**D-1.**

**GAME AND FISH COMMISSION**
Title 12, Chapter 4

**Amend:** R12-4-101, R12-4-102, R12-4-103, R12-4-104, R12-4-107, R12-4-108, R12-4-109, R12-4-115, R12-4-120 R12-4-121, R12-4-127

# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - REGULAR RULEMAKING

---

**MEETING DATE: April 1, 2025**

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

**FROM:** Council Staff

**DATE:** March 18, 2025

**SUBJECT:** **GAME AND FISH COMMISSION**
Title 12, Chapter 4

**Amend:** R12-4-101, R12-4-102, R12-4-103, R12-4-104, R12-4-107, R12-4-108, R12-4-109, R12-4-115, R12-4-120 R12-4-121, R12-4-127

---

**Summary:**

This regular rulemaking from the Game and Fish Commission (Commission) seeks to amend eleven (11) rules to Title 12, Chapter 4, Article 1 regarding Definitions and General Provisions. These amendments relate to the Five Year Review Report approved by the Council on October 3, 2023.

For R12-4-101, the Commission will be adding definitions for electronic signature and signature.

For R12-4-102, the Commission will be removing references to the repealed Community Fishing License.

For R12-4-103, the Commission will be adding electronic tags to the existing language for duplicate tags and licenses.

For R12-4-104, the Commission is adding language to clarify when an individual is eligible for a big game permit tag and bonus point. The amended language will allow minors to apply for non big game draw hunts without needed to buy a license

For R12-4-107, the Commission is amending this rule to clarify the bonus point system as it relates to the proposed changes in R12-4-104.

For R12-4-108, the Commission is amending the Game Management Unit Boundaries to improve the clarity of boundaries by increasing the detail of where these units are located.

For R12-4-109, an individual is required to complete a trapping course prior to being issued a trapping license, this course is administered by a third party which is allowed to charge a fee. The proposed amendment would increase the amount a third party could charge from $25 to $75, the Commission states that this increase is necessary because the fee has not been updated since 1992 and has fallen behind the Consumer Price Index.

For R12-4-115, the rule is being amended to specify that an applicant for a supplemental hunt or hunter pool can be filed either online or by paper application.

For R12-4-120, the Commission is proposing to change references from license-tags to just tags with the goal being to make the rules more concise.

For R12-4-121, the Department has indicated that they have added language to clarify the number of same species tags an individual may receive via the tag transfer program, with the proposed language being the current practice of the Commission.

For R12-4-127, the Commission is adding a new subsection that requires the Arizona Game and Fish Department to recommend the value of unlawfully lost aquatic wildlife based on information obtained from the Arizona Anglers' Expenditures and the Economic Impact of Fishing in the State and to take that dollar amount when calculating the average body weight in the manner identified by the Commission in (D)(2). The existing rules do not specify the difference between aquatic and non-aquatic wildlife. Additionally, the formula used to help determine the value of lost aquatic life comes from other western states.

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

The Commission 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. However in R12-4-109, the rule allows for a third party provider of a trapping educational course to collect a fee from the participant. All individuals who apply for a trapping license must complete a trapping course per A.R.S. § 17-333.02(A). The Department has indicated that 100 to 150 individuals apply for a trapping license per year.

The Commission currently does not allow a vendor to charge over $25 but the Commission is proposing to raise that amount to $75. The Commission states that this increase is necessary because the fee amount has not increased since 1992 and the consumer price index (CPI) has increased 119% since 1992. The Commission has stated only one vendor provides this service at this time and they currently charge $34.95. The Department has also indicated that the Arizona Trappers Association supports this fee increase.

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

The Commission indicates it did not review or rely on a study in its evaluation of or justification for a rule in this rulemaking.

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

The Commission states that, overall, it believes the amendments proposed in this rulemaking result in rules that are either less burdensome or have no significant impact on the regulated community. The Commission believes the general public, regulated community and the Department benefit from the proposed rulemaking through clarification of rule language. The Commission anticipates the rulemaking will result in an overall benefit to persons regulated by the rules by reducing the burden and cost associated with the rules, by increasing clarity, and by providing better customer service to persons seeking to conduct activities authorized by the rules. The Commission states that the proposed rulemaking will benefit hunters interested in hunting in Arizona by ensuring Department processes align with current technology and circumstances, allow for the adoption of updated business practices and represents the most cost-effective and efficient method of fulfilling the Commission's and Department's responsibilities by imposing only those requirements that are necessary to meet the Commission's objectives.

**5. Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?**

The Commission has determined that there are no alternative methods of achieving the objectives of the proposed rulemaking.

**6. What are the economic impacts on stakeholders?**

The Commission anticipates the following amendments being made solely to clarify the rules will have no impact on the Department and/or the regulated community: R12-4-102,

removing references to the repealed community fishing rule, R12-4-120, replacing references to “license-tag” with “tag” and R12-4-121, specifying that any number of donated or surrendered tags may be transferred to an eligible person provided the person has not reached the established annual or lifetime bag limit for that species/genus.

The Commission anticipates persons regulated by the rule and the Department will benefit from an amendment that defines ‘electronic signature”. The Commission believes they play a crucial role in modern business and legal processes because it’s a faster and more efficient way of conducting business online and they are legally binding.

The Commission anticipates that persons regulated by the rule and the Department will benefit from amendment that allows a person to obtain a duplicate tag in the event their electronic tag is attached to an animal that was tagged, condemned and subsequently surrendered to a Department employee.

The Commission anticipates that persons regulated by the rule and the Department will benefit from amendment that allows a minor who applied for a Sandhill crane tag to purchase or accrue a bonus point for Sandhill crane.

The Commission anticipates persons regulated by the rule and the Department will benefit from amendments that update Management Unit boundaries.
The Commission anticipates persons regulated by the rule and the Department will benefit from the amendment that increases the fee of providing an approved educational course of instruction in responsible trapping and environmental ethics. The Commission says the current fee limitation has been in place for over 20 years. Increasing the fee from $25 to $75 will allow course providers to collect a fee that is more commensurate with the service provided and ensure the rule remains current for an extended period of time. The Commission states that approximately 100 to 150 individuals attend the trapper education Course.

The Commission anticipates persons regulated by the rule and the Department will benefit from amendments that allow the Department to specify the manner and methods by which a person may apply for a supplemental hunt or the hunter pool.

The Commission anticipates that both the public and Department will benefit from amendments that establish civil liabilities for loss of aquatic wildlife. The Commission believes the proposed rule creates a method using reasonable factors to ensure damages are determined fairly and consistently.

Overall, the Commission anticipates the proposed amendments will not have a significant impact on the Department of other agencies directly affected by the implementation and enforcement of the proposed rulemaking. The Commission anticipates the proposed amendments will have little or no impact on state revenues. The Commission anticipates the proposed rulemaking will benefit private persons and consumers by clarifying license and permit rules and in so doing ensures the continued integrity of and compliance with its

Rules.

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

The Commission indicates it made the following changes to the rules between the Notice of Proposed Rulemaking and the Notice of Final Rulemaking now before the Council:

- R12-4-108 was changed to correct a typographical error from exit 289 to exit 291
- R12-4-127 contained a reference to a National survey that skewered costs because it covered coastal and deep sea fishing; the Commission changed the reference to an Arizona based survey with more local and accurate figures that the Commission believes will make it easier to calculate costs for establishing values for unlawfully taken aquatic wildlife.

Council staff does not believe these changes make the final rules substantially different from the proposed rules pursuant to A.R.S. § 41-1025.

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

The Department indicates it received one comment in response to the Proposed Rulemaking. The comment was in support of the rulemaking and is listed below.

- The proposed changes to Article 1 generally demonstrate responsible and sustainable management of wildlife while maintaining high levels of opportunity for hunters. Specifically, Safari Club International supports the proposed changes in R12-4-104, which allows a minor to apply for a draw hunt other than big game without having to purchase a license, and R12-4-107, allowing for a bonus point for sandhill crane unsuccessful applicants under the age of ten and allows the minor to apply for a hunt other than a big game without having to purchase a license. The proposed changes should assist in recruitment of new hunters.

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

The Commission indicates that the rules do not require the issuance of a regulatory permit, license or agency authorization.

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

Not applicable. The Commission indicates federal law is not directly applicable to the subject of the rules. The rules are based on state law.

## 11. Conclusion

This regular rulemaking from the Game and Fish Commission (Commission) seeks to amend eleven (11) rules to Title 12, Chapter 4, Article 1 regarding Definitions and General Provisions. These changes are a result of the Commissions most recent 5 Year Review Report with the changes mostly being to improve the clarity of the rules. The Commission is proposing to amend the rules to increase the maximum fee that a third party can charge for an educational trapping course. The course is required for the issuance of a trapping license. The maximum amount is being raised from $25 to $75 because the maximum amount has not been raised since 1992 and needs to be adjusted to reflect the changes to the Consumer Price Index during that time.

The Commission is seeking the standard 60 day effective date.

Council staff recommends approval of this rulemaking.

February 10, 2025

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

**RE:** Arizona Game and Fish Department, 12 A.A.C., Ch. 4 Game and Fish Commission, Article 1. Definitions and General Provisions, Regular Rulemaking

Dear Jessica Klein:

**1. The close of record date:** January 25, 2024
**2. Does the rulemaking activity relate to a Five Year Review Report:** Yes
    **a. If yes, the date the Council approved the Five Year Review Report:** October 3, 2023
**3. Does the rule establish a new fee:** No
    **a. If yes, what statute authorizes the fee:** NA
**4. Does the rule contain a fee increase:** No
**5. Is an immediate effective date requested pursuant to A.R.S. 41-1032:** No

The Department certifies that the preamble discloses a reference to any study relevant to the rule that the agency reviewed.

The Department certifies that the preamble states that it did not rely on it in the Department's evaluation of or justification for the rule.

The Department certifies that the preparer of the economic, small business, and consumer impact statement has not notified the Joint Legislative Budget Committee of the number of new full-time employees necessary to implement and enforce the rule because the rule does not require any new full-time employees.


**GOVERNOR:** KATIE HOBBS **COMMISSIONERS:** CHAIRMAN CLAY HERNANDEZ, TUCSON | MARSHA PETRIE SUE, SCOTTSDALE | JEFF BUCHANAN, PATAGONIA
JAMES E. GOUGHNOUR, PAYSON | TODD G. GEILER, PRESCOTT **DIRECTOR:** TOM P. FINLEY **DEPUTY DIRECTOR:** JOSHUA W. HURST

The following documents are enclosed:

**1.** Notice of Final Rulemaking, including the preamble, table of contents, and text of each rule;

**2.** An economic, small business, and consumer impact statement that contains the information required by A.R.S. 41-1055;

**3.** The written comments received by the agency concerning the proposed;

**4.** General and specific statutes authorizing the rules, including relevant statutory definitions; and

**5.** 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,


For

Tom Finley
Director

**NOTICE OF FINAL RULEMAKING**

**TITLE 12. NATURAL RESOURCES**

**CHAPTER 4. GAME AND FISH COMMISSION**

**ARTICLE 1. DEFINITIONS AND GENERAL PROVISIONS**

**PREAMBLE**

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

December 11, 2023

| **2. Article, Part, or Section Affected (as applicable)** | **Rulemaking Action** |
|---|---|
| R12-4-101 | Amend |
| R12-4-102 | Amend |
| R12-4-103 | Amend |
| R12-4-104 | Amend |
| R12-4-107 | Amend |
| R12-4-108 | Amend |
| R12-4-109 | Amend |
| R12-4-115 | Amend |
| R12-4-120 | Amend |
| R12-4-121 | Amend |
| R12-4-127 | 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. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-102, 17-234, 17-239, 17-241, 17-314, 17-331, 17-332, 17-333, 17-333.02, 17-335.01, 17-342, 17-345, 17-346, 17-371, 17-452, 17-453, 17-454, 17-455, 25-320(P), 25-502(K), 25-518, 41-1005, and 41-2572.

**4. The effective date of the rule:**

The rules shall become effective 60 days after a certified original and preamble are filed in the Office of the Secretary of State pursuant to A.R.S. § 41-1032(A). 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. 2986, Issue Date: October 4, 2024, Issue Number: 40 File number: R24-193

Notice of Proposed Rulemaking: (30) A.A.R. 2929, Issue Date: October 4, 2024, Issue Number: 40 File number: R24-187

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


Name: Celeste Cook

Title: Policy and Rules Manager

Division: Director's Office Compliance and Strategies

Address: 5000 W. Carefree Hwy, PHX, AZ 85086

Telephone: (602) 236-7390

Email: ccook@azgfd.gov

Website: azgfd.gov


Please visit the AZGFD website to track the progress of this rule; view the regulatory agenda, five-year review reports, and learn about other agency rulemaking matters.

**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 Arizona Game and Fish Commission proposes to amend its Article 1 rules, addressing definitions and general provisions to enact amendments developed during the preceding Five-year Review Report. Arizona's great abundance and diversity of native wildlife can be attributed to careful management and the important role of the conservation programs developed by the Arizona Game and Fish Department. The Department's management of both game and nongame species as a public resource depends on sound science and active management. As trustee, the state has no power to delegate its trust duties and no freedom to transfer trust ownership or management of assets to private establishments. Without strict agency oversight and management, the fate of many of our native species would be in jeopardy. Wildlife can be owned by no person and is held by the state in trust for all the people.

**R12-4-101. Definitions:** The objective of the rule is to establish definitions that assist persons regulated by the rule and members of the public in understanding the unique terms that are used throughout 12 A.A.C. Chapter 4. The rule was adopted to facilitate consistent interpretation and to prevent persons regulated by the rule from misinterpreting the intent of Commission rules. Over time, the Department has diligently worked towards moving its processes to the Department's online platform. Many of the applications, forms, reports, etc. require the person submitting them to sign and date the application, form, report, etc. The Commission proposed to amend the rule to define "electronic signature" and "signature" to further enhance and support the use of online Department forms, applications, reports, etc. that require the submitter to provide a signature and date to indicate the person's intent to agree to payment, conditions, terms, etc. as applicable to the online application, form, report, etc. Electronic signatures provide a convenient way to sign documents without having to print them, physically sign them, and then scan or mail them back, thus reducing the person's costs and burdens. They play a crucial role in modern business and legal processes because it's a faster and more efficient way of getting things done online and they are legally binding. Defining elec-

tronic signatures ensures that parties involved understand their legal implications and obligations when using them. An electronic signature comes with audit trail capabilities, encryption, and other backend tools to ensure the signature is authentic. They are more convenient than a traditional signature, saving time and postage as they can be used to sign documents remotely, rendering the recipient's location irrelevant and nearly instant results. An electronic signature is essentially a process that uses computers to authenticate the signatory and certify the integrity of the document and the authenticity information stored within a digital signature is very difficult to manipulate or forge.

**R12-4-102. License, Permit, Stamp, and Tag Fees:** The objective of the rule is to prescribe fees for licenses, tags, stamps, and permits within statutory confines to meet Department operating expenditures and wildlife conservation. The Department receives no appropriations from the general fund and operates primarily with the revenue it generates from the sale of licenses, permits, stamps, tags, and matching funds from federal excise taxes hunters and anglers pay on guns, ammunition, fishing tackle, motorboat fuels, and related equipment. The rule was adopted to provide persons regulated by the rule with a comprehensive listing of license, permit, stamp, and tag fees and to ensure consistency between the fees collected by the Department and license dealers. The rule references R12-4-209. Community Fishing License, which was repealed January 1, 2022. The Commission proposes to amend the rule to remove references to the repealed rule to increase consistency between Commission rules.

**R12-4-103. Duplicate Tags and Licenses:** The objective of the rule is to establish requirements for the issuance of a duplicate license or tag when the original license or tag was not used and was lost, destroyed, mutilated or is otherwise unusable or was placed on a harvested animal that was subsequently condemned and surrendered to a Department employee. The rule was adopted to ensure consistency between the Department and license dealers when issuing a duplicate license or tag. Since the rule was last amended, the Department implemented a paperless tag process which allows a customer to purchase a license and permit-tag, view their license, bonus point, and tag information and electronically "tag" an animal using an App on their own electronic device. The Commission proposes to amend the rule to clarify that a person who validates their tag electronically for a harvested animal that was subsequently condemned and surrendered to a Department employee may apply for a duplicate tag upon submitting the condemned meat duplicate tag authorization form issued by the Department.

**R12-4-104. Application Procedures for Issuance of Hunt Permit-tags by Computer Draw and Purchase of Bonus Points:** The objective of the rule is to prescribe application requirements for the purchase of a bonus point and the issuance of hunt permit-tags; meaning a permit-tag for which the Commission has assigned a hunt number. The rule was adopted to provide persons regulated by the rule with the information necessary to successfully apply for a computer draw or the purchase of a bonus point. The current language requires a person to provide their license number when applying for a hunt permit-tag issued by computer draw. A person 10 years of age and under is not required to possess a hunting license unless they are applying for a big game hunt permit-tag. The Department recently began issuing Sandhill Crane tags by computer draw; under A.R.S. § 17-101, Sandhill Crane are not considered big game. The Commission proposes to amend the rule to establish an exemption to allow minors applying for draw hunts other than big game to do so without having to purchase a license. This amendment will also require amending R12-4-107 (bonus points) to ensure consistency between Commission Rules.

**R12-4-107. Bonus Point System:** The objective of the rule is to establish requirements for applying for and maintaining bonus points, which may improve an applicant's draw odds for big game computer draws. The rule was

adopted in response to customer comments requesting the Department implement a method that would reward loyal applicants and improve the drawing odds for a previously unsuccessful computer draw applicant. The "bonus point" system increases the number of chances for an application to receive a low random number in the computer draw. Bonus points are accumulated by failing to draw a hunt permit-tag or by buying a bonus point. Applications are assigned a random, computer-generated number. Applications that are assigned the lowest random number draw a tag first. It is important to note, having the greatest number of points does not guarantee a person will draw a tag. However, it does provide a better chance of being assigned a low random number in the computer draw. Under R12-4-104, the Department shall award one bonus point to an applicant who submits a valid Hunt Permit-tag Application and the application is unsuccessful in the computer draw. R12-4-104 also prohibits a person under the age of 10 from applying for the purchase of a bonus point. This was largely due to the fact that persons under the age of 10 are not eligible to hunt big game and, until just recently, the Department's computer draws were specific to big game animals only. Over the years, the interest in Sandhill Crane tags increased to the point where the interest in Sandhill Crane tags outnumbered the number of tags issued. A determination was made to issue Sandhill Cranes permit-tags by computer draw and add them to the list of game for which a bonus point may be awarded or purchased. This is problematic because a person 10 years of age and under is not eligible to purchase or accrue a bonus point. To address this conflict, the Commission proposes to amend the rule to award a Sandhill Crane bonus point to an applicant who is under the age of 10 and whose application was unsuccessful in the computer draw. These applicants would not be eligible to purchase a bonus point to avoid an over-accumulation of bonus points that would grant them an unfair advantage over other applicants.

**R12-4-108. Management Unit Boundaries:** The objective of the rule is to establish Game Management Unit boundaries for the preservation and management of wildlife. The Commission divides the state into 76 units for the purpose of managing wildlife. These units are known as Game Management Units and are composed of state, federal, military, and private land. These units define legally huntable areas and are essential to the Department's licensing, hunt permit-tag and law enforcement operations. Department biologists and Regional offices responsible for the management of a specific unit submit data concerning wildlife and wildlife habitat to the Department's Terrestrial Wildlife Program. The Terrestrial Wildlife Program then uses this data to formulate hunting seasons. Hunters purchase tags that authorize the person to participate in a specific hunting season in a Game Management Unit, portion of a unit, or group of units that are open to hunting. It is illegal for a person to take any wildlife in any area, other than the unit and wildlife specified on the tag, and hunters rely on the unit boundary descriptions provided in R12-4-108 to ensure that they are complying. Because landmarks change over time due to environmental factors, as local opinion changes regarding its destination, or the names of places and things change due to political or historical factors, the Commission proposes to amend the rule to update boundary revisions as necessary to clearly define roads and intersections with sufficient detail to reflect on the ground signage and current maps. The update serves to provide additional clarity and maintain recreational opportunities for the public (both hunters and outdoor recreationists).

**R12-4-109. Approved Trapping Education Course Fee:** The objective of the rule is to establish the maximum fee a person may charge for a trapping education course. The rule was adopted to ensure compliance with A.R.S. § 17-333.02. Under A.R.S. § 17-333.02, a person is required to successfully complete a trapping education course

conducted or approved by the Department before being issued a trapping license. The course shall include instruction on the history of trapping, trapping ethics, trapping laws, techniques in safely releasing nontarget animals, trapping equipment, wildlife management, proper catch handling, trapper health and safety and considerations and ethics intended to avoid conflicts with other public land users. The current fee was established prior to 1992 and, since then, the consumer price index (CPI) has increased by 119%. As a result, the current fee established in rule is not reflective of the CPI or value of the Trapper Education Course. Our current vendor who provides this necessary service to customers charges a fee of $34.95 and is not in compliance with the rule. Approximately, 100 to 150 individuals attend the education course on an annual basis. Failure to increase the fee at this time has the potential to negatively impact Department resources because the vendor provides this service to a degree that the Department is unable to fulfill, therefore affecting the time, efficiency, and ability to serve the Department's customers who need this course in order to obtain a trapping license. By increasing the fee limit the Department will bring the vendor into compliance and allow the Department to continue providing a necessary service to its customers. Increasing the fee from $25 to $75 will ensure the rule remains effective and enforceable now and into the future. The Arizona Trappers Association supports this course fee increase.

**R12-4-115. Restricted Nonpermit-Tags; Supplemental Hunts and Hunter Pool:** The objective of the rule is to establish the Commission's authority to implement a supplemental hunt when necessary to achieve management objectives when those objectives are not being reached through the regular season structures, take depredating wildlife, or address an immediate threat to the health, safety, or management of wildlife or its habitat, or to public health or safety. The rule also establishes the requirements for the supplemental hunter pool, comprised of persons who may be called upon to receive restricted nonpermit-tags when a supplemental hunt is authorized by the Commission. Under A.R.S. § 17-239(D), the Commission may establish special seasons, special bag limits, and reduce or waive license and tag fees to manage wildlife. The rule was adopted to establish an application process and hunter pool to enable the Department conduct those authorized activities. The current process for accepting Hunter Pool applications requires customers to submit a paper application to the Department's Draw Unit staff who then manually enter the customer's application into the Department's Customer Database. This process is time consuming and cumbersome. The Department is developing an online solution that will allow customers to apply online, eliminating the many hours needed for manual entry and freeing up Draw Unit staff to focus on other duties. The Department anticipates the online application will contain expanded criteria that the customer may select to further reduce the burden on the Department when making phone calls to potential tag recipients (i.e.; a customer applying for an elk hunt may select whether they are interested in an 'any elk,' 'cow elk,' or 'bull elk' hunt). The Commission proposes to amend the rule to allow the Department to specify the manner and method by which a person may submit an application for a supplemental hunt or hunter pool, such as online or by paper application to reduce administrative burden.

**R12-4-120. Issuance, Sale, and Transfer of Special Big Game License-tags:** The objective of the rule is to establish procedures for the application and issuance of special big game tags, including the selection criteria for choosing applicants who are awarded such tags as authorized under A.R.S. § 17-346. The rule was adopted to ensure compliance with the requirements of A.R.S. § 17-346. The Commission is authorized to issue three special big game tags each year for each species of big game to 501(c)(3) organizations. The Commission reviews applications submitted by eligible wildlife conservation organizations and, through a public process, awards those tags to selected organiza-

tions to raise funds for wildlife. Tags are awarded to eligible wildlife conservation organizations in June and are valid from August 15th of the year in which they were purchased until August 14th the following year; a separate hunting license is required. With the last rulemaking the Commission amended the rule to require the winning bidder to possess a hunting or combination hunting and fishing license to validate the special license tag. The Commission proposes to amend the rule to replace references to "license-tags" with "tags" to make the rule more concise.

**R12-4-121. Tag Transfer:** The objective of the rule is to establish the requirements for the transfer of an unused big game tag as authorized under A.R.S. § 17-332, which allows a parent, guardian, or grandparent to transfer their unused big game tag to a minor child or grandchild; or a person to transfer their unused big game tag to a 501(c)(3) organization that provides hunting opportunities and experiences to persons eligible under A.R.S. § 17-332(D). The rule was adopted to ensure compliance with A.R.S. § 17-332. The Department processes approximately 700 transfers on an annual basis, this figure includes transfers to a minor child or grandchild and transfers to a 501(c)(3) organization. Each transfer represents an opportunity that would likely have gone unrealized. Persons who are eligible to receive a donated, unused big game tag include: Children with life-threatening medical conditions or physical disabilities; Children whose parent was killed in action while serving in the U.S. Armed Forces, in the course and scope of employment as a peace officer; or in the course and scope of employment as a professional firefighter who is a member of a state, federal, tribal, city, town, county, district or private fire department; and Veterans with service-connected disabilities. There is some confusion regarding the number of same species/genus tags an eligible person may receive by way of the tag transfer program. The current process allows a person to receive any number of the same species/genus tags in a calendar year provided the eligible person has not met the annual or lifetime bag limit for that same species/genus, as applicable. The Commission proposes to clarify the rule to reflect the Department's current process.

**R12-4-127. Civil Liability for Loss of Wildlife:** The rule was adopted to prescribe the civil liability values for the loss of wildlife when a person convicted of unlawfully taking, wounding, or killing wildlife or unlawfully in possession of unlawfully taken wildlife. This information is used by the Commission as a tool to establish the reasonable 'market' value when the Commission is determining the civil assessment to recover lost revenue to the state for the unlawful take of wildlife. The formula remains consistent while figures are researched and presented to the Commission each January for approval. The rule was adopted to allow the Commission to recover lost revenue when the value of the wildlife taken exceeds the minimal values prescribed under A.R.S. § 17-314. Prior to the adoption of this rule, the Commission used the statutory minimum values for reimbursement to the state as prescribed under A.R.S. § 17-314. These values were derived from baseline figures taken from other western states and initially adopted and approved as reasonable average values. The statutory values have remained the same since adoption in law and left no process for future modification based on market fluctuations. Many factors were explored in the process of determining an updated version of value associated with wildlife for the state. Research of processes and methods of valuation from other states was conducted to determine best practices. It was decided that using market values associated with wildlife and parts of wildlife would be the most defensible and repeatable year after year. The Department operates six fish hatcheries. Five of these fish hatcheries are used for cold water production and play a major role in providing trout fishing opportunities in Arizona. The sixth hatchery is dedicated to warm water fish production. Hatchery fish are raised from eggs which are purchased and imported from other federal, state, or pri-

vate hatcheries in the nation. Almost all of the trout harvested in Arizona are stocked from Commission-owned hatcheries. Every year, Department fish hatcheries contribute to Arizona's economy by producing on average 385,000 pounds of fish. This equates to over 3 million fish that are stocked into 118 locations throughout Arizona. The rule allows the Commission to establish civil penalties intended to recover the cost of wildlife unlawfully taken, lost, or injured. Internal discussions indicate the rule does not adequately address the loss of aquatic wildlife. The Commission proposes to amend the rule to establish values intended to recover hatchery expenses per fish, which includes the costs to purchase, raise, feed, transport, and release aquatic wildlife.

**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 proposed rulemaking will benefit hunters interested in hunting in Arizona by ensuring Department processes and programs align with current technology and circumstances, allow for the adoption of updated business practices and represents the most cost-effective and efficient method of fulfilling the Commission's and Department's responsibilities by imposing only those requirements that are necessary to meet the Commission's objectives. When amending Commission rules, the Department tasks a team of subject matter experts to consider all comments from the public and agency staff that administer and enforce the rules, historical data, current processes and environment, and the Department's overall mission. The team takes a customer-focused approach, considers each recommendation from a resource perspective and determines whether the recommendation would cause undue harm to the Department's goals and objectives. The team then determines whether the request is in keeping with overarching guidance provided by the Governor, authorized by statute, in keeping with overarching guidance provided by the Commission, consistent with the Department's overall mission, is least burdensome to persons regulated by the rule, if it could be effectively implemented given agency resources, and if it is acceptable to the public.

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

Under R12-4-108, units 33 and 37M contained a manifest typographical error, the I-10/Marsh Station Rd exit is listed as exit "289" and it should be exit "291."

Under R12-4-127, the National Survey of Fishing, Hunting and Wildlife-Associated Recreation survey conducted by the U.S. Fish and Wildlife Service is not as applicable to inland angling as originally believed. Further analysis has determined the values contained in the report are skewed due to cost estimates associated with coastal and deep-sea fishing gear, boating equipment, and trip expenditures. The Commission replaced references to the U.S. Fish and Wildlife Service survey with the Arizona Anglers' Expenditures and the Economic Impact of Fishing in the State conducted by an independent survey provider. The most recent survey was conducted by Responsive Management, an internationally recognized survey research firm specializing in attitudes toward natural resource and outdoor rec-

reation in an effort to help natural resource and outdoor recreation agencies, businesses, and organizations better understand and work with their constituents, customers, and the public. The Commission believes the values provided in the independent surveys conducted specifically in Arizona will better serve the public and Commission when establishing the civil values for unlawfully taken aquatic wildlife.

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

During the rulemaking process to further encourage public participation in the rulemaking process, the Department issued press releases and published information regarding the proposed rulemaking. The Notice of Proposed Rulemaking was published in the *Arizona Administrative Register* on October 4, 2024; the official public comment period began October 4, 2024 and ended on November 4, 2024, see Notice of Proposed Rulemaking: 30 A.A.R. 2929, October 4, 2024. The proposed rulemaking was an agenda item at the September 2024 Commission Meeting; at this public meeting members of the public and stakeholders were given the opportunity to address the Commission in response to the rulemaking.

In addition to the above, at the September, October, November, and December 2024 Commission meetings, under the Call to the Public agenda item, the public could comment on the proposed rule package. During the formally noticed October 4, 2024 Commission meeting, the Commission formally accepted additional oral comments in person, by telephone, and from public stakeholders who wished to comment about the proposed rules virtually from any of the six Game and Fish regional offices. It is important to note, to further encourage public participation in the rulemaking process, the Department issued press releases, a licensed dealer bulletin, and published information regarding the proposed changes. It is important to note, the comment submitted in response to the proposed rulemaking was provided to the Commission and the Governor's Regulatory Review Council for their consideration. The following comment was received in response to the Notice of Proposed Rulemaking, see Notice of Proposed Rulemaking: 30 A.A.R. 2929, October 4, 2024:

**October 29, 2024:** The proposed changes to Article 1 generally demonstrate responsible and sustainable management of wildlife while maintaining high levels of opportunity for hunters. Specifically, Safari Club International supports the proposed changes in R12-4-104, which allows a minor to apply for a draw hunt other than big game without having to purchase a license, and R12-4-107, allowing for a bonus point for sandhill crane unsuccessful applicants under the age of ten and allows the minor to apply for a hunt other than a big game without having to purchase a license. The proposed changes should assist in recruitment of new hunters.

**Agency Response:** The Commission appreciates your support.

**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 reason why a general permit is not used:**

The rules included in this notice do not require the issuance of a regulatory permit, license, or agency authorization.

**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 rules included in this notice are based on state law and federal law is not directly applicable to the rules.

**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 agency has not received an analyses.

**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:**

Rule text begins on the next page.

**TITLE 12. NATURAL RESOURCES**

**CHAPTER 4. GAME AND FISH COMMISSION**

**ARTICLE 1. DEFINITIONS AND GENERAL PROVISIONS**

Section


R12-4-101. Definitions

R12-4-102. License, Permit, Stamp, and Tag Fees

R12-4-103. Duplicate Tags and Licenses

R12-4-104. Application Procedures for Issuance of Hunt Permit-tags by Computer Draw and Purchase of Bonus Points

R12-4-107. Bonus Point System

R12-4-108. Management Unit Boundaries

R12-4-109. Approved Trapping Education Course Fee

R12-4-115. Restricted Nonpermit-Tags; Supplemental Hunts and Hunter Pool

R12-4-120. Issuance, Sale, and Transfer of Special Big Game ~~License tags~~ Tags

R12-4-121. Tag Transfer

R12-4-127. Civil Liability for Loss of Wildlife

## ARTICLE 1. DEFINITIONS AND GENERAL PROVISIONS

### R12-4-101. Definitions

**A.** In addition to the definitions provided under A.R.S. § 17-101, R12-4-301, R12-4-401, and R12-4-501, the following definitions apply to this Chapter, unless otherwise specified:

"Arizona Conservation Education" means the conservation education course provided by Arizona Game and Fish Department in hunting safety, responsibility, and conservation.

"Arizona Hunter Education" means the hunter education course provided by Arizona Game and Fish Department in hunting safety, responsibility, and conservation meeting Association of Fish and Wildlife agreed upon reciprocity standards along with Arizona-specific requirements.

"Attach" means to fasten or affix a tag to a legally harvested animal. An electronic tag is considered attached once the validation code is fastened to the legally harvested animal.

"Bobcat seal" means the tag a person is required to attach to the raw pelt or unskinned carcass of any bobcat taken by trapping in Arizona or exported out of Arizona regardless of the method of take.

"Bonus point" means a credit that authorizes the Department to issue an applicant an additional computer-generated random number.

"Bow" means a long bow, flat bow, recurve bow, or compound bow of which the bowstring is drawn and held under tension entirely by the physical power of the shooter through all points of the draw cycle until the shooter purposely acts to release the bowstring either by relaxing the tension of the toes, fingers, or mouth or by triggering the release of a hand-held release aid.

"Certificate of insurance" means an official document, issued by the sponsor's and sponsor's vendors, or subcontractor's insurance carrier, providing insurance against claims for injury to persons or damage to property which may arise from, or in connection with, the solicitation or event as determined by the Department.

"Cervid" means a mammal classified as a Cervidae, which includes but is not limited to caribou, elk, moose, mule deer, reindeer, wapiti, and whitetail deer; as defined in the taxonomic classification from the Integrated Taxonomic Information System, available online at www.itis.gov.

"Commission Order" means a document adopted by the Commission that does one or more of the following:

Open, close, or alter seasons,

Open areas for taking wildlife,

Set bag or possession limits for wildlife,

Set the number of permits available for limited hunts, or

Specify wildlife that may or may not be taken.

"Crossbow" means a device consisting of a bow affixed on a stock having a trigger mechanism to release the bowstring.

"Day-long" means the 24-hour period from one midnight to the following midnight.

"Department property" means those buildings or real property and wildlife areas under the jurisdiction of the Arizona Game and Fish Commission.

"Electronic signature" means symbols or other data in digital form attached to an electronically transmitted document

as verification of the sender's intent to sign the document. The electronic signature is used to indicate the person's intent to agree to payment, conditions, terms, etc. as applicable to an online application, form, report, etc.

"Electronic tag" means a tag that is provided by the Department through an electronic device that syncs with the Department's computer systems.

"Export" means to carry, send, or transport wildlife or wildlife parts out of Arizona to another state or country.

"Firearm" means any loaded or unloaded handgun, pistol, revolver, rifle, shotgun, or other weapon that will discharge, is designed to discharge, or may readily be converted to discharge a projectile by the action of an explosion caused by the burning of smokeless powder, black powder, or black powder substitute.

"Hunt area" means a management unit, portion of a management unit, or group of management units, or any portion of Arizona described in a Commission Order and not included in a management unit, opened to hunting.

"Hunt number" means the number assigned by Commission Order to any hunt area where a limited number of hunt permits are available.

"Hunt permits" means the number of hunt permit-tags made available to the public as a result of a Commission Order.

"Hunt permit-tag" means a tag for a hunt for which a Commission Order has assigned a hunt number.

"Identification number" means the number assigned to each applicant or license holder by the Department as established under R12-4-111.

"Import" means to bring, send, receive, or transport wildlife or wildlife parts into Arizona from another state or country.

"License dealer" means a business authorized to sell hunting, fishing, and other licenses as established under R12-4-105.

"Limited-entry permit-tag" means a permit made available for a limited-entry fishing or hunting season.

"Live baitfish" means any species of live freshwater fish designated by Commission Order as lawful for use in taking aquatic wildlife under R12-4-313 and R12-4-314.

"Management unit" means an area established by the Commission for management purposes.

"Nonpermit-tag" means a tag for a hunt for which a Commission Order does not assign a hunt number and the number of tags is not limited.

"Nonprofit organization" means an organization that is recognized under Section 501© of the U.S. Internal Revenue Code.

"Person" has the meaning as provided under A.R.S. § 1-215.

"Proof of purchase," for the purposes of A.R.S. § 17-331, means an original, or any authentic and verifiable form of the original, of any Department-issued license, permit, or stamp that establishes proof of actual purchase.

"Pursue" means to chase, tree, corner or hold wildlife at bay.

"Pursuit-only" means a person may pursue, but not kill, a bear, mountain lion, or raccoon on any management unit that is open to pursuit-only season, as defined under R12-4-318, by Commission Order.

"Pursuit-only permit" means a permit for a pursuit-only hunt for which a Commission Order does not assign a hunt number and the number of permits are not limited.

"Restricted nonpermit-tag" means a tag issued for a supplemental hunt as established under R12-4-115.

"Signature" means a notation that signifies an individual's acceptance of the terms and conditions applicable to the ap-

plication or contract and is used to identify who is signing and what their intention is; includes electronic signatures.

"Solicitation" means any activity that may be considered or interpreted as promoting, selling, or transferring products, services, memberships, or causes, or participation in an event or activity of any kind, including organizational, educational, public affairs, or protest activities, including the distribution or posting of advertising, handbills, leaflets, circulars, posters, or other printed materials for these purposes.

"Solicitation material" means advertising, circulars, flyers, handbills, leaflets, posters, or other printed information.

"Sponsor" means the person or persons conducting a solicitation or event.

"Stamp" means a form of authorization in addition to a license that authorizes the license holder to take wildlife specified by the stamp.

"Tag" means the Department authorization a person is required to obtain before taking certain wildlife as established under A.R.S. Title 17 and 12 A.A.C. 4.

"Validation code" means the unique code provided by the Department and associated with an electronic tag.

"Waterdog" means the larval or metamorphosing stage of a salamander.

"Wildlife area" means an area established under 12 A.A.C. 4, Article 8.

**B.** If the following terms are used in a Commission Order, the following definitions apply:

"Antlered" means having an antler fully erupted through the skin and capable of being shed.

"Antlerless" means not having an antler, antlers, or any part of an antler erupted through the skin.

"Bearded turkey" means a turkey with a beard that extends beyond the contour feathers of the breast.

"Buck pronghorn" means a male pronghorn.

"Adult bull bison" means a male bison of any age or any bison designated by a Department employee during an adult bull bison hunt.

"Adult cow bison" means a female bison of any age or any bison designated by a Department employee during an adult cow bison hunt.

"Bull elk" means an antlered elk.

"Designated" means the gender, age, or species of wildlife or the specifically identified wildlife the Department authorizes to be taken and possessed with a valid tag.

"One-horned ram" means any bighorn sheep ram having one horn that is less than one half the length of its other horn.

"Ram" means any male bighorn sheep.

"Rooster" means a male pheasant.

"Yearling bison" means any bison less than three years of age or any bison designated by a Department employee during a yearling bison hunt.

**R12-4-102. License, Permit, Stamp, and Tag Fees**

**A.** A person who purchases a license, tag, stamp, or permit listed in this Section shall pay at the time of purchase all applicable fees prescribed under this Section or the fees the Director authorizes under R12-4-115.

**B.** A person who applies to purchase a hunt permit-tag shall submit with the application all applicable fees using acceptable forms of payment as required under R12-4-104(F) and (G).

**C.** As authorized under A.R.S. § 17-345, the license fees in this Section include a $3 surcharge, except Youth and High

Achievement Scout licenses.

**D.** A person desiring a replacement of a Migratory Bird Stamp shall repurchase the stamp.

| **Hunting and Fishing License Fees** | **Resident** | **Nonresident** |
|---|---|---|
| General Fishing License | $37 | $55 |
| ~~Community Fishing License~~ | ~~$24~~ | ~~$24~~ |
| General Hunting License | $37 | Not available |
| Combination Hunting and Fishing License | $57 | $160 |
| Youth Combination Hunting and Fishing License, fee applies until the applicant's 18th birthday. | $5 | $5 |
| High Achievement Scout License, as authorized under A.R.S. § 17-333(C). Fee applies until the applicant's 21st birthday. | $5 | Not available |
| Short-term Combination Hunting and Fishing License | $15 | $20 |
| Youth Group Two-day Fishing License | $25 | Not available |

| **Hunt Permit-tag Fees** | **Resident** | **Nonresident** |
|---|---|---|
| Bear | $25 | $150 |
| Bighorn Sheep | $300 | $1,800 |
| Bison | | |
| Adult Bulls or any Bison | $1,100 | $5,400 |
| Adult Cows | $650 | $3,250 |
| Yearling | $350 | $1,750 |
| Cow or Yearling | $650 | $3,250 |
| Deer and Archery Deer | $45 | $300 |
| Youth | $25 | $25 |
| Elk | $135 | $650 |
| Youth | $50 | $50 |
| Javelina | $25 | $100 |
| Youth | $15 | $15 |
| Pheasant non-archery, non-falconry | Application fee only | Application fee only |
| Pronghorn | $90 | $550 |
| Raptor | Not applicable | $175 |
| Sandhill Crane | $10 | $10 |
| Turkey and Archery Turkey | $25 | $90 |

| | | |
|---|---|---|
| Youth | $10 | $10 |

| **Nonpermit-tag and Restricted Nonpermit-tag Fees** | **Resident** | **Nonresident** |
|---|---|---|
| Bear | $25 | $150 |
| Bison | | |
| Adult Bulls or any Bison | $1,100 | $5,400 |
| Adult Cows | $650 | $3,250 |
| Yearling | $350 | $1,750 |
| Cow or Yearling | $650 | $3,250 |
| Deer | $45 | $300 |
| Youth | $25 | $25 |
| Elk | $135 | $650 |
| Youth | $50 | $50 |
| Javelina | $25 | $100 |
| Youth | $15 | $15 |
| Mountain Lion | $15 | $75 |
| Pronghorn | $90 | $550 |
| Sandhill Crane | $10 | $10 |
| Raptor | Not applicable | $175 |
| Turkey | $25 | $90 |
| Youth | $10 | $10 |

| **Stamps and Special Use Fees** | **Resident** | **Nonresident** |
|---|---|---|
| Bobcat Seal | $3 | $3 |
| Limited-entry Permit | Application fee only | Application fee only |
| State Migratory Bird Stamp | $5 | $5 |

| **Other License Fees** | **Resident** | **Nonresident** |
|---|---|---|
| Challenged Hunter Access/Mobility Permit (CHAMP) | Application fee only | Application fee only |
| Crossbow Permit | Application fee only | Application fee only |
| Fur Dealer’s License | $115 | $115 |

| | | |
|---|---|---|
| Reduced-fee Disabled Veteran's License, available to a resident disabled veteran who receives compensation from the U.S. government for a service-connected disability. This fee shall be equal to the fee required for the resident Combination Hunting and Fishing License, reduced by 25%, and then rounded up to the nearest even dollar. | $42 | Not available |
| Reduced-fee Purple Heart Medal License, available to a resident who is a bona fide Purple Heart Medal recipient. This fee shall be equal to the fee required for the resident Combination Hunting and Fishing License, reduced by 50%, and then rounded down to the nearest even dollar. | $28 | Not available |
| Guide License | $300 | $300 |
| License Dealer's License | $100 | $100 |
| License Dealer's Outlet License | $25 | $25 |
| Pursuit-only Permit | $20 | $100 |
| Taxidermist Registration | $100 | $100 |
| Trapping License | $30 | $275 |
| Youth | $10 | $10 |

| **Administrative Fees** | **Resident** | **Nonresident** |
|---|---|---|
| Duplicate License Fee, in the event the Department is unable to verify the expiration date of the original license, the duplicate license shall expire on December 31 of the current year. | $8 | $8 |
| Application Fee | $13 | $15 |

**R12-4-103. Duplicate Tags and Licenses**

**A.** Under A.R.S. § 17-332(C), the Department and its license dealers may issue a duplicate license ~~or,~~ tag, or electronic tag to an applicant who:

1. Pays the applicable fee prescribed under R12-4-102, and
2. Signs an affidavit. The affidavit is furnished by the Department and is available at any Department office or license dealer.

**B.** The applicant shall provide the following information on the affidavit:

1. The applicant's personal information:
   a. Name;
   b. Department identification number, when applicable;
   c. Residency status and number of years of residency immediately preceding application, when applicable;
2. The original license or tag information:
   a. Type of license ~~or,~~ tag, or electronic tag;

b. Place of purchase;

c. Purchase date, when available; and

3. Disposition of the original tag for which a duplicate is being purchased:

a. The tag was not used and is lost, destroyed, mutilated, or otherwise unusable; or

b. The tag was attached to a harvested animal that was subsequently condemned and the carcass and all parts of the animal were surrendered to a Department employee as required under R12-4-112(B) and (C). An applicant applying for a duplicate tag under this subsection shall also submit the condemned meat duplicate tag authorization form issued by the Department.

**C.** In the event the Department is unable to verify the expiration date of the original license, the duplicate license shall expire on December 31 of the current year.

**R12-4-104. Application Procedures for Issuance of Hunt Permit-tags by Computer Draw and Purchase of Bonus Points**

**A.** For the purposes of this Section, "group" means all applicants who placed their names on a single application as part of the same application.

**B.** A person is eligible to apply for a:

1. ~~For a hunt~~ Hunt permit-tag for big game if the person:

a. Is at least 10 years of age at the start of the hunt for which the person is applying;

b. Has successfully completed a Department-sanctioned hunter education course by the start date of the hunt for which the person is applying, when the person is between 9 and 14 years of age;

c. Has not reached the bag limit established under subsection (J) for that genus; and

d. Is not suspended or revoked in this state as a result of an action under A.R.S. §§ 17-340 or 17-502 at the time the person submits an application.

2. ~~For a bonus~~ Bonus point for big game if the person:

a. Is at least 10 years of age by the application deadline date; and

b. Is not suspended or revoked in this state as a result of an action under A.R.S. §§ 17-340 or 17-502 at the time the person submits an application.

3. Bonus point for wildlife other than big game if the person is not suspended or revoked in this state as a result of an action under A.R.S. §§ 17-340 or 17-502 at the time the person submits an application.

**C.** An applicant shall apply at the times, locations, and in the manner and method established by the hunt permit-tag application schedule published by the Department and available at any Department office, on the Department's website, or a license dealer.

1. The Commission shall set application deadline dates for hunt permit-tag computer draw applications through the hunt permit-tag application schedule.

2. The Director has the authority to extend any application deadline date if a problem occurs that prevents the public from submitting a hunt permit-tag application within the deadlines set by the Commission.

3. The Commission, through the hunt permit-tag application schedule, shall designate the manner and method of submitting an application, which may require an applicant to apply online only. If the Commission requires appli-

cants to use the online method, the Department shall accept paper applications only in the event of a Department systems failure.

**D.** An applicant for a hunt permit-tag or a bonus point shall complete and submit a Hunt Permit-tag Application. The application form is available from any Department office, a license dealer, or on the Department's website.

**E.** An applicant shall provide the following information on the Hunt Permit-tag Application:

1. The applicant's personal information:
   a. Name;
   b. Date of birth,
   c. Social security number, as required under A.R.S. §§ 25-320(P) and 25-502(K);
   d. Department identification number, when applicable;
   e. Residency status and number of years of residency immediately preceding application, when applicable;
   f. Mailing address, when applicable;
   g. Physical address;
   h. Telephone number, when available; and
   i. E-mail address, when available;
2. If the applicant possesses a valid license authorizing the take of wildlife in this state, the number of the applicant's license;
3. If the applicant does not possess a valid license at the time of the application, the applicant shall purchase a license as established under subsection (K). The applicant shall provide all of the following information on the license application portion of the Hunt Permit-tag Application:
   a. Physical description, to include the applicant's eye color, hair color, height, and weight;
   b. Residency status and number of years of residency immediately preceding application, when applicable;
   c. Type of license for which the person is applying; and
4. Certify the information provided on the application is true and accurate;
5. An applicant who is:
   a. Under the age of 10 and is submitting an application for a hunt other than big game is not required to have a license under this Chapter. The applicant shall indicate "youth" in the space provided for the license number on the Hunt Permit-tag Application.
   b. Age nine or older and is submitting an application for a big game hunt is required to purchase an appropriate license as required under this Section. The applicant shall either enter the appropriate license number in the space provided for the license number on the Hunt Permit-tag Application Form or purchase a license at the time of application, as applicable.

**F.** In addition to the information required under subsection (E), an applicant shall also submit all applicable fees established under R12-4-102, as follows:

1. When applying electronically:
   a. The permit application fee; and
   b. The license fee, when the applicant does not possess a valid license at the time of application. The applicant shall submit payment in U.S. currency using valid credit or debit card.

c. If an applicant is successful in the computer draw, the Department shall charge the hunt permit-tag fee using the credit or debit card furnished by the applicant.

2. When applying manually:
   a. The fee for the applicable hunt permit-tag;
   b. The permit application fee; and
   c. The license fee if the applicant does not possess a valid license at the time of application. The applicant shall submit payment by certified check, cashier's check, or money order made payable in U.S. currency to the Arizona Game and Fish Department.

**G.** An applicant shall apply for a specific hunt or a bonus point by the current hunt number. If all hunts selected by the applicant are filled at the time the application is processed in the computer draw, the Department shall deem the application unsuccessful, unless the application is for a bonus point.

1. An applicant shall make all hunt choices for the same genus within one application.
2. An applicant shall not include applications for different genera of wildlife in the same envelope.

**H.** An applicant shall submit only one valid application per genus of wildlife for any calendar year, except:

1. If the bag limit is one per calendar year, an unsuccessful applicant may re-apply for remaining hunt permit-tags in unfilled hunt areas, as specified in the hunt permit-tag application schedule.
2. For genera that have multiple draws within a single calendar year, a person who successfully draws a hunt permit-tag during an earlier season may apply for a later season for the same genus if the person has not taken the bag limit for that genus during a preceding hunt in the same calendar year.
3. If the bag limit is more than one per calendar year, a person may apply for remaining hunt permit-tags in unfilled hunt areas as specified in the hunt permit-tag application schedule.

**I.** All members of a group shall apply for the same hunt numbers and in the same order of preference.

1. No more than four persons may apply as a group.
2. The Department shall not issue a hunt permit-tag to any group member unless sufficient hunt permit-tags are available for all group members.

**J.** A person shall not apply for a hunt permit-tag for:

1. Rocky Mountain or desert bighorn sheep if the person has met the lifetime bag limit for that sub-species.
2. Bison if the person has met the lifetime bag limit for that species.
3. Any species when the person has reached the bag limit for that species during the same calendar year for which the hunt permit-tag applies.

**K.** To participate in:

1. The computer draw system, an applicant shall possess an appropriate hunting license that shall be valid, either:
   a. On the last day of the application deadline for that computer draw, as established by the hunt permit-tag application schedule published by the Department, or
   b. On the last day of an extended deadline date, as authorized under subsection (C)(2).
   c. If an applicant does not possess an appropriate hunting license that meets the requirements of this subsection, the applicant shall purchase the license at the time of application.
2. The bonus point system, an applicant shall comply with the requirements established under R12-4-107.

**L.** The Department shall reject as invalid a Hunt Permit-Tag Application not prepared or submitted in accordance with this Section or not prepared in a legible manner.

**M.** Any hunt permit-tag issued for an application that is subsequently found not to be in accordance with this Section is invalid.

**N.** The Department or its authorized agent shall deliver hunt permit-tags to successful applicants. The Department shall return application overpayments to the applicant designated "A" on the Hunt Permit-tag Application. The Department shall not refund:

1. A permit application fee.
2. A license fee submitted with a valid application for a hunt permit-tag or bonus point.
3. An overpayment of five dollars or less. The Department shall consider the overpayment to be a donation to the Arizona Game and Fish Fund.

**O.** The Department shall award a bonus point for the appropriate species to an applicant when the payment submitted is less than the required fees, but is sufficient to cover the application fee and, when applicable, license fee.

**P.** When the Department determines a Department error, as defined under subsection (P)(3), caused the rejection or denial of a valid application:

1. The Director may authorize either:
   a. The issuance of an additional hunt permit-tag, provided the issuance of an additional hunt permit-tag will have no significant impact on the wildlife population to be hunted and the application for the hunt permit-tag would have otherwise been successful based on its random number, or
   b. The awarding of a bonus point when a hunt permit-tag is not issued.
2. A person who is denied a hunt permit-tag or a bonus point under this subsection may appeal to the Commission as provided under A.R.S. Title 41, Chapter 6, Article 10.
3. For the purposes of this subsection, "Department error" means an internal processing error that:
   a. Prevented a person from lawfully submitting an application for a hunt permit-tag,
   b. Caused a person to submit an invalid application for a hunt permit-tag,
   c. Caused the rejection of an application for a hunt permit-tag,
   d. Failed to apply an applicant's bonus points to a valid application for a hunt permit-tag, or
   e. Caused the denial of a hunt permit-tag.

**R12-4-107. Bonus Point System**

**A.** For the purpose of this Section, the following definitions apply:

"Bonus point hunt number" means the hunt number assigned in a Commission Order for use by an applicant who is applying for a bonus point only.

"Loyalty bonus point" means a bonus point awarded to a person who has submitted a valid application for a hunt permit-tag or a bonus point for a specific genus identified in subsection (B) at least once annually for a consecutive five-year period.

**B.** The bonus point system grants a person one random number entry in each computer draw for bear, bighorn sheep, bison, deer, elk, javelina, pronghorn, Sandhill crane, or turkey for each bonus point that person has accumulated under

this Section.

1. Each bonus point random number entry is in addition to the entry normally granted under R12-4-104.
2. When processing a "group" application, as defined under R12-4-104, the Department shall use the average number of bonus points accumulated by all persons in the group, rounded to the nearest whole number. If the average number of bonus points is equal to or greater than .5, the total will be rounded to the next higher number.
3. The Department shall credit a bonus point under an applicant's Department identification number for the genus on the application.
4. The Department shall not transfer bonus points between persons or genera.

**C.** The Department shall award one bonus point to an applicant who submits a valid Hunt Permit-tag Application provided the following apply:

1. The application is unsuccessful in the computer draw or the application is for a bonus point only;
2. The application is unsuccessful in the computer draw:
   a. The applicant is age 10 or younger, and is applying for a hunt for wildlife other than big game; or
   b. The application is for a bonus point for wildlife other than big game only;

~~2.~~3. The application is not for a hunt permit-tag leftover after the computer draw and available on a first-come, first-served basis as established under R12-4-114; and

~~3.~~4. The applicant either provides the appropriate hunting license number on the application, or submits an application and fees for the applicable license with the Hunt Permit-tag Application Form, as applicable.

**D.** An applicant who purchases a bonus point only shall:

1. Submit a valid Hunt Permit-tag Application, as prescribed under R12-4-104 at the times, locations, and in the manner and method established by the schedule published by the Department and available at any Department office, on the Department's website, or a license dealer.
   a. When the application is submitted for a hunt permit-tag or bonus point, the Department shall reject any application that:
      i. Indicates the bonus point only hunt number as any choice other than the first-choice,
      ii. Includes any other hunt number on the application,
      iii. Includes more than one Hunt Permit-tag Application per genus per computer draw, or
      iv. Is submitted after the application deadline for that specific computer draw.
   ~~2.~~b. When the application is submitted for a bonus point during the extended bonus point period, the Department shall reject any application that:
      i. Includes more than one Hunt Permit-tag Application per genus, or
      ii. Is submitted after the application deadline for that extended bonus point period.

~~3.~~2. Include the applicable fees:
   a. Application fee, and
   b. Applicable license fee, required when the applicant does not possess a valid license at the time of application and the applicant is applying for a hunt permit-tag.

**E.** With the exception of the conservation education and hunter education bonus points, each accumulated bonus point is valid only for the genus designated on the Hunt Permit-tag Application.

**F.** With the exception of a permanent bonus point awarded for conservation education or hunter education and a loyalty bonus point which is accrued and forfeited as established under subsection (L), a person's accumulated bonus points for a genus are expended if:

1. The person is issued a hunt permit-tag for that genus in a computer draw;
2. The person fails to submit a Hunt Permit-tag Application for that genus for five consecutive years; or
3. The person purchases a surrendered tag as prescribed under R12-4-118(F)(1), (2), or (3).

**G.** Notwithstanding subsection (F), the Department shall restore any expended bonus points to a person who surrenders or transfers a tag in compliance with R12-4-118 or R12-4-121.

**H.** An applicant issued a first-come, first-served hunt permit-tag under R12-4-114(C)(2)(e) after the computer draw does not expend bonus points for that genus.

**I.** An applicant who is unsuccessful for a first-come, first-served hunt permit-tag made available by the Department after the computer draw is not eligible to receive a bonus point.

**J.** The Department shall award one permanent bonus point for each genus upon a person's first graduation from either:

1. A Department-sanctioned Arizona Hunter Education Course completed after January 1, 1980, or
2. The Department's Arizona Conservation Education Course completed after January 1, 2021.
    a. Course participants are required to provide the following information upon registration, the participants:
        i. Name;
        ii. Mailing address;
        iii. Telephone number;
        iv. E-mail address, when available;
        v. Date of birth; and
        vi. Department ID number, when applicable.
    b. The Arizona Game and Fish Department-certified Instructor shall submit the course paperwork to the Department within 10 business days of course completion. Course paperwork must be received by the Department no less than 30 days before the computer draw application deadline, as specified in the hunt permit-tag application schedule in order for the Department to assign hunter education bonus points in the next computer draw.
    c. Any person who is nine years of age or older may participate in a hunter education course or the Department's conservation education course. When the person is under 10 years of age, the hunter education completion card and certificate shall become valid on the person's 10th birthday.
    d. The Department shall not award hunter education bonus points for any of the following specialized hunter education courses:
        i. Bowhunter Education,
        ii. Trapper Education, or
        iii. Advanced Hunter Education.

**K.** The Department provides an applicant's total number of accumulated bonus points on the Department's application website or IVR telephone system.

1. If a person believes the total number of accumulated bonus points is incorrect, the person may request proof of

compliance with this Section, from the Department, to prove Department error.

2. In the event of an error, the Department shall correct the person's record.

**L.** The following provisions apply to the loyalty bonus point program:

1. An applicant who submits a valid application at least once a year for a hunt permit-tag or a bonus point for a specific genus consecutively for a five-year period shall accrue a loyalty bonus point for that genus.
2. Except as established under subsection (N), once a loyalty bonus point is accrued, the applicant shall retain the loyalty bonus point provided the applicant annually submits an application, with funds sufficient to cover all application fees and applicable license fees for each applicant listed on the application, for a hunt permit-tag or a bonus point for the genus for which the loyalty bonus point was accrued.
3. An applicant who fails to apply in any calendar year for a hunt permit-tag or bonus point for the genus for which the loyalty bonus point was accrued shall forfeit the loyalty bonus point for that genus.
4. A loyalty bonus point is accrued in addition to all other bonus points.

**M.** It is unlawful for a person to purchase or accrue a bonus point by fraud or misrepresentation and any bonus point so obtained shall be removed from the person's Department record.

**R12-4-108. Management Unit Boundaries**

**A.** For the purpose of this Section, parentheses mean "also known as," and the following definitions shall apply:

"FH" means forest highway.

"FR" means forest road.

"Hwy" means Highway.

"I-8" means Interstate Highway 8.

"I-10" means Interstate Highway 10.

"I-15" means Interstate Highway 15.

"I-17" means Interstate Highway 17.

"I-19" means Interstate Highway 19.

"I-40" means Interstate Highway 40.

"mp" means "milepost."

**B.** The state is divided into units for the purpose of managing wildlife. Each unit is identified by a number, or a number and letter. For the purpose of this Section, Indian reservation land contained within any management unit is not under the jurisdiction of the Arizona Game and Fish Commission or the Arizona Game and Fish Department.

**C.** Management unit descriptions are as follows:

Unit 1 – Beginning at the New Mexico state line and U.S. Hwy 60; west on U.S. Hwy 60 to Vernon Junction; southerly on the Vernon-McNary ~~road~~ RD. (FR 224) to the White Mountain Apache Indian Reservation boundary; east and south along the reservation boundary to Black River; east and north along Black River to the east fork of Black River; north along the east fork to Three Forks; and continuing north and east on the Three Forks-Williams Valley Alpine Rd. (FR 249) to U.S. Hwy 180; east on U.S. Hwy 180 to the New Mexico state line; north along the state line to U.S. Hwy 60.

Unit 2A – Beginning at St. Johns on U.S. Hwy 191 (AZ Hwy 61); north on U.S. Hwy 191 (AZ Hwy 61) to the Navajo

Indian Reservation boundary; westerly along the reservation boundary to AZ Hwy 77; south on AZ Hwy 77 to Exit 292 on I-40; west on the westbound lane of I-40 to Exit 286; south on AZ Hwy 77 to U.S. Hwy 180; southeast on U.S. Hwy 180 to AZ Hwy 180A; south on AZ Hwy 180A to AZ Hwy 61; east on AZ Hwy 61 to U.S. Hwy 180 (AZ Hwy 61); east to U.S. Hwy 191 at St. Johns; except those portions that are sovereign tribal lands of the Zuni Tribe.

Unit 2B – Beginning at Springerville; east on U.S. Hwy 60 to the New Mexico state line; north along the state line to the Navajo Indian Reservation boundary; westerly along the reservation boundary to U.S. Hwy 191 (AZ Hwy 61); south on U.S. Hwy 191 (U.S. Hwy 180) to Springerville.

Unit 2C – Beginning at St. Johns on U.S. Hwy 191 (AZ Hwy 61); west on to AZ Hwy 61 Concho; southwest on AZ Hwy 61 to U.S. Hwy 60; east on U.S. Hwy 60 to U.S. Hwy 191 (U.S. Hwy 180); north on U.S. Hwy 191 (U.S. Hwy 180) to St. Johns.

Unit 3A – Beginning at the junction of U.S. Hwy 180 and AZ Hwy 77; south on AZ Hwy 77 to AZ Hwy 377; southwesterly on AZ Hwy 377 to AZ Hwy 277; easterly on AZ Hwy 277 to Snowflake; easterly on the Snowflake-Concho Rd. to U.S. Hwy 180A; north on U.S. Hwy 180A to U.S. Hwy 180; northwesterly on U.S. Hwy 180 to AZ Hwy 77.

Unit 3B – Beginning at Snowflake; southerly along AZ Hwy 77 to U.S. Hwy 60; southwesterly along U.S. Hwy 60 to the White Mountain Apache Indian Reservation boundary; easterly along the reservation boundary to the Vernon-McNary Rd. (FR 224); northerly along the Vernon-McNary Rd. to U.S. Hwy 60; west on U.S. Hwy 60 to AZ Hwy 61; northeasterly on AZ Hwy 61 to AZ Hwy 180A; northerly on AZ Hwy 180A to Concho-Snowflake Rd.; westerly on the Concho-Snowflake Rd. to Snowflake.

Unit 3C – Beginning at Snowflake; westerly on AZ Hwy 277 to AZ Hwy 260; westerly on AZ Hwy 260 to the Sitgreaves National Forest boundary with the Tonto National Forest; easterly along the Apache-Sitgreaves National Forest boundary to U.S. Hwy 60 (AZ Hwy 77); northeasterly on U.S. Hwy 60 (AZ Hwy 77) to Showlow; northerly along AZ Hwy 77 to Snowflake.

Unit 4A – Beginning on the boundary of the Apache-Sitgreaves National Forest with the Coconino National Forest at the Mogollon Rim; north along this boundary (Leonard Canyon) to East Clear Creek; northerly along East Clear Creek to AZ Hwy 99; north on AZ Hwy 99 to AZ Hwy 87; north on AZ Hwy 87 to Business I-40 (3rd St.); west on Business I-40 (3rd St.) to Hipkoe Dr.; northerly on Hipkoe Dr. to I-40; west on I-40 to mp 221.4; north to the southwest corner of the Navajo Indian Reservation boundary; east along the Navajo Indian Reservation boundary to the Little Colorado River; southerly along the Little Colorado River to Chevelon Creek; southerly along Chevelon Creek to Woods Canyon; westerly along Woods Canyon to Woods Canyon Lake Rd.; westerly and southerly along the Woods Canyon Lake Rd. to the Mogollon Rim; westerly along the Mogollon Rim to the boundary of the Apache-Sitgreaves National Forest with the Coconino National Forest.

Unit 4B – Beginning at AZ Hwy 260 and the Sitgreaves National Forest boundary with the Tonto National Forest; northeasterly on AZ Hwy 260 to AZ Hwy 277; northeasterly on AZ Hwy 277 to Hwy 377; northeasterly on AZ Hwy 377 to AZ Hwy 77; northeasterly on AZ Hwy 77 to I-40 Exit 286; northeasterly along the westbound lane of I-40 to Exit 292; north on AZ Hwy 77 to the Navajo Indian Reservation boundary; west along the reservation boundary to the Little Colorado River; southerly along the Little Colorado River to Chevelon Creek; southerly

along Chevelon Creek to Woods Canyon; westerly along Woods Canyon to Woods Canyon Lake Rd. (FH 151); westerly and southerly along the Woods Canyon Lake Rd. (FH 151) to the Mogollon Rim; easterly along the Mogollon Rim to the intersection of AZ Hwy 260 and the Sitgreaves National Forest boundary with the Tonto National Forest.

Unit 5A – Beginning at the junction of the Sitgreaves National Forest boundary with the Coconino National Forest boundary at the Mogollon Rim; northerly along this boundary (Leonard Canyon) to East Clear Creek; northeasterly along East Clear Creek to AZ Hwy 99; north on AZ Hwy 99 to AZ Hwy 87; north on AZ Hwy 87 to Business I-40 (3rd St.); west on Business I-40 (3rd St.) to Hipkoe Dr.; north on Hipkoe Dr. to I-40; west on I-40 to the Meteor Crater Rd. (Exit 233); southerly on the Meteor Crater-Chavez Pass-Jack's Canyon Rd. (FR 69) to AZ Hwy 87; southwesterly along AZ Hwy 87 to the Coconino-Tonto National Forest boundary; easterly along the Coconino-Tonto National Forest boundary (Mogollon Rim) to the Sitgreaves National Forest boundary with the Coconino National Forest.

Unit 5B -- Beginning at Lake Mary-Clint's Well Rd. (FH3) and Walnut Canyon (mp 337.5 on FH3); southeasterly on FH3 to AZ Hwy 87; northeasterly on AZ Hwy 87 to FR 69; westerly and northerly on FR 69 to I-40 (Exit 233); west on I-40 to Walnut Canyon (mp 210.2); southwesterly along the bottom of Walnut Canyon to Walnut Canyon National Monument; southwesterly along the northern boundary of the Walnut Canyon National Monument to Walnut Canyon; southwesterly along the bottom of Walnut Canyon to FH3 (mp 337.5).

Unit 6A - Beginning at the junction of AZ Hwy 89A and FR 237; southwesterly on AZ Hwy 89A to the Verde River; southeasterly along the Verde River to the confluence with Fossil Creek; northeasterly along Fossil Creek to Fossil Springs; southeasterly on FS trail 18 (Fossil Spring Trail) to the top of the rim; northeasterly on the rim to Nash Point on the Tonto-Coconino National Forest boundary; easterly along this boundary to AZ Hwy 87; northeasterly on AZ Hwy 87 to Lake Mary-Clint's Well Rd. (FH3); northwesterly on FH3 to FR 132; southwesterly on FR 132 to FR 296; southwesterly on FR 296 to FR 296A; southwesterly on FR 296A to FR 132; northwesterly on FR 132 to FR 235; westerly on FR 235 to Priest Draw; southwesterly along the bottom of Priest Draw to FR 235; westerly on FR 235 to FR 235A; westerly on FR 235A to FR 235; southerly on FR 235 to FR 235K; northwesterly on FR 235K to FR 700; northerly on FR 700 to Mountainaire Rd.; west on Mountainaire Rd. to FR 237; westerly on FR 237 to AZ Hwy 89A except those portions that are sovereign tribal lands of the Yavapai-Apache Nation.

Unit 6B – Beginning at mp 188.5 on I-40 at a point just north of the east boundary of Camp Navajo; south along the eastern boundary of Camp Navajo to the southeastern corner of Camp Navajo; southeast approximately 1/3 mile through the forest to the forest road in section 33; southeast on the forest road to FR 231 (Woody Mountain Rd.); easterly on FR 231 to FR 533; southerly on FR 533 to AZ Hwy 89A; southerly on AZ Hwy 89A to the Verde River; northerly along the Verde River to Sycamore Creek; northeasterly along Sycamore Creek and Volunteer Canyon to the southwest corner of the Camp Navajo boundary; northerly along the western boundary of Camp Navajo to the northwest corner of Camp Navajo; continuing north to I-40 (mp 180.0); easterly along I-40 to mp 188.5.

Unit 7 – Beginning at the junction of AZ Hwy 64 and I-40 (in Williams); easterly on I-40 to FR 171 (mp 184.4 on I-40); northerly on FR 171 to the Transwestern Gas Pipeline; easterly along the Transwestern Gas Pipeline to FR 420 (Schultz Pass Rd.); northeasterly on FR 420 to U.S. Hwy 89; across U.S. Hwy 89 to FR 545; east on FR 545 to the Sunset Crater National Monument; easterly along the southern boundary of the Sunset Crater National

Monument to FR 545; east on FR 545 to the 345 KV transmission lines 1 and 2; southeasterly along the power lines to I-40 (mp 212 on I-40); east on I-40 to mp 221.4; north to the southwest corner of the Navajo Indian Reservation boundary; northerly and westerly along the reservation boundary to the Four Corners Gas Line; southwesterly along the Four Corners Gas Line to U.S. Hwy 180; west on U.S. Hwy 180 to AZ Hwy 64; south on AZ Hwy 64 to I-40.

Unit 8 – Beginning at the junction of I-40 and AZ Hwy 89 (in Ash Fork, Exit 146); south on AZ Hwy 89 to the Verde River; easterly along the Verde River to Sycamore Creek; northerly along Sycamore Creek to Volunteer Canyon; northeasterly along Volunteer Canyon to the west boundary of Camp Navajo; north along the boundary to a point directly north of I-40; west on I-40 to AZ Hwy 89.

Unit 9 – Beginning where Cataract Creek enters the Havasupai Reservation; easterly and northerly along the Havasupai Reservation boundary to Grand Canyon National Park; easterly along the Grand Canyon National Park boundary to the Navajo Indian Reservation boundary; southerly along the reservation boundary to the Four Corners Gas Line; southwesterly along the Four Corners Gas Line to U.S. Hwy 180; westerly along U.S. Hwy 180 to AZ Hwy 64; south along AZ Hwy 64 to Airpark Rd.; west and north along Airpark Rd. to the Valle-Cataract Creek Rd.; westerly along the Valle-Cataract Creek Rd. to Cataract Creek at Island Tank; northwesterly along Cataract Creek to the Havasupai Reservation Boundary.

Unit 10 – Beginning at the junction of AZ Hwy 64 and I-40; westerly on I-40 to Crookton Rd. (AZ Hwy 66, Exit 139); westerly on AZ Hwy 66 to the Hualapai Indian Reservation boundary; northeasterly along the reservation boundary to Grand Canyon National Park; east along the park boundary to the Havasupai Indian Reservation; easterly and southerly along the reservation boundary to where Cataract Creek enters the reservation; southeasterly along Cataract Creek in Cataract Canyon to Island Tank; easterly on the Cataract Creek-Valle Rd. to Airpark Rd.; south and east along Airpark Rd. to AZ Hwy 64; south on AZ Hwy 64 to I-40.

Unit 11M – Beginning at the junction of Lake MaryClint's Well Rd (FH3) and Walnut Canyon (mp 337.5 on FH3); northeasterly along the bottom of Walnut Canyon to the Walnut Canyon National Monument boundary; northeasterly along the northern boundary of the Walnut Canyon National Monument to Walnut Canyon; northeasterly along the bottom of Walnut Canyon to I-40 (mp 210.2); east on I-40 to the 345 KV transmission lines 1&2 (mp 212 on I-40); north and northeasterly along the power line to FR 545 (Sunset Crater Rd); west along FR 545 to the Sunset Crater National Monument boundary; westerly along the southern boundary of the Sunset Crater National monument to FR 545; west on FR 545 to U.S. Hwy 89; across U.S. Hwy 89 to FR 420 (Schultz Pass Rd); southwesterly on FR 420 to the Transwestern Gas Pipeline; westerly along the Transwestern Gas Pipeline to FR 171; south on FR 171 to I-40 (mp 184.4 on I-40); east on I-40 to a point just north of the eastern boundary of the Navajo Army Depot (mp 188.5 on I-40); south along the eastern boundary of the Navajo Army Depot to the southeast corner of the Depot; southeast approximately 1/3 mile to forest road in section 33; southeasterly along that forest road to FR 231 (Woody Mountain Rd); easterly on FR 231 to FR 533; southerly on FR 533 to U.S. Hwy 89A; southerly on U.S. Hwy 89A to FR 237; northeasterly on FR 237 to Mountainaire Rd; easterly on Mountainaire Rd to FR 700; southerly on FR 700 to FR 235K; southeasterly on FR 235K to FR 235; northerly on FR 235 to FR 235A; easterly on FR 235A to FR 235; easterly on FR 235 to Priest Draw; northeasterly along the bottom of Priest Draw to FR 235; easterly on FR 235 to FR 132; southeasterly on FR 132 to FR 296A; northeasterly on FR 296A to

FR 296; northeasterly on FR 296 to FR 132; northeasterly on FR 132 to FH 3; southeasterly on FH 3 to the south rim of Walnut Canyon (mp 337.5 on FH3).

Unit 12A – Beginning at the confluence of the Colorado River and South Canyon; southerly and westerly along the Colorado River to Kanab Creek; northerly along Kanab Creek to Snake Gulch; northerly, easterly, and southerly around the Kaibab National Forest boundary to South Canyon; northeasterly along South Canyon to the Colorado River.

Unit 12B – Beginning at U.S. Hwy 89A and the Kaibab National Forest boundary near mp 566; southerly and easterly along the forest boundary to Grand Canyon National Park; northeasterly along the park boundary to Glen Canyon National Recreation area; easterly along the recreation area boundary to the Colorado River; northeasterly along the Colorado River to the Arizona-Utah state line; westerly along the state line to Kanab Creek; southerly along Kanab Creek to the Kaibab National Forest boundary; northerly, easterly, and southerly along this boundary to U.S. Hwy 89A near mp 566; except those portions that are sovereign tribal lands of the Kaibab Band of Paiute Indians.

Unit 13A – Beginning on the western edge of the Hurricane Rim at the Utah state line; southerly along the western edge of the Hurricane Rim to Mohave County Rd. 5 (the Mt. Trumbull Rd.); west along Mohave County Rd. 5 to the town of Mt. Trumbull (Bundyville); south from the town of Mt. Trumbull (Bundyville) on Mohave County Rd. 257 to BLM Rd. 1045; south on BLM Rd. 1045 to where it crosses Cold Spring Wash near Cold Spring Wash Pond; south along the bottom of Cold Spring Wash to Whitmore Wash; southerly along the bottom of Whitmore Wash to the Colorado River; easterly along the Colorado River to Kanab Creek; northerly along Kanab Creek to the Utah state line; west along the Utah state line to the western edge of the Hurricane Rim; except those portions that are sovereign tribal lands of the Kaibab Band of Paiute Indians.

Unit 13B – Beginning on the western edge of the Hurricane Rim at the Utah state line; southerly along the western edge of the Hurricane Rim to Mohave County Rd. 5 (the Mt. Trumbull Rd.); west along Mohave County Rd. 5 to the town of Mt. Trumbull (Bundyville); south from the town of Mt. Trumbull (Bundyville) on Mohave County Rd. 257 to BLM Rd. 1045; south on BLM Rd. 1045 to where it crosses Cold Spring Wash near Cold Spring Wash Pond; south along the bottom of Cold Spring Wash to Whitmore Wash; southerly along the bottom of Whitmore Wash to the Colorado River; westerly along the Colorado River to the Nevada state line; north along the Nevada state line to the Utah state line; east along the Utah state line to the western edge of the Hurricane Rim.

Unit 15A – Beginning at Pearce Ferry on the Colorado River; southerly on the Pearce Ferry Rd. to Antares Rd.; southeasterly on Antares Rd. to AZ Hwy 66; easterly on AZ Hwy 66 to the Hualapai Indian Reservation; west and north along the west boundary of the reservation to the Colorado River; westerly along the Colorado River to Pearce Ferry; except those portions that are sovereign tribal lands of the Hualapai Indian Tribe.

Unit 15B – Beginning at Kingman on I-40 (Exit 48); northwesterly on U.S. Hwy 93 to Hoover Dam; north and east along the Colorado River to Pearce Ferry; southerly on the Pearce Ferry Rd. to Antares Rd.; southeasterly on Antares Rd. to AZ Hwy 66; easterly on AZ Hwy 66 to Hackberry Rd.; southerly on the Hackberry Rd. to I-40; west on I-40 to Kingman (Exit 48).

Unit 15C – Beginning at Hoover Dam; southerly along the Colorado River to AZ Hwy 68 and Davis Dam; easterly on AZ Hwy 68 to U.S. Hwy 93; northwesterly on U.S. Hwy 93 to Hoover Dam.

Unit 15D – Beginning at AZ Hwy 68 and Davis Dam; southerly along the Colorado River to I-40; east and north on I-40 to Kingman (Exit 48); northwest on U.S. Hwy 93 to AZ Hwy 68; west on AZ Hwy 68 to Davis Dam; except those portions that are sovereign tribal lands of the Fort Mohave Indian Tribe.

Unit 16A – Beginning at Kingman on I-40 (Exit 48); south and west on I-40 to U.S. Hwy 95 (Exit 9); southerly on U.S. Hwy 95 to the Bill Williams River; easterly along the Bill Williams and Santa Maria rivers to U.S. Hwy 93; north on U.S. Hwy 93 to I-40 (Exit 71); west on I-40 to Kingman (Exit 48).

Unit 16B – Beginning at I-40 on the Colorado River; southerly along the Arizona-California state line to the Bill Williams River; east along the Bill Williams River to U.S. Hwy 95; north on U.S. Hwy 95 to I-40 (Exit 9); west on I-40 to the Colorado River.

Unit 17A – Beginning at the junction of the Williamson Valley Rd. (County ~~Road~~ Rd. 5) and the Camp Wood Rd. (FR 21); westerly on the Camp Wood Rd. to the west boundary of the Prescott National Forest; north along the forest boundary to the Baca Grant; east, north and west around the grant to the west boundary of the Prescott National Forest; north and east along the forest boundary to the Williamson Valley Rd. (County Rd. 5, FR 6); southerly on Williamson Valley Rd. (County Rd. 5, FR 6) to the Camp Wood Rd.

Unit 17B – Beginning at the junction of Iron Springs Rd. (County Rd. 10) and Williamson Valley Rd. (County ~~Road~~ Rd. 5) in Prescott; westerly on the Prescott-Skull Valley-Hillside-Bagdad Rd. to Bagdad; northeast on the Bagdad-Camp Wood Rd. (FR 21) to the Williamson Valley Rd. (County Rd. 5, FR 6); south on the Williamson Valley Rd. (County Rd. 5, FR 6) to the Iron Springs Rd.

Unit 18A – Beginning at Seligman; westerly on AZ Hwy 66 to the Hualapai Indian Reservation; southwest and west along the reservation boundary to AZ Hwy 66; southwest on AZ Hwy 66 to the Hackberry Rd.; south on the Hackberry Rd. to I-40; west along I-40 to U.S. Hwy 93; south on U.S. Hwy 93 to Cane Springs Wash; easterly along Cane Springs Wash to the Big Sandy River; northerly along the Big Sandy River to Trout Creek; northeast along Trout Creek to the Davis Dam-Prescott power line; southeasterly along the power line to the west boundary of the Prescott National Forest; north and east along the forest boundary to the Williamson Valley Rd. (County Rd. 5, FR 6); northerly on the Williamson Valley Rd. (County Rd. 5, FR 6) to Seligman and AZ Hwy 66; except those portions that are sovereign tribal lands of the Hualapai Indian Tribe.

Unit 18B – Beginning at Bagdad; southeast on AZ Hwy 96 to the Santa Maria River; southwest along the Santa Maria River to U.S. Hwy 93; northerly on U.S. Hwy 93 to Cane Springs Wash; easterly along Cane Springs Wash to the Big Sandy River; northerly along the Big Sandy River to Trout Creek; northeasterly along Trout Creek to the Davis Dam-Prescott power line; southeasterly along the power line to the west boundary of the Prescott National Forest; south along the forest boundary to the Baca Grant; east, south and west along the forest boundary; south along the west boundary of the Prescott National Forest; to the Camp Wood-Bagdad Rd.; southwesterly on the Camp Wood-Bagdad Rd. to Bagdad; except those portions that are sovereign tribal lands of the Hualapai Indian Tribe.

Unit 19A – Beginning at AZ Hwy 69 and AZ Hwy 89 (in Prescott); northerly on AZ Hwy 89 to the Verde River; easterly along the Verde River to I-17; southwesterly on the southbound lane of I-17 to AZ Hwy 69; northwesterly on AZ Hwy 69 to AZ Hwy 89; except those portions that are sovereign tribal lands of the Yavapai-Prescott Tribe and the Yavapai-Apache Nation.

Unit 19B – Beginning at the intersection of AZ Hwy 89 and AZ Hwy 69, west on Gurley St. to Grove Ave.; north on the Grove Ave. to Miller Valley Rd.; northwest on the Miller Valley Rd. to Iron Springs Rd.; northwest on the Iron Springs Rd. to the junction of Williamson Valley Rd. and Iron Springs Rd.; northerly on the Williamson Valley-Prescott-Seligman Rd. (FR 6, Williamson Valley Rd.) to AZ Hwy 66 at Seligman; east on Crookton Rd. (AZ Hwy 66) to I-40 (Exit 139); east on I-40 to AZ Hwy 89; south on AZ Hwy 89 to the junction with AZ Hwy 69; except those portions that are sovereign tribal lands of the Yavapai-Prescott Tribe.

Unit 20A – Beginning at the intersection of AZ Hwy 89 and AZ Hwy 69; west on Gurley St. to Grove Ave.; north on ~~the~~ Grove Ave. to Miller Valley Rd., northwest on ~~the~~ Miller Valley Rd. to Iron Springs Rd., west and south on Iron Springs Rd. (County ~~Road~~ Rd. 10) to Kirkland; ~~south and east~~ southeast on ~~AZ Hwy 96 to~~ Kirkland Junction Rd. (~~U.S.~~ AZ Hwy 89, County Rd. 15) to Kirkland Junction (AZ Hwy 89); south on AZ Hwy 89 to Wagoner Rd. (County Rd. 60); southeasterly along Wagoner Rd. ~~(County Road 60)~~ to Wagoner (~~mp 17~~ confluence of Hassayampa River and Blind Indian Creek); from Wagoner easterly along Wagoner Rd. (County ~~Road~~ Rd. 60 ~~(~~,FR 362) to ~~intersection of~~ Senator Highway (FR 52); easterly along ~~FR 52 to intersection of FR 259~~ Senator Highway~~; easterly along FR 259~~ to Crown King Rd. (County ~~Road~~ Rd. 59, FR 529) ~~at~~; easterly along Crown King~~; continue easterly~~ to ~~the intersection of~~ Antelope Creek Rd. cutoff (County ~~Road~~ Rd. 179S); northeasterly along Antelope Creek Rd. cutoff to intersection of Antelope Creek Rd. (County ~~Road~~ Rd. 179); northeasterly on Antelope Creek Rd. to Cordes; east on Bloody Basin Rd. ~~(County Road 73)~~ to I-17 (Exit 259); north on the southbound lane of I-17 to AZ Hwy 69; northwest on AZ Hwy 69 to junction of AZ Hwy 89 at Prescott; except those portions that are sovereign tribal lands of the Yavapai-Prescott Tribe.

Unit 20B – Beginning at the Hassayampa River and U.S. Hwy 60/93 (at Wickenburg), northeasterly along the Hassayampa River to Wagoner (~~County Road 60, mp 17~~ confluence of Hassayampa River and Blind Indian Creek); from Wagoner easterly along Wagoner Rd. (County ~~Road~~ Rd. 60 ~~(~~,FR 362) to ~~intersection of~~ Senator Highway (FR 52); easterly along Senator Highway (FR 52) to ~~intersection of~~ Crown Kind Rd. (County Rd. 59, FR 259); easterly along ~~FR 259 to~~ Crown King Rd. (County ~~Road~~ Rd. 59, FR 259) ~~at Crown King; continue easterly~~ to ~~intersection of~~ Antelope Creek Rd. cutoff (County ~~Road~~ Rd. 179S); northeasterly along Antelope Creek Rd. cutoff to intersection of Antelope Creek Rd. (County ~~Road~~ Rd. 179); northeasterly on Antelope Creek Rd. to Cordes; east on Bloody Basin Rd. (County ~~Road~~ Rd. 73) to I-17 (Exit 259); south on the southbound lane of I-17 to New River ~~Road~~ Rd. (Exit 232); west on New River ~~Road~~ Rd. to ~~SR~~ AZ Hwy 74; west on AZ Hwy 74 to junction of U.S. Hwy 60/93; northwesterly on U.S. Hwy 60/93 to the Hassayampa River (at Wickenburg).

Unit 20C – Beginning at U.S. Hwy 60/93 and the Santa Maria River; northeasterly along the Santa Maria River to AZ Hwy 96; easterly on AZ Hwy 96 to Kirkland ~~Junction~~; southeast on Kirkland Junction Rd. (AZ. Hwy ~~89~~ 96, County Rd. 15) to Kirkland Junction (U.S. Hwy 89); ~~south along AZ Hwy 89 to Wagoner Rd.;~~ southeasterly along Wagoner Rd. (County ~~Road~~ Rd. 60) to Wagoner (~~mp 17~~ confluence of Hassayampa River and Blind Indian Creek)); from Wagoner southwesterly along the Hassayampa River to U.S. Hwy 60/93; northwesterly on U.S. Hwy 60/93 to the Santa Maria River.

Unit 21 – Beginning on I-17 at the Verde River; southerly on the southbound lane of I-17 to the New River ~~Road~~ Rd. (Exit 232); east on New River ~~Road~~ Rd. to Fig Springs ~~Road~~ Rd.; northeasterly on Fig Springs ~~Road~~ Rd. to Mingus Rd.; Mingus Rd. to the Tonto National Forest boundary; southeasterly along this boundary to the Verde River;

north along the Verde River to I-17.

Unit 22 – Beginning at the junction of the Salt and Verde Rivers; north along the Verde River to the confluence with Fossil Creek; northeasterly along Fossil Creek to Fossil Springs; southeasterly on FS trail 18 (Fossil Spring Trail) to the top of the rim; northeasterly on the rim to Nash Point on the Tonto-Coconino National Forest boundary along the Mogollon Rim; easterly along this boundary to Tonto Creek; southerly along the east fork of Tonto Creek to the spring box, north of the Tonto Creek Hatchery, and continuing southerly along Tonto Creek to the Salt River; westerly along the Salt River to the Verde River; except those portions that are sovereign tribal lands of the Tonto Apache Tribe and the Fort McDowell Yavapai Nation.

Unit 23 – Beginning at the confluence of Tonto Creek and the Salt River; northerly along Tonto Creek to the spring box, north of the Tonto Creek Hatchery, on Tonto Creek; northeasterly along the east fork of Tonto Creek to the Tonto-Sitgreaves National Forest boundary along the Mogollon Rim; east along this boundary to the White Mountain Apache Indian Reservation boundary; southerly along the reservation boundary to the Salt River; westerly along the Salt River to Tonto Creek.

Unit 24A – Beginning on AZ Hwy 177 in Superior; southeasterly on AZ Hwy 177 to the Gila River; northeasterly along the Gila River to the San Carlos Indian Reservation boundary; easterly, westerly and northerly along the reservation boundary to the Salt River; southwesterly along the Salt River to AZ Hwy 288; southerly on AZ Hwys 288 and 188 to U.S. Hwy 60; southwesterly on U.S. Hwy 60 to AZ Hwy 177.

Unit 24B – Beginning on U.S. Hwy 60 in Superior; northeasterly on U.S. Hwy 60 to AZ Hwy 188; northerly on AZ Hwys 188 and 288 to the Salt River; westerly along the Salt River to the Tonto National Forest boundary near Granite Reef Dam; southeasterly along Forest boundary to Forest Route 77 (Peralta Rd.); southwesterly on Forest Route 77 (Peralta Rd.) to U.S. Hwy 60; easterly on U.S. Hwy 60 to Superior.

Unit 25M – Beginning at the junction of 51st Ave. and I-10; west on I-10 to AZ Loop 303, northeasterly on AZ Loop 303 to I-17; north on I-17 to Carefree Hwy; east on Carefree Hwy to Cave Creek Rd.; northeasterly on Cave Creek Rd. to the Tonto National Forest boundary; easterly and southerly along the Tonto National Forest boundary to Fort McDowell Yavapai Nation boundary; northeasterly along the Fort McDowell Yavapai Nation boundary to the Verde River; southerly along the Verde River to the Salt River; southwesterly along the Salt River to the Tonto National Forest boundary; southerly along the Tonto National Forest boundary to Bush Hwy/Power Rd.; southerly on Bush Hwy/Power Rd. to AZ Loop 202; easterly, southerly, and westerly on AZ Loop 202 to the intersection of Pecos Rd. at I-10; west on Pecos Rd. to the Gila River Indian Community boundary; northwesterly along the Gila River Indian Community boundary to 51st Ave; northerly on 51st Ave to I-10; except those portions that are sovereign tribal lands.

Unit 26M – Beginning at the junction of I-17 and New River Rd. (Exit 232); southwesterly on New River Rd. to AZ Hwy 74; westerly on AZ Hwy 74 to U.S. Hwy 93; southeasterly on U.S. Hwy 93 to the Beardsley Canal; southwesterly on the Beardsley Canal to Indian School Rd.; west on Indian School Rd. to Jackrabbit Trail; south on Jackrabbit Trail to I-10 (Exit 121); west on I-10 to Oglesby Rd. (Exit 112); south on Oglesby Rd. to AZ Hwy 85; south on AZ Hwy 85 to the Gila River; northeasterly along the Gila River to the Gila River Indian Community boundary; southeasterly along the Gila River Indian Community boundary to AZ Hwy 347 (John Wayne Parkway); south on AZ Hwy 347 (John Wayne Parkway) to AZ Hwy 84; east on AZ Hwy 84 to Stanfield; south on the

Stanfield-Cocklebur Rd. to the Tohono O'odham Nation boundary; easterly along the Tohono O'odham Nation boundary to Battaglia Rd.; east on Battaglia Rd. to Toltec Rd.; north on Toltec Rd. to I-10 (Exit 203); southeasterly on I-10 to AZ Hwy 87 (Exit 211); north on AZ Hwy 87 to AZ Hwy 287 north of Coolidge; east on AZ Hwy 287 to AZ Hwy 79; north on AZ Hwy 79 to U.S. Hwy 60; northwesterly on U.S. Highway 60 to Peralta Rd.; northeasterly along Peralta Rd. to the Tonto National Forest boundary; northwesterly along the Tonto National Forest boundary to the Salt River; northeasterly along the Salt River to the Verde River; northerly along the Verde River to the Tonto National Forest boundary; northwesterly along the Tonto National Forest boundary to Mingus Rd.; Mingus Rd. to Fig Springs Rd.; southwesterly on Fig Springs Rd. to New River Rd.; west on New River Rd. to I-17 (Exit 232); except Unit 25M and those portions that are sovereign tribal lands.

Unit 27 – Beginning at the New Mexico state line and AZ Hwy 78; southwest on AZ Hwy 78 to U.S. Hwy 191; north on U.S. Hwy 191 to Lower Eagle Creek Rd. (Pump Station Rd.); west on the Lower Eagle Creek Rd. (Pump Station Rd.) to Eagle Creek; north along Eagle Creek to the San Carlos Apache Indian Reservation boundary; north along the San Carlos Apache Indian Reservation boundary to Black River; northeast along Black River to the East Fork of Black River; northeast along the East Fork of Black River to Three Forks-Williams Valley-Alpine Rd. (FR 249); easterly along Three Forks-Williams Valley-Alpine Rd. to U.S. Hwy 180; southeast on U.S. Hwy 180 to the New Mexico state line; south along the New Mexico state line to AZ Hwy 78.

Unit 28 – Beginning at I-10 and the New Mexico state line; north along the state line to AZ Hwy 78; southwest on AZ Hwy 78 to U.S. Hwy 191; northwest on U.S. Hwy 191 to Clifton; westerly on the Lower Eagle Creek Rd. (Pump Station Rd.) to Eagle Creek; northerly along Eagle Creek to the San Carlos Indian Reservation boundary; southerly and west along the reservation boundary to U.S. Hwy 70; southeast on U.S. Hwy 70 to U.S. Hwy 191; south on U.S. Hwy 191 to I-10 Exit 352; easterly on I-10 to the New Mexico state line.

Unit 29 – Beginning on I-10 at the New Mexico state line; westerly on I-10 to the Bowie-Apache Pass Rd.; southerly on the Bowie-Apache Pass Rd. to AZ Hwy 186; southeast on AZ Hwy 186 to AZ Hwy 181; south on AZ Hwy 181 to the West Turkey Creek-Kuykendall cutoff road; southerly on the Kuykendall cutoff road to Rucker Canyon Rd.; easterly on the Rucker Canyon Rd. to Tex Canyon Rd.; southerly on Tex Canyon Rd. to U.S. Hwy 80; northeast on U.S. Hwy 80 to the New Mexico state line; north along the state line to I-10.

Unit 30A – Beginning at the junction of the New Mexico state line and U.S. Hwy 80; south along the state line to the U.S.-Mexico border; west along the border to U.S. Hwy 191; northerly on U.S. Hwy 191 to I-10 Exit 331; northeasterly on I-10 to the Bowie-Apache Pass Rd.; southerly on the Bowie-Apache Pass Rd. to AZ Hwy 186; southeasterly on AZ Hwy 186 to AZ Hwy 181; south on AZ Hwy 181 to the West Turkey Creek - Kuykendall cutoff road; southerly on the Kuykendall cutoff road to Rucker Canyon Rd.; easterly on Rucker Canyon Rd. to the Tex Canyon Rd.; southerly on Tex Canyon Rd. to U.S. Hwy 80; northeast on U.S. Hwy 80 to the New Mexico state line.

Unit 30B – Beginning at U.S. Hwy 191 and the U.S.-Mexico border; west along the border to the San Pedro River; north along the San Pedro River to I-10; northeasterly on I-10 to U.S. Hwy 191; southerly on U.S. Hwy 191 to the U.S.-Mexico border.

Unit 31 – Beginning at Willcox Exit 340 on I-10; north on Fort Grant Rd. to Brookerson Rd.; north on Brookerson Rd. to Ash Creek Rd.; west on Ash Creek Rd. to Fort Grant Rd.; north on Fort Grant Rd. to Bonita; northerly on the

Bonita-Klondyke Rd. to the junction with Aravaipa Creek; west along Aravaipa Creek to AZ Hwy 77; northerly along AZ Hwy 77 to the Gila River; northeast along the Gila River to the San Carlos Indian Reservation boundary; south then east and north along the reservation boundary to U.S. Hwy 70; southeast on U.S. Hwy 70 to U.S. Hwy 191; south on U.S. Hwy 191 to the 352 exit on I-10; southwest on I-10 to Exit 340.

Unit 32 – Beginning at Willcox Exit 340 on I-10; north on Fort Grant Rd. to Brookerson Rd.; north on Brookerson Rd. to Ash Creek Rd.; west on Ash Creek Rd. to Fort Grant Rd.; north on Fort Grant Rd. to Bonita; northerly on the Bonita-Klondyke Rd. to the junction with Aravaipa Creek; west along Aravaipa Creek to AZ Hwy 77; southerly along AZ Hwy 77 to the San Pedro River; southerly along the San Pedro River to I-10; northeast on I-10 to Willcox Exit 340.

Unit 33 – Beginning at Tangerine Rd. and AZ Hwy 77; north and northeast on AZ Hwy 77 to the San Pedro River; southeast along the San Pedro River to I-10 at Benson; west on I-10 to Marsh Station Rd. (Exit ~~289~~ 291); northwest on the Marsh Station Rd. to the Agua Verde Rd.; north on the Agua Verde Rd. to its terminus then north 1/2 mile to the Coronado National Forest boundary; north and west along the National Forest boundary; then west, north, and east along the Saguaro National Park boundary; continuing north and west along the Coronado National Forest boundary to the southern boundary of Catalina State Park; west along the southern boundary of Catalina State Park to AZ Hwy 77; north on AZ Hwy 77 to Tangerine Rd.

Unit 34A – Beginning in Nogales at I-19 and Compound St.; northeast on Grand Avenue to AZ Hwy 82; northeast on AZ Hwy 82 to AZ Hwy 83; northerly on AZ Hwy 83 to the Sahuarita Rd. alignment; west along the Sahuarita Rd. alignment to I-19 Exit 75; south on I-19 to Grand Avenue (U.S. Hwy 89).

Unit 34B – Beginning at AZ Hwy 83 and I-10 Exit 281; easterly on I-10 to the San Pedro River; south along the San Pedro River to AZ Hwy 82; westerly on AZ Hwy 82 to AZ Hwy 83; northerly on AZ Hwy 83 to I-10 Exit 281. Unit 35A – Beginning on the U.S.-Mexico border at the San Pedro River; west along the border to Lochiel Rd.; north on Lochiel Rd. to Patagonia San Rafael Rd.; north on the Patagonia San Rafael Rd. to San Rafael Valley-FS 58 Rd.; north on the San Rafael Valley-FS 58 Rd. to Christian Ln.; north on the Christian Ln. to Ranch Rd.; east and north on the Ranch Rd. to FR 799-Canelo Pass Rd.; northeasterly on the FR 799-Canelo Pass Rd. to AZ Hwy 83; northwesterly on the AZ Hwy 83 to Elgin Canelo Rd.; northeasterly on the Elgin-Canelo Rd. to Upper Elgin Rd.; north on the Upper Elgin Rd. to AZ Hwy 82; easterly on AZ Hwy 82 to the San Pedro River; south along the San Pedro River to the U.S.-Mexico border.

Unit 35B – Beginning at Grand Avenue Hwy 89 at the U.S.-Mexico border in Nogales; east along the U.S.-Mexico border to Lochiel Rd.; north on the Lochiel Rd. to Patagonia San Rafael Rd.; north on the Patagonia San Rafael Rd. to San Rafael Valley-FS 58 Rd.; north on the San Rafael Valley-FS 58 Rd. to Christian Ln.; north on the Christian Ln. to Ranch Rd.; east and north on the Ranch Rd. to FR 799-Canelo Pass Rd.; northeasterly on FR 799-Canelo Pass Rd. to AZ Hwy 83; northwesterly on the AZ Hwy 83 to Elgin Canelo Rd.; north on the Elgin Canelo Rd. to Upper Elgin Rd.; north on the Upper Elgin Rd. to AZ Hwy 82; southwest on AZ Hwy 82 to Grand Avenue; southwest on Grand Avenue to the U.S.-Mexico border.

Unit 36A – Beginning at the junction of Sandario Rd. and AZ Hwy 86; southwesterly on AZ Hwy 86 to AZ Hwy 286; southerly on AZ Hwy 286 to the Arivaca-Sasabe Rd.; southeasterly on the Arivaca-Sasabe Rd. to the town of Arivaca; from the town of Arivaca northeasterly on the Arivaca Rd. to I-19; north on I-19 to the southern boundary of

the San Xavier Indian Reservation boundary; westerly and northerly along the reservation boundary to the Sandario ~~road~~ Rd. alignment; north on Sandario Rd. to AZ Hwy 86.

Unit 36B – Beginning at I-19 and Compound St.; southeasterly on Compound St. to Sonoita Ave.; north on Sonoita Ave. to Crawford St.; southeasterly on Crawford St. to Grand Avenue in Nogales; southwest on Grand Avenue to the U.S.-Mexico border; west along the U.S.-Mexico border to AZ Hwy 286; north on AZ Hwy 286 to the Arivaca-Sasabe Rd.; southeasterly on the Arivaca-Sasabe Rd. to the town of Arivaca; from the town of Arivaca northeasterly on the Arivaca Rd. to I-19; south on I-19 to Grand Avenue.

Unit 36C – Beginning at the junction of AZ Hwy 86 and AZ Hwy 286; southerly on AZ Hwy 286 to the U.S.-Mexico border; westerly along the border to the east boundary of the Tohono O'odham (Papago) Indian Reservation; northerly along the reservation boundary to AZ Hwy 86; easterly on AZ Hwy 86 to AZ Hwy 286.

Unit 37A – Beginning at the junction of I-10 and Tangerine Rd. (Exit 240); southeast on I-10 to Avra Valley Rd. (Exit 242); west on Avra Valley Rd. to Sandario Rd.; south on Sandario Rd. to AZ Hwy 86; southwest on AZ Hwy 86 to the Tohono O'odham Nation boundary; north, east, and west along this boundary to Battaglia Rd.; east on Battaglia Rd. to Toltec Rd.; north on Toltec Rd. to I-10 (Exit 203); southeast on I-10 to AZ Hwy 87 (Exit 211); north on AZ Hwy 87 to AZ Hwy 287; east on AZ Hwy 287 to AZ Hwy 79 at Florence; southeast on AZ Hwy 79 to its junction with AZ Hwy 77; south on AZ Hwy 77 to Tangerine Rd.; west on Tangerine Rd. to I-10.

Unit 37B – Beginning at the junction of AZ Hwy 79 and AZ Hwy 77; northwest on AZ Hwy 79 to U.S. Hwy 60; east on U.S. Hwy 60 to AZ Hwy 177; southeast on AZ Hwy 177 to AZ Hwy 77; southeast and southwest on AZ Hwy 77 to AZ Hwy 79.

Unit 38M – Beginning at the junction of I-10 and Tangerine Rd. (Exit 240); southeast on I-10 to Avra Valley Rd. (Exit 242); west on Avra Valley Rd. to Sandario Rd.; south on Sandario Rd. to the San Xavier Indian Reservation boundary; south and east along the reservation boundary to I-19; south on I-19 to Sahuarita Rd. (Exit 75); east on Sahuarita Rd. to AZ Hwy 83; north on AZ Hwy 83 to I-10 (Exit 281); east on I-10 to Marsh Station Rd. (Exit ~~289~~ 291); northwest on Marsh Station Rd. to the Agua Verde Rd.; north on the Agua Verde Rd. to its terminus, then north 1/2 mile to the Coronado National Forest boundary; north and west along the National Forest boundary, then west, north, and east along the Saguaro National Park boundary; continuing north and west along the Coronado National Forest boundary to the southern boundary of Catalina State Park; west along the southern boundary of Catalina State Park to AZ Hwy 77; north on AZ Hwy 77 to Tangerine Rd.; west on Tangerine Rd. to I-10.

Unit 39 – Beginning at AZ Hwy 85 and the Gila River; east along the Gila River to the western boundary of the Gila River Indian Community; southeasterly along this boundary to AZ Hwy 347 (John Wayne Parkway); south on AZ Hwy 347 (John Wayne Parkway) to AZ Hwy 84; east on AZ Hwy 84 to Stanfield; south on the Stanfield-Cocklebur Rd. to I-8; westerly on I-8 to Exit 87; northerly on the Agua Caliente Rd. to the Hyder Rd.; northeasterly on Hyder Rd. to 555th Ave.; north on 555th Ave. to Lahman Rd.; east on Lahman Rd., which becomes Agua Caliente Rd.; northeasterly on Agua Caliente Rd. to Old Hwy 80; northeasterly on Old Hwy 80 to Arizona Hwy 85; southerly on AZ Hwy 85 to the Gila River; except those portions that are sovereign tribal lands of the Tohono O'odham Nation and the Ak-Chin Indian Community.

Unit 40A – Beginning at Ajo; southeasterly on AZ Hwy 85 to Why; southeasterly on AZ Hwy 86 to the Tohono O'odham (Papago) Indian Reservation; northerly and easterly along the reservation boundary to the Cockle-

bur-Stanfield Rd.; north on the Cocklebur-Stanfield Rd. to I-8; westerly on I-8 to AZ Hwy 85; southerly on AZ Hwy 85 to Ajo.

Unit 40B – Beginning at Gila Bend; westerly on I-8 to the Colorado River; southerly along the Colorado River to the Mexican border at San Luis; southeasterly along the border to the Cabeza Prieta National Wildlife Refuge; northerly, easterly and southerly around the refuge boundary to the Mexican border; southeast along the border to the Tohono O'odham (Papago) Indian Reservation; northerly along the reservation boundary to AZ Hwy 86; northwesterly on AZ Hwy 86 to AZ Hwy 85; north on AZ Hwy 85 to Gila Bend; except those portions that are sovereign tribal lands of the Cocopah Tribe.

Unit 41 – Beginning at I-8 and U.S. Hwy 95 (in Yuma); easterly on I-8 to exit 87; northerly on the Agua Caliente Rd. to the Hyder Rd.; northeasterly on Hyder Rd. to 555th Ave.; north on 555th Ave. to Lahman Rd.; east on Lahman Rd., which becomes Agua Caliente Rd.; northeasterly on Agua Caliente Rd. to Old Hwy 80; northeasterly on Old Hwy 80 to Arizona Hwy 85; northerly on AZ Hwy 85 to Oglesby Rd.; north on Oglesby Rd. to I-10; westerly on I-10 to Exit 45; southerly on Vicksburg-Kofa National Wildlife Refuge Rd. to the Refuge boundary; easterly, southerly, westerly, and northerly along the boundary to the Castle Dome Rd.; southwesterly on the Castle Dome Rd. to U.S. Hwy 95; southerly on U.S. Hwy 95 to I-8.

Unit 42 – Beginning at the junction of the Beardsley Canal and U.S. Hwy 93 (AZ 89, U.S. 60); northwesterly on U.S. Hwy 93 to AZ Hwy 71; southwesterly on AZ Hwy 71 to U.S. Hwy 60; westerly on U.S. Hwy 60 to Aguila; south on the Eagle Eye Rd. to the Salome-Hassayampa Rd.; southeasterly on the Salome-Hassayampa Rd. to I-10 (Exit 81); easterly on I-10 to Jackrabbit Trail (Exit 121); north along Jackrabbit Trail to the Indian School ~~road~~ Rd.; east along Indian School Rd. to the Beardsley Canal; northeasterly along the Beardsley Canal to U.S. Hwy 93.

Unit 43A – Beginning at U.S. Hwy 95 and the Bill Williams River; west along the Bill Williams River to the Arizona-California state line; southerly to the south end of Cibola Lake; northerly and easterly on the Cibola Lake Rd. to U.S. Hwy 95; south on U.S. Hwy 95 to the Stone Cabin-King Valley Rd. (King Rd.); east along the Stone Cabin-King Valley Rd. (King Rd.) to the west boundary of the Kofa National Wildlife Refuge; northerly along the refuge boundary to the Crystal Hill Rd. (Blevens Rd.); northwesterly on the Crystal Hill Rd. (Blevens Rd.) to U.S. Hwy 95; northerly on U.S. Hwy 95 to the Bill Williams River; except those portions that are sovereign tribal lands of the Colorado River Indian Tribes.

Unit 43B – Beginning at the south end of Cibola Lake; southerly along the Arizona-California state line to I-8; southeasterly on I-8 to U.S. Hwy 95; easterly and northerly on U.S. Hwy 95 to the Castle Dome ~~road~~ Rd.; northeast on the Castle Dome Rd. to the Kofa National Wildlife Refuge boundary; north along the refuge boundary to the Stone Cabin-King Valley Rd. (King Rd.); west along the Stone Cabin-King Valley Rd. (King Rd.) to U.S. Hwy 95; north on U.S. Hwy 95 to the Cibola Lake Rd.; west and south on the Cibola Lake Rd. to the south end of Cibola Lake; except those portions that are sovereign tribal lands of the Quechan Tribe.

Unit 44A – Beginning at U.S. Hwy 95 and the Bill Williams River; south along U.S. Hwy 95 to AZ Hwy 72; southeasterly on AZ Hwy 72 to Vicksburg; south on the Vicksburg-Kofa National Wildlife Refuge Rd. to I-10; easterly on I-10 to the Salome-Hassayampa Rd. (Exit 81); northwesterly on the Salome-Hassayampa Rd. to Eagle Eye Rd.; northeasterly on Eagle Eye Rd. to Aguila; east on U.S. Hwy 60 to AZ Hwy 71; northeasterly on AZ Hwy 71 to U.S. Hwy 93; northwesterly on U.S. Hwy 93 to the Santa Maria River; westerly along the Santa Maria and Bill

Williams rivers to U.S. Hwy 95; except those portions that are sovereign tribal lands of the Colorado River Indian Tribes.

Unit 44B – Beginning at Quartzsite; south on U.S. Hwy 95 to the Crystal Hill Rd. (Blevens Rd.); east on the Crystal Hill Rd. (Blevens Rd.) to the Kofa National Wildlife Refuge; north and east along the refuge boundary to the Vicksburg-Kofa National Wildlife Refuge Rd.; north on the Vicksburg-Kofa National Wildlife Refuge Rd. to AZ Hwy 72; northwest on AZ Hwy 72 to U.S. Hwy 95; south on U.S. Hwy 95 to Quartzsite.

Unit 45A – Beginning at the junction of the Stone Cabin-King Valley Rd. (King Rd.) and Kofa National Wildlife Refuge boundary; east on the Stone Cabin-King Valley Rd. (King Rd.) to O-O Junction; north from O-O Junction on the Kofa Mine Rd. to the Evening Star Mine; north on a line over Polaris Mountain to Midwell-Alamo Spring-Kofa Cabin Rd. (Wilbanks Rd.); north on the Midwell-Alamo Spring-Kofa Cabin Rd. (Wilbanks Rd.) to the El Paso Natural Gas Pipeline Rd.; north on a line from the junction to the north boundary of the Kofa National Wildlife Refuge; west and south on the boundary line to Stone Cabin-King Valley Rd. (King Rd.).

Unit 45B – Beginning at O-O Junction; north from O-O Junction on the Kofa Mine Rd. to the Evening Star Mine; north on a line over Polaris Mountain to Midwell-Alamo Spring-Kofa Cabin Rd. (Wilbanks Rd.); north on the Midwell-Alamo Spring-Kofa Cabin Rd. (Wilbanks Rd.) to the El Paso Natural Gas Pipeline Rd.; north on a line from the junction to the north Kofa National Wildlife Refuge boundary; east to the east refuge boundary; south and west along the Kofa National Wildlife Refuge boundary to the Stone Cabin-King Valley Rd. (Wellton-Kofa Rd./Ave 40E); north and west on the Stone Cabin-King Valley Rd. (Wellton-Kofa Rd./Ave 40E) to O-O Junction.

Unit 45C – Beginning at the junction of the Stone Cabin-King Valley Rd. (King Rd.) and Kofa National Wildlife Refuge; south, east, and north along the refuge boundary to the Stone Cabin-King Valley Rd. (King Rd.); north and west on the Stone Cabin-King Valley Rd. (King Rd.) to the junction of the Stone Cabin-King Valley Rd. (King Rd.) and Kofa National Wildlife Refuge boundary.

Unit 46A – That portion of the Cabeza Prieta National Wildlife Refuge east of the Yuma-Pima County line.

Unit 46B – That portion of the Cabeza Prieta National Wildlife Refuge west of the Yuma-Pima County line.

**R12-4-109. Approved Trapping Education Course Fee**

Under A.R.S. § 17-333.02(A), the provider of an approved educational course of instruction in responsible trapping and environmental ethics may collect a fee from each participant that:

1. Is reasonable and commensurate for the course, and
2. Does not exceed ~~$25~~ 75.

**R12-4-115. Restricted Nonpermit-Tags; Supplemental Hunts and Hunter Pool**

**A.** For the purposes of this Section, the following definitions apply:

"Companion tag" means a restricted nonpermit-tag valid for a supplemental hunt prescribed by Commission Order that exactly matches the season dates and open areas of another big game hunt, for which a hunt number is assigned and hunt permit-tags are issued through the computer draw.

"Emergency season" means a season established for reasons constituting an immediate threat to the health, safety or management of wildlife or its habitat, or public health or safety.

"Management objectives" means goals, recommendations, or guidelines contained in Department or Commission-approved wildlife management plans, which include hunt guidelines, operational plans, or hunt recommendations.

"Hunter pool" means all persons who have submitted an application for a supplemental hunt.

"Restricted nonpermit-tag" means a permit limited to a season for a supplemental hunt established by the Commission for the following purposes:

Take of depredating wildlife as authorized under A.R.S. § 17-239;

Take of wildlife under an Emergency Season; or

Take of wildlife under a population management hunt if the Commission has prescribed nonpermit-tags by Commission Order for the purpose of meeting management objectives because regular seasons are not, have not been, or will not be sufficient or effective to achieve management objectives.

**B.** The Commission shall, by Commission Order, open a season or seasons and prescribe a maximum number of restricted nonpermit-tags to be made available under this Section.

**C.** The Department shall implement a population management hunt under the open season or seasons established under subsection (B) if the Department determines the:

1. Regular seasons have not met or will not meet management objectives;
2. Take of wildlife is necessary to meet management objectives; and
3. Issuance of a specific number of restricted nonpermit-tags is likely to meet management objectives.

**D.** To implement a population management hunt established by Commission Order, the Department shall:

1. Select season dates, within the range of dates listed in the Commission Order;
2. Select specific hunt areas, within the range of hunt areas listed in the Commission Order;
3. Select the legal wildlife that may be taken from the list of legal wildlife identified in the Commission Order;
4. Determine the number of restricted nonpermit-tags that will be issued from the maximum number of tags authorized in the Commission Order.
    a. The Department shall not issue more restricted nonpermit-tags than the maximum number prescribed by Commission Order.
    b. A restricted nonpermit-tag is valid only for the supplemental hunt for which it is issued.

**E.** The provisions of R12-4-104, R12-4-107, R12-4-114, and R12-4-609 do not apply to a supplemental hunt.

**F.** If the Department anticipates the normal fee structure will not generate adequate participation, then the Department may reduce restricted nonpermit-tag fees up to 75%, as authorized under A.R.S. § 17-239(D).

**G.** An applicant for a supplemental hunt shall apply at the times, locations, and in the manner and method established by the hunt permit-tag application schedule published by the Department and available at any Department office, on the Department's website, or a license dealer. A supplemental hunt application submitted in accordance with this Section does not invalidate any other application submitted by the person for a hunt permit-tag.

1. The Department shall not accept a group application, as defined under R12-4-104, for a restricted nonpermit-tag.
2. An applicant shall not apply for or obtain a restricted nonpermit-tag to take wildlife in excess of the bag limit established by Commission Order.
3. The issuance of a restricted nonpermit-tag does not authorize a person to exceed the bag limit established by Commission Order.

**H.** To participate in a supplemental hunt, a person shall:

1. Obtain a restricted nonpermit-tag as prescribed under this Section, and
2. Possess a valid hunting license. If the applicant does not possess a valid license or the license will expire before the supplemental hunt, the applicant shall purchase an appropriate license.

**I.** The Department or its authorized agent shall maintain a hunter pool for supplemental hunts other than companion tag hunts.

1. The Department shall purge and renew the hunter pool on an annual basis.
2. An applicant for a restricted nonpermit-tag under this subsection shall submit a hunt permit-tag application to the Department for each desired species. The application is available at any Department office, an authorized agent, or on the Department's website. The applicant shall provide all of the following information on the application:
    a. The applicant's:
        i. Name;
        ii. Department identification number, when applicable;
        iii. Mailing address;
        iv. Number of years of residency immediately preceding application;
        v. Date of birth;
        vi. Social Security Number, as required under A.R.S. §§ 25-320(P) and 25-502(K); and
        vii. Daytime and evening telephone numbers,
    b. The species that the applicant would like to hunt, if selected, and
    c. The applicant's hunting license number.
3. In addition to the requirements established under subsection (I)(2), at the time of application the applicant shall submit the application fee required under R12-4-102. A separate application and application fee is required for each species the applicant submits an application for.
4. When issuing a restricted nonpermit-tag, the Department or its authorized agent shall randomly select applicants from the hunter pool.
    a. The Department or its authorized agent shall attempt to contact each randomly-selected applicant at least three times within a 24-hour period.
    b. If an applicant cannot be contacted or is unable to participate in the supplemental hunt, the Department or its authorized agent shall return the application to the hunter pool and draw another application.
    c. In compliance with subsection (D)(4), the Department or its authorized agent shall select no more applications after the number of restricted nonpermit-tags establish by Commission Order are issued.
5. The Department shall reserve a restricted nonpermit-tag for an applicant only for the period specified by the Department when contact is made with the applicant. If an applicant fails to purchase the nonpermit-tag within the specified period, the Department or its authorized agent shall:
    a. Remove the person's application from the hunter pool, and
    b. Offer that restricted nonpermit-tag to another person whose application is drawn from the hunter pool as established under this Section.
6. A person who participates in a supplemental hunt through the hunter pool shall be removed from the supplemental

hunter pool for the genus for which the person participated. A hunter pool applicant who is selected and who wishes to participate in a supplemental hunt shall submit the following to the Department to obtain a restricted nonpermit-tag:

a. The fee for the tag as established under R12-4-102 or subsection (F) if the fee has been reduced, and

b. The applicant's hunting license number. The applicant shall possess an appropriate license that is valid at the time of the supplemental hunt. The applicant shall purchase a license at the time of application when:

i. The applicant does not possess a valid license, or

ii. The applicant's license will expire before the supplemental hunt.

7. A person who participates in a supplemental hunt shall not reapply for the hunter pool for that genus until the hunter pool is renewed.

**J.** The Department shall only make a companion tag available to a person who possesses a matching hunt permit-tag and not a person from the hunter pool. Authorization to issue a companion tag occurs when the Commission establishes a hunt in Commission Order under subsection (B).

1. The requirements of subsection (D) are not applicable to a companion tag issued under this subsection.
2. To obtain a companion tag under this subsection, an applicant shall submit a hunt permit-tag application to the Department. The application is available at any Department office and on the Department's website. The applicant shall provide all of the following information on the application, the applicant's:
   a. Name,
   b. Mailing address,
   c. Department identification number, and
   d. Hunt permit-tag number, to include the hunt number and permit number, corresponding with the season dates and open areas of the supplemental hunt.
3. In addition to the requirements established under subsection (J)(2), at the time of application the applicant shall:
   a. Provide verification that the applicant lawfully obtained the hunt permit-tag for the hunt described under this subsection by presenting the hunt permit-tag to a Department office for verification, and
   b. Submit all applicable fees required under R12-4-102.

**R12-4-120. Issuance, Sale, and Transfer of Special Big Game ~~License tags~~ Tags**

**A.** An incorporated nonprofit organization that is tax exempt under section 501(c) seeking special big game ~~license tags~~ tags as authorized under A.R.S. § 17-346 shall submit a proposal to the Director of the Arizona Game and Fish Department from March 1 through May 31 preceding the year when the tags may be legally used. The proposal shall include all of the following information for each member of the organization coordinating the proposal:

1. The name of the organization making the proposal and the:
   a. Name;
   b. Mailing address;
   c. E-mail address, when available; and
   d. Telephone number;
2. Organization's previous involvement with wildlife management;

3. Organization's conservation objectives;
4. Number of special big game ~~license tags~~ tags and the species requested;
5. Purpose to be served by the issuance of these tags;
6. Method or methods by which the tags will be marketed and sold;
7. Proposed fund raising plan;
8. Estimated amount of money to be raised and the rationale for that estimate;
9. Any special needs or particulars relevant to the marketing of the tags;
10. A copy of the organization's articles of incorporation and evidence that the organization has tax-exempt status under Section 501(c) of the Internal Revenue Code, unless a current and correct copy is already on file with the Department;
11. Statement that the person or organization submitting the proposal agrees to the conditions established under A.R.S. § 17-346 and this Section;
12. Printed name and signature of the president and secretary-treasurer of the organization or their equivalent; and
13. Date of signing.

**B.** The Director shall return to the organization any proposal that does not comply with the requirements established under A.R.S. § 17-346 and this Section. Because proposals are reviewed for compliance after the May 31 deadline, an organization that receives a returned proposal cannot resubmit a corrected proposal, but may submit a proposal that complies with the requirements established under A.R.S. § 17-346 and this Section the following year.

**C.** The Director shall submit all timely and valid proposals to the Commission for consideration.

1. In selecting an organization, the Commission shall consider the:
   a. Written proposal;
   b. Proposed uses for tag proceeds;
   c. Qualifications of the organization as a fund raiser;
   d. Proposed fund raising plan;
   e. Organization's previous involvement with wildlife management; and
   f. Organization's conservation objectives.
2. The Commission may accept any proposal in whole or in part and may reject any proposal if it is in the best interest of wildlife to do so.
3. Commission approval and issuance of any special big game license-tag is contingent upon compliance with this Section.

**D.** A successful organization shall agree in writing to all of the following:

1. To underwrite all promotional and administrative costs to sell and transfer each special big game license-tag;
2. To transfer all proceeds to the Department within 90 days of the date that the organization sells or awards the tag;
3. To sell and transfer each special big game license-tag as described in the proposal; and
4. To provide the Department with the name, address, and physical description of each person to whom a special big game license-tag is to be issued within 60 days of the sale.

**E.** The Department and the successful organization shall coordinate on:

1. The specific projects or purposes identified in the proposal;

2. The arrangements for the deposit of the proceeds, the accounting procedures, and final audit; and
3. The dates when the wildlife project or purpose will be accomplished.

**F.** The Department shall dedicate all proceeds generated by the sale or transfer of a special big game license-tag to the management of the species for which the tag was issued.

1. A special license-tag shall not be issued until the Department receives all proceeds from the sale of ~~license-tags~~ tags.
2. The Department shall not refund proceeds.

**G.** A special big game license-tag is valid only for the person named on the tag, for the season dates on the tag, and for the species for which the tag was issued.

1. A hunting license is required for the tag to be valid.
2. Possession of a special big game license-tag shall not invalidate any other big game tag or application for any other big game tag.
3. Wildlife taken under the authority of a special big game license-tag shall not count towards the established bag limit for that species.

**H.** A person who wins the special big game license-tag through auction or raffle is prohibited from selling the special big game license-tag to another person.

**R12-4-121. Tag Transfer**

**A.** For the purposes of this Section:

"Authorized nonprofit organization" means a nonprofit organization approved by the Department to receive donated unused tags.

"Unused tag" means a hunt permit-tag, limited-entry permit-tag, nonpermit-tag, or special license tag that has not been attached to any wildlife.

**B.** A parent, grandparent, or guardian issued a hunt permit-tag, limited-entry permit-tag, nonpermit-tag, or special license tag may transfer the unused tag to the parent's, grandparent's, or guardian's minor child or grandchild.

1. A parent, grandparent, or guardian issued a tag may transfer the unused tag to a minor child or grandchild at any time prior to the end of the season for which the unused tag was issued.
2. A parent, grandparent, or guardian may transfer the unused tag by providing all of the following documentation in person at any Department office:
   a. Proof of ownership of the unused tag to be transferred,
   b. The unused tag, and
   c. The minor's valid hunting license.
3. If a parent, grandparent, or legal guardian is deceased, the personal representative of the person's estate may transfer an unused tag to an eligible minor. The person acting as the personal representative shall present:
   a. The deceased person's death certificate, and
   b. Proof of the person's authority to act as the personal representative of the deceased person's estate.
4. To be eligible to receive an unused tag from a parent, grandparent, or legal guardian, the minor child shall meet the criteria established under subsection (D).

5. A minor child or grandchild receiving an unused tag from a parent, grandparent, or legal guardian shall be accompanied into the field by any grandparent, parent, or legal guardian of the minor child.

**C.** A person issued a tag or the person's legal representative may donate the unused tag to an authorized nonprofit organization for use by a minor child or a veteran of the Armed Forces of the United States as prescribed under A.R.S. § 17-332(D)(1).

1. The person or legal representative who donates the unused tag shall provide the authorized nonprofit organization with a written statement indicating the unused tag is voluntarily donated to the organization.
2. An authorized nonprofit organization receiving a donated tag under this subsection may transfer the unused tag to an eligible minor child or veteran by contacting any Department office.
    a. To obtain a transfer, the nonprofit organization shall:
        i. Provide proof of donation of the unused tag to be transferred;
        ii. Provide the unused tag;
        iii. Provide proof of the minor child's or veteran's valid hunting license.
    b. To be eligible to receive a donated unused tag from an authorized nonprofit organization, a minor child shall meet the criteria established under subsection (D).
3. A person who donates an original, unused hunt permit-tag issued in a computer drawing to an authorized nonprofit organization may submit a request to the Department for the reinstatement of the bonus points expended for that unused tag, provided all of the following conditions are met:
    a. The person has a valid and active membership in the Department's membership program with at least one unredeemed tag surrender on the application deadline date, for the computer draw in which the hunt permit-tag being surrendered was drawn, and at the time of tag surrender.
    b. The person submits a completed application form as described under R12-4-118;
    c. The person provides acceptable proof to the Department that the tag was transferred to an authorized nonprofit organization; and
    d. The person submits the request to the Department:
        i. No later than 60 days after the date on which the tag was donated to an authorized nonprofit organization; and
        ii. No less than 30 days prior to the computer draw application deadline for that genus, as specified in the hunt permit-tag application schedule.

**D.** To receive an unused tag authorized under subsections (B) or (C), an eligible minor child shall meet the following criteria:

1. Possess a valid hunting license,
2. Has not reached the applicable annual or lifetime bag limit for that genus, and
3. Is 10 to 17 years of age on the date of the transfer. A minor child under the age of 14 shall have satisfactorily completed a Department-sanctioned hunter education course before the beginning date of the hunt.

**E.** To receive an unused tag authorized under subsection (C), an eligible veteran of the Armed Forces of the United States with a service-connected disability shall meet the following criteria:

1. Possess a valid hunting license, and

2. Has not reached the applicable annual or lifetime bag limit for that genus.

**F.** A person who is eligible to receive an unused tag under this Section may receive any number of unused tags in a calendar year provided the person:

1. Has not reached the applicable annual or lifetime bag limit for that genus; and
2. Does not possess a valid permit tag for that genus.

**F.G.** A nonprofit organization is eligible to apply for authorization to receive a donated unused tag, provided the nonprofit organization:

1. Is qualified under section 501(c)(3) of the United States Internal Revenue Code, and
2. Affords opportunities and experiences to:
   a. Children with life-threatening medical conditions or physical disabilities;
   b. Children whose parent was killed in action while serving in the U.S. Armed Forces, in the course and scope of employment as a peace officer; or in the course and scope of employment as a professional firefighter who is a member of a state, federal, tribal, city, town, county, district or private fire department; or
   c. Veterans with service-connected disabilities.
3. This authorization shall remain in effect unless revoked by the Department for noncompliance with the requirements established under A.R.S. § 17-332 or this Section.
4. A nonprofit organization shall apply for authorization by submitting an application to any Department office. The application form is furnished by the Department and is available at any Department office. A nonprofit organization shall provide all of the following information on the application:
   a. Nonprofit organization's information:
      i. Name,
      ii. Physical address,
      iii. Telephone number;
   b. Contact information for the person responsible for ensuring compliance with this Section:
      i. Name,
      ii. Address,
      iii. Telephone number;
   c. Signature of the president and secretary-treasurer of the organization or their equivalents; and
   d. Date of signing.
5. In addition to the application, a nonprofit organization shall provide all of the following:
   a. A copy of the organization's articles of incorporation and evidence that the organization has tax-exempt status under Section 501(c)(3) of the Internal Revenue Code, unless a current and correct copy is already on file with the Department;
   b. Document identifying the organization's mission;
   c. A letter stating how the organization will participate in the Big Game Tag Transfer program; and
   d. A statement that the person or organization submitting the application agrees to the conditions established under A.R.S. § 17-332 and this Section.
6. An applicant who is denied authorization to receive donated tags under this Section may appeal to the Commission

as provided under A.R.S. Title 41, Chapter 6, Article 10.

**R12-4-127. Civil Liability for Loss of Wildlife**

**A.** In order to compensate the state for the value of lost or injured wildlife, the Commission may, pursuant to A.R.S. § 17-314, impose a civil penalty against any person for unlawfully taking, wounding, killing or possessing wildlife. Any civil penalties so imposed shall be equal to or greater than the applicable statutory-minimum sums found in A.R.S. § 17-314(A). The Commission may impose a civil penalty above the statutory-minimum sums where it has determined that the value of the lost or injured wildlife exceeds the statutory-minimum sums.

**B.** The Commission shall annually establish the value of lost or injured wildlife using objective and measurable economic criteria. When doing so, the Commission may consider objective economic criteria recommended by the Department or any other person.

**C.** The Department shall recommend the value of lost or injured wildlife to the Commission by aggregating the following objective and measurable economic factors:

1. The average dollar amount spent by an individual hunter in pursuit of the same species. This amount shall be calculated using information from the most recent National Survey of Fishing, Hunting and Wildlife-Associated Recreation conducted by the U.S. Fish and Wildlife Service and measures hunting and fishing expenditures, in combination with hunter harvest data gathered by the Department. This information shall be available on the Department's website.
2. The average dollar amount spent by an individual in an effort to view wildlife. This amount shall be calculated using information from the most recent National Survey of Fishing, Hunting and Wildlife-Associated Recreation conducted by the U.S. Fish and Wildlife Service and measures wildlife viewing expenditures, in combination with hunter harvest data gathered by the Department. This information shall be available on the Department's website.
3. The average body weight in pounds of meat for the unlawfully taken or possessed species multiplied by the average price per pound of ground meat for that same species or a similar species. Average body weight in pounds of meat shall be calculated using the average body weight for the wildlife taken, minus 30% of the average weight to account for the weight of the head, hide, offal, and bone.
4. When new data is not available, the Department may use Consumer Price Index (CPI) calculations to update the above factors in terms of U.S. dollars.

**D.** The Department shall recommend the value of lost aquatic wildlife to the Commission by aggregating the following objective and measurable economic factors:

1. The average dollar amount spent by an individual angler in pursuit of the same species. This amount shall be calculated using information from the most recent Arizona Anglers' Expenditures and the Economic Impact of Fishing in the State which measures fishing expenditures, in combination with angler harvest data gathered by the Department. This information shall be available on the Department's website.
2. The average body weight in pounds of aquatic meat for the unlawfully taken or possessed species multiplied by the average price per pound of aquatic meat for that same species or a similar species. Average body weight in pounds of aquatic meat shall be calculated using the average body weight for the wildlife taken, minus 40% of the average weight to account for the weight of the head, entrails, and fins.

3. Recommended values based on current market to cover hatchery expenses per fish, which includes the cost to purchase, raise, feed, transport and release wildlife.

~~D.~~**E.** The most recent wildlife values established by the Commission shall be available on the Department's website.

**TITLE 12. NATURAL RESOURCES**

**CHAPTER 4. GAME AND FISH COMMISSION**

**ARTICLE OR RULE NUMBERS**

**ECONOMIC, SMALL BUSINESS AND CONSUMER IMPACT STATEMENT**

**R12-4-101, R12-4-102, R12-4-103, R12-4-104, R12-4-107, R12-4-108, R12-4-109, R12-4-114, R12-4-115, R12-4-120, R12-4-121, AND R12-4-127**

## A. The economic, small business and consumer impact summary:

### 1. Identification of the proposed rulemaking:

An exemption from Executive Order 2021-02 was provided for this rulemaking by Will Greene, Natural Resource Policy Advisor, Governor's Office, in an email dated December 11, 2023.

The Arizona Game and Fish Commission proposes to amend its Article 1 rules, addressing definitions and general provisions to enact amendments developed during the preceding Five-year Review Report. Arizona's great abundance and diversity of native wildlife can be attributed to careful management and the important role of the conservation programs developed by the Arizona Game and Fish Department. The Department's management of both game and nongame species as a public resource depends on sound science and active management. As trustee, the state has no power to delegate its trust duties and no freedom to transfer trust ownership or management of assets to private establishments. Without strict agency oversight and management, the fate of many of our native species would be in jeopardy. Wildlife can be owned by no person and is held by the state in trust for all the people.

**R12-4-101. Definitions:** The objective of the rule is to establish definitions that assist persons regulated by the rule and members of the public in understanding the unique terms that are used throughout 12 A.A.C. Chapter 4. The rule was adopted to facilitate consistent interpretation and to prevent persons regulated by the rule from misinterpreting the intent of Commission rules. Over time, the Department has diligently worked towards moving its processes to the Department's online platform. Many of the applications, forms, reports, etc. require the person submitting them to sign and date the application, form, report, etc. The Commission proposed to amend the rule to define "electronic signature" and "signature" to further enhance and support the use of online Department forms, applications, reports, etc. that require the submitter to provide a signature and date to indicate the person's intent to agree to payment, conditions, terms, etc. as applicable to the online application, form, report, etc. Electronic signatures provide a convenient way to sign documents without having to print them, physically sign them, and then scan or mail them back, thus reducing the person's costs and burdens. They play a crucial role in modern business and legal processes because it's a faster and more efficient way of getting things done online and they are legally binding. Defining electronic signatures ensures that parties involved understand their legal implications and obligations when using them. An electronic signature comes with audit trail capabilities, encryption, and other backend tools to ensure the signature is authentic. They are more convenient than a traditional signature, saving time and postage as they can be used to sign documents remotely, rendering the recipient's location irrelevant and nearly instant

results. An electronic signature is essentially a process that uses computers to authenticate the signatory and certify the integrity of the document and the authenticity information stored within a digital signature is very difficult to manipulate or forge.

**R12-4-102. License, Permit, Stamp, and Tag Fees:** The objective of the rule is to prescribe fees for licenses, tags, stamps, and permits within statutory confines to meet Department operating expenditures and wildlife conservation. The Department receives no appropriations from the general fund and operates primarily with the revenue it generates from the sale of licenses, permits, stamps, tags, and matching funds from federal excise taxes hunters and anglers pay on guns, ammunition, fishing tackle, motorboat fuels, and related equipment. The rule was adopted to provide persons regulated by the rule with a comprehensive listing of license, permit, stamp, and tag fees and to ensure consistency between the fees collected by the Department and license dealers. The rule references R12-4-209. Community Fishing License, which was repealed January 1, 2022. The Commission proposes to amend the rule to remove references to the repealed rule to increase consistency between Commission rules.

**R12-4-103. Duplicate Tags and Licenses:** The objective of the rule is to establish requirements for the issuance of a duplicate license or tag when the original license or tag was not used and was lost, destroyed, mutilated or is otherwise unusable or was placed on a harvested animal that was subsequently condemned and surrendered to a Department employee. The rule was adopted to ensure consistency between the Department and license dealers when issuing a duplicate license or tag. Since the rule was last amended, the Department implemented a paperless tag process which allows a customer to purchase a license and permit-tag, view their license, bonus point, and tag information and electronically "tag" an animal using an App on their own electronic device. The Commission proposes to amend the rule to clarify that a person who validates their tag electronically for a harvested animal that was subsequently condemned and surrendered to a Department employee may apply for a duplicate tag upon submitting the condemned meat duplicate tag authorization form issued by the Department.

**R12-4-104. Application Procedures for Issuance of Hunt Permit-tags by Computer Draw and Purchase of Bonus Points:** The objective of the rule is to prescribe application requirements for the purchase of a bonus point and the issuance of hunt permit-tags; meaning a permit-tag for which the Commission has assigned a hunt number. The rule was adopted to provide persons regulated by the rule with the information necessary to successfully apply for a computer draw or the purchase of a bonus point. The current language requires a person to provide their license number when applying for a hunt permit-tag issued by computer draw. A person 10 years of age and under is not required to possess a hunting license unless they are applying for a big game hunt permit-tag. The Department recently began issuing Sandhill Crane tags by computer draw; under A.R.S. § 17-101, Sandhill Crane are not considered big game. The Commission proposes to amend the rule to establish an exemption to allow minors applying for draw hunts other than big game to do so without having to purchase a license. This amendment will also require amending R12-4-107 (bonus points) to ensure consistency between Commission Rules.

**R12-4-107. Bonus Point System:** The objective of the rule is to establish requirements for applying for

and maintaining bonus points, which may improve an applicant's draw odds for big game computer draws. The rule was adopted in response to customer comments requesting the Department implement a method that would reward loyal applicants and improve the drawing odds for a previously unsuccessful computer draw applicant. The "bonus point" system increases the number of chances for an application to receive a low random number in the computer draw. Bonus points are accumulated by failing to draw a hunt permit-tag or by buying a bonus point. Applications are assigned a random, computer-generated number. Applications that are assigned the lowest random number draw a tag first. It is important to note, having the greatest number of points does not guarantee a person will draw a tag. However, it does provide a better chance of being assigned a low random number in the computer draw. Under R12-4-104, the Department shall award one bonus point to an applicant who submits a valid Hunt Permit-tag Application and the application is unsuccessful in the computer draw. R12-4-104 also prohibits a person under the age of 10 from applying for the purchase of a bonus point. This was largely due to the fact that persons under the age of 10 are not eligible to hunt big game and, until just recently, the Department's computer draws were specific to big game animals only. Over the years, the interest in Sandhill Crane tags increased to the point where the interest in Sandhill Crane tags outnumbered the number of tags issued. A determination was made to issue Sandhill Cranes permit-tags by computer draw and add them to the list of game for which a bonus point may be awarded or purchased. This is problematic because a person 10 years of age and under is not eligible to purchase or accrue a bonus point. To address this conflict, the Commission proposes to amend the rule to award a Sandhill Crane bonus point to an applicant who is under the age of 10 and whose application was unsuccessful in the computer draw. These applicants would not be eligible to purchase a bonus point to avoid an over-accumulation of bonus points that would grant them an unfair advantage over other applicants.

**R12-4-108. Management Unit Boundaries:** The objective of the rule is to establish Game Management Unit boundaries for the preservation and management of wildlife. The Commission divides the state into 76 units for the purpose of managing wildlife. These units are known as Game Management Units and are composed of state, federal, military, and private land. These units define legally huntable areas and are essential to the Department's licensing, hunt permit-tag and law enforcement operations. Department biologists and Regional offices responsible for the management of a specific unit submit data concerning wildlife and wildlife habitat to the Department's Terrestrial Wildlife Program. The Terrestrial Wildlife Program then uses this data to formulate hunting seasons. Hunters purchase tags that authorize the person to participate in a specific hunting season in a Game Management Unit, portion of a unit, or group of units that are open to hunting. It is illegal for a person to take any wildlife in any area, other than the unit and wildlife specified on the tag, and hunters rely on the unit boundary descriptions provided in R12-4-108 to ensure that they are complying. Because landmarks change over time due to environmental factors, as local opinion changes regarding its destination, or the names of places and things change due to political or historical factors, the Commission proposes to amend the rule to update boundary revisions as necessary to clearly define roads and intersections with sufficient detail to reflect on the ground signage and current maps. The update serves to provide additional clarity and maintain recreational opportunities for the public (both hunters

and outdoor recreationists).

**R12-4-109. Approved Trapping Education Course Fee:** The objective of the rule is to establish the maximum fee a person may charge for a trapping education course. The rule was adopted to ensure compliance with A.R.S. § 17-333.02. Under A.R.S. § 17-333.02, a person is required to successfully complete a trapping education course conducted or approved by the Department before being issued a trapping license. The course shall include instruction on the history of trapping, trapping ethics, trapping laws, techniques in safely releasing nontarget animals, trapping equipment, wildlife management, proper catch handling, trapper health and safety and considerations and ethics intended to avoid conflicts with other public land users. The current fee was established prior to 1992 and, since then, the consumer price index (CPI) has increased by 119%. As a result, the current fee established in rule is not reflective of the CPI or value of the Trapper Education Course. Our current vendor who provides this necessary service to customers charges a fee of $34.95 and is not in compliance with the rule. Approximately, 100 to 150 individuals attend the education course on an annual basis. Failure to increase the fee at this time has the potential to negatively impact Department resources because the vendor provides this service to a degree that the Department is unable to fulfill, therefore affecting the time, efficiency, and ability to serve the Department's customers who need this course in order to obtain a trapping license. By increasing the fee limit the Department will bring the vendor into compliance and allow the Department to continue providing a necessary service to its customers. Increasing the fee from $25 to $75 will ensure the rule remains effective and enforceable now and into the future. The Arizona Trappers Association supports this course fee increase.

**R12-4-115. Restricted Nonpermit-Tags; Supplemental Hunts and Hunter Pool:** The objective of the rule is to establish the Commission's authority to implement a supplemental hunt when necessary to achieve management objectives when those objectives are not being reached through the regular season structures, take depredating wildlife, or address an immediate threat to the health, safety, or management of wildlife or its habitat, or to public health or safety. The rule also establishes the requirements for the supplemental hunter pool, comprised of persons who may be called upon to receive restricted nonpermit-tags when a supplemental hunt is authorized by the Commission. Under A.R.S. § 17-239(D), the Commission may establish special seasons, special bag limits, and reduce or waive license and tag fees to manage wildlife. The rule was adopted to establish an application process and hunter pool to enable the Department conduct those authorized activities. The current process for accepting Hunter Pool applications requires customers to submit a paper application to the Department's Draw Unit staff who then manually enter the customer's application into the Department's Customer Database. This process is time consuming and cumbersome. The Department is developing an online solution that will allow customers to apply online, eliminating the many hours needed for manual entry and freeing up Draw Unit staff to focus on other duties. The Department anticipates the online application will contain expanded criteria that the customer may select to further reduce the burden on the Department when making phone calls to potential tag recipients (i.e.; a customer applying for an elk hunt may select whether they are interested in an 'any elk,' 'cow elk,' or 'bull elk' hunt). The Commission proposes to amend the rule to allow the Department to specify the manner and method by which a person

may submit an application for a supplemental hunt or hunter pool, such as online or by paper application to reduce administrative burden.

**R12-4-120. Issuance, Sale, and Transfer of Special Big Game License-tags:** The objective of the rule is to establish procedures for the application and issuance of special big game tags, including the selection criteria for choosing applicants who are awarded such tags as authorized under A.R.S. § 17-346. The rule was adopted to ensure compliance with the requirements of A.R.S. § 17-346. The Commission is authorized to issue three special big game tags each year for each species of big game to 501(c)(3) organizations. The Commission reviews applications submitted by eligible wildlife conservation organizations and, through a public process, awards those tags to selected organizations to raise funds for wildlife. Tags are awarded to eligible wildlife conservation organizations in June and are valid from August 15th of the year in which they were purchased until August 14th the following year; a separate hunting license is required. With the last rulemaking the Commission amended the rule to require the winning bidder to possess a hunting or combination hunting and fishing license to validate the special license tag. The Commission proposes to amend the rule to replace references to "license-tags" with "tags" to make the rule more concise.

**R12-4-121. Tag Transfer:** The objective of the rule is to establish the requirements for the transfer of an unused big game tag as authorized under A.R.S. § 17-332, which allows a parent, guardian, or grandparent to transfer their unused big game tag to a minor child or grandchild; or a person to transfer their unused big game tag to a 501(c)(3) organization that provides hunting opportunities and experiences to persons eligible under A.R.S. § 17-332(D). The rule was adopted to ensure compliance with A.R.S. § 17-332. The Department processes approximately 700 transfers on an annual basis, this figure includes transfers to a minor child or grandchild and transfers to a 501(c)(3) organization. Each transfer represents an opportunity that would likely have gone unrealized. Persons who are eligible to receive a donated, unused big game tag include: Children with life-threatening medical conditions or physical disabilities; Children whose parent was killed in action while serving in the U.S. Armed Forces, in the course and scope of employment as a peace officer; or in the course and scope of employment as a professional firefighter who is a member of a state, federal, tribal, city, town, county, district or private fire department; and Veterans with service-connected disabilities. There is some confusion regarding the number of same species/genus tags an eligible person may receive by way of the tag transfer program. The current process allows a person to receive any number of the same species/genus tags in a calendar year provided the eligible person has not met the annual or lifetime bag limit for that same species/genus, as applicable. The Commission proposes to clarify the rule to reflect the Department's current process.

**R12-4-127. Civil Liability for Loss of Wildlife:** The rule was adopted to prescribe the civil liability values for the loss of wildlife when a person convicted of unlawfully taking, wounding, or killing wildlife or unlawfully in possession of unlawfully taken wildlife. This information is used by the Commission as a tool to establish the reasonable 'market' value when the Commission is determining the civil assessment to recover lost revenue to the state for the unlawful take of wildlife. The formula remains consistent while figures are researched and presented to the Commission each January for approval. The rule was adopted to

allow the Commission to recover lost revenue when the value of the wildlife taken exceeds the minimal values prescribed under A.R.S. § 17-314. Prior to the adoption of this rule, the Commission used the statutory minimum values for reimbursement to the state as prescribed under A.R.S. § 17-314. These values were derived from baseline figures taken from other western states and initially adopted and approved as reasonable average values. The statutory values have remained the same since adoption in law and left no process for future modification based on market fluctuations. Many factors were explored in the process of determining an updated version of value associated with wildlife for the state. Research of processes and methods of valuation from other states was conducted to determine best practices. It was decided that using market values associated with wildlife and parts of wildlife would be the most defensible and repeatable year after year. The Department operates six fish hatcheries. Five of these fish hatcheries are used for cold water production and play a major role in providing trout fishing opportunities in Arizona. The sixth hatchery is dedicated to warm water fish production. Hatchery fish are raised from eggs which are purchased and imported from other federal, state, or private hatcheries in the nation. Almost all of the trout harvested in Arizona are stocked from Commission-owned hatcheries. Every year, Department fish hatcheries contribute to Arizona's economy by producing on average 385,000 pounds of fish. This equates to over 3 million fish that are stocked into 118 locations throughout Arizona. The rule allows the Commission to establish civil penalties intended to recover the cost of wildlife unlawfully taken, lost, or injured. Internal discussions indicate the rule does not adequately address the loss of aquatic wildlife. The Commission proposes to amend the rule to establish values intended to recover hatchery expenses per fish, which includes the costs to purchase, raise, feed, transport, and release aquatic wildlife.

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

Overall, the Commission believes the amendments proposed in this rulemaking result in rules that are either less burdensome or have no significant impact on the regulated community. Therefore, this subsection will address only those rules deemed to have a significant impact on the regulated community.

**R12-4-101. Definitions:** The Department has diligently worked towards moving its services to its online platform. Many of the applications, forms, reports, etc. require the person submitting them to sign and date the application, form, report, etc. or accept the terms and conditions for licenses, permits, payments, etc. By defining "electronic signature," the Commission establishes that electronic communication and contracts are equivalent to their paper counterparts, if a rule requires a signature in writing, the electronic record satisfies the requirement.

**R12-4-104. Application Procedures for Issuance of Hunt Permit-tags by Drawing and Purchase of Bonus Points:** A person 10 years of age and under is not required to possess a hunting license unless they are applying for a big game hunt permit-tag. The Department recently began issuing Sandhill Crane tags by computer draw; under A.R.S. § 17-101, Sandhill Crane are not considered big game. The Department recommends amending the rule to establish an exemption to allow minors applying for draw hunts other than big game to do so without having to purchase a license. This recommendation will also require amending R12-4-107 (bonus points) to ensure consistency between Commission Rules.

**(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:**

Overall, the Commission believes the amendments proposed in rulemaking result in rules that are either less burdensome or have no significant impact on the regulated community. Therefore, this subsection will address only those rules deemed to have significant impact on the regulated community. For the rules identified below, the Commission believes the targeted conduct identified in paragraph (A)(1)(a) will continue to occur and may increase if the rule is not amended as proposed above:

**(c) The estimated change in frequency of the targeted conduct expected from the rule change:**

The Commission anticipates the rule changes will prevent or diminish the frequency of the targeted conduct. While it is not possible to quantify the actual change in frequency of the targeted conduct expected from the rule changes, the Commission believes that over time, through continued outreach, education, and enforcement of the rule changes identified paragraph (A)(1)(a), the frequency of the targeted conduct will be significantly reduced.

**2. Brief summary of the information included in the economic, small business and consumer impact statement.**

The proposed rulemaking will benefit hunters interested in hunting in Arizona by ensuring Department processes and programs align with current technology and circumstances, allow for the adoption of updated business practices and represents the most cost-effective and efficient method of fulfilling the Commission's and Department's responsibilities by imposing only those requirements that are necessary to meet the Commission's objectives. When amending Commission rules, the Department tasks a team of subject matter experts to consider all comments from the public and agency staff that administer and enforce the rules, historical data, current processes and environment, and the Department's overall mission. The team takes a customer-focused approach, considers each recommendation from a resource perspective and determines whether the recommendation would cause undue harm to the Department's goals and objectives. The team then determines whether the request is in keeping with overarching guidance provided by the Governor, authorized by statute, in keeping with overarching guidance provided by the Commission, consistent with the Department's overall mission, is least burdensome to persons regulated by the rule, if it could be effectively implemented given agency resources, and if it is acceptable to the public.

**3. The name and address of agency employees who may be contacted to submit or request additional data on the information included in the economic, small business and consumer impact statement:**

Name: Christopher Dean, BASF Range Manager

Address: Arizona Game and Fish Department
5000 W. Carefree Highway, BASF
Phoenix, AZ 85086

Telephone: (623) 236-7072

E-mail: CDean@azgfd.gov

**B. Economic, small business and consumer impact statement shall include:**

**1. Identification of the proposed rulemaking:**

See paragraph (A)(1) above.

Overall, the Commission believes the amendments proposed in this rulemaking result in rules that are either less burdensome or have no significant impact on the regulated community. The Commission believes the general public, regulated community and the Department will benefit from the proposed rulemaking through clarification of rule language. The Commission anticipates the rulemaking will result in an overall benefit to persons regulated by the rules by reducing the burden and costs associated with the rules, by increasing clarity, and by providing better customer service to persons seeking to conduct activities authorized under the rules.

The Commission anticipates the following amendments being made solely to clarify the rules will have no impact on the Department and/or regulated community: R12-4-102, removing references to the repealed community fishing rule; R12-4-120, replacing references to "license-tag" with "tag;" and R12-4-121, specifying that any number of donated or surrendered tags may be transferred to an eligible person provided the person has not reached the established annual or lifetime bag limit for that species/genus.

The Commission anticipates persons regulated by the rule and the Department will benefit from amendment that defines "electronic signature." Electronic signatures provide a convenient way to sign documents without having to print them, physically sign them, and then scan or mail them back, thus reducing the person's costs and burdens. They play a crucial role in modern business and legal processes because it's a faster and more efficient way of conducting business online and they are legally binding.

The Commission anticipates persons regulated by the rule and the Department will benefit from amendment that allows a person to obtain a duplicate tag in the event their electronic tag is attached to an animal that was tagged, condemned, and subsequently surrendered to a Department employee.

The Commission anticipates persons regulated by the rule and the Department will benefit from amendment that allows a minor who applied for a Sandhill crane tag to purchase or accrue a bonus point for Sandhill crane.

The Commission anticipates persons regulated by the rule and the Department will benefit from amendments that update Management Unit boundaries. Hunters purchase tags that identify a specific hunting season and Management Unit, portion of a unit, or group of units; hunters rely on the unit boundary descriptions provided under R12-4-108 to ensure that they are complying with Game and Fish Commission laws, rules, and orders.

The Commission anticipates persons regulated by the rule and the Department will benefit from the amendment that increases the fee the provider of an approved educational course of instruction in responsible trapping and environmental ethics may collect from each participant. The current fee limitation has been in place for over 20 years. Increasing the fee from $25 to $75 will allow course providers to collect a fee that is

more commensurate with the service provided and ensure the rule remains current for an extended period of time. Approximately, 100 to 150 individuals attend the trapper education course.

The Commission anticipates persons regulated by the rule and the Department will benefit from amendments that allow the Department to specify the manner and method by which a person may apply for a supplemental hunt or the hunter pool. The Department intends to develop an automated system for notifying persons entered in the hunter pool that is similar to the draw that will ensure the random selection of applicants is a transparent process and archive the information for future reference.

The Commission anticipates both the public and Department will benefit from amendments that establish civil liabilities for loss of aquatic wildlife. Under A.R.S. 17-314, authorizes the Commission to bring a civil action against a person convicted of unlawfully taking, wounding, or killing wildlife or unlawfully in possession of unlawfully taken wildlife in an effort to recover damages suffered due to the loss of the illegally taken wildlife; and establishes the minimum sums for damages (loss of wildlife). In the event the wildlife taken was of exceptional value, the Commission has the authority to establish sums greater than the minimum sums prescribed under statute. Over the years, the Department employed a number of methods to determine damages, which included evaluating empirical data, obtaining estimates from taxidermists, benchmarking with other fish and wildlife agencies, etc. The Commission believes the proposed rule creates a method using reasonable factors to ensure damages are determined fairly and consistently.

**3. Cost benefit analysis:**

**(a) The probable costs and benefits to the implementing agency and other agencies directly affected by the implementation and enforcement of the proposed rulemaking:**

Overall, the Commission anticipates the proposed amendments will not have a significant impact on the Department or other agencies directly affected by the implementation and enforcement of the proposed rulemaking. The Commission has determined that the proposed rulemaking will not require any additional full-time employees to implement and enforce the proposed amendments. The principle benefit the Department will receive from the proposed rulemaking is increasing customer satisfaction. Many of these proposals are simply clarifying rule language or reducing burdens and costs to persons regulated by the rule or originated as a result of comments submitted by the public. As a result, some of the proposed amendments will create costs to the agency. The Commission believes the benefits of the rulemaking outweigh any costs.

**(b) The probable costs and benefits to a political subdivision of this State directly affected by the implementation and enforcement of the proposed rulemaking:**

The Commission anticipates the proposed amendments will have little or no impact on political subdivisions of this State.

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

Overall, the Commission anticipates the proposed amendments will not affect businesses, their revenues, or their payroll expenditures. Of those that do or may have an impact, the Commission does not anticipate the impact will be significant. The Commission believes the benefits of the rulemaking outweigh any costs.

4. **General description of the probable impact on private and public employment in businesses, agencies and political subdivisions of this state directly affected by the proposed rulemaking.**

   Overall, the Commission anticipates the proposed amendments will have no impact on private and public employment in businesses, agencies, and political subdivisions of this State. Of those that do or may have an impact, the Commission does not anticipate the impact will be significant.

5. **Statement of the probable impact of the proposed rulemaking on small businesses:**

   **(a) Identification of the small businesses subject to the proposed rulemaking.**

   The proposed rulemaking will benefit businesses providing an approved trapper education course; if these businesses qualify as small businesses.

   **(b) Administrative and other costs required for compliance with the proposed rulemaking.**

   Overall, the Commission anticipates the proposed amendments will not result in increased administrative and other costs for small businesses. Of those that do or may have an impact, the Commission does not anticipate the impact will be significant.

   **(c) Description of the methods that the agency may use to reduce the impact on small businesses.**

   The Commission believes establishing less stringent compliance requirements for small businesses is not necessary as the proposed rules do not place any additional compliance or reporting requirements on businesses.

   **(d) Probable cost and benefit to private persons and consumers who are directly affected by the proposed rulemaking.**

   The Commission anticipates the proposed rulemaking will benefit private persons and consumers by clarifying license and permit rules and in doing so ensuring the continued integrity of and compliance with its rules.

6. **Statement of the probable effect on state revenues.**

   The Commission anticipates the proposed amendments will have little or no impact on state revenues. The Department holds that, in general, the proposed rulemaking will not impact the general fund. The Commission believes the benefits of the rulemaking outweigh any costs.

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 rationale for not using the nonselected alternatives.**

   The Commission has determined that there are no alternative methods of achieving the objectives of the proposed rulemaking.

8. **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.**

For this rulemaking, the Commission relied on empirical data based on agency experience, observations, or inference; which included comments from agency staff who administer and enforce rules included in this rulemaking, comments from the public, historical data (i.e., meeting notes from previous rulemaking teams, refund reports, license and permit sales reports, other state agency rules, recruitment and retention reports, etc.), current processes, benchmarking with other states, and the Department's wildlife objectives. This rulemaking includes rules that govern general provisions for hunting and fishing, such as application procedures for hunt permit-tags, the computer draw, license dealers, the bonus point system, management unit boundaries, procedures for posting and access to state land, a membership program, and use of Department facilities; and the taking and handling of wildlife. The subjects the rules address are based on social sciences rather than formal sciences, thus recommendations based on empirical data using agency experience and observations is acceptable data. The Commission approached this rulemaking and the use of the documentation, statistics, and research in a methodical way, testing various approaches and trying to replicate approaches that were successful in other states.

**C. If for any reason adequate data are not reasonably available to comply with the requirements of subsection B of this section, the agency shall explain the limitations of the data and the methods that were employed in the attempt to obtain the data and shall characterize the probable impacts in qualitative terms. The absence of adequate data, if explained in accordance with this subsection, shall not be grounds for a legal challenge to the sufficiency of the economic, small business and consumer impact statement.**

The Department tasked a team of subject matter experts to review and make recommendations for rules contained within Article 1. In its review, the team considered all comments from agency staff who administer and enforce Article 1 rules, comments from the public, historical data, current processes and environment, and the Department's wildlife objectives. The team took a customer-focused approach, considering each recommendation from a resource perspective and determining whether the recommendation would cause undue harm to the state's wildlife or negatively affect the Department's wildlife objectives. The team then determined whether the request was consistent with the Department's overall mission, if it could be effectively implemented given agency resources, and if it was acceptable to the public. The Commission believes the data utilized in completing this economic, small business, and consumer statement is more than adequate.

# ARTICLE 1. DEFINITIONS AND GENERAL PROVISIONS


R12-4-101. Definitions
R12-4-102. License, Permit, Stamp, and Tag Fees
R12-4-103. Duplicate Tags and Licenses
R12-4-104. Application Procedures for Issuance of Hunt Permit-tags by Computer Draw and Purchase of Bonus Points
R12-4-105. License Dealer's License
R12-4-106. Special Licenses Licensing Time-frames
Table 1. Time-Frames
R12-4-107. Bonus Point System
R12-4-108. Management Unit Boundaries
R12-4-109. Approved Trapping Education Course Fee
R12-4-110. Posting and Access to State Land
R12-4-111. Repealed
R12-4-112. Diseased, Injured, or Chemically-immobilized Wildlife
R12-4-113. Small Game Depredation Permit
R12-4-114. Issuance of Nonpermit-tags and Hunt Permit-tags
R12-4-115. Restricted Nonpermit-Tags; Supplemental Hunts and Hunter Pool
R12-4-116. Issuance of Limited-Entry Permit-tag
R12-4-117. Indian Reservations
R12-4-118. Hunt Permit-tag Surrender
R12-4-119. Arizona Game and Fish Department Reserve
R12-4-120. Issuance, Sale, and Transfer of Special Big Game License-tags
R12-4-121. Tag Transfer
R12-4-122. Handling, Transporting, Processing, and Storing of Game Meat Given to Public Institutions and Charitable Organizations
R12-4-123. Expenditure of Funds
R12-4-124. Proof of Domicile
R12-4-125. Public Solicitation or Event on Department Property
R12-4-126. Reward Payments
R12-4-127. Civil Liability for Loss of Wildlife


**R12-4-101. Definitions**

**A.** In addition to the definitions provided under A.R.S. § 17-101, R12-4-301, R12-4-401, and R12-4-501, the following definitions apply to this Chapter, unless otherwise specified:

"Arizona Conservation Education" means the conservation education course provided by Arizona Game and Fish Department in hunting safety, responsibility, and conservation.

"Arizona Hunter Education" means the hunter education course provided by Arizona Game and Fish Department in hunting safety, responsibility, and conservation meeting Association of Fish and Wildlife agreed upon reciprocity standards along with Arizona-specific requirements.

"Attach" means to fasten or affix a tag to a legally harvested animal. An electronic tag is considered attached once the validation code is fastened to the legally harvested animal.

"Bobcat seal" means the tag a person is required to attach to the raw pelt or unskinned carcass of any bobcat taken by trapping in Arizona or exported out of Arizona regardless of the method of take.

"Bonus point" means a credit that authorizes the Department to issue an applicant an additional computer-generated random number.

"Bow" means a long bow, flat bow, recurve bow, or compound bow of which the bowstring is drawn and held under tension entirely by the physical power of the shooter through all points of the draw cycle until the shooter purposely acts to release the bowstring either by relaxing the tension of the toes, fingers, or mouth or by triggering the release of a hand-held release aid.

"Certificate of insurance" means an official document, issued by the sponsor's and sponsor's vendors, or subcontractors insurance carrier, providing insurance against claims for injury to persons or damage to property which may arise from, or in connection with, the solicitation or event as determined by the Department.

"Cervid" means a mammal classified as a Cervidae, which includes but is not limited to caribou, elk, moose, mule deer, reindeer, wapiti, and whitetail deer; as defined in the taxonomic classification from the Integrated Taxonomic Information System, available online at www.itis.gov.

"Commission Order" means a document adopted by the Commission that does one or more of the following:

Open, close, or alter seasons,

Open areas for taking wildlife,

Set bag or possession limits for wildlife,
Set the number of permits available for limited hunts, or
Specify wildlife that may or may not be taken.

"Crossbow" means a device consisting of a bow affixed on a stock having a trigger mechanism to release the bowstring.
"Day-long" means the 24-hour period from one midnight to the following midnight.
"Department property" means those buildings or real property and wildlife areas under the jurisdiction of the Arizona Game and Fish Commission.
"Electronic tag" means a tag that is provided by the Department through an electronic device that syncs with the Department's computer systems.
"Export" means to carry, send, or transport wildlife or wildlife parts out of Arizona to another state or country.
"Firearm" means any loaded or unloaded handgun, pistol, revolver, rifle, shotgun, or other weapon that will discharge, is designed to discharge, or may readily be converted to discharge a projectile by the action of an explosion caused by the burning of smokeless powder, black powder, or black powder substitute.
"Handgun" means a firearm designed and intended to be held, gripped, and fired by one or more hands, not intended to be fired from the shoulder, and that uses the energy from an explosive in a fixed cartridge to fire a single projectile through a barrel for each single pull of the trigger.
"Hunt area" means a management unit, portion of a management unit, or group of management units, or any portion of Arizona described in a Commission Order and not included in a management unit, opened to hunting.
"Hunt number" means the number assigned by Commission Order to any hunt area where a limited number of hunt permits are available.
"Hunt permits" means the number of hunt permit-tags made available to the public as a result of a Commission Order.
"Hunt permit-tag" means a tag for a hunt for which a Commission Order has assigned a hunt number.
"Identification number" means the number assigned to each applicant or license holder by the Department as established under R12-4-111.
"Import" means to bring, send, receive, or transport wildlife or wildlife parts into Arizona from another state or country.
"License dealer" means a business authorized to sell hunting, fishing, and other licenses as established under R12-4-105.
"Limited-entry permit-tag" means a permit made available for a limited-entry fishing or hunting season.
"Live baitfish" means any species of live freshwater fish designated by Commission Order as lawful for use in taking aquatic wildlife under R12-4-317.
"Management unit" means an area established by the Commission for management purposes.
"Nonpermit-tag" means a tag for a hunt for which a Commission Order does not assign a hunt number and the number of tags is not limited.
"Nonprofit organization" means an organization that is recognized under Section 501© of the U.S. Internal Revenue Code.
"Person" has the meaning as provided under A.R.S. § 1-215.
"Proof of purchase," for the purposes of A.R.S. § 17-331, means an original, or any authentic and verifiable form of the original, of any Department-issued license, permit, or stamp that establishes proof of actual purchase.
"Pursue" means to chase, tree, corner or hold wildlife at bay.
"Pursuit-only" means a person may pursue, but not kill, a bear, mountain lion, or raccoon on any management unit that is open to pursuit-only season, as defined under R12-4-318, by Commission Order.
"Pursuit-only permit" means a permit for a pursuit-only hunt for which a Commission Order does not assign a hunt number and the number of permits are not limited.
"Restricted nonpermit-tag" means a tag issued for a supplemental hunt as established under R12-4-115.
"Solicitation" means any activity that may be considered or interpreted as promoting, selling, or transferring products, services, memberships, or causes, or participation in an event or activity of any kind, including organizational, educational, public affairs, or protest activities, including the distribution or posting of advertising, handbills, leaflets, circulars, posters, or other printed materials for these purposes.
"Solicitation material" means advertising, circulars, flyers, handbills, leaflets, posters, or other printed information.
"Sponsor" means the person or persons conducting a solicitation or event.
"Stamp" means a form of authorization in addition to a license that authorizes the license holder to take wildlife specified by the stamp.
"Tag" means the Department authorization a person is required to obtain before taking certain wildlife as established under A.R.S. Title 17 and 12 A.A.C. 4.
"Validation code" means the unique code provided by the Department and associated with an electronic tag.
"Waterdog" means the larval or metamorphosing stage of a salamander.
"Wildlife area" means an area established under 12 A.A.C. 4, Article 8.

**B.** If the following terms are used in a Commission Order, the following definitions apply:
"Antlered" means having an antler fully erupted through the skin and capable of being shed.

"Antlerless" means not having an antler, antlers, or any part of an antler erupted through the skin.
"Bearded turkey" means a turkey with a beard that extends beyond the contour feathers of the breast.
"Buck pronghorn" means a male pronghorn.
"Adult bull bison" means a male bison of any age or any bison designated by a Department employee during an adult bull bison hunt.
"Adult cow bison" means a female bison of any age or any bison designated by a Department employee during an adult cow bison hunt.
"Bull elk" means an antlered elk.
"Designated" means the gender, age, or species of wildlife or the specifically identified wildlife the Department authorizes to be taken and possessed with a valid tag.
"Ram" means any male bighorn sheep.
"Rooster" means a male pheasant.
"Yearling bison" means any bison less than three years of age or any bison designated by a Department employee during a yearling bison hunt.

**Authorizing Statute**

General: A.R.S. § 17-231(A)(1)
Specific: A.R.S. § 17-231(A)(1)

**Historical Note**

Amended effective May 3, 1976 (Supp. 76-3). Amended effective October 22, 1976 (Supp. 76-5). Amended effective June 29, 1978 (Supp. 78-3). Amended effective April 22, 1980 (Supp. 80-2). Former Section R12-4-01 renumbered as Section R12-4-101 without change effective August 13, 1981 (Supp. 81-4). Amended effective April 22, 1982 (Supp. 82-2). Amended subsection (A), paragraph (10) effective April 7, 1983 (Supp. 83-2). Amended effective June 4, 1987 (Supp. 87-2). Amended subsection (A) effective December 30, 1988 (Supp. 88-4). Correction, former Historical Note should read "Amended subsection (A) effective January 1, 1989, filed December 30, 1988" (Supp. 89-2). Amended effective May 27, 1992 (Supp. 92-2). Amended effective January 1, 1993; filed December 18, 1992 (Supp. 92-4). Amended effective January 1, 1995; filed in the Office of the Secretary of State December 9, 1994 (Supp. 94-4). Amended effective January 1, 1996; filed in the Office of the Secretary of State December 18, 1995 (Supp. 95-4). Amended by final rulemaking at 6 A.A.R. 211, effective January 1, 2000 (Supp. 99-4). Amended by final rulemaking at 9 A.A.R. 610, effective April 6, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 845, effective April 3, 2004 (Supp. 04-1). Amended by final rulemaking at 11 A.A.R. 991, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 12 A.A.R. 291, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 19 A.A.R. 826, effective July 1, 2013 (Supp. 13-2). Amended by final rulemaking at 21 A.A.R. 3025, effective January 2, 2016 (Supp. 15-4). Amended by final rulemaking at 25 A.A.R. 1047, effective June 1, 2019 (Supp. 19-2). Amended by final rulemaking at 27 A.A.R. 283, effective July 1, 2021 (Supp. 21-1). Amended by final rulemaking at 27 A.A.R. 2966 (December 24, 2021), effective February 7, 2022; when amended the Commission inadvertently removed the definitions of "Arizona Conservation Education" and "Arizona Hunter Education." These definitions are included as originally published (Supp. 21-4).

**R12-4-102. License, Permit, Stamp, and Tag Fees**

**A.** A person who purchases a license, tag, stamp, or permit listed in this Section shall pay at the time of purchase all applicable fees prescribed under this Section or the fees the Director authorizes under R12-4-115.
**B.** A person who applies to purchase a hunt permit-tag shall submit with the application all applicable fees using acceptable forms of payment as required under R12-4-104(F) and (G).
**C.** As authorized under A.R.S. § 17-345, the license fees in this Section include a $3 surcharge, except Youth and High Achievement Scout licenses.
**D.** A person desiring a replacement of a Migratory Bird Stamp shall repurchase the stamp.

| Hunting and Fishing License Fees | Resident | Nonresident |
|---|---|---|
| General Fishing License | $37 | $55 |
| Community Fishing License | $24 | $24 |
| General Hunting License | $37 | Not available |
| Combination Hunting and Fishing License | $57 | $160 |
| Youth Combination Hunting and Fishing License, fee applies until the applicant's 18th birthday. | $5 | $5 |
| High Achievement Scout License, as authorized under A.R.S. § 17-333(C). Fee applies until the applicant's 21st birthday. | $5 | Not available |

| | | |
|---|---|---|
| Short-term Combination Hunting and Fishing License | $15 | $20 |
| Youth Group Two-day Fishing License | $25 | Not available |

| **Hunt Permit-tag Fees** | **Resident** | **Nonresident** |
|---|---|---|
| Bear | $25 | $150 |
| Bighorn Sheep | $300 | $1,800 |
| Bison | | |
| Adult Bulls or any Bison | $1,100 | $5,400 |
| Adult Cows | $650 | $3,250 |
| Yearling | $350 | $1,750 |
| Cow or Yearling | $650 | $3,250 |
| Deer and Archery Deer | $45 | $300 |
| Youth | $25 | $25 |
| Elk | $135 | $650 |
| Youth | $50 | $50 |
| Javelina | $25 | $100 |
| Youth | $15 | $15 |
| Pheasant non-archery, non-falconry | Application fee only | Application fee only |
| Pronghorn | $90 | $550 |
| Raptor | Not applicable | $175 |
| Sandhill Crane | $10 | $10 |
| Turkey and Archery Turkey | $25 | $90 |
| Youth | $10 | $10 |

| **Nonpermit-tag and Restricted Nonpermit-tag Fees** | **Resident** | **Nonresident** |
|---|---|---|
| Bear | $25 | $150 |
| Bison | | |
| Adult Bulls or any Bison | $1,100 | $5,400 |
| Adult Cows | $650 | $3,250 |
| Yearling | $350 | $1,750 |
| Cow or Yearling | $650 | $3,250 |
| Deer | $45 | $300 |
| Youth | $25 | $25 |
| Elk | $135 | $650 |
| Youth | $50 | $50 |
| Javelina | $25 | $100 |
| Youth | $15 | $15 |
| Mountain Lion | $15 | $75 |
| Pronghorn | $90 | $550 |
| Sandhill Crane | $10 | $10 |
| Raptor | Not applicable | $175 |
| Turkey | $25 | $90 |
| Youth | $10 | $10 |

| Stamps and Special Use Fees | Resident | Nonresident |
|---|---|---|
| Bobcat Seal | $3 | $3 |
| Limited-entry Permit | Application fee only | Application fee only |
| State Migratory Bird Stamp | $5 | $5 |

| Other License Fees | Resident | Nonresident |
|---|---|---|
| Challenged Hunter Access/Mobility Permit (CHAMP) | Application fee only | Application fee only |
| Crossbow Permit | Application fee only | Application fee only |
| Fur Dealer's License | $115 | $115 |
| Reduced-fee Disabled Veteran's License, available to a resident disabled veteran who receives compensation from the U.S. government for a service-connected disability. This fee shall be equal to the fee required for the resident Combination Hunting and Fishing License, reduced by 25%, and then rounded up to the nearest even dollar. | $42 | Not available |
| Reduced-fee Purple Heart Medal License, available to a resident who is a bona fide Purple Heart Medal recipient. This fee shall be equal to the fee required for the resident Combination Hunting and Fishing License, reduced by 50%, and then rounded down to the nearest even dollar. | $28 | Not available |
| Guide License | $300 | $300 |
| License Dealer's License | $100 | $100 |
| License Dealer's Outlet License | $25 | $25 |
| Pursuit-only Permit | $20 | $100 |
| Taxidermist License | $100 | $100 |
| Trapping License | $30 | $275 |
| Youth | $10 | $10 |

| Administrative Fees | Resident | Nonresident |
|---|---|---|
| Duplicate License Fee, in the event the Department is unable to verify the expiration date of the original license, the duplicate license shall expire on December 31 of the current year. | $8 | $8 |
| Application Fee | $13 | $15 |

**Authorizing Statute**

General: A.R.S. § 17-231(A)(1)

Specific: A.R.S. §§ 17-102, 17-333, 17-335.01, 17-342, 17-345, and 41-1005

**Historical Note**

Amended effective May 3, 1976 (Supp. 76-3). Amended effective March 31, 1977 (Supp. 77-2). Amended effective June 28, 1977 (Supp. 77-3). Amended effective October 20, 1977 (Supp. 77-5). Amended effective January 1, 1979 Supp. 78-6). Amended effective June 4, 1979 (Supp. 79-3). Amended effective January 1, 1980 (Supp. 79-6). Amended paragraphs (1), (7) through (11), (13), (15), (29), (30), and (32) effective January 1, 1981 (Supp. 80-5). Former Section R12-4-30 renumbered as Section R12-4-102 without change effective August 13, 1981. Amended effective August 31, 1981 (Supp. 81-4). Amended effective September 15, 1982 unless otherwise noted in subsection (D) (Supp. 82-5). Amended effective January 1, 1984 (Supp. 83-4). Amended subsections (A) and (C) effective January 1, 1985 (Supp. 84-5). Amended effective January 1, 1986 (Supp. 85-5). Amended subsection (A), paragraphs (1), (2), (8) and (9) effective January 1, 1987; Amended by adding a new subsection (A), paragraph (31) and renumbering accordingly effective July 1, 1987. Both amendments filed November 5, 1986 (Supp. 86-6). Amended subsections (A) and (C) effective December 30, 1988 (Supp. 88-4). Correction, former Historical Note should read "Amended subsections (A) and (C) filed December 30, 1988, effective January 1, 1989"; Amended subsection (C) effective April 28, 1989 (Supp. 89-2). Section R12-4-102 repealed, new Section R12-4-102 filed as adopted November 26, 1990, effective January 1, 1991 (Supp. 90-

4). Amended effective September 1, 1992; filed August 7, 1992 (Supp. 92-3). Amended effective January 1, 1993; filed December 18, 1993 (Supp. 92-4). Amended effective January 1, 1995; filed in the Office of the Secretary of State December 9, 1994 (Supp. 94-4). Amended effective December 16, 1995 (Supp. 94-4). Amended effective January 1, 1997; filed in the Office of the Secretary of State November 14, 1995 (Supp. 95-4). Amended subsection (D), paragraph (4), and subsection (E), paragraph (10), effective October 1, 1996; filed in the Office of the Secretary of State July 12, 1996 (Supp. 96-3). Amended subsection (B), paragraph (6) and subsection (E) paragraph (4), effective January 1, 1997; filed with the Office of the Secretary of State November 7, 1996 (Supp. 96-4). Amended by final rulemaking at 6 A.A.R. 211, effective January 1, 2000 (Supp. 99-4). Amended by final rulemaking at 6 A.A.R. 1146, effective July 1, 2000 or January 1, 2001, as designated within the text of the Section (Supp. 00-1). Amended by final rulemaking at 9 A.A.R. 610, effective April 6, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 1157, effective May 1, 2004 (Supp. 04-1). Amended by final rulemaking at 10 A.A.R. 2823, effective August 13, 2004 (Supp. 04-2). Amended by final rulemaking at 12 A.A.R. 291, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 12 A.A.R. 1391, effective June 4, 2006 (Supp. 06-2). Amended by final rulemaking at 13 A.A.R. 462, effective February 6, 2007 (Supp. 07-1). Amended by final rulemaking at 17 A.A.R. 1472, effective July 12, 2011 (Supp. 11-3). Amended by final rulemaking at 19 A.A.R. 3225, effective January 1, 2014 (Supp. 13-3). Amended by final rulemaking at 25 A.A.R. 1854, effective July 2, 2019 (Supp. 19-3). Amended by final exempt rulemaking at 27 A.A.R. 400, effective July 1, 2021 (Supp. 21-1). Amended by final exempt rulemaking at 27 A.A.R. 1076, effective August 21, 2021 (Supp. 21-2). Amended by final exempt rulemaking at 27 A.A.R. 2916 (December 17, 2021), effective February 7, 2022 (Supp. 21-4).

**R12-4-103. Duplicate Tags and Licenses**

**A.** Under A.R.S. § 17-332(C), the Department and its license dealers may issue a duplicate license or tag to an applicant who:
1. Pays the applicable fee prescribed under R12-4-102, and
2. Signs an affidavit. The affidavit is furnished by the Department and is available at any Department office or license dealer.

**B.** The applicant shall provide the following information on the affidavit:
1. The applicant's personal information:
   a. Name;
   b. Department identification number, when applicable;
   c. Residency status and number of years of residency immediately preceding application, when applicable;
2. The original license or tag information:
   a. Type of license or tag;
   b. Place of purchase;
   c. Purchase date, when available; and
3. Disposition of the original tag for which a duplicate is being purchased:
   a. The tag was not used and is lost, destroyed, mutilated, or otherwise unusable; or
   b. The tag was attached to a harvested animal that was subsequently condemned and the carcass and all parts of the animal were surrendered to a Department employee as required under R12-4-112(B) and (C). An applicant applying for a duplicate tag under this subsection shall also submit the condemned meat duplicate tag authorization form issued by the Department.

**C.** In the event the Department is unable to verify the expiration date of the original license, the duplicate license shall expire on December 31 of the current year.

**Authorizing Statute**

General: A.R.S. § 17-231(A)(1)
Specific: A.R.S. §§ 17-331(A) and 17-332

**Historical Note**

Amended effective June 7, 1976 (Supp. 76-3). Amended effective October 20, 1977 (Supp. 77-5). Former Section R12-4-07 renumbered as Section R12-4-103 without change effective August 13, 1981 (Supp. 81-4). Amended effective January 1, 1996; filed in the Office of the Secretary of State December 18, 1995 (Supp. 95-4). Amended by final rulemaking at 12 A.A.R. 291, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 3025, effective January 2, 2016 (Supp. 15-4). Amended by final rulemaking at 27 A.A.R. 2966 (December 24, 2021), effective February 7, 2022 (Supp. 21-4).

**R12-4-104. Application Procedures for Issuance of Hunt Permit-tags by Computer Draw and Purchase of Bonus Points**

**A.** For the purposes of this Section, "group" means all applicants who placed their names on a single application as part of the same application.

**B.** A person is eligible to apply:
1. For a hunt permit-tag if the person:

a. Is at least 10 years of age at the start of the hunt for which the person is applying;
b. Has successfully completed a Department-sanctioned hunter education course by the start date of the hunt for which the person is applying, when the person is between 9 and 14 years of age;
c. Has not reached the bag limit established under subsection (J) for that genus; and
d. Is not suspended or revoked in this state as a result of an action under A.R.S. §§ 17-340 or 17-502 at the time the person submits an application.

2. For a bonus point if the person:
a. Is at least 10 years of age by the application deadline date; and
b. Is not suspended or revoked in this state as a result of an action under A.R.S. §§ 17-340 or 17-502 at the time the person submits an application.

**C.** An applicant shall apply at the times, locations, and in the manner and method established by the hunt permit-tag application schedule published by the Department and available at any Department office, on the Department's website, or a license dealer.
1. The Commission shall set application deadline dates for hunt permit-tag computer draw applications through the hunt permit-tag application schedule.
2. The Director has the authority to extend any application deadline date if a problem occurs that prevents the public from submitting a hunt permit-tag application within the deadlines set by the Commission.
3. The Commission, through the hunt permit-tag application schedule, shall designate the manner and method of submitting an application, which may require an applicant to apply online only. If the Commission requires applicants to use the online method, the Department shall accept paper applications only in the event of a Department systems failure.

**D.** An applicant for a hunt permit-tag or a bonus point shall complete and submit a Hunt Permit-tag Application. The application form is available from any Department office, a license dealer, or on the Department's website.

**E.** An applicant shall provide the following information on the Hunt Permit-tag Application:
1. The applicant's personal information:
a. Name;
b. Date of birth,
c. Social security number, as required under A.R.S. §§ 25-320(P) and 25-502(K);
d. Department identification number, when applicable;
e. Residency status and number of years of residency immediately preceding application, when applicable;
f. Mailing address, when applicable;
g. Physical address;
h. Telephone number, when available; and
i. E-mail address, when available;
2. If the applicant possesses a valid license authorizing the take of wildlife in this state, the number of the applicant's license;
3. If the applicant does not possess a valid license at the time of the application, the applicant shall purchase a license as established under subsection (K). The applicant shall provide all of the following information on the license application portion of the Hunt Permit-tag Application:
a. Physical description, to include the applicant's eye color, hair color, height, and weight;
b. Residency status and number of years of residency immediately preceding application, when applicable;
c. Type of license for which the person is applying; and
4. Certify the information provided on the application is true and accurate;
5. An applicant who is:
a. Under the age of 10 and is submitting an application for a hunt other than big game is not required to have a license under this Chapter. The applicant shall indicate "youth" in the space provided for the license number on the Hunt Permit-tag Application.
b. Age nine or older and is submitting an application for a big game hunt is required to purchase an appropriate license as required under this Section. The applicant shall either enter the appropriate license number in the space provided for the license number on the Hunt Permit-tag Application Form or purchase a license at the time of application, as applicable.

**F.** In addition to the information required under subsection (E), an applicant shall also submit all applicable fees established under R12-4-102, as follows:
1. When applying electronically:
a. The permit application fee; and
b. The license fee, when the applicant does not possess a valid license at the time of application. The applicant shall submit payment in U.S. currency using valid credit or debit card.

c. If an applicant is successful in the computer draw, the Department shall charge the hunt permit-tag fee using the credit or debit card furnished by the applicant.

2. When applying manually:
   a. The fee for the applicable hunt permit-tag;
   b. The permit application fee; and
   c. The license fee if the applicant does not possess a valid license at the time of application. The applicant shall submit payment by certified check, cashier's check, or money order made payable in U.S. currency to the Arizona Game and Fish Department.

**G.** An applicant shall apply for a specific hunt or a bonus point by the current hunt number. If all hunts selected by the applicant are filled at the time the application is processed in the computer draw, the Department shall deem the application unsuccessful, unless the application is for a bonus point.
1. An applicant shall make all hunt choices for the same genus within one application.
2. An applicant shall not include applications for different genera of wildlife in the same envelope.

**H.** An applicant shall submit only one valid application per genus of wildlife for any calendar year, except:
1. If the bag limit is one per calendar year, an unsuccessful applicant may re-apply for remaining hunt permit-tags in unfilled hunt areas, as specified in the hunt permit-tag application schedule.
2. For genera that have multiple draws within a single calendar year, a person who successfully draws a hunt permit-tag during an earlier season may apply for a later season for the same genus if the person has not taken the bag limit for that genus during a preceding hunt in the same calendar year.
3. If the bag limit is more than one per calendar year, a person may apply for remaining hunt permit-tags in unfilled hunt areas as specified in the hunt permit-tag application schedule.

**I.** All members of a group shall apply for the same hunt numbers and in the same order of preference.
1. No more than four persons may apply as a group.
2. The Department shall not issue a hunt permit-tag to any group member unless sufficient hunt permit-tags are available for all group members.

**J.** A person shall not apply for a hunt permit-tag for:
1. Rocky Mountain or desert bighorn sheep if the person has met the lifetime bag limit for that sub-species.
2. Bison if the person has met the lifetime bag limit for that species.
3. Any species when the person has reached the bag limit for that species during the same calendar year for which the hunt permit-tag applies.

**K.** To participate in:
1. The computer draw system, an applicant shall possess an appropriate hunting license that shall be valid, either:
   a. On the last day of the application deadline for that computer draw, as established by the hunt permit-tag application schedule published by the Department, or
   b. On the last day of an extended deadline date, as authorized under subsection (C)(2).
   c. If an applicant does not possess an appropriate hunting license that meets the requirements of this subsection, the applicant shall purchase the license at the time of application.
2. The bonus point system, an applicant shall comply with the requirements established under R12-4-107.

**L.** The Department shall reject as invalid a Hunt Permit-Tag Application not prepared or submitted in accordance with this Section or not prepared in a legible manner.

**M.** Any hunt permit-tag issued for an application that is subsequently found not to be in accordance with this Section is invalid.

**N.** The Department or its authorized agent shall deliver hunt permit-tags to successful applicants. The Department shall return application overpayments to the applicant designated "A" on the Hunt Permit-tag Application. The Department shall not refund:
1. A permit application fee.
2. A license fee submitted with a valid application for a hunt permit-tag or bonus point.
3. An overpayment of five dollars or less. The Department shall consider the overpayment to be a donation to the Arizona Game and Fish Fund.

**O.** The Department shall award a bonus point for the appropriate species to an applicant when the payment submitted is less than the required fees, but is sufficient to cover the application fee and, when applicable, license fee.

**P.** When the Department determines a Department error, as defined under subsection (P)(3), caused the rejection or denial of a valid application:
1. The Director may authorize either:
   a. The issuance of an additional hunt permit-tag, provided the issuance of an additional hunt permit-tag will have no significant impact on the wildlife population to be hunted and the application for the hunt permit-tag would have otherwise been successful based on its random number, or
   b. The awarding of a bonus point when a hunt permit-tag is not issued.

2. A person who is denied a hunt permit-tag or a bonus point under this subsection may appeal to the Commission as provided under A.R.S. Title 41, Chapter 6, Article 10.
3. For the purposes of this subsection, "Department error" means an internal processing error that:
   a. Prevented a person from lawfully submitting an application for a hunt permit-tag,
   b. Caused a person to submit an invalid application for a hunt permit-tag,
   c. Caused the rejection of an application for a hunt permit-tag,
   d. Failed to apply an applicant's bonus points to a valid application for a hunt permit-tag, or
   e. Caused the denial of a hunt permit-tag.

**Authorizing Statute**

General: A.R.S. § 17-231(A)(1)

Specific: A.R.S. §§ 17-102, 17-231(A)(2), 25-320(P), 25-502(K), and 25-518

**Historical Note**

Amended effective May 3, 1976 (Supp. 76-3). Amended effective June 28, 1977 (Supp. 77-3). Amended effective July 24, 1978 (Supp. 78-4). Former Section R12-4-06 renumbered as Section R12-4-104 without change effective August 13, 1981. Amended subsections (N), (O), and (P) effective August 31, 1981 (Supp. 81-4). Former Section R12-4-104 repealed, new Section R12-4-104 adopted effective May 12, 1982 (Supp. 82-3). Amended subsection (D) as an emergency effective December 27, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-6). Emergency expired. Amended effective June 20, 1983 (Supp. 83-3). Amended subsection (F)(3) effective September 12, 1984. Amended subsection (F)(9) and added subsections (F)(10) and (G)(3) effective October 31, 1984 (Supp. 84-5). Amended effective May 5, 1986 (Supp. 86-3). Amended effective June 4, 1987 (Supp. 87-2). Section R12-4-104 repealed, new Section R12-4-104 adopted effective March 1, 1991; filed February 28, 1991 (Supp. 91-1). Amended effective January 1, 1996; filed in the Office of the Secretary of State December 18, 1995 (Supp. 95-4). Amended by final rulemaking at 6 A.A.R. 211, effective January 1, 2000 (Supp. 99-4). Amended by final rulemaking at 9 A.A.R. 610, effective April 6, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 845, effective April 3, 2004 (Supp. 04-1). Amended by final rulemaking at 11 A.A.R. 991, effective April 2, 2005; amended by final rulemaking at 11 A.A.R. 1177, effective May 2, 2005 (Supp. 05-1). Amended by final rulemaking at 12 A.A.R. 291, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 19 A.A.R. 3225, effective January 1, 2014 (Supp. 13-3). Amended by final rulemaking at 21 A.A.R. 3025, effective January 2, 2016 (Supp. 15-4). Amended by final rulemaking at 27 A.A.R. 283, effective July 1, 2021 (Supp. 21-1).

**R12-4-105. License Dealer's License**

**A.** For the purposes of this Section, unless the context otherwise requires:
"Dealer number" means the unique number assigned by the Department to a dealer outlet.
"Dealer outlet" means a specified location authorized to sell licenses under a license dealer's license.
"License" means any hunting or fishing license, permit, stamp, or tag that may be sold by a dealer or dealer outlet under this Section.
"License dealer" means a business licensed by the Department to sell licenses from one or more dealer outlets.
"License Dealer Portal" means the secure website provided by the Department for issuing licenses and permits and accessing a license dealer's account.

**B.** A person shall not sell or issue licenses without authorization from the Department. A license dealer's license authorizes a person to issue licenses on behalf of the Department. A person is eligible to apply for a license dealer's license, provided all of the following criteria are met:
1. The person's privilege to sell licenses for the Department has not been revoked or canceled under A.R.S. §§ 17-334, 17-338, or 17-339 within the two calendar years immediately preceding the date of application;
2. The person's credit record or assets assure the Department that the value of the licenses shall be adequately protected;
3. The person agrees to assume financial responsibility for licenses provided by the Department at the maximum value established under R12-4-102.

**C.** A person shall apply for a license dealer's license by submitting an application to any Department office. The application is furnished by the Department and is available at any Department office. A license dealer license applicant shall provide all of the following information on the application:
1. The principal business or corporation information:
   a. Name,
   b. Physical address, and
   c. Telephone number;
   d. If not a corporation, the applicant shall provide the information required under subsections (C)(1)(a), (b), and (c) for each owner;
2. The contact information for the person responsible for ensuring compliance with this Section:

a. Name,
b. Business address, and
c. Business telephone number;
3. Whether the applicant has previously sold licenses under A.R.S. § 17-334;
4. Whether the applicant is seeking renewal of an existing license dealer's license;
5. Credit references and a statement of assets and liabilities; and
6. Dealer outlet information:
a. Name,
b. Physical address,
c. Telephone number, and
d. Name of the person responsible for ensuring compliance with this Section at each dealer outlet.

**D.** A license dealer may request to add dealer outlets to the license dealer's license, at any time during the license year, by submitting the application form containing the information required under subsection (C) to the Department and paying the fee established under R12-4-102.

**E.** An applicant who is denied a license dealer's license under this Section may appeal to the Commission as provided under A.R.S. Title 41, Chapter 6, Article 10.

**F.** The Department shall:
1. Provide to the license dealer all licenses that the license dealer will make available to the public for sale,
2. Authorize the license dealer to use the dealer's own license stock, or
3. Authorize the license dealer to issue licenses and permits online via the Department's License Dealer Portal.

**G.** Upon receipt of licenses provided by the Department, the license dealer shall verify the licenses received are the licenses identified on the shipment inventory provided by the Department with the shipment.
1. Within five working days from receipt of shipment, the person performing the verification shall:
a. Clearly designate any discrepancies on the shipment inventory,
b. Sign and date the shipping inventory, and
c. Return the signed shipping inventory to the Department.
2. The Department shall verify any discrepancies identified by the license dealer and credit or debit the license dealer's inventory accordingly.

**H.** A license dealer shall maintain an inventory of licenses for sale to the public at each outlet.

**I.** A license dealer's license holder shall transmit to the Department all collected license or permit fees established under R12-4-102.
1. A license dealer's license holder may collect and retain a reasonable and commensurate fee for its services.
2. Each license dealer's license holder shall identify to the public the Department's license fees separately from any other costs.

**J.** A license dealer may request additional licenses in writing or verbally.
1. The request shall include:
a. The name of the license dealer,
b. The assigned dealer number,
c. A list of the licenses needed, and
d. The name of the person making the request.
2. Within 10 calendar days from receipt of a request, the Department shall provide the licenses requested, unless:
a. The license dealer failed to acknowledge licenses previously provided to the license dealer, as required under subsection (G);
b. The license dealer failed to transmit license fees, as required under subsection (J); or
c. The license dealer is not in compliance with this Section and all applicable statutes and rules.

**K.** A license dealer shall transmit to the Department all license fees collected by the tenth day of each month, prescribed under A.R.S. § 17-338(A). Failure to comply with the requirements of this subsection shall result in the cancellation of the license dealer's license, as authorized under A.R.S. § 17-338(A).

**L.** A license dealer shall submit a monthly report to the Department by the tenth day of each month¸ as prescribed under A.R.S. § 17-339.
1. The monthly report form is furnished by the Department.
2. A monthly report is required regardless of whether or not activities were performed.
3. Failure to submit the monthly report in compliance with this subsection shall be cause to cancel the license dealer's license.
4. The license dealer shall include in the monthly report all of the following information for each outlet:
a. Name of the dealer;
b. The assigned dealer number;

c. Reporting period;
d. Number of sales and dollar amount of sales for reporting period, by type of license sold;
e. Debit and credit adjustments for previous reporting periods, if any;
f. Number of affidavits received for which a duplicate license was issued under R12-4-103;
g. List of lost or missing licenses; and
h. Printed name and signature of the preparer.

5. In addition to the information required under subsection (L), the license dealer shall also provide the affidavit for each duplicate license issued by the dealer during the reporting period.
   a. The affidavit is furnished by the Department and is included in the license book.
   b. A license dealer who fails to submit the affidavit for a duplicate license issued by the license dealer shall remit to the Department the actual cash value of the original license replaced.

**L.** The Department shall provide written notice of suspension and demand the return of all inventory within five calendar days from any license dealer who:
1. Fails to transmit monies due the Department under A.R.S. § 17-338 by the deadline established under subsection (J);
2. Issues to the Department more than one check with insufficient funds during a calendar year; or
3. Otherwise fails to comply with this Section and all applicable statutes and rules.

**M.** As prescribed under A.R.S. § 17-338, the actual cash value of licenses not returned to the Department is due and payable to the Department within 15 working days from the date the Department provides written notice to the license dealer. This includes, but is not limited to:
1. Licenses not returned upon termination of business by a license dealer; or
2. Licenses reported by a dealer outlet or discovered by the Department to be lost, missing, stolen, or destroyed for any reason.

**N.** In addition to those violations that may result in revocation, suspension, or cancellation of a license dealer's license as prescribed under A.R.S. §§ 17-334, 17-338, and 17-339, the Commission may revoke a license dealer's license if the license dealer or an employee of the license dealer is convicted of counseling, aiding, or attempting to aid any person in obtaining a fraudulent license.

**Authorizing Statute**

General: A.R.S. § 17-231(A)(1)
Specific: A.R.S. §§ 17-332, 17-333, 17-334, 17-338, and 17-339

**Historical Note**

Amended effective June 7, 1976 (Supp. 77-3). Former Section R12-4-08 renumbered as Section R12-4-105 without change effective August 13, 1981 (Supp. 81-4). Former Section R12-4-105 repealed, new Section R12-4-105 adopted effective December 30, 1988 (Supp. 88-4). Correction, former Historical Note should read "Former Section R12-4-105 repealed, new Section R12-4-105 adopted effective January 1, 1989, filed December 30, 1988" (Supp. 89-2). Amended effective March 1, 1991; filed February 28, 1991 (Supp. 91-1). Amended effective January 1, 1996; filed in the Office of the Secretary of State December 18, 1995 (Supp. 95-4). Amended by final rulemaking at 12 A.A.R. 291, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 3025, effective January 2, 2016 (Supp. 15-4). Amended by final rulemaking at 27 A.A.R. 283, effective July 1, 2021 (Supp. 21-1).

**R12-4-106. Special Licenses Licensing Time-frames**

**A.** For the purposes of this Section, the following definitions apply:
"Administrative review time-frame" has the same meaning as prescribed under A.R.S. § 41-1072(1).
"License" means any permit or authorization issued by the Department and listed under subsection (H).
"Overall time-frame" has the same meaning as prescribed under A.R.S. § 41-1072(2).
"Substantive review time-frame" has the same meaning as prescribed under A.R.S. § 41-1072(3).

**B.** As required under A.R.S. § 41-1072 et seq., within the overall time-frames listed in the Table 1. Time-Frames, the Department shall either:
1. Grant a license to an applicant after determining the applicant meets all of the criteria required by statute and the governing rule; or
2. Deny a license to an applicant when the Department determines the applicant does not meet all of the criteria required by statute and the governing rule.
   a. The Department may deny a license at any point during the review process if the information provided by the applicant demonstrates the applicant is not eligible for the license as prescribed under statute or the governing rule.
   b. The Department shall issue a written denial notice when it is determined that an applicant does not meet all of the criteria for the license.
   c. The written denial notice shall provide:

i. The Department's justification for the denial, and
ii. When a hearing or appeal is authorized, an explanation of the applicant's right to a hearing or appeal.

**C.** During the overall time-frame:
1. The applicant and the Department may agree in writing to extend the overall time-frame.
2. The substantive review time-frame shall not be extended by more than 25% of the overall time-frame.

**D.** An applicant may withdraw an application at any time.

**E.** The administrative review time-frame shall begin upon the Department's receipt of an application.
1. During the administrative review time-frame, the Department may return to the applicant, without denial, an application that is missing any of the information required under R12-4-409 and the rule governing the specific license. The Department shall issue to the applicant a written notice that identifies all missing information and indicates the applicant has 30 days in which to provide the missing information.
2. The administrative review time-frame and the overall time-frame listed for the applicable license under this Section are suspended from the date on the notice until the date the Department receives the missing information.
3. If an applicant fails to respond to a request for missing information within 30 days, the Department shall consider the application withdrawn.

**F.** The substantive review time-frame shall begin when the Department determines an application is complete.
1. During the substantive review time-frame, the Department may make one comprehensive written request for additional information. The written notice shall:
   a. Identify the additional information, and
   b. Indicate the applicant has 30 days in which to submit the additional information.
   c. The Department and the applicant may mutually agree in writing to allow the agency to submit supplemental requests for additional information.
   d. If an applicant fails to respond to a request for additional information within 30 days, the Department shall consider the application withdrawn.
2. The substantive review time-frame and the overall time-frame listed for the applicable license under this Section are suspended from the date on the request until the date the Department receives the additional information.

**G.** If the last day of the time-frame period falls on a Saturday, Sunday, or an official State holiday, the Department shall consider the next business day the time-frame period's last day. All periods listed are:
1. Calendar days, and
2. Maximum time periods.

**H.** The Department may grant or deny a license in less time than specified in Table 1. Time-Frames.

**Table 1. Time-Frames**

| Name of Special License | Governing Rule | Administrative Review Time-frame | Substantive Review Time-frame | Overall Time-frame |
|---|---|---|---|---|
| Aquatic Wildlife Stocking License | R12-4-410 | 10 days | 170 days | 180 days |
| Authorization for Use of Drugs on Wildlife | R12-4-309 | 20 days | 70 days | 90 days |
| Challenged Hunter Access/Mobility Permit | R12-4-217 | 1 day | 29 days | 30 days |
| Crossbow Permit | R12-4-216 | 1 day | 29 days | 30 days |
| Disabled Veteran's License | R12-4-202 | 1 day | 29 days | 30 days |
| Fishing Permits | R12-4-310 | 10 days | 20 days | 30 days |
| Game Bird License | R12-4-414 | 10 days | 20 days | 30 days |
| Guide License | R12-4-208 | 10 days | 20 days | 30 days |
| License Dealer's License | R12-4-105 | 10 days | 20 days | 30 days |
| Live Bait Dealer's License | R12-4-411 | 10 days | 20 days | 30 days |
| Pioneer License | R12-4-201 | 1 day | 29 days | 30 days |
| Private Game Farm License | R12-4-413 | 10 days | 20 days | 30 days |
| Scientific Activity License | R12-4-418 | 10 days | 20 days | 30 days |
| Small Game Depredation Permit | R12-4-113 | 10 days | 20 days | 30 days |

| | | | | |
|---|---|---|---|---|
| Sport Falconry License | R12-4-422 | 10 days | 20 days | 30 days |
| Taxidermy Registration | R12-4-204 | 10 days | 20 days | 30 days |
| Watercraft Agents | R12-4-509 | 10 days | 20 days | 30 days |
| White Amur Stocking License | R12-4-424 | 10 days | 20 days | 30 days |
| Wildlife Holding License | R12-4-417 | 10 days | 20 days | 30 days |
| Wildlife Rehabilitation License | R12-4-423 | 10 days | 50 days | 60 days |
| Wildlife Service License | R12-4-421 | 10 days | 50 days | 60 days |
| Zoo License | R12-4-420 | 10 days | 20 days | 30 days |

**Authorizing Statute**

General: A.R.S. § 17-231(A)(1)

Specific: A.R.S. §§ 41-1072 and 41-1073

**Historical Note**

Editorial correction subsections (F) through (G) (Supp. 78-5). Former Section R12-4-09 renumbered as Section R12-4-106 without change effective August 13, 1981 (Supp. 81-4). Repealed effective May 27, 1992 (Supp. 92-2). New Section adopted June 10, 1998 (Supp. 98-2). Amended by final rulemaking at 12 A.A.R. 291, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 3025, effective January 2, 2016 (Supp. 15-4). Amended by final rulemaking at 25 A.A.R. 1854, effective July 2, 2019 (Supp. 19-3). Amended by final rulemaking at 27 A.A.R. 283, effective July 1, 2021 (Supp. 21-1).

**R12-4-107. Bonus Point System**

**A.** For the purpose of this Section, the following definitions apply:

"Bonus point hunt number" means the hunt number assigned in a Commission Order for use by an applicant who is applying for a bonus point only.

"Loyalty bonus point" means a bonus point awarded to a person who has submitted a valid application for a hunt permit-tag or a bonus point for a specific genus identified in subsection (B) at least once annually for a consecutive five-year period.

**B.** The bonus point system grants a person one random number entry in each computer draw for bear, bighorn sheep, bison, deer, elk, javelina, pronghorn, Sandhill crane, or turkey for each bonus point that person has accumulated under this Section.

1. Each bonus point random number entry is in addition to the entry normally granted under R12-4-104.
2. When processing a "group" application, as defined under R12-4-104, the Department shall use the average number of bonus points accumulated by all persons in the group, rounded to the nearest whole number. If the average number of bonus points is equal to or greater than .5, the total will be rounded to the next higher number.
3. The Department shall credit a bonus point under an applicant's Department identification number for the genus on the application.
4. The Department shall not transfer bonus points between persons or genera.

**C.** The Department shall award one bonus point to an applicant who submits a valid Hunt Permit-tag Application provided the following apply:

1. The application is unsuccessful in the computer draw or the application is for a bonus point only;
2. The application is not for a hunt permit-tag leftover after the computer draw and available on a first-come, first-served basis as established under R12-4-114; and
3. The applicant either provides the appropriate hunting license number on the application, or submits an application and fees for the applicable license with the Hunt Permit-tag Application Form, as applicable.

**D.** An applicant who purchases a bonus point only shall:

1. Submit a valid Hunt Permit-tag Application, as prescribed under R12-4-104 at the times, locations, and in the manner and method established by the schedule published by the Department and available at any Department office, on the Department's website, or a license dealer.
   a. When the application is submitted for a hunt permit-tag or bonus point, the Department shall reject any application that:
      i. Indicates the bonus point only hunt number as any choice other than the first-choice,
      ii. Includes any other hunt number on the application,
      iii. Includes more than one Hunt Permit-tag Application per genus per computer draw, or
      iv. Is submitted after the application deadline for that specific computer draw.
2. When the application is submitted for a bonus point during the extended bonus point period, the Department shall

reject any application that:
i. Includes more than one Hunt Permit-tag Application per genus, or
ii. Is submitted after the application deadline for that extended bonus point period.
3. Include the applicable fees:
a. Application fee, and
b. Applicable license fee, required when the applicant does not possess a valid license at the time of application and the applicant is applying for a hunt permit-tag.

**E.** With the exception of the conservation education and hunter education bonus points, each accumulated bonus point is valid only for the genus designated on the Hunt Permit-tag Application.

**F.** With the exception of a permanent bonus point awarded for conservation education or hunter education and a loyalty bonus point which is accrued and forfeited as established under subsection (L), a person's accumulated bonus points for a genus are expended if:
1. The person is issued a hunt permit-tag for that genus in a computer draw;
2. The person fails to submit a Hunt Permit-tag Application for that genus for five consecutive years; or
3. The person purchases a surrendered tag as prescribed under R12-4-118(F)(1), (2), or (3).

**G.** Notwithstanding subsection (F), the Department shall restore any expended bonus points to a person who surrenders or transfers a tag in compliance with R12-4-118 or R12-4-121.

**H.** An applicant issued a first-come, first-served hunt permit-tag under R12-4-114(C)(2)(e) after the computer draw does not expend bonus points for that genus.

**I.** An applicant who is unsuccessful for a first-come, first-served hunt permit-tag made available by the Department after the computer draw is not eligible to receive a bonus point.

**J.** The Department shall award one permanent bonus point for each genus upon a person's first graduation from either:
1. A Department-sanctioned Arizona Hunter Education Course completed after January 1, 1980, or
2. The Department's Arizona Conservation Education Course completed after January 1, 2021.
a. Course participants are required to provide the following information upon registration, the participants:
i. Name;
ii. Mailing address;
iii. Telephone number;
iv. E-mail address, when available;
v. Date of birth; and
vi. Department ID number, when applicable.
b. The Arizona Game and Fish Department-certified Instructor shall submit the course paperwork to the Department within 10 business days of course completion. Course paperwork must be received by the Department no less than 30 days before the computer draw application deadline, as specified in the hunt permit-tag application schedule in order for the Department to assign hunter education bonus points in the next computer draw.
c. Any person who is nine years of age or older may participate in a hunter education course or the Department's conservation education course. When the person is under 10 years of age, the hunter education completion card and certificate shall become valid on the person's 10th birthday.
d. The Department shall not award hunter education bonus points for any of the following specialized hunter education courses:
i. Bowhunter Education,
ii. Trapper Education, or
iii. Advanced Hunter Education.

**K.** The Department provides an applicant's total number of accumulated bonus points on the Department's application website or IVR telephone system.
1. If a person believes the total number of accumulated bonus points is incorrect, the person may request proof of compliance with this Section, from the Department, to prove Department error.
2. In the event of an error, the Department shall correct the person's record.

**L.** The following provisions apply to the loyalty bonus point program:
1. An applicant who submits a valid application at least once a year for a hunt permit-tag or a bonus point for a specific genus consecutively for a five-year period shall accrue a loyalty bonus point for that genus.
2. Except as established under subsection (N), once a loyalty bonus point is accrued, the applicant shall retain the loyalty bonus point provided the applicant annually submits an application, with funds sufficient to cover all application fees and applicable license fees for each applicant listed on the application, for a hunt permit-tag or a bonus point for the genus for which the loyalty bonus point was accrued.
3. An applicant who fails to apply in any calendar year for a hunt permit-tag or bonus point for the genus for which the loyalty bonus point was accrued shall forfeit the loyalty bonus point for that genus.

4. A loyalty bonus point is accrued in addition to all other bonus points.

**M.** A military member, military reserve member, member of the National Guard, or emergency response personnel with a public agency may request the reinstatement of any expended bonus points for a successful Hunt Permit-tag Application.

1. To request reinstatement of expended bonus points under these circumstances, an applicant shall submit all of the following information to the Arizona Game and Fish Department, Draw Section, 5000 W. Carefree Highway, Phoenix, AZ 85086:
   a. Evidence of mobilization or change in duty status, such as a letter from the public agency or official orders; or
   b. An official declaration of a state of emergency from the public agency or authority making the declaration of emergency, if applicable; and
   c. The valid, unused hunt permit-tag.
2. The Department shall deny requests post-marked after the beginning date of the hunt for which the hunt permit-tag is valid, unless the person also submits, with the request, evidence of mobilization, activation, or a change in duty status that precluded the applicant from submitting the hunt permit-tag before the beginning date of the hunt.
3. Under A.R.S. § 17-332(E), no refunds for a license or hunt permit-tag will be issued to an applicant who applies for reinstatement of bonus points under this subsection.
4. Reinstatement of bonus points under this subsection is not subject to the requirements established under R12-4-118.

**N.** It is unlawful for a person to purchase or accrue a bonus point by fraud or misrepresentation and any bonus point so obtained shall be removed from the person's Department record.

**Authorizing Statute**

General: A.R.S. § 17-231(A)(1)
Specific: A.R.S. §§ 17-102, 17-231(A)(2) and 17-231(A)(8)

**Historical Note**

Former Section R12-4-03 renumbered as Section R12-4-107 without change effective August 13, 1981 (Supp. 81-4). Section R12-4-107 repealed, new Section R12-4-107 adopted effective March 1, 1991; filed February 28, 1991 (Supp. 91-1). Amended effective July 29, 1992 (Supp. 92-3). Section R12-4-107 repealed, new Section R12-4-107 adopted effective January 1, 1999; filed with the Office of the Secretary of State February 9, 1998 (Supp. 98-1). Amended by final rulemaking at 9 A.A.R. 610, effective April 6, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 845, effective April 3, 2004 (Supp. 04-1). Amended by final rulemaking at 11 A.A.R. 991, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 11 A.A.R. 991, effective April 2, 2005; amended by final rulemaking at 11 A.A.R. 1177, effective May 2, 2005 (Supp. 05-1). Amended by final rulemaking at 12 A.A.R. 291, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 19 A.A.R. 3225, effective January 1, 2014 (Supp. 13-3). Amended by final rulemaking at 21 A.A.R. 3025, effective January 2, 2016 (Supp. 15-4). Amended by final rulemaking at 27 A.A.R. 283, effective July 1, 2021 (Supp. 21-1).

**R12-4-108. Management Unit Boundaries**

**A.** For the purpose of this Section, parentheses mean "also known as," and the following definitions shall apply:
"FH" means forest highway.
"FR" means forest road.
"Hwy" means Highway.
"I-8" means Interstate Highway 8.
"I-10" means Interstate Highway 10.
"I-15" means Interstate Highway 15.
"I-17" means Interstate Highway 17.
"I-19" means Interstate Highway 19.
"I-40" means Interstate Highway 40.
"mp" means "milepost."

**B.** The state is divided into units for the purpose of managing wildlife. Each unit is identified by a number, or a number and letter. For the purpose of this Section, Indian reservation land contained within any management unit is not under the jurisdiction of the Arizona Game and Fish Commission or the Arizona Game and Fish Department.

**C.** Management unit descriptions are as follows:

Unit 1 – Beginning at the New Mexico state line and U.S. Hwy 60; west on U.S. Hwy 60 to Vernon Junction; southerly on the Vernon-McNary road (FR 224) to the White Mountain Apache Indian Reservation boundary; east and south along the reservation boundary to Black River; east and north along Black River to the east fork of Black River; north along the east fork to Three Forks; and continuing north and east on the Three Forks-Williams Valley Alpine Rd. (FR 249) to U.S. Hwy 180; east on U.S. Hwy 180 to the New Mexico state line; north along the state line to U.S. Hwy 60.

Unit 2A – Beginning at St. Johns on U.S. Hwy 191 (AZ Hwy 61); north on U.S. Hwy 191 (AZ Hwy 61) to the Navajo Indian Reservation boundary; westerly along the reservation boundary to AZ Hwy 77; south on AZ Hwy 77 to Exit

292 on I-40; west on the westbound lane of I-40 to Exit 286; south on AZ Hwy 77 to U.S. Hwy 180; southeast on U.S. Hwy 180 to AZ Hwy 180A; south on AZ Hwy 180A to AZ Hwy 61; east on AZ Hwy 61 to U.S. Hwy 180 (AZ Hwy 61); east to U.S. Hwy 191 at St. Johns; except those portions that are sovereign tribal lands of the Zuni Tribe.

Unit 2B – Beginning at Springerville; east on U.S. Hwy 60 to the New Mexico state line; north along the state line to the Navajo Indian Reservation boundary; westerly along the reservation boundary to U.S. Hwy 191 (AZ Hwy 61); south on U.S. Hwy 191 (U.S. Hwy 180) to Springerville.

Unit 2C – Beginning at St. Johns on U.S. Hwy 191 (AZ Hwy 61); west on to AZ Hwy 61 Concho; southwest on AZ Hwy 61 to U.S. Hwy 60; east on U.S. Hwy 60 to U.S. Hwy 191 (U.S. Hwy 180); north on U.S. Hwy 191 (U.S. Hwy 180) to St. Johns.

Unit 3A – Beginning at the junction of U.S. Hwy 180 and AZ Hwy 77; south on AZ Hwy 77 to AZ Hwy 377; southwesterly on AZ Hwy 377 to AZ Hwy 277; easterly on AZ Hwy 277 to Snowflake; easterly on the Snowflake-Concho Rd. to U.S. Hwy 180A; north on U.S. Hwy 180A to U.S. Hwy 180; northwesterly on U.S. Hwy 180 to AZ Hwy 77.

Unit 3B – Beginning at Snowflake; southerly along AZ Hwy 77 to U.S. Hwy 60; southwesterly along U.S. Hwy 60 to the White Mountain Apache Indian Reservation boundary; easterly along the reservation boundary to the Vernon-McNary Rd. (FR 224); northerly along the Vernon-McNary Rd. to U.S. Hwy 60; west on U.S. Hwy 60 to AZ Hwy 61; northeasterly on AZ Hwy 61 to AZ Hwy 180A; northerly on AZ Hwy 180A to Concho-Snowflake Rd.; westerly on the Concho-Snowflake Rd. to Snowflake.

Unit 3C – Beginning at Snowflake; westerly on AZ Hwy 277 to AZ Hwy 260; westerly on AZ Hwy 260 to the Sitgreaves National Forest boundary with the Tonto National Forest; easterly along the Apache-Sitgreaves National Forest boundary to U.S. Hwy 60 (AZ Hwy 77); northeasterly on U.S. Hwy 60 (AZ Hwy 77) to Showlow; northerly along AZ Hwy 77 to Snowflake.

Unit 4A – Beginning on the boundary of the Apache-Sitgreaves National Forest with the Coconino National Forest at the Mogollon Rim; north along this boundary (Leonard Canyon) to East Clear Creek; northerly along East Clear Creek to AZ Hwy 99; north on AZ Hwy 99 to AZ Hwy 87; north on AZ Hwy 87 to Business I-40 (3rd St.); west on Business I-40 (3rd St.) to Hipkoe Dr.; northerly on Hipkoe Dr. to I-40; west on I-40 to mp 221.4; north to the southwest corner of the Navajo Indian Reservation boundary; east along the Navajo Indian Reservation boundary to the Little Colorado River; southerly along the Little Colorado River to Chevelon Creek; southerly along Chevelon Creek to Woods Canyon; westerly along Woods Canyon to Woods Canyon Lake Rd.; westerly and southerly along the Woods Canyon Lake Rd. to the Mogollon Rim; westerly along the Mogollon Rim to the boundary of the Apache-Sitgreaves National Forest with the Coconino National Forest.

Unit 4B – Beginning at AZ Hwy 260 and the Sitgreaves National Forest boundary with the Tonto National Forest; northeasterly on AZ Hwy 260 to AZ Hwy 277; northeasterly on AZ Hwy 277 to Hwy 377; northeasterly on AZ Hwy 377 to AZ Hwy 77; northeasterly on AZ Hwy 77 to I-40 Exit 286; northeasterly along the westbound lane of I-40 to Exit 292; north on AZ Hwy 77 to the Navajo Indian Reservation boundary; west along the reservation boundary to the Little Colorado River; southerly along the Little Colorado River to Chevelon Creek; southerly along Chevelon Creek to Woods Canyon; westerly along Woods Canyon to Woods Canyon Lake Rd. (FH 151); westerly and southerly along the Woods Canyon Lake Rd. (FH 151) to the Mogollon Rim; easterly along the Mogollon Rim to the intersection of AZ Hwy 260 and the Sitgreaves National Forest boundary with the Tonto National Forest.

Unit 5A – Beginning at the junction of the Sitgreaves National Forest boundary with the Coconino National Forest boundary at the Mogollon Rim; northerly along this boundary (Leonard Canyon) to East Clear Creek; northeasterly along East Clear Creek to AZ Hwy 99; north on AZ Hwy 99 to AZ Hwy 87; north on AZ Hwy 87 to Business I-40 (3rd St.); west on Business I-40 (3rd St.) to Hipkoe Dr.; north on Hipkoe Dr. to I-40; west on I-40 to the Meteor Crater Rd. (Exit 233); southerly on the Meteor Crater-Chavez Pass-Jack's Canyon Rd. (FR 69) to AZ Hwy 87; southwesterly along AZ Hwy 87 to the Coconino-Tonto National Forest boundary; easterly along the Coconino-Tonto National Forest boundary (Mogollon Rim) to the Sitgreaves National Forest boundary with the Coconino National Forest.

Unit 5B -- Beginning at Lake Mary-Clint's Well Rd. (FH3) and Walnut Canyon (mp 337.5 on FH3); southeasterly on FH3 to AZ Hwy 87; northeasterly on AZ Hwy 87 to FR 69; westerly and northerly on FR 69 to I-40 (Exit 233); west on I-40 to Walnut Canyon (mp 210.2); southwesterly along the bottom of Walnut Canyon to Walnut Canyon National Monument; southwesterly along the northern boundary of the Walnut Canyon National Monument to Walnut Canyon; southwesterly along the bottom of Walnut Canyon to FH3 (mp 337.5).

Unit 6A - Beginning at the junction of AZ Hwy 89A and FR 237; southwesterly on AZ Hwy 89A to the Verde River; southeasterly along the Verde River to the confluence with Fossil Creek; northeasterly along Fossil Creek to Fossil Springs; southeasterly on FS trail 18 (Fossil Spring Trail) to the top of the rim; northeasterly on the rim to Nash Point on the Tonto-Coconino National Forest boundary; easterly along this boundary to AZ Hwy 87; northeasterly on AZ Hwy 87 to Lake Mary-Clint's Well Rd. (FH3); northwesterly on FH3 to FR 132; southwesterly on FR 132 to FR 296; southwesterly on FR 296 to FR 296A; southwesterly on FR 296A to FR 132; northwesterly on FR 132 to FR 235; westerly on FR 235 to Priest Draw; southwesterly along the bottom of Priest Draw to FR 235; westerly on FR 235 to

FR 235A; westerly on FR 235A to FR 235; southerly on FR 235 to FR 235K; northwesterly on FR 235K to FR 700; northerly on FR 700 to Mountainaire Rd.; west on Mountainaire Rd. to FR 237; westerly on FR 237 to AZ Hwy 89A except those portions that are sovereign tribal lands of the Yavapai-Apache Nation.

Unit 6B – Beginning at mp 188.5 on I-40 at a point just north of the east boundary of Camp Navajo; south along the eastern boundary of Camp Navajo to the southeastern corner of Camp Navajo; southeast approximately 1/3 mile through the forest to the forest road in section 33; southeast on the forest road to FR 231 (Woody Mountain Rd.); easterly on FR 231 to FR 533; southerly on FR 533 to AZ Hwy 89A; southerly on AZ Hwy 89A to the Verde River; northerly along the Verde River to Sycamore Creek; northeasterly along Sycamore Creek and Volunteer Canyon to the southwest corner of the Camp Navajo boundary; northerly along the western boundary of Camp Navajo to the northwest corner of Camp Navajo; continuing north to I-40 (mp 180.0); easterly along I-40 to mp 188.5.

Unit 7 – Beginning at the junction of AZ Hwy 64 and I-40 (in Williams); easterly on I-40 to FR 171 (mp 184.4 on I-40); northerly on FR 171 to the Transwestern Gas Pipeline; easterly along the Transwestern Gas Pipeline to FR 420 (Schultz Pass Rd.); northeasterly on FR 420 to U.S. Hwy 89; across U.S. Hwy 89 to FR 545; east on FR 545 to the Sunset Crater National Monument; easterly along the southern boundary of the Sunset Crater National Monument to FR 545; east on FR 545 to the 345 KV transmission lines 1 and 2; southeasterly along the power lines to I-40 (mp 212 on I-40); east on I-40 to mp 221.4; north to the southwest corner of the Navajo Indian Reservation boundary; northerly and westerly along the reservation boundary to the Four Corners Gas Line; southwesterly along the Four Corners Gas Line to U.S. Hwy 180; west on U.S. Hwy 180 to AZ Hwy 64; south on AZ Hwy 64 to I-40.

Unit 8 – Beginning at the junction of I-40 and AZ Hwy 89 (in Ash Fork, Exit 146); south on AZ Hwy 89 to the Verde River; easterly along the Verde River to Sycamore Creek; northerly along Sycamore Creek to Volunteer Canyon; northeasterly along Volunteer Canyon to the west boundary of Camp Navajo; north along the boundary to a point directly north of I-40; west on I-40 to AZ Hwy 89.

Unit 9 – Beginning where Cataract Creek enters the Havasupai Reservation; easterly and northerly along the Havasupai Reservation boundary to Grand Canyon National Park; easterly along the Grand Canyon National Park boundary to the Navajo Indian Reservation boundary; southerly along the reservation boundary to the Four Corners Gas Line; southwesterly along the Four Corners Gas Line to U.S. Hwy 180; westerly along U.S. Hwy 180 to AZ Hwy 64; south along AZ Hwy 64 to Airpark Rd.; west and north along Airpark Rd. to the Valle-Cataract Creek Rd.; westerly along the Valle-Cataract Creek Rd. to Cataract Creek at Island Tank; northwesterly along Cataract Creek to the Havasupai Reservation Boundary.

Unit 10 – Beginning at the junction of AZ Hwy 64 and I-40; westerly on I-40 to Crookton Rd. (AZ Hwy 66, Exit 139); westerly on AZ Hwy 66 to the Hualapai Indian Reservation boundary; northeasterly along the reservation boundary to Grand Canyon National Park; east along the park boundary to the Havasupai Indian Reservation; easterly and southerly along the reservation boundary to where Cataract Creek enters the reservation; southeasterly along Cataract Creek in Cataract Canyon to Island Tank; easterly on the Cataract Creek-Valle Rd. to Airpark Rd.; south and east along Airpark Rd. to AZ Hwy 64; south on AZ Hwy 64 to I-40.

Unit 11M – Beginning at the junction of Lake MaryClint's Well Rd (FH3) and Walnut Canyon (mp 337.5 on FH3); northeasterly along the bottom of Walnut Canyon to the Walnut Canyon National Monument boundary; northeasterly along the northern boundary of the Walnut Canyon National Monument to Walnut Canyon; northeasterly along the bottom of Walnut Canyon to I-40 (mp 210.2); east on I-40 to the 345 KV transmission lines 1&2 (mp 212 on I-40); north and northeasterly along the power line to FR 545 (Sunset Crater Rd); west along FR 545 to the Sunset Crater National Monument boundary; westerly along the southern boundary of the Sunset Crater National monument to FR 545; west on FR 545 to U.S. Hwy 89; across U.S. Hwy 89 to FR 420 (Schultz Pass Rd); southwesterly on FR 420 to the Transwestern Gas Pipeline; westerly along the Transwestern Gas Pipeline to FR 171; south on FR 171 to I-40 (mp 184.4 on I-40); east on I-40 to a point just north of the eastern boundary of the Navajo Army Depot (mp 188.5 on I-40); south along the eastern boundary of the Navajo Army Depot to the southeast corner of the Depot; southeast approximately 1/3 mile to forest road in section 33; southeasterly along that forest road to FR 231 (Woody Mountain Rd); easterly on FR 231 to FR 533; southerly on FR 533 to U.S. Hwy 89A; southerly on U.S. Hwy 89A to FR 237; northeasterly on FR 237 to Mountainaire Rd; easterly on Mountainaire Rd to FR 700; southerly on FR 700 to FR 235K; southeasterly on FR 235K to FR 235; northerly on FR 235 to FR 235A; easterly on FR 235A to FR 235; easterly on FR 235 to Priest Draw; northeasterly along the bottom of Priest Draw to FR 235; easterly on FR 235 to FR 132; southeasterly on FR 132 to FR 296A; northeasterly on FR 296A to FR 296; northeasterly on FR 296 to FR 132; northeasterly on FR 132 to FH 3; southeasterly on FH 3 to the south rim of Walnut Canyon (mp 337.5 on FH3).

Unit 12A – Beginning at the confluence of the Colorado River and South Canyon; southerly and westerly along the Colorado River to Kanab Creek; northerly along Kanab Creek to Snake Gulch; northerly, easterly, and southerly around the Kaibab National Forest boundary to South Canyon; northeasterly along South Canyon to the Colorado River.

Unit 12B – Beginning at U.S. Hwy 89A and the Kaibab National Forest boundary near mp 566; southerly and easterly along the forest boundary to Grand Canyon National Park; northeasterly along the park boundary to Glen Canyon

National Recreation area; easterly along the recreation area boundary to the Colorado River; northeasterly along the Colorado River to the Arizona-Utah state line; westerly along the state line to Kanab Creek; southerly along Kanab Creek to the Kaibab National Forest boundary; northerly, easterly, and southerly along this boundary to U.S. Hwy 89A near mp 566; except those portions that are sovereign tribal lands of the Kaibab Band of Paiute Indians.

Unit 13A – Beginning on the western edge of the Hurricane Rim at the Utah state line; southerly along the western edge of the Hurricane Rim to Mohave County Rd. 5 (the Mt. Trumbull Rd.); west along Mohave County Rd. 5 to the town of Mt. Trumbull (Bundyville); south from the town of Mt. Trumbull (Bundyville) on Mohave County Rd. 257 to BLM Rd. 1045; south on BLM Rd. 1045 to where it crosses Cold Spring Wash near Cold Spring Wash Pond; south along the bottom of Cold Spring Wash to Whitmore Wash; southerly along the bottom of Whitmore Wash to the Colorado River; easterly along the Colorado River to Kanab Creek; northerly along Kanab Creek to the Utah state line; west along the Utah state line to the western edge of the Hurricane Rim; except those portions that are sovereign tribal lands of the Kaibab Band of Paiute Indians.

Unit 13B – Beginning on the western edge of the Hurricane Rim at the Utah state line; southerly along the western edge of the Hurricane Rim to Mohave County Rd. 5 (the Mt. Trumbull Rd.); west along Mohave County Rd. 5 to the town of Mt. Trumbull (Bundyville); south from the town of Mt. Trumbull (Bundyville) on Mohave County Rd. 257 to BLM Rd. 1045; south on BLM Rd. 1045 to where it crosses Cold Spring Wash near Cold Spring Wash Pond; south along the bottom of Cold Spring Wash to Whitmore Wash; southerly along the bottom of Whitmore Wash to the Colorado River; westerly along the Colorado River to the Nevada state line; north along the Nevada state line to the Utah state line; east along the Utah state line to the western edge of the Hurricane Rim.

Unit 15A – Beginning at Pearce Ferry on the Colorado River; southerly on the Pearce Ferry Rd. to Antares Rd.; southeasterly on Antares Rd. to AZ Hwy 66; easterly on AZ Hwy 66 to the Hualapai Indian Reservation; west and north along the west boundary of the reservation to the Colorado River; westerly along the Colorado River to Pearce Ferry; except those portions that are sovereign tribal lands of the Hualapai Indian Tribe.

Unit 15B – Beginning at Kingman on I-40 (Exit 48); northwesterly on U.S. Hwy 93 to Hoover Dam; north and east along the Colorado River to Pearce Ferry; southerly on the Pearce Ferry Rd. to Antares Rd.; southeasterly on Antares Rd. to AZ Hwy 66; easterly on AZ Hwy 66 to Hackberry Rd.; southerly on the Hackberry Rd. to I-40; west on I-40 to Kingman (Exit 48).

Unit 15C – Beginning at Hoover Dam; southerly along the Colorado River to AZ Hwy 68 and Davis Dam; easterly on AZ Hwy 68 to U.S. Hwy 93; northwesterly on U.S. Hwy 93 to Hoover Dam.

Unit 15D – Beginning at AZ Hwy 68 and Davis Dam; southerly along the Colorado River to I-40; east and north on I-40 to Kingman (Exit 48); northwest on U.S. Hwy 93 to AZ Hwy 68; west on AZ Hwy 68 to Davis Dam; except those portions that are sovereign tribal lands of the Fort Mohave Indian Tribe.

Unit 16A – Beginning at Kingman on I-40 (Exit 48); south and west on I-40 to U.S. Hwy 95 (Exit 9); southerly on U.S. Hwy 95 to the Bill Williams River; easterly along the Bill Williams and Santa Maria rivers to U.S. Hwy 93; north on U.S. Hwy 93 to I-40 (Exit 71); west on I-40 to Kingman (Exit 48).

Unit 16B – Beginning at I-40 on the Colorado River; southerly along the Arizona-California state line to the Bill Williams River; east along the Bill Williams River to U.S. Hwy 95; north on U.S. Hwy 95 to I-40 (Exit 9); west on I-40 to the Colorado River.

Unit 17A – Beginning at the junction of the Williamson Valley Rd. (County Road 5) and the Camp Wood Rd. (FR 21); westerly on the Camp Wood Rd. to the west boundary of the Prescott National Forest; north along the forest boundary to the Baca Grant; east, north and west around the grant to the west boundary of the Prescott National Forest; north and east along the forest boundary to the Williamson Valley Rd. (County Rd. 5, FR 6); southerly on Williamson Valley Rd. (County Rd. 5, FR 6) to the Camp Wood Rd.

Unit 17B – Beginning at the junction of Iron Springs Rd. (County Rd. 10) and Williamson Valley Rd. (County Road 5) in Prescott; westerly on the Prescott-Skull Valley-Hillside-Bagdad Rd. to Bagdad; northeast on the Bagdad-Camp Wood Rd. (FR 21) to the Williamson Valley Rd. (County Rd. 5, FR 6); south on the Williamson Valley Rd. (County Rd. 5, FR 6) to the Iron Springs Rd.

Unit 18A – Beginning at Seligman; westerly on AZ Hwy 66 to the Hualapai Indian Reservation; southwest and west along the reservation boundary to AZ Hwy 66; southwest on AZ Hwy 66 to the Hackberry Rd.; south on the Hackberry Rd. to I-40; west along I-40 to U.S. Hwy 93; south on U.S. Hwy 93 to Cane Springs Wash; easterly along Cane Springs Wash to the Big Sandy River; northerly along the Big Sandy River to Trout Creek; northeast along Trout Creek to the Davis Dam-Prescott power line; southeasterly along the power line to the west boundary of the Prescott National Forest; north and east along the forest boundary to the Williamson Valley Rd. (County Rd. 5, FR 6); northerly on the Williamson Valley Rd. (County Rd. 5, FR 6) to Seligman and AZ Hwy 66; except those portions that are sovereign tribal lands of the Hualapai Indian Tribe.

Unit 18B – Beginning at Bagdad; southeast on AZ Hwy 96 to the Santa Maria River; southwest along the Santa Maria River to U.S. Hwy 93; northerly on U.S. Hwy 93 to Cane Springs Wash; easterly along Cane Springs Wash to the Big

Sandy River; northerly along the Big Sandy River to Trout Creek; northeasterly along Trout Creek to the Davis Dam-Prescott power line; southeasterly along the power line to the west boundary of the Prescott National Forest; south along the forest boundary to the Baca Grant; east, south and west along the forest boundary; south along the west boundary of the Prescott National Forest; to the Camp Wood-Bagdad Rd.; southwesterly on the Camp Wood-Bagdad Rd. to Bagdad; except those portions that are sovereign tribal lands of the Hualapai Indian Tribe.

Unit 19A – Beginning at AZ Hwy 69 and AZ Hwy 89 (in Prescott); northerly on AZ Hwy 89 to the Verde River; easterly along the Verde River to I-17; southwesterly on the southbound lane of I-17 to AZ Hwy 69; northwesterly on AZ Hwy 69 to AZ Hwy 89; except those portions that are sovereign tribal lands of the Yavapai-Prescott Tribe and the Yavapai-Apache Nation.

Unit 19B – Beginning at the intersection of AZ Hwy 89 and AZ Hwy 69, west on Gurley St. to Grove Ave.; north on the Grove Ave. to Miller Valley Rd.; northwest on the Miller Valley Rd. to Iron Springs Rd.; northwest on the Iron Springs Rd. to the junction of Williamson Valley Rd. and Iron Springs Rd.; northerly on the Williamson Valley-Prescott-Seligman Rd. (FR 6, Williamson Valley Rd.) to AZ Hwy 66 at Seligman; east on Crookton Rd. (AZ Hwy 66) to I-40 (Exit 139); east on I-40 to AZ Hwy 89; south on AZ Hwy 89 to the junction with AZ Hwy 69; except those portions that are sovereign tribal lands of the Yavapai-Prescott Tribe.

Unit 20A – Beginning at the intersection of AZ Hwy 89 and AZ Hwy 69; west on Gurley St. to Grove Ave.; north on the Grove Ave. to Miller Valley Rd., northwest on the Miller Valley Rd. to Iron Springs Rd., west and south on Iron Springs Rd. (County Road 10) to Kirkland; south and east on AZ Hwy 96 to Kirkland Junction (U.S. Hwy 89); southeasterly along Wagoner Rd. (County Road 60) to Wagoner (mp 17); from Wagoner easterly along County Road 60 (FR 362) to intersection of FR 52; easterly along FR 52 to intersection of FR 259; easterly along FR 259 to Crown King Rd. (County Road 59) at Crown King; continue easterly to the intersection of Antelope Creek Rd. cutoff (County Road 179S); northeasterly along Antelope Creek Rd. cutoff to intersection of Antelope Creek Rd. (County Road 179); northeasterly on Antelope Creek Rd. to Cordes; east on Bloody Basin Rd. (County Road 73) to I-17 (Exit 259); north on the southbound lane of I-17 to AZ Hwy 69; northwest on AZ Hwy 69 to junction of AZ Hwy 89 at Prescott; except those portions that are sovereign tribal lands of the Yavapai-Prescott Tribe.

Unit 20B – Beginning at the Hassayampa River and U.S. Hwy 60/93 (at Wickenburg), northeasterly along the Hassayampa River to Wagoner (County Road 60, mp 17); from Wagoner easterly along County Road 60 (FR 362) to intersection of FR 52; easterly along FR 52 to intersection of FR 259; easterly along FR 259 to Crown King Rd. (County Road 59) at Crown King; continue easterly to intersection of Antelope Creek Rd. cutoff (County Road 179S); northeasterly along Antelope Creek Rd. cutoff to intersection of Antelope Creek Rd. (County Road 179); northeasterly on Antelope Creek Rd. to Cordes; east on Bloody Basin Rd. (County Road 73) to I-17 (Exit 259); south on the southbound lane of I-17 to New River Road (Exit 232); west on New River Road to SR 74; west on AZ Hwy 74 to junction of U.S. Hwy 60/93; northwesterly on U.S. Hwy 60/93 to the Hassayampa River (at Wickenburg).

Unit 20C – Beginning at U.S. Hwy 60/93 and the Santa Maria River; northeasterly along the Santa Maria River to AZ Hwy 96; easterly on AZ Hwy 96 to Kirkland Junction (AZ. Hwy 89); south along AZ Hwy 89 to Wagoner Rd.; southeasterly along Wagoner Rd. (County Road 60) to Wagoner (mp 17); from Wagoner southwesterly along the Hassayampa River to U.S. Hwy 60/93; northwesterly on U.S. Hwy 60/93 to the Santa Maria River.

Unit 21 – Beginning on I-17 at the Verde River; southerly on the southbound lane of I-17 to the New River Road (Exit 232); east on New River Road to Fig Springs Road; northeasterly on Fig Springs Road to Mingus Rd.; Mingus Rd. to the Tonto National Forest boundary; southeasterly along this boundary to the Verde River; north along the Verde River to I-17.

Unit 22 – Beginning at the junction of the Salt and Verde Rivers; north along the Verde River to the confluence with Fossil Creek; northeasterly along Fossil Creek to Fossil Springs; southeasterly on FS trail 18 (Fossil Spring Trail) to the top of the rim; northeasterly on the rim to Nash Point on the Tonto-Coconino National Forest boundary along the Mogollon Rim; easterly along this boundary to Tonto Creek; southerly along the east fork of Tonto Creek to the spring box, north of the Tonto Creek Hatchery, and continuing southerly along Tonto Creek to the Salt River; westerly along the Salt River to the Verde River; except those portions that are sovereign tribal lands of the Tonto Apache Tribe and the Fort McDowell Yavapai Nation.

Unit 23 – Beginning at the confluence of Tonto Creek and the Salt River; northerly along Tonto Creek to the spring box, north of the Tonto Creek Hatchery, on Tonto Creek; northeasterly along the east fork of Tonto Creek to the Tonto-Sitgreaves National Forest boundary along the Mogollon Rim; east along this boundary to the White Mountain Apache Indian Reservation boundary; southerly along the reservation boundary to the Salt River; westerly along the Salt River to Tonto Creek.

Unit 24A – Beginning on AZ Hwy 177 in Superior; southeasterly on AZ Hwy 177 to the Gila River; northeasterly along the Gila River to the San Carlos Indian Reservation boundary; easterly, westerly and northerly along the reservation boundary to the Salt River; southwesterly along the Salt River to AZ Hwy 288; southerly on AZ Hwys 288 and 188 to U.S. Hwy 60; southwesterly on U.S. Hwy 60 to AZ Hwy 177.

Unit 24B – Beginning on U.S. Hwy 60 in Superior; northeasterly on U.S. Hwy 60 to AZ Hwy 188; northerly on AZ Hwys 188 and 288 to the Salt River; westerly along the Salt River to the Tonto National Forest boundary near Granite Reef Dam; southeasterly along Forest boundary to Forest Route 77 (Peralta Rd.); southwesterly on Forest Route 77 (Peralta Rd.) to U.S. Hwy 60; easterly on U.S. Hwy 60 to Superior.

Unit 25M – Beginning at the junction of 51st Ave. and I-10; west on I-10 to AZ Loop 303, northeasterly on AZ Loop 303 to I-17; north on I-17 to Carefree Hwy; east on Carefree Hwy to Cave Creek Rd.; northeasterly on Cave Creek Rd. to the Tonto National Forest boundary; easterly and southerly along the Tonto National Forest boundary to Fort McDowell Yavapai Nation boundary; northeasterly along the Fort McDowell Yavapai Nation boundary to the Verde River; southerly along the Verde River to the Salt River; southwesterly along the Salt River to the Tonto National Forest boundary; southerly along the Tonto National Forest boundary to Bush Hwy/Power Rd.; southerly on Bush Hwy/Power Rd. to AZ Loop 202; easterly, southerly, and westerly on AZ Loop 202 to the intersection of Pecos Rd. at I-10; west on Pecos Rd. to the Gila River Indian Community boundary; northwesterly along the Gila River Indian Community boundary to 51st Ave; northerly on 51st Ave to I-10; except those portions that are sovereign tribal lands.

Unit 26M – Beginning at the junction of I-17 and New River Rd. (Exit 232); southwesterly on New River Rd. to AZ Hwy 74; westerly on AZ Hwy 74 to U.S. Hwy 93; southeasterly on U.S. Hwy 93 to the Beardsley Canal; southwesterly on the Beardsley Canal to Indian School Rd.; west on Indian School Rd. to Jackrabbit Trail; south on Jackrabbit Trail to I-10 (Exit 121); west on I-10 to Oglesby Rd. (Exit 112); south on Oglesby Rd. to AZ Hwy 85; south on AZ Hwy 85 to the Gila River; northeasterly along the Gila River to the Gila River Indian Community boundary; southeasterly along the Gila River Indian Community boundary to AZ Hwy 347 (John Wayne Parkway); south on AZ Hwy 347 (John Wayne Parkway) to AZ Hwy 84; east on AZ Hwy 84 to Stanfield; south on the Stanfield-Cocklebur Rd. to the Tohono O'odham Nation boundary; easterly along the Tohono O'odham Nation boundary to Battaglia Rd.; east on Battaglia Rd. to Toltec Rd.; north on Toltec Rd. to I-10 (Exit 203); southeasterly on I-10 to AZ Hwy 87 (Exit 211); north on AZ Hwy 87 to AZ Hwy 287 north of Coolidge; east on AZ Hwy 287 to AZ Hwy 79; north on AZ Hwy 79 to U.S. Hwy 60; northwesterly on U.S. Highway 60 to Peralta Rd.; northeasterly along Peralta Rd. to the Tonto National Forest boundary; northwesterly along the Tonto National Forest boundary to the Salt River; northeasterly along the Salt River to the Verde River; northerly along the Verde River to the Tonto National Forest boundary; northwesterly along the Tonto National Forest boundary to Mingus Rd.; Mingus Rd. to Fig Springs Rd.; southwesterly on Fig Springs Rd. to New River Rd.; west on New River Rd. to I-17 (Exit 232); except Unit 25M and those portions that are sovereign tribal lands.

Unit 27 – Beginning at the New Mexico state line and AZ Hwy 78; southwest on AZ Hwy 78 to U.S. Hwy 191; north on U.S. Hwy 191 to Lower Eagle Creek Rd. (Pump Station Rd.); west on the Lower Eagle Creek Rd. (Pump Station Rd.) to Eagle Creek; north along Eagle Creek to the San Carlos Apache Indian Reservation boundary; north along the San Carlos Apache Indian Reservation boundary to Black River; northeast along Black River to the East Fork of Black River; northeast along the East Fork of Black River to Three Forks-Williams Valley-Alpine Rd. (FR 249); easterly along Three Forks-Williams Valley-Alpine Rd. to U.S. Hwy 180; southeast on U.S. Hwy 180 to the New Mexico state line; south along the New Mexico state line to AZ Hwy 78.

Unit 28 – Beginning at I-10 and the New Mexico state line; north along the state line to AZ Hwy 78; southwest on AZ Hwy 78 to U.S. Hwy 191; northwest on U.S. Hwy 191 to Clifton; westerly on the Lower Eagle Creek Rd. (Pump Station Rd.) to Eagle Creek; northerly along Eagle Creek to the San Carlos Indian Reservation boundary; southerly and west along the reservation boundary to U.S. Hwy 70; southeast on U.S. Hwy 70 to U.S. Hwy 191; south on U.S. Hwy 191 to I-10 Exit 352; easterly on I-10 to the New Mexico state line.

Unit 29 – Beginning on I-10 at the New Mexico state line; westerly on I-10 to the Bowie-Apache Pass Rd.; southerly on the Bowie-Apache Pass Rd. to AZ Hwy 186; southeast on AZ Hwy 186 to AZ Hwy 181; south on AZ Hwy 181 to the West Turkey Creek-Kuykendall cutoff road; southerly on the Kuykendall cutoff road to Rucker Canyon Rd.; easterly on the Rucker Canyon Rd. to Tex Canyon Rd.; southerly on Tex Canyon Rd. to U.S. Hwy 80; northeast on U.S. Hwy 80 to the New Mexico state line; north along the state line to I-10.

Unit 30A – Beginning at the junction of the New Mexico state line and U.S. Hwy 80; south along the state line to the U.S.-Mexico border; west along the border to U.S. Hwy 191; northerly on U.S. Hwy 191 to I-10 Exit 331; northeasterly on I-10 to the Bowie-Apache Pass Rd.; southerly on the Bowie-Apache Pass Rd. to AZ Hwy 186; southeasterly on AZ Hwy 186 to AZ Hwy 181; south on AZ Hwy 181 to the West Turkey Creek - Kuykendall cutoff road; southerly on the Kuykendall cutoff road to Rucker Canyon Rd.; easterly on Rucker Canyon Rd. to the Tex Canyon Rd.; southerly on Tex Canyon Rd. to U.S. Hwy 80; northeast on U.S. Hwy 80 to the New Mexico state line.

Unit 30B – Beginning at U.S. Hwy 191 and the U.S.-Mexico border; west along the border to the San Pedro River; north along the San Pedro River to I-10; northeasterly on I-10 to U.S. Hwy 191; southerly on U.S. Hwy 191 to the U.S.-Mexico border.

Unit 31 – Beginning at Willcox Exit 340 on I-10; north on Fort Grant Rd. to Brookerson Rd.; north on Brookerson Rd. to Ash Creek Rd.; west on Ash Creek Rd. to Fort Grant Rd.; north on Fort Grant Rd. to Bonita; northerly on the Bonita-

Klondyke Rd. to the junction with Aravaipa Creek; west along Aravaipa Creek to AZ Hwy 77; northerly along AZ Hwy 77 to the Gila River; northeast along the Gila River to the San Carlos Indian Reservation boundary; south then east and north along the reservation boundary to U.S. Hwy 70; southeast on U.S. Hwy 70 to U.S. Hwy 191; south on U.S. Hwy 191 to the 352 exit on I-10; southwest on I-10 to Exit 340.

Unit 32 – Beginning at Willcox Exit 340 on I-10; north on Fort Grant Rd. to Brookerson Rd.; north on Brookerson Rd. to Ash Creek Rd.; west on Ash Creek Rd. to Fort Grant Rd.; north on Fort Grant Rd. to Bonita; northerly on the Bonita-Klondyke Rd. to the junction with Aravaipa Creek; west along Aravaipa Creek to AZ Hwy 77; southerly along AZ Hwy 77 to the San Pedro River; southerly along the San Pedro River to I-10; northeast on I-10 to Willcox Exit 340.

Unit 33 – Beginning at Tangerine Rd. and AZ Hwy 77; north and northeast on AZ Hwy 77 to the San Pedro River; southeast along the San Pedro River to I-10 at Benson; west on I-10 to Marsh Station Rd. (Exit 289); northwest on the Marsh Station Rd. to the Agua Verde Rd.; north on the Agua Verde Rd. to its terminus then north 1/2 mile to the Coronado National Forest boundary; north and west along the National Forest boundary; then west, north, and east along the Saguaro National Park boundary; continuing north and west along the Coronado National Forest boundary to the southern boundary of Catalina State Park; west along the southern boundary of Catalina State Park to AZ Hwy 77; north on AZ Hwy 77 to Tangerine Rd.

Unit 34A – Beginning in Nogales at I-19 and Compound St.; northeast on Grand Avenue to AZ Hwy 82; northeast on AZ Hwy 82 to AZ Hwy 83; northerly on AZ Hwy 83 to the Sahuarita Rd. alignment; west along the Sahuarita Rd. alignment to I-19 Exit 75; south on I-19 to Grand Avenue (U.S. Hwy 89).

Unit 34B – Beginning at AZ Hwy 83 and I-10 Exit 281; easterly on I-10 to the San Pedro River; south along the San Pedro River to AZ Hwy 82; westerly on AZ Hwy 82 to AZ Hwy 83; northerly on AZ Hwy 83 to I-10 Exit 281. Unit 35A – Beginning on the U.S.-Mexico border at the San Pedro River; west along the border to Lochiel Rd.; north on Lochiel Rd. to Patagonia San Rafael Rd.; north on the Patagonia San Rafael Rd. to San Rafael Valley-FS 58 Rd.; north on the San Rafael Valley-FS 58 Rd. to Christian Ln.; north on the Christian Ln. to Ranch Rd.; east and north on the Ranch Rd. to FR 799-Canelo Pass Rd.; northeasterly on the FR 799-Canelo Pass Rd. to AZ Hwy 83; northwesterly on the AZ Hwy 83 to Elgin Canelo Rd.; northeasterly on the Elgin-Canelo Rd. to Upper Elgin Rd.; north on the Upper Elgin Rd. to AZ Hwy 82; easterly on AZ Hwy 82 to the San Pedro River; south along the San Pedro River to the U.S.-Mexico border.

Unit 35B – Beginning at Grand Avenue Hwy 89 at the U.S.-Mexico border in Nogales; east along the U.S.-Mexico border to Lochiel Rd.; north on the Lochiel Rd. to Patagonia San Rafael Rd.; north on the Patagonia San Rafael Rd. to San Rafael Valley-FS 58 Rd.; north on the San Rafael Valley-FS 58 Rd. to Christian Ln.; north on the Christian Ln. to Ranch Rd.; east and north on the Ranch Rd. to FR 799-Canelo Pass Rd.; northeasterly on FR 799-Canelo Pass Rd. to AZ Hwy 83; northwesterly on the AZ Hwy 83 to Elgin Canelo Rd.; north on the Elgin Canelo Rd. to Upper Elgin Rd.; north on the Upper Elgin Rd. to AZ Hwy 82; southwest on AZ Hwy 82 to Grand Avenue; southwest on Grand Avenue to the U.S.-Mexico border.

Unit 36A – Beginning at the junction of Sandario Rd. and AZ Hwy 86; southwesterly on AZ Hwy 86 to AZ Hwy 286; southerly on AZ Hwy 286 to the Arivaca-Sasabe Rd.; southeasterly on the Arivaca-Sasabe Rd. to the town of Arivaca; from the town of Arivaca northeasterly on the Arivaca Rd. to I-19; north on I-19 to the southern boundary of the San Xavier Indian Reservation boundary; westerly and northerly along the reservation boundary to the Sandario road alignment; north on Sandario Rd. to AZ Hwy 86.

Unit 36B – Beginning at I-19 and Compound St.; southeasterly on Compound St. to Sonoita Ave.; north on Sonoita Ave. to Crawford St.; southeasterly on Crawford St. to Grand Avenue in Nogales; southwest on Grand Avenue to the U.S.-Mexico border; west along the U.S.-Mexico border to AZ Hwy 286; north on AZ Hwy 286 to the Arivaca-Sasabe Rd.; southeasterly on the Arivaca-Sasabe Rd. to the town of Arivaca; from the town of Arivaca northeasterly on the Arivaca Rd. to I-19; south on I-19 to Grand Avenue.

Unit 36C – Beginning at the junction of AZ Hwy 86 and AZ Hwy 286; southerly on AZ Hwy 286 to the U.S.-Mexico border; westerly along the border to the east boundary of the Tohono O'odham (Papago) Indian Reservation; northerly along the reservation boundary to AZ Hwy 86; easterly on AZ Hwy 86 to AZ Hwy 286.

Unit 37A – Beginning at the junction of I-10 and Tangerine Rd. (Exit 240); southeast on I-10 to Avra Valley Rd. (Exit 242); west on Avra Valley Rd. to Sandario Rd.; south on Sandario Rd. to AZ Hwy 86; southwest on AZ Hwy 86 to the Tohono O'odham Nation boundary; north, east, and west along this boundary to Battaglia Rd.; east on Battaglia Rd. to Toltec Rd.; north on Toltec Rd. to I-10 (Exit 203); southeast on I-10 to AZ Hwy 87 (Exit 211); north on AZ Hwy 87 to AZ Hwy 287; east on AZ Hwy 287 to AZ Hwy 79 at Florence; southeast on AZ Hwy 79 to its junction with AZ Hwy 77; south on AZ Hwy 77 to Tangerine Rd.; west on Tangerine Rd. to I-10.

Unit 37B – Beginning at the junction of AZ Hwy 79 and AZ Hwy 77; northwest on AZ Hwy 79 to U.S. Hwy 60; east on U.S. Hwy 60 to AZ Hwy 177; southeast on AZ Hwy 177 to AZ Hwy 77; southeast and southwest on AZ Hwy 77 to AZ Hwy 79.

Unit 38M – Beginning at the junction of I-10 and Tangerine Rd. (Exit 240); southeast on I-10 to Avra Valley Rd. (Exit

242); west on Avra Valley Rd. to Sandario Rd.; south on Sandario Rd. to the San Xavier Indian Reservation boundary; south and east along the reservation boundary to I-19; south on I-19 to Sahuarita Rd. (Exit 75); east on Sahuarita Rd. to AZ Hwy 83; north on AZ Hwy 83 to I-10 (Exit 281); east on I-10 to Marsh Station Rd. (Exit 289); northwest on Marsh Station Rd. to the Agua Verde Rd.; north on the Agua Verde Rd. to its terminus, then north 1/2 mile to the Coronado National Forest boundary; north and west along the National Forest boundary, then west, north, and east along the Saguaro National Park boundary; continuing north and west along the Coronado National Forest boundary to the southern boundary of Catalina State Park; west along the southern boundary of Catalina State Park to AZ Hwy 77; north on AZ Hwy 77 to Tangerine Rd.; west on Tangerine Rd. to I-10.

Unit 39 – Beginning at AZ Hwy 85 and the Gila River; east along the Gila River to the western boundary of the Gila River Indian Community; southeasterly along this boundary to AZ Hwy 347 (John Wayne Parkway); south on AZ Hwy 347 (John Wayne Parkway) to AZ Hwy 84; east on AZ Hwy 84 to Stanfield; south on the Stanfield-Cocklebur Rd. to I-8; westerly on I-8 to Exit 87; northerly on the Agua Caliente Rd. to the Hyder Rd.; northeasterly on Hyder Rd. to 555th Ave.; north on 555th Ave. to Lahman Rd.; east on Lahman Rd., which becomes Agua Caliente Rd.; northeasterly on Agua Caliente Rd. to Old Hwy 80; northeasterly on Old Hwy 80 to Arizona Hwy 85; southerly on AZ Hwy 85 to the Gila River; except those portions that are sovereign tribal lands of the Tohono O'odham Nation and the Ak-Chin Indian Community.

Unit 40A – Beginning at Ajo; southeasterly on AZ Hwy 85 to Why; southeasterly on AZ Hwy 86 to the Tohono O'odham (Papago) Indian Reservation; northerly and easterly along the reservation boundary to the Cocklebur-Stanfield Rd.; north on the Cocklebur-Stanfield Rd. to I-8; westerly on I-8 to AZ Hwy 85; southerly on AZ Hwy 85 to Ajo.

Unit 40B – Beginning at Gila Bend; westerly on I-8 to the Colorado River; southerly along the Colorado River to the Mexican border at San Luis; southeasterly along the border to the Cabeza Prieta National Wildlife Refuge; northerly, easterly and southerly around the refuge boundary to the Mexican border; southeast along the border to the Tohono O'odham (Papago) Indian Reservation; northerly along the reservation boundary to AZ Hwy 86; northwesterly on AZ Hwy 86 to AZ Hwy 85; north on AZ Hwy 85 to Gila Bend; except those portions that are sovereign tribal lands of the Cocopah Tribe.

Unit 41 – Beginning at I-8 and U.S. Hwy 95 (in Yuma); easterly on I-8 to exit 87; northerly on the Agua Caliente Rd. to the Hyder Rd.; northeasterly on Hyder Rd. to 555th Ave.; north on 555th Ave. to Lahman Rd.; east on Lahman Rd., which becomes Agua Caliente Rd.; northeasterly on Agua Caliente Rd. to Old Hwy 80; northeasterly on Old Hwy 80 to Arizona Hwy 85; northerly on AZ Hwy 85 to Oglesby Rd.; north on Oglesby Rd. to I-10; westerly on I-10 to Exit 45; southerly on Vicksburg-Kofa National Wildlife Refuge Rd. to the Refuge boundary; easterly, southerly, westerly, and northerly along the boundary to the Castle Dome Rd.; southwesterly on the Castle Dome Rd. to U.S. Hwy 95; southerly on U.S. Hwy 95 to I-8.

Unit 42 – Beginning at the junction of the Beardsley Canal and U.S. Hwy 93 (AZ 89, U.S. 60); northwesterly on U.S. Hwy 93 to AZ Hwy 71; southwesterly on AZ Hwy 71 to U.S. Hwy 60; westerly on U.S. Hwy 60 to Aguila; south on the Eagle Eye Rd. to the Salome-Hassayampa Rd.; southeasterly on the Salome-Hassayampa Rd. to I-10 (Exit 81); easterly on I-10 to Jackrabbit Trail (Exit 121); north along Jackrabbit Trail to the Indian School road; east along Indian School Rd. to the Beardsley Canal; northeasterly along the Beardsley Canal to U.S. Hwy 93.

Unit 43A – Beginning at U.S. Hwy 95 and the Bill Williams River; west along the Bill Williams River to the Arizona-California state line; southerly to the south end of Cibola Lake; northerly and easterly on the Cibola Lake Rd. to U.S. Hwy 95; south on U.S. Hwy 95 to the Stone Cabin-King Valley Rd. (King Rd.); east along the Stone Cabin-King Valley Rd. (King Rd.) to the west boundary of the Kofa National Wildlife Refuge; northerly along the refuge boundary to the Crystal Hill Rd. (Blevens Rd.); northwesterly on the Crystal Hill Rd. (Blevens Rd.) to U.S. Hwy 95; northerly on U.S. Hwy 95 to the Bill Williams River; except those portions that are sovereign tribal lands of the Colorado River Indian Tribes.

Unit 43B – Beginning at the south end of Cibola Lake; southerly along the Arizona-California state line to I-8; southeasterly on I-8 to U.S. Hwy 95; easterly and northerly on U.S. Hwy 95 to the Castle Dome road; northeast on the Castle Dome Rd. to the Kofa National Wildlife Refuge boundary; north along the refuge boundary to the Stone Cabin-King Valley Rd. (King Rd.); west along the Stone Cabin-King Valley Rd. (King Rd.) to U.S. Hwy 95; north on U.S. Hwy 95 to the Cibola Lake Rd.; west and south on the Cibola Lake Rd. to the south end of Cibola Lake; except those portions that are sovereign tribal lands of the Quechan Tribe.

Unit 44A – Beginning at U.S. Hwy 95 and the Bill Williams River; south along U.S. Hwy 95 to AZ Hwy 72; southeasterly on AZ Hwy 72 to Vicksburg; south on the Vicksburg-Kofa National Wildlife Refuge Rd. to I-10; easterly on I-10 to the Salome-Hassayampa Rd. (Exit 81); northwesterly on the Salome-Hassayampa Rd. to Eagle Eye Rd.; northeasterly on Eagle Eye Rd. to Aguila; east on U.S. Hwy 60 to AZ Hwy 71; northeasterly on AZ Hwy 71 to U.S. Hwy 93; northwesterly on U.S. Hwy 93 to the Santa Maria River; westerly along the Santa Maria and Bill Williams rivers to U.S. Hwy 95; except those portions that are sovereign tribal lands of the Colorado River Indian Tribes.

Unit 44B – Beginning at Quartzsite; south on U.S. Hwy 95 to the Crystal Hill Rd. (Blevens Rd.); east on the Crystal Hill

Rd. (Blevens Rd.) to the Kofa National Wildlife Refuge; north and east along the refuge boundary to the Vicksburg-Kofa National Wildlife Refuge Rd.; north on the Vicksburg-Kofa National Wildlife Refuge Rd. to AZ Hwy 72; northwest on AZ Hwy 72 to U.S. Hwy 95; south on U.S. Hwy 95 to Quartzsite.

Unit 45A – Beginning at the junction of the Stone Cabin-King Valley Rd. (King Rd.) and Kofa National Wildlife Refuge boundary; east on the Stone Cabin-King Valley Rd. (King Rd.) to O-O Junction; north from O-O Junction on the Kofa Mine Rd. to the Evening Star Mine; north on a line over Polaris Mountain to Midwell-Alamo Spring-Kofa Cabin Rd. (Wilbanks Rd.); north on the Midwell-Alamo Spring-Kofa Cabin Rd. (Wilbanks Rd.) to the El Paso Natural Gas Pipeline Rd.; north on a line from the junction to the north boundary of the Kofa National Wildlife Refuge; west and south on the boundary line to Stone Cabin-King Valley Rd. (King Rd.).

Unit 45B – Beginning at O-O Junction; north from O-O Junction on the Kofa Mine Rd. to the Evening Star Mine; north on a line over Polaris Mountain to Midwell-Alamo Spring-Kofa Cabin Rd. (Wilbanks Rd.); north on the Midwell-Alamo Spring-Kofa Cabin Rd. (Wilbanks Rd.) to the El Paso Natural Gas Pipeline Rd.; north on a line from the junction to the north Kofa National Wildlife Refuge boundary; east to the east refuge boundary; south and west along the Kofa National Wildlife Refuge boundary to the Stone Cabin-King Valley Rd. (Wellton-Kofa Rd./Ave 40E); north and west on the Stone Cabin-King Valley Rd. (Wellton-Kofa Rd./Ave 40E) to O-O Junction.

Unit 45C – Beginning at the junction of the Stone Cabin-King Valley Rd. (King Rd.) and Kofa National Wildlife Refuge; south, east, and north along the refuge boundary to the Stone Cabin-King Valley Rd. (King Rd.); north and west on the Stone Cabin-King Valley Rd. (King Rd.) to the junction of the Stone Cabin-King Valley Rd. (King Rd.) and Kofa National Wildlife Refuge boundary.

Unit 46A – That portion of the Cabeza Prieta National Wildlife Refuge east of the Yuma-Pima County line.

Unit 46B – That portion of the Cabeza Prieta National Wildlife Refuge west of the Yuma-Pima County line.

**Authorizing Statute**

General: A.R.S. § 17-231(A)(1)

Specific: A.R.S. §§ 17-102, 17-231(B)(2) 17-234, 17-241, 17-452, 17-453, 17-454, and 17-455

**Historical Note**

Amended as an emergency effective April 10, 1975 (Supp. 75-1). Amended effective March 5, 1976 (Supp. 76-2). Amended effective May 17, 1977 (Supp. 77-3). Amended effective September 7, 1978 (Supp. 78-5). Amended effective June 4, 1979 (Supp. 79-3). Former Section R12-4-10 renumbered as Section R12-4-108 without change effective August 13, 1981 (Supp. 81-4). Amended effective March 1, 1991; filed February 28, 1991 (Supp. 91-1). Amended effective February 4, 1993 (Supp. 93-1). Amended effective January 1, 1996; filed in the Office of the Secretary of State December 18, 1995 (Supp. 95-4). Amended by final rulemaking at 6 A.A.R. 1146, effective July 1, 2000 (Supp. 00-1). Amended by final rulemaking at 7 A.A.R. 865, effective July 1, 2001 (Supp. 01-1). Amended by final rulemaking at 12 A.A.R. 291, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 18 A.A.R. 1458, effective January 1, 2013 (Supp. 12-2). Amended by final rulemaking at 21 A.A.R. 3025, effective January 2, 2016 (Supp. 15-4). Amended by final rulemaking at 27 A.A.R. 283, effective July 1, 2021 (Supp. 21-1).

### R12-4-109. Approved Trapping Education Course Fee

Under A.R.S. § 17-333.02(A), the provider of an approved educational course of instruction in responsible trapping and environmental ethics may collect a fee from each participant that:

1. Is reasonable and commensurate for the course, and
2. Does not exceed $25.

**Authorizing Statute**

General: A.R.S. § 17-231(A)(1)

Specific: A.R.S. § 17-333.02

**Historical Note**

Amended as an emergency effective April 10, 1975 (Supp. 75-1). Amended effective May 3, 1976 (Supp. 76-3). Editorial correction paragraph (14) (Supp. 78-5). Former Section R12-4-11 renumbered as Section R12-4-109 without change effective August 13, 1981 (Supp. 81-4). Amended by adding paragraphs (2) and (3) and renumbering former paragraphs (2) through (17) as paragraphs (4) through (19) effective May 12, 1982 (Supp. 82-3). Amended effective March 1, 1991; filed February 28, 1991 (Supp. 91-1). Section repealed by final rulemaking at 6 A.A.R. 211, effective May 1, 2000 (Supp. 99-4). New Section made by final rulemaking at 19 A.A.R. 3225, effective January 1, 2014 (Supp. 13-3).

### R12-4-110. Posting and Access to State Land

**A.** For the purpose of this Section:

"Corrals," "feed lots," or "holding pens" mean completely fenced areas used to contain livestock for purposes other than grazing.

"Existing road" means any maintained or unmaintained road, way, highway, trail, or path that has been used for motorized

vehicular travel, and clearly shows or has a history of established vehicle use, and is not currently closed by the Commission.

"State lands" means all land owned or held in trust by the state that is managed by the State Land Department and lands that are owned or managed by the Game and Fish Commission.

**B.** In addition to the prohibition against posting proscribed under A.R.S. § 17-304, a person shall not lock a gate, construct a fence, place an obstacle, or otherwise commit an act that denies legally available access to or use of any existing road upon state lands by persons lawfully taking or retrieving wildlife or conducting any activities that are within the scope of and take place while lawfully hunting or fishing.

1. A person in violation of this Section shall take immediate corrective action to remove any lock, fence, or other obstacle unlawfully preventing access to state lands.
2. If immediate corrective action is not taken, a representative of the Department may remove any unlawful posting and remove any lock, fence, or other obstacle that unlawfully prevents access to state lands.
3. In addition, the Department may take appropriate legal action to recover expenses incurred in the removal of any unlawful posting or obstacle that prevented access to state land.

**C.** The provisions of this Section do not allow any person to trespass upon private land to gain access to any state land.

**D.** A person may post state lands as closed to hunting, fishing, or trapping without further action by the Commission when the state land is within one-quarter mile of any:

1. Occupied residence, cabin, lodge, or other building; or
2. Corrals, feed lots, or holding pens containing concentrations of livestock other than for grazing purposes.
3. Subsection (D) does not authorize any person to deny lawful access to state land in any way.

**E.** The Commission may grant permission to lock, tear down, or remove a gate or close a road or trail that provides legally available access to state lands for persons lawfully taking wildlife or conducting any activities that are within the scope of and take place while lawfully hunting or fishing if access to such lands is provided by a reasonable alternate route.

1. Under R12-4-610, the Director may grant a permit to a state land lessee to temporarily lock a gate or close an existing road that provides access to state lands if the taking of wildlife will cause unreasonable interference during a critical livestock or commercial operation. This permit shall not exceed 30 days.
2. Applications for permits for more than 30 days shall be submitted to the Commission for approval.
3. If a permit is issued to temporarily close a road or gate, a copy of the permit shall be posted at the point of the closure during the period of the closure.

**F.** A person may post state lands other than those referenced under subsection (D) as closed to hunting, fishing, or trapping, provided the person has obtained a permit from the Commission authorizing the closure. A person possessing a permit authorizing the closure of state lands shall post signs in compliance with A.R.S. 17-304(C). The Commission may permit the closure of state land when it is necessary:

1. Because the taking of wildlife constitutes an unusual hazard to permitted users;
2. To prevent unreasonable destruction of plant life or habitat; or
3. For proper resource conservation, use, or protection, including but not limited to high fire danger, excessive interference with mineral development, developed agricultural land, or timber or livestock operations.

**G.** A person shall submit an application for posting state land to prohibit hunting, fishing, or trapping under subsection (F), or to close an existing road under subsection (E), as required under R12-4-610. If an application to close state land to hunting, fishing, or trapping is made by a person other than the state land lessee, the Department shall provide notice to the lessee and the State Land Commissioner before the Commission considers the application. The state land lessee or the State Land Commissioner shall file any objections with the Department, in writing, within 30 days after receipt of notice, after which the matter shall be submitted to the Commission for determination.

**H.** A person may use a vehicle on or off a road to pick up lawfully taken big game.

**I.** The closing of state land to hunting, fishing, or trapping shall not restrict any other permitted use of the land.

**J.** State trust land may be posted with signs that read "State Land No Trespassing," but such posting shall not prohibit access to such land by any person lawfully taking or retrieving wildlife or conducting any activities that are within the scope of and take place while lawfully hunting or fishing.

**K.** When hunting, fishing, or trapping on state land, a license holder shall not:

1. Break or remove any lock or cut any fence to gain access to state land;
2. Open and not immediately close a gate;
3. Intentionally or wantonly destroy, deface, injure, remove, or disturb any building, sign, equipment, marker, or other property;
4. Harvest or remove any vegetative or mineral resources or object of archaeological, historic, or scientific interest;
5. Appropriate, mutilate, deface, or destroy any natural feature, object of natural beauty, antiquity, or other public or private property;
6. Dig, remove, or destroy any tree or shrub;

7. Gather or collect renewable or non-renewable resources for the purpose of sale or barter unless specifically permitted or authorized by law;
8. Frighten or chase domestic livestock or wildlife, or endanger the lives or safety of others when using a motorized vehicle or other means; or
9. Operate a motor vehicle off road or on any road closed to the public by the Commission or landowner, except to retrieve a lawfully taken big game.

**Authorizing Statute**

General: A.R.S. § 17-231(A)(1)
Specific: A.R.S. §§ 17-102, 17-231(B)(2) and 17-304

**Historical Note**

Adopted effective June 1, 1977 (Supp. 77-3). Editorial correction subsection (F) (Supp. 78-5). Former Section R12-4-13 renumbered as Section R12-4-110 without change effective August 13, 1981 (Supp. 81-4). Amended effective March 1, 1991; filed February 28, 1991 (Supp. 91-1). Amended by final rulemaking at 12 A.A.R. 291, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 3025, effective January 2, 2016 (Supp. 15-4). Amended by final rulemaking at 27 A.A.R. 283, effective July 1, 2021 (Supp. 21-1).

**R12-4-111. Repealed**

**Historical Note**

Amended effective April 22, 1980 (Supp. 80-2). Former Section R12-4-05 renumbered as Section R12-4-111 without change effective August 13, 1981 (Supp. 81-4). Section R12-4-111 repealed effective March 1, 1991; filed February 28, 1991 (Supp. 91-1). New Section adopted effective January 1, 1995; filed in the Office of the Secretary of State December 9, 1994 (Supp. 94-4). Amended by final rulemaking at 12 A.A.R. 291, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 3025, effective January 2, 2016 (Supp. 15-4). Repealed by final rulemaking at 27 A.A.R. 1368 (September 3, 2021), effective January 1, 2022 (Supp. 21-4).

**R12-4-112. Diseased, Injured, or Chemically-immobilized Wildlife**

**A.** A person who lawfully takes and possesses wildlife believed to be diseased, injured, or chemically-immobilized may request an inspection of the wildlife carcass provided:
1. The wildlife was lawfully taken and possessed under a valid hunt permit- or nonpermit-tag, and
2. The person who took the wildlife did not create the condition.

**B.** The Department, after inspection, may condemn the carcass if it is determined the wildlife is unfit for human consumption. The Department shall condemn chemically-immobilized wildlife only when the wildlife was taken during the immobilizing drug's established withdrawal period.

**C.** The person shall surrender the entire condemned wildlife carcass and any parts thereof to the Department.
1. Upon surrender of the condemned wildlife, the Department shall provide to the person written authorization allowing the person to purchase a duplicate hunt permit- or nonpermit-tag.
2. The person may purchase a duplicate tag from any Department office or license dealer where the permit-tag is available.

**D.** If the duplicate tag is issued by a license dealer, the license dealer shall forward the written authorization to the Department with the report required under R12-4-105(K).

**Authorizing Statute**

General: A.R.S. § 17-231(A)(1)
Specific: A.R.S. §§ 17-102, 17-231(A)(2), 17-231(A)(8), and 17-250(A)(3)

**Historical Note**

Former Section R12-4-04 renumbered as Section R12-4-112 without change effective August 13, 1981 (Supp. 81-4). Amended effective March 1, 1991; filed February 28, 1991 (Supp. 91-1). Amended by final rulemaking at 12 A.A.R. 291, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 3025, effective January 2, 2016 (Supp. 15-4).

**R12-4-113. Small Game Depredation Permit**

**A.** The Department shall issue a small game depredation permit authorizing the take of small game and the allowable methods of take only after the Department has determined all other remedies prescribed under A.R.S. § 17-239(A), (B), and (C) have been exhausted and the take of the small game is necessary to alleviate the property damage. A small game depredation permit is:
1. A complimentary permit.
2. Not valid for the take of migratory birds unless the permit holder:
   a. Obtains and possesses a federal special purpose permit under 50 CFR 21.41, revised October 1, 2014, which is

incorporated by reference; or

b. Is exempt from permitting requirements under 50 CFR 21.43, revised October 1, 2014, which is incorporated by reference.

c. For subsections (A)(2)(a) and (b), the incorporated material is available at any Department office, online at www.gpoaccess.gov, or it may be ordered from the U.S. Government Printing Office, Superintendent of Documents, P.O. Box 979050, St. Louis, MO 63197-9000. This incorporation by reference does not include any later amendments or editions of the incorporated material.

**B.** A person desiring a small game depredation permit shall submit to the Department an application requesting the permit. The application form is furnished by the Department and is available at any Department office and on the Department's website. The person shall provide all of the following information on the form:

1. Full name or, when submitted by a municipality, the name of the agency and agency contact;
2. Mailing address;
3. Telephone number or, when submitted by a municipality, agency contact number;
4. E-mail address, when available, or, when submitted by a municipality, agency contact e-mail address;
5. Description of property damage suffered;
6. Species of wildlife causing the property damage; and
7. Area the permit would be valid for.

**C.** Within 30 days of completion of the activities authorized by the small game depredation permit, the permit holder shall submit a report to the Department providing all of the following:

1. The number of individuals removed;
2. The location the individuals were removed from;
3. The date of the removal; and
4. The method of removal.

**Authorizing Statute**

General: A.R.S. § 17-231(A)(1)
Specific: A.R.S. §§ 17-102 and 17-239

**Historical Note**

Adopted effective August 5, 1976 (Supp. 76-4). Former Section R12-4-12 renumbered as Section R12-4-113 without change effective August 13, 1981 (Supp. 81-4). Amended as an emergency effective September 20, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-5). Amended effective May 5, 1986 (Supp. 86-3). Section R12-4-113 repealed, new Section R12-4-113 adopted effective March 1, 1991; filed February 28, 1991 (Supp. 91-1). Amended by final rulemaking at 12 A.A.R. 291, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 3025, effective January 2, 2016 (Supp. 15-4). Amended by final rulemaking at 27 A.A.R. 283, effective July 1, 2021 (Supp. 21-1).

**R12-4-114. Issuance of Nonpermit-tags and Hunt Permit-tags**

**A.** The Department provides numbered tags for sale to the public. The Department shall ensure each tag:

1. Includes a transportation and shipping permit as prescribed under A.R.S. §§ 17-332 and 17-371, and
2. Clearly identifies the wildlife for which the tag is valid.

**B.** If the Commission establishes a big game season for which a hunt number is not assigned, the Department or its authorized agent, or both, shall sell nonpermit-tags.

1. A person purchasing a nonpermit-tag shall provide all of the following information to a Department office or license dealer at the time of purchase; the applicant's:
   a. Name,
   b. Mailing address, and
   c. Department identification number.
2. An applicant shall not obtain nonpermit-tags in excess of the bag limit established by Commission Order when it established the season for which the nonpermit-tags are valid.

**C.** If the number of hunt permits for a species in a particular hunt area must be limited, a Commission Order establishes a hunt number for that hunt area and a hunt permit-tag is required to take the species in that hunt area.

1. A person applying for a hunt permit-tag shall submit an application as described under R12-4-104.
2. The Department shall determine whether a hunt permit-tag will be issued to an applicant as follows:
   a. The Department shall reserve a maximum of 20% of the hunt permit-tags for each hunt number, except as established under subsection (C)(2)(b), for bear, deer, elk, javelina, pronghorn, Sandhill crane, and turkey and reserve a maximum of 20% of the hunt permit-tags for all hunt numbers combined statewide for bighorn sheep and bison to issue to persons who have bonus points and shall issue the hunt permit-tags as established under subsection (C)(2)(c).

b. For bear, deer, elk, javelina, pronghorn, Sandhill crane, and turkey, the Department shall reserve one hunt permit-tag for any hunt number with fewer than five, but more than one, hunt permit-tags and shall issue the tag as established under subsection (C)(2)(c). When this occurs, the Department shall adjust the number of available hunt permit-tags in order to ensure the total number of hunt permit-tags available does not exceed the 20% maximum specified in subsection (C)(2)(a).
c. The Department shall issue the reserved hunt permit-tags for hunt numbers that eligible applicants designate as their first or second choices. The Department shall issue the reserved hunt permit-tags by random selection:
   i. First, to eligible applicants with the highest number of bonus points for that genus;
   ii. Next, if there are reserved hunt permit-tags remaining, to eligible applicants with the next highest number of bonus points for that genus; and
   iii. If there are still tags remaining, to the next eligible applicants with the next highest number of bonus points; continuing in the same manner until all of the reserved tags have been issued or until there are no more applicants for that hunt number who have bonus points.
d. The Department shall ensure that all unreserved hunt permit-tags are issued by random selection:
   i. First, to hunt numbers designated by eligible applicants as their first or second choices; and
   ii. Next, to hunt numbers designated by eligible applicants as their third, fourth, or fifth choices.
e. Before each of the three passes listed under (C)(2)(c)(i), (ii), and (iii), each application is processed through the Department's random number generator program. A random number is assigned to each application; an additional random number is assigned to each application for each group bonus point, including the Education and Loyalty bonus points. Only the lowest random number generated for an application is used in the computer draw process. A new random number is generated for each application for each pass of the computer draw.
f. If the bag limit is more than one per calendar year, or if there are unissued hunt permit-tags remaining after the random computer draw, the Department shall ensure these hunt permit-tags are available on a first-come, first-served basis as specified in the annual hunt permit-tag application schedule.

**D.** A person may purchase hunt permit-tags equal to the bag limit for a genus.
1. A person shall not exceed the established bag limit for that genus.
2. A person shall not apply for any additional hunt-permit-tags if the person has reached the bag limit for that genus during the same calendar year.
3. A person who surrenders a tag in compliance with R12-4-118 is eligible to apply for another hunt permit-tag for the same genus during the same calendar year, provided the person has not reached the bag limit for that genus.

**E.** The Department shall make available to nonresidents:
1. For bighorn sheep and bison, no more than one hunt permit-tag or 10% of the total hunt permit-tags, whichever is greater, for bighorn sheep or bison in any computer draw. The Department shall not make available more than 50% nor more than two bighorn sheep or bison hunt permit-tags of the total in any hunt number.
2. For antlered deer, bull elk, pronghorn, Sandhill crane, or turkey, no more than 10%, rounded down to the next lowest number, of the total hunt permit-tags in any hunt number. If a hunt number for antlered deer, bull elk, pronghorn, Sandhill crane, or turkey has 10 or fewer hunt permit-tags, no more than one hunt permit-tag will be made available unless the hunt number has only one hunt permit-tag, then that tag shall only be available to a resident.

**F.** The Commission may, at a public meeting, increase the number of hunt permit-tags issued to nonresidents in a computer draw when necessary to meet management objectives.

**G.** The Department shall not issue under subsection (C)(2)(c), more than half of the hunt permit-tags made available to nonresidents under subsection (E).

**H.** A nonresident cap established under this Section applies only to hunt permit-tags issued by computer draw under subsections (C)(2)(c) and (d).

**Authorizing Statute**

General: A.R.S. § 17-231(A)(1)

Specific: A.R.S. §§ 17-102, 17-231(A)(2), 17-231(A)(3), 17-331(A), 17-332(A), and 17-371

**Historical Note**

Adopted effective March 1, 1991; filed February 28, 1991 (Supp. 91-1). Amended effective January 1, 1993; filed December 18, 1992 (Supp. 92-4). Amended effective January 1, 1996; filed in the Office of the Secretary of State December 18, 1995 (Supp. 95-4). Amended effective January 1, 1997; filed with the Office of the Secretary of State November 7, 1996 (Supp. 96-4). Amended by final rulemaking at 9 A.A.R. 610, effective April 6, 2003 (Supp. 03-1). Amended by final rulemaking at 11 A.A.R. 1183, effective May 2, 2005 (Supp. 05-1). Amended by final rulemaking at 12 A.A.R. 291, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 3025, effective January 2, 2016 (Supp. 15-4). Amended by final rulemaking at 27 A.A.R. 283, effective July 1, 2021 (Supp. 21-1).

**R12-4-115. Restricted Nonpermit-Tags; Supplemental Hunts and Hunter Pool**

# ARTICLE 1. DEFINITIONS AND GENERAL PROVISIONS

**A.** For the purposes of this Section, the following definitions apply:
"Companion tag" means a restricted nonpermit-tag valid for a supplemental hunt prescribed by Commission Order that exactly matches the season dates and open areas of another big game hunt, for which a hunt number is assigned and hunt permit-tags are issued through the computer draw.
"Emergency season" means a season established for reasons constituting an immediate threat to the health, safety or management of wildlife or its habitat, or public health or safety.
"Management objectives" means goals, recommendations, or guidelines contained in Department or Commission-approved wildlife management plans, which include hunt guidelines, operational plans, or hunt recommendations.
"Hunter pool" means all persons who have submitted an application for a supplemental hunt.
"Restricted nonpermit-tag" means a permit limited to a season for a supplemental hunt established by the Commission for the following purposes:
Take of depredating wildlife as authorized under A.R.S. § 17-239;
Take of wildlife under an Emergency Season; or
Take of wildlife under a population management hunt if the Commission has prescribed nonpermit-tags by Commission Order for the purpose of meeting management objectives because regular seasons are not, have not been, or will not be sufficient or effective to achieve management objectives.

**B.** The Commission shall, by Commission Order, open a season or seasons and prescribe a maximum number of restricted nonpermit-tags to be made available under this Section.

**C.** The Department shall implement a population management hunt under the open season or seasons established under subsection (B) if the Department determines the:
1. Regular seasons have not met or will not meet management objectives;
2. Take of wildlife is necessary to meet management objectives; and
3. Issuance of a specific number of restricted nonpermit-tags is likely to meet management objectives.

**D.** To implement a population management hunt established by Commission Order, the Department shall:
1. Select season dates, within the range of dates listed in the Commission Order;
2. Select specific hunt areas, within the range of hunt areas listed in the Commission Order;
3. Select the legal wildlife that may be taken from the list of legal wildlife identified in the Commission Order;
4. Determine the number of restricted nonpermit-tags that will be issued from the maximum number of tags authorized in the Commission Order.
   a. The Department shall not issue more restricted nonpermit-tags than the maximum number prescribed by Commission Order.
   b. A restricted nonpermit-tag is valid only for the supplemental hunt for which it is issued.

**E.** The provisions of R12-4-104, R12-4-107, R12-4-114, and R12-4-609 do not apply to a supplemental hunt.

**F.** If the Department anticipates the normal fee structure will not generate adequate participation, then the Department may reduce restricted nonpermit-tag fees up to 75%, as authorized under A.R.S. § 17-239(D).

**G.** A supplemental hunt application submitted in accordance with this Section does not invalidate any other application submitted by the person for a hunt permit-tag.
1. The Department shall not accept a group application, as defined under R12-4-104, for a restricted nonpermit-tag.
2. An applicant shall not apply for or obtain a restricted nonpermit-tag to take wildlife in excess of the bag limit established by Commission Order.
3. The issuance of a restricted nonpermit-tag does not authorize a person to exceed the bag limit established by Commission Order.

**H.** To participate in a supplemental hunt, a person shall:
1. Obtain a restricted nonpermit-tag as prescribed under this Section, and
2. Possess a valid hunting license. If the applicant does not possess a valid license or the license will expire before the supplemental hunt, the applicant shall purchase an appropriate license.

**I.** The Department or its authorized agent shall maintain a hunter pool for supplemental hunts other than companion tag hunts.
1. The Department shall purge and renew the hunter pool on an annual basis.
2. An applicant for a restricted nonpermit-tag under this subsection shall submit a hunt permit-tag application to the Department for each desired species. The application is available at any Department office, an authorized agent, or on the Department's website. The applicant shall provide all of the following information on the application:
   a. The applicant's:
      i. Name;
      ii. Department identification number, when applicable;
      iii. Mailing address;
      iv. Number of years of residency immediately preceding application;

v. Date of birth;
vi. Social Security Number, as required under A.R.S. §§ 25-320(P) and 25-502(K); and
vii. Daytime and evening telephone numbers,
b. The species that the applicant would like to hunt, if selected, and
c. The applicant's hunting license number.

3. In addition to the requirements established under subsection (I)(2), at the time of application the applicant shall submit the application fee required under R12-4-102. A separate application and application fee is required for each species the applicant submits an application for.
4. When issuing a restricted nonpermit-tag, the Department or its authorized agent shall randomly select applicants from the hunter pool.
   a. The Department or its authorized agent shall attempt to contact each randomly-selected applicant at least three times within a 24-hour period.
   b. If an applicant cannot be contacted or is unable to participate in the supplemental hunt, the Department or its authorized agent shall return the application to the hunter pool and draw another application.
   c. In compliance with subsection (D)(4), the Department or its authorized agent shall select no more applications after the number of restricted nonpermit-tags establish by Commission Order are issued.
5. The Department shall reserve a restricted nonpermit-tag for an applicant only for the period specified by the Department when contact is made with the applicant. If an applicant fails to purchase the nonpermit-tag within the specified period, the Department or its authorized agent shall:
   a. Remove the person's application from the hunter pool, and
   b. Offer that restricted nonpermit-tag to another person whose application is drawn from the hunter pool as established under this Section.
6. A person who participates in a supplemental hunt through the hunter pool shall be removed from the supplemental hunter pool for the genus for which the person participated. A hunter pool applicant who is selected and who wishes to participate in a supplemental hunt shall submit the following to the Department to obtain a restricted nonpermit-tag:
   a. The fee for the tag as established under R12-4-102 or subsection (F) if the fee has been reduced, and
   b. The applicant's hunting license number. The applicant shall possess an appropriate license that is valid at the time of the supplemental hunt. The applicant shall purchase a license at the time of application when:
      i. The applicant does not possess a valid license, or
      ii. The applicant's license will expire before the supplemental hunt.
7. A person who participates in a supplemental hunt shall not reapply for the hunter pool for that genus until the hunter pool is renewed.

**J.** The Department shall only make a companion tag available to a person who possesses a matching hunt permit-tag and not a person from the hunter pool. Authorization to issue a companion tag occurs when the Commission establishes a hunt in Commission Order under subsection (B).

1. The requirements of subsection (D) are not applicable to a companion tag issued under this subsection.
2. To obtain a companion tag under this subsection, an applicant shall submit a hunt permit-tag application to the Department. The application is available at any Department office and on the Department's website. The applicant shall provide all of the following information on the application, the applicant's:
   a. Name,
   b. Mailing address,
   c. Department identification number, and
   d. Hunt permit-tag number, to include the hunt number and permit number, corresponding with the season dates and open areas of the supplemental hunt.
3. In addition to the requirements established under subsection (J)(2), at the time of application the applicant shall:
   a. Provide verification that the applicant lawfully obtained the hunt permit-tag for the hunt described under this subsection by presenting the hunt permit-tag to a Department office for verification, and
   b. Submit all applicable fees required under R12-4-102.

**Authorizing Statute**

General: A.R.S. § 17-231(A)(1)

Specific: A.R.S. §§ 17-102, 17-231(A)(2), 17-231(A)(3), 17-239, 17-331(A), and 17-332(A)

**Historical Note**

Adopted effective June 13, 1977 (Supp. 77-3). Former Section R12-4-14 renumbered as Section R12-4-115 without change effective August 13, 1981 (Supp. 81-4). Former Section R12-4-115 renumbered as Section R12-4-607 without change effective December 22, 1987 (Supp. 87-4). New Section R12-4-115 adopted effective March 1, 1991; filed February 28, 1991 (Supp. 91-1). Amended effective January 1, 1993; filed December 18, 1992 (Supp. 92-4). Amended by

final rulemaking at 9 A.A.R. 610, effective April 6, 2003 (Supp. 03-1). Amended by final rulemaking at 11 A.A.R. 991, effective April 2, 2005; amended by final rulemaking at 11 A.A.R. 1177, effective May 2, 2005 (Supp. 05-1). Amended by final rulemaking at 12 A.A.R. 291, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 19 A.A.R. 3225, effective January 1, 2014 (Supp. 13-3). Amended by final rulemaking at 21 A.A.R. 3025, effective January 2, 2016 (Supp. 15-4). Amended by final rulemaking at 27 A.A.R. 283, effective July 1, 2021 (Supp. 21-1).

**R12-4-116. Issuance of Limited-Entry Permit-tag**

**A.** For the purposes of this Section, limited-entry permit-tags may be for terrestrial or aquatics species, or specific areas for terrestrial or aquatic species.

**B.** The Commission may, by Commission Order, open a limited-entry season or seasons and prescribe a maximum number of limited-entry permit-tags to be made available under this Section.

**C.** The Department may implement limited-entry permit-tags under the open season or seasons established in subsection (B) if the Department determines:
1. A season for a specific terrestrial or aquatic wildlife species, or specific area of the state, is in high demand;
2. Issuance of a specific number of limited-entry permit-tags will not adversely affect management objectives for a species or area;
3. Surrendered hunt permit-tags, already approved by Commission Order, are available from hunts with high demand.

**D.** To implement a limited-entry season established by Commission Order, the Department shall:
1. Select season dates, within the range of dates listed in the Commission Order;
2. Select specific areas, within the range of areas listed in the Commission Order;
3. Select the legal wildlife that may be taken from the list of legal wildlife identified in the Commission Order;
4. Determine the number of limited-entry permit-tags that will be issued from the maximum number authorized in the Commission Order.
   a. The Department shall not issue more limited-entry permit-tags than the maximum number prescribed by Commission Order.
   b. A limited-entry permit-tag is valid only for the limited-entry season for which it is issued.

**E.** The provisions of R12-4-104, R12-4-107, R12-4-114, and R12-4-609 do not apply to limited-entry seasons.

**F.** A limited-entry permit-tag application submitted in accordance with this Section does not invalidate any other application submitted by the person for a hunt permit-tag.

**G.** The Department shall not accept a group application, as defined under R12-4-104, for a limited-entry season.

**H.** To participate in a limited-entry season, a person shall:
1. Obtain a limited-entry permit-tag as prescribed under this Section, and
2. Possess a valid hunting, fishing or combination license at the time the limited-entry permit-tag is awarded. If the applicant does not possess a valid license or the license will expire before the limited-entry season, the applicant shall purchase an appropriate license. A valid hunting, fishing or combination license is not required at the time of application.

**I.** A limited-entry permit-tag is valid only for the person named on the permit-tag, for the season dates on the permit-tag, and the species for which the permit-tag is issued.
1. Possession of a limited-entry permit-tag shall not invalidate any other hunt permit-tag for that species.
2. Big game taken under the authority of this limited-entry permit-tag shall not count towards the established bag limit for that species.

**J.** The Department shall maintain the applications submitted for limited-entry permit-tags.
1. An applicant for a limited-entry season under this subsection shall submit a limited-entry permit-tag application to the Department for each limited-entry season established. The application is available at any Department office and on the Department's website. The applicant shall provide all of the following information on the application:
   a. The applicant's personal information:
      i. Name,
      ii. Date of birth,
      iii. Social security number, as required under A.R.S. §§ 25-320(P) and 25-502(K), when applicable;
      iv. Department identification number, when applicable;
      v. Residency status and number of years of residency immediately preceding application, when applicable;
      vi. Mailing address, when applicable;
      vii. Physical address;
      viii. Telephone number, when available; and
      ix. Email address, when available;
   b. The limited-entry season the applicant would like to participate in, and
   c. Certify the information provided on the application is true and accurate.

2. In addition to the requirements established under subsection (J)(1), at the time of application the applicant shall submit the application fee required under R12-4-102. A separate application and application fee are required for each limited-entry season an applicant submits an application.
3. When issuing a limited-entry permit-tag for a terrestrial or aquatic wildlife species, the Department shall randomly select applicants for each designated limited-entry season.
4. When issuing a limited-entry permit-tag for a particular water, the Department shall randomly select applicants for each date limited-entry permit-tags are available until no more are available for that date.
5. In compliance with subsection (D)(4), the Department shall select no more applications after the number of limited-entry permits establish by Commission Order are issued.

**Authorizing Statute**

General: A.R.S. § 17-231(A)(1)
Specific: A.R.S. §§ 17-231(A)(7) and 17-315(B)(1)

**Historical Note**

Adopted effective January 10, 1979 (Supp. 79-1). Former Section R12-4-15 renumbered as Section R12-4-116 without change effective August 13, 1981 (Supp. 81-4). Amended effective December 18, 1985 (Supp. 85-6). Section R12-4-116 repealed, new Section R12-4-116 adopted effective March 1, 1991; filed February 28, 1991 (Supp. 91-1). Amended by final rulemaking at 12 A.A.R. 291, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 3025, effective January 2, 2016 (Supp. 15-4). Amended by final rulemaking at 21 A.A.R. 3025, effective January 2, 2016 (Supp. 15-4). R12-4-116 renumbered to R12-4-126; new Section R12-4-116 made by final rulemaking at 27 A.A.R. 283, effective July 1, 2021 (Supp. 21-1).

**R12-4-117. Indian Reservations**

A state license, permit, or tag is not required to hunt or fish on any Indian reservation in this State. Wildlife lawfully taken on an Indian reservation may be transported or processed anywhere in the State if it can be identified as to species and legality as provided in A.R.S. § 17-309(A)(19). All wildlife transported anywhere in this State is subject to inspection under the provisions of A.R.S. § 17-211(E)(4).

**Authorizing Statute**

General: A.R.S. § 17-231(A)(1)
Specific: A.R.S. §§ 17-231(A)(7) and 17-315(B)(1)

**Historical Note**

Former Section R12-4-02 renumbered as Section R12-4-117 without change effective August 13, 1981 (Supp. 81-4). Former Section R12-4-117 repealed, new Section R12-4-117 adopted effective April 10, 1984 (Supp. 84-2). Amended by final rulemaking at 12 A.A.R. 291, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 3025, effective January 2, 2016 (Supp. 15-4).

**R12-4-118. Hunt Permit-tag Surrender**

**A.** The Commission authorizes the Department to implement a tag surrender program if the Director finds:
1. The Department has the administrative capacity to implement the program;
2. There is public interest in such a program; or
3. The tag surrender program is likely to meet the Department's revenue objectives.

**B.** The tag surrender program is limited to a person who has a valid and active membership in a Department membership program.
1. The Department may establish a membership program that offers a person various products and services.
2. The Department may establish different membership levels based on the type of products and services offered and set prices for each level.
   a. The lowest membership level may include the option to surrender one hunt permit-tag during the membership period.
   b. A higher membership level may include the option to surrender more than one hunt permit-tag during the membership period.
3. The Department may establish terms and conditions for the membership program in addition to the following:
   a. Products and services to be included with each membership level.
   b. Membership enrollment is available online only and requires a person to create a portal account.
   c. Membership is not transferable.
   d. No refund shall be made for the purchase of a membership, unless an internal processing error resulted in the collection of erroneous fees.

**C.** The tag surrender program is restricted to the surrender of an original, unused hunt permit-tag obtained through a computer draw.

1. A person must have a valid and active membership in the Department's membership program with at least one unredeemed tag surrender that was valid:
   a. On the application deadline date for the computer draw in which the hunt permit-tag being surrendered was drawn, and
   b. At the time of tag surrender.
2. A person who chooses to surrender an original, unused hunt permit-tag shall do so prior to the close of business the day before the hunt begins for which the tag is valid.
3. A person may surrender an unused hunt permit-tag for a specific species only once before any bonus points accrued for that species must be expended.

**D.** A person who wants to surrender an original, unused hunt permit-tag or an authorized nonprofit organization that wants to return a donated original, unused hunt permit-tag shall comply with all of the following conditions:
1. Submit a completed application form to any Department office. The application form is available at any Department office and on the Department's website. The applicant shall provide all of the following information on the application form:
   a. The applicant's:
      i. Name,
      ii. Mailing address,
      iii. Department identification number,
      iv. Membership number,
   b. Applicable hunt number,
   c. Applicable hunt permit-tag number, and
   d. Any other information required by the Department.
2. A person shall surrender the original, unused hunt permit-tag as required under subsection (C) in the manner described by the Department as indicated on the application form.

**E.** Upon receipt of an original, unused hunt permit-tag surrendered in compliance with this Section, the Department shall:
1. Restore the person's bonus points that were expended for the surrendered tag, and
2. Award the bonus point the person would have accrued had the person been unsuccessful in the computer draw for the surrendered tag.
3. Not refund any fees the person paid for the surrendered tag, as prohibited under A.R.S. § 17-332(E).

**F.** The Department may, at its sole discretion, re-issue or destroy the surrendered original, unused hunt permit-tag. When re-issuing a tag, the Department may use any of the following methods in no order of preference:
1. Re-issuing the surrendered tag, beginning with the highest membership level in the Department's membership program, to a person who has a valid and active membership in that membership level and who would have been next to receive a tag for that hunt number, as evidenced by the random numbers assigned during the Department's computer draw process;
2. Re-issuing the surrendered tag to a person who has a valid and active membership in any tier of the Department's membership program with a tag surrender option and who would have been next to receive a tag for that hunt number, as evidenced by the random numbers assigned during the Department's computer draw process;
3. Re-issuing the surrendered tag to an eligible person who would have been next to receive a tag for that hunt number, as evidenced by the random numbers assigned during the Department's computer draw process; or
4. Offering the surrendered tag through the first-come, first-served process.

**G.** For subsections (F)(1), (2), and (3); if the Department cannot contact a person qualified to receive a tag or the person declines to purchase the surrendered tag, the Department shall make a reasonable attempt to contact and offer the surrendered tag to the next person qualified to receive a tag for that hunt number based on the assigned random number during the Department's computer draw process. This process will continue until the surrendered tag is either purchased or the number of persons qualified is exhausted. For the purposes of subsections (G) and (H), the term "qualified" means a person who satisfies the conditions for re-issuing a surrendered tag as provided under the selected re-issuing method.

**H.** When the re-issuance of a surrendered tag involves a group application and one or more members of the group is qualified under the particular method for re-issuing the surrendered tag, the Department shall offer the surrendered tag first to the applicant designated "A" if qualified to receive a surrendered tag.
1. If applicant "A" chooses not to purchase the surrendered tag or is not qualified, the Department shall offer the surrendered tag to the applicant designated "B" if qualified to receive a surrendered tag.
2. This process shall continue with applicants "C" and then "D" until the surrendered tag is either purchased or all qualified members of the group application choose not to purchase the surrendered tag.

**I.** A person who receives a surrendered tag shall submit the applicable tag fee as established under R12-4-102 and provide their valid hunting license number.
1. A person receiving the surrendered tag as established under subsections (F)(1), (2), and (3) shall expend all bonus

points accrued for that genus, except any accrued Education and loyalty bonus points.

2. The applicant shall possess a valid hunting license at the time of purchasing the surrendered tag and at the time of the hunt for which the surrendered tag is valid. If the person does not possess a valid license at the time the surrendered tag is offered, the applicant shall purchase a license in compliance with R12-4-104.
3. The issuance of a surrendered tag does not authorize a person to exceed the bag limit established by Commission Order.
4. It is unlawful for a person to purchase a surrendered tag when the person has reached the bag limit for that genus during the same calendar year.

**J.** A person is not eligible to petition the Commission under R12-4-611 for reinstatement of any expended bonus points, except as authorized under R12-4-107(M).

**K.** For the purposes of this Section and R12-4-121, "valid and active membership" means a paid and unexpired membership in any level of the Department's membership program.

**Authorizing Statute**

General: A.R.S. § 17-231(A)(1)

Specific: A.R.S. §§ 17-102, 17-231(A)(2), 17-231(A)(8), and 41-2752

**Historical Note**

Adopted effective April 8, 1983 (Supp. 83-2). Section R12-4-118 repealed effective March 1, 1991; filed February 28, 1991 (Supp. 91-1). New Section made by final rulemaking at 21 A.A.R. 3025, effective January 2, 2016 (Supp. 15-4). Amended by final rulemaking at 27 A.A.R. 283, effective July 1, 2021 (Supp. 21-1).

**R12-4-119. Arizona Game and Fish Department Reserve**

**A.** The Commission shall establish an Arizona Game and Fish Department Reserve under A.R.S. § 17-214, consisting of commissioned reserve officers and noncommissioned reserve volunteers.

**B.** Commissioned reserve officers shall:

1. Meet and maintain the minimum qualifications and training requirements necessary for peace officer certification by the Arizona Peace Officer Standards and Training Board as prescribed under 13 A.A.C. 4, and
2. Assist with wildlife enforcement patrols, boating enforcement patrols, off-highway vehicle enforcement patrols, special investigations, and other enforcement and related non-enforcement duties as the Director designates.

**C.** Noncommissioned reserve volunteers shall:

1. Meet qualifications that the Director determines are related to the services to be performed by the volunteer and the success or safety of the program mission, and
2. Perform any non-enforcement duties designated by the Director for the purposes of conservation and education to maximize paid staff time.

**Authorizing Statute**

General: A.R.S. § 17-231(A)(1)

Specific: A.R.S. §§ 17-231(A)(1) and 17-214

**Historical Note**

Adopted effective September 29, 1983 (Supp. 83-5). Section R12-4-119 repealed, new Section R12-4-119 adopted effective March 1, 1991; filed February 28, 1991 (Supp. 91-1). Amended by final rulemaking at 8 A.A.R. 1702, effective March 11, 2002 (Supp. 02-1). Amended by final rulemaking at 12 A.A.R. 291, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 3025, effective January 2, 2016 (Supp. 15-4).

**R12-4-120. Issuance, Sale, and Transfer of Special Big Game License-tags**

**A.** An incorporated nonprofit organization that is tax exempt under section 501(c) seeking special big game license-tags as authorized under A.R.S. § 17-346 shall submit a proposal to the Director of the Arizona Game and Fish Department from March 1 through May 31 preceding the year when the tags may be legally used. The proposal shall include all of the following information for each member of the organization coordinating the proposal:

1. The name of the organization making the proposal and the:
   a. Name;
   b. Mailing address;
   c. E-mail address, when available; and
   d. Telephone number;
2. Organization's previous involvement with wildlife management;
3. Organization's conservation objectives;
4. Number of special big game license-tags and the species requested;
5. Purpose to be served by the issuance of these tags;
6. Method or methods by which the tags will be marketed and sold;

7. Proposed fund raising plan;
8. Estimated amount of money to be raised and the rationale for that estimate;
9. Any special needs or particulars relevant to the marketing of the tags;
10. A copy of the organization's articles of incorporation and evidence that the organization has tax-exempt status under Section 501(c) of the Internal Revenue Code, unless a current and correct copy is already on file with the Department;
11. Statement that the person or organization submitting the proposal agrees to the conditions established under A.R.S. § 17-346 and this Section;
12. Printed name and signature of the president and secretary-treasurer of the organization or their equivalent; and
13. Date of signing.

**B.** The Director shall return to the organization any proposal that does not comply with the requirements established under A.R.S. § 17-346 and this Section. Because proposals are reviewed for compliance after the May 31 deadline, an organization that receives a returned proposal cannot resubmit a corrected proposal, but may submit a proposal that complies with the requirements established under A.R.S. § 17-346 and this Section the following year.

**C.** The Director shall submit all timely and valid proposals to the Commission for consideration.
1. In selecting an organization, the Commission shall consider the:
   a. Written proposal;
   b. Proposed uses for tag proceeds;
   c. Qualifications of the organization as a fund raiser;
   d. Proposed fund raising plan;
   e. Organization's previous involvement with wildlife management; and
   f. Organization's conservation objectives.
2. The Commission may accept any proposal in whole or in part and may reject any proposal if it is in the best interest of wildlife to do so.
3. Commission approval and issuance of any special big game license-tag is contingent upon compliance with this Section.

**D.** A successful organization shall agree in writing to all of the following:
1. To underwrite all promotional and administrative costs to sell and transfer each special big game license-tag;
2. To transfer all proceeds to the Department within 90 days of the date that the organization sells or awards the tag;
3. To sell and transfer each special big game license-tag as described in the proposal; and
4. To provide the Department with the name, address, and physical description of each person to whom a special big game license-tag is to be issued within 60 days of the sale.

**E.** The Department and the successful organization shall coordinate on:
1. The specific projects or purposes identified in the proposal;
2. The arrangements for the deposit of the proceeds, the accounting procedures, and final audit; and
3. The dates when the wildlife project or purpose will be accomplished.

**F.** The Department shall dedicate all proceeds generated by the sale or transfer of a special big game license-tag to the management of the species for which the tag was issued.
1. A special license-tag shall not be issued until the Department receives all proceeds from the sale of license-tags.
2. The Department shall not refund proceeds.

**G.** A special big game license-tag is valid only for the person named on the tag, for the season dates on the tag, and for the species for which the tag was issued.
1. A hunting license is required for the tag to be valid.
2. Possession of a special big game license-tag shall not invalidate any other big game tag or application for any other big game tag.
3. Wildlife taken under the authority of a special big game license-tag shall not count towards the established bag limit for that species.

**H.** A person who wins the special big game license-tag through auction or raffle is prohibited from selling the special big game license-tag to another person.

**Authorizing Statute**

General: A.R.S. § 17-231(A)(1)

Specific: A.R.S. §§ 17-102, 17-231(A)(2), 17-231(A)(3), 17-231(A)(8), 17-331(A), 17-332(A), and 17-346

**Historical Note**

Adopted effective September 22, 1983 (Supp. 83-5). Amended effective April 7, 1987 (Supp. 87-2). Correction, balance of language in subsection (I) is deleted as certified effective April 7, 1987 (Supp. 87-4). Amended effective March 1, 1991; filed February 28, 1991 (Supp. 91-1). Amended by final rulemaking at 12 A.A.R. 291, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 3025, effective January 2, 2016 (Supp. 15-4). Amended by final rulemaking at 27 A.A.R. 283, effective July 1, 2021 (Supp. 21-1).

**R12-4-121. Tag Transfer**

**A.** For the purposes of this Section:
"Authorized nonprofit organization" means a nonprofit organization approved by the Department to receive donated unused tags.
"Unused tag" means a hunt permit-tag, limited-entry permit-tag, nonpermit-tag, or special license tag that has not been attached to any wildlife.

**B.** A parent, grandparent, or guardian issued a hunt permit-tag, limited-entry permit-tag, nonpermit-tag, or special license tag may transfer the unused tag to the parent's, grandparent's, or guardian's minor child or grandchild.
1. A parent, grandparent, or guardian issued a tag may transfer the unused tag to a minor child or grandchild at any time prior to the end of the season for which the unused tag was issued.
2. A parent, grandparent, or guardian may transfer the unused tag by providing all of the following documentation in person at any Department office:
   a. Proof of ownership of the unused tag to be transferred,
   b. The unused tag, and
   c. The minor's valid hunting license.
3. If a parent, grandparent, or legal guardian is deceased, the personal representative of the person's estate may transfer an unused tag to an eligible minor. The person acting as the personal representative shall present:
   a. The deceased person's death certificate, and
   b. Proof of the person's authority to act as the personal representative of the deceased person's estate.
4. To be eligible to receive an unused tag from a parent, grandparent, or legal guardian, the minor child shall meet the criteria established under subsection (D).
5. A minor child or grandchild receiving an unused tag from a parent, grandparent, or legal guardian shall be accompanied into the field by any grandparent, parent, or legal guardian of the minor child.

**C.** A person issued a tag or the person's legal representative may donate the unused tag to a an authorized nonprofit organization for use by a minor child with a life threatening medical condition or permanent physical disability or a veteran of the Armed Forces of the United States with a service-connected disability.
1. The person or legal representative who donates the unused tag shall provide the authorized nonprofit organization with a written statement indicating the unused tag is voluntarily donated to the organization.
2. An authorized nonprofit organization receiving a donated tag under this subsection may transfer the unused tag to an eligible minor child or veteran by contacting any Department office.
   a. To obtain a transfer, the nonprofit organization shall:
      i. Provide proof of donation of the unused tag to be transferred;
      ii. Provide the unused tag;
      iii. Provide proof of the minor child's or veteran's valid hunting license.
   b. To be eligible to receive a donated unused tag from an authorized nonprofit organization, a minor child shall meet the criteria established under subsection (D).
3. A person who donates an original, unused hunt permit-tag issued in a computer drawing to an authorized nonprofit organization may submit a request to the Department for the reinstatement of the bonus points expended for that unused tag, provided all of the following conditions are met:
   a. The person has a valid and active membership in the Department's membership program with at least one unredeemed tag surrender on the application deadline date, for the computer draw in which the hunt permit-tag being surrendered was drawn, and at the time of tag surrender.
   b. The person submits a completed application form as described under R12-4-118;
   c. The person provides acceptable proof to the Department that the tag was transferred to an authorized nonprofit organization; and
   d. The person submits the request to the Department:
      i. No later than 60 days after the date on which the tag was donated to an authorized nonprofit organization; and
      ii. No less than 30 days prior to the computer draw application deadline for that genus, as specified in the hunt permit-tag application schedule.

**D.** To receive an unused tag authorized under subsections (B) or (C), an eligible minor child shall meet the following criteria:
1. Possess a valid hunting license,
2. Has not reached the applicable annual or lifetime bag limit for that genus, and
3. Is 10 to 17 years of age on the date of the transfer. A minor child under the age of 14 shall have satisfactorily completed a Department-sanctioned hunter education course before the beginning date of the hunt.

**E.** To receive an unused tag authorized under subsection (C), an eligible veteran of the Armed Forces of the United States

with a service-connected disability shall meet the following criteria:
1. Possess a valid hunting license, and
2. Has not reached the applicable annual or lifetime bag limit for that genus.

**F.** A nonprofit organization is eligible to apply for authorization to receive a donated unused tag, provided the nonprofit organization:
1. Is qualified under section 501(c)(3) of the United States Internal Revenue Code, and
2. Affords opportunities and experiences to:
   a. Children with life-threatening medical conditions or physical disabilities, or
   b. Veterans with service-connected disabilities.
3. This authorization shall remain in effect unless revoked by the Department for noncompliance with the requirements established under A.R.S. § 17-332 or this Section.
4. A nonprofit organization shall apply for authorization by submitting an application to any Department office. The application form is furnished by the Department and is available at any Department office. A nonprofit organization shall provide all of the following information on the application:
   a. Nonprofit organization's information:
      i. Name,
      ii. Physical address,
      iii. Telephone number;
   b. Contact information for the person responsible for ensuring compliance with this Section:
      i. Name,
      ii. Address,
      iii. Telephone number;
   c. Signature of the president and secretary-treasurer of the organization or their equivalents; and
   d. Date of signing.
5. In addition to the application, a nonprofit organization shall provide all of the following:
   a. A copy of the organization's articles of incorporation and evidence that the organization has tax-exempt status under Section 501(c)(3) of the Internal Revenue Code, unless a current and correct copy is already on file with the Department;
   b. Document identifying the organization's mission;
   c. A letter stating how the organization will participate in the Big Game Tag Transfer program; and
   d. A statement that the person or organization submitting the application agrees to the conditions established under A.R.S. § 17-332 and this Section.
6. An applicant who is denied authorization to receive donated tags under this Section may appeal to the Commission as provided under A.R.S. Title 41, Chapter 6, Article 10.

**Authorizing Statute**

General: A.R.S. § 17-231(A)(1)

Specific: A.R.S. §§ 17-102, 17-231(A)(2), 17-231(A)(3), 17-231(A)(8), 17-331(A), 17-332(A), and 17-346

**Historical Note**

Adopted effective October 10, 1986, filed September 25, 1986 (Supp. 86-5). Rule expired one year from effective date of October 10, 1986. Rule readopted without change for one year effective January 22, 1988, filed January 7, 1988 (Supp. 88-1). Rule expired effective January 22, 1989 (Supp. 89-1). New Section R12-4-121 adopted effective March 1, 1991; filed February 28, 1991 (Supp. 91-1). Repealed effective January 1, 1993; filed December 18, 1992 (Supp. 92-4). New Section made by final rulemaking at 7 A.A.R. 2732, effective July 1, 2001 (Supp. 01-2). Amended by final rulemaking at 12 A.A.R. 291, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 18 A.A.R. 1195, effective June 30, 2012 (Supp. 12-2). Amended by final rulemaking at 21 A.A.R. 3025, effective January 2, 2016 (Supp. 15-4). Amended by final rulemaking at 27 A.A.R. 283, effective July 1, 2021 (Supp. 21-1).

### R12-4-122. Handling, Transporting, Processing, and Storing of Game Meat Given to Public Institutions and Charitable Organizations

**A.** Under A.R.S. § 17-240 and this Section, the Department may donate the following wildlife, except that the Department shall not donate any portion of wildlife killed in a collision with a motor vehicle or wildlife that died subsequent to immobilization by any chemical agent:
1. Big game;
2. Upland game birds;
3. Migratory game birds;
4. Game fish.

**B.** The Director shall not authorize an employee to handle game meat for the purpose of this Section until the employee has

satisfactorily completed a course designed to give the employee the expertise necessary to protect game meat recipients from diseased or unwholesome meat products. A Department employee shall complete a course that is either conducted or approved by the State Veterinarian. The employee shall provide a copy of a certificate that demonstrates satisfactory completion of the course to the Director.

**C.** Only an employee authorized by the Director shall determine if game meat is safe and appropriate for donation. An authorized Department employee shall inspect and field dress each donated carcass before transporting it. The Department shall not retain the game meat in storage for more than 48 continuous hours before transporting it, and shall reinspect the game meat for wholesomeness before final delivery to the recipient.

**D.** Final processing and storage is the responsibility of the recipient.

**Authorizing Statute**

General: A.R.S. § 17-231(A)(1)

Specific: A.R.S. §§ 17-102, 17-211(E)(4), 17-233, 17-239(D), and 17-240(A)

**Historical Note**

Adopted effective August 6, 1991 (Supp. 91-3). Amended by final rulemaking at 12 A.A.R. 291, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 27 A.A.R. 283, effective July 1, 2021 (Supp. 21-1).

**R12-4-123. Expenditure of Funds**

**A.** The Director may expend funds available through appropriations, licenses, gifts, or other sources, in compliance with applicable laws and rules, and:

1. For purposes designated by lawful Commission agreements and Department guidelines;
2. In agreement with budgets approved by the Commission;
3. In agreement with budgets appropriated by the legislature;
4. With regard to a gift, for purposes designated by the donor, the Director shall expend undesignated donations for a public purpose in furtherance of the Department's responsibilities and duties.

**B.** The Director shall ensure that the Department implements internal management controls to comply with subsection (A) and to deter unlawful use or expenditure of funds.

**Authorizing Statute**

General: A.R.S. § 17-231(A)(1)

Specific: A.R.S. §§ 17-231(A)(6) and 17-231(A)(8)

**Historical Note**

Adopted effective July 12, 1996 (Supp. 96-3). Amended by final rulemaking at 12 A.A.R. 291, effective March 11, 2006 (Supp. 06-1).

**R12-4-124. Proof of Domicile**

**A.** An applicant may be required to present acceptable proof of domicile in Arizona to the Department upon request. For the purposes of this rule, "current address" means the address an applicant inhabits at the time of application for any license, permit, stamp, or tag offered by the Department.

**B.** Acceptable proof of domicile establishes a person's true, fixed, and permanent home and principal residence. Acceptable proof to aid in establishing a person's domicile in Arizona may include, but is not limited to, one or more of the following lawfully obtained documents:

1. Arizona Driver's License displaying a current address;
2. Arizona Resident State Income Tax Return filing;
3. Arizona school records containing satisfactory proof of identity and relationship of the parent or guardian to the minor child, when applicable;
4. Arizona Voter Registration Card displaying a current address;
5. Selective Service Registration Acknowledgement Card displaying a current address in Arizona;
6. Social Security Administration document indicating an address in Arizona; or
7. Current document or order issued by the U.S. military to an active-duty military service member identifying Arizona as state of legal residence or duty station.

**C.** In the event one of the documents listed under subsection (B) alone is not sufficient proof of domicile, additional documents may be required.

**Authorizing Statute**

General: A.R.S. § 17-231(A)(1)

Specific: A.R.S. § 17-101

**Historical Note**

New Section made by final rulemaking at 21 A.A.R. 3025, effective January 2, 2016 (Supp. 15-4). Amended by final rulemaking at 27 A.A.R. 283, effective July 1, 2021 (Supp. 21-1).

**R12-4-125. Public Solicitation or Event on Department Property**

**A.** All Department buildings, properties, and wildlife areas are designated non-public forums and are closed to all solicitations and events unless permitted by the Department.

**B.** A solicitation or event on Department property shall not:
1. Conflict with the Department's mission; or
2. Constitute partisan political activity, the activity of a political campaign, or influence in any way an election or the results thereof.

**C.** A request for permission to conduct a solicitation or event on Department property shall be directed to the responsible Regional Supervisor or Branch Chief who shall initially determine whether an application is required for the solicitation or event.

**D.** If it is determined that an application is required, the person may apply for a solicitation or event permit by submitting a completed solicitation or event application to any Department office or Department Headquarters, Director's Office, at 5000 W. Carefree Hwy, Phoenix, AZ 85086. The application form is furnished by the Department and available at all Department offices.
1. An applicant shall submit an application:
   a. Not more than six months prior to the solicitation or event; and
   b. Not less than 14 days prior to the desired date of the solicitation or event for solicitations other than the posting of advertising, handbills, leaflets, circulars, posters, or other printed materials; or
   c. Not less than 10 days prior to the desired date of the solicitation or event for solicitations involving only the posting of advertising, handbills, leaflets, circulars, posters, or other printed materials.
2. An applicant shall provide all of the following information on the application:
   a. Sponsor's name, address, and telephone number;
   b. Sponsor's e-mail address, when available;
   c. Contact person's name and telephone number, when the sponsor is an organization;
   d. Proposed date of the solicitation or event;
   e. Specific, proposed location for the solicitation or event;
   f. Starting and approximate concluding times;
   g. General description of the solicitation or event's purpose;
   h. Anticipated number of attendees, when applicable;
   i. Amount of fees to be charged to attendees, when applicable;
   j. Detailed description of any activity that will occur at the solicitation or event, including a detailed map of the solicitation or event and any equipment that will be used, e.g., tents, tables, etc.;
   k. Copies of any solicitation materials to be distributed to the public or to be posted on Department property;
   l. Copy of a current and valid license issued by the Arizona Department of Liquor Licenses and Control, required when the applicant intends to sell alcohol at the solicitation or event; and
   m. The contact person's signature and date. The person's signature on the application certifies that the sponsor:
      i. Assumes risk of injury to persons or property;
      ii. Agrees to hold harmless the state of Arizona, its officials, Departments, employees, and agents against all claims arising from the use of Department facilities;
      iii. Assumes responsibility for any damages or clean-up costs due to the solicitation or event, solicitation or event cleanup, or solicitation or event damage repair; and
      iv. Agrees to surrender the premises in a clean and orderly condition.

**E.** The Department may take any of the following actions to the extent necessary and in the best interest of the State:
1. Require the sponsor to furnish all necessary labor, material, and equipment for the solicitation or event;
2. Require the sponsor to post a deposit against damage and cleanup expense;
3. Require indemnification of the state of Arizona, its Departments, agencies, officers, and employees;
4. Require the sponsor to carry adequate insurance and provide certificates of insurance to the Department not less than ten business days before the solicitation or event. A certificate of insurance for a solicitation or event shall name the state of Arizona, its Departments, agencies, boards, commissions, officers, agents, and employees as additional insureds;
5. Require the sponsor to enter into written agreements with any vendors and subcontractors and require vendors and subcontractors to provide certificates of insurance to the Department not less than ten business days before the solicitation or event. A certificate of insurance for a solicitation or event shall name the state of Arizona, its Departments, agencies, boards, commissions, officers, agents, and employees as additional insureds;
6. Require the sponsor to provide medical support, security, and sanitary services, including public restrooms; and
7. Impose additional conditions not otherwise specified under this Section on the conduct of the solicitation or event.

**F.** The Department may consider the following criteria when determining whether any of the actions in subsection (E) are necessary and in the best interest of the state:
1. Previous experience with similar solicitations or events;
2. Deposits required for similar solicitations or events in Arizona;
3. Risk data; and
4. Medical, sanitary, and security services required for similar solicitations or events in Arizona and the cost of those services .

**G.** The Department shall designate the hours of use for Department property.

**H.** The Department shall inspect the solicitation or event site at the conclusion of activities and document any damage or cleanup costs incurred because of the solicitation or event. The sponsor shall be responsible for any cleanup or damage costs associated with the solicitation or event.

**I.** The sponsor shall not allow, without the express written permission of the Department, the possession, use, or consumption of alcoholic beverages at the solicitation or event site. When the Department provides written permission for the possession, use, or consumption of alcoholic beverages at the solicitation or event site, the sponsor shall provide to the Department:
1. A copy of a current and valid license issued by the Arizona Department of Liquor Licenses and Control to the sponsor and vendor, required when the applicant intends to sell alcohol at the solicitation or event; and
2. A liquor liability rider, included with the insurance certificate required under subsection (E)(4).

**J.** The sponsor shall not allow unlawful possession or use of drugs at the solicitation or event site.

**K.** The Department shall deny an application for any of the following reasons:
1. The solicitation or event interferes with the work of an employee or the daily business of the Department;
2. The solicitation or event conflicts with the time, place, manner, or duration of other approved or pending solicitations or events;
3. The content of the solicitation or event conflicts with or is unrelated to the Department's activities or its mission;
4. The solicitation or event presents a risk of injury or illness to persons or risk of damage to property;
5. The sponsor cannot demonstrate adequate compliance with applicable local, state, or federal laws, ordinances, codes, or regulations, or
6. The sponsor has not complied with the requirements of the application process or this Section.

**L.** At all times, the Department reserves the right to immediately remove or cause to be removed all obstructions or other hazards of the solicitation or event that could damage state property, inhibit egress, or poses a safety risk. The Department also reserves the right to immediately remove or cause to be removed any person damaging state property, inhibiting egress, or posing a threat to public health and safety.

**M.** The Department may revoke approval of a solicitation or event due to emergency circumstances or for failure to comply with this Section.

**N.** The Department shall send written notice of the denial or revocation of an approved permit. The notice shall contain the reason for the denial or revocation.

**O.** A sponsor:
1. Is liable to the Department for damage to Department property and any expense arising out of the sponsor's use of Department property.
2. Shall post solicitation material only in designated posting areas.
3. Shall ensure that a solicitation or event on Department property causes the minimum infringement of use to the public and government operation.
4. Shall modify or terminate a solicitation or event, upon request by the Department, if the Department determines that the solicitation or event unacceptably infringes on the Department's operations or causes an unacceptable risk of liability exposure to the State.

**P.** When conducting an event on Department property, a sponsor shall:
1. Park or direct vehicles in designated parking areas.
2. Obey all posted requirements and restrictions.
3. Designate one person to act as a monitor for every 50 persons anticipated to attend the solicitation or event. The monitor shall act as a contact person for the Department for the purposes of the solicitation or event.
4. Ensure that all safety standards, guidelines, and requirements are followed.
5. Implement additional safety requirements upon request by the Department.
6. Ensure all obstructions and hazards are eliminated.
7. Ensure trash and waste is properly disposed of throughout the solicitation or event.

**Q.** The Department shall revoke or terminate the solicitation or event if a sponsor fails to comply with a Department request or any one of the following minimum safety requirements:
1. All solicitation or event activities shall comply with all applicable federal, state, and local laws, ordinances, codes,

statues, rules, and regulations.
2. The layout of the solicitation or event shall ensure that emergency vehicles will have access at all times.
3. The Department may conduct periodic safety checks throughout the solicitation or event.

**R.** This Section does not apply to government agencies.

**Authorizing Statute**

General: A.R.S. § 17-231(A)(1)
Specific: A.R.S. §§ 17-231(A)(1), 17-231(B)(13), 17-231(B)(14), and 41-275

**Historical Note**

New Section made by emergency rulemaking at 10 A.A.R. 4777, effective November 4, 2004 for 180 days (Supp. 04-4). Emergency expired (Supp. 05-2). New Section renumbered from R12-4-804 and amended by final rulemaking at 21 A.A.R. 3025, effective January 2, 2016 (Supp. 15-4).

**R12-4-126. Reward Payments**

**A.** Subject to the restrictions prescribed under A.R.S. § 17-315, a person may claim a reward from the Department when the person provides information that leads to an arrest through the Operation Game Thief Program. The person who reports the unlawful activity will then become eligible to receive a reward as established under subsections (C) and (D), provided funds are available in the Wildlife Theft Prevention Fund and:
1. The person who reported the violation provides the Operation Game Thief control number issued by Department law enforcement personnel, as established under subsection (B);
2. The information provided relates to a violation of any provisions of A.R.S. Title 17, A.A.C. Title 12, Chapter 4, or federal wildlife laws enforced by and under the jurisdiction of the Department, but not on Indian Reservations;
3. The person did not first provide information during a criminal investigation or judicial proceeding; and
4. The person who reports the violation is not:
   a. The person who committed the violation;
   b. A peace officer, including wildlife managers and game rangers;
   c. A Department employee; or
   d. An immediate family member of a Department employee.

**B.** The Department shall inform the person providing information regarding a wildlife violation of the procedure for claiming a reward if the information results in an arrest. The Department shall also provide the person with the control number assigned to the reported violation.

**C.** Reward payments for information that results in an arrest for the reported violation are as follows:
1. For cases that involve eagles, bear, bighorn sheep, bison, deer, elk, javelina, mountain lion, pronghorn, turkey, or endangered or threatened wildlife as defined under R12-4-401, $500, to be increased by an additional amount of at least $50, but not to exceed $500, when vandalism impacting recreational access or wildlife habitat is also involved;
2. For cases that involve wildlife that are not listed under subsection (C)(1), a minimum of $50, not to exceed $150, to be increased by an additional amount of at least $50, but not to exceed $500, when vandalism impacting recreational access or wildlife habitat is also involved; and
3. For cases that involve any wildlife and damage to wildlife habitat, an additional $1,000 may be made available based on:
   a. The value of the information;
   b. The unusual value of the wildlife;
   c. The number of individuals taken;
   d. Whether or not the person who committed the unlawful act was arrested for commercialization of wildlife; and
   e. Whether or not the person who committed the unlawful act is a repeat offender.

**D.** If more than one person independently provides information or evidence that leads to an arrest for a violation, the Department may divide the reward payment among the persons who provided the information if the total amount of the reward payment does not exceed the maximum amount of a monetary reward established under subsections (C) or (E);

**E.** Notwithstanding subsection (C), the Department may offer and pay a reward up to the minimum civil damage value of the wildlife unlawfully taken, wounded or killed, or unlawfully possessed as prescribed under A.R.S. § 17-314, if the Department believes that an enhanced reward offer is merited due to the specific circumstances of the case.

**Authorizing Statute**

General: A.R.S. § 17-231(A)(1)
Specific: A.R.S. §§ 17-231(A)(7) and 17-315(B)(1)

**Historical Note**

New Section R12-4-126 renumbered from R12-4-116 and amended by final rulemaking at 27 A.A.R. 283, effective July 1, 2021 (Supp. 20-1).

# ARTICLE 1. DEFINITIONS AND GENERAL PROVISIONS

**R12-4-127. Civil Liability for Loss of Wildlife**

**A.** In order to compensate the state for the value of lost or injured wildlife, the Commission may, pursuant to A.R.S. § 17-314, impose a civil penalty against any person for unlawfully taking, wounding, killing or possessing wildlife. Any civil penalties so imposed shall be equal to or greater than the applicable statutory-minimum sums found in A.R.S. § 17-314(A). The Commission may impose a civil penalty above the statutory-minimum sums where it has determined that the value of the lost or injured wildlife exceeds the statutory-minimum sums.

**B.** The Commission shall annually establish the value of lost or injured wildlife using objective and measurable economic criteria. When doing so, the Commission may consider objective economic criteria recommended by the Department or any other person.

**C.** The Department shall recommend the value of lost or injured wildlife to the Commission by aggregating the following objective and measurable economic factors:

1. The average dollar amount spent by an individual hunter in pursuit of the same species. This amount shall be calculated using information from the most recent National Survey of Fishing, Hunting and Wildlife-Associated Recreation conducted by the U.S. Fish and Wildlife Service and measures hunting and fishing expenditures, in combination with hunter harvest data gathered by the Department. This information shall be available on the Department's website.
2. The average dollar amount spent by an individual in an effort to view wildlife. This amount shall be calculated using information from the most recent National Survey of Fishing, Hunting and Wildlife-Associated Recreation conducted by the U.S. Fish and Wildlife Service and measures wildlife viewing expenditures, in combination with hunter harvest data gathered by the Department. This information shall be available on the Department's website.
3. The average body weight in pounds of meat for the unlawfully taken or possessed species multiplied by the average price per pound of ground meat for that same species or a similar species. Average body weight in pounds of meat shall be calculated using the average body weight for the wildlife taken, minus 30% of the average weight to account for the weight of the head, hide, offal, and bone.
4. When new data is not available, the Department may use Consumer Price Index (CPI) calculations to update the above factors in terms of U.S. dollars.

**D.** The most recent wildlife values established by the Commission shall be available on the Department's website.

**Authorizing Statute**

General: A.R.S. § 17-231(A)(1)

Specific: A.R.S. §§ 17-231(A)(1), 17-231(B)(13), 17-231(B)(14), and 17-314

**Historical Note**

New Section made by final rulemaking at 27 A.A.R. 283, effective July 1, 2021 (Supp. 20-1).

# ARTICLE 1. DEFINITIONS AND GENERAL PROVISIONS STATUTORY AUTHORITY

**17-101. Definitions**

A. In this title, unless the context otherwise requires:

1. "Angling" means taking fish by one line and not more than two hooks, by one line and one artificial lure, which may have attached more than one hook, or by one line and not more than two artificial flies or lures.
2. "Bag limit" means the maximum limit, in number or amount, of wildlife that any one person may lawfully take during a specified period of time.
3. "Closed season" means the time during which wildlife may not be lawfully taken.
4. "Commission" means the Arizona game and fish commission.
5. "Department" means the Arizona game and fish department.
6. "Device" means any net, trap, snare, salt lick, scaffold, deadfall, pit, explosive, poison or stupefying substance, crossbow, firearm, bow and arrow, or other implement used for taking wildlife. Device does not include a raptor or any equipment used in the sport of falconry.
7. "Domicile" means a person's true, fixed and permanent home and principal residence. Proof of domicile in this state may be shown as prescribed by rule by the commission.
8. "Falconry" means the sport of hunting or taking quarry with a trained raptor.
9. "Fishing" means to lure, attract or pursue aquatic wildlife in such a manner that the wildlife may be captured or killed.
10. "Fur dealer" means any person engaged in the business of buying for resale the raw pelts or furs of wild mammals.
11. "Guide" means a person who meets any of the following:
    (a) Advertises for guiding services.
    (b) Holds himself out to the public for hire as a guide.
    (c) Is employed by a commercial enterprise as a guide.
    (d) Accepts compensation in any form commensurate with the market value in this state for guiding services in exchange for aiding, assisting, directing, leading or instructing a person in the field to locate and take wildlife.
    (e) Is not a landowner or lessee who, without full fair market compensation, allows access to the landowner's or lessee's property and directs and advises a person in taking wildlife.
12. "License classification" means a type of license, permit, tag or stamp authorized under this title and prescribed by the commission by rule to take, handle or possess wildlife.
13. "License year" means the twelve-month period between January 1 and December 31, inclusive, or a different twelve-month period as prescribed by the commission by rule.
14. "Nonresident", for the purposes of applying for a license, permit, tag or stamp, means a citizen of the United States or an alien who is not a resident.
15. "Open season" means the time during which wildlife may be lawfully taken.
16. "Possession limit" means the maximum limit, in number or amount of wildlife, that any one person may possess at one time.
17. "Resident", for the purposes of applying for a license, permit, tag or stamp, means a person who is:
    (a) A member of the armed forces of the United States on active duty and who is stationed in:
        (i) This state for a period of thirty days immediately preceding the date of applying for a license, permit, tag or stamp.
        (ii) Another state or country but who lists this state as the person's home of record at the time of applying for a license, permit, tag or stamp.
    (b) Domiciled in this state for six months immediately preceding the date of applying for a license, permit, tag or stamp and who does not claim residency privileges for any purpose in any other state or jurisdiction.
    (c) A youth who resides with and is under the guardianship of a person who is a resident.
18. "Road" means any maintained right-of-way for public conveyance.
19. "Statewide" means all lands except those areas lying within the boundaries of state and federal refuges, parks and monuments, unless specifically provided differently by commission order.
20. "Take" means pursuing, shooting, hunting, fishing, trapping, killing, capturing, snaring or netting wildlife or placing or using any net or other device or trap in a manner that may result in capturing or killing wildlife.
21. "Taxidermist" means any person who engages for hire in mounting, refurbishing, maintaining, restoring or preserving any display specimen.
22. "Traps" or "trapping" means taking wildlife in any manner except with a gun or other implement in hand.

23. "Wild" means, in reference to mammals and birds, those species that are normally found in a state of nature.
24. "Wildlife" means all wild mammals, wild birds and the nests or eggs thereof, reptiles, amphibians, mollusks, crustaceans and fish, including their eggs or spawn.
25. "Youth" means a person who is under eighteen years of age.
26. "Zoo" means a commercial facility open to the public where the principal business is holding wildlife in captivity for exhibition purposes.

B. The following definitions of wildlife shall apply:
1. "Aquatic wildlife" means fish, amphibians, mollusks, crustaceans and soft-shelled turtles.
2. "Big game" means wild turkey, deer, elk, pronghorn (antelope), bighorn sheep, bison (buffalo), peccary (javelina), bear and mountain lion.
3. "Fur-bearing animals" means muskrats, raccoons, otters, weasels, bobcats, beavers, badgers and ringtail cats.
4. "Game fish" means trout of all species, bass of all species, catfish of all species, sunfish of all species, northern pike, walleye and yellow perch.
5. "Game mammals" means deer, elk, bear, pronghorn (antelope), bighorn sheep, bison (buffalo), peccary (javelina), mountain lion, tree squirrel and cottontail rabbit.
6. "Migratory game birds" means wild waterfowl, including ducks, geese and swans, sandhill cranes, all coots, all gallinules, common snipe, wild doves and bandtail pigeons.
7. "Nongame animals" means all wildlife except game mammals, game birds, fur-bearing animals, predatory animals and aquatic wildlife.
8. "Nongame birds" means all birds except upland game birds and migratory game birds.
9. "Nongame fish" means all the species of fish except game fish.
10. "Predatory animals" means foxes, skunks, coyotes and bobcats.
11. "Raptors" means birds that are members of the order of falconiformes or strigiformes and includes falcons, hawks, owls, eagles and other birds that the commission may classify as raptors.
12. "Small game" means cottontail rabbits, tree squirrels, upland game birds and migratory game birds.
13. "Trout" means all species of the family salmonidae, including grayling.
14. "Upland game birds" means quail, partridge, grouse and pheasants.

**17-102. Wildlife as state property; exceptions**

Wildlife, both resident and migratory, native or introduced, found in this state, except fish and bullfrogs impounded in private ponds or tanks or wildlife and birds reared or held in captivity under permit or license from the commission, are property of the state and may be taken at such times, in such places, in such manner and with such devices as provided by law or rule of the commission.

**17-214. Arizona game and fish department reserve; members; powers and duties; compensation**

A. The commission may establish a volunteer organization known as the Arizona game and fish department reserve and prescribe the qualifications for membership. Members of the reserve serve at the pleasure of the director who has general supervision and control of all reserve activities.

B. The reserve shall assist the department as an auxiliary body and perform such duties in the areas of education, conservation and enforcement as the commission prescribes by rule or regulation. The director may designate qualified reservists as peace officers in the same manner and with the same powers as game rangers and wildlife managers. Such reservists are not entitled to participate in the public safety personnel retirement system pursuant to title 38, chapter 5, article 4.

C. Members of the reserve are not eligible to receive compensation but are eligible for reimbursement of expenses pursuant to title 38, chapter 4, article 2. Members of the reserve are deemed to be employees of this state for the purpose of coverage under Arizona workers' compensation pursuant to title 23, chapter 6.

**17-231. General powers and duties of the commission**

A. The commission shall:
1. Adopt rules and establish services it deems necessary to carry out the provisions and purposes of this title.
2. Establish broad policies and long-range programs for the management, preservation and harvest of wildlife.
3. Establish hunting, trapping and fishing rules and prescribe the manner and methods that may be used in taking wildlife, but the commission shall not limit or restrict the magazine capacity of any authorized firearm.
4. Be responsible for the enforcement of laws for the protection of wildlife.
5. Provide for the assembling and distribution of information to the public relating to wildlife and activities of the department.

6. Prescribe rules for the expenditure, by or under the control of the director, of all funds arising from appropriation, licenses, gifts or other sources.
7. Exercise such powers and duties necessary to carry out fully the provisions of this title and in general exercise powers and duties that relate to adopting and carrying out policies of the department and control of its financial affairs.
8. Prescribe procedures for use of department personnel, facilities, equipment, supplies and other resources in assisting search or rescue operations on request of the director of the division of emergency management.
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.

B. The commission may:

1. Conduct investigations, inquiries or hearings in the performance of its powers and duties.
2. Establish game management units or refuges for the preservation and management of wildlife.
3. Construct and operate game farms, fish hatcheries, fishing lakes or other facilities for or relating to the preservation or propagation of wildlife.
4. Expend funds to provide training in the safe handling and use of firearms and safe hunting practices.
5. Remove or permit to be removed from public or private waters fish which hinder or prevent propagation of game or food fish and dispose of such fish in such manner as it may designate.
6. Purchase, sell or barter wildlife for the purpose of stocking public or private lands and waters and take at any time in any manner wildlife for research, propagation and restocking purposes or for use at a game farm or fish hatchery and declare wildlife salable when in the public interest or the interest of conservation.
7. Enter into agreements with the federal government, with other states or political subdivisions of the state and with private organizations for the construction and operation of facilities and for management studies, measures or procedures for or relating to the preservation and propagation of wildlife and expend funds for carrying out such agreements.
8. Prescribe rules for the sale, trade, importation, exportation or possession of wildlife.
9. Expend monies for the purpose of producing publications relating to wildlife and activities of the department for sale to the public and establish the price to be paid for annual subscriptions and single copies of such publications. All monies received from the sale of such publications shall be deposited in the game and fish publications revolving fund.
10. Contract with any person or entity to design and produce artwork on terms that, in the commission's judgment, will produce an original and valuable work of art relating to wildlife or wildlife habitat.
11. Sell or distribute the artwork authorized under paragraph 10 of this subsection on such terms and for such price as it deems acceptable.
12. Consider the adverse and beneficial short-term and long-term economic impacts on resource dependent communities, small businesses and the state of Arizona, of policies and programs for the management, preservation and harvest of wildlife by holding a public hearing to receive and consider written comments and public testimony from interested persons.
13. Adopt rules relating to range operations at public shooting ranges operated by and under the jurisdiction of the commission, including the hours of operation, the fees for the use of the range, the regulation of groups and events, the operation of related range facilities, the type of firearms and ammunition that may be used at the range, the safe handling of firearms at the range, the required safety equipment for a person using the range, the sale of firearms, ammunition and shooting supplies at the range, and the authority of range officers to enforce these rules, to remove violators from the premises and to refuse entry for repeat violations.
14. Solicit and accept grants, gifts or donations of money or other property from any source, which may be used for any purpose consistent with this title.

C. The commission shall confer and coordinate with the director of water resources with respect to the commission's activities, plans and negotiations relating to water development and use, restoration projects under the restoration acts pursuant to chapter 4, article 1 of this title, where water development and use are involved, the abatement of pollution injurious to wildlife and in the formulation of fish and wildlife aspects of the director of water resources' plans to develop and utilize water resources of the state and shall have jurisdiction over fish and wildlife resources and fish and wildlife activities of projects constructed for the state under or pursuant to the jurisdiction of the director of water resources.

D. The commission may enter into one or more agreements with a multi-county water conservation district and other

parties for participation in the lower Colorado river multispecies conservation program under section 48-3713.03, including the collection and payment of any monies authorized by law for the purposes of the lower Colorado river multispecies conservation program.

**17-234. Open or closed seasons; bag limits; possession limits**

The commission shall by order open, close or alter seasons and establish bag and possession limits for wildlife, but a commission order to open a season shall be issued not less than ten days prior to such opening date. The order may apply statewide or to any portion of the state. Closed season shall be in effect unless opened by commission order.

**17-239. Wildlife depredations; investigations; corrective measures; disposal; reports; judicial review**

A. Any person suffering property damage from wildlife may exercise all reasonable measures to alleviate the damage, except that reasonable measures shall not include injuring or killing game mammals, game birds or wildlife protected by federal law or regulation unless authorized under subsection D of this section. A person may not retain or sell any portion of an animal taken pursuant to this subsection except as provided in section 3-2403.

B. Any person suffering such property damage, after resorting to the relief as is provided in subsection A of this section, may file a written report with the director, advising the director of the damage suffered, and the species of animals causing the damage, and the director shall immediately order an investigation and report by an employee trained in the handling of wild animal depredation.

C. The department shall provide technical advice and assist in the necessary anti-depredation measures recommended in the report, including trapping, capturing and relocating animals.

D. If harvest of animals is found to be necessary to relieve damage, the commission may establish special seasons or special bag limits, and either set reduced fees or waive any or all license fees required by this title, to crop that wildlife. If the commission determines that this cropping by hunters is impractical, it may issue a special permit for taking that wildlife to the landowner, lessee, livestock operator or municipality suffering damage, provided that the edible portions, or other portions as prescribed by the commission, of all the wildlife taken by the person suffering damage are turned over to an agent of the department for delivery to a public institution or charitable organization.

E. Except as provided in section 41-1092.08, subsection H, in the event any person suffering property damage from wildlife is dissatisfied with the final decision of the commission, the person may seek judicial review pursuant to title 12, chapter 7, article 6.

**17-245. Training courses**

The commission may:

1. Offer training courses on a voluntary basis to all persons as prescribed by rule.
2. Require any person whose hunting, fishing or guide license has been revoked or suspended to show a certificate of completion of a training course as a condition to issuance or renewal of a hunting, fishing or guide license.

**17-250. Wildlife diseases; order of director; violation; classification; rule making exemption**

A. If a wildlife disease is suspected or documented in freeranging or captive wildlife, the director may issue orders that are necessary to minimize or eliminate the threat from the disease. The director may also order or direct an employee of the department to:

1. After notification of and in coordination with the state veterinarian, establish quarantines and the boundary of the quarantine.
2. Destroy wildlife as necessary to prevent the spread of any infectious, contagious or communicable disease.
3. Control the movement of wildlife, wildlife carcasses or wildlife parts that may be directly related to spreading or disseminating diseases that pose a health threat to animals or humans.
4. Require any individual who has taken wildlife, who is in possession of wildlife or who maintains wildlife under a license issued by the department to submit the wildlife or parts for disease testing.

B. On finding there is reason to believe an infectious, contagious or communicable disease is present, the director may require an employee of the department to enter any place where wildlife may be located and take custody of the wildlife for purposes of disease testing. If search warrants are required by law, the director shall apply for and obtain warrants for entry to carry out the requirements of this subsection.

C. A person who violates any lawful order issued under this section is guilty of a class 2 misdemeanor.

D. An order issued under this section is exempt from title 41, chapter 6, article 3, except that the director shall promptly file a copy of the order with the secretary of state for publication in the Arizona administrative register pursuant to section 41-1013.

**17-304. Prohibition by landowner on hunting; posting; exception**

A. Landowners or lessees of private land who desire to prohibit hunting, fishing, trapping, or guiding on their lands without their permission shall post such lands closed to hunting, fishing, trapping, or guiding using notices or signboards.

B. State or federal lands including those under lease may not be posted except by consent of the commission.

C. The notices or signboards shall meet all of the following criteria:

1. Be at least eight inches by eleven inches with plainly legible wording in capital and bold-faced lettering at least one inch high.
2. Contain the words "no trespassing," "no hunting," "no trapping," "no fishing," or "no guiding" either as a single phrase or in any combination.
3. Be conspicuously placed on a structure or post at all points of vehicular access, at all property or fence corners and at intervals of not more than one-quarter mile along the property boundary, except that a post with one hundred square inches or more of orange paint may serve as the interval notices between property or fence corners and points of vehicular access. The orange paint shall be clearly visible and shall cover the entire aboveground surface of the post facing outward and on both lateral sides from the closed area.

D. The entry of any person for the taking of wildlife is not grounds for an action for criminal trespassing pursuant to section 13-1502 unless either:

1. The land has been posted pursuant to this section and the notices and signboards also contain the words "no trespassing".
2. The person knowingly remains unlawfully on any real property after a reasonable request to leave by a law enforcement officer acting at the request of the owner, the owner or any other person having lawful control over the property or the person knowingly disregards reasonable notice prohibiting entry to any real property.

**17-314. Illegally taking, wounding, killing or possessing wildlife; civil penalty; enforcement**

A. The commission may impose a civil penalty against any person for unlawfully taking, wounding, killing or possessing any of the following wildlife, or part thereof, to recover the following minimum sums:

1. For each turkey or javelina $ 500.00
2. For each bear, mountain lion, pronghorn (antelope) or deer $1,500.00
3. For each elk or eagle, other than endangered species $2,500.00
4. For each predatory, fur-bearing or nongame animal $250.00
5. For each small game or aquatic wildlife animal $50.00
6. For each bighorn sheep, bison (buffalo) or endangered species animal $8,000.00

B. The commission may bring a civil action in the name of this state to enforce the civil penalty. The civil penalty, or a verdict or judgment to enforce the civil penalty, shall not be less than the sum fixed in this section. The minimum sum that the commission may recover from a person pursuant to this section may be doubled for a second violation, verdict or judgment and tripled for a third violation, verdict or judgment. The action to enforce the civil penalty may be joined with an action for possession and recovery had for the possession as well as the civil penalty.

C. The pendency or determination of an action to enforce the civil penalty or for payment of the civil penalty or a judgment, or the pendency or determination of a criminal prosecution for the same taking, wounding, killing or possession, is not a bar to the other, nor does either affect the right of seizure under any other provision of the laws relating to game and fish.

D. All monies recovered pursuant to this section shall be deposited in the wildlife theft prevention fund established by section 17-315.

**17-331. License or proof of purchase required; violation of child support order**

A. Except as provided by this title, rules prescribed by the commission or commission order, a person shall not take any wildlife in this state without a valid license or a commission approved proof of purchase. The person shall carry the license or proof of purchase and produce it on request to any game ranger, wildlife manager or peace officer.

B. A certificate of noncompliance with a child support order issued pursuant to section 25-518 invalidates any license or proof of purchase issued to the support obligor for taking wildlife in this state and prohibits the support obligor from applying for any additional licenses issued by an automated drawing system under this title.

C. On receipt of a certificate of compliance with a child support order from the court pursuant to section 25-518 and without further action:

1. Any license or proof of purchase issued to the support obligor for taking wildlife that was previously invalidated by a certificate of noncompliance and that has not otherwise expired shall be reinstated.
2. Any ineligibility to apply for any license issued by an automated drawing system shall be removed.

**17-332. Form and content of license; duplicate licenses; transfer of license prohibited; exceptions; period of validity**

A. Licenses and license materials shall be prepared by the department and may be furnished and charged to dealers that are authorized to issue licenses. Each license shall be issued in the name of the department and signed in a manner provided by rule adopted by the commission. With each license authorizing the taking of big game, the department shall provide such tags as the commission may prescribe, which the licensee shall attach to the big game animal in the manner prescribed by the commission. The commission shall limit the number of big game permits issued to nonresidents in a random drawing to ten percent or fewer of the total hunt permits, but in extraordinary circumstances, at a public meeting the commission may increase the number of permits issued to nonresidents in a random drawing if, on separate roll call votes, the members of the commission unanimously:
1. Support the finding of a specifically described extraordinary circumstance.
2. Adopt the increased number of nonresident permits for the hunt.

B. The commission shall issue with each license a shipping permit entitling the holder of the license to a shipment of game or fish as provided by article 4 of this chapter.

C. It is unlawful, except as provided by the commission, for any person to apply for or obtain in any one license year more than one original license permitting the taking of big game. A duplicate license or tag may be issued by the department or by a license dealer if the person requesting such a license or tag furnishes the information deemed necessary by the commission.

D. A license or permit is not transferable and may not be used by anyone except the person to whom the license or permit was issued, except that:
1. The commission may prescribe the manner and conditions of transferring and using permits and tags under this paragraph, including an application process for a qualified organization, to allow a person to transfer the person's big game permit or tag to a qualified organization for use by:
(a) A minor child who has a life-threatening medical condition or a permanent physical disability. If a child with a physical disability is under fourteen years of age, the child must satisfactorily complete the Arizona hunter education course or another comparable hunter education course that is approved by the director.
(b) A veteran of the armed forces of the United States who has a service-connected disability. For the purposes of this paragraph:
(i) "Disability" means a permanent physical impairment that substantially limits one or more major life activities and that requires the assistance of another person or a mechanical device for physical mobility.
(ii) "Qualified organization" means a nonprofit organization that is qualified under section 501(c)(3) of the United States internal revenue code and that affords opportunities and experiences to children with life-threatening medical conditions or with physical disabilities or to veterans with service-connected disabilities.
2. A parent, grandparent or legal guardian may allow the parent's, grandparent's or guardian's minor child or minor grandchild to use the parent's, grandparent's or guardian's big game permit or tag to take big game pursuant to the following requirements:
(a) The parent, grandparent or guardian must transfer the permit or tag to the minor child in a manner prescribed by the commission.
(b) The minor child must possess a valid hunting license and, if under fourteen years of age, must satisfactorily complete, before the beginning of the hunt, the Arizona hunter education course or another comparable hunter education course that is approved by the director.
(c) Any big game that is taken counts toward the minor child's bag limit.

E. Refunds may not be made for the purchase of a license or permit.

F. Licenses are valid for a license year as prescribed in rule by the commission. Lifetime licenses and benefactor licenses are valid for the lifetime of the licensee.

**17-333.02. Trapping license; education; exemption**

A. A person applying for a trapping license must successfully complete a trapping education course conducted or approved by the department before being issued a trapping license. The department shall conduct or approve an

educational course of instruction in responsible trapping and environmental ethics. The course shall include instruction on the history of trapping, trapping ethics, trapping laws, techniques in safely releasing nontarget animals, trapping equipment, wildlife management, proper catch handling, trapper health and safety and considerations and ethics intended to avoid conflicts with other public land users. A person must pass a written examination to successfully complete the course. The department shall not approve a trapping education course conducted by any person, agency, corporation or other organization for which a fee is charged greater than an amount the commission determines per person.

B. A person who is born before January 1, 1967 or who has completed, from and after December 31, 1987 and before March 1, 1993, the voluntary trapper education course on responsible trapping conducted in cooperation with the Arizona game and fish department is exempt from subsection A of this section.

**17-334. Sale of licenses**

Hunting, fishing and other licenses shall be issued by such person as may be designated license dealers by the commission. The commission may suspend or revoke a dealer's license for failure to comply with rules specified by commission order.

**17-335. Blind resident; fishing license exemption**

A blind resident may fish without a license and is entitled to the same privileges as the holder of a valid license.

**17-337. Hunting and fishing licenses; armed forces members and spouses**

A member or the spouse of a member of the armed forces of the United States who is on active duty and stationed in this state for either permanent or temporary duty may purchase a resident license permitting the taking of wildlife.

**17-337.01. Licenses for enrollees in the job corps**

Enrollees in the job corps created by the economic opportunity act of 1964, who are stationed within the state, shall be entitled to purchase a fishing license as provided by law for other residents of the state.

**17-338. Remission of fees from sale of licenses and permits; violation; classification**

A. License dealers shall transmit to the department all license and permit fees collected and furnish such information as the commission prescribes by rule. The failure to transmit these fees within thirty days after the deadline the commission prescribes by rule is cause to cancel a license dealer's license. The knowing failure to transmit all collected license and permit fees within thirty days is a class 2 misdemeanor.

B. A license dealer may collect and retain a reasonable fee as determined by the license dealer in addition to the fee charged to issue the license or permit.

**17-339. Reports and returns by license dealers; noncompliance; classification**

A. Each license dealer shall by January 10, or on demand of the commission or department, return to the department:

1. All duplicate stubs, unused licenses, permits and big game tags.
2. All due and unremitted license and permit fees collected.
3. A full and complete report of the licenses, permits and big game tags returned.

B. The failure to make such return within thirty days shall automatically cancel the license dealer's license, and intentional failure to comply with the provisions of this section is a class 1 misdemeanor. Any license dealer who makes a false or fraudulent return or report or who fails to submit returns, reports or all due and unremitted fees as required under this section with the intent of defrauding the department is guilty of a class 6 felony.

**17-346. Special big game license tags**

In addition to any license tags issued under section 17-333, the commission may issue special big game license tags in the name of an incorporated nonprofit organization that is dedicated to wildlife conservation. No more than three special big game license tags may be issued for each species of big game in a license year. Notwithstanding section 17-332, subsection D, an organization that receives special big game license tags issued under this section may sell and transfer them if all proceeds of the sale are used in this state for wildlife management.

**41-1005. Exemptions**

A. This chapter does not apply to any:

1. Rule that relates to the use of public works, including streets and highways, under the jurisdiction of an agency if the effect of the order is indicated to the public by means of signs or signals.

2. Order or rule of the Arizona game and fish commission that does the following:
   (a) Opens, closes or alters seasons or establishes bag or possession limits for wildlife.
   (b) Establishes a fee pursuant to section 5-321, 5-322 or 5-327.
   (c) Establishes a license classification, fee or application fee pursuant to title 17, chapter 3, article 2.
3. Rule relating to section 28-641 or to any rule regulating motor vehicle operation that relates to speed, parking, standing, stopping or passing enacted pursuant to title 28, chapter 3.
4. Rule concerning only the internal management of an agency that does not directly and substantially affect the procedural or substantive rights or duties of any segment of the public.
5. Rule that only establishes specific prices to be charged for particular goods or services sold by an agency.
6. Rule concerning only the physical servicing, maintenance or care of agency owned or operated facilities or property.
7. Rule or substantive policy statement concerning inmates or committed youths of a correctional or detention facility in secure custody or patients admitted to a hospital, if made by the state department of corrections, the department of juvenile corrections, the board of executive clemency or the department of health services or a facility or hospital under the jurisdiction of the state department of corrections, the department of juvenile corrections or the department of health services.
8. Form whose contents or substantive requirements are prescribed by rule or statute, and instructions for the execution or use of the form.
9. Capped fee-for-service schedule adopted by the Arizona health care cost containment system administration pursuant to title 36, chapter 29.
10. Fees prescribed by section 6-125.
11. Order of the director of water resources adopting or modifying a management plan pursuant to title 45, chapter 2, article 9.
12. Fees established under section 3-1086.
13. Fees established under sections 41-4010 and 41-4042.
14. Rule or other matter relating to agency contracts.
15. Fees established under section 32-2067 or 32-2132.
16. Rules made pursuant to section 5-111, subsection A.
17. Rules made by the Arizona state parks board concerning the operation of the Tonto natural bridge state park, the facilities located in the Tonto natural bridge state park and the entrance fees to the Tonto natural bridge state park.
18. Fees or charges established under section 41-511.05.
19. Emergency medical services protocols except as provided in section 36-2205, subsection B.
20. Fee schedules established pursuant to section 36-3409.
21. Procedures of the state transportation board as prescribed in section 28-7048.
22. Rules made by the state department of corrections.
23. Fees prescribed pursuant to section 32-1527.
24. Rules made by the department of economic security pursuant to section 46-805.
25. Schedule of fees prescribed by section 23-908.
26. Procedure that is established pursuant to title 23, chapter 6, article 6.
27. Rules, administrative policies, procedures and guidelines adopted for any purpose by the Arizona commerce authority pursuant to chapter 10 of this title if the authority provides, as appropriate under the circumstances, for notice of an opportunity for comment on the proposed rules, administrative policies, procedures and guidelines.
28. Rules made by a marketing commission or marketing committee pursuant to section 3-414.
29. Administration of public assistance program monies authorized for liabilities that are incurred for disasters declared pursuant to sections 26-303 and 35-192.
30. User charges, tolls, fares, rents, advertising and sponsorship charges, services charges or similar charges established pursuant to section 28-7705.
31. Administration and implementation of the hospital assessment pursuant to section 36-2901.08, except that the Arizona health care cost containment system administration must provide notice and an opportunity for public comment at least thirty days before establishing or implementing the administration of the assessment.
32. Rules made by the Arizona department of agriculture to adopt and implement the provisions of the federal milk ordinance as prescribed by section 3-605.
33. Rules made by the Arizona department of agriculture to adopt, implement and administer the United States food and drug administration produce safety rule (21 Code of Federal Regulations part 112) and any other

federal produce safety regulation, order or guideline or other requirement adopted pursuant to the FDA food safety modernization act (P.L. 111-353; 21 United States Code sections 2201 through 2252) as provided by title 3, chapter 3, article 4.1.

34. Calculations performed by the department of economic security associated with the adjustment of the sliding fee scale and formula for determining child care assistance pursuant to section 46-805.

B. Notwithstanding subsection A, paragraph 21 of this section, at such time as the federal highway administration authorizes the privatization of rest areas, the state transportation board shall make rules governing the lease or license by the department of transportation to a private entity for the purposes of privatization of a rest area.

C. Coincident with the making of a final rule pursuant to an exemption from the applicability of this chapter under this section, another statute or session law, the agency shall:

1. Prepare a notice and follow formatting guidelines prescribed by the secretary of state.
2. Prepare the rulemaking exemption notices pursuant to chapter 6.2 of this title.
3. File a copy of the rule with the secretary of state for publication pursuant to section 41-1012 and provide a copy to the council.

D. Unless otherwise required by law, articles 2, 3, 4 and 5 of this chapter do not apply to the Arizona board of regents and the institutions under its jurisdiction, except that the Arizona board of regents shall make policies or rules for the board and the institutions under its jurisdiction that provide, as appropriate under the circumstances, for notice of and opportunity for comment on the policies or rules proposed.

E. Unless otherwise required by law, articles 2, 3, 4 and 5 of this chapter do not apply to the Arizona state schools for the deaf and the blind, except that the board of directors of all the state schools for the deaf and the blind shall adopt policies for the board and the schools under its jurisdiction that provide, as appropriate under the circumstances, for notice of and opportunity for comment on the policies proposed for adoption.

F. Unless otherwise required by law, articles 2, 3, 4 and 5 of this chapter do not apply to the state board of education, except that the state board of education shall adopt policies or rules for the board and the institutions under its jurisdiction that provide, as appropriate under the circumstances, for notice of and opportunity for comment on the policies or rules proposed for adoption. In order to implement or change any rule, the state board of education shall provide at least two opportunities for public comment. The state board of education shall consider the fiscal impact of any proposed rule pursuant to this subsection.

G. Unless otherwise required by law, articles 2, 3, 4 and 5 of this chapter do not apply to the state board for charter schools, except that the board shall adopt policies or rules for the board and the charter schools sponsored by the board that provide, as appropriate under the circumstances, for notice of and opportunity for comment on the policies or rules proposed for adoption. In order to implement or change any policy or rule, the board shall provide at least two opportunities for public comment. The state board for charter schools shall consider the fiscal impact of any proposed rule pursuant to this subsection.

**41-1072. Definitions**

In this article, unless the context otherwise requires:

1. "Administrative completeness review time frame" means the number of days from agency receipt of an application for a license until an agency determines that the application contains all components required by statute or rule, including all information required to be submitted by other government agencies. The administrative completeness review time frame does not include the period of time during which an agency provides public notice of the license application or performs a substantive review of the application.
2. "Overall time frame" means the number of days after receipt of an application for a license during which an agency determines whether to grant or deny a license. The overall time frame consists of both the administrative completeness review time frame and the substantive review time frame.
3. "Substantive review time frame" means the number of days after the completion of the administrative completeness review time frame during which an agency determines whether an application or applicant for a license meets all substantive criteria required by statute or rule. Any public notice and hearings required by law shall fall within the substantive review time frame.

**41-1073. Time frames; exception**

A. No later than December 31, 1998, an agency that issues licenses shall have in place final rules establishing an overall time frame during which the agency will either grant or deny each type of license that it issues. Agencies shall submit their overall time frame rules to the governor's regulatory review council pursuant to the schedule developed by the council. The council shall schedule each agency's rules so that final overall time frame rules are in place no later than December 31, 1998. The rule regarding the overall time frame for each type of license shall

state separately the administrative completeness review time frame and the substantive review time frame.

B. If a statutory licensing time frame already exists for an agency but the statutory time frame does not specify separate time frames for the administrative completeness review and the substantive review, by rule the agency shall establish separate time frames for the administrative completeness review and the substantive review, which together shall not exceed the statutory overall time frame. An agency may establish different time frames for initial licenses, renewal licenses and revisions to existing licenses.

C. The submission by the department of environmental quality of a revised permit to the United States environmental protection agency in response to an objection by that agency shall be given the same effect as a notice granting or denying a permit application for licensing time frame purposes. For the purposes of this subsection, "permit" means a permit required by title 49, chapter 2, article 3.1 or section 49-426.

D. In establishing time frames, agencies shall consider all of the following:

1. The complexity of the licensing subject matter.
2. The resources of the agency granting or denying the license.
3. The economic impact of delay on the regulated community.
4. The impact of the licensing decision on public health and safety.
5. The possible use of volunteers with expertise in the subject matter area.
6. The possible increased use of general licenses for similar types of licensed businesses or facilities.
7. The possible increased cooperation between the agency and the regulated community.
8. Increased agency flexibility in structuring the licensing process and personnel.

E. This article does not apply to licenses issued either:

1. Pursuant to tribal state gaming compacts.
2. Within seven days after receipt of initial application.
3. By a lottery method.

**BOARD OF PSYCHOLOGIST EXAMINERS**
Title 4, Chapter 26

**Amend:** R4-26-406

# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - REGULAR RULEMAKING

---

**MEETING DATE: April 1, 2025**

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

**FROM:** Council Staff

**DATE:** March 12, 2025

**SUBJECT:** **BOARD OF PSYCHOLOGIST EXAMINERS**
Title 4, Chapter 26

**Amend:** R4-26-406

---

**Summary:**

This regular rulemaking from the Board of Psychologist Examiners (Board) seeks to amend one (1) rule in Title 4, Chapter 26, Article 4 regarding ethical standards for behavioral analysis. Specifically, the Board is seeking to incorporate by reference the Ethics Code for Behavior Analysts, 2020 edition, updated February 2024, and published by the Behavior Analyst Certification Board pursuant to A.R.S. § 41-1028.

**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. The Board has complied with the statutory requirements of A.R.S. § 41-1028 for incorporation by reference.

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

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

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

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

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

The Board states that in this rulemaking, it updates the applicable ethical standards in a manner consistent with A.R.S. § 41-1028. The Board states that a licensed behavior analyst is required by statute and industry standards to comply with current ethical standards. The Board indicates this rulemaking simply incorporates these standards by reference. The Board states that the economic impact, which falls primarily on the Board, is minimal. Licensed behavior analysts and the Board are persons directly affected by, bear the costs of, and directly benefit from this rulemaking.

**5. Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?**

The Board indicates that the rulemaking is neither intrusive nor costly, no alternative methods were considered.

**6. What are the economic impacts on stakeholders?**

The Board states that the rulemaking simply incorporates current ethical standards by reference and will have minimal economic impact for licensed behavior analysts. The Board indicates that by adhering to the ethical standards, behavior analysts have the benefit of avoiding potential disciplinary action. The Board incurred the cost of doing this rulemaking and will incur the cost of implementing and enforcing the rule. The Board believes these costs will be minimal. The Board believes that incorporating the ethical standards in a manner consistent with statute may assist the Board when the Board has to use the ethical standards during a disciplinary proceeding.

The Board states they are the only state agency affected by the rulemaking. The Board indicates that no political subdivision is directly affected by the rulemaking. The Board says private persons and consumers are not directly affected by the rulemaking although the ultimate goal of the rulemaking is to protect public health and safety. The Board believes the impact of the rule on licensed behavior analysts cannot be reduced and still achieves the objective of protecting public health and safety.

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

The Board indicates there were no changes between the Notice of Proposed Rulemaking published in the Administrative Register on December 6, 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?**

The Board indicates it received no public comments related to this rulemaking.

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

Not applicable. The rule does 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?**

Not applicable. The Board indicates there is no corresponding federal law directly applicable to the subject of these rules.

**11. Conclusion**

This regular rulemaking from the Board seeks to amend one (1) rule in Title 4, Chapter 26, Article 4 regarding ethical standards for behavioral analysis. Specifically, the Board is seeking to incorporate by reference the Ethics Code for Behavior Analysts, 2020 edition, updated February 2024, and published by the Behavior Analyst Certification Board pursuant to A.R.S. § 41-1028.

The Board is seeking the standard 60-day delayed effective date pursuant to A.R.S. § 41-1032(A).

Council staff recommends approval of this rulemaking.

**STATE OF ARIZONA**
**BOARD OF PSYCHOLOGIST EXAMINERS**
**1740 WEST ADAMS STREET, SUITE 3403**
**PHOENIX, AZ 85007**
**602.542.8162 · psychboard.az.gov**

KATIE HOBBS
Governor

HEIDI HERBST PAAKKONEN
Executive Director

February 14, 2025

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 26. Board of Psychologist Examiners**

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 January 10, 2025, 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 does not relate to a 5YRR.

C. New fee: The rulemaking does not establish a new fee.

D. Fee increase: The rulemaking does not increase an existing fee.

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

F. Certification regarding studies: I certify that the preamble accurately discloses the Board did not review any studies in its evaluation of or justification for the rule in this rulemaking.

G. Certification that the preparer of the EIS notified the JLBC of the number of new full-time employees necessary to implement and enforce the rule: I certify that the rule in this rulemaking will require a state agency to employ a new full-time employee. No notification was provided to JLBC.

H. List of documents enclosed:
1. Cover letter signed by the Executive Director;
2. Notice of Final Rulemaking including the preamble, table of contents, and rule text;
3. Economic, Small Business, and Consumer Impact Statement;

Sincerely,

Heidi Herbst Paakkonen

Heidi Herbst Paakkonen, MPA

Executive Director

**NOTICE OF FINAL RULEMAKING**
**TITLE 4. PROFESSIONS AND OCCUPATIONS**
**CHAPTER 26. BOARD OF PSYCHOLOGIST EXAMINERS**

**PREAMBLE**

**1. Permission to proceed with this final rulemaking was granted under A.R.S. § 41-1039(B) by the governor on:**
(February 13, 2025

**2. Article, Part, or Section Affected (as applicable)** **Rulemaking Action**
R4-26-406 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. § 32-2063(A)(1) and (9)
Implementing statute: A.R.S. § A.R.S. § 32-2091(12)(dd)

**4. The effective date of the rule:**
This rule will become effective 60 days after a certified original and preamble are filed in the Office of the Secretary of State under A.R.S. § 41-1032(A). 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. 3717, Issue Date: December 6, 2024, Issue Number: 49, File number: R24-266
Notice of Proposed Rulemaking: 30 A.A.R. 3715, Issue Date: December 6, 2024, Issue Number: 49, File number: R24-265

**6. The agency's contact person who can answer questions about the rulemaking:**
Name: Heidi Herbst Paakkonen
Title: Executive Director
Address: Board of Psychologist Examiners
1740 W Adams Street, Suite 3403
Phoenix, AZ 85007
Telephone: (602) 542-3018
E-mail: Heidi.paakkonen@psychboard.az.gov
Web site: www.psychboard.az.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 updating the applicable ethical standards in a manner consistent with A.R.S. § 41-1028.

**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:**
A behavior analyst is required by statute and industry standards to comply with current ethical standards. The rulemaking simply incorporates these standards by reference. The economic impact of incorporation will be minimal.

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

Not applicable

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

Not applicable

**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 amended 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:**

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:**

R4-26-406. Ethics Code for Behavior Analysts, 2020 edition, updated February 2024, and published by the Behavior Analyst Certification Board.

**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 26. BOARD OF PSYCHOLOGIST EXAMINERS**
**ARTICLE 4. BEHAVIOR ANALYSIS**

**Section**

R4-26-406. Ethical Standard

**ARTICLE 4. BEHAVIOR ANALYSIS**

**R4-26-406. Ethical Standard**

~~In fulfilling its responsibilities under law, the~~ The Board ~~shall rely on the most current version of the BACB Professional and Ethical Compliance Code for~~ incorporates by this reference the Ethics Code for Behavior Analysts, 2020 edition, updated February 2024, and published by the BACB. ~~And~~ The incorporated material is available ~~for review at the Board office and online at www.BACB.com unless the Board determines public health and safety is not sufficiently protected by the current version of the BACB Professional and Ethical Compliance Code for Behavior Analysts~~ at https://bacb.com/wp-content/ethics-code-for-behavior-analysts and on the Board's website. This incorporation by reference does not include later amendments or editions of the incorporated material.

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

**TITLE 4. PROFESSIONS AND OCCUPATIONS**

**CHAPTER 26. BOARD OF PSYCHOLOGIST EXAMINERS**

1. Identification of the rulemaking:

   In this rulemaking, the Board updates the applicable ethical standards in a manner consistent with A.R.S. § 41-1028.

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

   Until the rulemaking is completed, the Board's rule regarding the applicable ethical standards will be inconsistent with statute.

   a. 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 a regulatory board to have a rule that is inconsistent with statute because the inconsistency may cause confusion for those who must comply with the rule.

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

      When the rulemaking is completed, the Board's rule regarding the applicable ethical standards will be consistent with statute.

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

   A licensed behavior analyst is required by statute and industry standards to comply with current ethical standards. The rulemaking simply incorporates these standards by reference. The economic impact, which falls primarily on the Board, is minimal.

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: Heidi Herbst Paakkonen
   Title: Executive Director
   Address: 1740 W. Adams Street, Suite 3403, Phoenix, AZ 85007
   Telephone: (602) 542-3018
   Email: Heidi.paakkonen@psychboard.az.gov
   Website: www.psychboard.az.gov

[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)).

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

   Licensed behavior analysts and the Board are persons directly affected by, bear the costs of, and directly benefit from this rulemaking. There are currently 1,186 licensed behavior analysts in Arizona. All are required by statute (See A.R.S. § 32-2091(12)(dd)) and industry practice to adhere to ethical standards. The rulemaking, which simply incorporates current ethical standards by reference, will have minimal economic impact for licensed behavior analysts. By adhering to the ethical standards, behavior analysts have the benefit of avoiding potential disciplinary action.

   The Board incurred the cost of doing this rulemaking and will incur the cost of implementing and enforcing the rule. These costs will be minimal. Incorporating the ethical standards in a manner consistent with statute may assist the Board when the Board has to use the ethical standards during a disciplinary proceeding.

5. Cost-benefit analysis:

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

      The Board is the only state agency directly affected by the rulemaking. Its costs and benefits are discussed in item 4. The Board, which currently has 4.5 full-time employees, will not need new full-time employees to implement and enforce the rule.

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

      No political subdivision is directly affected by the rulemaking.

   d. Costs and benefits to businesses directly affected by the rulemaking:

      Licensed behavior analysts are businesses directly affected by the rulemaking. Their costs and benefits are discussed in item 4.

6. Impact on private and public employment:

   The rulemaking will have no impact on private or public employment.

7. Impact on small businesses[2]:

   a. Identification of the small business subject to the rulemaking:

      Licensed behavior analysts are small businesses directly affected by the rulemaking. Their costs and benefits are discussed in item 4.

   b. Administrative and other costs required for compliance with the rulemaking:

[2] Small business has the meaning specified in A.R.S. § 41-1001(23).

The only cost for compliance is adherence to the ethical standards.

c. Description of methods that may be used to reduce the impact on small businesses:
The impact of the rule on licensed behavior analysts cannot be reduced and still achieve the objective of protecting public health and safety.

8. Cost and benefit to private persons and consumers who are directly affected by the rulemaking:
Private persons and consumers are not directly affected by the rulemaking although the ultimate goal of the rulemaking is to protect public health and safety.

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, no alternative methods were considered.

# Ethics Code for Behavior Analysts

The Ethics Code for Behavior Analysts (Code) replaces the Professional and Ethical Compliance Code for Behavior Analysts (2014). All BCBA and BCaBA applicants and certificants are required to adhere to the Code effective January 1, 2022.

This document should be referenced as:

Behavior Analyst Certification Board. (2020). *Ethics code for behavior analysts.* https://bacb.com/wp-content/ethics-code-for-behavior-analysts/

Copyright © 2020, BACB®, All rights reserved.

# Table of Contents


Introduction ..... 3
- Scope of the Code ..... 3
- Core Principles ..... 4
- Application of the Code ..... 5
- Enforcement of the Code ..... 6

Glossary ..... 7

Ethics Standards ..... 9

- Section 1—Responsibility as a Professional ..... 9
  - 1.01 Being Truthful ..... 9
  - 1.02 Conforming with Legal and Professional Requirements ..... 9
  - 1.03 Accountability ..... 9
  - 1.04 Practicing within a Defined Role ..... 9
  - 1.05 Practicing within Scope of Competence ..... 9
  - 1.06 Maintaining Competence ..... 9
  - 1.07 Cultural Responsiveness and Diversity ..... 9
  - 1.08 Nondiscrimination ..... 9
  - 1.09 Nonharassment ..... 9
  - 1.10 Awareness of Personal Biases and Challenges ..... 9
  - 1.11 Multiple Relationships ..... 10
  - 1.12 Giving and Receiving Gifts ..... 10
  - 1.13 Coercive and Exploitative Relationships ..... 10
  - 1.14 Romantic and Sexual Relationships ..... 10
  - 1.15 Responding to Requests ..... 10
  - 1.16 Self-Reporting Critical Information ..... 10
- Section 2—Responsibility in Practice ..... 10
  - 2.01 Providing Effective Treatment ..... 10
  - 2.02 Timeliness ..... 10
  - 2.03 Protecting Confidential Information ..... 10
  - 2.04 Disclosing Confidential Information ..... 11
  - 2.05 Documentation Protection and Retention ..... 11
  - 2.06 Accuracy in Service Billing and Reporting ..... 11
  - 2.07 Fees ..... 11
  - 2.08 Communicating About Services ..... 11
  - 2.09 Involving Clients and Stakeholders ..... 11
  - 2.10 Collaborating with Colleagues ..... 11
  - 2.11 Obtaining Informed Consent ..... 11
  - 2.12 Considering Medical Needs ..... 12
  - 2.13 Selecting, Designing, and Implementing Assessments ..... 12
  - 2.14 Selecting, Designing, and Implementing Behavior-Change Interventions ..... 12
  - 2.15 Minimizing Risk of Behavior-Change Interventions ..... 12
  - 2.16 Describing Behavior-Change Interventions Before Implementation ..... 12
  - 2.17 Collecting and Using Data ..... 12
  - 2.18 Continual Evaluation of the Behavior-Change Intervention ..... 12
  - 2.19 Addressing Conditions Interfering with Service Delivery ..... 12
- Section 3—Responsibility to Clients and Stakeholders ..... 13
  - 3.01 Responsibility to Clients ..... 13
  - 3.02 Identifying Stakeholders ..... 13
  - 3.03 Accepting Clients ..... 13
  - 3.04 Service Agreement ..... 13
  - 3.05 Financial Agreements ..... 13
  - 3.06 Consulting with Other Providers ..... 13
  - 3.07 Third-Party Contracts for Services ..... 13
  - 3.08 Responsibility to the Client with Third-Party Contracts for Services ..... 13
  - 3.09 Communicating with Stakeholders About Third-Party Contracted Services ..... 14
  - 3.10 Limitations of Confidentiality ..... 14
  - 3.11 Documenting Professional Activity ..... 14
  - 3.12 Advocating for Appropriate Services ..... 14
  - 3.13 Referrals ..... 14
  - 3.14 Facilitating Continuity of Services ..... 14
  - 3.15 Appropriately Discontinuing Services ..... 14
  - 3.16 Appropriately Transitioning Services ..... 14
- Section 4—Responsibility to Supervisees and Trainees ..... 15
  - 4.01 Compliance with Supervision Requirements ..... 15
  - 4.02 Supervisory Competence ..... 15
  - 4.03 Supervisory Volume ..... 15
  - 4.04 Accountability in Supervision ..... 15
  - 4.05 Maintaining Supervision Documentation ..... 15
  - 4.06 Providing Supervision and Training ..... 15
  - 4.07 Incorporating and Addressing Diversity ..... 15
  - 4.08 Performance Monitoring and Feedback ..... 15
  - 4.09 Delegation of Tasks ..... 15
  - 4.10 Evaluating Effects of Supervision and Training ..... 16
  - 4.11 Facilitating Continuity of Supervision ..... 16
  - 4.12 Appropriately Terminating Supervision ..... 16
- Section 5—Responsibility in Public Statements ..... 16
  - 5.01 Protecting the Rights of Clients, Stakeholders, Supervisees, and Trainees ..... 16
  - 5.02 Confidentiality in Public Statements ..... 16
  - 5.03 Public Statements by Behavior Analysts ..... 16
  - 5.04 Public Statements by Others ..... 16
  - 5.05 Use of Intellectual Property ..... 16
  - 5.06 Advertising Nonbehavioral Services ..... 16
  - 5.07 Soliciting Testimonials from Current Clients for Advertising ..... 17
  - 5.08 Using Testimonials from Former Clients for Advertising ..... 17
  - 5.09 Using Testimonials for Nonadvertising Purposes ..... 17
  - 5.10 Social Media Channels and Websites ..... 17
  - 5.11 Using Digital Content in Public Statements ..... 17
- Section 6—Responsibility in Research ..... 17
  - 6.01 Conforming with Laws and Regulations in Research ..... 17
  - 6.02 Research Review ..... 17
  - 6.03 Research in Service Delivery ..... 17
  - 6.04 Informed Consent in Research ..... 18
  - 6.05 Confidentiality in Research ..... 18
  - 6.06 Competence in Conducting Research ..... 18
  - 6.07 Conflict of Interest in Research and Publication ..... 18
  - 6.08 Appropriate Credit ..... 18
  - 6.09 Plagiarism ..... 18
  - 6.10 Documentation and Data Retention in Research ..... 18
  - 6.11 Accuracy and Use of Data ..... 18


Updated 02/2024, Copyright © 2020, BACB® | All rights reserved.

# Introduction

As a diverse group of professionals who work in a variety of practice areas, behavior analysts deliver applied behavior analysis (ABA) services to positively impact lives. The Behavior Analyst Certification Board® (BACB®) exists to meet the credentialing needs of these professionals and relevant stakeholders (e.g., licensure boards, funders) while protecting ABA consumers by establishing, disseminating, and managing professional standards. The BACB facilitates ethical behavior in the profession through its certification eligibility and maintenance requirements, by issuing the ethics standards described in this document, and by operating a system for addressing professional misconduct.

The Ethics Code for Behavior Analysts (Code) guides the professional activities of behavior analysts over whom the BACB has jurisdiction (see *Scope of the Code* below). The Code also provides a means for behavior analysts to evaluate their own behavior and for others to assess whether a behavior analyst has violated their ethical obligations. An **introduction** section describes the scope and application of the Code, its core principles, and considerations for ethical decision making. The core principles are foundational concepts that should guide all aspects of a behavior analyst's work. The introduction is followed by a **glossary** that includes definitions of technical terms used in the Code. The final section includes the **ethics standards**, which are informed by the core principles. The standards are organized into six sections: 1) Responsibility as a Professional, 2) Responsibility in Practice, 3) Responsibility to Clients and Stakeholders, 4) Responsibility to Supervisees and Trainees, 5) Responsibility in Public Statements, and 6) Responsibility in Research.

## Scope of the Code

The Code applies to all individuals who hold Board Certified Behavior Analyst® (BCBA®) or Board Certified Assistant Behavior Analyst® (BCaBA®) certification and all individuals who have completed an application for BCBA or BCaBA certification. For the sake of efficiency, the term "behavior analyst" is used throughout this document to refer to those who must act in accordance with the Code. The BACB does not have separate jurisdiction over organizations or corporations.

The Code applies to behavior analysts in all of their professional activities, including direct service delivery, consultation, supervision, training, management, editorial and peer-review activities, research, and any other activity within the ABA profession. The Code applies to behavior analysts' professional activities across settings and delivery modes (e.g., in person; in writing; via phone, email, text message, video conferencing). Application of the Code does not extend to behavior analysts' personal behavior unless it is determined that the behavior clearly poses a potential risk to the health and safety of clients, stakeholders, supervisees, or trainees.

Specific terms are defined in the Glossary section; however, two definitions are provided here because they are frequently used in the Core Principles section.

**Client:** The direct recipient of the behavior analyst's services. At various times during service provision, one or more stakeholders may simultaneously meet the definition of client (e.g., the point at which they receive direct training or consultation). In some contexts, the client might be a group of individuals (e.g., with organizational behavior management services).

**Stakeholder:** An individual, other than the client, who is impacted by and invested in the behavior analyst's services (e.g., parent, caregiver, relative, legally authorized representative, collaborator, employer, agency or institutional representative, licensure board, funder, third-party contractor for services).

Updated 02/2024, Copyright © 2020, BACB® | All rights reserved.

## Core Principles

Four foundational principles, which all behavior analysts should strive to embody, serve as the framework for the ethics standards. Behavior analysts should use these principles to interpret and apply the standards in the Code. The four core principles are that behavior analysts should: benefit others; treat others with compassion, dignity, and respect; behave with integrity; and ensure their own competence.

1. **Benefit Others.** Behavior analysts work to maximize benefits and do no harm by:
    - Protecting the welfare and rights of clients above all others
    - Protecting the welfare and rights of other individuals with whom they interact in a professional capacity
    - Focusing on the short- and long-term effects of their professional activities
    - Actively identifying and addressing the potential negative impacts of their own physical and mental health on their professional activities
    - Actively identifying potential and actual conflicts of interest and working to resolve them in a manner that avoids or minimizes harm
    - Actively identifying and addressing factors (e.g., personal, financial, institutional, political, religious, cultural) that might lead to conflicts of interest, misuse of their position, or negative impacts on their professional activities
    - Effectively and respectfully collaborating with others in the best interest of those with whom they work and always placing clients' interests first
2. **Treat Others with Compassion, Dignity, and Respect.** Behavior analysts behave toward others with compassion, dignity, and respect by:
    - Treating others equitably, regardless of factors such as age, disability, ethnicity, gender expression/identity, immigration status, marital/relationship status, national origin, race, religion, sexual orientation, socioeconomic status, or any other basis proscribed by law
    - Respecting others' privacy and confidentiality
    - Respecting and actively promoting clients' self-determination to the best of their abilities, particularly when providing services to vulnerable populations
    - Acknowledging that personal choice in service delivery is important by providing clients and stakeholders with needed information to make informed choices about services
3. **Behave with Integrity.** Behavior analysts fulfill responsibilities to their scientific and professional communities, to society in general, and to the communities they serve by:
    - Behaving in an honest and trustworthy manner
    - Not misrepresenting themselves, misrepresenting their work or others' work, or engaging in fraud
    - Following through on obligations
    - Holding themselves accountable for their work and the work of their supervisees and trainees, and correcting errors in a timely manner
    - Being knowledgeable about and upholding BACB and other regulatory requirements
    - Actively working to create professional environments that uphold the core principles and standards of the Code
    - Respectfully educating others about the ethics requirements of behavior analysts and the mechanisms for addressing professional misconduct
4. **Ensure their Competence.** Behavior analysts ensure their competence by:
    - Remaining within the profession's scope of practice
    - Remaining current and increasing their knowledge of best practices and advances in ABA and participating in professional development activities
    - Remaining knowledgeable and current about interventions (including pseudoscience) that may exist in their practice areas and pose a risk of harm to clients
    - Being aware of, working within, and continually evaluating the boundaries of their competence
    - Working to continually increase their knowledge and skills related to cultural responsiveness and service delivery to diverse groups

Updated 02/2024, Copyright © 2020, BACB® | All rights reserved.

## Application of the Code

Behavior analysts are expected to be knowledgeable about and comply with the Code and Code-Enforcement Procedures. Lack of awareness or misunderstanding of an ethics standard is not a defense against an alleged ethics violation. When appropriate, behavior analysts should inform others about the Code and Code-Enforcement Procedures and create conditions that foster adherence to the Code. When addressing potential code violations by themselves or others, behavior analysts document the steps taken and the resulting outcomes. Behavior analysts should address concerns about the professional misconduct of others directly with them when, after assessing the situation, it seems possible that doing so will resolve the issue and not place the behavior analyst or others at undue risk.

The BACB recognizes that behavior analysts may have different professional roles. As such, behavior analysts are required to comply with all applicable laws, licensure requirements, codes of conduct/ethics, reporting requirements (e.g., mandated reporting, reporting to funding sources or licensure board, self-reporting to the BACB, reporting instances of misrepresentation by others), and professional practice requirements related to their various roles. In some instances, behavior analysts may need to report serious concerns to relevant authorities or agencies that can provide more immediate relief or protection before reporting to the BACB (e.g., criminal activity or behavior that places clients or others at risk for direct and immediate harm should immediately be reported to the relevant authorities before reporting to the BACB or a licensure board).

The standards included in the Code are not meant to be exhaustive, as it is impossible to predict every situation that might constitute an ethics violation. Therefore, the absence of a particular behavior or type of conduct from the Code standards does not indicate that such behavior or conduct is ethical or unethical. When interpreting and applying a standard, it is critical to attend to its specific wording and function, as well as the core principles. Additionally, standards must be applied to a situation using a functional, contextualized approach that accounts for factors relevant to that situation, such as variables related to diversity (e.g., age, disability, ethnicity, gender expression/identity, immigration status, marital/relationship status, national origin, race, religion, sexual orientation, socioeconomic status) and possible imbalances in power. In all instances of interpreting and applying the Code, behavior analysts should put compliance with the law and clients' interests first by actively working to maximize desired outcomes and minimize risk.

**Ethical decision making.** Behavior analysts will likely encounter complex and multifaceted ethical dilemmas. When faced with such a dilemma, behavior analysts should identify problems and solutions with care and deliberation. In resolving an ethical dilemma, behavior analysts should follow the spirit and letter of the Code's core principles and specific standards. Behavior analysts should address ethical dilemmas through a structured decision-making process that considers the full context of the situation and the function of relevant ethics standards. Although no single ethical decision-making process will be equally effective in all situations, the process below illustrates a systematic approach behavior analysts can take to document and address potential ethical concerns.

> Throughout all of the following steps, document information that may be essential to decision making or for communicating the steps taken and outcomes (e.g., to the BACB, licensure boards, or other governing agencies). For example, consider documenting: dates, times, locations, and relevant individuals; summaries of observations, meetings, or information reported by others. Take care to protect confidentiality in the preparation and storage of all documentation.

1. Clearly define the issue and consider potential risk of harm to relevant individuals.
2. Identify all relevant individuals.
3. Gather relevant supporting documentation and follow-up on second-hand information to confirm that there is an actual ethical concern.
4. Consider your personal learning history and biases in the context of the relevant individuals.
5. Identify the relevant core principles and Code standards.
6. Consult available resources (e.g., research, decision-making models, trusted colleagues).
7. Develop several possible actions to reduce or remove risk of harm, prioritizing the best interests of clients in accordance with the Code and applicable laws.

Updated 02/2024, Copyright © 2020, BACB® | All rights reserved.

8. Critically evaluate each possible action by considering its alignment with the "letter and spirit" of the Code, its potential impact on the client and stakeholders, the likelihood of it immediately resolving the ethical concern, as well as variables such as client preference, social acceptability, degree of restrictiveness, and likelihood of maintenance.
9. Select the action that seems most likely to resolve the specific ethical concern and reduce the likelihood of similar issues arising in the future.
10. Take the selected action in collaboration with relevant individuals affected by the issue and document specific actions taken, agreed-upon next steps, names of relevant individuals, and due dates.
11. Evaluate the outcomes to ensure that the action successfully addressed the issue.

## Enforcement of the Code

The BACB enforces the Code to protect clients and stakeholders, BCBA and BCaBA certificants and applicants, and the ABA profession. Complaints are received and processed according to the processes outlined in the BACB's Code-Enforcement Procedures document.

Updated 02/2024, Copyright © 2020, BACB® | All rights reserved.

# Glossary

**Assent**

Vocal or nonvocal verbal behavior that can be taken to indicate willingness to participate in research or behavioral services by individuals who cannot provide informed consent (e.g., because of age or intellectual impairments). Assent may be required by a research review committee or a service organization. In such instances, those entities will provide parameters for assessing assent.

**Behavior Analyst**

An individual who holds BCBA or BCaBA certification or who has submitted a complete application for BCBA or BCaBA certification.

**Behavior-Change Intervention**

The full set of behavioral procedures designed to improve the client's wellbeing.

**Behavioral Services**

Services that are explicitly based on the principles and procedures of behavior analysis and are designed to change behavior in meaningful ways. These services include, but are not limited to, assessment, behavior-change interventions, training, consultation, managing and supervising others, and delivering continuing education.

**Client**

The direct recipient of the behavior analyst's services. At various times during service provision, one or more stakeholders may simultaneously meet the definition of client (e.g., the point at which they receive direct training or consultation). In some contexts, the client might be a group of individuals (e.g., with organizational behavior management services).

**Clients' Rights**

Human rights, legal rights, rights codified within behavior analysis, and organization rules designed to benefit the client.

**Conflict of Interest**

An incompatibility between a behavior analysts' private and professional interests resulting in risk or potential risk to services provided to, or the professional relationship with, a client, stakeholder, supervisee, trainee, or research participant. Conflicts may result in a situation in which personal, financial, or professional considerations have the potential to influence or compromise professional judgment in the delivery of behavioral services, research, consultation, supervision, training, or any other professional activity.

**Digital Content**

Information that is made available for online consumption, downloading, or distribution through an electronic medium (e.g., television, radio, ebook, website, social media, videogame, application, computer, smart device). Common digital content includes documents, pictures, videos, and audio files.

**Informed Consent**

The permission given by an individual with the legal right to consent before participating in services or research, or allowing their information to be used or shared.

> *Service/Research*: Providing the opportunity for an individual to give informed consent for services or research involves communicating about and taking appropriate steps to confirm understanding of: 1) the purpose of the services or research; 2) the expected time commitment and procedures involved; 3) the right to decline to participate or withdraw at any time without adverse consequences; 4) potential benefits, risks, discomfort, or adverse effects; 5) any limits to confidentiality or privacy; 6) any incentives for research participation; 7) whom to contact for questions or concerns at any time; and 8) the opportunity to ask questions and receive answers.
>
> *Information Use/Sharing*: Providing the opportunity for an individual to give informed consent to share or use their information involves communicating about: 1) the purpose and intended use; 2) the audience; 3) the expected duration; 4) the right to decline or withdraw consent at any time; 5) potential risks or benefits; 6) any limitations to confidentiality or privacy; 7) whom to contact for questions or concerns at any time; and 8) the opportunity to ask questions and receive answers.

**Legally Authorized Representative**

Any individual authorized under law to provide consent on behalf of an individual who cannot provide consent to receive services or participate in research.

**Multiple Relationship**

A comingling of two or more of a behavior analyst's roles (e.g., behavioral and personal) with a client, stakeholder, supervisee, trainee, research participant, or someone closely associated with or related to the client.

Updated 02/2024, Copyright © 2020, BACB® | All rights reserved.

**Public Statements**

Delivery of information (digital or otherwise) in a public forum for the purpose of either better informing that audience or providing a call-to-action. This includes paid or unpaid advertising, brochures, printed material, directory listings, personal resumes or curriculum vitae, interviews, or comments for use in media (e.g., print, statements in legal proceedings, lectures and public presentations, social media, published materials).

**Research**

Any data-based activity, including analysis of preexisting data, designed to generate generalizable knowledge for the discipline. The use of an experimental design does not by itself constitute research.

**Research Participant**

Any individual participating in a defined research study for whom informed consent has been obtained.

**Research Review Committee**

A group of professionals whose stated purpose is to review research proposals to ensure the ethical treatment of human research participants. This committee might be an official entity of a government or university (e.g., Institutional Review Board, Research Ethics Board), an independent committee within a service organization, or an independent organization created for this purpose.

**Scope of Competence**

The professional activities a behavior analyst can consistently perform with proficiency.

**Social Media Channel**

A digital platform, either found through a web browser or through an application, where users (individuals and/or businesses) can consume, create, copy, download, share, or comment on posts or advertisements. Both posts and advertisements would be considered digital content.

**Stakeholder**

An individual, other than the client, who is impacted by and invested in the behavior analyst's services (e.g., parent, caregiver, relative, legally authorized representative, collaborator, employer, agency or institutional representatives, licensure board, funder, third-party contractor for services).

**Supervisee**

Any individual whose behavioral service delivery is overseen by a behavior analyst within the context of a defined, agreed-upon relationship. Supervisees may include RBTs, BCaBAs, and BCBAs, as well as other professionals carrying out supervised behavioral services.

**Testimonial**

Any solicited or unsolicited recommendation, in any form, from a client, stakeholder, supervisee, or trainee affirming the benefits received from a behavior analyst's product or service. From the point at which a behavior analyst asks an individual for a recommendation it is considered solicited.

**Third Party**

Any individual, group of individuals, or entity, other than the direct recipient of services, the primary caregiver, the legally authorized representative, or the behavior analyst, who requests and funds services on behalf of a client or group of clients. Some examples include a school district, governmental entity, mental health agency, among others.

**Trainee**

Any individual accruing fieldwork/experience toward fulfilling eligibility requirements for BCaBA or BCBA certification.

**Website**

A digital platform found through a web browser where an entity (individual and/or organization) produces and distributes digital content for the consumption of users online. Depending on the functionality, users can consume, create, copy, download, share, or comment on the provided digital content.

*Note*: Terms defined in the glossary are *italicized* the first time they appear in a standard in each section of the Code.

Updated 02/2024, Copyright © 2020, BACB® | All rights reserved.

# Ethics Standards

## Section 1—Responsibility as a Professional

**1.01 Being Truthful**

*Behavior analysts* are truthful and arrange the professional environment to promote truthful behavior in others. They do not create professional situations that result in others engaging in behavior that is fraudulent or illegal or that violates the Code. They also provide truthful and accurate information to all required entities (e.g., BACB, licensure boards, funders) and individuals (e.g., clients, stakeholders, supervisees, trainees), and they correct instances of untruthful or inaccurate submissions as soon as they become aware of them.

**1.02 Conforming with Legal and Professional Requirements**

Behavior analysts follow the law and the requirements of their professional community (e.g., BACB, licensure board).

**1.03 Accountability**

Behavior analysts are accountable for their actions and professional services and follow through on work commitments. When errors occur or commitments cannot be met, behavior analysts take all appropriate actions to directly address them, first in the best interest of *clients,* and then in the best interest of relevant parties.

**1.04 Practicing within a Defined Role**

Behavior analysts provide services only after defining and documenting their professional role with relevant parties in writing.

**1.05 Practicing within Scope of Competence**

Behavior analysts practice only within their identified *scope of competence*. They engage in professional activities in new areas (e.g., populations, procedures) only after accessing and documenting appropriate study, training, supervised experience, consultation, and/or co-treatment from professionals competent in the new area. Otherwise, they refer or transition services to an appropriate professional.

**1.06 Maintaining Competence**

Behavior analysts actively engage in professional development activities to maintain and further their professional competence. Professional development activities include reading relevant literature; attending conferences and conventions; participating in workshops and other training opportunities; obtaining additional coursework; receiving coaching, consultation, supervision, or mentorship; and obtaining and maintaining appropriate professional credentials.

**1.07 Cultural Responsiveness and Diversity**

Behavior analysts actively engage in professional development activities to acquire knowledge and skills related to cultural responsiveness and diversity. They evaluate their own biases and ability to address the needs of individuals with diverse needs/backgrounds (e.g., age, disability, ethnicity, gender expression/identity, immigration status, marital/relationship status, national origin, race, religion, sexual orientation, socioeconomic status). Behavior analysts also evaluate biases of their *supervisees* and *trainees*, as well as their supervisees' and trainees' ability to address the needs of individuals with diverse needs/backgrounds.

**1.08 Nondiscrimination**

Behavior analysts do not discriminate against others. They behave toward others in an equitable and inclusive manner regardless of age, disability, ethnicity, gender expression/identity, immigration status, marital/relationship status, national origin, race, religion, sexual orientation, socioeconomic status, or any other basis proscribed by law.

**1.09 Nonharassment**

Behavior analysts do not engage in behavior that is harassing or hostile toward others.

**1.10 Awareness of Personal Biases and Challenges**

Behavior analysts maintain awareness that their personal biases or challenges (e.g., mental or physical health conditions; legal, financial, marital/relationship challenges) may interfere with the effectiveness of their professional work. Behavior analysts take appropriate steps to resolve interference, ensure that their professional work is not compromised, and document all actions taken in this circumstance and the eventual outcomes.

Updated 02/2024, Copyright © 2020, BACB® | All rights reserved.

### 1.11 Multiple Relationships

Because *multiple relationships* may result in a *conflict of interest* that might harm one or more parties, behavior analysts avoid entering into or creating multiple relationships, including professional, personal, and familial relationships with clients and colleagues. Behavior analysts communicate the risks of multiple relationships to relevant individuals and continually monitor for the development of multiple relationships. If multiple relationships arise, behavior analysts take appropriate steps to resolve them. When immediately resolving a multiple relationship is not possible, behavior analysts develop appropriate safeguards to identify and avoid conflicts of interest in compliance with the Code and develop a plan to eventually resolve the multiple relationship. Behavior analysts document all actions taken in this circumstance and the eventual outcomes.

### 1.12 Giving and Receiving Gifts

Because the exchange of gifts can invite conflicts of interest and multiple relationships, behavior analysts do not give gifts to or accept gifts from clients, *stakeholders*, supervisees, or trainees with a monetary value of more than $10 US dollars (or the equivalent purchasing power in another currency). Behavior analysts make clients and stakeholders aware of this requirement at the onset of the professional relationship. A gift is acceptable if it functions as an infrequent expression of gratitude and does not result in financial benefit to the recipient. Instances of giving or accepting ongoing or cumulative gifts may rise to the level of a violation of this standard if the gifts become a regularly expected source of income or value to the recipient.

### 1.13 Coercive and Exploitative Relationships

Behavior analysts do not abuse their power or authority by coercing or exploiting persons over whom they have authority (e.g., evaluative, supervisory).

### 1.14 Romantic and Sexual Relationships

Behavior analysts do not engage in romantic or sexual relationships with current clients, stakeholders, trainees, or supervisees because such relationships pose a substantial risk of conflicts of interest and impaired judgment. Behavior analysts do not engage in romantic or sexual relationships with former clients or stakeholders for a minimum of two years from the date the professional relationship ended. Behavior analysts do not engage in romantic or sexual relationships with former supervisees or trainees until the parties can document that the professional relationship has ended (i.e., completion of all professional duties). Behavior analysts do not accept as supervisees or trainees individuals with whom they have had a past romantic or sexual relationship until at least six months after the relationship has ended.

### 1.15 Responding to Requests

Behavior analysts make appropriate efforts to respond to requests for information from and comply with deadlines of relevant individuals (e.g., clients, stakeholders, supervisees, trainees) and entities (e.g., BACB, licensure boards, funders). They also comply with practice requirements (e.g., attestations, criminal background checks) imposed by the BACB, employers, or governmental entities.

### 1.16 Self-Reporting Critical Information

Behavior analysts remain knowledgeable about and comply with all self-reporting requirements of relevant entities (e.g., BACB, licensure boards, funders).

## Section 2—Responsibility in Practice

### 2.01 Providing Effective Treatment

*Behavior analysts* prioritize *clients' rights* and needs in service delivery. They provide services that are conceptually consistent with behavioral principles, based on scientific evidence, and designed to maximize desired outcomes for and protect all *clients, stakeholders, supervisees, trainees*, and *research participants* from harm. Behavior analysts implement nonbehavioral services with clients only if they have the required education, formal training, and professional credentials to deliver such services.

### 2.02 Timeliness

Behavior analysts deliver services and carry out necessary service-related administrative responsibilities in a timely manner.

### 2.03 Protecting Confidential Information

Behavior analysts take appropriate steps to protect the confidentiality of clients, stakeholders, supervisees, trainees, and research participants; prevent the accidental or inadvertent sharing of confidential information; and comply with applicable

Updated 02/2024, Copyright © 2020, BACB® | All rights reserved.

confidentiality requirements (e.g., laws, regulations, organization policies). The scope of confidentiality includes service delivery (e.g., live, teleservices, recorded sessions); documentation and data; and verbal, written, or electronic communication.

**2.04 Disclosing Confidential Information**

Behavior analysts only share confidential information about clients, stakeholders, supervisees, trainees, or research participants: (1) when *informed consent* is obtained; (2) when attempting to protect the client or others from harm; (3) when attempting to resolve contractual issues; (4) when attempting to prevent a crime that is reasonably likely to cause physical, mental, or financial harm to another; or (5) when compelled to do so by law or court order. When behavior analysts are authorized to discuss confidential information with a *third party*, they only share information critical to the purpose of the communication.

**2.05 Documentation Protection and Retention**

Behavior analysts are knowledgeable about and comply with all applicable requirements (e.g., BACB rules, laws, regulations, contracts, funder and organization requirements) for storing, transporting, retaining, and destroying physical and electronic documentation related to their professional activities. They destroy physical documentation after making electronic copies or summaries of data (e.g., reports and graphs) only when allowed by applicable requirements. When a behavior analyst leaves an organization these responsibilities remain with the organization.

**2.06 Accuracy in Service Billing and Reporting**

Behavior analysts identify their services accurately and include all required information on reports, bills, invoices, requests for reimbursement, and receipts. They do not implement or bill nonbehavioral services under an authorization or contract for *behavioral services*. If inaccuracies in reporting or billing are discovered, they inform all relevant parties (e.g., organizations, licensure boards, funders), correct the inaccuracy in a timely manner, and document all actions taken in this circumstance and the eventual outcomes.

**2.07 Fees**

Behavior analysts implement fee practices and share fee information in compliance with applicable laws and regulations. They do not misrepresent their fees. In situations where behavior analysts are not directly responsible for fees, they must communicate these requirements to the responsible party and take steps to resolve any inaccuracy or conflict. They document all actions taken in this circumstance and the eventual outcomes.

**2.08 Communicating About Services**

Behavior analysts use understandable language in, and ensure comprehension of, all communications with clients, stakeholders, supervisees, trainees, and research participants. Before providing services, they clearly describe the scope of services and specify the conditions under which services will end. They explain all assessment and *behavior-change intervention* procedures before implementing them and explain assessment and intervention results when they are available. They provide an accurate and current set of their credentials and a description of their area of competence upon request.

**2.09 Involving Clients and Stakeholders**

Behavior analysts make appropriate efforts to involve clients and relevant stakeholders throughout the service relationship, including selecting goals, selecting and designing assessments and behavior-change interventions, and conducting continual progress monitoring.

**2.10 Collaborating with Colleagues**

Behavior analysts collaborate with colleagues from their own and other professions in the best interest of clients and stakeholders. Behavior analysts address conflicts by compromising when possible and always prioritizing the best interest of the client. Behavior analysts document all actions taken in these circumstances and their eventual outcomes.

**2.11 Obtaining Informed Consent**

Behavior analysts are responsible for knowing about and complying with all conditions under which they are required to obtain informed consent from clients, stakeholders, and research participants (e.g., before initial implementation of assessments or behavior-change interventions, when making substantial changes to interventions, when exchanging or releasing confidential information or records). They are responsible for explaining, obtaining, reobtaining, and documenting required informed consent. They are responsible for obtaining *assent* from clients when applicable.

Updated 02/2024, Copyright © 2020, BACB® | All rights reserved.

### 2.12 Considering Medical Needs

Behavior analysts ensure, to the best of their ability, that medical needs are assessed and addressed if there is any reasonable likelihood that a referred behavior is influenced by medical or biological variables. They document referrals made to a medical professional and follow up with the client after making the referral.

### 2.13 Selecting, Designing, and Implementing Assessments

Before selecting or designing behavior-change interventions behavior analysts select and design assessments that are conceptually consistent with behavioral principles; that are based on scientific evidence; and that best meet the diverse needs, context, and resources of the client and stakeholders. They select, design, and implement assessments with a focus on maximizing benefits and minimizing risk of harm to the client and stakeholders. They summarize the procedures and results in writing.

### 2.14 Selecting, Designing, and Implementing Behavior-Change Interventions

Behavior analysts select, design, and implement behavior-change interventions that: (1) are conceptually consistent with behavioral principles; (2) are based on scientific evidence; (3) are based on assessment results; (4) prioritize positive reinforcement procedures; and (5) best meet the diverse needs, context, and resources of the client and stakeholders. Behavior analysts also consider relevant factors (e.g., risks, benefits, and side effects; client and stakeholder preference; implementation efficiency; cost effectiveness) and design and implement behavior-change interventions to produce outcomes likely to maintain under naturalistic conditions. They summarize the behavior-change intervention procedures in writing (e.g., a behavior plan).

### 2.15 Minimizing Risk of Behavior-Change Interventions

Behavior analysts select, design, and implement behavior-change interventions (including the selection and use of consequences) with a focus on minimizing risk of harm to the client and stakeholders. They recommend and implement restrictive or punishment-based procedures only after demonstrating that desired results have not been obtained using less intrusive means, or when it is determined by an existing intervention team that the risk of harm to the client outweighs the risk associated with the behavior-change intervention. When recommending and implementing restrictive or punishment-based procedures, behavior analysts comply with any required review processes (e.g., a human rights review committee). Behavior analysts must continually evaluate and document the effectiveness of restrictive or punishment-based procedures and modify or discontinue the behavior-change intervention in a timely manner if it is ineffective.

### 2.16 Describing Behavior-Change Interventions Before Implementation

Before implementation, behavior analysts describe in writing the objectives and procedures of the behavior-change intervention, any projected timelines, and the schedule of ongoing review. They provide this information and explain the environmental conditions necessary for effective implementation of the behavior-change intervention to the stakeholders and client (when appropriate). They also provide explanations when modifying existing or introducing new behavior-change interventions and obtain informed consent when appropriate.

### 2.17 Collecting and Using Data

Behavior analysts actively ensure the appropriate selection and correct implementation of data collection procedures. They graphically display, summarize, and use the data to make decisions about continuing, modifying, or terminating services.

### 2.18 Continual Evaluation of the Behavior-Change Intervention

Behavior analysts engage in continual monitoring and evaluation of behavior-change interventions. If data indicate that desired outcomes are not being realized, they actively assess the situation and take appropriate corrective action. When a behavior analyst is concerned that services concurrently delivered by another professional are negatively impacting the behavior-change intervention, the behavior analyst takes appropriate steps to review and address the issue with the other professional.

### 2.19 Addressing Conditions Interfering with Service Delivery

Behavior analysts actively identify and address environmental conditions (e.g., the behavior of others, hazards to the client or staff, disruptions) that may interfere with or prevent service delivery. In such situations, behavior analysts remove or minimize the conditions, identify effective modifications to the intervention, and/or consider obtaining or recommending assistance from other professionals. Behavior analysts document the conditions, all actions taken, and the eventual outcomes.

Updated 02/2024, Copyright © 2020, BACB® | All rights reserved.

## Section 3—Responsibility to Clients and Stakeholders

**3.01 Responsibility to Clients** (see 1.03, 2.01)

*Behavior analysts* act in the best interest of *clients*, taking appropriate steps to support *clients' rights*, maximize benefits, and do no harm. They are also knowledgeable about and comply with applicable laws and regulations related to mandated reporting requirements.

**3.02 Identifying Stakeholders**

Behavior analysts identify *stakeholders* when providing services. When multiple stakeholders (e.g., parent or *legally authorized representative*, teacher, principal) are involved, the behavior analyst identifies their relative obligations to each stakeholder. They document and communicate those obligations to stakeholders at the outset of the professional relationship.

**3.03 Accepting Clients** (see 1.05, 1.06)

Behavior analysts only accept clients whose requested services are within their identified *scope of competence* and available resources (e.g., time and capacity for case supervision, staffing). When behavior analysts are directed to accept clients outside of their identified scope of competence and available resources, they take appropriate steps to discuss and resolve the concern with relevant parties. Behavior analysts document all actions taken in this circumstance and the eventual outcomes.

**3.04 Service Agreement** (see 1.04)

Before implementing services, behavior analysts ensure that there is a signed service agreement with the client and/or relevant stakeholders outlining the responsibilities of all parties, the scope of *behavioral services* to be provided, the behavior analyst's obligations under the Code, and procedures for submitting complaints about a behavior analyst's professional practices to relevant entities (e.g., BACB, service organization, licensure board, funder). They update service agreements as needed or as required by relevant parties (e.g., service organizations, licensure boards, funders). Updated service agreements must be reviewed with and signed by the client and/or relevant stakeholders.

**3.05 Financial Agreements** (see 1.04, 2.07)

Before beginning services, behavior analysts document agreed-upon compensation and billing practices with their clients, relevant stakeholders, and/or funders. When funding circumstances change, they must be revisited with these parties. Pro bono and bartered services are only provided under a specific service agreement and in compliance with the Code.

**3.06 Consulting with Other Providers** (see 1.05, 2.04, 2.10, 2.11, 2.12)

Behavior analysts arrange for appropriate consultation with and referrals to other providers in the best interests of their clients, with appropriate *informed consent*, and in compliance with applicable requirements (e.g., laws, regulations, contracts, organization and funder policies).

**3.07 Third-Party Contracts for Services** (see 1.04, 1.11, 2.04, 2.07)

When behavior analysts enter into a signed contract to provide services to a client at the request of a *third party* (e.g., school district, governmental entity), they clarify the nature of the relationship with each party and assess any potential conflicts before services begin. They ensure that the contract outlines (1) the responsibilities of all parties, (2) the scope of behavioral services to be provided, (3) the likely use of the information obtained, (4) the behavior analysts' obligations under the Code, and (5) any limits about maintaining confidentiality. Behavior analysts are responsible for amending contracts as needed and reviewing them with the relevant parties at that time.

**3.08 Responsibility to the Client with Third-Party Contracts for Services** (see 1.05, 1.11, 2.01)

Behavior analysts place the client's care and welfare above all others. If the third party requests services from the behavior analyst that are incompatible with the behavior analyst's recommendations, that are outside of the behavior analyst's scope of competence, or that could result in a *multiple relationship*, behavior analysts resolve such conflicts in the best interest of the client. If a conflict cannot be resolved, the behavior analyst may obtain additional training or consultation, discontinue services following appropriate transition measures, or refer the client to another behavior analyst. Behavior analysts document all actions taken in this circumstance and the eventual outcomes.

Updated 02/2024, Copyright © 2020, BACB® | All rights reserved.

**3.09 Communicating with Stakeholders About Third-Party Contracted Services** (2.04, 2.08, 2.09, 2.11)

When providing services at the request of a third party to a minor or individual who does not have the legal right to make personal decisions, behavior analysts ensure that the parent or legally authorized representative is informed of the rationale for and scope of services to be provided, as well as their right to receive copies of all service documentation and data. Behavior analysts are knowledgeable about and comply with all requirements related to informed consent, regardless of who requested the services.

**3.10 Limitations of Confidentiality** (see 1.02, 2.03, 2.04)

Behavior analysts inform clients and stakeholders of the limitations of confidentiality at the outset of the professional relationship and when information disclosures are required.

**3.11 Documenting Professional Activity** (see 1.04, 2.03, 2.05, 2.06, 2.10)

Throughout the service relationship, behavior analysts create and maintain detailed and high-quality documentation of their professional activities to facilitate provision of services by them or by other professionals, to ensure accountability, and to meet applicable requirements (e.g., laws, regulations, funder and organization policies). Documentation must be created and maintained in a manner that allows for timely communication and transition of services, should the need arise.

**3.12 Advocating for Appropriate Services** (1.04, 1.05, 2.01, 2.08)

Behavior analysts advocate for and educate clients and stakeholders about evidence-based assessment and *behavior-change intervention* procedures. They also advocate for the appropriate amount and level of behavioral service provision and oversight required to meet defined client goals.

**3.13 Referrals** (see 1.05, 1.11, 2.01, 2.04, 2.10)

Behavior analysts make referrals based on the needs of the client and/or relevant stakeholders and include multiple providers when available. Behavior analysts disclose to the client and relevant stakeholders any relationships they have with potential providers and any fees or incentives they may receive for the referrals. They document any referrals made, including relevant relationships and fees or incentives received, and make appropriate efforts to follow up with the client and/or relevant stakeholders.

**3.14 Facilitating Continuity of Services** (see 1.03, 2.02, 2.05, 2,08, 2.10)

Behavior analysts act in the best interests of the client to avoid interruption or disruption of services. They make appropriate and timely efforts to facilitate the continuation of behavioral services in the event of planned interruptions (e.g., relocation, temporary leave of absence) and unplanned interruptions (e.g., illness, funding disruption, parent request, emergencies). They ensure that service agreements or contracts include a general plan of action for service interruptions. When a service interruption occurs, they communicate to all relevant parties the steps being taken to facilitate continuity of services. Behavior analysts document all actions taken in this circumstance and the eventual outcomes.

**3.15 Appropriately Discontinuing Services** (see 1.03, 2.02, 2.05. 2.10, 2.19)

Behavior analysts include the circumstances for discontinuing services in their service agreement. They consider discontinuing services when: (1) the client has met all behavior-change goals, (2) the client is not benefiting from the service, (3) the behavior analyst and/or their *supervisees* or *trainees* are exposed to potentially harmful conditions that cannot be reasonably resolved, (4) the client and/or relevant stakeholder requests discontinuation, (5) the relevant stakeholders are not complying with the behavior-change intervention despite appropriate efforts to address barriers, or (6) services are no longer funded. Behavior analysts provide the client and/or relevant stakeholders with a written plan for discontinuing services, document acknowledgment of the plan, review the plan throughout the discharge process, and document all steps taken.

**3.16 Appropriately Transitioning Services** (see 1.03, 2.02, 2.05. 2.10)

Behavior analysts include in their service agreement the circumstances for transitioning the client to another behavior analyst within or outside of their organization. They make appropriate efforts to effectively manage transitions; provide a written plan that includes target dates, transition activities, and responsible parties; and review the plan throughout the transition. When relevant, they take appropriate steps to minimize disruptions to services during the transition by collaborating with relevant service providers.

Updated 02/2024, Copyright © 2020, BACB® | All rights reserved.

## Section 4—Responsibility to Supervisees and Trainees

**4.01 Compliance with Supervision Requirements** (see 1.02)

*Behavior analysts* are knowledgeable about and comply with all applicable supervisory requirements (e.g., BACB rules, licensure requirements, funder and organization policies), including those related to supervision modalities and structure (e.g., in person, video conference, individual, group).

**4.02 Supervisory Competence** (see 1.05, 1.06)

Behavior analysts supervise and train others only within their identified *scope of competence*. They provide supervision only after obtaining knowledge and skills in effective supervisory practices, and they continually evaluate and improve their supervisory repertoires through professional development.

**4.03 Supervisory Volume** (see 1.02, 1.05, 2.01)

Behavior analysts take on only the number of *supervisees* or *trainees* that allows them to provide effective supervision and training. They are knowledgeable about and comply with any relevant requirements (e.g., BACB rules, licensure requirements, funder and organization policies). They consider relevant factors (e.g., their current client demands, their current supervisee or trainee caseload, time and logistical resources) on an ongoing basis and when deciding to add a supervisee or trainee. When behavior analysts determine that they have met their threshold volume for providing effective supervision, they document this self-assessment and communicate the results to their employer or other relevant parties.

**4.04 Accountability in Supervision** (see 1.03)

Behavior analysts are accountable for their supervisory practices. They are also accountable for the professional activities (e.g., client services, supervision, training, research activity, public statements) of their supervisees or trainees that occur as part of the supervisory relationship.

**4.05 Maintaining Supervision Documentation** (1.01, 1.02, 1.04, 2.03, 2.05, 3.11)

Behavior analysts create, update, store, and dispose of documentation related to their supervisees or trainees by following all applicable requirements (e.g., BACB rules, licensure requirements, funder and organization policies), including those relating to confidentiality. They ensure that their documentation, and the documentation of their supervisees or trainees, is accurate and complete. They maintain documentation in a manner that allows for the effective transition of supervisory oversight if necessary. They retain their supervision documentation for at least 7 years and as otherwise required by law and other relevant parties and instruct their supervisees or trainees to do the same.

**4.06 Providing Supervision and Training** (see 1.02, 1.13 2.01)

Behavior analysts deliver supervision and training in compliance with applicable requirements (e.g., BACB rules, licensure requirements, funder and organization policies). They design and implement supervision and training procedures that are evidence based, focus on positive reinforcement, and are individualized for each supervisee or trainee and their circumstances.

**4.07 Incorporating and Addressing Diversity** (see 1.05, 1.06, 1.07, 1.10)

During supervision and training, behavior analysts actively incorporate and address topics related to diversity (e.g., age, disability, ethnicity, gender expression/identity, immigration status, marital/relationship status, national origin, race, religion, sexual orientation, socioeconomic status).

**4.08 Performance Monitoring and Feedback** (see 2.02, 2.05, 2.17, 2.18)

Behavior analysts engage in and document ongoing, evidence-based data collection and performance monitoring (e.g., observations, structured evaluations) of supervisees or trainees. They provide timely informal and formal praise and feedback designed to improve performance and document formal feedback delivered. When performance problems arise, behavior analysts develop, communicate, implement, and evaluate an improvement plan with clearly identified procedures for addressing the problem.

**4.09 Delegation of Tasks** (see 1.03)

Behavior analysts delegate tasks to their supervisees or trainees only after confirming that they can competently perform the tasks and that the delegation complies with applicable requirements (e.g., BACB rules, licensure requirements, funder and organization policies).

Updated 02/2024, Copyright © 2020, BACB® | All rights reserved.

**4.10 Evaluating Effects of Supervision and Training** (see 1.03, 2.17, 2.18)

Behavior analysts actively engage in continual evaluation of their own supervisory practices using feedback from others and *client* and supervisee or trainee outcomes. Behavior analysts document those self-evaluations and make timely adjustments to their supervisory and training practices as indicated.

**4.11 Facilitating Continuity of Supervision** (see 1.03, 2.02, 3.14)

Behavior analysts minimize interruption or disruption of supervision and make appropriate and timely efforts to facilitate the continuation of supervision in the event of planned interruptions (e.g., temporary leave) or unplanned interruptions (e.g., illness, emergencies). When an interruption or disruption occurs, they communicate to all relevant parties the steps being taken to facilitate continuity of supervision.

**4.12 Appropriately Terminating Supervision** (see 1.03, 2.02, 3.15)

When behavior analysts determine, for any reason, to terminate supervision or other services that include supervision, they work with all relevant parties to develop a plan for terminating supervision that minimizes negative impacts to the supervisee or trainee. They document all actions taken in this circumstance and the eventual outcomes.

## Section 5—Responsibility in Public Statements

**5.01 Protecting the Rights of Clients, Stakeholders, Supervisees, and Trainees** (see 1.03, 3.01)

*Behavior analysts* take appropriate steps to protect the *rights* of their *clients*, *stakeholders*, *supervisees,* and *trainees* in all *public statements*. Behavior analysts prioritize the rights of their clients in all public statements.

**5.02 Confidentiality in Public Statements** (see 2.03, 2.04, 3.10)

In all public statements, behavior analysts protect the confidentiality of their clients, supervisees, and trainees, except when allowed. They make appropriate efforts to prevent accidental or inadvertent sharing of confidential or identifying information.

**5.03 Public Statements by Behavior Analysts** (see 1.01, 1.02)

When providing public statements about their professional activities, or those of others with whom they are affiliated, behavior analysts take reasonable precautions to ensure that the statements are truthful and do not mislead or exaggerate either because of what they state, convey, suggest, or omit; and are based on existing research and a behavioral conceptualization. Behavior analysts do not provide specific advice related to a client's needs in public forums.

**5.04 Public Statements by Others** (see 1.03)

Behavior analysts are responsible for public statements that promote their professional activities or products, regardless of who creates or publishes the statements. Behavior analysts make reasonable efforts to prevent others (e.g., employers, marketers, clients, stakeholders) from making deceptive statements concerning their professional activities or products. If behavior analysts learn of such statements, they make reasonable efforts to correct them. Behavior analysts document all actions taken in this circumstance and the eventual outcomes.

**5.05 Use of Intellectual Property** (see 1.01, 1.02, 1.03)

Behavior analysts are knowledgeable about and comply with intellectual property laws, including obtaining permission to use materials that have been trademarked or copyrighted or can otherwise be claimed as another's intellectual property as defined by law. Appropriate use of such materials includes providing citations, attributions, and/or trademark or copyright symbols. Behavior analysts do not unlawfully obtain or disclose proprietary information, regardless of how it became known to them.

**5.06 Advertising Nonbehavioral Services** (see 1.01, 1.02, 2.01)

Behavior analysts do not advertise nonbehavioral services as *behavioral services*. If behavior analysts provide nonbehavioral services, those services must be clearly distinguished from their behavioral services and BACB certification with the following disclaimer: "These interventions are not behavioral in nature and are not covered by my BACB certification." This disclaimer is placed alongside the names and descriptions of all nonbehavioral interventions. If a behavior analyst is employed by an organization that violates this Code standard, the behavior analyst makes reasonable efforts to remediate the situation, documenting all actions taken and the eventual outcomes.

Updated 02/2024, Copyright © 2020, BACB® | All rights reserved.

**5.07 Soliciting Testimonials from Current Clients for Advertising** (see 1.11, 1.13, 2.11, 3.01, 3.10)

Because of the possibility of undue influence and implicit coercion, behavior analysts do not solicit *testimonials* from current clients or stakeholders for use in advertisements designed to obtain new clients. This does not include unsolicited reviews on *websites* where behavior analysts cannot control content, but such content should not be used or shared by the behavior analyst. If a behavior analyst is employed by an organization that violates this Code standard, the behavior analyst makes reasonable efforts to remediate the situation, documenting all actions taken and the eventual outcomes.

**5.08 Using Testimonials from Former Clients for Advertising** (see 2.03, 2.04, 2.11, 3.01, 3.10)

When soliciting testimonials from former clients or stakeholders for use in advertisements designed to obtain new clients, behavior analysts consider the possibility that former clients may re-enter services. These testimonials must be identified as solicited or unsolicited, include an accurate statement of the relationship between the behavior analyst and the testimonial author, and comply with all applicable privacy and confidentiality laws. When soliciting testimonials from former clients or stakeholders, behavior analysts provide them with clear and thorough descriptions about where and how the testimonial will appear, make them aware of any risks associated with the disclosure of their private information, and inform them that they can rescind the testimonial at any time. If a behavior analyst is employed by an organization that violates this Code standard, the behavior analyst makes reasonable efforts to remediate the situation, documenting all actions taken and the eventual outcomes.

**5.09 Using Testimonials for Nonadvertising Purposes** (see 1.02, 2.03. 2.04, 2.11, 3.01, 3.10)

Behavior analysts may use testimonials from former or current clients and stakeholders for nonadvertising purposes (e.g., fundraising, grant applications, dissemination of information about ABA) in accordance with applicable laws. If a behavior analyst is employed by an organization that violates this Code standard, the behavior analyst makes reasonable efforts to remediate the situation, documenting all actions taken and the eventual outcomes.

**5.10 Social Media Channels and Websites** (see 1.02, 2.03, 2.04, 2.11, 3.01, 3.10)

Behavior analysts are knowledgeable about the risks to privacy and confidentiality associated with the use of *social media channels* and websites and they use their respective professional and personal accounts accordingly. They do not publish information and/or *digital content* of clients on their **personal** social media accounts and websites. When publishing information and/or digital content of clients on their **professional** social media accounts and websites, behavior analysts ensure that for each publication they (1) obtain *informed consent* before publishing, (2) include a disclaimer that informed consent was obtained and that the information should not be captured and reused without express permission, (3) publish on social media channels in a manner that reduces the potential for sharing, and (4) make appropriate efforts to prevent and correct misuse of the shared information, documenting all actions taken and the eventual outcomes. Behavior analysts frequently monitor their social media accounts and websites to ensure the accuracy and appropriateness of shared information.

**5.11 Using Digital Content in Public Statements** (see 1.02, 1.03, 2.03, 2.04, 2.11, 3.01, 3.10)

Before publicly sharing information about clients using digital content, behavior analysts ensure confidentiality, obtain informed consent before sharing, and only use the content for the intended purpose and audience. They ensure that all shared media is accompanied by a disclaimer indicating that informed consent was obtained. If a behavior analyst is employed by an organization that violates this Code standard, the behavior analyst makes reasonable efforts to remediate the situation, documenting all actions taken and the eventual outcomes.

## Section 6—Responsibility in Research

**6.01 Conforming with Laws and Regulations in Research** (see 1.02)

*Behavior analysts* plan and conduct *research* in a manner consistent with all applicable laws and regulations, as well as requirements by organizations and institutions governing research activity.

**6.02 Research Review** (see 1.02, 1.04, 3.01)

Behavior analysts conduct research, whether independent of or in the context of service delivery, only after approval by a formal *research review committee*.

**6.03 Research in Service Delivery** (see 1.02, 1.04, 2.01, 3.01)

Behavior analysts conducting research in the context of service delivery must arrange research activities such that *client* services and client welfare are prioritized. In these situations, behavior analysts must comply with all ethics requirements for both

Updated 02/2024, Copyright © 2020, BACB® | All rights reserved.

service delivery and research within the Code. When professional services are offered as an incentive for research participation, behavior analysts clarify the nature of the services, and any potential risks, obligations, and limitations for all parties.

**6.04 Informed Consent in Research** (see 1.04, 2.08, 2.11)

Behavior analysts are responsible for obtaining *informed consent* (and *assent* when relevant) from potential *research participants* under the conditions required by the research review committee. When behavior analysts become aware that data obtained from past or current clients, *stakeholders*, *supervisees,* and/or *trainees* during typical service delivery might be disseminated to the scientific community, they obtain informed consent for use of the data before dissemination, specify that services will not be impacted by providing or withholding consent, and make available the right to withdraw consent at any time without penalty.

**6.05 Confidentiality in Research** (see 2.03, 2.04, 2.05)

Behavior analysts prioritize the confidentiality of their research participants except under conditions where it may not be possible. They make appropriate efforts to prevent accidental or inadvertent sharing of confidential or identifying information while conducting research and in any dissemination activity related to the research (e.g., disguising or removing confidential or identifying information).

**6.06 Competence in Conducting Research** (see 1.04, 1.05, 1.06, 3.01)

Behavior analysts only conduct research independently after they have successfully conducted research under a supervisor in a defined relationship (e.g., thesis, dissertation, mentored research project). Behavior analysts and their assistants are permitted to perform only those research activities for which they are appropriately trained and prepared. Before engaging in research activities for which a behavior analyst has not received training, they seek the appropriate training and become demonstrably competent or they collaborate with other professionals who have the required competence. Behavior analysts are responsible for the ethical conduct of all personnel assigned to the research project.

**6.07 Conflict of Interest in Research and Publication** (see 1.01, 1.11, 1.13)

When conducting research, behavior analysts identify, disclose, and address *conflicts of interest* (e.g., personal, financial, organization related, service related). They also identify, disclose, and address conflicts of interest in their publication and editorial activities.

**6.08 Appropriate Credit** (see 1.01, 1.11, 1.13)

Behavior analysts give appropriate credit (e.g., authorship, author-note acknowledgment) to research contributors in all dissemination activities. Authorship and other publication acknowledgments accurately reflect the relative scientific or professional contributions of the individuals involved, regardless of their professional status (e.g., professor, student).

**6.09 Plagiarism** (see 1.01)

Behavior analysts do not present portions or elements of another's work or data as their own. Behavior analysts only republish their previously published data or text when accompanied by proper disclosure.

**6.10 Documentation and Data Retention in Research** (see 2.03, 2.05, 3.11, 4.05)

Behavior analysts must be knowledgeable about and comply with all applicable standards (e.g., BACB rules, laws, research review committee requirements) for storing, transporting, retaining, and destroying physical and electronic documentation related to research. They retain identifying documentation and data for the longest required duration. Behavior analysts destroy physical documentation after making deidentified digital copies or summaries of data (e.g., reports and graphs) when permitted by relevant entities.

**6.11 Accuracy and Use of Data** (see 1.01, 2.17, 5.03)

Behavior analysts do not fabricate data or falsify results in their research, publications, and presentations. They plan and carry out their research and describe their procedures and findings to minimize the possibility that their research and results will be misleading or misinterpreted. If they discover errors in their published data they take steps to correct them by following publisher policy. Data from research projects are presented to the public and scientific community in their entirety whenever possible. When that is not possible, behavior analysts take caution and explain the exclusion of data (whether single data points, or partial or whole data sets) from presentations or manuscripts submitted for publication by providing a rationale and description of what was excluded.

Updated 02/2024, Copyright © 2020, BACB® | All rights reserved.




Copyright © 2020 by the Behavior Analyst Certification Board®, Inc. (“BACB®”), all rights reserved. Unauthorized reproduction, copying, or transmission in any medium is strictly prohibited.

®The trademarks “Behavior Analyst Certification Board®, Inc.,” “BACB®.” “Board Certified Behavior Analyst®,” “BCBA®,” “Board Certified Assistant Behavior Analyst®,” “BCaBA®,” and “RBT®,” are owned by the Behavior Analyst Certification Board®. Unauthorized use or misrepresentation is strictly prohibited.

i. Developing performance expectations for the supervisee;
ii. Observing the supervisee and providing performance feedback on behavior-analytic activities with clients in the natural environment. In person, on-site observation is preferred but use of web cameras, video record, videoconferencing, or a similar means that provides synchronous or asynchronous observation is acceptable;
iii. Modeling technical, professional, and ethical behavior for the supervisee;
iv. Guiding behavioral case conceptualization, problem solving, and decision making skills of the supervisee;
v. Reviewing written materials prepared by the supervisee such as behavior programs, data sheets, and reports;
vi. Providing oversight and evaluation of the effects of the supervisee's delivery of behavioral service; and
vii. Evaluating the effects of supervising the supervisee; and

b. Effective supervision may be conducted:
i. Individually for at least half of the total supervised hours in each supervisory period; and
ii. In groups of two to 10 supervisees for no more than half of the total supervised hours in each supervisory period.

6. Supervision plan. The Board shall accept, for the purpose of licensure, hours of supervised experience for which the supervisee and supervisor executed a written plan before starting the supervised experience, which includes the following:
a. States the responsibilities of both the supervisor and supervisee;
b. Requires the supervisor to complete eight hours of supervision training provided by BACB;
c. Includes a description of appropriate activities and instructional objectives;
d. Specifies the measurable circumstance under which the supervisor will complete the supervisee's Experience Verification Form;
e. Delineates the consequences if either supervisor or supervisee does not comply with the plan;
f. Requires the supervisee to obtain written permission from the supervisee's employer or manager when applicable; and
g. Requires both the supervisor and supervisee to comply with the ethical standard specified at R4-26-406.

7. Multiple supervisors or settings. The Board shall accept, for the purpose of licensure, hours of supervised experience provided by multiple supervisors or at multiple settings if all the hours of supervised experience meet the standards specified in subsections (C)(1) through (6).

**Historical Note**

New Section made by final rulemaking at 24 A.A.R. 3100, effective December 11, 2018 (Supp. 18-4). Amended by final rulemaking 26 A.A.R. 1017, effective July 4, 2020 (Supp. 20-2). Amended by final rulemaking at 28 A.A.R. 3891 (December 23, 2022), effective January 29, 2023 (Supp. 22-4).

**R4-26-405. Coursework Requirement**

**A.** This Section does not apply to an applicant who was certified as a behavior analyst by the BACB before January 1, 2015.

**B.** To be licensed as a behavior analyst in Arizona, an individual shall complete, as part of or in addition to the coursework necessary to obtain the graduate degree required under R4-26-404.1, a minimum of 270 classroom hours of graduate-level instruction, the content of which is consistent with the minimum verified course sequence of the Association for Behavior Analysis International in effect at the time the instruction is obtained.

**C.** The Board shall accept classroom hours of graduate-level instruction completed at an accredited institution of higher education or in a program consistent with the minimum verified course sequence of the Association for Behavior Analysis International in effect at the time the instruction is obtained.

**Historical Note**

Section made by final rulemaking at 18 A.A.R. 2490, effective September 11, 2012 (Supp. 12-3). Section amended by final rulemaking at 23 A.A.R. 215, effective March 5, 2017 (Supp. 17-1). Amended by final rulemaking at 28 A.A.R. 3891 (December 23, 2022), effective January 29, 2023 (Supp. 22-4).

**R4-26-406. Ethical Standard**

In fulfilling its responsibilities under law, the Board shall rely on the most current version of the BACB Professional and Ethical Compliance Code for Behavior Analysts, published by the BACB and available for review at the Board office and online at www.BACB.com unless the Board determines public health and safety is not sufficiently protected by the current version of the BACB Professional and Ethical Compliance Code for Behavior Analysts.

**Historical Note**

Section made by final rulemaking at 18 A.A.R. 2490, effective September 11, 2012 (Supp. 12-3). Section amended by final rulemaking at 23 A.A.R. 215, effective March 5, 2017 (Supp. 17-1). Amended by final rulemaking 26 A.A.R. 1017, effective July 4, 2020 (Supp. 20-2).

**R4-26-407. Repealed**

**Historical Note**

Section made by final rulemaking at 18 A.A.R. 2490, effective September 11, 2012 (Supp. 12-3). Section amended by final rulemaking at 23 A.A.R. 215, effective March 5, 2017 (Supp. 17-1). Section amended by final rulemaking at 24 A.A.R. 3100, effective December 11, 2018 (Supp. 18-4). Repealed by final rulemaking 26 A.A.R. 1017, effective July 4, 2020 (Supp. 20-2).

**R4-26-408. License Renewal**

**A.** A license issued by the Board, whether active or inactive, expires on the last day of a licensee's birth month during the licensee's renewal year.

**B.** The Board shall provide a licensee with 60 days' notice of the license renewal deadline. Failure to receive the notice does not excuse failure to renew timely.

**C.** To renew a license, a licensee shall, on or before the last day of the licensee's birth month during the licensee's renewal year, submit to the Board a renewal application form, which is available from the Board office and on its website.

**D.** Additionally, to renew a license, a licensee shall submit:
1. The license renewal fee required under R4-26-402;

32-2063. Powers and duties

A. The board shall:

1. Administer and enforce this chapter and board rules.

2. Regulate disciplinary actions, the granting, denial, revocation, renewal and suspension of licenses and the rehabilitation of licensees pursuant to this chapter and board rules.

3. Prescribe the forms, content and manner of application for licensure and renewal of licensure and set deadlines for the receipt of materials required by the board.

4. Keep a record of all licensees, board actions taken on all applicants and licensees and the receipt and disbursal of monies.

5. Adopt an official seal for attesting licenses and other official papers and documents.

6. Investigate charges of violations of this chapter and board rules and orders.

7. Subject to title 41, chapter 4, article 4, employ an executive director who serves at the pleasure of the board.

8. Annually elect from among its membership a chairman, a vice chairman and a secretary, who serve at the pleasure of the board.

9. Adopt rules pursuant to title 41, chapter 6 to carry out this chapter and to define unprofessional conduct.

10. Engage in a full exchange of information with other regulatory boards and psychological associations, national psychology organizations and the Arizona psychological association and its components.

11. By rule, adopt a code of ethics relating to the practice of psychology. The board shall base this code on the code of ethics adopted and published by the American psychological association. The board shall apply the code to all board enforcement policies and disciplinary case evaluations and development of licensing examinations.

12. Adopt rules regarding the use of telepractice.

13. Before the board takes action, receive and consider recommendations from the committee on behavior analysts on all matters relating to licensing and regulating behavior analysts, as well as regulatory changes pertaining to the practice of behavior analysis, except in the case of a summary suspension of a license pursuant to section 32-2091.09, subsection E.

14. Beginning January 1, 2022, require each applicant for an initial or temporary license or a license renewal pursuant to this chapter to have applied for a fingerprint clearance card pursuant to title 41, chapter 12, article 3.1. 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 is based does not alone disqualify the applicant from licensure.

B. Subject to title 41, chapter 4, article 4, the board may employ personnel it deems necessary to carry out this chapter. The board, in investigating violations of this chapter, may employ investigators who may be psychologists. The board or its executive director may take and hear evidence, administer oaths and

affirmations and compel by subpoena the attendance of witnesses and the production of books, papers, records, documents and other information relating to the investigation or hearing.

C. Subject to section 35-149, the board may accept, expend and account for gifts, grants, devises and other contributions, monies or property from any public or private source, including the federal government. The board shall deposit, pursuant to sections 35-146 and 35-147, monies received pursuant to this subsection in special funds for the purpose specified, and monies in these funds are exempt from the provisions of section 35-190 relating to lapsing of appropriations.

D. Compensation for all personnel shall be determined pursuant to section 38-611.

32-2091. Definitions

In this article, unless the context otherwise requires:

1. "Active license" means a current license issued by the board to a person licensed pursuant to this article.

2. "Adequate records" means records that contain, at a minimum, sufficient information to identify the client, the dates of service, the fee for service, the payments for service and the type of service given and copies of any reports that may have been made.

3. "Behavior analysis" means the design, implementation and evaluation of systematic environmental modifications by a behavior analyst to produce socially significant improvements in human behavior based on the principles of behavior identified through the experimental analysis of behavior. Behavior analysis does not include cognitive therapies or psychological testing, neuropsychology, psychotherapy, sex therapy, psychoanalysis, hypnotherapy and long-term counseling as treatment modalities.

4. "Behavior analysis services" means the use of behavior analysis to assist a person to learn new behavior, increase existing behavior, reduce existing behavior and emit behavior under precise environmental conditions. Behavior analysis includes behavioral programming and behavioral programs.

5. "Behavior analyst" means a person who is licensed pursuant to this article to practice behavior analysis.

6. "Client" means:

(a) A person or entity that receives behavior analysis services.

(b) A corporate entity, a governmental entity or any other organization that has a professional contract to provide services or benefits primarily to an organization rather than to an individual.

(c) An individual's legal guardian for decision making purposes, except that the individual is the client for issues that directly affect the individual's physical or emotional safety and issues that the legal guardian agrees to specifically reserve to the individual.

7. "Exploit" means an action by a behavior analyst who takes undue advantage of the professional association with a client, student or supervisee for the advantage or profit of the behavior analyst.

8. "Health care institution" means a facility that is licensed pursuant to title 36, chapter 4, article 1.

9. "Incompetent as a behavior analyst" means that a person who is licensed pursuant to article 4 of this chapter lacks the knowledge or skills of a behavior analyst to a degree that is likely to endanger the health of a client.

10. "Letter of concern" means an advisory letter to notify a licensee that while there is insufficient evidence to support disciplinary action the board believes the licensee 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 license.

11. "Supervisee" means a person who acts under the extended authority of a behavior analyst to provide behavioral services and includes a person who is in training to provide these services.

12. "Unprofessional conduct" includes the following activities, whether occurring in this state or elsewhere:

(a) Obtaining a fee by fraud or misrepresentation.

(b) Betraying professional confidences.

(c) Making or using statements of a character tending to deceive or mislead.

(d) Aiding or abetting a person who is not licensed pursuant to this article in representing that person as a behavior analyst.

(e) Gross negligence in the practice of a behavior analyst.

(f) Sexual intimacies or sexual intercourse with a current client or a supervisee or with a former client within two years after the cessation or termination of treatment. For the purposes of this subdivision, "sexual intercourse" has the same meaning prescribed in section 13-1401.

(g) Engaging or offering to engage as a behavior analyst in activities that are not congruent with the behavior analyst's professional education, training and experience.

(h) Failing or refusing to maintain and retain adequate business, financial or professional records pertaining to the behavior analysis services provided to a client.

(i) Committing a felony, whether or not involving moral turpitude, or a misdemeanor involving moral turpitude. In either case, conviction by a court of competent jurisdiction or a plea of no contest is conclusive evidence of the commission.

(j) Making a fraudulent or untrue statement to the board or its investigators, staff or consultants.

(k) Violating any federal or state law that relates to the practice of behavior analysis or to obtain a license to practice behavior analysis.

(l) Practicing behavior analysis while impaired or incapacitated to the extent and in a manner that jeopardizes the welfare of a client or renders the services provided ineffective.

(m) Using fraud, misrepresentation or deception to obtain or attempt to obtain a behavior analysis license or to pass or attempt to pass a behavior analysis licensing examination or in assisting another person to do so.

(n) Unprofessional conduct in another jurisdiction that resulted in censure, probation or a civil penalty or in the denial, suspension, restriction or revocation of a certificate or license to practice as a behavior analyst.

(o) Providing services that are unnecessary or unsafe or otherwise engaging in activities as a behavior analyst that are unprofessional by current standards of practice.

(p) Falsely or fraudulently claiming to have performed a professional service, charging for a service or representing a service as the licensee's own if the licensee has not rendered the service or assumed supervisory responsibility for the service.

(q) Representing activities or services as being performed under the licensee's supervision if the behavior analyst has not assumed responsibility for them and has not exercised control, oversight and review.

(r) Failing to obtain a client's informed and written consent to release personal or otherwise confidential information to another party unless the release is otherwise authorized by law.

(s) Failing to make client records in the behavior analyst's possession promptly available to another behavior analyst on receipt of proper authorization to do so from the client, a minor client's parent, the client's legal guardian or the client's authorized representative or failing to comply with title 12, chapter 13, article 7.1.

(t) Failing to take reasonable steps to inform or protect a client's intended victim and inform the proper law enforcement officials if the behavior analyst becomes aware during the course of providing or supervising behavior analysis services that a client intends or plans to inflict serious bodily harm on another person.

(u) Failing to take reasonable steps to protect a client if the behavior analyst becomes aware during the course of providing or supervising behavior analysis services that a client intends or plans to inflict serious bodily harm on self.

(v) Abandoning or neglecting a client in need of immediate care without making suitable arrangements for continuation of the care.

(w) Engaging in direct or indirect personal solicitation of clients through the use of coercion, duress, undue influence, compulsion or intimidation practices.

(x) Engaging in false, deceptive or misleading advertising.

(y) Exploiting a client, student or supervisee.

(z) Failing to report information to the board regarding a possible act of unprofessional conduct committed by another behavior analyst who is licensed pursuant to this article unless this reporting violates the behavior analyst's confidential relationship with a client pursuant to this article. A behavior

analyst who reports or provides information to the board in good faith is not subject to an action for civil damages.

(aa) Violating a formal board order, consent agreement, term of probation or stipulated agreement issued under this article.

(bb) Failing to furnish information in a timely manner to the board or its investigators or representatives if requested or subpoenaed by the board as prescribed by this article.

(cc) Failing to make available to a client or to the client's designated representative, on written request, a copy of the client's record, excluding raw test data, psychometric testing materials and other information as provided by law.

(dd) Violating an ethical standard adopted by the board.

(ee) Representing oneself as a psychologist or permitting others to do so if the behavior analyst is not also licensed as a psychologist pursuant to this chapter.

41-1028. Incorporation by reference

A. An agency may incorporate by reference in its rules, and without publishing the incorporated matter in full, all or any part of a code, standard, rule or regulation of an agency of the United States or of this state or a nationally recognized organization or association, if incorporation of its text in agency rules would be unduly cumbersome, expensive or otherwise inexpedient.

B. The reference in the agency rules shall fully identify the incorporated matter by location, date and otherwise and shall state that the rule does not include any later amendments or editions of the incorporated matter.

C. An agency may incorporate by reference such matter in its rules only if the agency, organization or association originally issuing that matter makes copies of it readily available to the public for inspection and reproduction.

D. The rules shall state where copies of the incorporated matter are available from the agency issuing the rule and from the agency of the United States or this state or the organization or association originally issuing the matter.

E. An agency may incorporate later amendments or editions of the incorporated matter only after compliance with the rule making requirements of this chapter.

**D-3.**

**DEPARTMENT OF HEALTH SERVICES**
Title 9, Chapter 13

**Amend:** R9-13-201, R9-13-203, R9-13-204, R9-13-205, R9-13-208

# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - REGULAR RULEMAKING

---

**MEETING DATE: April 1, 2025**

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

**FROM:** Council Staff

**DATE:** March 18, 2025

**SUBJECT:** **DEPARTMENT OF HEALTH SERVICES**
Title 9, Chapter 13

**Amend:** R9-13-201, R9-13-203, R9-13-204, R9-13-205, R9-13-208

---

**Summary:**

This regular rulemaking from the Department of Health Services (Department) seeks to amend five (5) rules in Title 9, Chapter 13, Article 2 regarding Newborn and Infant Screening. Specifically, the Department indicates it is proposing several rule changes to add testing for certain congenital disorders and to increase the fee for the program. The amendments to R9-13-201 will remove the defined term initial specimen. The Department is proposing changes in R9-13-203 to add three new disorders that are tested. The Department has indicated these disorders need to be added as a result of the U.S. Department of Health and Human Services adding these disorders to the Recommended Uniform Screening Panel (RUSP). The Department is required by A.R.S. § 36-694(D) to add all disorders listed on RUSP to the State's newborn screening panel.

Additionally, the Department is proposing amendments to R9-13-204 to clarify what a hospital or birth center must do should a parent refuse testing of a newborn. The proposed amendments in R9-13-205 are to fix typographical errors. Lastly, the Department is proposing updates to R9-13-208, which effective June 1, 2025 will increase the fee for the newborn screening program from $171.00 to $194.00, and then effective April 1, 2026 will increase to

$211.00. The Department has indicated that this increase is necessary because of the addition of the three additional disorders, along with the follow up required for abnormal results. This fee is paid for by the health care facility or health care provider submitting the specimen for testing. The Department last raised the fee amount in a rulemaking approved by the council in September 2022.

The Department is seeking an immediate effective date pursuant to A.R.S. § 41-1032(A)(1) and (4).

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

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

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

This rulemaking does contain a fee increase. The fee is for newborn screening testing. This is an existing fee that was last increased in 2022. The current fee is $171.00. Under the proposed rules, the fee would go to $194.00 on June 1, 2025 and remain that amount until April 1, 2026 when the fee would be increased to $211.00. This ultimately results in a $40 fee increase. The Department has indicated that this fee increase is necessary because they are adding additional disorders that need to be tested, along with the accompanying follow up procedures for positive or abnormal test results. The Department has indicated that the fee is related to the program and not testing, so the fee is charged even if testing is not performed as a result of not having parental consent or other factors.

The Department, at the discretion of the Director, is allowed to charge fees for operation of the newborn screening program per A.R.S. § 36-694(H).

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

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

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

The Department indicates that Laws 2021, Ch. 409, § 14, revised A.R.S. § 36-694 and directed the Department to adopt all of the newborn screening (NBS) disorders included on the Recommended Uniform Screening Panel (RUSP) adopted by the Secretary of the U.S. Department of Health and Human Services. The Department states that since the current rules were adopted in September 2022, three additional disorders have been added to the RSUP and must be added to the list of NBS disorders. The Department believes that it will incur new costs for adding the tests for the additional disorders, including following up on abnormal screening test results, the newborn screening program fees have also been increased to cover these costs. The Department indicates that to cover the additional

expense related to adding these disorders to the NBS panel, the Department is instituting a fee increase of $40 from the current program fee of $171, to be paid by the submitter of an initial specimen collection kit for a baby. The Department states that to reduce the economic burden, the increased fees will be implemented in a stepwise fashion. The Department states that effective June 1, 2025 and until March 31, 2026, the fee for the newborn screening program will be $194, an increase of $23. Effective April 1, 2026, the fee for the newborn screening program will be $211, for a total increase of $40.

The Department is planning a delayed implementation date of June 1, 2025, for the new program fee to enable time for AHCCCS and third-party payors to comply with A.R.S. § 36-694(I)(1) and (2), thus, reducing the financial burden on facilities submitting initial specimen collection kits until birth packages can be updated. In addition, the Department provides outpatient treatment centers, midwives, and other free-standing small healthcare-related facilities with free, in-person training upon request.

The Department anticipates that the rulemaking may affect the Department, AHCCCS; third-party payors, including Indian Health Services, tribal health services, and insurance companies; health care institutions, including hospitals and birth centers; health care providers, including physicians and midwives; parents of newborns; and the general public.

**5. Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?**

The Department states that there is no less intrusive or less costly alternatives for achieving the purpose of the rule.

**6. What are the economic impacts on stakeholders?**

The Department indicates that annual costs/revenues changes are designated as minimal when more than $0 and $2,000 or less, moderate costs when between $2,000 and $10,000, and substantial when $10,000 or greater in additional costs or revenues.

The Department anticipates that adding testing, follow-up of abnormal results, and other program-related activities for the three new congenital disorders will cause the Department to incur substantial new costs. These will be offset by the fee increase, which will cover these additional costs. In addition, the Department says, according to A.R.S. § 36-694(I), AHCCCS and many third-party payors are required to revise birth packages, that amounts paid to a hospital or birth center for the birth of a covered individual, to reflect the increase in program fee. The Department estimates that AHCCCS will incur substantial increase in costs from the increased program fee because of having to increase the amounts of birth packages. The Department goes on to say that depending on how many births are covered by a third-party payor, an individual third-party payor may incur up to substantial costs from the increased program fees because of having to increase the amount of birth

packages. The Department indicates that since babies screened for a congenital disorder can be diagnosed earlier, when the disorder may be better treated or cured, the Department expects AHCCCS to receive a substantial decrease in the costs associated with diagnosing and treating a screened baby. Similarly, a third-party payor may receive a minimal-to-substantial decrease in costs to diagnose and treat a screened baby covered by the third-party-payor, depending on the number of affected babies covered by the third-party-payor. In addition, the Department goes on to indicate that the general public is expected to receive up to a substantial benefit from the addition of these disorders to newborn and infant screening by having fewer affected individuals identified later when costs of treatment are higher.

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

The Department indicates there were no changes between the Notice of Proposed Rulemaking published in the Administrative Register on January 3, 2025 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?**

The Department indicates they did not receive any comments on 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?**

Not applicable. The rules do not require the issuance of a permit or license.

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

The Department indicates there is no corresponding federal law.

**11. Conclusion**

This regular rulemaking from the Department seeks to amend five (5) rules in Title 9, Chapter 13, Article 2 regarding Newborn and Infant Screening. Specifically, the Department indicates it is proposing to add three new disorders to screen for in accordance with changes made by the U.S. Health and Human Services Administration. The Department is also planning on increasing the fee associated with all testings as a result of the addition of three new disorders and accompanying follow up required in the case of abnormal results.

The Department is seeking an immediate effective date under A.R.S. § 41-1032(A)(1) and (4). The increase in fee would not go into effect until June 1, 2025, which is 60 days from the April 1 Council Meeting. The Department states an immediate effective date is necessary to

allow for AHCCCS and third-party payors time to update their information prior to the change in fee, which is intended to ease the burden on them. The Department additionally indicated that an immediate effective date is necessary to protect babies born in Arizona. Council staff recommends the Department be granted the request for an immediate effective date.

Council staff recommends approval of this rulemaking.

ARIZONA DEPARTMENT OF HEALTH SERVICES

February 13, 2025

**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. 13, Article 2, Regular Rulemaking

Dear Ms. Klein:

1. The close of record date: February 3, 2025

2. Whether the rulemaking relates to a five-year-review report and, if applicable, the date the report was approved by the Council:
The rulemaking for 9 A.A.C. 13, Article 2, partially relates to a five-year-review report approved by the Council on August 6, 2024. In addition, the rulemaking makes changes to comply with A.R.S. § 36-694, as revised by Laws 2021, Ch. 409, § 14, to adopt all of the newborn screening disorders included on the Recommended Uniform Screening Panel adopted by the Secretary of the U.S. Department of Health and Human Services.

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

4. Whether the rulemaking contains a fee increase:
The rulemaking does contain a fee increase, which is being implemented in stages.

5. Whether an immediate effective date is requested pursuant to A.R.S. § 41-1032:
The Department is requesting an immediate effective date for the rules under A.R.S. § 41-1032(A)(1) and (4) to better protect the health and safety of babies born in Arizona and allow for a delayed implementation date for the fee increase, which will give AHCCCS and third-party payors time to update "birth packages," according to A.R.S. § 36-694(I)(1) and (2), to reduce the burden of the new fee on those who would be paying the program fee.

The Department certifies that the Preamble of this rulemaking discloses a reference to any study relevant to the rule that the Department reviewed and either did or did not rely on in its evaluation of or justification for the rule.

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

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

Sincerely,



Stacie Gravito
Director's Designee

SG:rms

Enclosures

**NOTICE OF FINAL RULEMAKING**

**TITLE 9. HEALTH SERVICES**

**CHAPTER 13. DEPARTMENT OF HEALTH SERVICES**

**HEALTH PROGRAMS SERVICES**

**ARTICLE 2. NEWBORN AND INFANT SCREENING**

## PREAMBLE

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

February 13, 2025

| **2. Article, Part or Sections Affected (as applicable)** | **Rulemaking Action** |
|---|---|
| R9-13-201 | Amend |
| R9-13-203 | Amend |
| R9-13-204 | Amend |
| R9-13-205 | Amend |
| R9-13-208 | Amend |

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

Authorizing statutes: A.R.S. §§ 36-132(A)(1), 36-132(A)(7), 36-136(G)

Implementing statutes: A.R.S. § 36-694

**4. The effective date of the rule:**

The Department requests an immediate effective date for the rules under A.R.S. § 41-1032(A)(1) and (4) to better protect the health and safety of babies born in Arizona and allow for a delayed implementation date for the fee increase, which will give AHCCCS and third-party payors time to update "birth packages," according to A.R.S. § 36-694(I)(1) and (2), to reduce the burden of the new fee on those who would be paying the program fee.

**5. 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. 2846, September 13, 2024

Notice of Proposed Rulemaking: 31 A.A.R. 44, January 3, 2025

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

Name: Kate Fitzpatrick, Deputy Bureau Chief

Address: Arizona Department of Health Services

| | |
|---|---|
| | Arizona State Public Health Laboratory |
| | 250 N. 17th Ave. |
| | Phoenix, AZ 85007-3248 |
| Telephone: | (480) 521-6261 |
| Fax: | (602) 364-1655 |
| E-mail: | kate.fitzpatrick@azdhs.govor |
| or | |
| Name: | Stacie Gravito, Office Chief |
| Address: | Arizona Department of Health Services |
| | Office of Administrative Counsel and Rules |
| | 150 N. 18th Ave., Suite 200 |
| | Phoenix, AZ 85007 |
| Telephone: | (602) 542-1020 |
| Fax: | (602) 364-1150 |
| E-mail: | Stacie.Gravito@azdhs.gov |

**7. 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.) § 36-694 contains requirements for ordering tests for certain congenital disorders and reporting congenital disorder test results and hearing test results to the Arizona Department of Health Services (Department), and establishes a newborn screening program, a central database for information about newborns and infants who are tested for congenital disorders or hearing loss, an educational program and follow-up services, and a newborn screening program committee. Current rules in Arizona Administrative Code (A.A.C.) Title 9, Chapter 13, Article 2, specify the congenital disorders being tested for, the information required when critical congenital heart defect screening is performed, the information required when a bloodspot specimen is collected from a newborn or infant, the person responsible for collecting the specimen, when the specimen should be collected, reporting requirements for a bloodspot test, reporting requirements for hearing tests, and fees. Laws 2021, Ch. 409, § 14, revised A.R.S. § 36-694 and directed the Department to adopt all of the newborn screening (NBS) disorders included on the Recommended Uniform Screening Panel (RUSP) adopted by the Secretary of the U.S. Department of Health and Human Services. Since the current rules were adopted in September 2022, three additional disorders have been added to the RSUP and must be added to the list of NBS disorders. After obtaining approval for the rulemaking under A.R.S. § 41-1039, the Department has amended the rules in 9 A.A.C. 13, Article 2, to comply with A.R.S.

§ 36-694. Because the Department will incur new costs for adding the tests for the additional disorders, including following up on abnormal screening test results, the newborn screening program fee has also been increased to cover these costs. To reduce the economic burden, the increased fee will be implemented in a stepwise fashion.

**8. 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 is not relying on any study to justify the addition of the three new disorders, which are now part of the RSUP and must be added to the screening panel according to A.R.S. § 36-694. However, the Department is relying on information in "The Cost of Delayed Diagnosis in Rare Disease" (https://everylifefoundation.org/wp-content/uploads/2023/09/EveryLife-Cost-of-Delayed-Diagnosis-in-Rare-Disease_Final-Full-Study-Report_0914223.pdf), which was completed in September 2023, as partial justification for the economic benefits of adding the new disorders through 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 anticipates that the rulemaking may affect the Department; AHCCCS; third-party payors, including Indian Health Service, tribal health services, and insurance companies; health care institutions, including hospitals and birth centers; health care providers, including physicians and midwives; parents of newborns; and the general public. Annual costs/revenues changes are designated as minimal when more than $0 and $2,000 or less, moderate when between $2,000 and $10,000, and substantial when $10,000 or greater in additional costs or revenues. A cost is listed as significant when meaningful or important, but not readily subject to quantification.

The Department anticipates that adding testing, follow-up of abnormal results, and other Program-related activities for the three new congenital disorders will cause the Department to incur substantial new costs. These will be offset by the fee increase, which will cover these additional costs. According to A.R.S. § 36-694(I), AHCCCS and many third-party payors are required to revise birth packages, the amounts paid to a hospital or birth center for the birth of a

covered individual, to reflect the increase in the program fee. The Department estimates that AHCCCS will incur substantial increased costs from the increased program fee because of having to increase the amount of the birth packages. Depending on how many births are covered by a third-party payor, an individual third-party payor may incur up to substantial additional costs from the increased program fee because of having to increase the amounts of birth packages. Since babies screened for a congenital disorder can be diagnosed earlier, when the disorder may be better treated or cured, the Department expects AHCCCS to receive a substantial decrease in the costs associated with diagnosing and treating a screened baby. Similarly, a third-party payor may receive a minimal-to-substantial decrease in costs to diagnose and treat a screened baby covered by the third-party-payor, depending on the number of affected babies covered by the third-party-payor.

Most initial specimens are collected from a newborn before the newborn is 72 hours old and, thus, would be collected by the facility at which the birth occurred. These facilities are, for the most part, hospitals or birth centers. Although the amount of a birth package is expected to be increased for most births occurring at a hospital or birth center, providing up to a substantial benefit, some may not. The Department believes that a health care institution providing maternity services could be expected to incur an increase of $40 (the difference between the current program fee and the increased program fee) in costs due to the fee increase for each initial specimen submitted for a baby whose birth was not covered by AHCCCS or a third-party payor. Depending on the number of such births, the hospital or birth center could incur up to a substantial increase in costs, but these costs could be passed on to the person responsible for paying for the birth. A hospital, outpatient treatment center, or other health care institution that is authorized to provide services required to diagnose a baby with a positive screening test or treat a baby with a diagnosis of one of the added disorders may incur a moderate-to-substantial decrease in revenue if an affected baby is identified through NBS and avoids multiple diagnostic tests/procedures to determine a diagnosis, extensive treatment to address the effects of disease progression, or more expensive treatment once the disorder has become symptomatic. However, a health care institution may also receive a moderate-to-substantial increase in revenue from providing on-going, but likely less expensive, treatment to an affected baby/child, who might otherwise have died.

Health care providers, including individual midwives, pediatric offices, primary care providers, outpatient treatment centers, and wellness clinics, have in total submitted an average of fewer than 850 initial specimens per year over the past five years for the newborns they deliver from their clients or that come to their office/facility for routine check-ups or treatment. If similar

numbers of initial specimens are submitted in the future, the Department would expect an individual health care provider to incur no more than a minimal increase in costs due to the program fee increase. A health care provider may also pass the costs of the increased fee for an initial specimen on to clients/patients as increased fees.

The Department expects that the increased program fee may result in at most a minimal cost increase to an individual parent, either directly from the fee change or indirectly through an increase in a health insurance premium or midwifery fee. A parent of a newborn with a positive screening test result may experience stress due to the uncertainty about the health of the parent's newborn and will need to obtain diagnostic testing to determine if the screening test result means newborn is affected with the target disorder or another disorder, or whether it is a false positive result. However, the parent of a baby affected with an added disorder or another condition may receive a significant and perhaps up to a substantial benefit from having the condition diagnosed early, through targeted testing, rather than undergo months of stress, have the baby undergo a multitude of tests to try to obtain a diagnosis, and experience the monetary and emotional toll of having a sick child or one whose diagnosis was delayed.

Affected babies who are not identified through NBS, and left undiagnosed and untreated, may experience a range of adverse outcomes including irreversible morbidity, developmental delays, and, for some disorders, death. Society in general will receive a significant benefit from having a baby grow up into a healthy and productive member of society because of timely identification and treatment. In addition, the general public is expected to receive up to a substantial benefit from the addition of these disorders to newborn and infant screening by having fewer affected individuals identified later when costs of treatment are higher.

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

No changes were made 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:**

No written or oral comments were received about the rulemaking since the filing of the Notice of Proposed Rulemaking. No stakeholders attended the Oral Proceeding.

**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:**

**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:**

The rules are based on state statutes rather 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 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:**

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:**

The rules were not previously made, amended, or repealed through emergency rulemaking.

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

# TITLE 9. HEALTH SERVICES

## CHAPTER 13. DEPARTMENT OF HEALTH SERVICES

## HEALTH PROGRAMS SERVICES

## ARTICLE 2. NEWBORN AND INFANT SCREENING

Section

R9-13-201. Definitions

R9-13-203. Newborn and Infant Bloodspot Tests

R9-13-204. First Specimen Collection

R9-13-205. Second Specimen Collection

R9-13-208. Newborn Screening Program Fee

## ARTICLE 2. NEWBORN AND INFANT SCREENING

### R9-13-201. Definitions

In this Article, unless otherwise specified:

1. "Abnormal result" means an outcome that deviates from the range of values established by:
   a. The Department for an analysis performed as part of a bloodspot test or for a hearing test, or
   b. A health care facility or health care provider for critical congenital heart defect screening.
2. "Admission" or "admitted" means the same as in A.A.C. R9-10-101.
3. "AHCCCS" means the Arizona Health Care Cost Containment System.
4. "Amino acid disorder" means a congenital disorder characterized by the abnormal accumulation of an amino acid or another nitrogen-containing molecule due to a defective enzyme.
5. "Arizona State Laboratory" means the entity operated according to A.R.S. § 36-251.
6. "Audiological equipment" means an instrument used to help determine the presence, type, or degree of hearing loss by:
   a. Providing ear-specific and frequency-specific stimuli to an individual; or
   b. Measuring an individual's physiological response to stimuli.
7. "Audiologist" means the same as in A.R.S. § 36-1901.
8. "Birth center" means a health care facility that is not a hospital and is organized for the purpose of delivering newborns.
9. "Blood sample" means capillary or venous blood, and possibly arterial blood but not cord blood, applied to the filter paper of a specimen collection kit.
10. "Bloodspot test" means multiple laboratory analyses performed on a blood sample to screen for the presence of congenital disorders listed in R9-13-203.
11. "Congenital disorder" means an abnormal condition present at birth, as a result of heredity or environmental factors, that impairs normal physiological functioning of a human body.
12. "Critical congenital heart defect" means a heart abnormality or condition present at birth that places a newborn or infant at significant risk of disability or death if not diagnosed soon after birth.
13. "Department" means the Arizona Department of Health Services.

14. "Diagnostic evaluation" means a hearing test performed by an audiologist or a physician to determine whether hearing loss exists, and, if applicable, determine the type or degree of hearing loss.
15. "Discharge" means the termination of inpatient services to a newborn or an infant.
16. "Disorder" means a disease or medical condition that may be identified by a laboratory analysis.
17. "Document" means to establish and maintain information in written, photographic, electronic, or other permanent form.
18. "Educational materials" means printed or electronic information provided by the Department, explaining newborn and infant screening, any of the congenital disorders listed in R9-13-203, hearing loss, or critical congenital heart defect.
19. "Electronic" means the same as in A.R.S. § 44-7002.
20. "Endocrine disorder" means a congenital disorder characterized by an abnormal amount of a hormone being secreted from a gland into the blood stream.
21. "Fatty acid oxidation disorder" means a congenital disorder characterized by the inability of the body to break down fatty acids as a source of energy.
22. "First specimen" means a specimen that is collected from a newborn who is less than five days of age and sent to the Arizona State Laboratory for testing and recording of demographic information.
23. "Guardian" means an individual appointed by a court under A.R.S. Title 14, Chapter 5, Article 2.
24. "Health care facility" means a health care institution, as defined in A.R.S. § 36-401, where obstetrical care or newborn care is provided.
25. "Health care provider" means a physician, physician assistant, registered nurse practitioner, or midwife.
26. "Health-related services" means the same as in A.R.S. § 36-401.
27. "Hearing screening" means a hearing test to determine the likelihood of hearing loss in a newborn or infant.
28. "Hearing test" means an evaluation of each of a newborn's or an infant's ears, using audiological equipment to:
    a. Screen the newborn or infant for a possible hearing loss;
    b. Determine that the newborn or infant does not have a hearing loss; or
    c. Diagnose a hearing loss in the newborn or infant, including determining the type or degree of hearing loss.

29. "Hemoglobinopathy" means a congenital disorder characterized by abnormal production, structure, or functioning of hemoglobin.

30. "Home birth" means delivery of a newborn, outside a health care facility, when the newborn is not hospitalized within 72 hours of delivery.

31. "Hospital" means the same as in A.A.C. R9-10-101.

32. "Hospital services" means the same as in A.A.C. R9-10-201.

33. "Identification code" means a unique set of numbers or letters, or a unique set of both numbers and letters, assigned by the Department to a health care facility, a health care provider, an audiologist, or another person submitting specimen collection kits to the Arizona State Laboratory or hearing test results to the Department.

34. "Infant" means the same as in A.R.S. § 36-694.

~~35. "Initial specimen" means the earliest specimen that was collected from a newborn or infant and sent to the Arizona State Laboratory for testing.~~

~~36.~~35. "Inpatient" means an individual who:

a. Is admitted to a hospital,

b. Receives hospital services for 24 consecutive hours, or

c. Is admitted to a birth center.

~~37.~~36. "Inpatient services" means medical services, nursing services, or other health-related services provided to an inpatient in a health care facility.

~~38.~~37. "Medical services" means the same as in A.R.S. § 36-401.

~~39.~~38. "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.

~~40.~~39. "Newborn" means the same as in A.R.S. § 36-694.

~~41.~~40. "Newborn care" means medical services, nursing services, and health-related services provided to a newborn.

~~42.~~41. "Nursing services" means the same as in A.R.S. § 36-401.

~~43.~~42. "Obstetrical care" means medical services, nursing services, and health-related services provided to a woman throughout her pregnancy, labor, delivery, and postpartum.

~~44.~~43. "Organ" means a somewhat independent part of a human body, such as a salivary gland, kidney, or pancreas, which performs a specific function.

~~45.~~44. "Organic acid disorder" means a congenital disorder characterized by the abnormal accumulation of organic acids in the blood and urine due to a defective enzyme.

~~46.~~45. "Parent" means a natural, adoptive, or custodial mother or father of a newborn or an infant.

~~47.~~46. "Parenteral nutrition" means the feeding of an individual intravenously through the administration of a formula containing at least glucose and amino acids, as well as possibly lipids, vitamins, and minerals.

~~48.~~47. "Person" means the state, a municipality, district, or other political subdivision, a cooperative, institution, corporation, company, firm, partnership, individual, or other legal entity.

~~49.~~48. "Physician" means an individual licensed under A.R.S. Title 32, Chapters 13, 14, 17, or 29.

~~50.~~49. "Physician assistant" means an individual licensed under A.R.S. Title 32, Chapter 25.

~~51.~~50. "Pulse oximetry" means a non-invasive method of measuring the percentage of hemoglobin in the blood that is saturated with oxygen using a device approved by the U.S. Food and Drug Administration for use with newborns or infants less than six weeks of age.

~~52.~~51. "Registered nurse practitioner" means the same as in A.R.S. § 32-1601.

~~53.~~52. "Second specimen" means a specimen that is sent to the Arizona State Laboratory for testing and recording of demographic information, after being collected from an individual who is at least five days and not older than one year of age.

~~54.~~53. "Sickle cell disease" means a hemoglobinopathy characterized by an abnormally shaped red blood cell resulting from the abnormal structure of the protein hemoglobin.

~~55.~~54. "Sickle cell gene" means a unit of inheritance that is involved in producing an abnormal type of the protein hemoglobin, in which the amino acid valine is substituted for the amino acid glutamic acid at a specific location in the hemoglobin.

~~56.~~55. "Specimen" means a blood sample obtained from and demographic information about a newborn or an infant.

~~57.~~56. "Specimen collection kit" means a strip of filter paper for collecting a blood sample attached to a form for obtaining the information specified in R9-13-203(B)(3) about a newborn or an infant.

~~58.~~57. "Transfer" means a health care facility or health care provider discharging a newborn and sending the newborn to a hospital for inpatient medical services without the intent that the patient will be returned to the sending health care facility or health care provider.

~~59.~~58. "Transfusion" means the infusion of blood or blood products into the body of an individual.

~~60.~~59. "Verify" means to confirm by obtaining information through a source such as the newborn screening program, a health care provider, a health care facility, or a documented record.

~~61.~~60. "Working day" means 8:00 a.m. through 5:00 p.m. Monday through Friday, excluding state holidays.

**R9-13-203. Newborn and Infant Bloodspot Tests**

**A.** A bloodspot test shall screen for the following congenital disorders:

1. Amino acid disorders, including:
   a. Argininemia, a congenital disorder characterized by an inability to metabolize the amino acid arginine due to defective arginase activity;
   b. Argininosuccinic acidemia, a congenital disorder characterized by an inability to metabolize the amino acid argininosuccinic acid due to defective argininosuccinate lyase activity;
   c. Biopterin defect in cofactor biosynthesis, a congenital disorder characterized by reduced levels of tetrahydrobiopterin due to a defect in an enzyme that produces tetrahydrobiopterin;
   d. Biopterin defect in cofactor regeneration, a congenital disorder characterized by reduced levels of tetrahydrobiopterin due to a defect in an enzyme that recycles tetrahydrobiopterin to a usable form after a metabolic reaction;
   e. Citrullinemia type I, a congenital disorder characterized by an inability to convert the amino acid citrulline and aspartic acid into argininosuccinic acid due to defective argininosuccinate synthetase activity;
   f. Citrullinemia type II, a congenital disorder characterized by a reduction in levels of citrin, which is involved in the transport of glutamate and aspartate, due to a defective *SLC25A13* gene;
   g. Homocystinuria, a congenital disorder characterized by abnormal methionine and homocysteine metabolism due to defective ~~cystathione-ß-synthase~~ cystathionine-ß-synthase activity;
   h. Hypermethioninemia, a congenital disorder characterized by an elevated level of methionine in the bloodstream;
   i. Hyperphenylalaninemia (benign), a congenital disorder characterized by an elevated level of phenylalanine in the bloodstream with few, if any, clinical symptoms;

j. Maple syrup urine disease, a congenital disorder of branched chain amino acid metabolism due to defective ~~branched chain-keto~~ branched-chain alpha-keto acid dehydrogenase activity;

k. Phenylketonuria, a congenital disorder characterized by abnormal phenylalanine metabolism due to defective phenylalanine hydroxylase activity;

l. Tyrosinemia type I, a congenital disorder characterized by an accumulation of the amino acid tyrosine due to defective fumarylacetoacetate hydrolase activity;

m. Tyrosinemia type II, a congenital disorder characterized by an accumulation of the amino acid tyrosine due to defective tyrosine aminotransferase activity; and

n. Tyrosinemia type III, a congenital disorder characterized by an accumulation of the amino acid tyrosine and metabolic product 4-hydroxyphenylpyruvate due to defective 4-hydroxyphenylpyruvate dioxygenase activity;

2. Endocrine disorders, including:

a. Congenital adrenal hyperplasia, a congenital disorder characterized by decreased cortisol production and increased androgen production due to defective 21-hydroxylase activity; and

b. Congenital hypothyroidism, a congenital disorder characterized by deficient thyroid hormone production;

3. Fatty acid oxidation disorders, including:

a. 2,4 Dienoyl-CoA reductase deficiency, a congenital disorder characterized by an accumulation of the amino acid lysine and some fatty acids due to defective 2,4 dienoyl-CoA reductase activity;

b. Carnitine shuttle disorders, including:

i. Carnitine palmitoyltransferase I deficiency, a congenital disorder characterized by the defective activity of carnitine palmitoyltransferase I, resulting in the inability of a cell to transport carnitine and acyl-CoA out of the cytosol;

ii. Carnitine-acylcarnitine translocase deficiency, a congenital disorder characterized by the defective activity of carnitine-acylcarnitine translocase, resulting in the inability of acylcarnitine to enter the mitochondria; and

iii. Carnitine palmitoyltransferase II deficiency, a congenital disorder characterized by the defective activity of carnitine palmitoyltransferase II, resulting in the inability to transfer acyl-CoA into the mitochondria;

c. Carnitine uptake defect, a congenital disorder characterized by a decrease in the amount of free carnitine due to defective sodium ion-dependent carnitine transporter OCTN2 activity;

d. Glutaric acidemia type II, a congenital disorder characterized by a decrease in the ability to break down proteins and fatty acids due to decreased activity of either electron transfer flavoprotein or electron transfer flavoprotein dehydrogenase;

e. Long-chain 3-hydroxy acyl-CoA dehydrogenase deficiency, a congenital disorder characterized by an inability to metabolize fatty acids that are 12 to 18 carbon atoms in length due to defective long-chain 3-hydroxy acyl-CoA dehydrogenase activity;

f. Medium-chain acyl-CoA dehydrogenase deficiency, a congenital disorder characterized by an inability to metabolize fatty acids that are 6 to 10 carbon atoms in length due to defective medium-chain acyl-CoA dehydrogenase activity;

g. Medium-chain ketoacyl-CoA thiolase deficiency, a congenital disorder characterized by an inability to metabolize fatty acids due to defective ketoacyl-CoA thiolase activity;

h. Medium/short chain L-3 hydroxyacyl-CoA dehydrogenase deficiency, a congenital disorder characterized by an inability to metabolize fatty acids that are 3 to 10 carbon atoms in length due to defective 3-hydroxyacyl-CoA dehydrogenase activity;

i. Short chain acyl-CoA dehydrogenase deficiency, a congenital disorder characterized by an inability to metabolize fatty acids that are 6 or fewer carbon atoms in length due to defective short chain acyl-CoA dehydrogenase activity;

j. Trifunctional protein deficiency, a congenital disorder characterized by an inability to metabolize fatty acids that are 12 to 18 carbon atoms in length due to defective mitochondrial trifunctional protein activity; and

k. Very long-chain acyl-CoA dehydrogenase deficiency, a congenital disorder characterized by an inability to metabolize fatty acids that are 14 to 18 carbon atoms in length due to defective very long-chain acyl-CoA dehydrogenase activity;

4. Hemoglobinopathies, including:

a. Hemoglobin S/Beta-thalassemia, a sickle cell disease in which an individual has one sickle cell gene and one gene coding for beta thalassemia, another inherited hemoglobinopathy;

b. Hemoglobin S/C disease, a sickle cell disease in which an individual has one sickle cell gene and one gene coding for another inherited hemoglobinopathy called hemoglobin C;

c. Sickle cell anemia, a sickle cell disease in which an individual has two sickle cell genes; and

d. Other congenital disorders caused by an abnormal hemoglobin protein;

5. Organic acid disorders, including:

a. 2-Methylbutyrylglycinuria, a congenital disorder characterized by an inability to metabolize the amino acid isoleucine, resulting in elevated levels of 2-methylbutryl carnitine, due to defective short/branched chain acyl-CoA dehydrogenase activity;

b. 2-Methyl-3-hydroxybutyric aciduria or HSD10 disease, a congenital disorder characterized by elevated levels of break-down products of the amino acid isoleucine and a reduction in functional mitochondrial tRNA molecules, which results in impaired mitochondrial synthesis of proteins;

c. 3-Hydroxy-3-methylglutaric aciduria, a congenital disorder characterized by the accumulation of 3-hydroxy-3-methylglutaric acid due to defective 3-hydroxy-3-methylglutaryl-CoA lyase activity;

d. 3-Methylcrotonyl-CoA carboxylase deficiency, a congenital disorder characterized by an accumulation of 3-methylcrotonyl-glycine due to defective 3-methylcrotonyl-CoA carboxylase activity;

e. 3-Methylglutaconic aciduria, a set of congenital ~~disorder~~ disorders characterized by elevated levels of 3-methylglutaconic acid due to defective 3-methylglutaconyl-CoA hydratase activity or a related enzyme;

f. Beta-ketothiolase deficiency, a congenital disorder characterized by an inability to metabolize 2-methyl-acetoacetyl-CoA due to defective mitochondrial acetoacetyl-CoA thiolase activity;

g. Glutaric acidemia type I, a congenital disorder characterized by an accumulation of glutaric acid due to defective glutaryl-CoA dehydrogenase activity;

h. Holocarboxylase synthase deficiency, a congenital disorder of multiple carboxylase deficiencies characterized by an inability to transport or metabolize biotin that leads to defective activity of propionyl-CoA carboxylase, beta-methylcrotonyl-CoA carboxylase, and pyruvate carboxylase;

i. Isobutyrylglycinuria, a congenital disorder characterized by an inability to metabolize the amino acid valine due to defective isobutyryl-CoA dehydrogenase activity;

j. Isovaleric acidemia, a congenital disorder characterized by an accumulation of isovaleric acid due to defective isovaleryl-CoA dehydrogenase activity;

k. Malonic acidemia, a congenital disorder characterized by an inability to metabolize fatty acids due to defective malonyl-CoA decarboxylase activity;

l. Methylmalonic acidemia (cobalamin disorders), a congenital disorder characterized by an accumulation of methylmalonic acid due to defective activity of methylmalonyl-CoA epimerase or adenosylcobalamin synthetase;

m. Methylmalonic acidemia (mutase deficiency), a congenital disorder characterized by an accumulation of methylmalonic acid due to defective methylmalonyl-CoA mutase activity;

n. Methylmalonic acidemia with homocystinuria, a congenital disorder characterized by the abnormal processing of cobalamin, leading to defective activity of methylmalonyl-CoA mutase and methionine synthase, for both of which cobalamin is a cofactor; and

o. Propionic acidemia, a congenital disorder characterized by an accumulation of glycine and 3-hydroxypropionic acid due to defective propionyl-CoA carboxylase activity; and

6. Other disorders, including:

a. Biotinidase deficiency, a congenital disorder characterized by defective biotinidase activity that causes abnormal biotin metabolism and multiple carboxylase deficiencies;

b. Classic galactosemia, a congenital disorder characterized by abnormal galactose metabolism due to defective galactose-1-phosphate uridyltranferase activity;

c. Cystic fibrosis, a congenital disorder caused by defective functioning of a transmembrane regulator protein and characterized by damage to ~~and~~ or dysfunction of various organs, such as the lungs, pancreas, and reproductive organs;

d. Galactoepimerase deficiency, a congenital disorder characterized by abnormal galactose metabolism due to defective UTP-galactose 4-epimerase activity;

e. Galactokinase deficiency, a congenital disorder characterized by abnormal galactose metabolism due to defective galactokinase activity;

f. ~~Beginning May 1, 2023, glycogen~~ Glycogen storage disease type II or Pompe disease, a congenital disorder characterized by the accumulation of the polysaccharide, glycogen, in lysosomes due to a defect in the lysosomal acid alpha-glucosidase enzyme;

g. Guanidinoacetate methyltransferase deficiency, a congenital disorder characterized by the inability to produce creatine from guanidinoacetate due to a defective guanidinoacetate methyltransferase activity;

h. Beginning July 31, 2026, infantile Krabbe disease, a congenital disorder characterized by the loss of myelin from nerve cells due to mutations in the *GALC* gene;

~~g.~~i. ~~Beginning May 1, 2023, mucopolysaccaridosis~~ Mucopolysaccharidosis type I, a congenital disorder characterized by the buildup of ~~the~~ glycosaminoglycans, ~~dermatan sulfate and heparan sulfate,~~ due to defective alpha-L-iduronidase activity;

j. Mucopolysaccharidosis type II, a congenital disorder characterized by the buildup of glycosaminoglycans, due to defective iduronidate 2-sulfatase activity;

~~h.~~k. Severe combined immunodeficiency, a congenital disorder usually characterized by a defect in both the T- and B-lymphocyte systems, which typically results in the onset of one or more serious infections within the first few months of life;

~~i.~~l. Spinal muscular atrophy, a congenital disorder characterized by the loss of function of nerve cells in the spinal cord that control muscle movement due to a defect in the survival motor neuron 1 (*SMN1*) gene;

~~j.~~m. T-cell related lymphocyte deficiency, a congenital disorder characterized by a defect in the T-lymphocyte system, which typically results in a decrease in cell-mediated immunity and unusually severe common viral infections; and

~~k.~~n. X-linked adrenoleukodystrophy, a congenital disorder characterized by the build-up of very long-chain fatty acids due to a deficiency in the adrenoleukodystrophy protein, caused by a defective *ABCD1* gene.

**B.** When a bloodspot test is ordered for a newborn or an infant, a health care facility's designee, a health care provider, or the health care provider's designee shall:

1. Only use a specimen collection kit supplied by the Department;
2. Collect a blood sample from the newborn or infant on a specimen collection kit;
3. Complete the following information on the specimen collection kit:

a. The newborn's or infant's name, gender, race, ethnicity, medical record number, and, if applicable, AHCCCS identification number;

b. The newborn's or infant's type of food or food source;

c. Whether the newborn or infant is from a single or multiple birth;

d. If the newborn or infant is from a multiple birth, the birth order of the newborn or infant;

e. Whether the newborn or infant has a medical condition that may affect the bloodspot test results;

f. Whether the newborn or infant received a blood transfusion and, if applicable, the date of the last blood transfusion;

g. The date and time of birth, and the newborn's or infant's weight at birth;

h. The date and time of blood sample collection, and the newborn's or infant's weight when the blood sample is collected;

i. The identification code or the name and address of the health care facility or health care provider submitting the specimen collection kit;

j. The name, address, and telephone number or the identification code of the health care provider responsible for the management of medical services provided to the newborn or infant;

k. Except as provided in subsection (B)(3)(l), the mother's first and last names, date of birth, name before first marriage, mailing address, telephone number, and if applicable, AHCCCS identification number; and

l. If the newborn's or infant's mother does not have physical custody of the newborn or infant, the first and last names, mailing address, and telephone number of the person who has physical custody of the newborn or infant; and

4. Submit the specimen collection kit to the Arizona State Laboratory no later than 24 hours or the next working day after the blood sample is collected.

**C.** A health care facility or a health care provider submitting an initial specimen collection kit to the Arizona State Laboratory shall pay the Department the fee in R9-13-208.

**D.** When a home birth not attended by a health care provider is reported to a local registrar, a deputy local registrar, or the state registrar under A.R.S. § 36-333:

1. The local registrar, deputy local registrar, or state registrar shall notify the local health department of the county where the birth occurred; and

2. The local health department's designee shall:

a. Collect a specimen from the newborn or infant on a specimen collection kit according to the requirements in R9-13-204(A)(2) or R9-13-205(C), and

b. Submit the specimen collection kit to the Arizona State Laboratory no later than 24 hours or the next working day after the blood sample is collected.

**E.** A health care facility's designee, a health care provider, or the health care provider's designee shall ensure that:

1. Educational materials are provided to the parent or guardian of a newborn or an infant for whom a bloodspot test is ordered, and
2. The newborn's or infant's parent or guardian is informed of the requirement for a second specimen if the second specimen has not been collected.

**F.** For a home birth, a health care provider or the health care provider's designee shall provide educational materials to the parent or guardian of a newborn or an infant for whom a bloodspot test is ordered.

**R9-13-204. First Specimen Collection**

**A.** When a newborn is born in a hospital, the hospital's designee shall collect a first specimen from the newborn according to whichever of the following occurs first:

1. Unless specified otherwise by a physician, physician assistant, or registered nurse practitioner, before administering a transfusion or parenteral nutrition;
2. When the newborn is at least 24 but not more than 72 hours old; or
3. Before the newborn is discharged, unless the newborn:
   a. Is transferred to another hospital before the newborn is 48 hours old; or
   b. Dies before the newborn is 72 hours old.

**B.** If a newborn is admitted or transferred to a hospital before the newborn is 48 hours old, the receiving hospital's designee shall:

1. Verify that the first specimen was collected before admission or transfer, or
2. Collect a first specimen from the newborn according to the requirements in subsection (A).

**C.** When a newborn is born in a birth center, the birth center's designee shall collect a first specimen from the newborn according to ~~subsections~~ subsection (A)(1) or (A)(2).

**D.** For a home birth attended by a health care provider, the health care provider or the health care provider's designee shall collect a first specimen from the newborn according the requirements in subsection (A)(2).

**E.** If a parent refuses collection of a first specimen, the hospital or birth center in which the newborn was born or the health care provider attending the newborn's home birth shall indicate the refusal

on a specimen collection kit, comply with R9-13-203(B)(3), and submit the specimen collection kit to the Arizona State Laboratory no later than 24 hours or the next working day after the refusal.

**R9-13-205. Second Specimen Collection**

**A.** After a newborn's or an infant's discharge from a health care facility or after a home birth, a health care provider or the health care provider's designee shall:

1. Collect a second specimen from the newborn or infant not older than one year of age at the time of the newborn's or infant's first visit to the health care provider, or
2. Verify that a health care facility or different health care provider has collected a second specimen from the newborn or infant.

**B.** If a newborn is an inpatient of a health care facility at ~~5~~ five days of age, the health care facility's designee shall collect a second specimen from the newborn:

1. When the newborn is at least ~~5~~ five but not more than 10 days old; or
2. If the newborn is discharged from the health care facility when the newborn is at least ~~5~~ five but not more than 10 days old, before discharge.

**C.** For a home birth that is not attended by a health care provider, a local health department's designee shall collect a specimen from a newborn or an infant if the local health department's designee has not verified that a second specimen has already been collected from the newborn or infant.

**R9-13-208. Newborn Screening Program Fee**

~~**A.** Until November 1, 2022, the fee for the newborn screening program is:~~

~~1. For a first specimen, $36; and~~

~~2. For a second specimen, $65.~~

~~**B.**~~**A.** ~~Effective November 1, 2022~~ Until May 31, 2025, the fee for the newborn screening program is $171.00.

**B.** Effective June 1, 2025 and until March 31, 2026, the fee for the newborn screening program is $194.00.

**C.** Effective April 1, 2026, the fee for the newborn screening program is $211.00.




**TITLE 9. HEALTH SERVICES**

**CHAPTER 13. DEPARTMENT OF HEALTH SERVICES**
**HEALTH PROGRAMS SERVICES**

**ARTICLE 2. NEWBORN AND INFANT SCREENING**

# ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT

**February 2025**

**ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT**

**TITLE 9. HEALTH SERVICES**

**CHAPTER 13. DEPARTMENT OF HEALTH SERVICES - HEALTH PROGRAMS SERVICES**

**ARTICLE 2. NEWBORN AND INFANT SCREENING**

**1. An identification of the rulemaking**

Arizona Revised Statutes (A.R.S.) § 36-694 contains requirements for ordering tests for certain congenital disorders and reporting congenital disorder test results and hearing test results to the Department, and establishes a newborn screening program, a central database for information about newborns and infants who are tested for congenital disorders or hearing loss, an educational program and follow-up services, and a newborn screening program committee. Current rules in Arizona Administrative Code (A.A.C.) Title 9, Chapter 13, Article 2, specify the congenital disorders being tested for, the information required when critical congenital heart defect screening is performed, the information required when a bloodspot specimen is collected from a newborn or infant, the person responsible for collecting the specimen, when the specimen should be collected, reporting requirements for a bloodspot test, reporting requirements for hearing tests, and fees. Laws 2021, Ch. 409, § 14, revised A.R.S. § 36-694 and directed the Department to adopt all of the newborn screening (NBS) disorders included on the Recommended Uniform Screening Panel (RUSP) adopted by the Secretary of the U.S. Department of Health and Human Services. Since the current rules were adopted in September 2022, three additional disorders have been added to the RSUP and must be added to the list of NBS disorders. After obtaining approval for the rulemaking under A.R.S. § 41-1039, the Department is amending the rules in 9 A.A.C. 13, Article 2, to comply with A.R.S. § 36-694. Because the Department will incur new costs for adding the tests for the additional disorders, including following up on abnormal screening test results, the newborn screening program fee is also being increased to cover these costs. To reduce the economic burden, the increased fee is being implemented in a stepwise fashion.

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

- The Department
- AHCCCS
- Third-party payors, including Indian Health Service, tribal health services, and insurance companies
- Health care institutions, including hospitals, birth centers, and outpatient treatment centers
- Health care providers, including physicians and midwives
- Parents of newborns

- General public

**3. Cost/Benefit Analysis**

This analysis covers costs and benefits associated with the rule changes to comply with A.R.S. § 36-694 by expanding the NBS panel to include new RUSP conditions as part of a newborn and infant bloodspot test, to increase the newborn screening program fee to cover the costs of the additional testing, and to make other clarifying changes. The calculations used throughout this analysis assume approximately 150,000 specimens being received by the Department per year, with approximately 77,800 initial specimen collection kits, for babies born during the year, being submitted for which the fee in R9-13-208 would be assessed. Although the birth rate will vary, the projected costs and benefits should both vary in a similar fashion with the birth rate, since the screening tests should be offered to all newborns. Thus, the figures given should be comparable, regardless of their absolute size. Annual cost/revenue changes are designated as minimal when $2,000 or less, moderate when between $2,000 and $10,000, and substantial when $10,000 or greater in additional costs or revenues. A cost is listed as significant when meaningful or important, but not readily subject to quantification. A summary of the economic impact of the rules is given in the Table below, while the economic impact is explained more fully in the sections immediately following.

| Description of Affected Groups | Description of Effect | Increased Cost/ Decreased Revenue | Decreased Cost/ Increased Revenue |
|---|---|---|---|
| **A. State and Local Government Agencies** | | | |
| Department | Testing bloodspot specimens for all RUSP disorders | Substantial | Significant |
| | Establishing a new program fee to cover the Program costs | Substantial | Substantial |
| | Providing follow-up on abnormal test results and collecting diagnoses on core and secondary disorders | Substantial | Significant |
| AHCCCS | Having birth packages adjusted to the new program fee | Substantial | None |
| | Having babies with the added RUSP disorders diagnosed earlier, when the disorder may be better treated or cured | None | Substantial |
| **B. Privately Owned Businesses** | | | |
| Third-party payors, including Indian Health Service, tribal health services, and insurance companies | Having birth packages adjusted to the new program fee | Minimal-to-substantial | None |
| | Having babies with the added RUSP disorders diagnosed earlier, when the disorder may be better treated or cured | None | Minimal-to-substantial |

| | | | |
|---|---|---|---|
| Health care institutions, including hospitals and birth centers | Having birth packages adjusted to the new program fee<br>Having babies with the added RUSP disorders diagnosed earlier, when the disorder may be better treated or cured | Minimal-to-substantial<br>Moderate-to-substantial | None<br>Moderate-to-substantial<br>Significant |
| Health care providers, including midwives and physicians | Having a higher program fee<br>Having babies with the added RUSP disorders diagnosed earlier, when the disorder may be better treated or cured | Minimal<br>None | None<br>Significant |
| **C. Consumers** | | | |
| Parents of newborns or infants tested through NBS | Having a higher program fee<br>Having a baby screened for RUSP disorders<br>Having a baby diagnosed earlier, based on screening results, when the disorder may be better treated or cured | None-to-minimal<br>None<br>None | None<br>Significant<br>None-to-substantial |
| General public | Having babies with added RUSP disorders diagnosed earlier, when the disorder may be better treated or cured | None | Significant/substantial |

- **The Department**

  For many congenital disorders, early detection and treatment are critical in preventing death or a lifetime of disability due to the congenital disorder. Babies born with these disorders are at risk for a number of negative outcomes, including irreversible morbidity, developmental delays, or even death, if undiagnosed and untreated. With newborn screening, these disorders can be identified and treated early, improving outcomes. In addition, the medical costs and costs for other care for a baby or child with a disorder may be quite significant, but medical care for affected babies who are treated early is typically much less than for those who are diagnosed too late or not at all. The Newborn and Infant Screening Program (NBS) within the Department currently provides bloodspot testing for 59 congenital disorders, through the Arizona State Laboratory, and follow-up for newborns and infants who had an abnormal screening test result for one of the congenital disorders, allowing these disorders to be identified early, as well as follow-up for a critical congenital heart defect or hearing loss. Pursuant to A.R.S. § 36-694, as amended by Laws 2021, Ch. 409, § 14, the Department is now adopting three additional disorders that were newly added to the RUSP. The Department anticipates receiving a significant benefit from identifying additional newborns with the new disorders and assisting them to lead more normal lives.

  During CY 2019 through 2023, the Department received an average of approximately 150,000 specimens for bloodspot testing from approximately 77,800 babies, representing approximately 98% of births. During this time period, the Department conducted an expedited rulemaking to include two

new RSUP disorders in the screening panel, effective December 30, 2021, that were added without a fee increase to enable testing to begin as soon as possible. Subsequently, the Department changed the fees through regular rulemaking, in compliance with a statutory change, from specimen-based fees to a program fee to cover the Department's expenses for operating NBS and added all the remaining core and secondary conditions that were included on the RSUP, either by initiating direct testing or incorporating the parameters for detection as part of testing for other disorders. While the new rules were effective as of September 8, 2022, the Department delayed the implementation of the new fee until November 1, 2022, to allow time for compliance with A.R.S. § 36-694(I)(1) and (2). For the two final core disorders as of 2022, glycogen storage disease type II (Pompe disease) and mucopolysaccharidosis type I, the Department needed additional time to obtain the equipment and expertise needed to begin testing and implemented testing by May 1, 2023.

In Appendix A, the numbers of first specimens and second specimens received during FY 2019 through FY 2022 are shown, along with the amounts billed and amounts collected during the fiscal years. The number of specimens is based on the fiscal year of the newborn's date of birth, while the amounts billed and collected are based on the dates of billing and collection, respectively. Therefore, there is not a direct connection between the numbers of specimens, amounts billed, and amounts collected shown for each fiscal year. Specimens received during one fiscal year may be billed and accounted for in the next fiscal year, and the Department may collect revenue during a fiscal year for specimens billed during the previous fiscal year. However, the data show that the numbers of specimens received remains fairly stable. They also show the increase in revenue generated by establishing a program fee of $171, effective November 1, 2022, over the revenue generated through billing separately for first specimens ($36) and second specimens ($65).

During fiscal year 2024, the Department received an appropriation of $12,802,900 from the newborn screening fund to support NBS. Appendix B shows the breakdown of expenses in the current budget for the various components of NBS on the Current Fee Budget page. As part of NBS, the demographic data entry section enters information from a submitted specimen collection kit into a database system for linking with test results. Scientists in the Arizona State Laboratory review submitted specimens for quality, perform laboratory testing, maintain records of the tests performed, and conduct quality assurance for all laboratory methods and practices. The follow-up section of NBS is responsible for promptly notifying physicians of abnormal bloodspot test results, linking physicians to appropriate specialty consultation services to ensure appropriate and timely confirmatory testing, and verifying that infants with abnormal bloodspot test results and confirmatory results are under a physician's care. The follow-up section also receives newborn and infant hearing test results and tracks infants who do not receive newborn hearing screening or do not pass these tests in order to assist families with obtaining further confirmatory hearing testing and, when a hearing loss is confirmed,

early intervention services. Results of newborn and infant critical congenital heart defect screening are collected and forwarded to the Department's Birth Defects Monitoring Program. The education section of NBS provides educational outreach, educational materials, and training to the professional healthcare and lay communities about NBS and its requirements. Other components of the program include data management and billing. The data management component analyzes, evaluates, and reports program data, trends, and performance measures. As shown on the Current Fee Budget page, current NBS budgeted expenses total about $12, 419,300. Some NBS activities were originally shared functions and funded through other sources, but the proportion of time spent on NBS activities has increased in recent years and are expected to increase further in the coming years with the addition of new disorders. They are described in further detail below.

As mentioned previously, A.R.S. § 36-694, as amended by Laws 2021, Ch. 409, requires the Department to add the two new disorders, guanidinoacetate methyltransferase deficiency (GAMT) and mucopolysaccharidosis type II (MPS II), to the congenital disorders being tested for, based on their addition to the RSUP. A baby/child with GAMT has weak muscle tone and delayed development of motor skills, such as sitting or walking. They may experience intellectual disabilities, seizure disorders, muscle weakness, behavior disorders, and movement disorders. Treatment, including a special diet, begun in the newborn period may prevent the manifestation of these symptoms of the disorder. MPS II causes abnormalities in many organs, including skeletal abnormalities, hearing loss, upper airway disease, and cardiac problems. Treatment may include enzyme replacement therapy or bone marrow transplantation.

As of July 2024, the RSUP included another disorder, infantile Krabbe disease. Babies with this disorder display progressive neurologic deterioration in infancy and death before the age of two. Treatment includes bone marrow transplantation or hematopoietic stem cell transplantation as early as possible in life. According to A.R.S. § 36-694, the Department has two years to add this disorder to the newborn screening panel and plans to begin testing in July 2026 to allow time for the purchase of additional equipment, training of personnel, and planning for the opening of the Arizona State Laboratory on Saturday due to the duration of testing protocols.

To cover the additional expenses related to adding these disorders to the NBS screening panel, the Department is instituting a fee increase of $40 from the current program fee of $171, to be paid by the submitter of an initial specimen collection kit for a baby. However, the Department is including this increase in the program fee in a stepwise manner as part of this rulemaking to reflect the delayed implementation of screening for Krabbe disease. The Department also plans to delay implementation of the first step of this new fee until June 1, 2025 (based on the new rules going into effect in April 2025) to give AHCCCS and third-party payors time to update "birth packages," according to A.R.S. § 36-694(I)(1) and (2), to reduce the burden of the new fee on those who would be paying the program

fee. Effective June 1, 2025 and until March 31, 2026, the fee for the newborn screening program will be $194.00, an increase of $23.00. Effective April 1, 2026, the fee for the newborn screening program will be $211.00, for a total increase of $40.00. The Summary Sheet of Appendix B shows how these fees were calculated, with supporting information about the individual disorders specified on their respective pages. Once the program fee increases to $211, the Department would expect to receive an additional $3,112,880 in revenue, which would be deposited into the newborn screening fund, established according to A.R.S. § 36-694.01, from which the Legislature appropriates funds for NBS operations within the Department.

As shown on their respective pages in Appendix B, the inclusion of MPS II in the NBS screening panel will require the addition of 1.5 FTEs, as will the inclusion of GAMT. A 1.0 FTE laboratory public health scientist will be needed for each of the two disorders to perform the testing, and a 1.0 FTE follow-up specialist will be shared between these two added disorders to address abnormal screening results. In addition, another laboratory public health scientist will be needed for testing specimens for Krabbe. The follow-up specialist who is currently handling other lysosomal storage diseases is expected to be able to absorb follow-up for Krabbe, especially since follow-up will occur after second-tier testing, which will greatly reduce the number of false positive results and babies needing follow-up on abnormal results.

However, the expansion of tested disorders to the NBS panel has necessitated the addition of other FTEs. A data analyst will work under the data manager to support development of cut-off values for determining what is a normal result versus what is an abnormal result, especially for Krabbe and the other lysosomal storage diseases, which will be tested for using the same new methodology. The data analyst will also routinely monitor related laboratory data, evaluate cut-off values for all tested conditions, and adjust them as needed based on Arizona's population. Since the critical need for this position was caused by the addition of Krabbe to the NBS screening panel, the funding for this position was calculated as part of the cost of adding Krabbe testing.

The costs of three other functions are shared among the three new disorders. Currently, NBS funding supports an Applications Developer at 0.7 FTE. The Applications Developer is responsible for tailoring two information management systems, Specimen Gate for the laboratory and Neometrics for reporting results and case management, to meet Program needs, as well as updating and providing technical support on the information management systems for Program staff. With the further expansion of the screening panel, applications development will require a full-time position, so funding for a further 0.3 FTE is being added. A Quality Assurance Officer is also being added at 1.0 FTE and will be responsible for reviewing all required NBS quality assurance activities to ensure that laboratory operations are compliant with CMS (CLIA licensed). This position will also support the laboratory in ensuring compliance with FDA regulations for laboratory-developed tests for NBS. This

position had been funded from various sources within the Arizona State Laboratory, but has become 100% dedicated to NBS due to the expansion of the number of screened disorders since RUSP alignment. Another position that had been supported from many sources within the Arizona State Laboratory, but which has increasingly been dedicated to NBS, is that of a Purchaser. The Purchaser, at 0.75 FTE, will be responsible for placing orders for the NBS Program to ensure continuity of operations, as well as for processing all programmatic invoices.

Although parents refuse testing for fewer than 1% of babies, the Department needs to know about parent refusals of first specimens to better target educational efforts, determine if there are patterns of certain providers not collecting these specimens, and better match data if a specimen is subsequently collected from the baby at five or more days of age (second specimen). The new rules, in R9-13-204(E), require the hospital or birth center in which a newborn was born or the health care provider attending the newborn's home birth, who should be paying the program fee from the monies collected for the birth (through birth package or from parents), to indicate the refusal on a specimen collection kit and submit the specimen collection kit to the Department. The Department anticipates that this clarification may provide a minimal increase in revenue, as well as a significant benefit to public health.

- **AHCCCS**

According to CY 2022 birth data from the Department's Health Status and Vital Statistics group (https://pub.azdhs.gov/health-stats/report/ahs/ahs2022/pdf/1b28.pdf), there were 78,355 births recorded for Arizona residents, of which 36,055 were paid through AHCCCS. Thus, AHCCCS was the party paying for delivery for 46.0% of births [36,055/78,355]. The Department expects that the initial specimen collection kits for babies born in a hospital or birthing center will be submitted by the health care facility where the birth occurred. Therefore, the Department would anticipate that funds provided by AHCCCS, through negotiated "birth packages" with Arizona's hospitals and birth centers, would be used to pay the program fee in R9-13-208 for approximately 46.0% of initial specimen collection kits received by the Department. According to A.R.S. § 36-694(I)(2), AHCCCS is required to update the rates included in birth packages to reflect the program fee increase. Since the Department does not know if AHCCCS will increase birth packages in a two-step process, in line with the phased-in increase in the program fee, or how many births would be affected by each fee rate, this analysis will assume that AHCCCS will bear the entire $40 increase on all initial specimen collection kits submitted for babies covered under a negotiated birth package, as it will in future years, and pay for approximately the same percentage of births. Therefore, based on the Department receiving approximately 77,800 initial specimen collection kits per year, the fee increase of $40 would be expected to cause AHCCCS to expend an additional $1,432,000 per year as shown below:

77,800 initial specimen collection kits X 46.0% = 35,800 AHCCCS initial specimen collection kits

35,800 AHCCCS initial specimen collection kits X $40 increase = $1,432,000 additional expense.

Although AHCCCS may incur costs related to actually updating these birth packages (beyond the costs for claims against the birth packages), those costs are imposed by the statute rather than the rules and are not addressed here. However, as stated above, the Department plans to delay implementation of the first step of the new fee until June 1, 2025, to give AHCCCS time to comply with A.R.S. § 36-694(I)(2).

The Department anticipates that AHCCCS may also receive a substantial benefit from the addition of the new congenital disorders to the newborn screening panel. As mentioned above, babies born with these new disorders are at risk for a number of negative outcomes. With newborn screening, these disorders can be identified and treated early, improving outcomes. A positive screening result also allows targeted diagnostic testing for a disorder, eliminating the "diagnostic odyssey" and, thus, reducing the number of tests before a diagnosis is made and the costs of these tests. The costs to treat the disorders are also generally less with an early diagnosis., as described in a recent health economics study entitled "The Cost of Delayed Diagnosis in Rare Disease" (https://everylifefoundation.org/wp-content/uploads/2023/09/EveryLife-Cost-of-Delayed-Diagnosis-in-Rare-Disease_Final-Full-Study-Report_0914223.pdf), which was completed in September 2023. In it, the authors estimated that "the avoidable costs attributable to delayed diagnosis, in terms of medical costs and productivity loss in the pre-diagnosis years, is between $86,000 and $517,000 per patient cumulatively for the years of delay." According to the study, the cumulative excess medical costs alone ranged from $65,689 to $465,791 per patient for the disorders considered.

- **Third-party payors**

Third-party payors include private insurance plans, military health care facilities, Indian Health Service, and tribal health care facilities. Of the 78,355 recorded births for Arizona residents in CY 2022, as many as 38,030 births (those births that were not listed as AHCCCS or self-pay) [34,280 private insurance + 890 IHS + 2,860 unknown] were paid for by third-party payors, for approximately 48.5% of all births [38,030/78,355], based on data from the Department's Health Status and Vital Statistics group. As with AHCCCS, third-party payors pay for births through negotiated birth packages with hospitals and birth centers. According to A.R.S. § 36-694(I)(1), many third-party payors are required to update the rates included in birth packages to reflect the fee increase. As for AHCCCS, this analysis will assume that third-party payors as a whole will bear the entire $40 increase on all initial specimen collection kits submitted for babies covered under a negotiated birth package and pay for approximately the same percentage of births. Based on the Department receiving approximately 77,800 initial specimen collection kits per year, the program fee increase would be expected to cause third-party payors in total to expend an additional $1,510,440 per year as shown below:

77,800 initial specimen collection kits X 48.5% = 37,761 initial specimen collection kits paid for by third-party payors

37,761 initial specimen collection kits X $40 increase = $1,510,440 additional expense for third-party payors in total. The fraction of this total paid by an individual third-party payor will vary, based on the number of babies covered under the third-party payor, but would be expected to range from a minimal to a substantial increase in costs.

Although they may incur costs related to updating the birth packages, those costs are again imposed by the statute rather than the rules and are not addressed here. However, the delayed implementation of the first step of the new fee until June 1, 2025, will give third-party payors time to comply with A.R.S. § 36-694(I)(1).

The disorders added to the newborn screening panel can be identified and treated early, improving outcomes. As for AHCCCS, the Department anticipates that a third-party payor may receive up to a substantial cost savings from the addition of the new congenital disorders to the newborn screening panel if affected babies, insured through the third-party payor, are identified through NBS, allowing targeted diagnostic testing for a disorder, instead of the "diagnostic odyssey." The Department believes this will reduce the number of tests before a diagnosis is made and the costs of these tests and allow for treatment of a disorder at a time when the cost of the treatment is generally less. This belief is supported by "The Cost of Delayed Diagnosis in Rare Disease" study identified above.

- **Health care institutions**

Most initial specimen kits for newborns are submitted to the Department before or shortly after the newborn is 72 hours old and, thus, the specimen would be collected by the facility at which the birth occurred, as stated above. These facilities are, for the most part, hospitals or birth centers licensed under A.R.S. Title 36, Chapter 4, Article 2, and 9 A.A.C. 10 as health care institutions or similar tribal or federal facilities. During CY 2019 to CY2023, approximately 20 hospitals submitted an average of more than 1,000 initial specimen collection kits each, while another 15 submitted an average of between 250 and 1,000 initial specimen collection kits. Approximately seven hospitals and four birth centers submitted an average of between 50 and 250 initial specimen collection kits. The remainder of these facilities submitted fewer than 50 initial specimen collection kits each. Currently, the Department bills these facilities the $171 program fee for the submitted initial specimens. Therefore, the health care institutions providing maternity services could be expected to incur an increase of $40 (the difference between the current program fee and the increased program fee) in costs due to the fee increase for each initial specimen collection kit submitted once the entire fee increase is in place. If similar numbers of initial specimen collection kits are submitted in the future, approximately 35 hospitals would be expected to incur a substantial increase in costs (from submission of 250 or more initial specimen collection kits) due to the change in the program fee, while approximately another 11

facilities would be expected to incur a moderate increase in costs (from submission of between 50 and 250 initial specimen collection kits) due to the change in the fee, with the rest incurring a minimal increase in costs. This increase in cost should be offset by the increase in the rate for birth packages required in A.R.S. § 36-694(I) for any birth covered by AHCCCS or a third-party payor. The Department anticipates that the delayed implementation of the first step of the new program fee until June 1, 2025, allowing birth packages to be updated before its implementation, may provide up to a substantial benefit to these facilities. For those births not subject to the requirements in A.R.S. § 36-694(I), the Department anticipates that the health care institution will incur an additional cost of up to $40 for each initial specimen collection kit from a baby whose birth was not covered by AHCCCS or a third-party payor, but these costs could be passed on to the person responsible for paying for the birth.

A hospital, outpatient treatment center, or other health care institution that is authorized to provide services required to diagnose a baby with a positive screening test or treat a baby with a diagnosis of one of the added disorders may also be affected by the addition of the new disorders to the newborn screening panel of conditions as part of the rulemaking. An affected baby, identified through NBS and either treated or cured of the condition, could avoid morbidities that would otherwise have sent the baby to the health care institution for treatment, decreasing the revenue to these health care institutions. The Department anticipates that a health care institution may incur a moderate-to-substantial decrease in revenue if an affected baby is identified through NBS and avoids multiple diagnostic tests/procedures to determine a diagnosis, extensive treatment to address the effects of disease progression, or more expensive treatment once the disorder has become symptomatic. However, a health care institution may also receive a moderate-to-substantial increase in revenue from providing on-going, but likely less expensive, treatment to an affected baby/child, who might otherwise have died, as well as receive a significant benefit in knowing that a baby, who was identified through NBS and who has been treated and/or cured, is healthy.

- **Health care providers (midwives, pediatricians, and primary care providers)**

Health care providers may include individual midwives, pediatric offices, primary care providers, outpatient treatment centers, and wellness clinics. As a whole submit, they have in total submitted an average over the past five years of fewer than 850 initial specimen collection kits per year for the newborns they deliver from their clients or that come to their office/facility for routine check-ups or treatment, according to Department records. In CY 2019 through 2023, no health care provider submitted an average of 50 or more specimens per year, with two submitting an average of between 25 and 50 specimens per year, and only 10 submitting an average of between 10 and 25 specimens per year. The rest of them submitted an average of fewer than 10 specimens per year. If a similar number of specimens is submitted by health care providers in upcoming years, the Department would expect

an individual health care provider to incur no more than a minimal increase in costs due to the program fee increase. A health care provider may also pass the costs of the increased fee on to clients/patients as increased fees.

The Department believes that all health care providers may also receive a significant benefit in knowing that an affected baby, identified through NBS, is treated or cured and is healthy.

- **Parents of newborns**

  Parents paid for about 5.4% of births (percentage of self-paid births – 4,260/78,355) in Arizona in CY 2022, according to data from the Department's Health Status and Vital Statistics group. A parent paying a health care facility or health care provider for the delivery of the newborn would likely have the fee for newborn and infant screening included in the fee charged by the health care facility or health care provider for the delivery. A parent for whom their baby's birth was paid by a third-party payor may also incur an increase in the premium paid to the third-party payor if that third-party payor passes the increased newborn screening program fee on to policyholders. The Department expects that the increased program fee may result in at most a minimal cost increase to an individual parent, either directly from the fee change or indirectly through an increase in a health insurance premium or midwifery fee.

  The tests used for newborn and infant screening have a high sensitivity, and the cut-off values for a positive test result are set to ensure that, while there may be false positive results, a false negative result (a negative test result from a baby that really has the condition tested for) is very rare. Over the past three years, there have been an average of 3,163 presumptive positive screening results per year that required follow-up. Of these, almost 100 resulted in a confirmed diagnosis of one of the screened disorders and another almost 500 diagnoses of disorders, including carrier status, that are part of a differential diagnosis of a screened disorder. Because a false positive result may occur, a parent of a newborn with a positive screening test result may experience stress due to the uncertainty about the health of the parent's newborn and will need to obtain diagnostic testing to determine if the screening test result means newborn is affected with the target disorder or another disorder, or whether it is a false positive result. However, the parent of a baby affected with an added disorder or another condition may receive a significant and perhaps up to a substantial benefit from having the condition diagnosed early, through targeted testing, rather than undergo months of stress, have the baby undergo a multitude of tests to try to obtain a diagnosis, and experience the monetary and emotional toll of having a sick child or one whose diagnosis was delayed. Additional information about the economic effect of a delayed diagnosis may be found in "The Cost of Delayed Diagnosis in Rare Disease" study identified above.

- **General public**

As mentioned above, affected babies who are not identified through NBS, and left undiagnosed and untreated, may experience a range of adverse outcomes including irreversible morbidity, developmental delays, and, for some disorders, death. Society in general will receive a significant benefit from having a baby grow up into a healthy and productive member of society because of timely identification and treatment. In addition, the general public is expected to receive up to a substantial benefit from the addition of these disorders to newborn and infant screening by having fewer affected individuals identified later when costs of treatment are higher.

**4. A general description of the probable impact on private and public employment in businesses, agencies, and political subdivisions of this state directly affected by the rulemaking**

Public and private employment in the State of Arizona are not expected to be affected due to the changes in the rules.

**5. A statement of the probable impact of the rules on small business**

**a. Identification of the small businesses subject to the rules**

Small businesses subject to the rule may include small hospitals, small outpatient treatment centers or birth centers, small insurance carriers, physician practices, and midwives.

**b. The administrative and other costs required for compliance with the rules**

The program fee increase may impose an increased cost to a small hospital or birth center that does not receive an increase in the fee for a birthing package from AHCCCS or a third-party payor and does not pass the increased cost for newborn screening on to a parent. The program fee change may impose an increased cost to a midwifery practice that does not pass the increased cost on to a parent. The program fee increase may impose an increased cost on a small insurance carrier or other third-party payor that covers newborn and infant screening for a newborn or infant, which may be offset by higher premiums or lower medical costs for affected babies diagnosed through NBS, rather than once symptoms arise and additional medical treatment is required. Additional information is provided under paragraph 3.

**c. A description of the methods that the agency may use to reduce the impact on small businesses**

The Department is planning a delayed implementation date of June 1, 2025, for the new program fee to enable time for AHCCCS and third-party payors time to comply with A.R.S. § 36-694(I)(1) and (2), thus, reducing the financial burden on facilities submitting initial specimen collection kits until birth packages can be updated. In addition, the Department provides outpatient treatment centers, midwives, and other free-standing small healthcare-related facilities with free, in-person training upon request. These small businesses, as well as other health care institutions and health care providers, also have access to free parent and provider brochures and other materials in English and Spanish and can request

assistance with establishing their facility as a screening location for newborns/infants. Training includes a "getting started" packet covering collection technique, timing, drying, and shipping for specimens, as well as information for families related to disorders tested for through NBS. The Department also contracts with physicians specializing in disorders in the screening panel, who can serve as a resource to health care providers, as well as the Department. Additionally, resources are provided related to hearing screening, insurance reimbursement, and other administrative tasks associated with appropriate screening and education to families. Family support resources are also offered, and a review of the website is provided to ensure stakeholders know how to access information as needed. Except as described above, the Department is unaware of another method that may be used to reduce the impact on small businesses.

**d. The probable costs and benefits to private persons and consumers who are directly affected by the rules**

If the parents of a newborn or infant have no health care insurance for the newborn or infant, the parents may bear the cost of the program fee for the newborn and infant screening program. However, for most parents (those whose babies have negative test result), the parents will benefit from the knowledge that the parent's newborn does not have a screened disorder. For those parents receiving a positive screening result, the parent can benefit from targeted testing for a screened disorder. If the newborn is diagnosed with a disorder after a positive newborn and infant screening test, those parents can benefit from early diagnosis and treatment/cure to avoid a stressful diagnostic odyssey and costly medical and other expenses, including the death of the baby in some cases. Additional information is provided under paragraph 3.

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

The funds generated through newborn screening fees are placed into a newborn screening fund, from which the Legislature appropriates funds to run NBS within the Department. The Department anticipates that approximately $3,112,880 in additional funds will be generated to run the program, as described in paragraph 3.

**7. A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking**

There are no less intrusive or less costly alternatives for achieving the purpose of the rule.

**8. A description of any data on which the rule is based with a detailed explanation of how the data was obtained and why the data is acceptable data**

The financial data used to develop this document was obtained, as cited, from the Department's newborn screening database, vital statistics data, and financial records and projections, not from any outside data. As such, the Department believes the data is acceptable.

Although not used to develop the rules, the "The Cost of Delayed Diagnosis in Rare Disease" study, identified above, provides additional information on the economic effect that screening for rare disorders, such as those being added through this rulemaking, has on healthcare systems, payors, patients and their families, and society in general.

# TITLE 9. HEALTH SERVICES

## CHAPTER 13. DEPARTMENT OF HEALTH SERVICES

## HEALTH PROGRAMS SERVICES

## ARTICLE 2. NEWBORN AND INFANT SCREENING

Section

R9-13-201. Definitions
R9-13-202. Newborn and Infant Critical Congenital Heart Defect Screening
R9-13-203. Newborn and Infant Bloodspot Tests
R9-13-204. First Specimen Collection
R9-13-205. Second Specimen Collection
R9-13-206. Reporting Requirements for Specimens
R9-13-207. Newborn and Infant Hearing Tests
R9-13-208. Newborn Screening Program Fee

## ARTICLE 2. NEWBORN AND INFANT SCREENING

### R9-13-201. Definitions

In this Article, unless otherwise specified:

1. "Abnormal result" means an outcome that deviates from the range of values established by:
   a. The Department for an analysis performed as part of a bloodspot test or for a hearing test, or
   b. A health care facility or health care provider for critical congenital heart defect screening.
2. "Admission" or "admitted" means the same as in A.A.C. R9-10-101.
3. "AHCCCS" means the Arizona Health Care Cost Containment System.
4. "Amino acid disorder" means a congenital disorder characterized by the abnormal accumulation of an amino acid or another nitrogen-containing molecule due to a defective enzyme.
5. "Arizona State Laboratory" means the entity operated according to A.R.S. § 36-251.
6. "Audiological equipment" means an instrument used to help determine the presence, type, or degree of hearing loss by:
   a. Providing ear-specific and frequency-specific stimuli to an individual; or
   b. Measuring an individual's physiological response to stimuli.
7. "Audiologist" means the same as in A.R.S. § 36-1901.
8. "Birth center" means a health care facility that is not a hospital and is organized for the purpose of delivering newborns.
9. "Blood sample" means capillary or venous blood, and possibly arterial blood but not cord blood, applied to the filter paper of a specimen collection kit.
10. "Bloodspot test" means multiple laboratory analyses performed on a blood sample to screen for the presence of congenital disorders listed in R9-13-203.
11. "Congenital disorder" means an abnormal condition present at birth, as a result of heredity or environmental factors, that impairs normal physiological functioning of a human body.
12. "Critical congenital heart defect" means a heart abnormality or condition present at birth that places a newborn or infant at significant risk of disability or death if not diagnosed soon after birth.
13. "Department" means the Arizona Department of Health Services.

14. "Diagnostic evaluation" means a hearing test performed by an audiologist or a physician to determine whether hearing loss exists, and, if applicable, determine the type or degree of hearing loss.
15. "Discharge" means the termination of inpatient services to a newborn or an infant.
16. "Disorder" means a disease or medical condition that may be identified by a laboratory analysis.
17. "Document" means to establish and maintain information in written, photographic, electronic, or other permanent form.
18. "Educational materials" means printed or electronic information provided by the Department, explaining newborn and infant screening, any of the congenital disorders listed in R9-13-203, hearing loss, or critical congenital heart defect.
19. "Electronic" means the same as in A.R.S. § 44-7002.
20. "Endocrine disorder" means a congenital disorder characterized by an abnormal amount of a hormone being secreted from a gland into the blood stream.
21. "Fatty acid oxidation disorder" means a congenital disorder characterized by the inability of the body to break down fatty acids as a source of energy.
22. "First specimen" means a specimen that is collected from a newborn who is less than five days of age and sent to the Arizona State Laboratory for testing and recording of demographic information.
23. "Guardian" means an individual appointed by a court under A.R.S. Title 14, Chapter 5, Article 2.
24. "Health care facility" means a health care institution, as defined in A.R.S. § 36-401, where obstetrical care or newborn care is provided.
25. "Health care provider" means a physician, physician assistant, registered nurse practitioner, or midwife.
26. "Health-related services" means the same as in A.R.S. § 36-401.
27. "Hearing screening" means a hearing test to determine the likelihood of hearing loss in a newborn or infant.
28. "Hearing test" means an evaluation of each of a newborn's or an infant's ears, using audiological equipment to:
    a. Screen the newborn or infant for a possible hearing loss;
    b. Determine that the newborn or infant does not have a hearing loss; or
    c. Diagnose a hearing loss in the newborn or infant, including determining the type or degree of hearing loss.

29. “Hemoglobinopathy” means a congenital disorder characterized by abnormal production, structure, or functioning of hemoglobin.
30. “Home birth” means delivery of a newborn, outside a health care facility, when the newborn is not hospitalized within 72 hours of delivery.
31. “Hospital” means the same as in A.A.C. R9-10-101.
32. “Hospital services” means the same as in A.A.C. R9-10-201.
33. “Identification code” means a unique set of numbers or letters, or a unique set of both numbers and letters, assigned by the Department to a health care facility, a health care provider, an audiologist, or another person submitting specimen collection kits to the Arizona State Laboratory or hearing test results to the Department.
34. “Infant” means the same as in A.R.S. § 36-694.
35. “Initial specimen” means the earliest specimen that was collected from a newborn or infant and sent to the Arizona State Laboratory for testing.
36. “Inpatient” means an individual who:
    a. Is admitted to a hospital,
    b. Receives hospital services for 24 consecutive hours, or
    c. Is admitted to a birth center.
37. “Inpatient services” means medical services, nursing services, or other health-related services provided to an inpatient in a health care facility.
38. “Medical services” means the same as in A.R.S. § 36-401.
39. “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.
40. “Newborn” means the same as in A.R.S. § 36-694.
41. “Newborn care” means medical services, nursing services, and health-related services provided to a newborn.
42. “Nursing services” means the same as in A.R.S. § 36-401.
43. “Obstetrical care” means medical services, nursing services, and health-related services provided to a woman throughout her pregnancy, labor, delivery, and postpartum.
44. “Organ” means a somewhat independent part of a human body, such as a salivary gland, kidney, or pancreas, which performs a specific function.
45. “Organic acid disorder” means a congenital disorder characterized by the abnormal accumulation of organic acids in the blood and urine due to a defective enzyme.
46. “Parent” means a natural, adoptive, or custodial mother or father of a newborn or an infant.

47. “Parenteral nutrition” means the feeding of an individual intravenously through the administration of a formula containing at least glucose and amino acids, as well as possibly lipids, vitamins, and minerals.
48. “Person” means the state, a municipality, district, or other political subdivision, a cooperative, institution, corporation, company, firm, partnership, individual, or other legal entity.
49. “Physician” means an individual licensed under A.R.S. Title 32, Chapters 13, 14, 17, or 29.
50. “Physician assistant” means an individual licensed under A.R.S. Title 32, Chapter 25.
51. “Pulse oximetry” means a non-invasive method of measuring the percentage of hemoglobin in the blood that is saturated with oxygen using a device approved by the U.S. Food and Drug Administration for use with newborns or infants less than six weeks of age.
52. “Registered nurse practitioner” means the same as in A.R.S. § 32-1601.
53. “Second specimen” means a specimen that is sent to the Arizona State Laboratory for testing and recording of demographic information, after being collected from an individual who is at least five days and not older than one year of age.
54. “Sickle cell disease” means a hemoglobinopathy characterized by an abnormally shaped red blood cell resulting from the abnormal structure of the protein hemoglobin.
55. “Sickle cell gene” means a unit of inheritance that is involved in producing an abnormal type of the protein hemoglobin, in which the amino acid valine is substituted for the amino acid glutamic acid at a specific location in the hemoglobin.
56. “Specimen” means a blood sample obtained from and demographic information about a newborn or an infant.
57. “Specimen collection kit” means a strip of filter paper for collecting a blood sample attached to a form for obtaining the information specified in R9-13-203(B)(3) about a newborn or an infant.
58. “Transfer” means a health care facility or health care provider discharging a newborn and sending the newborn to a hospital for inpatient medical services without the intent that the patient will be returned to the sending health care facility or health care provider.
59. “Transfusion” means the infusion of blood or blood products into the body of an individual.

60. "Verify" means to confirm by obtaining information through a source such as the newborn screening program, a health care provider, a health care facility, or a documented record.

61. "Working day" means 8:00 a.m. through 5:00 p.m. Monday through Friday, excluding state holidays.

**R9-13-202. Newborn and Infant Critical Congenital Heart Defect Screening**

**A.** A health care facility's designee, a health care provider, or a health care provider's designee shall order critical congenital heart defect screening using pulse oximetry for a newborn to be performed:

1. Between 24 and 48 hours after birth according to the health care facility's or health care provider's policies and procedures, or
2. As late as possible before discharge according to the health care facility's or health care provider's policies and procedures if the newborn is discharged earlier than 24 hours after birth.

**B.** Before critical congenital heart defect screening is performed on a newborn, a health care facility's designee, a health care provider, or a health care provider's designee shall provide educational materials to the newborn's parent or guardian.

**C.** When critical congenital heart defect screening is ordered for a newborn, a health care facility's designee, a health care provider, or a health care provider's designee shall submit, in a format specified by the Department, the following information:

1. The newborn's name, gender, race, ethnicity, medical record number, and, if applicable, AHCCCS identification number;
2. Whether the newborn is from a single or multiple birth;
3. If the newborn is from a multiple birth, the birth order of the newborn;
4. The date and time of birth, and the newborn's weight at birth;
5. The identification code or the name and address of the health care facility or health care provider submitting the information;
6. Except as provided in subsection (C)(7), the mother's first and last names, date of birth, name before first marriage, mailing address, telephone number, and, if applicable, AHCCCS identification number;
7. If the newborn's mother does not have physical custody of the newborn, the first and last names, mailing address, and telephone number of the person who has physical custody of the newborn;

8. The date, time, and result of the critical congenital heart defect screening;
9. If critical congenital heart defect screening was not performed, the reason critical congenital heart defect screening was not performed;
10. If the newborn was transferred to another health care facility or health care provider before the critical congenital heart defect screening was performed, the name, address, and telephone number of the health care facility or health care provider to which the newborn was transferred; and
11. Whether the newborn has a medical condition that may affect the critical congenital heart defect screening results.

**D.** In addition to the information in subsection (C), if the reported result of critical congenital heart defect screening for a newborn or infant is abnormal, a health care facility's designee, a health care provider, or a health care provider's designee shall submit to the Department, upon request and in a format specified by the Department, the following information:

1. The dates, times, values of all critical congenital heart defect screening results;
2. The dates, times, and results of any subsequent tests performed as a result of critical congenital heart defect screening;
3. The name, address, and telephone number of the contact person for the health care facility, health care provider, or other person performing the subsequent tests; and
4. If a medical condition is found as a result of critical congenital heart defect screening or subsequent tests, the type of medical condition found and the name of the health care provider who will be responsible for the coordination of medical services for the newborn or infant after the newborn or infant is discharged.

**R9-13-203. Newborn and Infant Bloodspot Tests**

**A.** A bloodspot test shall screen for the following congenital disorders:

1. Amino acid disorders, including:
    a. Argininemia, a congenital disorder characterized by an inability to metabolize the amino acid arginine due to defective arginase activity;
    b. Argininosuccinic acidemia, a congenital disorder characterized by an inability to metabolize the amino acid argininosuccinic acid due to defective argininosuccinate lyase activity;
    c. Biopterin defect in cofactor biosynthesis, a congenital disorder characterized by reduced levels of tetrahydrobiopterin due to a defect in an enzyme that produces tetrahydrobiopterin;

d. Biopterin defect in cofactor regeneration, a congenital disorder characterized by reduced levels of tetrahydrobiopterin due to a defect in an enzyme that recycles tetrahydrobiopterin to a usable form after a metabolic reaction;

e. Citrullinemia type I, a congenital disorder characterized by an inability to convert the amino acid citrulline and aspartic acid into argininosuccinic acid due to defective argininosuccinate synthetase activity;

f. Citrullinemia type II, a congenital disorder characterized by a reduction in levels of citrin, which is involved in the transport of glutamate and aspartate, due to a defective *SLC25A13* gene;

g. Homocystinuria, a congenital disorder characterized by abnormal methionine and homocysteine metabolism due to defective cystathione-ß-synthase activity;

h. Hypermethioninemia, a congenital disorder characterized by an elevated level of methionine in the bloodstream;

i. Hyperphenylalaninemia (benign), a congenital disorder characterized by an elevated level of phenylalanine in the bloodstream with few, if any, clinical symptoms;

j. Maple syrup urine disease, a congenital disorder of branched chain amino acid metabolism due to defective branched chain-keto acid dehydrogenase activity;

k. Phenylketonuria, a congenital disorder characterized by abnormal phenylalanine metabolism due to defective phenylalanine hydroxylase activity;

l. Tyrosinemia type I, a congenital disorder characterized by an accumulation of the amino acid tyrosine due to defective fumarylacetoacetate hydrolase activity;

m. Tyrosinemia type II, a congenital disorder characterized by an accumulation of the amino acid tyrosine due to defective tyrosine aminotransferase activity; and

n. Tyrosinemia type III, a congenital disorder characterized by an accumulation of the amino acid tyrosine and metabolic product 4-hydroxyphenylpyruvate due to defective 4-hydroxyphenylpyruvate dioxygenase activity;

2. Endocrine disorders, including:

a. Congenital adrenal hyperplasia, a congenital disorder characterized by decreased cortisol production and increased androgen production due to defective 21-hydroxylase activity; and

b. Congenital hypothyroidism, a congenital disorder characterized by deficient thyroid hormone production;

3. Fatty acid oxidation disorders, including:

a. 2,4 Dienoyl-CoA reductase deficiency, a congenital disorder characterized by an accumulation of the amino acid lysine and some fatty acids due to defective 2,4 dienoyl-CoA reductase activity;

b. Carnitine shuttle disorders, including:

   i. Carnitine palmitoyltransferase I deficiency, a congenital disorder characterized by the defective activity of carnitine palmitoyltransferase I, resulting in the inability of a cell to transport carnitine and acyl-CoA out of the cytosol;

   ii. Carnitine-acylcarnitine translocase deficiency, a congenital disorder characterized by the defective activity of carnitine-acylcarnitine translocase, resulting in the inability of acylcarnitine to enter the mitochondria; and

   iii. Carnitine palmitoyltransferase II deficiency, a congenital disorder characterized by the defective activity of carnitine palmitoyltransferase II, resulting in the inability to transfer acyl-CoA into the mitochondria;

c. Carnitine uptake defect, a congenital disorder characterized by a decrease in the amount of free carnitine due to defective sodium ion-dependent carnitine transporter OCTN2 activity;

d. Glutaric acidemia type II, a congenital disorder characterized by a decrease in the ability to break down proteins and fatty acids due to decreased activity of either electron transfer flavoprotein or electron transfer flavoprotein dehydrogenase;

e. Long-chain 3-hydroxy acyl-CoA dehydrogenase deficiency, a congenital disorder characterized by an inability to metabolize fatty acids that are 12 to 18 carbon atoms in length due to defective long-chain 3-hydroxy acyl-CoA dehydrogenase activity;

f. Medium-chain acyl-CoA dehydrogenase deficiency, a congenital disorder characterized by an inability to metabolize fatty acids that are 6 to 10 carbon atoms in length due to defective medium-chain acyl-CoA dehydrogenase activity;

g. Medium-chain ketoacyl-CoA thiolase deficiency, a congenital disorder characterized by an inability to metabolize fatty acids due to defective ketoacyl-CoA thiolase activity;

h. Medium/short chain L-3 hydroxyacyl-CoA dehydrogenase deficiency, a congenital disorder characterized by an inability to metabolize fatty acids that are

3 to 10 carbon atoms in length due to defective 3-hydroxyacyl-CoA dehydrogenase activity;

i. Short chain acyl-CoA dehydrogenase deficiency, a congenital disorder characterized by an inability to metabolize fatty acids that are 6 or fewer carbon atoms in length due to defective short chain acyl-CoA dehydrogenase activity;

j. Trifunctional protein deficiency, a congenital disorder characterized by an inability to metabolize fatty acids that are 12 to 18 carbon atoms in length due to defective mitochondrial trifunctional protein activity; and

k. Very long-chain acyl-CoA dehydrogenase deficiency, a congenital disorder characterized by an inability to metabolize fatty acids that are 14 to 18 carbon atoms in length due to defective very long-chain acyl-CoA dehydrogenase activity;

4. Hemoglobinopathies, including:

a. Hemoglobin S/Beta-thalassemia, a sickle cell disease in which an individual has one sickle cell gene and one gene for beta thalassemia, another inherited hemoglobinopathy;

b. Hemoglobin S/C disease, a sickle cell disease in which an individual has one sickle cell gene and one gene for another inherited hemoglobinopathy called hemoglobin C;

c. Sickle cell anemia, a sickle cell disease in which an individual has two sickle cell genes; and

d. Other congenital disorders caused by an abnormal hemoglobin protein;

5. Organic acid disorders, including:

a. 2-Methylbutyrylglycinuria, a congenital disorder characterized by an inability to metabolize the amino acid isoleucine, resulting in elevated levels of 2-methylbutryl carnitine, due to defective short/branched chain acyl-CoA dehydrogenase activity;

b. 2-Methyl-3-hydroxybutyric aciduria or HSD10 disease, a congenital disorder characterized by elevated levels of break-down products of the amino acid isoleucine and a reduction in functional mitochondrial tRNA molecules, which results in impaired mitochondrial synthesis of proteins;

c. 3-Hydroxy-3-methylglutaric aciduria, a congenital disorder characterized by the accumulation of 3-hydroxy-3-methylglutaric acid due to defective 3-hydroxy-3-methylglutaryl-CoA lyase activity;

d. 3-Methylcrotonyl-CoA carboxylase deficiency, a congenital disorder characterized by an accumulation of 3-methylcrotonyl-glycine due to defective 3-methylcrotonyl-CoA carboxylase activity;

e. 3-Methylglutaconic aciduria, a congenital disorder characterized by elevated levels of 3-methylglutaconic acid due to defective 3-methylglutaconyl-CoA hydratase activity or a related enzyme;

f. Beta-ketothiolase deficiency, a congenital disorder characterized by an inability to metabolize 2-methyl-acetoacetyl-CoA due to defective mitochondrial acetoacetyl-CoA thiolase activity;

g. Glutaric acidemia type I, a congenital disorder characterized by an accumulation of glutaric acid due to defective glutaryl-CoA dehydrogenase activity;

h. Holocarboxylase synthase deficiency, a congenital disorder of multiple carboxylase deficiencies characterized by an inability to transport or metabolize biotin that leads to defective activity of propionyl-CoA carboxylase, beta-methylcrotonyl-CoA carboxylase, and pyruvate carboxylase;

i. Isobutyrylglycinuria, a congenital disorder characterized by an inability to metabolize the amino acid valine due to defective isobutyryl-CoA dehydrogenase activity;

j. Isovaleric acidemia, a congenital disorder characterized by an accumulation of isovaleric acid due to defective isovaleryl-CoA dehydrogenase activity;

k. Malonic acidemia, a congenital disorder characterized by an inability to metabolize fatty acids due to defective malonyl-CoA decarboxylase activity;

l. Methylmalonic acidemia (cobalamin disorders), a congenital disorder characterized by an accumulation of methylmalonic acid due to defective activity of methylmalonyl-CoA epimerase or adenosylcobalamin synthetase;

m. Methylmalonic acidemia (mutase deficiency), a congenital disorder characterized by an accumulation of methylmalonic acid due to defective methylmalonyl-CoA mutase activity;

n. Methylmalonic acidemia with homocystinuria, a congenital disorder characterized by the abnormal processing of cobalamin, leading to defective activity of methylmalonyl-CoA mutase and methionine synthase, for both of which cobalamin is a cofactor; and

o. Propionic acidemia, a congenital disorder characterized by an accumulation of glycine and 3-hydroxypropionic acid due to defective propionyl-CoA carboxylase activity; and

6. Other disorders, including:

a. Biotinidase deficiency, a congenital disorder characterized by defective biotinidase activity that causes abnormal biotin metabolism and multiple carboxylase deficiencies;

b. Classic galactosemia, a congenital disorder characterized by abnormal galactose metabolism due to defective galactose-1-phosphate uridyltranferase activity;

c. Cystic fibrosis, a congenital disorder caused by defective functioning of a transmembrane regulator protein and characterized by damage to and dysfunction of various organs, such as the lungs, pancreas, and reproductive organs;

d. Galactoepimerase deficiency, a congenital disorder characterized by abnormal galactose metabolism due to defective UTP-galactose 4-epimerase activity;

e. Galactokinase deficiency, a congenital disorder characterized by abnormal galactose metabolism due to defective galactokinase activity;

f. Beginning May 1, 2023, glycogen storage disease type II or Pompe disease, a congenital disorder characterized by the accumulation of the polysaccharide, glycogen, in lysosomes due to a defect in the lysosomal acid alpha-glucosidase enzyme;

g. Beginning May 1, 2023, mucopolysaccaridosis type I, a congenital disorder characterized by the buildup of the glycosaminoglycans, dermatan sulfate and heparan sulfate, due to defective alpha-L-iduronidase activity;

h. Severe combined immunodeficiency, a congenital disorder usually characterized by a defect in both the T- and B-lymphocyte systems, which typically results in the onset of one or more serious infections within the first few months of life;

i. Spinal muscular atrophy, a congenital disorder characterized by the loss of nerve cells in the spinal cord that control muscle movement due to a defect in the survival motor neuron 1 (*SMN1*) gene;

j. T-cell related lymphocyte deficiency, a congenital disorder characterized by a defect in the T-lymphocyte system, which typically results in a decrease in cell-mediated immunity and unusually severe common viral infections; and

k. X-linked adrenoleukodystrophy, a congenital disorder characterized by the build-up of very long-chain fatty acids due to a deficiency in the adrenoleukodystrophy protein, caused by a defective *ABCD1* gene.

**B.** When a bloodspot test is ordered for a newborn or an infant, a health care facility's designee, a health care provider, or the health care provider's designee shall:

1. Only use a specimen collection kit supplied by the Department;
2. Collect a blood sample from the newborn or infant on a specimen collection kit;
3. Complete the following information on the specimen collection kit:
   a. The newborn's or infant's name, gender, race, ethnicity, medical record number, and, if applicable, AHCCCS identification number;
   b. The newborn's or infant's type of food or food source;
   c. Whether the newborn or infant is from a single or multiple birth;
   d. If the newborn or infant is from a multiple birth, the birth order of the newborn or infant;
   e. Whether the newborn or infant has a medical condition that may affect the bloodspot test results;
   f. Whether the newborn or infant received a blood transfusion and, if applicable, the date of the last blood transfusion;
   g. The date and time of birth, and the newborn's or infant's weight at birth;
   h. The date and time of blood sample collection, and the newborn's or infant's weight when the blood sample is collected;
   i. The identification code or the name and address of the health care facility or health care provider submitting the specimen collection kit;
   j. The name, address, and telephone number or the identification code of the health care provider responsible for the management of medical services provided to the newborn or infant;
   k. Except as provided in subsection (B)(3)(l), the mother's first and last names, date of birth, name before first marriage, mailing address, telephone number, and if applicable, AHCCCS identification number; and
   l. If the newborn's or infant's mother does not have physical custody of the newborn or infant, the first and last names, mailing address, and telephone number of the person who has physical custody of the newborn or infant; and
4. Submit the specimen collection kit to the Arizona State Laboratory no later than 24 hours or the next working day after the blood sample is collected.

**C.** A health care facility or a health care provider submitting an initial specimen to the Arizona State Laboratory shall pay the Department the fee in R9-13-208.

**D.** When a home birth not attended by a health care provider is reported to a local registrar, a deputy local registrar, or the state registrar under A.R.S. § 36-333:

1. The local registrar, deputy local registrar, or state registrar shall notify the local health department of the county where the birth occurred; and
2. The local health department's designee shall:
    a. Collect a specimen from the newborn or infant on a specimen collection kit according to the requirements in R9-13-204(A)(2) or R9-13-205(C), and
    b. Submit the specimen collection kit to the Arizona State Laboratory no later than 24 hours or the next working day after the blood sample is collected.

**E.** A health care facility's designee, a health care provider, or the health care provider's designee shall ensure that:

1. Educational materials are provided to the parent or guardian of a newborn or an infant for whom a bloodspot test is ordered, and
2. The newborn's or infant's parent or guardian is informed of the requirement for a second specimen if the second specimen has not been collected.

**F.** For a home birth, a health care provider or the health care provider's designee shall provide educational materials to the parent or guardian of a newborn or an infant for whom a bloodspot test is ordered.

**R9-13-204. First Specimen Collection**

**A.** When a newborn is born in a hospital, the hospital's designee shall collect a first specimen from the newborn according to whichever of the following occurs first:

1. Unless specified otherwise by a physician, physician assistant, or registered nurse practitioner, before administering a transfusion or parenteral nutrition;
2. When the newborn is at least 24 but not more than 72 hours old; or
3. Before the newborn is discharged, unless the newborn:
    a. Is transferred to another hospital before the newborn is 48 hours old; or
    b. Dies before the newborn is 72 hours old.

**B.** If a newborn is admitted or transferred to a hospital before the newborn is 48 hours old, the receiving hospital's designee shall:

1. Verify that the first specimen was collected before admission or transfer, or

2. Collect a first specimen from the newborn according to the requirements in subsection (A).

**C.** When a newborn is born in a birth center, the birth center's designee shall collect a first specimen from the newborn according to subsections (A)(1) or (A)(2).

**D.** For a home birth attended by a health care provider, the health care provider or the health care provider's designee shall collect a first specimen from the newborn according the requirements in subsection (A)(2).

**R9-13-205. Second Specimen Collection**

**A.** After a newborn's or an infant's discharge from a health care facility or after a home birth, a health care provider or the health care provider's designee shall:

1. Collect a second specimen from the newborn or infant not older than one year of age at the time of the newborn's or infant's first visit to the health care provider, or
2. Verify that a health care facility or different health care provider has collected a second specimen from the newborn or infant.

**B.** If a newborn is an inpatient of a health care facility at 5 days of age, the health care facility's designee shall collect a second specimen from the newborn:

1. When the newborn is at least 5 but not more than 10 days old; or
2. If the newborn is discharged from the health care facility when the newborn is at least 5 but not more than 10 days old, before discharge.

**C.** For a home birth that is not attended by a health care provider, a local health department's designee shall collect a specimen from a newborn or an infant if the local health department's designee has not verified that a second specimen has already been collected from the newborn or infant.

**R9-13-206. Reporting Requirements for Specimens**

**A.** The Arizona State Laboratory shall report, in written or electronic format, to the health care provider and, if applicable, health care facility identified on a specimen collection kit:

1. The results of a bloodspot test on a specimen; or
2. For a specimen that does not meet quality standards established by the Arizona State Laboratory in compliance with 42 CFR § 493.1200:
    a. That a bloodspot test was not performed on the specimen; and
    b. The reason the bloodspot test was not performed.

**B.** A health care facility's designee, a health care provider, or the health care provider's designee, who orders a subsequent test on a newborn or an infant in response to an abnormal result on a bloodspot test, shall send the results of the subsequent test in writing to the Department, if the subsequent test is not performed by the Arizona State Laboratory.

**C.** Bloodspot test results are confidential subject to the disclosure provisions of 9 A.A.C. 1, Article 3, and A.R.S. §§ 12-2801 and 12-2802.

**R9-13-207. Newborn and Infant Hearing Tests**

**A.** Before a hearing test is performed on a newborn or infant, a health care facility's designee, a health care provider, or the health care provider's designee shall provide educational materials to the newborn's or infant's parent or guardian.

**B.** A health care facility's designee, a health care provider, or the health care provider's designee shall order hearing testing for a newborn or infant to be performed according to the health care facility's or health care provider's policies and procedures that includes:

1. An initial hearing screening ordered to be performed within 30 days after birth or before discharge;
2. A second hearing screening ordered to be performed within 30 days after birth if an abnormal result is obtained in one or both of a newborn's or infant's ears on the initial hearing screening; and
3. Diagnostic evaluation ordered to be performed:
    a. If a newborn or infant has an abnormal result in one or both ears on the second hearing screening;
    b. If a newborn or infant has been admitted to the Neonatal Intensive Care Unit for five days or more and has an abnormal initial hearing screening;
    c. If a newborn or infant has a medical condition that makes diagnostic evaluation more appropriate; or
    d. As clinically indicated.

**C.** When an initial hearing test is performed on a newborn or infant, a health care facility's designee, a health care provider, or the health care provider's designee shall submit to the Department, as specified in subsection (G), the following information:

1. The newborn's or infant's name, date of birth, gender, and medical record number;
2. Whether the newborn or infant is from a single or multiple birth;
3. If the newborn or infant is from a multiple birth, the birth order of the newborn or infant;
4. The first and last names and date of birth of the newborn's or infant's mother;

5. The name and identification code of the health care facility of birth;
6. The name and identification code of the health care facility where the initial hearing test was performed or of the health care provider who performed the initial hearing test;
7. The date of the initial hearing test;
8. Whether or not the initial hearing test was performed when the newborn or infant was an inpatient;
9. The audiological equipment used for the initial hearing test and the type of initial hearing test performed; and
10. The initial hearing test result for each of the newborn's or infant's ears.

**D.** In addition to the information in subsection (C), if the reported results of an initial hearing test on a newborn or infant include an abnormal result, a health care facility's designee, a health care provider, or the health care provider's designee shall submit to the Department, as specified in subsection (G), the following information:

1. Except as provided in subsection (D)(2), the mother's name before first marriage, mailing address, and telephone number;
2. If the newborn's or infant's mother does not have physical custody of the newborn or infant, the first and last names, mailing address, and telephone number of the person who has physical custody of the newborn or infant;
3. The name of the health care provider who will be responsible for the coordination of medical services for the newborn or infant after the newborn or infant is discharged from the health care facility;
4. The name and telephone number of the person to whom the newborn's or infant's mother or other person who has physical custody of the newborn or infant was referred for a subsequent hearing test;
5. The date of the appointment for a subsequent hearing test, if available; and
6. The health care facility where a subsequent hearing test is scheduled to be performed or the name and address of the health care provider who is scheduled to perform the subsequent test, if available.

**E.** When a subsequent hearing test is performed on a newborn or an infant after an initial hearing test, the designee of the health care facility, health care provider, or other person that performs the subsequent hearing test shall submit to the Department, as specified in subsection (G), the following information:

1. The newborn's or infant's name, date of birth, and gender;
2. Whether the newborn or infant is from a single or multiple birth;

3. If the newborn or infant is from a multiple birth, the birth order of the newborn or infant;
4. The first and last names and date of birth of the newborn's or infant's mother;
5. The name of the health care facility of birth, if known;
6. The name of the health care facility where the subsequent hearing test was performed, or the name and address of the health care provider who performed the subsequent hearing test;
7. The date of the subsequent hearing test;
8. The audiological equipment used for the subsequent hearing test and type of hearing test performed;
9. The result, including a quantitative result if applicable, for each of the newborn's or infant's ears on the subsequent hearing test;
10. The name, address and telephone number of the contact person for the health care facility, health care provider, or other person that performed the subsequent hearing test, if different from the person specified in subsection (E)(6); and
11. If the subsequent hearing test was a diagnostic evaluation:
    a. Whether the newborn or infant has a hearing loss and, if so, the type and degree of hearing loss;
    b. A copy of the narrative that describes the hearing test performed on the newborn or infant to determine that the newborn or infant does not have a hearing loss or diagnose a hearing loss in the newborn or infant, the results of the hearing test, and the analysis of the hearing test results by the audiologist or physician who performed the hearing test;
    c. Whether the newborn or infant has a medical condition that may affect the hearing test results; and
    d. Whether the newborn or infant has been referred to early intervention services, including a date of referral.

**F.** In addition to the information in subsection (E), if the reported results of a subsequent hearing test on a newborn or infant include an abnormal result, the person submitting the report on the subsequent hearing test shall submit to the Department, as specified in subsection (G), the following information:

1. Except as provided in subsection (F)(2), the mailing address and telephone number of the newborn's or infant's mother;

2. If the newborn's or infant's mother does not have physical custody of the newborn or infant, the first and last names, mailing address, and telephone number of the person who has physical custody of the newborn or infant;
3. The name of the health care provider who is responsible for the coordination of medical services for the newborn or infant; and
4. If applicable, the name and phone telephone number of the person to whom the newborn's or infant's parent was referred for further hearing tests, evaluation services, specialty care, or early intervention.

**G.** A health care facility's designee, health care provider, health care provider's designee, or other person required to report under subsections (C), (D), (E), or (F) shall submit, in an electronic format specified by the Department, the information specified in subsections (C), (D), (E), or (F) for hearing tests performed each week by the sixth day of the subsequent week.

**R9-13-208. Newborn Screening Program Fee**

**A.** Until November 1, 2022, the fee for the newborn screening program is:
1. For a first specimen, $36; and
2. For a second specimen, $65.

**B.** Effective November 1, 2022, the fee for the newborn screening program is $171.00.

**Statutory Authority for 9 A.A.C. 13, Article 2**

**36-132. Department of health services; functions; contracts**

A. The department, in addition to other powers and duties vested in it by law, shall:

1. Protect the health of the people of the state.

2. Promote the development, maintenance, efficiency and effectiveness of local health departments or districts of sufficient population and area that they can be sustained with reasonable economy and efficient administration, provide technical consultation and assistance to local health departments or districts, provide financial assistance to local health departments or districts and services that meet minimum standards of personnel and performance and in accordance with a plan and budget submitted by the local health department or districts to the department for approval, and recommend the qualifications of all personnel.

3. Collect, preserve, tabulate and interpret all information required by law in reference to births, deaths and all vital facts, and obtain, collect and preserve information relating to the health of the people of this state and the prevention of diseases as may be useful in the discharge of functions of the department not in conflict with chapter 3 of this title and sections 36-693, 36-694 and 39-122.

4. Operate 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.

**36-694. Report of blood tests; newborn screening program; committee; fee; definitions**

A. When a birth or stillbirth is reported, the attending physician or other person required to report the birth shall state on the certificate whether a blood test for syphilis was made on a specimen of blood taken from the woman who bore the child or from the umbilical cord at delivery, as required by section 36-693, and the approximate date when the specimen was taken.

B. When a birth is reported, the attending physician or person who is required to report the birth shall order or cause to be ordered tests for certain congenital disorders, including hearing disorders. The results of tests for these disorders must be reported to the department of health services. The department of health services shall specify in rule the disorders, the process for collecting and submitting specimens and the reporting requirements for test results.

C. When a hearing test is performed on a newborn, the initial hearing test results and any subsequent hearing test results must be reported to the department of health services as prescribed by department rules.

D. The director of the department of health services shall establish a newborn screening program within the department to ensure that the testing for congenital disorders and the reporting of hearing test results required by this section are conducted in an effective and efficient manner. The newborn screening program shall include all congenital disorders that are included on the recommended uniform screening panel adopted by the secretary of the United States department of health and human services for both core and secondary conditions. Beginning January 1, 2022, disorders that are added to the core and secondary conditions list of the recommended uniform screening panel shall be added to this state's newborn screening panel within two years after their addition to the recommended uniform screening panel. The newborn screening program shall include an education program for the general public, the medical community, parents and professional groups. The director shall designate the state laboratory as the only testing facility for the program, except that the director may designate other laboratory testing facilities for conditions or tests added to the newborn screening program on or after July 24, 2014. If the director designates another laboratory testing facility for any condition or test, the director shall require the facility to follow all of the privacy and sample destruction time frames that are required of the state laboratory.

E. The newborn screening program shall establish and maintain a central database of newborns and infants who are tested for hearing loss and congenital disorders that includes information required in rule. Test results are confidential subject to the disclosure provisions of sections 12-2801 and 12-2802.

F. If tests conducted pursuant to this section indicate that a newborn or infant may have a hearing loss or a congenital disorder, the screening program shall provide follow-up services to encourage the child's family to access evaluation services, specialty care and early intervention services.

G. The director shall establish a committee to provide recommendations and advice to the department on at least an annual basis regarding newborn screening best practices and emerging trends.

H. The director may establish by rule a fee that the department may collect for operating the newborn screening program, including contracting for the testing pursuant to this section. The director shall

present any change to the fee for the newborn screening program to the joint legislative budget committee for review.

I. Not later than sixty days after the department adjusts the newborn screening program fee established pursuant to subsection H of this section:

1. Each health insurer that is subject to title 20 shall update its hospital rates that include newborn screening to reflect the increase.

2. For the Arizona health care cost containment system and contractors acting pursuant to chapter 29, article 1 of this title that are not subject to title 20, the Arizona health care cost containment system shall update its hospital rates that include newborn screening to reflect the increase.

J. For the purposes of this section:

1. "Infant" means a child who is twenty-nine days of age to two years of age.

2. "Newborn" means a child who is not more than twenty-eight days of age.

**DEPARTMENT OF HEALTH SERVICES**
Title 9, Chapter 6

**Renumber:** R9-6-312; R9-6-313; R9-6-314; R9-6-315 R9-6-316; R9-6-317; R9-6-318; R9-6-319; R9-6-320; R9-6-321; R9-6-322; R9-6-323; R9-6-324; R9-6-325; R9-6-326; R9-6-327; R9-6-328; R9-6-329; R9-6-330; R9-6-331; R9-6-332; R9-6-333; R9-6-334; R9-6-335; R9-6-336; R9-6-337; R9-6-338; R9-6-339; R9-6-340; R9-6-341; R9-6-342; R9-6-343; R9-6-344; R9-6-345; R9-6-346; R9-6-347; R9-6-348; R9-6-349; R9-6-350; R9-6-351; R9-6-352; R9-6-353; R9-6-354; R9-6-355; R9-6-356; R9-6-357; R9-6-358; R9-6-359; R9-6-360; R9-6-361; R9-6-362; R9-6-363; R9-6-364; R9-6-365;R9-6-366; R9-6-367; R9-6-368; R9-6-369; R9-6-370; R9-6-371; R9-6-372; R9-6-373; R9-6-374; R9-6-375; R9-6-376; R9-6-377; R9-6-378; R9-6-379; R9-6-380; R9-6-381; R9-6-382; R9-6-383; R9-6-384; R9-6-385; R9-6-386; R9-6-387; R9-6-388; R9-6-389; R9-6-390; R9-6-391; R9-6-392; R9-6-393; R9-6-394; R9-6-395; R9-6-396; R9-6-397; R9-6-398; R9-6-399; R9-6-3100; R9-6-3101; R9-6-3102; R9-6-3103; R9-6-3104; R9-6-3105; R9-6-3106; R9-6-3107; R9-6-3108

**Amend:** R9-6-101; R9-6-202; Table 2.1; R9-6-203; Table 2.2; R9-6-204; Table 2.3; R9-6-205; Table 2.4; R9-6-306; R9-6-308; R9-6-313; R9-6-314; R9-6-318; R9-6-338; R9-6-340; R9-6-342; R9-6-344; R9-6-348; R9-6-352; R9-6-354; R9-6-356; R9-6-360; R9-6-361; R9-6-362; R9-6-366; R9-6-369; R9-6-373; R9-6-374; R9-6-377; R9-6-380; R9-6-381; R9-6-382; R9-6-384; R9-6-385; R9-6-386; R9-6-391; R9-6-396; R9-6-397; R9-6-3101; R9-6-3103; R9-6-3104; R9-6-3106; R9-6-3107; R9-6-3108; R9-6-1002; R9-6-1102; R9-6-1103

**New Section:** R9-6-312, R9-6-316, R9-6-317, R9-6-319, R9-6-330, R9-6-364; R9-6-365; R9-6-367; R9-6-370; R9-6-383

**Repeal:** R9-6-1005

# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - REGULAR RULEMAKING

---

**MEETING DATE: April 1, 2025**

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

**FROM:** Council Staff

**DATE:** March 18, 2025

**SUBJECT:** **DEPARTMENT OF HEALTH SERVICES**
Title 9, Chapter 6

**Renumber:** R9-6-312; R9-6-313; R9-6-314; R9-6-315 R9-6-316; R9-6-317; R9-6-318; R9-6-319; R9-6-320; R9-6-321; R9-6-322; R9-6-323; R9-6-324; R9-6-325; R9-6-326; R9-6-327; R9-6-328; R9-6-329; R9-6-330; R9-6-331; R9-6-332; R9-6-333; R9-6-334; R9-6-335; R9-6-336; R9-6-337; R9-6-338; R9-6-339; R9-6-340; R9-6-341; R9-6-342; R9-6-343; R9-6-344; R9-6-345; R9-6-346; R9-6-347; R9-6-348; R9-6-349; R9-6-350; R9-6-351; R9-6-352; R9-6-353; R9-6-354; R9-6-355; R9-6-356; R9-6-357; R9-6-358; R9-6-359; R9-6-360; R9-6-361; R9-6-362; R9-6-363; R9-6-364; R9-6-365; R9-6-366; R9-6-367; R9-6-368; R9-6-369; R9-6-370; R9-6-371; R9-6-372; R9-6-373; R9-6-374; R9-6-375; R9-6-376; R9-6-377; R9-6-378; R9-6-379; R9-6-380; R9-6-381; R9-6-382; R9-6-383; R9-6-384; R9-6-385; R9-6-386; R9-6-387; R9-6-388; R9-6-389; R9-6-390; R9-6-391; R9-6-392; R9-6-393; R9-6-394; R9-6-395; R9-6-396; R9-6-397; R9-6-398; R9-6-399; R9-6-3100; R9-6-3101; R9-6-3102; R9-6-3103; R9-6-3104; R9-6-3105; R9-6-3106; R9-6-3107; R9-6-3108

**Amend:** R9-6-101; R9-6-202; Table 2.1; R9-6-203; Table 2.2; R9-6-204; Table 2.3; R9-6-205; Table 2.4; R9-6-306; R9-6-308; R9-6-313; R9-6-314; R9-6-318; R9-6-338; R9-6-340; R9-6-342; R9-6-344; R9-6-348; R9-6-352; R9-6-354; R9-6-356; R9-6-360; R9-6-361; R9-6-362; R9-6-366; R9-6-369; R9-6-373; R9-6-374; R9-6-377; R9-6-380;

| | |
|---|---|
| | R9-6-381; R9-6-382; R9-6-384; R9-6-385; R9-6-386; R9-6-391; R9-6-396; R9-6-397; R9-6-3101; R9-6-3103; R9-6-3104; R9-6-3106; R9-6-3107; R9-6-3108; R9-6-1002; R9-6-1102; R9-6-1103 |
| **New Section:** | R9-6-312, R9-6-316, R9-6-317, R9-6-319, R9-6-330, R9-6-364; R9-6-365; R9-6-367; R9-6-370; R9-6-383 |
| **Repeal:** | R9-6-1005 |

---


**Summary:**

This regular rulemaking from the Department of Health Services (Department) seeks to add ten (10) rules, amend forty-four (44) rules, amend four (4) tables, and repeal one (1) in Title 9, Chapter 6, regarding Communicable Disease. The Department is seeking to amend one (1) rule in Article 1, amend four (4) rules and four (4) tables in Article 2, amend thirty-six (36) rules and add 10 rules in Article 3, amend one (1) rule and repeal one (1) rule in Article 10, and amend two (2) rules in Article 11.

The amendments to Article 1 are to the definitions of Case and Suspected Case, both of which add experienced respiratory symptoms as part of an outbreak to their definitions.

Article 2 covers communicable disease and infestation reporting. The amendments will specifically amend the rules and tables to clarify the reporting requirements for a health care provider, a school, child care establishment, or shelter, or a clinical laboratory. The Department has indicated that some of the diseases that were reported by either health care providers and school, child care establishment, or shelters were removed because the diseases can only be accurately tested by and reported by a clinical laboratory.

Article 3 adds 10 rules and amends 36 rules. The Department is also renumbering most of the section to better organize the addition of the 10 rules. The 10 added rules are additional communicable diseases, which the Department believes is necessary to protect the health of the public by clarifying reporting and monitoring of communicable diseases. Improving these areas would allow the Department to respond faster to mitigate or prevent an outbreak. The Department states the amendments are necessary for the other communicable diseases to better clarify what is required by a local health agency, a health care provider, a correction facility, or the Department for either case control or during an outbreak.

Article 10 amends one rule by changing a cross reference to reflect the changes proposed in Article 3. The Department is also proposing to repeal R9-6-1005 because A.R.S. § 36-663, which authorized anonymous HIV testing was repealed in 2022, and thus the Department lacks authority to create rules on the subject.

Lastly, the Department is proposing to amend two rules in Article 11 because they contain cross references to rules that are being renumbered in the proposed amendments to Article 3.

This rulemaking partially relates to the Five Year Review Report approved by the Council on September 6, 2023.

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

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

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

The Department has indicated that these rules do not contain a fee.

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

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

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

The Department states that Arizona Revised Statutes (A.R.S.) § 36-136(I)(1) requires the Arizona Department of Health Services to make rules defining and prescribing "reasonably necessary measures for detecting, reporting, preventing, and controlling communicable diseases." The Department also indicates that as part of a five-year review report for 9 A.A.C. 6, Article 2, and in coordination with local health agencies, the Department identified several issues with the current rules and proposed making changes to the rules in Article 2. In addition, addressing some of the issues will require changes to existing Sections in Article 1 and 3, and others will require the addition of new Sections in Article 3 to describe newly added communicable diseases. In compliance with statutory changes, a Section in Article 10 also needs to be repealed. The Department is addressing these concerns in this rulemaking and believes that making these changes will improve the effectiveness of the rules and improve public health. The Department believes that without the rule changes, Arizona would continue to have outdated rules that impose an undue burden on those entities required to report communicable diseases and infestations, do not address other conditions that should be reportable to protect public health, and are less effective in protecting the citizens of Arizona than they should be. The Department indicates that it receives over 700,000 communicable disease reports annually from local health agencies, clinical laboratories, health care institutions, corrections facilities, schools and shelters, pharmacists, and health care providers required to report. The Department goes on to state that many of these reports may be from different sources but relate to the same individual with the same disease. They also indicate that of these over 700,000 reports, almost 280,00 are considered to be for new cases of a communicable disease.

The Department anticipates that the rulemaking may affect the Department, local health agencies; health care providers; health care institutions; both public and private correctional facilities; schools, childcare establishments and shelters; clinical laboratories; AHCCCS and other payors of medical costs; pharmacists and pharmacies; cases or suspect cases of a communicable disease; contacts of individuals infected with a communicable disease; and the general public.

**5. Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?**

The Department states that these are no less intrusive or less costly alternatives for achieving the purpose of the rule

**6. What are the economic impacts on stakeholders?**

The Department indicates they work closely with local health agencies in the control of communicable diseases to protect public health. Local health agencies are responsible for carrying out most of the control measures for cases or suspect cases within their jurisdictions and directly receive reports from health care providers required to report. The administration of health care institutions and correctional facilities, schools, childcare establishments, and shelters are submitted to the applicable local heath agency, while reports from clinical laboratories come directly to the Department. The Department anticipates that local health agencies receive a significant benefit from the clarified requirements related to communicable disease reporting or control measures.

The Department believes the general public may receive a significant benefit from the clarity of the new rules and the ease with which they may be followed. The Department states that the improved clarity of the rules may increase the awareness of health care providers (and in turn their patients) about communicable diseases and methods to avoid becoming infected. The Department believes that the changes to the reporting requirements and control measures may improve the health of individuals and their families.

The Department states that public and private employment in the State of Arizona is not expected to be affected due to the changes required in the rule. The Department does not anticipate any effect on state revenues on the basis of this rulemaking.

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

The Department indicates there were no changes between the Notice of Proposed Rulemaking published in the Administrative Register on January 3, 2025 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?**

The Department indicates there were a total of 9 written comments made by a representative of the National Nurses Organizing Committee/National Nurses United. The comments and responses are summarized below, the full list of comments and the Department responses can be found on pgs 14-16 in the NFR.

- The stakeholder was concerned over the reduction of diseases that a health care provider is required to report. The Department replied stating that the reduction is because these diseases are going to be reported by a laboratory instead, and the change is to ease the burden on health care providers.
- The stakeholder was concerned over the requirement to routinely submit isolates. The Department stated that they only removed the submission of some isolates based on whether or not the Department needs to perform additional analysis or not.
- The stakeholder would like isolation required for *Candida auris*. The Department does not believe isolation is needed for every case, and to require so could place excessive burden on certain facilities.
- The stakeholder stated SARS-CoV-2 should also be listed separately like MERS and SARS with similar precautions to ensure clarity. SARS-CoV-2 may no longer be considered "novel" and new novel coronaviruses may emerge. The Department responded that control measures are already in place and is not needed to separate.
- The stakeholder voiced support for the Department's addition of novel influenza virus.
- The stakeholder stated that Mpox cases should trigger isolation precautions including airborne and contact transmission. The Department declined any changes because health care providers should be taking basic precautions to reduce risk of infection, and no further clarification is needed from a public health standpoint. The Department states this response is a result of CDC guidance.
- The stakeholder voiced support of increased attention to drug-resistant organisms.
- The stakeholder voiced concern over a tuberculosis control officer having the power to release an individual with or suspected to have tuberculosis from isolation. The Department indicated that given the skillset of tuberculosis control officers they are able to assess when a case is infectious and still a risk to public health.
- The stakeholder disagreed with the removal of anonymous HIV testing. The Department indicated that the authorizing statute (A.R.S. §36-663) was repealed in 2022, and the the Department no longer had authority to conduct the testing.

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

The Department indicates none of the rules included in this rulemaking require the issuance of a license, permit, or agency authorization.

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

The Department indicates there is no corresponding federal law.

## 11. Conclusion

This regular rulemaking from the Department of Health Services (Department) seeks to add ten (10) rules, amend forty-four (44) rules, amend four (4) tables, and repeal one (one) in Title 9, Chapter 6, regarding Communicable Disease. The Department is seeking to amend one (1) rule in Article 1, amend four (4) rules and four (4) tables in Article 2, amend thirty-six (35) rules and add 10 rules in Article 3, amend one (1) rule and repeal one (1) rule in Article 10, and amend two (2) rules in Article 11. The 10 added rules are additional communicable diseases, which the Department believes is necessary to protect the health of the public by clarifying reporting and monitoring of communicable diseases. Improving these areas would allow the Department to respond faster to mitigate or prevent an outbreak. The Department indicates the amendments are necessary for the other communicable diseases to better clarify what is required by a local health agency, a health care provider, a correction facility, or the Department for either case control or during an outbreak. The repealed rule is related to anonymous HIV testing, which the Department no longer has statutory authority to enforce.

The Department is seeking the standard 60-day delayed effective date pursuant to A.R.S. § 41-1032(A).

Council staff recommends approval of this rulemaking.

February 14, 2025

**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, Regular Rulemaking

Dear Ms. Klein:

1. The close of record date: February 3, 2025

2. Whether the rulemaking relates to a five-year-review report and, if applicable, the date the report was approved by the Council:
The rulemaking for 9 A.A.C. 6 partially relates to a five-year-review report approved by the Council on September 6, 2023.

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

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

5. Whether an immediate effective date is requested pursuant to A.R.S. § 41-1032:
The Department is requesting the normal 60-day delayed effective date for the rules under A.R.S. § 41-1032.

The Department certifies that the Preamble of this rulemaking discloses a reference to any study relevant to the rule that the Department reviewed and either did or did not rely on in its evaluation of or justification for the rule.

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

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

Sincerely,



Stacie Gravito
Director's Designee

SG:rms

Enclosures

**NOTICE OF FINAL RULEMAKING**

**TITLE 9. HEALTH SERVICES**

**CHAPTER 6. DEPARTMENT OF HEALTH SERVICES**

**COMMUNICABLE DISEASES AND INFESTATIONS**

## PREAMBLE

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

February 13, 2025

| **2. Article, Part or Sections Affected (as applicable)** | **Rulemaking Action** |
|---|---|
| R9-6-101 | Amend |
| R9-6-202 | Amend |
| Table 2.1 | Amend |
| R9-6-203 | Amend |
| Table 2.2 | Amend |
| R9-6-204 | Amend |
| Table 2.3 | Amend |
| R9-6-205 | Amend |
| Table 2.4 | Amend |
| R9-6-306 | Amend |
| R9-6-308 | Amend |
| R9-6-312 | Renumber |
| R9-6-312 | New Section |
| R9-6-313 | Renumber |
| R9-6-313 | Amend |
| R9-6-314 | Renumber |
| R9-6-314 | Amend |
| R9-6-315 | Renumber |
| R9-6-316 | Renumber |
| R9-6-316 | New Section |
| R9-6-317 | Renumber |
| R9-6-317 | New Section |
| R9-6-318 | Renumber |

| | |
|---|---|
| R9-6-318 | Amend |
| R9-6-319 | Renumber |
| R9-6-319 | New Section |
| R9-6-320 | Renumber |
| R9-6-321 | Renumber |
| R9-6-322 | Renumber |
| R9-6-323 | Renumber |
| R9-6-324 | Renumber |
| R9-6-325 | Renumber |
| R9-6-326 | Renumber |
| R9-6-327 | Renumber |
| R9-6-328 | Renumber |
| R9-6-329 | Renumber |
| R9-6-330 | Renumber |
| R9-6-330 | New Section |
| R9-6-331 | Renumber |
| R9-6-332 | Renumber |
| R9-6-333 | Renumber |
| R9-6-334 | Renumber |
| R9-6-335 | Renumber |
| R9-6-336 | Renumber |
| R9-6-337 | Renumber |
| R9-6-338 | Renumber |
| R9-6-338 | Amend |
| R9-6-339 | Renumber |
| R9-6-340 | Renumber |
| R9-6-340 | Amend |
| R9-6-341 | Renumber |
| R9-6-342 | Renumber |
| R9-6-342 | Amend |
| R9-6-343 | Renumber |
| R9-6-344 | Renumber |
| R9-6-344 | Amend |
| R9-6-345 | Renumber |

| | |
|---|---|
| R9-6-346 | Renumber |
| R9-6-347 | Renumber |
| R9-6-348 | Renumber |
| R9-6-348 | Amend |
| R9-6-349 | Renumber |
| R9-6-350 | Renumber |
| R9-6-351 | Renumber |
| R9-6-352 | Renumber |
| R9-6-352 | Amend |
| R9-6-353 | Renumber |
| R9-6-354 | Renumber |
| R9-6-354 | Amend |
| R9-6-355 | Renumber |
| R9-6-356 | Renumber |
| R9-6-356 | Amend |
| R9-6-357 | Renumber |
| R9-6-358 | Renumber |
| R9-6-359 | Renumber |
| R9-6-360 | Renumber |
| R9-6-360 | Amend |
| R9-6-361 | Renumber |
| R9-6-361 | Amend |
| R9-6-362 | Renumber |
| R9-6-362 | Amend |
| R9-6-363 | Renumber |
| R9-6-364 | Renumber |
| R9-6-364 | New Section |
| R9-6-365 | Renumber |
| R9-6-365 | New Section |
| R9-6-366 | Renumber |
| R9-6-366 | Amend |
| R9-6-367 | Renumber |
| R9-6-367 | New Section |
| R9-6-368 | Renumber |

| | |
|---|---|
| R9-6-369 | Renumber |
| R9-6-369 | Amend |
| R9-6-370 | Renumber |
| R9-6-370 | New Section |
| R9-6-371 | Renumber |
| R9-6-372 | Renumber |
| R9-6-373 | Renumber |
| R9-6-373 | Amend |
| R9-6-374 | Renumber |
| R9-6-374 | Amend |
| R9-6-375 | Renumber |
| R9-6-376 | Renumber |
| R9-6-377 | Renumber |
| R9-6-377 | Amend |
| R9-6-378 | Renumber |
| R9-6-379 | Renumber |
| R9-6-380 | Renumber |
| R9-6-380 | Amend |
| R9-6-381 | Renumber |
| R9-6-381 | Amend |
| R9-6-382 | Renumber |
| R9-6-382 | Amend |
| R9-6-383 | Renumber |
| R9-6-383 | New Section |
| R9-6-384 | Renumber |
| R9-6-384 | Amend |
| R9-6-385 | Renumber |
| R9-6-385 | Amend |
| R9-6-386 | Renumber |
| R9-6-386 | Amend |
| R9-6-387 | Renumber |
| R9-6-388 | Renumber |
| R9-6-389 | Renumber |
| R9-6-390 | Renumber |

| | |
|---|---|
| R9-6-391 | Renumber |
| R9-6-391 | Amend |
| R9-6-392 | Renumber |
| R9-6-393 | Renumber |
| R9-6-394 | Renumber |
| R9-6-395 | Renumber |
| R9-6-396 | Renumber |
| R9-6-396 | Amend |
| R9-6-397 | Renumber |
| R9-6-397 | Amend |
| R9-6-398 | Renumber |
| R9-6-399 | Renumber |
| R9-6-3100 | Renumber |
| R9-6-3101 | Renumber |
| R9-6-3101 | Amend |
| R9-6-3102 | Renumber |
| R9-6-3103 | Renumber |
| R9-6-3103 | Amend |
| R9-6-3104 | Renumber |
| R9-6-3104 | Amend |
| R9-6-3105 | Renumber |
| R9-6-3106 | Renumber |
| R9-6-3106 | Amend |
| R9-6-3107 | Renumber |
| R9-6-3107 | Amend |
| R9-6-3108 | Renumber |
| R9-6-3108 | Amend |
| R9-6-1002 | Amend |
| R9-6-1005 | Repeal |
| R9-6-1102 | Amend |
| R9-6-1103 | Amend |

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

Authorizing statutes: A.R.S. §§ 36-132(A)(1), 36-136(A)(7), and 36-136(G)

Implementing statutes: A.R.S. § 36-136(I)(1)

**4. The effective date of the rule:**

The Department requests the standard 60-day delayed effective date for the rules.

**5. 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. 932, May 10, 2024

Notice of Proposed Rulemaking: 31 A.A.R. 7, January 3, 2025

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

Name: Eric Thomas, Chief
Address: Arizona Department of Health Services
Bureau of Infectious Disease Services
150 N. 18th Ave., Suite 100
Phoenix, AZ 85007-3248
Telephone: (602) 542-1588
Fax: (602) 364-3199
E-mail: Eric.Thomas@azdhs.gov

or

Name: Stacie Gravito, Office Chief
Address: Arizona Department of Health Services
Office of Administrative Counsel and Rules
150 N. 18th Ave., Suite 200
Phoenix, AZ 85007
Telephone: (602) 542-1020
Fax: (602) 364-1150
E-mail: Stacie.Gravito@azdhs.gov

**7. 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.) § 36-136(I)(1) requires the Arizona Department of Health Services (Department) to make rules defining and prescribing "reasonably necessary measures for detecting, reporting, preventing, and controlling communicable and preventable diseases." The Department has adopted in Arizona Administrative Code (A.A.C.) Title 9, Chapter 6, Article 2, rules related to communicable disease and infestation reporting and, in Article 3, rules related to control measures for communicable diseases and infestations. As part of a five-year-review report for 9 A.A.C. 6, Article 2, and in coordination with county health departments, the Department

identified several issues with the current rules and proposed making changes to the rules in Article 2. In addition, addressing some of the issues will require changes to existing Sections in Article 3, and others will require the addition of new Sections in Article 3 to describe the control measures for newly added communicable diseases. In compliance with statutory changes, a Section in Article 10 also needs to be repealed. After receiving rulemaking approval according to A.R.S. § 41-1039(A), the Department is revising the rules in 9 A.A.C. 6, consistent with the five-year-review report. The Department believes that making these changes will improve the effectiveness of the rules and improve public health.

**8. 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.

**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 anticipates that the rulemaking may affect the Department; local health agencies; health care providers; health care institutions; both public and private correctional facilities; schools, child care establishments, and shelters; clinical laboratories; AHCCCS and other payors of medical costs; pharmacists and pharmacies; cases or suspect cases of a communicable disease; contacts of individuals infected with a communicable disease; and the general public. Annual costs/revenues changes are designated as minimal when more than $0 and $2,000 or less, moderate when between $2,000 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. This analysis covers costs and benefits associated with the rule changes and does not describe effects imposed by statutes. No new FTEs will be required due to this rulemaking.

The Department believes that having rules that are clearer and easier to understand and receiving more accurate and timely information about reportable communicable diseases may provide a significant benefit to the Department since staff could then spend less time on following up on incomplete or inadequate reports or answering questions about the communicable disease rules and more time analyzing the data received. In the new rules, 35 communicable diseases will

no longer be reported under Table 2.1 by health care providers required to report and the administrators of health care institutions and correctional facilities, but most will continue to be reported by clinical laboratories. Five communicable diseases are being added as reportable by health care providers required to report and by the administrators of health care institutions and correctional facilities as part of this rulemaking. Two of them, Middle East respiratory syndrome (MERS) and severe acute respiratory syndrome (SARS), had previously been reported under novel corona viruses, so their addition should be considered as a clarification to improve reporting. The three others are *Candida auris*, *Cronobacter* infection in an infant, and Mpox (formerly Monkeypox). *Candida auris* is an emerging multi-drug resistant fungus that poses a serious global and local health threat due to its ability to cause severe infections, its resistance to antifungal treatments, and its potential for rapid spread in healthcare settings. Infection with *Cronobacter* is a rare but life-threatening condition in infants that can lead to severe outcomes such as sepsis and meningitis. Mpox rose to national prominence in 2022 during a global outbreak, and Arizona has continued to receive disease reports. The Department believes that the addition of these communicable diseases will provide a significant benefit to the Department in protecting public health. Reporting for 13 new infectious agents is being added for clinical laboratories, which routinely report test results to the Department electronically with the reporting built into their Laboratory Information Management data systems. The Department anticipates that receiving accurate and timely reports about cases and suspect cases infected with these new agents may provide a significant benefit to the Department in protecting public health in the least burdensome manner possible, but may impose minimal additional costs on the Department.

The Arizona State Laboratory is a component of the Department that performs serological, microbiological, entomological, and chemical analyses on specimens and isolates submitted to the Arizona State Laboratory for testing. The current rules require clinical laboratories to submit isolates or specimens for specific agents to the Arizona State Laboratory. In this rulemaking, the Department is removing requirements for routinely submitting isolates for 14 infectious agents or toxins. The Department estimates that this change may have a minor impact on the number of specimens and isolates submitted for further testing. However, the flexibility provided by the new rules will lessen the financial and resource burden on the Arizona State Laboratory, and providing up to a significant benefit to the Department, while continuing to protect public health. Additionally, the Department anticipates up to a moderate increase in costs related to notifying laboratories about the changes in isolate submission.

The Department works closely with local health agencies in the control of communicable diseases to protect public health. Local health agencies are responsible for carrying out most of

the control measures for cases or suspect cases within their jurisdictions and directly receive reports from health care providers required to report, the administrators of health care institutions and correctional facilities, schools, child care establishments, and shelters are submitted to the applicable local health agency, while reports from clinical laboratories come directly to the Department. The Department anticipates that local health agencies may receive a significant benefit from the clarified requirements related to communicable disease reporting or control measures. Currently, local health agencies receive reports about outbreaks of 15 communicable diseases and infestations from health care providers required to report and the administrators of health care institutions and correctional facilities. The new rules now require the reporting of outbreaks for only two infectious syndromes for which there may be multiple etiologies and, thus, may provide up to a moderate benefit to a local health agency, depending on the number of outbreaks that would otherwise have been reported to it. Because 35 communicable diseases are being removed from those reported directly to local health agencies, but most are still being reported by clinical laboratories, and local health agencies will still be required to conduct timely epidemiologic investigations or other activities required of local health agencies in Article 3 related to control measures for these diseases, it is possible that this change in reporting may cause both the Department and a local health agency to experience a minimal increase in costs to ensure the local health agency is receiving the information they will need.

The new rules add reporting by local health agencies for ten new infectious agents. The Department estimates that a local health agency may incur up to a substantial increase in costs because of their addition, but may also receive a significant benefit in protecting the health of individuals within their respective jurisdictions. As mentioned above, clinical laboratories are required to submit isolates or specimens for specific agents to the Arizona State Laboratory, and local health agencies are required to ensure the submission of these isolates/specimens. In the new rules, this requirement is changed for some communicable diseases/agents to provide more flexibility to local health agencies and the Department, with the requirement being for a local health agency to ensure submission "in consultation with the Department." The Department anticipates that this change could provide up to a moderate benefit to a local health agency, with particular benefit to a small local health agency. The Department also anticipates that changes being made to the control measures for specific communicable diseases/agents in Article 3 may provide up to a moderate benefit to a local health agency.

As for other persons, a correctional facility may receive a significant benefit from the clarification of the rules and the removal or simplification of reporting requirements. The Department believes that an administrator of a correctional facility may receive as much as a

moderate benefit from removing requirements for reporting 35 communicable diseases and changes reporting HIV infection and related disease, depending on the number of cases/suspect cases for which a report will no longer be required. However, the addition of requirements for notification of a receiving facility of the transfer of a prisoner with a multi-drug resistant disease and for reporting and instituting control measures for the communicable diseases being added as part of the rulemaking may cause a correctional facility to incur up to a moderate additional cost, depending on the number of such events.

The Department believes that the addition of the last date that an individual with a disease, infestation, or symptoms of a communicable disease or infestation was present at the school, child care establishment, or shelter, as applicable, to a report may cause a school, child care establishment, or shelter to incur at most minimal additional costs for the added information, and that a school, child care establishment, or shelter may receive a significant benefit from clarity and the reduced time spent finding and giving the additional information to a local health agency once it is requested separate from the report. According to the new rules, a school, child care establishment, or shelter will no longer have to submit a report for seven diseases that are being removed. Based on the Department's experience during the COVID-19 epidemic, the Department believes that these reporting entities are essential in the early detection of unusual communicable disease cases and outbreaks, enabling a public health response. Therefore, the reporting of emerging or exotic disease has been added to the reporting requirements for schools, child care establishments, and shelters. Additionally, the case control measures for scabies have been changed to give the administrator of a school or child care establishment discretion as to whether or not to exclude a scabies case from the school or child care establishment until treatment for scabies is completed. Depending on the number of cases reported by an individual school, child care establishment, or shelter, the Department anticipates that these changes may provide a minimal benefit to a school, child care establishment, or shelter and may cause a school, child care establishment, or shelter to incur at most a minimal increase in costs.

As mentioned above, the new rules add case control measures for several drug-resistant organisms, which are considered by the CDC to be threats to public health because their resistance to antibiotics makes them difficult to treat. An individual infected with one of these agents may need to be hospitalized for an extended period and receive very expensive medication regimens to try to clear the infection. Changes requiring a diagnosing health care provider or an administrator of a health care institution or correctional facility to institute isolation precautions as necessary for such a case and notify a receiving facility when the case is being transferred may result in up to substantial reduced costs to AHCCCS or another payor of medical costs in

reducing the number of other individuals, covered by AHCCCS or other payor of medical costs, to whom the drug-resistant organism is passed before the receiving health care provider, health care institution, or correctional facility is aware of the problem. New requirements for routine testing of syphilis cases at 24 months, to address the rising problem of reinfection, may provide a significant benefit to the Department but cause AHCCCS or another payor of medical costs to incur up to substantial increased costs for the added testing, depending on the number of cases covered, while also receiving up to a substantial benefit in learning of the reinfection earlier so treatment can be reinitiated. Since treatment costs are less if reinfection is detected within 12 months, this change may provide as much as a substantial net benefit to other payors, while not resulting in additional costs for AHCCCS since this change aligns with current AHCCCS policy. Early detection and treatment may help prevent further spread to other covered individuals, as well as reduce the incidence of congenital syphilis in a baby who may be covered, the cost of care of all types for whom may approach $2 million dollars over the lifetime of a child.

Health care providers required to report may receive a significant benefit from the clarification of the rules and the removal or simplification of reporting requirements, including changes to reporting pregnancy status and reporting those elements that would be obtained during an epidemiological investigation or that would be duplicated in reports from clinical laboratories. The Department anticipates that a health care provider required to report may receive up to a moderate benefit from the removal of the reporting requirements for the 35 communicable diseases and for reporting outbreaks. The addition of reporting requirements for *Candida auris, Cronobacter* infection in an infant, and Mpox may cause a health care provider required to report to incur as much as a moderate increase in costs from the reporting of the added communicable diseases. Control measures that health care providers will now be required to initiate are being added in the rules for some of the newly added communicable diseases, but the new rules clarify that these control measures are only required for individuals within the diagnosing or treating health care provider's health care institution. Another method to remove a case/suspect case of tuberculosis from isolation and the institution of airborne precautions has also been added in the new rules. The Department believes that a health care provider may already be instituting the required control measures as the standard of care. If not, a health care provider may incur as much as a substantial increase in costs from instituting the required control measures. However, a health care provider may also receive up to a moderate benefit from the addition of another method to remove a case/suspect case from isolation and the institution of airborne precautions and a significant benefit from providing appropriate care for their patients.

Many of the requirements for health care providers are also applicable to the administrators of health care institutions. Therefore, many of the changes made in the new rules would affect both health care providers and health care institutions in a similar manner. A health care institution may also receive a significant benefit from the clarification of the rules and the removal or simplification of reporting requirements. The removal of the reporting requirements for the 35 communicable diseases may also provide as much as a moderate benefit to the administrator of a health care institution, depending on the size of the health care institution, the number of patients served, and the number of cases of the communicable diseases that would have had to be reported. An administrator of a health care institution that had not reported cases or suspect cases of the newly added communicable diseases under a reporting category in the current rules may be expected to incur a minimal-to-moderate burden for reporting them. The Department anticipates that an administrator of a health care institution may receive as much as a moderate benefit from changes related to notification of multi-drug-resistant cases, depending on the number of multi-drug resistant cases being transferred into the health care institution, and may incur up to a moderate cost for reporting and instituting control measures for the communicable diseases being added as part of the rulemaking. They may also receive as much as a moderate benefit from changes to tuberculosis control measures, depending on the number of tuberculosis cases/suspect cases.

As mentioned above, 13 additional infectious agents or toxins will now be required to be reported by clinical laboratories according to the new rules. A clinical laboratory may receive a significant benefit from the clarification of the rules and incur as much as a substantial additional burden from incorporating additional reporting requirements into their electronic reporting. In addition, requirements for routinely submitting isolates for 14 infectious agents or toxins are being removed from the rules and will now only need to be submitted upon the Department's request. However, submission of isolates for one additional communicable disease will now routinely be required, causing a clinical laboratory to incur up to a moderate increase in costs for submitting these additional isolates, but may also receive up to a minimal benefit from the removal of other submission requirements.

Pharmacists and the administrators of pharmacies are required to report to the Department when two or more drugs commonly used to treat tuberculosis are presented for filling to assist in the detection of cases of tuberculosis. The new rules remove streptomycin from the list of drugs triggering the reporting requirement. The Department believes that a pharmacist or pharmacy may receive a minimal benefit from its removal.

The Department expects individuals infected with a communicable disease and their families to receive a significant benefit from the clarification of reporting requirements and control measures for communicable diseases, because it may be easier for health care providers and other reporting entities to report and for entities responsible for control activities to comply with control measures for communicable diseases. Similarly, the addition of the new communicable diseases may enable a case or suspect case to receive more timely, appropriate treatment, providing a significant benefit. Cases or suspect cases and their families may also receive a significant benefit from the requirements in Article 3 for a local health agency to provide education to a case of mpox or *Mycoplasma genitalium* infection and from the change giving the administrator of a school or child care establishment discretion as to whether or not to exclude a scabies case from the school or child care establishment until treatment for scabies is completed. The addition of another method of removing a case/suspect case of tuberculosis from isolation and the institution of airborne precautions may also provide a significant benefit to a case/suspect case and their family. However, the addition of the requirement for a syphilis case to obtain serologic testing for syphilis at 24 months after initiating treatment may cause the case to incur a minimal additional cost, while also possibly receiving a significant benefit.

A contact of an individual infected with a communicable disease may receive a significant benefit from the addition of the new communicable diseases, enabling more timely assessment and, if appropriate, treatment to occur. New requirements for a local health agency to provide education to a contact of a mpox case or a case with *Mycoplasma genitalium* infection and for a local health agency to offer or arrange for treatment for any contact of a *Mycoplasma genitalium* infection case that seeks care at the local health agency may provide a significant benefit to a contact. However, the new rules also may impose up to a substantial burden on a contact of a case with MERS, SARS, or a novel influenza virus if a local health agency determines that the contact must be quarantined or excluded, according to R9-6-303, to prevent transmission.

The general public may receive a significant benefit from the clarity of the new rules and the ease with which they may be followed. The improved clarity of the rules may increase the awareness of health care providers (and in turn their patients) about communicable diseases and methods to avoid becoming infected. Changes to the reporting requirements and control measures may improve the health of individuals and their families. If fewer individuals become infected, they and their families will lose fewer days of work or school due to illness or exclusion. The Department also anticipates lower costs to the public related to untreated disease. In a more global sense, earlier detection of cases or outbreaks made possible by the new rules should lead to quicker response times and less disease transmission, as will changes to control measures, such as

education, exclusions, and isolation, established to prevent additional cases. Reduced transmission leads to less risk to others, which may provide a significant benefit to society in general.

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

No changes were made 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:**

One written set of comments from a representative of the National Nurses Organizing Committee/National Nurses United was received about the rulemaking since the filing of the Notice of Proposed Rulemaking. No stakeholders attended the Oral Proceeding on February 3, and no oral comments were received about the rulemaking. A summary of the comments and the Department's responses are shown below:

| Comment | Department's Response |
|---|---|
| The Department should not reduce the health care provider reporting requirements for communicable diseases. | The Department disagrees. The Department's experience has been that the diseases being removed from the health care provider reporting requirements are, for the most part, diagnosed based on laboratory results. As such, the Department has likely already received reports of cases through laboratory reporting before a local health agency receives a report from a health care provider, and this report is, thus, redundant and an unnecessary burden on health care providers. During an epidemiologic investigation of the case, contextual information can be obtained from health care providers and the administrators of health care institutions and correctional facilities, as needed. The Department does not plan to change the rules based on the comment. |
| The Department should not end requirements to routinely submit isolates. | The Department disagrees. For some agents, routine submission of isolates will still be required. These include among others: *Bacillus anthracis*, *Brucella* spp., *Burkholderia mallei*, *Burkholderia pseudomallei*, *Burkholderia pseudomallei*, carbapenem-resistant organisms, Shiga toxin-producing *Escherichia coli*, *Salmonella* spp., and the agent causing viral hemorrhagic fever. The reason for requiring the submission of isolates is to allow the Department to perform serological, microbiological, entomological, and chemical analyses for identification and confirmation of disease status, as well as to establish relationships between cases of the disease, determine the drugs that may be used to treat an individual infected with the agent, and identify trends in the agent's surface antigen content that may affect vaccine effectiveness or public health control measures. If the Department is not doing additional testing of isolates, their submission is unnecessary and burdensome on |

| | |
|---|---|
| | clinical laboratories. According to the new R9-6-204(D), clinical laboratories will still be required to submit a specimen or isolate if there is a public health need for its submission. The Department does not plan to change the rules based on the comment. |
| The addition of control measures for *Candida auris* is a positive step. Isolation for *Candida auris* should be mandatory in all cases, not merely "as necessary." | The Department thanks the commenter for the support of this addition. However, the Department does not believe that isolation of a case with *Candida auris* infection or colonization is needed in every case to protect public health. Control measures specified in rule cover a wide range of health care institutions, many of which do not have the capabilities to institute isolation. These include health care institutions in which the case is a resident. Requiring isolation in all cases would require transferring a resident who is a case out of their home to a facility with isolation capabilities. Instead of isolation, alternate mechanisms can be instituted in many instances that address precautions and prevent further spread. This would be especially important if an individual is colonized, for whom precautions may need to be retained for a long period of time. The Department does not plan to change the rules based on the comment. |
| The proposed rule's separation of MERS and SARS into their own categories and assignment of airborne and contact precautions to those viruses is appropriate. SARS-CoV-2 should also be listed separately with similar precautions to ensure clarity. SARS-CoV-2 may no longer be considered "novel" and new novel coronaviruses may emerge. | SARS-CoV-2 is the agent that causes COVID-19 and has become endemic throughout the world, just like the flu. Although no longer considered "novel," there is still a public health need to track infections, so reporting of this agent has been added to Table 2.3 for clinical laboratories to report positive test results. The Department believes that only in congregate setting would control measures be needed, and has required these control measures in R9-6-379. Respiratory Disease in a Health Care Institution or Correctional Facility. Any truly "novel" variants would be covered under "emerging or exotic disease reporting and control requirements. The Department does not plan to change the rules based on the comment. |
| The addition of a novel influenza virus category with airborne and contact precautions is an important measure that should be retained. | The Department agrees, which is why the new rules have already added control measures for novel influenza virus, including airborne and contact precautions. The Department thanks the commenter for the support of this addition. The Department does not plan to change the rules based on the comment. |
| Mpox cases should trigger isolation precautions for health care providers, including airborne and contact transmission precautions, in addition to the surveillance measures required by the proposed rule. | The Department is unsure what the commenter means by the comment, especially since airborne transmission is unlikely. A health care provider should be taking precautions to reduce the risk of becoming infected with any communicable disease with which the health care provider comes into contact. Similarly, a health care provider should be advising a patient under care of mechanisms to prevent transmission and of reinfection as a standard of care. In these rules, the Department is specifying requirements for local health agencies to protect public health, consistent with CDC recommendations. The Department does not plan to change the rules based on the comment. |

| | |
|---|---|
| NNOC/NNU appreciates the rule's increased attention to drug-resistant organisms. Drug-resistant organisms present a significant threat to public health and require close surveillance. | The Department thanks the commenter for the support of this addition. |
| A tuberculosis control officer should not have the power to release an infectious tuberculosis case or suspected case from isolation. Objective criteria dictate whether a confirmed or suspected case of tuberculosis requires continued isolation. The need for isolation is not a subjective question that can be determined by individual officers. The rule should continue to require that isolation is maintained until the criteria are met. | The Department disagrees. Tuberculosis control officers are highly skilled and knowledgeable individuals who can accurately assess whether a case or suspect case of infectious active tuberculosis is still infectious and a threat to public health. There are instances where an individual who is a case or suspect case cannot physically meet other criteria for release from isolation and airborne precautions specified in the new R9-6-396(A)(1)(a) or (b), as applicable, but is judged by the tuberculosis control officer as no longer being infectious. In these instances, it is unnecessary and unduly burdensome to continue to require the individual to be isolated. The Department does not plan to change the rules based on the comment. |
| Anonymous HIV testing is an essential public health measure. | The Department had authority to conduct anonymous testing for HIV under A.R.S. § 36-663. However, this statute was repealed by Laws 2022, Ch. 246, § 1. Therefore, the Department has removed all references to anonymous HIV testing from the rules in 9 A.A.C. 6 as part of this rulemaking. The Department does not plan to change the rules based on the comment. |

**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:**

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

The rules do not require a permit.

**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 rules are based on state statutes rather 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 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:**

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:**

The rules were not previously made, amended, or repealed through emergency rulemaking.

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

# TITLE 9. HEALTH SERVICES

# CHAPTER 6. DEPARTMENT OF HEALTH SERVICES - COMMUNICABLE DISEASES AND INFESTATIONS

## ARTICLE 1. GENERAL


Section

R9-6-101. Definitions


## ARTICLE 2. COMMUNICABLE DISEASE AND INFESTATION REPORTING


Section

R9-6-202. Reporting Requirements for a Health Care Provider Required to Report or an Administrator of a Health Care Institution or Correctional Facility

Table 2.1. Reporting Requirements for a Health Care Provider Required to Report or an Administrator of a Health Care Institution or Correctional Facility

R9-6-203. Reporting Requirements for an Administrator of a School, Child Care Establishment, or Shelter

Table 2.2. Reporting Requirements for an Administrator of a School, Child Care Establishment, or Shelter

R9-6-204. Clinical Laboratory Director Reporting Requirements

Table 2.3. Clinical Laboratory Director Reporting Requirements

R9-6-205. Reporting Requirements for a Pharmacist or an Administrator of a Pharmacy

Table 2.4. Local Health Agency Reporting Requirements


## ARTICLE 3. CONTROL MEASURES FOR COMMUNICABLE DISEASES AND INFESTATIONS


Section

R9-6-306. Amebiasis

R9-6-308. Anthrax

R9-6-312. Blastomycosis Infection

~~R9-6-312.~~R9-6-313.Botulism

~~R9-6-313.~~R9-6-314.Brucellosis

~~R9-6-314.~~R9-6-315.Campylobacteriosis

R9-6-316. *Candida auris*

R9-6-317. Carbapenem-resistant *Acinetobacter baumannii*

~~R9-6-315.~~R9-6-318.Carbapenem-resistant ~~Enterobacteriaceae~~ Enterobacterales

R9-6-319. Carbapenem-resistant *Pseudomonas aeruginosa*

~~R9-6-316.~~R9-6-320.Chagas Infection and Related Disease (*American Trypanosomiasis*)

~~R9-6-317.~~R9-6-321.Chancroid (*Haemophilus ducreyi*)

~~R9-6-318.~~R9-6-322.Chikungunya

~~R9-6-319.~~R9-6-323.*Chlamydia trachomatis* Infection

~~R9-6-320.~~R9-6-324.Cholera

~~R9-6-321.~~R9-6-325.~~*Clostridium*~~ *Clostridioides difficile*

~~R9-6-322.~~R9-6-326.Coccidioidomycosis (Valley Fever)

~~R9-6-323.~~R9-6-327.Colorado Tick Fever

~~R9-6-324.~~R9-6-328.Conjunctivitis: Acute

~~R9-6-325.~~R9-6-329.Creutzfeldt-Jakob Disease

R9-6-330. *Cronobacter* Infection in an Infant

~~R9-6-326.~~R9-6-331.Cryptosporidiosis

~~R9-6-327.~~R9-6-332.Cyclospora Infection

~~R9-6-328.~~R9-6-333.Cysticercosis

~~R9-6-329.~~R9-6-334.Dengue

~~R9-6-330.~~R9-6-335.Diarrhea, Nausea, or Vomiting

~~R9-6-331.~~R9-6-336.Diphtheria

~~R9-6-332.~~R9-6-337.Ehrlichiosis

~~R9-6-333.~~R9-6-338.Emerging or Exotic Disease

~~R9-6-334.~~R9-6-339.Encephalitis, Viral or Parasitic

~~R9-6-335.~~R9-6-340.*Escherichia coli*, Shiga Toxin-producing

~~R9-6-336.~~R9-6-341.Giardiasis

~~R9-6-337.~~R9-6-342.Glanders

~~R9-6-338.~~R9-6-343.Gonorrhea

~~R9-6-339.~~R9-6-344.*Haemophilus influenzae*: Invasive Disease

~~R9-6-340.~~R9-6-345.Hansen's Disease (Leprosy)

~~R9-6-341.~~R9-6-346.Hantavirus Infection

~~R9-6-342.~~R9-6-347.Hemolytic Uremic Syndrome

~~R9-6-343.~~R9-6-348.Hepatitis A

~~R9-6-344.~~R9-6-349.Hepatitis B and Hepatitis D

~~R9-6-345.~~R9-6-350.Hepatitis C

~~R9-6-346.~~R9-6-351.Hepatitis E

~~R9-6-347.~~R9-6-352.HIV Infection and Related Disease

~~R9-6-348.~~R9-6-353.Influenza-Associated Mortality in a Child

~~R9-6-349.~~R9-6-354.Legionellosis (Legionnaires' Disease)

~~R9-6-350.~~R9-6-355.Leptospirosis

~~R9-6-351.~~R9-6-356.Listeriosis

~~R9-6-352.~~R9-6-357.Lyme Disease

~~R9-6-353.~~R9-6-358.Lymphocytic Choriomeningitis

~~R9-6-354.~~R9-6-359.Malaria

~~R9-6-355.~~R9-6-360.Measles (Rubeola)

~~R9-6-356.~~R9-6-361.Melioidosis

~~R9-6-357.~~R9-6-362.Meningococcal Invasive Disease

~~R9-6-358.~~R9-6-363.Methicillin-resistant *Staphylococcus aureus* (MRSA)

R9-6-364. Middle East Respiratory Syndrome (MERS)

R9-6-365. Mpox

~~R9-6-359.~~R9-6-366.Mumps

R9-6-367. *Mycoplasma genitalium* Infection

~~R9-6-360.~~R9-6-368.Norovirus

~~R9-6-361.~~R9-6-369. Novel Coronavirus ~~(e.g., SARS or MERS)~~

R9-6-370. Novel Influenza Virus

~~R9-6-362.~~R9-6-371.Pediculosis (Lice Infestation)

~~R9-6-363.~~R9-6-372.Pertussis (Whooping Cough)

~~R9-6-364.~~R9-6-373.Plague

~~R9-6-365.~~R9-6-374.Poliomyelitis (Paralytic or Non-paralytic)

~~R9-6-366.~~R9-6-375.Psittacosis (Ornithosis)

~~R9-6-367.~~R9-6-376.Q Fever

~~R9-6-368.~~R9-6-377.Rabies in a Human

~~R9-6-369.~~R9-6-378.Relapsing Fever (Borreliosis)

~~R9-6-370.~~R9-6-379.Respiratory Disease in a Health Care Institution or Correctional Facility

~~R9-6-371.~~R9-6-380.Rubella (German Measles)

~~R9-6-372.~~R9-6-381.Rubella Syndrome, Congenital

~~R9-6-373.~~R9-6-382.Salmonellosis

R9-6-383. Severe Acute Respiratory Syndrome (SARS)

~~R9-6-374.~~R9-6-384.Scabies

~~R9-6-375.~~R9-6-385.Shigellosis

~~R9-6-376.~~R9-6-386.Smallpox

~~R9-6-377.~~R9-6-387.Spotted Fever Rickettsiosis (e.g., Rocky Mountain Spotted Fever)

~~R9-6-378.~~R9-6-388.Streptococcal Group A Infection
~~R9-6-379.~~R9-6-389.Streptococcal Group B Invasive Infection in an Infant Younger Than 90 Days of Age
~~R9-6-380.~~R9-6-390.*Streptococcus pneumoniae* Invasive Infection
~~R9-6-381.~~R9-6-391.Syphilis
~~R9-6-382.~~R9-6-392.Taeniasis
~~R9-6-383.~~R9-6-393.Tetanus
~~R9-6-384.~~R9-6-394.Toxic Shock Syndrome
~~R9-6-385.~~R9-6-395.Trichinosis
~~R9-6-386.~~R9-6-396.Tuberculosis
~~R9-6-387.~~R9-6-397.Tularemia
~~R9-6-388.~~R9-6-398.Typhoid Fever
~~R9-6-389.~~R9-6-399.Typhus Fever
~~R9-6-390.~~R9-6-3100. Vaccinia-related Adverse Event
~~R9-6-391.~~R9-6-3101. Vancomycin-Resistant or Vancomycin-Intermediate *Staphylococcus aureus*
~~R9-6-392.~~R9-6-3102. Varicella (Chickenpox)
~~R9-6-393.~~R9-6-3103. *Vibrio* Infection
~~R9-6-394.~~R9-6-3104. Viral Hemorrhagic Fever
~~R9-6-395.~~R9-6-3105. West Nile Virus Infection
~~R9-6-396.~~R9-6-3106. Yellow Fever
~~R9-6-397.~~R9-6-3107. Yersiniosis (Enteropathogenic Yersinia)
~~R9-6-398.~~R9-6-3108. Zika Virus Infection

**ARTICLE 10. HIV-RELATED TESTING AND NOTIFICATION**

Section

R9-6-1002. Local Health Agency Requirements
R9-6-1005. ~~Anonymous HIV Testing~~ Repealed

**ARTICLE 11. STI-RELATED TESTING AND NOTIFICATION**

Section

R9-6-1102. Health Care Provider Requirements
R9-6-1103. Local Health Agency Requirements

## ARTICLE 1. GENERAL

**R9-6-101. Definitions**

In this Chapter, unless otherwise specified:

1. No change
2. No change
3. No change
4. No change
5. No change
6. No change
    a. No change
        i. No change
            (1) No change
            (2) No change
        ii. No change
            (1) No change
            (2) No change
    b. No change
        i. No change
        ii. No change
7. No change
8. No change
9. No change
10. No change
11. No change
12. No change
13. "Case" means an individual:
    a. No change
        i. No change
        ii. No change
        iii. No change
    b. No change
    c. Who has experienced respiratory disease symptoms as part of an outbreak; or
    ~~c.~~ d. Who has experienced a vaccinia-related adverse event.

14. No change
15. No change
16. No change
17. No change
    a. No change
    b. No change
    c. No change
    d. No change
18. No change
19. No change
20. No change
21. No change
    a. No change
    b. No change
    c. No change
22. No change
23. No change
24. No change
    a. No change
    b. No change
    c. No change
25. No change
26. No change
27. No change
28. No change
29. No change
30. No change
31. No change
    a. No change
    b. No change
    c. No change
    d. No change
32. No change

33. No change
34. No change
35. No change
36. No change
    a. No change
    b. No change
37. No change
38. No change
39. No change
40. No change
41. No change
42. No change
    a. No change
    b. No change
43. No change
44. No change
45. No change
46. No change
47. No change
48. No change
49. No change
    a. No change
    b. No change
50. No change
51. No change
    a. No change
    b. No change
52. No change
53. No change
54. No change
55. No change
    a. No change
    b. No change

56. No change
57. No change
58. No change
59. No change
60. No change
61. No change
62. No change
63. No change
    a. No change
    b. No change
    c. No change
    d. No change
64. No change
65. No change
66. No change
67. No change
68. No change
69. No change
70. No change
    a. No change
    b. No change
    c. No change
    d. No change
    e. No change
    f. No change
    g. No change
71. No change
72. No change
73. No change
    a. No change
    b. No change
    c. No change
74. No change

75. No change

76. No change

77. No change

78. "Suspect case" means an individual whose medical history, signs, or symptoms indicate that the individual:

    a. No change

    b. No change

    c. May have experienced respiratory disease symptoms as part of an outbreak; or

    ~~c.~~d. May have experienced a vaccinia-related adverse event.

79. No change

80. No change

81. No change

82. No change

83. No change

84. No change

85. No change

86. No change

87. No change

88. No change

89. No change

## ARTICLE 2. COMMUNICABLE DISEASE AND INFESTATION REPORTING

### R9-6-202. Reporting Requirements for a Health Care Provider Required to Report or an Administrator of a Health Care Institution or Correctional Facility

**A.** No change

**B.** No change

**C.** Except as described in subsection (D), for each case, suspect case, or occurrence for which a report on an individual is required by subsection (A) or (B) and Table 2.1, a health care provider required to report or an administrator of a health care institution or correctional facility shall submit a report that includes:

1. The following information about the case or suspect case:
    a. No change
    b. No change
    c. No change
    d. No change
    e. Whether the individual is ~~a member of~~ affiliated with a tribe and, if so, the name of the tribe;
    f. No change
    g. No change
    h. No change
    i. ~~Gender~~ Sex assigned at birth;
    ~~j. If known, whether the individual is pregnant;~~
    ~~k. If known, whether the individual is alive or dead;~~
    ~~l. If known, the individual's occupation~~;
    ~~m. If the individual is attending or working in a school or child care establishment or working in a health care institution or food establishment, the name and address of the school, child care establishment, health care institution, or food establishment;~~ and
    ~~n. For a case or suspect case who is a child requiring parental consent for treatment, the name, residential address, telephone number, and, if available, email address of the child's parent or guardian, if known;~~
    j. A unique patient identifier, such as a medical record number;
2. The following information about the disease:
    a. The name of the disease~~;~~,

b. The date of onset of symptoms~~;~~, and

c. The date of diagnosis;

~~d. The date of specimen collection;~~

~~e. Each type of specimen collected;~~

~~f. Each type of laboratory test completed;~~

~~g. The date of the result of each laboratory test; and~~

~~h. A description of the laboratory test results, including quantitative values if available;~~

3. No change

a. No change

b. No change

i. No change

ii. No change

iii. No change

c. No change

4. If reporting a case or suspect case of chancroid~~;~~ or gonorrhea~~, or *Chlamydia trachomatis* infection~~:

~~a. The gender of the individuals with whom the case or suspect case had sexual contact;~~

~~b.~~a. A description of the treatment prescribed, if any, including:

i. No change

ii. No change

iii. The date of prescription for each drug; and

~~c.~~b. The site of infection; ~~and~~

~~d. Whether the diagnosis was confirmed by a laboratory and, if so, the name, address, and phone number of the laboratory;~~

5. If reporting a case or suspect case of syphilis:

a. For a case or suspect case whose sex assigned at birth is female, whether the case or suspect case is pregnant;

b. The information required under subsection (C)(4); and

~~b.~~c. Identification of~~:~~

~~i. The~~ the stage of the disease~~, or~~

~~ii. Whether the syphilis is congenital~~;

6. If reporting a case of congenital syphilis in an infant, and in addition to the information required under ~~subsection~~ subsections ~~(C)(5)~~ (C)(5)(b) and (c) and A.R.S. § 36-694(A), the following information:

a. The name and date of birth of the ~~infant's mother~~ individual who gave birth to the infant~~;~~, and

b. The residential address~~, mailing address,~~ and telephone number~~, and, if available, email address~~ of the ~~infant's mother~~ individual who gave birth to the infant;

~~c. The date and test results for the infant's mother of the prenatal syphilis test required in A.R.S. § 36-693; and~~

~~d. If the prenatal syphilis test of the infant's mother indicated that the infant's mother was infected with syphilis:~~

~~i. Whether the infant's mother received treatment for syphilis,~~

~~ii. The name and dosage of each drug prescribed to the infant's mother for treatment of syphilis and the date each drug was prescribed, and~~

~~iii. The name and phone number of the health care provider required to report who treated the infant's mother for syphilis;~~

7. If reporting a case or suspect case with one of the following, the pregnancy status of a case or suspected case whose sex assigned at birth is female:

a. Hepatitis C,

b. Listeriosis,

c. Rubella, or

d. Emerging or exotic disease;

~~7.~~8. The name, address, telephone number, and, if available, email address of the individual making the report; and

~~8.~~9. The name, address, telephone number, and, if available, email address of the:

a. Health care provider, if reporting under subsection (A) and different from the individual specified in subsection ~~(C)(7)~~ (C)(8); or

b. Health care institution or correctional facility, if reporting under subsection (B).

**D.** For each outbreak for which a report is required by subsection ~~(A) or~~ (B) and Table 2.1, ~~a health care provider required to report or~~ an administrator of a health care institution or correctional facility shall submit a report that includes:

1. No change
2. No change
3. No change
4. No change
5. No change
6. The name, address, telephone number, and, if available, email address of the~~:~~

~~a. Health care provider, if reporting under subsection (A) and different from the individual specified in subsection (D)(5); or~~

~~b.~~ ~~Health~~ health care institution or correctional facility~~, if reporting under subsection (B)~~.

**E.** When an HIV-related test is ordered for an infant ~~who was perinatally exposed to HIV to determine whether the infant is infected with HIV~~, the health care provider who orders the HIV-related test or the administrator of the health care institution in which the HIV-related test is ordered shall:

1. No change
2. Include the following information in the report specified in subsection (E)(1):
    a. No change
    b. No change
    c. The name and date of birth of the ~~infant's mother~~ individual who gave birth to the infant;
    d. No change
    e. No change
    f. No change
    g. No change
    h. No change
3. Include with the report specified in subsection (E)(1) a report for the ~~infant's mother~~ individual who gave birth to the infant, including the following information:
    a. The name and date of birth of the ~~infant's mother~~ individual who gave birth to the infant;
    b. The residential address, mailing address, and telephone number of the ~~infant's mother~~ individual who gave birth to the infant;
    c. The date of the last medical evaluation of the ~~infant's mother~~ individual who gave birth to the infant;
    d. The types of HIV-related tests ordered for the ~~infant's mother~~ individual who gave birth to the infant;
    e. The dates of the HIV-related tests for the ~~infant's mother~~ individual who gave birth to the infant;
    f. The results of the HIV-related tests for the ~~infant's mother~~ individual who gave birth to the infant;
    g. What HIV-related risk factors the ~~infant's mother~~ individual who gave birth to the infant has;

h. Whether the ~~infant's mother~~ individual who gave birth to the infant delivered the infant vaginally or by C-section;

i. Whether the ~~infant's mother~~ individual who gave birth to the infant was receiving HIV-related drugs prior to the infant's birth to reduce the risk of perinatal transmission of HIV; and

j. The name, address, and telephone number of the health care provider who ordered the HIV-related tests for the ~~infant's mother~~ individual who gave birth to the infant.

**Table 2.1. Reporting Requirements for a Health Care Provider Required to Report or an Administrator of a Health Care Institution or Correctional Facility**

| | | | | | |
|---|---|---|---|---|---|
| □*,Θ | Amebiasis | □ | Glanders | Θ | Respiratory disease in a health care institution or correctional facility |
| □ | Anaplasmosis | □ | Gonorrhea | Ⓒ* | Rubella (German measles) |
| □ | Anthrax | Ⓒ | *Haemophilus influenza*, invasive disease | Ⓒ | Rubella syndrome, congenital |
| □ | Arboviral infection | □ | Hansen's disease (Leprosy) | Ⓒ*,Θ | Salmonellosis |
| □ | Babesiosis | Ⓒ | Hantavirus infection | Θ | Scabies |
| □ | Basidiobolomycosis | Ⓒ | Hemolytic uremic syndrome | Ⓒ*,Θ | Shigellosis |
| □ | Botulism | Ⓒ*,Θ | Hepatitis A | □ | Smallpox |
| Ⓒ | Brucellosis | □ | Hepatitis B and Hepatitis D | Ⓒ | Spotted fever rickettsiosis (e.g., Rocky Mountain spotted fever) |
| □*,Θ | Campylobacteriosis | □ | Hepatitis C | □ | Streptococcal group A infection, invasive disease |
| □ | Chagas infection and related disease (American trypanosomiasis) | □*,Θ | Hepatitis E | □ | Streptococcal group B infection in an infant younger than 90 days of age, invasive disease |
| □ | Chancroid | □ | HIV infection and related disease | □ | *Streptococcus pneumoniae* infection (pneumococcal invasive disease) |
| Ⓒ | Chikungunya | Ⓒ | Influenza-associated mortality in a child | □[‡] | Syphilis |
| □ | *Chlamydia trachomatis* infection | Ⓒ | Legionellosis (Legionnaires' disease) | □*,Θ | Taeniasis |
| Ⓒ* | Cholera | Ⓒ | Leptospirosis | □ | Tetanus |
| □ | Coccidioidomycosis (Valley Fever) | Ⓒ | Listeriosis | □ | Toxic shock syndrome |
| □ | Colorado tick fever | □ | Lyme disease | Ⓒ | Trichinosis |
| Θ | Conjunctivitis, acute | Ⓒ | Lymphocytic choriomeningitis | Ⓒ | Tuberculosis, active disease |
| □ | Creutzfeldt-Jakob disease | □ | Malaria | Ⓒ | Tuberculosis latent infection in a child 5 years of age or younger (positive screening test result) |
| Ⓒ*,Θ | Cryptosporidiosis | □ | Measles (rubeola) | □ | Tularemia |
| Ⓒ | *Cyclospora* infection | Ⓒ | Melioidosis | Ⓒ | Typhoid fever |
| □ | Cysticercosis | □ | Meningococcal invasive disease | Ⓒ | Typhus fever |
| Ⓒ | Dengue | Ⓒ | Mumps | Ⓒ | Vaccinia-related adverse event |
| Θ | Diarrhea, nausea, or vomiting | □ | Novel coronavirus infection (e.g., SARS or MERS) | □ | Vancomycin-resistant or Vancomycin-intermediate *Staphylococcus aureus* |
| □ | Diphtheria | Ⓒ | Pertussis (whooping cough) | □ | Varicella (chickenpox) |
| □ | Ehrlichiosis | □ | Plague | Ⓒ*,Θ | *Vibrio* infection |
| □ | Emerging or exotic disease | □ | Poliomyelitis (paralytic or non-paralytic) | □ | Viral hemorrhagic fever |
| □ | Encephalitis, parasitic | □ | Psittacosis (ornithosis) | □ | West Nile virus infection |
| Ⓒ | Encephalitis, viral | Ⓒ | Q fever | □ | Yellow fever |
| Ⓒ | *Escherichia coli*, Shiga toxin-producing | □ | Rabies in a human | Ⓒ*,Θ | Yersiniosis (enteropathogenic *Yersinia*) |
| □*,Θ | Giardiasis | Ⓒ | Relapsing fever (borreliosis) | Ⓒ | Zika virus infection |

**Key:**

□ Submit a report by telephone or through an electronic reporting system authorized by the Department within 24 hours after a case or suspect case is diagnosed, treated, or detected or an occurrence is detected.

* Submit a report within 24 hours after a case or suspect case is diagnosed, treated, or detected, instead of reporting within the general reporting deadline, if the case or suspect case is a food handler or works in a child care establishment or a health care institution.

‡ Submit a report within one working day if the case or suspect case is a pregnant woman.

Ⓒ Submit a report within one working day after a case or suspect case is diagnosed, treated, or detected.

□ Submit a report within five working days after a case or suspect case is diagnosed, treated, or detected.

Θ Submit a report within 24 hours after detecting an outbreak.

| | | | | | |
|---|---|---|---|---|---|
| ↯ | Anthrax | ! | Hantavirus infection | ! | Rubella (German measles) |
| ↯ | Botulism | ! | Hemolytic uremic syndrome | ! | Rubella syndrome, congenital |
| ! | Brucellosis | □ | HIV infection and related disease in an infant | ↯ | Severe acute respiratory syndrome (SARS) |
| ! | *Candida auris* | ! | Influenza-associated mortality in a child | ↯ | Smallpox |
| □ | Chancroid | ! | Leptospirosis | ! | Spotted fever rickettsiosis (e.g., Rocky Mountain spotted fever) |
| ! | Chikungunya | ! | Listeriosis | □[1] | Syphilis |
| ! | Cholera | ! | Lymphocytic choriomeningitis | □ | Taeniasis |
| □ | Creutzfeldt-Jakob disease | ↯ | Measles (rubeola) | □ | Tetanus |
| ↯ | Cronobacter infection in an infant | ! | Melioidosis | □ | Toxic shock syndrome |
| □ | Cysticercosis | ↯ | Meningococcal invasive disease | ! | Trichinosis |
| ! | Dengue | ↯ | Middle East respiratory syndrome (MERS) | ! | Tuberculosis, active disease |
| O | Diarrhea, nausea, or vomiting | □ | Mpox | ! | Tuberculosis latent infection in a child 5 years of age or younger |
| ↯ | Diphtheria | ! | Mumps | ↯ | Tularemia |
| ↯ | Emerging or exotic disease | ↯ | Novel coronavirus infection | ! | Typhoid fever |
| ↯ | Encephalitis, parasitic | ! | Pertussis (whooping cough) | ! | Typhus fever |
| ! | Encephalitis, viral | ↯ | Plague | ! | Vaccinia-related adverse event |
| ↯ | Glanders | ↯ | Poliomyelitis (paralytic or non-paralytic) | □ | Varicella (chickenpox) |
| □ | Gonorrhea | ! | Q fever | ↯ | Viral hemorrhagic fever |
| ! | *Haemophilus influenzae*, invasive disease | ↯ | Rabies in a human | ↯ | Yellow fever |
| □ | Hansen's disease (Leprosy) | ! | Relapsing fever (borreliosis) | ! | Zika virus infection |
| | | O | Respiratory disease | | |

**Key:**

↯ Submit a report through an electronic reporting system authorized by the Department or by telephone within 24 hours after a case or suspect case is diagnosed, treated, or detected or an occurrence is detected.

[1] Submit a report within one working day if the case or suspect case is a pregnant woman.

! Submit a report within one working day through an electronic reporting system or by telephone after a case or suspect case is diagnosed, treated, or detected.

□ Submit a report within five working days after a case or suspect case is diagnosed, treated, or detected.

O Submit a report within 24 hours after detecting an outbreak.

**R9-6-203. Reporting Requirements for an Administrator of a School, Child Care Establishment, or Shelter**

**A.** No change

**B.** For each individual with a disease, infestation, or symptoms of a communicable disease or infestation listed in Table 2.2, or an outbreak of the communicable disease or infestation, an administrator of a school, child care establishment, or shelter shall submit a report that includes:

1. No change
2. No change
3. No change
4. No change
5. The following information about each individual with the disease, infestation, or symptoms:
    a. No change
    b. No change
    c. No change
    d. No change
    e. Last date the individual was present at the school, child care establishment, or shelter, as applicable; and
    ~~c.~~f. Whether the individual is a staff member, ~~a~~ student, ~~a~~ child in care, or ~~a~~ resident;
6. No change
7. No change

**Table 2.2. Reporting Requirements for an Administrator of a School, Child Care Establishment, or Shelter**

| | | | |
|---|---|---|---|
| ~~□~~ | ~~Campylobacteriosis~~ | ~~□~~ | ~~Mumps~~ |
| ~~O~~ | ~~Conjunctivitis, acute~~ | ~~□~~ | ~~Pertussis (whooping cough)~~ |
| ~~□~~ | ~~Cryptosporidiosis~~ | ~~□~~ | ~~Rubella (German measles)~~ |
| ~~O~~ | ~~Diarrhea, nausea, or vomiting~~ | ~~□~~ | ~~Salmonellosis~~ |
| ~~□~~ | ~~*Escherichia coli*, Shiga toxin-producing~~ | ~~O~~ | ~~Scabies~~ |
| ~~□~~ | ~~*Haemophilus influenzae*, invasive disease~~ | ~~□~~ | ~~Shigellosis~~ |
| ~~□~~ | ~~Hepatitis A~~ | ~~O~~ | ~~Streptococcal group A infection~~ |
| ~~□~~ | ~~Measles~~ | ~~□~~ | ~~Varicella (chickenpox)~~ |
| ~~□~~ | ~~Meningococcal invasive disease~~ | | |
| O | Diarrhea, nausea, or vomiting | ~~✓~~ | Mumps |
| ~~✓~~ | Emerging or exotic disease | ~~✓~~ | Pertussis (whooping cough) |
| ~~✓~~ | *Haemophilus influenzae*, invasive disease | ~~✓~~ | Rubella (German measles) |
| ~~✓~~ | Hepatitis A | O | Streptococcal group A infection |
| ~~✓~~ | Measles | □ | Varicella (chickenpox) |
| ~~✓~~ | Meningococcal invasive disease | | |

**Key:**

~~□~~ ~~✓~~ Submit a report within 24 hours after detecting a case or suspect case.

~~□~~ □ Submit a report within five working days after detecting a case or suspect case.

O Submit a report within 24 hours after detecting an outbreak.

**R9-6-204. Clinical Laboratory Director Reporting Requirements**

**A.** ~~Except as specified in subsection (D), a~~ A director of a clinical laboratory that obtains a test result described in Table 2.3 or that receives a specimen for detection of an infectious agent or toxin listed in Table 2.3 shall, either personally or through a representative, submit a report, in a Department-provided format, and, if applicable, an isolate or a specimen to the Department within the time limitation and as specified in Table 2.3 and subsection (B) or (C).

**B.** For each specimen for which an immediate report is required by subsection (A) and Table 2.3, a clinical laboratory director shall ensure the report includes:

1. No change
2. No change
3. No change
4. No change
5. The ~~gender~~ sex assigned at birth of the subject;
6. The race and ethnicity of the subject;
~~6.~~7. The laboratory identification number;
~~7.~~8. The specimen type;
~~8.~~9. The date of collection of the specimen;
~~9.~~10. The type of test ordered on the specimen; and

~~10.~~11. The ordering health care provider's name, address, telephone number, and, if available, email address.

**C.** Except as provided in Table 2.3 ~~and as specified in subsection (D)~~, for each test result for a subject for which a report is required by subsection (A) and Table 2.3, a clinical laboratory director shall ensure the report includes:

1. No change
2. No change
3. No change
4. No change
5. The ~~gender~~ sex assigned at birth of the subject;
6. The race and ethnicity of the subject;
~~6.~~7. The laboratory identification number;
~~7.~~8. The specimen type;
~~8.~~9. The date of collection of the specimen;
~~9.~~10. The date of the result of the test;
~~10.~~11. The type of test completed on the specimen;
~~11.~~12. The test result, including:
    a. Qualitative results;
    b. ~~quantitative~~ Quantitative values and reference ranges, if applicable;
    c. Susceptibility testing data and a drug sensitivity pattern, if performed; and
    d. Variant type, if available; and
~~12.~~13. The ordering health care provider's name, address, telephone number, and, if available, email address.

~~**D.** When the Arizona State Laboratory obtains a test result from anonymous HIV testing sent to the Arizona State Laboratory as described in R9-6-1005, the director of the Arizona State Laboratory shall, either personally or through a representative:~~

~~1. Submit a report to the Department within five working days after obtaining a positive test result; and~~
~~2. Include in the report the following information:~~
    ~~a. The laboratory identification number of the subject;~~
    ~~b. The date of birth, gender, race, and ethnicity of the subject;~~
    ~~c. The date the specimen was collected;~~
    ~~d. The type of tests completed on the specimen;~~
    ~~e. The test results, including quantitative values if available; and~~

~~f. The name, address, and telephone number of the person who submitted the specimen to the Arizona State Laboratory.~~

**D.** Upon the request of the Department, the director of a clinical laboratory shall:

1. Include an equivocal result or a negative test result for any subject in the report of test results, required in subsection (C)(12), for an infectious agent or toxin for which a report is required by subsection (A) and Table 2.3;
2. Submit sequencing-related information, as available, in a Department-provided format; or
3. Submit to the Arizona State Laboratory an isolate of an infectious agent, if available, or a specimen from a subject.

**Table 2.3. Clinical Laboratory Director Reporting Requirements**

| | | | | | |
|---|---|---|---|---|---|
| □ | *Anaplasma* spp. | □,✆,□ | *Francisella tularensis* | □ | *Plasmodium* spp. |
| ✆,□[4] | Arbovirus | ✆,□[4,5] | *Haemophilus influenzae*, from a normally sterile site | ✆,□ | Rabies virus from a human |
| □ | *Babesia* spp. | ✆ | Hantavirus | ✆,□[4] | Rabies virus from an animal |
| □,□,□ | *Bacillus anthracis* | ✆[+] | Hepatitis A virus (anti-HAV-IgM serologies, detection of viral nucleic acid, or genetic sequencing) | □ | Respiratory syncytial virus |
| ✆,□[4] | *Bordetella pertussis* | □[+] | Hepatitis B virus (anti-Hepatitis B core-IgM serologies, Hepatitis B surface or envelope antigen serologies, detection of viral nucleic acid, or genetic sequencing) | ✆,□[4] | *Rickettsia* spp.—any test result |
| ✆,□ | *Brucella* spp. | □[1] | Hepatitis C virus | ✆[1],□ | Rubella virus and anti-rubella-IgM serologies |
| ✆,□ | *Burkholderia mallei* and *B. pseudomallei* | □[+] | Hepatitis D virus | ✆,□ | *Salmonella* spp. |
| □,□[4] | *Campylobacter* spp. | □[1],□[4] | Hepatitis E virus | ✆,□[4] | *Shigella* spp. |
| □,□[4] | Carbapenem-resistant Enterobacteriaceae (CRE) | □ | HIV—any test result (by culture, antigen, antibodies to the virus, detection of viral nucleic acid, or genetic sequencing), except from a negative screening test | □,□[4] | *Streptococcus* group A, from a normally sterile site |
| □ | $CD_4$ T-lymphocyte count | □ | HIV—any test result for an infant (by culture, antigen, antibodies to the virus, detection of viral nucleic acid, or genetic sequencing) | □ | Streptococcus group B, from a normally sterile site in an infant younger than 90 days of age |
| ✆,□[4] | Chikungunya virus | □,□[4] | Influenza virus | □,□[4] | *Streptococcus pneumoniae* and its drug sensitivity pattern, from a normally sterile site |
| □ | *Chlamydia trachomatis* | ✆,+ | *Legionella* spp. (excluding single serological results) | □[+] | *Treponema pallidum* (syphilis) or rapid plasma reagin |
| □ | *Chlamydia psittaci /Chlamydophila psittaci* | ✆ | *Leptospira* spp. | □ | *Trypanosoma cruzi* (Chagas disease) |
| □,□ | *Clostridium botulinum* toxin (botulism) | ✆ | *Lymphocytic choriomeningitis* virus | ✆,□ | Vancomycin-resistant or Vancomycin-intermediate *Staphylococcus aureus* |
| □,□[4] | *Coccidioides* spp. | ✆,□ | *Listeria* spp., from a normally sterile site | □,□,□ | Variola virus (smallpox) |
| ✆ | *Coxiella burnetti* | □[+],□ | Measles virus and anti-measles-IgM serologies | ✆,□ | *Vibrio* spp. |
| ✆ | *Cryptosporidium* spp. | □[2] | Methicillin-resistant *Staphylococcus aureus*, from a normally sterile site | □,□,□ | Viral hemorrhagic fever agent |
| ✆ | *Cyclospora* spp. | ✆[+],□ | Mumps virus and anti-mumps-IgM serologies | □ | West Nile virus |
| ✆,□[4] | Dengue virus | ✆,□[3] | *Mycobacterium tuberculosis* complex and its drug sensitivity pattern | □,□ | Yellow fever virus |
| □ | *Ehrlichia* spp. | □,□[4] | *Neisseria gonorrhoeae* and, if performed, the drug sensitivity pattern | □,□,□ | *Yersinia pestis* (plague) |
| □,□ | Emerging or exotic disease agent | □,□ | *Neisseria meningitidis*, from a normally sterile site | ✆,□ | *Yersinia* spp. (other than *Y. pestis*) |
| □ | *Entamoeba histolytica* | ✆ | Norovirus | ✆,□ | Zika virus |
| ✆,□ | *Escherichia coli*, *Shiga* toxin-producing | □ | Novel coronavirus infection (e.g., SARS or MERS) | | |

| | | | | | |
|---|---|---|---|---|---|
| □ | *Anaplasma* spp. | □ | *Ehrlichia* spp. | ! | Norovirus |
| ! | Arbovirus | □,🗲 | Emerging or exotic disease agent | 🗲 | Novel coronavirus |
| □ | *Babesia* spp. | !,□ | *Escherichia coli, Shiga* toxin-producing | 🗲 | Novel influenza virus |
| □,🗲,□ | *Bacillus anthracis* | □,!,□ | *Francisella tularensis* | □ | *Plasmodium* spp. |
| □ | *Basidiobolus* spp. | □ | *Giardia duodenalis* | !,□ | Rabies virus from a human |
| □ | *Blastomyces* spp. | !,□[4] | *Haemophilus influenzae*, from a normally sterile site | ! | Rabies virus from an animal |
| ! | *Bordetella pertussis* | ! | Hantavirus | □ | Respiratory syncytial virus |
| □ | *Borrelia* spp. | ![1] | Hepatitis A virus | ! | *Rickettsia* spp. |
| !,□ | *Brucella* spp. | □[1] | Hepatitis B virus | ![1],□ | Rubella virus |
| !,□ | *Burkholderia mallei* | □[1] | Hepatitis C virus | !,□ | *Salmonella* spp. |
| !,□ | *Burkholderia pseudomallei* | □[1] | Hepatitis D virus | □ | Severe acute respiratory syndrome coronavirus |
| □ | *Campylobacter* spp. | □[1] | Hepatitis E virus | □ | Severe acute respiratory syndrome coronavirus-2 (SARS-CoV-2) |
| !,□[3] | *Candida auris* | □[1] | HIV | ! | *Shigella* spp. |
| □,□[3] | Carbapenem-resistant *Acinetobacter baumannii* (CRAB) | □[1] | HIV—any test result for an infant | □ | St. Louis encephalitis virus |
| □,□[3] | Carbapenem-resistant ~~E~~ Enterobacterales (CRE) | □ | Influenza virus | □ | *Streptococcus* group A, from a normally sterile site |
| □,□[3] | Carbapenem-resistant *Pseudomonas aeruginosa* (CRPA) | !,+ | *Legionella* spp. | □ | Streptococcus group B, from a normally sterile site in an infant younger than 90 days of age |
| □ | $CD_4$-T-lymphocyte count | ! | *Leptospira* spp. | □ | *Streptococcus pneumoniae* from a normally sterile site |
| ! | Chikungunya virus | !,□ | *Listeria* spp., from a normally sterile site | □[1] | *Treponema pallidum* (syphilis) or rapid plasma reagin |
| □ | *Chlamydia trachomatis* | ! | *Lymphocytic choriomeningitis* virus | □ | *Trypanosoma cruzi* (Chagas disease) |
| □ | *Chlamydia psittaci* | 🗲[1],□ | Measles virus | !,□ | Vancomycin-resistant or Vancomycin-intermediate *Staphylococcus aureus* |
| □,🗲 | *Clostridium botulinum* toxin (botulism) | □[2] | Methicillin-resistant *Staphylococcus aureus*, from a normally sterile site | □,🗲,□ | Variola virus (smallpox) |
| □ | *Coccidioides* spp. | 🗲 | Middle East respiratory syndrome coronavirus (MERS-CoV) | !,□ | *Vibrio* spp. |
| □ | Colorado tick fever virus | □ | Monkeypox virus | □,🗲,□ | Viral hemorrhagic fever agent |
| ! | *Coxiella burnetti* | ![1],□ | Mumps virus | □ | West Nile virus |
| 🗲,□ | *Cronobacter* spp. in an infant | !,□[3] | *Mycobacterium tuberculosis* complex | 🗲,□ | Yellow fever virus |
| ! | *Cryptosporidium* spp. | □ | *Mycoplasma genitalium* | □,🗲,□ | *Yersinia pestis* (plague) |

| | | | | | |
|---|---|---|---|---|---|
| ! | *Cyclospora* spp. | | *Neisseria gonorrhoeae* | ! | *Yersinia* spp. (other than *Y. pestis*) |
| ! | Dengue virus | | *Neisseria meningitidis,* from a normally sterile site | ! | Zika virus |

**Key:**

Submit a report immediately after receiving one specimen for detection of the agent. Report the receipt of subsequent specimens within five working days after receipt.

Submit a report within 24 hours after obtaining a positive test result.

Submit a report within one working day after obtaining a positive test result.

Submit a report within five working days after obtaining a positive test result or a test result specified in Table 2.3.

Submit an isolate of the organism for each positive culture, if available, or a specimen for each positive test result to the Arizona State Laboratory within one working day.

\+ Submit an isolate of the organism for each positive culture to the Arizona State Laboratory within one working day.

When appearing after one of the symbols above, the following modify the requirement:

[1] When reporting a positive result for any of the specified tests, report the results of all other tests performed for the subject as part of the disease panel or as a reflex test.

[2] Submit a report only when an initial positive result is obtained for an individual.

[3] Submit an isolate or specimen of the organism, as applicable, only when an initial positive result is obtained for an individual, when a change in resistance pattern or mechanism is detected, or when a positive result is obtained ≥ 12 months after the initial positive result is obtained for an individual.

~~[4] Submit an isolate or specimen, as applicable, only by request.~~

[54] Submit an isolate of the organism, if available, or a specimen when a positive result is obtained for an individual < 5 years of age.

**R9-6-205. Reporting Requirements for a Pharmacist or an Administrator of a Pharmacy**

**A.** No change

**B.** Any combination of two or more of the following drugs when initially prescribed for an individual triggers the reporting requirement of subsection (A):

1. No change
2. ~~Streptomycin,~~
3. ~~3.~~2. Any rifamycin,
4. ~~4.~~3. Pyrazinamide, or
5. ~~5.~~4. Ethambutol.

**C.** No change

1. No change
    a. No change
    b. No change
    c. No change
    d. No change
2. No change
    a. No change
    b. No change
    c. No change

**Table 2.4. Local Health Agency Reporting Requirements**

| | | | | | |
|---|---|---|---|---|---|
| □,□ | Amebiasis | □ | Gonorrhea | ©,□,□ | Rubella (German measles) |
| □,□ | Anaplasmosis | ©,□ | *Haemophilus influenza influenzae*, invasive disease | □,□,□ | Rubella syndrome, congenital |
| □,□,□ | Anthrax | □,□ | Hansen's disease (Leprosy) | ©,□ | Salmonellosis |
| □,□ | Arboviral infection | ©,□ | Hantavirus infection | ©,□ | Shigellosis |
| □,□ | Babesiosis | ©,□ | Hemolytic uremic syndrome | □,□,□ | Smallpox |
| □,□ | Basidiobolomycosis | ©,□ | Hepatitis A | ©,□ | Spotted fever rickettsiosis (e.g., Rocky Mountain spotted fever) |
| □,□,□ | Botulism | □,□ | Hepatitis B and Hepatitis D | □ | Streptococcal group A infection, invasive disease |
| □,□,□ | Brucellosis | □,□ | Hepatitis E | □ | Streptococcal group B infection in an infant younger than 90 days of age, invasive disease |
| □,□ | Campylobacteriosis | □,□ | HIV infection and related disease | □ | *Streptococcus pneumoniae* infection, (pneumococcal invasive disease) |
| □,□ | Chagas infection and related disease (American Trypanosomiasis) | ©,□ | Influenza-associated mortality in a child | □,□ | Syphilis |
| □,□ | Chancroid (*Haemophilus ducreyi*) | ©,□ | Legionellosis (Legionnaires' disease) | □,□ | Taeniasis |
| □,□ | Chikungunya | ©,□ | Leptospirosis | □,□ | Tetanus |
| □ | *Chlamydia trachomatis* infection | ©,□,□ | Listeriosis | □,□ | Toxic shock syndrome |
| ©,□ | Cholera | □,□ | Lyme disease | ©,□ | Trichinosis |
| □ | Coccidioidomycosis (Valley Fever) | ©,□ | Lymphocytic choriomeningitis | ©,□,□ | Tuberculosis, active disease |
| □,□ | Colorado tick fever | □,□ | Malaria | ©,□ | Tuberculosis latent infection in a child five years of age or younger (positive screening test result) |
| □,□ | Creutzfeldt-Jakob disease | □,□,□ | Measles (rubeola) | | |
| □,□ | Cryptosporidiosis | ©,□,□ | Melioidosis | □,□,□ | Tularemia |
| □,□ | *Cyclospora* infection | □,□,□ | Meningococcal invasive disease | ©,□ | Typhoid fever |
| □,□ | Cysticercosis | ©,□,□ | Mumps | ©,□ | Typhus fever |
| ©,□ | Dengue | □,□ | Novel coronavirus (e.g., SARS or MERS) | ©,□ | Vaccinia-related adverse event |
| □,□ | Diphtheria | ©,□ | Pertussis (whooping cough) | ©,□,□ | Vancomycin-resistant or Vancomycin-intermediate *Staphylococcus aureus* |
| □,□ | Ehrlichiosis | □,□,□ | Plague | □,□[†] | Varicella (chickenpox) |
| □,□ | Emerging or exotic disease | □,□,□ | Poliomyelitis (paralytic or non-paralytic) | ©,□ | *Vibrio* infection |
| □,□ | Encephalitis, parasitic | □,□ | Psittacosis (ornithosis) | □,□,□ | Viral hemorrhagic fever |
| ©,□ | Encephalitis, viral | ©,□ | Q Fever | □,□ | West Nile virus infection |
| ©,□ | *Escherichia coli*, Shiga toxin-producing | □,□,□ | Rabies in a human | □,□,□ | Yellow fever |
| □,□ | Giardiasis | ©,□ | Relapsing fever (borreliosis) | ©,□,□ | Yersiniosis (enteropathogenic *Yersinia)* |
| ©,□,□ | Glanders | | | ©,□,□ | Zika virus infection |

| | | | | | |
|---|---|---|---|---|---|
| O | Amebiasis | □,□ | Giardiasis | ,□,□ | Rabies in a human |
| □,□ | Anaplasmosis | !,□,□ | Glanders | !,□ | Relapsing fever (borreliosis) |
| ,□,□ | Anthrax | □ | Gonorrhea | O | Respiratory disease |
| □,□ | Arboviral infection | !,□ | *Haemophilus influenzae*, invasive disease | !,□,□ | Rubella (German measles) |
| □,□ | Babesiosis | □,□ | Hansen's disease (Leprosy) | ,□,□ | Rubella syndrome, congenital |
| □,□ | Basidiobolomycosis | !,□ | Hantavirus infection | !,□ | Salmonellosis |
| □,□ | Blastomycosis | !,□ | Hemolytic uremic syndrome | !,□ | Severe acute respiratory syndrome (SARS) |
| ,□,□ | Botulism | !,□ | Hepatitis A | !,□ | Shigellosis |
| □,□,□ | Brucellosis | □,□ | Hepatitis B and Hepatitis D | ,□,□ | Smallpox |
| □,□ | Campylobacteriosis | □ | Hepatitis C | !,□ | Spotted fever rickettsiosis (e.g., Rocky Mountain spotted fever) |
| !,□,□ | *Candida auris* | □,□ | Hepatitis E | □ | Streptococcal group A infection, invasive disease |
| □,□,□ | Carbapenem-resistant *Acinetobacter baumannii* (CRAB) | □,□ | HIV infection and related disease | □ | Streptococcal group B infection in an infant younger than 90 days of age, invasive disease |
| □,□,□ | Carbapenem-resistant Enterobacterales (CRE) | !,□ | Influenza-associated mortality in a child | □ | *Streptococcus pneumoniae* infection, (pneumococcal invasive disease) |
| □,□,□ | Carbapenem-resistant *Pseudomonas aeruginosa* (CRPA) | !,□ | Legionellosis (Legionnaires' disease) | □,□ | Syphilis |
| □,□ | Chagas infection and related disease (American Trypanosomiasis) | !,□ | Leptospirosis | □,□ | Taeniasis |
| □,□ | Chancroid (*Haemophilus ducreyi*) | !,□,□ | Listeriosis | □,□ | Tetanus |
| □,□ | Chikungunya | □,□ | Lyme disease | □,□ | Toxic shock syndrome |
| □ | *Chlamydia trachomatis* infection | !,□ | Lymphocytic choriomeningitis | !,□ | Trichinosis |
| !,□ | Cholera | □,□ | Malaria | !,□,□ | Tuberculosis, active disease |
| □ | Coccidioidomycosis (Valley Fever) | ,□,□ | Measles (rubeola) | !,□ | Tuberculosis latent infection in a child five years of age or younger ~~(positive screening test result)~~ |
| □,□ | Colorado tick fever | !,□,□ | Melioidosis | ,□,□ | Tularemia |
| □,□ | Creutzfeldt-Jakob disease | ,□,□ | Meningococcal invasive disease | | |
| ,□ | Cronobacter infection in an infant | !,□ | Middle East respiratory syndrome (MERS) | !,□ | Typhoid fever |
| □,□ | Cryptosporidiosis | □,□ | Mpox | !,□ | Typhus fever |
| □,□ | *Cyclospora* infection | !,□,□ | Mumps | !,□ | Vaccinia-related adverse event |

| | | | | | |
|---|---|---|---|---|---|
| □,□ | Cysticercosis | □ | *Mycoplasma genitalium* infection | !,□,□ | Vancomycin-resistant or Vancomycin-intermediate *Staphylococcus aureus* |
| !,□ | Dengue | ,□ | Novel coronavirus infection ~~(e.g., SARS or MERS)~~ | □,□[1] | Varicella (chickenpox) |
| ,□ | Diphtheria | | Novel influenza virus infection | !,□ | *Vibrio* infection |
| □,□ | Ehrlichiosis | !,□ | Pertussis (whooping cough) | ,□,□ | Viral hemorrhagic fever |
| ,□ | Emerging or exotic disease | ,□,□ | Plague | □,□ | West Nile virus infection |
| ,□ | Encephalitis, parasitic | ,□,□ | Poliomyelitis (paralytic or non-paralytic) | ,□;□ | Yellow fever |
| !,□ | Encephalitis, viral | □,□ | Psittacosis (ornithosis) | !,□,□ | Yersiniosis (enteropathogenic *Yersinia)* |
| !,□ | *Escherichia coli*, Shiga toxin-producing | !,□ | Q Fever | !,□,□ | Zika virus infection |

**Key:**

~~□~~ Notify the Department within 24 hours after receiving a report under R9-6-202 or R9-6-203.

~~C~~! Notify the Department within one working day after receiving a report under R9-6-202 or R9-6-203.

~~□~~□ Notify the Department within five working days after receiving a report under R9-6-202 or R9-6-203.

**O** Notify the Department within 24 hours after receiving a report or reports indicating an outbreak or possible outbreak.

□ Submit an epidemiologic investigation report within 30 calendar days after receiving a report under R9-6-202 or R9-6-203 or notification by the Department.

□ ~~Ensure~~ In consultation with the Department, ensure that an isolate of the organism for each positive culture, if available, or a specimen for each positive test result is submitted to the Arizona State Laboratory within one working day.

[1] Submit an epidemiologic investigation report only if a case or suspect case has died as a result of the communicable disease.

## ARTICLE 3. CONTROL MEASURES FOR COMMUNICABLE DISEASES AND INFESTATIONS

### R9-6-306. Amebiasis

~~Case~~ Outbreak control measures: A local health agency shall:

1. Conduct an epidemiologic investigation of each reported amebiasis outbreak;
2. ~~1.~~ Exclude an amebiasis case or suspect case with diarrhea from:
    a. Working as a food handler, caring for children in or attending a child care establishment, or caring for patients or residents in a health care institution until:
        ~~i. Either:~~
            ~~(1) Treatment with an amebicide is initiated, and~~
            ~~(2) A stool specimen negative for amoebae is obtained from the amebiasis case or suspect case;~~
        i. Diarrhea has resolved, or
        ii. No change
    b. No change
3. ~~2. Conduct an epidemiologic investigation of each reported amebiasis case or suspect case;~~ and
4. ~~For each amebiasis case, submit~~ Submit to the Department~~, as specified in Table 2.4,~~ the information required under ~~R9-6-206(D)~~ R9-6-206(E).

### R9-6-308. Anthrax

**A.** Case control measures: A local health agency shall:

1. No change
2. No change
3. No change
4. ~~Ensure~~ In consultation with the Department, ensure that an isolate or a specimen, as available, from each anthrax case or suspect case is submitted to the Arizona State Laboratory.

**B.** No change

### R9-6-312. Blastomycosis Infection

**A.** Case control measures: A local health agency shall:

1. Conduct an epidemiologic investigation of each reported blastomycosis case or suspect case; and
2. For each blastomycosis case, submit to the Department, as specified in Table 2.4, the information required under R9-206 (D).

**B.** Outbreak control measures: A local health agency shall:

1. Conduct an epidemiologic investigation of each reported outbreak of blastomycosis; and
2. For each outbreak of blastomycosis, submit to the Department the information required under R9-6-206(E).

**~~R9-6-312.~~R9-6-313. Botulism**

**A.** Case control measures: A local health agency shall:

1. No change
2. No change
3. For each botulism case or suspect case:
    a. No change
    b. ~~Ensure~~ In consultation with the Department, ensure that one or more specimens from each botulism case or suspect case are submitted to the Arizona State Laboratory.

**B.** No change

1. No change
2. No change

**~~R9-6-313.~~R9-6-314. Brucellosis**

Case control measures: A local health agency shall:

1. No change
2. No change
3. ~~Ensure~~ In consultation with the Department, ensure that an isolate or a specimen, as available, from each brucellosis case is submitted to the Arizona State Laboratory.

**~~R9-6-314.~~R9-6-315. Campylobacteriosis**

No change

1. No change
    a. No change
        i. No change
        ii. No change
        iii. No change
    b. No change
2. No change
3. No change

**R9-6-316. *Candida auris***

**A.** Case control measures:

1. A diagnosing health care provider or an administrator of a health care institution, either

personally or through a representative, shall:

a. Institute isolation precautions as necessary for a case with *Candida auris* infection or colonization to prevent transmission; and

b. If a case with *Candida auris* infection or colonization is being transferred to another health care provider or health care institution or to a correctional facility, comply with R9-6-305.

2. An administrator of a correctional facility, either personally or through a representative, shall:

a. Institute isolation precautions as necessary for a case with *Candida auris* infection or colonization to prevent transmission; and

b. If a case with *Candida auris* infection or colonization is being transferred to another correctional facility or to a health care institution, comply with R9-6-305.

3. A local health agency, in consultation with the Department, shall ensure that:

a. A case with *Candida auris* infection or colonization is isolated as necessary to prevent transmission; and

b. An isolate or a specimen, as available, from each case with *Candida auris* infection or colonization is submitted to the Arizona State Laboratory.

**B.** Outbreak control measures: A local health agency shall:

1. Conduct an epidemiologic investigation for each outbreak or suspected outbreak of *Candida auris*; and

2. For each outbreak or suspected outbreak of *Candida auris*, submit to the Department the information required under R9-6-206(E).

**R9-6-317. Carbapenem-resistant *Acinetobacter baumannii***

**A.** Case control measures:

1. A diagnosing health care provider or an administrator of a health care institution, either personally or through a representative, shall:

a. Institute isolation precautions as necessary for a case with carbapenem-resistant *Acinetobacter baumannii* infection or colonization to prevent transmission; and

b. If a case with carbapenem-resistant *Acinetobacter baumannii* infection or colonization is being transferred to another health care provider or health care institution or to a correctional facility, comply with R9-6-305.

2. An administrator of a correctional facility, either personally or through a representative, shall:

a. Institute isolation precautions as necessary for a case with carbapenem-resistant *Acinetobacter baumannii* infection or colonization to prevent transmission; and

b. If a case with carbapenem-resistant *Acinetobacter baumannii* infection or

colonization is being transferred to another correctional facility or to a health care institution, comply with R9-6-305.

3. A local health agency, in consultation with the Department, shall ensure that
   a. A case with carbapenem-resistant *Acinetobacter baumannii* infection or colonization is isolated as necessary to prevent transmission; and
   b. An isolate or a specimen, as available, from each case with carbapenem-resistant *Acinetobacter baumannii* infection or colonization is submitted to the Arizona State Laboratory.

**B.** Outbreak control measures: A local health agency shall:

1. Conduct an epidemiologic investigation for each outbreak or suspected outbreak of carbapenem-resistant *Acinetobacter baumannii*; and
2. For each outbreak or suspected outbreak of carbapenem-resistant *Acinetobacter baumannii*, submit to the Department the information required under R9-6-206(E).

~~**R9-6-315.**~~**R9-6-318. Carbapenem-resistant ~~Enterobacteriaceae~~ Enterobacterales**

**A.** Case control measures:

1. A diagnosing health care provider or an administrator of a health care institution, either personally or through a representative, shall:
   a. Institute isolation precautions as necessary for a case with carbapenem-resistant ~~enterobacteriaceae~~ enterobacterales infection or colonization ~~case or carrier~~ to prevent transmission; and
   b. If a case with carbapenem-resistant ~~enterobacteriaceae~~ enterobacterales infection or colonization ~~case or carrier~~ is being transferred to another health care provider or health care institution or to a correctional facility, comply with R9-6-305.
2. An administrator of a correctional facility, either personally or through a representative, shall:
   a. Institute isolation precautions as necessary for a case with carbapenem-resistant ~~enterobacteriaceae~~ enterobacterales infection or colonization ~~case or carrier~~ to prevent transmission; and
   b. If a case with carbapenem-resistant ~~enterobacteriaceae~~ enterobacterales infection or colonization ~~case or carrier~~ is being transferred to another correctional facility or to a health care institution, comply with R9-6-305.
3. A local health agency, in consultation with the Department, shall ensure that:
   a. ~~Ensure that a~~ A case ~~or carrier of~~ with carbapenem-resistant ~~enterobacteriaceae~~ enterobacterales infection or colonization is isolated as necessary to prevent transmission; and

b. ~~Upon request, ensure that an~~ An isolate or a specimen, as available, from each case ~~or carrier of~~ with carbapenem-resistant ~~enterobacteriaceae~~ enterobacterales infection or colonization is submitted to the Arizona State Laboratory.

**B.** Outbreak control measures: A local health agency shall:

1. Conduct an epidemiologic investigation for each outbreak or suspected outbreak of carbapenem-resistant ~~enterobacteriaceae~~ enterobacterales; and
2. For each outbreak or suspected outbreak of carbapenem-resistant ~~enterobacteriaceae~~ enterobacterales, submit to the Department the information required under R9-6-206(E).

**R9-6-319. Carbapenem-resistant *Pseudomonas aeruginosa***

**A.** Case control measures:

1. A diagnosing health care provider or an administrator of a health care institution, either personally or through a representative, shall:
   a. Institute isolation precautions as necessary for a case with carbapenem-resistant *Pseudomonas aeruginosa* infection or colonization to prevent transmission; and
   b. If a case with carbapenem-resistant *Pseudomonas aeruginosa* infection or colonization is being transferred to another health care provider or health care institution or to a correctional facility, comply with R9-6-305.
2. An administrator of a correctional facility, either personally or through a representative, shall:
   a. Institute isolation precautions as necessary for a case with carbapenem-resistant *Pseudomonas aeruginosa* infection or colonization to prevent transmission; and
   b. If a case with carbapenem-resistant *Pseudomonas aeruginosa* infection or colonization is being transferred to another correctional facility or to a health care institution, comply with R9-6-305.
3. A local health agency, in consultation with the Department, shall ensure that:
   a. A case with carbapenem-resistant *Pseudomonas aeruginosa* infection or colonization is isolated as necessary to prevent transmission; and
   b. An isolate or a specimen, as available, from each case with carbapenem-resistant *Pseudomonas aeruginosa* infection or colonization is submitted to the Arizona State Laboratory.

**B.** Outbreak control measures: A local health agency shall:

1. Conduct an epidemiologic investigation for each outbreak or suspected outbreak of carbapenem-resistant *Pseudomonas aeruginosa*; and
2. For each outbreak or suspected outbreak of carbapenem-resistant *Pseudomonas aeruginosa*, submit to the Department the information required under R9-6-206(E).

**~~R9-6-316.~~R9-6-320. Chagas Infection and Related Disease (*American Trypanosomiasis*)**

No change

1. No change
2. No change
    a. No change
    b. No change
        i. No change
        ii. No change
        iii. No change

**~~R9-6-317.~~R9-6-321. Chancroid (*Haemophilus ducreyi*)**

**A.** No change

1. No change
2. No change
3. No change

**B.** No change

**~~R9-6-318.~~R9-6-322. Chikungunya**

**A.** No change

1. No change
2. No change
3. No change
4. No change
    a. No change
    b. No change

**B.** No change

**~~R9-6-319.~~R9-6-323. *Chlamydia trachomatis* Infection**

**A.** No change

**B.** No change

**~~R9-6-320.~~R9-6-324. Cholera**

**A.** No change

1. No change
2. No change
    a. No change
    b. No change
3. No change

4. No change

**B.** No change

**~~R9-6-321.~~R9-6-325.** ***~~Clostridium~~ Clostridioides difficile***

Case control measures:

1. A diagnosing health care provider or an administrator of a health care institution transferring a known ~~*Clostridium*~~ *Clostridioides difficile* case with active infection and diarrhea to another health care provider or health care institution or to a correctional facility shall, either person-ally or through a representative, ensure that the receiving health care provider, health care institution, or correctional facility is in-formed that the patient is a known ~~*Clostridium*~~ *Clostridioides difficile* case.
2. If a known ~~*Clostridium*~~ *Clostridioides difficile* case with active infection and diarrhea is being transferred from a correctional facility to another correctional facility or to a health care institution, an administrator of the correctional facility, either personally or through a representative, shall ensure that the receiving correctional facility or health care institution is informed that the individual is a known ~~*Clostridium*~~ *Clostridioides difficile* case.

**~~R9-6-322.~~R9-6-326. Coccidioidomycosis (Valley Fever)**

No change:

1. No change
2. No change

**~~R9-6-323.~~R9-6-327. Colorado Tick Fever**

No change

1. No change
2. No change

**~~R9-6-324.~~R9-6-328. Conjunctivitis: Acute**

**A.** No change

**B.** No change

1. No change
2. No change

**~~R9-6-325.~~R9-6-329. Creutzfeldt-Jakob Disease**

No change

1. No change
2. No change

**R9-6-330. Cronobacter Infection in an Infant**

**A.** Case control measures: A local health agency shall:

1. Upon receiving a report under R9-6-202 of a Cronobacter infection case or suspect case in an infant, notify the Department within 24 hours after receiving the report and provide to the Department the information contained in the report;
2. Conduct an epidemiologic investigation of each reported Cronobacter infection case or suspect case in an infant; and
3. For each Cronobacter case in an infant, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

**B.** Outbreak control measures: A local health agency shall:

1. Conduct an epidemiologic investigation of each reported Cronobacter outbreak in infants; and
2. For each Cronobacter outbreak in infants, submit to the Department the information required under R9-6-206(E).

**~~R9-6-326.~~R9-6-331. Cryptosporidiosis**

**A.** No change

1. No change
    a. No change
    b. No change
2. No change
3. No change

**B.** No change

**~~R9-6-327.~~R9-6-332. *Cyclospora* Infection**

No change

1. No change
2. No change

**~~R9-6-328.~~R9-6-333. Cysticercosis**

No change

1. No change
2. No change

**~~R9-6-329.~~R9-6-334. Dengue**

**A.** No change

1. No change
2. No change
3. No change
4. No change

a. No change

b. No change

**B.** No change

**~~R9-6-330.~~R9-6-335. Diarrhea, Nausea, or Vomiting**

**A.** No change

1. No change
2. No change
3. No change
    a. No change
        i. No change
        ii. No change
    b. No change

**B.** No change

**~~R9-6-331.~~R9-6-336. Diphtheria**

**A.** No change

1. No change
    a. No change
    b. No change
2. No change
    a. No change
    b. No change
    c. No change

**B.** No change

1. No change
2. No change
3. No change
4. No change

**~~R9-6-332.~~R9-6-337. Ehrlichiosis**

No change

1. No change
2. No change

**~~R9-6-333.~~R9-6-338. Emerging or Exotic Disease**

**A.** Case control measures: A local health agency shall:

1. Upon receiving a report under R9-6-202 or R9-6-203 of an emerging or exotic disease case or

suspect case, notify the Department within 24 hours after receiving the report and provide to the Department the information contained in the report;

2. No change
3. No change
4. No change

**B.** No change

**~~R9-6-334.~~R9-6-339. Encephalitis, Viral or Parasitic**

No change:

1. No change
    a. No change
    b. No change
2. No change
3. No change

**~~R9-6-335.~~R9-6-340. *Escherichia coli*, Shiga Toxin-producing**

A. Case control measures: A local health agency shall:

1. Upon receiving a report ~~under R9-6-202 or R9-6-203~~ of a Shiga toxin-producing *Escherichia coli* case or suspect case, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
2. No change
    a. No change
        i. No change
        ii. No change
        iii. No change
    b. No change
3. No change
4. No change

**B.** No change

1. No change
2. No change
    a. No change
    b. No change

**~~R9-6-336.~~R9-6-341. Giardiasis**

No change

1. No change

a. No change

i. No change

ii. No change

b. No change

2. No change

3. No change

**~~R9-6-337.~~R9-6-342. Glanders**

Case control measures: A local health agency shall:

1. No change
2. No change
3. No change
4. ~~Ensure~~ In consultation with the Department, ensure that an isolate or a specimen, as available, from each glanders case or suspect case is submitted to the Arizona State Laboratory.

**~~R9-6-338.~~R9-6-343. Gonorrhea**

**A.** No change

1. No change
    a. No change
    b. No change
2. No change

**B.** No change

**~~R9-6-339.~~R9-6-344. *Haemophilus influenzae*: Invasive Disease**

**A.** Case control measures:

1. No change
2. A local health agency shall:
    a. Upon receiving a report ~~under R9-6-202 or R9-6-203~~ of a *Haemophilus influenzae* invasive disease case or suspect case, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
    b. No change
    c. No change

**B.** No change

**~~R9-6-340.~~R9-6-345. Hansen's Disease (Leprosy)**

**A.** No change

1. No change

2. No change

**B.** No change

**~~R9-6-341.~~R9-6-346. Hantavirus Infection**

**A.** No change

1. No change
2. No change
3. No change
4. No change

**B.** No change

**~~R9-6-342.~~R9-6-347. Hemolytic Uremic Syndrome**

**A.** No change

1. No change
2. No change
3. No change

**B.** No change

**~~R9-6-343.~~R9-6-348. Hepatitis A**

**A.** Case control measures: A local health agency shall:

1. Upon receiving a report ~~under R9-6-202 or R9-6-203~~ of a hepatitis A case or suspect case, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
2. No change
3. No change
4. No change

**B.** No change

1. No change
2. No change
3. No change

**~~R9-6-344.~~R9-6-349. Hepatitis B and Hepatitis D**

**A.** No change

1. No change
    a. No change
    b. No change
    c. No change
2. No change

**B.** No change

1. No change
2. No change

**~~R9-6-345.~~R9-6-350. Hepatitis C**

No change

1. No change
2. No change
3. No change
4. No change

**~~R9-6-346.~~R9-6-351. Hepatitis E**

No change

1. No change
2. No change
3. No change

**~~R9-6-347.~~R9-6-352. HIV Infection and Related Disease**

**A.** Case control measures:

1. No change
    a. No change
    b. No change
2. No change
3. The Department and a local health agency shall offer ~~anonymous~~ HIV-testing to an individual ~~as specified in R9-6-1005~~.

**B.** No change

**C.** No change

**~~R9-6-348.~~R9-6-353. Influenza-Associated Mortality in a Child**

No change

1. No change
2. No change
3. No change

**~~R9-6-349.~~R9-6-354. Legionellosis (Legionnaires' Disease)**

**A.** Case control measures: A local health agency shall:

1. Upon receiving a report ~~under R9-6-202~~ of a legionellosis case or suspect case, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;

2. No change

3. No change

**B.** No change

**~~R9-6-350.~~R9-6-355. Leptospirosis**

No change

1. No change
2. No change
3. No change

**~~R9-6-351.~~R9-6-356. Listeriosis**

Case control measures: A local health agency shall:

1. No change
2. No change
3. No change
4. ~~Ensure~~ In consultation with the Department, ensure that an isolate or a specimen, as available, from each listeriosis case is submitted to the Arizona State Laboratory.

**~~R9-6-352.~~R9-6-357. Lyme Disease**

No change

1. No change
2. No change

**~~R9-6-353.~~R9-6-358. Lymphocytic Choriomeningitis**

No change

1. No change
2. No change
3. No change

**~~R9-6-354.~~R9-6-359. Malaria**

**A.** No change

1. No change
2. No change

**B.** No change

**~~R9-6-355.~~R9-6-360. Measles (Rubeola)**

**A.** Case control measures:

1. No change
    a. No change
    b. No change

2. No change
3. No change
    a. No change
    b. No change
4. A local health agency shall:
    a. No change
    b. No change
    c. No change
    d. ~~Ensure~~ In consultation with the Department, ensure that one or more specimens from each measles case or suspect case, as required by the Department, are submitted to the Arizona State Laboratory.
5. No change

**B.** No change

1. No change
    a. No change
    b. No change
2. No change
    a. No change
    b. No change
3. No change
    a. No change
    b. No change
    c. No change

**~~R9-6-356.~~R9-6-361. Melioidosis**

Case control measures: A local health agency shall:

1. No change
2. No change
3. No change
4. ~~Ensure~~ In consultation with the Department, ensure that an isolate or a specimen, as available, from each melioidosis case or suspect case is submitted to the Arizona State Laboratory.

**~~R9-6-357.~~R9-6-362. Meningococcal Invasive Disease**

**A.** Case control measures:

1. No change

2. A local health agency shall:
    a. No change
    b. No change
    c. No change
    d. ~~Ensure~~ In consultation with the Department, ensure that an isolate or a specimen, as available, from each meningococcal invasive disease case is submitted to the Arizona State Laboratory.

**B.** No change

**~~R9-6-358.~~R9-6-363. Methicillin-resistant *Staphylococcus aureus* (MRSA)**

**A.** No change
1. No change
2. No change

**B.** No change
1. No change
    a. No change
    b. No change
2. No change

**R9-6-364. Middle East Respiratory Syndrome (MERS)**

**A.** Case control measures:
1. In consultation with the Department or the applicable local health agency, a diagnosing health care provider or an administrator of a health care institution, either personally or through a representative, shall isolate and institute both airborne precautions and contact precautions for a Middle East Respiratory Syndrome (MERS) case, until evaluated and determined to be noninfectious by a physician, physician assistant, or registered nurse practitioner or otherwise advised by the Department or the applicable local health agency.
2. A local health agency shall:
    a. Upon receiving a report under R9-6-202 of a MERS case or suspect case, notify the Department within 24 hours after receiving the report and provide to the Department the information contained in the report;
    b. In consultation with the Department, ensure that isolation and both airborne precautions and contact precautions have been instituted for a hospitalized MERS case or suspect case to prevent transmission, unless otherwise advised by the Department;
    c. Conduct an epidemiologic investigation of each reported MERS case or suspect case,

unless otherwise advised by the Department; and

d. For each MERS case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

**B.** Contact control measures: A local health agency, in consultation with the Department, shall determine which MERS contacts will be quarantined or excluded, according to R9-6-303, to prevent transmission.

**R9-6-365. Mpox**

**A.** Case control measures: A local health agency shall:

1. Conduct an epidemiologic investigation of each reported mpox case or suspect case;
2. As part of the epidemiologic investigation, provide education to a mpox case, including:
   a. A description of the disease or syndrome caused by the Monkeypox virus, the symptoms of mpox, treatment options, and how mpox is passed to others; and
   b. Risk reduction strategies for preventing re-infection;
3. For each mpox case, submit to the Department, as specified in Table 2.4, the information required under R9-206(D); and
4. For each mpox case seeking care at the local health agency, either provide care to the mpox case or refer the mpox case to another facility for treatment or services.

**B.** Contact control measures: A local health agency shall:

1. Notify a contact named by a mpox case of the exposure;
2. Provide education about the mpox to the contact; and
3. Provide recommendations for prevention of mpox to the contact.

**C.** Outbreak control measures: A local health agency shall:

1. Conduct an epidemiologic investigation of each reported outbreak of mpox; and
2. For each outbreak of mpox, submit to the Department the information required under R9-6-206(E).

~~**R9-6-359.**~~**R9-6-366. Mumps**

**A.** Case control measures:

1. No change
   a. No change
   b. No change
2. No change
3. No change
   a. No change
   b. No change

4. A local health agency shall:
    a. No change
    b. No change
    c. No change
    d. ~~Ensure~~ In consultation with the Department, ensure that one or more specimens from each mumps case or suspect case, as required by the Department, are submitted to the Arizona State Laboratory.
5. No change

**B.** No change

1. No change
    a. No change
    b. No change
2. No change
    a. No change
    b. No change
3. No change
    a. No change
    b. No change

**R9-6-367. *Mycoplasma genitalium* Infection**

**A** Case control measures: A local health agency shall:

1. Offer or arrange for treatment for each *Mycoplasma genitalium* infection case that seeks treatment from the local health agency;
2. Provide education to the *Mycoplasma genitalium* infection case about *Mycoplasma genitalium* that includes a description of *Mycoplasma genitalium* infection, symptoms, treatment options, measures to prevent transmission and re-infection, and the confidential nature of test results and services; and
3. Inform the *Mycoplasma genitalium* infection case about the importance of notifying sexual contacts and the options for notification.

**B.** Contact control measures: A local health agency shall:

1. Offer or arrange for treatment for any contact of a *Mycoplasma genitalium* infection case that seeks care at the local health agency; and
2. Provide education to a contact of a *Mycoplasma genitalium* infection case that includes a description of *Mycoplasma genitalium* infection, symptoms, treatment options, measures to prevent transmission and re-infection, and the confidential nature of test results and

services.

**~~R9-6-360.~~R9-6-368. Norovirus**

**A.** No change

1. No change
2. No change
3. No change
    a. No change
    b. No change

**B.** No change

**~~R9-6-361.~~R9-6-369. Novel Coronavirus ~~(e.g., SARS or MERS)~~**

**A.** Case control measures:

1. In consultation with the Department or the applicable local health agency, a diagnosing health care provider or an administrator of a health care institution, either personally or through a representative, shall isolate and institute both airborne precautions and contact precautions for a novel coronavirus case or suspect case, ~~including a case or suspect case of severe acute respiratory syndrome or Middle East respiratory syndrome,~~ until evaluated and determined to be noninfectious by a physician, physician assistant, or registered nurse practitioner or otherwise advised by the Department or the applicable local health agency.
2. A local health agency shall:
    a. No change
    b. In consultation with the Department, ensure that isolation and both airborne precautions and contact precautions have been instituted for a hospitalized novel coronavirus case or suspect case to prevent transmission, unless otherwise advised by the Department;
    c. No change
    d. No change

**B.** No change

**R9-6-370. Novel Influenza Virus**

**A.** Case control measures:

1. In consultation with the Department or the applicable local health agency, a diagnosing health care provider or an administrator of a health care institution, either personally or through a representative, shall isolate and institute both airborne precautions and contact precautions for a novel influenza virus case or suspect case, until evaluated and

determined to be noninfectious by a physician, physician assistant, or registered nurse practitioner or otherwise advised by the Department or the applicable local health agency.

2. A local health agency shall:
    a. Upon receiving a report under R9-6-202 of a novel influenza virus case or suspect case, notify the Department within 24 hours after receiving the report and provide to the Department the information contained in the report;
    b. In consultation with the Department, ensure that isolation and both airborne precautions and contact precautions have been instituted for a hospitalized novel influenza virus case or suspect case to prevent transmission, unless otherwise advised by the Department;
    c. Conduct an epidemiologic investigation of each reported novel influenza virus case or suspect case, unless otherwise advised by the Department; and
    d. For each novel influenza virus case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

**B.** Contact control measures: A local health agency, in consultation with the Department, shall determine which novel influenza virus contacts will be quarantined or excluded, according to R9-6-303, to prevent transmission.

**~~R9-6-362.~~R9-6-371. Pediculosis (Lice Infestation)**

**A.** No change
1. No change
2. No change

**B.** No change

**~~R9-6-363.~~R9-6-372. Pertussis (Whooping Cough)**

**A.** No change
1. No change
    a. No change
    b. No change
2. No change
    a. No change
    b. No change
3. No change
4. No change
    a. No change

b. No change

c. No change

5. No change

**B.** No change

1. No change

a. No change

b. No change

2. No change

a. No change

b. No change

**~~R9-6-364.~~R9-6-373. Plague**

**A.** Case control measures:

1. No change
2. No change
3. A local health agency shall:

a. No change

b. No change

c. No change

d. ~~Ensure~~ In consultation with the Department, ensure that an isolate or a specimen, as available, from each plague case or suspect case is submitted to the Arizona State Laboratory.

**B.** No change

**~~R9-6-365.~~R9-6-374. Poliomyelitis (Paralytic or Non-paralytic)**

Case control measures: A local health agency shall:

1. No change
2. No change
3. For each poliomyelitis case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D); and
4. ~~Ensure~~ In consultation with the Department, ensure that one or more specimens from each poliomyelitis case or suspect case, as required by the Department, are submitted to the Arizona State Laboratory.

**~~R9-6-366.~~R9-6-375. Psittacosis (Ornithosis)**

**A.** No change

1. No change
2. No change

**B.** No change

1. No change
    a. No change
    b. No change
2. No change
    a. No change
    b. No change
    c. No change

**~~R9-6-367.~~R9-6-376. Q Fever**

No change

1. No change
2. No change
3. No change

**~~R9-6-368.~~R9-6-377. Rabies in a Human**

**A.** Case control measures: A local health agency shall:

1. No change
2. No change
3. No change
4. ~~Ensure~~ In consultation with the Department, ensure that a specimen from each human rabies case or suspect case, as required by the Department, is submitted to the Arizona State Laboratory.

**B.** No change

**~~R9-6-369.~~R9-6-378. Relapsing Fever (Borreliosis)**

No change

1. No change
2. No change
3. No change

**~~R9-6-370.~~R9-6-379. Respiratory Disease in a Health Care Institution or Correctional Facility**

No change

1. No change
    a. No change
    b. No change

2. No change

**~~R9-6-371.~~R9-6-380. Rubella (German Measles)**

**A.** Case control measures:

1. No change
    a. No change
    b. No change
2. No change
3. No change
    a. No change
    b. No change
4. A local health agency shall:
    a. No change
    b. No change
    c. No change
    d. ~~Ensure~~ In consultation with the Department, ensure that one or more specimens from each rubella case or suspect case, as required by the Department, are submitted to the Arizona State Laboratory.
5. No change

**B.** No change

1. No change
    a. No change
    b. No change
2. No change
    a. No change
    b. No change
3. No change
    a. No change
    b. No change

**~~R9-6-372.~~R9-6-381. Rubella Syndrome, Congenital**

**A.** Case control measures:

1. No change
    a. No change
    b. No change
2. A local health agency shall:

a. No change

b. No change

c. No change

d. ~~Ensure~~ In consultation with the Department, ensure that one or more specimens from each congenital rubella syndrome case or suspect case, as required by the Department, are submitted to the Arizona State Laboratory.

**B.** No change

**~~R9-6-373.~~R9-6-382. Salmonellosis**

**A.** Case control measures: A local health agency shall:

1. Upon receiving a report ~~under R9-6-202 or R9-6-203~~ of a salmonellosis case or suspect case, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
2. No change
    a. No change
        i. No change
        ii. No change
        iii. No change
    b. No change
3. No change
4. No change

**B.** No change

1. No change
2. No change
    a. No change
    b. No change

**R9-6-383. Severe Acute Respiratory Syndrome (SARS)**

**A.** Case control measures:

1. In consultation with the Department or the applicable local health agency, a diagnosing health care provider or an administrator of a health care institution, either personally or through a representative, shall isolate and institute both airborne precautions and contact precautions for a Severe Acute Respiratory Syndrome (SARS) case, until evaluated and determined to be noninfectious by a physician, physician assistant, or registered nurse practitioner or otherwise advised by the Department or the applicable local health agency.
2. A local health agency shall:

a. Upon receiving a report under R9-6-202 of a SARS case or suspect case, notify the Department within 24 hours after receiving the report and provide to the Department the information contained in the report;

b. In consultation with the Department, ensure that isolation and both airborne precautions and contact precautions have been instituted for a hospitalized SARS case or suspect case to prevent transmission, unless otherwise advised by the Department;

c. Conduct an epidemiologic investigation of each reported SARS case or suspect case, unless otherwise advised by the Department; and

d. For each SARS case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

**B.** Contact control measures: A local health agency, in consultation with the Department, shall determine which SARS contacts will be quarantined or excluded, according to R9-6-303, to prevent transmission.

~~**R9-6-374.**~~**R9-6-384.** **Scabies**

**A.** Case control measures:

1. An administrator of a school or child care establishment, either personally or through a representative, ~~shall~~ may exclude a scabies case from the school or child care establishment until treatment for scabies is completed.
2. No change
3. No change
4. No change

**B.** No change

~~**C.** Outbreak control measures: A local health agency shall:~~

~~1. Provide health education regarding prevention, control, and treatment of scabies to individuals affected by a scabies outbreak;~~

~~2. When a scabies outbreak occurs in a health care institution, notify the licensing agency of the outbreak; and~~

~~3. For each scabies outbreak, submit to the Department the information required under R9-6-202(D).~~

~~**R9-6-375.**~~**R9-6-385.** **Shigellosis**

Case control measures: A local health agency shall:

1. Upon receiving a report ~~under R9-6-202 or R9-6-203~~ of a shigellosis case or suspect case, notify the Department within one working day after receiving the report and provide to

the Department the information contained in the report;

2. No change
    a. No change
        i. No change
        ii. No change
        iii. No change
    b. No change
3. No change
4. No change

**~~R9-6-376.~~R9-6-386. Smallpox**

**A.** Case control measures:

1. No change
2. A local health agency shall:
    a. No change
    b. No change
        i. No change
        ii. No change
    c. No change
    d. ~~Ensure~~ In consultation with the Department, ensure that a specimen from each smallpox case or suspect case, as required by the Department, is submitted to the Arizona State Laboratory.

**B.** No change

1. No change
2. No change

**~~R9-6-377.~~R9-6-387. Spotted Fever Rickettsiosis (e.g., Rocky Mountain Spotted Fever)**

**A.** No change

1. No change
2. No change
3. No change
4. No change

**B.** No change.

**~~R9-6-378.~~R9-6-388. Streptococcal Group A Infection**

**A.** No change

**B.** No change

1. No change
2. No change
3. No change

**~~R9-6-379.~~R9-6-389. Streptococcal Group B Invasive Infection in an Infant Younger Than 90 Days of Age**

No change

1. No change
2. No change

**~~R9-6-380.~~R9-6-390. *Streptococcus pneumoniae* Invasive Infection**

No change

1. No change
2. No change

**~~R9-6-381.~~R9-6-391. Syphilis**

**A.** Case control measures:

1. A syphilis case shall obtain serologic testing for syphilis three months, six months, 12 months, and ~~one year~~ 24 months after initiating treatment, unless more frequent or longer testing is recommended by a local health agency.
2. A health care provider ~~for a pregnant syphilis case~~ shall order serologic testing for syphilis for a pregnant individual at 28 to 32 weeks gestation and at delivery.
3. No change
    a. No change
    b. No change
    c. No change
    d. No change
4. No change

**B.** No change

**C.** No change

1. No change
2. No change

**~~R9-6-382.~~R9-6-392. Taeniasis**

No change

1. No change
2. No change
3. No change

**~~R9-6-383.~~R9-6-393. Tetanus**

No change

1. No change
2. No change

**~~R9-6-384.~~R9-6-394. Toxic Shock Syndrome**

No change

1. No change
2. No change.

**~~R9-6-385.~~R9-6-395. Trichinosis**

No change

1. No change
2. No change
3. No change

**~~R9-6-386.~~R9-6-396. Tuberculosis**

**A.** Case control measures:

1. ~~A~~ Except as provided in subsection (A)(2), a diagnosing or treating health care provider or an administrator of a health care institution, either personally or through a representative, shall isolate and institute airborne precautions for:
    a. An individual with infectious active tuberculosis within the diagnosing or treating health care provider's or administrator's health care institution until:
        i. No change
        ii. No change
        iii. No change
    b. A suspect case of infectious active tuberculosis within the diagnosing or treating health care provider's or administrator's health care institution until:
        i. No change
        ii. No change
    c. A case or suspect case of multi-drug resistant active tuberculosis within the diagnosing or treating health care provider's or administrator's health care institution until a tuberculosis control officer has approved the release of the case or suspect case.
2. A tuberculosis control officer may approve the release of a case or suspect case even if the release criteria in subsection (A)(1)(a) or (b), as applicable, are not satisfied.

~~2.~~3. No change

~~3.~~4. A local health agency shall:

a. No change

b. Exclude an individual with infectious active tuberculosis or a suspect case from working, unless the individual's work setting has been approved by a tuberculosis control officer, until the individual with infectious active tuberculosis or suspect case is released from airborne precautions ~~according to the applicable criteria in subsection (A)(1)~~;

c. No change

d. No change

e. ~~Ensure~~ In consultation with the Department, ensure that an isolate or a specimen, as available, from each tuberculosis case is submitted to the Arizona State Laboratory; and

f. No change

**B.** No change

1. No change
2. No change

**C.** No change

**~~R9-6-387.~~R9-6-397. Tularemia**

Case control measures:

1. No change
2. A local health agency shall:
   a. No change
   b. No change
   c. No change
   d. ~~Ensure~~ In consultation with the Department, ensure that an isolate or a specimen, as available, from each tularemia case or suspect case is submitted to the Arizona State Laboratory.

**~~R9-6-388.~~R9-6-398. Typhoid Fever**

**A.** No change

1. No change
2. No change
3. No change
4. No change
   a. No change

b. No change

5. No change
6. No change
7. No change

**B.** No change

**~~R9-6-389.~~R9-6-399. Typhus Fever**

No change

1. No change
2. No change
3. No change

**~~R9-6-390.~~R9-6-3100. Vaccinia-related Adverse Event**

No change

1. No change
2. No change
3. No change

**~~R9-6-391.~~R9-6-3101. Vancomycin-Resistant or Vancomycin-Intermediate *Staphylococcus aureus***

Case control measures:

1. No change
2. No change
3. A local health agency, in consultation with the Department, shall:
    a. Upon receiving a report ~~under R9-6-202~~ of a case or suspect case of vancomycin-resistant or vancomycin-intermediate *Staphylococcus aureus*, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
    b. No change
    c. No change
    d. No change
    e. ~~Ensure~~ In consultation with the Department, ensure that an isolate or a specimen, as available, from each case of vancomycin-resistant or vancomycin-intermediate *Staphylococcus aureus* is submitted to the Arizona State Laboratory.

**~~R9-6-392.~~R9-6-3102. Varicella (Chickenpox)**

**A.** No change

1. No change
2. No change

3. No change
    a. No change
    b. No change

**B.** No change

1. No change
    a. No change
    b. No change
2. No change
    a. No change
    b. No change

**~~R9-6-393.~~R9-6-3103. *Vibrio* Infection**

Case control measures: A local health agency shall:

1. Upon receiving a report ~~under R9-6-202~~ of a *Vibrio* infection case or suspect case, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
2. No change
    a. No change
        i. No change
        ii. No change
    b. No change
3. No change
4. No change

**~~R9-6-394.~~R9-6-3104. Viral Hemorrhagic Fever**

**A.** No change

1. No change
2. A local health agency shall:
    a. No change
    b. No change
    c. No change
    d. ~~Ensure~~ In consultation with the Department, ensure that one or more specimens from each viral hemorrhagic fever case or suspect case are submitted to the Arizona State Laboratory.

**B.** No change

**~~R9-6-395.~~R9-6-3105. West Nile Virus Infection**

**A.** No change

1. No change
2. No change
3. No change
    a. No change
    b. No change

**B.** No change

**~~R9-6-396.~~R9-6-3106. Yellow Fever**

**A.** Case control measures: A local health agency shall:

1. No change
2. No change
3. No change
4. No change
    a. No change
    b. No change
5. ~~Ensure~~ In consultation with the Department, ensure that an isolate or a specimen, as available, from each yellow fever case or suspect case is submitted to the Arizona State Laboratory.

**B.** No change

**~~R9-6-397.~~R9-6-3107. Yersiniosis (Enteropathogenic Yersinia)**

Case control measures: A local health agency shall:

1. Upon receiving a report ~~under R9-6-202~~ of a yersiniosis case or suspect case, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
2. No change
    a. No change
        i. No change
        ii. No change
        iii. No change
    b. No change
3. No change
4. No change
5. ~~Ensure~~ In consultation with the Department, ensure that an isolate or a specimen, as available, from each yersiniosis case is submitted to the Arizona State Laboratory.

**~~R9-6-398.~~R9-6-3108. Zika Virus Infection**

**A.** Case control measures: A local health agency shall:

1. No change
2. No change
3. No change
4. ~~Ensure~~ In consultation with the Department, ensure that one or more specimens from each Zika virus infection case or suspect case, as required by the Department, are submitted to the Arizona State Laboratory; and
5. No change
    a. No change
    b. No change
    c. No change

**B.** No change

## ARTICLE 10. HIV-RELATED TESTING AND NOTIFICATION

### R9-6-1002. Local Health Agency Requirements

For each HIV-infected individual or suspect case, a local health agency shall comply with the requirements in ~~R9-6-347~~ R9-6-352.

### R9-6-1005. ~~Anonymous HIV Testing~~ Repealed

~~**A.** A local health agency and the Department shall offer anonymous HIV testing to individuals.~~

~~**B.** If an individual requests anonymous HIV testing, the Department or a local health agency shall:~~

~~1. Provide to the individual requesting anonymous HIV testing:~~

~~a. Health education about HIV;~~

~~b. The meaning of HIV test results, and~~

~~c. The risk factors for becoming infected with HIV or transmitting HIV to other individuals;~~

~~2. Collect a specimen of blood from the individual;~~

~~3. Record the following information in a Department-provided format:~~

~~a. The individual's date of birth;~~

~~b. The individual's race and ethnicity;~~

~~c. The individual's gender;~~

~~d. The date and time the blood specimen was collected;~~

~~e. The type of screening test;~~

~~f. Information about the individual's risk factors for becoming infected with or transmitting HIV; and~~

~~g. The name, address, and telephone number of the person collecting the blood specimen;~~

~~4. Before the individual leaves the building occupied by the Department or local health agency:~~

~~a. Test the individual's specimen of blood using the screening test for HIV specified in subsection (B)(3);~~

~~b. Provide the results of the screening test to the individual;~~

~~c. Enter the test results in the record established according to subsection (B)(3); and~~

~~d. If the test results from the screening test on the specimen of blood indicate that the individual may be HIV-infected:~~

~~i. Assist the individual to connect with persons that may have additional resources available for the individual; and~~

~~ii. Provide confirmatory testing or submit the specimen of blood to the Arizona~~

~~State Laboratory for confirmatory testing by:~~

~~(1) Assigning to the blood specimen an identification number corresponding to the record established according to subsection (B)(3);~~

~~(2) Giving the individual requesting anonymous HIV testing the identification number assigned to the blood specimen and information about how to obtain the results of the confirmatory test; and~~

~~(3) Sending the blood specimen and the record specified in subsection (B)(3) to the Arizona State Laboratory for confirmatory testing; and~~

~~5. If anonymous HIV testing is provided by a local health agency, submit the record specified in subsection (B)(3) to the Department.~~

## ARTICLE 11. STI-RELATED TESTING AND NOTIFICATION

### R9-6-1102. Health Care Provider Requirements

When a laboratory report for a test ordered by a health care provider for a subject indicates that the subject is infected with an STI, the ordering health care provider or the ordering health care provider's designee shall:

1. No change
2. No change
    a. No change
    b. No change
    c. No change
    d. No change
    e. No change
    f. No change
    g. No change
3. No change
4. If the subject is pregnant and is a syphilis case, inform the subject of the requirement that the subject obtain serologic testing for syphilis according to ~~R9-6-381~~ R9-6-391.

### R9-6-1103. Local Health Agency Requirements

**A.** For each STI case, a local health agency shall:

1. Comply with the requirements in:
    a. ~~R9-6-317(A)(1)~~ R9-6-321(A)(1) and (2) for each chancroid case reported to the local health agency, and
    b. ~~R9-6-381(A)(3)(a)~~ R9-6-391(A)(3)(a) through (c) for each syphilis case reported to the local health agency;
2. No change
    a. No change
    b. No change
    c. No change
    d. No change
3. No change
    a. No change
    b. No change
    c. No change

d. No change

4. No change
    a. No change
    b. No change

**B.** No change

1. No change
    a. No change
    b. No change
        i. No change
        ii. No change
        iii. No change
2. No change
3. No change
    a. No change
    b. No change
    c. No change
    d. No change

**C.** No change

1. No change
2. No change
    a. No change
    b. No change
    c. No change
    d. No change

ARIZONA
DEPARTMENT OF
HEALTH SERVICES

# TITLE 9. HEALTH SERVICES

## CHAPTER 6. COMMUNICABLE DISEASES AND INFESTATIONS

## ARTICLE 1. GENERAL

## ARTICLE 2. COMMUNICABLE DISEASE AND INFESTATION REPORTING

## ARTICLE 3. CONTROL MEASURES FOR COMMUNICABLE DISEASES AND INFESTATIONS

## ARTICLE 10. HIV-RELATED TESTING AND NOTIFICATION

## ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT

**February 2025**

**ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT**

**TITLE 9. HEALTH SERVICES**

**CHAPTER 6. COMMUNICABLE DISEASES AND INFESTATIONS**

**ARTICLE 1. GENERAL**

**ARTICLE 2. COMMUNICABLE DISEASE AND INFESTATION REPORTING**

**ARTICLE 3. CONTROL MEASURES FOR COMMUNICABLE DISEASES AND INFESTATIONS**

**ARTICLE 10. HIV-RELATED TESTING AND NOTIFICATION**

**1. An identification of the rulemaking**

Arizona Revised Statutes (A.R.S.) § 36-136(I)(1) requires the Arizona Department of Health Services (Department) to make rules defining and prescribing "reasonably necessary measures for detecting, reporting, preventing, and controlling communicable and preventable diseases." The Department has adopted rules to implement this statute in Arizona Administrative Code (A.A.C.) Title 9, Chapter 6. The rules specifying reporting requirements for communicable diseases are in 9 A.A.C. 6, Article 2. The rules covering control measures for communicable diseases are in 9 A.A.C. 6, Article 3. As part of a five-year-review report for 9 A.A.C. 6, Article 2, and in coordination with local health agencies, the Department identified several issues with the current rules and proposed making changes to the rules in Article 2. In addition, addressing some of the issues will require changes to existing Sections in Articles 1 and 3, and others will require the addition of new Sections in Article 3 to describe the control measures for newly added communicable diseases. In compliance with statutory changes, a Section in Article 10 also needs to be repealed. The Department is addressing these concerns in this rulemaking and believes that making these changes will improve the effectiveness of the rules and improve public health. Without the rule changes, Arizona would continue to have outdated rules that impose an undue burden on those entities required to report communicable diseases and infestations, do not address other conditions that should be reportable to protect public health, and are less effective in protecting the citizens of Arizona than they should be.

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

- The Department
- Local health agencies
- Health care providers
- Health care institutions

- Correctional facilities, including both public and private
- Schools, child care establishments, and shelters
- Clinical laboratories
- AHCCCS and other payors of medical costs
- Pharmacists and pharmacies
- Cases or suspect cases of a communicable disease
- Contacts of individuals infected with a communicable disease
- General public

**3. Cost/Benefit Analysis**

This analysis covers costs and benefits associated with the rule changes and does not describe effects imposed by any changes made by a local health agency that are not required in the rules. No new FTEs will be required due to this rulemaking. Annual cost/revenue changes are designated as minimal when more than $0 and $2,000 or less, moderate when between $2,000 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.

| Description of Affected Groups | Description of Effect | Increased Cost/ Decreased Revenue | Decreased Cost/ Increased Revenue |
|---|---|---|---|
| **A. State and Local Government Agencies** | | | |
| Department | Having rules to follow that are clearer and easier to understand | None | Significant |
| | Receiving more complete information from clinical laboratories | None | Significant |
| | Receiving information about additional communicable disease cases and suspect cases | Minimal | Significant |
| | Changing requirements for routine submission by clinical laboratories of specimens or isolates from cases and suspect cases of communicable diseases | None-to-moderate | Significant |
| | Changing reporting requirements from local health agencies and requirements for epidemiologic investigations and isolate/specimen submissions | Minimal | None |
| | Changing requirements for syphilis testing | None | Significant |
| Local health agencies | Clarifying requirements related to communicable disease reporting or control measures | None-to-minimal | Significant |
| | Removing requirements for some disease reporting and outbreak reporting | None-to-minimal | None-to-moderate |
| | Adding the reporting of some diseases, with control measures | Minimal-to-substantial | Significant |
| | Changing requirements for ensuring submission of specimens or isolates | None | None-to-moderate |
| | Changing requirements for control measures for certain diseases | None | Minimal-to-moderate |
| Public correctional facilities | Clarifying reporting requirements | None | Significant |
| | Removing and simplifying reporting requirements | None | Significant |
| | Adding reporting of some diseases and removing others | None-to-moderate | Minimal-to-moderate |
| | Adding control measures applicable to the administrator of a correctional facility for certain diseases | Minimal-to-moderate | Minimal-to-moderate |
| | Requiring notification upon transferring individuals infected with drug-resistant organisms | Minimal-to-moderate | Minimal-to-moderate |
| | Adding another method for removing a | | |

| Description of Affected Groups | Description of Effect | Increased Cost/ Decreased Revenue | Decreased Cost/ Increased Revenue |
|---|---|---|---|
| | tuberculosis case from exclusion | None | None-to-moderate |
| Public schools | Adding a requirement for reporting the last date that a case was present | Minimal | None |
| | Removing reporting of some diseases and adding another | None-to-minimal | Minimal |
| AHCCCS | Requiring notification upon transferring patients infected with drug-resistant organisms | None | None-to-substantial |
| | Adding requirements for syphilis testing to reduce the spread, as well as the incidence of congenital syphilis | None | None-to-substantial |
| **B. Privately Owned Businesses** | | | |
| Health care providers | Clarifying reporting requirements | None | Significant |
| | Removing and simplifying reporting requirements | None | Significant |
| | Changing requirements for reporting pregnancy status | None | Significant |
| | Removing requirements for reporting 35 communicable diseases | None | None-to-moderate |
| | Removing requirements to report outbreaks | None | None-to-moderate |
| | Adding requirements for reporting three new diseases | Minimal-to-moderate | Significant |
| | Requiring another serologic test for syphilis | Minimal | Significant |
| | Adding case control requirements for health care providers | Minimal-to-moderate | Significant |
| | Changing isolation criteria for health care providers | None-to-minimal | Minimal-to-moderate |
| | Adding another method for removing a tuberculosis case from exclusion | None | None-to-moderate |
| Health care institutions | Removing and simplifying reporting requirements | None | Significant |
| | Changing requirements for reporting pregnancy status | None | Significant |
| | Removing requirements for reporting 35 communicable diseases | None | Minimal-to-moderate |
| | Adding requirements for reporting three new communicable diseases | Minimal-to-moderate | Significant |
| | Adding case control requirements for communicable diseases | Minimal-to-substantial | Significant |
| | Requiring notification upon transferring | None-to-moderate | None-to-moderate |

| Description of Affected Groups | Description of Effect | Increased Cost/ Decreased Revenue | Decreased Cost/ Increased Revenue |
|---|---|---|---|
| | individuals infected with drug-resistant organisms | | |
| | Adding another method for removing a tuberculosis case from exclusion | None | Minimal-to-moderate |
| Private correctional facilities | See "Public correctional facilities" above | | |
| Schools or child care establishments | See "Public schools" above | | |
| Shelters | Adding a requirement for reporting the last date that a case was present | Minimal | None |
| | Removing reporting of some diseases and adding another | None-to-minimal | Minimal |
| Clinical laboratories | Clarifying reporting requirements | None | Significant |
| | Providing more complete information when reporting | None-to-substantial | None |
| | Changing isolate/specimen submission requirements | None-to-moderate | None-to-minimal |
| Pharmacists and pharmacies | Removing a drug triggering the reporting requirement | None | Minimal |
| Payors of medical costs | Requiring notification upon transferring patients infected with drug-resistant organisms | None | None-to-substantial |
| | Adding requirements for syphilis testing to reduce the spread, as well as the incidence of congenital syphilis | None-to-substantial | None-to-substantial |
| **C. Consumers** | | | |
| Cases or suspect cases of a communicable disease | Clarifying reporting and control requirements | None | Significant |
| | Adding the reporting of additional communicable diseases | None | Significant |
| | Requiring notification upon transferring individuals infected with drug-resistant organisms | None | Significant |
| | Adding other case control requirements for communicable diseases | None | Significant |
| | Adding a requirement for syphilis testing | None-to-minimal | Significant |
| Contacts of individuals infected with a communicable disease | Adding the reporting of additional communicable diseases | None | Significant |
| | Adding contact control measures for new communicable diseases | None | Significant |

| Description of Affected Groups | Description of Effect | Increased Cost/ Decreased Revenue | Decreased Cost/ Increased Revenue |
|---|---|---|---|
| | Adding other contact control measures in Article 3 | None-to-substantial | Significant |
| Other patients or residents in a health care institution or other prisoners or detainees in a correctional facility to which a case is transferred | Requiring notification upon transferring individuals infected with drug-resistant organisms | None | Significant |
| General public | Clarifying reporting and control requirements<br>Reducing the incidence of communicable diseases through improved reporting and control measures | None<br>None | Significant<br>Significant |

- **The Department**

The Department receives over 700,000 communicable disease reports annually from local health agencies, clinical laboratories, health care institutions, correctional facilities, schools and shelters, pharmacists, and health care providers required to report. Many of these reports may be from different sources but relate to the same individual with the same disease. Of these over 700,000 reports, almost 280,000 are considered to be for new cases of a communicable disease.

A summary of selected reportable communicable disease cases for the current year is shown at: https://www.azdhs.gov/preparedness/epidemiology-disease-control/index.php#data-stats, with selected communicable diseases for 2024, compared with 2023 and with a five-year median shown on page 2 of:
https://www.azdhs.gov/documents/preparedness/epidemiology-disease-control/disease-data-statistics-reports/data-statistics-archive/2024/yearly.pdf?v=20250113.
Data and statistics for these selected reportable communicable diseases for previous years may be accessed at:
https://www.azdhs.gov/preparedness/epidemiology-disease-control/index.php#data-stats-past-years.
Data and statistics for sexually transmitted infections can be found at:
https://www.azdhs.gov/preparedness/epidemiology-disease-control/disease-integration-services/std-control/index.php#reports.
Data for tuberculosis can be found at:
https://www.azdhs.gov/preparedness/epidemiology-disease-control/disease-integration-services/tb-co

ntrol/#tb-control-data-reports.
Data for HIV can be found at:
https://www.azdhs.gov/preparedness/bureau-of-infectious-disease-and-services/hiv-hepatitis-c-services/index.php#hiv-surveillance-incidence-data.

In this rulemaking, the Department is clarifying some requirements, including the icons being used in the Tables in Article 2, which currently do not reflect electronic reporting, and information required in a report. Some elements currently required in a report under R9-6-202 are being removed, clarified, or simplified, especially those related to elements that could be obtained during an epidemiologic investigation carried out by local health agencies or from a report from a clinical laboratory. The new rules replace a requirement for reporting the pregnancy status of all cases or suspect cases with requiring the pregnancy status only for cases/suspect cases of syphilis, hepatitis C, listeriosis, rubella, or an emerging or exotic disease. Changes are also being made to ensure that more complete information is being received from schools, child care establishments, shelters, and clinical laboratories. The names of several agents are being changed to reflect the current nomenclature standards. Due to the number of reports received by the Department, the number and variety of persons making reports, and the amount of time the Department spends following up on incomplete or inadequate reports or answering questions about the communicable disease rules, the Department believes that having rules that are clearer and easier to understand and receiving more accurate and timely information about reportable communicable diseases may provide a significant benefit to the Department. Benefits may include savings in staff time on redundant activities, allowing for increased time to analyze critical data received. This benefit extends to the correction of cross-references in Articles 10 and 11, made necessary due to the renumbering in Article 3, and the repealing of R9-6-1005 due to a statutory change, which also contribute to clearer, more understandable rules.

In the new rules, 35 communicable diseases will no longer be reported under Table 2.1 by health care providers required to report and the administrators of health care institutions and correctional facilities. These include the following, with the approximate average annual number of reported cases during the past six years from all sources in parentheses: amebiasis (39), anaplasmosis (7), arboviral infection (53), babesiosis (19), basidiobolomycosis (1), campylobacteriosis (1,425), Chagas infection and related disease (13), *Chlamydia trachomatis* infection (34,000), coccidioidomycosis (Valley Fever) (10,750), Colorado tick fever (1), acute conjunctivitis (6), cryptosporidiosis (147), *Cyclospora* infection (25), ehrlichiosis (5), Shiga toxin-producing *Escherichia coli* (350), giardiasis (150), hepatitis A (562), hepatitis B and hepatitis D (3,050), hepatitis C (10,400), hepatitis E (21), legionellosis (Legionnaires' disease) (283), Lyme disease (200), malaria (31), psittacosis (8), salmonellosis (1,030), scabies (84), shigellosis (471), invasive streptococcal group A infection

(1,133), invasive streptococcal group B infection in an infant younger than 90 days of age (57), *Streptococcus pneumoniae* infection (956), vancomycin-resistant or vancomycin-intermediate *Staphylococcus aureus* (7), *Vibrio* infection (59), West Nile virus infection (776), and yersiniosis (80). However, cases of these communicable diseases will continue to be reported by clinical laboratories.

Five communicable diseases are being added as reportable by health care providers required to report and by the administrators of health care institutions and correctional facilities as part of this rulemaking. Two of them, Middle East respiratory syndrome (MERS) and severe acute respiratory syndrome (SARS), had previously been reported under novel coronaviruses, so their addition should be considered as a clarification to improve reporting. The three others are *Candida auris*, *Cronobacter* infection in an infant, and Mpox (formerly Monkeypox). *Candida auris* is an emerging multi-drug resistant fungus that poses a serious global and local health threat due to its ability to cause severe infections, its resistance to antifungal treatments, and its potential for rapid spread in healthcare settings. Early identification, reporting, and tracking are crucial for implementing timely infection control measures and preventing outbreaks, particularly among vulnerable populations. Since these rules were last updated, *Candida auris* has become increasingly a condition of concern. From 2018 to 2021, confirmed or suspect cases were rarely reported, with no more than two being reported a year, but there has been a very large increase in reports since 2022, with 209 disease reports in 2022 and 216 disease reports in 2023 (an over 10,000% increase). In 2022, there was a national *Cronobacter* outbreak linked to powdered infant formula that led to a nationwide recall. Infection with *Cronobacter* is a rare but life-threatening condition in infants that can lead to severe outcomes such as sepsis and meningitis. Early detection and reporting are essential for identifying contamination sources, preventing outbreaks associated with powdered infant formula or other sources, and protecting vulnerable infants. In 2023, the Council of State and Territorial Epidemiologists (CSTE) in partnership with the CDC added *Cronobacter* infections in infants to the list of nationally notifiable conditions. Mpox rose to national prominence in 2022 during a global outbreak. Although it has been two years since the original global outbreak, Arizona has continued to receive disease reports, including 256 reports in 2024, and continues to provide navigation to services and public health interventions to reduce transmission rates. Including mpox as a reportable condition would ensure routine reporting to improve public health surveillance and provide more timely public health interventions. The Department believes that the addition of these communicable diseases will provide a significant benefit to the Department in protecting public health.

Clinical laboratories routinely report test results to the Department electronically with the reporting built into their Laboratory Information Management (LIM) data systems. As described below for clinical laboratories, reporting for 13 new infectious agents is being added for clinical

laboratories. These include *Candida auris* and *Cronobacter* spp. in an infant, which are described above. The others are: *Basidiobolus* spp., *Blastomyces* spp., *Borrelia* spp., carbapenem-resistant *Acinetobacter baumannii* (CRAB), carbapenem-resistant *Pseudomonas aeruginosa* (CRPA), Colorado tick fever virus, *Giardia duodenalis*, Monkeypox virus, *Mycoplasma genitalium*, novel influenza virus, and St. Louis encephalitis virus. Three conditions, Middle East respiratory syndrome (MERS), severe acute respiratory syndrome (SARS), and severe acute respiratory syndrome coronoavirus, had previously been reported under novel coronaviruses, so their addition should be considered as a clarification to improve reporting. *Burkholderia mallei* and *Burkholderia pseudomallei* were also previously reportable but will now display separately on the Table for additional clarity.

*Basidiobolus* spp. are fungi with world-wide distribution, and definitive diagnosis requires laboratory testing. Although cases in Arizona are rare, the current rules require reporting under R9-6-202. *Borrelia* spp., the bacteria that cause Lyme disease; Colorado tick fever virus; *Giardia duodenalis*; and St. Louis encephalitis virus are also currently reportable under R9-6-202. With advances in diagnostic testing, most cases of infection with these agents are now identified through lab-confirmed tests, making provider reporting redundant. Blastomycosis can cause severe illness, especially in immunocompromised individuals. Blastomycosis often presents with non-specific symptoms that can be mistaken for other conditions. Lab confirmation is essential for accurate diagnosis. While *Blastomyces* reports have been relatively low in Arizona, there has been an increase in reported cases of Blastomycosis in certain regions, particularly in areas where *Blastomyces* is endemic. Requiring laboratory reporting would help public health officials monitor and respond to any emerging trends in incidence.

Antibiotic resistance is a growing problem in both medicine and public health, making infections difficult to treat. Carbapenems are a class of broad-spectrum antibiotics that are often used to treat infections that are resistant to other antibiotics. A number of bacteria have recently developed mechanisms to evade the effects of carbapenems. These include *Acinetobacter baumannii*, *Enterobacterales* spp., and *Pseudomonas aeruginosa*. Carbapenem-resistant *Enterobacterales* spp. is already included in the current rules, and carbapenem-resistant *Acinetobacter baumannii* (CRAB) and carbapenem-resistant *Pseudomonas aeruginosa* (CRPA) are being added as part of this rulemaking to enhance public health surveillance and action for multidrug-resistant organisms.

Mpox (formerly known as Monkeypox) rose to national prominence in 2022 during the global outbreak. Prior to 2022, Mpox cases in the United States were rare, and often travel-associated. Since 2022, Arizona has continued to receive cases, which currently are caused by a Clade 2b variety of Mpox virus, which has a 99% survival rate. However, there is a growing outbreak of Mpox in Central

Africa caused by Clade 1/1b, which is of concern because it tends to cause more severe health outcomes, and there are some reports that Clade 1/1b may spread more easily. While there are currently no cases of Clade 1/1b Mpox in Arizona, having Mpox as a reportable condition will ensure timely notification of Clade 1/1b cases, improving our readiness to respond in the event of a Clade 1/1b outbreak in Arizona, as well as detecting cases of Clade 2b Mpox, enabling public health interventions to focus on protecting vulnerable groups through early case identification and targeted outreach.

The Department has recently started to see an influx of case reports of *Mycoplasma genitalium* infection in Arizona under the emerging infectious disease reporting rules, and is aware of at least one case that had multiple treatment failures and required intensive consultation with national experts. In 2019, *M. genitalium* was added to the CDC's antimicrobial resistance threat report list. Under the current reporting rules, it is difficult to determine the true burden of disease in our state because these cases are not routinely being reported, and there is not a standard case definition to guide surveillance efforts. There has been interest across the nation in improving surveillance of *M. genitalium*, given the potential antimicrobial resistance threat, and adding this emerging infection to the laboratory reporting list is a relatively low-cost strategy to improve surveillance to better monitor this emerging threat to public health.

While infection with the influenza virus and severe acute respiratory syndrome coronavirus (COVID-19) is now endemic throughout the world, it is still important to track novel versions of the viruses that arise through mutation. In most instances, novel influenza and COVID-19 viruses will only be detected via laboratory testing, rather than through diagnosis from providers. It is only through such surveillance that novel versions of a virus, such as the H5N1 flu virus, can be detected, the public notified, and public health actions undertaken.

The Department anticipates that receiving accurate and timely reports about cases and suspect cases infected with these new agents may provide a significant benefit to the Department in protecting public health in the least burdensome manner possible. Because the addition of reporting for new agents/diseases may require more time to review and analyze the extra information submitted, changes to add new agents/diseases may cause the Department to incur a minimal increase in costs.

The Arizona State Laboratory is a component of the Department that performs serological, microbiological, entomological, and chemical analyses on specimens and isolates submitted to the Arizona State Laboratory for testing. The current rules require clinical laboratories to submit isolates or specimens for specific agents to the Arizona State Laboratory. The Arizona State Laboratory receives over 20,000 isolates and specimens each year from clinical laboratories for identification and confirmation of disease status, as well as to establish relationships between cases of the disease,

determine the drugs that may be used to treat an individual infected with the agent, and identify trends in the agent's surface antigen content that may affect vaccine effectiveness or public health control measures. In this rulemaking, the Department is removing requirements for routinely submitting isolates for 14 infectious agents or toxins, including: arbovirus, *Bordetella pertussis*, *Campylobacter* spp., chikungunya virus, *Coccidioides* spp., dengue virus, hepatitis E virus, influenza virus, *Neisseria gonorrhoeae*, rabies virus from an animal, *Rickettsia* spp., *Shigella* spp., *Streptococcus* group A, and *Streptococcus pneumoniae*. Instead, the new rules specify that a clinical laboratory is required to submit a specimen/isolate for one of these upon a Department request. The Department estimates that this change may have a minor impact on the number of specimens and isolates submitted for further testing. However, the flexibility provided by the new rules will lessen the financial and resource burden on the Arizona State Laboratory. This change is expected to yield a significant benefit for the Department by allowing the Arizona State Laboratory to adapt as positions shift from year to year, while still prioritizing public health. Additionally, the Department anticipates up to a moderate increase in costs related to notifying laboratories about the changes in isolate submission.

The Department works closely with local health agencies in the control of communicable diseases to protect public health. For most communicable diseases, local health agencies are required to conduct an epidemiologic investigation to determine the source of infection and mitigate the spread of the communicable disease. Reports from health care providers required to report, the administrators of health care institutions and correctional facilities, schools, child care establishments, and shelters are submitted to the applicable local health agency, while reports from clinical laboratories come directly to the Department. Since 35 communicable diseases are being removed from those reported under R9-6-202, and all but three (amebiasis, conjunctivitis, and scabies) will still be reported by clinical laboratories, this change will require even closer coordination to ensure that timely epidemiologic investigations or other activities required of local health agencies in Article 3, related to the control of these diseases, can still occur. The Department anticipates that by using existing technology, local health agencies may be able to access the information needed about these disease reports without much extra effort on the part of Department staff, but it is possible that this change in reporting may cause the Department to experience a minimal increase in costs to ensure local health agencies are receiving the information they will need.

The new rules also add requirements related to syphilis. Since 2009, the annual number of syphilis cases in Arizona has greatly increased, with the total number of syphilis cases in Arizona almost doubling from 3,935 cases in 2019 to 7,729 cases in 2023. The rate of reinfection has also risen, with 6.2% of 2021 syphilis cases identified as having been reinfected between 12 and 24 months after their initial diagnosis. Currently, the rules only require retesting at 3, 6, and 12 months,

but there is a need to expand follow-up testing requirements beyond 12 months as part of standard practice. The inclusion of routine testing at 24 months would improve the ability of the Department and local health agencies to respond to the rising rates of syphilis and to more quickly identify persons who have been reinfected in order to identify additional contacts that may be in need of linkage to treatment to reduce community transmission, as well as to better stage the disease, which affects the treatment needed by a case. The addition of testing at 24 months also aligns with the CDC's treatment guidelines. The Department expects that the addition of routine testing at 24 months may provide a significant benefit to the Department.

- **Local health agencies**

  Local health agencies are responsible for carrying out most of the control measures for cases or suspect cases within their jurisdictions. As required by the rules, the employees of local health agencies receive the disease reports of cases or suspect cases of reportable communicable diseases that are submitted by health care providers required to report and the administrators of health care institutions, correctional facilities, schools, child care establishments, and shelters and conduct epidemiologic investigations. These employees also receive laboratory reports from the Department of cases or suspect cases submitted to the Department by clinical laboratories. Each year local health agencies in Arizona receive approximately 336,600 reports of communicable disease cases or suspect cases under R9-6-202 and R9-6-203, which are entered into the Department's communicable disease data systems and are viewable, when appropriate, by other local health agencies and the Department, avoiding the need for a local health agency to maintain a separate database system with duplicate entry. The Department anticipates that local health agencies may receive a significant benefit from the clarified requirements related to communicable disease reporting or control measures, including the separate reporting of Middle East respiratory syndrome coronavirus (MERS-CoV) and severe acute respiratory syndrome coronavirus (SARS-CoV) from other potential novel coronaviruses. They may also incur as much as minimal costs related to providing technical assistant about the clarifications.

  Currently, local health agencies receive reports about outbreaks of 15 communicable diseases and infestations from health care providers required to report and the administrators of health care institutions and correctional facilities. For most of these, reporting under R9-6-202 or R9-6-203 is no longer required, so outbreaks would be detected through investigations of reports from clinical laboratories. Others are not typically associated with severe health outcomes or widespread public health risks. These conditions do not result in significant morbidity or mortality, making ongoing surveillance less critical. The new rules now require the reporting of outbreaks for only two infectious agents/conditions (amebiasis and respiratory disease). Amebiasis is being retained based on input from local health agencies. Reporting of outbreaks of respiratory disease will only be required from

the administrators of health care institutions and correctional facilities. The Department believes that these changes will provide up to a moderate benefit to a local health agency, depending on the number of outbreaks that would otherwise have been reported to it.

Although 35 communicable diseases are being removed from those reported under R9-6-202, all but three will still be reported by clinical laboratories, and local health agencies will still be required to conduct timely epidemiologic investigations or other activities required of local health agencies in Article 3 related to the control of these diseases. The Department anticipates that local health agencies will be able to access the information needed about these disease reports upon entry into the Department's statewide surveillance system without extra effort on the part of staff of local health agencies, but it is possible that this change in reporting may cause a local health agency to experience as much as a minimal increase in costs to ensure the local health agency is receiving the information they will need.

The new rules add reporting for ten infectious agents to Table 2.4, Local Health Agency Reporting Requirements. These include: blastomycosis, *Candida auris*, carbapenem-resistant *Acinetobacter baumannii* (CRAB), carbapenem-resistant *Enterobacterales* (CRE), carbapenem-resistant *Pseudomonas aeruginosa* (CRPA), *Cronobacter* infection in an infant, hepatitis C, Mpox, *M. genitalium,* and novel influenza virus infection. All but three of these, *Candida auris*, Cronobacter infection in an infant, and Mpox are only reportable by clinical laboratories, but local health agencies play a role in public health control measures for the infections, which could include case or contact control measures, conducting an epidemiologic investigation, ensuring that isolation measures are instituted and maintained, and providing or arranging for education about the applicable disease. The Department estimates that a local health agency may incur up to a substantial increase in costs because of their addition to Table 2.4, but may also receive a significant benefit in protecting the health of individuals within their respective jurisdictions.

Clinical laboratories are required to submit isolates or specimens for specific agents to the Arizona State Laboratory. In the new rules, submission is required for some agents only upon a Department request, while routine submission is required for others. The current rules require local health agencies to ensure the submission of an isolate or specimen. In the new rules, this requirement is changed for some communicable diseases/agents to provide more flexibility to local health agencies and the Department, with the requirement being for a local health agency to ensure submission "in consultation with the Department." The communicable diseases/agents this would affect are: anthrax, botulism, brucellosis, *Candida auris*, carbapenem-resistant *Acinetobacter baumannii* (CRAB), carbapenem-resistant *Enterobacterales* (CRE), carbapenem-resistant *Pseudomonas aeruginosa* (CRPA), glanders, listeriosis, measles, melioidosis, meningococcal invasive

disease, mumps, plague, poliomyelitis, rabies in a human, rubella (German measles), congenital rubella syndrome, smallpox, tuberculosis, tularemia, vancomycin-resistant or vancomycin-intermediate *Staphylococcus aureus*, viral hemorrhagic fever, yellow fever, yersiniosis (enteropathogenic Yersinia), and Zika virus infection. The Department anticipates that this change could provide up to a moderate benefit to a local health agency, with particular benefit to smaller local health agencies.

Changes are also being made to the control measures for specific communicable diseases/agents in Article 3 that may affect local health agencies. In R9-6-306, a local health agency is only responsible for control measures during outbreaks of amebiasis, rather than for each case or suspect case. In the new R9-6-352, a local health agency no longer is required to offer anonymous HIV-testing to an individual, consistent with a statutory change. In the new R9-6-364 and R9-6-383, the rules specify that a local health agency is only required to ensure that isolation and both airborne precautions and contact precautions have been instituted for a hospitalized case or suspect case to prevent transmission, rather than for any case/suspect case of MERS-CoV or SARS-CoV. In the new R9-6-384, requirements for a local health agency to conduct scabies outbreak control measures are removed. The Department anticipates that these changes may provide up to a moderate benefit to a local health agency.

- **Correctional facilities, both public and private**

The Department receives approximately 18,000 disease reports of communicable diseases each year from correctional facilities. As for other persons, a correctional facility may receive a significant benefit from the clarification of the rules and the removal or simplification of reporting requirements. These include those elements that would be obtained during an epidemiological investigation or that would be duplicated in reports from clinical laboratories. Replacing a requirement for reporting the pregnancy status of all cases or suspect cases with requiring the pregnancy status only for syphilis, hepatitis C, listeriosis, rubella, or an emerging or exotic disease may also benefit correctional facilities.

As mentioned above, clinical laboratories routinely report test results to the Department electronically with the reporting built into their Laboratory Information Management data systems, while reports made under R9-6-202 are likely to be entered manually. In the new rules, 35 communicable diseases are being removed from Table 2.1, and would, therefore, not be required to be reported by an administrator of a correctional facility, while still being reportable by clinical laboratories. In addition, reporting HIV infection and related disease will now only be required for an infant. As mentioned above, requirements for reporting for five diseases have been added in the new rules, which include three new diseases (*Candida auris*, *Cronobacter* infection in an infant, and

Mpox) and two (Middle East respiratory syndrome (MERS) and severe acute respiratory syndrome (SARS)) that had previously been reported as novel coronaviruses. Article 3 now contains control measures for these diseases, as well as the new diseases being added for clinical laboratory reporting, some of which include control measures required at correctional facilities. Requirements for notification of a receiving facility for multi-drug resistant cases have also been added. The Department believes that an administrator of a correctional facility may receive as much as a moderate benefit from these changes, depending on the number of cases/suspect cases for which a report will no longer be required or the number of multi-drug resistant cases being transferred into the correctional facility, and may incur up to a moderate cost for reporting and instituting control measures for the communicable diseases being added as part of the rulemaking and for notifications of receiving facilities for multi-drug resistant cases. Since a tuberculosis case may be in a correctional facility, adding another method for removing a tuberculosis case from exclusion may provide up to a moderate benefit to a correctional facility.

- **Public and private schools, child care establishments, and shelters**

The Department receives approximately 509 disease reports of communicable diseases each year under R9-6-203 and Table 2.2 through local health agencies from reporting entities identified as schools, child care establishments, and shelters. In this rulemaking, R9-6-203 is being changed to include information on the last date that an individual with a disease, infestation, or symptoms of a communicable disease or infestation was present at the school, child care establishment, or shelter, as applicable. Although this will assist the Department and local health agencies in prioritizing and mounting a public health response to a reported case/suspect case, this change may cause a school, child care establishment, or shelter to incur up to minimal additional costs. In the new rules, seven diseases are being removed from Table 2.2, including: campylobacteriosis, acute conjunctivitis, cryptosporidiosis, Shiga toxin-producing Escherichia coli, salmonellosis, scabies, and shigellosis. As mentioned above, most of these diseases will now only be reportable by clinical laboratories. Based on the Department's experience during the COVID-19 epidemic, the Department believes that these reporting entities are essential in the early detection of unusual communicable disease cases and outbreaks, enabling a public health response. Therefore, the reporting of emerging or exotic disease has been added to Table 2.2. In the new R9-6-384, the case control measures for scabies have been changed, consistent with the recent changes in the new R9-6-371, to give the administrator of a school or child care establishment discretion as to whether or not to exclude a scabies case from the school or child care establishment until treatment for scabies is completed. Depending on the number of cases reported by an individual school, child care establishment, or shelter, the Department anticipates that these changes may provide a minimal benefit to a school, child care establishment, or shelter and may

cause a school, child care establishment, or shelter to incur at most a minimal increase in costs.

- **AHCCCS and other payors of medical costs**

The new rules add case control measures for several drug-resistant organisms. These diseases are considered by the CDC to be threats to public health because their resistance to antibiotics makes them difficult to treat. An individual infected with one of these agents may need to be hospitalized for an extended period and receive very expensive medication regimens to try to clear the infection. The changes being made in the new rules include that a diagnosing health care provider or an administrator of a health care institution or correctional facility is required to institute isolation precautions as necessary for a case and let a receiving facility know about the infection and the precautions that had been instituted for the case when the case is being transferred to another health care provider, health care institution, or correctional facility. The Department believes that these new requirements may result in up to substantial reduced costs to AHCCCS or another payor of medical costs in reducing the number of other individuals, covered by AHCCCS or other payor of medical costs, to whom the drug-resistant organism is passed before the receiving health care provider, health care institution, or correctional facility is aware of the problem.

As mentioned above, the new rules include requirements for routine testing of syphilis cases at 24 months to address the rising problem of reinfection. This change is in alignment with the current AHCCCS Medical Policy Manual (AMPM) (updated October 1, 2024) that requires healthcare providers to ensure that members are tested for syphilis at least annually beginning at age 15. Therefore, this rule change will not result in additional costs for AHCCCS beyond what is already required by the AMPM, but may result in an up-to-substantial increase in testing costs for other payors of medical costs, depending on the number of cases covered. However, given that the majority of syphilis cases are detected among AHCCCS members and the cost of testing is significantly lower than the cost of treatment, the rule change may provide as much as a substantial net benefit to other payors of medical costs. The rule change may also result in reduced treatment costs as persons who are detected as having treatment failure or being reinfected within 12 months only require one dose of benzathine penicillin g (BPG), as compared to the three doses of BPG needed to treat persons diagnosed as reinfected more than 12 months after their original infection. Given the asymptomatic nature of these infections, retesting is critical for timely detection of reinfections. Early detection and treatment may also help prevent further spread to other covered individuals from someone not on AHCCCS, lessen healthcare costs associated with complications of untreated syphilis, as well as reduce the incidence of congenital syphilis in a baby who may be covered, the cost of care of all types for whom may approach $2 million dollars over the lifetime of a child. Therefore, the rule change may provide as much as a substantial benefit to AHCCCS.

- **Health care providers**

The Department receives approximately 318,000 disease reports per year from health care providers and health care institutions. Because a report from a health care institution may come from a health care provider required to report or the health care institution's infection control program staff, it is not possible to determine the number of individual health care providers reporting. A health care provider may receive a significant benefit from the clarification of the rules and the removal or simplification of reporting requirements, including changes to reporting pregnancy status and reporting those elements that would be obtained during an epidemiological investigation or that would be duplicated in reports from clinical laboratories.

As mentioned above, 35 communicable diseases are being removed from Table 2.1 and will no longer be reported by health care providers required to report. Instead, clinical laboratories, which routinely report test results to the Department electronically, would be reporting on all but three of these communicable diseases. Nor will health care providers be required to report outbreaks under the new rules, even though the administrators of health care institutions or correctional facilities will continue to be required to do so. In addition, reporting HIV infection and related disease will now only be required for an infant. However, under the new rules, health care providers required to report will need to begin reporting *Candida auris, Cronobacter* infection in an infant, and Mpox. The Department anticipates that a health care provider required to report may receive up to a moderate benefit from the removal of these reporting requirements, and that these changes may cause a health care provider required to report to incur as much as a moderate increase in costs from the reporting of the added communicable diseases, but provide a significant benefit in providing better care to patients.

Changes in control measures being made in Article 3 may also affect health care providers. Adding a requirement for another serologic test for syphilis may case a health care provider to incur minimal additional costs, but provide the significant benefit of providing better patient care. Control measures that health care providers will now be required to initiate, including isolation and, if applicable, airborne precautions and contact precautions, are being added in the rules for some of the newly added communicable diseases. These include *Candida auris*, the carbapenem-resistant organisms, and novel influenza virus. A health care provider would already have been required under the Section for novel coronaviruses to institute control measures for MERS and SARS, so their addition as separate Sections should not affect health care providers. In the new R9-6-396 related to tuberculosis, the new rules clarify that isolation and the institution of airborne precautions are only required for individuals within the diagnosing or treating health care provider's health care institution.

Another method to remove a case/suspect case from isolation and the institution of airborne precautions has also been added in the new rules. The Department believes that a health care provider may already be instituting the required control measures as the standard of care. If not, a health care provider may incur as much as a substantial increase in costs from instituting the required control measures. However, a health care provider may also receive up to a moderate benefit from the addition of another method to remove a case/suspect case from isolation and the institution of airborne precautions and a significant benefit from providing appropriate care for their patients.

- **Health care institutions**

As mentioned above, the Department receives approximately 318,000 disease reports per year from more than 5,000 health care institutions, with 1,900 reporting through MEDSIS, and a range of one to about 17,000 disease reports per year from a reporting entity. Many of the requirements for health care providers are also applicable to the administrators of health care institutions. Therefore, many of the changes made in the new rules would affect both health care providers and health care institutions in a similar manner. A health care institution may also receive a significant benefit from the clarification of the rules and the removal or simplification of reporting requirements, including changes to reporting pregnancy status and reporting those elements that would be obtained during an epidemiological investigation or that would be duplicated in reports from clinical laboratories. The removal from Table 2.1 of 35 communicable diseases will also provide as much as a moderate benefit to the administrator of a health care institution, depending on the size of the health care institution, the number of patients served, and the number of cases of the communicable diseases that would have had to be reported. In addition, reporting HIV infection and related disease will now only be required for an infant, which may also provide a minimal benefit.

As mentioned above, new communicable diseases are being added to the list in Table 2.1. If an administrator of a health care institution had been reporting these communicable diseases under "Emerging or exotic disease" or another reporting category, listing them specifically should clarify that they need to be reported, rather than add to the burden of reporting. Except for cases of *Candida auris*, the incidences of these cases are expected to be very low. An administrator of a health care institution that had not reported cases or suspect cases of these communicable diseases under the current rules may be expected to incur a minimal-to-moderate burden for reporting them.

The administrators of health care institutions may also be affected by the changes in control measures in Article 3. As described above, control measures, which include isolation and, if applicable, airborne precautions and contact precautions, will now be required for *Candida auris*, the carbapenem-resistant organisms, and novel influenza virus. These changes may result in up to a substantial increased cost for instituting control measures for the communicable diseases being added

as part of the rulemaking. Requirements for notification of a receiving facility of a multi-drug-resistant case being transferred out of or into the health care facility may also affect the administrator of a health care institution. The Department anticipates that an administrator of a health care institution may receive as much as a moderate benefit from these changes in notification, depending on the number of multi-drug resistant cases being transferred into the health care institution, and may incur up to a substantial cost for reporting and instituting control measures for the communicable diseases being added as part of the rulemaking.

Just as for health care providers, the administrators of health care institutions may receive a benefit from the changes in the new R9-6-396 related to tuberculosis. The new rules clarify that isolation and the institution of airborne precautions are only required for individuals within the health care institution, and another method to remove a case/suspect case from isolation and the institution of airborne precautions has been added. The Department believes that an administrator of a health care institution may receive as much as a moderate benefit from these changes, depending on the number of tuberculosis cases/suspect cases.

- **Clinical laboratories**

As mentioned above, communicable disease reporting from clinical laboratories is primarily submitted electronically to the Department, with the reporting built into their Laboratory Information Management data systems. The new rules clarify reporting requirements, including more specific information about test results, and add requirements to report race and ethnicity of a subject and, upon Department request, an equivocal result or a negative test result; sequencing-related information, as available; and an isolate of an infectious agent. As mentioned above, reporting for 13 additional infectious agents or toxins will now be required in the new rules. A clinical laboratory may receive a significant benefit from the clarification of the rules and incur as much as a substantial additional burden from incorporating additional reporting requirements into their electronic reporting.

In the new rules, requirements for routinely submitting isolates for 14 infectious agents or toxins are being removed from the rules. Instead, these isolates will only need to be submitted upon the Department's request. These include isolates for: arbovirus, *Bordetella pertussis, Campylobacter* spp., chikungunya virus, *Coccidioides* spp., dengue virus, hepatitis E virus, influenza virus, *Neisseria gonorrhoeae*, rabies virus from an animal, *Rickettsia* spp., *Shigella* spp., *Streptococcus* group A, and *Streptococcus pneumoniae*. However, with the addition of the new communicable diseases to Table 2.3, submission of isolates will now routinely be required for *Candida auris*, carbapenem-resistant *Acinetobacter baumannii* (CRAB), carbapenem-resistant *Pseudomonas aeruginosa* (CRPA), *Cronobacter* in an infant, and *Cyclospora* spp. The Department believes that a clinical laboratory may incur up to a moderate increase in costs for submitting these additional isolates, but may also receive

up to a minimal benefit from the removal of other submission requirements.

- **Pharmacists and pharmacies**

  Pharmacists and the administrators of pharmacies are required to report to the Department when two or more drugs commonly used to treat tuberculosis are presented for filling to assist in the detection of cases of tuberculosis. In 2024, the Department received over 4,000 reports from pharmacists or administrators of pharmacies under R9-6-205. The Department reviews these reports to determine which relate to the same individual and whether the individual is already identified as a tuberculosis case. The new rules remove streptomycin from the list of drugs triggering the reporting requirement. Streptomycin was the first anti-tuberculosis drug to be discovered and has been used for many years in its treatment. However, the drug carries the risk of neurotoxicity and ototoxicity, and its use has generated opposition from patients, leading to concerns about non-compliance. Although still needed for treatment of multi-drug-resistant tuberculosis and for patients with hepatic issues, the other drugs listed are more frequently used. The Department believes that a pharmacist or pharmacy may receive a minimal benefit from its removal.

- **Cases or suspect cases of a communicable disease**

  The Department expects individuals infected with a communicable disease to receive a significant benefit from the clarification of reporting requirements and control measures for communicable diseases. The new rules should make it easier for health care providers and other reporting entities to report and for entities responsible for control activities to comply with control measures for communicable diseases. Since many of the reportable communicable diseases are rare, the sooner a disease is reported by a reporting entity to a local health agency or the Department, the faster individuals with expertise in the disease will be able to provide assistance to the individual or the individual's health care provider, if appropriate. Similarly, the addition of the new communicable diseases may enable a case or suspect case to receive more timely, appropriate treatment, providing a significant benefit.

  Some changes in the control measures in Article 3 particularly affect cases and suspect cases. The requirement for notification upon transferring patients infected with drug-resistant organisms may allow a case to receive more timely and appropriate care, providing a significant benefit to the case. The new R9-6-365 for mpox and the new R9-6-367 for *Mycoplasma genitalium* infection contain requirements for a local health agency to provide education to a case, including a description of the infection, symptoms, treatment options, how it is spread, and measures to prevent transmission and re-infection. A change in the new R9-6-384 gives the administrator of a school or child care establishment discretion as to whether or not to exclude a scabies case from the school or child care establishment until treatment for scabies is completed. In the new R9-6-396 for tuberculosis, another

method of removing a case/suspect case from isolation and the institution of airborne precautions has been added. The Department expects that these changes may provide a significant benefit to a case or suspect case of the relevant disease and their families.

According to the new R9-6-391, a syphilis case is now required to obtain serologic testing for syphilis at 24 months after initiating treatment. If not adequately treated, a syphilis infection may remain in the body for years without causing symptoms and may travel to the brain and nervous system (neurosyphilis), the eye (ocular syphilis), or the ear (otosyphilis), causing irreversible neural damage including blindness or dementia. Persons with untreated syphilis may also pass syphilis to their baby during pregnancy at any point during their infection. Having syphilis during pregnancy can lead to a low-birth-weight-baby, pre-term delivery, or a stillbirth (a baby born dead). The new requirement will enable persons who have been reinfected to be more quickly identified and linked to treatment, which may reduce the risk of further morbidity due to the infection. Nevertheless, the additional requirement may also cause a syphilis case to incur an additional burden in the time and, perhaps, expense for obtaining the additional test. However, more timely identification of reinfection also has the benefit of reducing both the treatment expense and duration. If a person is identified as being reinfected within 12 months of their last test (which is possible through testing at 12 and 24 months), they would only need one dose of benzathine penicillin g rather than three doses of BPG spaced at one-week intervals. Further costs could be avoided to treat complications of untreated syphilis (i.e. hospitalization of an infant born with congenital syphilis, 10 - 14 days of intramuscular or intravenous treatment for neurosyphilis, etc.). Since the treatment must be administered by a healthcare professional, this also reduces the travel time and coordination needed to ensure complete treatment. The Department anticipates that a syphilis case may receive a significant benefit from the additional requirement and incur a minimal additional cost.

- **Contacts of individuals infected with a communicable disease**

  According to the definition in R9-6-101, a contact is "an individual who has been exposed to an infectious agent in a manner that may have allowed transmission of the infectious agent to the individual during the communicable period." The addition of the new communicable diseases may enable a contact of an identified case or suspect case to receive more timely assessment and, if appropriate, treatment. Therefore, the additions of these new communicable diseases may provide a significant benefit to the contact. In addition, the new rules in Article 3 contain requirements for a local health agency to provide education to a contact of a mpox case (R9-6-365) or a case with *Mycoplasma genitalium* infection (R9-6-367). This education includes a description of the infection, symptoms, treatment options, how it is spread, and measures to prevent transmission and re-infection. The new R9-6-367(B)(1) also includes requirements for a local health agency to offer or arrange for

treatment for any contact of a *Mycoplasma genitalium* infection case that seeks care at the local health agency. The Department anticipates that these changes may provide a significant benefit to a contact. Requiring notification upon transferring individuals infected with drug-resistant organisms may also provide a significant benefit to a contact of one of these individuals. However, the new rules also may impose up to a substantial burden on a contact of a case with MERS, SARS, or a novel influenza virus if a local health agency determines that the contact must be quarantined or excluded, according to R9-6-303, to prevent transmission.

- **General public**

  The general public may receive a significant benefit from the clarity of the new rules and the ease with which they may be followed. The improved clarity of the rules and educational activities by the Department about the new rules may increase the awareness of health care providers (and in turn their patients) about communicable diseases and methods to avoid becoming infected. Changes to the reporting requirements and control measures may improve the health of individuals and their families. If fewer individuals become infected with one of these diseases, they and their families will lose fewer days of work or school due to illness or exclusion. The Department also anticipates lower costs to the public related to the results of untreated disease. In a more global sense, earlier detection of cases or outbreaks made possible by the new rules should lead to quicker response times and less disease transmission, as will changes to control measures, such as education, exclusions, and isolation, established to prevent additional cases. Reduced transmission leads to less risk to others, which may provide a significant benefit to society in general.

**4. A general description of the probable impact on private and public employment in businesses, agencies, and political subdivisions of this state directly affected by the rulemaking**

Public and private employment in the State of Arizona is not expected to be affected due to the changes required in the rule.

**5. A statement of the probable impact of the rules on small business**

**a. Identification of the small businesses subject to the rules**

Small businesses subject to the rules may include the practices of health care providers, small health care institutions, pharmacies, schools, shelters, and child care establishments.

**b. The administrative and other costs required for compliance with the rules**

Anticipated costs for complying with the rules are described under paragraph 3.

**c. A description of the methods that the agency may use to reduce the impact on small businesses**

The methods that the Department uses to reduce the impact on small businesses are described under paragraph 3 and include improving the clarity of the rules to reduce confusion, removing reporting requirements for health care providers required to report and the administrators of health care institutions or correctional facilities of 35 communicable diseases, requiring the submission by a clinical laboratory of an isolate or specimen by request only for certain diseases, and providing more flexibility in removal from exclusion from working.

**d. The probable costs and benefits to private persons and consumers who are directly affected by the rules**

The costs to private persons and consumers from the rule changes are described in paragraph 3.

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

The Department does not anticipate any effect on state revenue on the basis of this rulemaking.

**7. A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking**

There are no less intrusive or less costly alternatives for achieving the purpose of the rule.

**8. A description of any data on which the rule is based with a detailed explanation of how the data was obtained and why the data is acceptable data**

Not applicable

# TITLE 9. HEALTH SERVICES
# CHAPTER 6. DEPARTMENT OF HEALTH SERVICES - COMMUNICABLE DISEASES AND INFESTATIONS

## ARTICLE 1. GENERAL

**R9-6-101. Definitions**

In this Chapter, unless otherwise specified:

1. "Active tuberculosis" means the same as in A.R.S. § 36-711.
2. "Administrator" means the individual who is the senior leader at a child care establishment, health care institution, correctional facility, school, pharmacy, or shelter.
3. "Agency" means any board, commission, department, office, or other administrative unit of the federal government, the state, or a political subdivision of the state.
4. "Agent" means an organism that may cause a disease, either directly or indirectly.
5. "AIDS" means Acquired Immunodeficiency Syndrome.
6. "Airborne precautions" means, in addition to use of standard precautions:
    a. Either:
        i. Placing an individual in a private room with negative air-pressure ventilation, at least six air exchanges per hour, and air either:
            (1) Exhausted directly to the outside of the building containing the room, or
            (2) Recirculated through a HEPA filtration system before being returned to the interior of the building containing the room; or
        ii. If the building in which an individual is located does not have an unoccupied room meeting the specifications in subsection (6)(a)(i):
            (1) Placing the individual in a private room, with the door to the room kept closed when not being used for entering or leaving the room, until the individual is transferred to a health care institution that has a room meeting the specifications in subsection (6)(a)(i) or to the individual's residence, as medically appropriate; and
            (2) Ensuring that the individual is wearing a mask covering the individual's nose and mouth; and
    b. Ensuring the use by other individuals, when entering the room in which the individual is located, of a device that is:

i. Designed to protect the wearer against inhalation of an atmosphere that may be harmful to the health of the wearer, and
ii. At least as protective as a National Institute for Occupational Safety and Health-approved N-95 respirator.

7. "Approved test for tuberculosis" means a Mantoux skin test or other test for tuberculosis recommended by the Centers for Disease Control and Prevention or the Tuberculosis Control Officer appointed under A.R.S. § 36-714.
8. "Arizona State Laboratory" means the part of the Department authorized by A.R.S. Title 36, Chapter 2, Article 2, and A.R.S. § 36-132(A)(11) that performs serological, microbiological, entomological, and chemical analyses.
9. "Average window period" means the typical time between exposure to an agent and the ability to detect infection with the agent in human blood.
10. "Barrier" means a mask, gown, glove, face shield, face mask, or other membrane or filter to prevent the transmission of infectious agents and protect an individual from exposure to body fluids.
11. "Body fluid" means semen, vaginal secretion, tissue, cerebrospinal fluid, synovial fluid, pleural fluid, peritoneal fluid, pericardial fluid, amniotic fluid, urine, blood, lymph, or saliva.
12. "Carrier" means an infected individual without symptoms who can spread the infection to a susceptible individual.
13. "Case" means an individual:
    a. With a communicable disease whose condition is documented:
        i. By laboratory results that support the presence of the agent that causes the disease;
        ii. By a health care provider's diagnosis based on clinical observation; or
        iii. By epidemiologic associations with the communicable disease, the agent that causes the disease, or toxic products of the agent;
    b. Who has experienced diarrhea, nausea, or vomiting as part of an outbreak; or
    c. Who has experienced a vaccinia-related adverse event.
14. "Case definition" means the disease-specific criteria that must be met for an individual to be classified as a case.
15. "Chief medical officer" means the senior health care provider in a correctional facility or that individual's designee who is also a health care provider.
16. "Child" means an individual younger than 18 years of age.
17. "Child care establishment" means:

a. A "child care facility," as defined in A.R.S. § 36-881;
b. A "child care group home," as defined in A.R.S. § 36-897;
c. A child care home registered with the Arizona Department of Education under A.R.S. § 46-321; or
d. A child care home certified by the Arizona Department of Economic Security under A.R.S. Title 46, Chapter 7, Article 1.

18. "Clinical signs and symptoms" means evidence of disease or injury that can be observed by a health care provider or can be inferred by the health care provider from a patient's description of subjective complaints.
19. "Cohort room" means a room housing only individuals infected with the same agent and no other agent.
20. "Communicable disease" means an illness caused by an agent or its toxic products that arises through the transmission of that agent or its products to a susceptible host, either directly or indirectly.
21. "Communicable period" means the time during which an agent may be transmitted directly or indirectly:
    a. From an infected individual to another individual;
    b. From an infected animal, arthropod, or vehicle to an individual; or
    c. From an infected individual to an animal.
22. "Confirmatory test" means a laboratory analysis approved by the U.S. Food and Drug Administration to be used after a screening test to diagnose or monitor the progression of HIV infection.
23. "Contact" means an individual who has been exposed to an infectious agent in a manner that may have allowed transmission of the infectious agent to the individual during the communicable period.
24. "Correctional facility" means any place used for the confinement or control of an individual:
    a. Charged with or convicted of an offense,
    b. Held for extradition, or
    c. Pursuant to a court order for law enforcement purposes.
25. "Court-ordered subject" means a subject who is required by a court of competent jurisdiction to provide one or more specimens of blood or other body fluids for testing.
26. "Dentist" means an individual licensed under A.R.S. Title 32, Chapter 11, Article 2.
27. "Department" means the Arizona Department of Health Services.
28. "Designated service area" means the same as in A.A.C. R9-1-601.
29. "Diagnosis" means an identification of a disease by an individual authorized by law to make the identification.
30. "Disease" means a condition or disorder that causes the human body to deviate from its normal or healthy state.
31. "Emerging or exotic disease" means:
    a. A new disease resulting from change in an existing organism;
    b. A known disease not usually found in the geographic area or population in which it is found;
    c. A previously unrecognized disease appearing in an area undergoing ecologic transformation; or
    d. A disease reemerging as a result of a situation such as antimicrobial resistance in a known infectious agent, a breakdown in public health measures, or deliberate release.
32. "Entity" has the same meaning as "person" in A.R.S. § 1-215.
33. "Epidemiologic investigation" means the application of scientific methods to ascertain a diagnosis; identify risk factors for a disease; determine the potential for spreading a disease; institute control measures; and complete forms and reports such as communicable disease, case investigation, and outbreak reports.
34. "Fever" means a temperature of 100.4° F or higher.
35. "Food establishment" has the same meaning as in the document incorporated by reference in A.A.C. R9-8-101.
36. "Food handler" means:
    a. A paid or volunteer full-time or part-time worker who prepares or serves food or who otherwise touches food in a food establishment; or
    b. An individual who prepares food for or serves food to a group of two or more individuals in a setting other than a food establishment.
37. "Foodborne" means that food serves as a mode of transmission of an infectious agent.
38. "Guardian" means an individual who is invested with the authority and charged with the duty of caring for an individual by a court of competent jurisdiction.
39. "HBsAg" means hepatitis B surface antigen.
40. "Health care institution" has the same meaning as in A.R.S. § 36-401.
41. "Health care provider" means the same as in A.R.S. § 36-661.
42. "Health education" means supplying to an individual or a group of individuals:
    a. Information about a communicable disease or options for treatment of a communicable disease, and
    b. Guidance about methods to reduce the risk that the individual or group of individuals will become infected or infect other individuals.
43. "HIV" means Human Immunodeficiency Virus.
44. "HIV-related test" has the same meaning as in A.R.S. § 36-661.

45. “Infected” or “infection” means when an individual has an agent for a disease in a part of the individual’s body where the agent may cause a disease.
46. “Infectious active tuberculosis” means pulmonary or laryngeal active tuberculosis in an individual, which can be transmitted from the infected individual to another individual.
47. “Infectious agent” means an agent that can be transmitted to an individual.
48. “Infant” means a child younger than 12 months of age.
49. “Isolate” means:
    a. To separate an infected individual or animal from others to limit the transmission of infectious agents, or
    b. A pure strain of an agent obtained from a specimen.
50. “Isolation” means separation, during the communicable period, of an infected individual or animal from others to limit the transmission of infectious agents.
51. “Laboratory report” means a document that:
    a. Is produced by a laboratory that conducts a test or tests on a subject’s specimen; and
    b. Shows the outcome of each test, including personal identifying information about the subject.
52. “Local health agency” means a county health department, a public health services district, a tribal health unit, or a U.S. Public Health Service Indian Health Service Unit.
53. “Local health officer” means an individual who has daily control and supervision of a local health agency or the individual’s designee.
54. “Medical evaluation” means an assessment of an individual’s health by a physician, physician assistant, or registered nurse practitioner.
55. “Medical examiner” means an individual:
    a. Appointed as a county medical examiner by a county board of supervisors under A.R.S. § 11-592, or
    b. Employed by a county board of supervisors under A.R.S. § 11-592 to perform the duties of a county medical examiner.
56. “Multi-drug resistant tuberculosis” means active tuberculosis that is caused by bacteria that are not susceptible to the antibiotics isoniazid and rifampin.
57. “Officer in charge” means the individual in the senior leadership position in a correctional facility or that individual’s designee.
58. “Outbreak” means an unexpected increase in incidence of a disease, infestation, or sign or symptom of illness.
59. “Parent” means a biological or adoptive mother or father.
60. “Person” has the same meaning as in A.R.S. § 1-215.
61. “Petition” means a formal written application to a court requesting judicial action on a matter.
62. “Pharmacy” has the same meaning as in A.R.S. § 32-1901.
63. “Physician” means an individual licensed as a doctor of:
    a. Allopathic medicine under A.R.S. Title 32, Chapter 13;
    b. Naturopathic medicine under A.R.S. Title 32, Chapter 14;
    c. Osteopathic medicine under A.R.S. Title 32, Chapter 17; or
    d. Homeopathic medicine under A.R.S. Title 32, Chapter 29.
64. “Physician assistant” has the same meaning as in A.R.S. § 32-2501.
65. “Pupil” means a student attending a school.
66. “Quarantine” means the restriction of activities of an individual or animal that has been exposed to a case or carrier of a communicable disease during the communicable period, to prevent transmission of the disease if infection occurs.
67. “Registered nurse practitioner” has the same meaning as in A.R.S. § 32-1601.
68. “Respiratory disease” means a communicable disease with acute onset of fever and symptoms such as cough, sore throat, or shortness of breath.
69. “Risk factor” means an activity or circumstance that increases the chances that an individual will become infected with or develop a communicable disease.
70. “School” means:
    a. An “accommodation school,” as defined in A.R.S. § 15-101;
    b. A “charter school,” as defined in A.R.S. § 15-101;
    c. A “private school,” as defined in A.R.S. § 15-101;
    d. A “school,” as defined in A.R.S. § 15-101;
    e. A college or university;
    f. An institution that offers a “private vocational program,” as defined in A.R.S. § 32-3001; or
    g. An institution that grants a “degree,” as defined in A.R.S. § 32-3001, for completion of an educational program of study.
71. “Screening test” means a laboratory analysis approved by the U.S. Food and Drug Administration as an initial test to indicate the possibility that an individual is infected with a communicable disease.

72. “Sexual contact” means vaginal intercourse, anal intercourse, fellatio, cunnilingus, or other deliberate interaction with another individual’s genital area for a non-medical or non-hygienic reason.
73. “Shelter” means:
    a. A facility or home that provides “shelter care,” as defined in A.R.S. § 8-201;
    b. A “homeless shelter,” as defined in A.R.S. § 16-121; or
    c. A “shelter for victims of domestic violence,” as defined in A.R.S. § 36-3001.
74. “Significant exposure” means the same as in A.R.S. § 32-3207.
75. “Standard precautions” means the use of barriers by an individual to prevent parenteral, mucous membrane, and nonintact skin exposure to body fluids and secretions other than sweat.
76. “Subject” means an individual whose blood or other body fluid has been tested or is to be tested.
77. “Submitting entity” means the same as in A.R.S. § 13-1415.
78. “Suspect case” means an individual whose medical history, signs, or symptoms indicate that the individual:
    a. May have or is developing a communicable disease;
    b. May have experienced diarrhea, nausea, or vomiting as part of an outbreak; or
    c. May have experienced a vaccinia-related adverse event.
79. “Syndrome” means a pattern of signs and symptoms characteristic of a disease.
80. “Test” means an analysis performed on blood or other body fluid to evaluate for the presence or absence of a disease.
81. “Test result” means information about the outcome of a laboratory analysis of a subject’s specimen and does not include personal identifying information about the subject.
82. “Treatment” means a procedure or method to cure, improve, or palliate an illness or a disease.
83. “Tuberculosis control officer” means the same as in A.R.S. § 36-711.
84. “Vaccine” means a preparation of a weakened or killed agent, a portion of the agent’s structure, or a synthetic substitute for a portion of the agent’s structure that, upon administration into the body of an individual or animal, stimulates a response in the body to produce or increase immunity to a particular disease.
85. “Vaccinia-related adverse event” means a reaction to the administration of a vaccine against smallpox that requires medical evaluation of the reaction.
86. “Victim” means an individual on whom another individual is alleged to have committed a sexual offense, as defined in A.R.S. § 13-1415.
87. “Viral hemorrhagic fever” means disease characterized by fever and hemorrhaging and caused by a virus.
88. “Waterborne” means that water serves as a mode of transmission of an infectious agent.
89. “Working day” means the period from 8:00 a.m. to 5:00 p.m. on a Monday, Tuesday, Wednesday, Thursday, or Friday that is not a state holiday.

## ARTICLE 2. COMMUNICABLE DISEASE AND INFESTATION REPORTING

**R9-6-202. Reporting Requirements for a Health Care Provider Required to Report or an Administrator of a Health Care Institution or Correctional Facility**

**A.** A health care provider required to report shall, either personally or through a representative, submit a report, in a Department-provided format, to the local health agency within the time limitation in Table 2.1 and as specified in subsection (C) or (D).

**B.** An administrator of a health care institution or correctional facility in which a case or suspect case of a communicable disease listed in Table 2.1 is diagnosed, treated, or detected or an occurrence listed in Table 2.1 is detected shall, either personally or through a representative, submit a report, in a Department-provided format, to the local health agency within the time limitation in Table 2.1 and as specified in subsection (C) or (D).

**C.** Except as described in subsection (D), for each case, suspect case, or occurrence for which a report on an individual is required by subsection (A) or (B) and Table 2.1, a health care provider required to report or an administrator of a health care institution or correctional facility shall submit a report that includes:

1. The following information about the case or suspect case:
    a. Name;
    b. Residential and mailing addresses;
    c. County of residence;
    d. Whether the individual is living on a reservation and, if so, the name of the reservation;
    e. Whether the individual is a member of a tribe and, if so, the name of the tribe;
    f. Telephone number and, if available, email address;
    g. Date of birth;
    h. Race and ethnicity;
    i. Gender;
    j. If known, whether the individual is pregnant;
    k. If known, whether the individual is alive or dead;
    l. If known, the individual's occupation;
    m. If the individual is attending or working in a school or child care establishment or working in a health care institution or food establishment, the name and address of the school, child care establishment, health care institution, or food establishment; and
    n. For a case or suspect case who is a child requiring parental consent for treatment, the name, residential address, telephone number, and, if available, email address of the child's parent or guardian, if known;
2. The following information about the disease:
    a. The name of the disease;
    b. The date of onset of symptoms;
    c. The date of diagnosis;
    d. The date of specimen collection;
    e. Each type of specimen collected;
    f. Each type of laboratory test completed;
    g. The date of the result of each laboratory test; and
    h. A description of the laboratory test results, including quantitative values if available;
3. If reporting a case or suspect case of tuberculosis:
    a. The site of infection;
    b. A description of the treatment prescribed, if any, including:
        i. The name of each drug prescribed,
        ii. The dosage prescribed for each drug, and
        iii. The date of prescription for each drug; and
    c. Whether the diagnosis was confirmed by a laboratory and, if so, the name, address, and phone number of the laboratory;
4. If reporting a case or suspect case of chancroid, gonorrhea, or *Chlamydia trachomatis* infection:
    a. The gender of the individuals with whom the case or suspect case had sexual contact;
    b. A description of the treatment prescribed, if any, including:
        i. The name of each drug prescribed,
        ii. The dosage prescribed for each drug, and
        iii. The date of prescription for each drug;
    c. The site of infection; and

d. Whether the diagnosis was confirmed by a laboratory and, if so, the name, address, and phone number of the laboratory;

5. If reporting a case or suspect case of syphilis:
   a. The information required under subsection (C)(4); and
   b. Identification of:
      i. The stage of the disease, or
      ii. Whether the syphilis is congenital;
6. If reporting a case of congenital syphilis in an infant, and in addition to the information required under subsection (C)(5) and A.R.S. § 36-694(A), the following information:
   a. The name and date of birth of the infant's mother;
   b. The residential address, mailing address, telephone number, and, if available, email address of the infant's mother;
   c. The date and test results for the infant's mother of the prenatal syphilis test required in A.R.S. § 36-693; and
   d. If the prenatal syphilis test of the infant's mother indicated that the infant's mother was infected with syphilis:
      i. Whether the infant's mother received treatment for syphilis,
      ii. The name and dosage of each drug prescribed to the infant's mother for treatment of syphilis and the date each drug was prescribed, and
      iii. The name and phone number of the health care provider required to report who treated the infant's mother for syphilis;
7. The name, address, telephone number, and, if available, email address of the individual making the report; and
8. The name, address, telephone number, and, if available, email address of the:
   a. Health care provider, if reporting under subsection (A) and different from the individual specified in subsection (C)(7); or
   b. Health care institution or correctional facility, if reporting under subsection (B).

**D.** For each outbreak for which a report is required by subsection (A) or (B) and Table 2.1, a health care provider required to report or an administrator of a health care institution or correctional facility shall submit a report that includes:

1. A description of the signs and symptoms;
2. If possible, a diagnosis and identification of suspected sources;
3. The number of known cases and suspect cases;
4. A description of the location and setting of the outbreak;
5. The name, address, telephone number, and, if available, email address of the individual making the report; and
6. The name, address, telephone number, and, if available, email address of the:
   a. Health care provider, if reporting under subsection (A) and different from the individual specified in subsection (D)(5); or
   b. Health care institution or correctional facility, if reporting under subsection (B).

**E.** When an HIV-related test is ordered for an infant who was perinatally exposed to HIV to determine whether the infant is infected with HIV, the health care provider who orders the HIV-related test or the administrator of the health care institution in which the HIV-related test is ordered shall:

1. Report the results of the infant's HIV-related test to the Department, either personally or through a representative, within five working days after receiving the results of the HIV-related test;
2. Include the following information in the report specified in subsection (E)(1):
   a. The name and date of birth of the infant;
   b. The residential address, mailing address, and telephone number of the infant;
   c. The name and date of birth of the infant's mother;
   d. The date of the last medical evaluation of the infant;
   e. The types of HIV-related tests ordered for the infant;
   f. The dates of the infant's HIV-related tests;
   g. The results of the infant's HIV-related tests; and
   h. The ordering health care provider's name, address, and telephone number; and
3. Include with the report specified in subsection (E)(1) a report for the infant's mother including the following information:
   a. The name and date of birth of the infant's mother;
   b. The residential address, mailing address, and telephone number of the infant's mother;
   c. The date of the last medical evaluation of the infant's mother;
   d. The types of HIV-related tests ordered for the infant's mother;
   e. The dates of the HIV-related tests for the infant's mother;
   f. The results of the HIV-related tests for the infant's mother;
   g. What HIV-related risk factors the infant's mother has;
   h. Whether the infant's mother delivered the infant vaginally or by C-section;

i. Whether the infant's mother was receiving HIV-related drugs prior to the infant's birth to reduce the risk of perinatal transmission of HIV; and

j. The name, address, and telephone number of the health care provider who ordered the HIV-related tests for the infant's mother.

**Table 2.1. Reporting Requirements for a Health Care Provider Required to Report or an Administrator of a Health Care Institution or Correctional Facility**

| | | | | | |
|---|---|---|---|---|---|
| □*,O | Amebiasis | □ | Glanders | O | Respiratory disease in a health care institution or correctional facility |
| □ | Anaplasmosis | □ | Gonorrhea | ✆* | Rubella (German measles) |
| □ | Anthrax | ✆ | *Haemophilus influenza*, invasive disease | ✆ | Rubella syndrome, congenital |
| □ | Arboviral infection | □ | Hansen's disease (Leprosy) | ✆*,O | Salmonellosis |
| □ | Babesiosis | ✆ | Hantavirus infection | O | Scabies |
| □ | Basidiobolomycosis | ✆ | Hemolytic uremic syndrome | ✆*,O | Shigellosis |
| □ | Botulism | ✆*,O | Hepatitis A | □ | Smallpox |
| ✆ | Brucellosis | □ | Hepatitis B and Hepatitis D | ✆ | Spotted fever rickettsiosis (e.g., Rocky Mountain spotted fever) |
| □*,O | Campylobacteriosis | □ | Hepatitis C | □ | Streptococcal group A infection, invasive disease |
| □ | Chagas infection and related disease (American trypanosomiasis) | □*,O | Hepatitis E | □ | Streptococcal group B infection in an infant younger than 90 days of age, invasive disease |
| □ | Chancroid | □ | HIV infection and related disease | □ | *Streptococcus pneumoniae* infection (pneumococcal invasive disease) |
| ✆ | Chikungunya | ✆ | Influenza-associated mortality in a child | □[1] | Syphilis |
| □ | *Chlamydia trachomatis* infection | ✆ | Legionellosis (Legionnaires' disease) | □*,O | Taeniasis |
| ✆* | Cholera | ✆ | Leptospirosis | □ | Tetanus |
| □ | Coccidioidomycosis (Valley Fever) | ✆ | Listeriosis | □ | Toxic shock syndrome |
| □ | Colorado tick fever | □ | Lyme disease | ✆ | Trichinosis |
| O | Conjunctivitis, acute | ✆ | Lymphocytic choriomeningitis | ✆ | Tuberculosis, active disease |
| □ | Creutzfeldt-Jakob disease | □ | Malaria | ✆ | Tuberculosis latent infection in a child 5 years of age or younger (positive screening test result) |
| ✆*,O | Cryptosporidiosis | □ | Measles (rubeola) | □ | Tularemia |
| ✆ | *Cyclospora* infection | ✆ | Melioidosis | ✆ | Typhoid fever |
| □ | Cysticercosis | □ | Meningococcal invasive disease | ✆ | Typhus fever |

| | | | | | |
|---|---|---|---|---|---|
| ✆ | Dengue | ✆ | Mumps | ✆ | Vaccinia-related adverse event |
| O | Diarrhea, nausea, or vomiting | □ | Novel coronavirus infection (e.g., SARS or MERS) | □ | Vancomycin-resistant or Vancomycin-intermediate Staphylococcus aureus |
| □ | Diphtheria | ✆ | Pertussis (whooping cough) | □ | Varicella (chickenpox) |
| □ | Ehrlichiosis | □ | Plague | ✆ | *,O *Vibrio* infection |
| □ | Emerging or exotic disease | □ | Poliomyelitis (paralytic or non-paralytic) | □ | Viral hemorrhagic fever |
| □ | Encephalitis, parasitic | □ | Psittacosis (ornithosis) | □ | West Nile virus infection |
| ✆ | Encephalitis, viral | ✆ | Q fever | □ | Yellow fever |
| ✆ | *Escherichia coli,* Shiga toxin-producing | □ | Rabies in a human | ✆ | *,O Yersiniosis (enteropathogenic *Yersinia*) |
| □ | *,O Giardiasis | ✆ | Relapsing fever (borreliosis) | ✆ | Zika virus infection |

**Key:**

□ Submit a report by telephone or through an electronic reporting system authorized by the Department within 24 hours after a case or suspect case is diagnosed, treated, or detected, or an occurrence is detected.

* Submit a report within 24 hours after a case or suspect case is diagnosed, treated, or detected, instead of reporting within the general reporting deadline, if the case or suspect case is a food handler or works in a child care establishment or a health care institution.

[1] Submit a report within one working day if the case or suspect case is a pregnant woman.

✆ Submit a report within one working day after a case or suspect case is diagnosed, treated, or detected.

□ Submit a report within five working days after a case or suspect case is diagnosed, treated, or detected.

O Submit a report within 24 hours after detecting an outbreak.

**R9-6-203. Reporting Requirements for an Administrator of a School, Child Care Establishment, or Shelter**

**A.** An administrator of a school, child care establishment, or shelter shall, either personally or through a representative, submit a report, in a Department-provided format, to the local health agency within the time limitation in Table 2.2 and as specified in subsection (B).

**B.** For each individual with a disease, infestation, or symptoms of a communicable disease or infestation listed in Table 2.2, or an outbreak of the communicable disease or infestation, an administrator of a school, child care establishment, or shelter shall submit a report that includes:

1. The name and address of the school, child care establishment, or shelter;
2. The number of individuals with the disease, infestation, or symptoms;
3. The date and time that the disease or infestation was detected or that the symptoms began;
4. The number of rooms, grades, or classes affected and the name of each;
5. The following information about each individual with the disease, infestation, or symptoms:
   a. Name;
   b. Date of birth or age;
   c. If the individual is a child, name and contact information for the individual's parent or guardian;
   d. Residential address and telephone number; and
   e. Whether the individual is a staff member, a student, a child in care, or a resident;
6. The number of individuals attending or residing at the school, child care establishment, or shelter; and
7. The name, address, telephone number, and, if available, email address of the individual making the report.

**Table 2.2. Reporting Requirements for an Administrator of a School, Child Care Establishment, or Shelter**

- Campylobacteriosis
- O Conjunctivitis, acute
- Cryptosporidiosis
- O Diarrhea, nausea, or vomiting
- *Escherichia coli*, Shiga toxin-producing
- *Haemophilus influenzae*, invasive disease
- Hepatitis A
- Measles
- Meningococcal invasive disease
- Mumps
- Pertussis (whooping cough)
- Rubella (German measles)
- Salmonellosis
- O Scabies
- Shigellosis
- O Streptococcal group A infection
- Varicella (chickenpox)

**Key:**

- Submit a report within 24 hours after detecting a case or suspect case.
- Submit a report within five working days after detecting a case or suspect case.
- O Submit a report within 24 hours after detecting an outbreak.

**R9-6-204. Clinical Laboratory Director Reporting Requirements**

**A.** Except as specified in subsection (D), a director of a clinical laboratory that obtains a test result described in Table 2.3 or that receives a specimen for detection of an infectious agent or toxin listed in Table 2.3 shall, either personally or through a representative, submit a report, in a Department-provided format, and, if applicable, an isolate or a specimen to the Department within the time limitation and as specified in Table 2.3 and subsection (B) or (C).

**B.** For each specimen for which an immediate report is required by subsection (A) and Table 2.3, a clinical laboratory director shall ensure the report includes:

1. The name and address of the laboratory;
2. The name and telephone number of the director of the clinical laboratory;
3. The name and, as available, the address, telephone number, and email address of the subject;
4. The date of birth of the subject;
5. The gender of the subject;
6. The laboratory identification number;
7. The specimen type;
8. The date of collection of the specimen;
9. The type of test ordered on the specimen; and
10. The ordering health care provider's name, address, telephone number, and, if available, email address.

**C.** Except as provided in Table 2.3 and as specified in subsection (D), for each test result for a subject for which a report is required by subsection (A) and Table 2.3, a clinical laboratory director shall ensure the report includes:

1. The name and address of the laboratory;
2. The name and telephone number of the director of the clinical laboratory;
3. The name and, as available, the address, telephone number, and email address of the subject;
4. The date of birth of the subject;
5. The gender of the subject;
6. The laboratory identification number;
7. The specimen type;
8. The date of collection of the specimen;
9. The date of the result of the test;
10. The type of test completed on the specimen;
11. The test result, including quantitative values and reference ranges, if applicable; and

12. The ordering health care provider's name, address, telephone number, and, if available, email address.

**D.** When the Arizona State Laboratory obtains a test result from anonymous HIV testing sent to the Arizona State Laboratory as described in R9-6-1005, the director of the Arizona State Laboratory shall, either personally or through a representative:

1. Submit a report to the Department within five working days after obtaining a positive test result; and
2. Include in the report the following information:
   a. The laboratory identification number of the subject;
   b. The date of birth, gender, race, and ethnicity of the subject;
   c. The date the specimen was collected;
   d. The type of tests completed on the specimen;
   e. The test results, including quantitative values if available; and
   f. The name, address, and telephone number of the person who submitted the specimen to the Arizona State Laboratory.

**Table 2.3. Clinical Laboratory Director Reporting Requirements**

| | | | | | |
|---|---|---|---|---|---|
| □ | *Anaplasma* spp. | □,✆,□ | Francisella tularensis | □ | *Plasmodium* spp. |
| ✆,□[4] | Arboviruses | ✆,□[4,5] | *Haemophilus influenzae,* from a normally sterile site | ✆,□ | Rabies virus from a human |
| □ | *Babesia* spp. | ✆ | Hantavirus | ✆,□[4] | Rabies virus from an animal |
| □,□,□ | *Bacillus anthracis* | ✆[1] | Hepatitis A virus (anti-HAV-IgM serologies, detection of viral nucleic acid, or genetic sequencing) | □ | Respiratory syncytial virus |
| ✆,□[4] | Bordetella pertussis | □[1] | Hepatitis B virus (anti-Hepatitis B core-IgM serologies, Hepatitis B surface or envelope antigen serologies, detection of viral nucleic acid, or genetic sequencing) | ✆,□[4] | *Rickettsia* spp. – any test result |
| ✆,□ | *Brucella* spp. | □[1] | Hepatitis C virus | ✆[1],□ | Rubella virus and anti-rubella-IgM serologies |
| ✆,□ | *Burkholderia mallei* and B. *pseudomallei* | □[1] | Hepatitis D virus | ✆,□ | *Salmonella* spp. |
| □,□[4] | *Campylobacter* spp. | □[1],□[4] | Hepatitis E virus | ✆,□[4] | *Shigella* spp. |
| □,□[4] | Carbapenem-resistant Enterobacteriaceae (CRE) | □ | HIV—any test result (by culture, antigen, antibodies to the virus, detection of viral nucleic acid, or genetic sequencing), except from a negative screening test | □,□[4] | *Streptococcus* group A, from a normally sterile site |
| □ | $CD_4$-T-lymphocyte count | □ | HIV—any test result for an infant (by culture, antigen, antibodies to the virus, detection of viral nucleic acid, or genetic sequencing) | □ | *Streptococcus* group B, from a normally sterile site in an infant younger than 90 days of age |
| ✆,□[4] | Chikungunya virus | □,□[4] | Influenza virus | □,□[4] | *Streptococcus pneumoniae* and its drug sensitivity pattern, from a normally sterile site |
| □ | *Chlamydia trachomatis* | ✆,+ | *Legionella* spp. (excluding single serological results) | □[1] | *Treponema pallidum* (syphilis) or rapid plasma reagin |
| □ | Chlamydia psittaci /Chlamydophila psittaci | ✆ | *Leptospira* spp. | □ | *Trypanosoma cruzi* (Chagas disease) |

| | | | | | |
|---|---|---|---|---|---|
| □,□ | *Clostridium botulinum* toxin (botulism) | ✆ | *Lymphocytic choriomeningitis* virus | ✆,□ | Vancomycin-resistant or Vancomycin-intermediate *Staphylococcus aureus* |
| □,□[4] | *Coccidioides* spp. | ✆,□ | *Listeria* spp., from a normally sterile site | □,□,□ | Variola virus (smallpox) |
| ✆ | Coxiella burnetti | □[1],□ | Measles virus and anti-measles-IgM serologies | ✆,□ | *Vibrio* spp. |
| ✆ | *Cryptosporidium* spp. | □[2] | Methicillin-resistant *Staphylococcus aureus*, from a normally sterile site | □,□,□ | Viral hemorrhagic fever agent |
| ✆ | *Cyclospora* spp. | ✆[1],□ | Mumps virus and anti-mumps-IgM serologies | □ | West Nile virus |
| ✆,□[4] | Dengue virus | ✆,□[3] | *Mycobacterium tuberculosis* complex and its drug sensitivity pattern | □,□ | Yellow fever virus |
| □ | *Ehrlichia* spp. | □,□[4] | *Neisseria gonorrhoeae* and, if performed, the drug sensitivity pattern | □,□,□ | *Yersinia pestis* (plague) |
| □,□ | Emerging or exotic disease agent | □,□ | *Neisseria meningitidis*, from a normally sterile site | ✆,□ | *Yersinia* spp. (other than *Y. pestis*) |
| □ | Entamoeba histolytica | ✆ | Norovirus | ✆,□ | Zika virus |
| ✆,□ | *Escherichia coli, Shiga* toxin-producing | □ | Novel coronavirus infection (e.g., SARS or MERS) | | |

Key:

□ Submit a report immediately after receiving one specimen for detection of the agent. Report the receipt of subsequent specimens within five working days after receipt.

□ Submit a report within 24 hours after obtaining a positive test result.

✆ Submit a report within one working day after obtaining a positive test result.

□ Submit a report within five working days after obtaining a positive test result or a test result specified in Table 2.3.

□ Submit an isolate of the organism for each positive culture, if available, or a specimen for each positive test result to the Arizona State Laboratory within one working day.

\+ Submit an isolate of the organism for each positive culture to the Arizona State Laboratory within one working day.

When appearing after one of the symbols above, the following modify the requirement:

[1] When reporting a positive result for any of the specified tests, report the results of all other tests performed for the subject as part of the disease panel or as a reflex test.

[2] Submit a report only when an initial positive result is obtained for an individual.

[3] Submit an isolate or specimen of the organism, as applicable, only when an initial positive result is obtained for an individual, when a change in resistance pattern is detected, or when a positive result is obtained ≥ 12 months after the initial positive result is obtained for an individual.

[4] Submit an isolate or specimen, as applicable, only by request.

[5] Submit an isolate of the organism, if available, or a specimen when a positive result is obtained for an individual < 5 years of age.

**R9-6-205. Reporting Requirements for a Pharmacist or an Administrator of a Pharmacy**

**A.** A pharmacist who fills an individual's initial prescription for two or more of the drugs listed in subsection (B) or an administrator of a pharmacy in which an individual's initial prescription for two or more of the drugs listed in subsection (B) is filled shall, either personally or through a representative, submit a report, in a Department-provided format, that complies with subsection (C) to the Department within five working days after the prescription is filled.

**B.** Any combination of two or more of the following drugs when initially prescribed for an individual triggers the reporting requirement of subsection (A):
1. Isoniazid,
2. Streptomycin,
3. Any rifamycin,
4. Pyrazinamide, or
5. Ethambutol.

**C.** A pharmacist or an administrator of a pharmacy shall submit a report required under subsection (A) that includes:
1. The following information about the individual for whom the drugs are prescribed:
   a. Name,
   b. Address,
   c. Telephone number, and
   d. Date of birth; and
2. The following information about the prescription:
   a. The name of the drugs prescribed,
   b. The date of prescription, and
   c. The name and telephone number of the prescribing health care provider.

**Table 2.4. Local Health Agency Reporting Requirements**

| | | | | | |
|---|---|---|---|---|---|
| □,□ | Amebiasis | □ | Gonorrhea | ✆,□,□ | Rubella (German measles) |
| □,□ | Anaplasmosis | ✆,□ | *Haemophilus influenza*, invasive disease | □,□,□ | Rubella syndrome, congenital |
| □,□,□ | Anthrax | □,□ | Hansen's disease (Leprosy) | ✆,□ | Salmonellosis |
| □,□ | Arboviral infection | ✆,□ | Hantavirus infection | ✆,□ | Shigellosis |
| □,□ | Babesiosis | ✆,□ | Hemolytic uremic syndrome | □,□,□ | Smallpox |
| □,□ | Basidiobolomycosis | ✆,□ | Hepatitis A | ✆,□ | Spotted fever rickettsiosis (e.g., Rocky Mountain spotted fever) |
| □,□,□ | Botulism | □,□ | Hepatitis B and Hepatitis D | □ | *Streptococcal* group A infection, invasive disease |
| □,□,□ | Brucellosis | □,□ | Hepatitis E | □ | *Streptococcal* group B infection in an infant younger than 90 days of age, invasive disease |
| □,□ | Campylobacteriosis | □,□ | HIV infection and related disease | □ | *Streptococcus pneumoniae* infection, (pneumococcal invasive disease) |
| □,□ | Chagas infection and related disease (American Trypanosomiasis) | ✆,□ | Influenza-associated mortality in a child | □,□ | Syphilis |
| □,□ | Chancroid (*Haemophilus ducreyi*) | ✆,□ | Legionellosis (Legionnaires' disease) | □,□ | Taeniasis |
| □,□ | Chikungunya | ✆,□ | Leptospirosis | □,□ | Tetanus |
| □ | *Chlamydia trachomatis* infection | ✆,□,□ | Listeriosis | □, □ | Toxic shock syndrome |
| ✆,□ | Cholera | □,□ | Lyme disease | ✆,□ | Trichinosis |

| | | | | | |
|---|---|---|---|---|---|
| □ | Coccidioidomycosis (Valley Fever) | ✆,□ | Lymphocytic choriomeningitis | ✆,□,□ | Tuberculosis, active disease |
| □,□ | Colorado tick fever | □,□ | Malaria | ✆,□ | Tuberculosis latent infection in a child five years of age or younger (positive screening test result) |
| □,□ | Creutzfeldt-Jakob disease | □,□,□ | Measles (rubeola) | | |
| □,□ | Cryptosporidiosis | ✆,□,□ | Melioidosis | □,□,□ | Tularemia |
| □,□ | *Cyclospora* infection | □,□,□ | Meningococcal invasive disease | ✆,□ | Typhoid fever |
| □,□ | Cysticercosis | ✆,□,□ | Mumps | ✆,□ | Typhus fever |
| ✆,□ | Dengue | □,□ | Novel coronavirus (e.g., SARS or MERS) | ✆,□ | Vaccinia-related adverse event |
| □,□ | Diphtheria | ✆,□ | Pertussis (whooping cough) | ✆,□,□ | Vancomycin-resistant or Vancomycin-intermediate *Staphylococcus aureus* |
| □,□ | Ehrlichiosis | □,□,□ | Plague | □,□[1] | Varicella (chickenpox) |
| □,□ | Emerging or exotic disease | □,□,□ | Poliomyelitis (paralytic or non-paralytic) | ✆,□ | *Vibrio* infection |
| □,□ | Encephalitis, parasitic | □,□ | Psittacosis (ornithosis) | □,□,□ | Viral hemorrhagic fever |
| ✆,□ | Encephalitis, viral | ✆,□ | Q Fever | □,□ | West Nile virus infection |
| ✆,□ | *Escherichia coli*, Shiga toxin-producing | □,□,□ | Rabies in a human | □,□,□ | Yellow fever |
| □,□ | Giardiasis | ✆,□ | Relapsing fever (borreliosis) | ✆,□,□ | Yersiniosis (enteropathogenic *Yersinia*) |
| ✆,□,□ | Glanders | | | ✆,□,□ | Zika virus infection |

Key:

□ Notify the Department within 24 hours after receiving a report under R9-6-202 or R9-6-203.

✆ Notify the Department within one working day after receiving a report under R9-6-202 or R9-6-203.

□ Notify the Department within five working days after receiving a report under R9-6-202 or R9-6-203.

□ Submit an epidemiologic investigation report within 30 calendar days after receiving a report under R9-6-202 or R9-6-203 or notification by the Department.

□ Ensure that an isolate of the organism for each positive culture, if available, or a specimen for each positive test result is submitted to the Arizona State Laboratory within one working day.

[1] Submit an epidemiologic investigation report only if a case or suspect case has died as a result of the communicable disease.

## ARTICLE 3. CONTROL MEASURES FOR COMMUNICABLE DISEASES AND INFESTATIONS

**R9-6-306. Amebiasis**

Case control measures: A local health agency shall:

1. Exclude an amebiasis case or suspect case with diarrhea from:
    a. Working as a food handler, caring for children in or attending a child care establishment, or caring for patients or residents in a health care institution until:
        i. Either:
            (1) Treatment with an amebicide is initiated, and
            (2) A stool specimen negative for amoebae is obtained from the amebiasis case or suspect case; or
        ii. The local health agency has determined that the amebiasis case or suspect case is unlikely to infect other individuals; and
    b. Using an aquatic venue for two weeks after diarrhea has resolved;
2. Conduct an epidemiologic investigation of each reported amebiasis case or suspect case; and
3. For each amebiasis case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

**R9-6-307. Anaplasmosis**

Case control measures: A local health agency shall:

1. Conduct an epidemiologic investigation of each reported anaplasmosis case or suspect case; and
2. For each anaplasmosis case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

**R9-6-308. Anthrax**

**A.** Case control measures: A local health agency shall:

1. Upon receiving a report under R9-6-202 of an anthrax case or suspect case, notify the Department within 24 hours after receiving the report and provide to the Department the information contained in the report;
2. Conduct an epidemiologic investigation of each reported anthrax case or suspect case;
3. For each anthrax case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D); and
4. Ensure that an isolate or a specimen, as available, from each anthrax case or suspect case is submitted to the Arizona State Laboratory.

**B.** Environmental control measures: A local health agency shall, in conjunction with the Department and applicable federal agencies, provide or arrange for disinfection of areas or objects contaminated by *Bacillus anthracis* through sterilization by dry heating, incineration of objects, or other appropriate means.

**R9-6-309. Arboviral Infection**

**A.** Case control measures: A local health agency shall:

1. Conduct an epidemiologic investigation of each reported arboviral infection case or suspect case;
2. For each arboviral infection case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D); and
3. Ensure that each arboviral infection case is provided with health education that includes measures to:
    a. Avoid mosquito bites, and
    b. Reduce mosquito breeding sites.

**B.** Environmental control measures: In cooperation with the Department, a local health agency or another local agency responsible for vector control within a jurisdiction shall conduct an assessment of the environment surrounding each arboviral infection case or suspect case and implement vector control measures as necessary.

**R9-6-310. Babesiosis**

Case control measures: A local health agency shall:

1. Conduct an epidemiologic investigation of each reported babesiosis case or suspect case; and
2. For each babesiosis case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

**R9-6-311. Basidiobolomycosis**

Case control measures: A local health agency shall:

1. Conduct an epidemiologic investigation of each reported basidiobolomycosis case or suspect case; and
2. For each basidiobolomycosis case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

**R9-6-312. Botulism**

**A.** Case control measures: A local health agency shall:

1. Upon receiving a report under R9-6-202 of a botulism case or suspect case, notify the Department within 24 hours after receiving the report and provide to the Department the information contained in the report;
2. Conduct an epidemiologic investigation of each reported botulism case or suspect case; and
3. For each botulism case or suspect case:
   a. Submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D); and
   b. Ensure that one or more specimens from each botulism case or suspect case are submitted to the Arizona State Laboratory.

**B.** Environmental control measures: An individual in possession of:

1. Food known to be contaminated by *Clostridium botulinum* or *Clostridium botulinum* toxin shall boil the contaminated food for 10 minutes and then discard it, and
2. Utensils known to be contaminated by *Clostridium botulinum* or *Clostridium botulinum* toxin shall boil the contaminated utensils for 10 minutes before reuse or disposal.

**R9-6-313. Brucellosis**

Case control measures: A local health agency shall:

1. Conduct an epidemiologic investigation of each reported brucellosis case or suspect case;
2. For each brucellosis case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D); and
3. Ensure that an isolate or a specimen, as available, from each brucellosis case is submitted to the Arizona State Laboratory.

**R9-6-314. Campylobacteriosis**

Case control measures: A local health agency shall:

1. Exclude a campylobacteriosis case or suspect case with diarrhea from:
   a. Working as a food handler, caring for children in or attending a child care establishment, or caring for patients or residents in a health care institution until:
      i. Diarrhea has resolved,
      ii. A stool specimen negative for *Campylobacter* spp. is obtained from the campylobacteriosis case or suspect case, or
      iii. The local health agency has determined that the case or suspect case is unlikely to infect other individuals; and
   b. Using an aquatic venue until diarrhea has resolved;
2. Conduct an epidemiologic investigation of each reported campylobacteriosis case or suspect case; and
3. For each campylobacteriosis case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

**R9-6-315. Carbapenem-resistant Enterobacteriaceae**

**A.** Case control measures:

1. A diagnosing health care provider or an administrator of a health care institution, either personally or through a representative, shall:
   a. Institute isolation precautions as necessary for a carbapenem-resistant enterobacteriaceae case or carrier to prevent transmission; and
   b. If a carbapenem-resistant enterobacteriaceae case or carrier is being transferred to another health care provider or health care institution or to a correctional facility, comply with R9-6-305.

2. An administrator of a correctional facility, either personally or through a representative, shall:
    a. Institute isolation precautions as necessary for a carbapenem-resistant enterobacteriaceae case or carrier to prevent transmission; and
    b. If a carbapenem-resistant enterobacteriaceae case or carrier is being transferred to another correctional facility or to a health care institution, comply with R9-6-305.
3. A local health agency, in consultation with the Department, shall:
    a. Ensure that a case or carrier of carbapenem-resistant enterobacteriaceae is isolated as necessary to prevent transmission; and
    b. Upon request, ensure that an isolate or a specimen, as available, from each case or carrier of carbapenem-resistant enterobacteriaceae is submitted to the Arizona State Laboratory.

**B.** Outbreak control measures: A local health agency shall:
1. Conduct an epidemiologic investigation for each outbreak or suspected outbreak of carbapenem-resistant enterobacteriaceae; and
2. For each outbreak or suspected outbreak of carbapenem-resistant enterobacteriaceae, submit to the Department the information required under R9-6-206(E).

**R9-6-316. Chagas Infection and Related Disease *(American Trypanosomiasis)***

Case control measures: A local health agency shall:
1. Conduct an epidemiologic investigation of each reported Chagas infection or disease case or suspect case; and
2. For each Chagas infection or disease case:
    a. Submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D); and
    b. Provide to the Chagas infection or disease case or ensure that another person provides to the Chagas infection or disease case health education that includes:
        i. The treatment options for Chagas infection or disease,
        ii. Where the Chagas infection or disease case may receive treatment for Chagas infection or disease, and
        iii. For women of childbearing age, the risks of transmission of Chagas infection or disease to a fetus.

**R9-6-317. Chancroid *(Haemophilus ducreyi)***

**A.** Case control measures: A local health agency shall:
1. Conduct an epidemiologic investigation of each reported chancroid case or suspect case;
2. For each chancroid case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D); and
3. Comply with the requirements specified in R9-6-1103 concerning treatment and health education for a chancroid case.

**B.** Contact control measures: When a chancroid case has named a contact, a local health agency shall comply with the requirements specified in R9-6-1103 concerning notification, testing, treatment, and health education for the contact.

**R9-6-318. Chikungunya**

**A.** Case control measures: A local health agency shall:
1. Upon receiving a report under R9-6-202 of a chikungunya case or suspect case, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
2. Conduct an epidemiologic investigation of each reported chikungunya case or suspect case;
3. For each chikungunya case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D); and
4. Ensure that each chikungunya case is provided with health education that includes measures to:
    a. Avoid mosquito bites, and
    b. Reduce mosquito breeding sites.

**B.** Environmental control measures: In cooperation with the Department, a local health agency or another local agency responsible for vector control within a jurisdiction shall conduct an assessment of the environment surrounding each chikungunya case or suspect case and implement vector control measures as necessary.

**R9-6-319. *Chlamydia trachomatis* Infection**

**A.** Case control measures:

A local health agency shall comply with the requirements specified in R9-6-1103 concerning treatment and health education for a *Chlamydia trachomatis* infection case that seeks treatment from the local health agency.

**B.** Contact control measures: If an individual who may have been exposed to chlamydia through sexual contact with a *Chlamydia trachomatis* infection case seeks treatment for symptoms of chlamydia infection from a local health agency, the local health agency shall comply with the requirements specified in R9-6-1103 concerning treatment and health education for the individual.

**R9-6-320. Cholera**

**A.** Case control measures: A local health agency shall:

1. Upon receiving a report under R9-6-202 of a cholera case or suspect case, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
2. Exclude a cholera case or suspect case from:
   a. Working as a food handler, caring for patients or residents in a health care institution, or caring for children in or attending a child care establishment until a stool specimen negative for toxigenic *Vibrio cholerae* is obtained from the cholera case or suspect case; and
   b. Using an aquatic venue until diarrhea has resolved;
3. Conduct an epidemiologic investigation of each reported cholera case or suspect case; and
4. For each cholera case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

**B.** Contact control measures: A local health agency shall provide follow-up for each cholera contact for five calendar days after exposure.

**R9-6-321. *Clostridium difficile***

Case control measures:

1. A diagnosing health care provider or an administrator of a health care institution transferring a known *Clostridium difficile* case with active infection and diarrhea to another health care provider or health care institution or to a correctional facility shall, either personally or through a representative, ensure that the receiving health care provider, health care institution, or correctional facility is informed that the patient is a known *Clostridium difficile* case.
2. If a known *Clostridium difficile* case with active infection and diarrhea is being transferred from a correctional facility to another correctional facility or to a health care institution, an administrator of the correctional facility, either personally or through a representative, shall ensure that the receiving correctional facility or health care institution is informed that the individual is a known *Clostridium difficile* case.

**R9-6-322. Coccidioidomycosis (Valley Fever)**

Outbreak control measures: A local health agency shall:

1. Conduct an epidemiologic investigation of each reported outbreak of coccidioidomycosis; and
2. For each outbreak of coccidioidomycosis, submit to the Department the information required under R9-6-206(E).

**R9-6-323. Colorado Tick Fever**

Case control measures: A local health agency shall:

1. Conduct an epidemiologic investigation of each reported Colorado tick fever case or suspect case; and
2. For each Colorado tick fever case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

**R9-6-324. Conjunctivitis: Acute**

**A.** Case control measures: An administrator of a school or child care establishment, either personally or through a representative, shall exclude an acute conjunctivitis case from attending the school or child care establishment until the symptoms of acute conjunctivitis subside or treatment for acute conjunctivitis is initiated and maintained for 24 hours.

**B.** Outbreak control measures: A local health agency shall:

1. Conduct an epidemiologic investigation of each reported conjunctivitis outbreak; and
2. For each conjunctivitis outbreak, submit to the Department the information required under R9-6-206(E).

**R9-6-325. Creutzfeldt-Jakob Disease**

Case control measures: A local health agency shall:

1. Conduct an epidemiologic investigation of each reported Creutzfeldt-Jakob disease case or suspect case; and
2. For each Creutzfeldt-Jakob disease case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

**R9-6-326. Cryptosporidiosis**

**A.** Case control measures: A local health agency shall:

1. Exclude a cryptosporidiosis case or suspect case with diarrhea from:
   a. Working as a food handler, caring for patients or residents in a health care institution, or caring for children in or attending a child care establishment until diarrhea has resolved; and
   b. Using an aquatic venue for two weeks after diarrhea has resolved;
2. Conduct an epidemiologic investigation of each reported cryptosporidiosis case or suspect case; and
3. For each cryptosporidiosis case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

**B.** Environmental control measures: A local health agency shall conduct a sanitary inspection or ensure that a sanitary inspection is conducted of each facility or location regulated under 9 A.A.C. 8 that is associated with an outbreak of cryptosporidiosis.

**R9-6-327. *Cyclospora* Infection**

Case control measures: A local health agency shall:

1. Conduct an epidemiologic investigation of each reported *Cyclospora* infection case or suspect case; and
2. For each *Cyclospora* infection case submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

**R9-6-328. Cysticercosis**

Case control measures: A local health agency shall:

1. Conduct an epidemiologic investigation of each reported cysticercosis case or suspect case; and
2. For each cysticercosis case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

**R9-6-329. Dengue**

**A.** Case control measures: A local health agency shall:

1. Upon receiving a report under R9-6-202 of a dengue case or suspect case, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
2. Conduct an epidemiologic investigation of each reported dengue case or suspect case;
3. For each dengue case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D); and
4. Ensure that each dengue case is provided with health education that includes measures to:
   a. Avoid mosquito bites, and
   b. Reduce mosquito breeding sites.

**B.** Environmental control measures: In cooperation with the Department, a local health agency or another local agency responsible for vector control within a jurisdiction shall conduct an assessment of the environment surrounding each dengue case or suspect case and implement vector control measures as necessary.

**R9-6-330. Diarrhea, Nausea, or Vomiting**

**A.** Outbreak control measures: A local health agency shall:

1. Conduct an epidemiologic investigation of each reported outbreak of diarrhea, nausea, or vomiting;
2. Submit to the Department the information required under R9-6-206(E); and
3. Exclude each case that is part of an outbreak of diarrhea, nausea, or vomiting from:
   a. Working as a food handler, caring for patients or residents in a health care institution, or caring for children in or attending a child care establishment until:

i. Diarrhea and vomiting have resolved, or
ii. The local health agency has determined that the case is unlikely to infect other individuals; and

b. Using an aquatic venue for two weeks after diarrhea has resolved.

**B.** Environmental control measures: A local health agency shall conduct a sanitary inspection or ensure that a sanitary inspection is conducted of each facility or location regulated under 9 A.A.C. 8 that is associated with an outbreak of diarrhea, nausea, or vomiting.

**R9-6-331. Diphtheria**

**A.** Case control measures:

1. A diagnosing health care provider or an administrator of a health care institution, either personally or through a representative, shall:
   a. Isolate and institute droplet precautions for a pharyngeal diphtheria case or suspect case until two successive sets of cultures negative for *Cornyebacterium diphtheriae* are obtained from nose and throat specimens collected from the case or suspect case at least 24 hours apart and at least 24 hours after cessation of treatment; and
   b. Isolate and institute contact precautions for a cutaneous diphtheria case or suspect case until two successive sets of cultures negative for *Cornyebacterium diphtheriae* are obtained from skin specimens collected from the case or suspect case at least 24 hours apart and at least 24 hours after cessation of treatment
   .
2. A local health agency shall:
   a. Upon receiving a report under R9-6-202 of a diphtheria case or suspect case, notify the Department within 24 hours after receiving the report and provide to the Department the information contained in the report;
   b. Conduct an epidemiologic investigation of each reported diphtheria case or suspect case; and
   c. For each diphtheria case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

**B.** Contact control measures: A local health agency shall:

1. Exclude each diphtheria contact from working as a food handler, caring for patients or residents in a health care institution, or caring for children in or attending a school or child care establishment until a set of cultures negative for *Cornyebacterium diphtheriae* is obtained from the contact's nose and throat specimens;
2. In consultation with the Department, quarantine a contact of a diphtheria case, if indicated, until two successive sets of cultures negative for *Cornyebacterium diphtheriae* are obtained from nose and throat specimens collected from the contact at least 24 hours apart;
3. Offer each previously immunized diphtheria contact prophylaxis and a vaccine containing diphtheria toxoid; and
4. Offer each unimmunized diphtheria contact prophylaxis and the primary vaccine series.

**R9-6-332. Ehrlichiosis**

Case control measures: A local health agency shall:

1. Conduct an epidemiologic investigation of each reported ehrlichiosis case or suspect case; and
2. For each ehrlichiosis case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

**R9-6-333. Emerging or Exotic Disease**

**A.** Case control measures: A local health agency shall:

1. Upon receiving a report under R9-6-202 of an emerging or exotic disease case or suspect case, notify the Department within 24 hours after receiving the report and provide to the Department the information contained in the report;
2. In consultation with the Department, isolate an emerging or exotic disease case or suspect case as necessary to prevent transmission;
3. Conduct an epidemiologic investigation of each reported emerging or exotic disease case or suspect case; and
4. For each emerging or exotic disease case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

**B.** Contact control measures: A local health agency, in consultation with the Department, shall quarantine or exclude an emerging or exotic disease contact as necessary, according to R9-6-303, to prevent transmission.

**R9-6-334. Encephalitis, Viral or Parasitic**

Case control measures: A local health agency shall:

1. Upon receiving a report of encephalitis under R9-6-202, notify the Department:
   a. For a case or suspect case of parasitic encephalitis, within 24 hours after receiving the report and provide to the Department the information contained in the report; and
   b. For a case or suspect case of viral encephalitis, within one working day after receiving the report and provide to the Department the information contained in the report;
2. Conduct an epidemiologic investigation of each reported viral or parasitic encephalitis case or suspect case; and
3. For each encephalitis case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

**R9-6-335. *Escherichia coli,* Shiga Toxin-producing**

**A.** Case control measures: A local health agency shall:

1. Upon receiving a report under R9-6-202 or R9-6-203 of a Shiga toxin-producing *Escherichia coli* case or suspect case, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
2. Exclude a Shiga toxin-producing *Escherichia coli* case or suspect case with diarrhea from:
   a. Working as a food handler, caring for patients or residents in a health care institution, or caring for children in or attending a child care establishment until:
      i. Two successive stool specimens, collected from the Shiga toxin-producing *Escherichia coli* case or suspect case at least 24 hours apart, are negative for Shiga toxin-producing *Escherichia coli*;
      ii. Diarrhea has resolved; or
      iii. The local health agency has determined that the case or suspect case is unlikely to infect other individuals; and
   b. Using an aquatic venue for two weeks after diarrhea has resolved;
3. Conduct an epidemiologic investigation of each reported Shiga toxin-producing *Escherichia coli* case or suspect case; and
4. For each Shiga toxin-producing *Escherichia coli* case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

**B.** Environmental control measures: A local health agency shall:

1. If an animal located in a private residence is suspected to be the source of infection for a Shiga toxin-producing *Escherichia coli* case or outbreak, provide health education for the animal's owner about Shiga toxin-producing *Escherichia coli* and the risks of becoming infected with Shiga toxin-producing *Escherichia coli*; and
2. If an animal located in a setting other than a private residence is suspected to be the source of infection for a Shiga toxin-producing *Escherichia coli* case or outbreak:
   a. Provide health education for the animal's owner about Shiga toxin-producing *Escherichia coli* and the risks of becoming infected with Shiga toxin-producing *Escherichia coli*, and
   b. Require the animal's owner to provide information to individuals with whom the animal may come into contact about Shiga toxin-producing *Escherichia coli* and methods to reduce the risk of transmission.

**R9-6-336. Giardiasis**

Case control measures: A local health agency shall:

1. Exclude a giardiasis case or suspect case with diarrhea from:
   a. Working as a food handler, caring for patients or residents in a health care institution, or caring for children in or attending a child care establishment until:
      i. Treatment for giardiasis is initiated and diarrhea has resolved, or
      ii. The local health agency has determined that the case or suspect case is unlikely to infect other individuals; and
   b. Using an aquatic venue for two weeks after diarrhea has resolved;
2. Conduct an epidemiologic investigation of each reported giardiasis case or suspect case; and
3. For each giardiasis case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

**R9-6-337. Glanders**

Case control measures: A local health agency shall:

1. Upon receiving a report under R9-6-202 of a glanders case or suspect case, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
2. Conduct an epidemiologic investigation of each reported glanders case or suspect case;
3. For each glanders case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D); and
4. Ensure that an isolate or a specimen, as available, from each glanders case or suspect case is submitted to the Arizona State Laboratory.

**R9-6-338. Gonorrhea**

**A.** Case control measures:

1. For the prevention of gonorrheal ophthalmia, a physician, physician assistant, registered nurse practitioner, or midwife attending the birth of an infant in this state shall treat the eyes of the infant immediately after the birth with one of the following, unless treatment is refused by the parent or guardian:
   a. Erythromycin ophthalmic ointment 0.5%; or
   b. If erythromycin ophthalmic ointment is not available, another appropriate antibiotic.
2. A local health agency shall comply with the requirements specified in R9-6-1103 concerning treatment and health education for a gonorrhea case that seeks treatment from the local health agency.

**B.** Contact control measures: If an individual who may have been exposed to gonorrhea through sexual contact with a gonorrhea case seeks treatment for symptoms of gonorrhea from a local health agency, the local health agency shall comply with the requirements specified in R9-6-1103 concerning treatment and health education for the individual.

**R9-6-339. *Haemophilus influenzae*: Invasive Disease**

**A.** Case control measures:

1. A diagnosing health care provider or an administrator of a health care institution, either personally or through a representative, shall isolate and institute droplet precautions for a *Haemophilus influenzae* meningitis or epiglottitis case or suspect case for 24 hours after the initiation of treatment.
2. A local health agency shall:
   a. Upon receiving a report under R9-6-202 or R9-6-203 of a *Haemophilus influenzae* invasive disease case or suspect case, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
   b. Conduct an epidemiologic investigation of each reported *Haemophilus influenzae* invasive disease case or suspect case; and
   c. For each *Haemophilus influenzae* invasive disease case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

**B.** Contact control measures: A local health agency shall evaluate the level of risk of transmission from each contact's exposure to a *Haemophilus influenzae* invasive disease case and, if indicated, shall provide or arrange for each contact to receive immunization or treatment.

**R9-6-340. Hansen's Disease (Leprosy)**

**A.** Case control measures: A local health agency shall:

1. Conduct an epidemiologic investigation of each reported Hansen's disease case or suspect case; and
2. For each Hansen's disease case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

**B.** Contact control measures: In consultation with the Department, a local health agency shall examine contacts of a Hansen's disease case, if indicated, for signs and symptoms of leprosy at six-to-twelve month intervals for five years after the last exposure to an infectious case.

**R9-6-341. Hantavirus Infection**

**A.** Case control measures: A local health agency shall:

1. Upon receiving a report under R9-6-202 of a hantavirus infection case or suspect case, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;

2. Ensure that a hantavirus infection case or, if the case is a child or incapacitated adult, the parent or guardian of the case receives health education about reducing the risks of becoming reinfected with or of having others become infected with hantavirus;
3. Conduct an epidemiologic investigation of each reported hantavirus infection case or suspect case; and
4. For each hantavirus infection case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

**B.** Environmental control measures: A local health agency shall conduct an environmental assessment for each hantavirus infection case or suspect case.

**R9-6-342. Hemolytic Uremic Syndrome**

**A.** Case control measures: A local health agency shall:
1. Upon receiving a report under R9-6-202 of a hemolytic uremic syndrome case or suspect case, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
2. Conduct an epidemiologic investigation of each reported hemolytic uremic syndrome case or suspect case; and
3. For each hemolytic uremic syndrome case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

**B.** Contact control measures: A local health agency shall exclude a hemolytic uremic syndrome contact with diarrhea of unknown cause from working as a food handler until diarrhea has resolved.

**R9-6-343. Hepatitis A**

**A.** Case control measures: A local health agency shall:
1. Upon receiving a report under R9-6-202 or R9-6-203 of a hepatitis A case or suspect case, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
2. Exclude a hepatitis A case or suspect case from working as a food handler, caring for patients or residents in a health care institution, or caring for children in or attending a child care establishment during the first 14 calendar days of illness or for seven calendar days after onset of jaundice;
3. Conduct an epidemiologic investigation of each reported hepatitis A case or suspect case; and
4. For each hepatitis A case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

**B.** Contact control measures: A local health agency shall:
1. Exclude a hepatitis A contact with symptoms of hepatitis A from working as a food handler during the first 14 calendar days of illness or for seven calendar days after onset of jaundice;
2. For 45 calendar days after exposure, monitor a food handler who was a contact of a hepatitis A case during the infectious period for symptoms of hepatitis A; and
3. Evaluate the level of risk of transmission from each contact's exposure to a hepatitis A case and, if indicated, provide or arrange for each contact to receive prophylaxis and immunization.

**R9-6-344. Hepatitis B and Hepatitis D**

**A.** Case control measures:
1. A local health agency shall:
   a. Evaluate a health care provider identified as the source of hepatitis B virus transmission in the work place and, if indicated, ensure reassignment of the health care provider to a position where the occupational risk of transmission is eliminated;
   b. Conduct an epidemiologic investigation of each reported case or suspect case of hepatitis B or hepatitis B co-infected with hepatitis D; and
   c. For each acute case of hepatitis B or hepatitis B co-infected with hepatitis D or case of perinatal hepatitis B, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).
2. The operator of a blood bank, blood center, or plasma center shall notify a donor of a test result with significant evidence suggestive of hepatitis B, as required under A.R.S. § 32-1483 and 21 CFR 630.6.

**B.** Contact control measures: A local health agency shall:
1. Refer each non-immune hepatitis B contact to a health care provider for prophylaxis and initiation of the hepatitis B vaccine series, and

2. Provide health education related to the progression of hepatitis B disease and the prevention of transmission of hepatitis B infection to each non-immune hepatitis B contact.

**R9-6-345. Hepatitis C**

Outbreak control measures: A local health agency shall:

1. Conduct an epidemiologic investigation of each reported hepatitis C outbreak;
2. For each hepatitis C outbreak, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(E);
3. Evaluate a health care provider identified as the source of hepatitis C virus transmission in the work place and, if indicated, ensure reassignment of the health care provider to a position where the occupational risk of transmission is eliminated; and
4. Ensure that health education related to the progression of hepatitis C disease and the prevention of transmission of hepatitis C infection is provided to each individual who may have been exposed to hepatitis C during the outbreak.

**R9-6-346. Hepatitis E**

Case control measures: A local health agency shall:

1. Exclude a hepatitis E case or suspect case from working as a food handler, caring for patients or residents in a health care institution, or caring for children in or attending a child care establishment during the first 14 calendar days of illness or for seven calendar days after onset of jaundice;
2. Conduct an epidemiologic investigation of each reported hepatitis E case or suspect case; and
3. For each hepatitis E case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

**R9-6-347. HIV Infection and Related Disease**

**A.** Case control measures:

1. A local health agency shall:
   a. Conduct an epidemiologic investigation, including a review of medical records, of each reported HIV-infected individual or suspect case; and
   b. For each HIV-infected individual, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).
2. The operator of a blood bank, blood center, or plasma center shall notify a donor of a test result with significant evidence suggestive of HIV infection, as required under A.R.S. § 32-1483 and 21 CFR 630.6.
3. The Department and a local health agency shall offer anonymous HIV-testing to an individual as specified in R9-6-1005.

**B.** Contact control measures: The Department or the Department's designee shall confidentially notify an individual reported to be at risk for HIV infection under A.R.S. § 36-664(I) as specified in R9-6-1006(A).

**C.** Environmental control measures: An employer, as defined under A.R.S. § 23-401, or health care provider shall comply with the requirements specified in A.R.S. § 23-403 and A.A.C. R20-5-602.

**R9-6-348. Influenza-Associated Mortality in a Child**

Case control measures: A local health agency shall:

1. Upon receiving a report under R9-6-202 of a case or suspect case of an influenza-associated death of a child, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
2. Conduct an epidemiologic investigation of each reported case or suspect case of influenza-associated mortality in a child; and
3. For each case of influenza-associated mortality in a child, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

**R9-6-349. Legionellosis (Legionnaires' Disease)**

**A.** Case control measures: A local health agency shall:

1. Upon receiving a report under R9-6-202 of a legionellosis case or suspect case, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
2. Conduct an epidemiologic investigation of each reported legionellosis case or suspect case; and
3. For each legionellosis case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

**B.** Environmental control measures: The owner of a water, cooling, or ventilation system or equipment that is determined by the Department or a local health agency to be associated with a case of *Legionella* infection shall comply with the environmental control measures recommended by the Department or local health agency to prevent the exposure of other individuals.

**R9-6-350. Leptospirosis**

Case control measures: A local health agency shall:

1. Upon receiving a report under R9-6-202 of a leptospirosis case or suspect case, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
2. Conduct an epidemiologic investigation of each reported leptospirosis case or suspect case; and
3. For each leptospirosis case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

**R9-6-351. Listeriosis**

Case control measures: A local health agency shall:

1. Upon receiving a report under R9-6-202 of a listeriosis case or suspect case, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
2. Conduct an epidemiologic investigation of each reported listeriosis case or suspect case;
3. For each listeriosis case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D); and
4. Ensure that an isolate or a specimen, as available, from each listeriosis case is submitted to the Arizona State Laboratory.

**R9-6-352. Lyme Disease**

Case control measures: A local health agency shall:

1. Conduct an epidemiologic investigation of each reported Lyme disease case or suspect case; and
2. For each Lyme disease case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

**R9-6-353. Lymphocytic Choriomeningitis**

Case control measures: A local health agency shall:

1. Upon receiving a report under R9-6-202 of a lymphocytic choriomeningitis case or suspect case, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
2. Conduct an epidemiologic investigation of each reported lymphocytic choriomeningitis case or suspect case; and
3. For each lymphocytic choriomeningitis case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

**R9-6-354. Malaria**

**A.** Case control measures: A local health agency shall:

1. Conduct an epidemiologic investigation of each reported malaria case or suspect case; and
2. For each malaria case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

**B.** Environmental control measures: In cooperation with the Department, a local health agency or another local agency responsible for vector control within a jurisdiction shall conduct an assessment of the environment surrounding each malaria case or suspect case and implement vector control measures as necessary.

**R9-6-355. Measles (Rubeola)**

**A.** Case control measures:

1. An administrator of a school or child care establishment, either personally or through a representative, shall:
   a. Exclude a measles case from the school or child care establishment and from school- or child-care-establishment-sponsored events from the onset of illness through the fourth calendar day after the rash appears; and
   b. Exclude a measles suspect case from the school or child care establishment and from school- or child-care-establishment-sponsored events until the local health agency has determined that the suspect case is unlikely to infect other individuals.
2. A diagnosing health care provider or an administrator of a health care institution, either personally or through a representative, shall isolate and institute airborne precautions for a measles case from onset of illness through the fourth calendar day after the rash appears.
3. An administrator of a health care institution, either personally or through a representative, shall exclude a measles:
   a. Case from working at the health care institution from the onset of illness through the fourth calendar day after the rash appears; and
   b. Suspect case from working at the health care institution until the local health agency has determined that the suspect case may return to work.
4. A local health agency shall:
   a. Upon receiving a report under R9-6-202 or R9-6-203 of a measles case or suspect case, notify the Department within 24 hours after receiving the report and provide to the Department the information contained in the report;
   b. Conduct an epidemiologic investigation of each reported measles case or suspect case;
   c. For each measles case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D); and
   d. Ensure that one or more specimens from each measles case or suspect case, as required by the Department, are submitted to the Arizona State Laboratory.
5. An administrator of a correctional facility or shelter, either personally or through a representative, shall comply with the measles control measures recommended by a local health agency or the Department.

**B.** Contact control measures:

1. When a measles case has been at a school or child care establishment, the administrator of the school or child care establishment, either personally or through a representative, shall:
   a. Consult with the local health agency to determine who shall be excluded and how long each individual shall be excluded from the school or child care establishment, and
   b. Comply with the local health agency's recommendations for exclusion.
2. A local health agency shall:
   a. Determine which measles contacts will be quarantined or excluded, according to R9-6-303, to prevent transmission; and
   b. Provide or arrange for immunization of each non-immune measles contact within 72 hours after last exposure, if possible.
3. An administrator of a health care institution shall ensure that a paid or volunteer full-time or part-time worker at a health care institution does not participate in the direct care of a measles case or suspect case unless the worker is able to provide evidence of immunity to measles through one of the following:
   a. A record of immunization against measles with two doses of live virus vaccine given on or after the first birthday and at least one month apart;
   b. A statement signed by a physician, physician assistant, registered nurse practitioner, state health officer, or local health officer affirming serologic evidence of immunity to measles; or
   c. Documentary evidence of birth before January 1, 1957.

**R9-6-356. Melioidosis**

Case control measures: A local health agency shall:

1. Upon receiving a report under R9-6-202 of a melioidosis case or suspect case, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
2. Conduct an epidemiologic investigation of each reported melioidosis case or suspect case;
3. For each melioidosis case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D); and
4. Ensure that an isolate or a specimen, as available, from each melioidosis case or suspect case is submitted to the Arizona State Laboratory.

**R9-6-357. Meningococcal Invasive Disease**

**A.** Case control measures:

1. A diagnosing health care provider or an administrator of a health care institution, either personally or through a representative, shall isolate and institute droplet precautions for a meningococcal invasive disease case for 24 hours after the initiation of treatment.
2. A local health agency shall:
   a. Upon receiving a report under R9-6-202 or R9-6-203 of a meningococcal invasive disease case or suspect case, notify the Department within 24 hours after receiving the report and provide to the Department the information contained in the report;
   b. Conduct an epidemiologic investigation of each reported meningococcal invasive disease case or suspect case;
   c. For each meningococcal invasive disease case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D); and
   d. Ensure that an isolate or a specimen, as available, from each meningococcal invasive disease case is submitted to the Arizona State Laboratory.

**B.** Contact control measures: A local health agency shall evaluate the level of risk of transmission from each contact's exposure to a meningococcal invasive disease case and, if indicated, provide or arrange for each contact to receive prophylaxis.

**R9-6-358. Methicillin-resistant *Staphylococcus aureus* (MRSA)**

**A.** Case control measures:

1. A diagnosing health care provider or an administrator of a health care institution transferring a known methicillin-resistant *Staphylococcus aureus* case with active infection to another health care provider or health care institution or to a correctional facility shall, either personally or through a representative, ensure that the receiving health care provider, health care institution, or correctional facility is informed that the patient is a known methicillin-resistant *Staphylococcus aureus* case.
2. If a known methicillin-resistant *Staphylococcus aureus* case with active infection is being transferred from a correctional facility to another correctional facility or to a health care institution, an administrator of the correctional facility, either personally or through a representative, shall ensure that the receiving correctional facility or health care institution is informed that the individual is a known methicillin-resistant *Staphylococcus aureus* case.

**B.** Outbreak control measures:

1. A local health agency, in consultation with the Department, shall:
   a. Conduct an epidemiologic investigation of each reported outbreak of methicillin-resistant *Staphylococcus aureus* in a health care institution or correctional facility; and
   b. For each outbreak of methicillin-resistant *Staphylococcus aureus* in a health care institution or correctional facility, submit to the Department the information required under R9-6-206(E).
2. When an outbreak of methicillin-resistant *Staphylococcus aureus* occurs in a health care institution or correctional facility, the administrator of the health care institution or correctional facility, either personally or through a representative, shall comply with the control measures recommended by a local health agency or the Department.

**R9-6-359. Mumps**

**A.** Case control measures:

1. An administrator of a school or child care establishment, either personally or through a representative, shall:
   a. Exclude a mumps case from the school or child care establishment for five calendar days after the onset of glandular swelling; and
   b. Exclude a mumps suspect case from the school or child care establishment and from school- or child-care-establishment-sponsored events until evaluated and determined to be noninfectious by a physician, physician assistant, registered nurse practitioner, or local health agency.
2. A diagnosing health care provider or an administrator of a health care institution, either personally or through a representative, shall isolate and institute droplet precautions with a mumps case for five calendar days after the onset of glandular swelling.
3. An administrator of a health care institution, either personally or through a representative, shall exclude a mumps:
   a. Case from working at the health care institution for five calendar days after the onset of glandular swelling; and
   b. Suspect case from working at the health care institution until evaluated and determined to be noninfectious by a physician, physician assistant, registered nurse practitioner, or local health agency.
4. A local health agency shall:

a. Upon receiving a report under R9-6-202 or R9-6-203 of a mumps case or suspect case, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
b. Conduct an epidemiologic investigation of each reported mumps case or suspect case;
c. For each mumps case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D); and
d. Ensure that one or more specimens from each mumps case or suspect case, as required by the Department, are submitted to the Arizona State Laboratory.

5. An administrator of a correctional facility or shelter, either personally or through a representative, shall comply with the mumps control measures recommended by a local health agency or the Department.

**B.** Contact control measures:

1. When a mumps case has been at a school or child care establishment, the administrator of the school or child care establishment, either personally or through a representative, shall:
   a. Consult with the local health agency to determine who shall be excluded and how long each individual shall be excluded from the school or child care establishment, and
   b. Comply with the local health agency's recommendations for exclusion.
2. An administrator of a health care institution shall ensure that a paid or volunteer full-time or part-time worker at a health care institution does not participate in the direct care of a mumps case or suspect case unless the worker is able to provide evidence of immunity to mumps through one of the following:
   a. A record of immunization against mumps with two doses of live virus vaccine given on or after the first birthday and at least one month apart; or
   b. A statement signed by a physician, physician assistant, registered nurse practitioner, state health officer, or local health officer affirming serologic evidence of immunity to mumps.
3. A local health agency shall determine which mumps contacts will be:
   a. Quarantined or excluded, according to R9-6-303, to prevent transmission; and
   b. Advised to obtain an immunization against mumps.

**R9-6-360. Norovirus**

**A.** Outbreak control measures: A local health agency shall:

1. Conduct an epidemiologic investigation of each reported norovirus outbreak;
2. Submit to the Department the information required under R9-6-206(E); and
3. Exclude each case that is part of a norovirus outbreak from working as a food handler, caring for patients or residents in a health care institution, or caring for children in or attending a child care establishment until:
   a. Diarrhea has resolved, or
   b. The local health agency has determined that the case or suspect case is unlikely to infect other individuals.

**B.** Environmental control measures: A local health agency shall conduct a sanitary inspection or ensure that a sanitary inspection is conducted of each facility or location regulated under 9 A.A.C. 8 that is associated with a norovirus outbreak.

**R9-6-361. Novel Coronavirus (e.g., SARS or MERS)**

**A.** Case control measures:

1. In consultation with the Department or the applicable local health agency, a diagnosing health care provider or an administrator of a health care institution, either personally or through a representative, shall isolate and institute both airborne precautions and contact precautions for a novel coronavirus case or suspect case, including a case or suspect case of severe acute respiratory syndrome or Middle East respiratory syndrome, until evaluated and determined to be noninfectious by a physician, physician assistant, or registered nurse practitioner or otherwise advised by the Department or the applicable local health agency.
2. A local health agency shall:
   a. Upon receiving a report under R9-6-202 of a novel coronavirus case or suspect case, notify the Department within 24 hours after receiving the report and provide to the Department the information contained in the report;
   b. In consultation with the Department, ensure that isolation and both airborne precautions and contact precautions have been instituted for a novel coronavirus case or suspect case to prevent transmission, unless otherwise advised by the Department;
   c. Conduct an epidemiologic investigation of each reported novel coronavirus case or suspect case, unless otherwise advised by the Department; and

d. For each novel coronavirus case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

**B.** Contact control measures: A local health agency, in consultation with the Department, shall determine which novel coronavirus contacts will be quarantined or excluded, according to R9-6-303, to prevent transmission.

**R9-6-362. Pediculosis (Lice Infestation)**

**A.** Case control measures:
1. An administrator of a school or child care establishment, either personally or through a representative, may exclude a pediculosis case from the school or child care establishment until the case is treated with a pediculocide.
2. An administrator of a shelter shall ensure that a pediculosis case is treated with a pediculocide and that the case's clothing and personal articles are disinfested.

**B.** Contact control measures: An administrator of a school or child care establishment that has knowledge of a pediculosis case from the school or child care establishment, either personally or through a representative, shall ensure that a parent or guardian of a child who is a contact is notified that a pediculosis case was identified at the school or child care establishment.

**R9-6-363. Pertussis (Whooping Cough)**

**A.** Case control measures:
1. An administrator of a school or child care establishment, either personally or through a representative, shall:
   a. Exclude a pertussis case from the school or child care establishment for 21 calendar days after the date of onset of cough or for five calendar days after the date of initiation of antibiotic treatment for pertussis; and
   b. Exclude a pertussis suspect case from the school or child care establishment until evaluated and determined to be noninfectious by a physician, physician assistant, registered nurse practitioner, or local health agency.
2. An administrator of a health care institution, either personally or through a representative, shall:
   a. Exclude a pertussis case from working at the health care institution for 21 calendar days after the date of onset of cough or for five calendar days after the date of initiation of antibiotic treatment for pertussis; and
   b. Exclude a pertussis suspect case from working at the health care institution until evaluated and determined to be noninfectious by a physician, physician assistant, registered nurse practitioner, or local health agency.
3. A diagnosing health care provider or an administrator of a health care institution, either personally or through a representative, shall isolate and initiate droplet precautions for a pertussis case for five calendar days after the date of initiation of antibiotic treatment for pertussis.
4. A local health agency shall:
   a. Upon receiving a report under R9-6-202 or R9-6-203 of a pertussis case or suspect case, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
   b. Conduct an epidemiologic investigation of each reported pertussis case or suspect case; and
   c. For each pertussis case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).
5. An administrator of a correctional facility or shelter, either personally or through a representative, shall comply with the pertussis control measures recommended by a local health agency or the Department.

**B.** Contact control measures:
1. When a pertussis case has been at a school or child care establishment, the administrator of the school or child care establishment, either personally or through a representative, shall:
   a. Consult with the local health agency to determine who shall be excluded and how long each individual shall be excluded from the school or child care establishment, and
   b. Comply with the local health agency's recommendations for exclusion.
2. A local health agency shall identify contacts of a pertussis case and shall:
   a. Determine which pertussis contacts will be quarantined or excluded, according to R9-6-303, to prevent transmission; and
   b. If indicated, provide or arrange for a pertussis contact to receive antibiotic prophylaxis.

**R9-6-364. Plague**

**A.** Case control measures:

1. A diagnosing health care provider or an administrator of a health care institution, either personally or through a representative, shall isolate and institute droplet precautions for a pneumonic plague case or suspect case until 72 hours of antibiotic therapy have been completed with favorable clinical response.
2. An individual handling the body of a deceased plague case shall use droplet precautions.
3. A local health agency shall:
    a. Upon receiving a report under R9-6-202 of a plague case or suspect case, notify the Department within 24 hours after receiving the report and provide to the Department the information contained in the report;
    b. Conduct an epidemiologic investigation of each reported plague case or suspect case;
    c. For each plague case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D); and
    d. Ensure that an isolate or a specimen, as available, from each plague case or suspect case is submitted to the Arizona State Laboratory.

**B.** Contact control measures: A local health agency shall provide follow-up to pneumonic plague contacts for seven calendar days after last exposure to a pneumonic plague case.

**R9-6-365. Poliomyelitis (Paralytic or Non-paralytic)**

Case control measures: A local health agency shall:

1. Upon receiving a report under R9-6-202 of a poliomyelitis case or suspect case, notify the Department within 24 hours after receiving the report and provide to the Department the information contained in the report;
2. Conduct an epidemiologic investigation of each reported poliomyelitis case or suspect case;
3. For each poliomyelitis case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D); and
4. Ensure that one or more specimens from each poliomyelitis case or suspect case, as required by the Department, are submitted to the Arizona State Laboratory.

**R9-6-366. Psittacosis (Ornithosis)**

**A.** Case control measures: A local health agency shall:
1. Conduct an epidemiologic investigation of each reported psittacosis case or suspect case; and
2. For each psittacosis case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

**B.** Environmental control measures: A local health agency shall:
1. If a bird infected with *Chlamydia psittaci* or *Chlamydophila psittaci* is located in a private residence:
    a. Provide health education for the bird's owner about psittacosis and the risks of becoming infected with psittacosis, and
    b. Advise the bird's owner to obtain treatment for the bird; and
2. If a bird infected with *Chlamydia psittaci* or *Chlamydophila psittaci* is located in a setting other than a private residence:
    a. Provide health education for the bird's owner about psittacosis and the risks of becoming infected with psittacosis,
    b. Ensure that the bird is treated or destroyed and any contaminated structures are disinfected, and
    c. Require the bird's owner to isolate the bird from contact with members of the public and from other birds until treatment of the bird is completed or the bird is destroyed.

**R9-6-367. Q Fever**

Case control measures: A local health agency shall:

1. Upon receiving a report under R9-6-202 of a Q fever case or suspect case, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
2. Conduct an epidemiologic investigation of each reported Q fever case or suspect case; and
3. For each Q fever case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

**R9-6-368. Rabies in a Human**

**A.** Case control measures: A local health agency shall:

1. Upon receiving a report under R9-6-202 of a human rabies case or suspect case, notify the Department within 24 hours after receiving the report and provide to the Department the information contained in the report;
2. Conduct an epidemiologic investigation of each reported human rabies case or suspect case;
3. For each human rabies case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D); and
4. Ensure that a specimen from each human rabies case or suspect case, as required by the Department, is submitted to the Arizona State Laboratory.

**B.** Contact control measures: A local health agency shall evaluate the level of risk of transmission from each contact's exposure to a human rabies case and, if indicated, provide or arrange for each contact to receive prophylaxis.

**R9-6-369. Relapsing Fever (Borreliosis)**

Case control measures: A local health agency shall:

1. Upon receiving a report under R9-6-202 of a borreliosis case or suspect case, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
2. Conduct an epidemiologic investigation of each reported borreliosis case or suspect case; and
3. For each borreliosis case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

**R9-6-370. Respiratory Disease in a Health Care Institution or Correctional Facility**

Outbreak control measures:

1. A local health agency shall:
   a. Conduct an epidemiologic investigation of each reported outbreak of respiratory disease in a health care institution or correctional facility; and
   b. For each outbreak of respiratory disease in a health care institution or correctional facility, submit to the Department the information required under R9-6-206(E).
2. When an outbreak of respiratory disease occurs in a health care institution or correctional facility, the administrator of the health care institution or correctional facility, either personally or through a representative, shall comply with the control measures recommended by a local health agency.

**R9-6-371. Rubella (German Measles)**

**A.** Case control measures:

1. An administrator of a school or child care establishment, either personally or through a representative, shall:
   a. Exclude a rubella case from the school or child care establishment and from school- or child-care-establishment-sponsored events from the onset of illness through the seventh calendar day after the rash appears; and
   b. Exclude a rubella suspect case from the school or child care establishment and from school- or child-care-establishment-sponsored events until evaluated and determined to be noninfectious by a physician, physician assistant, registered nurse practitioner, or local health agency.
2. A diagnosing health care provider or an administrator of a health care institution, either personally or through a representative and in consultation with the local health agency, shall isolate and institute droplet precautions for a rubella case through the seventh calendar day after the rash appears.
3. An administrator of a health care institution, either personally or through a representative, shall exclude a rubella:
   a. Case from working at the health care institution from the onset of illness through the seventh calendar day after the rash appears; and
   b. Suspect case from working at the health care institution until evaluated and determined to be noninfectious by a physician, physician assistant, registered nurse practitioner, or local health agency.
4. A local health agency shall:
   a. Upon receiving a report under R9-6-202 or R9-6-203 of a rubella case or suspect case, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
   b. Conduct an epidemiologic investigation of each reported rubella case or suspect case;
   c. For each rubella case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D); and

d. Ensure that one or more specimens from each rubella case or suspect case, as required by the Department, are submitted to the Arizona State Laboratory.

5. An administrator of a correctional facility or shelter, either personally or through a representative, shall comply with the rubella control measures recommended by a local health agency or the Department.

**B.** Contact control measures:

1. An administrator of a health care institution shall ensure that a paid or volunteer full-time or part-time worker at a health care institution does not participate in the direct care of a rubella case or suspect case or of a patient who is or may be pregnant unless the worker first provides evidence of immunity to rubella consisting of:
   a. A record of immunization against rubella given on or after the first birthday; or
   b. A statement signed by a physician, physician assistant, registered nurse practitioner, state health officer, or local health officer affirming serologic evidence of immunity to rubella.
2. When a rubella case has been at a school or child care establishment, the administrator of the school or child care establishment, either personally or through a representative, shall:
   a. Consult with the local health agency to determine who shall be excluded and how long each individual shall be excluded from the school or child care establishment, and
   b. Comply with the local health agency's recommendations for exclusion.
3. A local health agency shall:
   a. Determine which rubella contacts will be quarantined or excluded, according to R9-6-303, to prevent transmission; and
   b. Provide or arrange for immunization of each non-immune rubella contact within 72 hours after last exposure, if possible.

**R9-6-372. Rubella Syndrome, Congenital**

**A.** Case control measures:

1. A diagnosing health care provider or an administrator of a health care institution, either personally or through a representative, shall isolate and implement contact precautions for an infant congenital rubella syndrome case until:
   a. The infant congenital rubella syndrome case reaches one year of age; or
   b. Two successive negative virus cultures, from specimens collected at least one month apart, are obtained from the infant congenital rubella syndrome case after the infant congenital rubella syndrome case reaches three months of age.
2. A local health agency shall:
   a. Upon receiving a report under R9-6-202 of a congenital rubella syndrome case or suspect case, notify the Department within 24 hours after receiving the report and provide to the Department the information contained in the report;
   b. Conduct an epidemiologic investigation of each reported congenital rubella syndrome case or suspect case;
   c. For each congenital rubella syndrome case, as specified in Table 2.4, the information required under R9-6-206(D); and
   d. Ensure that one or more specimens from each congenital rubella syndrome case or suspect case, as required by the Department, are submitted to the Arizona State Laboratory.

**B.** Contact control measures: An administrator of a health care institution shall ensure that a paid or volunteer full-time or part-time worker at a health care institution who is known to be pregnant does not participate in the direct care of a congenital rubella syndrome case or suspect case unless the worker first provides evidence of immunity to rubella that complies with R9-6-371(B)(1).

**R9-6-373. Salmonellosis**

**A.** Case control measures: A local health agency shall:

1. Upon receiving a report under R9-6-202 or R9-6-203 of a salmonellosis case or suspect case, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
2. Exclude a salmonellosis case or suspect case with diarrhea from:
   a. Working as a food handler, caring for children in or attending a child care establishment, or caring for patients or residents in a health care institution until:
      i. Diarrhea has resolved,
      ii. A stool specimen negative for *Salmonella* spp. is obtained from the salmonellosis case or suspect case, or

iii. The local health agency has determined that the case or suspect case is unlikely to infect other individuals; and

b. Using an aquatic venue until diarrhea has resolved;

3. Conduct an epidemiologic investigation of each reported salmonellosis case or suspect case; and
4. For each salmonellosis case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

**B.** Environmental control measures: A local health agency shall:

1. If an animal infected with *Salmonella* spp. is located in a private residence, provide health education for the animal's owner about salmonellosis and the risks of becoming infected with *Salmonella* spp.; and
2. If an animal infected with *Salmonella* spp. is located in a setting other than a private residence:
   a. Provide health education for the animal's owner about salmonellosis and the risks of becoming infected with *Salmonella* spp., and
   b. Require the animal's owner to provide information to individuals with whom the animal may come into contact about salmonellosis and methods to reduce the risk of transmission.

**R9-6-374. Scabies**

**A.** Case control measures:

1. An administrator of a school or child care establishment, either personally or through a representative, shall exclude a scabies case from the school or child care establishment until treatment for scabies is completed.
2. An administrator of a health care institution or shelter, either personally or through a representative, shall exclude a scabies case from participating in the direct care of a patient or resident until treatment for scabies is completed.
3. An administrator of a shelter, either personally or through a representative, shall ensure that a scabies case receives treatment for scabies and that the case's clothing and personal articles are disinfested.
4. An administrator of a correctional facility, either personally or through a representative, shall ensure that a scabies case receives treatment for scabies and that the case's clothing and personal articles are disinfested.

**B.** Contact control measures: An administrator of a school, child care establishment, health care institution, or shelter, either personally or through a representative, shall advise a scabies contact with symptoms of scabies to obtain examination and, if necessary, treatment.

**C.** Outbreak control measures: A local health agency shall:

1. Provide health education regarding prevention, control, and treatment of scabies to individuals affected by a scabies outbreak;
2. When a scabies outbreak occurs in a health care institution, notify the licensing agency of the outbreak; and
3. For each scabies outbreak, submit to the Department the information required under R9-6-202(D).

**R9-6-375. Shigellosis**

Case control measures: A local health agency shall:

1. Upon receiving a report under R9-6-202 or R9-6-203 of a shigellosis case or suspect case, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
2. Exclude a shigellosis case or suspect case with diarrhea from:
   a. Working as a food handler, caring for children in or attending a child care establishment, or caring for patients or residents in a health care institution until:
      i. Diarrhea has resolved,
      ii. A stool specimen negative for *Shigella* spp. is obtained from the shigellosis case or suspect case, or
      iii. The local health agency has determined that the case or suspect case is unlikely to infect other individuals; and
   b. Using an aquatic venue for one week after diarrhea has resolved;
3. Conduct an epidemiologic investigation of each reported shigellosis case or suspect case; and
4. For each shigellosis case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

**R9-6-376. Smallpox**

**A.** Case control measures:

1. A diagnosing health care provider or an administrator of a health care institution, either personally or through a representative, shall isolate and institute both airborne precautions and contact precautions for a smallpox case or

suspect case, until evaluated and determined to be noninfectious by a physician, physician assistant, or registered nurse practitioner.

2. A local health agency shall:
   a. Upon receiving a report under R9-6-202 of a smallpox case or suspect case, notify the Department within 24 hours after receiving the report and provide to the Department the information contained in the report;
   b. In consultation with the Department:
      i. Ensure that isolation and both airborne precautions and contact precautions have been instituted for a smallpox case or suspect case to prevent transmission, and
      ii. Conduct an epidemiologic investigation of each reported smallpox case or suspect case;
   c. For each smallpox case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D); and
   d. Ensure that a specimen from each smallpox case or suspect case, as required by the Department, is submitted to the Arizona State Laboratory.

**B.** Contact control measures: A local health agency, in consultation with the Department, shall:
1. Quarantine or exclude a smallpox contact as necessary, according to R9-6-303, to prevent transmission; and
2. Monitor the contact for smallpox symptoms, including fever, each day for 21 calendar days after last exposure.

**R9-6-377. Spotted Fever Rickettsiosis (e.g., Rocky Mountain Spotted Fever)**

**A.** Case control measures: A local health agency shall:
1. Upon receiving a report under R9-6-202 of a spotted fever rickettsiosis case or suspect case, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
2. Ensure that a spotted fever rickettsiosis case or, if the case is a child or incapacitated adult, the parent or guardian of the case receives health education about reducing the risks of becoming reinfected with or of having others become infected with spotted fever rickettsiosis;
3. Conduct an epidemiologic investigation of each reported spotted fever rickettsiosis case or suspect case; and
4. For each spotted fever rickettsiosis case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

**B.** Environmental control measures: In cooperation with the Department, a local health agency or another local agency responsible for vector control within a jurisdiction shall conduct an assessment of the environment surrounding each spotted fever rickettsiosis case or suspect case and implement vector control measures as necessary.

**R9-6-378. Streptococcal Group A Infection**

**A.** Streptococcal group A infection, invasive or non-invasive:

Case control measures: An administrator of a school, child care establishment, or health care institution or a person in charge of a food establishment, either personally or through a representative, shall exclude a streptococcal group A infection case with streptococcal lesions or streptococcal sore throat from working as a food handler, attending or working in a school, caring for children in or attending a child care establishment, or caring for patients or residents in a health care institution for 24 hours after the initiation of treatment for streptococcal group A infection.

**B.** Invasive streptococcal group A infection:

Outbreak control measures: A local health agency shall:
1. Conduct an epidemiologic investigation of each reported outbreak of streptococcal group A invasive infection;
2. For each streptococcal group A invasive infection case involved in an outbreak, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D); and
3. For each outbreak of streptococcal group A invasive infection, submit to the Department the information required under R9-6-206(E).

**R9-6-379. Streptococcal Group B Invasive Infection in an Infant Younger Than 90 Days of Age**

Case control measures: A local health agency shall:
1. Confirm the diagnosis of streptococcal group B invasive infection for each reported case or suspect case of streptococcal group B invasive infection in an infant younger than 90 days of age; and
2. For each case of streptococcal group B infection in an infant younger than 90 days of age, submit to the Department the information required under R9-6-202(C).

**R9-6-380. *Streptococcus pneumoniae* Invasive Infection**

Outbreak control measures: A local health agency shall:

1. Conduct an epidemiologic investigation of each reported outbreak of *Streptococcus pneumoniae* invasive infection; and
2. For each outbreak of *Streptococcus pneumoniae* invasive infection, submit to the Department the information required under R9-6-206(E).

**R9-6-381. Syphilis**

**A.** Case control measures:

1. A syphilis case shall obtain serologic testing for syphilis three months, six months, and one year after initiating treatment, unless more frequent or longer testing is recommended by a local health agency.
2. A health care provider for a pregnant syphilis case shall order serologic testing for syphilis at 28 to 32 weeks gestation and at delivery.
3. A local health agency shall:
   a. Conduct an epidemiologic investigation, including a review of medical records, of each reported syphilis case or suspect case, confirming the stage of the disease;
   b. For each syphilis case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D);
   c. If the syphilis case is pregnant, ensure that the syphilis case obtains the serologic testing for syphilis required in subsections (A)(1) and (A)(2); and
   d. Comply with the requirements specified in R9-6-1103 concerning treatment and health education for a syphilis case.
4. The operator of a blood bank, blood center, or plasma center shall notify a donor of a test result with significant evidence suggestive of syphilis, as required under A.R.S. § 32-1483 and 21 CFR 630.6.

**B.** Contact control measures: When a syphilis case has named a contact, a local health agency shall comply with the requirements specified in R9-6-1103 concerning notification, testing, treatment, and health education for the contact.

**C.** Outbreak control measures: A local health agency shall:

1. Conduct an epidemiologic investigation of each reported syphilis outbreak; and
2. For each syphilis outbreak, submit to the Department the information required under R9-6-206(E).

**R9-6-382. Taeniasis**

Case control measures: A local health agency shall:

1. Exclude a taeniasis case with *Taenia* spp. from working as a food handler, caring for children in or attending a child care establishment, or caring for patients or residents in a health care institution until free of infestation;
2. Conduct an epidemiologic investigation of each reported taeniasis case; and
3. For each taeniasis case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

**R9-6-383. Tetanus**

Case control measures: A local health agency shall:

1. Conduct an epidemiologic investigation of each reported tetanus case or suspect case; and
2. For each tetanus case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

**R9-6-384. Toxic Shock Syndrome**

Case control measures: A local health agency shall:

1. Conduct an epidemiologic investigation of each reported toxic shock syndrome case or suspect case; and
2. For each toxic shock syndrome case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

**R9-6-385. Trichinosis**

Case control measures: A local health agency shall:

1. Upon receiving a report under R9-6-202 of a trichinosis case or suspect case, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;

2. Conduct an epidemiologic investigation of each reported trichinosis case or suspect case; and
3. For each trichinosis case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

**R9-6-386. Tuberculosis**

**A.** Case control measures:
1. A diagnosing health care provider or an administrator of a health care institution, either personally or through a representative, shall isolate and institute airborne precautions for:
   a. An individual with infectious active tuberculosis until:
      i. At least three successive sputum smears collected at least eight hours apart, at least one of which is taken first thing in the morning as soon as possible after the individual awakens from sleep, are negative for acid-fast bacilli;
      ii. Anti-tuberculosis treatment is initiated with multiple antibiotics; and
      iii. Clinical signs and symptoms of active tuberculosis are improved;
   b. A suspect case of infectious active tuberculosis until:
      i. At least two successive tests for tuberculosis, using a product and methodology approved by the U.S. Food and Drug Administration for use when making decisions whether to discontinue isolation and airborne precautions, for the suspect case are negative; or
      ii. At least three successive sputum smears collected from the suspect case as specified in subsection (A)(1)(a)(i) are negative for acid-fast bacilli, anti-tuberculosis treatment of the suspect case is initiated with multiple antibiotics, and clinical signs and symptoms of active tuberculosis are improved; and
   c. A case or suspect case of multi-drug resistant active tuberculosis until a tuberculosis control officer has approved the release of the case or suspect case.
2. An administrator of a health care institution, either personally or through a representative, shall notify a local health agency at least one working day before discharging a tuberculosis case or suspect case.
3. A local health agency shall:
   a. Upon receiving a report under R9-6-202 of a tuberculosis case or suspect case, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
   b. Exclude an individual with infectious active tuberculosis or a suspect case from working, unless the individual's work setting has been approved by a tuberculosis control officer, until the individual with infectious active tuberculosis or suspect case is released from airborne precautions according to the applicable criteria in subsection (A)(1);
   c. Conduct an epidemiologic investigation of each reported tuberculosis case, suspect case, or latent infection in a child five years of age or younger;
   d. For each tuberculosis case or suspect case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D);
   e. Ensure that an isolate or a specimen, as available, from each tuberculosis case is submitted to the Arizona State Laboratory; and
   f. Comply with the requirements specified in R9-6-1202.

**B.** Contact control measures:
1. A contact of an individual with infectious active tuberculosis shall allow a local health agency to evaluate the contact's tuberculosis status.
2. A local health agency shall comply with the tuberculosis contact control measures specified in R9-6-1202.

**C.** An individual is not a tuberculosis case if the individual has a positive result from an approved test for tuberculosis but does not have clinical signs or symptoms of disease.

**R9-6-387. Tularemia**

Case control measures:
1. A diagnosing health care provider or an administrator of a health care institution, either personally or through a representative, shall isolate a pneumonic tularemia case until 72 hours of antibiotic therapy have been completed with favorable clinical response.
2. A local health agency shall:
   a. Upon receiving a report under R9-6-202 of a tularemia case or suspect case, notify the Department within 24 hours after receiving the report and provide to the Department the information contained in the report;
   b. Conduct an epidemiologic investigation of each reported tularemia case or suspect case;

c. For each tularemia case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D); and
d. Ensure that an isolate or a specimen, as available, from each tularemia case or suspect case is submitted to the Arizona State Laboratory.

**R9-6-388. Typhoid Fever**

**A.** Case control measures: A local health agency shall:
1. Upon receiving a report under R9-6-202 of a typhoid fever case or suspect case, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
2. Conduct an epidemiologic investigation of each reported typhoid fever case or suspect case;
3. For each typhoid fever case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D);
4. Exclude a typhoid fever case or suspect case from working as a food handler, caring for children in or attending a child care establishment, or caring for patients or residents in a health care institution until:
   a. At least one month after the date of onset of illness; and
   b. After two successive stool specimens, collected from the typhoid fever case at least 24 hours apart and at least 48 hours after cessation of antibiotic therapy, are negative for *Salmonella typhi*;
5. If a stool specimen from a typhoid fever case who has received antibiotic therapy is positive for *Salmonella typhi*, enforce the exclusions specified in subsection (A)(4) until two successive stool specimens, collected from the typhoid fever case at least one month apart and 12 or fewer months after the date of onset of illness, are negative for *Salmonella typhi*;
6. If a positive stool specimen, collected at least 12 months after onset of illness, is obtained from a typhoid fever case who has received antibiotic therapy, redesignate the case as a carrier; and
7. Exclude a typhoid fever carrier from working as a food handler, caring for children in or attending a child care establishment, or caring for patients or residents in a health care institution until three successive stool specimens, collected from the typhoid fever carrier at least one month apart, are negative for *Salmonella typhi*.

**B.** Contact control measures: A local health agency shall exclude a typhoid fever contact from working as a food handler, caring for children in or attending a child care establishment, or caring for patients or residents in a health care institution until two successive stool specimens, collected from the typhoid fever contact at least 24 hours apart, are negative for *Salmonella typhi*.

**R9-6-389. Typhus Fever**

Case control measures: A local health agency shall:
1. Upon receiving a report under R9-6-202 of a typhus fever case or suspect case, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
2. Conduct an epidemiologic investigation of each reported typhus fever case or suspect case; and
3. For each typhus fever case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

**R9-6-390. Vaccinia-related Adverse Event**

Case control measures: A local health agency shall:
1. Upon receiving a report under R9-6-202 of a case or suspect case of a vaccinia-related adverse event, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
2. Conduct an epidemiologic investigation of each reported case or suspect case of a vaccinia-related adverse event; and
3. For each case of a vaccinia-related adverse event, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

**R9-6-391. Vancomycin-Resistant or Vancomycin-Intermediate *Staphylococcus aureus***

Case control measures:
1. A diagnosing health care provider or an administrator of a health care institution, either personally or through a representative, shall isolate and implement contact precautions for a case or suspect case of vancomycin-resistant or vancomycin-intermediate *Staphylococcus aureus*.

2. A diagnosing health care provider or an administrator of a health care institution transferring a known case with active infection or a known carrier of vancomycin-resistant or vancomycin-intermediate *Staphylococcus aureus* to another health care provider or health care institution shall, either personally or through a representative, comply with R9-6-305.
3. A local health agency, in consultation with the Department, shall:
    a. Upon receiving a report under R9-6-202 of a case or suspect case of vancomycin-resistant or vancomycin-intermediate *Staphylococcus aureus*, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
    b. Ensure that a case or suspect case of vancomycin-resistant or vancomycin-intermediate *Staphylococcus aureus* is isolated as necessary to prevent transmission;
    c. Conduct an epidemiologic investigation of each reported case or suspect case of vancomycin-resistant or vancomycin-intermediate *Staphylococcus aureus*;
    d. For each case of vancomycin-resistant or vancomycin-intermediate *Staphylococcus aureus*, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D); and
    e. Ensure that an isolate or a specimen, as available, from each case of vancomycin-resistant or vancomycin-intermediate *Staphylococcus aureus* is submitted to the Arizona State Laboratory.

**R9-6-392. Varicella (Chickenpox)**

**A.** Case control measures:
1. An administrator of a school or child care establishment, either personally or through a representative, shall exclude a varicella case from the school or child care establishment and from school- or child-care-establishment-sponsored events until lesions are dry and crusted.
2. An administrator of a health care institution, either personally or through a representative, shall isolate and implement airborne precautions for a varicella case until the case is no longer infectious.
3. A local health agency shall:
    a. Conduct an epidemiologic investigation of each reported case of death due to primary varicella infection; and
    b. For each reported case of death due to varicella infection, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

**B.** Contact control measures:
1. When a varicella case has been at a school or child care establishment, the administrator of the school or child care establishment, either personally or through a representative, shall:
    a. Consult with the local health agency to determine who shall be excluded and how long each individual shall be excluded from the school or child care establishment, and
    b. Comply with the local health agency's recommendations for exclusion.
2. A local health agency shall determine which contacts of a varicella case will be:
    a. Excluded from a school or child care establishment, and
    b. Advised to obtain an immunization against varicella.

**R9-6-393. *Vibrio* Infection**

Case control measures: A local health agency shall:
1. Upon receiving a report under R9-6-202 of a *Vibrio* infection case or suspect case, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
2. Exclude a *Vibrio* infection case or suspect case with diarrhea from:
    a. Working as a food handler, caring for patients or residents in a health care institution, or caring for children in or attending a child care establishment until:
        i. Diarrhea has resolved, or
        ii. The local health agency has determined that the case or suspect case is unlikely to infect other individuals; and
    b. Using an aquatic venue until diarrhea has resolved;
3. Conduct an epidemiologic investigation of each reported *Vibrio* infection case or suspect case; and
4. For each *Vibrio* infection case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

**R9-6-394. Viral Hemorrhagic Fever**

**A.** Case control measures:
1. A diagnosing health care provider or an administrator of a health care institution, either personally or through a representative, shall isolate and implement both droplet precautions and contact precautions for a viral hemorrhagic fever case or suspect case for the duration of the illness.
2. A local health agency shall:
   a. Upon receiving a report under R9-6-202 of a viral hemorrhagic fever case or suspect case, notify the Department within 24 hours after receiving the report and provide to the Department the information contained in the report;
   b. Conduct an epidemiologic investigation of each reported viral hemorrhagic fever case or suspect case;
   c. For each viral hemorrhagic fever case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D); and
   d. Ensure that one or more specimens from each viral hemorrhagic fever case or suspect case are submitted to the Arizona State Laboratory.

**B.** Contact control measures: A local health agency, in consultation with the Department, shall quarantine a viral hemorrhagic fever contact as necessary to prevent transmission.

**R9-6-395. West Nile Virus Infection**

**A.** Case control measures: A local health agency shall:
1. Conduct an epidemiologic investigation of each reported West Nile virus infection case or suspect case;
2. For each case of West Nile virus infection, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D); and
3. Ensure that each West Nile virus infection case is provided with health education that includes measures to:
   a. Avoid mosquito bites, and
   b. Reduce mosquito breeding sites.

**B.** Environmental control measures: In cooperation with the Department, a local health agency or another local agency responsible for vector control within a jurisdiction shall conduct an assessment of the environment surrounding each West Nile virus infection case or suspect case and implement vector control measures as necessary.

**R9-6-396. Yellow Fever**

**A.** Case control measures: A local health agency shall:
1. Upon receiving a report under R9-6-202 of a yellow fever case or suspect case, notify the Department within 24 hours after receiving the report and provide to the Department the information contained in the report;
2. Conduct an epidemiologic investigation of each reported yellow fever case or suspect case;
3. For each yellow fever case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D);
4. Ensure that each yellow fever case is provided with health education that includes measures to:
   a. Avoid mosquito bites, and
   b. Reduce mosquito breeding sites; and
5. Ensure that an isolate or a specimen, as available, from each yellow fever case or suspect case is submitted to the Arizona State Laboratory.

**B.** Environmental control measures: In cooperation with the Department, a local health agency or another local agency responsible for vector control within a jurisdiction shall conduct an assessment of the environment surrounding each yellow fever case or suspect case and implement vector control measures as necessary.

**R9-6-397. Yersiniosis (Enteropathogenic *Yersinia*)**

Case control measures: A local health agency shall:
1. Upon receiving a report under R9-6-202 of a yersiniosis case or suspect case, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
2. Exclude a yersiniosis case or suspect case with diarrhea from:
   a. Working as a food handler, caring for patients or residents in a health care institution, or caring for children in or attending a child care establishment until:
      i. Diarrhea has resolved,
      ii. A stool specimen negative for enteropathogenic *Yersinia* is obtained from the case or suspect case, or
      iii. The local health agency has determined that the case or suspect case is unlikely to infect other individuals; and

b. Using an aquatic venue for two weeks after diarrhea has resolved;

3. Conduct an epidemiologic investigation of each reported yersiniosis case or suspect case;
4. For each yersiniosis case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D); and
5. Ensure that an isolate or a specimen, as available, from each yersiniosis case is submitted to the Arizona State Laboratory.

**R9-6-398. Zika Virus Infection**

**A.** Case control measures: A local health agency shall:

1. Upon receiving a report under R9-6-202 of a Zika virus infection case or suspect case, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
2. Conduct an epidemiologic investigation of each reported Zika virus infection case or suspect case;
3. For each Zika virus infection case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D);
4. Ensure that one or more specimens from each Zika virus infection case or suspect case, as required by the Department, are submitted to the Arizona State Laboratory; and
5. Provide to the Zika virus infection case or ensure that another person provides to the Zika virus infection case health education that includes measures to:
   a. Avoid mosquito bites,
   b. Reduce mosquito breeding sites, and
   c. Reduce the risk of sexual or congenital transmission of Zika virus.

**B.** Environmental control measures: In cooperation with the Department, a local health agency or another local agency responsible for vector control within a jurisdiction shall conduct an assessment of the environment surrounding each Zika virus infection case or suspect case and implement vector control measures as necessary.

## ARTICLE 10. HIV-RELATED TESTING AND NOTIFICATION

**R9-6-1002. Local Health Agency Requirements**

For each HIV-infected individual or suspect case, a local health agency shall comply with the requirements in R9-6-347.

**R9-6-1005. Anonymous HIV Testing**

**A.** A local health agency and the Department shall offer anonymous HIV testing to individuals.

**B.** If an individual requests anonymous HIV testing, the Department or a local health agency shall:

1. Provide to the individual requesting anonymous HIV testing:
   a. Health education about HIV,
   b. The meaning of HIV test results, and
   c. The risk factors for becoming infected with HIV or transmitting HIV to other individuals;
2. Collect a specimen of blood from the individual;
3. Record the following information in a Department-provided format:
   a. The individual's date of birth;
   b. The individual's race and ethnicity;
   c. The individual's gender;
   d. The date and time the blood specimen was collected;
   e. The type of screening test;
   f. Information about the individual's risk factors for becoming infected with or transmitting HIV; and
   g. The name, address, and telephone number of the person collecting the blood specimen;
4. Before the individual leaves the building occupied by the Department or local health agency:
   a. Test the individual's specimen of blood using the screening test for HIV specified in subsection (B)(3);
   b. Provide the results of the screening test to the individual;
   c. Enter the test results in the record established according to subsection (B)(3); and
   d. If the test results from the screening test on the specimen of blood indicate that the individual may be HIV-infected:
      i. Assist the individual to connect with persons that may have additional resources available for the individual; and
      ii. Provide confirmatory testing or submit the specimen of blood to the Arizona State Laboratory for confirmatory testing by:
         (1) Assigning to the blood specimen an identification number corresponding to the record established according to subsection (B)(3);
         (2) Giving the individual requesting anonymous HIV testing the identification number assigned to the blood specimen and information about how to obtain the results of the confirmatory test; and
         (3) Sending the blood specimen and the record specified in subsection (B)(3) to the Arizona State Laboratory for confirmatory testing; and
5. If anonymous HIV testing is provided by a local health agency, submit the record specified in subsection (B)(3) to the Department.

## ARTICLE 11. STI-RELATED TESTING AND NOTIFICATION

**R9-6-1102. Health Care Provider Requirements**

When a laboratory report for a test ordered by a health care provider for a subject indicates that the subject is infected with an STI, the ordering health care provider or the ordering health care provider's designee shall:

1. Describe the test results to the subject;
2. Provide or arrange for the subject to receive the following information about the STI for which the subject was tested:
    a. A description of the infection or syndrome caused by the STI, including its symptoms;
    b. Treatment options for the STI and where treatment may be obtained;
    c. A description of how the STI is transmitted to others;
    d. A description of measures to reduce the likelihood of transmitting the STI to others and that it is necessary to continue the measures until the infection is eliminated;
    e. That it is necessary for the subject to notify individuals who may have been infected by the subject that the individuals need to be tested for the STI;
    f. The availability of assistance from local health agencies or other resources; and
    g. The confidential nature of the subject's test results;
3. Report the information required in R9-6-202 to a local health agency; and
4. If the subject is pregnant and is a syphilis case, inform the subject of the requirement that the subject obtain serologic testing for syphilis according to R9-6-381.

**R9-6-1103. Local Health Agency Requirements**

**A.** For each STI case, a local health agency shall:

1. Comply with the requirements in:
    a. R9-6-317(A)(1) and (2) for each chancroid case reported to the local health agency, and
    b. R9-6-381(A)(3)(a) through (c) for each syphilis case reported to the local health agency;
2. Offer or arrange for treatment for each STI case that seeks treatment from the local health agency for:
    a. Chancroid,
    b. Chlamydia infection,
    c. Gonorrhea, or
    d. Syphilis;
3. Provide information about the following to each STI case that seeks treatment from the local health agency:
    a. A description of the infection or syndrome caused by the applicable STI, including its symptoms;
    b. Treatment options for the applicable STI;
    c. A description of measures to reduce the likelihood of transmitting the STI to others and that it is necessary to continue the measures until the infection is eliminated; and
    d. The confidential nature of the STI case's test results; and
4. Inform the STI case that:
    a. A chlamydia or gonorrhea case must notify each individual, with whom the chlamydia or gonorrhea case has had sexual contact within 60 days preceding the onset of chlamydia or gonorrhea symptoms up to the date the chlamydia or gonorrhea case began treatment for chlamydia or gonorrhea infection, of the need for the individual to be tested for chlamydia or gonorrhea; and
    b. The Department or local health agency will notify, as specified in subsection (B), each contact named by a chancroid or syphilis case.

**B.** For each contact named by a chancroid or syphilis case, the Department or a local health agency shall:

1. Notify the contact named by a chancroid or syphilis case of the contact's exposure to chancroid or syphilis and of the need for the contact to be tested for:
    a. Chancroid, if the chancroid case has had sexual contact with the contact within 10 days preceding the onset of chancroid symptoms up to the date the chancroid case began treatment for chancroid infection; or
    b. Syphilis, if the syphilis case has had sexual contact with the contact within:
        i. 90 days preceding the onset of symptoms of primary syphilis up to the date the syphilis case began treatment for primary syphilis infection;
        ii. Six months preceding the onset of symptoms of secondary syphilis up to the date the syphilis case began treatment for secondary syphilis infection; or
        iii. 12 months preceding the date the syphilis case was diagnosed with syphilis if the syphilis case cannot identify when symptoms of primary or secondary syphilis began;

2. Offer or arrange for each contact named by a chancroid or syphilis case to receive testing and, if appropriate, treatment for chancroid or syphilis; and
3. Provide information to each contact named by a chancroid or syphilis case about:
    a. The characteristics of the applicable STI,
    b. The syndrome caused by the applicable STI,
    c. Measures to reduce the likelihood of transmitting the applicable STI, and
    d. The confidential nature of the contact's test results.

**C.** For each contact of a chlamydia or gonorrhea case who seeks treatment from a local health agency for chlamydia or gonorrhea, the local health agency shall:
1. Offer or arrange for treatment for chlamydia or gonorrhea;
2. Provide information to each contact of a chlamydia or gonorrhea case about:
    a. The characteristics of the applicable STI,
    b. The syndrome caused by the applicable STI,
    c. Measures to reduce the likelihood of transmitting the applicable STI, and
    d. The confidential nature of the contact's test results.

# Statutory Authority for the Rules in 9 A.A.C. 6

**36-132. Department of health services; functions; contracts**

A. The department, in addition to other powers and duties vested in it by law, shall:

1. Protect the health of the people of the state.

2. Promote the development, maintenance, efficiency and effectiveness of local health departments or districts of sufficient population and area that they can be sustained with reasonable economy and efficient administration, provide technical consultation and assistance to local health departments or districts, provide financial assistance to local health departments or districts and services that meet minimum standards of personnel and performance and in accordance with a plan and budget submitted by the local health department or districts to the department for approval, and recommend the qualifications of all personnel.

3. Collect, preserve, tabulate and interpret all information required by law in reference to births, deaths and all vital facts, and obtain, collect and preserve information relating to the health of the people of this state and the prevention of diseases as may be useful in the discharge of functions of the department not in conflict with chapter 3 of this title and sections 36-693, 36-694 and 39-122.

4. Operate such sanitariums, hospitals or other facilities assigned to the department by law or by the governor.

5. Conduct a statewide program of health education relevant to the powers and duties of the department, prepare educational materials and disseminate information as to conditions affecting health, including basic information for the promotion of good health on the part of individuals and communities, and prepare and disseminate technical information concerning public health to the health professions, local health officials and hospitals. In cooperation with the department of education, the department of health services shall prepare and disseminate materials and give technical assistance for the purpose of education of children in hygiene, sanitation and personal and public health, and provide consultation and assistance in community organization to counties, communities and groups of people.

6. Administer or supervise a program of public health nursing, prescribe the minimum qualifications of all public health nurses engaged in official public health work, and encourage and aid in coordinating local public health nursing services.

7. Encourage and aid in coordinating local programs concerning control of preventable diseases in accordance with statewide plans that shall be formulated by the department.

8. Encourage and aid in coordinating local programs concerning maternal and child health, including midwifery, antepartum and postpartum care, infant and preschool health and the health of schoolchildren, including special fields such as the prevention of blindness and conservation of sight and hearing.

9. Encourage and aid in the coordination of local programs concerning nutrition of the people of this state.

10. Encourage, administer and provide dental health care services and aid in coordinating local programs concerning dental public health, in cooperation with the Arizona dental association. The department may bill and receive payment for costs associated with providing dental health care services and shall deposit the monies in the oral health fund established by section 36-138.

11. Establish and maintain adequate serological, bacteriological, parasitological, entomological and chemical laboratories with qualified assistants and facilities necessary for routine examinations and analyses and for investigations and research in matters affecting public health.

12. Supervise, inspect and enforce the rules concerning the operation of public bathing places and public and semipublic swimming pools adopted pursuant to section 36-136, subsection I, paragraph 10.

13. Take all actions necessary or appropriate to ensure that bottled water sold to the public and water used to process, store, handle, serve and transport food and drink are free from filth, disease-causing substances and organisms and unwholesome, poisonous, deleterious or other foreign substances. All state agencies and local health agencies involved with water quality shall provide to the department any assistance requested by the director to ensure that this paragraph is effectuated.

14. Enforce the state food, caustic alkali and acid laws in accordance with chapter 2, article 2 of this title, chapter 8, article 1 of this title and chapter 9, article 4 of this title, and collaborate in the enforcement of the federal food, drug, and cosmetic act (52 Stat. 1040; 21 United States Code sections 1 through 905).

15. Recruit and train personnel for state, local and district health departments.

16. Conduct continuing evaluations of state, local and district public health programs, study and appraise state health problems and develop broad plans for use by the department and for recommendation to other agencies, professions and local health departments for the best solution of these problems.

17. License and regulate health care institutions according to chapter 4 of this title.

18. Issue or direct the issuance of licenses and permits required by law.

19. Participate in the state civil defense program and develop the necessary organization and facilities to meet wartime or other disasters.

20. Subject to the availability of monies, develop and administer programs in perinatal health care, including:

(a) Screening in early pregnancy for detecting high-risk conditions.

(b) Comprehensive prenatal health care.

(c) Maternity, delivery and postpartum care.

(d) Perinatal consultation, including transportation of the pregnant woman to a perinatal care center when medically indicated.

(e) Perinatal education oriented toward professionals and consumers, focusing on early detection and adequate intervention to avert premature labor and delivery.

21. License and regulate the health and safety of group homes for persons with developmental disabilities. The department shall issue a license to an accredited facility for a period of the accreditation, except that no licensing period shall be longer than three years. The department is authorized to conduct an inspection of an accredited facility to ensure that the facility meets health and safety licensure standards. The results of the accreditation survey shall be public information. A copy of the final accreditation report shall be filed with the department of health services. For the purposes of this paragraph, "accredited" means accredited by a nationally recognized accreditation organization.

B. The department may accept from the state or federal government, or any agency of the state or federal government, and from private donors, trusts, foundations or eleemosynary corporations or organizations grants or donations for or in aid of the construction or maintenance of any program, project, research or facility authorized by this title, or in aid of the extension or enforcement of any program, project or facility authorized, regulated or prohibited by this title, and enter into contracts with the federal government, or an agency of the federal government, and with private donors, trusts, foundations or eleemosynary corporations or organizations, to carry out such purposes. All monies made available under this section are special project grants. The department may also expend these monies to further applicable scientific research within this state.

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

D. The department may enter into contracts with organizations that perform nonrenal organ transplant operations and organizations that primarily assist in the management of end-stage renal disease and related problems to provide, as payors of last resort, prescription medications necessary to supplement treatment and transportation to and from treatment facilities. The contracts may provide for department payment of administrative costs it specifically authorizes.

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

A. The director shall:

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

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

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

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

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

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

7. Prepare sanitary and public health rules.

8. Perform other duties prescribed by law.

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

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

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

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

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

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

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

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

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

I. The director, by rule, shall:

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

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

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

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

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

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

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

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

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

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

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

maintain active certification. The food preparer must register with an online registry established by the department pursuant to paragraph 13 of this subsection. The food preparer must display the preparer's certificate of registration when operating as a temporary food establishment. For the purposes of this subdivision, "not potentially hazardous" means cottage food products that meet the requirements of the food code published by the United States food and drug administration, as modified and incorporated by reference by the department by rule.

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

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

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

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

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

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

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

7. Define and prescribe reasonably necessary measures governing ice production, handling, storing and distribution to ensure that all ice sold or distributed for human consumption or for preserving or storing food for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions and the quality of ice that shall be maintained at any ice plant, storage and truck or vehicle in which ice is produced, stored, handled or transported and shall provide for inspection and licensing of the premises and vehicles, and for abatement as public nuisances of ice, premises, equipment, processes or vehicles that do not comply with the minimum standards.

8. Define and prescribe reasonably necessary measures concerning sewage and excreta disposal, garbage and trash collection, storage and disposal, and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels. The rules shall prescribe minimum standards for preparing food in community kitchens, adequacy of excreta disposal, garbage and trash collection, storage and disposal and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels and shall provide for inspection of these premises and for abatement as public nuisances of any premises or facilities that do not comply with the rules. Primitive camp and picnic grounds offered by this state or a political subdivision of this state are exempt from rules adopted pursuant to this paragraph but are subject to approval by a county health department under sanitary regulations adopted pursuant to section 36-183.02. Rules adopted pursuant to this paragraph do not apply to two or fewer recreational vehicles as defined in

section 33-2102 that are not park models or park trailers, that are parked on owner-occupied residential property for less than sixty days and for which no rent or other compensation is paid. For the purposes of this paragraph, "primitive camp and picnic grounds" means camp and picnic grounds that are remote in nature and without accessibility to public infrastructure such as water, electricity and sewer.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

R. For the purposes of this section:

1. "Cottage food product":

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

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

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

**D-5.**

**DEPARTMENT OF HEALTH SERVICES**
Title 9, Chapter 4

**Amend:** **R9-4-202; R9-4-302; R9-4-403; R9-4-404; R9-4-405**

# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - REGULAR RULEMAKING

---

**MEETING DATE: April 1, 2025**

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

**FROM:** Council Staff

**DATE:** March 18, 2025

**SUBJECT:** **DEPARTMENT OF HEALTH SERVICES**
Title 9, Chapter 4

**Amend:** R9-4-202, R9-4-302, R9-4-403, R9-4-404, R9-4-405

---

**Summary:**

This regular rulemaking from the Department of Health Services (Department) seeks to amend five (5) rules in Title 9, Chapter 4, regarding Noncommunicable Diseases. Article 2 covers pesticide related illness, Article 3 covers Blood lead Levels, and Article 4 covers the Cancer Registry. The Department indicates this rulemaking will fulfill the course of action identified in their 5 Year Review report approved by the council on October 1, 2024.

The Department is specifically proposing the following;

- For R9-4-202, the Department is making a minor grammatical change;
- For R9-4-302, the Department is proposing to amend the rule concerning the amount of lead in children. A physician must now report a finding of lead in a child's blood if it exceeds 3.5 µg of lead per dL, this is a decrease from 10 µg of lead per dL. The other change is that the physician must note if the child is a refugee or not. The Department has indicated these changes will allow the Department to identify at-risk families better and to improve intervention and education efforts.

- For R9-4-403, a physician, doctor of naturopathic medicine, dentist, registered nurse practitioner, or the designee of a clinic is required to provide a case report as part of the cancer registry. The Department is proposing to amend the requirements of the case report by requiring the case report to include the patient's tobacco use status, the country where the cancer was originally diagnosed, and data items related to the grade of tumor.
- For 9-4-404, the Department is proposing to amend the rules by adding a new subsection that specifies the reporting requirements for a hospital with a capacity of fewer than 50 impatient beds, if that hospital is part of a hospital system of two or more hospitals under the same governing authority. The rule is also being amended to change the reporting requirements of clinics that submit fewer than 100 case reports to fewer than 50 case reports.
- For 9-4-405, the Department is proposing to amend the rule to specify the number of years of data a hospital is required to submit for analytic patients, this change is to align with national standards. Currently, there is no year cap and the proposed rule will change to 15 years, which the Department believes will ease the burden of these hospitals.

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

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

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

The Department indicates this rulemaking does not create or increase a fee.

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

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

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

The Department states that Arizona Revised Statutes (A.R.S.) § 36-133 requires the Arizona Department of Health Services to develop a chronic disease surveillance system for the collection, management, and analysis of information on the incidence of chronic diseases in Arizona. In addition, A.RS. § 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 states that as a result of a five-year review of the rules in 9 A.A.C. 4, Articles 1 through 5, the Department identified issues that need to be addressed to make the rules more effective. Consistent with recent national guidelines from the Centers for Disease Control and Prevention (CDC), the Department follows up with the parents of children with a blood

lead level greater than or equal to 3.5 µg of lead per dL, providing educational information and other services as needed. In addition, the Department states that changes needed to be made to the rules for the Arizona Cancer Registry to better reflect current standards and practices. The Department believes other changes are needed to make the rules clearer or less burdensome.

The Department anticipates that the rulemaking may affect the Department; hospitals; clinics; health care professionals, including physicians, registered nurse practitioners, physician assistants, doctors of naturopathic medicine, and dentists; individuals who have a pesticide illness, blood lead levels above a standard established by the CDC, or cancer and their families; and the general public. The Department states that based on a five-year review report, these rules are being updated to make them clearer and consistent with current practice, which may provide a significant benefit to all affected persons.

**5. Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?**

The Department states there are no less intrusive or less costly alternatives for achieving the purpose of the rule.

**6. What are the economic impacts on stakeholders?**

The Department indicates that the rules in 9 A.A.C. 4, Articles 2, 3, and 4, cover reporting data on pesticide illnesses, blood lead levels and cancer to the Department. The Department believes these changes may result in a significant benefit to the Department, since less time may be spent in answering questions about them. The Department states that these rules are being updated to make them clearer and consistent with current practice, which may provide a significant benefit to all affected persons. The Department states that annual costs/revenues are designated as minimal when no 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.

The Department indicates that the requirements for cancer case reports in R9-4-403 are being updated to match current reporting practices and national norms. The Department also states that the revised requirement for the cancer registry or other designee of a hospital system to report electronically for patients of a hospital that has a licensed capacity of fewer than 50 inpatient beds and is within the hospital system affects seven hospitals in four hospital systems. The Department believes the hospital system may receive a significant benefit from the change since many reported cases stay within the hospital system for diagnosis and treatment, and the hospital system would then have a complete case report that contains all diagnosis and treatment information about the case.

The Department indicates that reducing the threshold for a clinic to submit case reports electronically from 100 to 50 case reports per year for patients who are not referred by the

clinic to a hospital for the first course of treatment may affect 11 clinics. The Department anticipates the clinics may incur minimal to moderate costs from this change, but may also receive a significant benefit.

The Department also states that the new rules limit the number of years of data a hospital would need to submit for analytic patients to be consistent with national standards, providing a significant benefit to the Department. The Department indicates that a hospital that has been reporting for more than 15 years, or is approaching that mark, is expected to receive a moderate-to-substantial benefit from this change due to having to report fewer analytic patients.

The Department also believes changing requirements for reporting blood lead levels to match national standards and for cancer to match the current reporting standards and practice and improving cancer data quality may provide a significant benefit to the general public. The general public may benefit from new discoveries arising from these non-communicable diseases. In addition, the Department believes better data may result in measures that may be taken to improve strategies to prevent these diseases or lead to better and earlier interventions.

The Department states that neither public employment nor private employment in the State of Arizona is expected to be affected due to the changes in the rule. The Department indicates it 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 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.

The Department indicates that the rulemaking does not include any fees, so the Department does not expect the rules to affect state revenues.

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

The Department indicates there were no changes between the Notice of Proposed Rulemaking published in the Administrative Register on January 10, 2025 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?**

The Department indicates there were no public comments received.

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

The Department indicates none of the rules included in this rulemaking package require the issuance of a license, permit, or agency authorization.

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

The Department indicates there is no corresponding federal law.

**11. Conclusion**

This regular rulemaking from the Department of Health Services (Department) seeks to amend five (5) rules in Title 9, Chapter 4, regarding Noncommunicable Diseases. The Department is seeking to amend these rules to complete the course of action identified in their last Five Year Review report. The Department indicates that these rule changes will improve outreach to families by lowering the reporting threshold for blood level in children in accordance with national guidelines, and to clarify requirements related to the Cancer registry with the intent to ease regulatory burdens in reporting requirements.

The Department is seeking the standard 60-day delayed effective date pursuant to A.R.S. § 41-1032(A).

Council staff recommends approval of this rulemaking.

February 14, 2025

**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, Regular Rulemaking

Dear Ms. Klein:

1. The close of record date: February 10, 2025

2. Whether the rulemaking relates to a five-year-review report and, if applicable, the date the report was approved by the Council:
The rulemaking for 9 A.A.C. 4 partially relates to a five-year-review report approved by the Council on October 1, 2024.

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

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

5. Whether an immediate effective date is requested pursuant to A.R.S. § 41-1032:
The Department is requesting the normal 60-day delayed effective date for the rules under A.R.S. § 41-1032.

The Department certifies that the Preamble of this rulemaking discloses a reference to any study relevant to the rule that the Department reviewed and either did or did not rely on in its evaluation of or justification for the rule.

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

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

Sincerely,



Stacie Gravito
Director's Designee

SG:rms

Enclosures

**NOTICE OF FINAL RULEMAKING**

**TITLE 9. HEALTH SERVICES**

**CHAPTER 4. DEPARTMENT OF HEALTH SERVICES**

**NONCOMMUNICABLE DISEASES**

## PREAMBLE

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

February 14, 2025

| **2. Article, Part or Sections Affected (as applicable)** | **Rulemaking Action** |
|---|---|
| R9-4-202 | Amend |
| R9-4-302 | Amend |
| R9-4-403 | Amend |
| R9-4-404 | Amend |
| R9-4-405 | Amend |

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

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

Implementing statutes: A.R.S. §§ 36-133, 36-606, 36-1673, 36-1675

**4. The effective date of the rule:**

The Department requests the standard 60-day delayed effective date for the rules.

**5. 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. 3145, October 25, 2024

Notice of Proposed Rulemaking: 31 A.A.R. 103, January 10, 2025

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


Name: Georgia Yee, Health Registries Systems Manager

Address: Arizona Department of Health Services
Office of Health Registries
150 N. 18th Ave., Suite 140
Phoenix, AZ 85007-3248

Telephone: (602) 542-7321

Fax: (602) 542-7362

E-mail: Georgia.Yee@azdhs.gov
or
Name: Kathryn Wangsness, Deputy Bureau Chief
Address: Arizona Department of Health Services
Arizona State Public Health Laboratory
250 N. 17th Ave.
Phoenix AZ 85007-3248
Telephone: (602)364-0724
Fax: (602) 364-0759
E-mail: kathryn.wangsness@azdhs.gov
or
Name: Stacie Gravito, Office Chief
Address: Arizona Department of Health Services
Office of Administrative Counsel and Rules
150 N. 18th Ave., Suite 200
Phoenix, AZ 85007
Telephone: (602) 542-1020
Fax: (602) 364-1150
E-mail: Stacie.Gravito@azdhs.gov

**7. 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.) § 36-133 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. As a result of a five-year review of the rules in 9 A.A.C. 4, Articles 1 through 5, the Department identified issues that need to be addressed to make the rules more effective. Consistent with recent national guidelines from the Centers for Disease Control and Prevention (CDC), the Department follows up with the parents of children with a blood lead level greater than or equal to 3.5 µg of lead per dL, providing educational information and other

services as needed. Having additional information about the parents of children with blood lead levels above 3.5 µg of lead per dL, currently required for children with 10 µg or more of blood lead per dL, would enable the Department to better interact with these families. Since a significant percentage of children with elevated blood lead levels are refugees, knowing the refugee status of children with elevated blood lead levels would help the Department to better target intervention and education efforts. In addition, changes needed to be made to the rules for the Arizona Cancer Registry to better reflect current standards and practices. Other changes are needed to make the rules clearer or less burdensome. After obtaining approval for the rulemaking according to A.R.S. § 41-1039(A), the Department has revised the rules to address the identified issues.

**8. 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.

**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 anticipates that the rulemaking may affect the Department; hospitals; clinics; health care professionals, including physicians, registered nurse practitioners, physician assistants, doctors of naturopathic medicine, and dentists; individuals who have a pesticide illness, blood lead levels above a standard established by the CDC, or cancer and their families; and the general public. 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.

Based on a five-year review report, these rules are being updated to make them clearer and consistent with current practice, which may provide a significant benefit to all affected persons. Updating the blood-lead level that triggers reporting of additional information to the Department, to match national norms and requiring the reporting of refugee status for a child with a blood lead level higher than a reference level established by the CDC to assist in follow-up on the report, might have imposed up to a moderate increased cost on the Department for providing follow-up,

if the Department were not already providing this follow-up, but it may also provide a minimal benefit from getting the needed information as part of a report, as well as a significant benefit in protecting the health of these children and identifying sources of lead poisoning. The Department anticipates that a physician may incur at most a minimal cost for providing the additional information, but also receive a significant benefit in knowing that the Department will follow up on the reports, most likely without having to go back to the physician for further information. The Department believes that this change may provide a significant benefit to children with blood lead levels higher than the CDC reference level and their families.

The Arizona Cancer Registry within the Department collects and maintains data on the incidence and characteristics of cancer in Arizona. The requirements for cancer case reports in R9-4-403 are being updated to match current reporting practices and national norms. Since these changes are already incorporated into current reporting standards, the Department would not expect to incur any additional costs from these changes, but may receive a minimal benefit from not having to explain the discrepancy to those who are unaware that they are included in the national standard cancer reporting guidelines, as well as a significant benefit from having cleaner and more complete data. Hospitals, clinics, and other reporters already report the new/clarified data elements being added to the rules to be consistent with national standards and would not be expected to incur any additional costs due to the change. However, if not reporting according to the national standard, the hospital, clinic, or other reporter could incur a much as a moderate additional expense, but could also receive a significant benefit from the elimination of the discrepancy between the current rules and the current reporting practice.

The revised requirement for the cancer registry or other designee of a hospital system to report electronically for patients of a hospital that has a licensed capacity of fewer than 50 inpatient beds and is within the hospital system affects seven hospitals in four hospital systems. This change is expected to provide up to a substantial benefit to the Department from not having to enter all the information provided on paper reports into the data system. It could also cause a hospital system that has one or more of these small hospitals in the hospital system to incur up to substantial additional costs, depending on the number of cases and the potential for additional software costs. However, the hospital system may also receive a significant benefit from the change since many reported cases stay within the hospital system for diagnosis and treatment, and the hospital system would then have a complete case report that contains all diagnosis and treatment information about the case. A cancer patient may also receive a significant benefit from having a complete case file available through the hospital system, rather than having the information located at scattered facilities where diagnosis or treatment took place.

Reducing the threshold for a clinic to submit case reports electronically from 100 to 50 case reports per year for patients who are not referred by the clinic to a hospital for the first course of treatment may affect 11 clinics. The Department believes this change would result in at most minimal additional costs to the Department, from providing a secure web-based application to the clinics and training on the application, as well as providing up to a substantial benefit to the Department by eliminating the need for further data entry, while still reducing the burden on small clinics, and a significant benefit in having accurate date in a more timely fashion. The Department anticipates that a clinic may incur minimal-to-moderate costs from this change, but may also receive a significant benefit. If a physician, registered nurse practitioner, or doctor of naturopathic medicine is in a large group practice that meets the definition of a clinic, they may incur at most minimal additional costs but receive a significant benefit.

The new rules limit the number of years of data a hospital would need to submit for analytic patients to be consistent with national standards, providing a significant benefit to the Department. Because many hospitals have been reporting cancer data for many years, the change may affect 49 hospitals. A hospital that has been reporting for more than 15 years, or is approaching that mark, is expected to receive a moderate-to-substantial benefit from this change due to having to report fewer analytic patients.

Changing requirements for reporting blood lead levels to match national standards and for cancer to match the current reporting standards and practice and improving cancer 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.

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

No changes were made 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:**

No written or oral comments were received about the rulemaking since the filing of the Notice of Proposed Rulemaking. No stakeholders attended the Oral Proceeding.

**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:**

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

The rules do not require a permit.

**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 rules are based on state statutes rather 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 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:**

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:**

The rules were not previously made, amended, or repealed through emergency rulemaking.

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

# TITLE 9. HEALTH SERVICES

## CHAPTER 4. DEPARTMENT OF HEALTH SERVICES - NONCOMMUNICABLE DISEASES

### ARTICLE 2. PESTICIDE ILLNESS

Section

R9-4-202. Pesticide Illness Reporting Requirements

### ARTICLE 3. BLOOD LEAD LEVELS

Section

R9-4-302. Blood Lead Level Reporting Requirements

### ARTICLE 4. CANCER REGISTRY

Section

R9-4-403. Case Reports

R9-4-404. Requirements for Submitting Case Reports and Follow-up Reports and Allowing Review of Hospital Records

R9-4-405. Data Quality Assurance

## ARTICLE 2. PESTICIDE ILLNESS

### 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~~ day 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

### R9-4-302. 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~~ 3.5 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~~;~~:
        i. ~~the~~ The name of the patient's parent or guardian, and
        ii. Whether the child is a refugee;
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.

## ARTICLE 4. CANCER REGISTRY

### 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, including the country of residence at diagnosis;
    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, and
        iii. Patient's tobacco use status;
    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 data items related to grade; 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; and

iii. A code for the source of the information in subsection (A)(2)(u)(i) or (ii), as applicable;

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) or (C) 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, including the code that represents the earliest source that identified the 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 and code related to 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~~ Except as specified in subsection (C), 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 a hospital with a licensed capacity of fewer than 50 inpatient beds is part of a hospital system, consisting of two or more hospitals under the same governing authority, as defined in A.R.S. § 36-401, the cancer registry or other designee of the hospital system shall report according to subsection (A)(1) for patients of the hospital.

**~~C.~~D.** If the designee of a clinic submitted ~~100~~ 50 or more case reports to the Department in the previous calendar year or expects to submit ~~100~~ 50 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)~~ (D)(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.~~**E.** If the designee of a clinic submitted fewer than ~~100~~ 50 case reports to the Department in the previous calendar year and expects to submit fewer than ~~100~~ 50 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.~~**F.** 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.~~**G.** 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.~~**H.** 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.~~**I.** 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 during the past 15 years or from the hospital's reference date, whichever is shorter; 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.

ARIZONA DEPARTMENT OF HEALTH SERVICES

# TITLE 9. HEALTH SERVICES

## CHAPTER 4.NONCOMMUNICABLE DISEASES

## ARTICLE 2. PESTICIDE ILLNESS
## ARTICLE 3. BLOOD LEAD LEVELS
## ARTICLE 4. CANCER REGISTRY

## ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT

**February 2025**

**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. As a result of a five-year review of the rules in 9 A.A.C. 4, Articles 1 through 5, the Department identified issues that need to be addressed to make the rules more effective. After obtaining approval for the rulemaking according to A.R.S. § 41-1039(A), the Department is revising the rules to address the identified issues.

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

- The Department
- Hospitals
- Clinics
- Health care professionals, including physicians, registered nurse practitioners, physician assistants, doctors of naturopathic medicine, and dentists
- Individuals who have a pesticide illness, elevated blood lead levels, or cancer and their families
- 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. 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 | Clarifying requirements in the rules | None | Significant |
| | Updating the blood-lead level that triggers reporting of additional information to match national norms and requiring refugee status | None-to-moderate | Minimal/Significant |
| | Updating requirements for cancer case reports to match current reporting practices and national norms | None | Minimal/Significant |
| | Adding a requirement for the cancer registry of a hospital system to submit electronic case reports for a small hospital in the hospital system | None | Minimal-to-substantial |
| | Reducing the threshold for a clinic to submit case reports electronically | None-to-minimal | Minimal-to-substantial/ Significant |
| | Limiting the number of years of data a hospital would need to submit for analytic patients | None | Significant |
| **B. Privately Owned Businesses** | | | |
| Hospitals | Updating requirements for cancer case reports to match current reporting practices | None-to-moderate | Significant |
| | Adding a requirement for the cancer registry of a hospital system to submit electronic case reports for a small hospital in the hospital system | None-to-substantial | Significant |
| | Limiting the number of years of data a hospital would need to submit for analytic patients | None | Moderate-to-substantial |
| Clinics | Updating requirements for cancer case reports to match current reporting practices | None-to-minimal | Significant |
| | Reducing the threshold for a clinic to submit case reports electronically | Minimal-to-moderate | Significant |
| Health care professionals, including physicians, registered nurse practitioners, physician assistants, doctors of naturopathic medicine, and dentists | Clarifying reporting requirements for pesticide illness | None | Significant |
| | Updating the blood-lead level that triggers reporting of additional information to match national norms and requiring refugee status | None-to-minimal | Significant |
| | Updating requirements for cancer case reports to match current reporting practices and national norms | None-to-minimal | Significant |
| | Changing the reporting threshold for clinics | None-to-minimal | Significant |
| **C. Consumers** | | | |
| Individuals who have elevated blood lead levels or cancer and their families | Updating the blood-lead level that triggers reporting of additional information to national norms and requiring refugee status | None-to-minimal | Significant |
| | Changing requirements for electronic cancer case report submission for a small hospital that is part of a hospital system | None | Significant |

| Description of Affected Groups | Description of Effect | Increased Cost/Decreased Revenue | Decreased Cost/Increased Revenue |
|---|---|---|---|
| General public | Changing requirements for reporting blood lead levels to match national standards and cancer to match the current reporting standards and practice and improving cancer data quality | None | Significant |

- **The Department**

The rules in 9 A.A.C. 4, Articles 2, 3, and 4, cover reporting data on pesticide illnesses, blood lead levels and cancer to the Department. Based on a five-year review report, these rules are being updated to make them clearer and consistent with current practice. These changes may result in a significant benefit to the Department, since less time may be spent in answering questions about them.

The Department receives both venous and capillary blood lead results for approximately 51,000 children annually under the rules in Article 3. In the past five years, an average of 40 children were identified each year with blood lead levels greater than 10 micrograms per deciliter (µg/dL). An additional 140 children, on average, are identified annually through clinical laboratory test results with blood lead levels between five and 10 micrograms per deciliter (µg/dL). Over the past five years, the number of new cases with blood lead levels above the reference values established by the Centers for Disease Control and Prevention (CDC) ranged from 236 in 2019 to 390 in 2022. In 2022, the Department adopted a new CDC blood lead reference value of 3.5 µg/dL for children, and 187 children were identified with a blood lead level between and including 3.5 µg/dL (the new CDC blood lead reference value) and 4.9 µg/dL (under the clinical laboratory reporting level), who would not otherwise have been identified. Consistent with these 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/dL, providing educational information and other services as needed. The current rules require the submission of additional information about children with blood lead levels greater than or equal to 10 µg of lead per dL of whole blood to enable the Department to better interact with the families during follow-up. Having this additional information reported for children with blood lead levels between 3.5 µg and the current 10 µg of lead per dL, as required in the new rules, would make it more efficient and cost effective for the Department to provide follow-up, without having to spend additional time and effort to contact the physician or other sources for the information. This information is especially important in enabling the Department to provide culturally-appropriate follow-up for all children, including refugee children. Anecdotally, the Department has identified that a significant percentage of children with blood lead levels above the CDC reference value in Arizona are refugees, which

correlates with similar information from other states. Therefore, the new rules contain a requirement for reporting refugee status for any child with a blood lead level greater than or equal to 3.5 µg of lead per dL of whole blood. While knowing that a child is a refugee may not enable the Department to identify where and how the child was exposed to lead before arriving in Arizona, it may help the Department to ensure that there is no continued exposure and, through follow-up testing, that the levels of lead are going down. If the Department were not already providing follow-up for these children, the new requirement might have imposed up to a moderate increased cost on the Department for providing follow-up, but it may also provide a minimal benefit from getting the needed information as part of a report, as well as a significant benefit in protecting the health of these children and identifying sources of lead poisoning.

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 48,000 case reports per year from hospitals, approximately 9,100 per year from clinics, approximately 1,100 per year from physicians and other practitioners, and approximately 4,500 per year from pathology laboratories. As identified in the recent five-year-review report, the requirements for cancer case reports in R9-4-403 need to be updated to match current reporting practices and national norms. These changes include clarifying that the address at diagnosis of cancer includes the country of residence at diagnosis, as well as adding requirements for reporting tobacco use status for an adult patient, more specific data related to grade in R9-4-403(A)(2)(k)(iii), and codes related to any of the patient's laboratory tests, for the source of the information on whether the patient is alive or dead, and for the type of facility that identified the cancer. Since these changes are already incorporated into current reporting standards, the Department would not expect to incur any additional costs from these changes, but may receive a minimal benefit from not having to explain the discrepancy to those who are unaware that they are included in the national standard cancer reporting guidelines, as well as a significant benefit from having cleaner and more complete data.

As specified in R9-4-404, the cancer registry of a hospital with a licensed capacity of 50 or more inpatient beds is required to submit an electronic case report within 180 calendar days after the date a patient is first released from the hospital. To reduce the burden on small hospitals, the rules specify that the cancer registry of a hospital with a licensed capacity of fewer than 50 inpatient beds can either report as a larger hospital or submit to the Department, at least once every six months, a report containing a small amount of patient information and allow the Department to abstract the rest of the information required in a case report from patient records. This abstraction is a time-consuming and arduous task for Department staff. With the advent of electronic patient records in hospitals, a small

hospital that is part of a hospital system shares a medical records system that can be accessed by any hospital within the hospital system. To continue to provide a reduced burden on small, independent hospitals, but reduce the burden on the Department, the new rules now require the cancer registry or other designee of a hospital system to report electronically for patients of a hospital within the hospital system that has a licensed capacity of fewer than 50 inpatient beds. There are currently seven hospitals within four hospital systems that this rule change would affect. They range in size from a licensed capacity of eight to a licensed capacity of 36. The Department believes that this change may provide a moderate-to-substantial benefit to the Department from not having to enter all the information provided on paper reports into the data system.

Similarly, the current rules require a clinic that submits 100 or more case reports to the Department per year to report electronically, while a clinic that submits fewer than 100 case reports per year may submit an electronic or paper case report. The new rules reduce the threshold for a clinic to submit case reports electronically from 100 to 50 case reports per year for patients who are not referred by the clinic to a hospital for the first course of treatment. There are currently approximately 11 clinics that would be affected by this change. However, the clinics are already doing the bulk of the work gathering information for reporting the cases by mail or fax. The Department will provide a secure web-based application as a standardized tool through which the clinic could report electronically, as well as training on its use, at no cost to the clinic. The Department believes this change would result in at most minimal additional costs to the Department, as well as providing a moderate-to-substantial benefit to the Department by eliminating the need for Department staff to enter data into the system for these cases, while still reducing the burden on small clinics, and a significant benefit in having accurate date in a more timely fashion.

In R9-4-405, the rules require a hospital to submis a follow-up report specified in R9-4-404(A)(3) to the Department once each calendar year for at least eighty percent of all analytic patients from the hospital's reference date. Many hospitals have been reporting for a very long time and have thousands of analytic patients. The new rules limit the number of years of data a hospital would need to submit for analytic patients, with changes being made to subsection (C)(1) 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. This change is expected to affect 56 hospitals and will make the rules consistent with national standards, providing a significant benefit to the Department.

- **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. As stated above, the Department receives an average of approximately 48,000 case reports per year from hospitals. Currently, 56 hospitals with a licensed

capacity of 50 or more inpatient beds, not including hospitals run under the U.S. Department of Veterans Affairs, actively submit case reports under R9-4-404(A), with a seven-year average of approximately 4,100 case reports per year being submitted by the hospital with the largest number of cases. The average number of case reports submitted by these larger hospitals in 2023 was approximately 1,000 case reports per hospital. These hospitals already report the new/clarified data elements being added to the rules to be consistent with national standards. The Department estimates that these hospitals would not incur any additional costs due to the change. However, if a hospital were not reporting according to the national standard, the hospital could incur a much as a moderate additional expense. A hospital could also receive a significant benefit from the elimination of any confusion caused by the discrepancy between the current rules and the current reporting practice.

There are currently 16 hospitals with a licensed capacity of less than 50 inpatient beds that report under R9-4-404(B). These small hospitals are estimated to have an average of approximately 100 case reports per year. Of these, seven with a licensed capacity of fewer than 50 inpatient beds are part of a hospital system that reports electronically and would be affected by the change in the new rules requiring electronic reporting for these hospitals. The Department estimates that this change may cause a hospital system that has one or more of these small hospitals in the hospital system to incur up to substantial additional costs, depending on the number of cases and the potential for additional software costs. However, the hospital system may also receive a significant benefit from the change, since many reported cases stay within the hospital system for diagnosis and treatment, and the hospital system would then have a complete case report that contains all diagnosis and treatment information about the case. The hospital system would be able to identify in which hospital system a patient was receiving a diagnosis or treatment, leading to a better understanding of the hospital system's catchment area.

As stated above, a follow-up report specified in R9-4-404(A)(3) is required by R9-4-405(C)(1) to be submitted to the Department once each calendar year for at least eighty percent of all analytic patients from the hospital's reference date. The national standard is for these reports to be submitted for analytic patients diagnosed during the past 15 years or the hospital's reference date, whichever is shorter. There are 49 hospitals that have been reporting for more than 15 years and would be affected by this change for reporting analytic patients. The new rules make the rules consistent with national standards. A hospital that has been reporting for more than 15 years, or is approaching that mark, is expected to receive a minimal-to-moderate benefit from this change due to having to report fewer analytic patients.

- **Clinics**

As mentioned above, the Department receives an average of approximately 9,100 case reports per year from clinics. Updating requirements in R9-4-403 for cancer case reports to match current reporting practices may cause a clinic to incur as much as minimal additional costs for reporting the additional information, if not already doing so, and provide a significant benefit to a clinic by removing the discrepancy between the rules and current practice, according to national reporting standards. A clinic that submits 100 or more case reports to the Department per year is required by the current rules to report electronically, while a clinic that submits fewer than 100 case reports per year may submit an electronic or paper case report. Currently, five clinics report electronically and 129 submit paper reports. Of the latter, approximately 11 will be affected by the rule change, dropping the threshold for reporting electronically from 100 to 50 case reports per year. According to the current rules, a clinic has to gather all the information for a case report, regardless of whether they submit paper reports or electronically. Therefore, they are already doing the bulk of the work, regardless of the method of submission. For clinics submitting electronically, the Department will provide a secure web-based application for electronic reporting, as well as training on its use, at no cost to the clinic. Training time is expected to be minimal. This standardized web-based application provides immediate feedback to a clinic on the completeness and quality of the information entered. Clinics are also able to track the cases released to the Department. The Department anticipates that a clinic may incur minimal-to-moderate costs from this change, but may also receive a significant benefit.

- **Health care professionals, including 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 may benefit from the clarification of reporting requirements for pesticide illness in R9-4-202. Physicians are required by R9-4-302 to report to the Department blood lead levels. The new rules update the blood-lead level that triggers reporting of additional information to the national norms. They also require the reporting of refugee status for a child with elevated blood lead levels. Since fewer than 250 children are expected to be identified with a blood lead level between 3.5 μg/dL and 10 μg/dL per year, the Department anticipates that most physicians may not be affected by this rule change. Of those that are, a physician may incur at most a minimal cost for providing the additional information, but also receive a significant benefit in knowing that the Department will follow up on the reports, most likely without having to go back to the physician for further information.

Physicians, registered nurse practitioners, doctors of naturopathic medicine, and dentists are required by R9-4-403 to prepare case reports for their patients with cancer. The Department believes

that updating requirements for cancer case reports to match current reporting practices and national norms may cause a physician, registered nurse practitioner, doctor of naturopathic medicine, or dentist to incur at most minimal increased costs from reporting the additional information if not already doing so, but receive a significant benefit from the elimination of the discrepancy between rule requirements and the current reporting practices according to national standards. Physicians, registered nurse practitioners, or doctors of naturopathic medicine may also be affected by the change in the new R9-4-404(D) if they are in a large group practice that meets the definition of a clinic. If so, a physician, registered nurse practitioner, or doctor of naturopathic medicine may incur at most minimal additional costs but receive a significant benefit, as described under "clinics."

- **Individuals who have a blood lead level above the CDC reference value or cancer and their families**

The Department anticipates that about 380 children will be identified each year with blood lead levels above 3.5ug/dl. These include: an estimated 200 children identified with a blood lead level between and including 3.5 µg/dL and 4.9 µg/dL; an estimated 140 children identified with blood lead levels between and including 5ug/dl and 10 ug/dl; and an estimated 40 children identified with blood lead levels above 10 ug/dL. 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/dL, providing educational information and other services as needed. Although the current rules require the submission of additional information about children with blood lead levels greater than or equal to 10 µg of lead per dL of whole blood, this information is currently not readily available to the Department for children with blood lead levels between 3.5 µg and the current 10 µg of lead per dL, without additional interaction with the child's physician. Having this additional information reported for these children, as required in the new rules, would make it more efficient and cost effective for the Department to provide follow-up, without having to spend additional time and effort to contact the physician or other sources for the information and enable the Department to provide culturally-appropriate follow-up for all children, including refugee children. The Department anticipates that this change may provide a significant benefit to these children and their families. The Department believes that changing requirements for electronic case report submission for a small hospital that is part of a hospital system may provide a significant benefit to a cancer patient from having a complete case file available through the hospital system, rather than having the information located at scattered facilities where diagnosis or treatment took place.

- **General public**

Changing requirements for reporting blood lead levels to match national standards and cancer to match the current reporting standards and practice and improving cancer 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 changes to the rules may include small hospitals; clinics; and the practices of physicians, registered nurse practitioners, physician assistants, doctors of naturopathic medicine, and dentists.

**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 2. PESTICIDE ILLNESS

### 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

### R9-4-302. 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:

| | | |
|---|---|---|
| **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 |

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.

## ARTICLE 4. CANCER REGISTRY

### 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.

# 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.

**D-6.**

**DEPARTMENT OF HEALTH SERVICES**
Title 9, Chapter 10

**Amend:** R9-10-501; R9-10-503; R9-10-506; R9-10-507; R9-10-508; R9-10-509; R9-10-510; R9-10-511; R9-10-512; R9-10-514; R9-10-515; R9-10-516; R9-10-518; R9-10-520; R9-10-522; R9-10-525

# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - EXPEDITED RULEMAKING

---

**MEETING DATE: April 1, 2025**

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

**FROM:** Council Staff

**DATE:** March 18, 2025

**SUBJECT:** **DEPARTMENT OF HEALTH SERVICES**
Title 9, Chapter 10

**Amend:** R9-10-501, R9-10-503, R9-10-506, R9-10-507, R9-10-508, R9-10-509, R9-10-510, R9-10-511, R9-10-512, R9-10-514, R9-10-515, R9-10-516, R9-10-518, R9-10-520, R9-10-522, R9-10-525

---

**Summary:**

This expedited rulemaking from the Arizona Department of Health Services (Department) seeks to amend eleven (11) rules in Title 9, Chapter 10, Article 5, which covers Intermediate Care Facilities for Individuals with Intellectual Disabilities.

- R9-10-501; The Department is proposing to amend two definitions, including amending the definition of qualified intellectual disabilities professional to meet the requirements of 42 CFR 483.430 (Medicaid/Medicare)
- R9-10-503; The Department is proposing some grammatical changes, clarifying when an administrator of a care facility must report to the Department a possible occurrence of abuse, neglect, or exploitation, and clarifying when an administrator must notify a resident's contacts of a resident's death, change in medical condition, or requirement of emergency medical services.
- R9-10-506; The Department is proposing to add a new subsection stating that the administrator of a care facility must have fall prevention and fall recovery program that

complies with A.R.S. § 36-420.01. The amended rule does not add any additional requirements of the facility that is not already required by statute.

- R9-10-507, R9-10-508, R9-10-509, R9-10-510, R9-10-511, R9-10-512, R9-10-514, R9-10-515, R9-10-516, R9-10-518, and R9-10-522 contain minor grammatical changes or changes to correct cross references.
- R9-10-520, the Department is proposing structural changes to subsection (D) which concerns pharmaceutical services, the Department is also proposing adding language that the administrator of a facility, upon request, be able to provide a copy of the pharmacy license that is used for the pharmaceutical services.
- R9-10-525, the Department is proposing to amend the rule to clarify the rule based on Laws, 2022, Ch. 34, which amended A.R.S. §36-422. The change required an attestation from an registered architect of the architectural plans and specifications of a facility, the statute previously only required that the plans and specifications be submitted and did not have the attestation.

**1. Do the rules satisfy the criteria for expedited rulemaking pursuant to A.R.S. § 41-1027(A)?**

The Department believes that these changes are consistent with the purpose for A.R.S. § 41-1027 because the rulemaking does not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of regulated persons. The Department specifically cites to A.R.S. § 41-1027(A)(1) and (A)(3).

The Department has indicated Laws 2022, Ch. 34, as the justification under (A)(1). This statutory change relates to R9-10-525, with the amendment to the rule being the addition of a notarized attestation of architectural plans for a facility that has more than 16 residents.

Council staff believe the current rulemaking satisfies the criteria for expedited rulemaking under A.R.S. § 41-1027(A)(1) and (3). For (A)(3), Council staff believes that the Department has not amended the rules to the point where they have changed their ultimate effect, and the addition of fall prevention is already required for administrators by statute.

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

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

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

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

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

The Department indicates there were a few changes between the Notice of Proposed Rulemaking and the Notice of Final Rulemaking.

- In R9-10-501, R9-10-512(C)(23), and R9-10-515(C)(10)(e), the subsections were not numbered properly and have been corrected.
- In R9-10-520(D)(1), the Department removed an unnecessary "and" from the rule.
- In R9-10-506(M) a hyphen was added to correct the statutory reference
- Inin R9-10-525(A)(1)(a)(ii), a typo was corrected from "he application" to "the application."

Council staff does not consider any of these changes to be substantive and the Department is in compliance with A.R.S. § 41-1025.

**5. 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 has indicated that there are no applicable federal laws.

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

Not applicable. The Department has indicated that no permit or license is required or issued as part of these rules.

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

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

**8. Conclusion**

This expedited rulemaking from the Department of Health Services (Department) seeks to amend eleven (11) rules in Title 18, Chapter 10, Article 5 for the purpose of fulfilling objectives from a previous 5 YRR and to correct terminology and references to statutes and other rules. The proposed amendments do not implement any substantive changes to the existing rules and do not restrict the rights of any person.

Pursuant to A.R.S. § 41-1027(H), an expedited rulemaking becomes effective immediately on the filing of the approved Notice of Final Expedited Rulemaking with the Secretary of State.

Council staff recommends approval of this rulemaking.

ARIZONA
DEPARTMENT OF
HEALTH SERVICES

February 13, 2025

**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. 10, Article 5

Dear Ms. Klein:

Enclosed are the administrative rules identified above which I am submitting, as the Designee of the Director of the Department of Health Services, for approval by the Governor's Regulatory Review Council (Council) under A.R.S. §§ 41-1027 and 41-1053.

The following information is provided for your use in reviewing the enclosed rule package pursuant to A.R.S. § 41-1052 and A.A.C. R1-6-202:

1. The close of record: January 28, 2025

2. Explanation of how the expedited rule meets the criteria in A.R.S. § 41-1027(A):
The rulemaking does not increase the cost of regulatory compliance, increase a fee, or reduce the procedural rights of regulated persons. As specified in A.R.S. § 41-1027(A)(1) to align the rules with the statutory changes enacted under Laws 2022, Ch. 34 regarding architectural plans. In addition, the expedited rule meets the criteria in A.R.S. § 41-1027(A)(3) by correcting typographical errors and clarifying language of a rule without changing its effect.

3. Whether the rulemaking relates to a five-year-review report and, if applicable, the date the report was approved by the Council:
The rulemaking relates to a five-year-review report approved by the Council on August 6, 2024.

4. A list of all items enclosed:
   a. Notice of Final Expedited Rulemaking, including the Preamble, Table of Contents, and text of the rule;
   b. Statutory authority;
   c. Current rules;
   d. Rulemaking approval pursuant to A.R.S. § 41-1039(A); and
   e. Rulemaking approval pursuant to A.R.S. § 41-1039(B).

I certify that the Preamble of this rulemaking discloses a reference to any study relevant to the rule that the Department reviewed and either did or did not rely on in its evaluation of or justification for the rule.

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

Sincerely,

Stacie Gravito
Director's Designee

SG:ls

Enclosures

**NOTICE OF FINAL EXPEDITED RULEMAKING**

**TITLE 9. HEALTH SERVICES**

**CHAPTER 10. DEPARTMENT OF HEALTH SERVICES - HEALTH CARE INSTITUTIONS: LICENSING**

**PREAMBLE**

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

February 13, 2025

| **2. Article, Part, or Section Affected (as applicable)** | **Rulemaking Action** |
|---|---|
| R9-10-501 | Amend |
| R9-10-503 | Amend |
| R9-10-506 | Amend |
| R9-10-507 | Amend |
| R9-10-508 | Amend |
| R9-10-509 | Amend |
| R9-10-510 | Amend |
| R9-10-511 | Amend |
| R9-10-512 | Amend |
| R9-10-514 | Amend |
| R9-10-515 | Amend |
| R9-10-516 | Amend |
| R9-10-518 | Amend |
| R9-10-520 | Amend |
| R9-10-522 | Amend |
| R9-10-525 | 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) and (17) and 36-136(G)

Implementing statute: A.R.S. §§ 36-405, 36-406, 36-407, and 36-425.05

**4. The effective date of the rule:**

This expedited rulemaking becomes effective immediately on the date the notice is filed under A.R.S. § 41-1027(H). 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 expedited rule:**

Notice of Rulemaking Docket Opening: 30 A.A.R. 3781, December 13, 2024, 50, [R24-283]

Notice of Proposed Expedited Rulemaking: 31 A.A.R. 384, January 24, 2025, 4, [R24-310]

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

Name: Thomas Salow
Title: Assistant Director
Division: Public Health Licensing
Address: 150 N. 18th Ave., Suite 500, Phoenix, AZ 85007
Telephone: (602) 542-6383
Email: Thomas.Salow@azdhs.gov

or

Name: Stacie Gravito
Title: Office Chief, Administrative Counsel and Rules
Division: Director's Office
Address: 150 N. 18th Ave., Suite 200, Phoenix, AZ 85007
Telephone: (602) 542-1020
Fax: (602) 364-1150
Email: stacie.gravito@azdhs.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:**

Pursuant to Arizona Revised Statutes (A.R.S.) § 36-405, the Arizona Department of Health Services (the Department) is required to establish minimum standards for health care institutions, including requirements for construction, equipment, sanitation, staffing for medical, nursing, and personal care services, and recordkeeping to protect public health, safety, and welfare. The rules in 9 A.A.C. 10, Article 5 pertain specifically to Intermediate Care Facilities for Individuals with Intellectual Disabilities. The Department proposes amendments to these rules based on findings from a five-year-review report approved by the Governor's Regulatory Review Council. The Department plans to amend the rules to align more closely with statutes, other health care institution rules in A.A.C. Title 9, Chapter 10, and Centers for Medicare and Medicaid Services (CMS) requirements under 42 CFR 483, Subpart I; correct cross-references and citations; improve clarity, conciseness, and overall understandability; eliminate obsolete or duplicative provisions; and ensure consistency across related rules. Additionally, the Department seeks to amend rules as necessary for the effective administration and enforcement of public health laws, with the goal of promoting continuity and improving patient outcomes. On December 3, 2024, the Department received approval from the Governor's Office, in accordance with A.R.S. § 41-1039(A), to proceed with rulemaking. The proposed changes will adhere to the current rulemaking format and style require-

ments of the Governor's Regulatory Review Council and the Office of the Secretary of State, and the Department may add, amend, repeal, or renumber rules as necessary to achieve these objectives.

**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 statement that the agency is exempt from the requirements under A.R.S. § 41-1055(G) to obtain and file a 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).

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

The Department made minor typographical and formatting changes between the proposed expedited rulemaking and the final rulemaking, including:

- The subsection numbering was incorrect and not listed in sequential order under R9-10-501(12), R9-10-512(C)(23), and R9-10-515(C)(10)(e).
- Removed an unnecessary "and" in R9-10-520(D)(1).
- Added a hyphen in the statutory reference in R9-10-506(M).
- Corrected a typo in R9-10-525(A)(1)(a)(ii), which stated "he" instead of "the."

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

No comments were received.

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

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

There are no federal laws applicable to the subject of these rules.

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

No business competitiveness analysis was submitted to the Department.

**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 expedited rulemaking packages:**

Not applicable

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

Rule text begins on the next page.

# TITLE 9. HEALTH SERVICES

## CHAPTER 10. DEPARTMENT OF HEALTH SERVICES - HEALTH CARE INSTITUTIONS: LICENSING

## ARTICLE 5. INTERMEDIATE CARE FACILITIES FOR INDIVIDUALS WITH INTELLECTUAL DISABILITIES

Section


R9-10-501. Definitions
R9-10-503. Administration
R9-10-506. Personnel
R9-10-507. Admission
R9-10-508. Transfer; Discharge
R9-10-509. Transport
R9-10-510. Transportation; Resident Outings
R9-10-511. Resident Rights
R9-10-512. Medical Records
R9-10-514. Individual Program Plan
R9-10-515. Seclusion; Restraint
R9-10-516. Physical Health Services
R9-10-518. Clinical Laboratory Services
R9-10-520. Medication Services
R9-10-522. Food Services
R9-10-525. Physical Plant Standards

## ARTICLE 5. INTERMEDIATE CARE FACILITIES FOR INDIVIDUALS WITH INTELLECTUAL DISABILITIES

**R9-10-501. Definitions**

In addition to the definitions in A.R.S. §§ 36-401 and 36-551 and R9-10-101, the following definitions apply in this Article unless otherwise specified:

1. "Active treatment" means rehabilitative services and habilitation services provided to a resident to address the resident's developmental disability and, if applicable, medical condition.
2. "Acuity" means a resident's need for medical services, nursing services, rehabilitative services, or habilitation services based on the patient's medical condition or developmental disability.
3. "Acuity plan" means a method for establishing requirements for nursing personnel or therapists by unit based on a resident's acuity.
4. "Advocate" means an individual who:
   a. Assists a resident or the resident's representative to make the resident's wants and needs known,
   b. Recommends a course of action to address the resident's wants and needs, and
   c. Supports the resident or the resident's representative in addressing the resident's wants and needs.
5. "Assistive device" means a piece of equipment or mechanism that is designed to enable an individual to better carry out activities of daily living.
6. "Dental services" means activities, methods, and procedures included in the practice of dentistry, as described in A.R.S § 32-1202.
7. "Direct care" means medical services, nursing services, rehabilitation services, or habilitation services provided to a resident.
8. "ICF/IID" means intermediate care facility for individuals with intellectual disabilities.
9. "Inappropriate behavior" means actions by a resident that may:
   a. Put the resident at risk for physical illness or injury,
   b. Significantly interfere with the resident's care,
   c. Significantly interfere with the resident's ability to participate in activities or social interactions,
   d. Put other residents or personnel members at significant risk for physical injury,
   e. Significantly intrude on another resident's privacy, or
   f. Significantly disrupt care for another resident.
10. "Medical care plan" means a documented guide for providing medical services and nursing services to a resident requiring continuous nursing services that includes measurable objectives and the methods for meeting the objectives.
11. "Nursing care plan" means a documented guide for providing intermittent nursing services to a resident that includes measurable objectives and the methods for meeting the objectives.
12. "Outing" means a social or recreational activity or habilitation services that:
   a. Occur away from the premises, and
   b. May be part of a resident's individual program plan.
13. "Qualified intellectual disabilities professional" means one of the following who has at least a bachelor's degree and one year of experience working directly with individuals who have developmental disabilities, consistent with the requirements in 42 CFR 483.430:
   a. A physician;
   b. A registered nurse;
   c. A physical therapist;
   d. An occupational therapist;

e. A psychologist, as defined in A.R.S. § 32-2061;

f. A speech-language pathologist;

g. An audiologist, as defined in A.R.S. § 36-1901;

~~f.~~h. A registered dietitian, as defined in A.R.S. § 36-416;

~~g.~~i. A licensed clinical social worker under A.R.S. § 32-3293; or

~~h.~~j. A nursing care institution administrator.

~~13.~~14. "Resident's representative" has the same meaning as "responsible person" in A.R.S. § 36-551.

**R9-10-503. Administration**

**A.** No change

1. No change
2. No change
3. No change
   a. No change
   b. No change
      i. No change
      ii. No change
4. No change
5. No change
6. No change
   a. No change
   b. No change
7. No change

**B.** No change

1. No change
2. No change
3. No change
4. No change

**C.** An administrator shall ensure that:

1. No change
   a. No change
   b. No change
   c. No change
   d. No change
      i. No change
      ii. No change
   e. No change
   f. No change
   g. No change
      i. No change
      ii. No change
      iii. No change
      iv. No change

v. No change

h. No change

i. No change

j. No change

k. No change

i. No change

ii. No change

l. No change

m. No change

n. No change

o. No change

p. No change

q. No change

r. No change

s. No change

t. No change

u. No change

2. Policies and procedures for active treatment and other physical health services and behavioral care are established, documented, and implemented to protect the health and safety of a resident that:

a. No change

b. No change

c. No change

d. No change

e. No change

f. No change

g. No change

i. No change

ii. No change

iii. No change

h. No change

i. No change

ii. No change

i. No change

i. No change

ii. No change

j. Cover ~~telemedicine~~ telehealth, if applicable;

k. No change

l. No change

m. No change

n. No change

o. No change

p. No change

q. No change

3. No change

4. No change

5. No change

a. No change

b. No change

**D.** No change

1. No change

2. No change

**E.** No change

1. No change

2. No change

**F.** If an administrator has a reasonable basis, according to A.R.S. §§ 13-3620 or 46-454, to believe that abuse, neglect, or exploitation has occurred on the premises or while a resident is receiving services from an ICF/IID's employee or personnel member, an administrator shall:

1. ~~If applicable, take~~ Take immediate action to stop the suspected abuse, neglect, or exploitation;

2. Report the suspected abuse, neglect, or exploitation of the resident as follows:

a. For a resident 18 years of age or older, according to A.R.S. § 46-454; or

b. For a resident under 18 years of age, according to A.R.S. § 13-3620;

c. Report to the Department:

i. Immediately but not later than two hours if the alleged violation involves abuse or results in serious bodily injury; or

ii. Not later than 24 hours if the alleged violation involves neglect, exploitation, mistreatment, or misappropriation of resident property; and does not result in serious bodily injury;

3. Document:

a. The suspected abuse, neglect, or exploitation;

b. Any action taken according to subsection (F)(1); and

c. The report in subsection (F)(2);

4. Maintain the documentation in subsection (F)(3) for at least 12 months after the date of the report in subsection (F)(2);

5. Initiate an investigation of the suspected abuse, neglect, or exploitation and document the following information within five working days after the report required in subsection (F)(2):

a. The dates, times, and description of the suspected abuse, neglect, or exploitation;

b. A description of any injury to the resident related to the suspected abuse or neglect and any change to the resident's physical, cognitive, functional, or emotional condition;

c. The names of witnesses to the suspected abuse, neglect, or exploitation; and

d. The actions taken by the administrator to prevent the suspected abuse, neglect, or exploitation from occurring in the future; and

6. Maintain a copy of the documented information required in subsection (F)(5) and any other information obtained during the investigation for at least 12 months after the date the investigation was initiated.

**G.** No change

1. No change

2. No change

3. No change

a. No change

b. No change

i. No change

ii. No change

c. No change

d. No change

e. No change

i. No change

ii. No change

**H.** No change

1. No change

2. No change

**I.** An administrator shall:

1. Notify a resident's representative, family member, or other individual designated by the resident ~~within one calendar day~~ immediately, with no delay between staff awareness of the occurrence and reporting unless the situation is unstable in which case reporting should occur as soon as the safety of the resident is assured, after:

a. The resident's death,

b. There is a significant change in the resident's medical condition, or

c. 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

2. No change

a. No change

b. No change

c. No change

d. No change

e. No change

f. No change

**J.** No change

1. No change

2. No change

3. No change

4. No change

5. No change

6. No change

7. No change

**K.** No change

1. No change

a. No change

b. No change

2. No change

**L.** No change

1. No change

a. No change

b. No change

2. No change

3. No change

**M.** No change

1. No change

2. No change

3. No change

**N.** No change

1. No change

2. No change

**R9-10-506. Personnel**

**A.** No change

1. No change

   a. No change

   b. No change

2. No change

3. No change

4. No change

**B.** An administrator shall ensure that:

1. The qualifications, skills, and knowledge required for each type of personnel member:

   a. Are based on:

      i. The type of active treatment or other physical health services or behavioral care expected to be provided by the personnel member according to the established job description, and

      ii. The acuity of the residents receiving active treatment or other physical health services or behavioral care from the personnel member according to the established job description; and

   b. Include:

      i. The specific skills and knowledge necessary for the personnel member to provide the expected active treatment or other physical health services and behavioral care listed in the established job description,

      ii. The type and duration of education that may allow the personnel member to have acquired the specific skills and knowledge for the personnel member to provide the expected active treatment or other physical health services or behavioral care listed in the established job description, and

      iii. The type and duration of experience that may allow the personnel member to have acquired the specific skills and knowledge for the personnel member to provide the expected active treatment or other physical health services or behavioral care listed in the established job description;

2. A personnel member's skills and knowledge are verified and documented:

   a. Before the personnel member provides active treatment or other physical health services or ~~and~~ behavioral care, and

   b. According to policies and procedures; and

3. Sufficient personnel members are present on an ICF/IID's premises with the qualifications, skills, and knowledge necessary to:

   a. Provide the services in the ICF/IID's scope of services,

   b. Meet the needs of a resident, and

c. Ensure the health and safety of a resident.

**C.** No change

1. No change
2. No change

**D.** No change

**E.** No change

**F.** No change

1. No change
2. No change

**G.** No change

1. No change
2. No change
   a. No change
   b. No change
   c. No change
   d. No change
3. No change

**H.** No change

1. No change
   a. No change
   b. No change
   c. No change
      i. No change
      ii. No change
      iii. No change
2. No change
   a. No change
   b. No change

**I.** No change

1. No change
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
   h. No change
   i. No change
   j. No change
   k. No change

**J.** No change

1. No change
    a. No change
    b. No change
2. No change

**K.** No change

1. No change
2. No change
3. No change
    a. No change
    b. No change
    c. No change
4. No change
5. No change
    a. No change
    b. No change
    c. No change
6. No change

**L.** No change

1. No change
2. No change

**M.** An administrator shall ensure that a fall prevention and fall recovery program that complies with requirements in A.R.S. § 36-420.01 is developed, documented, and implemented.

**R9-10-507. Admission**

An administrator shall ensure that:

1. No change
    a. No change
    b. No change
    c. No change
    d. No change
2. No change
3. At the time of a resident's admission, a registered nurse conducts or coordinates an initial assessment ~~on~~ of a resident to determine the resident's acuity and ensure the resident's immediate needs are met;
4. No change
5. No change
    a. No change
    b. No change
    c. No change
    d. No change
    e. No change
    f. No change
6. No change

7. No change
   a. No change
   b. No change
8. No change
9. No change
   a. No change
   b. No change
10. No change
    a. No change
    b. No change

**R9-10-508. Transfer; Discharge**

**A.** No change

1. No change
   a. No change
   b. No change
2. No change
   a. No change
   b. No change
   c. No change
      i. No change
      ii. No change
   d. No change
   e. No change

**B.** Except for a transfer of a resident due to an emergency, an administrator shall ensure that:

1. No change
2. According to policies and procedures:
   a. No change
   b. No change
   c. A personnel member explains the risks and benefits of the transfer to the resident or the resident's representative; and
3. No change
   a. No change
   b. No change
   c. No change
   d. No change

**C.** No change

1. No change
   a. No change
   b. No change
2. No change
3. No change
   a. No change

b. No change

c. No change

i. No change

ii. No change

iii. No change

iv. No change

v. No change

vi. No change

**R9-10-509. Transport**

**A.** Except as provided in subsections (B) and (C), an administrator shall ensure that:

1. A personnel member authorized by policies and procedures coordinates the transport and the services provided to the resident;
2. According to policies and procedures:
   a. An evaluation of the resident is conducted before and after the transport,
   b. Information from the resident's medical record is provided to a receiving health care institution, and
   c. A personnel member explains the risks and benefits of the transport to the resident or the resident's representative; and
3. Documentation in the resident's medical record includes:
   a. Communication with an individual at a receiving health care institution;
   b. The date and time of the transport;
   c. The mode of transportation; and
   d. If applicable, the name of the personnel member accompanying the resident during a transport.

**B.** No change

1. No change
2. No change
3. No change

**C.** No change

1. No change
2. No change
3. No change
4. No change

**R9-10-510. Transportation; Resident Outings**

**A.** No change

1. No change
   a. No change
   b. No change
   c. No change
   d. No change
2. No change
3. No change
   a. No change
   b. No change

c. No change

d. No change

i. No change

ii. No change

iii. No change

e. No change

4. No change

a. No change

b. No change

**B.** No change

**C.** An administrator shall ensure that:

1. Except when only one resident is participating in an outing, at least two personnel members are present on the outing;
2. In addition to the personnel members required in subsection (C)(1), a sufficient number of personnel members are present on an outing to ensure the health and safety of a resident on the outing;
3. Each personnel member on the outing has documentation of current training in cardiopulmonary resuscitation according to R9-10-503(C)(1)(g) and first aid training according to R9-10-503(C)(1)(h);
4. Documentation is developed before an outing that includes:
   a. The name of each resident participating in the outing;
   b. A description of the outing;
   c. The date of the outing;
   d. The anticipated departure and return times;
   e. The name, address, and, if available, telephone number of the outing destination; and
   f. If applicable, the license plate number of a vehicle used to provide transportation for the outing;
5. The documentation described in subsection (C)(4) is updated to include the actual departure and return times and is maintained for at least 12 months after the date of the outing; and
6. Emergency information for a resident participating in the outing is maintained by a personnel member participating in the outing or in the vehicle used to provide transportation for the outing and includes:
   a. The resident's name;
   b. Medication information, including the name, dosage, route of administration, and directions for each medication needed by the resident during the anticipated duration of the outing;
   c. The resident's allergies; and
   d. The name and telephone number of a designated individual, who is present on the ICF/IID's premises, to notify in case of an emergency.

**R9-10-511. Resident Rights**

**A.** No change

1. No change
2. No change
3. No change
   a. No change
   b. No change

**B.** An administrator shall ensure that:

1. A resident has privacy in:

a. Treatment,

b. Bathing and toileting,

c. Room accommodations, and

d. Visiting or meeting with another resident or an individual;

2. A resident is treated with dignity, respect, and consideration;

3. A resident is not subjected to:

a. Abuse;

b. Neglect;

c. Exploitation;

d. Coercion;

e. Manipulation;

f. Sexual abuse;

g. Sexual assault;

h. Except as allowed in R9-10-515, seclusion or restraint;

i. Retaliation for submitting a complaint to the Department or another entity;

j. Misappropriation of personal and private property by an ICF/IID's personnel members, employees, volunteers, or students; or

k. Segregation solely ~~on the basis of~~ based on the resident's disability; and

4. A resident or the resident's representative:

a. Except in an emergency, either consents to or refuses treatment;

b. May refuse or withdraw consent for treatment before treatment is initiated;

c. Except in an emergency, is informed of proposed alternatives to psychotropic medication and the associated risks and possible complications of the psychotropic medication;

d. Is informed of the following:

i. The health care institution's policy on health care directives, and

ii. The resident complaint process;

e. Consents to photographs of the resident before the resident is photographed, except that the resident may be photographed when admitted to an ICF/IID for identification and administrative purposes;

f. May manage the resident's financial affairs;

g. Has access to and may communicate with any individual, organization, or agency;

h. Except as provided in the resident's individual program plan, has privacy:

i. In interactions with other residents or visitors to the ICF/IID,

ii. In the resident's mail, and

iii. For telephone calls made by or to the resident;

i. May review the ICF/IID's current license survey report and, if applicable, plan of correction in effect;

j. May review the resident's financial records within two working days and medical ~~record~~ records within one working day after the resident's or the resident's representative's request;

k. May obtain a copy of the resident's financial records and medical ~~record~~ records within two working days after the resident's request and in compliance with A.R.S. § 12-2295;

l. Except as otherwise permitted by law, consents, in writing, to the release of information in the resident's:

i. Medical record, and

ii. Financial records;

m. May select a pharmacy of choice if the pharmacy complies with policies and procedures and does not pose a risk to the resident;

n. Is informed of the method for contacting the resident's attending physician;

o. Is informed of the resident's overall physical and psychosocial well-being, as determined by the resident's comprehensive assessment;

p. Is provided with a copy of those sections of the resident's medical record that are required for continuity of care free of charge, according to A.R.S. § 12-2295, if the resident is transferred or discharged; and

q. Except in the event of an emergency, is informed orally or in writing before the ICF/IID makes a change in a resident's room or roommate assignment and notification is documented in the resident's medical record.

**C.** In addition to the rights in A.R.S. § 36-551.01, a resident has the following rights:

1. Not to be discriminated against based on race, national origin, religion, gender, sexual orientation, age, disability, marital status, or diagnosis;
2. To receive treatment that supports and respects the resident's individuality, choices, strengths, and abilities;
3. To choose activities and schedules consistent with the resident's interests that do not interfere with other residents;
4. To participate in social, religious, political, and community activities that do not interfere with other residents;
5. To retain personal possessions including furnishings and clothing as space permits unless the use of the personal possession infringes on the rights or health and safety of other residents;
6. To share a room with the resident's spouse if space is available and the spouse consents;
7. To receive a referral to another health care institution if the ICF/IID is not authorized or not able to provide active treatment or other physical health services or behavioral care needed by the resident;
8. To participate or have the resident's representative participate in the development of the resident's individual program plan or decisions concerning treatment;
9. To participate or refuse to participate in research or experimental treatment; and
10. To receive assistance from a family member, the resident's representative, or other individual in understanding, protecting, or exercising the resident's rights.

**R9-10-512. Medical Records**

**A.** No change

1. No change
2. No change
   a. No change
   b. No change
   c. No change
3. No change
   a. No change
   b. No change
   c. No change
4. No change
5. No change
   a. No change
   b. No change
   c. No change
6. No change

**B.** No change

1. No change
2. No change

**C.** An administrator shall ensure that a resident's medical record contains:

1. Resident information that includes:
   a. The resident's name;
   b. The resident's date of birth; and
   c. Any known allergies, including medication allergies;
2. The admission date and, if applicable, the date of discharge;
3. The admitting diagnosis or presenting symptoms;
4. Documentation of the resident's placement evaluation;
5. Documentation of general consent and, if applicable, informed consent;
6. If applicable, the name and contact information of the resident's representative and:
   a. The document signed by the resident consenting for the resident's representative to act on the resident's behalf; or
   b. If the resident's representative:
      i. Has a health care power of attorney established under A.R.S. § 36-3221 or a mental health care power of attorney executed under A.R.S. § 36-3282, a copy of the health care power of attorney or mental health care power of attorney; or
      ii. Is a legal guardian, a copy of the court order establishing guardianship;
7. The name and contact information of ~~an individual to be contacted under R9-10-503(I)~~ the resident's representative, family member, or other individual designated by the resident;
8. Documentation of the initial assessment required in R9-10-507(3) to determine acuity;
9. The medical history and physical examination required in R9-10-516(A)(4);
10. A copy of the resident's living will or other health care directive, if applicable;
11. The name and telephone number of the resident's attending physician;
12. Orders;
13. Documentation of the resident's comprehensive assessment;
14. Individual program plans, including nursing care plans or medical care plans, if applicable;
15. Documentation of active treatment and other physical health services or behavioral care provided to the resident;
16. Progress notes, including data needed to evaluate the effectiveness of the methods, schedule, and strategies being used to accomplish the goals in the resident's individual program plan;
17. If applicable, documentation of restraint or seclusion;
18. If applicable, documentation of any actions other than restraint or seclusion taken to control or address the resident's behavior to prevent harm to the resident or another individual or to improve the resident's social interactions;
19. If applicable, documentation that evacuation from the ICF/IID would cause harm to the resident;
20. The disposition of the resident after discharge;
~~21. The discharge plan;~~
~~22. The discharge summary;~~
~~23.~~21. Transfer documentation;
22. The discharge plan and summary;
~~24.~~23. If applicable:
   a. A laboratory report,

b. A radiologic report,

c. A diagnostic report, and

d. A consultation report;

~~25.~~24. Documentation of freedom from infectious tuberculosis required in ~~R9-10-507(10)~~ R9-10-507(9);

~~25.~~25. Documentation of a medication administered to the resident that includes:

a. The date and time of administration;

b. The name, strength, dosage, and route of administration;

c. The type of vaccine, if applicable;

d. For a medication administered for pain on a PRN basis:

i. An evaluation of the resident's pain before administering the medication, and

ii. The effect of the medication administered;

e. For a psychotropic medication administered on a PRN basis:

i. An evaluation of the resident's symptoms before administering the psychotropic medication, and

ii. The effect of the psychotropic medication administered;

f. The identification, signature, and professional designation of the individual administering the medication; and

g. Any adverse reaction a resident has to the medication; and

~~27.~~26. If applicable, a copy of written notices, including follow-up instructions, provided to the resident or the resident's representative.

**R9-10-514. Individual Program Plan**

**A.** An administrator shall ensure that:

1. A comprehensive assessment of a resident:

a. Is conducted or coordinated by a qualified intellectual disabilities professional, in collaboration with an interdisciplinary team that includes:

i. The resident's attending physician or designee;

ii. A registered nurse;

iii. If the resident is receiving medications as part of active treatment, a pharmacist; and

iv. Personnel members qualified to provide each type of rehabilitation services identified in a placement evaluation or the initial assessment required in R9-10-507(3);

b. Is completed for the resident within 30 calendar days after the resident's admission to an ICF/IID;

c. Is updated:

i. No later than 12 months after the date of the resident's last comprehensive assessment, and

ii. When the resident experiences a significant change;

d. Includes the following information for the resident:

i. Identifying information;

ii. An evaluation of the resident's hearing, speech, and vision;

iii. An evaluation of the resident's ability to understand and recall information;

iv. An evaluation of the resident's mental status;

v. Whether the resident demonstrates inappropriate behavior;

vi. Preferences for customary routine and activities;

vii. An evaluation of the resident's ability to perform activities of daily living;

viii. Need for a mobility device;

ix. An evaluation of the resident's ability to control the resident's bladder and bowels;

x. Any diagnosis that impacts rehabilitation services or other physical health services or behavioral care that the resident may require;

xi. Any medical conditions that impact the resident's functional status, quality of life, or need for nursing services;

xii. An evaluation of the resident's ability to maintain adequate nutrition and hydration;

xiii. An evaluation of the resident's oral and dental status;

xiv. An evaluation of the condition of the resident's skin;

xv. Identification of any medication or treatment administered to the resident during a seven-day calendar period that includes the time the comprehensive assessment was conducted;

xvi. Identification of any treatment or medication ordered for the resident;

xvii. Identification of interventions that may support the resident towards independence;

xviii. Identification of any assistive devices needed by the resident;

xix. Identification of the active treatment needed by the resident, including active treatment not provided by the ICF/IID;

xx. Identification of measurable goals and behavioral objective for the active treatment, in priority order, with time limits for attainment;

xxi. Identification of the methods, schedule, and strategies to accomplish the goals ~~in subsection (A)(1)(d)(xviii)~~, including the personnel member responsible;

xxii. Evaluation procedures for determining if the methods and strategies in subsection (A)(1)(d)(xix) are working, including the type of data required and frequency of collection;

xxiii. Whether any restraints have been used for the resident during a seven-day calendar period that includes the time the comprehensive assessment was conducted;

xxiv. If the resident demonstrates inappropriate behavior, as reported according to subsection (A)(1)(d)(v), identification of the methods, schedule, and strategies for replacement of the inappropriate behavior with appropriate behavioral expressions, including the hierarchy for use;

xxv. If restraint or seclusion is included in subsection ~~(A)(1)(d)(xxiv)~~ (A)(1)(d)(xxiii), the specific restraints or conditions of seclusion that may be used because of the resident's inappropriate behavior;

xxvi. A description of the resident or resident's representative's participation in the comprehensive assessment;

xxvii. The name and title of the interdisciplinary team members who participated in the resident's comprehensive assessment;

xxviii. Potential for rehabilitation, including the resident's strengths and specific developmental or behavioral health needs; and

xxix. Potential for discharge;

e. Is signed and dated by the qualified intellectual disabilities professional who conducts or coordinates the comprehensive assessment or review; and

f. Is used to determine or update the resident's acuity;

2. If ~~any of~~ the ~~conditions~~ condition in subsection (A)(1)(d)(v) ~~are~~ is answered in the affirmative during the comprehensive assessment or review, a behavioral health professional reviews a resident's comprehensive assessment or review and individual program plan to ensure that the resident's needs for behavioral care are being met;

3. A new comprehensive assessment is not required for a resident who is hospitalized and readmitted to an ICF/IID unless a physician, an individual designated by the physician, a qualified intellectual disabilities professional, or a registered nurse determines the resident has a significant change in condition; and

4. A resident's comprehensive assessment is reviewed at least once every three months after the date of the current comprehensive assessment and if there is a significant change in the resident's condition by:

a. A qualified intellectual disabilities professional; and

b. If the resident has a nursing care plan or medical care plan, a registered nurse.

**B.** An administrator shall ensure that an individual program plan for a resident:

1. Is developed, documented, and implemented for the resident within seven calendar days after completing the resident's comprehensive assessment required in subsection (A)(1);

2. Includes the acuity of the resident;

3. Is reviewed at least annually by the interdisciplinary team required in subsection (A)(1)(a) and revised based on any change to the resident's comprehensive assessment; and

4. Ensures that a resident is provided rehabilitation services and other physical health services or behavioral care that:

a. Address any medical condition or behavioral care issue identified in the resident's comprehensive assessment, and

b. Assist the resident in maintaining the resident's highest practicable well-being according to the resident's comprehensive assessment.

**R9-10-515. Seclusion; Restraint**

**A.** No change

1. No change

2. No change

**B.** No change

1. No change

2. No change

a. No change

b. No change

c. No change

d. No change

e. No change

f. No change

i. No change

(1) No change

(2) No change

ii. No change

iii. No change

3. No change

a. No change

i. No change

ii. No change

iii. No change

iv. No change

v. No change

vi. No change

b. No change

4. No change

a. No change

b. No change

c. No change

i. No change

ii. No change

iii. No change

d. No change

**C.** An administrator shall ensure that:

1. Policies and procedures for providing restraint or seclusion are established, documented, and implemented to protect the health and safety of a resident that:

a. Establish the process for resident assessment, including identification of a resident's medical conditions and criteria for the on-going monitoring of any identified medical condition;

b. Identify each type of restraint or seclusion used and include for each type of restraint or seclusion used:

i. The qualifications of a personnel member who can:

(1) Order the restraint or seclusion,

(2) Place a resident in the restraint or seclusion,

(3) Monitor a resident in the restraint or seclusion,

(4) Evaluate a resident's physical and psychological well-being after being placed in the restraint or seclusion and when released from the restraint or seclusion, or

(5) Renew the order for restraint or seclusion;

ii. On-going training requirements for a personnel member who has direct resident contact while the resident is in a restraint or seclusion; and

iii. Criteria for monitoring and assessing a resident including:

(1) Frequencies of monitoring and assessment based on a resident's medical condition and risks associated with the specific restraint or seclusion;

(2) For the renewal of an order for restraint or seclusion, whether an assessment is required before the order is renewed and, if an assessment is required, who may conduct the assessment;

(3) Assessment content, which may include, depending on a resident's condition, the resident's vital signs, respiration, circulation, hydration needs, elimination needs, level of distress and agitation, mental status, cognitive functioning, neurological functioning, and skin integrity;

(4) If a mechanical restraint is used, how often the mechanical restraint is loosened; and

(5) A process for meeting a resident's nutritional needs and elimination needs;

c. Establish the criteria and procedures for renewing an order for restraint or seclusion;

d. Establish procedures for internal review of the use of restraint or seclusion; and

e. Establish medical record and personnel record documentation requirements for restraint and seclusion, if applicable;

2. An order for restraint or seclusion is:

a. Obtained from a physician or registered nurse practitioner, and

b. Not written as a standing order or on an as-needed basis;

3. Restraint or seclusion is:

a. Not used as a means of coercion, discipline, convenience, or retaliation;

b. Only used when all of the following conditions are met:

i. Except as provided in subsection (C)(4), after obtaining an order for the restraint or seclusion;

ii. For the management of a resident's aggressive, violent, or self-destructive behavior;

iii. When less restrictive interventions have been determined to be ineffective; and

iv. To ensure the immediate physical safety of the resident, to prevent imminent harm to the resident or another individual, or to stop physical harm to another individual; and

c. Discontinued at the earliest possible time;

4. If as a result of a resident's aggressive, violent, or self-destructive behavior, harm to the resident or another individual is imminent or the resident or another individual is being physically harmed, a personnel member:

a. May initiate an emergency application of restraint or seclusion for the resident before obtaining an order for the restraint or seclusion, and

b. Obtains an order for the restraint or seclusion of the resident during the emergency application of the restraint or seclusion;

5. An order for restraint or seclusion includes:

a. The name of the physician or registered nurse practitioner ordering the restraint or seclusion;

b. The date and time that the restraint or seclusion was ordered;

c. The specific restraint or seclusion ordered;

d. If a drug is ordered as a chemical restraint, the drug's name, strength, dosage, and route of administration;

e. The specific criteria for release from restraint or seclusion without an additional order; and

f. The maximum duration authorized for the restraint or seclusion;

6. An order for restraint or seclusion is limited to the duration of the emergency situation and does not exceed three continuous hours;

7. If an order for restraint or seclusion of a resident is not provided by the resident's attending physician, the resident's attending physician is notified as soon as possible;

8. A medical practitioner or personnel member does not participate in restraint or seclusion, assess or monitor a resident during restraint or seclusion, or evaluate a resident after restraint or seclusion, and a physician or registered nurse practitioner does not order restraint or seclusion, until the medical practitioner or personnel member, completes education and training that:

a. Includes:

i. Techniques to identify medical practitioner, personnel member, and resident behaviors, events, and environmental factors that may trigger circumstances that require restraint or seclusion;

ii. The use of nonphysical intervention skills, such as de-escalation, mediation, conflict resolution, active listening, and verbal and observational methods;

iii. Techniques for identifying the least restrictive intervention based on an assessment of the resident's medical or behavioral health condition;

iv. The safe use of restraint and the safe use of seclusion, including training in how to recognize and respond to signs of physical and psychological distress in a resident who is restrained or secluded;

v. Clinical identification of specific behavioral changes that indicate that the restraint or seclusion is no longer necessary;

vi. Monitoring and assessing a resident while the resident is in restraint or seclusion according to policies and procedures; and

vii. Except for the medical practitioner, training exercises in which the personnel member successfully demonstrates the techniques that the medical practitioner or personnel member has learned for managing emergency situations; and

b. Is provided by individuals qualified according to policies and procedures;

9. When a resident is placed in restraint or seclusion:

a. The restraint or seclusion is conducted according to policies and procedures;

b. The restraint or seclusion is proportionate and appropriate to the severity of the resident's behavior and the resident's:

i. Chronological and developmental age;

ii. Size;

iii. Gender;

iv. Physical condition;

v. Medical condition;

vi. Psychiatric condition; and

vii. Personal history, including any history of physical or sexual abuse;

c. The physician or registered nurse practitioner who ordered the restraint or seclusion is available for consultation throughout the duration of the restraint or seclusion;

d. The resident is monitored and assessed according to policies and procedures;

e. A physician or registered nurse assesses the resident within one hour after the resident is placed in the restraint or seclusion and determines:

i. The resident's current behavior,

ii. The resident's reaction to the restraint or seclusion used,

iii. The resident's medical and behavioral condition, and

iv. Whether to continue or terminate the restraint or seclusion;

f. The resident is given the opportunity:

i. To eat during mealtime, and

ii. To use the toilet; and

g. The restraint or seclusion is discontinued at the earliest possible time, regardless of the length of time identified in the order;

10. A medical practitioner or personnel member documents the following information in a resident's medical record before the end of the shift in which the resident is placed in restraint or seclusion or, if the resident's restraint or seclusion does not end during the shift in which it began, during the shift in which the resident's restraint or seclusion ends:

a. The emergency situation that required the resident to be restrained or put in seclusion,

b. The times the resident's restraint or seclusion actually began and ended,

c. The monitoring and time of the assessment ~~required in subsection (C)(9)(d),~~

~~d. The time of the assessment required in subsection (C)(9)(e),~~

~~e.~~d. The names of the medical practitioners and personnel members with direct resident contact while the resident was in the restraint or seclusion,

~~f.~~e. The times the resident was given the opportunity to eat or use the toilet according to subsection (C)(9)(f), and

~~g.~~f. The resident evaluation required in subsection (C)(12);

11. If an emergency situation continues beyond the time limit of an order for restraint or seclusion, the order is renewed according to policies and procedures that include:
    a. The specific criteria for release from restraint or seclusion without an additional order, and
    b. The maximum duration authorized for the restraint or seclusion; and
12. A resident is evaluated after restraint or seclusion is no longer being used for the resident.

**R9-10-516. Physical Health Services**

**A.** No change
1. No change
2. No change
3. No change
4. No change
    a. No change
    b. No change
5. No change
    a. No change
    b. No change
6. No change
    a. No change
    b. No change
    c. No change

**B.** No change
1. No change
2. No change
    a. No change
    b. No change
3. No change

**C.** A director of nursing shall ensure that:
1. A method is established and documented that identifies the types and numbers of nursing personnel that are necessary to provide nursing services to residents based on:
    a. The acuity of the residents, and
    b. The ICF/IID's scope of services;
2. Sufficient nursing personnel, as determined by the method in subsection (C)(1), are on the ICF/IID's premises to meet the needs of a resident for nursing services;
3. A registered nurse participates in the development, review, and updating of a resident's nursing care plan or medical care plan;
4. Personnel members providing direct care to a resident with a nursing care plan or medical care plan receive direction from a nurse;
5. At least once every three months, a nurse:
    a. Assesses the health of a resident without a nursing care plan or medical care plan;
    b. Documents the results in the resident's medical record; and
    c. If the assessment indicates the need for physical health services or behavioral care, ~~initiates~~ initiate action, according to policies and procedures, to address the resident's needs;

6. Nursing personnel provide education and training to:
    a. Residents on hygiene and other behaviors that promote health; and
    b. Personnel members on:
        i. Detecting signs of illness or injury or significant changes in condition,
        ii. First aid, and
        iii. Basic skills for caring for residents;
7. ~~As soon as possible but not more than 24 hours after one of the following events occur, a nurse notifies a resident's attending physician and, if applicable, the resident's representative, if the resident:~~ A nurse notifies a resident's attending physician and, if applicable, the resident's representative immediately or within 24 hours after one of the following events occur:
    a. Is injured,
    b. Is involved in an incident that requires medical services, or
    c. Has a significant change in condition; and
8. Only a medication required by an order is administered to a resident.

**D.** No change

1. No change
    a. No change
    b. No change
2. No change
3. No change
4. No change
    a. No change
    b. No change
5. No change
6. No change
7. No change
8. No change
    a. No change
    b. No change
    c. No change

**E.** No change

1. No change
2. No change
    a. No change
    b. No change

**R9-10-518. Clinical Laboratory Services**

If clinical laboratory services are authorized to be provided on an ICF/IID's premises, an administrator shall ensure that:

1. Clinical laboratory services and pathology services are provided through a laboratory that holds a certificate of accreditation, certificate of compliance, or certificate of waiver issued by the United States Department of Health and Human Services under the 1988 amendments to the Clinical Laboratories Improvement Act of 1967;
2. A copy of the certificate of accreditation, certificate of compliance, or certificate of waiver in subsection (1) is provided to the Department for review upon the Department's request;

3. The ICF/IID:
    a. Is able to provide the clinical laboratory services delineated in the ICF/IID's scope of services when needed by the residents,
    b. Obtains specimens for the clinical laboratory services delineated in the ICF/IID's scope of services without transporting the residents from the ICF/IID's premises, and
    c. Has the examination of the specimens performed by a clinical laboratory;
4. Clinical laboratory and pathology test results are:
    a. Available to the ordering physician within 24 hours after the test:
        i. ~~Within 24 hours after the test is~~ Is complete with results if the test is performed at a laboratory on the ICF/IID's premises, or
        ii. ~~Within 24 hours after the test result~~ Result is received if the test is performed at a laboratory outside of the ICF/IID's premises; and
    b. Documented in a resident's medical record;
5. If a test result is obtained that indicates a resident may have an emergency medical condition, as established in policies and procedures, personnel notify:
    a. The ordering physician,
    b. A registered nurse in the resident's assigned unit,
    c. The ICF/IID's administrator, or
    d. The director of nursing;
6. If a clinical laboratory report is completed on a resident, a copy of the report is included in the resident's medical record;
7. If the ICF/IID provides blood or blood products, policies and procedures are established, documented, and implemented for:
    a. Procuring, storing, transfusing, and disposing of blood or blood products;
    b. Blood typing, antibody detection, and blood compatibility testing; and
    c. Investigating transfusion adverse reactions that specify a process for review through the quality management program; and
8. Expired laboratory supplies are discarded according to policies and procedures.

**R9-10-520. Medication Services**

**A.** No change
1. No change
    a. No change
        i. No change
        ii. No change
        iii. No change
        iv. No change
    b. No change
        i. No change
        ii. No change
        iii. No change
    c. No change
    d. No change

e. No change

2. No change

a. No change

b. No change

**B.** No change

1. No change

a. No change

b. No change

i. No change

ii. No change

c. No change

d. No change

2. No change

3. No change

a. No change

b. No change

4. No change

a. No change

b. No change

**C.** No change

1. No change

2. No change

a. No change

b. No change

c. No change

d. No change

i. No change

ii. No change

iii. No change

e. No change

3. No change

4. No change

a. No change

b. No change

i. No change

ii. No change

iii. No change

5. No change

6. No change

a. No change

b. No change

**D.** An administrator shall ensure that:

1. A current drug reference guide is available for use by personnel members; ~~and~~

2. If applicable, pharmaceutical services are provided~~:~~ under the direction of a pharmacist and comply with A.R.S. Title 36, Chapter 27; A.R.S. Title 32, Chapter 18; and 4 A.A.C. 23; and

~~a. The pharmaceutical services are provided under the direction of a pharmacist;~~

~~b. The pharmaceutical services comply with A.R.S. Title 36, Chapter 27; A.R.S. Title 32, Chapter 18; and 4 A.A.C. 23; and~~

~~c. A copy of the pharmacy license is provided to the Department upon request.~~

3. A copy of the pharmacy license is provided to the Department upon request.

**E.** No change

1. No change
2. No change
3. No change
   a. No change
   b. No change
   c. No change
   d. No change

**F.** No change

**R9-10-522. Food Services**

**A.** No change

1. No change
2. No change
3. No change
   a. No change
   b. No change
4. No change
   a. No change
   b. No change
   c. No change
   d. No change
5. No change

**B.** A registered dietitian or director of food services shall ensure that:

1. Food is prepared:
   a. Using methods that conserve nutritional value, flavor, and appearance; and
   b. In a form to meet the needs of a resident such as cut, chopped, ground, pureed, or thickened;
2. A food menu:
   a. Is prepared at least one week in advance,
   b. Includes the foods to be served on each day,
   c. Is conspicuously posted at least one day before the first meal on the food menu will be served,
   d. Includes any food substitution no later than the morning of the day of meal service with a food substitution, and
   e. Is maintained for at least 60 calendar days after the last day included in the food menu;

3. Meals and snacks for each day are planned and served using the applicable guidelines in ~~http://www.health.gov/dietaryguidelines/2015.asp~~ the most recent dietary guidelines according to the U.S. Department of Health and Human Services and U.S. Department of Agriculture;
4. A resident is provided:
    a. A diet that meets the resident's nutritional needs as specified in the resident's comprehensive assessment and individual program plan;
    b. Food served in sufficient quantities to meet the resident's nutritional needs and at an appropriate temperature;
    c. Three meals a day with not more than 14 hours between the evening meal and breakfast, except as provided in subsection (B)(4)(e);
    d. The option to have a daily evening snack identified in subsection (B)(4)(e)(ii) or other snack; and
    e. The option to extend the time span between the evening meal and breakfast from 14 hours to 16 hours if:
        i. A resident group agrees; and
        ii. The resident is offered an evening snack that includes meat, fish, eggs, cheese, or other protein, and a serving from either the fruit and vegetable food group or the bread and cereal food group;
5. A resident is provided with food substitutions of similar nutritional value if:
    a. The resident refuses to eat the food served, or
    b. The resident requests a substitution;
6. Recommendations and preferences are requested from a resident or the resident's representative for meal planning;
7. If food is used as a part of a program to manage a resident's inappropriate behavior:
    a. A special diet is included as part of the resident's individual program plan, and
    b. The special diet is reviewed and evaluated by a physician and a dietitian to ensure the special diet meets the resident's nutritional needs;
8. Meals are served to residents at tables in a dining area and in a manner that allows the resident to eat from an upright position, unless otherwise specified in the resident's individual program plan or by an attending physician;
9. A resident requiring assistance to eat is provided with assistance that recognizes the resident's nutritional, physical, and social needs, including the use of adaptive eating equipment or utensils;
10. Personnel members supervise meals in dining areas to:
    a. Direct a resident's self-help dining procedures,
    b. Ensure a resident consumes enough food to meet the resident's nutritional needs, and
    c. Ensure that a resident eats in a manner consistent with the resident's developmental level;
11. Tableware, utensils, equipment, and food-contact surfaces are clean and in good repair; and
12. Water is available and accessible to residents.

**R9-10-525. Physical Plant Standards**

**A.** An administrator shall ensure that, if an ICF/IID has:
1. More than 16 residents, the ICF/IID complies with:
    a. The applicable physical plant health and safety codes and standards, incorporated by reference in R9-10-104.01, that were in effect on the earlier of:
        i. The date the ICF/IID was originally certified as an ICF/IID by the federal Centers for Medicare and Medicaid Services, or
        ii. The date the ICF/IID submitted the application packet including the notarized attestation of architectural plans ~~and specifications to the Department for approval~~ according to R9-10-104; and

b. The requirements for Existing Health Care Occupancies in National Fire Protection Association 101, Life Safety Code, incorporated by reference in R9-10-104.01; and

2. Sixteen or fewer residents, the ICF/IID complies with the requirements for Existing Health Care Occupancies in National Fire Protection Association 101, Life Safety Code, incorporated by reference in R9-10-104.01.

**B.** No change

1. No change
   a. No change
   b. No change
2. No change
3. No change
4. 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
      vi. No change
      vii. No change
5. No change
   a. No change
   b. No change
   c. No change
6. No change
7. No change

**C.** No change

1. No change
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
4. No change
5. No change
6. No change
7. No change

a. No change

b. No change

c. No change

d. No change

e. No change

f. No change

g. No change

h. No change

i. No change

j. No change

k. No change

l. No change

**D.** If a swimming pool is located on the premises, an administrator shall ensure that:

1. The swimming pool is enclosed by a wall or fence that:

a. Is at least five feet in height as measured on the exterior of the wall or fence;

b. Has no vertical openings greater ~~that~~ than four inches across;

c. Has no horizontal openings, except as described in subsection (D)(1)(e);

d. Is not chain-link;

e. Does not have a space between the ground and the bottom fence rail that exceeds four inches in height; and

f. Has a self-closing, self-latching gate that:

i. Opens away from the swimming pool,

ii. Has a latch located at least 54 inches from the ground, and

iii. Is locked when the swimming pool is not in use; and

2. A life preserver or shepherd's crook is available and accessible in the pool area.

**E.** No change

# TITLE 9. HEALTH SERVICES

# CHAPTER 10. DEPARTMENT OF HEALTH SERVICES - HEALTH CARE INSTITUTIONS: LICENSING

## ARTICLE 5. INTERMEDIATE CARE FACILITIES FOR INDIVIDUALS WITH INTELLECTUAL DISABILITIES

Section

R9-10-501. Definitions
R9-10-502. Supplemental Application Requirements and Documentation Submission Requirements
R9-10-503. Administration
R9-10-504. Quality Management
R9-10-505. Contracted Services
R9-10-506. Personnel
R9-10-507. Admission
R9-10-508. Transfer; Discharge
R9-10-509. Transport
R9-10-510. Transportation; Resident Outings
R9-10-511. Resident Rights
R9-10-512. Medical Records
R9-10-513. Rehabilitation Services and Habilitation Services
R9-10-514. Individual Program Plan
R9-10-515. Seclusion; Restraint
R9-10-516. Physical Health Services
R9-10-517. Behavioral Care
R9-10-518. Clinical Laboratory Services
R9-10-519. Respiratory Care Services
R9-10-520. Medication Services
R9-10-521. Infection Control
R9-10-522. Food Services
R9-10-523. Emergency and Safety Standards
R9-10-524. Environmental Standards
R9-10-525. Physical Plant Standards

## ARTICLE 5. INTERMEDIATE CARE FACILITIES FOR INDIVIDUALS WITH INTELLECTUAL DISABILITIES

**R9-10-501. Definitions**

In addition to the definitions in A.R.S. §§ 36-401 and 36-551 and R9-10-101, the following definitions apply in this Article unless otherwise specified:

1. "Active treatment" means rehabilitative services and habilitation services provided to a resident to address the resident's developmental disability and, if applicable, medical condition.
2. "Acuity" means a resident's need for medical services, nursing services, rehabilitative services, or habilitation services based on the patient's medical condition or developmental disability.
3. "Acuity plan" means a method for establishing requirements for nursing personnel or therapists by unit based on a resident's acuity.
4. "Advocate" means an individual who:
   a. Assists a resident or the resident's representative to make the resident's wants and needs known,
   b. Recommends a course of action to address the resident's wants and needs, and
   c. Supports the resident or the resident's representative in addressing the resident's wants and needs.
5. "Assistive device" means a piece of equipment or mechanism that is designed to enable an individual to better carry out activities of daily living.
6. "Dental services" means activities, methods, and procedures included in the practice of dentistry, as described in A.R.S § 32-1202.
7. "Direct care" means medical services, nursing services, rehabilitation services, or habilitation services provided to a resident.
8. "Inappropriate behavior" means actions by a resident that may:
   a. Put the resident at risk for physical illness or injury,
   b. Significantly interfere with the resident's care,
   c. Significantly interfere with the resident's ability to participate in activities or social interactions,
   d. Put other residents or personnel members at significant risk for physical injury,
   e. Significantly intrude on another resident's privacy, or
   f. Significantly disrupt care for another resident.



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.

9. "Medical care plan" means a documented guide for providing medical services and nursing services to a resident requiring continuous nursing services that includes measurable objectives and the methods for meeting the objectives.
10. "Nursing care plan" means a documented guide for providing intermittent nursing services to a resident that includes measurable objectives and the methods for meeting the objectives.
11. "Outing" means a social or recreational activity or habilitation services that:
    a. Occur away from the premises, and
    b. May be part of a resident's individual program plan.
12. "Qualified intellectual disabilities professional" means one of the following who has at least one year of experience working directly with individuals who have developmental disabilities:
    a. A physician;
    b. A registered nurse;
    c. A physical therapist;
    d. An occupational therapist;
    e. A psychologist, as defined in A.R.S. § 32-2061;
    f. A speech-language pathologist;
    g. An audiologist, as defined in A.R.S. § 36-1901;
    f. A registered dietitian, as defined in A.R.S. § 36-416;
    g. A licensed clinical social worker under A.R.S. § 32-3293; or
    h. A nursing care institution administrator.
13. "Resident's representative" has the same meaning as "responsible person" in A.R.S. § 36-551.

**Historical Note**

Adopted as an emergency effective October 26, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Readopted without change as an emergency effective January 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-1). Emergency expired. Readopted without change as an emergency effective April 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-2). Emergency expired. Readopted without change as an emergency effective July 31, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Emergency expired. Permanent rules adopted with changes effective October 30, 1989 (Supp. 89-4). Section repealed, new Section adopted effective April 4, 1994 (Supp. 94-2). Amended by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Section R9-10-501 renumbered to R9-10-2101; new Section R9-10-501 made by exempt rulemaking at 25 A.A.R. 1222, effective April 25, 2019 (Supp. 19-2). Amended by exempt rulemaking, at 26 A.A.R. 72 with an effective date of January 1, 2020 (Supp. 19-4). Amended by exempt rulemaking at 28 A.A.R. 927 (May 6, 2022), with an immediate effective date of April 15, 2022 (Supp. 22-2).

**R9-10-502. Supplemental Application Requirements and Documentation Submission Requirements**

**A.** In addition to the license application requirements in A.R.S. § 36-422 and R9-10-105, an applicant for a license as an ICF/IID shall include:
1. In a Department-provided format, whether the applicant is requesting authorization:
    a. To admit residents who:
        i. Require continuous nursing services,
        ii. Require intermittent nursing services, or
        iii. Do not require nursing services; and
    b. To provide:
        i. Active treatment to individuals under 18 years of age, including the licensed capacity requested;
        ii. Seclusion;
        iii. Clinical laboratory services;
        iv. Respiratory care services, or
        v. Services to residents who have a nursing care plan or medical care plan; and
2. Documentation of the applicant's certification as an ICF/IID by the federal Centers for Medicare and Medicaid Services.

**B.** A licensee shall submit to the Department, with the relevant fees required in R9-10-106(C) and in a Department-provided format:
1. The information required in subsection (A)(1), as applicable, and
2. The documentation specified in subsection (A)(2).

**Historical Note**

Adopted as an emergency effective October 26, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Readopted without change as an emergency effective January 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-1). Emergency expired. Readopted without change as an emergency effective April 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-2). Emergency expired. Readopted without change as an emergency effective July 31, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Permanent rules adopted with changes effective October 30, 1989 (Supp. 89-4). Section repealed, new Section adopted effective April 4, 1994 (Supp. 94-2). Section repealed; Section amended by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt

rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Section R9-10-502 re-numbered to R9-10-2102; new Section R9-10-502 made by exempt rulemaking at 25 A.A.R. 1222, effective April 25, 2019 (Supp. 19-2). Amended by exempt rulemaking, at 26 A.A.R. 72 with an effective date of January 1, 2020 (Supp. 19-4).

**R9-10-503. Administration**

**A.** A governing authority shall:
1. Consist of one or more individuals responsible for the organization, operation, and administration of an ICF/IID;
2. Establish, in writing, the ICF/IID's scope of services;
3. Designate, in writing, an administrator for the ICF/IID who:
   a. Is at least 21 years old; and
   b. Either:
      i. Is a nursing care institution administrator, or
      ii. Has a minimum of three-years' experience working in an ICF/IID;
4. Adopt a quality management program according to R9-10-504;
5. Review and evaluate the effectiveness of the quality management program at least once every 12 months;
6. Designate, in writing, an acting administrator who meets the requirements in subsection (A)(3), if the administrator is:
   a. Expected not to be present on the premises of the ICF/IID for more than 30 calendar days, or
   b. Not present on the premises of the ICF/IID for more than 30 calendar days; and
7. Except as permitted in subsection (A)(6), when there is a change of administrator, notify the Department according to A.R.S. § 36-425(I) and, if applicable, submit a copy of the new administrator's license under A.R.S. § 36-446.04 to the Department.

**B.** An administrator:
1. Is directly accountable to the governing authority of an ICF/IID for the daily operation of the ICF/IID and all services provided by or at the ICF/IID;
2. Has the authority and responsibility to manage the ICF/IID;
3. Except as provided in subsection (A)(6), designates, in writing, an individual who is present on the premises of the ICF/IID and accountable for the ICF/IID when the administrator is not present on the ICF/IID's premises; and
4. Ensures the ICF/IID's compliance with A.R.S. § 36-411 and, as applicable, A.R.S. § 8-804 or § 46-459.

**C.** An administrator shall ensure that:
1. Policies and procedures are established, documented, and implemented to protect the health and safety of a resident that:
   a. Cover job descriptions, duties, and qualifications, including required skills, knowledge, education, and experience for personnel members, employees, volunteers, and students;
   b. Cover the process for checking on a personnel member through the adult protective services registry established according to A.R.S. § 46-459;
   c. Cover orientation and in-service education for personnel members, employees, volunteers, and students;
   d. Include methods to prevent abuse or neglect of a resident, including:
      i. Training of personnel members, at least annually, on how to recognize the signs and symptoms of abuse or neglect; and
      ii. Reporting of abuse or neglect of a resident;
   e. Include how a personnel member may submit a complaint relating to resident care;
   f. Cover the requirements in A.R.S. Title 36, Chapter 4, Article 11;
   g. Cover cardiopulmonary resuscitation training including:
      i. Which personnel members are required to obtain cardiopulmonary resuscitation training,
      ii. The method and content of cardiopulmonary resuscitation training,
      iii. The qualifications for an individual to provide cardiopulmonary resuscitation training,
      iv. The time-frame for renewal of cardiopulmonary resuscitation training, and
      v. The documentation that verifies an individual has received cardiopulmonary resuscitation training;
   h. Cover first aid training;
   i. Include a method to identify a resident to ensure the resident receives active treatment and other physical health services and behavioral care as ordered;
   j. Cover resident rights, including assisting a resident who does not speak English or who has a disability to become aware of resident rights;
   k. Cover specific steps for:
      i. A resident to file a complaint, and
      ii. The ICF/IID to respond to a resident's complaint;
   l. Cover health care directives;
   m. Cover medical records, including electronic medical records;
   n. Cover a quality management program, including incident reports and supporting documentation;
   o. Cover contracted services;
   p. Cover the process for receiving a fee for a resident and refunding a fee for a resident;

q. Cover resident's personal accounts;
r. Cover petty cash funds;
s. Cover fees and refund policies;
t. Cover smoking and the use of tobacco products on the premises; and
u. Cover when an individual may visit a resident in an ICF/IID; and

2. Policies and procedures for active treatment and other physical health services and behavioral care are established, documented, and implemented to protect the health and safety of a resident that:
   a. Cover resident screening, admission, transport, transfer, discharge planning, and discharge;
   b. Cover the provision of active treatment and other physical health services and behavioral care;
   c. Cover acuity, including a process for obtaining sufficient nursing personnel and therapists to meet the needs of residents;
   d. Include when general consent and informed consent are required;
   e. Cover storing, dispensing, administering, and disposing of medication, including provisions for inventory control and preventing diversion of controlled substances;
   f. Cover infection control;
   g. Cover interventions to address a resident's inappropriate behavior, including:
      i. The hierarchy for use;
      ii. Use of time outs for inappropriate behavior; and
      iii. Except in an emergency, require positive techniques for behavior modification to be used before more restrictive methods are used;
   h. Cover restraints, both chemical restraints and physical restraints if applicable, that:
      i. Require an order, including the frequency of monitoring and assessing the restraint; and
      ii. Are necessary to prevent imminent harm to self or others, including how personnel members will respond to a resident's sudden, intense, or out-of-control behavior;
   i. Cover seclusion of a resident including:
      i. The requirements for an order, and
      ii. The frequency of monitoring and assessing a resident in seclusion;
   j. Cover telemedicine, if applicable;
   k. Cover environmental services that affect resident care;
   l. Cover the security of a resident's possessions that are allowed on the premises;
   m. Cover methods to encourage participation of a resident's family or friends or other individuals in activities planned according to R9-10-513(C)(2);
   n. Include a method for obtaining an advocate for a resident, if necessary;
   o. Cover resident outings;
   p. Cover the process for obtaining resident preferences for social, recreational, or rehabilitative activities and meals and snacks; and
   q. Cover whether pets and animals are allowed on the premises, including procedures to ensure that any pets or animals allowed on the premises do not endanger the health or safety of residents or the public;
3. Policies and procedures are reviewed at least once every three years and updated as needed;
4. Policies and procedures are available to personnel members, employees, volunteers, and students; and
5. Unless otherwise stated:
   a. Documentation required by this Article is provided to the Department within two hours after a Department request; and
   b. When documentation or information is required by this Chapter to be submitted on behalf of an ICF/IID, the documentation or information is provided to the unit in the Department that is responsible for licensing and monitoring the ICF/IID.

**D.** An administrator shall designate an individual who is:
1. A qualified intellectual disabilities professional to oversee rehabilitation services provided by or on behalf of the ICF/IID; and
2. If the facility is authorized to admit patients who require intermittent nursing services or continuous nursing services, a registered nurse is appointed as director of nursing to oversee nursing services provided by or on behalf of the ICF/IID.

**E.** If abuse, neglect, or exploitation of a resident is alleged or suspected to have occurred before the resident was admitted or while the resident is not on the premises and not receiving services from an ICF/IID's employee or personnel member, an administrator shall report the alleged or suspected abuse, neglect, or exploitation of the resident as follows:
1. For a resident 18 years of age or older, according to A.R.S. § 46-454; or
2. For a resident under 18 years of age, according to A.R.S. § 13-3620.

**F.** If an administrator has a reasonable basis, according to A.R.S. §§ 13-3620 or 46-454, to believe that abuse, neglect, or exploitation has occurred on the premises or while a resident is receiving services from an ICF/IID's employee or personnel member, an administrator shall:
1. If applicable, take immediate action to stop the suspected abuse, neglect, or exploitation;
2. Report the suspected abuse, neglect, or exploitation of the resident as follows:
   a. For a resident 18 years of age or older, according to A.R.S. § 46-454; or
   b. For a resident under 18 years of age, according to A.R.S. § 13-3620;
3. Document:

a. The suspected abuse, neglect, or exploitation;
b. Any action taken according to subsection (F)(1); and
c. The report in subsection (F)(2);

4. Maintain the documentation in subsection (F)(3) for at least 12 months after the date of the report in subsection (F)(2);
5. Initiate an investigation of the suspected abuse, neglect, or exploitation and document the following information within five working days after the report required in subsection (F)(2):
   a. The dates, times, and description of the suspected abuse, neglect, or exploitation;
   b. A description of any injury to the resident related to the suspected abuse or neglect and any change to the resident's physical, cognitive, functional, or emotional condition;
   c. The names of witnesses to the suspected abuse, neglect, or exploitation; and
   d. The actions taken by the administrator to prevent the suspected abuse, neglect, or exploitation from occurring in the future; and
6. Maintain a copy of the documented information required in subsection (F)(5) and any other information obtained during the investigation for at least 12 months after the date the investigation was initiated.

**G.** An administrator shall:
1. Allow a resident advocate to assist a resident or the resident's representative with a request or recommendation, and document in writing any complaint submitted to the ICF/IID;
2. Ensure that a monthly schedule of recreational activities for residents is developed, documented, and implemented; and
3. Ensure that the following are conspicuously posted on the premises:
   a. The current ICF/IID license issued by the Department;
   b. The name, address, and telephone number of:
      i. The Department's Office of Long Term Care, and
      ii. Adult Protective Services of the Department of Economic Security;
   c. A notice that a resident may file a complaint with the Department concerning the ICF/IID;
   d. The monthly schedule of recreational activities; and
   e. One of the following:
      i. A copy of the current license survey report with information identifying residents redacted, any subsequent reports issued by the Department, and any plan of correction that is in effect; or
      ii. A notice that the current license survey report with information identifying residents redacted, any subsequent reports issued by the Department, and any plan of correction that is in effect are available for review upon request.

**H.** An administrator shall provide written notification to the Department of a resident's:
1. Death, if the resident's death is required to be reported according to A.R.S. § 11-593, within one working day after the resident's death; and
2. Self-injury, within two working days after the resident inflicts a self-injury that requires immediate intervention by an emergency medical services provider.

**I.** An administrator shall:
1. Notify a resident's representative, family member, or other individual designated by the resident within one calendar day after:
   a. The resident's death,
   b. There is a significant change in the resident's medical condition, or
   c. 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
2. For an illness or injury in subsection (I)(1)(c), document the following:
   a. The date and time of the illness or injury;
   b. A description of the illness or injury;
   c. If applicable, the names of individuals who observed the injury;
   d. The actions taken by personnel members, according to policies and procedures;
   e. The individuals notified by the personnel members; and
   f. Any action taken to prevent the illness or injury from occurring in the future.

**J.** If an administrator administers a resident's personal account at the request of the resident or the resident's representative, the administrator shall:
1. Comply with policies and procedures established according to subsection (C)(1)(q);
2. Designate a personnel member who is responsible for the personal accounts;
3. Maintain a complete and separate accounting of each personal account;
4. Obtain written authorization from the resident or the resident's representative for a personal account transaction;
5. Document an account transaction and provide a copy of the documentation to the resident or the resident's representative upon request and at least every three months;
6. Transfer all money from the resident's personal account in excess of $50.00 to an interest-bearing account and credit the interest to the resident's personal account; and

7. Within 30 calendar days after the resident's death, transfer, or discharge, return all money in the resident's personal account and a final accounting to the resident, the resident's representative, or the probate jurisdiction administering the resident's estate.

**K.** If a petty cash fund is established for use by residents, the administrator shall ensure that:
1. The policies and procedures established according to subsection (C)(1)(r) include:
   a. A prescribed cash limit of the petty cash fund, and
   b. The hours of the day a resident may access the petty cash fund; and
2. A resident's written acknowledgment is obtained for a petty cash transaction.

**L.** An administrator shall ensure that an acuity plan is developed, documented, and implemented for each unit in the ICF/IID that:
1. Includes:
   a. A method that establishes the types and numbers of personnel members that are required for each unit in the ICF/IID to ensure resident health and safety, and
   b. A policy and procedure stating the steps the ICF/IID will take to obtain or assign the necessary personnel members to address resident acuity;
2. Is used when making assignments for resident treatment; and
3. Is reviewed and updated, as necessary, at least once every 12 months.

**M.** An administrator shall establish and document the criteria for determining when a resident's absence is unauthorized, including the criteria for a resident who:
1. Is absent against medical advice,
2. Is under the age of 18, or
3. Does not return to the ICF/IID at the expected time after an authorized absence.

**N.** An administrator shall ensure that the following are on the premises of the ICF/IID:
1. The most recent inspection report of the ICF/IID conducted by the Arizona Department of Economic Security under A.R.S. § 36-557(G)(1), and
2. Documentation of the most recent monitoring of the ICF/IID conducted by the Arizona Department of Economic Security under A.R.S. § 36-557(G)(2).

**Historical Note**

Adopted as an emergency effective October 26, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Readopted without change as an emergency effective January 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-1). Emergency expired. Readopted without change as an emergency effective April 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-2). Emergency expired. Readopted without change as an emergency effective July 31, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Permanent rules adopted with changes effective October 30, 1989 (Supp. 89-4). Section repealed, new Section adopted effective April 4, 1994 (Supp. 94-2). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Section R9-10-503 renumbered to R9-10-2103; new Section R9-10-503 made by exempt rulemaking at 25 A.A.R. 1222, effective April 25, 2019 (Supp. 19-2). Amended by exempt rulemaking, at 26 A.A.R. 72 with an effective date of January 1, 2020 (Supp. 19-4).

**R9-10-504. Quality Management**

An administrator shall ensure that:
1. A plan is established, documented, and implemented for an ongoing quality management program that, at a minimum, includes:
   a. A method to identify, document, and evaluate incidents;
   b. A method to collect data to evaluate services provided to residents;
   c. A method to evaluate the data collected to identify a concern about the delivery of services related to resident care;
   d. A method to make changes or take action as a result of the identification of a concern about the delivery of services related to resident care; and
   e. The frequency of submitting a documented report required in subsection (2) to the governing authority;
2. A documented report is submitted to the governing authority that includes:
   a. An identification of each concern about the delivery of services related to resident care; and
   b. Any change made or action taken as a result of the identification of a concern about the delivery of services related to resident care; and
3. The report required in subsection (2) and the supporting documentation for the report are maintained for at least 12 months after the date the report is submitted to the governing authority.

**Historical Note**

Adopted as an emergency effective October 26, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Readopted without change as an emergency effective January 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-1). Emergency expired. Readopted without change as an emergency effective April 27, 198, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-2). Emergency expired. Readopted without change as an emergency effective July 31, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Permanent rules adopted with changes effective October 30, 1989 (Supp. 89-4). Section repealed, new Section adopted effective April 4, 1994 (Supp. 94-2). Section repealed; new

Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Section R9-10-504 renumbered to R9-10-2104; new Section R9-10-504 made by exempt rulemaking at 25 A.A.R. 1222, effective April 25, 2019 (Supp. 19-2).

**R9-10-505. Contracted Services**

An administrator shall ensure that:

1. Contracted services are provided according to the requirements in this Article, and
2. Documentation of current contracted services is maintained that includes a description of the contracted services provided.

**Historical Note**

Adopted as an emergency effective October 26, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Readopted without change as an emergency effective January 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-1). Emergency expired. Readopted without change as an emergency effective April 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-2). Emergency expired. Readopted without change as an emergency effective July 31, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Permanent rules adopted with changes effective October 30, 1989 (Supp. 89-4). Section repealed, new Section adopted effective April 4, 1994 (Supp. 94-2). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Section R9-10-505 renumbered to R9-10-2105; new Section R9-10-505 made by exempt rulemaking at 25 A.A.R. 1222, effective April 25, 2019 (Supp. 19-2).

**R9-10-506. Personnel**

**A.** An administrator shall ensure that:
1. A personnel member is:
   a. At least 21 years old, or
   b. At least 18 years old and is licensed or certified under A.R.S. Title 32 and providing services within the personnel member's scope of practice;
2. An employee is at least 18 years old;
3. A student is at least 18 years old; and
4. A volunteer is at least 21 years old.

**B.** An administrator shall ensure that:
1. The qualifications, skills, and knowledge required for each type of personnel member:
   a. Are based on:
      i. The type of active treatment or other physical health services or behavioral care expected to be provided by the personnel member according to the established job description, and
      ii. The acuity of the residents receiving active treatment or other physical health services or behavioral care from the personnel member according to the established job description; and
   b. Include:
      i. The specific skills and knowledge necessary for the personnel member to provide the expected active treatment or other physical health services and behavioral care listed in the established job description,
      ii. The type and duration of education that may allow the personnel member to have acquired the specific skills and knowledge for the personnel member to provide the expected active treatment or other physical health services or behavioral care listed in the established job description, and
      iii. The type and duration of experience that may allow the personnel member to have acquired the specific skills and knowledge for the personnel member to provide the expected active treatment or other physical health services or behavioral care listed in the established job description;
2. A personnel member's skills and knowledge are verified and documented:
   a. Before the personnel member provides active treatment or other physical health services or and behavioral care, and
   b. According to policies and procedures; and
3. Sufficient personnel members are present on an ICF/IID's premises with the qualifications, skills, and knowledge necessary to:
   a. Provide the services in the ICF/IID's scope of services,
   b. Meet the needs of a resident, and
   c. Ensure the health and safety of a resident.

**C.** An administrator shall ensure that an organizational chart of the ICF/IID is established, updated as necessary, and maintained on the premises:
1. Outlining the roles, responsibilities, and relationships within the ICF/IID; and
2. Including the name and, if applicable, the license or certification credential of each individual shown on the organizational chart.

**D.** An administrator shall ensure that, if a personnel member provides services that require a license under A.R.S. Title 32 or 36, the personnel member is licensed under A.R.S. Title 32 or 36, as applicable.

**E.** An administrator shall ensure that an individual who is a licensed baccalaureate social worker, master social worker, associate marriage and family therapist, associate counselor, or associate substance abuse counselor is under direct supervision as defined in 4 A.A.C. 6, Article 1.

**F.** An administrator shall ensure that a personnel member or an employee or volunteer who has or is expected to have direct interaction with a resident for more than eight hours a week provides evidence of freedom from infectious tuberculosis:
1. On or before the date the individual begins providing services at or on behalf of the ICF/IID, and
2. As specified in R9-10-113.

**G.** An administrator shall ensure that:
1. The types and numbers of nurses or therapists required according to the acuity plan in R9-10-503(L) are present in each unit in the ICF/IID;
2. Documentation of the nurses or therapists present on the ICF/IID's premises each day is maintained and includes:
   a. The date;
   b. The number of residents;
   c. The name, license or certification credential, and assigned duties of each nurse or therapist who worked that day; and
   d. The actual number of hours each nurse or therapist worked that day; and
3. The documentation of nurses or therapists required in subsection (G)(2) is maintained for at least 12 months after the date of the documentation.

**H.** An administrator shall ensure that a personnel member is:
1. On duty, on the premises, awake, and able to respond, according to policies and procedures, to injuries, symptoms of illness, or fire or other emergencies on the premises if the ICF/IID provides services to:
   a. More than 16 residents;
   b. A resident who has a nursing care plan or medical care plan; or
   c. A resident who requires additional supervision because the resident:
      i. Is aggressive,
      ii. May cause harm to self or others, or
      iii. May attempt an unauthorized absence; and
2. On duty, on the premises, and able to respond, according to policies and procedures, to injuries, symptoms of illness, or fire or other emergencies on the premises if:
   a. The ICF/IID provides services to 16 or fewer residents, and
   b. None of the residents has a nursing care plan or medical care plan or requires additional supervision according to subsection (H)(1)(c).

**I.** An administrator shall ensure that a personnel record is maintained for each personnel member, employee, volunteer, or student that includes:
1. The individual's name, date of birth, and contact telephone number;
2. The individual's starting date of employment or volunteer service and, if applicable, the ending date; and
3. Documentation of:
   a. The individual's qualifications, including skills and knowledge applicable to the individual's job duties;
   b. The individual's education and experience applicable to the individual's job duties;
   c. The individual's compliance with the requirements in A.R.S. § 36-411;
   d. The ICF/IID's check on the individual in the adult protective services registry established according to A.R.S. § 46-459;
   e. Orientation and in-service education as required by policies and procedures;
   f. Training in preventing, recognizing, and reporting abuse or neglect, required according to R9-10-503(C)(1)(d)(i);
   g. The individual's license or certification, if the individual is required to be licensed or certified in this Article or policies and procedures;
   h. The individual's qualifications and on-going training for each type of restraint or seclusion used, as required in R9-10-515;
   i. Cardiopulmonary resuscitation training, if required for the individual according to R9-10-503(C)(1)(g);
   j. First aid training, if required for the individual according to this Article or policies and procedures; and
   k. Evidence of freedom from infectious tuberculosis, if required for the individual according to subsection (F).

**J.** An administrator shall ensure that personnel records are:
1. Maintained:
   a. Throughout the individual's period of providing services in or for the ICF/IID, and
   b. For at least 24 months after the last date the individual provided services in or for the ICF/IID; and
2. For a personnel member who has not provided active treatment or other physical health services or behavioral care at or for the ICF/IID during the previous 12 months, provided to the Department within 72 hours after the Department's request.

**K.** An administrator shall ensure that:
1. A plan to provide orientation specific to the duties of a personnel member, an employee, a volunteer, and a student is developed, documented, and implemented;
2. A personnel member completes orientation before providing active treatment or other physical health services or behavioral care;
3. An individual's orientation is documented, to include:
   a. The individual's name,

b. The date of the orientation, and
c. The subject or topics covered in the orientation;
4. A plan to provide in-service education specific to the duties of a personnel member is developed, documented, and implemented;
5. A personnel member's in-service education is documented, to include:
a. The personnel member's name,
b. The date of the training, and
c. The subject or topics covered in the training; and
6. A work schedule of each personnel member is developed and maintained at the ICF/IID for at least 12 months after the date of the work schedule.

**L.** An administrator shall designate a qualified individual to provide:
1. Social services, and
2. Recreational activities.

**Historical Note**

Adopted as an emergency effective October 26, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Readopted without change as an emergency effective January 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-1). Emergency expired. Readopted without change as an emergency effective April 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-2). Emergency expired. Readopted without change as an emergency effective July 31, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Permanent rules adopted effective October 30, 1989 (Supp. 89-4). Section repealed, new Section adopted effective April 4, 1994 (Supp. 94-2). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Section R9-10-506 renumbered to R9-10-2106; new Section R9-10-506 made by exempt rulemaking at 25 A.A.R. 1222, effective April 25, 2019 (Supp. 19-2). Section R9-10-506 renumbered to R9-10-2106; new Section R9-10-506 made by exempt rulemaking at 25 A.A.R. 1222, effective April 25, 2019 (Supp. 19-2). Amended by exempt rulemaking, at 26 A.A.R. 72 with an effective date of January 1, 2020 (Supp. 19-4).

**R9-10-507. Admission**

An administrator shall ensure that:
1. A resident is admitted only:
a. On a physician's order;
b. If the resident has a developmental disability or cognitive disability, as defined in A.R.S. § 36-551;
c. If the resident's placement evaluation indicates that the resident's needs can be met by the ICF/IID; and
d. Except when the resident's placement evaluation states that the resident would benefit from being part of a group that includes residents of different ages, developmental levels, or social needs, if the resident can be assigned to a room or unit within the ICF/IID with other residents of similar ages, developmental levels, or social needs;
2. The physician's admitting order or placement evaluation documentation includes the active treatment or other physical health services or behavioral care required to meet the immediate needs of a resident, such as habilitation services, medication, and food services;
3. At the time of a resident's admission, a registered nurse conducts or coordinates an initial assessment on a resident to determine the resident's acuity and ensure the resident's immediate needs are met;
4. A resident's needs do not exceed the medical services, rehabilitation services, and nursing services available at the ICF/IID as established in the ICF/IID's scope of services;
5. A resident is assigned to a unit in the ICF/IID based, as applicable, on the patient's:
a. Documented diagnosis,
b. Treatment needs,
c. Developmental level,
d. Social skills,
e. Verbal skills, and
f. Acuity;
6. A resident does not share any space, participate in any activity or treatment, or verbally or physically interact with any other resident that, based on the other resident's documented diagnosis, treatment needs, developmental level, social skills, verbal skills, and personal history, may present a threat to the resident's health and safety;
7. Within 30 calendar days before admission or 10 working days after admission, a medical history and physical examination is completed on a resident by:
a. A physician, or
b. A physician assistant or a registered nurse practitioner designated by the attending physician;
8. Compliance with the requirements in subsection (7) is documented in the resident's medical record;
9. Except as specified in subsection (10), a resident provides evidence of freedom from infectious tuberculosis:
a. Before or within seven calendar days after the resident's admission, and

b. As specified in R9-10-113; and

10. A resident who transfers from an ICF/IID or nursing care institution to the ICF/IID is not required to be rescreened for tuberculosis as specified in R9-10-113 if:
    a. Fewer than 12 months have passed since the resident was screened for tuberculosis, and
    b. The documentation of freedom from infectious tuberculosis required in subsection (9) accompanies the resident at the time of transfer.

**Historical Note**

Adopted as an emergency effective October 26, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Readopted without change as an emergency effective January 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-1). Emergency expired. Readopted without change as an emergency effective April 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-2). Emergency expired. Readopted without change as an emergency effective July 31, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Permanent rules adopted with changes effective October 30, 1989 (Supp. 89-4). Section repealed, new Section adopted effective April 4, 1994 (Supp. 94-2). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Section R9-10-507 renumbered to R9-10-2107; new Section R9-10-507 made by exempt rulemaking at 25 A.A.R. 1222, effective April 25, 2019 (Supp. 19-2). Amended by final expedited rulemaking at 28 A.A.R. 1113 (May 27, 2022), with an immediate effective date of May 4, 2022 (Supp. 22-2).

**R9-10-508. Transfer; Discharge**

**A.** An administrator, in coordination with the Arizona Department of Economic Security, Division of Developmental Disabilities, shall ensure that:
1. A resident is transferred or discharged if:
    a. The ICF/IID is not authorized or not able to meet the needs of the resident, or
    b. The resident's behavior is a threat to the health or safety of the resident or other individuals at the ICF/IID; and
2. Documentation of a resident's transfer or discharge includes:
    a. The date of the transfer or discharge;
    b. The reason for the transfer or discharge;
    c. A 30-day written notice except:
        i. In an emergency, or
        ii. If the resident no longer requires rehabilitation services or habilitation services as determined by a physician or the physician's designee;
    d. A notation by a physician or the physician's designee if the transfer or discharge is due to any of the reasons listed in subsection (A)(1); and
    e. If applicable, actions taken by a personnel member to protect the resident or other individuals if the resident's behavior is a threat to the health and safety of the resident or other individuals in the ICF/IID and beyond the ICF/IID's scope of services.

**B.** Except for a transfer of a resident due to an emergency, an administrator shall ensure that:
1. A qualified intellectual disabilities professional or, if the resident has a nursing care plan or medical care plan, a registered nurse coordinates the transfer and the services provided to the resident;
2. According to policies and procedures:
    a. An evaluation of the resident is conducted before the transfer;
    b. Information from the resident's medical record, including orders that are in effect at the time of the transfer, is provided to a receiving health care institution; and
    c. A personnel member explains risks and benefits of the transfer to the resident or the resident's representative; and
3. Documentation in the resident's medical record includes:
    a. Communication with an individual at a receiving health care institution;
    b. The date and time of the transfer;
    c. The mode of transportation; and
    d. If applicable, the name of the personnel member accompanying the resident during a transfer.

**C.** Except in an emergency, a qualified intellectual disabilities professional or, if the resident has a nursing care plan or medical care plan, a registered nurse shall ensure that before a resident is discharged:
1. Written follow-up instructions are developed with the resident or the resident's representative that include:
    a. Information necessary to meet the resident's need for medical services and nursing services; and
    b. The state long-term care ombudsman's name, address, and telephone number;
2. A copy of the written follow-up instructions is provided to the resident or the resident's representative; and
3. A discharge summary:
    a. Is developed by a qualified intellectual disabilities professional or, if the resident has a nursing care plan or medical care plan, a registered nurse;
    b. Authenticated by the resident's attending physician or designee; and

c. Includes:
   i. The resident's need for rehabilitation services or habilitation services at the time of transfer or discharge;
   ii. The resident's need for medical services or nursing services;
   iii. The resident's developmental, behavioral, social, and nutritional status;
   iv. The resident's medical and psychosocial history;
   v. The date of the discharge; and
   vi. The location of the resident after discharge.

**Historical Note**

Adopted as an emergency effective October 26, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Readopted without change as an emergency effective January 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-1). Emergency expired. Readopted without change as an emergency effective April 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-2). Emergency expired. Readopted without change as an emergency effective July 31, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Permanent rules adopted with changes effective October 30, 1989 (Supp. 89-4). Section repealed, new Section adopted effective April 4, 1994 (Supp. 94-2). Amended by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Section R9-10-508 renumbered to R9-10-2108; new Section R9-10-508 made by exempt rulemaking at 25 A.A.R. 1222, effective April 25, 2019 (Supp. 19-2). Amended by exempt rulemaking, at 26 A.A.R. 72 with an effective date of January 1, 2020 (Supp. 19-4).

**R9-10-509. Transport**

**A.** Except as provided in subsections (B) and (C), an administrator shall ensure that:
1. A personnel member authorized by policies and procedures coordinates the transport and the services provided to the resident;
2. According to policies and procedures:
   a. An evaluation of the resident is conducted before and after the transport,
   b. Information from the resident's medical record is provided to a receiving health care institution, and
   c. A personnel member explains risks and benefits of the transport to the resident or the resident's representative; and
3. Documentation in the resident's medical record includes:
   a. Communication with an individual at a receiving health care institution;
   b. The date and time of the transport;
   c. The mode of transportation; and
   d. If applicable, the name of the personnel member accompanying the resident during a transport.

**B.** If the transport of a resident is to provide the resident with rehabilitation services or habilitation services off the premises, an administrator shall ensure that:
1. The rehabilitation services or habilitation services are included in the resident's individual program plan,
2. A qualified intellectual disabilities professional coordinates the transport and the services provided to the resident, and
3. The resident is transported according to R9-10-510(A).

**C.** Subsection (A) does not apply to:
1. Except as provided in subsection (B), transportation according to R9-10-510 to a location other than a licensed health care institution;
2. Transportation provided for a resident by the resident or the resident's representative;
3. Transportation provided by an outside entity that was arranged for a resident by the resident or the resident's representative; or
4. A transport to another licensed health care institution in an emergency.

**Historical Note**

Adopted as an emergency effective October 26, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Readopted without change as an emergency effective January 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-1). Emergency expired. Readopted without change as an emergency effective April 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-2). Emergency expired. Readopted without change as an emergency effective July 31, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Permanent rules adopted with changes effective October 30, 1989 (Supp. 89-4). Section repealed, new Section adopted effective April 4, 1994 (Supp. 94-2). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Section R9-10-509 renumbered to R9-10-2109; new Section R9-10-509 made by exempt rulemaking at 25 A.A.R. 1222, effective April 25, 2019 (Supp. 19-2).

**R9-10-510. Transportation; Resident Outings**

**A.** An administrator of an ICF/IID that uses a vehicle owned or leased by the ICF/IID to provide transportation to a resident shall ensure that:

1. The vehicle:
   a. Is safe and in good repair,
   b. Contains a first aid kit,
   c. Contains drinking water sufficient to meet the needs of each resident present in the vehicle, and
   d. Contains a working heating and air conditioning system;
2. Documentation of current vehicle insurance and a record of maintenance performed or a repair of the vehicle is maintained;
3. A driver of the vehicle:
   a. Is 21 years of age or older;
   b. Has a valid driver license;
   c. Operates the vehicle in a manner that does not endanger a resident in the vehicle;
   d. Does not leave in the vehicle an unattended:
      i. Child;
      ii. Resident who may be a threat to the health, safety, or welfare of the resident or another individual; or
      iii. Resident who is incapable of independent exit from the vehicle; and
   e. Ensures the safe and hazard-free loading and unloading of residents; and
4. Transportation safety is maintained as follows:
   a. An individual in the vehicle is sitting in a seat, which may include the seat of a wheel chair, and wearing a working seat belt while the vehicle is in motion; and
   b. Each seat in the vehicle is securely fastened to the vehicle and provides sufficient space for a resident's body.

**B.** An administrator shall ensure that an outing is consistent with the age, developmental level, physical ability, medical condition, and treatment needs of each resident participating in the outing.

**C.** An administrator shall ensure that:
1. Except when only one resident is participating in an outing, at least two personnel members are present on the outing;
2. In addition to the personnel members required in subsection (C)(1), a sufficient number of personnel members are present on an outing to ensure the health and safety of a resident on the outing;
3. Each personnel member on the outing has documentation of current training in cardiopulmonary resuscitation according to R9-10-503(C)(1)(g) and first aid training;
4. Documentation is developed before an outing that includes:
   a. The name of each resident participating in the outing;
   b. A description of the outing;
   c. The date of the outing;
   d. The anticipated departure and return times;
   e. The name, address, and, if available, telephone number of the outing destination; and
   f. If applicable, the license plate number of a vehicle used to provide transportation for the outing;
5. The documentation described in subsection (C)(4) is updated to include the actual departure and return times and is maintained for at least 12 months after the date of the outing; and
6. Emergency information for a resident participating in the outing is maintained by a personnel member participating in the outing or in the vehicle used to provide transportation for the outing and includes:
   a. The resident's name;
   b. Medication information, including the name, dosage, route of administration, and directions for each medication needed by the resident during the anticipated duration of the outing;
   c. The resident's allergies; and
   d. The name and telephone number of a designated individual, who is present on the ICF/IID's premises, to notify in case of an emergency.

**Historical Note**

Adopted as an emergency effective October 26, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Readopted without change as an emergency effective January 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-1). Emergency expired. Readopted without change as an emergency effective April 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-2). Emergency expired. Readopted without change as an emergency effective July 31, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Permanent rules adopted with changes effective October 30, 1989 (Supp. 89-4). Section repealed, new Section adopted effective April 4, 1994 (Supp. 94-2). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Section R9-10-510 renumbered to R9-10-2110; new Section R9-10-510 made by exempt rulemaking at 25 A.A.R. 1222, effective April 25, 2019 (Supp. 19-2). Amended by exempt rulemaking, at 26 A.A.R. 72 with an effective date of January 1, 2020 (Supp. 19-4).

**R9-10-511. Resident Rights**

**A.** An administrator shall ensure that:
1. The requirements in subsection (B) and the resident rights in subsection (C) are conspicuously posted on the premises;

2. At the time of admission, a resident or the resident's representative receives a written copy of the requirements in subsection (B) and the resident rights in subsection (C); and
3. Policies and procedures include:
   a. How and when a resident or the resident's representative is informed of resident rights in subsection (C), and
   b. Where resident rights are posted as required in subsection (A)(1).

**B.** An administrator shall ensure that:

1. A resident has privacy in:
   a. Treatment,
   b. Bathing and toileting,
   c. Room accommodations, and
   d. Visiting or meeting with another resident or an individual;
2. A resident is treated with dignity, respect, and consideration;
3. A resident is not subjected to:
   a. Abuse;
   b. Neglect;
   c. Exploitation;
   d. Coercion;
   e. Manipulation;
   f. Sexual abuse;
   g. Sexual assault;
   h. Except as allowed in R9-10-515, seclusion or restraint;
   i. Retaliation for submitting a complaint to the Department or another entity;
   j. Misappropriation of personal and private property by an ICF/IID's personnel members, employees, volunteers, or students; or
   k. Segregation solely on the basis of the resident's disability; and
4. A resident or the resident's representative:
   a. Except in an emergency, either consents to or refuses treatment;
   b. May refuse or withdraw consent for treatment before treatment is initiated;
   c. Except in an emergency, is informed of proposed alternatives to psychotropic medication and the associated risks and possible complications of the psychotropic medication;
   d. Is informed of the following:
      i. The health care institution's policy on health care directives, and
      ii. The resident complaint process;
   e. Consents to photographs of the resident before the resident is photographed, except that the resident may be photographed when admitted to an ICF/IID for identification and administrative purposes;
   f. May manage the resident's financial affairs;
   g. Has access to and may communicate with any individual, organization, or agency;
   h. Except as provided in the resident's individual program plan, has privacy:
      i. In interactions with other residents or visitors to the ICF/IID,
      ii. In the resident's mail, and
      iii. For telephone calls made by or to the resident;
   i. May review the ICF/IID's current license survey report and, if applicable, plan of correction in effect;
   j. May review the resident's financial records within two working days and medical record within one working day after the resident's or the resident's representative's request;
   k. May obtain a copy of the resident's financial records and medical record within two working days after the resident's request and in compliance with A.R.S. § 12-2295;
   l. Except as otherwise permitted by law, consents, in writing, to the release of information in the resident's:
      i. Medical record, and
      ii. Financial records;
   m. May select a pharmacy of choice if the pharmacy complies with policies and procedures and does not pose a risk to the resident;
   n. Is informed of the method for contacting the resident's attending physician;
   o. Is informed of the resident's overall physical and psychosocial well-being, as determined by the resident's comprehensive assessment;
   p. Is provided with a copy of those sections of the resident's medical record that are required for continuity of care free of charge, according to A.R.S. § 12-2295, if the resident is transferred or discharged; and
   q. Except in the event of an emergency, is informed orally or in writing before the ICF/IID makes a change in a resident's room or roommate assignment and notification is documented in the resident's medical record.

**C.** In addition to the rights in A.R.S. § 36-551.01, a resident has the following rights:

1. Not to be discriminated against based on race, national origin, religion, gender, sexual orientation, age, disability, marital status, or diagnosis;
2. To receive treatment that supports and respects the resident's individuality, choices, strengths, and abilities;
3. To choose activities and schedules consistent with the resident's interests that do not interfere with other residents;
4. To participate in social, religious, political, and community activities that do not interfere with other residents;
5. To retain personal possessions including furnishings and clothing as space permits unless use of the personal possession infringes on the rights or health and safety of other residents;
6. To share a room with the resident's spouse if space is available and the spouse consents;
7. To receive a referral to another health care institution if the ICF/IID is not authorized or not able to provide active treatment or other physical health services or behavioral care needed by the resident;
8. To participate or have the resident's representative participate in the development of the resident's individual program plan or decisions concerning treatment;
9. To participate or refuse to participate in research or experimental treatment; and
10. To receive assistance from a family member, the resident's representative, or other individual in understanding, protecting, or exercising the resident's rights.

**Historical Note**

Adopted as an emergency effective October 26, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Readopted without change as an emergency effective January 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-1). Emergency expired. Readopted without change as an emergency effective April 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-2). Emergency expired. Readopted without change as an emergency effective July 31, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Permanent rules adopted with changes effective October 30, 1989 (Supp. 89-4). Section repealed, new Section adopted effective April 4, 1994 (Supp. 94-2). Amended by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Section R9-10-511 renumbered to R9-10-2111; new Section R9-10-511 made by exempt rulemaking at 25 A.A.R. 1222, effective April 25, 2019 (Supp. 19-2).

**R9-10-512. Medical Records**

**A.** An administrator shall ensure that:
1. A medical record is established and maintained for each resident according to A.R.S. Title 12, Chapter 13, Article 7.1;
2. An entry in a resident's medical record is:
   a. Recorded only by an individual authorized by policies and procedures to make the entry;
   b. Dated, legible, and authenticated; and
   c. Not changed to make the initial entry illegible;
3. An order is:
   a. Dated when the order is entered in the resident's medical record and includes the time of the order;
   b. Authenticated by a medical practitioner or behavioral health professional according to policies and procedures; and
   c. If the order is a verbal order, authenticated by the medical practitioner or behavioral health professional issuing the order;
4. If a rubber-stamp signature or an electronic signature is used to authenticate an order, the individual whose signature the rubber-stamp signature or electronic signature represents is accountable for the use of the rubber-stamp signature or electronic signature;
5. A resident's medical record is available to an individual:
   a. Authorized to access the resident's medial record according to policies and procedures;
   b. If the individual is not authorized to access the resident's medical record according to policies and procedures, with the written consent of the resident or the resident's representative; or
   c. As permitted by law; and
6. A resident's medical record is protected from loss, damage, or unauthorized use.

**B.** If an ICF/IID maintains residents' medical records electronically, an administrator shall ensure that:
1. Safeguards exist to prevent unauthorized access, and
2. The date and time of an entry in a resident's medical record is recorded by the computer's internal clock.

**C.** An administrator shall ensure that a resident's medical record contains:
1. Resident information that includes:
   a. The resident's name;
   b. The resident's date of birth; and
   c. Any known allergies, including medication allergies;
2. The admission date and, if applicable, the date of discharge;
3. The admitting diagnosis or presenting symptoms;
4. Documentation of the resident's placement evaluation;
5. Documentation of general consent and, if applicable, informed consent;
6. If applicable, the name and contact information of the resident's representative and:
   a. The document signed by the resident consenting for the resident's representative to act on the resident's behalf; or

b. If the resident's representative:
   i. Has a health care power of attorney established under A.R.S. § 36-3221 or a mental health care power of attorney executed under A.R.S. § 36-3282, a copy of the health care power of attorney or mental health care power of attorney; or
   ii. Is a legal guardian, a copy of the court order establishing guardianship;
7. The name and contact information of an individual to be contacted under R9-10-503(I);
8. Documentation of the initial assessment required in R9-10-507(3) to determine acuity;
9. The medical history and physical examination required in R9-10-516(A)(4);
10. A copy of the resident's living will or other health care directive, if applicable;
11. The name and telephone number of the resident's attending physician;
12. Orders;
13. Documentation of the resident's comprehensive assessment;
14. Individual program plans, including nursing care plans or medical care plans, if applicable;
15. Documentation of active treatment and other physical health services or behavioral care provided to the resident;
16. Progress notes, including data needed to evaluate the effectiveness of the methods, schedule, and strategies being used to accomplish the goals in the resident's individual program plan;
17. If applicable, documentation of restraint or seclusion;
18. If applicable, documentation of any actions other than restraint or seclusion taken to control or address the resident's behavior to prevent harm to the resident or another individual or to improve the resident's social interactions;
19. If applicable, documentation that evacuation from the ICF/IID would cause harm to the resident;
20. The disposition of the resident after discharge;
21. The discharge plan;
22. The discharge summary;
23. Transfer documentation;
24. If applicable:
    a. A laboratory report,
    b. A radiologic report,
    c. A diagnostic report, and
    d. A consultation report;
25. Documentation of freedom from infectious tuberculosis required in R9-10-507(10);
26. Documentation of a medication administered to the resident that includes:
    a. The date and time of administration;
    b. The name, strength, dosage, and route of administration;
    c. The type of vaccine, if applicable;
    d. For a medication administered for pain on a PRN basis:
       i. An evaluation of the resident's pain before administering the medication, and
       ii. The effect of the medication administered;
    e. For a psychotropic medication administered on a PRN basis:
       i. An evaluation of the resident's symptoms before administering the psychotropic medication, and
       ii. The effect of the psychotropic medication administered;
    f. The identification, signature, and professional designation of the individual administering the medication; and
    g. Any adverse reaction a resident has to the medication; and
27. If applicable, a copy of written notices, including follow-up instructions, provided to the resident or the resident's representative.

**Historical Note**

Adopted as an emergency effective October 26, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Readopted without change as an emergency effective January 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-1). Emergency expired. Readopted without change as an emergency effective April 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-2). Emergency expired. Readopted without change as an emergency effective July 31, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Permanent rules adopted with changes effective October 30, 1989 (Supp. 89-4). Section repealed, new Section adopted effective April 4, 1994 (Supp. 94-2). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Section R9-10-512 renumbered to R9-10-2112; new Section R9-10-512 made by exempt rulemaking at 25 A.A.R. 1222, effective April 25, 2019 (Supp. 19-2). Amended by exempt rulemaking, at 26 A.A.R. 72 with an effective date of January 1, 2020 (Supp. 19-4).

**R9-10-513. Rehabilitation Services and Habilitation Services**

**A.** Except as provided in subsection (D), an administrator shall ensure that:
1. Personnel members are available to provide the following rehabilitation services:
   a. Physical therapy, as defined in A.R.S. § 32-2001;

b. Occupational therapy, A.R.S. § 32-3401;
c. Psychological service, as defined in A.R.S. § 32-2061;
d. Speech-language pathology, as defined in A.R.S. § 36-1901; and
e. Audiology, as defined in A.R.S. § 36-1901;

2. Rehabilitation services are provided:
   a. Under the direction of a qualified intellectual disabilities professional according to policies and procedures, and
   b. According to an order;
3. A resident receives the rehabilitation services required in the resident's individual program plan;
4. Unless otherwise required in the resident's individual program plan:
   a. A resident does not remain in bed or in the resident's bedroom;
   b. If the resident is not able to independently move from place to place, even with the use of an assistive device, the resident is moved from place to place in the ICF/IID; and
   c. A resident receiving rehabilitation services is encouraged to participate in activities that are planned according to subsection (C)(2) and are appropriate to objectives in the resident's individual program plan;
5. A qualified intellectual disabilities professional reviews the rehabilitation services provided to a resident and revises the frequency, duration, method, or type of rehabilitation services being provided in the resident's individual program plan:
   a. As necessary, if the resident is losing skills or failing to progress; or
   b. If a goal in the resident's individual program plan has been accomplished and a new objective is to be initiated; and
6. The medical record of a resident receiving rehabilitation services includes:
   a. An order for rehabilitation services that includes the name of the ordering individual and a referring diagnosis;
   b. The resident's individual program plan, including all updates;
   c. The rehabilitation services provided;
   d. The resident's response to the rehabilitation services; and
   e. The authentication of the individual providing the rehabilitation services.

**B.** Except as provided in subsection (D), an administrator shall ensure that:
1. Personnel members are available to provide a resident with habilitation services required in the resident's individual program plan;
2. A personnel member is only assigned to provide the habilitation services the personnel member has the documented skills and knowledge to perform;
3. A resident receives the habilitation services in the resident's individual program plan;
4. If applicable, a personnel member:
   a. Suggests techniques a resident may use to maintain or improve the resident's independence in performing activities of daily living; and
   b. Provides assistance with, supervises, or directs a resident's personal hygiene according to the resident's individual program plan;
5. A resident receiving habilitation services is encouraged to participate in activities of the resident's choosing that are planned according to subsection (C)(2); and
6. The medical record of a resident receiving habilitation services includes:
   a. The resident's individual program plan, including all updates;
   b. The habilitation services provided;
   c. The resident's response to the habilitation services; and
   d. The authentication of the individual providing the habilitation services.

**C.** An administrator shall ensure that:
1. Multiple media sources, such as daily newspapers, current magazines, internet sources, and a variety of reading materials, are available and accessible to a resident to maintain the resident's continued awareness of current news, social events, and other noteworthy information;
2. Daily social or recreational activities are planned according to residents' preferences, needs, and abilities;
3. A calendar of planned activities is:
   a. Prepared at least one week in advance of the date the activity is provided,
   b. Posted in a location that is easily seen by residents,
   c. Updated as necessary to reflect substitutions in the activities provided, and
   d. Maintained for at least 12 months after the last scheduled activity;
4. Equipment and supplies are available and accessible to accommodate a resident who chooses to participate in a planned activity on the premises;
5. Outings are provided according to R9-10-510(B) and (C); and
6. If necessary and unless otherwise required in the resident's individual program plan, a resident is assisted to participate in outings and other opportunities to leave the premises of the ICF/IID.

**D.** An administrator is not required to ensure that personnel members providing rehabilitation services or habilitation services are on the premises if no resident of the ICF/IID is on the premises because the residents are:
1. Receiving rehabilitation services off the premises,
2. Receiving habilitation services off the premises,

3. Participating in an outing, or
4. Otherwise absent from the ICF/IID.

**Historical Note**

Adopted as an emergency effective October 26, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Readopted without change as an emergency effective January 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-1). Emergency expired. Readopted without change as an emergency effective April 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-2). Emergency expired. Readopted without change as an emergency effective July 31, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Permanent rules adopted effective October 30, 1989 (Supp. 89-4). Section repealed, new Section adopted effective April 4, 1994 (Supp. 94-2). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Section R9-10-513 renumbered to R9-10-2113; new Section R9-10-513 made by exempt rulemaking at 25 A.A.R. 1222, effective April 25, 2019 (Supp. 19-2).

**R9-10-514. Individual Program Plan**

**A.** An administrator shall ensure that:

1. A comprehensive assessment of a resident:
   a. Is conducted or coordinated by a qualified intellectual disabilities professional, in collaboration with an interdisciplinary team that includes:
      i. The resident's attending physician or designee;
      ii. A registered nurse;
      iii. If the resident is receiving medications as part of active treatment, a pharmacist; and
      iv. Personnel members qualified to provide each type of rehabilitation services identified in a placement evaluation or the initial assessment required in R9-10-507(3);
   b. Is completed for the resident within 30 calendar days after the resident's admission to an ICF/IID;
   c. Is updated:
      i. No later than 12 months after the date of the resident's last comprehensive assessment, and
      ii. When the resident experiences a significant change;
   d. Includes the following information for the resident:
      i. Identifying information;
      ii. An evaluation of the resident's hearing, speech, and vision;
      iii. An evaluation of the resident's ability to understand and recall information;
      iv. An evaluation of the resident's mental status;
      v. Whether the resident demonstrates inappropriate behavior;
      vi. Preferences for customary routine and activities;
      vii. An evaluation of the resident's ability to perform activities of daily living;
      viii. Need for a mobility device;
      ix. An evaluation of the resident's ability to control the resident's bladder and bowels;
      x. Any diagnosis that impacts rehabilitation services or other physical health services or behavioral care that the resident may require;
      xi. Any medical conditions that impact the resident's functional status, quality of life, or need for nursing services;
      xii. An evaluation of the resident's ability to maintain adequate nutrition and hydration;
      xiii. An evaluation of the resident's oral and dental status;
      xiv. An evaluation of the condition of the resident's skin;
      xv. Identification of any medication or treatment administered to the resident during a seven-day calendar period that includes the time the comprehensive assessment was conducted;
      xvi. Identification of any treatment or medication ordered for the resident;
      xvii. Identification of interventions that may support the resident towards independence;
      xviii. Identification of any assistive devices needed by the resident;
      xix. Identification of the active treatment needed by the resident, including active treatment not provided by the ICF/IID;
      xx. Identification of measurable goals and behavioral objective for the active treatment, in priority order, with time limits for attainment;
      xxi. Identification of the methods, schedule, and strategies to accomplish the goals in subsection (A)(1)(d)(xviii), including the personnel member responsible;
      xxii. Evaluation procedures for determining if the methods and strategies in subsection (A)(1)(d)(xix) are working, including the type of data required and frequency of collection;
      xxiii. Whether any restraints have been used for the resident during a seven-day calendar period that includes the time the comprehensive assessment was conducted;

xxiv. If the resident demonstrates inappropriate behavior, as reported according to subsection (A)(1)(d)(v), identification of the methods, schedule, and strategies for replacement of the inappropriate behavior with appropriate behavioral expressions, including the hierarchy for use;
xxv. If restraint or seclusion is included in subsection (A)(1)(d)(xxiv), the specific restraints or conditions of seclusion that may be used because of the resident's inappropriate behavior;
xxvi. A description of the resident or resident's representative's participation in the comprehensive assessment;
xxvii. The name and title of the interdisciplinary team members who participated in the resident's comprehensive assessment;
xxviii. Potential for rehabilitation, including the resident's strengths and specific developmental or behavioral health needs; and
xxix. Potential for discharge;
e. Is signed and dated by the qualified intellectual disabilities professional who conducts or coordinates the comprehensive assessment or review; and
f. Is used to determine or update the resident's acuity;
2. If any of the conditions in subsection (A)(1)(d)(v) are answered in the affirmative during the comprehensive assessment or review, a behavioral health professional reviews a resident's comprehensive assessment or review and individual program plan to ensure that the resident's needs for behavioral care are being met;
3. A new comprehensive assessment is not required for a resident who is hospitalized and readmitted to an ICF/IID unless a physician, an individual designated by the physician, a qualified intellectual disabilities professional, or a registered nurse determines the resident has a significant change in condition; and
4. A resident's comprehensive assessment is reviewed at least once every three months after the date of the current comprehensive assessment and if there is a significant change in the resident's condition by:
a. A qualified intellectual disabilities professional; and
b. If the resident has a nursing care plan or medical care plan, a registered nurse.

**B.** An administrator shall ensure that an individual program plan for a resident:
1. Is developed, documented, and implemented for the resident within seven calendar days after completing the resident's comprehensive assessment required in subsection (A)(1);
2. Includes the acuity of the resident;
3. Is reviewed at least annually by the interdisciplinary team required in subsection (A)(1)(a) and revised based on any change to the resident's comprehensive assessment; and
4. Ensures that a resident is provided rehabilitation services and other physical health services or behavioral care that:
a. Address any medical condition or behavioral care issue identified in the resident's comprehensive assessment, and
b. Assist the resident in maintaining the resident's highest practicable well-being according to the resident's comprehensive assessment.

**Historical Note**

Adopted as an emergency effective October 26, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Readopted without change as an emergency effective January 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-1). Emergency expired. Readopted without change as an emergency effective April 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-2). Emergency expired. Readopted without change as an emergency effective July 31, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Permanent rules adopted with changes effective October 30, 1989 (Supp. 89-4). Section repealed, new Section adopted effective April 4, 1994 (Supp. 94-2). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Section R9-10-514 renumbered to R9-10-2114; new Section R9-10-514 made by exempt rulemaking at 25 A.A.R. 1222, effective April 25, 2019 (Supp. 19-2). Amended by exempt rulemaking, at 26 A.A.R. 72 with an effective date of January 1, 2020 (Supp. 19-4).

**R9-10-515. Seclusion; Restraint**

**A.** An administrator shall ensure that:
1. An ICF/IID's policies and procedures for managing a resident's inappropriate behavior, as described in R9-10-503(C)(2)(g) are reviewed, approved, and monitored through the quality management process in R9-10-504; and
2. Restraint is provided according to the requirements in subsection (C).

**B.** An administrator of an ICF/IID authorized to provide seclusion shall ensure that:
1. Seclusion is provided according to the requirements in subsection (C);
2. If a resident is placed in seclusion, the room used for seclusion:
a. Is approved for use as a seclusion room by the Department;
b. Is not used as a resident's bedroom or a sleeping area;
c. Allows full view of the resident in all areas of the room;
d. Is free of hazards, such as unprotected light fixtures or electrical outlets;
e. Contains at least 60 square feet of floor space; and
f. Except as provided in subsection (B)(3), contains a non-adjustable bed that:
i. Consists of a mattress on a solid platform that is:

(1) Constructed of a durable, non-hazardous material; and
(2) Raised off of the floor;
ii. Does not have wire springs or a storage drawer; and
iii. Is securely anchored in place;
3. If a room used for seclusion does not contain a non-adjustable bed required in subsection (B)(2)(f):
a. A piece of equipment is available that:
i. Is commercially manufactured to safely and humanely restrain a resident's body;
ii. Provides support to the trunk and head of a resident's body;
iii. Provides restraint to the trunk of a resident's body;
iv. Is able to restrict movement of a resident's arms, legs, body, and head;
v. Allows a resident's body to recline; and
vi. Does not inflict harm on a resident's body; and
b. Documentation of the manufacturer's specifications for the piece of equipment in subsection (B)(3)(a) is maintained; and
4. A seclusion room may be used for services or activities other than seclusion if:
a. A sign stating the service or activity scheduled or being provided in the room is conspicuously posted outside the room;
b. No permanent equipment other than the bed required in subsection (B)(2)(f) is in the room;
c. Policies and procedures:
i. Delineate which services or activities other than seclusion may be provided in the room,
ii. List what types of equipment or supplies may be placed in the room for the delineated services, and
iii. Provide for the prompt removal of equipment and supplies from the room before the room is used for seclusion; and
d. The sign required in subsection (B)(4)(a) and equipment and supplies in the room, other than the bed required in subsection (B)(2)(f), are removed before use as a seclusion room.

**C.** An administrator shall ensure that:
1. Policies and procedures for providing restraint or seclusion are established, documented, and implemented to protect the health and safety of a resident that:
a. Establish the process for resident assessment, including identification of a resident's medical conditions and criteria for the on-going monitoring of any identified medical condition;
b. Identify each type of restraint or seclusion used and include for each type of restraint or seclusion used:
i. The qualifications of a personnel member who can:
(1) Order the restraint or seclusion,
(2) Place a resident in the restraint or seclusion,
(3) Monitor a resident in the restraint or seclusion,
(4) Evaluate a resident's physical and psychological well-being after being placed in the restraint or seclusion and when released from the restraint or seclusion, or
(5) Renew the order for restraint or seclusion;
ii. On-going training requirements for a personnel member who has direct resident contact while the resident is in a restraint or seclusion; and
iii. Criteria for monitoring and assessing a resident including:
(1) Frequencies of monitoring and assessment based on a resident's medical condition and risks associated with the specific restraint or seclusion;
(2) For the renewal of an order for restraint or seclusion, whether an assessment is required before the order is renewed and, if an assessment is required, who may conduct the assessment;
(3) Assessment content, which may include, depending on a resident's condition, the resident's vital signs, respiration, circulation, hydration needs, elimination needs, level of distress and agitation, mental status, cognitive functioning, neurological functioning, and skin integrity;
(4) If a mechanical restraint is used, how often the mechanical restraint is loosened; and
(5) A process for meeting a resident's nutritional needs and elimination needs;
c. Establish the criteria and procedures for renewing an order for restraint or seclusion;
d. Establish procedures for internal review of the use of restraint or seclusion; and
e. Establish medical record and personnel record documentation requirements for restraint and seclusion, if applicable;
2. An order for restraint or seclusion is:
a. Obtained from a physician or registered nurse practitioner, and
b. Not written as a standing order or on an as-needed basis;
3. Restraint or seclusion is:
a. Not used as a means of coercion, discipline, convenience, or retaliation;
b. Only used when all of the following conditions are met:
i. Except as provided in subsection (C)(4), after obtaining an order for the restraint or seclusion;
ii. For the management of a resident's aggressive, violent, or self-destructive behavior;

iii. When less restrictive interventions have been determined to be ineffective; and
iv. To ensure the immediate physical safety of the resident, to prevent imminent harm to the resident or another individual, or to stop physical harm to another individual; and

c. Discontinued at the earliest possible time;

4. If as a result of a resident's aggressive, violent, or self-destructive behavior, harm to the resident or another individual is imminent or the resident or another individual is being physically harmed, a personnel member:
   a. May initiate an emergency application of restraint or seclusion for the resident before obtaining an order for the restraint or seclusion, and
   b. Obtains an order for the restraint or seclusion of the resident during the emergency application of the restraint or seclusion;
5. An order for restraint or seclusion includes:
   a. The name of the physician or registered nurse practitioner ordering the restraint or seclusion;
   b. The date and time that the restraint or seclusion was ordered;
   c. The specific restraint or seclusion ordered;
   d. If a drug is ordered as a chemical restraint, the drug's name, strength, dosage, and route of administration;
   e. The specific criteria for release from restraint or seclusion without an additional order; and
   f. The maximum duration authorized for the restraint or seclusion;
6. An order for restraint or seclusion is limited to the duration of the emergency situation and does not exceed three continuous hours;
7. If an order for restraint or seclusion of a resident is not provided by the resident's attending physician, the resident's attending physician is notified as soon as possible;
8. A medical practitioner or personnel member does not participate in restraint or seclusion, assess or monitor a resident during restraint or seclusion, or evaluate a resident after restraint or seclusion, and a physician or registered nurse practitioner does not order restraint or seclusion, until the medical practitioner or personnel member, completes education and training that:
   a. Includes:
      i. Techniques to identify medical practitioner, personnel member, and resident behaviors, events, and environmental factors that may trigger circumstances that require restraint or seclusion;
      ii. The use of nonphysical intervention skills, such as de-escalation, mediation, conflict resolution, active listening, and verbal and observational methods;
      iii. Techniques for identifying the least restrictive intervention based on an assessment of the resident's medical or behavioral health condition;
      iv. The safe use of restraint and the safe use of seclusion, including training in how to recognize and respond to signs of physical and psychological distress in a resident who is restrained or secluded;
      v. Clinical identification of specific behavioral changes that indicate that the restraint or seclusion is no longer necessary;
      vi. Monitoring and assessing a resident while the resident is in restraint or seclusion according to policies and procedures; and
      vii. Except for the medical practitioner, training exercises in which the personnel member successfully demonstrates the techniques that the medical practitioner or personnel member has learned for managing emergency situations; and
   b. Is provided by individuals qualified according to policies and procedures;
9. When a resident is placed in restraint or seclusion:
   a. The restraint or seclusion is conducted according to policies and procedures;
   b. The restraint or seclusion is proportionate and appropriate to the severity of the resident's behavior and the resident's:
      i. Chronological and developmental age;
      ii. Size;
      iii. Gender;
      iv. Physical condition;
      v. Medical condition;
      vi. Psychiatric condition; and
      vii. Personal history, including any history of physical or sexual abuse;
   c. The physician or registered nurse practitioner who ordered the restraint or seclusion is available for consultation throughout the duration of the restraint or seclusion;
   d. The resident is monitored and assessed according to policies and procedures;
   e. A physician or registered nurse assesses the resident within one hour after the resident is placed in the restraint or seclusion and determines:
      i. The resident's current behavior,
      ii. The resident's reaction to the restraint or seclusion used,
      iii. The resident's medical and behavioral condition, and
      iv. Whether to continue or terminate the restraint or seclusion;
   f. The resident is given the opportunity:
      i. To eat during mealtime, and
      ii. To use the toilet; and
   g. The restraint or seclusion is discontinued at the earliest possible time, regardless of the length of time identified in the order;

10. A medical practitioner or personnel member documents the following information in a resident's medical record before the end of the shift in which the resident is placed in restraint or seclusion or, if the resident's restraint or seclusion does not end during the shift in which it began, during the shift in which the resident's restraint or seclusion ends:
    a. The emergency situation that required the resident to be restrained or put in seclusion,
    b. The times the resident's restraint or seclusion actually began and ended,
    c. The monitoring required in subsection (C)(9)(d),
    d. The time of the assessment required in subsection (C)(9)(e),
    e. The names of the medical practitioners and personnel members with direct resident contact while the resident was in the restraint or seclusion,
    f. The times the resident was given the opportunity to eat or use the toilet according to subsection (C)(9)(f), and
    g. The resident evaluation required in subsection (C)(12);
11. If an emergency situation continues beyond the time limit of an order for restraint or seclusion, the order is renewed according to policies and procedures that include:
    a. The specific criteria for release from restraint or seclusion without an additional order, and
    b. The maximum duration authorized for the restraint or seclusion; and
12. A resident is evaluated after restraint or seclusion is no longer being used for the resident.

**Historical Note**

Adopted as an emergency effective October 26, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Readopted without change as an emergency effective January 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-1). Emergency expired. Readopted without change as an emergency effective April 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-2). Emergency expired. Readopted without change as an emergency effective July 31, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Permanent rules adopted with changes effective October 30, 1989 (Supp. 89-4). Section repealed effective April 4, 1994 (Supp. 94-2). New Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Section R9-10-515 renumbered to R9-10-2115; new Section R9-10-515 made by exempt rulemaking at 25 A.A.R. 1222, effective April 25, 2019 (Supp. 19-2).

**R9-10-516. Physical Health Services**

**A.** An administrator shall ensure that:
1. A resident has an attending physician;
2. An attending physician is available 24 hours a day;
3. An attending physician designates a physician who is available when the attending physician is not available;
4. A physical examination is performed on a resident by a physician or by a physician assistant or registered nurse practitioner designated by the resident's attending physician:
    a. If indicated, based on the resident's placement evaluation or comprehensive assessment; and
    b. At least once every 12 months after the date of admission, including an assessment of the acuity of the resident's medical condition;
5. If a resident's physical examination, placement evaluation, or comprehensive assessment indicates a need for:
    a. Intermittent nursing services, the resident's attending physician, in conjunction with the director of nursing, develops a nursing care plan of treatment for the resident, which is integrated into the resident's individual program plan; or
    b. Continuous nursing services, the resident's attending physician, in conjunction with the director of nursing, develops a medical care plan of treatment for the resident, which is integrated into the resident's individual program plan; and
6. Vaccinations for influenza and pneumonia are available to each resident at least once every 12 months unless:
    a. The attending physician provides documentation that the vaccination is medically contraindicated;
    b. The resident or the resident's representative refuses the vaccination or vaccinations and documentation is maintained in the resident's medical record that the resident or the resident's representative has been informed of the risks and benefits of a vaccination refused; or
    c. The resident or the resident's representative provides documentation that the resident received a pneumonia vaccination within the last five years or the current recommendation from the U.S. Department of Health and Human Services, Center for Disease Control and Prevention.

**B.** An administrator shall ensure that:
1. Nursing services are available 24 hours a day in an ICF/IID;
2. For an ICF/IID authorized to admit a resident requiring:
    a. Continuous nursing services, a registered nurse is on the premises; or
    b. Intermittent nursing services, a nurse is on the premises according to the schedule in a resident's nursing care plan; and
3. The director of nursing or an individual designated by the director of nursing participates in the quality management program.

**C.** A director of nursing shall ensure that:

1. A method is established and documented that identifies the types and numbers of nursing personnel that are necessary to provide nursing services to residents based on:
   a. The acuity of the residents, and
   b. The ICF/IID's scope of services;
2. Sufficient nursing personnel, as determined by the method in subsection (C)(1), are on the ICF/IID's premises to meet the needs of a resident for nursing services;
3. A registered nurse participates in the development, review, and updating of a resident's nursing care plan or medical care plan;
4. Personnel members providing direct care to a resident with a nursing care plan or medical care plan receive direction from a nurse;
5. At least once every three months, a nurse:
   a. Assesses the health of a resident without a nursing care plan or medical care plan;
   b. Documents the results in the resident's medical record; and
   c. If the assessment indicates the need for physical health services or behavioral care, initiates action, according to policies and procedures, to address the resident's needs;
6. Nursing personnel provide education and training to:
   a. Residents on hygiene and other behaviors that promote health; and
   b. Personnel members on:
      i. Detecting signs of illness or injury or significant changes in condition,
      ii. First aid, and
      iii. Basic skills for caring for residents;
7. As soon as possible but not more than 24 hours after one of the following events occur, a nurse notifies a resident's attending physician and, if applicable, the resident's representative, if the resident:
   a. Is injured,
   b. Is involved in an incident that requires medical services, or
   c. Has a significant change in condition; and
8. Only a medication required by an order is administered to a resident.

**D.** An administrator shall ensure that:

1. Dental services are provided to a resident by an individual licensed as:
   a. A dentist under A.R.S. Title 32, Chapter 11, Article 2; or
   b. A dental hygienist under A.R.S. Title 32, Chapter 11, Article 4;
2. If needed, based on a resident's initial assessment, a dentist or dental hygienist in subsection (D)(1) participates as part of an interdisciplinary team in the development of the resident's individual program plan;
3. A resident is provided with a complete dental examination within one month after admission, unless the ICF/IID has documentation of the resident's dental examination completed within 12 months before admission;
4. If a resident's dental examination indicates the resident needs dental treatment:
   a. A dentist or dental hygienist in subsection (D)(1) participates as part of an interdisciplinary team in the review and updating of the resident's individual program plan, and
   b. The resident is provided with dental treatment;
5. A dental examination is performed by a dentist or dental hygienist in subsection (D)(1) on a resident at least once every 12 months and treatment is provided as needed;
6. If needed, a resident is provided with emergency dental services;
7. A resident is provided with education and training in oral hygiene; and
8. A resident's medical record contains documentation of:
   a. Each dental examination of the resident,
   b. All dental treatment provided to the resident, and
   c. The resident's education and training in oral hygiene.

**E.** An administrator shall ensure that:

1. A resident's vision and hearing are assessed as part of the resident's comprehensive assessment and, if applicable, as part of the update of the comprehensive assessment; and
2. If an issue is identified with the resident's vision or hearing, the resident is provided, as applicable, with:
   a. Treatment to address the identified issue, or
   b. An assistive device to address an issue.

**Historical Note**

Adopted as an emergency effective October 26, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Readopted without change as an emergency effective January 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-1). Emergency expired. Readopted without change as an emergency effective April 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-2). Emergency expired. Readopted without change as an emergency effective July 31, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Permanent rules adopted with changes effective October 30, 1989 (Supp. 89-4). Section repealed effective April 4, 1994 (Supp. 94-2). New Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws

2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Section R9-10-516 renumbered to R9-10-2116; new Section R9-10-516 made by exempt rulemaking at 25 A.A.R. 1222, effective April 25, 2019 (Supp. 19-2). Amended by exempt rulemaking, at 26 A.A.R. 72 with an effective date of January 1, 2020 (Supp. 19-4).

**R9-10-517. Behavioral Care**

**A.** An administrator shall ensure that:
1. A resident who receives behavioral care from the ICF/IID is evaluated by a behavioral health professional or medical practitioner:
   a. Within 30 calendar days before the resident is admitted to the ICF/IID or before the resident begins receiving behavioral care, and
   b. At least once every six months throughout the duration of the resident's need for behavioral care;
2. A behavioral health professional or medical practitioner:
   a. Documents that the behavioral care needed by the resident is within the ICF/IID's scope of services, and
   b. Includes measurable objectives for the behavioral care and the methods for meeting the objectives in the resident's individual program plan; and
3. The documentation in subsection (A)(2) is included in the resident's medical record.

**B.** If a resident of an ICF/IID requires behavioral health services provided by a behavioral health professional on an intermittent basis as part of behavioral care, an administrator shall ensure that:
1. The behavioral health services are provided by a behavioral health professional licensed or certified to provide the type of behavioral health services required by the resident; and
2. Except for a psychotropic drug used as a chemical restraint or administered according to an order from a court of competent jurisdiction, informed consent is obtained from a resident or the resident's representative for a psychotropic drug and documented in the resident's medical record before the psychotropic drug is administered to the resident.

**Historical Note**

Adopted as an emergency effective October 26, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Readopted without change as an emergency effective January 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-1). Emergency expired. Readopted without change as an emergency effective April 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-2). Emergency expired. Readopted without change as an emergency effective July 31, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Permanent rules adopted effective October 30, 1989 (Supp. 89-4). Section repealed effective April 4, 1994 (Supp. 94-2). New Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Amended by final expedited rulemaking at 25 A.A.R. 259, effective January 8, 2019 (Supp. 19-1). Section R9-10-517 renumbered to R9-10-2117; new Section R9-10-517 made by exempt rulemaking at 25 A.A.R. 1222, effective April 25, 2019 (Supp. 19-2).

**R9-10-518. Clinical Laboratory Services**

If clinical laboratory services are authorized to be provided on an ICF/IID's premises, an administrator shall ensure that:
1. Clinical laboratory services and pathology services are provided through a laboratory that holds a certificate of accreditation, certificate of compliance, or certificate of waiver issued by the United States Department of Health and Human Services under the 1988 amendments to the Clinical Laboratories Improvement Act of 1967;
2. A copy of the certificate of accreditation, certificate of compliance, or certificate of waiver in subsection (1) is provided to the Department for review upon the Department's request;
3. The ICF/IID:
   a. Is able to provide the clinical laboratory services delineated in the ICF/IID's scope of services when needed by the residents,
   b. Obtains specimens for the clinical laboratory services delineated in the ICF/IID's scope of services without transporting the residents from the ICF/IID's premises, and
   c. Has the examination of the specimens performed by a clinical laboratory;
4. Clinical laboratory and pathology test results are:
   a. Available to the ordering physician:
      i. Within 24 hours after the test is complete with results if the test is performed at a laboratory on the ICF/IID's premises, or
      ii. Within 24 hours after the test result is received if the test is performed at a laboratory outside of the ICF/IID's premises; and
   b. Documented in a resident's medical record;
5. If a test result is obtained that indicates a resident may have an emergency medical condition, as established in policies and procedures, personnel notify:
   a. The ordering physician,
   b. A registered nurse in the resident's assigned unit,
   c. The ICF/IID's administrator, or

d. The director of nursing;
6. If a clinical laboratory report is completed on a resident, a copy of the report is included in the resident's medical record;
7. If the ICF/IID provides blood or blood products, policies and procedures are established, documented, and implemented for:
   a. Procuring, storing, transfusing, and disposing of blood or blood products;
   b. Blood typing, antibody detection, and blood compatibility testing; and
   c. Investigating transfusion adverse reactions that specify a process for review through the quality management program; and
8. Expired laboratory supplies are discarded according to policies and procedures.

**Historical Note**

Adopted as an emergency effective October 26, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Readopted without change as an emergency effective January 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-1). Emergency expired. Readopted without change as an emergency effective April 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-2). Emergency expired. Readopted without change as an emergency effective July 31, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Permanent rules adopted effective October 30, 1989 (Supp. 89-4). Section repealed effective April 4, 1994 (Supp. 94-2). New Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Section R9-10-518 renumbered to R9-10-2118; new Section R9-10-518 made by exempt rulemaking at 25 A.A.R. 1222, effective April 25, 2019 (Supp. 19-2).

**R9-10-519. Respiratory Care Services**

If respiratory care services are authorized to be provided on an ICF/IID's premises, an administrator shall ensure that:
1. Respiratory care services are provided under the direction of an attending physician;
2. Respiratory care services are provided according to an order that includes:
   a. The resident's name;
   b. The name and signature of the ordering individual;
   c. The type, frequency, and, if applicable, duration of treatment;
   d. The type and dosage of medication and diluent; and
   e. The oxygen concentration or oxygen liter flow and method of administration;
3. Respiratory care services provided to a resident are documented in the resident's medical record and include:
   a. The date and time of administration;
   b. The type of respiratory care services provided;
   c. The effect of the respiratory care services;
   d. The resident's adverse reaction to the respiratory care services, if any; and
   e. The authentication of the individual providing the respiratory care services; and
4. Any area or unit that performs blood gases or clinical laboratory tests complies with the requirements in R9-10-518.

**Historical Note**

R9-10-519 made by exempt rulemaking at 25 A.A.R. 1222, effective April 25, 2019 (Supp. 19-2).

**R9-10-520. Medication Services**

**A.** An administrator shall ensure that policies and procedures for medication services:
1. Include:
   a. A process for providing information to a resident about medication prescribed for the resident including:
      i. The prescribed medication's anticipated results,
      ii. The prescribed medication's potential adverse reactions,
      iii. The prescribed medication's potential side effects, and
      iv. Potential adverse reactions that could result from not taking the medication as prescribed;
   b. Procedures for preventing, responding to, and reporting:
      i. A medication error,
      ii. An adverse response to a medication, or
      iii. A medication overdose;
   c. Procedures to ensure that a pharmacist reviews a resident's medications at least once every three months and provides documentation to the resident's attending physician and the director of nursing indicating potential medication problems such as incompatible or duplicative medications;
   d. Procedures for documenting medication services; and
   e. Procedures for assisting a resident in obtaining medication; and
2. Specify a process for review through the quality management program of:
   a. A medication administration error, and
   b. An adverse reaction to a medication.

**B.** An administrator shall ensure that:
1. Policies and procedures for medication administration:

a. Are reviewed and approved by a pharmacist;
b. Specify the individuals who may:
i. Order medication, and
ii. Administer medication;
c. Ensure that medication is administered to a resident only as prescribed; and
d. Cover the documentation of a resident's refusal to take prescribed medication in the resident's medical record;
2. Verbal orders for medication services are taken by a nurse, unless otherwise provided by law;
3. A medication administered to a resident:
a. Is administered in compliance with an order, and
b. Is documented in the resident's medical record; and
4. If a psychotropic medication is administered to a resident, the psychotropic medication:
a. Is only administered to a resident for a diagnosed medical condition; and
b. Unless clinically contraindicated or otherwise ordered by an attending physician or the attending physician's designee, is gradually reduced in dosage while the resident is simultaneously provided with interventions such as behavior and environment modification in an effort to discontinue the psychotropic medication, unless a dose reduction is attempted and the resident displays behavior justifying the need for the psychotropic medication, and the attending physician documents the necessity for the continued use and dosage.

**C.** If an ICF/IID provides assistance in the self-administration of medication, an administrator shall ensure that:
1. A resident's medication is stored by the ICF/IID;
2. The following assistance is provided to a resident:
a. A reminder when it is time to take the medication;
b. Opening the medication container for the resident;
c. Observing the resident while the resident removes the medication from the container;
d. Verifying that the medication is taken as ordered by the resident's attending physician by confirming that:
i. The resident taking the medication is the individual stated on the medication container label,
ii. The resident is taking the dosage of the medication stated on the medication container label or according to an order from the resident's attending physician dated later than the date on the medication container label, and
iii. The resident is taking the medication at the time stated on the medication container label or according to an order from the resident's attending physician dated later than the date on the medication container label; or
e. Observing the resident while the resident takes the medication;
3. Policies and procedures for assistance in the self-administration of medication are reviewed and approved by the resident's attending physician or registered nurse;
4. Training for a personnel member, other than a physician, physician assistant, or registered nurse, in assistance in the self-administration of medication:
a. Is provided by the resident's attending physician, another physician, a physician assistant, or a registered nurse or an individual trained by a physician, physician assistant, or registered nurse; and
b. Includes:
i. A demonstration of the personnel member's skills and knowledge necessary to provide assistance in the self-administration of medication,
ii. Identification of medication errors and medical emergencies related to medication that require emergency medical intervention, and
iii. The process for notifying the appropriate entities when an emergency medical intervention is needed;
5. A personnel member, other than a physician, physician assistant, or registered nurse, completes the training in subsection (C)(4) before the personnel member provides assistance in the self-administration of medication; and
6. Assistance in the self-administration of medication provided to a resident:
a. Is in compliance with an order, and
b. Is documented in the resident's medical record.

**D.** An administrator shall ensure that:
1. A current drug reference guide is available for use by personnel members; and
2. If pharmaceutical services are provided:
a. The pharmaceutical services are provided under the direction of a pharmacist;
b. The pharmaceutical services comply with A.R.S. Title 36, Chapter 27; A.R.S. Title 32, Chapter 18; and 4 A.A.C. 23; and
c. A copy of the pharmacy license is provided to the Department upon request.

**E.** When medication is stored at an ICF/IID, an administrator shall ensure that:
1. Medication is stored in a separate locked room, closet, or self-contained unit used only for medication storage;
2. Medication is stored according to the instructions on the medication container; and
3. Policies and procedures are established, documented, and implemented to protect the health and safety of a resident for:
a. Receiving, storing, inventorying, tracking, dispensing, and discarding medication including expired medication;

b. Discarding or returning prepackaged and sample medication to the manufacturer if the manufacturer requests the discard or return of the medication;
c. A medication recall and notification of residents who received recalled medication; and
d. Storing, inventorying, and dispensing controlled substances.

**F.** An administrator shall ensure that a personnel member immediately reports a medication error or a resident's adverse reaction to a medication to the resident's attending physician or the physician who ordered the medication and the ICF/IID's director of nursing.

**Historical Note**

R9-10-520 made by exempt rulemaking at 25 A.A.R. 1222, effective April 25, 2019 (Supp. 19-2).

**R9-10-521. Infection Control**

An administrator shall ensure that:

1. An infection control program is established, under the direction of an individual qualified according to policies and procedures, to prevent the development and transmission of infections and communicable diseases including:
   a. A method to identify and document infections occurring at the ICF/IID;
   b. Analysis of the types, causes, and spread of infections and communicable diseases at the ICF/IID;
   c. The development of corrective measures to minimize or prevent the spread of infections and communicable diseases at the ICF/IID; and
   d. Documentation of infection control activities including:
      i. The collection and analysis of infection control data,
      ii. The actions taken related to infections and communicable diseases, and
      iii. Reports of communicable diseases to the governing authority and state and county health departments;
2. Infection control documentation is maintained for at least 12 months after the date of the documentation;
3. Policies and procedures are established, documented, and implemented that cover:
   a. Handling and disposal of biohazardous medical waste;
   b. Sterilization, disinfection, and storage of medical equipment and supplies;
   c. Using personal protective equipment such as aprons, gloves, gowns, masks, or face protection when applicable;
   d. Cleaning of an individual's hands when the individual's hands are visibly soiled and before and after providing a service to a resident;
   e. Cleaning of a resident's bedroom, furniture, and bedding after the resident's discharge before the bedroom is reassigned to another resident;
   f. Training of personnel members, employees, and volunteers in infection control practices; and
   g. Work restrictions for a personnel member with a communicable disease or infected skin lesion;
4. Biohazardous medical waste is identified, stored, and disposed of according to 18 A.A.C. 13, Article 14 and policies and procedures;
5. Soiled linen and clothing are:
   a. Collected in a manner to minimize or prevent contamination;
   b. Bagged at the site of use; and
   c. Maintained separate from clean linen and clothing and away from food storage, kitchen, or dining areas;
6. A resident's personal laundry is washed separately from towels, sheets, and bedding; and
7. A personnel member, an employee, or a volunteer washes hands or uses a hand disinfection product after a resident contact and after handling soiled linen, soiled clothing, or potentially infectious material.

**Historical Note**

R9-10-521 made by exempt rulemaking at 25 A.A.R. 1222, effective April 25, 2019 (Supp. 19-2).

**R9-10-522. Food Services**

**A.** An administrator shall ensure that:

1. The ICF/IID has a license or permit as a food establishment under 9 A.A.C. 8, Article 1;
2. A copy of the ICF/IID's food establishment license or permit is maintained;
3. If the ICF/IID contracts with a food establishment, as established in 9 A.A.C. 8, Article 1, to prepare and deliver food to the ICF/IID:
   a. A copy of the contracted food establishment's license or permit under 9 A.A.C. 8, Article 1 is maintained by the ICF/IID; and
   b. The ICF/IID is able to store, refrigerate, and reheat food to meet the dietary needs of a resident;
4. A registered dietitian:
   a. Participates as part of an interdisciplinary team for a resident requiring a modified or special diet,
   b. Reviews a food menu before the food menu is used to ensure that a resident's nutritional needs are being met,
   c. Documents the review of a food menu, and
   d. Is available for consultation regarding a resident's nutritional needs; and
5. If a registered dietitian is not employed full-time, an individual is designated as a director of food services who consults with a registered dietitian as often as necessary to ensure that the nutritional needs of a resident are met.

**B.** A registered dietitian or director of food services shall ensure that:
1. Food is prepared:
   a. Using methods that conserve nutritional value, flavor, and appearance; and
   b. In a form to meet the needs of a resident such as cut, chopped, ground, pureed, or thickened;
2. A food menu:
   a. Is prepared at least one week in advance,
   b. Includes the foods to be served on each day,
   c. Is conspicuously posted at least one day before the first meal on the food menu will be served,
   d. Includes any food substitution no later than the morning of the day of meal service with a food substitution, and
   e. Is maintained for at least 60 calendar days after the last day included in the food menu;
3. Meals and snacks for each day are planned and served using the applicable guidelines in http://www.health.gov/dietaryguidelines/2015.asp;
4. A resident is provided:
   a. A diet that meets the resident's nutritional needs as specified in the resident's comprehensive assessment and individual program plan;
   b. Food served in sufficient quantities to meet the resident's nutritional needs and at an appropriate temperature;
   c. Three meals a day with not more than 14 hours between the evening meal and breakfast, except as provided in subsection (B)(4)(e);
   d. The option to have a daily evening snack identified in subsection (B)(4)(e)(ii) or other snack; and
   e. The option to extend the time span between the evening meal and breakfast from 14 hours to 16 hours if:
      i. A resident group agrees; and
      ii. The resident is offered an evening snack that includes meat, fish, eggs, cheese, or other protein, and a serving from either the fruit and vegetable food group or the bread and cereal food group;
5. A resident is provided with food substitutions of similar nutritional value if:
   a. The resident refuses to eat the food served, or
   b. The resident requests a substitution;
6. Recommendations and preferences are requested from a resident or the resident's representative for meal planning;
7. If food is used as a part of a program to manage a resident's inappropriate behavior:
   a. A special diet is included as part of the resident's individual program plan, and
   b. The special diet is reviewed and evaluated by a physician and a dietitian to ensure the special diet meets the resident's nutritional needs;
8. Meals are served to residents at tables in a dining area and in a manner that allows the resident to eat from an upright position, unless otherwise specified in the resident's individual program plan or by an attending physician;
9. A resident requiring assistance to eat is provided with assistance that recognizes the resident's nutritional, physical, and social needs, including the use of adaptive eating equipment or utensils;
10. Personnel members supervise meals in dining areas to:
    a. Direct a resident's self-help dining procedures,
    b. Ensure a resident consumes enough food to meet the resident's nutritional needs, and
    c. Ensure that a resident eats in a manner consistent with the resident's developmental level;
11. Tableware, utensils, equipment, and food-contact surfaces are clean and in good repair; and
12. Water is available and accessible to residents.

**Historical Note**

R9-10-522 made by exempt rulemaking at 25 A.A.R. 1222, effective April 25, 2019 (Supp. 19-2).

**R9-10-523. Emergency and Safety Standards**

**A.** An administrator shall ensure that:
1. A disaster plan is developed, documented, maintained in a location accessible to personnel members and other employees, and, if necessary, implemented that includes:
   a. A floor plan of the facility showing emergency protection equipment, evacuation routes, and exits;
   b. When, how, and where residents will be relocated, including:
      i. Instructions for the evacuation or transfer of residents,
      ii. Assigned responsibilities for each employee and personnel member, and
      iii. A plan for continuing to provide services to meet a resident's needs;
   c. How a resident's medical record will be available to individuals providing services to the resident during a disaster;
   d. A plan for back-up power and water supply;
   e. A plan to ensure a resident's medications will be available to administer to the resident during a disaster;
   f. A plan to ensure a resident is provided nursing services, rehabilitation services, and other services required by the resident during a disaster; and

g. A plan for obtaining food and water for individuals present in the ICF/IID or the ICF/IID's relocation site during a disaster;

2. Personnel members receive training on the content and use of the disaster plan required in subsection (A)(1);
3. The disaster plan required in subsection (A)(1) is reviewed at least once every 12 months;
4. Documentation of a disaster plan review required in subsection (A)(3) is created, is maintained for at least 12 months after the date of the disaster plan review, and includes:
   a. The date and time of the disaster plan review;
   b. The name of each personnel member, employee, or volunteer participating in the disaster plan review;
   c. A critique of the disaster plan review; and
   d. If applicable, recommendations for improvement;
5. A disaster drill for employees is conducted on each shift at least once every three months and documented;
6. An evacuation drill for employees is conducted on each shift at least once every three months and documented;
7. An evacuation drill for residents:
   a. Is conducted at least once each year on each shift and documented; and
   b. Includes all residents on the premises except for:
      i. A resident whose medical record contains documentation that evacuation from the ICF/IID would cause harm to the resident, and
      ii. Sufficient personnel members to ensure the health and safety of residents not evacuated according to subsection (A)(7)(b)(i);
8. Documentation of each evacuation drill is created, is maintained for at least 12 months after the date of the drill, and includes:
   a. The date and time of the evacuation drill;
   b. The amount of time taken for employees and residents to evacuate to a designated area;
   c. If applicable:
      i. An identification of residents needing assistance for evacuation, and
      ii. An identification of residents who were not evacuated;
   d. Any problems encountered in conducting the evacuation drill; and
   e. Recommendations for improvement, if applicable; and
9. An evacuation path is conspicuously posted on each hallway of each floor of the ICF/IID.

**B.** An administrator shall ensure that, if an ICF/IID has:

1. More than 16 residents or a resident who has a medical care plan or whose medical record contains documentation that evacuation from the ICF/IID would cause harm to the resident:
   a. A fire alarm system is installed according to the National Fire Protection Association 72: National Fire Alarm and Signaling Code, incorporated by reference in R9-10-104.01, and is in working order; and
   b. A sprinkler system is installed according to the National Fire Protection Association 13 Standard for the Installation of Sprinkler Systems, incorporated by reference in R9-10-104.01, and is in working order; and
2. Sixteen or fewer residents, none of whom have a medical care plan or whose medical record contains documentation that evacuation from the ICF/IID would cause harm to the resident:
   a. A fire alarm system and a sprinkler system meeting the requirements in subsection (B)(1) are installed and in working order; or
   b. The ICF/IID has:
      i. A fire extinguisher that is:
         (1) Labeled as rated at least 2A-10-BC by the Underwriters Laboratories;
         (2) Accessible to personnel members and inaccessible to residents;
         (3) If a disposable fire extinguisher, replaced when its indicator reaches the red zone; and
         (4) If a rechargeable fire extinguisher, is serviced at least once every 12 months, as documented by 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; and
      ii. Smoke detectors that are:
         (1) Installed in each bedroom, hallway that adjoins a bedroom, storage room, laundry room, attached garage, and room or hallway adjacent to the kitchen, and other places recommended by the manufacturer;
         (2) Either battery operated or, if hard-wired into the electrical system of the ICF/IID, has a back-up battery;
         (3) In working order; and
         (4) Tested at least once a month, with documentation of the test maintained for at least 12 months after the date of the test.

**C.** An administrator shall:

1. Obtain a fire inspection conducted according to the time-frame established by the local fire department or the State Fire Marshal,
2. Make any repairs or corrections stated on the fire inspection report, and
3. Maintain documentation of a current fire inspection.

**D.** An administrator shall ensure that, if applicable, a sign is placed at the entrance to a room or area indicating that oxygen is in use.

**Historical Note**

R9-10-523 made by exempt rulemaking at 25 A.A.R. 1222, effective April 25, 2019 (Supp. 19-2). Amended by exempt rulemaking, at 26 A.A.R. 72 with an effective date of January 1, 2020 (Supp. 19-4).

**R9-10-524. Environmental Standards**

**A.** An administrator shall ensure that:
1. An ICF/IID's premises and equipment are:
   a. Cleaned and disinfected according to policies and procedures or manufacturer's instructions to prevent, minimize, and control illness and infection; and
   b. Free from a condition or situation that may cause a resident or an individual to suffer physical injury;
2. A pest control program that complies with A.A.C. R3-8-201(C)(4) is implemented and documented;
3. Equipment used to provide direct care is:
   a. Maintained in working order;
   b. Tested and calibrated according to the manufacturer's recommendations or, if there are no manufacturer's recommendations, as specified in policies and procedures; and
   c. Used according to the manufacturer's recommendations;
4. Documentation of equipment testing, calibration, and repair is maintained for at least 12 months after the date of the testing, calibration, or repair;
5. Garbage and refuse are:
   a. In areas used for food storage, food preparation, or food service, stored in a covered container lined with a plastic bag;
   b. In areas not used for food storage, food preparation, or food service, stored:
      i. According to the requirements in subsection (A)(5)(a), or
      ii. In a paper-lined or plastic-lined container that is cleaned and sanitized as often as necessary to ensure that the container is clean; and
   c. Removed from the premises at least once a week;
6. Heating and cooling systems maintain the ICF/IID at a temperature between 70° F and 84° F;
7. Common areas:
   a. Are lighted to assure the safety of residents, and
   b. Have lighting sufficient to allow personnel members to monitor resident activity;
8. The supply of hot and cold water is sufficient to meet the personal hygiene needs of residents and the cleaning and sanitation requirements in this Article;
9. The temperature of the hot water does not exceed 120° F;
10. Linens are clean before use, without holes and stains, and not in need of repair;
11. Oxygen containers are secured in an upright position;
12. Poisonous or toxic materials stored by the ICF/IID are maintained in labeled containers in a locked area separate from food preparation and storage, dining areas, and medications and are inaccessible to residents;
13. Combustible or flammable liquids stored by the ICF/IID are stored in the original labeled containers or safety containers in a locked area inaccessible to residents;
14. If pets or animals are allowed in the ICF/IID, pets or animals are:
   a. Controlled to prevent endangering the residents and to maintain sanitation;
   b. Licensed consistent with local ordinances; and
   c. For a dog or cat, vaccinated against rabies;
15. If a water source that is not regulated under 18 A.A.C. 4 by the Arizona Department of Environmental Quality is used:
   a. The water source is tested at least once every 12 months for total coliform bacteria and fecal coliform or *E. coli* bacteria;
   b. If necessary, corrective action is taken to ensure the water is safe to drink; and
   c. Documentation of testing is retained for at least 12 months after the date of the test; and
16. If a non-municipal sewage system is used, the sewage system is in working order and is maintained according to all applicable state laws and rules.

**B.** An administrator shall ensure that:
1. Smoking tobacco products are not permitted within an ICF/IID; and
2. Smoking tobacco products may be permitted outside an ICF/IID if:
   a. Signs designating smoking areas are conspicuously posted, and
   b. Smoking is prohibited in areas where combustible materials are stored or in use.

**C.** If a swimming pool is located on the premises, an administrator shall ensure that:
1. At least one personnel member with cardiopulmonary resuscitation training that meets the requirements in R9-10-503(C)(1)(g) is present in the pool area when a resident is in the pool area, and
2. At least two personnel members are present in the pool area when two or more residents are in the pool area.

**Historical Note**

R9-10-524 made by exempt rulemaking at 25 A.A.R. 1222, effective April 25, 2019 (Supp. 19-2).

**R9-10-525. Physical Plant Standards**

**A.** An administrator shall ensure that, if an ICF/IID has:
1. More than 16 residents, the ICF/IID complies with:
   a. The applicable physical plant health and safety codes and standards, incorporated by reference in R9-10-104.01, that were in effect on the earlier of:
      i. The date the ICF/IID was originally certified as an ICF/IID by the federal Centers for Medicare and Medicaid Services, or
      ii. The date the ICF/IID submitted architectural plans and specifications to the Department for approval according to R9-10-104; and
   b. The requirements for Existing Health Care Occupancies in National Fire Protection Association 101, Life Safety Code, incorporated by reference in R9-10-104.01; and
2. Sixteen or fewer residents, the ICF/IID complies with the requirements for Existing Health Care Occupancies in National Fire Protection Association 101, Life Safety Code, incorporated by reference in R9-10-104.01.

**B.** An administrator shall ensure that:
1. The premises and equipment are sufficient to accommodate:
   a. The services stated in the ICF/IID's scope of services, and
   b. An individual accepted as a resident by the ICF/IID;
2. A common area for use by residents is provided that has sufficient space and furniture to accommodate the recreational and socialization needs of residents;
3. A dining area has sufficient space and tables and chairs to accommodate the needs of the residents;
4. At least one bathroom is accessible from a common area and:
   a. May be used by residents and visitors;
   b. Does not open into an area in which food is prepared;
   c. Provides privacy when in use; and
   d. Contains the following:
      i. At least one working sink with running water,
      ii. At least one working toilet that flushes and has a seat,
      iii. Toilet tissue for each toilet,
      iv. Soap in a dispenser accessible from each sink,
      v. Paper towels in a dispenser or a mechanical air hand dryer,
      vi. Lighting, and
      vii. A window that opens or another means of ventilation;
5. An outside activity space is provided and available that:
   a. Is on the premises,
   b. Has a hard-surfaced section for wheelchairs, and
   c. Has an available shaded area;
6. Exterior doors are equipped with ramps or other devices to allow use by a resident using a wheelchair or other assistive device; and
7. The key to the door of a lockable bathroom or bedroom is available to a personnel member.

**C.** An administrator shall ensure that:
1. For every eight residents there is at least one working toilet that flushes and has a seat and one sink with running water;
2. For every eight residents there is at least one working bathtub or shower;
3. A resident bathroom provides privacy when in use and contains:
   a. A mirror;
   b. Toilet tissue for each toilet;
   c. Soap accessible from each sink;
   d. Paper towels in a dispenser or a mechanical air hand dryer for a bathroom that is used by more than one resident;
   e. A window that opens or another means of ventilation;
   f. Grab bars for the toilet and, if applicable, the bathtub or shower and other assistive devices, if required to provide for resident safety; and
   g. Nonporous surfaces for shower enclosures and slip-resistant surfaces in tubs and showers;
4. An ICF/IID is ventilated by windows or mechanical ventilation, or a combination of both;
5. If required for the residents of the ICF/IID, the corridors are equipped with handrails on each side that are firmly attached to the walls and are not in need of repair;
6. No more than two individuals reside in a resident bedroom; and
7. A resident's bedroom;
   a. Is accessible without passing through a storage area, an equipment room, or another resident's bedroom;
   b. Is constructed and furnished to provide unimpeded access to the door;

c. Has floor-to-ceiling walls with at least one door;
d. Does not open into any area where food is prepared, served, or stored;
e. If a private bedroom, has at least 80 square feet of floor space, not including a closet or bathroom;
f. If a shared bedroom, has at least 60 square feet of floor space for each individual occupying the shared bedroom, not including a closet or bathroom;
g. Has a separate bed, at least 36 inches in width and 72 inches in length, for each resident, consisting of at least a frame and mattress that is clean and in good repair;
h. Has clean linen, including a mattress pad, sheets large enough to tuck under the mattress, pillows, pillow cases, a bedspread, waterproof mattress covers as needed, and blankets to ensure warmth and comfort for the resident;
i. Has furniture to meet the resident's needs and sufficient light for reading;
j. Has an openable window to the outside with window coverings for controlling light and visual privacy, and the location of the window permits a resident to see outside from a sitting position;
k. Has individual storage space for a resident's possessions and assistive devices; and
l. Has a closet with clothing racks and shelves accessible to the resident.

**D.** If a swimming pool is located on the premises, an administrator shall ensure that:
1. The swimming pool is enclosed by a wall or fence that:
a. Is at least five feet in height as measured on the exterior of the wall or fence;
b. Has no vertical openings greater that four inches across;
c. Has no horizontal openings, except as described in subsection (D)(1)(e);
d. Is not chain-link;
e. Does not have a space between the ground and the bottom fence rail that exceeds four inches in height; and
f. Has a self-closing, self-latching gate that:
i. Opens away from the swimming pool,
ii. Has a latch located at least 54 inches from the ground, and
iii. Is locked when the swimming pool is not in use; and
2. A life preserver or shepherd's crook is available and accessible in the pool area.

**E.** An administrator shall ensure that a spa that is not enclosed by a wall or fence as described in subsection (D)(1) is covered and locked when not in use.

**Historical Note**

R9-10-525 made by exempt rulemaking at 25 A.A.R. 1222, effective April 25, 2019 (Supp. 19-2). Amended by exempt rulemaking, at 26 A.A.R. 72 with an effective date of January 1, 2020 (Supp. 19-4).

## 36-132. Department of health services; functions; contracts

A. The department, in addition to other powers and duties vested in it by law, shall:

1. Protect the health of the people of the state.

2. Promote the development, maintenance, efficiency and effectiveness of local health departments or districts of sufficient population and area that they can be sustained with reasonable economy and efficient administration, provide technical consultation and assistance to local health departments or districts, provide financial assistance to local health departments or districts and services that meet minimum standards of personnel and performance and in accordance with a plan and budget submitted by the local health department or districts to the department for approval, and recommend the qualifications of all personnel.

3. Collect, preserve, tabulate and interpret all information required by law in reference to births, deaths and all vital facts, and obtain, collect and preserve information relating to the health of the people of this state and the prevention of diseases as may be useful in the discharge of functions of the department not in conflict with chapter 3 of this title and sections 36-693, 36-694 and 39-122.

4. Operate 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.

36-405. Powers and duties of the director

A. The director shall adopt rules to establish minimum standards and requirements for constructing, modifying and licensing health care institutions necessary to ensure the public health, safety and welfare. The standards and requirements shall relate to the construction, equipment, sanitation, staffing for medical, nursing and personal care services, and recordkeeping pertaining to administering medical, nursing, behavioral health and personal care services, in accordance with generally accepted practices of health care. The standards shall require that a physician who is licensed pursuant to title 32, chapter 13 or 17 medically discharge patients from surgery and shall allow an outpatient surgical center to require that either an anesthesia provider who is licensed pursuant to title 32, chapter 13, 15 or 17 or a physician who is licensed pursuant to title 32, chapter 13 or 17 remain present on the premises until all patients are discharged from the recovery room.

Except as otherwise provided in this subsection, the director shall use the current standards adopted by the joint commission on accreditation of hospitals and the commission on accreditation of the American osteopathic association or those adopted by any recognized accreditation organization approved by the department as guidelines in prescribing minimum standards and requirements under this section.

B. The director, by rule, may:

1. Classify and subclassify health care institutions according to character, size, range of services provided, medical or dental specialty offered, duration of care and standard of patient care required for the purposes of licensure. Classes of health care institutions may include hospitals, infirmaries, outpatient treatment centers, health screening services centers and residential care facilities. Whenever the director reasonably deems distinctions in rules and standards to be appropriate among different classes or subclasses of health care institutions, the director may make such distinctions.

2. Prescribe standards for determining a health care institution's substantial compliance with licensure requirements.

3. Prescribe the criteria for the licensure inspection process.

4. Prescribe standards for selecting health care-related demonstration projects.

5. Establish nonrefundable application and licensing fees for health care institutions, including a grace period and a fee for the late payment of licensing fees.

6. Establish a process for the department to notify a licensee of the licensee's licensing fee due date.

7. Establish a process for a licensee to request a different licensing fee due date, including any limits on the number of requests by the licensee.

C. The director, by rule, shall adopt licensing provisions that facilitate the colocation and integration of outpatient treatment centers that provide medical, nursing and health-related services with behavioral health services consistent with article 3.1 of this chapter.

D. Ninety percent of the fees collected pursuant to this section shall be deposited, pursuant to sections 35-146 and 35-147, in the health services licensing fund established by section 36-414 and ten percent of the fees collected pursuant to this section shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

E. Subsection B, paragraph 5 of this section does not apply to a health care institution operated by a state agency pursuant to state or federal law or to adult foster care residential settings.

36-406. Powers and duties of the department

In addition to its other powers and duties:

1. The department shall:

(a) Administer and enforce this chapter and the rules, regulations and standards adopted pursuant thereto.

(b) Review, and may approve, plans and specifications for construction or modification or additions to health care institutions regulated by this chapter.

(c) Have access to books, records, accounts and any other information of any health care institution reasonably necessary for the purposes of this chapter.

(d) Require as a condition of licensure that nursing care institutions and assisted living facilities make vaccinations for influenza and pneumonia available to residents on site on a yearly basis. The department shall prescribe the manner by which the institutions and facilities shall document compliance with this subdivision, including documenting residents who refuse to be immunized. The department shall not impose a violation on a licensee for not making a vaccination available if there is a shortage of that vaccination in this state as determined by the director.

2. The department may:

(a) Make or cause to be made inspections consistent with standard medical practice of every part of the premises of health care institutions which are subject to the provisions of this chapter as well as those which apply for or hold a license required by this chapter.

(b) Make studies and investigations of conditions and problems in health care institutions, or any class or subclass thereof, as they relate to compliance with this chapter and rules, regulations and standards adopted pursuant thereto.

(c) Develop manuals and guides relating to any of the several aspects of physical facilities and operations of health care institutions or any class or subclass thereof for distribution to the governing authorities of health care institutions and to the general public.

## 36-407. Prohibited acts; required acts

A. A person shall not establish, conduct or maintain in this state a health care institution or any class or subclass of health care institution unless that person holds a current and valid license issued by the department specifying the class or subclass of health care institution the person is establishing, conducting or maintaining. The license is valid only for the establishment, operation and maintenance of the class or subclass of health care institution, the type of services and, except for emergency admissions as prescribed by the director by rule, the licensed capacity specified by the license.

B. The licensee shall not imply by advertising, directory listing or otherwise that the licensee is authorized to perform services more specialized or of a higher degree of care than is authorized by this chapter and the underlying rules for the particular class or subclass of health care institution within which the licensee is licensed.

C. The licensee may not transfer or assign the license. A license is valid only for the premises occupied by the institution at the time of its issuance.

D. The licensee shall not personally or through an agent offer or imply an offer of rebate or fee splitting to any person regulated by title 32 or chapter 17 of this title.

E. The licensee shall submit an itemized statement of charges to each patient.

F. A health care institution shall refer a patient who is discharged after receiving emergency services for a drug-related overdose to a behavioral health services provider.

36-425.05. Intermediate care facilities for individuals with intellectual disabilities; licensure

On or before January 1, 2020, an intermediate care facility for individuals with intellectual disabilities that is operated by the department of economic security or a private entity shall be licensed pursuant to this chapter and certified pursuant to 42 Code of Federal Regulations part 483, subpart I.

**D-7.**

**STATE PERSONNEL BOARD**
Title 2, Chapter 5.1

**Amend:** R2-5.1-101; R2-5.1-103; R2-5.1-104

# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - EXPEDITED RULEMAKING

---

**MEETING DATE: April 1, 2025**

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

**FROM:** Council Staff

**DATE:** March 18, 2025

**SUBJECT:** **STATE PERSONNEL BOARD**
Title 2, Chapter 5.1

**Amend:** R2-5.1-101; R2-5.1-103; R2-5.1-104

---

**Summary:**

This expedited rulemaking from the State Personnel Board (Board) seeks to amend three (3) rules in Title 2, Chapter 5.1, Article 1, which covers general provisions related to the State Personnel Board. The proposed amendments relate to both appeals and complaints heard by the Board and the amendments are summarized below:

For R2-5.1-101, the (Board) is proposing to amend two definitions involving Subpoenas that are intended to clarify the difference between Subpoena Ad Testifcandum and Subpoena duces tecum.

For R2-5.1-103, which covers appeals, the (Board) is proposing to remove the change of address procedures, add language regarding ex parte communications, clarify the procedures during a hearing, clarify the parties right to have a record of the hearing made available, to clarify the sharing of documents between the parties, including a witness list, to clarify when a party fails to appear, and the timeframe the parties have to object to the hearing officer's findings. These changes are to improve clarity and to better align with A.R.S. § 41-783.

Specifically, in subsection (H) the Board is proposing to change the time frame that the (Board) must hear an appeal from within 30 days of receipt to 60 days of receipt. This change is necessary to align with A.R.S. § 41-783(A), which states that an appeal must be heard within 60 days of receipt.

In subsection (N) and (O), the Board is also changing the number of days prior to the hearing that a party can exchange exhibits and witness lists from 10 days to 14 days. The Board has indicated to Council staff that the change allows for additional preparation time for the parties. The Board does not believe this limits procedural rights because subsection (N) permits a hearing officer to enter exhibits that arrive within 14 days of the hearing into the record if it is necessary to ensure a complete record and is not considered overly prejudicial to the parties, such as if the parties did not have sufficient time to review.

For R2-5.1-104, which covers complaints, the Board is proposing to mirror the amendments made in 103.

**1. Do the rules satisfy the criteria for expedited rulemaking pursuant to A.R.S. § 41-1027(A)?**

The Board believes that these changes are consistent with the purpose for A.R.S. § 41-1027 because the rulemaking does not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of regulated persons. The Board specifically cites to A.R.S. § 41-1027(A)(6) stating that they are amending outdated, redundant, or otherwise no longer necessary for the operation of state government.

Council staff believe the current rulemaking satisfies the criteria for expedited rulemaking under A.R.S. § 41-1027(A)(6).

**2. 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.

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

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

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

The Board indicates no changes were made between the proposed and final rulemaking.

**5. 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 has indicated that there is no corresponding federal law.

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

Not applicable. The Board has indicated that no permit or license is required or issued as part of these rules.

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

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

**8. Conclusion**

This expedited rulemaking from the State Personnel Board (Board) seeks to amend three (3) rules in Title 2, Chapter 5.1, Article 1, which covers general provisions related to the State Personnel Board, with the amendments being specific to hearings related to appeals and complaints. The Board has indicated that these amendments are necessary to provide clarity and to better align with A.R.S. § 41-783. The Board is specifically amending two definitions to remove the change of address procedures, add language regarding ex parte communications, clarify the procedures during a hearing, clarify the parties right to have a record of the hearing made available, to clarify the sharing of exhibits and witness list between the parties, to clarify when a party fails to appear, and the timeframe the parties have to object to the hearing officer's findings.

Pursuant to A.R.S. § 41-1027(H), an expedited rulemaking becomes effective immediately on the filing of the approved Notice of Final Expedited Rulemaking with the Secretary of State.

Council staff recommends approval of this rulemaking.

Board Members:
Mark Ziska, Chair
Jeanine Inman, Vice Chair
Jason Dudek

KATIE HOBBS, Governor
Zachariah Tolliver, Executive Director

# Arizona State Personnel Board

1740 West Adams Street, Suite 3007
Phoenix, Arizona 85007
Phone: (602) 542-3888

March 13, 2025

Governor's Regulatory Review Council
100 N. 15th Avenue.
Phoenix, AZ 85007

RE: Arizona State Personnel Board Request for Approval

Dear Council,

The Arizona State Personnel Board is requesting approval to be heard before the council for the establishment of the Expedited Rulemaking Process. Our close of record date was October 11, 2024. The purpose of entering the expedited rulemaking process was to amend or repeal rules that are outdated, redundant, or otherwise no longer necessary for the operation of state government. Entering the expedited rulemaking process was initiated by the need of the agency to update its rules to reflect current practices and was not associated with a five-year rule review report.

As part of the expedited rulemaking process, we entered the 30-day public comment period to field feedback and comments from stakeholders and the public at large. We notified stakeholders that the ASPB was entering the rulemaking process and provided the necessary filings. However, we did not receive any feedback or public comments during the 30-day public comment period. In addition, we held in-person oral proceedings after the 30-day public comment period and did not receive any feedback or comments at the oral proceedings.

Please note, that the following attachments are included as part of this letter;

- Notice of Final Expedited Rulemaking
- Notice of Final Expedited Rulemaking Certificate
- Notice of Final Expedited Rulemaking Receipt

If you have any questions, I can be reached at 602-542-388 or by email at Zachariah.tolliver@personnel.az.gov.

Sincerely,

Zachariah Tolliver

Zachariah Tolliver
Executive Director
Arizona State Personnel Board

**NOTICE OF FINAL EXPEDITED RULEMAKING**

**TITLE 2. ADMINISTRATION**

**CHAPTER 5.1 STATE PERSONNEL BOARD**

**PREAMBLE**

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

February 6, 2024. Please see the attached approval from the governor's office.

| **2. Article, Part, or Section Affected (as applicable)** | **Rulemaking Action** |
|---|---|
| R2-5.1-101 | Amend |
| R2-5.1-103 | Amend |
| R2-5.1-104 | 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. § 41-781

**4. The effective date of the rule:**

This expedited rulemaking becomes effective immediately when the notice is filed under A.R.S. § 41-1027(H)

**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 expedited rule:**

Date of Docket Opening: September 9, 2024

Arizona Administrative Register: Volume 38 A.A.R. Page 2875, Issue Date: September 20, 2024, Issue Number: 38, File number: R24-184

Notice of Proposed Expedited Rulemaking: Volume 38 A.A.R. Page 2869, Issue Date: September 20, 2024, Issue Number: 38, File number: R24-183

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


Name: Zachariah Tolliver

Title: Executive Director

Division: Arizona State Personnel Board

Address: 1740 W. Adams Street, Suite 3007, Phoenix, AZ 85007

Telephone: (602) 542-3888

Email: appeals@personnel.az.gov

Website: personnel.az.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:**

In response, the Arizona State Personnel Board ("ASPB") is entering the expedited rulemaking process to update our rules to reflect current statutes concerning time frames and dates referenced in §41-783 and §38-1004. In addition, we've utilized the existing language to amend sections as well as adding minimal language to ensure the routing of materials. Also, we repealed one section that was no longer required, while adding a section regarding communication amongst parties.

**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 Arizona State Personnel Board ("ASPB") is most similar to that of a "court." As a result, we've utilized existing court practices to ensure we have an integrity-filled due process concerning our rules. Most amendments that occurred were to reflect current statutes, while other amendments and new additions were implemented to ensure the ASPB is functioning in a court-like sense for every matter. In reference, we observed outside state Personnel Boards, as well as, the State of Arizona judicial system to ensure we are up-to-date with current practices.

**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:**

The rulemaking the Arizona State Personnel Board is undergoing is to ensure the rules are comprehensible for those laymen or self-represented. In addition, this aids the appeal and whistleblower complaint process as we refine our rules to ensure the integrity of the process is intact.

**10. A statement that the agency is exempt from the requirements under A.R.S. § 41-1055(G) to obtain and file a 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).

**11. A description of any change between the proposed expedited rulemaking, to include a supplemental proposed notice, and the final rulemaking:**

Not Applicable.

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

Not Applicable. No feedback or comments were provided or made during the 30-day public period or oral proceedings.

**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:**

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 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.

**14. 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.

**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) state where the text was changed between the emergency and the final expedited rulemaking package:**

Not applicable.

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

# TITLE. 2 ADMIISTRATION

# CHAPTER 5.1 STATE PERSONNEL BOARD

# ARTICLE 1. GENERAL PROVISIONS

## Section

R2-5.1-101. Definitions
R2-5.1-103. Appeal Procedures
R2-5.1-104. Complaint Procedures

# ARTICLE 1. GENERAL PROVISIONS

**R2-5.1-101. Definitions**

Unless the context requires otherwise, the following definitions govern in this Chapter:

1. "Agency" for purposes of appeal from a disciplinary action, means an employing state entity that takes an appealable disciplinary action against a covered employee in covered service as defined by A.R.S. § 41-741.
2. "Appeal" means a written request filed with the Board by a permanent covered employee in covered service seeking relief from dismissal, involuntary demotion, or suspension of more than 80 working hours.
3. "Appellant" means a permanent covered employee in covered service who files an appeal with the Board.
4. "Complainant" means an employee or former employee as defined in A.R.S. § 38-531 who files a complaint with the Board.
5. "Complaint" means a written request for relief under A.R.S. § 38-532 filed with the Board by an employee or former employee.
6. "Day" means a calendar day, unless otherwise stated.
7. "Deposition" means a form of discovery in which testimony of a witness given under oath or affirmation and subject to cross examination is recorded in writing prior to a hearing.
8. "Hearing" means an administrative proceeding at which the appellant or complainant and the respondent are given the opportunity to present oral or written evidence.
9. "Hearing officer" means a person appointed by the Board, including any member of the Board to act as the

trier of fact.

10. "Respondent" means an agency or individual whose interests are adverse to those of an appellant or complainant or who will be directly affected by the Board's decision.

11. "Subpoena Ad Testificandum" means a legal document issued under authority of the Board to compel the appearance of a witness at a hearing.

12. "Subpoena duces tecum" means a legal document issued under authority of the Board to compel a witness ~~to appear and to bring specified documents, records, or things.~~ or entity to provide specific records.

**R2-5.1-103. Appeal Procedures**

**A.** Appeal. A permanent status, covered employee who wishes to appeal a disciplinary action shall, no later than 10 business days after the effective date of the action, file a written appeal with the Board in accordance with A.R.S. § 41-783. The appeal shall include:

1. The appellant's name, telephone number, address and email address, if applicable;
2. The name of the agency taking the disciplinary action being appealed;
3. The name, telephone number, address, and email address of the appellant's representative, if applicable;
4. A specific response to the causes for disciplinary action upon which the appeal is based; and
5. The action requested of the Board.

~~**B.** Change of address. An appellant or respondent shall notify the Board in writing of a change of address or telephone number within five business days of the change. If written notice is not provided, future notices by the Board that are sent to the appellant's or respondent's prior address shall be deemed to have been received.~~

~~**C**~~ **B.** Routing of appeal. The Board shall provide a copy of an appeal to the respondent within five business days from the date of filing, and not less than 20 days before the hearing.

~~**D**~~ **C.** Hearing officer. The Board, including any member of the Board, may assign an appeal or may direct staff to assign an appeal to a hearing officer for hearing. When an appeal is assigned to a hearing officer, the hearing officer is the authorized representative of the Board and is empowered to grant or refuse extensions of time, to set proceedings for hearing, to conduct the hearing and to take any action in connection with the proceedings that the Board is authorized by law to take other than making the final findings of fact, conclusions of law, and order. The assignment of an appeal to a hearing officer does not preclude the Board, including any member of the Board, from withdrawing the assignment and the Board conducting the hearing or from reassigning the appeal to another hearing officer.

**D.** Ex parte communications. A party shall not communicate, either directly or indirectly, with the hearing officer about any substantive issue in a pending matter unless:

1. All parties are present;
2. It is during a scheduled proceeding, where an absent party fails to appear after proper notice; or
3. It is written by request or motion with copies to all parties.

**E.** ~~Change of hearing officer~~ Request to strike hearing officer. A party may request to change the hearing officer assigned to hear an appeal by filing a request in writing with the Board within five business days after receipt of the

first hearing notice. The request shall state the reasons for the change of hearing officer. The Board shall not grant a change of hearing officer unless the party demonstrates a clear case of bias or prejudice.

**F.** Notice of hearing. The Board shall provide the appellant and respondent with written notice of the time, date, and place of hearing of an appeal, the docket number assigned by the Board and the name and contact information of the hearing officer at least 20 days before the date of the hearing.

**G.** Prehearing conference. The Board or the Board's hearing officer may hold a prehearing conference with the parties either in person or telephonically. Any agreement reached at the prehearing conference shall be binding at the hearing.

**H.** Time for hearing. The Board or the Board's hearing officer shall hold a hearing on an appeal within ~~30~~ 60 calendar days after the Board receives the appeal unless the Board or the Board's hearing officer finds good cause to extend the time pursuant to a written request under this subsection. A request for continuance shall be made no less than five days prior to the scheduled hearing date and shall not be granted absent a showing of good cause. Good cause includes, but is not limited to, scheduling conflicts and unavailability of witnesses. The hearing officer shall grant or deny a request for continuance in his or her discretion.

**I.** Nature of hearing.

1. Every hearing shall be open to the public unless the appellant requests a confidential hearing.
2. A party may be self-represented or may designate a representative as provided by law.
3. Every hearing shall be conducted as a quasi-judicial proceeding.
4. All witnesses shall testify under oath. ~~or by affirmation, and a record of the proceeding shall be made and kept by the Board for three years.~~
5. Hearings shall be conducted in a manner that promotes and upholds the due process rights of the parties. ~~The respondent has the burden of proof and shall present its case first.~~
6. Conclusion of hearing. The Board shall consider the hearing concluded when the Board receives the hearing officer's proposed findings of fact, conclusions of law, and recommendation or, if objections are filed, on the date the objections are filed. The Board may request that the hearing officer be present during the consideration of the appeal by the Board, and, if requested, the hearing officer shall assist. ~~and advise the Board.~~

**J.** Record of Hearing. A record of the proceeding shall be made and kept by the Board for three years. Before the Board takes final action, the parties may request that the record be available for its review or duplication. Any party requesting a copy of the record or any portion of the record shall make a request to the Board and shall pay the reasonable cost for duplication.

**K.** Burden of Proof. The respondent has the burden of proof and shall present its case first.

~~**J**~~ **L**. Rules of evidence. The Board or the Board's hearing officer shall grant a request for a confidential hearing made by the respondent if the hearing involves evidence the state is precluded by law from disclosing. The appellant, respondent, or hearing officer may request that portions of the record be sealed or adequately protected if testimony of a witness is of a sensitive nature. The Board or the Board's hearing officer is not bound by common law, statutory rules of evidence, or technical or formal rules of procedure, except the rule of privilege as recognized by

law.

~~K~~ **M.** Requesting, serving, and enforcing subpoenas. A party may request a subpoena to require the attendance of a witness or a subpoena duces tecum to require the production of a document. A party shall file with the Board a completed request for subpoena prior to the scheduled hearing date. The Board shall prepare the subpoena and return the subpoena to the requesting party for service. A person who is not a party and is at least 18 years of age may serve a subpoena. If enforcement of a subpoena for appearance of a witness is necessary, enforcement proceedings shall be taken to Superior Court by the party requesting enforcement, and enforcement shall be determined by the Superior Court. The party requesting enforcement shall name the Board as a party to any proceedings. The Board shall follow any orders entered by the court.

~~L~~ **N.** Exhibits. A party introducing an exhibit shall furnish the opposing party and the Board office with a copy of the exhibit no later than ~~10~~ 14 calendar days prior to the hearing. Both parties should be prepared with ~~two~~ three additional copies of proposed exhibits for presentation of their cases on the day of the hearing for utilization by the opposing party, witness and the hearing officer. The hearing officer shall make the determination at the hearing as to whether additional evidence and exhibits are necessary to ensure the Board has a complete record for review. The hearing officer shall consider the prejudice to the party who has not seen the additional evidence when making the determination to either include or preclude the evidence.

~~M~~ **O.** Witnesses. No later than ~~10~~ 14 days prior to the hearing, parties shall ~~exchange~~ furnish the opposing party and the Board office with a list of the witnesses each party intends to call to testify at the hearing, along with a brief statement as to the substance and relevancy of the testimony.

~~N~~ **P.** Exclusion of witnesses. Upon the request or motion of an appellant or respondent, the hearing officer may exclude from the hearing room any witness who is not at the time under examination. The hearing officer shall not exclude a party to the hearing or a party's representative.

~~O~~ **Q.** Witness fees. A witness who is not a state employee and is subpoenaed to attend a hearing is entitled to the same fee as is allowed witnesses in civil cases in the Arizona Superior Court. If the hearing officer, on the hearing officer's own motion, subpoenas a witness, fees and mileage shall be paid from funds of the Board. If the appellant or respondent subpoenas a witness, the fees and mileage shall be paid by the party requesting the witness. Reimbursement to state employees subpoenaed as witnesses is limited to payment of mileage at the current Arizona Department of Administration reimbursement rate, available from the DOA General Accounting Office website regarding travel reimbursement.

~~P~~ **R.** Telephonic testimony. The appellant or respondent may request through a motion that a party or witness testify telephonically if personal attendance would present an undue or excessive hardship for the party or witness and would not cause undue prejudice to a party. Undue prejudice will be defined as improper or unfair treatment which impacts a due process right of a party. The hearing officer shall rule on the request, in his or her discretion, whether telephonic testimony is warranted and whether the moving party will be required to pay for the cost of obtaining the telephonic testimony.

~~Q~~ **S.** Deposition. A party may request that a witness' deposition be used as evidence if the presence of a witness cannot be procured at the time of hearing. The hearing officer shall grant or deny the request.

~~R~~ T. Failure of a party to appear. If a party fails to appear at a hearing, the hearing officer shall allow the appearing party to present evidence, or vacate the hearing and return to the Board for any further action.

~~S. Conclusion of hearing. The Board shall consider the hearing concluded when the Board receives the hearing officer's proposed findings of fact, conclusions of law, and recommendation or, if objections are filed, on the date the objections are filed. The Board may request that the hearing officer be present during the consideration of the appeal by the Board, and, if requested, the hearing officer shall assist and advise the Board.~~

~~T~~ U. Proposed findings of fact. Appellant and respondent may request permission to file proposed findings of fact and conclusions of law. The hearing officer shall grant or deny the request.

~~U~~ V. Hearing officer report. The hearing officer shall submit written proposed findings of fact, conclusions of law, and a recommendation, including a brief statement of reasons for the hearing officer's findings and conclusions, within 30 days after the last date of the hearing. If the parties are required to file written closing arguments or briefs to the hearing officer, the hearing officer shall submit proposed findings, conclusions, recommendation, and reasons within 30 days after the closing arguments or briefs are due.

~~V~~ W. Objections to findings. The Board shall send a copy of the hearing officer's proposed findings of fact, conclusions of law, and recommendation to the appellant and respondent. The appellant and respondent may file written objections, but not post-hearing evidence, to the hearing officer's proposed findings of fact and conclusions of law with the Board within 15 calendar days after receipt of the hearing officer's proposed findings of fact and conclusions of law, unless extended by the Board upon a written motion filed with the Board, and shall serve copies of the objections upon the other party. The opposing party may file a written response to the objections with the Board ~~at least 48 hours before a Board meeting~~ within 15 calendar days from receipt of the appellant or respondent objections but must be 48 hours before a Board meeting. The Board shall not consider untimely objections or responses.

~~W~~ X. Withdrawal of appeal. An appellant may withdraw an appeal at any time prior to the decision of the Board by submitting a written withdrawal letter to the Board.

~~X~~ Y. State Personnel Board decision. Within the time required by law, the Board shall notify the appellant and respondent of the date, time, and place of the Board meeting at which the appeal will be decided. The Board may affirm, reverse, adopt, modify, supplement, or reject the hearing officer's proposed findings of fact and conclusions of law in whole or in part, may recommit the matter to the hearing officer with instructions, may convene itself as a hearing body, or may make any other disposition of the appeal allowed by law. The Board shall make a decision on the appeal in an open meeting within 45 days after the conclusion of the hearing and shall send a copy of the decision to the appellant and respondent by certified mail, return receipt requested. If the Board orders the respondent to reinstate the appellant, it may also order the respondent to reinstate the appellant with or without back pay in the amount and for the period the Board determined to be proper.

~~Y~~ Z. Appeal of Board decisions in court. The appellant or respondent may appeal the Board's decision to the Superior Court as provided in A.R.S. § 41-783.

**R2-5.1-104. Complaint Procedures**

**A.** Complaint. An employee or former employee as defined in A.R.S. § 38-531 who wishes to file a complaint shall, no later than 10 calendar days after the effective date of the alleged prohibited personnel practice that is the subject of the complaint, file a written complaint with the Board in accordance with A.R.S. § 38-532. The complaint shall include:

1. The complainant's name, telephone number, address, and email address, if applicable;
2. The name, telephone number, address, and email address of the complainant's representative, if applicable;
3. A concise statement of the facts constituting the alleged prohibited personnel practice;
4. The name of the agency or employee believed to have knowingly committed the prohibited personnel practice; and
5. The date and place of the alleged prohibited personnel practice.

~~**B.** Change of address. A complainant or respondent shall notify the Board in writing of a change of address or telephone number within five business days of the change. If written notice is not provided, future notices by the Board that are sent to the complainant's or respondent's prior address shall be deemed to have been received.~~

~~**C**~~ **B.** Routing of complaint. The Board shall provide a copy of a complaint to the respondent within five business days from the date of filing, and not less than 20 days before the hearing.

~~**D**~~ **C.** Amending a complaint. A complainant may move to amend a complaint. An amendment shall relate only to the facts and circumstances under the original complaint and shall not relate to new causes of action. The hearing officer shall grant or deny the motion or shall refer the motion to the Board for disposition.

~~**E**~~ **D.** Hearing officer. The Board, including any member of the Board, may assign a complaint or may direct staff to assign a complaint to a hearing officer for hearing. When a complaint is assigned to a hearing officer, the hearing officer is the authorized representative of the Board and is empowered to grant or refuse extensions of time, to set proceedings for hearing, to conduct the hearing, and to take any action in connection with the proceedings that the Board is authorized by law to take other than making the final findings of fact, conclusions of law, and order. The assignment of a complaint to a hearing officer does not preclude the Board, including any member of the Board, from withdrawing the assignment and the Board conducting the hearing or from reassigning the complaint to another hearing officer.

**E.** Ex parte communications. A party shall not communicate, either directly or indirectly, with the hearing officer about any substantive issue in pending matter unless:

a. All parties are present;
b. It is during a scheduled proceedings, where an absent party fails to appear after proper notice; or
c. It is written by request or motion with copies to all parties.

**F.** ~~Change of hearing officer~~ Request to strike Hearing Officer. A party may request to change the hearing officer assigned to hear a complaint by filing a request in writing with the Board within five business days after

receipt of the first hearing notice. The request shall state the reasons for the change of hearing officer. The Board shall not grant a change of hearing officer unless the party demonstrates a clear case of bias or prejudice.

**G.** Notice of hearing. The Board shall provide the complainant and respondent with written notice of the time, date, and place of hearing of a complaint, the docket number assigned by the Board and the name and contact information of the hearing officer at least 20 days before the date of the hearing.

**H.** Prehearing conference. The Board or the Board's hearing officer may hold a prehearing conference with the parties either in person or telephonically. Any agreement reached at the prehearing conference shall be binding at the hearing.

**I.** Time for hearing. The Board or the Board's hearing officer shall hold a hearing on a complaint within ~~30~~ 60 calendar days after the Board receives the complaint unless the Board or the Board's hearing officer finds good cause to extend the time pursuant to a written request under this subsection. A request for continuance shall be made no less than five days prior to the scheduled hearing date and shall not be granted absent a showing of good cause. Good cause includes, but is not limited to, scheduling conflicts and unavailability of witnesses. The hearing officer shall grant or deny a request for continuance in his or her discretion.

**J.** Nature of hearing.

1. Every hearing shall be open to the public unless the complainant requests a confidential hearing.
2. A party may be self-represented or may designate a representative as provided by law. Every hearing shall be conducted as a quasi-judicial proceeding.
3. All witnesses shall testify under oath or by affirmation. ~~and a record of the proceedings shall be made and kept by the Board for three years.~~
4. Hearings shall be conducted in a manner that promotes and upholds the due process rights of the parties. ~~The complainant has the burden of proof and shall present its case first.~~
5. Conclusion of hearing. The Board shall consider the hearing concluded when the Board receives the hearing officer's proposed findings of fact, conclusions of law, and recommendation or, if objections are filed, on the date the objections are filed. The Board may request that the hearing officer be present during the consideration of the complaint by the Board, and, if requested, the hearing officer shall assist.

**K.** Record of Hearing. A record of the proceeding shall be made and kept by the Board for three years. Before the Board takes final action, the parties may request that the record be available for its review or duplication. Any party requesting a copy of the record or any portion of the record shall make a request to Board office and shall pay the reasonable cost for duplication.

**L.** Burden of Proof. The complainant has the burden of proof and shall present its case first.

~~**K**~~ **M.** Rules of evidence. The Board or the Board's hearing officer shall grant a request for a confidential hearing made by the respondent if the hearing involves evidence the state is precluded by law from disclosing. The complainant, respondent, or hearing officer may request that portions of the record be sealed or adequately protected if testimony of a witness is of a sensitive nature. The Board or the Board's hearing officer is not bound by common

law, statutory rules of evidence, or technical or formal rules of procedure, except the rule of privilege as recognized by law.

~~L~~ **N.** Requesting, serving, and enforcing subpoenas. A party may request a subpoena to require the attendance of a witness or a subpoena duces tecum to require the production of a document. A party shall file with the Board a completed request for subpoena prior to the scheduled hearing date. The Board shall prepare the subpoena and return the subpoena to the requesting party for service. A person who is not a party and is at least 18 years of age may serve a subpoena. If enforcement of a subpoena for appearance of a witness is necessary, enforcement proceedings shall be taken to Superior Court by the party requesting enforcement, and enforcement shall be determined by the Superior Court. The party requesting enforcement shall name the Board as a party to any proceedings. The Board shall follow any orders entered by the court.

~~M~~ **O.** Exhibits; Witness List. A party introducing an exhibit shall furnish the opposing party and the Board with a copy of the exhibit no later than ~~10~~ 14 calendar days prior to the hearing. Both parties should be prepared with ~~two~~ three additional copies of proposed exhibits for presentation of their cases on the day of the hearing for utilization by the opposing party, witness and the hearing officer. The hearing officer shall make the determination at the hearing as to whether additional evidence and exhibits are necessary to ensure the Board has a complete record for review. The hearing officer shall consider the prejudice to the party who has not seen the additional evidence when making the determination to either include or preclude the evidence. In addition to, parties shall furnish the opposing party and the Board office with a list of the witnesses each party intends to call to testify at the hearing, along with a brief statement as to the substance and relevancy of the testimony.

~~**M.** Witnesses. No later than 10 days prior to the hearing, parties shall exchange a list of the witnesses each party intends to call to testify at the hearing, along with a brief statement as to the substance and relevancy of the testimony.~~

~~O~~ **P.** Exclusion of witnesses. Upon the request or motion of a complainant or respondent, the hearing officer may exclude from the hearing room any witness who is not at the time under examination. The hearing officer shall not exclude a party to the hearing or a party's representative.

~~P~~ **Q.** Witness fees. A witness who is not a state employee and is subpoenaed to attend a hearing is entitled to the same fee as is allowed witnesses in civil cases in the Arizona Superior Court. If the hearing officer, on the hearing officer's own motion, subpoenas a witness, fees and mileage shall be paid from funds of the Board. If the complainant or respondent subpoenas a witness, the fees and mileage shall be paid by the party requesting the witness. Reimbursement to state employees subpoenaed as witnesses is limited to payment of mileage at the current Arizona Department of Administration reimbursement rate, available from the DOA General Accounting Office website regarding travel reimbursement.

~~Q~~ **R.** Telephonic testimony. The complainant or respondent may request through a request or motion that a party or witness testify telephonically if personal attendance would present an undue or excessive hardship for the party or witness and would not cause undue prejudice to a party. Undue prejudice will be defined as improper or unfair treatment which impacts a due process right of a party. The hearing officer shall rule on the request, in his or her

discretion, whether telephonic testimony is warranted and whether the moving party will be required to pay for the cost of obtaining the telephonic testimony.

~~R~~ **S.** Deposition. A party may request that a witness' deposition be used as evidence if the presence of a witness cannot be procured at the time of hearing. The hearing officer shall grant or deny the request.

~~S~~ **T.** Failure of a party to appear. If a party fails to appear at a hearing, the hearing officer shall allow the appearing party to present evidence, or vacate the hearing and return to the Board for any further action.

~~T. Conclusion of hearing. The Board shall consider the hearing concluded when the Board receives the hearing officer's proposed findings of fact, conclusions of law, and recommendation or, if objections are filed, on the date the objections are filed. The Board may request that the hearing officer be present during the consideration of the complaint by the Board, and, if requested, the hearing officer shall assist and advise the Board.~~

**U.** Proposed findings of fact. Complainant and respondent may request permission to file proposed findings of fact and conclusions of law. The hearing officer shall grant or deny the request.

**V.** Hearing officer report. The hearing officer shall submit written proposed findings of fact, conclusions of law, and a recommendation, including a brief statement of reasons for the hearing officer's findings and conclusions, within 30 days after the last date of the hearing. If the parties are required to file written closing arguments or briefs to the hearing officer, the hearing officer shall submit proposed findings, conclusions, recommendation, and reasons within 30 days after the closing arguments or briefs are due.

**W.** Objections to findings. The Board shall send a copy of the hearing officer's proposed findings of fact, conclusions of law, and recommendation to the complainant and respondent. The complainant and respondent may file written objections, but not post-hearing evidence, to the hearing officer's proposed findings of fact and conclusions of law with the Board within 15 calendar days after receipt of the hearing officer's proposed findings of fact and conclusions of law, unless extended by the Board upon a written motion filed with the Board, and shall serve copies of the objections upon the other party. The opposing party may file a written response to the objections with the Board ~~at least 48 hours before a Board meeting~~ within 15 calendar days from receipt of the appellant or respondent objections but must be 48 hours before a Board meeting. The Board shall not consider untimely objections or responses.

**X.** Withdrawal of complaint. A complainant may submit a written request to withdraw a complaint at any time prior to the decision of the Board. The Board shall rule on the request

**Y.** State Personnel Board decision. Within the time required by law, the Board shall notify the complainant and respondent of the date, time, and place of the Board meeting at which the complaint will be decided. The Board may affirm, reverse, adopt, modify, supplement, or reject the hearing officer's proposed findings of fact and conclusions of law in whole or in part, may recommit the matter to the hearing officer with instructions, may convene itself as a hearing body, or may make any other disposition of the complaint allowed by law. The Board shall determine the validity of the complaint and whether a prohibited personnel practice was committed against the employee or former employee as a result of the employee or former employee's disclosure of information of a matter of public concern. The Board shall make a decision on the complaint in an open meeting

within 45 days after the conclusion of the hearing and shall send a copy of the decision to the complainant and respondent by certified mail, return receipt requested. If the Board determines a prohibited personnel practice was committed as a result of a disclosure of information by the employee or former employee, the Board shall act in accordance with the requirements of A.R.S. § 38-532.

**Z.** Appeal of Board decisions in court. The complainant or respondent may appeal the Board's decision to the Superior Court as provided inA.R.S.§38-5

**AGENCY CERTIFICATE**

**NOTICE OF FINAL EXPEDITED RULEMAKING**

**1. Agency name:**

Arizona State Personnel Board

**2. Chapter # and heading:**

Title 2. Administration, Ch. 5.1 State Personnel Board

**3. *Code* Citation for the Chapter:**

Title 2. A.A.C., Chapter 5.1 State Personnel Board

| **4. Article, Part, or Section Affected (as applicable)** | **Rulemaking Action** |
|---|---|
| R2-5.1-101 | Amend |
| R2-5.1-103 | Amend |
| R2-5.1-104 | Amend |

**5. The rules contained in this rulemaking package are true and correct as made.**

Yes.

**6.**

| Zachariah Tolliver | February 9, 2025 |
|---|---|
| **Signature of agency chief executive officer in ink*** | **Date signed** |
| Zachariah Tolliver | Executive Director |
| **Typed name of signer*** | **Title of signer** |

* Signature of signer and typed name must match

**AGENCY RECEIPT**

**NOTICE OF FINAL EXPEDITED RULEMAKING**

**1. Agency name:**

Arizona State Personnel Board

**2. Chapter number and heading:**

Chapter 5.1 State Personnel Board

**3. *Code* Citation for the Chapter:**

Title 2. A.A.C., Ch. 5.1 State Personnel Board

**4. Any Subchapter, if applicable; Article; Part, if applicable; and Section involved in the rulemaking, listed in alphabetical and numerical order:**

Article 1. General Provisions

R2-5.1-101

Subsection 11 and 12

R2-5.1-103

-Subsection: D, F, I, J, K, P, U, W

R2-5.1-104

-Subsection; E, F, G, J, K, L, O, P, R, T, V,

| Article, Part, or Section Affected (as applicable) | Rulemaking Action |
|---|---|
| R2-5.1-101 | Amend |
| R2-5.1-103 | Amend |
| R2-5.1-104 | Amend |

Gmail

Zachariah Tolliver <zachariah.tolliver@personnel.az.gov>

# Permission to Proceed w/ Rulemaking

2 messages

**John Owens** <jowens@az.gov> Wed, Jul 24, 2024 at 1:09 PM
To: Zachariah Tolliver <zachariah.tolliver@personnel.az.gov>

Zachariah,

As specified in ARS 41-1039, this serves as approval for the State Personnel Board to proceed with the rulemaking amending R2-5.1-101 through R2-5.1-104, as outlined in the attached documents.

Please let me know if you have any questions. I look forward to receiving your request to proceed to GRRC at the conclusion of the process.

Warmly,
John

OFFICE OF THE GOVERNOR
KATIE HOBBS

**John Owens (He/Him/His)**

Operations & Policy Advisor

*jowens@az.gov*

Office of Governor Katie Hobbs

1700 W Washington St.

Phoenix, AZ 85007

Cell: 602.679.5610

https://azgovernor.gov

**2 attachments**

**Administrative Code - Title 2. Ch. 5.1 State Personnel Board - MASTER (2).pdf**
183K

**Administrative Code - Title 2. Ch. 5.1 Notes (2).pdf**
502K

**Zachariah Tolliver** <zachariah.tolliver@personnel.az.gov> Wed, Jul 24, 2024 at 1:50 PM
To: John Owens <jowens@az.gov>

Thank you!

**Zachariah Tolliver**
Executive Director
Arizona State Personnel Board
1740 W. Adams St., Suite 3007
Phoenix, AZ 85007

Gmail

**Zachariah Tolliver <zachariah.tolliver@personnel.az.gov>**

# Permission to Proceed w/ Rulemaking

1 message

**John Owens** <jowens@az.gov> Thu, Feb 6, 2025 at 1:08 PM
To: Zachariah Tolliver <zachariah.tolliver@personnel.az.gov>

Zachariah,

This serves as the Arizona State Personnel Board's Permission to Proceed to GRRC, per ARS 41-1039, with the Notice of Final Rulemaking, amending AAC R-5.1-101, R2-5.1-103, and R2-5.1-104 as outlined in the attached documents.

Please let me know if you have any questions.

Warmly,
John

ARIZONA
OFFICE OF THE GOVERNOR
KATIE HOBBS

**John Owens (He/Him/His)**
Operations & Policy Advisor
602.679.5610
azgovernor.gov

**2 attachments**

**Administrative Code - Title 2. Ch. 5.1 Arizona State Personnel Board.pdf**
186K

**Arizona Adminsitrative Register - Sept. 20, 2024 - V. 30, Issue 38.pdf**
1131K

# Arizona State Personnel Board

## TITLE 2. ADMINISTRATION

## CHAPTER 5.1. STATE PERSONNEL BOARD

(Authority: A.R.S. § 41-781 et seq.)

*Laws 1983, Ch. 98. § 162 limited authority of the Personnel Board. Prior rules and regulations for the Board were found in A.C.R.R. Title 2, Chapter 5, now consisting of rules and regulations of Personnel Administration, Department of Administration.*

### ARTICLE 1. GENERAL PROVISIONS

Section

R2-5.1-101. Definitions
R2-5.1-102. Personnel Board Procedures
R2-5.1-103. Appeal Procedures
R2-5.1-104. Complaint Procedures

### ARTICLE 1. GENERAL PROVISIONS

**R2-5.1-101. Definitions**

Unless the context requires otherwise, the following definitions govern in this Chapter:

1. "Agency" for purposes of appeal from a disciplinary action, means an employing state entity that takes an appealable disciplinary action against a covered employee in covered service as defined by A.R.S. § 41- 741.
2. "Appeal" means a written request filed with the Board by a permanent covered employee in covered service seeking relief from dismissal, involuntary demotion, or suspension of more than 80 working hours.
3. "Appellant" means a permanent covered employee in covered service who files an appeal with the Board.
4. "Complainant" means an employee or former employee as defined in A.R.S. § 38-531 who files a complaint with the Board.
5. "Complaint" means a written request for relief under A.R.S. § 38-532 filed with the Board by an employee or former employee.
6. "Day" means a calendar day, unless otherwise stated.
7. "Deposition" means a form of discovery in which testimony of a witness given under oath or affirmation and subject to cross-examination is recorded in writing prior to a hearing.
8. "Hearing" means an administrative proceeding at which the appellant or complainant and the respondent are given the opportunity to present oral or written evidence.
9. "Hearing officer" means a person appointed by the Board, including any member of the Board to act as the trier of fact.
10. "Respondent" means an agency or individual whose interests are adverse to those of an appellant or complainant or who will be directly affected by the Board's decision.
11. "Subpoena Ad Testificandum" means a legal document issued under authority of the Board to compel the appearance of a witness at a hearing.
12. "Subpoena duces tecum" means a legal document issued under authority of the Board to compel a witness or entity to provide specific records.

**Historical Note**

Adopted effective November 10, 1983 (Supp. 83-6). Former Section R2-5.1-101 renumbered to R2-5.1-102; new Section R2-5.1-101 adopted by final rulemaking at 7 A.A.R. 44, effective December 13, 2000 (Supp. 00-4). Amended by final rulemaking at 9 A.A.R. 22, effective February 7, 2003 (Supp. 02-4). Amended by exempt rulemaking at 18 A.A.R. 2926, effective October 29, 2012 (Supp. 12-4). Amended by final rulemaking at 20 A.A.R. 1379, effective August 3, 2014 (Supp. 14-2).

**R2-5.1-102. Personnel Board Procedures**

**A.** Meetings. The Board shall provide public notice of the date, time, and place of its monthly meetings and any special, emergency, or other meetings it deems necessary. The Board shall give notice as required by law.

**B.** Agenda. The agenda shall be mailed or electronically provided, as required by law, to each member of the Board, a state agency indicating an interest in receiving the agenda, and all parties in a matter scheduled for a Board meeting. The Board's failure to mail or electronically provide the agenda, or failure of an agency to receive the agenda, does not affect the validity of the meeting or of any action taken by the Board at the meeting.

**C.** Minutes. The Board shall record in the Board's minutes the date, time, and place of each meeting of the Board, names of the Board members present, all official acts of the Board, the votes of each Board member except when the acts are unanimous, and, when requested by a member, a member's dissent with the member's reasons. Board staff shall prepare and present the minutes for approval by the Board members at the next regular meeting. The Board shall provide copies of the approved minutes to the appellant, complainant, and respondent within seven days of the regular meeting at which the minutes are approved.

**Historical Note**

Adopted effective November 10, 1983 (Supp. 83-6). Amended subsection (B)(2) effective March 3, 1988 (Supp. 88-1). Corrections to subsections (B)(2) and (4) from revised format edition published February 1991 (Supp. 96-1). Former Section R2-5.1-102 renumbered to R2-5.1-103; new Section R2-5.1-102 renumbered from R2-5.1-101 and amended by final rulemaking at 7 A.A.R. 44, effective December 13, 2000 (Supp. 00-4). Manifest typographical error corrected in Section heading (Supp. 01-2). Amended by final rulemaking at 9 A.A.R. 22, effective February 7, 2003 (Supp. 02-4). Amended by final rulemaking at 20 A.A.R. 1379, effective August 3, 2014 (Supp. 14-2).

**R2-5.1-103. Appeal Procedures**

**A.** Appeal. A permanent status, covered employee who wishes to appeal a disciplinary action shall, no later than 10 business days after the effective date of the action, file a written appeal with the Board in accordance with A.R.S. § 41-783. The appeal shall include:

1. The appellant's name, telephone number, address and e-mail address, if applicable;
2. The name of the agency taking the disciplinary action being appealed;
3. The name, telephone number, address, and e-mail address of the appellant's representative, if applicable;

4. A specific response to the causes for disciplinary action upon which the appeal is based; and
5. The action requested of the Board.

**B.** Routing of appeal. The Board shall provide a copy of an appeal to the respondent within five business days from the date of filing, and not less than 20 days before the hearing.

**C.** Hearing officer. The Board, including any member of the Board, may assign an appeal or may direct staff to assign an appeal to a hearing officer for hearing. When an appeal is assigned to a hearing officer, the hearing officer is the authorized representative of the Board and is empowered to grant or refuse extensions of time, to set proceedings for hearing, to conduct the hearing and to take any action in connection with the proceedings that the Board is authorized by law to take other than making the final findings of fact, conclusions of law, and order. The assignment of an appeal to a hearing officer does not preclude the Board, including any member of the Board, from withdrawing the assignment and the Board conducting the hearing or from reassigning the appeal to another hearing officer.

**D.** Ex parte communications. A party shall not communicate, either directly or indirectly, with the hearing officer about any substantive issue in a pending matter unless:

1. All parties are present;
2. It is during a scheduled proceeding, where an absent party fails to appear after proper notice; or
3. It is written by request or motion with copies to all parties.

**E.** Request to Strike hearing officer. A party may request to change the hearing officer assigned to hear an appeal by filing a request in writing with the Board within five business days after receipt of the first hearing notice. The request shall state the reasons for the change of hearing officer. The Board shall not grant a change of hearing officer unless the party demonstrates a clear case of bias or prejudice.

**F.** Notice of hearing. The Board shall provide the appellant and respondent with written notice of the time, date, and place of hearing of an appeal, the docket number assigned by the Board and the name and contact information of the hearing officer at least 30 calendar days before the date of the hearing.

**G.** Prehearing conference. The Board or the Board's hearing officer may hold a prehearing conference with the parties either in person or telephonically. Any agreement reached at the pre-hearing conference shall be binding at the hearing.

**H.** Time for hearing. The Board or the Board's hearing officer shall hold a hearing on an appeal within 60 calendar days after the Board receives the appeal unless the Board or the Board's hearing officer finds good cause to extend the time pursuant to a written request under this subsection. A request for continuance shall be made no less than five days prior to the scheduled hearing date and shall not be granted absent a showing of good cause. Good cause includes, but is not limited to, scheduling conflicts and unavailability of witnesses. The hearing officer shall grant or deny a request for continuance in his or her discretion.

**I.** Nature of hearing.

1. Every hearing shall be open to the public unless the appellant requests a confidential hearing.
2. A party may be self-represented or may designate a representative as provided by law.
3. Every hearing shall be conducted as a quasi-judicial proceeding.
4. All witnesses shall testify under oath or by affirmation.
5. Hearings shall be conducted in a manner that promotes and upholds the due process rights of the parties.
6. Conclusion of hearing. The Board shall consider the hearing concluded when the Board receives the hearing officer's proposed findings of fact, conclusions of law, and recommendation or, if objections are filed, on the date the objections are filed. The Board may request that the hearing officer be present during the consideration of the appeal by the Board, and, if requested, the hearing officer shall assist.

**J.** Record of Hearing. A record of the proceeding shall be made and kept by the Board for three years. Before the Board takes final action, the parties may request that the record be available for its review or duplication. Any party requesting a copy of the record or any portion of the record shall make a request to the Board and shall pay the reasonable cost for duplication.

**K.** Burden of Proof. The respondent has the burden of proof and shall present its case first.

**L.** Rules of evidence. The Board or the Board's hearing officer shall grant a request for a confidential hearing made by the respondent if the hearing involves evidence the state is precluded by law from disclosing. The appellant, respondent, or hearing officer may request that portions of the record be sealed or adequately protected if testimony of a witness is of a sensitive nature. The Board or the Board's hearing officer is not bound by common law, statutory rules of evidence, or technical or formal rules of procedure, except the rule of privilege as recognized by law.

**M.** Requesting, serving, and enforcing subpoenas. A party may request a subpoena to require the attendance of a witness or a subpoena duces tecum to require the production of a document. A party shall file with the Board a completed request for subpoena prior to the scheduled hearing date. The Board shall prepare the subpoena and return the subpoena to the requesting party for service. A person who is not a party and is at least 18 years of age may serve a subpoena. If enforcement of a subpoena for appearance of a witness is necessary, enforcement proceedings shall be taken to Superior Court by the party requesting enforcement, and enforcement shall be determined by the Superior Court. The party requesting enforcement shall name the Board as a party to any proceedings. The Board shall follow any orders entered by the court.

**N.** Exhibits. A party introducing an exhibit shall furnish the opposing party and the Board office with a copy of the exhibit no later than 14 calendar days prior to the hearing. Both parties should be prepared with three additional copies of proposed exhibits for presentation of their cases on the day of the hearing for utilization by the opposing party, witness, and the hearing officer. The hearing officer shall make the determination at the hearing as to whether additional evidence and exhibits are necessary to ensure the Board has a complete record for review. The hearing officer shall consider the prejudice to the party who has not seen the additional evidence when making the determination to either include or preclude the evidence.

**O.** Witnesses. No later than 14 days prior to the hearing, parties shall furnish the opposing party and the Board office with a list of the witnesses each party intends to call to testify at the hearing, along with a brief statement as to the substance and relevancy of the testimony.

**P.** Exclusion of witnesses. Upon the request or motion of an appellant or respondent, the hearing officer may exclude from the hearing room any witness who is not at the time under examination. The hearing officer shall not exclude a party to the hearing or a party's representative.

**Q.** Witness fees. A witness who is not a state employee and is subpoenaed to attend a hearing is entitled to the same fee as is allowed witnesses in civil cases in the Arizona Superior Court. If the hearing officer, on the hearing officer's own motion, subpoenas a witness, fees and mileage shall be paid from funds of the Board. If the appellant or respondent subpoenas a witness, the fees and mileage shall be paid by the party requesting the witness. Reimbursement to state employees subpoenaed as witnesses is limited to payment of mileage at the current Arizona Department of Administration reimbursement rate, available from the DOA General Accounting Office website regarding travel reimbursement.

**R.** Telephonic testimony. The appellant or respondent may request through a motion that a party or witness testify telephonically if personal attendance would present an undue or excessive hardship for the party or witness and would not cause undue prejudice to a party. Undue prejudice will be defined as improper or unfair treatment which impacts a due process right of a party. The hearing officer shall rule on the request, in his or her discretion, whether telephonic testimony is warranted and whether the moving party will be required to pay for the cost of obtaining the telephonic testimony.

**S.** Deposition. A party may request that a witness' deposition be used as evidence if the presence of a witness cannot be procured at the time of hearing. The hearing officer shall grant or deny the request.

**T.** Failure of a party to appear. If a party fails to appear at a hearing, the hearing officer shall allow the appearing party to present evidence, or vacate the hearing and return to the Board for any further action.

**U.** Proposed finding of Facts. Appellant and respondent may request permission to file proposed findings of fact and conclusions of law. The hearing officer shall grant or deny the request.

**V.** Hearing officer report. The hearing officer shall submit written proposed findings of fact, conclusions of law, and a recommendation, including a brief statement of reasons for the hearing officer's findings and conclusions, within 30 days after the last date of the hearing. If the parties are required to file written closing arguments or briefs to the hearing officer, the hearing officer shall submit proposed findings, conclusions, recommendation, and reasons within 30 days after the closing arguments or briefs are due.

**W.** Objections to findings. The Board shall send a copy of the hearing officer's proposed findings of fact, conclusions of law, and recommendation to the appellant and respondent. The appellant and respondent may file written objections, but not post-hearing evidence, to the hearing officer's proposed findings of fact and conclusions of law with the Board within 15 calendar days after receipt of the hearing officer's proposed findings of fact and conclusions of law, unless extended by the Board upon a written motion filed with the Board, and shall serve copies of the objections upon the other party. The opposing party may file a written response to the objections with the Board within 15 calendar days from receipt of the appellant or respondent objection but must be 48 hours prior to the Board meeting. The Board shall not consider untimely objections or responses.

**X.** Withdrawal of appeal. An appellant may withdraw an appeal at any time prior to the decision of the Board by submitting a written withdrawal letter to the Board.

**Y.** State Personnel Board decision. Within the time required by law, the Board shall notify the appellant and respondent of the date, time, and place of the Board meeting at which the appeal will be decided. The Board may affirm, reverse, adopt, modify, supplement, or reject the hearing officer's proposed findings of fact and conclusions of law in whole or in part, may recommit the matter to the hearing officer with instructions, may convene itself as a hearing body, or may make any other disposition of the appeal allowed by law. The Board shall make a decision on the appeal in an open meeting within 45 days after the conclusion of the hearing and shall send a copy of the decision to the appellant and respondent by certified mail, return receipt requested. If the Board orders the respondent to reinstate the appellant, it may also order the respondent to reinstate the appellant with or without back pay in the amount and for the period the Board determined to be proper.

**Z.** Appeal of Board decisions in court. The appellant or respondent may appeal the Board's decision to the Superior Court as provided in A.R.S. § 41-783.

**Historical Note**

New Section renumbered from R2-5.1-103 renumbered from R2-5.1-102 and amended by final rulemaking at 7 A.A.R. 44, effective December 13, 2000 (Supp. 00-4). Amended by final rulemaking at 9 A.A.R. 22, effective February 7, 2003 (Supp. 02-4). Amended by exempt rulemaking at 18 A.A.R. 2926, effective October 29, 2012 (Supp. 12-4). Amended by final rulemaking at 20 A.A.R. 1379, effective August 3, 2014 (Supp. 14-2).

**R2-5.1-104. Complaint Procedures**

**A.** Complaint. An employee or former employee as defined in A.R.S. § 38-531 who wishes to file a complaint shall, no later than 10 calendar days after the effective date of the alleged prohibited personnel practice that is the subject of the complaint, file a written complaint with the Board in accordance with A.R.S. § 38-532. The complaint shall include:

1. The complainant's name, telephone number, address, and e-mail address, if applicable;
2. The name, telephone number, address, and e-mail address of the complainant's representative, if applicable;
3. A concise statement of the facts constituting the alleged prohibited personnel practice;
4. The name of the agency or employee believed to have knowingly committed the prohibited personnel practice; and
5. The date and place of the alleged prohibited personnel practice.

**B.** Routing of complaint. The Board shall provide a copy of a complaint to the respondent within five business days from the date of filing, and not less than 20 days before the hearing.

**C.** Amending a complaint. A complainant may move to amend a complaint. An amendment shall relate only to the facts and circumstances under the original complaint and shall not relate to new causes of action. The hearing officer shall grant or deny the motion or shall refer the motion to the Board for disposition.

**D.** Hearing officer. The Board, including any member of the Board, may assign a complaint or may direct staff to assign a complaint to a hearing officer for hearing. When a complaint is assigned to a hearing officer, the hearing officer is the authorized representative of the Board and is empowered to grant or refuse extensions of time, to set proceedings for hearing, to conduct the hearing, and to take any action in connection with the proceedings that the Board is authorized by law to take other than making the final findings of fact, conclusions of law, and order. The assignment of a complaint to a hearing officer does not preclude the Board, including any member of the Board, from withdrawing the assignment and the Board conducting the hearing or from reassigning the complaint to another hearing officer.

**E.** Ex parte communications. A party shall not communicate, either directly or indirectly, with the hearing officer about any substantive issue in pending matter unless:

a. All parties are present;
b. It is during a scheduled proceedings, where an absent party fails to appear after proper notice; or
c. It is written by request or motion with copies to all parties.

**F.** Request to strike hearing officer. A party may request to change the hearing officer assigned to hear a complaint by filing a request in writing with the Board within five business days after receipt of the first hearing notice. The request shall state the reasons for the change of hearing officer. The Board shall not grant a change of hearing officer unless the party demonstrates a clear case of bias or prejudice.

**G.** Notice of hearing. The Board shall provide the complainant and respondent with written notice of the time, date, and place of hearing of a complaint, the docket number assigned by the Board and the name and contact information of the hearing

officer at least 30 calendar days before the date of the hearing.

**H.** Prehearing conference. The Board or the Board's hearing officer may hold a prehearing conference with the parties either in person or telephonically. Any agreement reached at the pre-hearing conference shall be binding at the hearing.

**I.** Time for hearing. The Board or the Board's hearing officer shall hold a hearing on a complaint within 60 calendar days after the Board receives the complaint unless the Board or the Board's hearing officer finds good cause to extend the time pursuant to a written request under this subsection. A request for continuance shall be made no less than five days prior to the scheduled hearing date and shall not be granted absent a showing of good cause. Good cause includes, but is not limited to, scheduling conflicts and unavailability of witnesses. The hearing officer shall grant or deny a request for continuance in his or her discretion.

**J.** Nature of hearing.

1. Every hearing shall be open to the public unless the complainant requests a confidential hearing.
2. A party may be self-represented or may designate a representative as provided by law.
3. Every hearing shall be conducted as a quasi- judicial proceeding.
4. All witnesses shall testify under oath or by affirmation.
5. Hearings shall be conducted in a manner that promotes and upholds the due process rights of the parties.
6. Conclusion of hearing. The Board shall consider the hearing concluded when the Board receives the hearing officer's proposed findings of fact, conclusions of law, and recommendation or, if objections are filed, on the date the objections are filed. The Board may request that the hearing officer be present during the consideration of the complaint by the Board, and, if requested, the hearing officer shall assist.

**K.** Record of Hearing. A record of the proceeding shall be made and kept by the Board for three years. Before the Board takes final action, the parties may request that the record be available for its review or duplication. Any party requesting a copy of the record or any portion of the record shall make a request to Board office and shall pay the reasonable cost for duplication.

**L.** Burden of Proof. The complainant has the burden of proof and shall present its case first.

**M.** Rules of evidence. The Board or the Board's hearing officer shall grant a request for a confidential hearing made by the respondent if the hearing involves evidence the state is precluded by law from disclosing. The complainant, respondent, or hearing officer may request that portions of the record be sealed or adequately protected if testimony of a witness is of a sensitive nature. The Board or the Board's hearing officer is not bound by common law, statutory rules of evidence, or technical or formal rules of procedure, except the rule of privilege as recognized by law.

**N.** Requesting, serving, and enforcing subpoenas. A party may request a subpoena to require the attendance of a witness or a subpoena duces tecum to require the production of a document. A party shall file with the Board a completed request for subpoena prior to the scheduled hearing date. The Board shall prepare the subpoena and return the subpoena to the requesting party for service. A person who is not a party and is at least 18 years of age may serve a subpoena. If enforcement of a subpoena for appearance of a witness is necessary, enforcement proceedings shall be taken to Superior Court by the party requesting enforcement, and enforcement shall be determined by the Superior Court. The party requesting enforcement shall name the Board as a party to any proceedings. The Board shall follow any orders entered by the court.

**O.** Exhibits; Witness List. A party introducing an exhibit shall furnish the opposing party and the Board with a copy of the exhibit no later than 14 calendar days prior to the hearing. Both parties should be prepared with three additional copies of proposed exhibits for presentation of their cases on the day of the hearing for utilization by the witness, opposing party, and the hearing officer. The hearing officer shall make the determination at the hearing as to whether additional evidence and exhibits are necessary to ensure the Board has a complete record for review. The hearing officer shall consider the prejudice to the party who has not seen the additional evidence when making the determination to either include or preclude the evidence. In addition to, parties shall exchange a list of the witnesses each party intends to call to testify at the hearing, along with a brief statement as to the substance and relevancy of the testimony.

**P.** Exclusion of witnesses. Upon the request or motion of a complainant or respondent, the hearing officer may exclude from the hearing room any witness who is not at the time under examination. The hearing officer shall not exclude a party to the hearing or a party's representative.

**Q.** Witness fees. A witness who is not a state employee and is subpoenaed to attend a hearing is entitled to the same fee as is allowed witnesses in civil cases in the Arizona Superior Court. If the hearing officer, on the hearing officer's own motion, subpoenas a witness, fees and mileage shall be paid from funds of the Board. If the complainant or respondent subpoenas a witness, the fees and mileage shall be paid by the party requesting the witness. Reimbursement to state employees subpoenaed as witnesses is limited to payment of mileage at the current Arizona Department of Administration reimbursement rate, available from the DOA General Accounting Office website regarding travel reimbursement.

**R.** Telephonic testimony. The complainant or respondent may request through a request or motion that a party or witness testify telephonically if personal attendance would present an undue or excessive hardship for the party or witness and would not cause undue prejudice to a party. Undue prejudice will be defined as improper or unfair treatment which impacts a due process right of a party. The hearing officer shall rule on the request, in his or her discretion, whether telephonic testimony is warranted and whether the moving party will be required to pay for the cost of obtaining the telephonic testimony.

**S.** Deposition. A party may request that a witness' deposition be used as evidence if the presence of a witness cannot be procured at the time of hearing. The hearing officer shall grant or deny the request.

**T.** Failure of a party to appear. If a party fails to appear at a hearing, the hearing officer shall allow the appearing party to present evidence, or vacate the hearing and return to the Board for any further action.

**U.** Proposed findings of facts. Complainant and respondent may request permission to file proposed findings of fact and conclusion of law. The hearing officer shall grant or deny the request.

**V.** Hearing officer report. The hearing officer shall submit written proposed findings of fact, conclusions of law, and a recommendation, including a brief statement of reasons for the hearing officer's findings and conclusions, within 30 days after the last date of the hearing. If the parties are required to file writ- ten closing arguments or briefs to the hearing officer, the hearing officer shall submit proposed findings, conclusions, recommendation, and reasons within 30 days after the closing arguments or briefs are due.

**W.** Objections to findings. The Board shall send a copy of the hearing officer's proposed findings of fact, conclusions of law, and recommendation to the complainant and respondent. The complainant and respondent may file written objections, but not post-hearing evidence, to the hearing officer's proposed findings of fact and conclusions of law with the Board within 15 calendar days after receipt of the hearing officer's proposed findings of fact and conclusions of law, unless extended by the Board upon a written motion filed with the Board, and shall

serve copies of the objections upon the other party. The opposing party may file a written response to the objections with the Board within 15 calendar days from receipt of the appellant or respondent objection but must be 48 hours prior to the Board meeting. The Board shall not consider untimely objections or responses.

**X.** Withdrawal of complaint. A complainant may submit a written request to withdraw a complaint at any time prior to the decision of the Board. The Board shall rule on the request.

**Y.** State Personnel Board decision. Within the time required by law, the Board shall notify the complainant and respondent of the date, time, and place of the Board meeting at which the complaint will be decided. The Board may affirm, reverse, adopt, modify, supplement, or reject the hearing officer's proposed findings of fact and conclusions of law in whole or in part, may recommit the matter to the hearing officer with instructions, may convene itself as a hearing body, or may make any other disposition of the complaint allowed by law. The Board shall determine the validity of the complaint and whether a prohibited personnel practice was committed against the employee or former employee as a result of the employee or former employee's disclosure of information of a matter of public concern. The Board shall make a decision on the complaint in an open meeting within 45 days after the conclusion of the hearing and shall send a copy of the decision to the complainant and respondent by certified mail, return receipt requested. If the Board determines a prohibited personnel practice was committed as a result of a disclosure of information by the employee or former employee, the Board shall act in accordance with the requirements of A.R.S. § 38-532.

**Z.** Appeal of Board decisions in court. The complainant or respondent may appeal the Board's decision to the Superior Court as provided in A.R.S. § 38-532.

**Historical Note**

New Section made by final rulemaking at 9 A.A.R. 22, effective February 7, 2003 (Supp. 02-4). Amended by final rulemaking at 20 A.A.R. 1379, effective August 3, 2014 (Supp. 14-2)

# 38-1004. Appeals; hearings

A. A classified law enforcement officer who is suspended, demoted or dismissed by the department head, after a hearing and review before the merit system council, may have the determination of the council reviewed pursuant to title 12, chapter 7, article 6 in the superior court of the county in which the law enforcement officer resides. If the determination of the council is overruled by the court, the law enforcement officer shall be reinstated in the officer's position and the officer shall be reimbursed for any compensation withheld pending determination by the council and court.

B. If the order of the department head was for a suspension greater than sixteen hours, demotion or dismissal and the court exonerates the officer, the court may award, in whole or in part, the reasonable costs and attorney fees that the law enforcement officer incurred or were incurred on behalf of the law enforcement officer in the court proceedings. The award of attorney fees by the court shall not exceed $15,000. An award of attorney fees does not apply if either of the following applies:

1. The order of the department head was not for disciplinary purposes but was for administrative purposes such as a reduction in force.

2. The disciplinary action related to off-duty activities unrelated to the required duties of the law enforcement officer. If the department head appeals the decision of the court, the court's award of any costs or attorney fees to an officer shall be stayed pending the conclusion of the appeal. If the department head's decision is upheld on appeal, the award of costs or attorney fees in favor of the officer shall be reversed.

C. If a law enforcement officer of a county, city or town described in section 38-1007 appeals from a decision of a department head in connection with the law enforcement officer's suspension greater than sixteen hours, demotion or dismissal and the county, city or town maintains a merit system or civil service plan for its employees, and the merit system or civil service plan appeals board exonerates the officer, the merit system or civil service plan appeals board may award, in whole or in part, the reasonable costs and attorney fees that the law enforcement officer incurred or were incurred on behalf of the law enforcement officer in connection with the appeal. The amount of the award by the merit system or civil service plan appeals board shall not exceed $10,000. If the department head appeals the decision of the merit system or civil service appeals board, the award of attorney fees shall be stayed pending the conclusion of the appeal. If the officer appeals to court the decision of the merit system or civil service plan appeals board, or of the city or town council or board of supervisors if the city, town or county has no such board, and the court exonerates the officer, the court may award, in whole or in part, the reasonable costs and attorney fees that the law enforcement officer incurred or were incurred on behalf of the law enforcement officer in connection with the appeal. The award of attorney fees by the governing body or court shall not exceed $15,000. An award of attorney fees under this subsection does not apply if either of the following applies:

1. The order of the department head was not for disciplinary purposes but was for administrative purposes such as a reduction in force.

2. The disciplinary action related to off-duty activities unrelated to the required duties of the law enforcement officer. If the department head appeals the decision of the court, the court's award of any costs or attorney fees to an officer shall be stayed pending the conclusion of the appeal. If the department head's decision is upheld on appeal, the award of costs or attorney fees in favor of the officer shall be reversed.

D. A department head shall have the right to have all council policies and decisions reviewed pursuant to title 12, chapter 7, article 6 in the superior court of the county in which the law enforcement officer resides and legal counsel for the department head shall be provided by the county or city attorney in whose jurisdiction the department lies.

E. Notwithstanding section 38-1106, subsection J, any appeal of a suspension, demotion or dismissal in which a single hearing officer or administrative law judge has been appointed by the merit system council or appeals

board to conduct the appeal hearing shall be open to the public unless the hearing officer or administrative law judge determines that good cause exists to close the hearing.

# 41-781. State personnel board; members; appointment; term; meetings; compensation

A. The state personnel board consists of five members appointed by the governor pursuant to section 38-211. No more than three members shall belong to the same political party. Persons eligible for appointment shall have had a continuous recorded registration pursuant to title 16, chapter 1 with either the same political party or as an independent for at least two years immediately preceding appointment. Of the members appointed one shall be a person who for more than five years has managed a component or unit of government or industry with more than twenty employees, one shall be a professional personnel administrator, one a state employee, one a person active in business management and one a member of the public. Members may be removed by the governor for cause. The chairperson of the state personnel board shall serve as an ex officio member of the law enforcement merit system council established by section 41-1830.11 without voting privileges.

B. The term of office for each member is three years, each term to expire three years from the date of appointment. On the expiration of the term of a member a successor shall be appointed for a full term of three years.

C. The state personnel board may hold regular monthly meetings and, in addition, may hold special meetings the board deems necessary. A chairperson and vice chairperson shall be elected by the members at the first meeting of each year and the chairperson shall not serve successive terms as chairperson. Meetings of the state personnel board shall be open to the public, and executive sessions may be held as provided by law.

D. Any one of the following constitutes the resignation of a board member and authorizes the governor to appoint a new member to fill the unexpired term so vacated:

1. Becoming a candidate for any elective public office.

2. Accepting any appointive office or employment in the state personnel system, except the state employee who is designated to serve on the board.

E. Members of the state personnel board, except the person designated as the state employee, are eligible to receive compensation of one hundred dollars for each meeting attended, prorated for partial days for each meeting attended. The member of the state personnel board designated as the state employee shall be paid the state employee's regular compensation for meetings of the board.

# 41-782. Powers and duties of the state personnel board

A. Except as provided by section 41-1830.16, the state personnel board shall hear and review appeals as provided in this article relating to dismissal of a covered employee from covered service, suspension for more than eighty working hours or involuntary demotion resulting from disciplinary action as defined in the personnel rules for an employee in covered service.

B. The state personnel board shall hear and review complaints as provided in title 38, chapter 3, article 9, relating to any personnel action taken against an employee or former employee of this state, except an employee or former employee of a state university or the board of regents, which the employee or former employee believes was taken in reprisal for the employee's or former employee's disclosure of information to a public body. The state personnel board shall recommend the dismissal of a supervisor or other responsible person, other than an elected official, who it determines committed a prohibited personnel practice.

C. The state personnel board may adopt rules it deems necessary for the administration of hearings and the review of appeals and complaints as prescribed in this section.

D. The state personnel board shall only exercise authority that is specifically granted to the board pursuant to this article.

# 41-783. Appeals to the state personnel board for covered employees; notice of charges; hearings

A. Except as provided by section 41-1830.16, a covered employee who has completed the covered employee's original probationary period of service as provided by the personnel rules may appeal to the state personnel board the covered employee's dismissal from covered service, suspension for more than eighty working hours or involuntary demotion resulting from disciplinary action. The appeal shall be filed not later than ten working days after the effective date of such action. The covered employee shall be furnished with specified charges in writing when the action is taken. Such appeal shall be in writing and must state specific facts relating directly to the charges on which the appeal is based and shall be heard by the state personnel board within sixty days after its receipt. The state personnel board shall provide the employing agency with a copy of the appeal not less than twenty days in advance of the hearing.

B. Hearings on such appeals shall be open to the public, except in cases where the covered employee requests a confidential hearing, and shall be informal with technical rules of evidence not applying to the proceedings except the rule of privilege recognized by law. Both the covered employee and the employing agency shall be notified of the initial hearing date not less than twenty days in advance of the hearing and not less than ten days in advance of a board meeting. The covered employee and the employing agency may select representatives of their choosing, present and cross-examine witnesses and give evidence at the hearing. The state personnel board may appoint a hearing officer to conduct the hearing and take evidence on behalf of the board and exercise the rights prescribed by section 12-2212. The state personnel board shall prepare an official record of the hearing, including all testimony recorded manually or by mechanical device, and exhibits. Either party may request that the record be transcribed. If a party requests that the record be transcribed, an entity, other than the state personnel board, selected by the requesting party shall transcribe the record at the cost of the requesting party. If the disciplinary hearing would involve evidence the state is prevented by law from disclosing, then a confidential hearing upon the state's request shall be granted.

C. The state personnel board:

1. Shall determine whether the state agency has proven by a preponderance of the evidence the material facts on which the discipline was based. On such a finding, the board shall affirm the decision of the state agency head, unless the disciplinary decision was arbitrary and capricious.

2. May recommend modification of a disciplinary action if the agency has not proven by a preponderance of the evidence the material facts on which the discipline was based or if a disciplinary decision is found to be arbitrary and capricious.

3. Shall reverse the decision of the state agency head if the board finds that cause did not exist for any discipline to be imposed and, in the case of dismissal or demotion, return the covered employee to the same position the employee held before the dismissal or demotion with or without back pay.

D. On a finding that the agency has not proven by a preponderance of the evidence the material facts on which the discipline was based, the board shall identify the material facts that the board found were not supported by a preponderance of the evidence and may recommend a proposed disciplinary action in light of the facts proven. On a finding that the disciplinary decision was arbitrary and capricious, the board shall include the board's reasons for the board's finding and may recommend a proposed disciplinary action in light of the facts proven.

E. Within forty-five days after the conclusion of the hearing, the state personnel board shall enter its decision or recommendation and shall at the same time send a copy of the decision or recommendation by certified mail to the employing agency and to the covered employee at the employee's address as given at the hearing or to a representative designated by the covered employee to receive a copy of the decision or recommendation. The agency director or the director's designee shall accept, modify or reverse the board's decision or accept, modify or reject the board's recommendation within fourteen days of receipt of the findings or recommendation from the state personnel board. The decision of the agency director or director's designee is final and binding. The

agency director shall send a copy of the agency's final determination to the covered employee pursuant to this section.

F. Any party may appeal the decision of the state personnel board or the final decision of the agency pursuant to title 12, chapter 7, article 6 to the superior court in the covered employee's county of residence on one or more of the following grounds that the order was:

1. Founded on or contained error of law that shall specifically include error of construction or application of any pertinent rules.

2. Unsupported by any evidence as disclosed by the entire record.

3. Materially affected by unlawful procedure.

4. Based on a violation of any constitutional provision.

5. Arbitrary or capricious.

G. An appeal shall be available to the court of appeals from the order of the superior court pursuant to title 12, chapter 7, article 6 as in other civil cases.

H. A covered employee may represent himself or designate a representative, not necessarily an attorney, before any board hearing or any quasi-judicial hearing held pursuant to this section providing that no fee may be charged for any services rendered in connection with such hearing by any such designated representative who is not an attorney admitted to practice.

**D-8.**

**DEPARTMENT OF ENVIRONMENTAL QUALITY**
Title 18, Chapter 13

**New Article:** Article 10, Article 17

**New Section:** R18-13-1001, R18-13-1002, R18-13-1003, R18-13-1003.01, Table 1, R18-13-1003.02, R18-13-1004, R18-13-1005, R18-13-1006, R18-13-1007, R18-13-1008, R18-13-1010, R18-13-1010.01, R18-13-1011, R18-13-1012, R18-13-1013, R18-13-1014, R18-13-1015, R18-13-1016, R18-13-1017, R18-13-1018, R18-13-1019, R18-13-1020, R18-13-1021, Table 2, Table 3, R18-13-1701, R18-13-1703, R18-13-1704

# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - REGULAR RULEMAKING

---

**MEETING DATE: April 1, 2025**

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

**FROM:** Council Staff

**DATE:** March 12, 2025

**SUBJECT:** **DEPARTMENT OF ENVIRONMENTAL QUALITY**
Title 18, Chapter 13

**New Article:** Article 10, Article 17

**New Section:** R18-13-1001, R18-13-1002, R18-13-1003, R18-13-1003.01, Table 1, R18-13-1003.02, R18-13-1004, R18-13-1005, R18-13-1006, R18-13-1007, R18-13-1008, R18-13-1010, R18-13-1010.01, R18-13-1011, R18-13-1012, R18-13-1013, R18-13-1014, R18-13-1015, R18-13-1016, R18-13-1017, R18-13-1018, R18-13-1019, R18-13-1020, R18-13-1021, Table 2, Table 3, R18-13-1701, R18-13-1703, R18-13-1704

---

**Staff Update**:

This regular rulemaking from the Department of Environmental Quality (Department) is a resubmission pursuant to A.R.S. § 41-1052(C) and Council rule R1-6-206. Specifically, this rulemaking was previously considered at the Council's November 22, 2024 Study Session and December 3, 2024 Council Meeting. At the December 3, 2024 Council Meeting the Council voted to return the rulemaking in while pursuant to A.R.S. § 41-1052(C) after raising concerns regarding the Department's cost-benefit and least burdensomeness analysis pursuant to A.R.S. § 41-1052(D)(3).

Pursuant to A.R.S. § 41-1052(C), an agency "may resubmit a rule, preamble or economic, small business and consumer impact statement if the council returns the rule, economic, small business and consumer impact statement or preamble, in whole or in part, to the

agency." Council rule R1-6-206 states, "[a]n agency shall resubmit the notice, with a revised preamble; table of contents; rule; or economic, small business, and consumer impact statement to the Council, and attach to each resubmitted document a letter that: a. [i]dentifies all changes made in response to the Council's explanation for the returned portion, b. [e]xplains how the changes ensure that the document meets the standards at A.R.S. § 41-1052(D) through (G), and c. [i]f applicable, shows that the resubmitted rule is not substantially different from the proposed rule under the standards in A.R.S. § 41-1025."

Here the Department has resubmitted a revised preamble to the Notice of Final Rulemaking (NFR). Specifically, the Department has expanded its summary of the economic, small business, and consumer impact statement in the preamble as well as other clarifying changes as outlined in the Department's corresponding letter. Notably, the Department indicates it has not changed the text of the rules themselves, only the preamble of the NFR, with changes indicated in red text in the document.

Additionally, pursuant to A.R.S. § 41-1052(I), Council staff received three (3) public comments in support of the resubmitted rulemaking from the Salt River Project Agricultural Improvement and Power District, Arizona Public Service Company, and Arizona Electric Power Cooperative, Inc. Copies of the correspondences have been included with the final materials for the Council's reference.

**Summary:**

As a reminder, this regular rulemaking from the Department seeks to add two new Articles containing twenty-nine (29) new sections in Title 18, Chapter 13, Articles 10 and 17 related to Coal Combustion Residuals and corresponding Financial Assurance, respectively. Specifically, the Department indicates these rules establish an Arizona coal combustion residuals (CCR) permit program to be approved by the United States Environmental Protection Agency (EPA) to operate in lieu of the federal CCR program. In addition, after EPA approval and permit issuance, the Arizona CCR permit program would operate in place of Arizona Department of Water Resources (ADWR) dam safety rules for CCR surface impoundments.

The Department indicates in 2022, the Arizona legislature enacted Chapter 178 authorizing the Department to develop a state permit program for CCR. Pursuant to that legislation, A.R.S. § 49-891 requires the Arizona program to be neither more or less stringent than federal nonprocedural requirements in 40 CFR 257, subpart D, with two exceptions related to standards already developed in Arizona. First, as provided in A.R.S. § 49-891(B), the Department's CCR rules are required to be more stringent than 40 CFR 257, subpart D where existing ADWR dam safety standards are more stringent. A CCR surface impoundment typically includes a dike or embankment that holds the CCR and liquids in the impoundment. In Arizona, a surface impoundment with an aboveground embankment under EPA regulations is a dam under ADWR rules. These stricter dam safety standards based on ADWR rules are contained in proposed R18-13-1002, R18-13-1003.01, R18-13-1003.02 and R18-13-1010.01.

Second, the Department may opt to be more stringent than EPA to match aquifer protection standards already developed in Arizona. In this category, this final rule is broader than

EPA's CCR regulations, with requirements for non-CCR wastestreams that may be placed in a CCR unit at R18-13-1005(B). These requirements are explained in more detail in the section-by-section explanations later in the Department's Notice of Final Rulemaking Preamble.

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

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

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

Pursuant to A.R.S. § 41-1008(A)(1), "an agency shall not…[c]harge or receive a fee or make a rule establishing a fee unless the fee for the specific activity is expressly authorized by statute or tribal state gaming compact.

The Department indicates this rulemaking does establish new fees. Specifically, rule R18-13-1021 sets forth the fees and billing procedures for CCR facilities and permitting actions. In Subsection A, Table 2 specifies annual registration fees. In subsection (B), Table 3 presents initial and maximum fees for a CCR facility permit and CCR permit modification. Subsections (C), (D), and (E) state the billing procedure that the Department must follow during permitting actions. Subsection (E) also includes the hourly billing rate of $244 per hour for permitting activities and the procedure for annual adjustment of annual fees and the billing rate pursuant to United States Bureau of Labor Statistics Consumer Price Index tables.

The Department indicates these fees are specifically authorized by A.R.S. § 49-891(D). A.R.S. § 49-891(D) states, "[t]he rules for CCR permits shall include: 1. Permit processing fees from the applicant to cover the cost of administrative services and other expenses associated with evaluating the application and issuing or denying the permit, beginning when an application is submitted. 2. Annual fees for the program approved by the United States environmental protection agency beginning after CCR program approval."

As such, Council staff believes the Department is in compliance with A.R.S. § 41-1008.

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

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

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

These rules enact already existing standards from the EPA and ADWR into the Department's rules. The rules also enact additional requirements that would apply for the first time at some point after these rules are effective. The Department believes that where these CCR rules match existing standards, they do not have any direct negative impact on the four facilities in Arizona that will require a CCR facility permit.

The Department estimated the additional annual cost to implement the CCR permit program at $158,760, separate from the cost of processing permits. The Department based the annual registration fees in R18-13-1021(A) on this estimate after discussion with the utilities who will be subject to the fees. The Department states that these annual fees won't start until EPA approves Arizona's program. The Department indicates that once the program is approved by EPA, the overall cost to the Department is expected to be balanced by the fees it collects. In spite of the fees necessary to cover the cost of the program, Arizona's CCR facilities have supported the Department's development of a state permit program as early as 2018. The Department believes the overall benefits for all parties involved exceed the overall costs.

**5. Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?**

The Department states that the Department, ADWR, and EPA, and the four Arizona facilities that would be subject to a Department program, spent four years working on the legislation and developing this rule. According to the Department, the benefits of the four Arizona CCR facilities being regulated by the Department compared to EPA can be described generally but are difficult for the Department to quantify for a number of reasons: 1) EPA still does not have a final CCR permitting rule so intangible costs such as how long it will take a CCR facility to prepare an application, get a final permit, and how many modifications to the permit will be necessary as CCR units are shut down, cannot yet be estimated. Although EPA has not proposed any fees, they are not ready to go and may be under a regulation freeze. The Department is nearly fully staffed. 2) Some of the facilities may be planning to monitor groundwater for 30 years while some may try to avoid that by planning to close units by removal. Still others may have to remediate contaminated groundwater. 3) A Department program would be partially authorized by EPA because the Department will not be immediately implementing EPA's legacy rule. 4) Finally, each utility is in a completely different situation with respect to whether and where those units are in the glide path toward closure. The Department says given the differences in size, organization, strategies for future generation, geographic locations and potential groundwater and dam safety issues, one would expect it unlikely that all four Arizona facilities would choose the known out of pocket expenses of the Department over the lower upfront costs of EPA. The Department believes the best evidence that the benefits of this choice exceed the costs is that, despite these differences, all four Arizona facilities are unanimous in wanting the Department, not EPA, as the primary regulator and have stated that choice in written comments. The Department states that all four of the utilities affected by this rule have indicated their support for a Department permitting program along with the fees.

**6. What are the economic impacts on stakeholders?**

The Department states that the Department's costs are the lowest possible given the legislative directive for the agency to recover its costs. The Department says implicit in that directive is the legislature's belief that it is more appropriate for those that have sold or consumed electricity produced from coal to pay for a program that takes care of coal ash, rather than taxpayers in general.

The Department believes that because the Department will be replacing other agencies as the enforcing agency for standards that will remain the same, the rule will have a positive impact on the CCR facilities as well as the local community by enabling communication with a single, local agency.

CCR facilities will be subject to the Department's permitting requirements that may exceed, or at least be additional to, what will be required under future EPA permitting requirements for non-participating states. CCR facilities will also be required to provide financial assurance and pay annual registration fees and permit processing fees. The annual fees are designed to cover the Department's non-permit related costs in administering the state CCR program.

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

The Department indicates between the Notice of Proposed Rulemaking published in the Administrative Register on July 12, 2024 and the Notice of Final Rulemaking now before the Council for consideration, the Department made the following changes to the rules:

- In R18-13-1002(E), R18-13-1003(G) and R18-13-1010(G), ADEQ changed "{proposed rule date}" or "{insert proposed rule date}" to "July 12, 2024".
- In R18-13-1010(B)(2), ADEQ clarified that ADWR's approval to construct is independently required when seeking ADEQ approval for certain actions before a facility permit has been issued. ADEQ clarified this in R18-13-1010(B)(2)(a) as follows:
    - "a. For a CCR surface impoundment before a CCR facility permit has been issued for that facility, the owner or operator has obtained approval to construct from ADWR and demonstrates to the satisfaction of the Director that commencing construction before approval is necessary to comply with 40 CFR 257, as incorporated in this Article;"
- Modified R18-13-1010(C) to add an alternate time for the public meeting:
    - Proposed:
        - C. Prior to submitting an initial or renewal CCR facility permit application, the owner or operator shall hold a public meeting in order to solicit questions from the community and inform the community about the permit to be applied for. The owner or operator shall notify ADEQ at least 30 days before the meeting, provide adequate public notice for the meeting, and submit a summary of the meeting to ADEQ.
    - Final:
        - C. The owner or operator shall hold a public meeting in order to solicit questions from the community and inform the community about its intended permit at one of the times listed below. The owner or operator shall notify ADEQ at least 30 days before the meeting, provide adequate public notice for the meeting, and submit a summary of the meeting to ADEQ:
            1. Within 90 days after receiving notice from the Director that its application is administratively complete, or

2. Prior to submitting an initial or renewal CCR facility permit application.

- In R18-13-1017(F)(7), ADEQ added the last clause as follows:
  - 7. Replace monitoring equipment, including a well, if the replacement results in equal or greater monitoring effectiveness, but not including routine maintenance or replacement of well components and related equipment;

Council staff does not believe these changes make the current rules in the Notice of Final Expedited Rulemaking substantially different from the proposed rules in the Notice of Proposed Expedited Rulemaking pursuant to A.R.S. § 41-1025.

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

The Department indicates it received six written comments, four from the Arizona utilities that would be seeking CCR facility permits, one from an environmental organization, and one from a school district near a CCR facility. The Department indicates the four utilities expressed strong support for the Department seeking authorization for the federal program with this rule. The Department indicates the environmental organization and school district expressed concern and generally opposed ADEQ seeking authorization. The comments received by the Department and the Department's responses are summarized in Section 12 of the Preamble to the Notice of Final Rulemaking. Additionally, copies of the public comments received have been included in the final materials for the Council's reference. Council staff believes the Department has adequately responded to public comments related to this rulemaking.

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

Pursuant to A.R.S. § 41-1037(A), if an agency proposes an amendment to an existing rule that requires the issuance of a regulatory permit, license, or agency authorization, the agency shall use a general permit, as defined by A.R.S. § 41-1001(12), if the facilities, activities or practices in the class are substantially similar in nature unless certain exceptions apply.

A.R.S. § 41-1001(12) defines "general permit" to mean "a regulatory permit, license or agency authorization that is for facilities, activities or practices in a class that are substantially similar in nature and that is issued or granted by an agency to a qualified applicant to conduct identified operations or activities if the applicant meets the applicable requirements of the general permit, that requires less information than an individual or traditional permit, license or authorization and that does not require a public hearing."

The Department indicates the rules require a CCR permit. However, the Department indicates, pursuant to A.R.S. § 41-1037(A)(3), "[t]he issuance of a general permit is not technically feasible…" as there are only four facilities in Arizona to be permitted and each facility is unique and will be subject to different permit conditions. As such, Council staff believes the Department is in compliance with A.R.S. § 41-1037.

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

Pursuant to A.R.S. § 41-1052(D)(9), "[t]he council shall not approve the rule unless…[t]he rule is not more stringent than a corresponding federal law unless there is statutory authority to exceed the requirements of that federal law."

The Department indicates two federal laws are applicable to the subject of this rule: the WIIN Act (Water Infrastructure Improvements for the Nation Act) enacted by Congress in December 2016, and 40 CFR 257, subpart D, first promulgated in 2015, but amended since. The WIIN Act provided authority for EPA to review and approve permit programs submitted by states for CCR facilities. The approved state programs would then operate in lieu of the federal requirements in 40 CFR 257, subpart D.

The Department indicates in five areas, the rules are statutorily authorized to be more stringent than federal law:

- Aquifer protection standards already developed under ADEQ statutes and rules for non-CCR wastestreams. *See* R18-13-1005(B). Authorized in A.R.S. § 49-891(A);
- CCR surface impoundment safety standards already existing under Arizona Department of Water Resources rules at 15 A.A.C. 12, Article 15. Authorized in A.R.S. § 49-891(B);
- New ADEQ permitting requirements. These new permitting requirements are contained in R18-13-1010 through R18-13-1021. Authorized in A.R.S. §§ 49-891(C) and (F);
- Financial assurance requirements contained in R18-13-1020 and Article 17. Authorized in A.R.S. § 49-770(A); and
- Annual registration fees and permit processing fees contained in R18-13-1021. Authorized in A.R.S. § 49-891(D).

**11. Conclusion**

This regular rulemaking from the Department seeks to add two new Articles containing twenty-nine (29) new sections in Title 18, Chapter 13, Articles 10 and 17 related to Coal Combustion Residuals and corresponding Financial Assurance, respectively. Specifically, the Department indicates these rules establish an Arizona CCR permit program to be approved by the United States EPA to operate in lieu of the federal CCR program. In addition, after EPA approval and permit issuance, the Arizona CCR permit program would operate in place of ADWR dam safety rules for CCR surface impoundments.

The Department is seeking the standard 60-day delayed effective date pursuant to A.R.S. § 41-1032(A).

Council staff recommends approval of this rulemaking.

Katie Hobbs
Governor

# Arizona Department of Environmental Quality

Karen Peters
Deputy Director

February 18, 2025

Jessica Klein, Chairperson
Governor's Regulatory Review Council
100 N 15th Avenue, Suite 302
Phoenix, AZ 85004

RE: 18 A.A.C. 13, Article 10, Coal Combustion Residuals
18 A.A.C. 13, Article 17, Financial Assurance

Dear Ms. Klein:

ADEQ submits this letter pursuant to A.A.C. R1-6-206 with regard to its Coal Combustion Residuals (CCR) Notice of Final Rulemaking (NFRM) that the Governor's Regulatory Review Council "returned in whole pursuant to A.R.S. § 41-1052(C)" at its December 3, 2024, meeting. ADEQ is resubmitting the entire attached NFRM with the rule text unchanged. The preamble and the economic, small business, and consumer impact statement have been expanded, with red text on pages 4, 8, and 17-24 showing added or modified text in response to the questions and discussion that occurred during the December 3rd meeting. I respectfully request that you place this rulemaking on the Council's March/April agenda for approval.

In the meetings preceding the Council's return of the rule (November 22 and December 3, 2024), there was no specific identification of the standards in A.R.S. § 41-1052(D) through (G) that were not met. However, upon review of the December 3, 2024 meeting minutes, ADEQ believes that the Council did not find that the probable benefits of the CCR rule, regulating four Arizona facilities by ADEQ through an EPA-approved fee-based program, were greater than the probable costs. Changes to the preamble are responsive to this concern. ADEQ notes that, given the legislative directive to recover its costs[1], it is necessary to charge fees as outlined in the rule in order to implement the CCR program.

ADEQ, along with the Arizona Department of Water Resources (ADWR), EPA, and the four Arizona facilities that would be subject to Arizona CCR regulation, have spent the past 4 years working on the legislation and developing this rule. Three stakeholder meetings and a public hearing were held during 2023 and 2024 to allow all stakeholders to be informed of and comment on the rulemaking.

[1] These fees comply with two legislative directives for ADEQ to recover its costs. A.R.S. § 49-891(D)(1) requires permit processing fees that "cover the costs of administrative services and other expenses associated with evaluating the application . . . ". A.R.S. § 49-104(B)(17) requires both the annual fees and the permit fees to be based on "the direct and indirect costs of the department's relevant duties, including employee salaries and benefits, professional and outside services, equipment, in-state travel and other necessary operational expenses directly related to issuing licenses as defined in title 41, chapter 6 and enforcing the requirements of the applicable regulatory program."

Approval of this rule requires ADEQ to demonstrate and GRRC to agree (1) that the Economic Impact Statement is generally complete and accurate, (2) that the probable benefits of the rule outweigh the probable costs of the rule, and (3) that ADEQ has selected the alternative that imposes the least burden and cost to persons regulated. See A.R.S. 41-1052(D). ADEQ believes that the rule, as written, adheres to these standards and submits the following information supporting the benefits to costs comparison in the preamble and economic, small business, and consumer impact statement.

1. **ADEQ familiarity with the facilities and communities**. There are substantial intangible benefits associated with the decades of experience that ADEQ and the four facilities already have working with each other. This includes working together on Aquifer Protection Permits (and the earlier Groundwater Quality Protection Permits) for the coal ash impoundments and landfills at all four facilities since ADEQ's establishment. This required detailed knowledge of groundwater, geology and soil underneath the units, liner designs, leachate collection and removal, rainwater run on and run off controls, and other design and operating standards. In addition, ADEQ has developed this proposed permit program by working together with local stakeholders, and it is ready to go, pending Council approval.

   This familiarity and program readiness compare to EPA's relative lack of the same. EPA does not have comparable knowledge of these facilities and local soils, geology, or groundwater characteristics. Additionally, EPA has not yet established a permit program and, given the new federal administration, a date for establishing a permit program capable of processing permits is unknown at this time. Without a structured program, impacted facilities will have no assurance that they are in compliance with federal mandates.

   ADEQ's mission statement includes a commitment to clear and equitable engagement with communities. To meet this commitment, ADEQ's proposed CCR rules contain requirements for both the facilities and ADEQ to ensure open and timely communications with the public on permitting activities at these facilities. To better assist the public and the regulated community, ADEQ community liaisons serve designated regions of Arizona and have developed relationships with community leaders. ADEQ's experience and local presence will better serve Arizona's communities during the operation of these CCR units and for the closure and post closure periods that will go on for years to come.

2. **Benefits of a "one-stop shop."** Without ADEQ as the single regulator, EPA and ADWR will remain in charge and overlap in their regulatory oversight of CCR impoundment (or dam) safety. Currently, regulated entities are required to obtain both a permit from ADWR and be subject to EPA oversight. Through this rule, ADEQ would combine these two regulatory constructs into one rule, allowing facilities to vacate their ADWR permit and deal only with ADEQ on all CCR permitting and compliance issues. Significant

administrative efficiencies will be realized by regulated entities through this combined regulatory approach and removal of duplicative regulation.

3. **ADEQ fees are consistent with other environmental permitting programs.** When EPA proposed its CCR rule in 2010, it estimated "the electric utility industry spends an average of $5.6 billion per year for meeting state-required and company voluntary environmental standards for CCR disposal." (75 FR 35212, emphasis added) The ADEQ costs are predictable, spelled out and with a background of how ADEQ billing will be done. There are maximum permitting fees and licensing time frames to drive timely permitting performance, and these fees are consistent with other permitting fees throughout the agency. Impoundments and landfills used to manage CCR are typically many acres in size.

Comparing EPA's no-cost implementation of their CCR regulations to ADEQ's fee-based program needs to be done in the context of the significant costs to the four Arizona utilities of managing their coal ash under these regulations. ADEQ's costs are predictable, e.g., a maximum of $200,000 for a ten-year permit. ADEQ's response times, day-to-day presence in the state, and extensive history with these sites has been demonstrated to the utilities during the development of this rule, and for decades already.

I respectfully request that you approve the ADEQ CCR rule. Please do not hesitate to call me or Mark Lewandowski, Legal Analyst, at 602-771-2230, if you have any questions.

Sincerely,

Karen Peters
Deputy Director

Attachment

# Arizona Department of Environmental Quality

Katie Hobbs
Governor

Karen Peters
Deputy Director

October 3, 2024

Jessica Klein, Chairperson
Governor's Regulatory Review Council
100 N. 15th Avenue Suite 302
Phoenix, Arizona 85007

Re: 18 A.A.C. 13, Article 10, Coal Combustion Residuals, and
Article 17, Financial Assurance

Dear Ms. Klein:

Enclosed is a final Arizona Department of Environmental Quality (ADEQ) regular rule package and I respectfully request that you place it on the Governor's RegulatoryReview Council agenda for approval. Pursuant to A.A.C. R1-6-201, I provide the following information:

- The close of record date was August 20, 2024
- This rule does not relate to a five-year review report
- The rule does establish new fees, pursuant to A.R.S. § 49-891(D).
- The rule does not include increased fees
- An immediate effective date is not requested

I certify that the preamble contains a reference to any study relevant to the rules that ADEQ reviewed and either did or did not rely on in our evaluation and justification for the rule. I further certify that JLBC has been notified that one new full-time employee is necessary to implement and enforce the rule, and that no competitiveness analysis was submitted.

As required by the Administrative Procedure Act, the Notice of Rulemaking Docket Opening and Notice of Proposed Rulemaking were filed with the Secretary of State, and published in theArizona Administrative Register on June 7, 2024, and July 12, 2024, respectively.

Please do not hesitate to call me or Mark Lewandowski, Legal Analyst, at 602-771-2230, if you have any questions.

Sincerely,

DocuSigned by:
Karen Peters
72DC0E312D584BF...

Karen Peters
Deputy Director

Electronic Enclosures:
Notice of Final Rulemaking
Economic, small business, and consumer impact statement
Comments
Material Incorporated by Reference
General and specific statutes authorizing the rule, including relevant definitions
Governor's email granting exemption

**NOTICE OF FINAL RULEMAKING**

**TITLE 18. ENVIRONMENTAL QUALITY**

**CHAPTER 13. SOLID WASTE MANAGEMENT**

## PREAMBLE

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

September 10, 2024

| **2. Article, Part, or Section Affected (as applicable)** | **Rulemaking Action** |
|---|---|
| Article 10. | New Article |
| R18-13-1001. | New Section |
| R18-13-1002. | New Section |
| R18-13-1003. | New Section |
| R18-13-1003.01. | New Section |
| Table 1 | New Table |
| R18-13-1003.02. | New Section |
| R18-13-1004. | New Section |
| R18-13-1005. | New Section |
| R18-13-1006. | New Section |
| R18-13-1007. | New Section |
| R18-13-1008. | New Section |
| R18-13-1010. | New Section |
| R18-13-1010.01. | New Section |
| R18-13-1011. | New Section |
| R18-13-1012. | New Section |
| R18-13-1013. | New Section |
| R18-13-1014. | New Section |
| R18-13-1015. | New Section |
| R18-13-1016. | New Section |
| R18-13-1017. | New Section |
| R18-13-1018. | New Section |

| | |
|---|---|
| R18-13-1019. | New Section |
| R18-13-1020. | New Section |
| R18-13-1021. | New Section |
| Table 2 | New Table |
| Table 3 | New Table |
| Article 17. | New Article |
| R18-13-1701. | New Section |
| R18-13-1703. | New Section |
| R18-13-1704. | New Section |

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

Authorizing statute: A.R.S. § 49-891

Implementing statutes: A.R.S. §§ 49-763.01, 49-769, 49-770, 49-781, 49-783, 49-791, 49-881, 49-891, 49-891.01

**4. The effective date of the rule:**

This rule shall become effective 60 days after a certified original and preamble are filed in the Office of the Secretary of State pursuant to A.R.S. § 41-1032(A). The effective date is (to be filled in by Register editor).

**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. 2026, June 7, 2024, Issue Number:23, File Number, R24-100

Notice of Proposed Rulemaking: 30 A.A.R. 2275, July 12, 2024, Issue Number: 28. File Number: R24-126

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

Name: Mark Lewandowski

Address: Arizona Department of Environmental Quality, Waste Programs Division
1110 W. Washington Street Phoenix, AZ 85007

Telephone: (602) 771-2230

Email: lewandowski.mark@azdeq.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:**

Summary. The Arizona Department of Environmental Quality (ADEQ) has finalized rules to establish an Arizona coal combustion residuals (CCR) permit program to be approved by the United States Environmental Protection Agency (EPA) to operate in lieu of the federal CCR program. In addition, after EPA approval and permit issuance, the Arizona CCR permit program would operate in place of Arizona Department of Water Resources (ADWR) dam safety rules for CCR surface impoundments.

The contents of this part of the preamble are:

I. Background.

II. The Arizona CCR permit program.

II.a. Effective date of this rulemaking and early permit applications.

II.b. Language from EPA's proposed permit rule.

II.c. Signatory requirements for owners and operators.

II.d. Pre-application public meeting.

III. Financial assurance.

IV. Transition from Governor's Regulatory Review Council (GRRC) approval to CCR program approval.

V. Transition from CCR program approval until permit issuance.

VI. EPA's CCR "Legacy Rule"

VII. Section-by-Section explanations.

**I. Background.** In 2015, EPA adopted self-implementing rules for CCR in 40 CFR 257, subpart D, under Subtitle D of the Resource Conservation and Recovery Act (RCRA), that require electric utilities and independent power producers generating coal combustion residuals to follow detailed requirements for the management and disposal of CCR as solid waste. EPA's rules established national minimum criteria for existing and new CCR landfills

and existing and new CCR surface impoundments (''CCR units'') and all lateral expansions of CCR units. The criteria consist of location restrictions, design and operating criteria, groundwater monitoring and corrective action requirements, closure and post-closure care requirements, and recordkeeping, notification and internet posting requirements. Subpart D also required that CCR units failing to meet certain criteria in the rule stop receiving waste and retrofit or close, in some circumstances.

Congress enacted the Water Infrastructure Improvement for the Nation (WIIN) Act in 2016, amending section 4005 of RCRA. It provided authority for EPA to review and approve programs submitted by states to permit CCR units, which would then operate in lieu of the federal requirements. The WIIN Act also required EPA to implement a federal permit program in Indian country and nonparticipating states that would require each CCR unit to achieve compliance with applicable criteria established in subpart D. Once the state program is approved, permits or other prior approvals issued pursuant to the approved state permit program operate in lieu of the federal requirements. To be approved, a state program must require each CCR unit to achieve compliance with subpart D or alternative state criteria that EPA determines are ''at least as protective as'' subpart D. A state permitting program may be approved in whole or in part.

In 2022, the Arizona legislature enacted Chapter 178 authorizing ADEQ to develop a state permit program for CCR. ADEQ, ADWR, EPA, and the four Arizona facilities that would be subject to an ADEQ program, spent 4 years working on the legislation and developing this rule. Pursuant to that legislation, A.R.S. § 49-891 requires the Arizona program to be neither more or less stringent than federal nonprocedural requirements in 40 CFR 257, subpart D, with two exceptions related to standards already developed in Arizona. First, as provided in A.R.S. § 49-891(B), ADEQ's CCR rules are required to be more stringent than 40 CFR 257, subpart D where existing ADWR dam safety standards are more stringent. A CCR surface impoundment typically includes a dike or embankment that holds the CCR and liquids in the impoundment. In Arizona, a surface impoundment with an aboveground embankment under EPA regulations is a dam under ADWR rules. These stricter dam safety standards based on ADWR rules are contained in proposed R18-13-1002, R18-13-1003.01, R18-13-1003.02 and R18-13-1010.01.

Second, ADEQ may opt to be more stringent than EPA to match aquifer protection standards already developed in Arizona. In this category, this final rule is broader than EPA's regulations, with requirements for non-CCR wastestreams that may be placed in a CCR unit at R18-13-1005(B). These requirements are explained in more detail in the section-by-section explanations later in this preamble.

This rule incorporates EPA's 40 CFR 257, subpart D, revised by EPA as of December 14, 2020. As a starting point, before ADEQ modifications and exclusions, this was the most convenient incorporation date that takes into account important federal court decisions and EPA CCR rulemakings that occurred after EPA's original 2015 rule. A summary of this background can be found in the November 12, 2020 Federal Register at 85 FR 72506.

ADEQ opened dockets for this rulemaking in the June 10, 2022, June 9, 2023 and June 7, 2024 *Arizona Administrative Register*. ADEQ held a series of working group and stakeholder meetings in 2022, 2023, and 2024. Draft rule language was also shared with EPA during this time and EPA's feedback has been valuable. ADEQ published the proposed rule on June 21, 2024 and held a virtual hearing, with close of comment on August 14, 2024. Some of the major features of this rulemaking are explained below followed by a short section-by-section explanation.

**II. The Arizona CCR permit program.** EPA's 40 CFR 257, subpart D was designed to be self-implementing, without permits or any other form of formal regulatory approval. The permit program established in this rule has been designed just for the CCR program and is not used elsewhere by ADEQ. It supplements the certifications from "qualified professional engineers" that are used extensively in the federal rule with review and approval of those certifications by ADEQ as part of its permitting program.

II.a. Effective date of this rulemaking and early permit applications. This rule provides that most of the requirements in this rule become effective upon EPA's approval of Arizona's program. Congress drafted the WIIN Act so that an individual CCR unit at a CCR facility remains subject to 40 CFR 257, subpart D, until EPA both approves the state program and the state issues a permit covering the CCR unit under the approved program. For simplicity, under state statute, a CCR surface impoundment remains subject to ADWR dam safety rules

until EPA approves the CCR permit program and a permit is issued covering the impoundment under the Arizona program.

Arizona's CCR authorizing legislation requires CCR facilities to submit facility permit applications within 180 days after EPA CCR program approval, but also allows them to submit a permit application before program approval. This final rule provides that no permits will be issued until after CCR program approval to prevent Arizona utilities from holding a document that can't be enforced, and is not yet required by law. See A.R.S. §§ 49-781 and 49-783.

ADEQ recognizes that the initial facility permit process will be lengthy and that there is an indefinite period of time between ADEQ's submittal of its program to EPA and EPA's decision on the program. ADEQ expects that any early applications will be processed for completeness only. Under this rule, the permit processing fees in Article 10 begin upon the effective date of this rule. ADEQ expects a rule for CCR licensing time frames in 18 A.A.C. 1 to be effective by CCR program approval.

II.b. Language from EPA's proposed permit rule. EPA proposed a federal CCR permitting rule in February 2020 for Indian country and states not participating with their own program. In R18-13-1010, ADEQ used some of EPA's proposed language for its own application requirements. Using EPA's proposed permit application language as a foundation for ADEQ's language will reduce complexity should CCR facilities be required to submit applications to both EPA and Arizona at the same time. It also allows Arizona's program to be evaluated by EPA as a similar program with familiar features. At the time this rule was finalized, EPA estimated that it would finalize its proposed permitting rule in late 2024. It is possible that ADEQ's CCR permits rule will be effective around the same time as EPA's. If EPA program approval occurs quickly, CCR facilities in Arizona may be required to submit applications to both EPA and ADEQ, as well as ADWR for new or modified surface impoundments. By using EPA language and elements, it is likely that a certain amount of work done for one permitting authority will work for the other.

II.c. Signatory requirements for owners and operators. Throughout EPA's 40 CFR 257, subpart D, requirements are phrased in terms of "owner or operator". ADEQ followed this approach in this CCR rule. If the owner and operator of a CCR unit are separate persons,

only one person is required to discharge any specific responsibility, but both are liable in the event of noncompliance. An exception to this is signing and certifying the permit application, where, like EPA's proposed permitting rule at 40 CFR 257.130(a), this proposed rule would require both to sign, unless an agreement is provided to ADEQ that one will sign and certify for the other.

II.d. Pre-application public meeting. Although Arizona's four established CCR facilities are presumably well known in the surrounding community, a state permit program for CCR units focusing on groundwater and safety is potentially unfamiliar. This rule requires that the owner or operator hold a pre-application public meeting with the purpose of informing the local community about the permit they are seeking and addressing any questions and concerns. ADEQ believes this public meeting, once every 10 years, will minimize public misunderstandings during possible phase out of units, addition of new units, closure strategies, and any corrective action.

EPA has successfully employed the requirement for a pre-application public meeting since adding it to the RCRA Expanded Public Participation Rules in 1995. The most important goal ADEQ hopes to achieve from the pre-application meeting requirement is the opening or continuation of a dialogue between the permit applicant and the community. We believe that the applicant should open or restart this dialogue at the beginning of the permitting process. The meeting will give the public direct input to facility owners or operators; at the same time, facility owners or operators can gain an understanding of public expectations and attempt to address public concerns in their permit applications. The pre-application meeting should provide an open, flexible, and informal occasion for the applicant and the public to discuss various aspects of CCR management and the facility's operations.

**III. Financial assurance.** A.R.S. § 49-770, as amended in 2022 by Ch. 178, requires financial assurance for CCR facilities. ADEQ modeled the CCR financial assurance rules in Article 17 after those in Arizona's existing Aquifer Protection Permit (APP) program. All of Arizona's active CCR facilities already have financial assurance for their non-CCR units under their current APP. After Ch. 178 removed the requirement for CCR units to have an APP, some facilities removed the CCR units from their APP but all of them had financial assurance for their CCR units while they were under an APP. Ch. 178 modified the financial

assurance requirement for CCR units to recognize that these CCR units were still, or had just been, covered by financial assurance under an APP. R18-13-1020 allows temporary compliance with financial assurance requirements at existing CCR facilities until a CCR permit is issued, through submittal of the demonstrations that were made pursuant to the APP. See the explanation of R18-13-1020 for more detail.

**IV. Transition from Governor's Regulatory Review Council (GRRC) approval to CCR program approval.** Although this rule was officially effective about 60 days after GRRC approval, by its terms, most of this rule, including the requirement to submit a facility permit application, would not be effective until CCR program approval by EPA. After GRRC approval, ADEQ would prepare its program submittal to EPA, and any early permit applications would be accepted and processed for completeness. ADEQ expects a licensing time frame rule for CCR permits to be effective by CCR program approval. New construction or modifications of CCR units would continue to be processed under EPA and, for most surface impoundments, ADWR rules.

**V. Transition from CCR program approval until permit issuance.** After CCR program approval, CCR facility permit applications that have not already been submitted are required within 180 days, and ADEQ rules and oversight related to groundwater monitoring and CCR surface impoundment safety become effective. After CCR program approval, new surface impoundments and any changes to existing CCR surface impoundments will continue to be processed by ADWR until the impoundment is covered by an ADEQ permit. (See A.R.S. § 45-1201(1)(f)). However, before permit issuance, construction can begin on new surface impoundments without a permit modification as provided in R18-13-1010(B)(2), if it is consistent with any Arizona Department of Water Resources authorization needed.

**VI. EPA's CCR "Legacy Rule".** The proposed, and this final, Arizona CCR rule do not include changes made by EPA's 2024 Legacy Coal Combustion Residuals Surface Impoundments and CCR Management Units Rule that was effective November 4, 2024, with corrections and clarifications issued since. Any "legacy units" and "coal combustion residuals management units" (CCRMUs) in Arizona will be regulated by EPA under the newly revised Subpart D~~, once it is effective~~ until ADEQ amends its program and EPA approves it.

**VII. Section-by-Section explanations**

R18-13-1001. Applicability; Incorporation by Reference; General Provisions. R18-13-1001 contains four basic parts. Subsection (A) provides that the majority of the Article is not effective until EPA approves the CCR permit program. The earlier effective date for the list in (A)(1) allows processing of any early permit applications ADEQ receives as permitted under A.R.S. § 49-891(F). Subsection (B) provides information on the incorporation by reference model used in the rule. It is very similar to how incorporation by reference is used in ADEQ's hazardous waste rules at R18-8-260(A) and (B). Subsection (C) incorporates by reference a group of EPA CCR regulations under the basic heading of General Provisions and notes two minor exceptions. Subsections (D) through (F) contain ADEQ's modifications and additions to the EPA definitions in § 257.53. A separate section is used in subsection (F) to group together the definitions that originated in ADWR rules related to dam safety.

R18-13-1002. Location Restrictions. R18-13-1002 incorporates EPA's location restrictions as provided in §§ 257.60 through 257.64 and adds, in subsections (B), (C), and (D), additional items related to §§ 257.62, 257.63, and 257.64 from ADWR rules. Subsections (B), (C), and (D) apply only to new surface impoundments and lateral expansions of those existing surface impoundments that are larger than the size limits in subsection (E).

R18-13-1003. Design Criteria. R18-13-1003(A) through (E) incorporates EPA's detailed design standards for CCR units almost without change, only removing a height restriction for vegetation on surface impoundments as recommended by EPA after a federal court decision. Subsection (F) modifies EPA's spillway capacity requirements by requiring owners or operators to evaluate both ADWR's existing criteria for spillway capacity and EPA's, and use whichever capacity requirement is greater.

R18-13-1003.01. Additional Design Criteria for New CCR Surface Impoundments and Lateral Expansions of CCR Surface Impoundments. R18-13-1003.01 provides additional design requirements to R18-13-1003 that need to be met by new or lateral expansions of CCR surface impoundments. These design requirements cover embankment stability as it relates to how seepage flows through the embankment, how earthquake impacts are managed, how seepage and drains need to be designed, and minimum overall factors of safety. The requirements in this Section originate from ADWR rules and apply only to new

surface impoundments and lateral expansions of those existing surface impoundments that are larger than the size limits in subsection (D).

R18-13-1003.02. Additional Emergency Action Plan Requirements for CCR Surface Impoundments. R18-13-1003.02 adds to the emergency action plan (EAP) content and implementation requirement that EPA promulgated in §§ 257.73(a)(3) and 257.74(a)(3) by listing additional criteria from ADWR rules. The additional EAP content requirements under subsection (A) clarify notification and review requirements, triggering events, and the requirement for the EAP to be certified by a qualified professional engineer. Subsection (B) presents additional specific requirements pertaining to the implementation of the EAP and what actions need to be taken by the owner or operator of a CCR surface impoundment following specific triggering events. As in previous Sections adding ADWR requirements, the last subsection lists small structures that would be exempt from the Section.

R18-13-1004. Operating Criteria. R18-13-1004 incorporates by reference all of EPA's regulations that apply to operation of CCR landfills, CCR surface impoundments, and lateral expansions of CCR landfills. The additions in subsections (B) through (I) apply to CCR surface impoundments and their lateral expansions and originate in ADWR rules. ADEQ has only added requirements from ADWR rules where they may be more stringent than EPA's requirements in 40 CFR 257, subpart D.

R18-13-1005. Groundwater Monitoring and Corrective Action. R18-13-1005 incorporates by reference the groundwater monitoring and corrective action requirements of 40 CFR 257.90 through 257.98, subject to some amendments and clarification. These EPA regulations address groundwater contamination that could be caused by coal ash and the steps to be taken at that point.

Subsection (A) incorporates by reference 40 CFR 257.90 through 257.98 which require groundwater monitoring system(s), program(s), and related criteria for all CCR units. The initial system of monitoring, required for all CCR units, is called detection monitoring. The one section not incorporated is 257.90 (g) regarding suspension of groundwater monitoring. However, amendments are made to the other EPA sections.

Subsection (B) amends 40 CFR 257.94(a) such that ADEQ can require detection monitoring to include additional monitoring requirements for non-CCR related contaminants not otherwise listed in Appendix III of EPA's rule. In such instances, subsection (B) further clarifies that potential additional contaminant monitoring for non-CCR related constituents would be administered consistent with the requirements of the previously applicable aquifer protection permit program under A.R.S. Title 49, Chapter 2, Article 3, and Articles 1 and 2 of 18 A.A.C. 9.

Subsection (C) amends 40 CFR 257.94(e)(2) in the instance a statistically significant increase (SSI) over background or an exceedance of a water quality standard is observed and the owner or operator elects to proceed with an alternate source demonstration (ASD). The owner or operator is then required to notify ADEQ within 7 days of that decision. Subsection (C) further provides for the Director's approval or disapproval of the forthcoming ASD. Early notification of a pending ASD, within this and subsequent subsections, is intended to afford timely consideration of ASDs and address the constraints of EPA's established time frames. ASDs certified as such by the facility's qualified professional engineer and completed within the 90 days pursuant to 40 CFR 257.94(e)(2), allow for detection monitoring to continue. Any subsequent disapproval by the Director would trigger assessment monitoring within 90 days after the date of disapproval, consistent with 40 CFR 257.95(b). This allows the facility to continue with detection monitoring during ADEQ's evaluation of the ASD, as it would have before program approval. Subsequent ASDs, determined by the certifying engineer to be directly related to a previously demonstrated alternate source, may reference previous related ASDs for other constituent(s), however each ASD should stand on its own. ADEQ notes that approval or disapproval of an ASD under this subsection or subsection (D) would be an appealable agency action under A.R.S. § 41-1092 *et seq.*

Subsection (D) amends 40 CFR 257.95(g)(3)(ii) similarly for an ASD conducted during assessment monitoring. If subsequently disapproved by the Director, an assessment of corrective measures must be initiated within 90 days from the date of the Director's disapproval, as provided under 257.96(a). Subsection (D) also modifies 40 CFR

257.95(g)(3)(ii) such that if a facility is planning to conduct an ASD under this section, ADEQ should be notified within 7 days of this decision.

Subsection (E) modifies 40 CFR 257.95(g)(4) to provide for Director disapproval of ASDs where, if an ASD is not approved, the operator is to then evaluate corrective measures as outlined in 40 CFR 257.96.

Subsection (F) amends 40 CFR 257.95(h) to provide for groundwater protection standards consistent with aquifer water quality standards under 18 A.A.C. 11, Article 4 or EPA's maximum contaminant levels (MCLs), whichever is more stringent. For those contaminants without either aquifer water quality standards or MCLs, the established background concentration would be the limitation. Where background concentrations exceed aquifer water quality standards or MCLs the background concentration would be the limitation.

Subsection (G) amends 40 CFR 257.97 regarding remedy selection to provide for Director approval and incorporation of a remedy into the facility permit as a major modification.

Subsection (H) amends 40 CFR 257.98 regarding implementation of a correction action program to accommodate Director approval of a notification of remedy completion.

R18-13-1006. Closure and Post-Closure Care. This Section incorporates by reference the closure, post-closure care and inactive surface impoundment requirements of 40 CFR 257.100 through 104. The only addition is that the inspection and monitoring requirements from 40 CFR 257.83(b) are specified to continue throughout the post-closure care period.

R18-13-1007. Recordkeeping, Notification, and Posting of Information to the Internet. R18-13-1007 incorporates by reference the recordkeeping, notification, and posting of information to the internet requirements of 40 CFR 257.105 through 107. Subsection (A) incorporates by reference 40 CFR 257.105 through 257.107, subject to the modifications in the following subsections. These federal regulations require each CCR facility to maintain an operating record, post specific documents to the facility's CCR website, and notify ADEQ when certain documents are available. Subsection (B) amends 40 CFR 257.105(f) to recognize an Arizona-only source of Emergency Action Plan requirements. Subsection (C) amends 40 CFR 257.105(h)(1) to clarify that all records of groundwater monitoring and corrective action reports must be maintained in the operating record. Subsection (D) adds 40

CFR 257.105(k) requiring a CCR facility to determine and maintain in the operating record the amount of CCR beneficially used in the previous calendar year, based on when the product leaves the site. Subsection (E) adds 40 CFR 257.105(l) requiring a CCR facility to place financial assurance related information in the operating record. Subsection (F) adds 40 CFR 257.106(k) requiring a CCR facility to notify the Director when beneficial use information has been placed in the operating record. Subsection (G) adds 40 CFR 257.107(k) requiring the CCR facility owner or operator to place the entire CCR facility permit on the facility's CCR website and to update the permit with any approved modifications within 30 days of approval.

R18-13-1008. 40 CFR 257, Appendices III and IV. R18-13-1008 incorporates by reference the groundwater monitoring constituents required for detection monitoring and assessment monitoring that are listed in Appendices III and IV of 40 CFR 257.

R18-13-1010. Permit Application Requirements for CCR Facilities. R18-13-1010 presents the requirements for a CCR facility permit application.

Subsections (A) and (B) state the requirement for an application and the timing for its submittal. After ADEQ receives program approval from EPA, initial permit applications are due to ADEQ within 180 days. After program approval, construction of a new CCR unit or a lateral expansion of a CCR unit may not begin without authorization in facility permit, except as provided in subsection (B)(2). If the application includes constructing or modifying a CCR surface impoundment, additional requirements apply from R18-13-1010.01.

Subsection (C) requires an applicant for a CCR facility permit to hold a public meeting to inform the local community about the permit application and the facility. After public comment, ADEQ added that the meeting may be held after the applicant receives notice from ADEQ that the application is administratively complete. The permit applicant must provide public notice of the meeting to the community and must notify ADEQ of the meeting at least 30 days in advance.

Subsection (D) specifies the components of a CCR facility permit application to include design and operating information, groundwater and location information, related maps and

drawings, plans demonstrating compliance with all sections of 40 CFR Subpart D, financial assurance, and the applicable fee.

Subsections (E) and (F) address completeness of the application and refer to ADEQ's existing rules for licensing timeframes for completeness determinations and to R18-13-1018 for posting of a notice to ADEQ's website.

Subsection (G) addresses the transition of permitting from ADWR to ADEQ for dam modifications and puts ADEQ on early notice, perhaps before an application for a CCR permit, of a CCR surface impoundment modification in progress with ADWR that began after this proposed rule was published.

R18-13-1010.01. Additional Application Requirements for Constructing or Modifying CCR Surface Impoundments for Applications Submitted After CCR Program Approval. This Section adds application requirements for special situations covered by ADWR rules to the application requirements already provided in R18-13-1010. R18-13-1010.01 applies to applications specific to new or modified CCR surface impoundments permitted by ADEQ after CCR program approval. ADEQ recognizes that in some cases an application would have been also submitted to ADWR. The notice required under R18-13-1010(G) will allow ADEQ to coordinate this.

The requirements in this Section all originate in ADWR rules. R18-13-1010.01 does not negate any requirement in R18-13-1010, where closure and post-closure documents for all CCR units are required to be submitted in subsection (D)(6)(e). It does not negate any requirement in R18-13-1006, which incorporates closure and post-closure requirements from 40 CFR 257 in their entirety without change. This Section does not apply to demonstrations under R18-13-1010(B)(2).

R18-13-1011. Permit Contents. R18-13-1011 addresses the contents and standard conditions of CCR facility permits. Subsection (A) lists conditions that will be incorporated into all CCR facility permits. Subsections (B) through (E) allow the Director to establish permit terms and conditions as needed and in accordance with A.R.S. Title 49, Chapter 4 and 18 A.A.C. 13, Article 10, to ensure no reasonable probability of adverse effects on safety, health or the environment from CCR facility operations. Subsection (F) requires each permit to

specify the safe storage level for each surface impoundment. This requirement is as stringent as ADWR's rules for dams. Subsection (G) states the fixed 10-year permit term required by statute. A CCR facility permit may not be extended beyond a 10-year term through permit modification. Instead, a CCR facility must submit a complete application to renew the permit as described in R18-13-1016.

R18-13-1012. Compliance Schedules. R18-13-1012 allows ADEQ to establish a schedule of compliance in a CCR facility permit under two general scenarios. Subsection (B) addresses future compliance activities that may be used, for example, to specify schedule requirements for corrective action activities or submittal of as-built drawings or final engineering reports. This subsection is similar to the schedule of compliance concept used in ADEQ's Aquifer Protection Permit program. Subsection C will be used when a facility will not be in compliance with one or more requirements of A.R.S. Title 49, Ch 4, or rules thereunder at the time the permit is issued. This schedule of compliance will be an enforceable sequence of steps that will allow the facility to return to compliance. Subsection (C) also allows for interim compliance dates that will not be longer than one year, posting of progress information on the facility's public website, and progress reporting to the Director.

R18-13-1013. CCR Facility Permit Issuance or Denial. R18-13-1013(A) states that the procedures in Article 10 related to permit conditions are applicable before EPA program approval except for any licensing timeframes adopted in 18 A.A.C. 1 which apply after program approval. Subsection (B) requires the ADEQ Director to provide the owner or operator with written notification of a final decision to grant or deny a permit and to include the applicable appeal rights. Subsections (C) and (D) state the reasons why the Director may deny a permit and requires the Director to issue an order requiring closure of the CCR units at the facility.

R18-13-1014. CCR Permit Transfer. R18-13-1014 specifies the requirements to transfer a CCR facility permit if there is a change of ownership or operational control for a CCR unit or facility. Subsection (A) requires a 30-day advance notice to ADEQ or notice as soon as practicable. The new owner or operator is required to submit a permit modification request to allow for ADEQ to review all of the items specified in subsection (B). Subsection (C)

clarifies that the original owner or operator is required to comply with the CCR facility permit until it is modified even if ownership or operational control has been transferred.

R18-13-1015. CCR Permit Termination. R18-13-1015 lists five reasons for which the Director may terminate a CCR permit after providing a notice and opportunity for hearing.

R18-13-1016. Permit Renewals. R18-13-1016 presents three requirements for renewing a CCR facility permit. In Subsection (A), an application must be submitted at least 180 days prior to expiration of the current permit. For a timely and complete application submittal, Subsection (B) allows for the existing CCR facility permit to be administratively extended until a new permit is issued. Subsection (C) requires the owner or operator to renew the permit throughout operation, closure, post-closure, or corrective action for a CCR unit.

R18-13-1017. Modifications of a CCR Facility Permit. R18-13-1017 specifies the three types of permit modifications (major, minor, and administrative) and the requirements for permit modifications. Subsections (A) through (D) are general standards for permit modifications initiated by the owner or operator or the ADEQ Director. Subsection (E) describes major permit modifications, intended to be used only for substantial changes to the facility permit including new CCR units, lateral expansions of existing CCR units, and selection of a remedy if the CCR unit is in corrective action. Subsection (F) lists several examples of minor modifications intended to be more routine changes to the CCR permit. Subsection (G) allows for administrative modifications to the permit. Subsection (H) states that the ADEQ Director may change the categorization of a CCR facility permit modification. Subsection (I) allows multiple modifications to be combined into one to streamline processing.

R18-13-1018. Public Notice Requirements for Permit Actions. R18-13-1018 states the requirements for ADEQ to notify the public of CCR facility permitting actions for initial or renewal permits as well as permit modifications. Initial or renewal permits and major modifications require ADEQ to provide a public notice of a proposed issuance or denial and to provide at least 30 days for comments on the proposed decision. A public hearing may be held if requested and if the ADEQ Director determines there is sufficient public interest. ADEQ must prepare a written response to comments received on the proposed CCR permit or major modification.

R18-13-1019. Compliance, ADEQ Inspections, Violations and Enforcement. This rule specifies ADEQ rights to enter the facilities and do inspections, and the purposes of inspections, including as noted in subsection (C) during work on surface impoundments. Subsection (G) comes from ADWR rules.

R18-13-1020. Financial Assurance Requirements. This rule allows temporary compliance with Financial Assurance (also called financial responsibility) at existing CCR facilities until a permit is issued through submittal of demonstrations that were made pursuant to an ADEQ Aquifer Protection Permit (APP). A.R.S. § 49-770(A) states that Article 11 solid waste facilities may not operate unless financial responsibility "has been demonstrated" within 180 days of "CCR program approval." A.R.S. § 49-770(C) allows 2 possible times for submittal of financial responsibility, with the latest required time being 180 days after CCR program approval. Without more, if a CCR facility waits 180 days after CCR program approval to submit financial responsibility, it could be stated that financial responsibility has not yet been "demonstrated", since there is not yet approval by the Department. However, A.R.S. § 49-770(C) adds that if the facility was already in operation before CCR program approval, it may continue to operate while the department reviews the submission of financial responsibility pursuant to its APP. In addition, A.R.S. § 49-770(D) adds that a demonstration already made for an APP purposes shall suffice, in whole or in part, for any demonstration required by A.R.S. § 49-770. Therefore, proposed R18-13-1020 requires CCR facilities to submit the most recent financial assurance demonstrations made for APP, and allows those previous demonstrations to be sufficient (suffice "in part") to satisfy A.R.S. § 49-770(C) so that the facilities may continue to operate during the department's review of the submission using 40 CFR 257, subpart D closure, post closure and corrective action standards. ADEQ anticipates that the financial responsibility demonstrations that were made for APP will have to be supplemented to satisfy the different and more detailed closure, post-closure, and if applicable, corrective action requirements from 40 CFR 257, and that discussions about these details will take place in the facility permit application process.

R18-13-1021. Fees. R18-13-1021 sets forth the fees and billing procedures for CCR facilities and permitting actions. In subsection (A), Table 2 specifies annual registration fees. In subsection (B), Table 3 presents initial and maximum fees for a CCR facility permit and

permit modification. Subsections (C), (D), and (E) state the billing procedure that ADEQ must follow during permitting actions. Subsection (E) also includes the hourly billing rate of $244 per hour for permitting activities and the procedure for annual adjustment of annual fees and the billing rate pursuant to United States Bureau of Labor Statistics Consumer Price Index tables. These fees comply with two legislative mandates for ADEQ to recover its costs. A.R.S. § 49-891(D)(1) requires permit processing fees that "cover the costs of administrative services and other expenses associated with evaluating the application . . . ". A.R.S. § 49-104(B)(17) requires both the annual fees and the permit fees to be based on "the direct and indirect costs of the department's relevant duties, including employee salaries and benefits, professional and outside services, equipment, in-state travel and other necessary operational expenses directly related to issuing licenses as defined in title 41, chapter 6 and enforcing the requirements of the applicable regulatory program." See also the summary of the economic impact statement later in this notice.

R18-13-1701. Definitions. The intent for Article 17 is to include what is necessary to evaluate the financial assurance demonstrations for CCR facilities. R18-13-1701 includes the definitions that are used for APP financial assurance, unchanged, from R18-9-A203.

R18-13-1703. Financial Demonstrations for CCR Facilities. R18-13-1703 lays out what needs to be demonstrated for CCR facilities. This Article may be amended in separate rulemakings to apply to other types of solid waste facilities for which financial assurance may be required in the future. The three categories of cost are consistent with A.R.S.§§ 49-761(J) and 770(A).

R18-13-1704. Financial Assurance Mechanisms. Included in this Section are the content, terms and conditions for the mechanisms similar to APP rules but clarifying that costs are for closure, post-closure and corrective action. A catch-all provision in subsection (A)(9) allows other mechanisms to be used if approved by the Director, to provide flexibility should circumstances change.

**8. 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:**

No studies were reviewed by ADEQ. ADEQ notes that it examined materials posted by the four Arizona facilities it expects to require CCR facility permits that are posted on the facilities' CCR websites. These websites are required under 40 CFR 257, subpart D. ADEQ is proposing neither to rely or not rely on those materials for the evaluation or justification of these rules. For reader convenience, these websites are listed here.

Arizona Electric Power Cooperative, Inc.- https://ccr.azgt.coop/

Arizona Public Service Company- https://www.aps.com/en/Utility/Regulatory-and-Legal/Environmental-Compliance#Cholla

Salt River Project- https://environmental.srpnet.com/CCR/

Tucson Electric Power Company-https://www.tep.com/ccr/

**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:**

ADEQ separated the economic, small business, and consumer impacts of these rules into two major categories: 1) Those parts of the rules that would enact into Arizona rules nonprocedural standards that already apply; and 2) Additional requirements that would apply for the first time at some point after these rules are effective.

Already existing requirements. These rules enact already existing standards from the United States Environmental Protection Agency (EPA) and the Arizona Dept. of Water Resources (ADWR) into ADEQ rules. ADEQ believes that where these CCR rules match existing standards, they do not have any direct negative impact on the four facilities in Arizona that will require a CCR facility permit. There are two groups of already existing standards:

1) 40 CFR 257, subpart D, for all CCR units. There will be no impact here because this rule is neither more or less stringent than this federal subpart for nonprocedural standards, and the Arizona CCR facilities are already subject to those federal standards.

2) Arizona Dept. of Water Resources (ADWR) rules at 12 A.A.C. 15, Article 12, that apply to CCR surface impoundments. Although these standards are stricter than 40 CFR 257, subpart D in some areas, there will be no impact here because surface impoundments at CCR facilities have already been subject to those ADWR rules, including the requirements in R18-13-1010.01 related to getting a license from ADWR.

Positive impacts to the affected facilities. ADEQ believes that because ADEQ will be replacing ~~other agencies~~ both EPA and ADWR as the enforcing agency for standards that will remain the same, the rules will have a positive impact on the CCR facilities (as well as local communities) by enabling communication with a ~~single,~~ familiar "one-stop" local agency. As an example of the potential benefits for utilities, when cycling down and closing CCR units, a month's delay can cost hundreds of thousands of dollars because cycling down and closing CCR units is a capital-intensive process. In addition, monitoring groundwater and other conditions around closed coal ash landfills and surface impoundments will go on for decades after the last rail car of coal is burned. A phone call to a state employee, who is not responsible for facilities in multiple states, and who has likely already visited the site, is virtually certain to result in less delay and a more predictable outcome. In addition, EPAs responses can be delayed and unpredictable.

Examples of EPA's long and uncertain timeframes nationwide can be found at EPA's "demonstrations" page at https://www.epa.gov/coalash, where EPA lists data on requests it received from U.S. utilities for "Cease receipt of waste deadline extension requests", and "Alternate liner demonstrations". Although applications for both of these types of demonstrations were due to EPA on Nov. 30, 2020, as of February, 2025, EPA's "previously proposed determinations" for deadline extensions outnumbered "final determinations" twelve to one, and EPA's proposed determinations on alternate liner demonstrations numbered five against one final determination. ADEQ believes that in many cases, instead of waiting for EPA to issue final determinations, coal burning facilities are forced to guess what EPA may

determine and begin allocating resources based on that guess. ADEQ, in contrast, is required by Arizona statutes to have licensing timeframes for its permit actions.

The benefits of the four Arizona CCR facilities being regulated by ADEQ compared to EPA can be described generally but are difficult for ADEQ to quantify for a number of reasons: 1) EPA still does not have a final CCR permitting rule so intangible costs such as how long it will take a CCR facility to prepare an application, get a final permit, and how many modifications to the permit will be necessary as CCR units are shut down, cannot yet be estimated. Although EPA has not proposed any fees, they are not ready to go and may be under a regulation freeze. ADEQ is nearly fully staffed. 2) Some of the facilities may be planning to monitor groundwater for 30 years while some may try to avoid that by planning to close units by removal. Still others may have to remediate contaminated groundwater. 3) An ADEQ program would be partially authorized by EPA because ADEQ will not be immediately implementing EPA's legacy rule. 4) Finally, each utility is in a completely different situation with respect to the types of CCR units they have, and with respect to whether and where those units are in the glide path toward closure. Given the differences in size, organization, strategies for future generation, geographic locations and potential groundwater and dam safety issues, one would expect it unlikely that all four Arizona facilities would choose the known out of pocket expenses of ADEQ over the lower upfront cost of EPA. The best evidence that the benefits of this choice exceed the costs is that, despite these differences, all four Arizona facilities are unanimous in wanting ADEQ, not EPA, as the primary regulator and have stated that choice in written comments.

ADEQ's costs are the lowest possible given the legislative directive for the agency to recover its costs. Implicit in that directive is the legislature's belief that it is more appropriate for those that have sold or consumed electricity produced from coal to pay for a program that takes care of coal ash, rather than taxpayers in general.

Negative impacts to affected facilities. For CCR facilities, the advantages of ADEQ implementing the CCR permitting program will be offset in part by the permit processing and annual registration fees in this rule, described below under "Additional requirements". All four of the utilities affected by this rule have indicated their support for an ADEQ permitting program along with the fees.

Additional requirements. Pursuant to Arizona statute, these rules create requirements for CCR facilities additional to those already existing in the following areas:

1) Aquifer protection standards developed under ADEQ statutes and rules for non-CCR wastestreams. (see R18-13-1005(B) and (F)). Although these standards are additional to 40 CFR 257, subpart D, there will be little to no impact here because CCR facilities were already subject to these standards under their ADEQ Aquifer Protection Permit (APP) and the final rule limits the stringency of any requirements in this area to what was previously required.

2) New ADEQ permitting requirements. There are currently no permitting requirements for CCR units in Arizona. The requirement that CCR units be covered under an APP was removed in 2022 by Ch. 178 as a consequence of their being regulated under 40 CFR 257, subpart D. ADWR currently requires licenses for CCR surface impoundments because they are classified as dams. The new permitting requirements are contained in R18-13-1010 through R18-13-1021.The ADWR licensing requirement for CCR surface impoundments ends when an impoundment is covered by an ADEQ permit under an EPA approved program. See A.R.S. § 45-1201(1)(f).

Federal law requires that CCR units be eventually covered under either a federally approved state program or the federal permit program. In February, 2020, EPA proposed its permitting program in a new 40 CFR 257, subpart E, but it is currently on an uncertain timetable. There is no federal or state requirement that ADEQ match the federal permitting rules that will be adopted in subpart E. However, ADEQ has made its permitting rules match EPA's proposed rules where possible to avoid unintended extra impact should both apply at the same time when final. This strategy also increases confidence in EPA's evaluation of the Arizona program. In some areas however, ADEQ's own permitting requirements may exceed, or at least be additional to, what will be required under future EPA permitting requirements for non-participating states. These extra requirements may impact Arizona's CCR facilities.

3) Financial assurance. There is no federal requirement that CCR facilities provide financial assurance. However, state authorizing legislation for this rule has required it for Arizona CCR facilities, and it is included in R18-13-1020. ADEQ notes that these facilities were already meeting financial assurance requirements for their CCR units under previous APPs,

and that the legislature has indicated its intent that ADEQ recognize this financial assurance, "in whole or in part." (See A.R.S. § 49-770(D)) Thus, any impacts of the financial assurance requirement will be lessened to some degree. However, ADEQ expects that the eventual impact of financial assurance on CCR facilities may be greater ~~for CCR units~~ than what was required for their APP because of the more detailed closure, post-closure and corrective action requirements that exist in 40 CFR 257, subpart D.

4) Annual registration fees and permit processing fees. These fees are set out in R18-13-1021. Permit processing fees could begin after this rule is effective if any facility opts to apply early, although ADEQ expects most of these impacts to begin after CCR program approval by EPA. The annual registration fees for CCR facilities begin after CCR program approval. The annual fees are designed to cover ADEQ's non-permit related costs in administering the state CCR program as described below in the analysis of costs and benefits. EPA proposed no fees in its yet to be finalized CCR permit program.

Cost benefit analysis. ADEQ estimated its additional annual cost to implement the CCR permit program at $158,760, separate from the cost of processing permits. ADEQ based the annual registration fees in R18-13-1021(A) on this estimate after discussion with the utilities who will be subject to the fees. These annual fees won't start until EPA approves Arizona's program. Three additional full-time equivalent employees (FTEs) were estimated to be necessary to implement the CCR program: an inspector, a permit writer, and a geotechnical engineer. All but the permit writer ~~have~~ were already ~~been~~ hired at the time this final rule was approved. All of the FTE permit writer's time on CCR will be billed processing permits.

Under A.R.S. § 49-104(B)(17), ADEQ fees must "be fairly assessed and impose the least burden and cost to the parties subject to the fees." ADEQ believes its estimate of the annual cost of the program not covered by permit processing fees is the lowest possible and therefore imposes the least burden and cost. Further, the annual registration fees in R18-13-1021(A) are based on the number and complexity of CCR units at a facility. This formula was arrived at after discussion with the affected stakeholders, and it is roughly proportional to the amount of time ADEQ will likely spend relative to each facility. In ADEQ's judgment, it is the best way to fairly assess the annual registration fees.

The hourly rate in R18-13-1021(E)(1) in conjunction with the initial and maximum fees in R18-13-1021(B), Table 3, will covers "the cost of administrative services and other expenses associated with evaluating" permits. See A.R.S. § 49-891(D)(1). The hourly rate is based not only on the state's total cost for the employees billing the hours, but also a portion of the operational overhead of the Solid Waste section's employees not directly assigned to CCR facilities full time, such as supervisors, other engineers, and administrative staff. ADEQ estimated the total number of hours the permit writer would be able to bill annually after comparing its experience processing hazardous waste permits which are similar in length and complexity and factoring in annual leave, sick leave, required training and other types of nonbillable time. To provide a measure of budgeting certainty for stakeholders, ADEQ established maximum costs for CCR facility permits, similar to those required in other ADEQ permitting programs.

As a consequence of ADEQ setting its annual registration and permit processing fees at a level imposing the least burden on stakeholders, ADEQ had to plan for possible increases in its costs due to inflation. An annual adjustment to these fees based on a regional consumer price index was added at R18-13-1021(E)(4) in order for ADEQ to maintain its obligations under the program while keeping the cost at the least burdensome level.

Once the program is approved by EPA, the overall cost to ADEQ is expected to be balanced by the fees it collects. ADWR will experience slightly lower costs as ADEQ permitting will automatically remove CCR surface impoundments from ADWR's definition of dam. See A.R.S. § 45-1201(1)(f). As explained earlier under "Positive impacts to the affected facilities", there are significant potential benefits to both local communities and CCR facilities to having a single local agency handle all aspects of the federal CCR program and Arizona's dam safety regulations for CCR surface impoundments. In spite of the fees necessary to cover the cost of the program, Arizona's CCR facilities have supported ADEQ's development of a state permit program as early as 2018, when CCR permitting was planned to be added to the Aquifer Protection Permit in ADEQ's Water Quality Division. ADEQ believes the overall benefits for all parties involved exceed the overall costs.

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

1. In R18-13-1002(E), R18-13-1003(G) and R18-13-1010(G), ADEQ changed "{proposed rule date}" or "{insert proposed rule date}" to "July 12, 2024".

2. In R18-13-1010(B)(2), ADEQ clarified that ADWR's approval to construct is independently required when seeking ADEQ approval for certain actions before a facility permit has been issued. ADEQ clarified this in R18-13-1010(B)(2)(a) as follows:

"a. For a CCR surface impoundment before a CCR facility permit has been issued for that facility, the owner or operator has obtained approval to construct from ADWR and demonstrates to the satisfaction of the Director that commencing construction before approval is necessary to comply with 40 CFR 257, as incorporated in this Article;"

Based on comments, ADEQ made the following changes to the rule text:

1. Modified R18-13-1010(C) to add an alternate time for the public meeting:

Proposed:

**C.** Prior to submitting an initial or renewal CCR facility permit application, the owner or operator shall hold a public meeting in order to solicit questions from the community and inform the community about the permit to be applied for. The owner or operator shall notify ADEQ at least 30 days before the meeting, provide adequate public notice for the meeting, and submit a summary of the meeting to ADEQ.

Final:

**C.** The owner or operator shall hold a public meeting in order to solicit questions from the community and inform the community about its intended permit at one of the times listed below. The owner or operator shall notify ADEQ at least 30 days before the meeting, provide adequate public notice for the meeting, and submit a summary of the meeting to ADEQ:

1. Within 90 days after receiving notice from the Director that its application is administratively complete, or

2. Prior to submitting an initial or renewal CCR facility permit application.

2. In R18-13-1017(F)(7), ADEQ added the last clause as follows: 7. Replace monitoring equipment, including a well, if the replacement results in equal or greater monitoring effectiveness, but not including routine maintenance or replacement of well components and related equipment;

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

ADEQ received six written comments, four from the Arizona utilities that would be seeking CCR facility permits, one from an environmental organization, and one from a school district near a CCR facility. The four utilities expressed strong support for ADEQ seeking authorization for the federal program with this rule. The environmental organization and school district expressed concern and generally opposed ADEQ seeking authorization. The comments are summarized and responded to individually below.

Arizona Electric Power Cooperative (AEPCO)

Comment: General support for the AZ CCR program, especially as related to past APP regulation and local understanding of groundwater systems in the desert southwest.

Comment: **State Approvals of Certain CCR Activities May Unsettle CCR Rule Compliance.** AEPCO continues to have concerns regarding the implementation of ADEQ approvals of Alternate Source Demonstrations (ASDs)." R18-13-1005(C) AEPCO presents concern for ADEQ approval / disapproval of groundwater ASDs within the timelines required by EPA rule. Disapproval falling outside of the timelines required by EPA could "cause disorder" in the transitions between groundwater monitoring phases. A preference for continued self-implementation and certification, as existing under

the EPA umbrella, is implied. AEPCO acknowledges the 7-day advance notice of pending ASDs will help but they do not believe ADEQ's fully informed considerations for ASD approvals will be possible within the timelines defined by EPA rule.

RESPONSE: As drafted, R18-13-1005(C) accommodates transitions between detection and assessment monitoring where disapprovals occur. This allows for EPA required timelines to be met regardless of ADEQ processing time. ADEQ's intent is to conduct ASD reviews as timely as possible. The move to a more stringent level of groundwater monitoring is not required until ADEQ disapproves of an ASD as explained in the preamble discussion of R18-13-1005.

Comment: "**A Straightforward Appeal Process for ASDs Is Needed" "The Proposed Rule provides no clear path for appeals of ASDs. R18-13-1013 provides for appeals of a permitting decision.**" (Emphasis added) Consider adding clarifying text with a time frame for appeal and "stay" accommodation while appeals are considered.

RESPONSE: ADEQ agrees that the Director's decision to approve or disapprove an ASD under R18-13-1005(C) would be an appealable agency action under A.R.S. Title 41, Article 10, which controls stays and time frames. The preamble summary of R18-13-1005 now contains this statement.

Comment: "Permit Modifications are Unnecessary and Disruptive for Site Maintenance Activities" R18-13-1017(F). AEPCO suggests the routine maintenance items be specifically excluded from consideration as a permit modification. It is suggested the language of R18-13-1017 (F) is too wide in scope. Additional language is suggested for R18-13-1017(F)(7): "Replace monitoring equipment, including a well, if the replacement results in equal or greater monitoring effectiveness, but not including routine maintenance or replacement of well components and related equipment."

RESPONSE: This concern was considered by ADEQ in previous engagements and ADEQ has stated that routine maintenance is not a subject for minor permit modifications. A previous item was dropped from the draft rule to satisfy this

ongoing concern. ADEQ agrees and has placed the requested clarification in the rule.

Comment: "Pre-State Permit Program Certifications Should be Preserved" It is suggested that previously qualified professional engineer (QPE) certifications should be adopted into the ADEQ program without retroactive review and approval. AEPCO requests clarification that ADEQ does not intend to reopen previous QPE certifications and that the program be prospective only regarding QPE certifications.

RESPONSE: ADEQ must consider all permit related certifications and documentation during the CCR permit application process. EPA has expressed concern that, nationally, some QPE certifications may potentially be inadequate. As such, ADEQ cannot accept previously prepared certifications at face value. Any shortcomings identified during the permit application process must be addressed for permit approval to occur.

Comment: "Public Meeting Requirements Should be Revised" R18-13-1010(C) AEPCO asks that the timing and style of the pre-application public meeting described in R18-13-1010(C) be reconsidered. They argue that holding a public meeting prior to application submission is too early and that the timing of this public meeting would be best realigned to coincide with permit application receipt by ADEQ. It is further argued that holding a public meeting prior to application submission could risk confusing the public as the permit application evolves. AEPCO recommends a meeting style consistent with past practices where both ADEQ and the regulated entity engage the public jointly.

RESPONSE: ADEQ disagrees with the arguments of the electric utility commenters that any public meeting on a utility's CCR permit has to be led by ADEQ, or more generally, that all public engagement related to the CCR activities on site should be managed by ADEQ. EPA has successfully employed the requirement for a pre-application public meeting since adding it to the RCRA Expanded Public Participation Rules in 1995. The most important goal ADEQ hopes to achieve from the pre-application meeting requirement is the opening or continuation of a dialogue between the permit applicant and the

community. We believe that the applicant should open or resume this dialogue at the beginning of the permitting process. The meeting will give the public direct input to facility owners or operators; at the same time, facility owners or operators can gain an understanding of public expectations and attempt to address public concerns in their permit applications. The pre-application meeting should provide an open, flexible, and informal occasion for the applicant and the public to discuss various aspects of CCR management and the facility's operations. The pre-application public meeting allows the public to engage directly with the facility and learn about the elements of the application and to express any concerns they have about design, monitoring, corrective action, notifications, etc. Both the Department and the current administration have highlighted public engagement and this is one component that will be beneficial for the new program.

In light of commenters' suggestions that the required public meeting be moved to a different time period, ADEQ has added to the rule an alternate time when the meeting may be held - within 90 days of the owner or operator receiving notice from ADEQ that its application is administratively complete.

Salt River Project

Comment: SRP appreciates the work conducted by the agency to support this rulemaking.

Comment: SRP requests that ADEQ revise R18-13-1010(B)(2) to allow construction of proposed facilities to proceed "at risk" while a facility goes through a new facility permitting process. SRP states that this aligns with the agency's APP program regulations.

RESPONSE: This was addressed in the NPRM Part V (Transition from Program Approval to Permit Issuance) and in the rule at R18-13-1010(B)(2). The intent was to allow SRP to move forward with construction at-risk if construction had to begin on a new unit(s) before program approval or before the first CCR permit can be issued by ADEQ. ADWR's authority for surface impoundments

that are dams would still be in effect. Note that ADWR allows no "at-risk" construction. SRP is considering incised impoundments that would not require ADWR approval. ADEQ understands that SRP's construction schedule may depend on the timing of EPA's final decision to take an action related to SRP's unlined impoundment.

Comment: SRP requests that R18-13-1010(C) be removed. SRP supports public participation in the permitting process, however, ADEQ has not provided the legal basis for R18-13-1010(C), which requires the owner or operator to hold a public meeting to solicit questions from the community and inform the community of a proposed permit application prior to submitting an application for an initial or renewed CCR facility permit. This imposes a new regulatory burden on permittees. Further, SRP states that these proposed and novel requirements in R18-13-1010(C) for public involvement before formal agency engagement go beyond the federal regulations applicable to CCR units and are a marked departure from the public involvement requirements under other programs administered by ADEQ. SRP also believes that engaging the public before a project is fully defined may cause confusion and extend permitting timelines. SRP notes that the rule includes ample opportunities for participation for the public after a project has been defined by ADEQ under R18-13-1018 in which ADEQ is to provide public notice.

RESPONSE: ADEQ disagrees with the arguments of the electric utility commenters that any public meeting on a utility's CCR permit has to be led by ADEQ, or more generally, that all public engagement related to the CCR activities on site should be managed by ADEQ. EPA has successfully employed the requirement for a pre-application public meeting since adding it to the RCRA Expanded Public Participation Rules in 1995. The most important goal ADEQ hopes to achieve from the pre-application meeting requirement is the opening or continuation of a dialogue between the permit applicant and the community. We believe that the applicant should open or resume this dialogue at the beginning of the permitting process. The meeting will give the public direct input to facility owners or operators; at the same time, facility owners or

operators can gain an understanding of public expectations and attempt to address public concerns in their permit applications. The pre-application meeting should provide an open, flexible, and informal occasion for the applicant and the public to discuss various aspects of CCR management and the facility's operations. Both the Department and the current administration have highlighted public engagement and this is one component that will be beneficial for the new program.

In light of commenters' suggestions that the required public meeting be moved to a different time period, ADEQ has added to the rule an alternate time when the meeting may be held - within 90 days of the owner or operator receiving notice from ADEQ that its application is administratively complete.

Comment: SRP requests that R18-13-1017(F)(3)(c), under minor permit modifications, be removed. Alternate source demonstrations (ASDs) for statistically significant increases (SSIs) pertaining to naturally occurring conditions should not require a minor permit modification, as this type of ASD does not lead to a change in a facility's groundwater sampling and analysis program (i.e., the facility remains in detection monitoring, rather than commencing assessment monitoring).
RESPONSE: R18-13-1017(F)(3)(c) requires a facility's assessment of corrective measures to be submitted for approval as a minor permit modification, not the ASD. Subsection (F)(3)(a) requires a change in the method for statistical analysis to be approved by ADEQ as a minor permit modification. ASDs, although requiring approval by ADEQ, are not required to be submitted as permit modifications. The technical analysis required for an ASD and the method of calculating an SSI are critical to determining whether or not groundwater had been impacted by CCR units. EPA has commented extensively on many facilities' ASDs and uses of SSI calculation methods nationwide.

<u>Tucson Electric Power</u>

Comment: General appreciation that ADEQ has developed the program and for the stakeholder process. Acknowledgment that ADEQ is the appropriate agency to implement CCR permitting in Arizona.
Comment: Move the pre-application public meeting hosted by the applicant from R18-13-1010(C) to R18-13-1018(A). This would allow the public meeting to coincide with the public notice that an application has been received by ADEQ. This improves the timeliness of the meeting - an actual permit application has been submitted and the permitting process is underway. ADEQ should participate in the meeting.
RESPONSE: ADEQ disagrees with the arguments of the electric utility commenters that any public meeting on a utility's CCR permit has to be led by ADEQ, or more generally, that all public engagement related to the CCR activities on site should be managed by ADEQ. EPA has successfully employed the requirement for a pre-application public meeting since adding it to the RCRA Expanded Public Participation Rules in 1995. The most important goal ADEQ hopes to achieve from the pre-application meeting requirement is the opening or continuation of a dialogue between the permit applicant and the community. We believe that the applicant should open or resume this dialogue at the beginning of the permitting process. The meeting will give the public direct input to facility owners or operators; at the same time, facility owners or operators can gain an understanding of public expectations and attempt to address public concerns in their permit applications. The pre-application meeting should provide an open, flexible, and informal occasion for the applicant and the public to discuss various aspects of CCR management and the facility's operations. Both the Department and the current administration have highlighted public engagement and this is one component that will be beneficial for the new program.

In light of commenters' suggestions that the required public meeting be moved to a different time period, ADEQ has added to the rule an alternate time when the meeting may be held - within 90 days of the owner or operator receiving

notice from ADEQ that its application is administratively complete.

Arizona Public Service

Comment: Supportive of ADEQ's work towards getting an EPA-authorized CCR program.

Comment: Reiterates their concerns over the pre-application public meeting required by R18-13-1010(C). APS recommends that ADEQ lead all public engagement associated with the program in accordance with its own requirements. This also allows the public to correspond directly with the responsible regulatory agency, and not APS. APS recommends that ADEQ hold this public meeting after preparation of the draft permit.

RESPONSE: ADEQ disagrees with the arguments of the electric utility commenters that any public meeting on a utility's CCR permit has to be led by ADEQ, or more generally, that all public engagement related to the CCR activities on site should be managed by ADEQ. EPA has successfully employed the requirement for a pre-application public meeting since adding it to the RCRA Expanded Public Participation Rules in 1995. The most important goal ADEQ hopes to achieve from the pre-application meeting requirement is the opening or continuation of a dialogue between the permit applicant and the community. We believe that the applicant should open this dialogue at the beginning of the permitting process. The meeting will give the public direct input to facility owners or operators; at the same time, facility owners or operators can gain an understanding of public expectations and attempt to address public concerns in their permit applications. The pre-application meeting should provide an open, flexible, and informal occasion for the applicant and the public to discuss various aspects of CCR management and the facility's operations. Both the Department and the current administration have highlighted public engagement and this is one component that will be beneficial for the new program.

In light of commenters' suggestions that the required public meeting be moved

to a different time period, ADEQ has added to the rule an alternate time when the meeting may be held - within 90 days of the owner or operator receiving notice from ADEQ that its application is administratively complete.

Joseph City Unified School District

Comment: The Superintendent of this school district, which is near a coal ash pond, asked that ADEQ not take over the CCR program unless it can assure citizens that Arizona regulations will not be weaker in any respect than current federal regulation, also stating his concern that the state may not have the staffing and expertise comparable to the experience and resources of the federal EPA, especially in light of recent state budget cuts. Finally, he cited a news story from several years ago that commented on the possibility that citizen suits would not be available if ADEQ is approved to run the program.

RESPONSE: Under federal law, EPA may not approve a state to implement the federal CCR program unless the state program requires each ash pond or landfill to achieve compliance with the federal regulations or such other state criteria EPA determines to be at least as protective. EPA has already refused to approve one state program and has only approved three.

ADEQ has already hired staff to evaluate dam safety and water quality issues related to this CCR rule to assure that it will be at least as protective as EPA regulations. In addition, ADEQ aquifer protection staff have been monitoring all four coal fired power plants subject to this rule for years, making ADEQ more familiar with the actual sites than EPA. A system of fees charged to the power plants is included in the ADEQ rule to ensure that the program is insulated from current or future state budget issues.

In spite of the news story questioning whether citizen suits would still be available with Arizona implementing the federal CCR program, citizen suits are permanently in place even with state authorization, not only in the CCR program ,but in every other program under the Resource Recovery and Conservation Act (RCRA). It would not be legally possible to eliminate these suits, and in fact a number of citizen lawsuits have been, and will likely

continue to be filed, with regard to the CCR regulation and state CCR programs. ADEQ recognizes the land, water, and labor that local communities have contributed to provide electricity to the state for decades and will be in the best position to protect those interests.

Sierra Club

Comment: ADEQ should not assert primacy over coal ash regulation and enforcement as the Agency is understaffed and EPA has already made significant efforts in enforcing relevant federal requirements.
RESPONSE: ADEQ believes the fees contained in the proposed rule are sufficient to support the program indefinitely in spite of periodic state budget tightening. In addition, the proposed rule contains financial assurance requirements missing from the federal program. The proposed rule maintains the requirements of the self-implementing federal CCR rule while additionally incorporating components of the Aquifer Protection Program (APP) and ADWR dam safety rules that currently apply to CCR units in Arizona. The final CCR rule will allow for a single, streamlined permit program for CCR units that meets applicable federal and state requirements for CCR management, aquifer protection, and dam safety. The support for ADEQ's authorization over the last two administrations recognizes ADEQ's extensive knowledge of the unique geologic and hydro geologic site conditions across Arizona. ADEQ is the most appropriate regulatory agency to implement the CCR Program.

Comment: Legacy Rule. This rule incorporates 40 CFR 257, Subpart D, as of December, 2020, however in May 2024 EPA amended Subpart D by adopting the CCR "Legacy Rule", providing for regulation of non-operating coal ash units originally outside of 2015 Subpart D regulation. ADEQ's rule does not address and is silent on the 2024 Legacy Rule. Sierra Club finds that the rules do not specifically state "does not include any later amendments or editions of the incorporated matter", although the rule does refer to Subpart D "as revised December 14, 2020 (and no future editions)." Sierra Club requests specifying

language that this rule does not include matters covered by EPA's 2024 CCR Legacy Rule amendments to Subpart D. Sierra Club notes two coal ash units that may be subject to the Legacy Rule (Coronado power plant site). Sierra Club interprets this silence to the Legacy Rule to mean "legacy units" would remain under EPA regulation per 2024 Legacy Rule amendments.

RESPONSE: Once EPA's new legacy rule becomes effective (November 5, 2024) Legacy Units and Coal Combustion Residuals Management Units (CCRMUs) will be under the authority of EPA. Since September 2022, (see Guiding Principles and Features on ADEQ's website) ADEQ indicated its intent to use December 14, 2020 as the cutoff date for EPA rule changes. All draft rules and this proposed rule have also indicated that with the statutorily required phrase "(and no further editions)". ADEQ has placed a small section clarifying its intent with EPA's Legacy rule in the preamble to this final rule.

Comment: In several areas, the proposed regulations are less stringent than Subpart D and thus cannot be approved by EPA. Example: R18-13-1003 amendment of 40 CFR 257.73 & 257.74 by deleting "not to exceed a height of 6 inches above the slope of the dike." Requests revision regulations to fully incorporate all requirements of 40 C.F.R. 257.73 and 257.74.

RESPONSE: ADEQ has deleted these height restrictions on the recommendation of EPA based on the U.S. District Court's decision in USWAG et al v. EPA (2015) vacating the restrictions. See EPA's discussion at 83 FR 11589, March 15, 2018.

Comment: The definition of "minor modifications" in R18-13-1017(F) is overly broad and includes modifications that are "material," "major," and/or "serve as the underlying basis for a permit condition", denying the public the opportunity to comment on or appeal important CCR permit changes.

RESPONSE: ADEQ provided several specific examples in R18-13-1017(F) which will require a minor permit modification. Minor permit modifications are also subject to public scrutiny per R18-13-1018.

Comment: Citizen suits. While ADEQ "backed off" (clarified) earlier statements of avoiding RCRA citizen suits by assuming control of the program, concern

remains that A.R.S. citizen enforcement provisions remain very weak. As such, the rule should clarify RCRA citizen enforcement provisions apply to the CCR program.

RESPONSE: The citizen suit provisions for RCRA programs come from an act of Congress and are not subject to state removal. Section 7002(a)(1)(B) of RCRA allows any person to sue another person, including a federal, state or local government agency, whose handling of solid or hazardous waste "may present an imminent or substantial endangerment to health or the environment." ADEQ has neither the ability or intent to change this.

**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 ADEQ or this specific rulemaking outside of the authority provided in A.R.S. § 49-891.

**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:**

This rule requires a permit but it is not technically feasible to issue a general permit because there are only four facilities in Arizona to be permitted. Each facility is unique and will be subject to different permit conditions.

**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:**

Two federal laws are applicable to the subject of this rule: the WIIN Act (Water Infrastructure Improvements for the Nation Act) enacted by Congress in December 2016, and 40 CFR 257, subpart D, first promulgated in 2015 but amended since. The WIIN Act provided authority for EPA to review and approve permit programs submitted by states for CCR facilities. The approved

state programs would then operate in lieu of the federal requirements in 40 CFR 257, subpart D.

In five areas, this rule is more stringent than federal law:

1) Aquifer protection standards already developed under ADEQ statutes and rules for non-CCR wastestreams. See R18-13-1005(B). Authorized in A.R.S. § 49-891(A);

2) CCR surface impoundment safety standards already existing under Arizona Department of Water Resources rules at 15 A.A.C. 12, Article 15. Authorized in A.R.S. § 49-891(B);

3) New ADEQ permitting requirements. These new permitting requirements are contained in R18-13-1010 through R18-13-1021. Authorized in A.R.S. §§ 49-891(C) and (F);

4) Financial assurance requirements contained in R18-13-1020 and Article 17. Authorized in A.R.S. § 49-770(A); and

5) Annual registration fees and permit processing fees contained in R18-13-1021. Authorized in A.R.S. § 49-891(D).

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

No such analysis was submitted.

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

| Incorporated federal citation | Location |
|---|---|
| 40 CFR 257.50, 40 CFR 257.52, 40 CFR 257.53 | R18-13-1001 |
| 40 CFR 257.60 through 40 CFR 257.64 | R18-13-1002 |
| 40 CFR 257.70 through 40 CFR 257.74 | R18-13-1003 |
| 40 CFR 257.80 through 40 CFR 257.84 | R18-13-1004 |
| 40 CFR 257.90 through 40 CFR 257.98 | R18-13-1005 |
| 40 CFR 257.100 through 40 CFR 257.104 | R18-13-1006 |

| | |
|---|---|
| 40 CFR 257.105 through 40 CFR 257.107 | R18-13-1007 |
| 40 CFR 257, Appendices III and IV | R18-13-1008 |

**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 18. ENVIRONMENTAL QUALITY

## CHAPTER 13. DEPARTMENT OF ENVIRONMENTAL QUALITY

## SOLID WASTE MANAGEMENT

## ARTICLE 10. COAL COMBUSTION RESIDUALS

Section


| | |
|---|---|
| R18-13-1001. | Applicability; Incorporation by Reference; General Provisions |
| R18-13-1002. | Location Restrictions |
| R18-13-1003. | Design Criteria |
| R18-13-1003.01. | Additional Design Criteria for New CCR Surface Impoundments and Lateral Expansions of CCR Surface Impoundments |
| Table 1. | Minimum Factors of Safety for Stability |
| R18-13-1003.02. | Additional Emergency Action Plan Requirements for CCR Surface Impoundments |
| R18-13-1004. | Operating Criteria |
| R18-13-1005. | Groundwater Monitoring and Corrective Action |
| R18-13-1006. | Closure and Post-Closure Care |
| R18-13-1007. | Recordkeeping, Notification, and Posting of Information to the Internet |
| R18-13-1008. | 40 CFR 257, Appendices III and IV |
| R18-13-1010. | Permit Application Requirements for CCR Facilities |
| R18-13-1010.01. | Additional Application Requirements for Constructing or Modifying CCR Surface Impoundments for Applications Submitted After CCR Program Approval |
| R18-13-1011. | Permit Contents |
| R18-13-1012. | Compliance Schedules |
| R18-13-1013. | CCR Permit Issuance or Denial |
| R18-13-1014. | CCR Permit Transfer |
| R18-13-1015. | CCR Permit Termination |
| R18-13-1016. | CCR Permit Renewals |
| R18-13-1017. | Modification of a CCR Facility Permit |
| R18-13-1018. | Public Notice Requirements for CCR Facility Permit Actions |
| R18-13-1019. | Compliance, ADEQ Inspections, Violations and Enforcement |

R18-13-1020. Financial Assurance Requirements
R18-13-1021. Fees
Table 2. Facility Annual Registration Fees
Table 3. CCR Facility Permitting Fees

## ARTICLE 17. FINANCIAL ASSURANCE

Section

R18-13-1701. Definitions
R18-13-1703. Financial Demonstrations for CCR Facilities
R18-13-1704. Financial Assurance Mechanisms

**R18-13-1001. Applicability; Incorporation by Reference; General Provisions**

**A.** This Article becomes effective as follows:

1. Provisions related to the submission of initial CCR permit applications, including R18-13-1010(A), R18-13-1010(B)(1), R18-13-1010(C), R18-13-1010(D), R18-13-1010(E), R18-13-1010(G), R18-13-1021(B), (D), and (E), and applicable definitions, are effective 60 days after the filing of this rule with the Secretary of State.
2. All other provisions of this Article are effective upon the date of CCR program approval.

**B.** Any reference or citation to 40 CFR 257, or a section thereof, appearing in the body of this Article includes any modification to the CFR or section made by this Article. When federal regulatory language that has been incorporated by reference into Arizona rule has also been amended, brackets [ ] indicate where the amended language would be placed if it was part of the federal regulation. The subsection labeling for incorporated material in this Article may not conform to the Arizona Secretary of State's formatting requirements, because the formatting reflects the structure of the incorporated federal regulation.

**C.** 40 CFR 257.50 through 257.53, revised as of December 14, 2020 (and no future editions) are incorporated by reference, modified by the following subsections, and on file with the Arizona Department of Environmental Quality (ADEQ) with the exception of the following:

1. 40 CFR 257.50(e) is not incorporated by reference;
2. 40 CFR 257.51 is not incorporated by reference. 40 CFR 257, subpart D was effective as federal law as provided therein, but is effective as state law, as incorporated in this Article, on the effective date of CCR program approval.

**D.** 40 CFR 257.53, titled "Definitions", is amended as follows:

1. "New CCR surface impoundment" means:

[a. In the places listed below, a CCR surface impoundment that begins construction or operation after the effective date of these rules:

i. R18-13-1002(B), (C), and (D);

ii. R18-13-1003.01;

iii. R18-13-1004(B), (C), and (D);

iv. R18-13-1010(D)(11);

v. R18-13-1010.01; and

vi. R18-13-1017(E).

b. Other than as listed in paragraph (a),] a CCR surface impoundment or lateral expansion of an existing or new CCR surface impoundment that first receives CCR or commences construction after October 19, 2015. A new CCR surface impoundment has commenced construction if the owner or operator has obtained the federal, state, and local approvals or permits necessary to begin physical construction and a continuous on-site, physical construction program had begun after October 19, 2015.

2. "Participating State" means [Arizona, after CCR program approval.]

3. "Participating State Director" means the [Director of ADEQ, after CCR program approval.]

4. "Qualified professional engineer" means an individual who is licensed by [the state of Arizona] as a Professional Engineer to practice one or more disciplines of engineering and who is qualified by education, technical knowledge and experience to make the specific technical certifications required under this [Article. An engineer is considered qualified to provide information to the Director regarding the safe storage level of a reservoir if the engineer:

a. Is licensed in accordance with A.R.S. Title 32, Chapter 1, with proficiency in engineering and knowledge of dam technology,

b. Has three years of experience in the field of dam safety, and

c. Has actual experience in conducting dam safety inspections.]

5. "State" means [Arizona.]

**E.** In addition to the definitions in 40 CFR 257.53:

1. "ADEQ" or "Department" means the Arizona Department of Environmental Quality.

2. "Applicable requirement" means a requirement in A.R.S. Title 49, Chapter 4, this Article, or Article 17, to which an owner or operator is subject based on the applicability criteria in these laws.

3. "CCR multi-unit" means a group of CCR units operating with a multiunit

groundwater monitoring system complying with 40 CFR 257.91(d).

4. "CCR program approval" means United States Environmental Protection Agency approval of the Arizona coal combustion residuals program in accordance with 42 United States Code section 6945(d)(1).

5. “Certification from a qualified professional engineer or approval from the Participating State Director or approval from EPA where EPA is the permitting authority” means “certification from a qualified professional engineer, approved by the Director or EPA where EPA is the permitting authority”, unless specifically provided otherwise.

6. “Director” or “State Director” means [the director of ADEQ.]

7. "Discharge" has the same meaning prescribed in A.R.S. § 49-201.

8. “EPA” means the United States Environmental Protection Agency.

**F.** The following definitions are also applicable in this Article:

1. “Appurtenant structure” means any structure that is contiguous and essential to the safe operation of the CCR surface impoundment including embankments, saddle dikes, outlet works and controls, diversion ditches, spillway and controls, access structures, bridges, and related housing at a surface impoundment.

2. “Emergency spillway” means a spillway designed to safely pass the inflow design flood routed through the reservoir. If the flow is controlled by gates, it is a controlled spillway. If the flow is not controlled by gates, it is an uncontrolled spillway.

3. “Incremental adverse consequences” means under the same loading conditions, the additional adverse consequences such as economic, intangible, lifeline, or human losses, that would occur due to the failure or improper operation of the CCR surface impoundment over those that would have occurred without failure or improper operation of the CCR surface impoundment.

4. “Intangible losses” means incremental adverse consequences to property that are not economic in nature, including property related to social, cultural, unique, or resource-based values, including the loss of irreplaceable and unique historic and cultural features; long-lasting pollution of land or water; or long-lasting or permanent changes to the ecology, including fish and endangered species habitat

identified and evaluated by a public natural resource management or protection agency.

5. "Maximum credible earthquake" means the most severe earthquake that is believed to be possible at a point on the basis of geologic and seismological evidence.

6. "Maximum water surface" means the maximum elevation of the reservoir water level attained during routing of the inflow design flood.

7. "Outlet works" means a closed conduit under or through a CCR surface impoundment or through an abutment for the controlled discharge of the contents normally impounded by a CCR surface impoundment and reservoir. The outlet works include the inlet and outlet structures appurtenant to the conduit. Outlet works may be controlled or uncontrolled.

8. "Probable maximum flood" or "PMF" means the flood runoff expected from the most severe combination of critical meteorologic and hydrologic conditions that are reasonably possible in the [region, including rain and snow where applicable. 0.5 PMF is that flood represented by the flood hydrograph with ordinates equal to 0.5 the corresponding ordinates of the PMF hydrograph.]

9. "Probable maximum precipitation" means the greatest depth of precipitation for a given duration that is theoretically physically possible over a particular size storm area at a particular geographical location at a particular time of year.

10. "Reservoir" means a CCR surface impoundment.

11. "Residual freeboard" or "freeboard" means the vertical distance between the highest water surface elevation during the inflow design flood and the lowest point at the top of the CCR surface impoundment.

12. "Safe storage level" means the maximum reservoir surface elevation at which the Director determines it is safe to impound water, other liquids, or CCR in the reservoir.

13. "Safety deficiency" means a condition at a CCR surface impoundment that impairs or adversely affects the safe operation of the CCR surface impoundment.

14. "Spillway crest" means the highest elevation of the floor of the spillway along a centerline profile through the spillway.

15. "Storage capacity" means the maximum volume of CCR, liquid, sediment, or debris that can be impounded in the reservoir with no discharge, including the situation where an uncontrolled outlet becomes plugged. When spillways are present, the storage capacity is reached when the reservoir level is at the crest of the emergency spillway, or at the top of permanently mounted emergency spillway gates in the closed position. Storage capacity excludes dead storage below the natural ground surface.

16. "Total freeboard" means the vertical distance between the emergency spillway crest or the safe storage level and the top of the CCR surface impoundment.

17. "Unsafe" means that safety deficiencies in a CCR surface impoundment or spillway could result in failure of the CCR surface impoundment with subsequent loss of human life or significant property damage.

**R18-13-1002. Location Restrictions**

**A.** 40 CFR 257.60 through 40 CFR 257.64, revised as of December 14, 2020 (and no future editions) are incorporated by reference, modified by the following subsections, and on file with ADEQ.

**B.** In addition to the location requirements in 40 CFR 257.62(a), new CCR surface impoundments and all lateral expansions of CCR surface impoundments shall not be located within 60 meters (200 feet) of the outermost damage zone of a fault that has had displacement in either Holocene or Late Pleistocene time unless the owner or operator demonstrates by the date specified in § 257.62(c)(2) that an alternative setback distance of less than 60 meters (200 feet) will prevent damage to the structural integrity of the CCR impoundment.

**C.** In addition to the requirements in 40 CFR 257.63(a), the following requirements are added:

1. For a new or lateral expansion of a CCR surface impoundment, the owner or operator shall submit a review of the seismic or earthquake history of the area around the surface impoundment within a radius of 100 miles to establish the relationship of the site to known faults and epicenters. The review shall include any known earthquakes and the epicenter locations and magnitudes of the

earthquakes.

2. For a new or lateral expansion of a CCR surface impoundment, the owner or operator shall identify the location of active or potentially active faults that have experienced Holocene or Late Pleistocene displacement within a radius of 100 miles of the site.

3. For a new or lateral expansion of a high or significant hazard potential CCR surface impoundment, the owner or operator shall design the impoundment to withstand the maximum credible earthquake or the maximum horizontal acceleration, whichever is greater.

**D.** In addition to the requirements in 40 CFR 257.64, the owner or operator shall not construct a new CCR surface impoundment or a CCR surface impoundment lateral expansion on active faults, as defined by § 257.62(a), collapsible soils, dispersive soils, sinkholes, fissures, or soils with the potential for subsidence, unless the owner or operator demonstrates that the CCR surface impoundment can safely withstand the anticipated offset or other unsafe effects on the CCR surface impoundment.

**E.** Subsections (B), (C), and (D) of this Section are based on Arizona dam safety standards in existence on July 12, 2024, are additional to those in 40 CFR 257, subpart D, as incorporated in this Article, and do not apply to:

1. CCR surface impoundments with a maximum height of less than 6 feet, regardless of storage capacity;

2. CCR surface impoundments with a maximum height of between 6 and 25 feet and a storage capacity of less than 50 acre-feet; or

3. CCR surface impoundments with a maximum height greater than 25 feet and a storage capacity of 15 acre-feet or less.

**R18-13-1003. Design Criteria**

**A.** 40 CFR 257.70 through 40 CFR 257.74, revised as of December 14, 2020 (and no future editions) are incorporated by reference, modified by the following subsections, and on file with ADEQ.

**B.** 40 CFR 257.73(a)(4) is amended by deleting “not to exceed a height of 6 inches above the slope of the dike,”.

**C.** 40 CFR 257.73(d)(1)(iv) is amended by deleting "not to exceed a height of 6 inches above the slope of the dike,".

**D.** 40 CFR 257.74(a)(4) is amended by deleting "not to exceed a height of 6 inches above the slope of the dike,".

**E.** 40 CFR 257.74(d)(1)(iv) is amended by deleting "not to exceed a height of 6 inches above the slope of the dike,".

**F.** 40 CFR 257.74(d)(1)(v)(B) is amended as follows: "(B) The combined capacity of all spillways must adequately manage flow during and following the peak discharge from a:

(1) Probable maximum flood (PMF) for a high hazard potential CCR surface impoundment; or

(2) 1000-year flood [or 0.5 PMF, whichever is greater] for a significant hazard potential CCR surface impoundment; or

(3) 100-year flood [or 0.25 PMF, whichever is greater] for a low hazard potential CCR surface impoundment."

**G.** Subsection (F) of this Section is based on Arizona dam safety standards in existence on July 12, 2024, is additional to those in 40 CFR 257, subpart D, as incorporated in this Article, and does not apply to:

1. CCR surface impoundments with a maximum height of less than 6 feet, regardless of storage capacity;
2. CCR surface impoundments with a maximum height of between 6 and 25 feet and a storage capacity of less than 50 acre-feet; or
3. CCR surface impoundments with a maximum height greater than 25 feet and a storage capacity of 15 acre-feet or less.

## R18-13-1003.01. Additional Arizona Design Criteria for New CCR Surface Impoundments and Lateral Expansions of CCR Surface Impoundments

**A.** The requirements in this Section are additional to those in 40 CFR 257, subpart D, as incorporated in this Article, and do not replace any requirement of 40 CFR 257, subpart D, as incorporated herein.

**B.** Geotechnical Requirements. The owner or operator shall provide an evaluation of the static stability of the foundation, CCR surface impoundment, and slopes of the reservoir

rim.

**C.** CCR surface impoundment Embankment Requirements.

1. Geotechnical Requirements. Table 1 states additional minimum factors of safety for embankment stability under various loading conditions not covered by 40 CFR 257.74(e).

   a. The analysis of minimum factors of safety shall include the effects of anisotropy on the phreatic surface position by using a ratio of horizontal permeability to vertical permeability of at least 10. The Director may require ratios of up to 100 if the material types and construction techniques will cause excessive stratification.

   b. The owner or operator shall use tests modeling the conditions being analyzed to determine the strengths used in the stability analysis. The stability analysis shall include total and effective stress strengths appropriate for the different material zones and conditions analyzed. The stability analysis shall use undrained strengths or strength parameters for all saturated materials.

   c. If applicable, the owner or operator shall perform an analysis of the upstream slope stability for a partial pool with steady seepage considering the reservoir level that provides the lowest factor of safety.

2. Seismic Requirements

   a. The owner or operator shall determine the seismic characteristics of the site as prescribed in R18-13-1002(B) and(C) and R18-13-1010.01(G)(3)(m).

   b. The owner or operator shall determine the liquefaction susceptibility of the embankment, foundation, and abutments and may use standard penetration testing, cone penetration testing, shear wave velocity measurements, or a combination of these methods to make this determination. The owner or operator shall compute the minimum factor of safety against liquefaction at specific points and make a determination of whether the overall site is subject to liquefaction.

   c. The owner or operator shall compute a minimum factor of safety against

overtopping due to deformation and settlement in each of the following cases. The minimum factor of safety against overtopping can be no less than 2.5, determined by dividing the total pre-earthquake freeboard by the estimated vertical settlement in feet. The owner or operator shall determine the total vertical settlement by adding the settlement values of the upstream and downstream slopes.

i. An embankment, foundation, or abutment is not subject to liquefaction, has a maximum peak acceleration of more than 0.2g or a maximum peak acceleration of more than 0.35g and consists of clay on a clay or bedrock foundation; or

ii. The embankment, foundation or abutment is subject to liquefaction.

d. The owner or operator shall perform a liquefaction analysis to establish approximate boundaries of liquefiable zones and physical characteristics of the soil following liquefaction for an embankment, foundation, or abutment subject to liquefaction. The owner or operator shall perform an analysis of the potential for flow liquefaction.

e. Other analytical procedures may be required by the Director for sites with high seismicity or low strength embankment or foundation soils.

3. Miscellaneous Design Requirements

a. The design of any significant or high hazard potential CCR surface impoundment shall provide seepage collection and prevent internal erosion or piping due to embankment cracking or other causes.

b. The Director shall review the filter and permeability design for a chimney drain, drain blanket, toe drain, or outlet conduit filter diaphragms on the basis of unique site characteristics.

i. The minimum thickness of an internal drain is 3 feet.

ii. The minimum width of a chimney drain is 6 feet.

iii. The owner or operator shall filter match an internal drain to its adjacent material.

iv. The owner or operator shall design internal drains with sufficient

capacity for the expected drainage without the use of drainpipes using only natural granular materials.

c. The use of a geosynthetic is not permitted in a design if it serves as the sole defense against CCR surface impoundment embankment failure. The use of geotextiles and geonets as a filter or drain material or a geomembrane liner is permitted only in a location that is easily accessible for repair or if its excavation cannot create an unsafe condition at the CCR surface impoundment. The Director may impose permit conditions, including monitoring appropriate to the hazard classification, inspection, and necessary repairs.

d. The owner or operator shall use armoring on any upstream slope of a CCR surface impoundment embankment. If the owner or operator uses rock riprap for armoring, it shall be well-graded, durable, sized to withstand wave action, and placed on a well-graded pervious sand and gravel bedding or geotextile with filtering capacity appropriate for the site.

e. The minimum width of the top of a CCR surface impoundment embankment is equal to the structural height of the CCR surface impoundment divided by 5 plus an additional 5 feet. The required minimum width for any CCR surface impoundment embankment is 12 feet. The maximum width for any CCR surface impoundment embankment is 25 feet.

**Table 1. Minimum Factors of Safety for Stability**

(Not applicable to an embankment on a clay shale foundation)

| **Embankment Loading Condition** | **Minimum Factor of Safety** |
|---|---|
| End of construction case for embankments greater than 50 feet in height on weak foundations | 1.4 |
| Steady state seepage - upstream (critical partial pool) | 1.5 |

| | |
|---|---|
| Instantaneous drawdown - upstream slope | 1.2 |

**D.** The requirements in this Section are based on Arizona dam safety standards additional to those in 40 CFR 257, subpart D, as incorporated in this Article, and do not apply to:

1. CCR surface impoundments with a maximum height of less than 6 feet, regardless of storage capacity;
2. CCR surface impoundments with a maximum height of between 6 and 25 feet and a storage capacity of less than 50 acre-feet; or
3. CCR surface impoundments with a maximum height greater than 25 feet and a storage capacity of 15 acre-feet or less.

**R18-13-1003.02. Additional Emergency Action Plan Requirements for CCR Surface Impoundments**

**A.** In addition to the emergency action plan (EAP) requirements in 40 CFR 257.73(a)(3) and 257.74(a)(3), the EAP shall:

1. Contain a notification chart showing the priority for notification in an emergency situation. The owner shall notify local emergency response agencies, affected downstream populations, county emergency management agencies, and affected flood control districts;
2. Contain a delineation of potentially unsafe conditions, evaluation procedures, and triggering events that require the initiation of partial or full emergency notification procedures, based on the urgency of the situation; including the following:
    a. Sliding of upstream or downstream slopes or abutments contiguous to the CCR surface impoundment;
    b. Sudden subsidence of the top of the CCR surface impoundment;
    c. Longitudinal or transverse cracking of the top of the CCR surface impoundment;
    d. Unusual release of water from the downstream slope or face of the CCR surface impoundment;
    e. Other unusual conditions at the downstream slope of the CCR surface impoundment;

f. Significant landslides in the reservoir area;

g. Increasing volume of seepage;

h. Cloudy seepage or recent deposits of soil at seepage exit points;

i. Sudden cracking or displacement of concrete in a concrete or masonry CCR surface impoundment spillway or outlet works;

j. Loss of freeboard or CCR surface impoundment cross section due to storm wave erosion;

k. Flood waters overtopping an embankment CCR surface impoundment; or

l. Spillway backcutting that threatens evacuation of the reservoir.

3. Contain a specific notification procedure for each emergency situation anticipated;

4. Contain a description of emergency supplies and resources, equipment access to the site, and alternative means of communication.

5. Require the owner to submit a copy of the proposed emergency action plan for review by the Arizona Division of Emergency Management and all local emergency coordinators involved in the plan. The owner shall incorporate appropriate recommendations generated by the reviews and submit the revised emergency action plan to the Department.

6. Be reviewed and updated, at a minimum, every year to ensure the information is accurate and to incorporate changes such as new personnel, changing roles of emergency agencies, emergency response resources, conditions of the surface impoundment and information learned from mock exercises. The owner shall send updated portions of the plan to persons and agencies holding copies of the plan within 15 days after preparation of an update. The updated plan shall be placed in the facility's operating record as required by § 257.105(f)(6).

7. Notwithstanding paragraph (6) above, the owner or operator of a CCR surface impoundment may amend the written EAP at any time provided the revised plan is placed in the facility's operating record as required by § 257.105(f)(6). The owner or operator must amend the written EAP whenever there is a change in conditions that would substantially affect the EAP in effect.

8. Be certified by a qualified professional engineer stating that the written EAP, and

any subsequent amendment of the EAP, meets the requirements of this Article.

**B.** In addition to the emergency action plan requirements in §§ 257.73(a)(3) and 257.74(a)(3), as incorporated:

1. The owner or operator shall increase the frequency of observation when the reservoir is full, during heavy rains or flooding, and following an earthquake.
2. The owner or operator is responsible for the safety of the CCR surface impoundment and shall take action to lower any liquid portion of the reservoir if it appears that the impoundment has weakened or is in danger of failing.
3. The owner or operator of a CCR surface impoundment shall immediately notify the Department and responsible authorities in adjacent and downstream communities, including emergency management authorities, of a condition that may threaten the safety of the impoundment. The owner shall take necessary actions to protect human life and property, including action required under an emergency action plan or order issued under this Article. The owner shall report these actions to the Director as soon as possible, but not later than 12 hours after discovery of the conditions.
4. If CCR surface impoundment failure appears imminent, the owner or operator shall notify the county sheriff, and the Arizona Department of Public Safety or other emergency official immediately.
5. The owner or operator shall notify the Director immediately of any emergency condition that exists and any emergency action taken.
6. Emergency actions not impairing the safety of the CCR surface impoundment may be taken before guidance can be provided by an engineer and do not require prior approval of the Director. Emergency actions do not excuse an owner's responsibility to promptly undertake a permanent solution. Emergency actions include:
    a. Stockpiling materials such as riprap, earth fill, sand, sandbags, and plastic sheeting.
    b. Lowering the reservoir level by making releases through the outlet or a gated spillway, by pumping, or by siphoning.
    c. Armoring eroded areas by placing sandbags, riprap, plastic sheeting, or

other available material.

d. Plugging leakage entrances on the upstream slope.

e. Increasing freeboard by placing sandbags or temporary earth fill on the CCR surface impoundment.

f. Diverting flood waters to prevent them from entering the reservoir basin.

g. Constructing training berms to control flood waters.

h. Placing sandbag ring dikes or reverse filter materials around boils at the downstream toe to provide back pressure.

i. Removing obstructions from outlet or spillway flow areas.

7. Emergency actions impairing the safety of the CCR surface impoundment require prior approval of the Director. An owner shall not lower the water level by excavating the spillway or embankment unless failure is imminent.

8. The Director shall issue an emergency approval to repair, alter, or remove an existing CCR surface impoundment if the Director finds that immediate remedial action is necessary to alleviate an imminent threat to human life or property.

a. The emergency approval shall be provided in writing.

b. The emergency approval may contain conditions the Director determines are appropriate to protect human life or property.

c. The emergency approval is effective immediately for 30 days after notice is issued unless extended in writing by the Director. The Director shall also send notice to the county flood control district of the county in which the CCR surface impoundment is located, all municipalities within five miles downstream of the CCR surface impoundment, and any additional persons identified in the emergency action plan.

d. The Director may institute legal or administrative proceedings that the Director deems appropriate for violations of the emergency approval or conditions of the emergency approval.

e. After the Director issues an emergency approval, the Department shall post information related to the approval on the Department's CCR website as soon as practicable.

**C.** The requirements in this Section are based on Arizona dam safety standards additional to

those in 40 CFR 257, subpart D, as incorporated in this Article, and do not apply to:

1. CCR surface impoundments with a maximum height of less than 6 feet, regardless of storage capacity;
2. CCR surface impoundments with a maximum height of between 6 and 25 feet and a storage capacity of less than 50 acre-feet; or
3. CCR surface impoundments with a maximum height greater than 25 feet and a storage capacity of 15 acre-feet or less.

**R18-13-1004. Operating Criteria**

**A.** 40 CFR 257.80 through 40 CFR 257.84, revised as of December 14, 2020 (and no future editions) are incorporated by reference, modified by the following subsections, and on file with ADEQ:

**B.** 40 CFR 257.82(a)(3) is amended as follows: "(3) The inflow design flood is:

(i) For a high hazard potential CCR surface impoundment, as determined under § 257.73(a)(2) or § 257.74(a)(2), the probable maximum flood;

(ii) For a significant hazard potential CCR surface impoundment, as determined under § 257.73(a)(2) or § 257.74(a)(2), the 1,000-year flood [or, for new impoundments and lateral expansions, 0.5 PMF, whichever is greater];

(iii) For a low hazard potential CCR surface impoundment, as determined under § 257.73(a)(2) or § 257.74(a)(2), the 100-year flood [or, for new impoundments and lateral expansions, 0.25 PMF, whichever is greater]; or

(iv) For an incised CCR surface impoundment, the 25-year flood."

**C.** In addition to the requirements in 40 CFR 257.82(a), the following requirements are added:

1. Inflow Design Flood Requirements. For new impoundments and lateral expansions, an owner or operator shall ensure that the total freeboard is the largest of the following:
   a. The sum of the inflow design flood maximum water depth above the spillway crest plus wave run up.
   b. The sum of the inflow design flood maximum water depth above the

spillway crest plus 3 feet.

c. A minimum of 5 feet.

2. Surface Impoundment Site and Reservoir Area Requirements

a. An owner or operator shall demonstrate that reservoir storage during the inflow design flood will not result in incremental adverse consequences during the inflow design flood. In determining whether a discharge will result in incremental adverse consequences, the Director shall evaluate whether the owner or operator has taken any or all of the following actions: issuing public notice to upstream affected property owners, complying with flood insurance requirements, adopting emergency action plans, conducting mock flood drills, acquiring flood easements or other acquisitions of real property, or other actions appropriate to safeguard the CCR surface impoundment site and reservoir.

b. The owner or operator shall clear the reservoir storage area of debris.

c. The owner or operator shall place borrow areas a safe distance from the upstream toe and the downstream toe of the CCR surface impoundment to prevent a piping failure of the CCR surface impoundment.

d. The owner or operator shall keep the top of the CCR surface impoundment and appurtenant structures accessible by equipment and vehicles for emergency operations and maintenance.

**D.** In addition to the requirements in 40 CFR 257.82(b), the following requirement are added:

1. Emergency Spillway Requirements. An owner or operator of a new CCR surface impoundment with emergency spillways or a lateral expansion of a CCR surface impoundment with emergency spillways shall:

a. Construct each spillway in a manner that avoids flooding in excess of the flooding that would have occurred in the same location under the same conditions before construction. The owner or operator of a CCR surface impoundment shall demonstrate that a spillway discharge would not result in incremental adverse consequences. In determining whether a spillway discharge of a CCR surface impoundment would result in incremental

adverse consequences, the Director shall evaluate whether the owner or operator has taken any or all of the following actions: issuing public notice to downstream property owners, complying with flood insurance requirements, adopting emergency action plans, conducting mock flood drills, acquiring flow easements or other acquisitions of real property, or other actions appropriate to safeguard the CCR surface impoundment site and flood channel.

b. Include a control structure to avoid head cutting and lowering of the spillway crest for spillways excavated in soils or soft rock. In the alternative, the design may provide evidence acceptable to the Director that erosion during the inflow design flood will not result in a sudden release of the reservoir.

c. Provide each spillway and channel with a minimum width of 10 feet and suitable armor to prevent erosion during the discharge resulting from the inflow design flood.

d. Ensure that downstream spillway channel flows do not encroach on the CCR surface impoundment unless suitable erosion protection is constructed.

e. Not construct bridges or fences across a spillway unless the construction is approved as part of the CCR facility permit. The CCR facility permit may include conditions regarding the design and operation of the spillway and fencing, based on safety concerns.

f. Not use a pipe or culvert as an emergency spillway unless specifically approved in the CCR facility permit following review of the CCR surface impoundment design and site characteristics.

2. Outlet Works Requirements. An owner or operator shall ensure that a CCR surface impoundment that has outlet works has a low-level outlet works that:

a. Is capable of draining the reservoir to the sediment pool level or CCR surface. A low-level outlet works for a high or significant hazard potential CCR surface impoundment shall be a minimum of 36 inches in diameter. A low-level outlet works for a low hazard potential CCR surface

impoundment shall be a minimum of 18 inches in diameter.

b. Has a filter diaphragm or other current practice measures to reduce the potential for piping along the conduit.

c. Has accessible outlet controls when the spillway is in use.

d. Has an emergency manual override system or can be operated manually.

e. Is constructed of materials appropriate for loading condition, seismic forces, thermal expansion, cavitation, corrosion, and potential abrasion. The owner or operator shall not use corrugated metal pipes or other thin-walled pipes except as a form for a cast-in-place concrete conduit. The owner or operator shall construct outlet conduits of cast-in-place reinforced concrete. The owner or operator shall design each outlet to maintain water tightness. The owner or operator shall construct each outlet to prevent the occurrence of piping adjacent to the outlet.

f. Has an operating or guard gate on the upstream end of any gated outlet.

g. Has an outlet conduit near the base of one of the abutments on native bedrock or other competent material. The entire length of the conduit shall be supported on foundation materials of uniform density and consistency to prevent adverse differential settlement.

h. Has an upstream valve or gate capable of controlling the discharge through all ranges of flow on any gated outlet conduit.

i. Has a trashrack designed for a minimum of 25% of the reservoir head to which it would be subjected if completely clogged at the upstream end of the outlet.

j. Has an outlet conduit designed for internal pressure equal to the full reservoir head and for superimposed embankment loads, acting separately.

**E.** 40 CFR 257.83(a)(1)(i) is amended to read: "At intervals not exceeding seven days, inspect for any appearances of actual or potential structural weakness and other conditions which are disrupting or have the potential to disrupt the operation or safety of the CCR unit. [The owner or operator shall increase the frequency of observation when the reservoir is full, during heavy rains or flooding, and following an earthquake.]"

**F.** 40 CFR 257.83, titled "Inspection requirements for CCR surface impoundments",

subsection (b)(1) is amended to read: "If the existing or new CCR surface impoundment or any lateral expansion of the CCR surface impoundment is subject to the periodic structural stability assessment requirements under § 257.73(d) or § 257.74(d), the CCR unit must additionally be inspected on a periodic basis by a qualified professional engineer to ensure that the design, construction, operation, and maintenance of the CCR unit is consistent with recognized and generally accepted good engineering standards. [The owner or operator shall notify the Director and submit a written summary of the engineer's qualifications at least 14 days before the scheduled inspection.] The inspection must, at a minimum, include:"

**G.** In addition to the inspection requirements for CCR surface impoundments in 40 CFR 257.83(b)(1), the following requirements are added:

1. Inspection of any permanent monument or monitoring installations;
2. Assessment of all parts of the CCR surface impoundment that are related to the CCR surface impoundment's safety; and
3. A recommendation regarding the safe storage level of the impoundment.

**H.** In addition to the inspection requirements for CCR surface impoundments in 40 CFR 257.83(b)(5), the owner or operator shall notify the Department within 24 hours and in writing within five days if a deficiency or release could result in harm to human health or the environment or has resulted in a release. The owner or operator shall notify the Department in writing within 14 days of all other deficiencies under 40 CFR 257.83(b)(5).

**I.** In addition to the inspection requirements for CCR surface impoundments in 40 CFR 257.83, the following requirements are added:

1. Notwithstanding 40 CFR 257.73(a)(2)(i) and (ii) and 40 CFR 257.74(a)(2)(i) and (ii), a qualified professional engineer shall review the hazard potential classification of each CCR surface impoundment during each subsequent inspection under § 257.83(b)(4)(i) and revise the classification in accordance with current conditions.]
2. Maintenance and Repair
    a. An owner shall perform general maintenance and ordinary repairs that do not impair the safety of the CCR surface impoundment. General

maintenance and ordinary repair activities listed under this subsection do not require prior approval of the Director. These repair activities include:

i. Removing brush or tall weeds.

ii. Cutting trees and removing slash from the embankment or spillway. Small stumps may be removed provided no excavation into the embankment occurs.

iii. Exterminating rodents by trapping or other methods. Rodent damage may be repaired provided it does not involve excavation that extends more than 2 feet into the embankment and replacement materials are compacted as they are placed.

iv. Repairing erosion gullies less than 2 feet deep on the embankment or in the spillway.

v. Grading the surface on the top of the CCR surface impoundment embankment or spillway to eliminate potholes and provide proper drainage, provided the freeboard is not reduced.

vi. Placing additional riprap and bedding on the upstream slope, or in the spillway in areas that have sustained minor damage and restoring the original riprap protection where the damage has not yet resulted in erosion and weakening of the CCR surface impoundment.

vii. Painting, caulking, or lubricating metal structures.

viii. Patching or caulking spalled or cracked concrete to prevent deterioration.

ix. Removing debris, rock, or earth from outlet conduits or spillway channels and basins.

x. Patching to prevent deterioration within outlet works.

xi. Replacing worn or damaged parts on outlet valves or controls to restore them to original condition or its equivalent.

xii. Repairing or replacing fences intended to keep traffic or livestock off the CCR surface impoundment or spillway.

b. General maintenance and ordinary repair that may impair or adversely

affect safety, such as excavation into or near the toe of the CCR surface impoundment, construction of new appurtenant structures for the CCR surface impoundment, and repair of damage that has already significantly weakened the CCR surface impoundment shall be performed in accordance with this Article. The Director shall determine pursuant to R18-13-1017 whether general maintenance and ordinary repair activities not listed in paragraph (a) will impair safety.]

**J.** Subsections (B) through (I) of this Section are based on Arizona dam safety standards additional to those in 40 CFR 257, subpart D, as incorporated in this Article, and do not apply to:

1. CCR surface impoundments with a maximum height of less than 6 feet, regardless of storage capacity;
2. CCR surface impoundments with a maximum height of between 6 and 25 feet and a storage capacity of less than 50 acre-feet; or
3. CCR surface impoundments with a maximum height greater than 25 feet and a storage capacity of 15 acre-feet or less.

**R18-13-1005. Groundwater Monitoring and Corrective Action**

**A.** 40 CFR 257.90 through 40 CFR 257.98, revised as of December 14, 2020 (and no future editions) are incorporated by reference, modified by the following subsections, and on file with ADEQ, with the exception of 40 CFR 257.90(g), "Suspension of groundwater monitoring requirements".

**B.** 40 CFR 257.94(a) is amended as follows: "(a) The owner or operator of a CCR unit must conduct detection monitoring at all groundwater monitoring wells consistent with this section. At a minimum, a detection monitoring program must include groundwater monitoring for all constituents listed in appendix III to this part. [The Director may require monitoring for constituents or pollutants not listed in appendix III based on information that non-CCR waste has been placed in a CCR unit. The owner or operator may propose to the Director that monitoring for non-CCR constituents be based on the facility's most recent aquifer protection permit. Requirements for non-CCR constituents at existing and new CCR units, including alert levels, discharge limitations, compliance

schedules, corrective actions and temporary cessation or plans shall be no more stringent than required to satisfy the requirements of A.R.S. Title 49, Chapter 2, Article 3, and 18 A.A.C. 9, Articles 1 and 2.]"

**C.** 40 CFR 257.94(e)(2) is amended as follows: "(2) The owner or operator may demonstrate that a source other than the CCR unit caused the statistically significant increase over background levels for a constituent or that the statistically significant increase resulted from error in sampling, analysis, statistical evaluation, or natural variation in groundwater quality. [An owner or operator that is investigating whether to submit an alternative source demonstration under this section, shall notify the Director in writing within seven days of that decision.] The owner or operator shall complete the written demonstration within 90 days of [determining that there is] a statistically significant increase over background levels to include obtaining a certification from a qualified professional engineer verifying the accuracy of the information in the report, [and submit the demonstration and certification to the Director for approval.] If the owner or operator completes a successful demonstration, as supported by a certification from a qualified professional engineer, within the 90-day period, the owner or operator may continue with a detection monitoring program, [unless such demonstration is subsequently disapproved by the Director.] If a successful demonstration was not completed within the 90-day period [or if the Director disapproves the demonstration,] the owner or operator shall initiate an assessment monitoring program as required under § 257.95. The owner or operator also shall include the demonstration in the annual groundwater monitoring and corrective action report required by § 257.90(e), in addition to the certification by a qualified professional engineer [and Director approval.]"

**D.** 40 CFR 257.95(g)(3)(ii) is modified as follows: "(ii) Demonstrate that a source other than the CCR unit caused the contamination, or that the statistically significant increase resulted from error in sampling, analysis, statistical evaluation, or natural variation in groundwater quality. [An owner or operator that is investigating whether to submit an alternative source demonstration under this section, shall notify the Director in writing within seven days of that decision.] Any such demonstration shall be supported by a report that includes the factual or evidentiary basis for any conclusions, and shall be certified to be accurate by a qualified professional engineer. [The demonstration, report

and certification shall be submitted to the Director for approval.] If a successful demonstration is made, the owner or operator shall continue monitoring in accordance with the assessment monitoring program pursuant to this section, and may return to detection monitoring if the constituents in Appendix III and Appendix IV of this part are at or below background as specified in paragraph (e) of this section, [unless such demonstration is subsequently disapproved by the Director.] The owner or operator must also include the demonstration in the annual groundwater monitoring and corrective action report required by § 257.90(e), in addition to the certification by a qualified professional engineer [and Director approval.]

**E.** 40 CFR 257.95(g)(4) is modified as follows: "(4) If a successful demonstration has not been made at the end of the 90-day period provided by paragraph (g)(3)(ii) of this section, [or if the Director disapproves the demonstration,] the owner or operator of the CCR unit shall initiate the assessment of corrective measures requirements under § 257.96."

**F.** 40 CFR 257.95(h) is amended as follows:

"(h) The owner or operator of the CCR unit shall establish a groundwater protection standard for each constituent in appendix IV to this part [and each pollutant identified pursuant to subsection (B)] detected in the groundwater. The groundwater protection standard shall be:

(1) For constituents [for which an Aquifer Water Quality Standard has been established under 18 A.A.C. 11, Article 4, either the Aquifer Water Quality Standard for that constituent, or the maximum contaminant level (MCL) that has been established under §§ 141.62 and 141.66 of this title, whichever is more stringent. For constituents for which no Aquifer Water Quality Standard exists, and] for which a maximum contaminant level (MCL) has been established under §§ 141.62 and 141.66 of this title, the MCL for that constituent.

(2) [For constituents for which no Aquifer Water Quality Standard exists, and for which a maximum contaminant level (MCL) has not been established under 40 CFR 141.62 and 141.66, the background concentration established from wells in accordance with § 257.91.]

(3) For constituents for which the background level is higher than the levels

identified under [paragraph (h)(1)] of this section, the background concentration."

**G.** 40 CFR 257.97, titled "Selection of remedy", paragraph (a) is amended as follows: "(a) Based on the results of the corrective measures assessment conducted under § 257.96, the owner or operator must, as soon as feasible, select a remedy that, at a minimum, meets the standards listed in paragraph (b) of this section. This requirement applies in addition to, not in place of, any applicable standards under the Occupational Safety and Health Act. The owner or operator must prepare a semiannual report describing the progress in selecting and designing the remedy. Upon selection of a remedy, the owner or operator must prepare a final report describing the selected remedy and how it meets the standards specified in paragraph (b) of this section. The owner or operator shall obtain a certification, from a qualified professional engineer, [which shall be submitted to the Director for approval,] that the remedy selected meets the requirements of this section. The report has been completed when it is placed in the operating record as required by § 257.105(h)(12). [The remedy selected shall be incorporated into the initial CCR facility permit, or added to it as a major permit modification.]"

**H.** 40 CFR 257.98, titled "Implementation of the corrective action program" paragraph (e) is amended as follows: "(e) Upon completion of the remedy, the owner or operator must prepare a notification stating that the remedy has been completed. The owner or operator must obtain a certification, from a qualified professional engineer, [which shall be submitted to the Director for approval,] attesting that the remedy has been completed in compliance with the requirements of paragraph (c) of this section. The [notification] has been completed when it is placed in the operating record as required by § 257.105(h)(13)."

**R18-13-1006. Closure and Post-Closure Care**

40 CFR 257.100 through 40 CFR 257.104, revised as of December 14, 2020 (and no future editions) are incorporated by reference, on file with ADEQ, and modified by adding paragraph (4) to 40 CFR 257.104(b) as follows: "Inspection and monitoring, as required by § 257.83(b), as amended, shall continue throughout the post-closure care period."

**R18-13-1007. Recordkeeping, Notification, and Posting of Information to the Internet**

**A.** 40 CFR 257.105 through 40 CFR 257.107, revised as of December 14, 2020 (and no future editions) are incorporated by reference, modified by the following subsections, and on file with ADEQ.

**B.** 40 CFR 257.105(f)(6) is amended as follows: "(6) The emergency action plan (EAP), and any amendment of the EAP, as required by §§ 257.73(a)(3), 257.74(a)(3), [and R18-13-1003.02,] except that only the most recent EAP must be maintained in the facility's operating record irrespective of the time requirement specified in paragraph (b) of this section."

**C.** 40 CFR 257.105(h)(1) is amended as follows: "(1) [All] annual groundwater monitoring and corrective action [reports,] as required by § 257.90(e) [, throughout the active life of the unit and post-closure care period.]"

**D.** 40 CFR 257.105 is amended by adding paragraph (k) as follows: "By March 15 of each calendar year, the owner or operator of a CCR facility shall determine and place in the operating record the amount of CCR beneficially used in the previous calendar year. The amount shall be measured based on when the product leaves the facility site."

**E.** 40 CFR 257.105 is amended by adding paragraph (l) as follows: "The financial assurance cost estimate and financial assurance mechanisms used to satisfy R18-13-1020."

**F.** 40 CFR 257.106 is amended by adding paragraph (k) as follows: "The owner or operator of a CCR unit subject to this subpart shall notify the Director when information has been placed in the operating record under § 257.105(k)."

**G.** 40 CFR 257.107 is amended by adding paragraph (k): "(k) CCR Facility Permit. The owner or operator of a CCR unit subject to this subpart must place the entire CCR facility permit on the facility's CCR website. The placement of the initial permit shall be updated with each modification within 30 days of the Director's approval of the modification."

**R18-13-1008. 40 CFR 257, Appendices III and IV**

40 CFR 257, Appendices III and IV, revised as of December 14, 2020 (and no future editions) are incorporated by reference and on file with ADEQ.

**R18-13-1010. Permit Application Requirements for CCR Facilities**

**A.** The owner or operator of a CCR unit that meets the applicability requirements in 40 CFR

257.50 shall submit to the Director a complete application for an initial or a renewal CCR facility permit, any new CCR unit, or any lateral expansion to a CCR unit, on an application form, as described in this Section.

**B.** The time for application submittal shall be as follows:

1. An application for an initial CCR facility permit shall be submitted within 180 days after the effective date of CCR program approval. An application for an initial CCR facility permit may be submitted prior to CCR program approval as allowed under A.R.S. § 49-891(F).
2. An application for a new CCR unit or lateral expansion of a CCR unit shall be submitted before beginning construction. Construction may not begin until the Director issues approval through a permit or modification authorizing construction, unless:
    a. For a CCR surface impoundment before a CCR facility permit has been issued for that facility, the owner or operator has obtained approval to construct from ADWR and demonstrates to the satisfaction of the Director that commencing construction before approval is necessary to comply with 40 CFR 257, as incorporated in this Article;
    b. For a CCR unit other than a CCR surface impoundment before a CCR facility permit has been issued for that facility, the owner or operator demonstrates to the satisfaction of the Director that commencing construction before approval is necessary to comply with 40 CFR 257, as incorporated in this Article.
3. For a renewal permit as required under R18-13-1016(A).

**C.** The owner or operator shall hold a public meeting in order to solicit questions from the community and inform the community about its intended permit at one of the times listed below. The owner or operator shall notify ADEQ at least 30 days before the meeting and provide adequate public notice for the meeting:

1. Within 90 days after receiving notice from the Director that its application is administratively complete, or
2. Prior to submitting an initial or renewal CCR facility permit application.

**D.** An owner or operator applying for a CCR facility permit shall provide the Department

with the following information in the application and shall clearly identify any confidential business information that if made public, would divulge the trade secrets of the person as defined in A.R.S. § 49-201, or other information likely to cause substantial harm to the person's competitive position:

1. Sufficient information about the facility for the Director to establish permit conditions to ensure compliance with, including to assess the applicability of, applicable provisions in A.R.S Title 49, Chapter 4, and this Article. Such information includes but is not limited to physical location; description; operations; operating history; the address of the facility's CCR website; a list of other federal or state environmental permits issued to the owner or operator for the facility where the CCR unit is located; and for surface impoundments, the current Arizona Department of Water Resources license pursuant to A.A.C. R12-15-1214.
2. Sufficient information about the owners and operators of each CCR unit at the facility for the Director to identify, contact, communicate with them and determine compliance with A.R.S. Title 49, Chapter 4 and this Article. Such information includes, but is not limited to contact information, ownership status (e.g., private, governmental) of each CCR unit and CCR-related solid waste management operation at the facility; and a description of allocated responsibilities among owners and operators of CCR units at the facility. Each owner and operator of a CCR unit shall sign and certify the accuracy of the application, unless an agreement is provided to the Director that one owner or operator is signing and certifying for the rest.
3. Sufficient technical information about each CCR unit at the facility necessary for the Director to establish permit conditions to require compliance with, including to assess the applicability of, applicable provisions in A.R.S. Title 49, Chapter 4 and this Article. Such information includes, but is not limited to the location, design, construction, operation, maintenance, closure and retrofit of each CCR unit, descriptions of all CCR and non-CCR wastestreams placed into a CCR unit, as well as liners, controls, monitoring approaches, the groundwater monitoring system, and corrective action or remedial measures.

4. Sufficient technical and other information about the geologic and hydrogeologic characteristics and features of the area surrounding each CCR unit, including subsurface characteristics, to support decisions by the Director to establish permit conditions to require compliance with, including to assess the applicability of, applicable provisions of this Article, and to evaluate the compliance approaches proposed in the permit application. The owner and operator shall provide, at a minimum, information about the following in proximity to the CCR unit(s): floodplains and wetlands, fault lines or unstable areas, groundwater and surface water, soil and subsoil characteristics, groundwater well locations and uses, adjacent land uses, and other similar information.

5. Sufficient technical and other information characterizing conditions surrounding each CCR unit for the Director to establish permit conditions to require compliance with, including to assess the applicability of, applicable provisions in this Article. This includes but is not limited to groundwater, aquifers, soil, or other sampling data; date and procedures used to characterize background concentrations; well construction diagrams and drill logs; hydrogeologic cross-sections; information about the activities that yielded the sampling data, including quality assurance data; delineation of contaminant plumes; and other relevant information required to make technical assessments to characterize the presence or absence of leakage or releases from the CCR unit.

6. Plans, maps, drawings, diagrams, and other visual information, in addition to narrative information, including, at a minimum:

    a. A site map, depicting the location of the CCR unit(s) and surrounding features representing site conditions, monitoring wells, and other pertinent information, including all known property lines, structures, water wells, injection wells, drywells and their uses, topography, the location of points of discharge, and all known borings.

    b. A topographic map, depicting each CCR unit, surrounding geologic and hydrogeologic features, surface water features, access and haul roads, and other pertinent information. Information in these maps must be provided to allow the Director to understand site conditions and evaluate

compliance strategies proposed by the owner and operator, to draft terms and conditions that will achieve compliance with the requirements of this Article.

c. Potentiometric maps depicting groundwater flow direction, all CCR units at the facility, any delineated plumes of contamination from releases from CCR units, all groundwater monitoring wells or other monitoring points where water level data were gathered, potable wells on the facility property or nearby property, and other pertinent information. A sufficient number and quality of maps are required to represent seasonal or temporal changes in groundwater flow direction.

d. Other documents, including: hydrogeologic cross-sections depicting subsurface conditions, drill logs, CCR unit construction diagram(s), and groundwater monitoring well construction diagrams.

e. All site-specific compliance plans and assessments required by this Article (e.g., fugitive emissions/dust control plan required by § 257.80, emergency action plan required by § 257.73, run-on and run-off control system plan required by § 257.81(c), inflow design flood control system plan required by § 257.82(c), closure plan or retrofit plan required by § 257.102, and post-closure care plan required by § 257.104).

f. All certifications and other documentation of decisions made or actions taken such as:

i. Certifications concerning the initial and periodic structural stability assessments required by §§ 257.73(d) and 257.74(d).

ii. Certifications concerning the initial and periodic safety factor assessments required by §§ 257.73(e) and 257.74(e).

iii. The inflow design flood certification under § 257.82(c)(5), the most recent inspection report required by § 257.83(b)(2), and the most recent hazard class certification required by § 257.73(a)(2)(ii).

iv. Documentation supporting a groundwater monitoring program meeting all requirements of 257.91 and 257.93 including

certifications that the design and construction of the system meets the requirements of 257.91 and that the statistical method for evaluating groundwater monitoring data is appropriate pursuant to § 257.93(f)(6). The groundwater monitoring program shall also demonstrate compliance with 257.94, 257.95, or 257.98, as applicable;

v. The most recent annual groundwater monitoring and corrective action report prepared pursuant to 257.90(e);

vi. Any notice of return to detection monitoring from assessment monitoring pursuant to § 257.95(e);

vii. Any alternative source demonstration pursuant to § 257.94(e)(2) or § 257.95(g)(3)(ii);

viii. Any assessment of corrective measures pursuant to § 257.96, along with the certification for any extension of time to complete the assessment and documentation of the public meeting required by § 257.96(e);

ix. Any selection of remedy required by § 257.97;

x. Documentation supporting implementation of the corrective action programs as required by § 257.98;

xi. A report describing any CCR units that the facility has closed since October 19, 2015. The report shall demonstrate that closure complied with the requirements of 40 CFR 257, subpart D at the time of closure, be certified by a qualified professional engineer, and shall include the post-closure plan, if applicable; and

xii. Technical data, such as design drawings and specifications, cost estimates, and engineering studies shall be certified by a qualified professional engineer.

7. The expected operational life of each CCR unit.

8. If submitting financial assurance as provided by A.R.S. § 49-770(C), the information required by R18-13-1020.

9. The applicable fee established in R18-13-1021.

10. Certification in writing that the information submitted in the application is true and accurate to the best of the knowledge of each owner and operator or as provided in subsection (D)(2) of this Section.

11. For any new CCR surface impoundment, and any lateral expansion, reconstruction, repair, or enlargement of a CCR surface impoundment, the information required by this Section, R18-13-1003.01, and R18-13-1010.01, prepared by or under the supervision of a qualified professional engineer.

a. A construction quality assurance plan describing all aspects of construction supervision.

b. The following may be submitted with the application or during construction.

i. An emergency action plan as prescribed in 40 CFR 257.73 and 257.74 and R18-13-1003.02.

ii. An operation and maintenance plan to accomplish the annual maintenance.

iii. An instrumentation plan regarding instruments that evaluate the performance of the CCR surface impoundment.

12. For a CCR surface impoundment, a statement by a qualified professional engineer that determines the CCR surface impoundment's hazard class in accordance with this Article. The qualified professional engineer shall submit a map of the area that would be inundated by failure or improper operation of the CCR surface impoundment. The qualified professional engineer shall demonstrate whether failure or improper operation of the CCR surface impoundment would result in:

a. Loss of human life. The demonstration may be based on an emergency action plan for persons who may be in the area of inundation;

b. Significant incremental adverse consequences; or

c. Significant intangible losses, as defined in R18-13-1001 and identified and evaluated by a public natural resource management or protection agency.

13. The Department may require additional information as necessary for the protection of human life, property, human health and the environment.

**E.** Completeness. When the Director receives an application containing the information

required by this Section for all applicable CCR units and CCR-related solid waste management operations at the facility and that meets the administrative completeness requirements of R18-1-503(A), the Director shall notify the owner or operator that the application is complete. The Department shall post a notice on the Department's website pursuant to R18-13-1018.

**F.** After a permit application is determined by the Director to be complete, and before permit issuance, the owner or operator shall notify the Director if any application components have changed or need to be added.

**G.** The owner or operator of a CCR unit that has submitted an application for dam modification to the Arizona Department of Water Resources related to a CCR surface impoundment after July 12, 2024 shall notify the Department within 30 days of submittal or the effective date of this rule, whichever is later. For the purposes of this subsection, an "application for dam modification" means an application submitted to the Arizona Department of Water Resources under A.A.C. R12-15-1208 through R12-15-1211.

**R18-13-1010.01. Additional Application Requirements for Constructing or Modifying CCR Surface Impoundments for Applications Submitted After CCR Program Approval**

**A.** The requirements in this Section are additional to those in 40 CFR 257, subpart D, as incorporated in this Article, and do not replace or negate any requirement of 40 CFR 257, subpart D, as incorporated herein.

**B.** Applications to Construct, Reconstruct, Repair, Enlarge, or Alter a High or Significant Hazard Potential CCR Surface Impoundment. An application to construct, reconstruct, repair, enlarge, alter or laterally expand a high or significant hazard potential CCR surface impoundment shall include the following prepared by or under the supervision of a qualified professional engineer:

1. All construction drawings as prescribed in subsection (G)(1) of this Section.
2. All construction specifications as prescribed in subsection (G)(2) of this Section.
3. An engineering design report that includes information needed to evaluate all aspects of the design of the CCR surface impoundment and appurtenances, including references with page numbers to support any assumptions used in the

design, as prescribed in subsection (G)(3) of this Section. The engineering design report shall recommend a safe storage level for existing CCR surface impoundments being reconstructed, repaired, enlarged, or altered.

4. A construction quality assurance plan describing all aspects of construction supervision.

**C.** Applications to Breach or Remove a High or Significant Hazard Potential CCR Surface Impoundment Embankment.

1. An application shall include plans for the excavation of the embankment down to the level of the natural ground at the maximum section. Upon approval of the Director, additional breaches may be made. This provision shall not be construed to require more than total removal of the embankment regardless of the flood magnitude. The breach or breaches shall be of sufficient width to pass the greater of:

   a. The 100-year flood at a depth of less than 5 feet, or

   b. The 100-year flood at a normal flood depth of not more than 2 feet at a distance of 2,000 feet downstream of the CCR surface impoundment.

2. The sides of each breach shall be excavated to a slope ratio that is stable and not steeper than 1 horizontal to 1 vertical.

3. Each breach shall be designed to prevent silt or CCR that has previously been deposited on the reservoir bottom and the excavated material from the breach from washing downstream.

4. Before breaching the CCR surface impoundment embankment, the reservoir shall be emptied in a controlled manner that will not endanger lives or damage downstream property. The applicant shall obtain approval from the Director for the method of breaching or removal.

5. An application to breach or remove a high or significant hazard potential CCR surface impoundment embankment shall include the following prepared by or under the supervision of a qualified professional engineer:

   a. The construction drawing or drawings for the breach or removal of a CCR surface impoundment, including the location, dimensions, and lowest elevation of each breach.

b. A construction quality assurance plan describing all aspects of construction supervision.

6. Reduction of a high or significant hazard potential CCR surface impoundment to a size less than subsection (H)(1), (H)(2) or (H)(3) of this Section shall be approved pursuant to R18-13-1017 under the following circumstances:

a. The owner or operator shall submit a completed application and construction drawings for the reduction and the appropriate specifications, prepared by or under the supervision of a qualified professional engineer.

b. The construction drawings and specifications shall contain sufficient detail to enable a contractor to bid on and complete the project.

c. The plans shall comply with all requirements of this subsection (C) except that the breach is not required to be to natural ground.

d. Upon completion of the reduction to a size less than subsection (H)(1), (H)(2) or (H)(3) of this Section, the qualified professional engineer shall file as constructed drawings and specifications with the Department.

**D.** Applications to Construct, Reconstruct, Repair, Enlarge, Alter, Breach, or Remove a Low Hazard Potential CCR Surface Impoundment

1. An application package to construct, reconstruct, repair, enlarge, or alter a low hazard potential CCR surface impoundment shall include the following prepared by or under the supervision of a qualified professional engineer:

a. Files of all construction drawings as prescribed by subsection (G)(1) of this Section.

b. Files of all construction specifications as prescribed by subsection (G)(2) of this Section.

c. An engineering design report that includes information needed to evaluate all aspects of the design of the CCR surface impoundment and appurtenances, including references with page numbers to support any assumptions used in the design, as prescribed in subsection (G)(3) of this Section.

2. An application package for the breach or removal of a low hazard potential CCR surface impoundment embankment shall include the following:

a. A completed application shall contain the following information:

i. The name and address of the owners and operators of the CCR surface impoundment.

ii. A description of the proposed removal.

iii. The proposed time for beginning and completing the removal.

b. A statement by a qualified professional engineer demonstrating both of the following:

i. That the CCR surface impoundment embankment will be excavated to the level of natural ground at the maximum section; and

ii. That the breach or breaches will be of sufficient width to pass the greater of:

(1) The 100-year flood at a depth of less than 5 feet, or

(2) The 100-year flood at a normal flood depth of not more than 2 feet at a distance of 2,000 feet downstream of the CCR surface impoundment embankment,

(3) This paragraph (ii) shall not be construed to require more than a total removal of the CCR surface impoundment embankment regardless of flood magnitude.

iii. That the sides of the breach will be excavated to a slope ratio that is stable and not steeper than 1 horizontal to 1 vertical.

3. Within 90 days after completing removal of a low hazard potential CCR surface impoundment embankment, the owner or operator shall file the following:

a. A brief completion report, including a description of the causes for any changes or deviations from the approved application package prepared by the qualified professional engineer who supervised the construction, in accordance with A.R.S. Title 32, Chapter 1. The qualified professional engineer shall certify that the as removed drawings and the report accurately represent the actual removal of the CCR surface impoundment embankment.

b. As-removed drawings prepared and sealed by the qualified professional

engineer who supervised the removal. The owner or operator and the qualified professional engineer shall maintain a record of the drawings.

**E.** Construction of a High, Significant, or Low Hazard Potential CCR surface impoundment.

1. Before commencement of construction activities, the owner or operator shall invite to a pre-construction conference all involved regulatory agencies, the prime contractor, and all subcontractors. At this meeting the Department shall identify, to the extent possible, the key construction stages at which an inspection will be made. At least 48 hours before each key construction stage identified for inspection, the owner or operator or the owner's qualified professional engineer shall provide notice to the Department.
2. The owner or operator's qualified professional engineer shall oversee construction of a new CCR surface impoundment or the lateral expansion reconstruction, repair, enlargement, alteration, breach, or removal of an existing CCR surface impoundment.
3. A qualified professional engineer shall supervise or direct the supervision of construction in accordance with the construction quality assurance plan.
4. The owner or operator's qualified professional engineer shall submit summary reports of construction activities and test results according to a schedule approved by the Department.
5. The owner or operator shall immediately report to the Department any condition encountered during construction that requires a deviation from the approved plans and specifications.
6. The owner or operator shall promptly submit a written request for approval of any necessary change with sufficient information to justify the proposed change. The owner or operator shall not commence construction without the written approval of the Director unless the change is a minor change. A minor change is a change that complies with the requirements of this Article and provides equal or better safety performance.
7. Upon completion of construction, the owner or operator shall notify the Department in writing. The Department shall make a final inspection. The owner or operator shall correct any deficiencies noted during the inspection. The owner

shall not use the CCR surface impoundment before issuance of a permit or permit modification unless the Director issues written approval.

**F.** Completion Documents for a Significant or High Hazard Potential CCR Surface Impoundment. Within 90 days after completion of the construction or removal work for a significant or high hazard potential CCR surface impoundment and final inspection by the Department, the owner or operator shall file the following:

1. One set of full sized as constructed drawings prepared and sealed by the qualified professional engineer who supervised the construction. If changes were made during construction, the owner or operator shall file supplemental drawings showing the CCR surface impoundment and appurtenances as actually constructed.
2. Construction records, including grouting, materials testing, and locations and baseline readings for permanent bench marks and instrumentation, initial surveys, and readings.
3. Photographs of construction from exposure of the foundation to completion of construction.
4. A brief completion report summarizing the salient features of the project, including a description of the causes for any changes or deviations from the approved drawings and specifications that were made during the construction phase.
5. A schedule for filling the impoundment, specifying fill rates, CCR surface or liquid level elevations to be held for observation, and a schedule for inspecting and monitoring the CCR surface impoundment.
6. An operating manual for the CCR surface impoundment and its appurtenant structures. The operating manual shall include a process for safety inspections prescribed in R18-13-1004. The operating manual shall include schedules for surveillance activities and baseline information for any installed instrumentation as follows:
    a. The frequency of monitoring,
    b. The data recording format,
    c. A graphical presentation of data, and

d. The person who will perform the work.

**G.** Construction Drawings, Construction Specifications, and Engineering Design Report for a High, Significant, or Low Hazard Potential CCR Surface Impoundment. The owner or operator and qualified professional engineer are responsible for complete and adequate design of a CCR surface impoundment and for including in the application all aspects of the design pertaining to the safety of the CCR surface impoundment.

1. Construction Drawing Requirements. The construction drawings required by subsections (B), (C), and (D) of this Section shall include the following:

   a. The seal and signature of a qualified professional engineer.

   b. One or more topographic maps of the CCR surface impoundment, spillway, outlet works, and reservoir on a scale large enough to accurately locate the CCR surface impoundment and appurtenances, indicate cut and fill lines, and show the property lines and ownership status of the land. Contour intervals shall be compatible with the height and size of the CCR surface impoundment and its appurtenances and shall show design and construction details.

   c. A reservoir area and capacity curve that reflect area in acres and capacity in acre-feet in relation to depth of CCR and liquids and elevation in the reservoir. The construction drawings shall show the spillway invert and top of CCR surface impoundment elevations. The construction drawings shall also show the reservoir volume and space functional allocations. The construction drawings may include alternate scales as required for the owner or operator's use.

   d. Spillway and outlet works rating curves and tables at a scale or scales that allow determination of discharge rate in cubic feet per second at both low and high flows as measured by depth of water passing over the spillway control section.

   e. A location map showing the CCR surface impoundment footprint and all exploration drill holes, test pits, trenches, adits, borrow areas, and bench marks with elevations, reference points, and permanent ties. This map shall use the same vertical and horizontal control as the topographic map.

f. Geologic information including 1 or more geologic maps, profile along the centerline, and other pertinent cross sections of the CCR surface impoundment site, spillway or spillways, and appurtenant structures, aggregate and material sources, and reservoir area at 1 or more scales compatible with the site and geologic complexity, showing logs of exploration drill holes, test pits, trenches, and adits.

g. One or more plans of the CCR surface impoundment to delineate design and construction details.

h. Foundation profile along the CCR surface impoundment embankment centerline at a true scale where the vertical scale is equal to the horizontal scale, showing the existing ground and proposed finished grade at cut and fill elevations, including anticipated geologic formations. The foundation profile shall include any proposed grout and drain holes.

i. Profile and a sufficient number of cross sections of the CCR surface impoundment embankment to delineate design and construction details. The drawings shall illustrate and show dimensions of camber, details of the top, core zone, interior filters and drains, and other zone details. The profile of the CCR surface impoundment may be drawn to different horizontal and vertical scales if required for detail. A maximum section of the CCR surface impoundment shall be drawn to a true scale, where the vertical scale is equal to the horizontal scale. The outlet conduit may be shown on the maximum section if this is typical of the proposed construction.

j. One or more CCR surface impoundment embankment foundation plans showing excavation grades and cut slopes with any proposed foundation preparation, grout and drain holes, and foundation dewatering requirements.

k. Plan, profile, and details of the outlet works, including the intake structure, the gate system, conduit, trashrack, conduit filter diaphragm, conduit concrete encasement, and the downstream outlet structure. The drawings shall include all connection and structural design details.

l. Plan, profile, control section, and cross sections of the spillway, including details of any foundation preparation, grouting, or concrete work that is planned. A complex control structure, a concrete chute, or an energy dissipating device for a terminal structure shall include both hydraulic and structural design details.

m. Hydrologic data, drainage area and flood routing, and diversion criteria.

2. Construction Specification Requirements. The construction specifications required by subsections (B), (C) and (D) of this Section shall include the following:

a. The seal and signature of a qualified professional engineer.

b. The statement that the construction drawings and specifications shall not be materially changed without the prior written approval of the Director.

c. A detailed description of the work to be performed and a statement of the requirements for the various types of materials and installation techniques that will enter into the permanent construction.

d. The statement that construction shall not be considered complete until the Director has approved the construction in writing.

e. The statement that the owner or operator's qualified professional engineer shall control the quality of construction.

f. The following construction information:

i. All earth and rock material descriptions, placement criteria, and construction requirements for all elements of the CCR surface impoundment and related structures.

ii. All concrete, grout, and shotcrete material and mix descriptions, placement and consolidation criteria, temperature controls, and construction requirements for all elements of the CCR surface impoundment and related structures.

iii. Material criteria and material testing, cleaning, and treatment. If foundation or curtain grouting is required, the specifications shall describe the type of grout, grouting method, special equipment necessary, recording during grouting, and foundation monitoring to

avoid disturbance from grouting.

iv. All materials testing that will be performed by the contractor for pre-qualification of materials, including special performance testing, such as water pressure tests in conduits. The Director shall accept materials that are pre-tested successfully and constructed in-place in accordance with specifications.

v. A plan for control or diversion of surface water during construction. The design qualified professional engineer may determine frequency of storm runoff to be controlled during construction, commensurate with the risk of economic loss during construction.

vi. Criteria for blast monitoring and acceptable blast vibration levels, including particle velocities for the CCR surface impoundment and other critical appurtenances. Monitoring equipment and monitoring locations shall be specified.

vii. Instrumentation material descriptions, placement criteria, and construction requirements and a statement that instrumentation shall be installed by experienced specialty subcontractors.

3. Engineering Design Report Requirements. The engineering design report required by subsections (B), (C), and (D) of this Section shall include the following:

a. The seal and signature of a qualified professional engineer.

b. The classification under 40 CFR 257.74(a)(2) of the proposed CCR surface impoundment, or for the proposed lateral expansion of an existing CCR surface impoundment.

c. Hydrologic considerations, including calculations and a summary table of data used in determining the required emergency spillway capacity and freeboard, and design of any diversion or detention structures. The design report shall include input and output listings.

d. Hydraulic characteristics, engineering data, and calculations used in determining the capacities of the outlet works and emergency spillway. The design report shall include input and output listings.

e. Geotechnical investigation and testing of the CCR surface impoundment site and reservoir basin. Results and analysis of subsurface investigations, including logs of test borings and geologic cross sections.

f. Guidelines and criteria for blasting to be used by the contractor in preparing the blasting plan.

g. Details of the plan for control or diversion of surface water during construction.

h. Details of the dewatering plan for subsurface water during construction.

i. Testing results of earth and rock materials, including the location of test pits and the logs of these pits.

j. Discussion and design of the foundation blanket grouting, grout curtain, and grout cap based on foundation stability and seepage considerations.

k. Calculations and basic assumptions on loads and limiting stresses for reinforced concrete design. The design report shall include input and output listings.

l. A discussion and stability analysis of the CCR surface impoundment embankment including appropriate seismic loading, safety factors, and embankment zone strength characteristics. Analyses shall include both short-term and long-term loading on upstream and downstream slopes. The design report shall include input and output listings.

m. A discussion of seismicity of the project area and activity of faults in the vicinity. The design report shall use both deterministic and statistical methods and identify the appropriate seismic coefficient for use in analyses.

n. Discussion and design of the cutoff trench based on seepage and other considerations.

o. Permeability characteristics of foundation and CCR surface impoundment embankment materials, including calculations for seepage quantities through the CCR surface impoundment, the foundation, and anticipated in the internal drain system. The design report shall include input and output listings. The design report shall include copies of any flow nets used.

p. Discussion and design of internal drainage based on seepage quantity calculations. The design report shall include instrumentation necessary to monitor the drainage system and filter design calculations for protection against piping of foundation and embankment.

q. Erosion protection against waves and rainfall runoff for both the upstream and downstream slopes, as appropriate.

r. Discussion and design of foundation treatment to compensate for geological weakness in the CCR surface impoundment foundation and abutment areas and in the spillway foundation area.

s. Post-construction vertical and horizontal movement systems.

t. Discussion of foundation conditions including the potential for subsidence, fissures, dispersive soils, collapsible soils, and sink holes.

**H.** This Section consists of enhancements to 40 CFR 257, subpart D based on Arizona dam safety standards and apply in addition to 40 CFR 257, subpart D but do not apply to:

1. CCR surface impoundments with a maximum height of less than 6 feet, regardless of storage capacity;

2. CCR surface impoundments with a maximum height of between 6 and 25 feet and a storage capacity of less than 50 acre-feet; or

3. CCR surface impoundments with a maximum height greater than 25 feet and a storage capacity of 15 acre-feet or less.

**R18-13-1011. Permit Contents**

**A.** Standard permit conditions for CCR facility permits. The following conditions shall be incorporated into all CCR facility permits either expressly or by reference. If incorporated by reference, a specific citation to these regulations shall be provided in the permit.

1. Duty to comply. The owner or operator shall comply with all conditions of this CCR facility permit, except to the extent and for the duration any noncompliance is authorized by the Director. Any unauthorized permit noncompliance constitutes a violation of this Article and is subject to enforcement action, permit termination, or denial of a permit application.

2. Duty to reapply. If the owner or operator wishes to continue an activity regulated by this permit after the expiration date of the permit, the owner or operator shall apply for and obtain a new permit.

3. Need to halt or reduce activity not a defense. It shall not be a defense for an owner or operator in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

4. Requirement to mitigate impacts of noncompliance. In the event of noncompliance with this permit, the owner or operator shall take all reasonable steps to minimize releases to the environment and shall carry out such measures as necessary to reduce reasonable probability of adverse impacts on health and the environment.

5. New statutory requirements or regulations. If the standards or regulations on which this permit is based change through changes to statute, promulgation of new or amended regulations, or by judicial decision, and this results in failure of the permit terms and conditions to ensure compliance with the revised standard or regulation, the owner or operator shall apply for a permit modification. The owner or operator shall submit an application to modify this permit to include the revised requirements within 180 days after the change becomes effective.

6. Proper operation and maintenance. The owner or operator shall ensure the proper operation and maintenance of all units, appurtenant structures, ancillary equipment and systems of treatment and control, which are installed or used to achieve compliance with the conditions of this permit. Failure to properly operate and maintain such equipment or structures does not excuse failure to comply with requirements in this permit. The term "Proper operation and maintenance" includes effective performance, adequate funding, adequate staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures. Operation of back-up or auxiliary equipment or similar systems is required only when necessary to achieve compliance with the conditions of this permit.

7. Permit actions. This permit may be modified, or terminated for cause. The

application by the owner or operator for a permit modification, or termination, or anticipated noncompliance, does not stay any permit condition.

8. Property rights. The permit does not convey any property rights of any sort, nor any exclusive privilege.

9. Duty to provide information. The owner or operator shall furnish to the Director, within a reasonable time, any relevant information which the Director may request to determine whether cause exists for modifying, or terminating this permit, or to determine compliance with this permit. The owner or operator shall also furnish to the Director, upon request, copies of records required to be kept by this permit.

10. Inspection and entry. The owner or operator 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 at reasonable times upon the permitted premises where a regulated unit or activity is located or conducted, or where records that must be kept under the conditions of this permit are located;

    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 units, appurtenant structures, 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, any substances or parameters at any location.

11. Monitoring and records.

    a. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

    b. The owner or operator shall retain records of all monitoring information, including all calibration, maintenance, and quality assurance records; all original monitoring data; copies of all reports and certifications required by this permit; and records of all data for a period of at least ten years

from the date of the sample, measurement, report, certification, or application. This period may be extended by request of the Director at any time. The owner or operator shall maintain records and data used to support a permit application for the lifetime of the permit. The owner or operator shall maintain records of all groundwater monitoring, including records of groundwater well construction and groundwater elevation measurements, throughout the active life of the unit, the post-closure care period and until completion of all corrective action.

12. Signatory requirements. All applications, reports, or information required to be submitted to the Director by this permit shall be signed and certified by each owner and operator of a CCR unit unless an agreement is provided to the Director that one owner or operator is certifying for the rest.

13. Reporting requirements.

a. Anticipated noncompliance. The owner or operator shall provide written or electronic notice to the Director as soon as possible, but no later than 60 days in advance of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

b. The owner or operator shall report to the Department by phone or electronically any noncompliance or release which has a reasonable probability of adverse effects on health or the environment as soon as possible, and no later than 24 hours after the time the owner or operator first becomes aware of the circumstances. The notification shall include the following:

i. Information concerning release of any CCR that may endanger public drinking water supplies.

ii. Any information about a release of CCR that could have a reasonable probability of adverse effects on health or the environment outside the facility.

iii. The description of the release and its cause shall include:

(A) Name, business address, business email address, and business telephone number of the owner and operator;

(B) Name, address, email address, and telephone number of the facility;

(C) Date, time, and type of release;

(D) Name and quantity of material(s) involved;

(E) The extent of injuries, if any;

(F) An assessment of actual or potential hazards to the environment and human health outside the facility, where applicable;

(G) Estimated quantity and disposition of recovered material that resulted from the release; and

(H) Action taken to mitigate the risk, including any preparation in advance of a severe weather event

iv. A narrative shall also be posted on the facility CCR website no later than five days after the time the owner or operator becomes aware of the circumstances. The narrative shall contain a description of the noncompliance and its cause; the period of noncompliance including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance. The Director may waive the five-day notice requirement in favor of posting a written report within fifteen days.

c. Where the owner or operator becomes aware that they failed to submit any relevant facts in a permit application or submitted incorrect information in a permit application or in any report to the Director, the owner or operator shall promptly submit such facts or corrected information to the Director.

14. Severability. Invalidation of a portion of this permit does not necessarily render the whole permit invalid. ADEQ intends that this permit remains in effect to the extent possible. In the event that any part of this permit is invalidated, the Director will advise the owner or operator as to the effect of such invalidation.

**B.** In addition to the standard conditions in subsection (A), the Director shall establish

permit terms and conditions in a CCR facility permit, on a case-by-case basis, in accordance with the requirements and procedures of A.R.S. Title 49, Chapter 4 and this Article. At a minimum, each CCR facility permit shall include all permit terms and conditions necessary to ensure compliance with A.R.S. Title 49, Chapter 4 and this Article.

**C.** Each CCR facility permit shall contain, either expressly or by reference, all requirements of this Article that are applicable to the permitted CCR units and CCR-associated solid waste management activities at the facility. In satisfying this provision, the Director may incorporate the applicable requirements directly into terms and conditions in the permit or incorporate them by reference. If incorporated by reference, a specific citation to the applicable regulations or requirements shall be provided in the permit.

**D.** Protectiveness. Each CCR facility permit shall contain such terms and conditions as the Director determines are necessary to ensure there is no reasonable probability of adverse effects on safety, health or the environment from the solid waste management of CCR at the facility.

**E.** The owner or operator of a CCR surface impoundment shall install, maintain, and monitor instrumentation to evaluate the performance of the CCR surface impoundment. The Director shall require site-specific instrumentation that the Director deems necessary for monitoring the safety of the CCR surface impoundment when failure may endanger human life and property. Conditions that may require monitoring include land subsidence, earth fissures, embankment cracking, phreatic surface, seepage, and embankment movements.

**F.** The permit shall contain a safe storage level for each CCR surface impoundment.

**G.** A CCR facility permit is issued for a fixed term of ten years. The term of a permit shall not be extended by modification of the permit beyond the maximum duration specified in this subsection.

**R18-13-1012. Compliance Schedules**

**A.** The Director may include compliance schedules in the CCR facility permit according to subsection (B) or (C) below, or both.

**B.** The owner or operator shall follow a timeline for future compliance, if established in the

CCR facility permit, that provides for action from the owner or operator that is not required until after the date of permit issuance. The timeline shall establish dates for their achievement.

1. If the time necessary for completion of an interim requirement is more than one year and is not readily divisible into stages for completion, the permit shall contain interim dates for submission of reports on progress toward completion of the interim requirement and shall indicate a projected completion date.
2. Unless otherwise specified in the permit, within 30 days after the applicable date specified in a compliance schedule, the owner or operator shall submit to the Department a report documenting that the required action was taken within the time specified.

**C.** When an owner or operator that has applied for a CCR facility permit will not be in compliance with one or more applicable requirements in A.R.S. Title 49, Chapter 4, or this Article at the time of permit issuance, the Director may include in the CCR facility permit a schedule of compliance. The schedule of compliance shall include an enforceable sequence of actions leading to compliance. This schedule of compliance shall resemble and be at least as stringent as that contained in any judicial consent decree or administrative order to which the owner or operator is subject. Any such schedule of compliance shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements in A.R.S. Title 49, Chapter 4 or this Article on which it is based.

1. Time for compliance. Any schedule of compliance established in a CCR facility permit under subsection (C) shall require compliance as soon as feasible.
2. Interim dates. If a permit establishes a schedule of compliance which exceeds one year from the date of permit issuance, the schedule shall set forth interim requirements and the dates for their achievement.
    a. The time between interim dates shall not exceed one year.
    b. The permit shall require posting on the facility's CCR website of reports of progress toward completion of the interim requirements and indicate a projected completion date. The time between progress reports shall not exceed six months.
3. Reporting. The permit shall require that, no later than 30 days following each

interim milestone deadline and the final deadline of the schedule of compliance, the owner or operator shall submit a report to the Director documenting that the required action was taken within the time specified and shall post a notification on the facility's CCR website of its compliance or noncompliance with the interim or final requirement.

**D.** After reviewing the activity pursuant to any schedule established under this Section, the Director may modify the CCR facility permit, based on changed circumstances relating to the required action.

**R18-13-1013. CCR Facility Permit Issuance or Denial**

**A.** The Director shall issue CCR facility permits after CCR program approval, based upon the information obtained by or made available to the Department, if the Director determines that the permit requires the owner or operator to comply with A.R.S. Title 49, Chapter 4, this Article and Article 17. The procedures in this Article related to permit applications are applicable before CCR program approval, except that the licensing time frames requirements of 18 A.A.C. 1 do not apply until CCR program approval.

**B.** The Director shall provide the owner or operator with written notification of the final decision to grant or deny the permit within the applicable licensing time frames requirements and include the following:

1. The owner or operator's right to appeal the final permit determination, including the number of days the owner or operator has to file an appeal and the name and telephone number of the Department contact person who can answer questions regarding the appeals process;
2. If the permit is denied, the reason for the denial with reference to the statute or rule on which the denial is based; and
3. The owner or operator's right to request an informal settlement conference under A.R.S. §§ 41-1092.03(A) and 41-1092.06.

**C.** The Director may deny a CCR facility permit if the Director determines upon completion of the application process that the owner or operator has:

1. Failed or refused to correct a deficiency in the CCR facility permit application;
2. Failed to demonstrate that the CCR units and their operation will comply with the

requirements of A.R.S. Title 49, Chapter 4 and this Article. The Director shall base this determination on:

a. The information submitted in the CCR facility permit application,

b. Any information submitted to the Department following a public hearing, or

c. Any relevant information that is developed or acquired by the Department; or

3. Provided false or misleading information.

**D.** Upon denying a CCR facility permit, the Director shall issue an order directing the owner or operator to begin closure of all CCR units at the facility according to § 257.101.

**R18-13-1014. CCR Permit Transfer**

**A.** The owner or operator of a CCR unit shall notify the Department 30 days prior to the planned transfer of any portion of ownership or operational control of a CCR unit or facility. If prior notice is impractical, the owner or operator shall notify the Department as soon as practical. The new owner and operator shall submit a permit modification request prior to the transfer of ownership or operational control or as soon as practicable thereafter.

**B.** The new owner or operator:

1. Shall include a written agreement between the previous and new owner or operator indicating a specific date for transfer of all permit responsibility, coverage, and liability;

2. Submit the applicable initial fee for a minor permit modification established in R18-13-1021;

3. Demonstrate technical capability necessary to fully carry out the terms of the permit and financial capability according to R18-13-1020; and

4. Submit a signed statement that it has reviewed the permit and agrees to the terms of the permit including any compliance schedules or new terms needed as a result of the transfer.

**C.** An owner or operator shall continue to comply with all permit conditions until the Director modifies/transfers the permit, regardless of whether ownership or operational

control has already been transferred.

**R18-13-1015. CCR Permit Termination**

The Director may, after notice and opportunity for a hearing, terminate a CCR facility permit for any of the following causes:

1. Significant noncompliance by the owner or operator with the permit;
2. Failure by the owner or operator in the permit application or during the permit issuance process to fully disclose all relevant facts,
3. Misrepresentation by the owner or operator of any relevant facts at any time;
4. A determination by the Director that the permit fails to ensure there is no reasonable probability of adverse effects to health or the environment and the permitted activity can only be regulated to acceptable levels by permit termination.
5. The Director has determined that all permitted activities have ceased and the owner or operator has completed closure, the required post-closure care and any required corrective action.

**R18-13-1016. Permit Renewals**

**A.** To renew a CCR facility permit, the owner or operator shall submit an application under R18-13-1010 at least 180 days before the expiration date of the effective permit.

**B.** If the owner or operator has submitted a timely and complete application for renewal under R18-13-1010, the terms and conditions of the existing CCR facility permit continue in force beyond the expiration date of the permit, but only until the effective date of the issuance or denial of a revised CCR facility permit.

**C.** The owner or operator shall renew the CCR facility permit as long as any CCR unit remains operational or is closing, in corrective action or post-closure care.

**R18-13-1017. Modification of a CCR Facility Permit**

**A.** The Director may modify a CCR facility permit upon the request of the facility owner or operator or upon the Director's initiative.

1. The owner or operator may submit a request for CCR facility permit modification

in writing on a form provided by the Department with the applicable fee established in R18-13-1021, explaining the facts and reasons justifying the request.

2. The Department may modify a permit, classify the modification, and collect the appropriate fee if:

a. There are alterations, additions, or changes in the operation or condition of the permitted facility which occurred after permit issuance and require permit conditions or terms that are different or absent from those in the existing permit;

b. The Director has received new information after the permit has been issued that:

i. Was not available to the Director at the time of permit issuance (other than revised regulations, guidance, or test methods) and would have justified the inclusion of different permit conditions at the time of issuance to ensure compliance with A.R.S. Title 49, Chapter 4 and this Article, or

ii. Otherwise shows that modification is necessary to ensure that there is no reasonable probability of adverse effects on safety, health or the environment.

c. There is a change in an underlying regulatory or statutory requirement

d. An error or omission is discovered that makes the permit inconsistent with regulatory or statutory requirements.

**B.** Upon receiving a request from an owner or operator, the Department shall determine whether the application is complete and whether the modification would be major, minor, or administrative.

**C.** The Department shall process modification requests following the applicable licensing time-frames.

**D.** A modified CCR facility permit supersedes the previous CCR facility permit upon the effective date of the modification, except as provided in R18-13-1011(F).

**E.** Major permit modifications. A major modification is one that substantially alters the CCR unit or its operation requiring a material change to a substantive term, provision,

requirement, or a limiting parameter of a permit, or one that could substantially impact human health or the environment. The owner or operator shall not make any change that requires a major permit modification without approval from the Director. The list below contains examples of major modifications:

1. Add a new CCR unit including a new landfill unit, a lateral expansion, or a new surface impoundment unit not already authorized by a CCR facility permit, including replacing a CCR unit.
2. Increase the maximum permissible operating storage level of CCR and liquids at a CCR surface impoundment or raising the embankment.
3. Selection of a remedy under 40 CFR 257.97.

**F.** Minor permit modifications. A minor modification is a modification that makes a routine change to a substantive term, provision, requirement, or a limiting parameter of a permit. The Director shall follow procedures for a minor modification to a CCR facility permit for those nonmajor alterations, additions, or changes in the operation or condition of the permitted facility which occurred after permit issuance and which require permit conditions that are different or absent from those in the existing permit. The owner or operator shall not make any change that requires a minor permit modification without approval from the Director. Minor permit modifications include, but are not limited to, the following:

1. Incorporate a change to an Aquifer Water Quality Standard in 18 A.A.C. 9, or a Maximum Contaminant Level under 40 CFR §§ 141.62 and 141.66, which serves as the underlying basis for a permit condition;
2. Change a construction requirement, treatment method, or operational practice, if the alteration complies with the requirements of A.R.S. Title 49, Chapter 4 and this Article and provides equal or better performance;
3. Change to a groundwater sampling and analysis program including the following:
    a. A change in the statistical method for evaluating groundwater monitoring data required by 40 CFR 257.93(f)(6);
    b. A change to an alternative groundwater sampling and analysis frequency pursuant to 40 CFR 257.94(d) or 257.95(c);
    c. Assessment of corrective measures pursuant to 40 CFR 257.96;

d. Changes to an approved groundwater monitoring system, including reducing the number of groundwater monitoring wells, or making changes in location, depth, or design of groundwater monitoring wells required by the permit.

4. Change an interim or final compliance date in a compliance schedule, if the Director determines just cause exists for changing the date;

5. Change the owner or operator's financial assurance mechanism or estimates under R18-13-1020;

6. Transfer a permit under R18-13-1014;

7. Replace monitoring equipment, including a well, if the replacement results in equal or greater monitoring effectiveness, but not including routine maintenance or replacement of well components and related equipment;

8. Breaching or removing a surface impoundment embankment. These activities shall be performed according to R18-13-1010.01(C) and (D).

9. Add interim measures to the corrective action program or make material changes to the corrective action requirements in the permit.

10. Change a permit condition that is based on a change in an underlying regulatory or statutory requirement, unless it requires substantial changes to the design, operation, or compliance strategies established in the permit and requires the application of significant technical judgment or discretion.

11. Increases to estimates of the maximum extent of operations or the maximum inventory of waste in the closure plan.

12. Completion of closure activities of a CCR unit.

13. Modify a CCR unit, including physical changes or changes in management practices which are not administrative modifications under subsection (G) or major modifications under subsection (E).

**G.** Administrative permit modifications. The Director shall follow procedures for an administrative modification to a CCR facility permit to:

1. Correct a typographical error;

2. Change nontechnical administrative information, excluding a permit transfer;

3. Correct minor technical errors, such as errors in calculation not impacting any

design aspects, locational information, citation of laws and citations of construction specifications;

4. Increase the frequency, duration, or stringency of the requirements for inspections, maintenance activities, monitoring, reporting, recordkeeping, or web posting or to revise a laboratory method;

**H.** The Director may change the categorization of a CCR facility permit modification.

**I.** An owner or operator may request a permit modification based on actions from more than one category of permit modification. Where possible, the Director may combine several requested permit modifications into one modification from the highest category.

**R18-13-1018. Public Notice Requirements for Permit Actions**

**A.** The Director shall provide notice as described after determining an application complete for the following permit actions. The notice shall contain information about the licensing timeframes for the permit action and describe how a person can inspect all permit application materials, either in person or online.

1. An initial or renewed CCR facility permit;
   a. On the ADEQ website;
   b. To anyone requesting such notice;
   c. To the entities listed in A.R.S. § 49-111.
2. A major modification to a CCR facility permit;
   a. On the ADEQ website;
   b. To anyone requesting such notice;
   c. To the entities listed in A.R.S. § 49-111.
3. A minor modification to a CCR facility permit;
   a. On the ADEQ website;
   b. To anyone requesting such notice.

**B.** The Director shall provide notice as described when proposing to issue or deny the items listed below. The notice shall describe how a person can inspect all permit application materials, either in person or online.

1. An initial or renewed CCR facility permit;
   a. Once, in a daily or weekly newspaper of general circulation where the

facility is located;

b. On the ADEQ website;

c. To anyone requesting such notice;

d. By requiring the owner or operator to place paper copies of a notice and supplemental information in a local library or community center.

2. A major modification to a CCR facility permit;

a. Once, in a daily or weekly newspaper of general circulation where the facility is located;

b. On the ADEQ website;

c. To anyone requesting such notice;

d. By requiring the owner or operator to place paper copies of a notice and supplemental information in a local library or community center.

**C.** The Director shall provide notice as described when issuing or denying the following:

1. An initial or renewed CCR facility permit;

a. To anyone who commented on the proposed initial or renewed CCR facility permit;

b. On the ADEQ website;

c. To anyone requesting such notice.

2. A major modification to a CCR facility permit;

a. To anyone who commented on the proposed major modification;

b. On the ADEQ website;

c. To anyone requesting such notice.

3. A minor modification to a CCR facility permit;

a. On the ADEQ website;

b. To anyone requesting such notice.

4. An administrative permit modification;

a. To anyone requesting such notice.

**D.** The Director shall provide notice as described when terminating a CCR facility permit:

1. On the ADEQ website;

2. To anyone requesting such notice.

**E.** The notice for a permit action under subsection (B)(1) or (B)(2) shall:

1. Include a brief summary of the draft document,
2. Contain information about the licensing timeframes for the permit action and explain where further information on the permit action can be obtained,
3. Describe when and how comments may be made,
4. Provide at least 30 days for comments from publication of the notice, and
5. Explain how a public hearing may be requested.

**F.** After a notice is issued under subsection (B)(1) or (B)(2), the Department shall schedule a public hearing if requested and if the Director determines there is sufficient public interest. The Director shall provide notice of the hearing as provided in subsection (B)(1)(a) or (B)(2)(a) at least 30 days before the hearing. The Department may conduct a public hearing for a CCR facility permit or major modification virtually.

**G.** The Department shall respond to comments received on the proposed CCR facility permit or major modification when the final decision is made under subsection (C). The Department shall send a copy of the comment responses to all commenters and notify commenters of their potential rights under A.R.S § 41-1092.03(B). The Department shall send the comment responses to commenters and anyone requesting a copy and post the comment responses on the Department's website.

**R18-13-1019. Compliance; ADEQ Inspections; Violations and Enforcement**

**A.** ADEQ Inspection and Entry. For purposes of ensuring compliance with the provisions of Title 49 and this Article, the owner or operator of a CCR facility, shall, upon request of any representative of ADEQ designated by the Director, furnish information pertaining to such CCR facility.

**B.** ADEQ Inspection and Entry for CCR units. The Director or a designated representative may enter at reasonable times upon private or public property and the owner or operator shall permit such entry, where a CCR surface impoundment is located, including a CCR surface impoundment under construction, reconstruction, repair, enlargement, alteration, breach, or removal, for any of the following purposes:

1. To enforce the conditions of approval of the construction drawings and specifications related to an application for construction, reconstruction, repair, enlargement, alteration, breach, or removal.

2. To inspect a CCR surface impoundment that is subject to this Article.

3. To investigate or assemble data to aid review and study of the design and construction of CCR surface impoundments, reservoirs, and appurtenances or make watershed investigations to facilitate decisions on public safety to fulfill the duties of this Article and A.R.S. Title 49, Chapter 4.

4. To ascertain compliance with this Article and A.R.S. Title 49, Chapter 4.

**C.** ADEQ Inspection and Entry for CCR surface impoundments. The Director or a designated representative may enter at reasonable times upon private or public property and the owner or operator shall permit such entry, where a CCR surface impoundment is located, including a CCR surface impoundment under construction, reconstruction, repair, enlargement, alteration, breach, or removal, for any of the following purposes:

1. To enter any establishment or other place maintained by such person where such CCR units are or have been operated;

2. To have access to, and to copy all records relating to CCR units;

3. To inspect any facilities, equipment (including monitoring and control equipment), practices, and operations, relating to CCR units;

4. To inspect, monitor, and obtain samples from such person of any CCR units and monitoring and control equipment; and

5. To record any inspection by use of written, electronic, magnetic and photographic media.

**D.** Upon receipt of a complaint that a CCR surface impoundment is endangering people or property:

1. The Director shall inspect the CCR surface impoundment unless there is substantial cause to believe the complaint is without merit.

2. The Director shall provide a written report of the inspection to the complainant and the CCR surface impoundment owner.

**E.** Penalties. A person who violates any CCR facility permit, provision of this Article, or order issued pursuant to a CCR facility permit is subject to civil and/or criminal penalties pursuant to A.R.S. §§ 49-783 and 791, as amended. Nothing in this Article shall be construed to limit the Director's or Attorney General's enforcement powers authorized by law including but not limited to the seeking or recovery of any civil or criminal penalties.

**F.** A certification statement may be required on written submittals to ADEQ in response to Compliance Orders or in response to information requested pursuant to subsection (B) of this Section. In addition, ADEQ may request in writing that a certification statement appear in any written submittal to ADEQ. The certification statement shall be signed by a person authorized to act on behalf of the company or empowered to make decisions on behalf of the company on the matter contained in the document.

**G.** The Director shall conduct a CCR surface impoundment safety inspection annually or more frequently for each high hazard potential CCR surface impoundment, triennially for each significant hazard potential CCR surface impoundment, and once every five years for each low hazard potential CCR surface impoundment.

**R18-13-1020. Financial Assurance Requirements**

**A.** The owner or operator of a CCR unit shall submit both of the following for each CCR unit within 180 days of CCR program approval:

1. The latest demonstration of financial responsibility made for the CCR facility under 18 A.A.C. 9, Article 2.
2. If not already submitted with a permit application before CCR program approval, the following third-party cost estimates that are representative of regional fair market costs for each CCR unit at the facility within 180 days after CCR program approval:
    a. The estimate for the Cost of Facility Closure that meets the requirements in 40 CFR §§ 257.102 and 257.103, consistent with the closure plans submitted thereunder;
    b. The estimate for the Cost to Ensure Proper Post-Closure Care according to 40 CFR § 257.104, consistent with the post-closure plan submitted thereunder;
    c. The estimate for the Cost to Perform Corrective Action as a result of any known releases from the facility as provided under 40 CFR §§ 257.97 and 257.98 and any compliance schedules in the facility permit.

**B.** A CCR facility that submits a demonstration under subsection (A)(1) shall update that demonstration to comply with subsection (A)(2) before a CCR facility permit is issued. The owner or operator shall demonstrate financial assurance for the total amounts in

subsection (A)(2) using one or more mechanisms in Article 17 of this Chapter.

**C.** The cost estimates shall be dated and updated every 3 years and as necessary whenever closure plans or post-closure plans are amended pursuant to §§ 257.102(b)(3) or 257.104(d)(3), or corrective action costs are changed under § 257.98.

**R18-13-1021. Fees**

**A.** After CCR program approval, the Department shall send an invoice to each CCR facility and the owner or operator of a CCR facility shall pay to ADEQ an annual registration fee as shown in Table 2. The invoice shall have a due date of the first of a month that is at least 30 days after CCR program approval and the fee shall be due on that date and annually thereafter on the first of that month.

**Table 2. Facility Annual Registration Fees**

| **CCR Unit** | **Annual Fee** |
|---|---|
| CCR Surface Impoundment | $17,450 each |
| Approved CCR Multi-unit | $21,860 |
| CCR Landfill | $13,150 each |
| Closed CCR Unit subject to post-closure | $10,200 each |

**B.** When submitting an application for any of the license types in Table 3 below, an owner or operator shall remit to ADEQ an initial application fee as shown in the Table.

**Table 3. CCR Facility Permitting Fees**

| **License Type** | **Initial Fee** | **Maximum Fee** |
|---|---|---|
| CCR Facility Permit (new or renewal) | $20,000 | $200,000 |
| Major Modification | $10,000 | $100,000 |
| Minor Modification | $5,000 | $50,000 |
| Administrative Modification | $1,500 flat fee | NA |

**C.** If the total cost of processing the application identified in the Table 3 is less than the

initial fee listed in the Table, the Department shall refund the difference between the total cost and the amount listed in the Table to the owner or operator.

1. Permits and permit modifications. If the total cost of processing the application is greater than the initial fee received plus other amounts paid, the Department shall bill the owner or operator for the difference upon permit approval. The owner or operator shall pay the difference in full before ADEQ issues the permit or modification.

2. Withdrawals. In the event of a withdrawal of the permit application by the owner or operator, if the total costs of processing the application are less than the amount paid, the Department shall refund the difference. If the total costs are greater than the amount paid, the Department shall bill the owner or operator for the difference, and the owner or operator shall pay the difference within 45 days of the date of the bill.

**D.** For the permitting actions in Table 3, the Department shall provide the owner or operator itemized bills at least quarterly for the expenses associated with evaluating the application and approving or denying the permit or permit modification. The invoice shall be paid within 30 days of receipt. The following information shall be included in each bill:

1. The dates of the billing period;

2. The date and number of review hours itemized by employee name, position type and specifically describing:

   a. Each review task performed,

   b. Each CCR unit involved, and

   c. The hourly rate;

3. A description and amount of review-related costs as described in subsection (E)(2); and

4. The total fees paid to date, the total fees due for the billing period, the date when the fees are due, and the maximum fee for the project.

**E.** For the permitting actions in Table 3, fees shall consist of processing charges and review-related costs as follows:

1. Processing charges. The Department shall calculate the processing charges using a

rate of $244 per hour, multiplied by the number of review hours, including pre-application meetings with the Department, used to evaluate and approve or deny the permit or permit modification.

2. Review-related costs means any of the following costs applicable to a specific application:
   a. Per diem expenses,
   b. Transportation costs,
   c. Reproduction costs,
   d. Laboratory analysis charges performed during the review of the permit or permit modification,
   e. Public notice advertising and mailing costs,
   f. Presiding officer expenses for public hearings on a permitting decision,
   g. Court reporter expenses for public hearings on a permitting decision,
   h. Facility rentals for public hearings on a permitting decision
   i. Costs related to the public notice required by R18-13-1018.
   j Other reasonable and necessary review-related expenses documented in writing by the Department.
3. Total itemized billings for an application shall not exceed the maximum amounts listed in Table 3 in this Section.
4. Beginning January 1, 2026, the Director shall adjust the amounts in Table 2, Table 3, and subsection (E)(1) above annually by the following method:
   a. Multiply the amount by the October CPI for the most recent year and then divide by the October CPI for 2024. The October CPI for any year is the Consumer Price Index for All Urban Consumers, Phoenix-Mesa-Scottsdale, AZ, all items, published by the United States Department of Labor at www.bls.gov/cpi/regional-resources.htm, for October of that year.
   b. Round the result from subsection (E)(4)(a) of this Section to the nearest cent. ADEQ shall post the new amounts on its webpage and install them in the billing software as soon as practicable.

## ARTICLE 17. FINANCIAL ASSURANCE

R18-13-1701. Definitions

R18-13-1703. Financial Demonstrations for CCR Facilities

R18-13-1704. Financial Assurance Mechanisms

## ARTICLE 17. FINANCIAL ASSURANCE

### R18-13-1701. Definitions

1. "Book net worth" means the net difference between total assets and total liabilities.
2. "Face amount" means the total amount the insurer is obligated to pay under the policy.
3. "Net working capital" means current assets minus current liabilities.
4. "Substantial business relationship" means a pattern of recent or ongoing business transactions to the extent that a guaranty contract issued incident to that relationship is valid and enforceable.
5. "Tangible net worth" means an owner or operator's book net worth, plus subordinated debts, less goodwill, patent rights, royalties, and assets and receivables due from affiliates or shareholders.

### R18-13-1703. Financial Demonstrations for CCR Facilities

**A.** Financial demonstration. The owner or operator of a of a CCR facility for which a financial demonstration is required under this Chapter shall demonstrate financial capability to meet all of the following based on third-party cost estimates that are representative of regional fair market costs:

1. Cost of Facility Closure for all applicable units at the facility,
2. Cost to Ensure Proper Post-Closure Care for all applicable units at the Facility, and
3. Cost to perform any corrective action as a result of known releases at all applicable units at the facility

**B.** The owner or operator shall:

1. Submit a letter signed by the chief financial officer stating that the owner or operator is financially capable of meeting the costs described in subsection (A);
2. For a state or federal agency, county, city, town, or other local governmental

entity, submit a statement specifying the details of the financial arrangements used to meet the estimated costs described in subsection (A), including any other details that demonstrate how the owner or operator is financially capable of meeting those costs;

3. For other than a state or federal agency, county, city, town, or other local governmental entity, submit the information required for at least one of the financial assurance mechanisms listed in R18-13-1704 that covers the closure, post-closure, and corrective action costs submitted under subsection (A), including:

   a. The selected financial mechanism or mechanisms;

   b. The amount covered by each financial mechanism;

   c. The institution or company that is responsible for each financial mechanism used in the demonstration;

   e. Any other details that demonstrate how the owner or operator is financially capable of meeting the costs described in R18-13-1020(A)(2) or other applicable rules in this Chapter.

**R18-13-1704. Financial Assurance Mechanisms**

The owner or operator of a CCR facility for which a financial demonstration under R18-13-1703 is required by this Chapter may use any one or a combination of the following mechanisms to cover the financial assurance obligations under R18-13-1703(A):

1. Financial test for self-assurance. If an owner or operator uses a financial test for self-assurance, the owner or operator shall not consolidate the financial statement with a parent or sibling company. The owner or operator shall make the demonstration in either subsection (1)(a) or (b) and submit the information required in subsection (1)(c):

   a. The owner or operator may demonstrate:

      i. One of the following:

         (1) A ratio of total liabilities to net worth less than 2.0 and a ratio of current assets to current liabilities greater than 1.5;

         (2) A ratio of total liabilities to net worth less than 2.0 and a

ratio of the sum of net annual income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; or

(3) A ratio of the sum of net annual income plus depreciation, depletion, and amortization to total liabilities greater than 0.1 and a ratio of current assets to current liabilities greater than 1.5;

ii. The net working capital and tangible net worth of the owner or operator each are at least six times the closure, post-closure and corrective action cost estimates; and

iii. The owner or operator has assets in the U.S. of at least 90 percent of total assets or six times the closure, post-closure and corrective action cost estimates; or

b. The owner or operator may demonstrate:

i. The owner or operator's senior unsecured debt has a current investment-grade rating as issued by Moody's Investor Service, Inc.; Standard and Poor's Corporation; or Fitch Ratings;

ii. The tangible net worth of the owner or operator is at least six times the closure, post-closure and corrective action cost estimates; and

iii. The owner or operator has assets in the U.S. of at least 90 percent of total assets or six times the closure, post-closure and corrective action cost estimates; and

c. The owner or operator shall submit:

i. A letter signed by the owner or operator's chief financial officer that identifies the criterion specified in subsection (1)(a) or (b) and used by the owner or operator to satisfy the financial assurance requirements of this Section, an explanation of how the owner or operator meets the criterion, and certification of the letter's accuracy, and

ii. A statement from an independent certified public accountant verifying that the demonstration submitted under subsection (1)(c)(i) is accurate based on a review of the owner or operator's financial statements for the latest completed fiscal year or more

recent financial data and no adjustment to the financial statement is necessary.

2. Performance surety bond. The owner or operator may use a performance surety bond if all the following conditions are met:
   a. The company providing the performance bond is listed as an acceptable surety on federal bonds in Circular 570 of the U.S. Department of the Treasury;
   b. The bond provides for performance of all the covered items listed in R18-13-1703(A) by the surety, or by payment into a standby trust fund of an amount equal to the penal amount if the owner or operator fails to perform the required activities;
   c. The penal amount of the bond is at least equal to the amount of the cost estimate developed in R18-13-1703(A) if the bond is the only method used to satisfy the requirements of this Section or a pro-rata amount if used with another financial assurance mechanism;
   d. The surety bond names the Arizona Department of Environmental Quality as beneficiary;
   e. The original surety bond is submitted to the Director;
   f. Under the terms of the bond, the surety is liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond; and
   g. The surety payments under the terms of the bond are deposited directly into the Standby Trust Fund.
3. Certificate of deposit. The owner or operator may use a certificate of deposit if the following conditions are met:
   a. The owner or operator submits to the Director one or more certificates of deposit made payable to or assigned to the Department to cover the owner or operator's financial assurance obligation or a pro-rata amount if used with another financial assurance mechanism;
   b. The certificate of deposit is insured by the Federal Deposit Insurance Corporation and is automatically renewable;

c. The bank assigns the certificate of deposit to the Arizona Department of Environmental Quality;

d. Only the Department has access to the certificate of deposit; and

e. Interest accrues to the owner or operator during the period the owner or operator gives the certificate as financial assurance, unless the interest is required to satisfy the requirements in R18-13-1703(A).

4. Trust fund. The owner or operator may use a trust fund if the following conditions are met:

a. The trust fund names the Arizona Department of Environmental Quality as beneficiary, and

b. The trust is initially funded in an amount at least equal to:

i. The cost estimate for the items submitted under R18-13-1703(A),

ii. The amount specified in a compliance schedule approved in a CCR facility permit, or

iii. A pro-rata amount if used with another financial assurance mechanism.

5. Letter of credit. The owner or operator may use a letter of credit if the following conditions are met:

a. The financial institution issuing the letter is regulated and examined by a federal or state agency;

b. The letter of credit is irrevocable and issued for at least one year in an amount equal to the cost estimate submitted under R18-13-1703(A) or a pro rata amount if used with another financial assurance mechanism. The letter of credit provides that the expiration date is automatically extended for a period of at least one year unless the issuing institution has canceled the letter of credit by sending notice of cancellation by certified mail to the owner or operator and the Director 90 days in advance of cancellation or expiration. The owner or operator shall provide alternate financial assurance within 60 days of receiving the notice of expiration or cancellation;

c. The financial institution names the Arizona Department of Environmental

Quality as beneficiary for the letter of credit; and

d. The letter is prepared by the financial institution and identifies the letter of credit issue date, expiration date, dollar sum of the credit, the name and address of the Department as the beneficiary, and the name and address of the owner or operator.

6. Insurance policy. The owner or operator may use an insurance policy if the following conditions are met:

a. The insurance is effective before signature of the permit or substitution of insurance for other extant financial assurance instruments posted with the Director;

b. The insurer is authorized to transact the business of insurance in the state and has an AM BEST Rating of at least a B+ or the equivalent;

c. The owner or operator submits a copy of the insurance policy to the Department;

d. The insurance policy guarantees that funds are available to pay costs for all items listed under R18-13-1703(A) without a deductible. The policy also guarantees that once cleanup steps begin that the insurer will pay out funds to the Director or other entity designated by the Director up to an amount equal to the face amount of the policy;

e. The policy guarantees that while closure, post-closure, or corrective action activities are conducted the insurer will pay out funds to the Director or other entity designated by the Director up to an amount equal to the face amount of the policy;

f. The insurance policy is issued for a face amount at least equal to the current cost estimate submitted to the Director for performance of all items listed under R18-13-1703(A) or a pro-rata amount if used with another financial assurance mechanism. Actual payments by the insurer will not change the face amount, although the insurer's future liability is reduced by the amount of the payments, during the policy period;

g. The insurance policy names the Arizona Department of Environmental Quality as additional insured;

h. The policy contains a provision allowing assignment of the policy to a successor owner or operator. The transfer of the policy is conditional upon consent of the insurer and the Department; and

i. The insurance policy provides that the insurer does not cancel, terminate, or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy, at a minimum, provides the insured with a renewal option at the face amount of the expiring policy. If the owner or operator fails to pay the premium, the insurer may cancel the policy by sending notice of cancellation by certified mail to the owner or operator and to the Director 90 days in advance of the cancellation. If the insurer cancels the policy, the owner or operator shall provide alternate financial assurance within 60 days of receiving the notice of cancellation.

7. Cash deposit. The owner or operator may use a cash deposit if the cash is deposited with the Department to cover the financial assurance obligation under R18-13-1703(A).

8. Guarantees.

a. The owner or operator may use guarantees to cover the financial assurance obligations under R18-13-1703(A) if the following conditions are met:

i. The owner or operator submits to the Department an affidavit certifying that the guarantee arrangement is valid under all applicable federal and state laws. If the owner or operator is a corporation, the owner or operator shall include a certified copy of the corporate resolution authorizing the corporation to enter into an agreement to guarantee the owner or operator's financial assurance obligation;

ii. The owner or operator submits to the Department documentation that explains the substantial business relationship between the guarantor and the owner or operator;

iii. The owner or operator demonstrates that the guarantor meets conditions of the financial mechanism listed in subsection (1). For purposes of applying the criteria in subsection (1) to a guarantor,

substitute "guarantor" for the term "owner or operator" as used in subsection (1);

iv. The guarantee is governed by and complies with state law;

v. The guarantee continues in full force until released by the Director or replaced by another financial assurance mechanism listed under subsection (1);

vi. The guarantee provides that, if the owner or operator fails to perform closure, post-closure care or corrective action of a facility covered by the guarantee, the guarantor shall perform or pay a third party to perform closure, post-closure care or corrective action, as required by the permit, or establish a fully funded trust fund as specified under subsection (4) in the name of the owner or operator; and

vii. The guarantor names the Arizona Department of Environmental Quality as beneficiary of the guarantee.

b. Guarantee reporting. The guarantor shall notify or submit a report to the Department within 30 days of:

i. An increase in financial responsibility during the fiscal year that affects the guarantor's ability to meet the financial demonstration;

ii. Receiving an adverse auditor's notice, opinion, or qualification; or

iii. Receiving a Department notification requesting an update of the guarantor's financial condition.

9. An owner or operator may use a financial assurance mechanism not listed in subsections (1) through (8) if approved by the Director.

**B.** Loss of coverage. If the Director believes that an owner or operator will lose financial capability under this Section, the owner or operator shall, within 30 days from the date of receipt of the Director's request, submit evidence that the financial demonstration under R18-13-1703 is being met or provide an alternative financial assurance mechanism.

**C.** Financial assurance mechanism substitution. An owner or operator may substitute one financial assurance mechanism for another if the substitution is approved by the Director through a permit modification or other Department approval.

**ECONOMIC, SMALL BUSINESS AND CONSUMER IMPACT STATEMENT**
**NOTICE OF FINAL RULEMAKING**
**TITLE 18. ENVIRONMENTAL QUALITY**
**CHAPTER 13. SOLID WASTE MANAGEMENT**

ADEQ separated the economic, small business, and consumer impacts of these rules into two major categories: 1) Those parts of the rules that would enact into Arizona rules nonprocedural standards that already apply; and 2) Additional requirements that would apply for the first time at some point after these rules are effective.

Existing requirements. These rules enact already existing standards from the United States Environmental Protection Agency (EPA) and the Arizona Dept. of Water Resources (ADWR) into ADEQ rules. ADEQ believes that where these CCR rules match existing standards, they do not have any direct negative impact on the four facilities in Arizona that will require a CCR facility permit. There are two groups of already existing standards:

1) 40 CFR 257, subpart D, for all CCR units. There will be no impact here because this rule is neither more or less stringent than this federal subpart for nonprocedural standards, and the Arizona CCR facilities are already subject to those federal standards.

2) Arizona Dept. of Water Resources (ADWR) rules at 12 A.A.C. 15, Article 12, that apply to CCR surface impoundments. Although these standards are stricter than 40 CFR 257, subpart D, there will be no impact here because surface impoundments at CCR facilities have already been subject to those ADWR rules, including the requirements in R18-13-1010.01 related to getting a license from ADWR.

ADEQ believes that because ADEQ will be replacing other agencies as the enforcing agency for standards that will remain the same, the rules will have a positive impact on the CCR facilities as well as the local community by enabling communication with a single, local agency. As an example, when cycling down and closing CCR units, a month delay can cost hundreds of thousands of dollars. A phone call to a state employee, who is not responsible for facilities in multiple states, and that may have already visited the site, is virtually certain to result in less delay. This advantage for CCR facilities will be offset in part by the permit processing and annual registration fees in this rule.

Additional requirements. Pursuant to statute, these rules create requirements for CCR facilities additional to those already existing in the following areas:

1) Aquifer protection standards developed under ADEQ statutes and rules for non-CCR wastestreams. (see R18-13-1005(B) and (F)). Although these standards are additional to 40 CFR 257, subpart D, there will be little to no impact here because CCR facilities were already subject to these standards under their ADEQ Aquifer Protection Permit (APP) and the final rule limits the stringency of any requirements in this area to what was previously required.

2) New ADEQ permitting requirements. There are currently no permitting requirements for CCR units in Arizona. The requirement that CCR units be covered under an APP was removed in 2022 by Ch. 178 as a consequence of their being regulated under 40 CFR 257, subpart D. ADWR currently requires licenses for CCR surface impoundments because they are classified as dams. The new permitting requirements are contained in R18-13-1010 through R18-13-1021.The ADWR licensing requirement for CCR surface impoundments ends when an impoundment is covered by an ADEQ permit under an EPA approved program. See A.R.S. § 45-1201(1)(f).

Federal law requires that CCR units be eventually covered under either a federally approved state program or the federal permit program. In February, 2020, EPA proposed its permitting program in a new 40 CFR 257, subpart E, but it is currently on an uncertain timetable. There is no federal or state requirement that ADEQ match the federal permitting rules that will be adopted in subpart E. However, ADEQ has made its permitting rules match EPA's proposed rules where possible to avoid unintended extra impact should both apply at the same time when final. This strategy also increases confidence in EPA's evaluation of the Arizona program. In some areas however, ADEQ's own permitting requirements may exceed, or at least be additional to, what will be required under future EPA permitting requirements for non-participating states. These extra requirements may impact Arizona's CCR facilities.

3) Financial assurance. There is no federal requirement that CCR facilities provide financial assurance. However, state authorizing legislation for this rule has required it for Arizona CCR facilities, and it is included in R18-13-1020. ADEQ notes that these facilities were already meeting financial assurance requirements for their CCR units under previous APPs,

and that the legislature has indicated its intent that ADEQ recognize this financial assurance, "in whole or in part." (See A.R.S. § 49-770(D)) Thus, any impacts of the financial assurance requirement will be lessened to some degree. However, ADEQ expects that the impact of financial assurance on CCR facilities may be greater for CCR units than what was required for their APP because of the more detailed closure, post-closure and corrective action requirements that exist in 40 CFR 257, subpart D.

4) Annual registration fees and permit processing fees. These fees are set out in R18-13-1021. Permit processing fees could begin after this rule is effective if any facility opts to apply early, although ADEQ expects most of these impacts to begin after CCR program approval. The annual registration fees for CCR facilities begin after CCR program approval. The annual fees are designed to cover ADEQ's non-permit related costs in administering the state CCR program. EPA proposed no fees in its CCR permit program.

Cost benefit analysis. ADEQ estimated the additional annual cost to implement the CCR permit program at $158,760, separate from the cost of processing permits. ADEQ based the annual registration fees on this estimate. Three additional full-time equivalent employees (FTEs) were estimated to be necessary to implement the CCR program: an inspector, a permit writer, and a geotechnical engineer. All but the permit writer have already been hired. All of the FTE permit writer's time on CCR will be billed processing permits.

Under A.R.S. § 49-104(B)(17), ADEQ fees must "be fairly assessed and impose the least burden and cost to the parties subject to the fees." ADEQ believes its estimate of the annual cost of the program not covered by permit processing fees is the lowest possible and therefore imposes the least burden and cost. Further, the annual registration fees in R18-13-1021(A) are based on the number and complexity of CCR units at each facility. This formula was arrived at after discussion with the affected stakeholders, and it is roughly proportional to the amount of time ADEQ will likely spend relative to each facility. In ADEQ's judgment, it is the best way to fairly assess the annual registration fees.

The hourly rate in R18-13-1021(E)(1) covers "the cost of administrative services and other expenses associated with evaluating" permits. It is based not only on the state's total cost for the employees billing the hours, but also a portion of the operational overhead of the Solid Waste section's employees not directly assigned to CCR facilities full time, such as

supervisors, other engineers, and administrative staff. ADEQ estimated the total number of hours the permit writer would be able to bill annually after comparing its experience processing hazardous waste permits which are similar in length and complexity and factoring in annual leave, sick leave, required training and other types of nonbillable time.

As a consequence of ADEQ setting its annual registration and permit processing fees at a level imposing the least burden on stakeholders, ADEQ had to plan for possible increases in its costs due to inflation. An annual adjustment to these fees based on a regional consumer price index was added at R18-13-1021(E)(4) in order for ADEQ to maintain its obligations under the program while keeping the cost at the least burdensome level.

The overall cost to ADEQ is expected to be balanced by the fees it collects. As explained earlier, there are significant potential benefits to both the local community and CCR facilities to having a single local agency handle all aspects of the federal CCR program. In spite of the fees necessary to cover the cost of the program, Arizona's CCR facilities have supported ADEQ's development of a state permit program as early as 2018, when CCR permitting was planned to be added to the Aquifer Protection Permit in ADEQ's Water Quality Division. ADEQ believes the overall benefits for all parties involved exceed the overall costs.

Kara M. Montalvo, Director
Environmental Services
PO Box 52025 | Mail Stop PAB359
Phoenix, AZ 85072-2025
602-236-5256 | Kara.Montalvo@srpnet.com

March 10, 2025

Council Member Jessica Klein, Chairperson
Governor's Regulatory Review Council
100 N. 5th Ave, Suite 302
Phoenix, AZ 85007

***RE: Arizona Department of Environmental Quality Rulemaking to Establish Arizona Coal Combustion Residuals Permit Program***

Dear Chairperson Klein and Council Members,

The Salt River Project Agricultural Improvement and Power District ("SRP") is a not-for-profit, community-based, public power provider that delivers retail electric services to over one million residential, commercial, industrial, agricultural, and mining customers in Arizona. As a vertically integrated utility, SRP provides generation, transmission, and distribution services, as well as metering and billing services. SRP relies on an intentional and beneficial diverse portfolio of generation resources that includes coal, natural gas, hydroelectric, nuclear, solar, wind, biomass, and geothermal. SRP is an owner and/or operator of generation units at two coal-fired power plants located in Arizona, Coronado Generating Station ("CGS") and Springerville Generating Station ("SGS"). Given SRP's ownership of and operating interests related to coal-fired electric generation, SRP supports Arizona Department of Environmental Quality (ADEQ) assumption of primacy for Coal Combustion Residuals (CCR) permitting in the state of Arizona.

SRP owns and operates CGS, a 780-megawatt (net) electricity generating facility located in St. Johns, Arizona, which includes two coal-fired generating units that began operation in 1979. CCR and non-CCR waste streams generated at the plant are managed by dry placement within an ash disposal landfill, sluicing to a surface impoundment referred to as the "Evaporation Pond," or through beneficial re-use via sale to a third-party vendor. The ash disposal landfill and the CGS Evaporation Pond have been regulated by the State of Arizona Aquifer Protection (APP) program since 2003. In 2015, these units became subject to federal CCR regulations in 40 C.F.R. Part 257, Subpart D.[1] In 2022, the Arizona Legislature authorized ADEQ to establish

[1] 40 C.F.R. §§ 257.60 - 257.64, § 257.101

and operate a CCR program "equivalent to or at least as protective as the federal coal combustion residuals program."[2]

SRP supports ADEQ's effort to establish a state CCR program. This letter highlights the critical benefits of ADEQ as the regulating agency in comparison to the EPA, focusing on three key areas:

1. ***ADEQ's Deep Familiarity with Facilities and Communities***
2. ***Efficiency and Effectiveness of a "One-Stop Shop"***
3. ***Alignment of ADEQ Fees with Other Environmental Permit Programs***

Interested stakeholders, including SRP, have been working with ADEQ for over a year on the proposed CCR permit program, and believe this program meets the criteria for state assumption as outlined in the Arizona CCR program statutes[3] as well as the federal regulations.

### *1. ADEQ's Familiarity with Facilities and Communities*

The State of Arizona has had a comprehensive groundwater protection program – the APP program – since 1987. The APP program, which is implemented by ADEQ, requires regulated facilities to meet aquifer water quality standards at designated points of compliance and to implement performance-based technology standards intended to reduce regulated discharges. Over the decades, ADEQ has regularly conducted inspections and compliance reviews to ensure the protection of Arizona's groundwater resources statewide.

Similarly, ADEQ is responsible for solid waste management in Arizona. The Waste Programs Division protects and enhances public health and the environment in Arizona by reducing the risk associated with waste management. Like the APP Program, ADEQ's solid waste program includes permitting, inspections and compliance assistance to ensure regulated facilities are in compliance with the program's requirements.

As noted above, the CGS facility has been covered by Arizona's APP program for nearly 22 years. Over the past decade, ADEQ has conducted three visits to CGS under this program, including field inspections in 2022 and 2024, and a visit to support a significant permit amendment in 2023. ADEQ's geohydrology staff possesses an intimate understanding of the climate, geology, and aquifers of Northeast Arizona, as well as the elements present in the underlying clays and soils.

The department also recognizes the economic importance of CGS to the communities in the White Mountains and St. Johns and is committed to protecting the environment of these areas while being mindful of costs and resource utilization. Further, ADEQ regulates three additional coal plants in Arizona, adding to the agency's expertise with this type of facility.

[2] A.R.S §49-891
[3] A.R.S . §§ 49-891-49-891.01

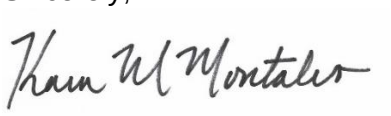
***2. Benefits of a "One-Stop Shop"***

A centralized source for environmental compliance provides regulatory consistency and enhances efficiency. The benefits of a "one-stop shop" include the ability to engage directly with the state agency to resolve technical challenges based on site-specific considerations and carve out regulatory pathways expeditiously. Working directly with ADEQ eliminates uncertainty in compliance elements, allows pragmatic tailoring of generic regulations to Arizona site-specific conditions, offers a wholistic approach taking into consideration other state regulatory programs, and ensures agency action and approval before facilities must make expensive capital expenditures. In addition, state-administered programs are often able to maintain more consistency in regulatory interpretation and policy when administrations shift, unlike federal programs. This consistency prevents wasteful use of resources, making it easier to plan and manage costs effectively, and preventing undue financial burden on Arizona constituents.

***3. Alignment of ADEQ Fees with Other Environmental Permit Programs***

ADEQ is a fee-for-service agency, that sets fees based on the costs of performing a specific function. Establishing fees to cover the costs of administering a state program is consistent with many programs across ADEQ, and stakeholders, including SRP, are familiar with the benefits of this model. In fact, stakeholders regularly advocate for the option of having state-administered regulatory programs at the Arizona legislature. The benefits of having an agency that is familiar with Arizona facilities and state-specific characteristics while also being effective in considering the needs of the residents within the state outweigh the fees that ADEQ requires to maintain a viable and effective program. Fees and costs for permits across waste, water, and air, among others, help to pay for the programs that employ local professionals and benefit the local economy. Additionally, as mandated by the federal Water Infrastructure Improvements for the Nation (WIIN) Act, any state CCR permit program must be as stringent as current federal requirements, so the environmental protections under a state-run program would be equivalent to an EPA-administered program with the added benefit of regulators who understand the uniqueness of Arizona communities, facilities, climate, and geohydrology.[4]

Sincerely,



Kara M. Montalvo, QEP

cc: Robin Thomas, ADEQ

[4] PUBLIC LAW 114–322—DEC. 16, 2016

**Phil Smithers**
Director of Environmental, Safety, HOP, & Industrial Hygiene

Tel. 602-250-4345
Mobile 602-809-2334
e-mail: phil.smithers@aps.com

400 North 5th Street
Mail Station 9303
Phoenix, Arizona 85072

March 11, 2025

Chairperson Jessica Klein
Honorable Council Members
Governor's Regulatory Review Council
100 N 15th Avenue
Suite 305
Phoenix, AZ 85007

**Re: Arizona Coal Combustion Residuals Rule**

Dear Chairperson Klein and Honorable Council Members:

Arizona Public Service Company ("APS") appreciates the opportunity to submit information supporting the Arizona Department of Environmental Quality's (ADEQ's) proposed Arizona Coal Combustion Residuals (CCR) Rulemaking, specifically *Arizona Administrative Code (AAC) Title 18, Chapter 13, Article 10 (Coal Combustion Residuals) and Article 17 (Financial Assurance)* (the Proposed Rules) included with your March 25, 2025 Study Session packet. This letter of support for the Proposed Rules is organized into three sections presenting: (1) background material relevant to understanding the purpose of the Proposed Rules, (2) an overview of APS's experience implementing the federal rule at one of our power plants, and (3) our perspective on why a state-based CCR program is good for Arizona.

## 1. Background

The federal CCR Rule was initially promulgated in 2015 at 40 Code of Federal Regulations (CFR) Part 257 to mitigate risks to the public of surface impoundments and landfills containing coal combustion waste. The rule was designed to be self-implementing and apply only to electrical utilities that operate or have operated coal-fired power plants. At the time the rule was promulgated, the nation had recently experienced two significant failures of CCR waste containment infrastructure that resulted in the release of sizable amounts of coal ash into downstream rivers. To address these failures, the focus of the CCR Rule was to promote standardized dam safety design and operational requirements for CCR units throughout the United States and to protect the drinking water use of groundwater through performance-based CCR unit closure standards, routine groundwater monitoring, and groundwater corrective action, as needed.

In 2016, the United States Congress passed the Water Infrastructure Improvements for the Nation (WIIN) Act which authorized the Environmental Protection Agency (EPA) to review and

approve state regulations that control CCR impoundments and landfills that are at least as protective as the federal CCR Rule. The WIIN Act also directed the EPA to establish and implement a CCR federal permit program in states that do not have an approved state program regulating CCR (i.e., 'nonparticipating states'). Although the EPA proposed a draft CCR permit rule in 2020 and the agency has continued to identify finalization of a CCR permit program in their legislative agenda for at least the last two years, no CCR permit program currently exists for 'nonparticipating states' at the federal level. With the current political climate, the outlook for EPA staffing of any CCR permit program, even if it is promulgated, is questionable. Thus, since 2015, the electrical utility industry has been interpreting and complying with the CCR Rule using our best judgement with limited site-specific feedback from any regulatory authority. Unfortunately, this has led to a myriad of legal challenges to the rule (from both the industry and environmental non-governmental organizations [eNGOs]), multiple enforcement actions levied on electric utilities with stiff penalties, and five substantive CCR Rule changes by EPA that have left the program in flux and contributed to appreciable regulatory uncertainty for almost ten years.

In Arizona, the Department of Water Resources (ADWR) regulates dam safety, and ADEQ regulates the impacts of solid waste units on groundwater. Arizona utilities with CCR surface impoundments and landfills must have ADWR-permitted dams when the containment structures that hold back the CCR waste pose a potential public safety hazard. Utilities have also historically had ADEQ Aquifer Protection Permits (APPs) to regulate leakage from CCR units with the potential to contaminate groundwater. When the federal CCR Rule went into effect, Arizona utilities were subject to both the federal CCR Rule and these pre-existing state programs which increased Arizona utilities' regulatory burden to maintain compliance because the requirements are not the same.

To address this duplicative regulation, ADEQ promulgated AAC Title 18, Chapter 9, Section 103.5 in 2019 which exempts CCR units from Arizona APP requirements for the protection of groundwater. As discussed in the Notice of Proposed Expedited Rulemaking for this exemption[1], the rulemaking was intended to be an interim action until ADEQ obtains primacy for the implementation of federal CCR regulations. In 2022, the Arizona Legislature authorized ADEQ to establish and operate an Arizona CCR permit program that would address both dam safety and solid waste impacts to groundwater. The Proposed Rules were developed in response to this express authorization.

## 2. APS Experience with the federal CCR Rule

The federal CCR Rule is applicable to APS in Arizona at Cholla Power Plant, located near Joseph City, where we have two large CCR surface impoundments and one CCR landfill. Our CCR program at this facility incorporates the required design, operational, closure, and post-closure requirements in the CCR Rule for these units as well as extensive monitoring networks to assess the structural stability of containment structures (including two high-hazard dams) and

[1] Notice of Proposed Expedited Rulemaking filed May 3, 2019 with the Arizona Secretary of State. Title 18. Environmental Quality. Chapter 9. Department of Environmental Quality, Water Pollution Control. AAC R18-9-101 and R18-9-103.

groundwater quality downgradient of CCR units. Although shutdown of coal-fired power generation at Cholla Power Plant is imminent, our CCR compliance obligations will not stop with the cessation of burning coal. We will continue to manage our CCR program at Cholla Power Plant for a minimum of 30 years where CCR units are closing in place in accordance with the rule.

Implementation of the federal rule has required APS to make significant investments in compliance without certainty that our regulatory strategy will be viewed as compliant with the CCR Rule by a regulatory authority due to the absence of a permitting program. To mitigate this risk, we benchmark with other local and national electrical utilities, participate in trade groups that follow rule development and enforcement, and review EPA actions and determinations to assess applicability to our operations.

An example of where hundreds of millions of dollars are currently being spent in rule compliance with lingering regulatory uncertainty is in the closure of our large CCR surface impoundments. At Cholla Power Plant, the Fly Ash Pond spans an area equivalent to approximately 310 football fields. Although we have been planning for the closure of this impoundment as part of plant shutdown for some time, recent EPA revisions to the CCR Rule call into question how performance-based criteria for closing a CCR impoundment in place are to be assessed from a compliance perspective. As a self-implementing regulation, these compliance assessments based on technical judgement are supposed to rely on Professional Engineer certifications. However, EPA has also recently questioned the validity of Profession Engineer certifications in similar compliance determinations at other sites. Thus, these conditions make it very difficult to know whether our very expensive closure efforts comply with the regulation until a regulator ultimately reviews the work.

## 3. Benefits of an Arizona CCR Permit Program

The Proposed Rules incorporate the federal CCR Rule by reference with provisions for integrating ADWR dam safety rules, Arizona financial assurance requirements, and permit program administration. The state-driven program established by the Proposed Rules will ensure:

- *Local control* - ADEQ already manages most of APS's environmental permit programs and we are familiar with how they operate. Based on this experience, we believe ADEQ can manage an efficient program that is protective of human health and the environment in Arizona because they already do that for numerous other regulatory programs. In addition, ADEQ can be locally responsive and accountable to surrounding communities, interested stakeholders, and the regulated entities because there is a system in Arizona government for escalating concerns, if there is a need to do so.
- *Professionals that understand the unique environmental settings at our CCR units are responsible for making technical judgements* – Arizona's hydrogeology is different from the Bay Area where EPA Region 9 is headquartered. Disconnects between regulators who do not understand the arid southwest frequently occur when we work with regulators and their consultants from other states. These disconnects can be as simple as not understanding the ephemeral nature of our watersheds to being surprised by depths to groundwater that can be over hundreds of feet below ground surface or thick layers of unsaturated soils between

our operations and drinkable water. These misunderstandings can lead to costly demonstrations that professionals with more experience in the region would be well versed with. ADEQ has first-hand experience with our CCR units as they were previously permitted by ADEQ under the APP Program; this positions the agency to efficiently and effectively manage environmental risks based on experienced technical judgements and promote timely regulation of permitted activities.

- *Removal of duplicative regulation* - Without a unifying Arizona CCR Permit program, Arizona utilities subject to the federal CCR Rule must comply with duplicative requirements that require maintenance of separate regulatory programs, particularly for dam safety, which can result in confusion and a costly regulatory burden. As a one-stop-shop, ADEQ's implementation of the Proposed Rules combining federal and state requirements makes Arizona safer by promoting clarity and consistency in dam safety regulation.
- *Financial sustainability of the program* – In general, ADEQ's permit programs are funded by regulated entities in a fee-for-service model. APS has reviewed the fees in the Proposed Rules and has determined that they are consistent with other permit fees we pay for environmental compliance. While we as the regulated community consistently advocate for cost control, we agree that Arizona utilities must adequately support a program that will effectively regulate only four facilities throughout the state. There is little potential for the addition of new facilities given the significant and numerous barriers to constructing new coal-fired power plants in the future; however, the permit program is anticipated to be required for some time due to post-closure requirements in the CCR Rule.
- *Reduced uncertainty for our businesses* – Self-implementing regulatory programs can be adequate for very straightforward compliance issues with little need for technical judgement. However, as the record of CCR Rule court challenges, rule revisions, and enforcement actions demonstrates, a CCR permit program is necessary in the near term to make effective progress on the goals that the CCR Rule set out to accomplish. APS believes an Arizona CCR permit program is the best approach for achieving CCR Rule compliance because it promotes local, timely, efficient, and reliable regulation that ultimately saves money by reducing regulatory uncertainty.

We welcome the opportunity to respond to any questions you may have on this submittal. If you would like to discuss the information provided in more detail, please contact Natalie Chrisman Lazarr at (602) 316-1324 or via email at natalie.chrismanlazarr@aps.com.

Thank you,



Phil Smithers
Director, Environmental and Safety

cc: Neal Brown, APS Environmental Support Manager
Jeffrey Allmon, Pinnacle West Associate General Counsel
Lauren Ferrigni, Pinnacle West Senior Environmental Attorney

March 11, 2025

Governor's Regulatory Review Council
100 N. 15th Avenue
Suite 302
Phoenix, AZ 85007

**RE: Arizona Coal Combustion Residuals**

Dear Chairperson Klein and Council Members,

Arizona Electric Power Cooperative, Inc. (AEPCO) is a not-for-profit generation and transmission electric utility cooperative headquartered in Benson, Arizona. AEPCO's purpose is to generate electricity and transmit it to distribution cooperatives that distribute it to end-use consumers in southern Arizona, western New Mexico, northwestern Arizona, and California. AEPCO provides wholesale energy and services to the six distribution cooperatives. AEPCO is owned, operated, and governed by its members who use the energy and services AEPCO provides. The member cooperatives to which AEPCO provides energy serve approximately 420,000 residential, agricultural, and industrial member-consumers. AEPCO owns and operates Apache Generating Station (Apache), located in Cochise, Arizona, about 80 miles east of Tucson and about 25 miles northeast of Benson, Arizona. At Apache AEPCO operates coal-related facilities which include surface impoundments subject to the federal Coal Combustion Residuals Rule (CCR) at 40 CFR Part 257.

AEPCO reiterates its support for the Arizona Department of Environmental Quality's (ADEQ) proposed Arizona CCR Rulemaking. AEPCO shares the common goal of a future program that is successful. We continue to believe that state management of CCR is the best approach and beneficial for a multitude of reasons.

ADEQ is in an ideal position to regulate CCR. Arizona has regulated our site for more than 30 years under the Arizona Aquifer Protection Permit (APP) Program. ADEQ has experience concerning the unique geology and hydrology of the arid west. Arizona faces declining groundwater availability, irrigation needs for agriculture, and specialized features such as the Willcox Playa near our site. ADEQ is familiar with these local attributes of the region and can work with regulated entities to effectively and safely manage CCR. We share ADEQ's goal of continued compliance and protection of human health and the environment.

AEPCO like other facilities are subject to duplicative regulatory oversight between the federal CCR Rule and the state APP permitting program which can create a range of challenges and inefficiencies. These challenges can include increased costs, confusion, conflicting rules, and

potential delays. AEPCO's top priority is to ensure the safe operation of the regulated CCR facilities which are critical infrastructure to the operation of Apache for the benefit of our members and ultimately their member-consumers at the end of the line.

The proposed fees under the Arizona CCR permit program are consistent with other regulatory fees paid to ADEQ. We believe that the proposed permit fees ensure that the regulatory programs across ADEQ ensure consistency and fairness across the regulatory framework. Aligning the agency permit fees with other similar fees not only fosters a level playing field but also promotes transparency and equity in the agency's fee structure. This approach ensures that no particular group is unfairly burdened and that the agency's fees are both reasonable and in proportion to the permitting services and oversight provided.

AEPCO respectfully requests GRRC support the approval of the Arizona CCR permit program. Please reach out to Michelle Freeark at 520-586-5122 or mfreeark@azgt.coop if you have any questions.

Sincerely,



Michelle R. Freeark
Executive Director of Regulatory Affairs & Corporate Services

cc: Robin Thomas, ADEQ

Tucson Electric Power
88 East Broadway Blvd (85701)
Mail Stop HQE901, Post Office Box 711
Tucson, Arizona 85702

Telephone (520) 549-8640
Email: megan.garvey@tep.com

March 5, 2025

Governor's Regulatory Review Council
100 N. 15th Avenue Suite 302
Phoenix, AZ 85007

RE: Support for Arizona Coal Combustion Residuals Program

Dear Honorable Council Members:

Tucson Electric Power Company ("TEP" or "Company") respectfully submits this letter of support to the Governor's Regulatory Review Council ("GRRC") regarding the Proposed Rulemaking – Coal Combustion Residuals ("CCR") Program published in the Arizona Administrative Register on July 12, 2024 ("Program" or "Proposed Rule"). TEP believes an Arizona-specific CCR permitting program administered by the Arizona Department of Environmental Quality ("ADEQ") is necessary to provide consistent, efficient regulatory oversight that will be protective of human health and the environment for Arizona's communities.

Background

TEP is an electric utility located in Tucson, Arizona, serving approximately 452,000 customers. TEP's service territory covers 1,155 square miles and includes a population of over one million people in Pima County, as well as Fort Huachuca in Cochise County, Arizona. TEP's principal business operations include generating, transmitting, and distributing electricity to its retail customers. In addition to retail sales, TEP sells electricity, transmission, and ancillary services to other utilities, municipalities, and energy marketing companies on a wholesale basis.

TEP operates and co-owns a coal-fired power plant in Springerville, Arizona that generates CCR, disposed in a CCR landfill subject to the CCR regulations under 40 CFR 257, Subpart D Standards for the Disposal of Coal Combustion Residuals in Landfills and Surface Impoundments (2015 CCR Rule).

Consistency with Federal and State Rules

TEP appreciates and supports ADEQ's efforts to develop Arizona-specific regulations regarding CCR management and the development of a state CCR permitting program. The Proposed Rule maintains the requirements of the self-implementing federal CCR rule while additionally incorporating components of the Aquifer Protection Program ("APP") that

currently apply to our CCR unit at the Springerville Generating Station. The Proposed Rule will allow for a streamlined, singular permit program for our CCR unit that meets all applicable federal and state requirements for CCR management and aquifer protection.

Clear and Predictable Requirements

While the federal CCR regulations under 40 CFR 257 became effective in 2015, they remain a self-implementing rule. There is currently no direct regulatory oversight of CCR management at electric utilities across the United States except in the three states where a state-level CCR permitting program has been approved by the EPA. The 2016 Water Infrastructure Improvements for the Nation (WIIN) Act gave EPA the authority to implement a federal CCR permit program and provided states the authority to operate permit programs, provided EPA determines that the state's requirements are as protective as the federal standards. EPA has been developing a federal permitting program since 2019 but has not finalized the program to date.

A permitting program provides clear, consistent, and predictable requirements for maintaining compliance with the CCR regulations and involves direct regulatory oversight. The current self-implementing nature of the CCR rule has created ambiguity between industry and the EPA regarding how certain provisions of the CCR regulations are to be complied with. A permitting program will eliminate this ambiguity.

Site-Specific Knowledge

The CCR landfill at TEP's Springerville Generating Station has been operating under an APP permit for decades. This has allowed ADEQ to become well informed with the landfill operations, the unique local geology and hydrogeology beneath the landfill, and the potential exposure pathways that need to be monitored to protect the local community. This extensive site-specific knowledge makes ADEQ the appropriate regulatory agency to implement the CCR Program at the facility.

Consolidated and Efficient Regulatory Oversight

The federal CCR Rule falls under the Resource Conservation and Recovery Act ("RCRA") solid waste regulations. ADEQ has been granted primacy to administer all other RCRA solid waste programs that apply to TEP's Springerville Generating Station, including oversight of non-CCR waste management at the CCR landfill. ADEQ also administers the applicable air quality and water quality permits for the facility. An Arizona CCR permitting program will allow for continued singular, efficient, local regulatory oversight of applicable environmental compliance programs at the facility.

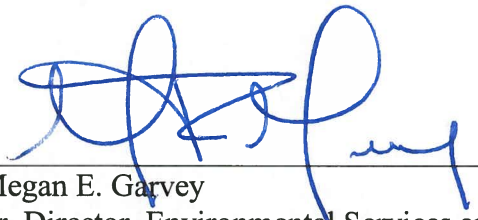
CCR Permitting Fees Consistent with Other Programs

For many years, ADEQ has been operating under a self-funded fee-for-service model for the environmental compliance and permitting programs it administers. TEP is subject to several of these fees from ADEQ for the applicable environmental programs at the Springerville Generating Station. The proposed CCR permitting fees are structured in a similar manner as existing ADEQ programs with initial fees and review fees (based on an hourly rate) that will be capped at maximum, not-to-exceed costs depending on permit application type.

TEP acknowledges that establishing a new regulatory permit program is resource intensive, involves a higher initial investment, and those costs will be shared among a limited number of permittees (four). However, the potential maximum fees proposed under the CCR rule will be lower than some existing programs at the Springerville Generating Station. For example, while the hourly rate for review of CCR permit applications will be higher than the APP program, the proposed maximum CCR permit fees are lower than the maximum allowable APP permitting fees. Additionally, the maximum potential permitting fee under the proposed CCR rule is less than half the annual air quality permitting program fees currently paid by TEP for the Springerville Generating Station operation. Therefore, TEP believes the proposed CCR permitting fees are appropriate and consistent with existing ADEQ environmental permitting fees.

Thank you for the opportunity to express our support for the Proposed Rule and we advocate for GRRC approval.

Sincerely,



Megan E. Garvey
Sr. Director, Environmental Services and Sustainability
Tucson Electric Power Company

cc:
Erik Bakken, TEP
Gregory Guimond, TEP
Bradley S. Carroll, TEP
Nicholas Loper, TEP
Steven Estes, TEP

August 14, 2024

***Via Email at wasterulemaking@azdeq.gov***

Mr. Mark Lewandowski
Department of Environmental Quality Waste Programs Division
1110 W. Washington St.
Phoenix, AZ 85007

RE: Notice of Proposed Rulemaking dated July 12, 2024
Comments on Arizona Coal Combustion Residuals Permit Program

Dear Mr. Lewandowski:

Arizona Electric Power Cooperative, Inc. (AEPCO) appreciates the opportunity to comment on the above-referenced proposed rulemaking for a state CCR program (the Arizona CCR Program or Proposed Rule). As a future permittee, AEPCO has a direct stake in an effective, workable Arizona CCR Program. Thank you for considering AEPCO's perspective on Proposed Rule through our lens of experience complying with the federal coal combustion residuals rule (the CCR Rule).

## *Introduction*

AEPCO is a not-for-profit generation and transmission electric utility cooperative headquartered in Benson, Arizona. AEPCO's purpose is to generate electricity and transmit it to distribution cooperatives that distribute it to end-use member-consumers in southern Arizona, western New Mexico, northwestern Arizona, and California. AEPCO provides wholesale energy and services to six distribution cooperatives through approximately 866 miles of wholly or partially owned transmission lines. AEPCO is owned, operated, and governed by its members who use the energy and services AEPCO provides. The member cooperatives to which AEPCO provides energy serve approximately 420,000 residential, agricultural, and industrial member-consumers. AEPCO is committed to balancing environmental stewardship with the cooperative's mission to provide reliable, affordable electricity to its members. AEPCO appreciates the Arizona Department of Environmental Quality's (ADEQ) past consideration of pricing to make the state program more affordable for a not-for-profit electric cooperative with cost-sensitive, rural end users.

AEPCO owns and operates Apache Generating Station (Apache), located in Cochise, Arizona, about 80 miles east of Tucson and about 25 miles northeast of Benson, Arizona. AEPCO



Arizona Electric Power Cooperative, Inc. • Sierra Southwest Cooperative Services, Inc.
P.O. Box 670 • 1000 S. Highway 80 • Benson, Arizona 85602 • (520) 586-3631 Phone • www.azgt.coop

operates a Combustion Waste Disposal Facility (CWDF) at Apache, which consists of a multi-unit system of four CCR impoundments (Ash Ponds 1-4) and Scrubber Pond 2. Ash Ponds 1-4 and Scrubber Pond 2 are subject to the federal CCR Rule, 40 CFR Part 257 *et seq.* Two separate ponds, Scrubber Pond 1 and an Evaporation Pond are subject to the Arizona Aquifer Protection Permit (APP) Program and are not presently subject to the federal CCR Rule. Ash Ponds 1-4 and Scrubber Pond 2 would be subject to the Arizona CCR Program.

***Comments on the Proposed Rule***

## I. AEPCO Supports Regulation of CCR Through a State Program.

AEPCO continues to support the development of an Arizona CCR Program. We acknowledge ADEQ's efforts to partner with the regulated community, public stakeholders, and U.S. EPA to develop the Program. AEPCO believes that a state program would be the most effective means to regulate CCR facilities in Arizona. Our state has the expertise and knowledge of the unique geologic and hydrology of the arid west. ADEQ has regulated Apache's CCR units and other CCR impoundments in the state for more than 30 years under the APP program. ADEQ is in the best position to navigate issues affecting the program such as declining groundwater levels, irrigation needs, and specialized features such as the Willcox Playa near Apache. Groundwater monitoring wells are often much deeper and may face operational issues due to declining groundwater levels. ADEQ has worked hand-in-hand with utilities to effectively and safely manage CCR. We believe the Arizona CCR Program is an opportunity to continue these collaborative efforts.

## II. State Approvals of Certain CCR Activities May Unsettle CCR Rule Compliance.

AEPCO continues to have concerns regarding the implementation of ADEQ approvals of Alternate Source Demonstrations (ASDs). The Proposed Rule includes a process for preparing and submitting an ASD to ADEQ, with the potential for a state disapproval:

> If the owner or operator completes a successful demonstration, as supported by a certification from a qualified professional engineer, within the 90-day period, the owner or operator may continue with a detection monitoring program, **[unless such demonstration is subsequently disapproved by the Director**.] If a successful demonstration was not completed within the 90-day period [**or if the Director disapproves the demonstration**,] the owner or operator shall initiate an assessment monitoring program as required under § 257.95.[1]

At present, the federal ASD process is self-implementing. It does not require an approval by EPA or another party. Importantly, a valid ASD completely changes the course of source compliance. If an ASD is not in place within a defined time period, then a statistically significant

[1] 30 AZ Register, Iss. 28 at 2279, 2291 (discussing and citing R18-13-1005(C) (emphasis added)).

increase (SSI) will cause a transition into Assessment Monitoring. If ADEQ holds disapproval power over an ASD, a belated determination would cause disorder in the designed transitions within the groundwater monitoring and sampling program. ASDs may be "disapproved" at any point - even years after being finalized.

The Proposed Rule summary suggests that since a facility must provide ADEQ a notice within seven days of the decision to prepare an ASD, timing is not an issue for ADEQ to act quickly. 30 AZ Register, Iss. 28 at 2279. We acknowledge that prior notice may help ADEQ plan for a future ASD review; however, the notice would not provide the technical lines of evidence and data that ADEQ must vet. AEPCO does not believe that prior notice remedies its timing concern.

## III. A Straightforward Appeal Process for ASDs Is Needed.

The Proposed Rule provides no clear path for appeals of ASDs. R18-13-1013 provides for appeals of a permitting decision. ASDs are not directly addressed. ADEQ should consider clarifying text to indicate that an ASD Disapproval is a final agency action subject to review immediately. A time frame for appeal should be offered, as well as an avenue to request the agency "stay" the ASD denial pending review. Since ASDs have immediate consequences, a clear process would benefit both the permittee and the agency.

## IV. Permit Modifications are Unnecessary and Disruptive for Site Maintenance Activities.

AEPCO supports a permit modification program that addresses true programmatic changes. ADEQ and sources should focus resources on the essential compliance and monitoring elements for the CCR program. Routine maintenance and equipment changes should be excluded. AEPCO regularly inspects its regulated units and must swiftly correct any equipment deficiencies to stay on schedule for sampling events and regular inspection requirements. *See* 40 CFR § 257.94 (containing regular sampling requirements). In fact, the federal CCR Rule even imposes direct time pressure on AEPCO in some scenarios. *See, e.g.,* 40 CFR § 257.83(b)(5) ("If a deficiency or release is identified during an inspection, the owner or operator must remedy the deficiency or release *as soon as feasible* and prepare documentation detailing the corrective measures taken" (emphasis added)).

AEPCO continues to have concerns that the text of R18-13-1017(F) (Modification of a CCR Facility Permit) could be interpreted to have a wide-scope. That provision refers to "nonmajor alternations, additions, or changes in the operation or condition of the permitted facility" as minor permit modification. AEPCO specifically suggests revision of section 7 to clarify that pieces of equipment that make-up the monitoring well should not trigger a permit revision: "Replace monitoring equipment, including a well, if the replacement results in equal or greater monitoring effectiveness, **but not including routine maintenance or replacement of well components and related equipment**." R18-13-1017(F)(7) (bolded red font included suggested addition).

Repairs or replacements of normal "wear and tear" items, such as a bladder pump in a monitoring well or a water quality parameter instrument, like a portable pH meter, have no place in a permitting scheme. These items do not impact the core elements of the program. Facilities must have some leeway to expeditiously address routine equipment needs without implicating a permitting change.

## V. Pre-State Permit Program Certifications Should Be Preserved.

AEPCO recommends that ADEQ clarify that pre-state program qualified professional engineer (QPE) certifications do not require state approvals. The Proposed Rule recognizes that QPE certifications are used extensively in CCR compliance. It was never AEPCO's understanding that the state program would be retroactive in scope. However, the preamble states that the rule will require "review and approval of those [QPE] certifications by ADEQ." 30 AZ Register, Iss. 28 at 2277. The self-implementing federal CCR program required AEPCO to undertake a substantial body of compliance work to set up the CCR program. Some of these activities began as early as 2015 – almost ten years ago. It would be counterproductive and time intensive for ADEQ and AEPCO to systematically revisit these certifications. It would upend the program. AEPCO requests that ADEQ clarify that ADEQ approvals shall be prospective only.

## VI. Public Meeting Requirements Should be Revised.

AEPCO supports the engagement of local communities and stakeholders, although we request that ADEQ reconsider the timing and style of the public meeting in R18-13-1010(C). That regulation requires that the owner or operator of the facility hold a public meeting to inform the community about the permit before the application is submitted for an initial or renewed CCR facility permit. This timing is too early. AEPCO supports shifting the meeting to coincide with the public notice informing the public that the written application has been received by ADEQ. This delay would provide the following advantages: (1) the source and ADEQ will have more time to fully develop the application, work through terms and conditions of the proposed permit, and navigate site-specific issues; (2) the meeting will offer the public more robust content on which to provide feedback, after source and agency coordination; and (3) the public feedback will be more meaningful and applicable to the project at hand. Indeed, meeting before the project is fully defined is likely to create confusion for the community and generate feedback that may not be productive. In addition, AEPCO supports a meeting style in which the regulated entity and ADEQ present the application together. This is consistent with past practices in other permitting frameworks. In summary, AEPCO believes a shared meeting approach, after the permit application is submitted, will promote consistency and coordination between the agency, regulated entity, and the public.

## *Conclusion*

AEPCO appreciates the opportunity to offer suggestions regarding the Arizona CCR Program. We look forward to further coordination and discussion with the agency. Please reach

out to Michelle Freeark at 520-586-5122 or mfreeark@azgt.coop if you have any questions or wish to discuss our recommendations further.

Sincerely,



Michelle R. Freeark
Executive Director of Regulatory Affairs & Corporate Services

**Phil Smithers**
Director of Environmental, Safety, HOP, & Industrial Hygiene

Tel. 602-250-4345
Mobile 602-809-2334
e-mail: phil.smithers@aps.com

400 North 5th Street
Mail Station 9303
Phoenix, Arizona 85072

August 13, 2024

***Submitted Electronically***

Arizona Department of Environmental Quality
Waste Programs Division, Solid Waste
Attn: Mark Lewandowski
1110 W. Washington Street
Phoenix, AZ 85007

Re: Comments on Proposed Rulemaking - Arizona Coal Combustion Residuals Rule

Dear Mr. Lewandowski:

Arizona Public Service Company ("APS") appreciates the opportunity to submit comments regarding the Arizona Department of Environmental Quality's (ADEQ's) Arizona Coal Combustion Residuals (CCR) Rule, specifically amendments to *Arizona Administrative Code (AAC) Title 18, Chapter 13, Article 10 (Coal Combustion Residuals) and Article 17 (Financial Assurance)* published in an Arizona Administrative Register Notice of Proposed Rulemaking dated July 12, 2024 (the Proposed Rules).

First and foremost, APS continues to be supportive of ADEQ's work towards an EPA-authorized CCR Program in Arizona as well as ADEQ's efforts to synchronize the future Arizona CCR program with the forthcoming federal CCR permit program.

Our remaining comment on the proposed rule is associated with the owner/operator-led public meeting held in advance of submitting an initial or renewal permit application per R18-13-1010.C. APS recommends that ADEQ lead public engagement to ensure that the content of public meetings aligns with the agency's requirements, promotes the community's engagement with an independent mediator in discussions, and allows the public to correspond directly with the authority responsible for regulating the subject compliance activities. Further, APS recommends that the meeting occur after preparation of the draft permit so that the public can be informed of and be provided the opportunity to comment in person on the controls proposed to ensure regulatory compliance.

If you have any questions or would like to discuss the information provided in more detail, please contact Natalie Chrisman Lazarr via email at natalie.chrismanlazarr@aps.com.

Thank you,



Phil Smithers
Director, Environmental, Safety, and HOP

cc: Anne Carlton, APS Environmental Support Manager
Jeffrey Allmon, Pinnacle West Senior Environmental Attorney

August 14, 2024

Mark Lewandowski
Arizona Department of Environmental Quality
Waste Programs Division
1110 W. Washington St.
Phoenix, AZ 85007
By email: wasterulemaking@azdeq.gov and lewandowski.mark@azdeq.gov

Re: Notice of Rulemaking Docket Opening: 30 A.A.R. 2026, June 7, 2024- State's adoption of proposed coal combustion residuals regulations.

Mr. Lewandowski:

Sierra Club, Western Clean Energy Campaign are submitting these written comments in the above-referenced docket regarding the Arizona Department of Environmental Quality's (ADEQ) proposed adoption of state coal combustion residuals (CCR) regulations that would apply in lieu of the Environmental Protection Agency's (EPA) coal ash regulations at 40 C.F.R. 257, Subpart D, which was published in the Arizona Administrative Register on July 12, 2024, Vol. 30, Issue 28. Please accept the following comments with regard to the proposed state coal ash regulations.

As an overarching matter, ADEQ should not assert primacy over coal ash regulation and enforcement. The Arizona legislation authorizing adoption of coal ash regulations states that "[t]he director ***may*** adopt rules to establish and operate a coal combustion residuals program…" A.R.S. § 49-891(A). Adoption of such rules is discretionary, not mandatory.

ADEQ is already understaffed. Moreover, EPA has begun a significant effort to enforce the federal requirements found in 40 C.F.R. Part 257, Subpart D. To protect public health, ADEQ should abandon its effort to assume primacy over coal ash regulation and enforcement and leave the implementation and enforcement of the CCR program to the federal government.

We also offer the following additional comments.

1. The Legacy Rule amendments of May 8, 2024.

ADEQ's proposed state coal ash regulations state that the proposed rule "would incorporate EPA's 40 CFR 257, Subpart D, revised by EPA as of December 14, 2020." Ariz. Admin. Reg., Vol. 30, No. 28 at 2277. However, A.R.S. § 41-1028(B) requires that any Arizona regulation that incorporates by reference any federal regulation "shall state that the rule does not include any later amendments or editions of the incorporated matter."

On May 8, 2024, EPA amended 40 CFR 257, Subpart D by adopting the CCR "Legacy Rule," which regulates non-operating coal ash units that originally fell outside of the 2015 version of the Subpart D regulations. EPA's recent "Legacy Rule" can be found at 89 Fed. Reg. 38950 (May 8, 2024). The preamble to ADEQ's proposed regulations and the proposed regulations themselves are silent as to the existence of EPA's Legacy Rule. The proposed ADEQ regulations do not specifically state that the rule "does not include any later amendments or editions of the incorporated matter," which would include the Legacy Rule amendments. Although some of ADEQ's proposed regulations refer to Subpart D "as revised December 14, 2020 (and no future editions)," we ask that ADEQ specifically state that the proposed CCR regulations do *not* include matters covered by EPA's 2024 CCR Legacy Rule amendments to Subpart D.

Earthjustice has identified at least two coal ash units in Arizona that may be subject to the CCR Legacy Rule.[1] These coal units appear to be coal ash landfills both located on the Coronado power plant site. Because Arizona's proposed regulations would not incorporate EPA revisions to Subpart D

[1] Earthjustice, Toxic Coal Ash in Arizona: Addressing Coal Plants' Hazardous Legacy (May 3, 2023), available at https://earthjustice.org/feature/coal-ash-states/arizona#unregulated.

after December 14, 2020, it appears Arizona is not seeking to regulate any legacy units and instead such units would remain regulated by EPA's Subpart D regulations. Please confirm that any "legacy units" in Arizona would remain regulated by EPA under the newly revised Subpart D.

2. Un-approvable provisions less stringent than Subpart D.

In several respects, ADEQ's proposed regulations are less stringent than the December 14, 2020 version of Subpart D and thus cannot be approved by EPA. For example, ADEQ's proposed regulations would amend 40 C.F.R. 257.73(a)(4), 40 C.F.R. 257.73 (d)(1)(iv), 40 C.F.R. 257.74(a)(4), and 40 C.F.R 257.74(d)(1)(iv) by deleting the words "not to exceed a height of 6 inches above the slope of the dike." The deletion of this language makes the proposed rule less stringent than the federal rule with regard to structural integrity requirements for existing and lateral expansions of CCR surface impoundments. Because the proposed language is less stringent, it is not approvable by EPA. In the event ADEQ proceeds to promulgate these regulations, please revise the regulations to fully incorporate all requirements of 40 C.F.R. 257.73 and 257.74.

3. The definition of "minor modification" is overly broad.

Section R18-13-1017 F. of the proposed regulations contains an overly broad definition of "minor permit modification" that would deny the public the opportunity to comment on and appeal important changes to a CCR permit. For example, the following significant permit modifications would be considered "minor" under the proposed regulations: changes to Aquifer Water Quality Standards or Maximum Contaminant Levels "which serve as the underlying basis for a permit condition"; changes in the statistical method for evaluating groundwater monitoring data; changes to groundwater sampling and analysis frequency; assessment of corrective measures; changes to approved groundwater monitoring systems; changes to interim or final compliance dates; making "material changes to the corrective action requirements"; and modification of a CCR unit "including physical changes."

By their very definition, these modifications are "material," "major," and/or "serve as the underlying basis for a permit condition." As such, the type of permit modifications identified above must be considered "major modifications" of a CCR permit requiring public notice, public comment, and an opportunity for public challenge.

Finally, in an early budget request for running the program and prior to passage of the authorizing legislation, ADEQ indicated that it hoped to avoid the citizen suit provisions of the Resource Conservation and Recovery Act (RCRA) by assuming control of the program.[2] While ADEQ later backed off on that statement and modified its request, we remain concerned, as Arizona's citizen enforcement provisions (*see* A.R.S. § 49-264) are so weak that they are almost never used. Arizona's citizen enforcement provisions allow the director of ADEQ to prevent a citizen suit from moving forward merely by asserting that no violation occurred. If ADEQ's proposed regulations are finalized, the rules should clarify that the citizen enforcement provisions of RCRA apply to the CCR program. The current lack of clarity about citizen enforcement is one of the reasons we oppose state primacy over the CCR program.

Thank you for the opportunity to comment on these proposed regulations.

Sincerely,



Sandy Bahr
Director
Sierra Club – Grand Canyon Chapter

Eric Frankowski
Executive Director
Western Clean Energy Campaign

Vianey Olivarria
Executive Director
Chispa Arizona

---

[2] https://www.azcentral.com/story/news/politics/arizona/2021/10/27/arizona-utilities-seek-state-oversight-coal-ash-pollution-disposal/8379404002/

Joseph City Schools
Tradition of Excellence

Bryan Fields
Superintedent

August 14, 2024

Mark Lewandowski
Arizona Department of Environmental Quality
Waste Programs Division
1110 W. Washington St.
Phoenix, AZ 85007
wasterulemaking@azdeq.gov

RE: State's adoption of proposed coal combustion residuals regulations
Notice of Rulemaking Docket Opening: 30 A.A.R. 2026, June 7, 2024

Mr. Lewandowski,

It has come to our attention that the Arizona Department of Environmental Quality (ADEQ) is proposing to take over responsibility for the state of Arizona for Coal Combustion Residual (CCR) regulation, rather than maintaining the current practice of the U.S. Environmental Protection Agency (EPA). As you know, EPA is the regulatory agency responsible for ensuring compliance by utilities, and our community is very supportive of continuing to ensure the level of protection EPA regulations provide to our community's safety and health.

Joseph City is considered a Coal Impacted Community as the Cholla Power Plant, and its attendant ponds and coal ash pits are located within two miles from our community border (Figure 1). While the Cholla Power Plant will close in 2025, the CCR or ash will remain in our community forever with the potential to expose our citizens to airborne toxins and water pollutants without adequate monitoring and protections in place.

Therefore, it is in the best interests of our community, its children and citizens that the strongest possible CCR regulations are implemented. Continual, robust monitoring of the ash pond in perpetuity will be necessary to ensure containment issues are not developing for these waste products. For these reasons, we ask that the state not take over the CCR program unless it can assure citizens of this state that Arizona compliance regulations will not be weaker or more permissible in any respect than current federal regulation.

As the ADEQ has historically not had responsibility for designing, implementing and enforcing a CCR program to date, we are concerned that the state may not have the staffing and expertise comparable to the experience and resources of the federal EPA. In addition, the state experiences budget deficits in many years, resulting in budget cuts to state agencies. Given this, how can the ADEQ ensure that adequate funding will be available to administer this program?




Figure 1. Joseph City (dotted line) and Coal Ash Pond (red circle) Geographic Boundaries

We also believe that members of the community should have the right and ability to seek legal remedies if situations arise where utilities are not complying with established regulations. According to a 2021 *Arizona Republic* news article,[1] when the change from federal to state jurisdiction for coal ash laws was first requested by utilities, a provision to allow for citizen lawsuits was not included. As we don't know what may happen in the future with such a significant waste site, it is imperative that the State of Arizona and ADEQ provide an effective and efficient process for citizen concerns to be addressed through a comprehensive and thorough review.

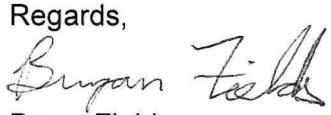
Joseph City and surrounding communities are working to address the impacts of losing the Cholla Power Plant, a significant, regional employer. Economic redevelopment and attraction of new industries and families will be impacted if enforcement of CCR becomes lax or if pollution is allowed to migrate from the site. Our communities have provided the land, water and labor that

[1] State regulators want to run coal ash program after ask from utilities (azcentral.com)

provided electricity to the state for decades. In return, we are due the strongest possible CCR regulation to protect the health and prosperity of our families.

Thank you for considering these comments.

Regards,



Bryan Fields
Superintendent
Joseph City Unified School District.

Andrea Martinez, Senior Manager
Water Quality & Waste Management Services
PAB 359| P.O. Box 52025
Phoenix, AZ 85072-2025
P: (602) 236-2618 | srpnet.com
Andrea.Martinez@srpnet.com

Delivering water and power™

*Transmitted via electronic mail*

Mr. Mark Lewandowski
Waste Programs Division
Arizona Department Environmental Quality
1110 W. Washington Street
Phoenix, AZ 85007

August 14, 2024

***RE: SRP Comments on ADEQ's Proposed Rulemaking to Establish and Operate a Coal Combustion Residuals Permitting Program for Arizona***

Dear Mark Lewandowski,

Salt River Project Agricultural Improvement and Power District (SRP) owns and operates the Coronado Generating Station (CGS), which has three Coal Combustion Residuals (CCR) units covered by the requirements of the U.S Environmental Protection Agency's 2015 CCR rule. The units include an active surface impoundment (Evaporation Pond), an active dry landfill (Ash Disposal Landfill), and a closed surface impoundment (Ash Slurry Settling Ponds). SRP completed closure of the Ash Slurry Settling Ponds in accordance with the CCR rule and Aquifer Protection Permit (APP) program requirements on April 29, 2019. SRP appreciates the opportunity to provide comments on the Arizona Department of Environmental Quality (ADEQ) draft CCR rule language and appreciates the work conducted by the agency to support this rulemaking. This rulemaking will allow ADEQ to establish and operate a CCR permitting program for Arizona. SRP previously submitted comments on draft rule language via ADEQ's comment portal on January 30, 2024. SRP has also reviewed the current rule language dated July 12, 2024, and SRP respectfully offers the following comments.

**Permit Application Requirements for CCR Facilities**

Section R18-13-1010.B.2 of the draft rule requires submittal of an application for a new CCR unit or lateral expansion of a CCR unit and issuance of a permit (or permit modification) authorizing construction before construction may begin. SRP requests that ADEQ revise this section to allow construction of proposed facilities to proceed at risk while a facility goes through a new facility permitting process. This practice aligns with the agency's APP program regulations and allows companies to proceed with developing new capacity in a shorter time period when needed.

Section R18-13-1010.C of the draft rule requires the owner or operator to hold a public meeting to solicit questions from the community and inform the community of a proposed permit application *prior to* submitting an application for an initial or renewed CCR facility permit. Additionally, the owner or operator must notify ADEQ of this meeting at least 30 days prior to the pre-application public meeting, provide "adequate" public notice for the meeting and submit a summary of the meeting including a list of attendees and any voluntarily submitted addresses to the Department.

SRP supports public participation in the permitting process, however, ADEQ has not provided the legal basis for these requirements, which impose a new regulatory burden on permittees. As ADEQ is aware, CCR permits will only be issued at long-existing facilities that have been under ADEQ oversight for many years. These proposed and novel requirements in section R18-13-1010.C for public involvement before formal agency engagement go beyond the federal regulations applicable to CCR units. In addition, the requirements are a marked departure from the public involvement requirements under other programs administered by ADEQ.

The requirements in R18-13-1010.C also have the potential to create confusion for the public. Public involvement is required when the *agency* proposes to take an action, not an applicant. It is not until an applicant has engaged ADEQ in the pre-application process that ADEQ defines the project permit and facility requirements. Engaging the public before a project is fully defined may cause confusion and extend permitting timelines.

SRP also notes that the draft rule includes opportunities for public participation that will better serve the public through its requirements to share information *after* a project has been defined by ADEQ. Indeed, section R18-13-1018 addressing "Public Notice Requirements for Permit Actions" requires ADEQ to provide public notice of initial or renewed CCR permit applications as well as applications to modify such permits (R18-13-1018.A). For initial or renewed CCR permits and major modifications, ADEQ must provide a notice that: (1) includes a brief summary of the draft document; (2) provides information about the licensing timeframes and explains where further information on the permit action can be obtained; (3) describes when and how comments may be made; (4) provides at least 30 days for comments; and (5) explains how a public hearing may be requested (A.A.C. R18-13-1018.E). In addition, the public may request additional time to comment on a draft permit. These provisions provide ample opportunities for participation for the public, and the additional requirements in section R18-13-1010.C are unwarranted. SRP requests that section R18-13-1010.C be removed.

**Modification of a CCR Facility Permit**

Section 8-13-1017.F.3.c requires a minor permit modification when there is a change to a groundwater sampling and analysis program, including a demonstration of an alternative source of a statistically significant increase (SSI) over background levels for a groundwater constituent per 40 CFR 257.94(d) or 257.95(c). Alternate source demonstrations (ASDs) for SSIs pertaining to naturally occurring conditions should not require a minor permit modification, as this type of ASD does not lead to a change in a facility's groundwater sampling and analysis program (i.e., the facility remains in detection monitoring, rather than commencing assessment monitoring). SRP requests this requirement be removed.

SRP appreciates the opportunity to provide these comments to ADEQ. If you have any questions, please call or e-mail me at the contact information listed above.

Sincerely,



Andrea Martinez

cc: Kara Montalvo, SRP

Tucson Electric Power
88 East Broadway Blvd (85701)
Mail Stop HQE901, Post Office Box 711
Tucson, Arizona 85702

Telephone (520) 549-8640
Email: megan.garvey@tep.com

***Submitted via email to wasterulemaking@azdeq.gov***

August 14, 2024

ADEQ
Waste Programs Division, Solid Waste
Attn: Mark Lewandowski
1110 W. Washington Street
Phoenix, AZ 85007

RE: Proposed Rulemaking – Coal Combustion Residuals Program

Tucson Electric Power Company (TEP or the Company) respectfully submits these comments to the Arizona Department of Environmental Quality (ADEQ or Agency) regarding the Proposed Rulemaking – Coal Combustion Residuals (CCR) Program published in the Arizona Administrative Register on July 12, 2024 (Program or Proposed Rule).

TEP appreciates and supports ADEQ's efforts to develop Arizona-specific regulations regarding CCR management and the development of a state CCR permitting program. The Proposed Rule maintains the requirements of the self-implementing federal CCR rule while additionally incorporating components of the Aquifer Protection Program (APP) that currently apply to our CCR unit at the Springerville Generating Station. This Proposed Rule will allow for a streamlined, singular permit program for our CCR unit that meets all applicable federal and state requirements for CCR management and aquifer protection. TEP recognizes that your extensive knowledge of the unique geologic and hydrogeologic site conditions across Arizona make ADEQ the appropriate regulatory agency to implement the CCR Program. We are grateful for the stakeholder process ADEQ facilitated over the past few years. Thank you for devoting time and resources to the development of this Program.

Engagement in our communities and with our customers is a TEP priority. We are pleased that ADEQ's proposed rulemaking is designed to provide ample opportunities for public participation during the permitting process. We agree that community awareness and participation in the CCR permitting process is important.

Stakeholder engagement is most meaningful when it is informed and timely. The proposed Public Notice Requirements under R18-13-1018 allow for meaningful public participation

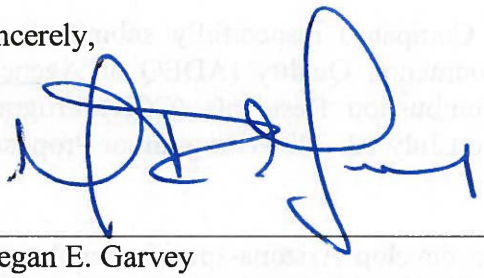
in the CCR permitting process through public notices, making application materials available to the public, and allowing for optional public meetings. TEP recommends that the proposed requirement under R18-13-1010.C, for a public meeting without ADEQ's involvement and prior to submitting a permit application, be moved to R18-13-1018.A to coincide with the public notice that an application has been received by ADEQ. TEP also proposes that both the applicant and ADEQ participate in the public meeting.

Moving the public meeting requirements from R18-13-1010.C to R18-13-1018.A will benefit all stakeholders. The community will be better informed of the permit application and permitting process after an application package has been submitted. This timing will provide ample opportunity for community feedback prior to the development of the draft permit.

As noted in R18-13-1018.F, ADEQ will also have the option to schedule a public hearing after public notice of a proposed draft permit "if requested and if the Director determines there is sufficient public interest." This will provide additional opportunities for public hearings, if requested by the community.

Thank you, again, for the opportunity to provide feedback on the Proposed Rule. Please let me know if you have any questions. We look forward to working with you under this Program.

Sincerely,



Megan E. Garvey
Sr. Director, Environmental Services and Sustainability
Tucson Electric Power Company

cc:
Erik Bakken, TEP
Gregory Guimond, TEP
Bradley S. Carroll, TEP
Steven Estes, TEP

AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO



Director of an approved State the following information as it becomes available:

(1) Any location restriction demonstration required under §§ 257.7 through 257.12; and

(2) Any demonstration, certification, finding, monitoring, testing, or analytical data required in §§ 257.21 through 257.28.

(b) The owner/operator must notify the State Director when the documents from paragraph (a) of this section have been placed or added to the operating record, and all information contained in the operating record must be furnished upon request to the State Director or be made available at all reasonable times for inspection by the State Director.

(c) The Director of an approved State can set alternative schedules for recordkeeping and notification requirements as specified in paragraphs (a) and (b) of this section, except for the notification requirements in § 257.25(g)(1)(iii).

(d) The Director of an approved state program may receive electronic documents only if the state program includes the requirements of 40 CFR Part 3—(Electronic reporting).

[44 FR 53460, Sept. 13, 1979, as amended at 70 FR 59888, Oct. 13, 2005]

## Subpart C [Reserved]

## Subpart D—Standards for the Disposal of Coal Combustion Residuals in Landfills and Surface Impoundments

SOURCE: 80 FR 21468, Apr. 17, 2015, unless otherwise noted.

### § 257.50 Scope and purpose.

(a) This subpart establishes minimum national criteria for purposes of determining which solid waste disposal facilities and solid waste management practices do not pose a reasonable probability of adverse effects on health or the environment under sections 1008(a)(3) and 4004(a) of the Resource Conservation and Recovery Act.

(b) This subpart applies to owners and operators of new and existing landfills and surface impoundments, including any lateral expansions of such units that dispose or otherwise engage in solid waste management of CCR generated from the combustion of coal at electric utilities and independent power producers. Unless otherwise provided in this subpart, these requirements also apply to disposal units located off-site of the electric utility or independent power producer. This subpart also applies to any practice that does not meet the definition of a beneficial use of CCR.

(c) This subpart also applies to inactive CCR surface impoundments at active electric utilities or independent power producers, regardless of the fuel currently used at the facility to produce electricity.

(d) This subpart does not apply to CCR landfills that have ceased receiving CCR prior to October 19, 2015.

(e) This subpart does not apply to electric utilities or independent power producers that have ceased producing electricity prior to October 19, 2015.

(f) This subpart does not apply to wastes, including fly ash, bottom ash, boiler slag, and flue gas desulfurization materials generated at facilities that are not part of an electric utility or independent power producer, such as manufacturing facilities, universities, and hospitals. This subpart also does not apply to fly ash, bottom ash, boiler slag, and flue gas desulfurization materials, generated primarily from the combustion of fuels (including other fossil fuels) other than coal, for the purpose of generating electricity unless the fuel burned consists of more than fifty percent (50%) coal on a total heat input or mass input basis, whichever results in the greater mass feed rate of coal.

(g) This subpart does not apply to practices that meet the definition of a beneficial use of CCR.

(h) This subpart does not apply to CCR placement at active or abandoned underground or surface coal mines.

(i) This subpart does not apply to municipal solid waste landfills that receive CCR.

### § 257.51 Effective date of this subpart.

The requirements of this subpart take effect on October 19, 2015.

**§ 257.52 Applicability of other regulations.**

(a) Compliance with the requirements of this subpart does not affect the need for the owner or operator of a CCR landfill, CCR surface impoundment, or lateral expansion of a CCR unit to comply with all other applicable federal, state, tribal, or local laws or other requirements.

(b) Any CCR landfill, CCR surface impoundment, or lateral expansion of a CCR unit continues to be subject to the requirements in §§ 257.3–1, 257.3–2, and 257.3–3.

**§ 257.53 Definitions.**

The following definitions apply to this subpart. Terms not defined in this section have the meaning given by RCRA.

*Acre foot* means the volume of one acre of surface area to a depth of one foot.

*Active facility* or *active electric utilities or independent power producers* means any facility subject to the requirements of this subpart that is in operation on October 19, 2015. An electric utility or independent power producer is in operation if it is generating electricity that is provided to electric power transmission systems or to electric power distribution systems on or after October 19, 2015. An off-site disposal facility is in operation if it is accepting or managing CCR on or after October 19, 2015.

*Active life* or *in operation* means the period of operation beginning with the initial placement of CCR in the CCR unit and ending at completion of closure activities in accordance with § 257.102.

*Active portion* means that part of the CCR unit that has received or is receiving CCR or non-CCR waste and that has not completed closure in accordance with § 257.102.

*Aquifer* means a geologic formation, group of formations, or portion of a formation capable of yielding usable quantities of groundwater to wells or springs.

*Area-capacity curves* means graphic curves which readily show the reservoir water surface area, in acres, at different elevations from the bottom of the reservoir to the maximum water surface, and the capacity or volume, in acre-feet, of the water contained in the reservoir at various elevations.

*Areas susceptible to mass movement* means those areas of influence (*i.e.*, areas characterized as having an active or substantial possibility of mass movement) where, because of natural or human-induced events, the movement of earthen material at, beneath, or adjacent to the CCR unit results in the downslope transport of soil and rock material by means of gravitational influence. Areas of mass movement include, but are not limited to, landslides, avalanches, debris slides and flows, soil fluctuation, block sliding, and rock fall.

*Beneficial use of CCR* means the CCR meet all of the following conditions:

(1) The CCR must provide a functional benefit;

(2) The CCR must substitute for the use of a virgin material, conserving natural resources that would otherwise need to be obtained through practices, such as extraction;

(3) The use of the CCR must meet relevant product specifications, regulatory standards or design standards when available, and when such standards are not available, the CCR is not used in excess quantities; and

(4) When unencapsulated use of CCR involving placement on the land of 12,400 tons or more in non-roadway applications, the user must demonstrate and keep records, and provide such documentation upon request, that environmental releases to groundwater, surface water, soil and air are comparable to or lower than those from analogous products made without CCR, or that environmental releases to groundwater, surface water, soil and air will be at or below relevant regulatory and health-based benchmarks for human and ecological receptors during use.

*Closed* means placement of CCR in a CCR unit has ceased, and the owner or operator has completed closure of the CCR unit in accordance with § 257.102 and has initiated post-closure care in accordance with § 257.104.

*Coal combustion residuals (CCR)* means fly ash, bottom ash, boiler slag, and

flue gas desulfurization materials generated from burning coal for the purpose of generating electricity by electric utilities and independent power producers.

*CCR fugitive dust* means solid airborne particulate matter that contains or is derived from CCR, emitted from any source other than a stack or chimney.

*CCR landfill or landfill* means an area of land or an excavation that receives CCR and which is not a surface impoundment, an underground injection well, a salt dome formation, a salt bed formation, an underground or surface coal mine, or a cave. For purposes of this subpart, a CCR landfill also includes sand and gravel pits and quarries that receive CCR, CCR piles, and any practice that does not meet the definition of a beneficial use of CCR.

*CCR pile or pile* means any non-containerized accumulation of solid, nonflowing CCR that is placed on the land. CCR that is beneficially used off-site is not a CCR pile.

*CCR surface impoundment or impoundment* means a natural topographic depression, man-made excavation, or diked area, which is designed to hold an accumulation of CCR and liquids, and the unit treats, stores, or disposes of CCR.

*CCR unit* means any CCR landfill, CCR surface impoundment, or lateral expansion of a CCR unit, or a combination of more than one of these units, based on the context of the paragraph(s) in which it is used. This term includes both new and existing units, unless otherwise specified.

*Dike* means an embankment, berm, or ridge of either natural or man-made materials used to prevent the movement of liquids, sludges, solids, or other materials.

*Displacement* means the relative movement of any two sides of a fault measured in any direction.

*Disposal* means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste as defined in section 1004(27) of the Resource Conservation and Recovery Act into or on any land or water so that such solid waste, or constituent thereof, may enter the environment or be emitted into the air or discharged into any waters, including groundwaters. For purposes of this subpart, disposal does not include the storage or the beneficial use of CCR.

*Downstream toe* means the junction of the downstream slope or face of the CCR surface impoundment with the ground surface.

*Eligible unlined CCR surface impoundment* means an existing CCR surface impoundment that meets all of the following conditions:

(1) The owner or operator has documented that the CCR unit is in compliance with the location restrictions specified under §§ 257.60 through 257.64;

(2) The owner or operator has documented that the CCR unit is in compliance with the periodic safety factor assessment requirements under § 257.73(e) and (f); and

(3) No constituent listed in Appendix IV to this part has been detected at a statistically significant level exceeding a groundwater protection standard defined under § 257.95(h).

*Encapsulated beneficial use* means a beneficial use of CCR that binds the CCR into a solid matrix that minimizes its mobilization into the surrounding environment.

*Existing CCR landfill* means a CCR landfill that receives CCR both before and after October 19, 2015, or for which construction commenced prior to October 19, 2015 and receives CCR on or after October 19, 2015. A CCR landfill has commenced construction if the owner or operator has obtained the federal, state, and local approvals or permits necessary to begin physical construction and a continuous on-site, physical construction program had begun prior to October 19, 2015.

*Existing CCR surface impoundment* means a CCR surface impoundment that receives CCR both before and after October 19, 2015, or for which construction commenced prior to October 19, 2015 and receives CCR on or after October 19, 2015. A CCR surface impoundment has commenced construction if the owner or operator has obtained the federal, state, and local approvals or permits necessary to begin physical construction and a continuous on-site, physical construction program had begun prior to October 19, 2015.

*Facility* means all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, disposing, or otherwise conducting solid waste management of CCR. A facility may consist of several treatment, storage, or disposal operational units (e.g., one or more landfills, surface impoundments, or combinations of them).

*Factor of safety (Safety factor)* means the ratio of the forces tending to resist the failure of a structure to the forces tending to cause such failure as determined by accepted engineering practice.

*Fault* means a fracture or a zone of fractures in any material along which strata on one side have been displaced with respect to that on the other side.

*Flood hydrograph* means a graph showing, for a given point on a stream, the discharge, height, or other characteristic of a flood as a function of time.

*Freeboard* means the vertical distance between the lowest point on the crest of the impoundment dike and the surface of the waste contained therein.

*Free liquids* means liquids that readily separate from the solid portion of a waste under ambient temperature and pressure.

*Groundwater* means water below the land surface in a zone of saturation.

*Hazard potential classification* means the possible adverse incremental consequences that result from the release of water or stored contents due to failure of the diked CCR surface impoundment or mis-operation of the diked CCR surface impoundment or its appurtenances. The hazardous potential classifications include high hazard potential CCR surface impoundment, significant hazard potential CCR surface impoundment, and low hazard potential CCR surface impoundment, which terms mean:

(1) *High hazard potential CCR surface impoundment* means a diked surface impoundment where failure or mis-operation will probably cause loss of human life.

(2) *Low hazard potential CCR surface impoundment* means a diked surface impoundment where failure or mis-operation results in no probable loss of human life and low economic and/or environmental losses. Losses are principally limited to the surface impoundment owner's property.

(3) *Significant hazard potential CCR surface impoundment* means a diked surface impoundment where failure or mis-operation results in no probable loss of human life, but can cause economic loss, environmental damage, disruption of lifeline facilities, or impact other concerns.

*Height* means the vertical measurement from the downstream toe of the CCR surface impoundment at its lowest point to the lowest elevation of the crest of the CCR surface impoundment.

*Holocene* means the most recent epoch of the Quaternary period, extending from the end of the Pleistocene Epoch, at 11,700 years before present, to present.

*Hydraulic conductivity* means the rate at which water can move through a permeable medium (*i.e.*, the coefficient of permeability).

*Inactive CCR surface impoundment* means a CCR surface impoundment that no longer receives CCR on or after October 19, 2015 and still contains both CCR and liquids on or after October 19, 2015.

*Incised CCR surface impoundment* means a CCR surface impoundment which is constructed by excavating entirely below the natural ground surface, holds an accumulation of CCR entirely below the adjacent natural ground surface, and does not consist of any constructed diked portion.

*Indian country* or *Indian lands* means:

(1) All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running throughout the reservation;

(2) All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of the State; and

(3) All Indian allotments, the Indian titles to which have not been extinguished, including rights of way running through the same.

*Indian Tribe* or *Tribe* means any Indian tribe, band, nation, or community

recognized by the Secretary of the Interior and exercising substantial governmental duties and powers on Indian lands.

*Inflow design flood* means the flood hydrograph that is used in the design or modification of the CCR surface impoundments and its appurtenant works.

*In operation* means the same as *active life*.

*Karst terrain* means an area where karst topography, with its characteristic erosional surface and subterranean features, is developed as the result of dissolution of limestone, dolomite, or other soluble rock. Characteristic physiographic features present in karst terranes include, but are not limited to, dolines, collapse shafts (sinkholes), sinking streams, caves, seeps, large springs, and blind valleys.

*Lateral expansion* means a horizontal expansion of the waste boundaries of an existing CCR landfill or existing CCR surface impoundment made after October 19, 2015.

*Liquefaction factor of safety* means the factor of safety (safety factor) determined using analysis under liquefaction conditions.

*Lithified earth material* means all rock, including all naturally occurring and naturally formed aggregates or masses of minerals or small particles of older rock that formed by crystallization of magma or by induration of loose sediments. This term does not include man-made materials, such as fill, concrete, and asphalt, or unconsolidated earth materials, soil, or regolith lying at or near the earth surface.

*Maximum horizontal acceleration in lithified earth material* means the maximum expected horizontal acceleration at the ground surface as depicted on a seismic hazard map, with a 98% or greater probability that the acceleration will not be exceeded in 50 years, or the maximum expected horizontal acceleration based on a site-specific seismic risk assessment.

*New CCR landfill* means a CCR landfill or lateral expansion of a CCR landfill that first receives CCR or commences construction after October 19, 2015. A new CCR landfill has commenced construction if the owner or operator has obtained the federal, state, and local approvals or permits necessary to begin physical construction and a continuous on-site, physical construction program had begun after October 19, 2015. Overfills are also considered new CCR landfills.

*New CCR surface impoundment* means a CCR surface impoundment or lateral expansion of an existing or new CCR surface impoundment that first receives CCR or commences construction after October 19, 2015. A new CCR surface impoundment has commenced construction if the owner or operator has obtained the federal, state, and local approvals or permits necessary to begin physical construction and a continuous on-site, physical construction program had begun after October 19, 2015.

*Nonparticipating State* means a State—

(1) For which the Administrator has not approved a State permit program or other system of prior approval and conditions under RCRA section 4005(d)(1)(B);

(2) The Governor of which has not submitted to the Administrator for approval evidence to operate a State permit program or other system of prior approval and conditions under RCRA section 4005(d)(1)(A);

(3) The Governor of which provides notice to the Administrator that, not fewer than 90 days after the date on which the Governor provides the notice to the Administrator, the State will relinquish an approval under RCRA section 4005(d)(1)(B) to operate a permit program or other system of prior approval and conditions; or

(4) For which the Administrator has withdrawn approval for a permit program or other system of prior approval and conditions under RCRA section 4005(d)(1)(E).

*Operator* means the person(s) responsible for the overall operation of a CCR unit.

*Overfill* means a new CCR landfill constructed over a closed CCR surface impoundment.

*Owner* means the person(s) who owns a CCR unit or part of a CCR unit.

*Participating State* means a state with a state program for control of CCR

that has been approved pursuant to RCRA section 4005(d).

*Participating State Director* means the chief administrative officer of any state agency operating the CCR permit program in a participating state or the delegated representative of the Participating State Director. If responsibility is divided among two or more state agencies, Participating State Director means the chief administrative officer of the state agency authorized to perform the particular function or procedure to which reference is made.

*Poor foundation conditions* mean those areas where features exist which indicate that a natural or human-induced event may result in inadequate foundation support for the structural components of an existing or new CCR unit. For example, failure to maintain static and seismic factors of safety as required in §§ 257.73(e) and 257.74(e) would cause a poor foundation condition.

*Probable maximum flood* means the flood that may be expected from the most severe combination of critical meteorologic and hydrologic conditions that are reasonably possible in the drainage basin.

*Qualified person* means a person or persons trained to recognize specific appearances of structural weakness and other conditions which are disrupting or have the potential to disrupt the operation or safety of the CCR unit by visual observation and, if applicable, to monitor instrumentation.

*Qualified professional engineer* means an individual who is licensed by a state as a Professional Engineer to practice one or more disciplines of engineering and who is qualified by education, technical knowledge and experience to make the specific technical certifications required under this subpart. Professional engineers making these certifications must be currently licensed in the state where the CCR unit(s) is located.

*Recognized and generally accepted good engineering practices* means engineering maintenance or operation activities based on established codes, widely accepted standards, published technical reports, or a practice widely recommended throughout the industry. Such practices generally detail approved ways to perform specific engineering, inspection, or mechanical integrity activities.

*Retrofit* means to remove all CCR and contaminated soils and sediments from the CCR surface impoundment, and to ensure the unit complies with the requirements in § 257.72

*Representative sample* means a sample of a universe or whole (e.g., waste pile, lagoon, and groundwater) which can be expected to exhibit the average properties of the universe or whole. See EPA publication SW–846, Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, Chapter 9 (available at *http://www.epa.gov/epawaste/hazard/testmethods/sw846/online/index.htm*) for a discussion and examples of representative samples.

*Run-off* means any rainwater, leachate, or other liquid that drains over land from any part of a CCR landfill or lateral expansion of a CCR landfill.

*Run-on* means any rainwater, leachate, or other liquid that drains over land onto any part of a CCR landfill or lateral expansion of a CCR landfill.

*Sand and gravel pit or quarry* means an excavation for the extraction of aggregate, minerals or metals. The term sand and gravel pit and/or quarry does not include subsurface or surface coal mines.

*Seismic factor of safety* means the factor of safety (safety factor) determined using analysis under earthquake conditions using the peak ground acceleration for a seismic event with a 2% probability of exceedance in 50 years, equivalent to a return period of approximately 2,500 years, based on the U.S. Geological Survey (USGS) seismic hazard maps for seismic events with this return period for the region where the CCR surface impoundment is located.

*Seismic impact zone* means an area having a 2% or greater probability that the maximum expected horizontal acceleration, expressed as a percentage of the earth's gravitational pull (g), will exceed 0.10 g in 50 years.

*Slope protection* means engineered or non-engineered measures installed on the upstream or downstream slope of the CCR surface impoundment to protect the slope against wave action or erosion, including but not limited to rock riprap, wooden pile, or concrete

revetments, vegetated wave berms, concrete facing, gabions, geotextiles, or fascines.

*Solid waste management or management* means the systematic administration of the activities which provide for the collection, source separation, storage, transportation, processing, treatment, or disposal of solid waste.

*State* means any of the fifty States in addition to the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

*State Director* means the chief administrative officer of the lead state agency responsible for implementing the state program regulating disposal in CCR landfills, CCR surface impoundments, and all lateral expansions of a CCR unit.

*Static factor of safety* means the factor of safety (safety factor) determined using analysis under the long-term, maximum storage pool loading condition, the maximum surcharge pool loading condition, and under the end-of-construction loading condition.

*Structural components* mean liners, leachate collection and removal systems, final covers, run-on and run-off systems, inflow design flood control systems, and any other component used in the construction and operation of the CCR unit that is necessary to ensure the integrity of the unit and that the contents of the unit are not released into the environment.

*Technically feasible* means possible to do in a way that would likely be successful.

*Technically infeasible* means not possible to do in a way that would likely be successful.

*Unstable area* means a location that is susceptible to natural or human-induced events or forces capable of impairing the integrity, including structural components of some or all of the CCR unit that are responsible for preventing releases from such unit. Unstable areas can include poor foundation conditions, areas susceptible to mass movements, and karst terrains.

*Uppermost aquifer* means the geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary. Upper limit is measured at a point nearest to the natural ground surface to which the aquifer rises during the wet season.

*Waste boundary* means a vertical surface located at the hydraulically downgradient limit of the CCR unit. The vertical surface extends down into the uppermost aquifer.

[80 FR 21468, Apr. 17, 2015, as amended at 80 FR 37991, July 2, 2015; 83 FR 36451, July 30, 2018; 85 FR 53561, Aug. 28, 2020]

## LOCATION RESTRICTIONS

### § 257.60 Placement above the uppermost aquifer.

(a) New CCR landfills, existing and new CCR surface impoundments, and all lateral expansions of CCR units must be constructed with a base that is located no less than 1.52 meters (five feet) above the upper limit of the uppermost aquifer, or must demonstrate that there will not be an intermittent, recurring, or sustained hydraulic connection between any portion of the base of the CCR unit and the uppermost aquifer due to normal fluctuations in groundwater elevations (including the seasonal high water table). The owner or operator must demonstrate by the dates specified in paragraph (c) of this section that the CCR unit meets the minimum requirements for placement above the uppermost aquifer.

(b) The owner or operator of the CCR unit must obtain a certification from a qualified professional engineer or approval from the Participating State Director or approval from EPA where EPA is the permitting authority stating that the demonstration meets the requirements of paragraph (a) of this section.

(c) The owner or operator of the CCR unit must complete the demonstration required by paragraph (a) of this section by the date specified in either paragraph (c)(1) or (2) of this section.

(1) For an existing CCR surface impoundment, the owner or operator must complete the demonstration no later than October 17, 2018.

(2) For a new CCR landfill, new CCR surface impoundment, or any lateral expansion of a CCR unit, the owner or

operator must complete the demonstration no later than the date of initial receipt of CCR in the CCR unit.

(3) The owner or operator has completed the demonstration required by paragraph (a) of this section when the demonstration is placed in the facility's operating record as required by § 257.105(e).

(4) An owner or operator of an existing CCR surface impoundment who fails to demonstrate compliance with the requirements of paragraph (a) of this section by the date specified in paragraph (c)(1) of this section is subject to the requirements of § 257.101(b)(1).

(5) An owner or operator of a new CCR landfill, new CCR surface impoundment, or any lateral expansion of a CCR unit who fails to make the demonstration showing compliance with the requirements of paragraph (a) of this section is prohibited from placing CCR in the CCR unit.

(d) The owner or operator of the CCR unit must comply with the recordkeeping requirements specified in § 257.105(e), the notification requirements specified in § 257.106(e), and the internet requirements specified in § 257.107(e).

[80 FR 21468, Apr. 17, 2015, as amended at 83 FR 36451, July 30, 2018]

### § 257.61 Wetlands.

(a) New CCR landfills, existing and new CCR surface impoundments, and all lateral expansions of CCR units must not be located in wetlands, as defined in § 232.2 of this chapter, unless the owner or operator demonstrates by the dates specified in paragraph (c) of this section that the CCR unit meets the requirements of paragraphs (a)(1) through (5) of this section.

(1) Where applicable under section 404 of the Clean Water Act or applicable state wetlands laws, a clear and objective rebuttal of the presumption that an alternative to the CCR unit is reasonably available that does not involve wetlands.

(2) The construction and operation of the CCR unit will not cause or contribute to any of the following:

(i) A violation of any applicable state or federal water quality standard;

(ii) A violation of any applicable toxic effluent standard or prohibition under section 307 of the Clean Water Act;

(iii) Jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of a critical habitat, protected under the Endangered Species Act of 1973; and

(iv) A violation of any requirement under the Marine Protection, Research, and Sanctuaries Act of 1972 for the protection of a marine sanctuary.

(3) The CCR unit will not cause or contribute to significant degradation of wetlands by addressing all of the following factors:

(i) Erosion, stability, and migration potential of native wetland soils, muds and deposits used to support the CCR unit;

(ii) Erosion, stability, and migration potential of dredged and fill materials used to support the CCR unit;

(iii) The volume and chemical nature of the CCR;

(iv) Impacts on fish, wildlife, and other aquatic resources and their habitat from release of CCR;

(v) The potential effects of catastrophic release of CCR to the wetland and the resulting impacts on the environment; and

(vi) Any additional factors, as necessary, to demonstrate that ecological resources in the wetland are sufficiently protected.

(4) To the extent required under section 404 of the Clean Water Act or applicable state wetlands laws, steps have been taken to attempt to achieve no net loss of wetlands (as defined by acreage and function) by first avoiding impacts to wetlands to the maximum extent reasonable as required by paragraphs (a)(1) through (3) of this section, then minimizing unavoidable impacts to the maximum extent reasonable, and finally offsetting remaining unavoidable wetland impacts through all appropriate and reasonable compensatory mitigation actions (e.g., restoration of existing degraded wetlands or creation of man-made wetlands); and

(5) Sufficient information is available to make a reasoned determination with respect to the demonstrations in paragraphs (a)(1) through (4) of this section.

(b) The owner or operator of the CCR unit must obtain a certification from a qualified professional engineer or approval from the Participating State Director or approval from EPA where EPA is the permitting authority stating that the demonstration meets the requirements of paragraph (a) of this section.

(c) The owner or operator of the CCR unit must complete the demonstrations required by paragraph (a) of this section by the date specified in either paragraph (c)(1) or (2) of this section.

(1) For an existing CCR surface impoundment, the owner or operator must complete the demonstration no later than October 17, 2018.

(2) For a new CCR landfill, new CCR surface impoundment, or any lateral expansion of a CCR unit, the owner or operator must complete the demonstration no later than the date of initial receipt of CCR in the CCR unit.

(3) The owner or operator has completed the demonstration required by paragraph (a) of this section when the demonstration is placed in the facility's operating record as required by § 257.105(e).

(4) An owner or operator of an existing CCR surface impoundment who fails to demonstrate compliance with the requirements of paragraph (a) of this section by the date specified in paragraph (c)(1) of this section is subject to the requirements of § 257.101(b)(1).

(5) An owner or operator of a new CCR landfill, new CCR surface impoundment, or any lateral expansion of a CCR unit who fails to make the demonstrations showing compliance with the requirements of paragraph (a) of this section is prohibited from placing CCR in the CCR unit.

(d) The owner or operator must comply with the recordkeeping requirements specified in § 257.105(e), the notification requirements specified in § 257.106(e), and the Internet requirements specified in § 257.107(e).

[80 FR 21468, Apr. 17, 2015, as amended at 83 FR 36451, July 30, 2018]

### § 257.62 Fault areas.

(a) New CCR landfills, existing and new CCR surface impoundments, and all lateral expansions of CCR units must not be located within 60 meters (200 feet) of the outermost damage zone of a fault that has had displacement in Holocene time unless the owner or operator demonstrates by the dates specified in paragraph (c) of this section that an alternative setback distance of less than 60 meters (200 feet) will prevent damage to the structural integrity of the CCR unit.

(b) The owner or operator of the CCR unit must obtain a certification from a qualified professional engineer or approval from the Participating State Director or approval from EPA where EPA is the permitting authority stating that the demonstration meets the requirements of paragraph (a) of this section.

(c) The owner or operator of the CCR unit must complete the demonstration required by paragraph (a) of this section by the date specified in either paragraph (c)(1) or (2) of this section.

(1) For an existing CCR surface impoundment, the owner or operator must complete the demonstration no later than October 17, 2018.

(2) For a new CCR landfill, new CCR surface impoundment, or any lateral expansion of a CCR unit, the owner or operator must complete the demonstration no later than the date of initial receipt of CCR in the CCR unit.

(3) The owner or operator has completed the demonstration required by paragraph (a) of this section when the demonstration is placed in the facility's operating record as required by § 257.105(e).

(4) An owner or operator of an existing CCR surface impoundment who fails to demonstrate compliance with the requirements of paragraph (a) of this section by the date specified in paragraph (c)(1) of this section is subject to the requirements of § 257.101(b)(1).

(5) An owner or operator of a new CCR landfill, new CCR surface impoundment, or any lateral expansion of a CCR unit who fails to make the demonstration showing compliance with the requirements of paragraph (a) of this section is prohibited from placing CCR in the CCR unit.

(d) The owner or operator of the CCR unit must comply with the recordkeeping requirements specified in

§ 257.105(e), the notification requirements specified in § 257.106(e), and the Internet requirements specified in § 257.107(e).

[80 FR 21468, Apr. 17, 2015, as amended at 83 FR 36451, July 30, 2018]

### § 257.63 Seismic impact zones.

(a) New CCR landfills, existing and new CCR surface impoundments, and all lateral expansions of CCR units must not be located in seismic impact zones unless the owner or operator demonstrates by the dates specified in paragraph (c) of this section that all structural components including liners, leachate collection and removal systems, and surface water control systems, are designed to resist the maximum horizontal acceleration in lithified earth material for the site.

(b) The owner or operator of the CCR unit must obtain a certification from a qualified professional engineer or approval from the Participating State Director or approval from EPA where EPA is the permitting authority stating that the demonstration meets the requirements of paragraph (a) of this section.

(c) The owner or operator of the CCR unit must complete the demonstration required by paragraph (a) of this section by the date specified in either paragraph (c)(1) or (2) of this section.

(1) For an existing CCR surface impoundment, the owner or operator must complete the demonstration no later than October 17, 2018.

(2) For a new CCR landfill, new CCR surface impoundment, or any lateral expansion of a CCR unit, the owner or operator must complete the demonstration no later than the date of initial receipt of CCR in the CCR unit.

(3) The owner or operator has completed the demonstration required by paragraph (a) of this section when the demonstration is placed in the facility's operating record as required by § 257.105(e).

(4) An owner or operator of an existing CCR surface impoundment who fails to demonstrate compliance with the requirements of paragraph (a) of this section by the date specified in paragraph (c)(1) of this section is subject to the requirements of § 257.101(b)(1).

(5) An owner or operator of a new CCR landfill, new CCR surface impoundment, or any lateral expansion of a CCR unit who fails to make the demonstration showing compliance with the requirements of paragraph (a) of this section is prohibited from placing CCR in the CCR unit.

(d) The owner or operator of the CCR unit must comply with the recordkeeping requirements specified in § 257.105(e), the notification requirements specified in § 257.106(e), and the Internet requirements specified in § 257.107(e).

[80 FR 21468, Apr. 17, 2015, as amended at 83 FR 36451, July 30, 2018]

### § 257.64 Unstable areas.

(a) An existing or new CCR landfill, existing or new CCR surface impoundment, or any lateral expansion of a CCR unit must not be located in an unstable area unless the owner or operator demonstrates by the dates specified in paragraph (d) of this section that recognized and generally accepted good engineering practices have been incorporated into the design of the CCR unit to ensure that the integrity of the structural components of the CCR unit will not be disrupted.

(b) The owner or operator must consider all of the following factors, at a minimum, when determining whether an area is unstable:

(1) On-site or local soil conditions that may result in significant differential settling;

(2) On-site or local geologic or geomorphologic features; and

(3) On-site or local human-made features or events (both surface and subsurface).

(c) The owner or operator of the CCR unit must obtain a certification from a qualified professional engineer or approval from the Participating State Director or approval from EPA where EPA is the permitting authority stating that the demonstration meets the requirements of paragraph (a) of this section.

(d) The owner or operator of the CCR unit must complete the demonstration required by paragraph (a) of this section by the date specified in either paragraph (d)(1) or (2) of this section.

(1) For an existing CCR landfill or existing CCR surface impoundment, the owner or operator must complete the demonstration no later than October 17, 2018.

(2) For a new CCR landfill, new CCR surface impoundment, or any lateral expansion of a CCR unit, the owner or operator must complete the demonstration no later than the date of initial receipt of CCR in the CCR unit.

(3) The owner or operator has completed the demonstration required by paragraph (a) of this section when the demonstration is placed in the facility's operating record as required by § 257.105(e).

(4) An owner or operator of an existing CCR surface impoundment or existing CCR landfill who fails to demonstrate compliance with the requirements of paragraph (a) of this section by the date specified in paragraph (d)(1) of this section is subject to the requirements of § 257.101(b)(1) or (d)(1), respectively.

(5) An owner or operator of a new CCR landfill, new CCR surface impoundment, or any lateral expansion of a CCR unit who fails to make the demonstration showing compliance with the requirements of paragraph (a) of this section is prohibited from placing CCR in the CCR unit.

(e) The owner or operator of the CCR unit must comply with the recordkeeping requirements specified in § 257.105(e), the notification requirements specified in § 257.106(e), and the Internet requirements specified in § 257.107(e).

[80 FR 21468, Apr. 17, 2015, as amended at 83 FR 36451, July 30, 2018]

## DESIGN CRITERIA

### § 257.70 Design criteria for new CCR landfills and any lateral expansion of a CCR landfill.

(a)(1) New CCR landfills and any lateral expansion of a CCR landfill must be designed, constructed, operated, and maintained with either a composite liner that meets the requirements of paragraph (b) of this section or an alternative composite liner that meets the requirements in paragraph (c) of this section, and a leachate collection and removal system that meets the requirements of paragraph (d) of this section.

(2) Prior to construction of an overfill the underlying surface impoundment must meet the requirements of § 257.102(d).

(b) A *composite liner* must consist of two components; the upper component consisting of, at a minimum, a 30-mil geomembrane liner (GM), and the lower component consisting of at least a two-foot layer of compacted soil with a hydraulic conductivity of no more than $1 \times 10^{-7}$ centimeters per second (cm/sec). GM components consisting of high density polyethylene (HDPE) must be at least 60-mil thick. The GM or upper liner component must be installed in direct and uniform contact with the compacted soil or lower liner component. The composite liner must be:

(1) Constructed of materials that have appropriate chemical properties and sufficient strength and thickness to prevent failure due to pressure gradients (including static head and external hydrogeologic forces), physical contact with the CCR or leachate to which they are exposed, climatic conditions, the stress of installation, and the stress of daily operation;

(2) Constructed of materials that provide appropriate shear resistance of the upper and lower component interface to prevent sliding of the upper component including on slopes;

(3) Placed upon a foundation or base capable of providing support to the liner and resistance to pressure gradients above and below the liner to prevent failure of the liner due to settlement, compression, or uplift; and

(4) Installed to cover all surrounding earth likely to be in contact with the CCR or leachate.

(c) If the owner or operator elects to install an alternative composite liner, all of the following requirements must be met:

(1) An *alternative composite liner* must consist of two components; the upper component consisting of, at a minimum, a 30-mil GM, and a lower component, that is not a geomembrane, with a liquid flow rate no greater than the liquid flow rate of two feet of compacted soil with a hydraulic conductivity of no more than $1 \times 10^{-7}$ cm/sec.

GM components consisting of high density polyethylene (HDPE) must be at least 60-mil thick. If the lower component of the alternative liner is compacted soil, the GM must be installed in direct and uniform contact with the compacted soil.

(2) The owner or operator must obtain certification from a qualified professional engineer or approval from the Participating State Director or approval from EPA where EPA is the permitting authority that the liquid flow rate through the lower component of the alternative composite liner is no greater than the liquid flow rate through two feet of compacted soil with a hydraulic conductivity of $1x10^{-7}$ cm/sec. The hydraulic conductivity for the two feet of compacted soil used in the comparison shall be no greater than $1x10^{-7}$ cm/sec. The hydraulic conductivity of any alternative to the two feet of compacted soil must be determined using recognized and generally accepted methods. The liquid flow rate comparison must be made using Equation 1 of this section, which is derived from Darcy's Law for gravity flow through porous media.

(Eq. 1):

$$\frac{Q}{A} = q = k\left(\frac{h}{t} + 1\right)$$

Where:

Q = flow rate (cubic centimeters/second);
A = surface area of the liner (squared centimeters);
q = flow rate per unit area (cubic centimeters/second/squared centimeter);
k = hydraulic conductivity of the liner (centimeters/second);
h = hydraulic head above the liner (centimeters); and
t = thickness of the liner (centimeters).

(3) The alternative composite liner must meet the requirements specified in paragraphs (b)(1) through (4) of this section.

(d) The *leachate collection and removal system* must be designed, constructed, operated, and maintained to collect and remove leachate from the landfill during the active life and post-closure care period. The leachate collection and removal system must be:

(1) Designed and operated to maintain less than a 30-centimeter depth of leachate over the composite liner or alternative composite liner;

(2) Constructed of materials that are chemically resistant to the CCR and any non-CCR waste managed in the CCR unit and the leachate expected to be generated, and of sufficient strength and thickness to prevent collapse under the pressures exerted by overlying waste, waste cover materials, and equipment used at the CCR unit; and

(3) Designed and operated to minimize clogging during the active life and post-closure care period.

(e) Prior to construction of the CCR landfill or any lateral expansion of a CCR landfill, the owner or operator must obtain a certification from a qualified professional engineer or approval from the Participating State Director or approval from EPA where EPA is the permitting authority that the design of the composite liner (or, if applicable, alternative composite liner) and the leachate collection and removal system meets the requirements of this section.

(f) Upon completion of construction of the CCR landfill or any lateral expansion of a CCR landfill, the owner or operator must obtain a certification from a qualified professional engineer or approval from the Participating State Director or approval from EPA where EPA is the permitting authority that the design of the composite liner (or, if applicable, alternative composite liner) and the leachate collection and removal system have been constructed in accordance with the requirements of this section.

(g) The owner or operator of the CCR unit must comply with the recordkeeping requirements specified in § 257.105(f), the notification requirements specified in § 257.106(f), and the

Internet requirements specified in § 257.107(f).

[80 FR 21468, Apr. 17, 2015, as amended at 83 FR 36451, July 30, 2018]

### § 257.71 Liner design criteria for existing CCR surface impoundments.

(a)(1) No later than October 17, 2016, the owner or operator of an existing CCR surface impoundment must document whether or not such unit was constructed with any one of the following:

(i) [Reserved]

(ii) A composite liner that meets the requirements of § 257.70(b); or

(iii) An alternative composite liner that meets the requirements of § 257.70(c).

(2) The hydraulic conductivity of the compacted soil must be determined using recognized and generally accepted methods.

(3) An existing CCR surface impoundment is considered to be an existing unlined CCR surface impoundment if either:

(i) The owner or operator of the CCR unit determines that the CCR unit is not constructed with a liner that meets the requirements of paragraph (a)(1)(ii) or (iii) of this section; or

(ii) The owner or operator of the CCR unit fails to document whether the CCR unit was constructed with a liner that meets the requirements of paragraph (a)(1)(ii) or (iii) of this section.

(4) All existing unlined CCR surface impoundments are subject to the requirements of § 257.101(a).

(b) The owner or operator of the CCR unit must obtain a certification from a qualified professional engineer or approval from the Participating State Director or approval from EPA where EPA is the permitting authority attesting that the documentation as to whether a CCR unit meets the requirements of paragraph (a) of this section is accurate.

(c) The owner or operator of the CCR unit must comply with the recordkeeping requirements specified in § 257.105(f), the notification requirements specified in § 257.106(f), and the Internet requirements specified in § 257.107(f).

(d) *Alternate Liner Demonstration.* An owner or operator of a CCR surface impoundment constructed without a composite liner or alternate composite liner, as defined in § 257.70(b) or (c), may submit an Alternate Liner Demonstration to the Administrator or the Participating State Director to demonstrate that based on the construction of the unit and surrounding site conditions, that there is no reasonable probability that continued operation of the surface impoundment will result in adverse effects to human health or the environment. The application and demonstration must be submitted to the Administrator or the Participating State Director no later than the relevant deadline in paragraph (d)(2) of this section. The Administrator or the Participating State Director will act on the submissions in accordance with the procedures in paragraph (d)(2) of this section.

(1) *Application and alternative liner demonstration submission requirements.* To obtain approval under this paragraph (d), the owner or operator of the CCR surface impoundment must submit all of the following:

(i) *Application.* The owner or operator of the CCR surface impoundment must submit a letter to the Administrator or the Participating State Director, announcing their intention to submit a demonstration under paragraph (d)(1)(ii) of this section. The application must include the location of the facility and identify the specific CCR surface impoundment for which the demonstration will be made. The letter must include all of the following:

(A) A certification signed by the owner or operator that the CCR unit is in full compliance with this subpart except for § 257.71(a)(1);

(B) Documentation supporting the certification required under paragraph (d)(1)(i)(A) of this section that includes all the following:

(*1*) Documentation that the groundwater monitoring network meets all the requirements of § 257.91. This must include documentation that the existing network of groundwater monitoring wells is sufficient to ensure detection of any groundwater contamination resulting from the impoundment,

based on direction of flow, well location, screening depth and other relevant factors. At a minimum, the documentation must include all of the following:

(*i*) Map(s) of groundwater monitoring well locations in relation to the CCR unit(s) that depict the elevation of the potentiometric surface and the direction(s) of groundwater flow across the site;

(*ii*) Well construction diagrams and drilling logs for all groundwater monitoring wells;

(*iii*) Maps that characterize the direction of groundwater flow accounting for temporal variations; and

(*iv*) Any other data and analyses the owner or operator of the CCR surface impoundment relied upon when determining the design and location of the groundwater monitoring network.

(*2*) Documentation that the CCR surface impoundment remains in detection monitoring pursuant to § 257.94 as a precondition for submitting an application. This includes documentation that the groundwater monitoring program meets the requirements of §§ 257.93 and 257.94. Such documentation includes data of constituent concentrations, summarized in table format, at each groundwater monitoring well monitored during each sampling event, and documentation of the most recent statistical tests conducted, analyses of the tests, and the rationale for the methods used in these comparisons. As part of this rationale, the owner or operator of the CCR surface impoundment must provide all data and analyses relied upon to comply with each of the requirements of this part;

(*3*) Documentation that the unit meets all the location restrictions under §§ 257.60 through 257.64;

(*4*) The most recent structural stability assessment required at § 257.73(d); and

(*5*) The most recent safety factor assessment required at § 257.73(e).

(C) Documentation of the design specifications for any engineered liner components, as well as all data and analyses the owner or operator of the CCR surface impoundment relied on when determining that the materials are suitable for use and that the construction of the liner is of good quality and in-line with proven and accepted engineering practices.

(D) Facilities with CCR surface impoundments located on properties adjacent to a water body must demonstrate that there is no reasonable probability that a complete and direct transport pathway (*i.e.*, not mediated by groundwater) can exist between the impoundment and any nearby water body. If the potential for such a pathway is identified, then the unit would not be eligible to submit a demonstration. If ongoing releases are identified, the owner or operator of the CCR unit must address these releases in accordance with § 257.96(a); and

(E) Upon submission of the application and any supplemental materials submitted in support of the application to the Administrator or the Participating State Director, the owner or operator must place the complete application in the facility's operating record as required by § 257.105(f)(14).

(ii) *Alternate Liner Demonstration Package*. The completed alternate liner demonstration package must be certified by a qualified professional engineer. The package must present evidence to demonstrate that, based on the construction of the unit and surrounding site conditions, there is no reasonable probability that operation of the surface impoundment will result in concentrations of constituents listed in appendix IV to this part in the uppermost aquifer at levels above a groundwater protection standard. For each line of evidence, as well as any other data and assumptions incorporated into the demonstration, the owner or operator of the CCR surface impoundment must include documentation on how the data were collected and why these data and assumptions adequately reflect potential contaminant transport from that specific impoundment. The alternate liner demonstration at a minimum must contain all of the following lines of evidence:

(A) *Characterization of site hydrogeology*. A characterization of the variability of site-specific soil and hydrogeology surrounding the surface impoundment that will control the rate and direction of contaminant transport from the impoundment. The

owner or operator must provide all of the following as part of this line of evidence:

(*1*) Measurements of the hydraulic conductivity in the uppermost aquifer from all monitoring wells associated with the impoundment(s) and discussion of the methods used to obtain these measurements;

(*2*) Measurements of the variability in subsurface soil characteristics collected from around the perimeter of the CCR surface impoundment to identify regions of substantially higher conductivity;

(*3*) Documentation that all sampling methods used are in line with recognized and generally accepted practices that can provide data at a spatial resolution necessary to adequately characterize the variability of subsurface conditions that will control contaminant transport;

(*4*) Explanation of how the specific number and location of samples collected are sufficient to capture subsurface variability if:

(*i*) Samples are advanced to a depth less than the top of the groundwater table or 20 feet beneath the bottom of the nearest water body, whichever is greater, and/or

(*ii*) Samples are spaced further apart than 200 feet around the impoundment perimeter;

(*5*) A narrative description of site geological history; and

(*6*) Conceptual site models with cross-sectional depictions of the site environmental sequence stratigraphy that include, at a minimum:

(*i*) The relative location of the impoundment with depth of ponded water noted;

(*ii*) Monitoring wells with screening depth noted;

(*iii*) Depiction of the location of other samples used in the development of the model;

(*iv*) The upper and lower limits of the uppermost aquifer across the site;

(*v*) The upper and lower limits of the depth to groundwater measured from monitoring wells if the uppermost aquifer is confined; and

(*vi*) Both the location and geometry of any nearby points of groundwater discharge or recharge (*e.g.*, surface water bodies) with potential to influence groundwater depth and flow measured around the unit.

(B) *Potential for infiltration.* A characterization of the potential for infiltration through any soil-based liner components and/or naturally occurring soil that control release and transport of leachate. All samples collected in the field for measurement of saturated hydraulic conductivity must be sent to a certified laboratory for analysis under controlled conditions and analyzed using recognized and generally accepted methodology. Facilities must document how the selected method is designed to simulate on-site conditions. The owner or operator must also provide documentation of the following as part of this line of evidence:

(*1*) The location, number, depth, and spacing of samples relied upon is supported by the data collected in paragraph (d)(1)(ii)(A) of this section and is sufficient to capture the variability of saturated hydraulic conductivity for the soil-based liner components and/or naturally occurring soil;

(*2*) The liquid used to pre-hydrate the samples and measure long-term hydraulic conductivity reflects the pH and major ion composition of the CCR surface impoundment porewater;

(*3*) That samples intended to represent the hydraulic conductivity of naturally occurring soils (*i.e.*, not mechanically compacted) are handled in a manner that will ensure the macrostructure of the soil is not disturbed during collection, transport, or analysis; and

(*4*) Any test for hydraulic conductivity relied upon includes, in addition to other relevant termination criteria specified by the method, criteria that equilibrium has been achieved between the inflow and outflow, within acceptable tolerance limits, for both electrical conductivity and pH.

(C) *Mathematical model to estimate the potential for releases.* Owners or operators must incorporate the data collected for paragraphs (d)(1)(ii)(A) and (d)(1)(ii)(B) of this section into a mathematical model to calculate the potential groundwater concentrations that may result in downgradient wells as a result of the impoundment. Facilities must also, where available, incorporate the national-scale data on constituent

concentrations and behavior provided by the existing risk record. Application of the model must account for the full range of site current and potential future conditions at and around the site to ensure that high-end groundwater concentrations have been effectively characterized. All of the data and assumptions incorporated into the model must be documented and justified.

(*1*) The models relied upon in this paragraph (d)(1)(ii)(C) must be well-established and validated, with documentation that can be made available for public review.

(*2*) The owner or operator must use the models to demonstrate that, for each constituent in appendix IV of this part, there is no reasonable probability that the peak groundwater concentration that may result from releases to groundwater from the CCR surface impoundment throughout its active life will exceed the groundwater protection standard at the waste boundary.

(*3*) The demonstration must include the peak groundwater concentrations modeled for all constituents in appendix IV of this part attributed both to the impoundment in isolation and in addition to background.

(D) Upon submission of the alternative liner demonstration to the Administrator or the Participating State Director, the owner or operator must place the complete demonstration in the facility's operating record as required by § 257.105(f)(15).

(2) *Procedures for adjudicating requests*—(i) *Deadline for application submission*. The owner or operator must submit the application under paragraph (d)(1)(i) of this section to EPA or the Participating State Director for approval no later than November 30, 2020.

(ii) *Deadline for demonstration submission*. If the application is approved the owner or operator must submit the demonstration required under paragraph (d)(1)(ii) of this section to EPA or the Participating State Director for approval no later than November 30, 2021.

(A) *Extension due to analytical limitations*. If the owner or operator cannot meet the demonstration deadline due to analytical limitations related to the measurement of hydraulic conductivity, the owner or operator must submit a request for an extension no later than September 1, 2021 that includes a summary of the data that have been analyzed to date for the samples responsible for the delay and an alternate timeline for completion that has been certified by the laboratory. The extension request must include all of the following:

(*1*) A timeline of fieldwork to confirm that samples were collected expeditiously;

(*2*) A chain of custody documenting when samples were sent to the laboratory;

(*3*) Written certification from the lab identifying how long it is projected for the tests to reach the relevant termination criteria related to solution chemistry, and

(*4*) Documentation of the progression towards all test termination metrics to date.

(B) *Length of extension*. If the extension is granted, the owner or operator will have 45 days beyond the timeframe certified by the laboratory to submit the completed demonstration.

(C) *Extension due to analytical limitations for chemical equilibrium*. If the measured hydraulic conductivity has not stabilized to within acceptable tolerance limits by the time the termination criteria for solution chemistry are met, the owner or operator must submit a preliminary demonstration no later than September 1, 2021 (with or without the one-time extension for analytical limitations).

(*1*) In this preliminary demonstration, the owner or operator must submit a justification of how the bounds of uncertainty applied to the available measurements of hydraulic conductivity ensure that the final value is not underestimated.

(*2*) EPA will review the preliminary demonstration to determine if it is complete and, if so, will propose to deny or to tentatively approve the demonstration. The proposed determination will be posted in the docket on *www.regulations.gov* and will be available for public comment for 30 days. After consideration of the comments, EPA will issue its decision on the application within four months of

receiving a complete preliminary demonstration.

(*3*) Once the final laboratory results are available, the owner or operator must submit a final demonstration that updates only the finalized hydraulic conductivity data to confirm that the model results in the preliminary demonstration are accurate.

(*4*) Until the time that EPA approves this final demonstration, the surface impoundment must remain in detection monitoring or the demonstration will be denied.

(*5*) If EPA tentatively approved the preliminary demonstration, EPA will then take action on the newly submitted final demonstration using the procedures in paragraphs (d)(2)(iv) through (vi) of this section.

(*6*) The public will have 30 days to comment but may comment only on the new information presented in the complete final demonstration or in EPA's tentative decision on the newly submitted demonstration.

(D) Upon submission of a request for an extension to the deadline for the demonstration due to analytical limitations pursuant to paragraph (d)(2)(ii)(A) of this section, the owner or operator must place the alternative liner demonstration extension request in the facility's operating record as required by § 257.105(f)(16).

(E) Upon submission of a preliminary demonstration pursuant to paragraph (d)(2)(ii)(C) of this section, the owner or operator must place the preliminary demonstration in the facility's operating record as required by § 257.105(f)(17).

(iii) *Application review*—(A) EPA will evaluate the application and may request additional information not required as part of the application as necessary to complete its review. Submission of a complete application will toll the facility's deadline to cease receipt of waste until issuance of a final decision under paragraph (d)(2)(iii)(C) of this section. Incomplete submissions will not toll the facility's deadline and will be rejected without further process.

(B) If the application is determined to be incomplete, EPA will notify the facility. The owner or operator must place the notification of an incomplete application in the facility's operating record as required by § 257.105(f)(18).

(C) EPA will publish a proposed decision on complete applications in a docket on *www.regulations.gov* for a 20-day comment period. After consideration of the comments, EPA will issue its decision on the application within sixty days of receiving a complete application.

(D) If the application is approved, the deadline to cease receipt of waste will be tolled until an alternate liner demonstration is determined to be incomplete or a final decision under paragraph (d)(2)(vi) of this section is issued.

(E) If the surface impoundment is determined by EPA to be ineligible to apply for an alternate liner demonstration, and the facility lacks alternative capacity to manage its CCR and/or non-CCR wastestreams, the owner or operator may apply for an alternative closure deadline in accordance with the procedures in § 257.103(f). The owner or operator will be given four months from the date of the ineligibility determination to apply for the alternative closure provisions in either § 257.103(f)(1) or (f)(2), during which time the facility's deadline to cease receipt of waste will be tolled.

(F) Upon receipt of a decision on the application pursuant to paragraph (d)(2)(iii)(C) of this section, the owner or operator must place the decision on the application in the facility's operating record as required by § 257.105(f)(19).

(iv) *Demonstration review*. EPA will evaluate the demonstration package and may request additional information not required as part of the demonstration as necessary to complete its review. Submission of a complete demonstration package will continue to toll the facility's deadline to cease receipt of waste into that CCR surface impoundment until issuance of a final decision under paragraph (d)(2)(vi) of this section. Upon a determination that a demonstration is incomplete the tolling of the facility's deadline will cease and the submission will be rejected without further process.

(v) *Proposed decision on demonstration*. EPA will publish a proposed decision on a complete demonstration package

in a docket on *www.regulations.gov* for a 30-day comment period.

(vi) *Final decision on demonstration.* After consideration of the comments, EPA will issue its decision on the alternate liner demonstration package within four months of receiving a complete demonstration package. Upon approval the facility may continue to operate the impoundment as long as the impoundment remains in detection monitoring. Upon detection of a statistically significant increase over background of a constituent listed on appendix III to this part, the facility must proceed in accordance with the requirements of paragraph (ix) of this section.

(vii) *Facility operating record requirements.* Upon receipt of the final decision on the alternate liner demonstration pursuant to paragraph (vi) of this section, the owner or operator must place the final decision in the facility's operating record as required by § 257.105(f)(20).

(viii) *Effect of Demonstration Denial.* If EPA determines that the CCR surface impoundment's alternate liner does not meet the standard for approval in this paragraph (d), the owner or operator must cease receipt of waste and initiate closure as determined in EPA's decision. If the owner or operator needs to obtain alternate capacity, they may do so in accordance with the procedures in § 257.103. The owner or operator will have four months from the date of EPA's decision to apply for an alternative closure deadline under either § 257.103(f)(1) or (f)(2), during which time the facility's deadline to cease receipt of waste will be tolled.

(ix) *Loss of authorization*–(A) The owner or operator of the CCR unit must comply with all of the following upon determining that there is a statistically significant increase over background levels for one or more constituents listed in appendix III to this part pursuant to § 257.94(e):

(*1*) In addition to the requirements specified in this paragraph (d), comply with the groundwater monitoring and corrective action procedures specified in §§ 257.90 through 257.98;

(*2*) Submit the notification required by § 257.94(e)(3) to EPA within 14 days of placing the notification in the facility's operating record as required by § 257.105(h)(5);

(*3*) Conduct intra-well analysis on each downgradient well to identify any trends of increasing concentrations as required by paragraph (d)(2)(ix)(B) of this section. The owner and operator must conduct the initial groundwater sampling and analysis for all constituents listed in appendix IV to this part according to the timeframes specified in § 257.95(b);

(*4*) The owner or operator may elect to pursue an alternative source demonstration pursuant to § 257.94(e)(2) that a source other than the CCR unit caused the contamination, or that the statistically significant increase resulted from error in sampling, analysis, statistical evaluation, or natural variation in groundwater quality, provided that such alternative source demonstration must be conducted simultaneously with the sampling and analysis required by paragraph (d)(2)(ix)(A)(*3*) of this section. If the owner or operator believes that a successful demonstration has been made, the demonstration must be submitted to EPA for review and approval. The owner or operator must place the demonstration in the facility's operating record within the deadlines specified in § 257.94(e)(2) and submit the demonstration to EPA within 14 days of placing the demonstration in the facility's operating record.

(*5*) The alternative source demonstration must be posted to the facility's publicly accessible CCR internet site and submitted to EPA within 14 days of completion. EPA will publish a proposed decision on the alternative source determination on *www.regulations.gov* for a 20-day comment period. After consideration of the comments, EPA will issue its decision. If the alternative source demonstration is approved, the owner or operator may cease conducting the trend analysis and return to detection monitoring. If the alternative source demonstration is denied, the owner or operator must either complete the trend analysis or cease receipt of waste. Upon receipt of the final decision on the alternative source demonstration, the owner or operator must place the final decision in

the facility's operating record as required by § 257.105(f)(22).

(B) *Trend analysis.* (*1*) Except as provided for in § 257.95(c), the owner or operator must collect a minimum of four independent samples from each well (background and downgradient) on a quarterly basis within the first year of triggering assessment monitoring and analyze each sample for all constituents listed in appendix IV to this part. Consistent with 257.95(b), the first samples must be collected within 90 days of triggering assessment monitoring. After the initial year of sampling, the owner or operator must then conduct sampling as prescribed in § 257.95(d)(1). After each sampling event, the owner or operator must update the trend analysis with the new sampling information.

(*2*) The owner or operator of the CCR surface impoundment must apply an appropriate statistical test to identify any trends of increasing concentrations within the monitoring data. For normally distributed datasets, linear regression will be used to identify trends and determine the associated magnitude. For non-normally distributed datasets, the Mann-Kendall test will be used to identify trends and the Theil-Sen trend line will be used to determine the associated magnitude. If a trend is identified, the owner or operator of the CCR surface impoundment will use the upper 95th percentile confidence limit on the trend line to estimate future concentrations. The owner or operator will project this trendline into the future for a duration set to the maximum number of years established in § 257.102 for closure of the surface impoundment.

(*3*) A report of the results of each sampling event, as well as the final trend analysis, must be posted to the facility's publicly accessible CCR internet site and submitted to EPA within 14 days of completion. The trend analysis submitted to EPA must include all data relied upon by the facility to support the analysis. EPA will publish a proposed decision on the trend analysis on *www.regulations.gov* for a 30-day comment period. After consideration of the comments, EPA will issue its decision. If the trend analysis shows the potential for a future exceedance of a groundwater protection standard, before the closure deadlines established in § 257.102, the CCR surface impoundment must cease receipt of waste by the date provided in the notice.

(C) If the trend analysis demonstrates the presence of a statistically significant trend of increasing concentration for one or more constituents listed in appendix IV of this part with potential to result in an exceedance of any groundwater protection standard before closure is complete, or if at any time one or more constituents listed in appendix IV of this part are detected at a statistically significant level above a groundwater protection standard, the authorization will be withdrawn. The provisions at § 257.96(g)(3) do not apply to CCR surface impoundments operating under an alternate liner demonstration. Upon receipt of a decision that the alternate liner demonstration has been withdrawn, the owner or operator must place the decision in the facility's operating record as required by § 257.105(f)(24).

(D) The onus remains on the owner or operator of the CCR surface impoundment at all times to demonstrate that the CCR surface impoundment meets the conditions for authorization under this section. If at any point, any condition for qualification under this section has not been met, EPA or the Participating State Director can without further notice or process deny or revoke the owner or operator's authorization under paragraph (d)(2)(ix) of this section.

[80 FR 21468, Apr. 17, 2015, as amended at 83 FR 36452, July 30, 2018; 85 FR 53561, Aug. 28, 2020; 85 FR 72539, Nov. 12, 2020]

### § 257.72 Liner design criteria for new CCR surface impoundments and any lateral expansion of a CCR surface impoundment.

(a) New CCR surface impoundments and lateral expansions of existing and new CCR surface impoundments must be designed, constructed, operated, and maintained with either a composite liner or an alternative composite liner that meets the requirements of § 257.70(b) or (c).

(b) Any liner specified in this section must be installed to cover all surrounding earth likely to be in contact with CCR. Dikes shall not be constructed on top of the composite liner.

(c) Prior to construction of the CCR surface impoundment or any lateral expansion of a CCR surface impoundment, the owner or operator must obtain certification from a qualified professional engineer or approval from the Participating State Director or approval from EPA where EPA is the permitting authority that the design of the composite liner or, if applicable, the design of an alternative composite liner complies with the requirements of this section.

(d) Upon completion, the owner or operator must obtain certification from a qualified professional engineer or approval from the Participating State Director or approval from EPA where EPA is the permitting authority that the composite liner or if applicable, the alternative composite liner has been constructed in accordance with the requirements of this section.

(e) The owner or operator of the CCR unit must comply with the recordkeeping requirements specified in § 257.105(f), the notification requirements specified in § 257.106(f), and the Internet requirements specified in § 257.107(f).

[80 FR 21468, Apr. 17, 2015, as amended at 83 FR 36452, July 30, 2018]

### § 257.73 Structural integrity criteria for existing CCR surface impoundments.

(a) The requirements of paragraphs (a)(1) through (4) of this section apply to all existing CCR surface impoundments, except for those existing CCR surface impoundments that are incised CCR units. If an incised CCR surface impoundment is subsequently modified (e.g., a dike is constructed) such that the CCR unit no longer meets the definition of an incised CCR unit, the CCR unit is subject to the requirements of paragraphs (a)(1) through (4) of this section.

(1) No later than, December 17, 2015, the owner or operator of the CCR unit must place on or immediately adjacent to the CCR unit a permanent identification marker, at least six feet high showing the identification number of the CCR unit, if one has been assigned by the state, the name associated with the CCR unit and the name of the owner or operator of the CCR unit.

(2) *Periodic hazard potential classification assessments.* (i) The owner or operator of the CCR unit must conduct initial and periodic hazard potential classification assessments of the CCR unit according to the timeframes specified in paragraph (f) of this section. The owner or operator must document the hazard potential classification of each CCR unit as either a high hazard potential CCR surface impoundment, a significant hazard potential CCR surface impoundment, or a low hazard potential CCR surface impoundment. The owner or operator must also document the basis for each hazard potential classification.

(ii) The owner or operator of the CCR unit must obtain a certification from a qualified professional engineer stating that the initial hazard potential classification and each subsequent periodic classification specified in paragraph (a)(2)(i) of this section was conducted in accordance with the requirements of this section.

(3) *Emergency Action Plan (EAP)*—(i) *Development of the plan.* No later than April 17, 2017, the owner or operator of a CCR unit determined to be either a high hazard potential CCR surface impoundment or a significant hazard potential CCR surface impoundment under paragraph (a)(2) of this section must prepare and maintain a written EAP. At a minimum, the EAP must:

(A) Define the events or circumstances involving the CCR unit that represent a safety emergency, along with a description of the procedures that will be followed to detect a safety emergency in a timely manner;

(B) Define responsible persons, their respective responsibilities, and notification procedures in the event of a safety emergency involving the CCR unit;

(C) Provide contact information of emergency responders;

(D) Include a map which delineates the downstream area which would be affected in the event of a CCR unit failure and a physical description of the CCR unit; and

(E) Include provisions for an annual face-to-face meeting or exercise between representatives of the owner or operator of the CCR unit and the local emergency responders.

(ii) *Amendment of the plan.* (A) The owner or operator of a CCR unit subject to the requirements of paragraph (a)(3)(i) of this section may amend the written EAP at any time provided the revised plan is placed in the facility's operating record as required by § 257.105(f)(6). The owner or operator must amend the written EAP whenever there is a change in conditions that would substantially affect the EAP in effect.

(B) The written EAP must be evaluated, at a minimum, every five years to ensure the information required in paragraph (a)(3)(i) of this section is accurate. As necessary, the EAP must be updated and a revised EAP placed in the facility's operating record as required by § 257.105(f)(6).

(iii) *Changes in hazard potential classification.* (A) If the owner or operator of a CCR unit determines during a periodic hazard potential assessment that the CCR unit is no longer classified as either a high hazard potential CCR surface impoundment or a significant hazard potential CCR surface impoundment, then the owner or operator of the CCR unit is no longer subject to the requirement to prepare and maintain a written EAP beginning on the date the periodic hazard potential assessment documentation is placed in the facility's operating record as required by § 257.105(f)(5).

(B) If the owner or operator of a CCR unit classified as a low hazard potential CCR surface impoundment subsequently determines that the CCR unit is properly re-classified as either a high hazard potential CCR surface impoundment or a significant hazard potential CCR surface impoundment, then the owner or operator of the CCR unit must prepare a written EAP for the CCR unit as required by paragraph (a)(3)(i) of this section within six months of completing such periodic hazard potential assessment.

(iv) The owner or operator of the CCR unit must obtain a certification from a qualified professional engineer stating that the written EAP, and any subsequent amendment of the EAP, meets the requirements of paragraph (a)(3) of this section.

(v) *Activation of the EAP.* The EAP must be implemented once events or circumstances involving the CCR unit that represent a safety emergency are detected, including conditions identified during periodic structural stability assessments, annual inspections, and inspections by a qualified person.

(4) The CCR unit and surrounding areas must be designed, constructed, operated, and maintained with vegetated slopes of dikes not to exceed a height of 6 inches above the slope of the dike, except for slopes which are protected with an alternate form(s) of slope protection.

(b) The requirements of paragraphs (c) through (e) of this section apply to an owner or operator of an existing CCR surface impoundment that either:

(1) Has a height of five feet or more and a storage volume of 20 acre-feet or more; or

(2) Has a height of 20 feet or more.

(c)(1) No later than October 17, 2016, the owner or operator of the CCR unit must compile a history of construction, which shall contain, to the extent feasible, the information specified in paragraphs (c)(1)(i) through (xi) of this section.

(i) The name and address of the person(s) owning or operating the CCR unit; the name associated with the CCR unit; and the identification number of the CCR unit if one has been assigned by the state.

(ii) The location of the CCR unit identified on the most recent U.S. Geological Survey (USGS) 7½ minute or 15 minute topographic quadrangle map, or a topographic map of equivalent scale if a USGS map is not available.

(iii) A statement of the purpose for which the CCR unit is being used.

(iv) The name and size in acres of the watershed within which the CCR unit is located.

(v) A description of the physical and engineering properties of the foundation and abutment materials on which the CCR unit is constructed.

(vi) A statement of the type, size, range, and physical and engineering properties of the materials used in constructing each zone or stage of the CCR

unit; the method of site preparation and construction of each zone of the CCR unit; and the approximate dates of construction of each successive stage of construction of the CCR unit.

(vii) At a scale that details engineering structures and appurtenances relevant to the design, construction, operation, and maintenance of the CCR unit, detailed dimensional drawings of the CCR unit, including a plan view and cross sections of the length and width of the CCR unit, showing all zones, foundation improvements, drainage provisions, spillways, diversion ditches, outlets, instrument locations, and slope protection, in addition to the normal operating pool surface elevation and the maximum pool surface elevation following peak discharge from the inflow design flood, the expected maximum depth of CCR within the CCR surface impoundment, and any identifiable natural or manmade features that could adversely affect operation of the CCR unit due to malfunction or mis-operation.

(viii) A description of the type, purpose, and location of existing instrumentation.

(ix) Area-capacity curves for the CCR unit.

(x) A description of each spillway and diversion design features and capacities and calculations used in their determination.

(xi) The construction specifications and provisions for surveillance, maintenance, and repair of the CCR unit.

(xii) Any record or knowledge of structural instability of the CCR unit.

(2) *Changes to the history of construction.* If there is a significant change to any information compiled under paragraph (c)(1) of this section, the owner or operator of the CCR unit must update the relevant information and place it in the facility's operating record as required by § 257.105(f)(9).

(d) *Periodic structural stability assessments.* (1) The owner or operator of the CCR unit must conduct initial and periodic structural stability assessments and document whether the design, construction, operation, and maintenance of the CCR unit is consistent with recognized and generally accepted good engineering practices for the maximum volume of CCR and CCR wastewater which can be impounded therein. The assessment must, at a minimum, document whether the CCR unit has been designed, constructed, operated, and maintained with:

(i) Stable foundations and abutments;

(ii) Adequate slope protection to protect against surface erosion, wave action, and adverse effects of sudden drawdown;

(iii) Dikes mechanically compacted to a density sufficient to withstand the range of loading conditions in the CCR unit;

(iv) Vegetated slopes of dikes and surrounding areas not to exceed a height of six inches above the slope of the dike, except for slopes which have an alternate form or forms of slope protection;

(v) A single spillway or a combination of spillways configured as specified in paragraph (d)(1)(v)(A) of this section. The combined capacity of all spillways must be designed, constructed, operated, and maintained to adequately manage flow during and following the peak discharge from the event specified in paragraph (d)(1)(v)(B) of this section.

(A) All spillways must be either:

(*1*) Of non-erodible construction and designed to carry sustained flows; or

(*2*) Earth- or grass-lined and designed to carry short-term, infrequent flows at non-erosive velocities where sustained flows are not expected.

(B) The combined capacity of all spillways must adequately manage flow during and following the peak discharge from a:

(*1*) Probable maximum flood (PMF) for a high hazard potential CCR surface impoundment; or

(*2*) 1000-year flood for a significant hazard potential CCR surface impoundment; or

(*3*) 100-year flood for a low hazard potential CCR surface impoundment.

(vi) Hydraulic structures underlying the base of the CCR unit or passing through the dike of the CCR unit that maintain structural integrity and are free of significant deterioration, deformation, distortion, bedding deficiencies, sedimentation, and debris which may negatively affect the operation of the hydraulic structure; and

(vii) For CCR units with downstream slopes which can be inundated by the pool of an adjacent water body, such as a river, stream or lake, downstream slopes that maintain structural stability during low pool of the adjacent water body or sudden drawdown of the adjacent water body.

(2) The periodic assessment described in paragraph (d)(1) of this section must identify any structural stability deficiencies associated with the CCR unit in addition to recommending corrective measures. If a deficiency or a release is identified during the periodic assessment, the owner or operator unit must remedy the deficiency or release as soon as feasible and prepare documentation detailing the corrective measures taken.

(3) The owner or operator of the CCR unit must obtain a certification from a qualified professional engineer stating that the initial assessment and each subsequent periodic assessment was conducted in accordance with the requirements of this section.

(e) *Periodic safety factor assessments.* (1) The owner or operator must conduct an initial and periodic safety factor assessments for each CCR unit and document whether the calculated factors of safety for each CCR unit achieve the minimum safety factors specified in paragraphs (e)(1)(i) through (iv) of this section for the critical cross section of the embankment. The critical cross section is the cross section anticipated to be the most susceptible of all cross sections to structural failure based on appropriate engineering considerations, including loading conditions. The safety factor assessments must be supported by appropriate engineering calculations.

(i) The calculated static factor of safety under the long-term, maximum storage pool loading condition must equal or exceed 1.50.

(ii) The calculated static factor of safety under the maximum surcharge pool loading condition must equal or exceed 1.40.

(iii) The calculated seismic factor of safety must equal or exceed 1.00.

(iv) For dikes constructed of soils that have susceptibility to liquefaction, the calculated liquefaction factor of safety must equal or exceed 1.20.

(2) The owner or operator of the CCR unit must obtain a certification from a qualified professional engineer stating that the initial assessment and each subsequent periodic assessment specified in paragraph (e)(1) of this section meets the requirements of this section.

(f) *Timeframes for periodic assessments*—(1) *Initial assessments.* Except as provided by paragraph (f)(2) of this section, the owner or operator of the CCR unit must complete the initial assessments required by paragraphs (a)(2), (d), and (e) of this section no later than October 17, 2016. The owner or operator has completed an initial assessment when the owner or operator has placed the assessment required by paragraphs (a)(2), (d), and (e) of this section in the facility's operating record as required by § 257.105(f)(5), (10), and (12).

(2) *Use of a previously completed assessment(s) in lieu of the initial assessment(s).* The owner or operator of the CCR unit may elect to use a previously completed assessment to serve as the initial assessment required by paragraphs (a)(2), (d), and (e) of this section provided that the previously completed assessment(s):

(i) Was completed no earlier than 42 months prior to October 17, 2016; and

(ii) Meets the applicable requirements of paragraphs (a)(2), (d), and (e) of this section.

(3) *Frequency for conducting periodic assessments.* The owner or operator of the CCR unit must conduct and complete the assessments required by paragraphs (a)(2), (d), and (e) of this section every five years. The date of completing the initial assessment is the basis for establishing the deadline to complete the first subsequent assessment. If the owner or operator elects to use a previously completed assessment(s) in lieu of the initial assessment as provided by paragraph (f)(2) of this section, the date of the report for the previously completed assessment is the basis for establishing the deadline to complete the first subsequent assessment. The owner or operator may complete any required assessment prior to the required deadline provided the owner or operator places the completed assessment(s) into the facility's operating record within a reasonable

amount of time. In all cases, the deadline for completing subsequent assessments is based on the date of completing the previous assessment. For purposes of this paragraph (f)(3), the owner or operator has completed an assessment when the relevant assessment(s) required by paragraphs (a)(2), (d), and (e) of this section has been placed in the facility's operating record as required by § 257.105(f)(5), (10), and (12).

(4) *Closure of the CCR unit.* An owner or operator of a CCR unit who either fails to complete a timely safety factor assessment or fails to demonstrate minimum safety factors as required by paragraph (e) of this section is subject to the requirements of § 257.101(b)(2).

(g) The owner or operator of the CCR unit must comply with the recordkeeping requirements specified in § 257.105(f), the notification requirements specified in § 257.106(f), and the internet requirements specified in § 257.107(f).

### § 257.74 Structural integrity criteria for new CCR surface impoundments and any lateral expansion of a CCR surface impoundment.

(a) The requirements of paragraphs (a)(1) through (4) of this section apply to all new CCR surface impoundments and any lateral expansion of a CCR surface impoundment, except for those new CCR surface impoundments that are incised CCR units. If an incised CCR surface impoundment is subsequently modified (e.g., a dike is constructed) such that the CCR unit no longer meets the definition of an incised CCR unit, the CCR unit is subject to the requirements of paragraphs (a)(1) through (4) of this section.

(1) No later than the initial receipt of CCR, the owner or operator of the CCR unit must place on or immediately adjacent to the CCR unit a permanent identification marker, at least six feet high showing the identification number of the CCR unit, if one has been assigned by the state, the name associated with the CCR unit and the name of the owner or operator of the CCR unit.

(2) *Periodic hazard potential classification assessments.* (i) The owner or operator of the CCR unit must conduct initial and periodic hazard potential classification assessments of the CCR unit according to the timeframes specified in paragraph (f) of this section. The owner or operator must document the hazard potential classification of each CCR unit as either a high hazard potential CCR surface impoundment, a significant hazard potential CCR surface impoundment, or a low hazard potential CCR surface impoundment. The owner or operator must also document the basis for each hazard potential classification.

(ii) The owner or operator of the CCR unit must obtain a certification from a qualified professional engineer stating that the initial hazard potential classification and each subsequent periodic classification specified in paragraph (a)(2)(i) of this section was conducted in accordance with the requirements of this section.

(3) *Emergency Action Plan (EAP)*—(i) *Development of the plan.* Prior to the initial receipt of CCR in the CCR unit, the owner or operator of a CCR unit determined to be either a high hazard potential CCR surface impoundment or a significant hazard potential CCR surface impoundment under paragraph (a)(2) of this section must prepare and maintain a written EAP. At a minimum, the EAP must:

(A) Define the events or circumstances involving the CCR unit that represent a safety emergency, along with a description of the procedures that will be followed to detect a safety emergency in a timely manner;

(B) Define responsible persons, their respective responsibilities, and notification procedures in the event of a safety emergency involving the CCR unit;

(C) Provide contact information of emergency responders;

(D) Include a map which delineates the downstream area which would be affected in the event of a CCR unit failure and a physical description of the CCR unit; and

(E) Include provisions for an annual face-to-face meeting or exercise between representatives of the owner or operator of the CCR unit and the local emergency responders.

(ii) *Amendment of the plan.* (A) The owner or operator of a CCR unit subject to the requirements of paragraph (a)(3)(i) of this section may amend the written EAP at any time provided the revised plan is placed in the facility's operating record as required by § 257.105(f)(6). The owner or operator must amend the written EAP whenever there is a change in conditions that would substantially affect the EAP in effect.

(B) The written EAP must be evaluated, at a minimum, every five years to ensure the information required in paragraph (a)(3)(i) of this section is accurate. As necessary, the EAP must be updated and a revised EAP placed in the facility's operating record as required by § 257.105(f)(6).

(iii) *Changes in hazard potential classification.* (A) If the owner or operator of a CCR unit determines during a periodic hazard potential assessment that the CCR unit is no longer classified as either a high hazard potential CCR surface impoundment or a significant hazard potential CCR surface impoundment, then the owner or operator of the CCR unit is no longer subject to the requirement to prepare and maintain a written EAP beginning on the date the periodic hazard potential assessment documentation is placed in the facility's operating record as required by § 257.105(f)(5).

(B) If the owner or operator of a CCR unit classified as a low hazard potential CCR surface impoundment subsequently determines that the CCR unit is properly re-classified as either a high hazard potential CCR surface impoundment or a significant hazard potential CCR surface impoundment, then the owner or operator of the CCR unit must prepare a written EAP for the CCR unit as required by paragraph (a)(3)(i) of this section within six months of completing such periodic hazard potential assessment.

(iv) The owner or operator of the CCR unit must obtain a certification from a qualified professional engineer stating that the written EAP, and any subsequent amendment of the EAP, meets the requirements of paragraph (a)(3) of this section.

(v) *Activation of the EAP.* The EAP must be implemented once events or circumstances involving the CCR unit that represent a safety emergency are detected, including conditions identified during periodic structural stability assessments, annual inspections, and inspections by a qualified person.

(4) The CCR unit and surrounding areas must be designed, constructed, operated, and maintained with vegetated slopes of dikes not to exceed a height of six inches above the slope of the dike, except for slopes which are protected with an alternate form(s) of slope protection.

(b) The requirements of paragraphs (c) through (e) of this section apply to an owner or operator of a new CCR surface impoundment and any lateral expansion of a CCR surface impoundment that either:

(1) Has a height of five feet or more and a storage volume of 20 acre-feet or more; or

(2) Has a height of 20 feet or more.

(c)(1) No later than the initial receipt of CCR in the CCR unit, the owner or operator unit must compile the design and construction plans for the CCR unit, which must include, to the extent feasible, the information specified in paragraphs (c)(1)(i) through (xi) of this section.

(i) The name and address of the person(s) owning or operating the CCR unit; the name associated with the CCR unit; and the identification number of the CCR unit if one has been assigned by the state.

(ii) The location of the CCR unit identified on the most recent U.S. Geological Survey (USGS) 7½ minute or 15 minute topographic quadrangle map, or a topographic map of equivalent scale if a USGS map is not available.

(iii) A statement of the purpose for which the CCR unit is being used.

(iv) The name and size in acres of the watershed within which the CCR unit is located.

(v) A description of the physical and engineering properties of the foundation and abutment materials on which the CCR unit is constructed.

(vi) A statement of the type, size, range, and physical and engineering properties of the materials used in constructing each zone or stage of the CCR unit; the method of site preparation and construction of each zone of the

CCR unit; and the dates of construction of each successive stage of construction of the CCR unit.

(vii) At a scale that details engineering structures and appurtenances relevant to the design, construction, operation, and maintenance of the CCR unit, detailed dimensional drawings of the CCR unit, including a plan view and cross sections of the length and width of the CCR unit, showing all zones, foundation improvements, drainage provisions, spillways, diversion ditches, outlets, instrument locations, and slope protection, in addition to the normal operating pool surface elevation and the maximum pool surface elevation following peak discharge from the inflow design flood, the expected maximum depth of CCR within the CCR surface impoundment, and any identifiable natural or manmade features that could adversely affect operation of the CCR unit due to malfunction or mis-operation.

(viii) A description of the type, purpose, and location of existing instrumentation.

(ix) Area-capacity curves for the CCR unit.

(x) A description of each spillway and diversion design features and capacities and calculations used in their determination.

(xi) The construction specifications and provisions for surveillance, maintenance, and repair of the CCR unit.

(xii) Any record or knowledge of structural instability of the CCR unit.

(2) *Changes in the design and construction.* If there is a significant change to any information compiled under paragraph (c)(1) of this section, the owner or operator of the CCR unit must update the relevant information and place it in the facility's operating record as required by § 257.105(f)(13).

(d) *Periodic structural stability assessments.* (1) The owner or operator of the CCR unit must conduct initial and periodic structural stability assessments and document whether the design, construction, operation, and maintenance of the CCR unit is consistent with recognized and generally accepted good engineering practices for the maximum volume of CCR and CCR wastewater which can be impounded therein. The assessment must, at a minimum, document whether the CCR unit has been designed, constructed, operated, and maintained with:

(i) Stable foundations and abutments;

(ii) Adequate slope protection to protect against surface erosion, wave action, and adverse effects of sudden drawdown;

(iii) Dikes mechanically compacted to a density sufficient to withstand the range of loading conditions in the CCR unit;

(iv) Vegetated slopes of dikes and surrounding areas not to exceed a height of six inches above the slope of the dike, except for slopes which have an alternate form or forms of slope protection;

(v) A single spillway or a combination of spillways configured as specified in paragraph (d)(1)(v)(A) of this section. The combined capacity of all spillways must be designed, constructed, operated, and maintained to adequately manage flow during and following the peak discharge from the event specified in paragraph (d)(1)(v)(B) of this section.

(A) All spillways must be either:

(*1*) Of non-erodible construction and designed to carry sustained flows; or

(*2*) Earth- or grass-lined and designed to carry short-term, infrequent flows at non-erosive velocities where sustained flows are not expected.

(B) The combined capacity of all spillways must adequately manage flow during and following the peak discharge from a:

(*1*) Probable maximum flood (PMF) for a high hazard potential CCR surface impoundment; or

(*2*) 1000-year flood for a significant hazard potential CCR surface impoundment; or

(*3*) 100-year flood for a low hazard potential CCR surface impoundment.

(vi) Hydraulic structures underlying the base of the CCR unit or passing through the dike of the CCR unit that maintain structural integrity and are free of significant deterioration, deformation, distortion, bedding deficiencies, sedimentation, and debris which may negatively affect the operation of the hydraulic structure; and

(vii) For CCR units with downstream slopes which can be inundated by the

pool of an adjacent water body, such as a river, stream or lake, downstream slopes that maintain structural stability during low pool of the adjacent water body or sudden drawdown of the adjacent water body.

(2) The periodic assessment described in paragraph (d)(1) of this section must identify any structural stability deficiencies associated with the CCR unit in addition to recommending corrective measures. If a deficiency or a release is identified during the periodic assessment, the owner or operator unit must remedy the deficiency or release as soon as feasible and prepare documentation detailing the corrective measures taken.

(3) The owner or operator of the CCR unit must obtain a certification from a qualified professional engineer stating that the initial assessment and each subsequent periodic assessment was conducted in accordance with the requirements of this section.

(e) *Periodic safety factor assessments.* (1) The owner or operator must conduct an initial and periodic safety factor assessments for each CCR unit and document whether the calculated factors of safety for each CCR unit achieve the minimum safety factors specified in paragraphs (e)(1)(i) through (v) of this section for the critical cross section of the embankment. The critical cross section is the cross section anticipated to be the most susceptible of all cross sections to structural failure based on appropriate engineering considerations, including loading conditions. The safety factor assessments must be supported by appropriate engineering calculations.

(i) The calculated static factor of safety under the end-of-construction loading condition must equal or exceed 1.30. The assessment of this loading condition is only required for the initial safety factor assessment and is not required for subsequent assessments.

(ii) The calculated static factor of safety under the long-term, maximum storage pool loading condition must equal or exceed 1.50.

(iii) The calculated static factor of safety under the maximum surcharge pool loading condition must equal or exceed 1.40.

(iv) The calculated seismic factor of safety must equal or exceed 1.00.

(v) For dikes constructed of soils that have susceptibility to liquefaction, the calculated liquefaction factor of safety must equal or exceed 1.20.

(2) The owner or operator of the CCR unit must obtain a certification from a qualified professional engineer stating that the initial assessment and each subsequent periodic assessment specified in paragraph (e)(1) of this section meets the requirements of this section.

(f) *Timeframes for periodic assessments*—(1) *Initial assessments.* Except as provided by paragraph (f)(2) of this section, the owner or operator of the CCR unit must complete the initial assessments required by paragraphs (a)(2), (d), and (e) of this section prior to the initial receipt of CCR in the unit. The owner or operator has completed an initial assessment when the owner or operator has placed the assessment required by paragraphs (a)(2), (d), and (e) of this section in the facility's operating record as required by § 257.105(f)(5), (10), and (12).

(2) *Frequency for conducting periodic assessments.* The owner or operator of the CCR unit must conduct and complete the assessments required by paragraphs (a)(2), (d), and (e) of this section every five years. The date of completing the initial assessment is the basis for establishing the deadline to complete the first subsequent assessment. The owner or operator may complete any required assessment prior to the required deadline provided the owner or operator places the completed assessment(s) into the facility's operating record within a reasonable amount of time. In all cases, the deadline for completing subsequent assessments is based on the date of completing the previous assessment. For purposes of this paragraph (f)(2), the owner or operator has completed an assessment when the relevant assessment(s) required by paragraphs (a)(2), (d), and (e) of this section has been placed in the facility's operating record as required by § 257.105(f)(5), (10), and (12).

(3) *Failure to document minimum safety factors during the initial assessment.* Until the date an owner or operator of

a CCR unit documents that the calculated factors of safety achieve the minimum safety factors specified in paragraphs (e)(1)(i) through (v) of this section, the owner or operator is prohibited from placing CCR in such unit.

(4) *Closure of the CCR unit.* An owner or operator of a CCR unit who either fails to complete a timely periodic safety factor assessment or fails to demonstrate minimum safety factors as required by paragraph (e) of this section is subject to the requirements of § 257.101(c).

(g) The owner or operator of the CCR unit must comply with the recordkeeping requirements specified in § 257.105(f), the notification requirements specified in § 257.106(f), and the internet requirements specified in § 257.107(f).

OPERATING CRITERIA

**§ 257.80 Air criteria.**

(a) The owner or operator of a CCR landfill, CCR surface impoundment, or any lateral expansion of a CCR unit must adopt measures that will effectively minimize CCR from becoming airborne at the facility, including CCR fugitive dust originating from CCR units, roads, and other CCR management and material handling activities.

(b) *CCR fugitive dust control plan.* The owner or operator of the CCR unit must prepare and operate in accordance with a CCR fugitive dust control plan as specified in paragraphs (b)(1) through (7) of this section. This requirement applies in addition to, not in place of, any applicable standards under the Occupational Safety and Health Act.

(1) The CCR fugitive dust control plan must identify and describe the CCR fugitive dust control measures the owner or operator will use to minimize CCR from becoming airborne at the facility. The owner or operator must select, and include in the CCR fugitive dust control plan, the CCR fugitive dust control measures that are most appropriate for site conditions, along with an explanation of how the measures selected are applicable and appropriate for site conditions. Examples of control measures that may be appropriate include: Locating CCR inside an enclosure or partial enclosure; operating a water spray or fogging system; reducing fall distances at material drop points; using wind barriers, compaction, or vegetative covers; establishing and enforcing reduced vehicle speed limits; paving and sweeping roads; covering trucks transporting CCR; reducing or halting operations during high wind events; or applying a daily cover.

(2) If the owner or operator operates a CCR landfill or any lateral expansion of a CCR landfill, the CCR fugitive dust control plan must include procedures to emplace CCR as conditioned CCR. Conditioned CCR means wetting CCR with water to a moisture content that will prevent wind dispersal, but will not result in free liquids. In lieu of water, CCR conditioning may be accomplished with an appropriate chemical dust suppression agent.

(3) The CCR fugitive dust control plan must include procedures to log citizen complaints received by the owner or operator involving CCR fugitive dust events at the facility.

(4) The CCR fugitive dust control plan must include a description of the procedures the owner or operator will follow to periodically assess the effectiveness of the control plan.

(5) The owner or operator of a CCR unit must prepare an initial CCR fugitive dust control plan for the facility no later than October 19, 2015, or by initial receipt of CCR in any CCR unit at the facility if the owner or operator becomes subject to this subpart after October 19, 2015. The owner or operator has completed the initial CCR fugitive dust control plan when the plan has been placed in the facility's operating record as required by § 257.105(g)(1).

(6) *Amendment of the plan.* The owner or operator of a CCR unit subject to the requirements of this section may amend the written CCR fugitive dust control plan at any time provided the revised plan is placed in the facility's operating record as required by § 257.105(g)(1). The owner or operator must amend the written plan whenever there is a change in conditions that would substantially affect the written plan in effect, such as the construction and operation of a new CCR unit.

(7) The owner or operator must obtain a certification from a qualified professional engineer or approval from the Participating State Director or approval from EPA where EPA is the permitting authority that the initial CCR fugitive dust control plan, or any subsequent amendment of it, meets the requirements of this section.

(c) *Annual CCR fugitive dust control report.* The owner or operator of a CCR unit must prepare an annual CCR fugitive dust control report that includes a description of the actions taken by the owner or operator to control CCR fugitive dust, a record of all citizen complaints, and a summary of any corrective measures taken. The initial annual report must be completed no later than 14 months after placing the initial CCR fugitive dust control plan in the facility's operating record. The deadline for completing a subsequent report is one year after the date of completing the previous report. For purposes of this paragraph (c), the owner or operator has completed the annual CCR fugitive dust control report when the plan has been placed in the facility's operating record as required by § 257.105(g)(2).

(d) The owner or operator of the CCR unit must comply with the recordkeeping requirements specified in § 257.105(g), the notification requirements specified in § 257.106(g), and the internet requirements specified in § 257.107(g).

[80 FR 21468, Apr. 17, 2015, as amended at 83 FR 36452, July 30, 2018]

### § 257.81 Run-on and run-off controls for CCR landfills.

(a) The owner or operator of an existing or new CCR landfill or any lateral expansion of a CCR landfill must design, construct, operate, and maintain:

(1) A run-on control system to prevent flow onto the active portion of the CCR unit during the peak discharge from a 24-hour, 25-year storm; and

(2) A run-off control system from the active portion of the CCR unit to collect and control at least the water volume resulting from a 24-hour, 25-year storm.

(b) Run-off from the active portion of the CCR unit must be handled in accordance with the surface water requirements under § 257.3–3.

(c) *Run-on and run-off control system plan*—(1) *Content of the plan.* The owner or operator must prepare initial and periodic run-on and run-off control system plans for the CCR unit according to the timeframes specified in paragraphs (c)(3) and (4) of this section. These plans must document how the run-on and run-off control systems have been designed and constructed to meet the applicable requirements of this section. Each plan must be supported by appropriate engineering calculations. The owner or operator has completed the initial run-on and run-off control system plan when the plan has been placed in the facility's operating record as required by § 257.105(g)(3).

(2) *Amendment of the plan.* The owner or operator may amend the written run-on and run-off control system plan at any time provided the revised plan is placed in the facility's operating record as required by § 257.105(g)(3). The owner or operator must amend the written run-on and run-off control system plan whenever there is a change in conditions that would substantially affect the written plan in effect.

(3) *Timeframes for preparing the initial plan*—(i) *Existing CCR landfills.* The owner or operator of the CCR unit must prepare the initial run-on and run-off control system plan no later than October 17, 2016.

(ii) *New CCR landfills and any lateral expansion of a CCR landfill.* The owner or operator must prepare the initial run-on and run-off control system plan no later than the date of initial receipt of CCR in the CCR unit.

(4) *Frequency for revising the plan.* The owner or operator of the CCR unit must prepare periodic run-on and run-off control system plans required by paragraph (c)(1) of this section every five years. The date of completing the initial plan is the basis for establishing the deadline to complete the first subsequent plan. The owner or operator may complete any required plan prior to the required deadline provided the owner or operator places the completed plan into the facility's operating record within a reasonable amount of

time. In all cases, the deadline for completing a subsequent plan is based on the date of completing the previous plan. For purposes of this paragraph (c)(4), the owner or operator has completed a periodic run-on and run-off control system plan when the plan has been placed in the facility's operating record as required by § 257.105(g)(3).

(5) The owner or operator must obtain a certification from a qualified professional engineer or approval from the Participating State Director or approval from EPA where EPA is the permitting authority stating that the initial and periodic run-on and run-off control system plans meet the requirements of this section.

(d) The owner or operator of the CCR unit must comply with the recordkeeping requirements specified in § 257.105(g), the notification requirements specified in § 257.106(g), and the internet requirements specified in § 257.107(g).

[80 FR 21468, Apr. 17, 2015, as amended at 83 FR 36452, July 30, 2018]

### § 257.82 Hydrologic and hydraulic capacity requirements for CCR surface impoundments.

(a) The owner or operator of an existing or new CCR surface impoundment or any lateral expansion of a CCR surface impoundment must design, construct, operate, and maintain an inflow design flood control system as specified in paragraphs (a)(1) and (2) of this section.

(1) The inflow design flood control system must adequately manage flow into the CCR unit during and following the peak discharge of the inflow design flood specified in paragraph (a)(3) of this section.

(2) The inflow design flood control system must adequately manage flow from the CCR unit to collect and control the peak discharge resulting from the inflow design flood specified in paragraph (a)(3) of this section.

(3) The inflow design flood is:

(i) For a high hazard potential CCR surface impoundment, as determined under § 257.73(a)(2) or § 257.74(a)(2), the probable maximum flood;

(ii) For a significant hazard potential CCR surface impoundment, as determined under § 257.73(a)(2) or § 257.74(a)(2), the 1,000-year flood;

(iii) For a low hazard potential CCR surface impoundment, as determined under § 257.73(a)(2) or § 257.74(a)(2), the 100-year flood; or

(iv) For an incised CCR surface impoundment, the 25-year flood.

(b) Discharge from the CCR unit must be handled in accordance with the surface water requirements under § 257.3–3.

(c) *Inflow design flood control system plan*—(1) *Content of the plan.* The owner or operator must prepare initial and periodic inflow design flood control system plans for the CCR unit according to the timeframes specified in paragraphs (c)(3) and (4) of this section. These plans must document how the inflow design flood control system has been designed and constructed to meet the requirements of this section. Each plan must be supported by appropriate engineering calculations. The owner or operator of the CCR unit has completed the inflow design flood control system plan when the plan has been placed in the facility's operating record as required by § 257.105(g)(4).

(2) *Amendment of the plan.* The owner or operator of the CCR unit may amend the written inflow design flood control system plan at any time provided the revised plan is placed in the facility's operating record as required by § 257.105(g)(4). The owner or operator must amend the written inflow design flood control system plan whenever there is a change in conditions that would substantially affect the written plan in effect.

(3) *Timeframes for preparing the initial plan*—(i) *Existing CCR surface impoundments.* The owner or operator of the CCR unit must prepare the initial inflow design flood control system plan no later than October 17, 2016.

(ii) *New CCR surface impoundments and any lateral expansion of a CCR surface impoundment.* The owner or operator must prepare the initial inflow design flood control system plan no later than the date of initial receipt of CCR in the CCR unit.

(4) *Frequency for revising the plan.* The owner or operator must prepare periodic inflow design flood control system plans required by paragraph (c)(1) of

this section every five years. The date of completing the initial plan is the basis for establishing the deadline to complete the first periodic plan. The owner or operator may complete any required plan prior to the required deadline provided the owner or operator places the completed plan into the facility's operating record within a reasonable amount of time. In all cases, the deadline for completing a subsequent plan is based on the date of completing the previous plan. For purposes of this paragraph (c)(4), the owner or operator has completed an inflow design flood control system plan when the plan has been placed in the facility's operating record as required by §257.105(g)(4).

(5) The owner or operator must obtain a certification from a qualified professional engineer or approval from the Participating State Director or approval from EPA where EPA is the permitting authority stating that the initial and periodic inflow design flood control system plans meet the requirements of this section.

(d) The owner or operator of the CCR unit must comply with the recordkeeping requirements specified in §257.105(g), the notification requirements specified in §257.106(g), and the internet requirements specified in §257.107(g).

[80 FR 21468, Apr. 17, 2015, as amended at 83 FR 36451, July 30, 2018]

### §257.83 Inspection requirements for CCR surface impoundments.

(a) *Inspections by a qualified person.* (1) All CCR surface impoundments and any lateral expansion of a CCR surface impoundment must be examined by a qualified person as follows:

(i) At intervals not exceeding seven days, inspect for any appearances of actual or potential structural weakness and other conditions which are disrupting or have the potential to disrupt the operation or safety of the CCR unit;

(ii) At intervals not exceeding seven days, inspect the discharge of all outlets of hydraulic structures which pass underneath the base of the surface impoundment or through the dike of the CCR unit for abnormal discoloration, flow or discharge of debris or sediment; and

(iii) At intervals not exceeding 30 days, monitor all CCR unit instrumentation.

(iv) The results of the inspection by a qualified person must be recorded in the facility's operating record as required by §257.105(g)(5).

(2) *Timeframes for inspections by a qualified person*—(i) *Existing CCR surface impoundments.* The owner or operator of the CCR unit must initiate the inspections required under paragraph (a) of this section no later than October 19, 2015.

(ii) *New CCR surface impoundments and any lateral expansion of a CCR surface impoundment.* The owner or operator of the CCR unit must initiate the inspections required under paragraph (a) of this section upon initial receipt of CCR by the CCR unit.

(b) Annual i*nspections by a qualified professional engineer.* (1) If the existing or new CCR surface impoundment or any lateral expansion of the CCR surface impoundment is subject to the periodic structural stability assessment requirements under §257.73(d) or §257.74(d), the CCR unit must additionally be inspected on a periodic basis by a qualified professional engineer to ensure that the design, construction, operation, and maintenance of the CCR unit is consistent with recognized and generally accepted good engineering standards. The inspection must, at a minimum, include:

(i) A review of available information regarding the status and condition of the CCR unit, including, but not limited to, files available in the operating record (e.g., CCR unit design and construction information required by §§257.73(c)(1) and 257.74(c)(1), previous periodic structural stability assessments required under §§257.73(d) and 257.74(d), the results of inspections by a qualified person, and results of previous annual inspections);

(ii) A visual inspection of the CCR unit to identify signs of distress or malfunction of the CCR unit and appurtenant structures; and

(iii) A visual inspection of any hydraulic structures underlying the base of the CCR unit or passing through the

dike of the CCR unit for structural integrity and continued safe and reliable operation.

(2) *Inspection report.* The qualified professional engineer must prepare a report following each inspection that addresses the following:

(i) Any changes in geometry of the impounding structure since the previous annual inspection;

(ii) The location and type of existing instrumentation and the maximum recorded readings of each instrument since the previous annual inspection;

(iii) The approximate minimum, maximum, and present depth and elevation of the impounded water and CCR since the previous annual inspection;

(iv) The storage capacity of the impounding structure at the time of the inspection;

(v) The approximate volume of the impounded water and CCR at the time of the inspection;

(vi) Any appearances of an actual or potential structural weakness of the CCR unit, in addition to any existing conditions that are disrupting or have the potential to disrupt the operation and safety of the CCR unit and appurtenant structures; and

(vii) Any other change(s) which may have affected the stability or operation of the impounding structure since the previous annual inspection.

(3) *Timeframes for conducting the initial inspection*—(i) *Existing CCR surface impoundments.* The owner or operator of the CCR unit must complete the initial inspection required by paragraphs (b)(1) and (2) of this section no later than January 19, 2016.

(ii) *New CCR surface impoundments and any lateral expansion of a CCR surface impoundment.* The owner or operator of the CCR unit must complete the initial annual inspection required by paragraphs (b)(1) and (2) of this section is completed no later than 14 months following the date of initial receipt of CCR in the CCR unit.

(4) *Frequency of inspections.* (i) Except as provided for in paragraph (b)(4)(ii) of this section, the owner or operator of the CCR unit must conduct the inspection required by paragraphs (b)(1) and (2) of this section on an annual basis. The date of completing the initial inspection report is the basis for establishing the deadline to complete the first subsequent inspection. Any required inspection may be conducted prior to the required deadline provided the owner or operator places the completed inspection report into the facility's operating record within a reasonable amount of time. In all cases, the deadline for completing subsequent inspection reports is based on the date of completing the previous inspection report. For purposes of this section, the owner or operator has completed an inspection when the inspection report has been placed in the facility's operating record as required by § 257.105(g)(6).

(ii) In any calendar year in which both the periodic inspection by a qualified professional engineer and the quinquennial (occurring every five years) structural stability assessment by a qualified professional engineer required by §§ 257.73(d) and 257.74(d) are required to be completed, the annual inspection is not required, provided the structural stability assessment is completed during the calendar year. If the annual inspection is not conducted in a year as provided by this paragraph (b)(4)(ii), the deadline for completing the next annual inspection is one year from the date of completing the quinquennial structural stability assessment.

(5) If a deficiency or release is identified during an inspection, the owner or operator must remedy the deficiency or release as soon as feasible and prepare documentation detailing the corrective measures taken.

(c) The owner or operator of the CCR unit must comply with the recordkeeping requirements specified in § 257.105(g), the notification requirements specified in § 257.106(g), and the internet requirements specified in § 257.107(g).

[80 FR 21468, Apr. 17, 2015, as amended at 80 FR 37992, July 2, 2015]

### § 257.84 Inspection requirements for CCR landfills.

(a) *Inspections by a qualified person.* (1) All CCR landfills and any lateral expansion of a CCR landfill must be examined by a qualified person as follows:

(i) At intervals not exceeding seven days, inspect for any appearances of actual or potential structural weakness and other conditions which are disrupting or have the potential to disrupt the operation or safety of the CCR unit; and

(ii) The results of the inspection by a qualified person must be recorded in the facility's operating record as required by §257.105(g)(8).

(2) *Timeframes for inspections by a qualified person*—(i) *Existing CCR landfills.* The owner or operator of the CCR unit must initiate the inspections required under paragraph (a) of this section no later than October 19, 2015.

(ii) *New CCR landfills and any lateral expansion of a CCR landfill.* The owner or operator of the CCR unit must initiate the inspections required under paragraph (a) of this section upon initial receipt of CCR by the CCR unit.

(b) *Annual inspections by a qualified professional engineer.* (1) Existing and new CCR landfills and any lateral expansion of a CCR landfill must be inspected on a periodic basis by a qualified professional engineer to ensure that the design, construction, operation, and maintenance of the CCR unit is consistent with recognized and generally accepted good engineering standards. The inspection must, at a minimum, include:

(i) A review of available information regarding the status and condition of the CCR unit, including, but not limited to, files available in the operating record (e.g., the results of inspections by a qualified person, and results of previous annual inspections); and

(ii) A visual inspection of the CCR unit to identify signs of distress or malfunction of the CCR unit.

(2) *Inspection report.* The qualified professional engineer must prepare a report following each inspection that addresses the following:

(i) Any changes in geometry of the structure since the previous annual inspection;

(ii) The approximate volume of CCR contained in the unit at the time of the inspection;

(iii) Any appearances of an actual or potential structural weakness of the CCR unit, in addition to any existing conditions that are disrupting or have the potential to disrupt the operation and safety of the CCR unit; and

(iv) Any other change(s) which may have affected the stability or operation of the CCR unit since the previous annual inspection.

(3) *Timeframes for conducting the initial inspection*—(i) *Existing CCR landfills.* The owner or operator of the CCR unit must complete the initial inspection required by paragraphs (b)(1) and (2) of this section no later than January 19, 2016.

(ii) *New CCR landfills and any lateral expansion of a CCR landfill.* The owner or operator of the CCR unit must complete the initial annual inspection required by paragraphs (b)(1) and (2) of this section no later than 14 months following the date of initial receipt of CCR in the CCR unit.

(4) *Frequency of inspections.* The owner or operator of the CCR unit must conduct the inspection required by paragraphs (b)(1) and (2) of this section on an annual basis. The date of completing the initial inspection report is the basis for establishing the deadline to complete the first subsequent inspection. Any required inspection may be conducted prior to the required deadline provided the owner or operator places the completed inspection report into the facility's operating record within a reasonable amount of time. In all cases, the deadline for completing subsequent inspection reports is based on the date of completing the previous inspection report. For purposes of this section, the owner or operator has completed an inspection when the inspection report has been placed in the facility's operating record as required by §257.105(g)(9).

(5) If a deficiency or release is identified during an inspection, the owner or operator must remedy the deficiency or release as soon as feasible and prepare documentation detailing the corrective measures taken.

(c) The owner or operator of the CCR unit must comply with the recordkeeping requirements specified in §257.105(g), the notification requirements specified in §257.106(g), and the internet requirements specified in §257.107(g).

[80 FR 21468, Apr. 17, 2015, as amended at 80 FR 37992, July 2, 2015]

GROUNDWATER MONITORING AND CORRECTIVE ACTION

**§ 257.90 Applicability.**

(a) All CCR landfills, CCR surface impoundments, and lateral expansions of CCR units are subject to the groundwater monitoring and corrective action requirements under §§ 257.90 through 257.99, except as provided in paragraph (g) of this section.

(b) *Initial timeframes*—(1) *Existing CCR landfills and existing CCR surface impoundments.* No later than October 17, 2017, the owner or operator of the CCR unit must be in compliance with the following groundwater monitoring requirements:

(i) Install the groundwater monitoring system as required by § 257.91;

(ii) Develop the groundwater sampling and analysis program to include selection of the statistical procedures to be used for evaluating groundwater monitoring data as required by § 257.93;

(iii) Initiate the detection monitoring program to include obtaining a minimum of eight independent samples for each background and downgradient well as required by § 257.94(b); and

(iv) Begin evaluating the groundwater monitoring data for statistically significant increases over background levels for the constituents listed in appendix III of this part as required by § 257.94.

(2) *New CCR landfills, new CCR surface impoundments, and all lateral expansions of CCR units.* Prior to initial receipt of CCR by the CCR unit, the owner or operator must be in compliance with the groundwater monitoring requirements specified in paragraph (b)(1)(i) and (ii) of this section. In addition, the owner or operator of the CCR unit must initiate the detection monitoring program to include obtaining a minimum of eight independent samples for each background well as required by § 257.94(b).

(c) Once a groundwater monitoring system and groundwater monitoring program has been established at the CCR unit as required by this subpart, the owner or operator must conduct groundwater monitoring and, if necessary, corrective action throughout the active life and post-closure care period of the CCR unit.

(d) In the event of a release from a CCR unit, the owner or operator must immediately take all necessary measures to control the source(s) of releases so as to reduce or eliminate, to the maximum extent feasible, further releases of contaminants into the environment. The owner or operator of the CCR unit must comply with all applicable requirements in §§ 257.96, 257.97, and 257.98.

(e) *Annual groundwater monitoring and corrective action report.* For existing CCR landfills and existing CCR surface impoundments, no later than January 31, 2018, and annually thereafter, the owner or operator must prepare an annual groundwater monitoring and corrective action report. For new CCR landfills, new CCR surface impoundments, and all lateral expansions of CCR units, the owner or operator must prepare the initial annual groundwater monitoring and corrective action report no later than January 31 of the year following the calendar year a groundwater monitoring system has been established for such CCR unit as required by this subpart, and annually thereafter. For the preceding calendar year, the annual report must document the status of the groundwater monitoring and corrective action program for the CCR unit, summarize key actions completed, describe any problems encountered, discuss actions to resolve the problems, and project key activities for the upcoming year. For purposes of this section, the owner or operator has prepared the annual report when the report is placed in the facility's operating record as required by § 257.105(h)(1). At a minimum, the annual groundwater monitoring and corrective action report must contain the following information, to the extent available:

(1) A map, aerial image, or diagram showing the CCR unit and all background (or upgradient) and downgradient monitoring wells, to include the well identification numbers, that are part of the groundwater monitoring program for the CCR unit;

(2) Identification of any monitoring wells that were installed or decommissioned during the preceding year, along with a narrative description of why those actions were taken;

(3) In addition to all the monitoring data obtained under §§ 257.90 through 257.98, a summary including the number of groundwater samples that were collected for analysis for each background and downgradient well, the dates the samples were collected, and whether the sample was required by the detection monitoring or assessment monitoring programs;

(4) A narrative discussion of any transition between monitoring programs (e.g., the date and circumstances for transitioning from detection monitoring to assessment monitoring in addition to identifying the constituent(s) detected at a statistically significant increase over background levels); and

(5) Other information required to be included in the annual report as specified in §§ 257.90 through 257.98.

(6) A section at the beginning of the annual report that provides an overview of the current status of groundwater monitoring and corrective action programs for the CCR unit. At a minimum, the summary must specify all of the following:

(i) At the start of the current annual reporting period, whether the CCR unit was operating under the detection monitoring program in § 257.94 or the assessment monitoring program in § 257.95;

(ii) At the end of the current annual reporting period, whether the CCR unit was operating under the detection monitoring program in § 257.94 or the assessment monitoring program in § 257.95;

(iii) If it was determined that there was a statistically significant increase over background for one or more constituents listed in appendix III to this part pursuant to § 257.94(e):

(A) Identify those constituents listed in appendix III to this part and the names of the monitoring wells associated with such an increase; and

(B) Provide the date when the assessment monitoring program was initiated for the CCR unit.

(iv) If it was determined that there was a statistically significant level above the groundwater protection standard for one or more constituents listed in appendix IV to this part pursuant to § 257.95(g) include all of the following:

(A) Identify those constituents listed in appendix IV to this part and the names of the monitoring wells associated with such an increase;

(B) Provide the date when the assessment of corrective measures was initiated for the CCR unit;

(C) Provide the date when the public meeting was held for the assessment of corrective measures for the CCR unit; and

(D) Provide the date when the assessment of corrective measures was completed for the CCR unit.

(v) Whether a remedy was selected pursuant to § 257.97 during the current annual reporting period, and if so, the date of remedy selection; and

(vi) Whether remedial activities were initiated or are ongoing pursuant to § 257.98 during the current annual reporting period.

(f) The owner or operator of the CCR unit must comply with the recordkeeping requirements specified in § 257.105(h), the notification requirements specified in § 257.106(h), and the internet requirements specified in § 257.107(h).

(g) *Suspension of groundwater monitoring requirements.* (1) The Participating State Director or EPA where EPA is the permitting authority may suspend the groundwater monitoring requirements under §§ 257.90 through 257.95 for a CCR unit for a period of up to ten years, if the owner or operator provides written documentation that, based on the characteristics of the site in which the CCR unit is located, there is no potential for migration of any of the constituents listed in appendices III and IV to this part from that CCR unit to the uppermost aquifer during the active life of the CCR unit and the post-closure care period. This demonstration must be certified by a qualified professional engineer and approved by the Participating State Director or EPA where EPA is the permitting authority, and must be based upon:

(i) Site-specific field collected measurements, sampling, and analysis of physical, chemical, and biological processes affecting contaminant fate and transport, including at a minimum, the information necessary to evaluate or interpret the effects of the following

properties or processes on contaminant fate and transport:

(A) Aquifer Characteristics, including hydraulic conductivity, hydraulic gradient, effective porosity, aquifer thickness, degree of saturation, stratigraphy, degree of fracturing and secondary porosity of soils and bedrock, aquifer heterogeneity, groundwater discharge, and groundwater recharge areas;

(B) Waste Characteristics, including quantity, type, and origin;

(C) Climatic Conditions, including annual precipitation, leachate generation estimates, and effects on leachate quality;

(D) Leachate Characteristics, including leachate composition, solubility, density, the presence of immiscible constituents, Eh, and pH; and

(E) Engineered Controls, including liners, cover systems, and aquifer controls (*e.g.*, lowering the water table). These must be evaluated under design and failure conditions to estimate their long-term residual performance.

(ii) Contaminant fate and transport predictions that maximize contaminant migration and consider impacts on human health and the environment.

(2) The owner or operator of the CCR unit may renew this suspension for additional ten year periods by submitting written documentation that the site characteristics continue to ensure there will be no potential for migration of any of the constituents listed in Appendices III and IV of this part. The documentation must include, at a minimum, the information specified in paragraphs (g)(1)(i) and (g)(1)(ii) of this section and a certification by a qualified professional engineer and approved by the State Director or EPA where EPA is the permitting authority. The owner or operator must submit the documentation supporting their renewal request for the state's or EPA's review and approval of their extension one year before the groundwater monitoring suspension is due to expire. If the existing groundwater monitoring extension expires or is not approved, the owner or operator must begin groundwater monitoring according to paragraph (a) of this section within 90 days. The owner or operator may continue to renew the suspension for ten-year periods, provided the owner or operator demonstrate that the standard in paragraph (g)(1) of this section continues to be met for the unit. The owner or operator must place each completed demonstration in the facility's operating record.

(3) The owner or operator of the CCR unit must include in the annual groundwater monitoring and corrective action report required by § 257.90(e) or § 257.100(e)(5)(ii) any approved no migration demonstration.

[80 FR 21468, Apr. 17, 2015, as amended at 81 FR 51807, Aug. 5, 2016; 83 FR 36452, July 30, 2018; 85 FR 53561, Aug. 28, 2020]

### § 257.91 Groundwater monitoring systems.

(a) *Performance standard.* The owner or operator of a CCR unit must install a groundwater monitoring system that consists of a sufficient number of wells, installed at appropriate locations and depths, to yield groundwater samples from the uppermost aquifer that:

(1) Accurately represent the quality of background groundwater that has not been affected by leakage from a CCR unit. A determination of background quality may include sampling of wells that are not hydraulically upgradient of the CCR management area where:

(i) Hydrogeologic conditions do not allow the owner or operator of the CCR unit to determine what wells are hydraulically upgradient; or

(ii) Sampling at other wells will provide an indication of background groundwater quality that is as representative or more representative than that provided by the upgradient wells; and

(2) Accurately represent the quality of groundwater passing the waste boundary of the CCR unit. The downgradient monitoring system must be installed at the waste boundary that ensures detection of groundwater contamination in the uppermost aquifer. All potential contaminant pathways must be monitored.

(b) The number, spacing, and depths of monitoring systems shall be determined based upon site-specific technical information that must include thorough characterization of:

(1) Aquifer thickness, groundwater flow rate, groundwater flow direction including seasonal and temporal fluctuations in groundwater flow; and

(2) Saturated and unsaturated geologic units and fill materials overlying the uppermost aquifer, materials comprising the uppermost aquifer, and materials comprising the confining unit defining the lower boundary of the uppermost aquifer, including, but not limited to, thicknesses, stratigraphy, lithology, hydraulic conductivities, porosities and effective porosities.

(c) The groundwater monitoring system must include the minimum number of monitoring wells necessary to meet the performance standards specified in paragraph (a) of this section, based on the site-specific information specified in paragraph (b) of this section. The groundwater monitoring system must contain:

(1) A minimum of one upgradient and three downgradient monitoring wells; and

(2) Additional monitoring wells as necessary to accurately represent the quality of background groundwater that has not been affected by leakage from the CCR unit and the quality of groundwater passing the waste boundary of the CCR unit.

(d) The owner or operator of multiple CCR units may install a multiunit groundwater monitoring system instead of separate groundwater monitoring systems for each CCR unit.

(1) The multiunit groundwater monitoring system must be equally as capable of detecting monitored constituents at the waste boundary of the CCR unit as the individual groundwater monitoring system specified in paragraphs (a) through (c) of this section for each CCR unit based on the following factors:

(i) Number, spacing, and orientation of each CCR unit;

(ii) Hydrogeologic setting;

(iii) Site history; and

(iv) Engineering design of the CCR unit.

(2) [Reserved]

(e) Monitoring wells must be cased in a manner that maintains the integrity of the monitoring well borehole. This casing must be screened or perforated and packed with gravel or sand, where necessary, to enable collection of groundwater samples. The annular space (*i.e.*, the space between the borehole and well casing) above the sampling depth must be sealed to prevent contamination of samples and the groundwater.

(1) The owner or operator of the CCR unit must document and include in the operating record the design, installation, development, and decommissioning of any monitoring wells, piezometers and other measurement, sampling, and analytical devices. The qualified professional engineer must be given access to this documentation when completing the groundwater monitoring system certification required under paragraph (f) of this section.

(2) The monitoring wells, piezometers, and other measurement, sampling, and analytical devices must be operated and maintained so that they perform to the design specifications throughout the life of the monitoring program.

(f) The owner or operator must obtain a certification from a qualified professional engineer or approval from the Participating State Director or approval from EPA where EPA is the permitting authority stating that the groundwater monitoring system has been designed and constructed to meet the requirements of this section. If the groundwater monitoring system includes the minimum number of monitoring wells specified in paragraph (c)(1) of this section, the certification must document the basis supporting this determination.

(g) The owner or operator of the CCR unit must comply with the recordkeeping requirements specified in §257.105(h), the notification requirements specified in §257.106(h), and the internet requirements specified in §257.107(h).

[80 FR 21468, Apr. 17, 2015, as amended at 83 FR 36453, July 30, 2018; 85 FR 53561, Aug. 28, 2020]

### §257.92 [Reserved]

### §257.93 Groundwater sampling and analysis requirements.

(a) The groundwater monitoring program must include consistent sampling

and analysis procedures that are designed to ensure monitoring results that provide an accurate representation of groundwater quality at the background and downgradient wells required by § 257.91. The owner or operator of the CCR unit must develop a sampling and analysis program that includes procedures and techniques for:

(1) Sample collection;

(2) Sample preservation and shipment;

(3) Analytical procedures;

(4) Chain of custody control; and

(5) Quality assurance and quality control.

(b) The groundwater monitoring program must include sampling and analytical methods that are appropriate for groundwater sampling and that accurately measure hazardous constituents and other monitoring parameters in groundwater samples. For purposes of §§ 257.90 through 257.98, the term *constituent* refers to both hazardous constituents and other monitoring parameters listed in either appendix III or IV of this part.

(c) Groundwater elevations must be measured in each well immediately prior to purging, each time groundwater is sampled. The owner or operator of the CCR unit must determine the rate and direction of groundwater flow each time groundwater is sampled. Groundwater elevations in wells which monitor the same CCR management area must be measured within a period of time short enough to avoid temporal variations in groundwater flow which could preclude accurate determination of groundwater flow rate and direction.

(d) The owner or operator of the CCR unit must establish background groundwater quality in a hydraulically upgradient or background well(s) for each of the constituents required in the particular groundwater monitoring program that applies to the CCR unit as determined under § 257.94(a) or § 257.95(a). Background groundwater quality may be established at wells that are not located hydraulically upgradient from the CCR unit if it meets the requirements of § 257.91(a)(1).

(e) The number of samples collected when conducting detection monitoring and assessment monitoring (for both downgradient and background wells) must be consistent with the statistical procedures chosen under paragraph (f) of this section and the performance standards under paragraph (g) of this section. The sampling procedures shall be those specified under § 257.94(b) through (d) for detection monitoring, § 257.95(b) through (d) for assessment monitoring, and § 257.96(b) for corrective action.

(f) The owner or operator of the CCR unit must select one of the statistical methods specified in paragraphs (f)(1) through (5) of this section to be used in evaluating groundwater monitoring data for each specified constituent. The statistical test chosen shall be conducted separately for each constituent in each monitoring well.

(1) A parametric analysis of variance followed by multiple comparison procedures to identify statistically significant evidence of contamination. The method must include estimation and testing of the contrasts between each compliance well's mean and the background mean levels for each constituent.

(2) An analysis of variance based on ranks followed by multiple comparison procedures to identify statistically significant evidence of contamination. The method must include estimation and testing of the contrasts between each compliance well's median and the background median levels for each constituent.

(3) A tolerance or prediction interval procedure, in which an interval for each constituent is established from the distribution of the background data and the level of each constituent in each compliance well is compared to the upper tolerance or prediction limit.

(4) A control chart approach that gives control limits for each constituent.

(5) Another statistical test method that meets the performance standards of paragraph (g) of this section.

(6) The owner or operator of the CCR unit must obtain a certification from a qualified professional engineer or approval from the Participating State Director or approval from EPA where EPA is the permitting authority stating that the selected statistical method is appropriate for evaluating the groundwater monitoring data for the

CCR management area. The certification must include a narrative description of the statistical method selected to evaluate the groundwater monitoring data.

(g) Any statistical method chosen under paragraph (f) of this section shall comply with the following performance standards, as appropriate, based on the statistical test method used:

(1) The statistical method used to evaluate groundwater monitoring data shall be appropriate for the distribution of constituents. Normal distributions of data values shall use parametric methods. Non-normal distributions shall use non-parametric methods. If the distribution of the constituents is shown by the owner or operator of the CCR unit to be inappropriate for a normal theory test, then the data must be transformed or a distribution-free (non-parametric) theory test must be used. If the distributions for the constituents differ, more than one statistical method may be needed.

(2) If an individual well comparison procedure is used to compare an individual compliance well constituent concentration with background constituent concentrations or a groundwater protection standard, the test shall be done at a Type I error level no less than 0.01 for each testing period. If a multiple comparison procedure is used, the Type I experiment wise error rate for each testing period shall be no less than 0.05; however, the Type I error of no less than 0.01 for individual well comparisons must be maintained. This performance standard does not apply to tolerance intervals, prediction intervals, or control charts.

(3) If a control chart approach is used to evaluate groundwater monitoring data, the specific type of control chart and its associated parameter values shall be such that this approach is at least as effective as any other approach in this section for evaluating groundwater data. The parameter values shall be determined after considering the number of samples in the background data base, the data distribution, and the range of the concentration values for each constituent of concern.

(4) If a tolerance interval or a predictional interval is used to evaluate groundwater monitoring data, the levels of confidence and, for tolerance intervals, the percentage of the population that the interval must contain, shall be such that this approach is at least as effective as any other approach in this section for evaluating groundwater data. These parameters shall be determined after considering the number of samples in the background data base, the data distribution, and the range of the concentration values for each constituent of concern.

(5) The statistical method must account for data below the limit of detection with one or more statistical procedures that shall at least as effective as any other approach in this section for evaluating groundwater data. Any practical quantitation limit that is used in the statistical method shall be the lowest concentration level that can be reliably achieved within specified limits of precision and accuracy during routine laboratory operating conditions that are available to the facility.

(6) If necessary, the statistical method must include procedures to control or correct for seasonal and spatial variability as well as temporal correlation in the data.

(h) The owner or operator of the CCR unit must determine whether or not there is a statistically significant increase over background values for each constituent required in the particular groundwater monitoring program that applies to the CCR unit, as determined under § 257.94(a) or § 257.95(a).

(1) In determining whether a statistically significant increase has occurred, the owner or operator must compare the groundwater quality of each constituent at each monitoring well designated pursuant to § 257.91(a)(2) or (d)(1) to the background value of that constituent, according to the statistical procedures and performance standards specified under paragraphs (f) and (g) of this section.

(2) Within 90 days after completing sampling and analysis, the owner or operator must determine whether there has been a statistically significant increase over background for any constituent at each monitoring well.

(i) The owner or operator must measure ''total recoverable metals'' concentrations in measuring groundwater

quality. Measurement of total recoverable metals captures both the particulate fraction and dissolved fraction of metals in natural waters. Groundwater samples shall not be field-filtered prior to analysis.

(j) The owner or operator of the CCR unit must comply with the recordkeeping requirements specified in § 257.105(h), the notification requirements specified in § 257.106(h), and the Internet requirements specified in § 257.107(h).

[80 FR 21468, Apr. 17, 2015, as amended at 83 FR 36453, July 30, 2018]

### § 257.94 Detection monitoring program.

(a) The owner or operator of a CCR unit must conduct detection monitoring at all groundwater monitoring wells consistent with this section. At a minimum, a detection monitoring program must include groundwater monitoring for all constituents listed in appendix III to this part.

(b) Except as provided in paragraph (d) of this section, the monitoring frequency for the constituents listed in appendix III to this part shall be at least semiannual during the active life of the CCR unit and the post-closure period. For existing CCR landfills and existing CCR surface impoundments, a minimum of eight independent samples from each background and downgradient well must be collected and analyzed for the constituents listed in appendix III and IV to this part no later than October 17, 2017. For new CCR landfills, new CCR surface impoundments, and all lateral expansions of CCR units, a minimum of eight independent samples for each background well must be collected and analyzed for the constituents listed in appendices III and IV to this part during the first six months of sampling.

(c) The number of samples collected and analyzed for each background well and downgradient well during subsequent semiannual sampling events must be consistent with § 257.93(e), and must account for any unique characteristics of the site, but must be at least one sample from each background and downgradient well.

(d) The owner or operator of a CCR unit may demonstrate the need for an alternative monitoring frequency for repeated sampling and analysis for constituents listed in appendix III to this part during the active life and the post-closure care period based on the availability of groundwater. If there is not adequate groundwater flow to sample wells semiannually, the alternative frequency shall be no less than annual. The need to vary monitoring frequency must be evaluated on a site-specific basis. The demonstration must be supported by, at a minimum, the information specified in paragraphs (d)(1) and (2) of this section.

(1) Information documenting that the need for less frequent sampling. The alternative frequency must be based on consideration of the following factors:

(i) Lithology of the aquifer and unsaturated zone;

(ii) Hydraulic conductivity of the aquifer and unsaturated zone; and

(iii) Groundwater flow rates.

(2) Information documenting that the alternative frequency will be no less effective in ensuring that any leakage from the CCR unit will be discovered within a timeframe that will not materially delay establishment of an assessment monitoring program.

(3) The owner or operator must obtain a certification from a qualified professional engineer or approval from the Participating State Director or approval from EPA where EPA is the permitting authority stating that the demonstration for an alternative groundwater sampling and analysis frequency meets the requirements of this section. The owner or operator must include the demonstration providing the basis for the alternative monitoring frequency and the certification by a qualified professional engineer or the approval from the Participating State Director or approval from EPA where EPA is the permitting authority in the annual groundwater monitoring and corrective action report required by § 257.90(e).

(e) If the owner or operator of the CCR unit determines, pursuant to § 257.93(h) that there is a statistically significant increase over background levels for one or more of the constituents listed in appendix III to this part at any monitoring well at the waste

boundary specified under §257.91(a)(2), the owner or operator must:

(1) Except as provided for in paragraph (e)(2) of this section, within 90 days of detecting a statistically significant increase over background levels for any constituent, establish an assessment monitoring program meeting the requirements of §257.95.

(2) The owner or operator may demonstrate that a source other than the CCR unit caused the statistically significant increase over background levels for a constituent or that the statistically significant increase resulted from error in sampling, analysis, statistical evaluation, or natural variation in groundwater quality. The owner or operator must complete the written demonstration within 90 days of detecting a statistically significant increase over background levels to include obtaining a certification from a qualified professional engineer or approval from the Participating State Director or approval from EPA where EPA is the permitting authority verifying the accuracy of the information in the report. If a successful demonstration is completed within the 90-day period, the owner or operator of the CCR unit may continue with a detection monitoring program under this section. If a successful demonstration is not completed within the 90-day period, the owner or operator of the CCR unit must initiate an assessment monitoring program as required under §257.95. The owner or operator must also include the demonstration in the annual groundwater monitoring and corrective action report required by §257.90(e), in addition to the certification by a qualified professional engineer or approval from the Participating State Director or approval from EPA where EPA is the permitting authority.

(3) The owner or operator of a CCR unit must prepare a notification stating that an assessment monitoring program has been established. The owner or operator has completed the notification when the notification is placed in the facility's operating record as required by §257.105(h)(5).

(f) The owner or operator of the CCR unit must comply with the recordkeeping requirements specified in §257.105(h), the notification requirements specified in §257.106(h), and the Internet requirements specified in §257.107(h).

[80 FR 21468, Apr. 17, 2015, as amended at 83 FR 36453, July 30, 2018]

### §257.95 Assessment monitoring program.

(a) Assessment monitoring is required whenever a statistically significant increase over background levels has been detected for one or more of the constituents listed in appendix III to this part.

(b) Within 90 days of triggering an assessment monitoring program, and annually thereafter, the owner or operator of the CCR unit must sample and analyze the groundwater for all constituents listed in appendix IV to this part. The number of samples collected and analyzed for each well during each sampling event must be consistent with §257.93(e), and must account for any unique characteristics of the site, but must be at least one sample from each well.

(c) The owner or operator of a CCR unit may demonstrate the need for an alternative monitoring frequency for repeated sampling and analysis for constituents listed in appendix IV to this part during the active life and the post-closure care period based on the availability of groundwater. If there is not adequate groundwater flow to sample wells semiannually, the alternative frequency shall be no less than annual. The need to vary monitoring frequency must be evaluated on a site-specific basis. The demonstration must be supported by, at a minimum, the information specified in paragraphs (c)(1) and (2) of this section.

(1) Information documenting that the need for less frequent sampling. The alternative frequency must be based on consideration of the following factors:

(i) Lithology of the aquifer and unsaturated zone;

(ii) Hydraulic conductivity of the aquifer and unsaturated zone; and

(iii) Groundwater flow rates.

(2) Information documenting that the alternative frequency will be no less effective in ensuring that any leakage from the CCR unit will be discovered

within a timeframe that will not materially delay the initiation of any necessary remediation measures.

(3) The owner or operator must obtain a certification from a qualified professional engineer or approval from the Participating State Director or approval from EPA where EPA is the permitting authority stating that the demonstration for an alternative groundwater sampling and analysis frequency meets the requirements of this section. The owner or operator must include the demonstration providing the basis for the alternative monitoring frequency and the certification by a qualified professional engineer or the approval from the Participating State Director or the approval from EPA where EPA is the permitting authority in the annual groundwater monitoring and corrective action report required by § 257.90(e).

(d) After obtaining the results from the initial and subsequent sampling events required in paragraph (b) of this section, the owner or operator must:

(1) Within 90 days of obtaining the results, and on at least a semiannual basis thereafter, resample all wells that were installed pursuant to the requirements of § 257.91, conduct analyses for all parameters in appendix III to this part and for those constituents in appendix IV to this part that are detected in response to paragraph (b) of this section, and record their concentrations in the facility operating record. The number of samples collected and analyzed for each background well and downgradient well during subsequent semiannual sampling events must be consistent with § 257.93(e), and must account for any unique characteristics of the site, but must be at least one sample from each background and downgradient well;

(2) Establish groundwater protection standards for all constituents detected pursuant to paragraph (b) or (d) of this section. The groundwater protection standards must be established in accordance with paragraph (h) of this section; and

(3) Include the recorded concentrations required by paragraph (d)(1) of this section, identify the background concentrations established under § 257.94(b), and identify the groundwater protection standards established under paragraph (d)(2) of this section in the annual groundwater monitoring and corrective action report required by § 257.90(e).

(e) If the concentrations of all constituents listed in appendices III and IV to this part are shown to be at or below background values, using the statistical procedures in § 257.93(g), for two consecutive sampling events, the owner or operator may return to detection monitoring of the CCR unit. The owner or operator must prepare a notification stating that detection monitoring is resuming for the CCR unit. The owner or operator has completed the notification when the notification is placed in the facility's operating record as required by § 257.105(h)(7).

(f) If the concentrations of any constituent in appendices III and IV to this part are above background values, but all concentrations are below the groundwater protection standard established under paragraph (h) of this section, using the statistical procedures in § 257.93(g), the owner or operator must continue assessment monitoring in accordance with this section.

(g) If one or more constituents in appendix IV to this part are detected at statistically significant levels above the groundwater protection standard established under paragraph (h) of this section in any sampling event, the owner or operator must prepare a notification identifying the constituents in appendix IV to this part that have exceeded the groundwater protection standard. The owner or operator has completed the notification when the notification is placed in the facility's operating record as required by § 257.105(h)(8). The owner or operator of the CCR unit also must:

(1) Characterize the nature and extent of the release and any relevant site conditions that may affect the remedy ultimately selected. The characterization must be sufficient to support a complete and accurate assessment of the corrective measures necessary to effectively clean up all releases from the CCR unit pursuant to § 257.96. Characterization of the release includes the following minimum measures:

(i) Install additional monitoring wells necessary to define the contaminant plume(s);

(ii) Collect data on the nature and estimated quantity of material released including specific information on the constituents listed in appendix IV of this part and the levels at which they are present in the material released;

(iii) Install at least one additional monitoring well at the facility boundary in the direction of contaminant migration and sample this well in accordance with paragraph (d)(1) of this section; and

(iv) Sample all wells in accordance with paragraph (d)(1) of this section to characterize the nature and extent of the release.

(2) Notify all persons who own the land or reside on the land that directly overlies any part of the plume of contamination if contaminants have migrated off-site if indicated by sampling of wells in accordance with paragraph (g)(1) of this section. The owner or operator has completed the notifications when they are placed in the facility's operating record as required by § 257.105(h)(8).

(3) Within 90 days of finding that any of the constituents listed in appendix IV to this part have been detected at a statistically significant level exceeding the groundwater protection standards the owner or operator must either:

(i) Initiate an assessment of corrective measures as required by § 257.96; or

(ii) Demonstrate that a source other than the CCR unit caused the contamination, or that the statistically significant increase resulted from error in sampling, analysis, statistical evaluation, or natural variation in groundwater quality. Any such demonstration must be supported by a report that includes the factual or evidentiary basis for any conclusions and must be certified to be accurate by a qualified professional engineer or approval from the Participating State Director or approval from EPA where EPA is the permitting authority. If a successful demonstration is made, the owner or operator must continue monitoring in accordance with the assessment monitoring program pursuant to this section, and may return to detection monitoring if the constituents in Appendix III and Appendix IV of this part are at or below background as specified in paragraph (e) of this section. The owner or operator must also include the demonstration in the annual groundwater monitoring and corrective action report required by § 257.90(e), in addition to the certification by a qualified professional engineer or the approval from the Participating State Director or the approval from EPA where EPA is the permitting authority.

(4) If a successful demonstration has not been made at the end of the 90 day period provided by paragraph (g)(3)(ii) of this section, the owner or operator of the CCR unit must initiate the assessment of corrective measures requirements under § 257.96.

(5) The owner or operator must prepare a notification stating that an assessment of corrective measures has been initiated.

(h) The owner or operator of the CCR unit must establish a groundwater protection standard for each constituent in appendix IV to this part detected in the groundwater. The groundwater protection standard shall be:

(1) For constituents for which a maximum contaminant level (MCL) has been established under §§ 141.62 and 141.66 of this title, the MCL for that constituent;

(2) For the following constituents:

(i) Cobalt 6 micrograms per liter (μg/l);

(ii) Lead 15 μg/l;

(iii) Lithium 40 μg/l; and

(iv) Molybdenum 100 μg/l.

(3) For constituents for which the background level is higher than the levels identified under paragraphs (h)(1) and (h)(2) of this section, the background concentration.

(i) The owner or operator of the CCR unit must comply with the recordkeeping requirements specified in § 257.105(h), the notification requirements specified in § 257.106(h), and the Internet requirements specified in § 257.107(h).

[80 FR 21468, Apr. 17, 2015, as amended at 83 FR 36453, July 30, 2018; 85 FR 53561, Aug. 28, 2020]

### § 257.96 Assessment of corrective measures.

(a) Within 90 days of finding that any constituent listed in Appendix IV to this part has been detected at a statistically significant level exceeding the groundwater protection standard defined under § 257.95(h), or immediately upon detection of a release from a CCR unit, the owner or operator must initiate an assessment of corrective measures to prevent further releases, to remediate any releases and to restore affected area to original conditions. The assessment of corrective measures must be completed within 90 days, unless the owner or operator demonstrates the need for additional time to complete the assessment of corrective measures due to site-specific conditions or circumstances. The owner or operator must obtain a certification from a qualified professional engineer or approval from the Participating State Director or approval from EPA where EPA is the permitting authority attesting that the demonstration is accurate. The 90-day deadline to complete the assessment of corrective measures may be extended for no longer than 60 days. The owner or operator must also include the demonstration in the annual groundwater monitoring and corrective action report required by § 257.90(e), in addition to the certification by a qualified professional engineer or the approval from the Participating State Director or the approval from EPA where EPA is the permitting authority.

(b) The owner or operator of the CCR unit must continue to monitor groundwater in accordance with the assessment monitoring program as specified in § 257.95.

(c) The assessment under paragraph (a) of this section must include an analysis of the effectiveness of potential corrective measures in meeting all of the requirements and objectives of the remedy as described under § 257.97 addressing at least the following:

(1) The performance, reliability, ease of implementation, and potential impacts of appropriate potential remedies, including safety impacts, cross-media impacts, and control of exposure to any residual contamination;

(2) The time required to begin and complete the remedy;

(3) The institutional requirements, such as state or local permit requirements or other environmental or public health requirements that may substantially affect implementation of the remedy(s).

(d) The owner or operator must place the completed assessment of corrective measures in the facility's operating record. The assessment has been completed when it is placed in the facility's operating record as required by § 257.105(h)(10).

(e) The owner or operator must discuss the results of the corrective measures assessment at least 30 days prior to the selection of remedy, in a public meeting with interested and affected parties.

(f) The owner or operator of the CCR unit must comply with the recordkeeping requirements specified in § 257.105(h), the notification requirements specified in § 257.106(h), and the Internet requirements specified in § 257.107(h).

[80 FR 21468, Apr. 17, 2015, as amended at 83 FR 36454, July 30, 2018]

### § 257.97 Selection of remedy.

(a) Based on the results of the corrective measures assessment conducted under § 257.96, the owner or operator must, as soon as feasible, select a remedy that, at a minimum, meets the standards listed in paragraph (b) of this section. This requirement applies in addition to, not in place of, any applicable standards under the Occupational Safety and Health Act. The owner or operator must prepare a semiannual report describing the progress in selecting and designing the remedy. Upon selection of a remedy, the owner or operator must prepare a final report describing the selected remedy and how it meets the standards specified in paragraph (b) of this section. The owner or operator must obtain a certification from a qualified professional engineer or approval from the Participating State Director or approval from EPA where EPA is the permitting authority that the remedy selected meets the requirements of this section. The report has been completed when it is

placed in the operating record as required by § 257.105(h)(12).

(b) Remedies must:

(1) Be protective of human health and the environment;

(2) Attain the groundwater protection standard as specified pursuant to § 257.95(h);

(3) Control the source(s) of releases so as to reduce or eliminate, to the maximum extent feasible, further releases of constituents in appendix IV to this part into the environment;

(4) Remove from the environment as much of the contaminated material that was released from the CCR unit as is feasible, taking into account factors such as avoiding inappropriate disturbance of sensitive ecosystems;

(5) Comply with standards for management of wastes as specified in § 257.98(d).

(c) In selecting a remedy that meets the standards of paragraph (b) of this section, the owner or operator of the CCR unit shall consider the following evaluation factors:

(1) The long- and short-term effectiveness and protectiveness of the potential remedy(s), along with the degree of certainty that the remedy will prove successful based on consideration of the following:

(i) Magnitude of reduction of existing risks;

(ii) Magnitude of residual risks in terms of likelihood of further releases due to CCR remaining following implementation of a remedy;

(iii) The type and degree of long-term management required, including monitoring, operation, and maintenance;

(iv) Short-term risks that might be posed to the community or the environment during implementation of such a remedy, including potential threats to human health and the environment associated with excavation, transportation, and re-disposal of contaminant;

(v) Time until full protection is achieved;

(vi) Potential for exposure of humans and environmental receptors to remaining wastes, considering the potential threat to human health and the environment associated with excavation, transportation, re-disposal, or containment;

(vii) Long-term reliability of the engineering and institutional controls; and

(viii) Potential need for replacement of the remedy.

(2) The effectiveness of the remedy in controlling the source to reduce further releases based on consideration of the following factors:

(i) The extent to which containment practices will reduce further releases; and

(ii) The extent to which treatment technologies may be used.

(3) The ease or difficulty of implementing a potential remedy(s) based on consideration of the following types of factors:

(i) Degree of difficulty associated with constructing the technology;

(ii) Expected operational reliability of the technologies;

(iii) Need to coordinate with and obtain necessary approvals and permits from other agencies;

(iv) Availability of necessary equipment and specialists; and

(v) Available capacity and location of needed treatment, storage, and disposal services.

(4) The degree to which community concerns are addressed by a potential remedy(s).

(d) The owner or operator must specify as part of the selected remedy a schedule(s) for implementing and completing remedial activities. Such a schedule must require the completion of remedial activities within a reasonable period of time taking into consideration the factors set forth in paragraphs (d)(1) through (6) of this section. The owner or operator of the CCR unit must consider the following factors in determining the schedule of remedial activities:

(1) Extent and nature of contamination, as determined by the characterization required under § 257.95(g);

(2) Reasonable probabilities of remedial technologies in achieving compliance with the groundwater protection standards established under § 257.95(h) and other objectives of the remedy;

(3) Availability of treatment or disposal capacity for CCR managed during implementation of the remedy;

(4) Potential risks to human health and the environment from exposure to

contamination prior to completion of the remedy;

(5) Resource value of the aquifer including:

(i) Current and future uses;

(ii) Proximity and withdrawal rate of users;

(iii) Groundwater quantity and quality;

(iv) The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to CCR constituents;

(v) The hydrogeologic characteristic of the facility and surrounding land; and

(vi) The availability of alternative water supplies; and

(6) Other relevant factors.

(e) The owner or operator of the CCR unit must comply with the recordkeeping requirements specified in § 257.105(h), the notification requirements specified in § 257.106(h), and the Internet requirements specified in § 257.107(h).

[80 FR 21468, Apr. 17, 2015, as amended at 83 FR 36454, July 30, 2018]

### § 257.98 Implementation of the corrective action program.

(a) Within 90 days of selecting a remedy under § 257.97, the owner or operator must initiate remedial activities. Based on the schedule established under § 257.97(d) for implementation and completion of remedial activities the owner or operator must:

(1) Establish and implement a corrective action groundwater monitoring program that:

(i) At a minimum, meets the requirements of an assessment monitoring program under § 257.95;

(ii) Documents the effectiveness of the corrective action remedy; and

(iii) Demonstrates compliance with the groundwater protection standard pursuant to paragraph (c) of this section.

(2) Implement the corrective action remedy selected under § 257.97; and

(3) Take any interim measures necessary to reduce the contaminants leaching from the CCR unit, and/or potential exposures to human or ecological receptors. Interim measures must, to the greatest extent feasible, be consistent with the objectives of and contribute to the performance of any remedy that may be required pursuant to § 257.97. The following factors must be considered by an owner or operator in determining whether interim measures are necessary:

(i) Time required to develop and implement a final remedy;

(ii) Actual or potential exposure of nearby populations or environmental receptors to any of the constituents listed in appendix IV of this part;

(iii) Actual or potential contamination of drinking water supplies or sensitive ecosystems;

(iv) Further degradation of the groundwater that may occur if remedial action is not initiated expeditiously;

(v) Weather conditions that may cause any of the constituents listed in appendix IV to this part to migrate or be released;

(vi) Potential for exposure to any of the constituents listed in appendix IV to this part as a result of an accident or failure of a container or handling system; and

(vii) Other situations that may pose threats to human health and the environment.

(b) If an owner or operator of the CCR unit, determines, at any time, that compliance with the requirements of § 257.97(b) is not being achieved through the remedy selected, the owner or operator must implement other methods or techniques that could feasibly achieve compliance with the requirements.

(c) Remedies selected pursuant to § 257.97 shall be considered complete when:

(1) The owner or operator of the CCR unit demonstrates compliance with the groundwater protection standards established under § 257.95(h) has been achieved at all points within the plume of contamination that lie beyond the groundwater monitoring well system established under § 257.91.

(2) Compliance with the groundwater protection standards established under § 257.95(h) has been achieved by demonstrating that concentrations of constituents listed in appendix IV to this part have not exceeded the groundwater protection standard(s) for a period of three consecutive years using

the statistical procedures and performance standards in § 257.93(f) and (g).

(3) All actions required to complete the remedy have been satisfied.

(d) All CCR that are managed pursuant to a remedy required under § 257.97, or an interim measure required under paragraph (a)(3) of this section, shall be managed in a manner that complies with all applicable RCRA requirements.

(e) Upon completion of the remedy, the owner or operator must prepare a notification stating that the remedy has been completed. The owner or operator must obtain a certification from a qualified professional engineer or approval from the Participating State Director or approval from EPA where EPA is the permitting authority attesting that the remedy has been completed in compliance with the requirements of paragraph (c) of this section. The report has been completed when it is placed in the operating record as required by § 257.105(h)(13).

(f) The owner or operator of the CCR unit must comply with the recordkeeping requirements specified in § 257.105(h), the notification requirements specified in § 257.106(h), and the internet requirements specified in § 257.107(h).

[80 FR 21468, Apr. 17, 2015, as amended at 83 FR 36454, July 30, 2018]

CLOSURE AND POST-CLOSURE CARE

### § 257.100 Inactive CCR surface impoundments.

(a) Inactive CCR surface impoundments are subject to all of the requirements of this subpart applicable to existing CCR surface impoundments.

(b)–(d) [Reserved]

(e) *Timeframes for certain inactive CCR surface impoundments.* (1) An inactive CCR surface impoundment for which the owner or operator has completed the actions by the deadlines specified in paragraphs (e)(1)(i) through (iii) of this section is eligible for the alternative timeframes specified in paragraphs (e)(2) through (6) of this section. The owner or operator of the CCR unit must comply with the applicable recordkeeping, notification, and internet requirements associated with these provisions. For the inactive CCR surface impoundment:

(i) The owner or operator must have prepared and placed in the facility's operating record by December 17, 2015, a notification of intent to initiate closure of the inactive CCR surface impoundment pursuant to § 257.105(i)(1);

(ii) The owner or operator must have provided notification to the State Director and/or appropriate Tribal authority by January 19, 2016, of the intent to initiate closure of the inactive CCR surface impoundment pursuant to § 257.106(i)(1); and

(iii) The owner or operator must have placed on its CCR Web site by January 19, 2016, the notification of intent to initiate closure of the inactive CCR surface impoundment pursuant to § 257.107(i)(1).

(2) *Location restrictions.* (i) No later than April 16, 2020, the owner or operator of the inactive CCR surface impoundment must:

(A) Complete the demonstration for placement above the uppermost aquifer as set forth by § 257.60(a), (b), and (c)(3);

(B) Complete the demonstration for wetlands as set forth by § 257.61(a), (b), and (c)(3);

(C) Complete the demonstration for fault areas as set forth by § 257.62(a), (b), and (c)(3);

(D) Complete the demonstration for seismic impact zones as set forth by § 257.63(a), (b), and (c)(3); and

(E) Complete the demonstration for unstable areas as set forth by § 257.64(a), (b), (c), and (d)(3).

(ii) An owner or operator of an inactive CCR surface impoundment who fails to demonstrate compliance with the requirements of paragraph (e)(2)(i) of this section is subject to the closure requirements of § 257.101(b)(1).

(3) *Design criteria.* The owner or operator of the inactive CCR surface impoundment must:

(i) No later than April 17, 2018, complete the documentation of liner type as set forth by § 257.71(a) and (b).

(ii) No later than June 16, 2017, place on or immediately adjacent to the CCR unit the permanent identification marker as set forth by § 257.73(a)(1).

(iii) No later than October 16, 2018, prepare and maintain an Emergency

Action Plan as set forth by § 257.73(a)(3).

(iv) No later than April 17, 2018, compile a history of construction as set forth by § 257.73(b) and (c).

(v) No later than April 17, 2018, complete the initial hazard potential classification, structural stability, and safety factor assessments as set forth by § 257.73(a)(2), (b), (d), (e), and (f).

(4) *Operating criteria.* The owner or operator of the inactive CCR surface impoundment must:

(i) No later than April 18, 2017, prepare the initial CCR fugitive dust control plan as set forth in § 257.80(b).

(ii) No later than April 17, 2018, prepare the initial inflow design flood control system plan as set forth in § 257.82(c).

(iii) No later than April 18, 2017, initiate the inspections by a qualified person as set forth by § 257.83(a).

(iv) No later than July 19, 2017, complete the initial annual inspection by a qualified professional engineer as set forth by § 257.83(b).

(5) *Groundwater monitoring and corrective action.* The owner or operator of the inactive CCR surface impoundment must:

(i) No later than April 17, 2019, comply with groundwater monitoring requirements set forth in §§ 257.90(b) and 257.94(b); and

(ii) No later than August 1, 2019, prepare the initial groundwater monitoring and corrective action report as set forth in § 257.90(e).

(6) *Closure and post-closure care.* The owner or operator of the inactive CCR surface impoundment must:

(i) No later than April 17, 2018, prepare an initial written closure plan as set forth in § 257.102(b); and

(ii) No later than April 17, 2018, prepare an initial written post-closure care plan as set forth in § 257.104(d).

[80 FR 21468, Apr. 17, 2015, as amended at 81 FR 51807, Aug. 5, 2016]

### § 257.101 Closure or retrofit of CCR units.

(a) The owner or operator of an existing unlined CCR surface impoundment, as determined under § 257.71(a), is subject to the requirements of paragraph (a)(1) of this section.

(1) Except as provided by paragraph (a)(3) of this section, as soon as technically feasible, but not later than April 11, 2021, an owner or operator of an existing unlined CCR surface impoundment must cease placing CCR and non-CCR wastestreams into such CCR surface impoundment and either retrofit or close the CCR unit in accordance with the requirements of § 257.102.

(2) An owner or operator of an existing unlined CCR surface impoundment that closes in accordance with paragraph (a)(1) of this section must include a statement in the notification required under § 257.102(g) or (k)(5) that the CCR surface impoundment is closing or retrofitting under the requirements of paragraph (a)(1) of this section.

(3) The timeframe specified in paragraph (a)(1) of this section does not apply if the owner or operator complies with the alternate liner demonstration provisions specified in § 257.71(d) or the alternative closure procedures specified in § 257.103.

(4) At any time after the initiation of closure under paragraph (a)(1) of this section, the owner or operator may cease closure activities and initiate a retrofit of the CCR unit in accordance with the requirements of § 257.102(k).

(b) The owner or operator of an existing CCR surface impoundment is subject to the requirements of paragraph (b)(1) of this section.

(1)(i) *Location standard under § 257.60.* Except as provided by paragraph (b)(4) of this section, the owner or operator of an existing CCR surface impoundment that has not demonstrated compliance with the location standard specified in § 257.60(a) must cease placing CCR and non-CCR wastestreams into such CCR unit as soon as technically feasible, but no later than April 11, 2021, and close the CCR unit in accordance with the requirements of § 257.102.

(ii) *Location standards under §§ 257.61 through 257.64.* Except as provided by paragraph (b)(4) of this section, within six months of determining that an existing CCR surface impoundment has not demonstrated compliance with any location standard specified in §§ 257.61(a), 257.62(a), 257.63(a), and

257.64(a), the owner or operator of the CCR surface impoundment must cease placing CCR and non-CCR wastestreams into such CCR unit and close the CCR unit in accordance with the requirements of §257.102.

(2) Within six months of either failing to complete the initial or any subsequent periodic safety factor assessment required by §257.73(e) by the deadlines specified in §257.73(f)(1) through (3) or failing to document that the calculated factors of safety for the existing CCR surface impoundment achieve the minimum safety factors specified in §257.73(e)(1)(i) through (iv), the owner or operator of the CCR surface impoundment must cease placing CCR and non-CCR wastestreams into such CCR unit and close the CCR unit in accordance with the requirements of §257.102.

(3) An owner or operator of an existing CCR surface impoundment that closes in accordance with paragraphs (b)(1) or (2) of this section must include a statement in the notification required under §257.102(g) that the CCR surface impoundment is closing under the requirements of paragraphs (b)(1) or (2) of this section.

(4) The timeframe specified in paragraph (b)(1) of this section does not apply if the owner or operator complies with the alternative closure procedures specified in §257.103.

(c) The owner or operator of a new CCR surface impoundment is subject to the requirements of paragraph (c)(1) of this section.

(1) Within six months of either failing to complete the initial or any subsequent periodic safety factor assessment required by §257.74(e) by the deadlines specified in §257.74(f)(1) through (3) or failing to document that the calculated factors of safety for the new CCR surface impoundment achieve the minimum safety factors specified in §257.74(e)(1)(i) through (v), the owner or operator of the CCR surface impoundment must cease placing CCR and non-CCR wastestreams into such CCR unit and close the CCR unit in accordance with the requirements of §257.102.

(2) An owner or operator of an new CCR surface impoundment that closes in accordance with paragraph (c)(1) of this section must include a statement in the notification required under §257.102(g) that the CCR surface impoundment is closing under the requirements of paragraph (c)(1) of this section.

(d) The owner or operator of an existing CCR landfill is subject to the requirements of paragraph (d)(1) of this section.

(1) Except as provided by paragraph (d)(3) of this section, within six months of determining that an existing CCR landfill has not demonstrated compliance with the location restriction for unstable areas specified in §257.64(a), the owner or operator of the CCR unit must cease placing CCR and non-CCR waste streams into such CCR landfill and close the CCR unit in accordance with the requirements of §257.102.

(2) An owner or operator of an existing CCR landfill that closes in accordance with paragraph (d)(1) of this section must include a statement in the notification required under §257.102(g) that the CCR landfill is closing under the requirements of paragraph (d)(1) of this section.

(3) The timeframe specified in paragraph (d)(1) of this section does not apply if the owner or operator complies with the alternative closure procedures specified in §257.103.

[80 FR 21468, Apr. 17, 2015, as amended at 83 FR 36454, July 30, 2018; 85 FR 53561, Aug. 28, 2020; 85 FR 72542, Nov. 12, 2020]

### §257.102 Criteria for conducting the closure or retrofit of CCR units.

(a) Closure of a CCR landfill, CCR surface impoundment, or any lateral expansion of a CCR unit must be completed either by leaving the CCR in place and installing a final cover system or through removal of the CCR and decontamination of the CCR unit, as described in paragraphs (b) through (j) of this section. Retrofit of a CCR surface impoundment must be completed in accordance with the requirements in paragraph (k) of this section.

(b) *Written closure plan*—(1) *Content of the plan.* The owner or operator of a CCR unit must prepare a written closure plan that describes the steps necessary to close the CCR unit at any point during the active life of the CCR unit consistent with recognized and

generally accepted good engineering practices. The written closure plan must include, at a minimum, the information specified in paragraphs (b)(1)(i) through (vi) of this section.

(i) A narrative description of how the CCR unit will be closed in accordance with this section.

(ii) If closure of the CCR unit will be accomplished through removal of CCR from the CCR unit, a description of the procedures to remove the CCR and decontaminate the CCR unit in accordance with paragraph (c) of this section.

(iii) If closure of the CCR unit will be accomplished by leaving CCR in place, a description of the final cover system, designed in accordance with paragraph (d) of this section, and the methods and procedures to be used to install the final cover. The closure plan must also discuss how the final cover system will achieve the performance standards specified in paragraph (d) of this section.

(iv) An estimate of the maximum inventory of CCR ever on-site over the active life of the CCR unit.

(v) An estimate of the largest area of the CCR unit ever requiring a final cover as required by paragraph (d) of this section at any time during the CCR unit's active life.

(vi) A schedule for completing all activities necessary to satisfy the closure criteria in this section, including an estimate of the year in which all closure activities for the CCR unit will be completed. The schedule should provide sufficient information to describe the sequential steps that will be taken to close the CCR unit, including identification of major milestones such as coordinating with and obtaining necessary approvals and permits from other agencies, the dewatering and stabilization phases of CCR surface impoundment closure, or installation of the final cover system, and the estimated timeframes to complete each step or phase of CCR unit closure. When preparing the written closure plan, if the owner or operator of a CCR unit estimates that the time required to complete closure will exceed the timeframes specified in paragraph (f)(1) of this section, the written closure plan must include the site-specific information, factors and considerations that would support any time extension sought under paragraph (f)(2) of this section.

(2) *Timeframes for preparing the initial written closure plan*—(i) *Existing CCR landfills and existing CCR surface impoundments.* No later than October 17, 2016, the owner or operator of the CCR unit must prepare an initial written closure plan consistent with the requirements specified in paragraph (b)(1) of this section.

(ii) *New CCR landfills and new CCR surface impoundments, and any lateral expansion of a CCR unit.* No later than the date of the initial receipt of CCR in the CCR unit, the owner or operator must prepare an initial written closure plan consistent with the requirements specified in paragraph (b)(1) of this section.

(iii) The owner or operator has completed the written closure plan when the plan, including the certification required by paragraph (b)(4) of this section, has been placed in the facility's operating record as required by § 257.105(i)(4).

(3) *Amendment of a written closure plan.* (i) The owner or operator may amend the initial or any subsequent written closure plan developed pursuant to paragraph (b)(1) of this section at any time.

(ii) The owner or operator must amend the written closure plan whenever:

(A) There is a change in the operation of the CCR unit that would substantially affect the written closure plan in effect; or

(B) Before or after closure activities have commenced, unanticipated events necessitate a revision of the written closure plan.

(iii) The owner or operator must amend the closure plan at least 60 days prior to a planned change in the operation of the facility or CCR unit, or no later than 60 days after an unanticipated event requires the need to revise an existing written closure plan. If a written closure plan is revised after closure activities have commenced for a CCR unit, the owner or operator must amend the current closure plan no later than 30 days following the triggering event.

(4) The owner or operator of the CCR unit must obtain a written certification from a qualified professional engineer or approval from the Participating State Director or approval from EPA where EPA is the permitting authority that the initial and any amendment of the written closure plan meets the requirements of this section.

(c) *Closure by removal of CCR.* An owner or operator may elect to close a CCR unit by removing and decontaminating all areas affected by releases from the CCR unit. CCR removal and decontamination of the CCR unit are complete when constituent concentrations throughout the CCR unit and any areas affected by releases from the CCR unit have been removed and groundwater monitoring concentrations do not exceed the groundwater protection standard established pursuant to § 257.95(h) for constituents listed in appendix IV to this part.

(d) *Closure performance standard when leaving CCR in place*—(1) The owner or operator of a CCR unit must ensure that, at a minimum, the CCR unit is closed in a manner that will:

(i) Control, minimize or eliminate, to the maximum extent feasible, post-closure infiltration of liquids into the waste and releases of CCR, leachate, or contaminated run-off to the ground or surface waters or to the atmosphere;

(ii) Preclude the probability of future impoundment of water, sediment, or slurry;

(iii) Include measures that provide for major slope stability to prevent the sloughing or movement of the final cover system during the closure and post-closure care period;

(iv) Minimize the need for further maintenance of the CCR unit; and

(v) Be completed in the shortest amount of time consistent with recognized and generally accepted good engineering practices.

(2) *Drainage and stabilization of CCR surface impoundments.* The owner or operator of a CCR surface impoundment or any lateral expansion of a CCR surface impoundment must meet the requirements of paragraphs (d)(2)(i) and (ii) of this section prior to installing the final cover system required under paragraph (d)(3) of this section.

(i) Free liquids must be eliminated by removing liquid wastes or solidifying the remaining wastes and waste residues.

(ii) Remaining wastes must be stabilized sufficient to support the final cover system.

(3) *Final cover system.* If a CCR unit is closed by leaving CCR in place, the owner or operator must install a final cover system that is designed to minimize infiltration and erosion, and at a minimum, meets the requirements of paragraph (d)(3)(i) of this section, or the requirements of the alternative final cover system specified in paragraph (d)(3)(ii) of this section.

(i) The final cover system must be designed and constructed to meet the criteria in paragraphs (d)(3)(i)(A) through (D) of this section. The design of the final cover system must be included in the written closure plan required by paragraph (b) of this section.

(A) The permeability of the final cover system must be less than or equal to the permeability of any bottom liner system or natural subsoils present, or a permeability no greater than $1 \times 10^{-5}$ cm/sec, whichever is less.

(B) The infiltration of liquids through the closed CCR unit must be minimized by the use of an infiltration layer that contains a minimum of 18 inches of earthen material.

(C) The erosion of the final cover system must be minimized by the use of an erosion layer that contains a minimum of six inches of earthen material that is capable of sustaining native plant growth.

(D) The disruption of the integrity of the final cover system must be minimized through a design that accommodates settling and subsidence.

(ii) The owner or operator may select an alternative final cover system design, provided the alternative final cover system is designed and constructed to meet the criteria in paragraphs (d)(3)(ii)(A) through (C) of this section. The design of the final cover system must be included in the written closure plan required by paragraph (b) of this section.

(A) The design of the final cover system must include an infiltration layer that achieves an equivalent reduction in infiltration as the infiltration layer

specified in paragraphs (d)(3)(i)(A) and (B) of this section.

(B) The design of the final cover system must include an erosion layer that provides equivalent protection from wind or water erosion as the erosion layer specified in paragraph (d)(3)(i)(C) of this section.

(C) The disruption of the integrity of the final cover system must be minimized through a design that accommodates settling and subsidence.

(iii) The owner or operator of the CCR unit must obtain a written certification from a qualified professional engineer or approval from the Participating State Director or approval from EPA where EPA is the permitting authority that the design of the final cover system meets the requirements of this section.

(e) *Initiation of closure activities.* Except as provided for in paragraph (e)(4) of this section and § 257.103, the owner or operator of a CCR unit must commence closure of the CCR unit no later than the applicable timeframes specified in either paragraph (e)(1) or (2) of this section.

(1) The owner or operator must commence closure of the CCR unit no later than 30 days after the date on which the CCR unit either:

(i) Receives the known final receipt of waste, either CCR or any non-CCR waste stream; or

(ii) Removes the known final volume of CCR from the CCR unit for the purpose of beneficial use of CCR.

(2)(i) Except as provided by paragraph (e)(2)(ii) of this section, the owner or operator must commence closure of a CCR unit that has not received CCR or any non-CCR waste stream or is no longer removing CCR for the purpose of beneficial use within two years of the last receipt of waste or within two years of the last removal of CCR material for the purpose of beneficial use.

(ii) Notwithstanding paragraph (e)(2)(i) of this section, the owner or operator of the CCR unit may secure an additional two years to initiate closure of the idle unit provided the owner or operator provides written documentation that the CCR unit will continue to accept wastes or will start removing CCR for the purpose of beneficial use. The documentation must be supported by, at a minimum, the information specified in paragraphs (e)(2)(ii)(A) and (B) of this section. The owner or operator may obtain two-year extensions provided the owner or operator continues to be able to demonstrate that there is reasonable likelihood that the CCR unit will accept wastes in the foreseeable future or will remove CCR from the unit for the purpose of beneficial use. The owner or operator must place each completed demonstration, if more than one time extension is sought, in the facility's operating record as required by § 257.105(i)(5) prior to the end of any two-year period.

(A) Information documenting that the CCR unit has remaining storage or disposal capacity or that the CCR unit can have CCR removed for the purpose of beneficial use; and

(B) Information demonstrating that that there is a reasonable likelihood that the CCR unit will resume receiving CCR or non-CCR waste streams in the foreseeable future or that CCR can be removed for the purpose of beneficial use. The narrative must include a best estimate as to when the CCR unit will resume receiving CCR or non-CCR waste streams. The situations listed in paragraphs (e)(2)(ii)(B)(*1*) through (*4*) of this section are examples of situations that would support a determination that the CCR unit will resume receiving CCR or non-CCR waste streams in the foreseeable future.

(*1*) Normal plant operations include periods during which the CCR unit does not receive CCR or non-CCR waste streams, such as the alternating use of two or more CCR units whereby at any point in time one CCR unit is receiving CCR while CCR is being removed from a second CCR unit after its dewatering.

(*2*) The CCR unit is dedicated to a coal-fired boiler unit that is temporarily idled (e.g., CCR is not being generated) and there is a reasonable likelihood that the coal-fired boiler will resume operations in the future.

(*3*) The CCR unit is dedicated to an operating coal-fired boiler (*i.e.*, CCR is being generated); however, no CCR are being placed in the CCR unit because the CCR are being entirely diverted to

beneficial uses, but there is a reasonable likelihood that the CCR unit will again be used in the foreseeable future.

(*4*) The CCR unit currently receives only non-CCR waste streams and those non-CCR waste streams are not generated for an extended period of time, but there is a reasonable likelihood that the CCR unit will again receive non-CCR waste streams in the future.

(iii) In order to obtain additional time extension(s) to initiate closure of a CCR unit beyond the two years provided by paragraph (e)(2)(i) of this section, the owner or operator of the CCR unit must include with the demonstration required by paragraph (e)(2)(ii) of this section the following statement signed by the owner or operator or an authorized representative:

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this demonstration and all attached documents, and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

(3) For purposes of this subpart, closure of the CCR unit has commenced if the owner or operator has ceased placing waste and completes any of the following actions or activities:

(i) Taken any steps necessary to implement the written closure plan required by paragraph (b) of this section;

(ii) Submitted a completed application for any required state or agency permit or permit modification; or

(iii) Taken any steps necessary to comply with any state or other agency standards that are a prerequisite, or are otherwise applicable, to initiating or completing the closure of a CCR unit.

(4) The timeframes specified in paragraphs (e)(1) and (2) of this section do not apply to any of the following owners or operators:

(i) [Reserved]

(ii) An owner or operator of an existing unlined CCR surface impoundment closing the CCR unit as required by §257.101(a);

(iii) An owner or operator of an existing CCR surface impoundment closing the CCR unit as required by §257.101(b);

(iv) An owner or operator of a new CCR surface impoundment closing the CCR unit as required by §257.101(c); or

(v) An owner or operator of an existing CCR landfill closing the CCR unit as required by §257.101(d).

(f) *Completion of closure activities.* (1) Except as provided for in paragraph (f)(2) of this section, the owner or operator must complete closure of the CCR unit:

(i) For existing and new CCR landfills and any lateral expansion of a CCR landfill, within six months of commencing closure activities.

(ii) For existing and new CCR surface impoundments and any lateral expansion of a CCR surface impoundment, within five years of commencing closure activities.

(2)(i) *Extensions of closure timeframes.* The timeframes for completing closure of a CCR unit specified under paragraphs (f)(1) of this section may be extended if the owner or operator can demonstrate that it was not feasible to complete closure of the CCR unit within the required timeframes due to factors beyond the facility's control. If the owner or operator is seeking a time extension beyond the time specified in the written closure plan as required by paragraph (b)(1) of this section, the demonstration must include a narrative discussion providing the basis for additional time beyond that specified in the closure plan. The owner or operator must place each completed demonstration, if more than one time extension is sought, in the facility's operating record as required by §257.105(i)(6) prior to the end of any two-year period. Factors that may support such a demonstration include:

(A) Complications stemming from the climate and weather, such as unusual amounts of precipitation or a significantly shortened construction season;

(B) Time required to dewater a surface impoundment due to the volume of CCR contained in the CCR unit or the characteristics of the CCR in the unit;

(C) The geology and terrain surrounding the CCR unit will affect the

amount of material needed to close the CCR unit; or

(D) Time required or delays caused by the need to coordinate with and obtain necessary approvals and permits from a state or other agency.

(ii) *Maximum time extensions.* (A) CCR surface impoundments of 40 acres or smaller may extend the time to complete closure by no longer than two years.

(B) CCR surface impoundments larger than 40 acres may extend the timeframe to complete closure of the CCR unit multiple times, in two-year increments. For each two-year extension sought, the owner or operator must substantiate the factual circumstances demonstrating the need for the extension. No more than a total of five two-year extensions may be obtained for any CCR surface impoundment.

(C) CCR landfills may extend the timeframe to complete closure of the CCR unit multiple times, in one-year increments. For each one-year extension sought, the owner or operator must substantiate the factual circumstances demonstrating the need for the extension. No more than a total of two one-year extensions may be obtained for any CCR landfill.

(iii) In order to obtain additional time extension(s) to complete closure of a CCR unit beyond the times provided by paragraph (f)(1) of this section, the owner or operator of the CCR unit must include with the demonstration required by paragraph (f)(2)(i) of this section the following statement signed by the owner or operator or an authorized representative:

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this demonstration and all attached documents, and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

(3) Upon completion, the owner or operator of the CCR unit must obtain a certification from a qualified professional engineer or approval from the Participating State Director or approval from EPA where EPA is the permitting authority verifying that closure has been completed in accordance with the closure plan specified in paragraph (b) of this section and the requirements of this section.

(g) No later than the date the owner or operator initiates closure of a CCR unit, the owner or operator must prepare a notification of intent to close a CCR unit. The notification must include the certification by a qualified professional engineer or the approval from the Participating State Director or the approval from EPA where EPA is the permitting authority for the design of the final cover system as required by § 257.102(d)(3)(iii), if applicable. The owner or operator has completed the notification when it has been placed in the facility's operating record as required by § 257.105(i)(7).

(h) Within 30 days of completion of closure of the CCR unit, the owner or operator must prepare a notification of closure of a CCR unit. The notification must include the certification by a qualified professional engineer or the approval from the Participating State Director or the approval from EPA where EPA is the permitting authority as required by § 257.102(f)(3). The owner or operator has completed the notification when it has been placed in the facility's operating record as required by § 257.105(i)(8).

(i) *Deed notations.* (1) Except as provided by paragraph (i)(4) of this section, following closure of a CCR unit, the owner or operator must record a notation on the deed to the property, or some other instrument that is normally examined during title search.

(2) The notation on the deed must in perpetuity notify any potential purchaser of the property that:

(i) The land has been used as a CCR unit; and

(ii) Its use is restricted under the post-closure care requirements as provided by § 257.104(d)(1)(iii).

(3) Within 30 days of recording a notation on the deed to the property, the owner or operator must prepare a notification stating that the notation has been recorded. The owner or operator has completed the notification when it has been placed in the facility's operating record as required by § 257.105(i)(9).

(4) An owner or operator that closes a CCR unit in accordance with paragraph (c) of this section is not subject to the requirements of paragraphs (i)(1) through (3) of this section.

(j) The owner or operator of the CCR unit must comply with the closure recordkeeping requirements specified in § 257.105(i), the closure notification requirements specified in § 257.106(i), and the closure Internet requirements specified in § 257.107(i).

(k) *Criteria to retrofit an existing CCR surface impoundment.* (1) To retrofit an existing CCR surface impoundment, the owner or operator must:

(i) First remove all CCR, including any contaminated soils and sediments from the CCR unit; and

(ii) Comply with the requirements in § 257.72.

(iii) A CCR surface impoundment undergoing a retrofit remains subject to all other requirements of this subpart, including the requirement to conduct any necessary corrective action.

(2) *Written retrofit plan*—(i) *Content of the plan.* The owner or operator must prepare a written retrofit plan that describes the steps necessary to retrofit the CCR unit consistent with recognized and generally accepted good engineering practices. The written retrofit plan must include, at a minimum, all of the following information:

(A) A narrative description of the specific measures that will be taken to retrofit the CCR unit in accordance with this section.

(B) A description of the procedures to remove all CCR and contaminated soils and sediments from the CCR unit.

(C) An estimate of the maximum amount of CCR that will be removed as part of the retrofit operation.

(D) An estimate of the largest area of the CCR unit that will be affected by the retrofit operation.

(E) A schedule for completing all activities necessary to satisfy the retrofit criteria in this section, including an estimate of the year in which retrofit activities of the CCR unit will be completed.

(ii) *Timeframes for preparing the initial written retrofit plan.* (A) No later than 60 days prior to date of initiating retrofit activities, the owner or operator must prepare an initial written retrofit plan consistent with the requirements specified in paragraph (k)(2) of this section. For purposes of this subpart, initiation of retrofit activities has commenced if the owner or operator has ceased placing waste in the unit and completes any of the following actions or activities:

(*1*) Taken any steps necessary to implement the written retrofit plan;

(*2*) Submitted a completed application for any required state or agency permit or permit modification; or

(*3*) Taken any steps necessary to comply with any state or other agency standards that are a prerequisite, or are otherwise applicable, to initiating or completing the retrofit of a CCR unit.

(B) The owner or operator has completed the written retrofit plan when the plan, including the certification required by paragraph (k)(2)(iv) of this section, has been placed in the facility's operating record as required by § 257.105(j)(1).

(iii) *Amendment of a written retrofit plan.* (A) The owner or operator may amend the initial or any subsequent written retrofit plan at any time.

(B) The owner or operator must amend the written retrofit plan whenever:

(*1*) There is a change in the operation of the CCR unit that would substantially affect the written retrofit plan in effect; or

(*2*) Before or after retrofit activities have commenced, unanticipated events necessitate a revision of the written retrofit plan.

(C) The owner or operator must amend the retrofit plan at least 60 days prior to a planned change in the operation of the facility or CCR unit, or no later than 60 days after an unanticipated event requires the revision of an existing written retrofit plan. If a written retrofit plan is revised after retrofit activities have commenced for a CCR unit, the owner or operator must amend the current retrofit plan no later than 30 days following the triggering event.

(iv) The owner or operator of the CCR unit must obtain a written certification from a qualified professional engineer or an approval from the Participating State Director or an approval

from EPA where EPA is the permitting authority that the activities outlined in the written retrofit plan, including any amendment of the plan, meet the requirements of this section.

(3) *Deadline for completion of activities related to the retrofit of a CCR unit.* Any CCR surface impoundment that is being retrofitted must complete all retrofit activities within the same time frames and procedures specified for the closure of a CCR surface impoundment in § 257.102(f) or, where applicable, § 257.103.

(4) Upon completion, the owner or operator must obtain a written certification from a qualified professional engineer or an approval from the Participating State Director or an approval from EPA where EPA is the permitting authority verifying that the retrofit activities have been completed in accordance with the retrofit plan specified in paragraph (k)(2) of this section and the requirements of this section.

(5) No later than the date the owner or operator initiates the retrofit of a CCR unit, the owner or operator must prepare a notification of intent to retrofit a CCR unit. The owner or operator has completed the notification when it has been placed in the facility's operating record as required by § 257.105(j)(5).

(6) Within 30 days of completing the retrofit activities specified in paragraph (k)(1) of this section, the owner or operator must prepare a notification of completion of retrofit activities. The notification must include the certification from a qualified professional engineer or an approval from the Participating State Director or an approval from EPA where EPA is the permitting authority has is required by paragraph (k)(4) of this section. The owner or operator has completed the notification when it has been placed in the facility's operating record as required by § 257.105(j)(6).

(7) At any time after the initiation of a CCR unit retrofit, the owner or operator may cease the retrofit and initiate closure of the CCR unit in accordance with the requirements of § 257.102.

(8) The owner or operator of the CCR unit must comply with the retrofit recordkeeping requirements specified in § 257.105(j), the retrofit notification requirements specified in § 257.106(j), and the retrofit Internet requirements specified in § 257.107(j).

[80 FR 21468, Apr. 17, 2015, as amended at 81 FR 51808, Aug. 5, 2016; 83 FR 36455, July 30, 2018; 85 FR 72542, Nov. 12, 2020]

### § 257.103 Alternative closure requirements.

The owner or operator of a CCR landfill, CCR surface impoundment, or any lateral expansion of a CCR unit that is subject to closure pursuant to § 257.101(a), (b)(1), or (d) may nevertheless continue to receive the wastes specified in either paragraph (a), (b), (f)(1), or (f)(2) of this section in the unit provided the owner or operator meets all of the requirements contained in the respective paragraph.

(a) *CCR landfills*—(1) *No alternative CCR disposal capacity.* Notwithstanding the provisions of § 257.101(d), a CCR landfill may continue to recieve CCR if the owner or operator of the CCR landfill certifies that the CCR must continue to be managed in that CCR landfill due to the absence of alternative disposal capacity both on and off-site of the facility. To qualify under this paragraph, the owner or operator of the CCR landfill must document that all of the following conditions have been met:

(i) No alternative disposal capacity is available on or off-site. An increase in costs or the inconvenience of existing capacity is not sufficient to support qualification under this section;

(ii) The owner or operator has made, and continues to make, efforts to obtain additional capacity. Qualification under this paragraph (a) lasts only as long as no alternative capacity is available. Once alternative capacity is identified, the owner or operator must arrange to use such capacity as soon as feasible;

(iii) The owner or operator must remain in compliance with all other requirements of this subpart, including the requirement to conduct any necessary corrective action; and

(iv) The owner or operator must prepare the annual progress report specified in paragraph (c) of this section

documenting the continued lack of alternative capacity and the progress towards the development of alternative CCR disposal capacity.

(2) Once alternative capacity is available, the CCR landfill must cease receiving CCR and initiate closure following the timeframes in § 257.102(e).

(3) If no alternative capacity is identified within five years after the initial certification, the CCR landfill must cease receiving CCR and close in accordance with the timeframes in § 257.102(e) and (f).

(b) *CCR landfills*—(1) *Permanent cessation of a coal-fired boiler(s) by a date certain.* Notwithstanding the provisions of § 257.101(d), a CCR landfill may continue to receive CCR if the owner or operator certifies that the facility will cease operation of the coal-fired boilers within the timeframe specified in paragraph (b)(4) of this section, but in the interim period (prior to closure of the coal-fired boiler), the facility must continue to use the CCR landfill due to the absence of alternative disposal capacity both on and off-site of the facility. To qualify under this paragraph, the owner or operator of the CCR landfill must document that all of the following conditions have been met:

(i) No alternative disposal capacity is available on or off-site. An increase in costs or the inconvenience of existing capacity is not sufficient to support qualification under this section.

(ii) The owner or operator must remain in compliance with all other requirements of this subpart, including the requirement to conduct any necessary corrective action; and

(iii) The owner or operator must prepare the annual progress report specified in paragraph (c) of this section documenting the continued lack of alternative capacity and the progress towards the closure of the coal-fired boiler.

(2)–(3) [Reserved]

(4) For a CCR landfill, the coal-fired boiler must cease operation, and the CCR landfill must complete closure no later than April 19, 2021.

(c) *Required notices and progress reports for CCR landfills.* An owner or operator of a CCR landfill that closes in accordance with paragraph (a) or (b) of this section must complete the notices and progress reports specified in paragraphs (c)(1) through (3) of this section.

(1) Within six months of becoming subject to closure pursuant to § 257.101(d), the owner or operator must prepare and place in the facility's operating record a notification of intent to comply with the alternative closure requirements of this section. The notification must describe why the CCR landfill qualifies for the alternative closure provisions under either paragraph (a) or (b) of this section, in addition to providing the documentation and certifications required by paragraph (a) or (b) of this section.

(2) The owner or operator must prepare the periodic progress reports required by paragraph (a)(1)(iv) or (b)(1)(iii) of this section, in addition to describing any problems encountered and a description of the actions taken to resolve the problems. The annual progress reports must be completed according to the following schedule:

(i) The first annual progress report must be prepared no later than 13 months after completing the notification of intent to comply with the alternative closure requirements required by paragraph (c)(1) of this section.

(ii) The second annual progress report must be prepared no later than 12 months after completing the first annual progress report. Subsequent annual progress reports must be prepared within 12 months of completing the previous annual progress report.

(iii) The owner or operator has completed the progress reports specified in this paragraph (c)(2) when the reports are placed in the facility's operating record as required by § 257.105(i)(11).

(3) An owner or operator of a CCR landfill must also prepare the notification of intent to close a CCR landfill as required by § 257.102(g).

(d) *CCR landfill recordkeeping.* The owner or operator of the CCR landfill must comply with the recordkeeping requirements specified in § 257.105(i), the notification requirements specified in § 257.106(i), and the internet requirements specified in § 257.107(i).

(e) [Reserved]

(f) *Site-specific alternative deadlines to initiate closure of CCR surface impoundments.* Notwithstanding the provisions of § 257.101(a) and (b)(1), a CCR surface

impoundment may continue to receive the waste specified in paragraph (f)(1) or (2) of this section, provided the owner or operator submits a demonstration that the criteria in either paragraph (f)(1) or (2) of this section have been met. The demonstration must be submitted to the Administrator or the Participating State Director no later than the relevant deadline in paragraph (f)(3) of this section. The Administrator or the Participating State Director will act on the submission in accordance with the procedures in paragraph (f)(3) of this section.

(1) *Development of alternative capacity is technically infeasible.* Notwithstanding the provisions of § 257.101(a) and (b)(1), a CCR surface impoundment may continue to receive the waste specified in paragraph (f)(1)(ii)(A) or (B) of this section, provided the owner or operator demonstrates the wastestream(s) must continue to be managed in that CCR surface impoundment because it was technically infeasible to complete the measures necessary to provide alternative disposal capacity on or off-site of the facility by April 11, 2021. To obtain approval under this paragraph all of the following criteria must be met:

(i) No alternative disposal capacity is available on or off-site. An increase in costs or the inconvenience of existing capacity is not sufficient to support qualification under this section;

(ii)(A) For units closing pursuant to § 257.101(a) and (b)(1)(i), CCR and/or non-CCR wastestreams must continue to be managed in that CCR surface impoundment because it was technically infeasible to complete the measures necessary to obtain alternative disposal capacity either on or off-site of the facility by April 11, 2021.

(B) For units closing pursuant to § 257.101(b)(1)(ii), CCR must continue to be managed in that CCR surface impoundment because it was technically infeasible to complete the measures necessary to obtain alternative disposal capacity either on or off-site of the facility by April 11, 2021.

(iii) The facility is in compliance with all of the requirements of this subpart.

(iv) The owner or operator of the CCR surface impoundment must submit documentation that the criteria in paragraphs (f)(1)(i) through (iii) of this section have been met by submitting to the Administrator or the Participating State Director all of the following:

(A) To demonstrate that the criteria in paragraphs (f)(1)(i) and (ii) of this section have been met the owner or operator must submit a workplan that contains all of the following elements:

(*1*) A written narrative discussing the options considered both on and off-site to obtain alternative capacity for each CCR and/or non-CCR wastestreams, the technical infeasibility of obtaining alternative capacity prior to April 11, 2021, and the option selected and justification for the alternative capacity selected. The narrative must also include all of the following:

(*i*) An in-depth analysis of the site and any site-specific conditions that led to the decision to select the alternative capacity being developed;

(*ii*) An analysis of the adverse impact to plant operations if the CCR surface impoundment in question were to no longer be available for use; and

(*iii*) A detailed explanation and justification for the amount of time being requested and how it is the fastest technically feasible time to complete the development of the alternative capacity;

(*2*) A detailed schedule of the fastest technically feasible time to complete the measures necessary for alternative capacity to be available including a visual timeline representation. The visual timeline must clearly show all of the following:

(*i*) How each phase and the steps within that phase interact with or are dependent on each other and the other phases;

(*ii*) All of the steps and phases that can be completed concurrently;

(*iii*) The total time needed to obtain the alternative capacity and how long each phase and step within each phase will take; and

(*iv*) At a minimum, the following phases: Engineering and design, contractor selection, equipment fabrication and delivery, construction, and start up and implementation.;

(*3*) A narrative discussion of the schedule and visual timeline representation, which must discuss all of the following:

(*i*) Why the length of time for each phase and step is needed and a discussion of the tasks that occur during the specific step;

(*ii*) Why each phase and step shown on the chart must happen in the order it is occurring;

(*iii*) The tasks that occur during each of the steps within the phase; and

(*iv*) Anticipated worker schedules; and

(*4*) A narrative discussion of the progress the owner or operator has made to obtain alternative capacity for the CCR and/or non-CCR wastestreams. The narrative must discuss all the steps taken, starting from when the owner or operator initiated the design phase up to the steps occurring when the demonstration is being compiled. It must discuss where the facility currently is on the timeline and the efforts that are currently being undertaken to develop alternative capacity.

(B) To demonstrate that the criteria in paragraph (f)(1)(iii) of this section have been met, the owner or operator must submit all of the following:

(*1*) A certification signed by the owner or operator that the facility is in compliance with all of the requirements of this subpart;

(*2*) Visual representation of hydrogeologic information at and around the CCR unit(s) that supports the design, construction and installation of the groundwater monitoring system. This includes all of the following:

(*i*) Map(s) of groundwater monitoring well locations in relation to the CCR unit(s);

(*ii*) Well construction diagrams and drilling logs for all groundwater monitoring wells; and

(*iii*) Maps that characterize the direction of groundwater flow accounting for seasonal variations;

(*3*) Constituent concentrations, summarized in table form, at each groundwater monitoring well monitored during each sampling event;

(*4*) A description of site hydrogeology including stratigraphic cross-sections;

(*5*) Any corrective measures assessment conducted as required at § 257.96;

(*6*) Any progress reports on corrective action remedy selection and design and the report of final remedy selection required at § 257.97(a);

(*7*) The most recent structural stability assessment required at § 257.73(d); and

(*8*) The most recent safety factor assessment required at § 257.73(e).

(v) As soon as alternative capacity for any CCR or non-CCR wastestream is available, the CCR surface impoundment must cease receiving that CCR or non-CCR wastestream. Once the CCR surface impoundment ceases receipt of all CCR and/or non-CCR wastestreams, the CCR surface impoundment must initiate closure following the timeframes in § 257.102(e) and (f).

(vi) *Maximum time frames.* All CCR surface impoundments covered by paragraph (f)(1) must cease receiving waste by the deadlines specified in paragraphs (f)(1)(vi)(A) and (B) of this section and close in accordance with the timeframes in § 257.102(e) and (f).

(A) Except as provided by paragraph (f)(1)(vi)(B) of this section, no later than October 15, 2023.

(B) An eligible unlined CCR surface impoundment must cease receiving CCR and/or non-CCR wastestreams no later than October 15, 2024. In order to continue to operate until October 15, 2024, the owner or operator must demonstrate that the unit meets the definition of an eligible unlined CCR surface impoundment.

(vii) An owner or operator may seek additional time beyond the time granted in the initial approval by making the showing in paragraphs (f)(1)(i) through (iv) of this section, provided that no facility may be granted time to operate the impoundment beyond the maximum allowable time frames provided in § 257.103(f)(1)(vi).

(viii) The owner or operator at all times bears responsibility for demonstrating qualification under this section. Failure to remain in compliance with any of the requirements of this subpart will result in the automatic loss of authorization under this section.

(ix) The owner or operator must:

(A) Upon submission of the demonstration to the Administrator or the Participating State Director, prepare and place in the facility's operating record a notification that it has submitted the demonstration, along with a copy of the demonstration. An owner or operator that claims CBI in the demonstration may post a redacted version of the demonstration to its publicly accessible CCR internet site provided that it contains sufficient detail so that the public can meaningfully comment on the demonstration.

(B) Upon receipt of a decision pursuant to paragraph (f)(3) of this section, must prepare and place in the facility's operating record a copy of the decision.

(C) If an extension of an approved deadline pursuant to paragraph (f)(1)(vii) of this section has been requested, place a copy of the request submitted to the Administrator or the Participating State Director in the facility's operating record.

(x) The owner or operator must prepare semi-annual progress reports. The semi-annual progress reports must contain all of the following elements:

(A) Discussion of the progress made to date in obtaining alternative capacity, including:

(*1*) Discussion of the current stage of obtaining the capacity in reference to the timeline required under paragraph (f)(1)(iv)(A) of this section;

(*2*) Discussion of whether the owner or operator is on schedule for obtaining alternative capacity;

(*3*) If the owner or operator is not on or ahead of schedule for obtaining alternative capacity, the following must be included:

(*i*) Discussion of any problems encountered, and a description of the actions taken or planned to resolve the problems and get back on schedule; and

(*ii*) Discussion of the goals for the next six months and major milestones to be achieved for obtaining alternative capacity; and

(B) Discussion of any planned operational changes at the facility.

(xi) The progress reports must be completed according to the following schedule:

(A) The semi-annual progress reports must be prepared no later than April 30 and October 31 of each year for the duration of the alternative cease receipt of waste deadline.

(B) The first semi-annual progress report must be prepared by whichever date, April 30 or October 31, is soonest after receiving approval from the Administrator or the Participating State Director; and

(C) The owner or operator has completed the progress reports specified in paragraph (f)(1)(x) of this section when the reports have been placed in the facility's operating record as required by § 257.105(i)(17).

(xii) The owner or operator must prepare the notification of intent to close a CCR surface impoundment as required by § 257.102(g).

(xiii) The owner or operator must comply with the recordkeeping requirements specified in § 257.105(i), the notification requirements specified in § 257.106(i), and the internet posting requirements in § 257.107(i).

(2) *Permanent cessation of a coal-fired boiler(s) by a date certain.* Notwithstanding the provisions of § 257.101(a), and (b)(1), a CCR surface impoundment may continue to receive CCR and/or non-CCR wastestreams if the facility will cease operation of the coal-fired boiler(s) and complete closure of the impoundment within the timeframes specified in paragraph (f)(2)(iv) of this section, but in the interim period (prior to closure of the coal-fired boiler), the facility must continue to use the CCR surface impoundment due to the absence of alternative disposal capacity both on and off-site of the facility. To qualify under this paragraph all of the following criteria must be met:

(i) No alternative disposal capacity is available on or off-site. An increase in costs or the inconvenience of existing capacity is not sufficient to support qualification under this section.

(ii) Potential risks to human health and the environment from the continued operation of the CCR surface impoundment have been adequately mitigated;

(iii) The facility is in compliance with all other requirements of this subpart, including the requirement to conduct any necessary corrective action; and

(iv) The coal-fired boilers must cease operation and closure of the impoundment must be completed within the following timeframes:

(A) For a CCR surface impoundment that is 40 acres or smaller, the coal-fired boiler(s) must cease operation and the CCR surface impoundment must complete closure no later than October 17, 2023.

(B) For a CCR surface impoundment that is larger than 40 acres, the coal-fired boiler(s) must cease operation, and the CCR surface impoundment must complete closure no later than October 17, 2028.

(v) The owner or operator of the CCR surface impoundment must submit the following documentation that the criteria in paragraphs (f)(2)(i) through (iv) of this section have been met as specified in paragraphs (f)(2)(v)(A) through (D) of this section.

(A) To demonstrate that the criteria in paragraph (f)(2)(i) of this section have been met the owner or operator must submit a narrative that explains the options considered to obtain alternative capacity for CCR and/or non-CCR wastestreams both on and off-site.

(B) To demonstrate that the criteria in paragraph (f)(2)(ii) of this section have been met the owner or operator must submit a risk mitigation plan describing the measures that will be taken to expedite any required corrective action, and that contains all of the following elements:

(*1*) A discussion of any physical or chemical measures a facility can take to limit any future releases to groundwater during operation.

(*2*) A discussion of the surface impoundment's groundwater monitoring data and any found exceedances; the delineation of the plume (if necessary based on the groundwater monitoring data); identification of any nearby receptors that might be exposed to current or future groundwater contamination; and how such exposures could be promptly mitigated.

(*3*) A plan to expedite and maintain the containment of any contaminant plume that is either present or identified during continued operation of the unit.

(C) To demonstrate that the criteria in paragraph (f)(2)(iii) of this section have been met, the owner or operator must submit all of the following:

(*1*) A certification signed by the owner or operator that the facility is in compliance with all of the requirements of this subpart;

(*2*) Visual representation of hydrogeologic information at and around the CCR unit(s) that supports the design, construction and installation of the groundwater monitoring system. This includes all of the following:

(*i*) Map(s) of groundwater monitoring well locations in relation to the CCR unit;

(*ii*) Well construction diagrams and drilling logs for all groundwater monitoring wells; and

(*iii*) Maps that characterize the direction of groundwater flow accounting for seasonal variations;

(*3*) Constituent concentrations, summarized in table form, at each groundwater monitoring well monitored during each sampling event;

(*4*) Description of site hydrogeology including stratigraphic cross-sections;

(*5*) Any corrective measures assessment required at § 257.96;

(*6*) Any progress reports on remedy selection and design and the report of final remedy selection required at § 257.97(a);

(*7*) The most recent structural stability assessment required at § 257.73(d); and

(*8*) The most recent safety factor assessment required at § 257.73(e).

(D) To demonstrate that the criteria in paragraph (f)(2)(iv) of this section have been met, the owner or operator must submit the closure plan required by § 257.102(b) and a narrative that specifies and justifies the date by which they intend to cease receipt of waste into the unit in order to meet the closure deadlines.

(vi) The owner or operator at all times bears responsibility for demonstrating qualification for authorization under this section. Failure to remain in compliance with any of the requirements of this subpart will result in the automatic loss of authorization under this section.

(vii) The owner or operator must comply with the recordkeeping requirements specified in § 257.105(i), the

notification requirements specified in § 257.106(i), and the internet posting requirements in § 257.107(i).

(viii) Upon submission of the demonstration to the Administrator or the Participating State Director the owner or operator must prepare and place in the facility's operating record and on its publicly accessible CCR internet site a notification that is has submitted a demonstration along with a copy of the demonstration.

(ix) Upon receipt of a decision pursuant to paragraph (f)(3) of this section, the owner or operator must place a copy of the decision in the facility's operating record and on the facility's publicly accessible CCR internet site.

(x) The owner or operator must prepare an annual progress report documenting the continued lack of alternative capacity and the progress towards the closure of the CCR surface impoundment. The owner or operator has completed the progress report when the report has been placed in the facility's operating record as required by § 257.105(i)(20).

(3) *Process to Obtain Authorization.* (i) *Deadlines for Submission.* (A) Except as provided by § 257.71(d)(2)(iii)(E) and (viii), the owner or operator must submit the demonstration required under paragraph (f)(1)(iv) of this section, for an alternative deadline to cease receipt of waste pursuant to paragraph (f)(1) of this section, to the Administrator or the Participating State Director for approval no later than November 30, 2020.

(B) An owner or operator may seek additional time beyond the time granted in the initial approval, in accordance with paragraph (f)(1)(vii) of this section, by submitting a new demonstration, as required under paragraph (f)(1)(iv) of this section, to the Administrator or the Participating State Director for approval, no later than fourteen days from determining that the cease receipt of waste deadline will not be met.

(C) Except as provided by § 257.71(d)(2)(iii)(E) and (viii), the owner or operator must submit the demonstration required under paragraph (f)(2)(v) of this section to the Administrator for approval no later than November 30, 2020.

(ii) EPA will evaluate the demonstration and may request additional information to complete its review. Submission of a complete demonstration will toll the facility's deadline to cease receipt of waste until issuance of a decision under paragraph (f)(3)(iv) of this section. Incomplete submissions will not toll the facility's deadline and will be rejected without further process. All decisions issued under this paragraph or paragraph (f)(3)(iv) of this section will contain the facility's deadline to cease receipt of waste.

(iii) EPA will publish its proposed decision on a complete demonstration in a docket on *www.regulations.gov* for a 15-day comment period. If the demonstration is particularly complex, EPA will provide a comment period of 20 to 30 days.

(iv) After consideration of the comments, EPA will issue its decision on the alternative compliance deadline within four months of receiving a complete demonstration.

(4) *Transferring between site-specific alternatives.* An owner or operator authorized to continue operating a CCR surface impoundment under this section may at any time request authorization to continue operating the impoundment pursuant to another paragraph of subsection (f), by submitting the information in paragraph (f)(4)(i) or (ii) of this section.

(i) *Transfer from § 257.103(f)(1) to § 257.103(f)(2).* The owner or operator of a surface impoundment authorized to operate pursuant to paragraph (f)(1) of this section may request authorization to instead operate the surface impoundment in accordance with the requirements of paragraph (f)(2) of this section, by submitting a new demonstration that meets the requirements of paragraph (f)(2)(v) of this section to the Administrator or the Participating State Director. EPA will approve the request only upon determining that the criteria at paragraphs (f)(2)(i) through (iv) have been met.

(ii) *Transfer from § 257.103(f)(2) to § 257.103(f)(1).* The owner or operator of a surface impoundment authorized to operate pursuant to paragraph (f)(2) of this section may request authorization

to instead operate the surface impoundment in accordance with the requirements of paragraph (f)(1) of this section, by submitting a new demonstration that meets the requirements of paragraph (f)(1)(iv) of this section to the Administrator or the Participating State Director. EPA will approve the request only upon determining that the criteria at paragraphs (f)(1)(i) through (iii) and (vi) of this section have been met.

(iii) The procedures in paragraph (f)(3) of this section will apply to all requests for transfer under this paragraph.

[85 FR 53561, Aug. 28, 2020, as amended at 85 FR 72542, Nov. 12, 2020]

### § 257.104 Post-closure care requirements.

(a) *Applicability*. (1) Except as provided by paragraph (a)(2) of this section, § 257.104 applies to the owners or operators of CCR landfills, CCR surface impoundments, and all lateral expansions of CCR units that are subject to the closure criteria under § 257.102.

(2) An owner or operator of a CCR unit that elects to close a CCR unit by removing CCR as provided by § 257.102(c) is not subject to the post-closure care criteria under this section.

(b) *Post-closure care maintenance requirements*. Following closure of the CCR unit, the owner or operator must conduct post-closure care for the CCR unit, which must consist of at least the following:

(1) Maintaining the integrity and effectiveness of the final cover system, including making repairs to the final cover as necessary to correct the effects of settlement, subsidence, erosion, or other events, and preventing run-on and run-off from eroding or otherwise damaging the final cover;

(2) If the CCR unit is subject to the design criteria under § 257.70, maintaining the integrity and effectiveness of the leachate collection and removal system and operating the leachate collection and removal system in accordance with the requirements of § 257.70; and

(3) Maintaining the groundwater monitoring system and monitoring the groundwater in accordance with the requirements of §§ 257.90 through 257.98.

(c) *Post-closure care period*. (1) Except as provided by paragraph (c)(2) of this section, the owner or operator of the CCR unit must conduct post-closure care for 30 years.

(2) If at the end of the post-closure care period the owner or operator of the CCR unit is operating under assessment monitoring in accordance with § 257.95, the owner or operator must continue to conduct post-closure care until the owner or operator returns to detection monitoring in accordance with § 257.95.

(d) *Written post-closure plan*—(1) *Content of the plan*. The owner or operator of a CCR unit must prepare a written post-closure plan that includes, at a minimum, the information specified in paragraphs (d)(1)(i) through (iii) of this section.

(i) A description of the monitoring and maintenance activities required in paragraph (b) of this section for the CCR unit, and the frequency at which these activities will be performed;

(ii) The name, address, telephone number, and email address of the person or office to contact about the facility during the post-closure care period; and

(iii) A description of the planned uses of the property during the post-closure period. Post-closure use of the property shall not disturb the integrity of the final cover, liner(s), or any other component of the containment system, or the function of the monitoring systems unless necessary to comply with the requirements in this subpart. Any other disturbance is allowed if the owner or operator of the CCR unit demonstrates that disturbance of the final cover, liner, or other component of the containment system, including any removal of CCR, will not increase the potential threat to human health or the environment. The demonstration must be certified by a qualified professional engineer or approved by the Participating State Director or approved from EPA where EPA is the permitting authority, and notification shall be provided to the State Director that the demonstration has been placed in the operating record and on the owners or operator's publicly accessible internet site.

(2) *Deadline to prepare the initial written post-closure plan*—(i) *Existing CCR landfills and existing CCR surface impoundments.* No later than October 17, 2016, the owner or operator of the CCR unit must prepare an initial written post-closure plan consistent with the requirements specified in paragraph (d)(1) of this section.

(ii) *New CCR landfills, new CCR surface impoundments, and any lateral expansion of a CCR unit.* No later than the date of the initial receipt of CCR in the CCR unit, the owner or operator must prepare an initial written post-closure plan consistent with the requirements specified in paragraph (d)(1) of this section.

(iii) The owner or operator has completed the written post-closure plan when the plan, including the certification required by paragraph (d)(4) of this section, has been placed in the facility's operating record as required by § 257.105(i)(4).

(3) *Amendment of a written post-closure plan.* (i) The owner or operator may amend the initial or any subsequent written post-closure plan developed pursuant to paragraph (d)(1) of this section at any time.

(ii) The owner or operator must amend the written closure plan whenever:

(A) There is a change in the operation of the CCR unit that would substantially affect the written post-closure plan in effect; or

(B) After post-closure activities have commenced, unanticipated events necessitate a revision of the written post-closure plan.

(iii) The owner or operator must amend the written post-closure plan at least 60 days prior to a planned change in the operation of the facility or CCR unit, or no later than 60 days after an unanticipated event requires the need to revise an existing written post-closure plan. If a written post-closure plan is revised after post-closure activities have commenced for a CCR unit, the owner or operator must amend the written post-closure plan no later than 30 days following the triggering event.

(4) The owner or operator of the CCR unit must obtain a written certification from a qualified professional engineer or an approval from the Participating State Director or an approval from EPA where EPA is the permitting authority that the initial and any amendment of the written post-closure plan meets the requirements of this section.

(e) *Notification of completion of post-closure care period.* No later than 60 days following the completion of the post-closure care period, the owner or operator of the CCR unit must prepare a notification verifying that post-closure care has been completed. The notification must include the certification by a qualified professional engineer or the approval from the Participating State Director or the approval from EPA where EPA is the permitting authority verifying that post-closure care has been completed in accordance with the closure plan specified in paragraph (d) of this section and the requirements of this section. The owner or operator has completed the notification when it has been placed in the facility's operating record as required by § 257.105(i)(13).

(f) The owner or operator of the CCR unit must comply with the recordkeeping requirements specified in § 257.105(i), the notification requirements specified in § 257.106(i), and the Internet requirements specified in § 257.107(i).

[80 FR 21468, Apr. 17, 2015, as amended at 81 FR 51808, Aug. 5, 2016; 83 FR 36455, July 30, 2018]

RECORDKEEPING, NOTIFICATION, AND POSTING OF INFORMATION TO THE INTERNET

### § 257.105 Recordkeeping requirements.

(a) Each owner or operator of a CCR unit subject to the requirements of this subpart must maintain files of all information required by this section in a written operating record at their facility.

(b) Unless specified otherwise, each file must be retained for at least five years following the date of each occurrence, measurement, maintenance, corrective action, report, record, or study.

(c) An owner or operator of more than one CCR unit subject to the provisions of this subpart may comply with the requirements of this section in one

recordkeeping system provided the system identifies each file by the name of each CCR unit. The files may be maintained on microfilm, on a computer, on computer disks, on a storage system accessible by a computer, on magnetic tape disks, or on microfiche.

(d) The owner or operator of a CCR unit must submit to the State Director and/or appropriate Tribal authority any demonstration or documentation required by this subpart, if requested, when such information is not otherwise available on the owner or operator's publicly accessible Internet site.

(e) *Location restrictions.* The owner or operator of a CCR unit subject to this subpart must place the demonstrations documenting whether or not the CCR unit is in compliance with the requirements under §§ 257.60(a), 257.61(a), 257.62(a), 257.63(a), and 257.64(a), as it becomes available, in the facility's operating record.

(f) *Design criteria.* The owner or operator of a CCR unit subject to this subpart must place the following information, as it becomes available, in the facility's operating record:

(1) The design and construction certifications as required by § 257.70(e) and (f).

(2) The documentation of liner type as required by § 257.71(a).

(3) The design and construction certifications as required by § 257.72(c) and (d).

(4) Documentation prepared by the owner or operator stating that the permanent identification marker was installed as required by §§ 257.73(a)(1) and 257.74(a)(1).

(5) The initial and periodic hazard potential classification assessments as required by §§ 257.73(a)(2) and 257.74(a)(2).

(6) The emergency action plan (EAP), and any amendment of the EAP, as required by §§ 257.73(a)(3) and 257.74(a)(3), except that only the most recent EAP must be maintained in the facility's operating record irrespective of the time requirement specified in paragraph (b) of this section.

(7) Documentation prepared by the owner or operator recording the annual face-to-face meeting or exercise between representatives of the owner or operator of the CCR unit and the local emergency responders as required by §§ 257.73(a)(3)(i)(E) and 257.74(a)(3)(i)(E).

(8) Documentation prepared by the owner or operator recording all activations of the emergency action plan as required by §§ 257.73(a)(3)(v) and 257.74(a)(3)(v).

(9) The history of construction, and any revisions of it, as required by § 257.73(c), except that these files must be maintained until the CCR unit completes closure of the unit in accordance with § 257.102.

(10) The initial and periodic structural stability assessments as required by §§ 257.73(d) and 257.74(d).

(11) Documentation detailing the corrective measures taken to remedy the deficiency or release as required by §§ 257.73(d)(2) and 257.74(d)(2).

(12) The initial and periodic safety factor assessments as required by §§ 257.73(e) and 257.74(e).

(13) The design and construction plans, and any revisions of it, as required by § 257.74(c), except that these files must be maintained until the CCR unit completes closure of the unit in accordance with § 257.102.

(14) The application and any supplemental materials submitted in support of the application as required by § 257.71(d)(1)(i)(E).

(15) The alternative liner demonstration as required by § 257.71(d)(1)(ii)(D).

(16) The alternative liner demonstration extension request as required by § 257.71(d)(2)(ii)(D).

(17) The documentation prepared for the preliminary demonstration as required by § 257.71(d)(2)(ii)(E).

(18) The notification of an incomplete application as required by § 257.71(d)(2)(iii)(B).

(19) The decision on the application as required by § 257.71(d)(2)(iii)(F).

(20) The final decision on the alternative liner demonstration as required by § 257.71(d)(2)(vii).

(21) The alternative source demonstration as required under § 257.71(d)(2)(ix)(A)(*4*).

(22) The final decision on the alternative source demonstration as required under § 257.71(d)(2)(ix)(A)(*5*).

(23) The final decision on the trend analysis as required under § 257.71(d)(2)(ix)(B)(*3*).

(24) The decision that the alternative source demonstration has been withdrawn as required under § 257.71(d)(2)(ix)(C).

(g) *Operating criteria.* The owner or operator of a CCR unit subject to this subpart must place the following information, as it becomes available, in the facility's operating record:

(1) The CCR fugitive dust control plan, and any subsequent amendment of the plan, required by § 257.80(b), except that only the most recent control plan must be maintained in the facility's operating record irrespective of the time requirement specified in paragraph (b) of this section.

(2) The annual CCR fugitive dust control report required by § 257.80(c).

(3) The initial and periodic run-on and run-off control system plans as required by § 257.81(c).

(4) The initial and periodic inflow design flood control system plan as required by § 257.82(c).

(5) Documentation recording the results of each inspection and instrumentation monitoring by a qualified person as required by § 257.83(a).

(6) The periodic inspection report as required by § 257.83(b)(2).

(7) Documentation detailing the corrective measures taken to remedy the deficiency or release as required by §§ 257.83(b)(5) and 257.84(b)(5).

(8) Documentation recording the results of the weekly inspection by a qualified person as required by § 257.84(a).

(9) The periodic inspection report as required by § 257.84(b)(2).

(h) *Groundwater monitoring and corrective action.* The owner or operator of a CCR unit subject to this subpart must place the following information, as it becomes available, in the facility's operating record:

(1) The annual groundwater monitoring and corrective action report as required by § 257.90(e).

(2) Documentation of the design, installation, development, and decommissioning of any monitoring wells, piezometers and other measurement, sampling, and analytical devices as required by § 257.91(e)(1).

(3) The groundwater monitoring system certification as required by § 257.91(f).

(4) The selection of a statistical method certification as required by § 257.93(f)(6).

(5) Within 30 days of establishing an assessment monitoring program, the notification as required by § 257.94(e)(3).

(6) The results of appendices III and IV to this part constituent concentrations as required by § 257.95(d)(1).

(7) Within 30 days of returning to a detection monitoring program, the notification as required by § 257.95(e).

(8) Within 30 days of detecting one or more constituents in appendix IV to this part at statistically significant levels above the groundwater protection standard, the notifications as required by § 257.95(g).

(9) Within 30 days of initiating the assessment of corrective measures requirements, the notification as required by § 257.95(g)(5).

(10) The completed assessment of corrective measures as required by § 257.96(d).

(11) Documentation prepared by the owner or operator recording the public meeting for the corrective measures assessment as required by § 257.96(e).

(12) The semiannual report describing the progress in selecting and designing the remedy and the selection of remedy report as required by § 257.97(a), except that the selection of remedy report must be maintained until the remedy has been completed.

(13) Within 30 days of completing the remedy, the notification as required by § 257.98(e).

(14) The demonstration, including long-term performance data, supporting the suspension of groundwater monitoring requirements as required by § 257.90(g).

(i) *Closure and post-closure care.* The owner or operator of a CCR unit subject to this subpart must place the following information, as it becomes available, in the facility's operating record:

(1) The notification of intent to initiate closure of the CCR unit as required by § 257.100(c)(1).

(2) The annual progress reports of closure implementation as required by § 257.100(c)(2)(i) and (ii).

(3) The notification of closure completion as required by § 257.100(c)(3).

(4) The written closure plan, and any amendment of the plan, as required by § 257.102(b), except that only the most recent closure plan must be maintained in the facility's operating record irrespective of the time requirement specified in paragraph (b) of this section.

(5) The written demonstration(s), including the certification required by § 257.102(e)(2)(iii), for a time extension for initiating closure as required by § 257.102(e)(2)(ii).

(6) The written demonstration(s), including the certification required by § 257.102(f)(2)(iii), for a time extension for completing closure as required by § 257.102(f)(2)(i).

(7) The notification of intent to close a CCR unit as required by § 257.102(g).

(8) The notification of completion of closure of a CCR unit as required by § 257.102(h).

(9) The notification recording a notation on the deed as required by § 257.102(i).

(10) The notification of intent to comply with the alternative closure requirements as required by § 257.103(c)(1).

(11) The annual progress reports under the alternative closure requirements as required by § 257.103(c)(2).

(12) The written post-closure plan, and any amendment of the plan, as required by § 257.104(d), except that only the most recent closure plan must be maintained in the facility's operating record irrespective of the time requirement specified in paragraph (b) of this section.

(13) The notification of completion of post-closure care period as required by § 257.104(e).

(14) The notification of intent to comply with the site-specific alternative to initiation of closure due to development of alternative capacity infeasible as required by § 257.103(f)(1)(ix)(A).

(15) The approved or denied demonstration for the site-specific alternative to initiation of closure due to development of alternative capacity infeasible as required by § 257.103(f)(1)(ix)(B).

(16) The notification for requesting additional time to the alternative cease receipt of waste deadline as required by § 257.103(f)(1)(ix)(C).

(17) The semi-annual progress reports for the site-specific alternative to initiation of closure due to development of alternative capacity infeasible as required by § 257.103(f)(1)(xi).

(18) The notification of intent to comply with the site-specific alternative to initiation of closure due to permanent cessation of a coal-fired boiler(s) by a date certain as required by § 257.103(f)(2)(viii).

(19) The approved or denied demonstration for the site-specific alternative to initiation of closure due to permanent cessation of a coal-fired boiler(s) by a date certain as required by § 257.103(f)(2)(ix).

(20) The annual progress report for the site-specific alternative to initiation of closure due to permanent cessation of a coal-fired boiler(s) by a date certain as required by § 257.103(f)(2)(x).

(j) *Retrofit criteria.* The owner or operator of a CCR unit subject to this subpart must place the following information, as it becomes available, in the facility's operating record:

(1) The written retrofit plan, and any amendment of the plan, as required by § 257.102(k)(2), except that only the most recent retrofit plan must be maintained in the facility's operating record irrespective of the time requirement specified in paragraph (b) of this section.

(2) The notification of intent that the retrofit activities will proceed in accordance with the alternative procedures in § 257.103.

(3) The annual progress reports required under the alternative requirements as required by § 257.103.

(4) The written demonstration(s), including the certification in § 257.102(f)(2)(iii), for a time extension for completing retrofit activities as required by § 257.102(k)(3).

(5) The notification of intent to initiate retrofit of a CCR unit as required by § 257.102(k)(5).

(6) The notification of completion of retrofit activities as required by § 257.102(k)(6).

[80 FR 21468, Apr. 17, 2015, as amended at 83 FR 36456, July 30, 2018; 85 FR 53565, Aug. 28, 2020; 85 FR 72543, Nov. 12, 2020; 85 FR 80626, Dec. 14, 2020]

**§ 257.106 Notification requirements.**

(a) The notifications required under paragraphs (e) through (i) of this section must be sent to the relevant State Director and/or appropriate Tribal authority before the close of business on the day the notification is required to be completed. For purposes of this section, *before the close of business* means the notification must be postmarked or sent by electronic mail (email). If a notification deadline falls on a weekend or federal holiday, the notification deadline is automatically extended to the next business day.

(b) If any CCR unit is located in its entirety within Indian Country, the notifications of this section must be sent to the appropriate Tribal authority. If any CCR unit is located in part within Indian Country, the notifications of this section must be sent both to the appropriate State Director and Tribal authority.

(c) Notifications may be combined as long as the deadline requirement for each notification is met.

(d) Unless otherwise required in this section, the notifications specified in this section must be sent to the State Director and/or appropriate Tribal authority within 30 days of placing in the operating record the information required by § 257.105.

(e) *Location restrictions.* The owner or operator of a CCR unit subject to the requirements of this subpart must notify the State Director and/or appropriate Tribal authority that each demonstration specified under § 257.105(e) has been placed in the operating record and on the owner or operator's publicly accessible internet site.

(f) *Design criteria.* The owner or operator of a CCR unit subject to this subpart must notify the State Director and/or appropriate Tribal authority when information has been placed in the operating record and on the owner or operator's publicly accessible internet site. The owner or operator must:

(1) Within 60 days of commencing construction of a new CCR unit, provide notification of the availability of the design certification specified under § 257.105(f)(1) or (3). If the owner or operator of the CCR unit elects to install an alternative composite liner, the owner or operator must also submit to the State Director and/or appropriate Tribal authority a copy of the alternative composite liner design.

(2) No later than the date of initial receipt of CCR by a new CCR unit, provide notification of the availability of the construction certification specified under § 257.105(f)(1) or (3).

(3) Provide notification of the availability of the documentation of liner type specified under § 257.105(f)(2).

(4) Provide notification of the availability of the initial and periodic hazard potential classification assessments specified under § 257.105(f)(5).

(5) Provide notification of the availability of emergency action plan (EAP), and any revisions of the EAP, specified under § 257.105(f)(6).

(6) Provide notification of the availability of documentation prepared by the owner or operator recording the annual face-to-face meeting or exercise between representatives of the owner or operator of the CCR unit and the local emergency responders specified under § 257.105(f)(7).

(7) Provide notification of documentation prepared by the owner or operator recording all activations of the emergency action plan specified under § 257.105(f)(8).

(8) Provide notification of the availability of the history of construction, and any revision of it, specified under § 257.105(f)(9).

(9) Provide notification of the availability of the initial and periodic structural stability assessments specified under § 257.105(f)(10).

(10) Provide notification of the availability of the documentation detailing the corrective measures taken to remedy the deficiency or release specified under § 257.105(f)(11).

(11) Provide notification of the availability of the initial and periodic safety factor assessments specified under § 257.105(f)(12).

(12) Provide notification of the availability of the design and construction plans, and any revision of them, specified under § 257.105(f)(13).

(13) Provide notification of the availability of the application and any supplemental materials submitted in support of the application specified under § 257.105(f)(14).

(14) Provide notification of the availability of the alternative liner demonstration specified under § 257.105(f)(15).

(15) Provide notification of the availability of the alternative liner demonstration extension request specified under § 257.105(f)(16).

(16) Provide notification of the availability of the documentation prepared for the preliminary demonstration specified under § 257.105(f)(17).

(17) Provide notification of the availability of the notification of an incomplete application specified under § 257.105(f)(18).

(18) Provide notification of the availability of the decision on the application specified under § 257.105(f)(19).

(19) Provide notification of the availability of the final decision on the alternative liner demonstration specified under § 257.105(f)(20).

(20) Provide notification of the availability of the alternative source demonstration specified under § 257.105(f)(21).

(21) Provide notification of the availability of the final decision on the alternative source demonstration specified under § 257.105(f)(22).

(22) Provide notification of the final decision on the trend analysis specified under § 257.105(f)(23).

(23) Provide notification of the decision that the alternative source demonstration has been withdrawn specified under § 257.105(f)(24).

(g) *Operating criteria.* The owner or operator of a CCR unit subject to this subpart must notify the State Director and/or appropriate Tribal authority when information has been placed in the operating record and on the owner or operator's publicly accessible internet site. The owner or operator must:

(1) Provide notification of the availability of the CCR fugitive dust control plan, or any subsequent amendment of the plan, specified under § 257.105(g)(1).

(2) Provide notification of the availability of the annual CCR fugitive dust control report specified under § 257.105(g)(2).

(3) Provide notification of the availability of the initial and periodic run-on and run-off control system plans specified under § 257.105(g)(3).

(4) Provide notification of the availability of the initial and periodic inflow design flood control system plans specified under § 257.105(g)(4).

(5) Provide notification of the availability of the periodic inspection reports specified under § 257.105(g)(6).

(6) Provide notification of the availability of the documentation detailing the corrective measures taken to remedy the deficiency or release specified under § 257.105(g)(7).

(7) Provide notification of the availability of the periodic inspection reports specified under § 257.105(g)(9).

(h) *Groundwater monitoring and corrective action.* The owner or operator of a CCR unit subject to this subpart must notify the State Director and/or appropriate Tribal authority when information has been placed in the operating record and on the owner or operator's publicly accessible internet site. The owner or operator must:

(1) Provide notification of the availability of the annual groundwater monitoring and corrective action report specified under § 257.105(h)(1).

(2) Provide notification of the availability of the groundwater monitoring system certification specified under § 257.105(h)(3).

(3) Provide notification of the availability of the selection of a statistical method certification specified under § 257.105(h)(4).

(4) Provide notification that an assessment monitoring programs has been established specified under § 257.105(h)(5).

(5) Provide notification that the CCR unit is returning to a detection monitoring program specified under § 257.105(h)(7).

(6) Provide notification that one or more constituents in appendix IV to this part have been detected at statistically significant levels above the groundwater protection standard and the notifications to land owners specified under § 257.105(h)(8).

(7) Provide notification that an assessment of corrective measures has been initiated specified under § 257.105(h)(9).

(8) Provide notification of the availability of assessment of corrective measures specified under § 257.105(h)(10).

(9) Provide notification of the availability of the semiannual report describing the progress in selecting and designing the remedy and the selection of remedy report specified under § 257.105(h)(12).

(10) Provide notification of the completion of the remedy specified under § 257.105(h)(13).

(11) Provide the demonstration supporting the suspension of groundwater monitoring requirements specified under § 257.105(h)(14).

(i) *Closure and post-closure care.* The owner or operator of a CCR unit subject to this subpart must notify the State Director and/or appropriate Tribal authority when information has been placed in the operating record and on the owner or operator's publicly accessible Internet site. The owner or operator must:

(1) Provide notification of the intent to initiate closure of the CCR unit specified under § 257.105(i)(1).

(2) Provide notification of the availability of the annual progress reports of closure implementation specified under § 257.105(i)(2).

(3) Provide notification of closure completion specified under § 257.105(i)(3).

(4) Provide notification of the availability of the written closure plan, and any amendment of the plan, specified under § 257.105(i)(4).

(5) Provide notification of the availability of the demonstration(s) for a time extension for initiating closure specified under § 257.105(i)(5).

(6) Provide notification of the availability of the demonstration(s) for a time extension for completing closure specified under § 257.105(i)(6).

(7) Provide notification of intent to close a CCR unit specified under § 257.105(i)(7).

(8) Provide notification of completion of closure of a CCR unit specified under § 257.105(i)(8).

(9) Provide notification of the deed notation as required by § 257.105(i)(9).

(10) Provide notification of intent to comply with the alternative closure requirements specified under § 257.105(i)(10).

(11) The annual progress reports under the alternative closure requirements as required by § 257.105(i)(11).

(12) Provide notification of the availability of the written post-closure plan, and any amendment of the plan, specified under § 257.105(i)(12).

(13) Provide notification of completion of post-closure care specified under § 257.105(i)(13).

(14) Provide the notification of intent to comply with the site-specific alternative to initiation of closure due to development of alternative capacity infeasible as specified under § 257.105(i)(14).

(15) Provide the approved or denied demonstration for the site-specific alternative to initiation of closure due to development of alternative capacity infeasible as required by as specified under § 257.105(i)(15).

(16) Provide the notification for requesting additional time to the alternative cease receipt of waste deadline as required by § 257.105(i)(16).

(17) The semi-annual progress reports for the site-specific alternative to initiation of closure due to development of alternative capacity infeasible as specified under § 257.105(i)(17).

(18) Provide the notification of intent to comply with the site-specific alternative to initiation of closure due to permanent cessation of a coal-fired boiler(s) by a date certain as specified under § 257.105(i)(18).

(19) Provide the approved or denied demonstration for the site-specific alternative to initiation of closure due to permanent cessation of a coal-fired boiler(s) by a date certain as required by § 257.105(i)(19).

(20) The annual progress report for the site-specific alternative to initiation of closure due to permanent cessation of a coal-fired boiler(s) by a date certain as required by § 257.105(i)(20).

(j) *Retrofit criteria.* The owner or operator of a CCR unit subject to this subpart must notify the State Director and/or appropriate Tribal authority when information has been placed in the operating record and on the owner or operator's publicly accessible Internet site. The owner or operator must:

(1) Provide notification of the availability of the written retrofit plan, and any amendment of the plan, specified under § 257.105(j)(1).

(2) Provide notification of intent to comply with the alternative retrofit requirements specified under § 257.105(j)(2).

(3) The annual progress reports under the alternative retrofit requirements as required by § 257.105(j)(3).

(4) Provide notification of the availability of the demonstration(s) for a time extension for completing retrofit activities specified under § 257.105(j)(4).

(5) Provide notification of intent to initiate retrofit of a CCR unit specified under § 257.105(j)(5).

(6) Provide notification of completion of retrofit activities specified under § 257.105(j)(6).

[80 FR 21468, Apr. 17, 2015, as amended at 83 FR 36456, July 30, 2018; 85 FR 53565, Aug. 28, 2020; 85 FR 72543, Nov. 12, 2020]

### § 257.107 Publicly accessible Internet site requirements.

(a) Each owner or operator of a CCR unit subject to the requirements of this subpart must maintain a publicly accessible internet site (CCR website) containing the information specified in this section. The owner or operator's website must be titled ''CCR Rule Compliance Data and Information.'' The website must ensure that all information required to be posted is immediately available to anyone visiting the site, without requiring any prerequisite, such as registration or a requirement to submit a document request. All required information must be clearly identifiable and must be able to be immediately printed and downloaded by anyone accessing the site. If the owner/operator changes the web address (*i.e.*, Uniform Resource Locator (URL)) at any point, they must notify EPA via the ''contact us'' form on EPA's CCR website and the state director within 14 days of making the change. The facility's CCR website must also have a ''contact us'' form or a specific email address posted on the website for the public to use to submit questions and issues relating to the availability of information on the website.

(b) An owner or operator of more than one CCR unit subject to the provisions of this subpart may comply with the requirements of this section by using the same Internet site for multiple CCR units provided the CCR Web site clearly delineates information by the name or identification number of each unit.

(c) Unless otherwise required in this section, the information required to be posted to the CCR Web site must be made available to the public for at least five years following the date on which the information was first posted to the CCR Web site.

(d) Unless otherwise required in this section, the information must be posted to the CCR Web site within 30 days of placing the pertinent information required by § 257.105 in the operating record.

(e) *Location restrictions.* The owner or operator of a CCR unit subject to this subpart must place each demonstration specified under § 257.105(e) on the owner or operator's CCR Web site.

(f) *Design criteria.* The owner or operator of a CCR unit subject to this subpart must place the following information on the owner or operator's CCR Web site:

(1) Within 60 days of commencing construction of a new unit, the design certification specified under § 257.105(f)(1) or (3).

(2) No later than the date of initial receipt of CCR by a new CCR unit, the construction certification specified under § 257.105(f)(1) or (3).

(3) The documentation of liner type specified under § 257.105(f)(2).

(4) The initial and periodic hazard potential classification assessments specified under § 257.105(f)(5).

(5) The emergency action plan (EAP) specified under § 257.105(f)(6), except that only the most recent EAP must be maintained on the CCR Web site irrespective of the time requirement specified in paragraph (c) of this section.

(6) Documentation prepared by the owner or operator recording the annual face-to-face meeting or exercise between representatives of the owner or operator of the CCR unit and the local emergency responders specified under § 257.105(f)(7).

(7) Documentation prepared by the owner or operator recording any activation of the emergency action plan specified under § 257.105(f)(8).

(8) The history of construction, and any revisions of it, specified under § 257.105(f)(9).

(9) The initial and periodic structural stability assessments specified under § 257.105(f)(10).

(10) The documentation detailing the corrective measures taken to remedy the deficiency or release specified under § 257.105(f)(11).

(11) The initial and periodic safety factor assessments specified under § 257.105(f)(12).

(12) The design and construction plans, and any revisions of them, specified under § 257.105(f)(13).

(13) The application and any supplemental materials submitted in support of the application specified under § 257.105(f)(14).

(14) The alternative liner demonstration specified under § 257.105(f)(15).

(15) The alternative liner demonstration specified under § 257.105(f)(16).

(16) The documentation prepared for the preliminary demonstration specified under § 257.105(f)(17).

(17) The notification of an incomplete application specified under § 257.105(f)(18).

(18) The decision on the application specified under § 257.105(f)(19).

(19) The final decision on the alternative liner demonstration specified under § 257.105(f)(20).

(20) The alternative source demonstration specified under § 257.105(f)(21).

(21) The final decision on the alternative source demonstration specified under § 257.105(f)(22).

(22) The final decision on the trend analysis specified under § 257.105(f)(23).

(23) The decision that the alternative source demonstration has been withdrawn specified under § 257.105(f)(24).

(g) *Operating criteria.* The owner or operator of a CCR unit subject to this subpart must place the following information on the owner or operator's CCR Web site:

(1) The CCR fugitive dust control plan, or any subsequent amendment of the plan, specified under § 257.105(g)(1) except that only the most recent plan must be maintained on the CCR Web site irrespective of the time requirement specified in paragraph (c) of this section.

(2) The annual CCR fugitive dust control report specified under § 257.105(g)(2).

(3) The initial and periodic run-on and run-off control system plans specified under § 257.105(g)(3).

(4) The initial and periodic inflow design flood control system plans specified under § 257.105(g)(4).

(5) The periodic inspection reports specified under § 257.105(g)(6).

(6) The documentation detailing the corrective measures taken to remedy the deficiency or release specified under § 257.105(g)(7).

(7) The periodic inspection reports specified under § 257.105(g)(9).

(h) *Groundwater monitoring and corrective action.* The owner or operator of a CCR unit subject to this subpart must place the following information on the owner or operator's CCR Web site:

(1) The annual groundwater monitoring and corrective action report specified under § 257.105(h)(1).

(2) The groundwater monitoring system certification specified under § 257.105(h)(3).

(3) The selection of a statistical method certification specified under § 257.105(h)(4).

(4) The notification that an assessment monitoring programs has been established specified under § 257.105(h)(5).

(5) The notification that the CCR unit is returning to a detection monitoring program specified under § 257.105(h)(7).

(6) The notification that one or more constituents in appendix IV to this part have been detected at statistically significant levels above the groundwater protection standard and the notifications to land owners specified under § 257.105(h)(8).

(7) The notification that an assessment of corrective measures has been initiated specified under § 257.105(h)(9).

(8) The assessment of corrective measures specified under § 257.105(h)(10).

(9) The semiannual reports describing the progress in selecting and designing remedy and the selection of remedy report specified under § 257.105(h)(12), except that the selection of the remedy report must be maintained until the remedy has been completed.

(10) The notification that the remedy has been completed specified under § 257.105(h)(13).

(11) The demonstration supporting the suspension of groundwater monitoring requirements specified under § 257.105(h)(14).

(i) *Closure and post-closure care.* The owner or operator of a CCR unit subject to this subpart must place the following information on the owner or operator's CCR Web site:

(1) The notification of intent to initiate closure of the CCR unit specified under § 257.105(i)(1).

(2) The annual progress reports of closure implementation specified under § 257.105(i)(2).

(3) The notification of closure completion specified under § 257.105(i)(3).

(4) The written closure plan, and any amendment of the plan, specified under § 257.105(i)(4).

(5) The demonstration(s) for a time extension for initiating closure specified under § 257.105(i)(5).

(6) The demonstration(s) for a time extension for completing closure specified under § 257.105(i)(6).

(7) The notification of intent to close a CCR unit specified under § 257.105(i)(7).

(8) The notification of completion of closure of a CCR unit specified under § 257.105(i)(8).

(9) The notification recording a notation on the deed as required by § 257.105(i)(9).

(10) The notification of intent to comply with the alternative closure requirements as required by § 257.105(i)(10).

(11) The annual progress reports under the alternative closure requirements as required by § 257.105(i)(11).

(12) The written post-closure plan, and any amendment of the plan, specified under § 257.105(i)(12).

(13) The notification of completion of post-closure care specified under § 257.105(i)(13).

(14) The notification of intent to comply with the site-specific alternative to initiation of closure due to development of alternative capacity infeasible as specified under § 257.105(i)(14).

(15) The approved or denied demonstration for the site-specific alternative to initiation of closure due to development of alternative capacity infeasible as required by as specified under § 257.105(i)(15).

(16) The notification for requesting additional time to the alternative cease receipt of waste deadline as required by § 257.105(i)(16).

(17) The semi-annual progress reports for the site-specific alternative to initiation of closure due to development of alternative capacity infeasible as specified under § 257.105(i)(17).

(18) The notification of intent to comply with the site-specific alternative to initiation of closure due to permanent cessation of a coal-fired boiler(s) by a date certain as specified under § 257.105(i)(18).

(19) The approved or denied demonstration for the site-specific alternative to initiation of closure due to permanent cessation of a coal-fired boiler(s) by a date certain as required by § 257.105(i)(19).

(20) The annual progress report for the site-specific alternative to initiation of closure due to permanent cessation of a coal-fired boiler(s) by a date certain as required by § 257.105(i)(20).

(j) *Retrofit criteria.* The owner or operator of a CCR unit subject to this subpart must place the following information on the owner or operator's CCR Web site:

(1) The written retrofit plan, and any amendment of the plan, specified under § 257.105(j)(1).

(2) The notification of intent to comply with the alternative retrofit requirements as required by § 257.105(j)(2).

(3) The annual progress reports under the alternative retrofit requirements as required by § 257.105(j)(3).

(4) The demonstration(s) for a time extension for completing retrofit activities specified under § 257.105(j)(4).

(5) The notification of intent to retrofit a CCR unit specified under § 257.105(j)(5).

(6) The notification of completion of retrofit activities specified under § 257.105(j)(6).

[80 FR 21468, Apr. 17, 2015, as amended at 83 FR 36456, July 30, 2018; 85 FR 53566, Aug. 28, 2020; 85 FR 72543, Nov. 12, 2020]

ADEQ CCR rule, authorizing statutes; implementing statutes

## 49-891. Coal combustion residuals program; rules; incorporation by reference

A. The director may adopt rules to establish and operate a coal combustion residuals program equivalent to or at least as protective as the federal coal combustion residuals program under 40 Code of Federal Regulations part 257, subpart D for the purpose of obtaining approval to operate the federal CCR program. Federal coal combustion residuals regulations may be adopted by reference. Rules adopted pursuant to this subsection shall not be more or less stringent than or conflict with 40 Code of Federal regulations part 257, subpart D for nonprocedural standards, except that the department may adopt aquifer protection standards that are more stringent than 40 Code of Federal regulations part 257, subpart D if these standards are developed pursuant to chapter 2, article 3 of this title.

B. Rules adopted pursuant to subsection A of this section shall not be more or less stringent than or conflict with 40 Code of Federal Regulations part 257, subpart D for nonprocedural standards, except that the department shall adopt those portions of the dam safety standards that are developed pursuant to title 45, chapter 6, article 1, that are in existence for CCR surface impoundments on September 24, 2022 and that are more stringent than 40 Code of Federal Regulations part 257, subpart D.

C. The rules authorized by subsection A of this section shall provide requirements for issuing, denying, suspending or modifying individual CCR permits, including:

1. Requirements for submitting notices, permit applications and any additional information necessary to determine whether a permit should be issued.

2. Recordkeeping, reporting and compliance schedule requirements in the permit.

3. A permit life of ten years, after which the permit shall be renewed.

4. Adequate opportunities for public participation during CCR permit processing.

5. Other terms and conditions as the director deems necessary to ensure compliance with this article.

D. The rules for CCR permits shall include:

1. Permit processing fees from the applicant to cover the cost of administrative services and other expenses associated with evaluating the application and issuing or denying the permit, beginning when an application is submitted.

2. Annual fees for the program approved by the United States environmental protection agency beginning after CCR program approval.

E. The fees authorized by this section shall be deposited, pursuant to sections 35-146 and 35-147, in the solid waste fee fund established by section 49-881.

F. After the effective date of design and operation rules adopted by the director for coal combustion residuals facilities pursuant to this section, facilities with CCR units may submit to the department a permit application covering each CCR unit at the facility. Facilities with CCR units shall submit to the department a permit application covering each CCR unit at the facility within one hundred eighty days of CCR program approval.

Implementing statutes

49-763.01. Variances

Within ninety days after receipt of a written request for a variance from a solid waste facility owner, operator or management agency, the department may grant a variance from solid waste management rules and standards if the department concludes that no violation of health standards will occur. The department may consider whether an environmental nuisance will result. If the request is denied, the department shall prepare and make available to the management agency or facility owner or operator a written decision including relevant data and a technical analysis supporting the denial. The department shall not grant any variance or temporary authorization to operate under this chapter if the proposed variance conflicts or is inconsistent with the requirements of 40 C.F.R. part 257, subparts A and B, 40 Code of Federal Regulations part 257, subpart D or 40 C.F.R. part 258.

49-769. Agency orders; appeal

Except as provided in section 41-1092.08, subsection H, any final agency order issued pursuant to this article or article 11 of this chapter is subject to judicial review pursuant to title 12, chapter 7, article 6.

49-770. Financial assurance requirements for solid waste facilities

A. Beginning one hundred eighty days after the effective date of the design and operation rules adopted by the director for that type of solid waste facility pursuant to section 49-761 or article 11 of this chapter or after CCR program approval, whichever is later, a solid waste facility may not be operated unless financial responsibility has been demonstrated for the costs of closure, postclosure care, if necessary, and any corrective action as a result of known releases from the facility. Financial assurance for municipal solid waste landfills shall be required pursuant to section 49-761, subsection B. This subsection applies to small municipal solid waste landfills beginning on October 9, 1997. For all other municipal solid waste landfills, this subsection shall apply beginning on September 1, 1997 unless the director establishes

an alternative date pursuant to section 49-761, subsection B on a facility-specific basis.

B. Within one hundred eighty days after the effective date of the design and operation rules adopted by the director for that type of solid waste facility pursuant to section 49-761, existing solid waste facilities shall modify and submit existing facility plans to the department to demonstrate the financial responsibility required by this section. A solid waste facility in operation before the effective date of the design and operation rules adopted by the director for that type of solid waste facility pursuant to section 49-761 may continue to operate while the department reviews the modified plan.

C. Within one hundred eighty days after the effective date of design and operation rules adopted by the director for that type of solid waste facility pursuant to article 11 of this chapter, existing solid waste facilities regulated under article 11 of this chapter may submit to the department the financial responsibility required by this section. Within one hundred eighty days after CCR program approval, existing solid waste facilities regulated under article 11 of this chapter shall submit to the department the financial responsibility required by this section. A solid waste facility in operation before the effective date of CCR program approval may continue to operate while the department reviews the submission.

D. A demonstration of financial responsibility made for a solid waste facility under chapter 2, article 3 of this title shall suffice, in whole or in part, for any demonstration of financial responsibility prescribed by this section. A demonstration of financial assurance or competence required under this section or under chapter 2, article 3 of this title for a solid waste facility shall not be required before completion of construction but shall be required before the department issues approval to operate.

E. The terms and conditions adopted by the director for each financial assurance mechanism shall provide:

1. The amount in current dollars equal to the cost of hiring a third party to complete site closure and, if necessary, continued postclosure monitoring and maintenance consistent with the plan and any factor to be applied for inflation. Amounts shall be updated annually for solid waste landfills and every three years for all other solid waste facilities to adjust for inflation or as necessary to reflect increased costs resulting from changes to the facility plan or facility conditions.

2. The period after closure for which financial assurance is required.

F. The approved financial assurance mechanism shall not be released unless the plan-specified closure and postclosure requirements have been completed or unless new financial assurance has been submitted by a new owner or operator of the solid waste facility and approved by the director. The owner or operator of the solid waste facility:

1. Shall receive any accrued interest on financial assurance instruments retained by the department.

2. May request a reduction in financial assurance requirements on completion of closure or portions of postclosure monitoring and maintenance that are approved by the director.

3. Shall justify any reduction in closure or postclosure cost estimates in the facility plan.

4. Shall assure that the period of coverage of the financial assurance instrument exceeds by a minimum of ninety days the applicable one-year or three-year time period required in subsection E of this section.

5. Shall be released from closure or postclosure financial responsibility on certification by a registered professional engineer or other environmental professional deemed acceptable by the director that the specific activities of closure or postclosure have been completed in accordance with the approved facility plan and placed in the operating record of the facility plan.

G. For a local governmental agency with CCR units, the demonstration required by this section may contain the details of the financial arrangements used to meet the estimated closure and postclosure costs without specifying a specific financial assurance mechanism.

## 49-781. Compliance orders; appeal; enforcement

A. If the director determines that a person is in violation of any provision of article 3 or 4 of this chapter, a rule adopted pursuant to article 4 or 11 of this chapter or any condition of a coal combustion residuals permit or solid waste facility plan approval issued pursuant to this chapter or is creating an imminent and substantial endangerment to the public health or the environment, the director may issue an order requiring compliance immediately or within a specified period of time.

B. A compliance order shall state with reasonable specificity the nature of the violation, a time for compliance, if applicable, and the right to a hearing.

C. A compliance order shall be transmitted to the alleged violator by certified mail, return receipt requested, or by hand delivery.

D. At the request of the director, the attorney general may file an action in superior court to enforce orders issued pursuant to this section after the order becomes final.

E. This section does not apply to CCR units until after CCR program approval.

## 49-783. Injunctive relief; civil penalties; costs

A. If the director has reason to believe that a person is in violation of any provision of article 3, 4 or 11 of this chapter, a rule adopted pursuant to article 4 or 11 of this chapter, any condition of a coal combustion residuals permit or an approved solid waste facility plan issued pursuant to article 4 of this chapter or that a person is creating an imminent and substantial endangerment to the public health or the environment, the director through the attorney general may request a temporary restraining order, a preliminary injunction, a permanent injunction or any other relief necessary to protect the public health or the environment, without regard to whether the person has requested a hearing.

B. A person who violates any provision of article 3, 4 or 11 of this chapter, a rule adopted pursuant to article 4 or 11 of this chapter, an order issued pursuant to this article, a coal combustion residuals permit or an approved solid waste facility plan issued pursuant to this chapter is subject to a civil penalty of not more than $1,000 for each day not to exceed $15,000 for each violation. At the request of the director, the attorney general shall file an action in superior court to recover civil penalties as prescribed by this section.

C. This section does not apply to CCR units until after CCR program approval.

49-791. Violation; classification; penalties

A. A person shall not:

1. Practice open burning at a solid waste facility without a variance approval issued by the director.

2. Scavenge at a solid waste facility.

3. Damage or destroy signs posted at a solid waste facility.

4. Dump or dispose of solid waste in violation of this chapter or any applicable rule adopted pursuant to article 4 or 11 of this chapter.

5. Operate a solid waste facility in a manner inconsistent with the solid waste facility plan after it has been approved or any rule adopted pursuant to article 4 or 11 of this chapter.

B. A violation of subsection A of this section is a class 2 misdemeanor.

C. In addition to the penalties prescribed by subsection B of this section or section 13-1603, subsection B, a person who violates this section or section 13-1603 shall be subject to a civil penalty in an amount prescribed by section 49-783.

49-881. Solid waste fee fund; uses; exemption

A. The solid waste fee fund is established. The director shall administer the fund. The fund consists of legislative appropriations, donations, gifts, grants, registration fees

collected pursuant to sections 44-1303 and 44-1304.01, waste tire administrative monies distributed pursuant to section 44-1305, subsection B, paragraph 1, lead acid battery collection and recycling fees collected pursuant to section 44-1322, licensure fees collected pursuant to section 49-104, subsection B, paragraph 14, subdivision (b), solid waste general permit fees collected pursuant to section 49-706, solid waste landfill registration fees from section 49-747, licensure fees collected pursuant to section 49-761, subsection D, paragraphs 2 and 3 and subsections H, J and M, solid waste fees collected pursuant to section 49-762.03, subsection F, section 49-802, subsection B, special waste management plan fees collected pursuant to section 49-857, special waste management fees collected pursuant to section 49-863, private consultants expedited plan review fees collected pursuant to section 49-762.03, subsection G, self-certification filing fees collected pursuant to section 49-762.05, subsection H, solid waste landfill disposal fees collected pursuant to section 49-836, special waste fees collected pursuant to section 49-855, subsection C, paragraph 2 and coal combustion residuals permit processing fees and annual fees collected pursuant to section 49-891.

B. Monies in the fund are subject to legislative appropriation for solid waste control programs established in the funding sources pursuant to subsection A of this section and as determined by the director.

C. On notice from the director, the state treasurer shall invest and divest monies in the fund as provided in section 35-313, and monies earned from investment shall be credited to the fund. Monies deposited in the fund are exempt from the provisions of section 35-190 relating to lapsing of appropriations.

### 49-891.01. Powers of the director

After CCR program approval, the director may compel production of documents or information from owners and operators of coal combustion residuals units in order to evaluate compliance with applicable statutes, rules and permits.

ADEQ CCR rule; definitions not shown in rule or statutes

## 49-701. Definitions

In this chapter, unless the context otherwise requires:

1. "Administratively complete plan" means an application for a solid waste facility plan approval that the department has determined contains each of the components required by statute or rule but that has not undergone technical review or public notice by the department.

2. "Administrator" means the administrator of the United States environmental protection agency.

3. "Advanced recycling":

(a) Means a manufacturing process to convert post-use polymers and recovered feedstocks into basic hydrocarbon raw materials, feedstocks, chemicals, monomers, oligomers, plastics, plastics and chemical feedstocks, basic and unfinished chemicals, crude oil, naphtha, liquid transportation fuels and coatings and other products such as waxes and lubricants through processes that include pyrolysis, gasification, depolymerization, catalytic cracking, reforming, hydrogenation, solvolysis and other similar technologies.

(b) Does not include solid waste management, processing, incineration or treatment.

4. "Advanced recycling facility":

(a) Means a facility that receives, stores and converts post-use polymers and recovered feedstocks using advanced recycling.

(b) Includes a manufacturing facility that is subject to applicable provisions of law and department rules for air quality, water quality and waste and land use.

(c) Does not include a solid waste facility, processing facility, treatment facility, materials recovery facility, recycling facility or incinerator.

5. "Beneficial use of CCR" means that all of the following conditions apply:

(a) The CCR provides a functional benefit.

(b) The CCR substitutes for the use of a virgin material, which conserves natural resources that would otherwise need to be obtained through practices such as extraction.

(c) The use of the CCR meets relevant product specifications, regulatory standards or design standards when available, and when those standards are not available, the CCR is not used in excess quantities.

(d) For unencapsulated use of CCR involving placement of twelve thousand four hundred tons or more on the land in nonroadway applications, the user demonstrates, keeps records and provides documentation on request, that environmental releases to groundwater, surface water, soil and air are comparable to or lower than those from analogous products made without CCR, or that environmental releases to groundwater, surface water, soil and air will be at or below relevant regulatory and health-based benchmarks for human and ecological receptors during use.

6. "CCR pile":

(a) Means any noncontainerized accumulation of solid, nonflowing CCR that is placed on the land.

(b) Does not include a CCR that is beneficially used off-site.

7. "CCR program approval" means United States environmental protection agency approval of the Arizona coal combustion residuals program in accordance with 42 United States Code section 6945(d)(1).

8. "CCR surface impoundment" or "impoundment" means a natural topographic depression, man-made excavation or diked area, which is designed to hold an accumulation of CCR and liquids, and the CCR unit treats, stores or disposes of CCR.

9. "Closed solid waste facility" means any of the following:

(a) A solid waste facility other than a CCR unit that ceases storing, treating, processing or receiving for disposal solid waste before the effective date of design and operation rules for that type of facility adopted pursuant to section 49-761.

(b) A public solid waste landfill that meets any of the following criteria:

(i) Ceased receiving solid waste before July 1, 1983.

(ii) Ceased receiving solid waste and received at least two feet of cover material before January 1, 1986.

(iii) Received approval for closure from the department after completing a postclosure care and monitoring plan as required by permit or plan approval.

(c) A public composting plant or a public incinerating facility that closed in accordance with an approved plan.

10. "Coal combustion residuals" or "CCR" means fly ash, bottom ash, boiler slag and flue gas desulfurization materials generated from burning coal for the purpose of generating electricity by electric utilities and independent power producers.

11. "Coal combustion residuals landfill" or "CCR landfill":

(a) Means an area of land or an excavation that receives CCR and that is not a surface impoundment, an underground injection well, a salt dome formation, a salt bed formation, an underground or surface coal mine or a cave.

(b) Includes sand and gravel pits and quarries that receive CCR or CCR piles and any use of CCR that does not meet the definition of a beneficial use of CCR.

12. "Coal combustion residuals unit" or "CCR unit":

(a) Means any CCR landfill, CCR surface impoundment or lateral expansion of a CCR unit or a combination of more than one of these units.

(b) Includes both new and existing units, unless otherwise specified.

13. "Construction debris" means solid waste derived from the construction, repair or remodeling of buildings or other structures.

14. "County" means:

(a) The board of supervisors in the context of the exercise of powers or duties.

(b) The unincorporated areas in the context of area of jurisdiction.

15. "Demolition debris" means solid waste derived from the demolition of buildings or other structures.

16. "Depolymerization" means a manufacturing process through which post-use polymers are broken into smaller molecules such as monomers and oligomers or raw, intermediate or final products, plastics and chemical feedstocks, basic and unfinished chemicals, crude oil, naphtha, liquid transportation fuels, waxes, lubricants, coatings and other basic hydrocarbons.

17. "Discharge" has the same meaning prescribed in section 49-201.

18. "Existing CCR landfill" means a CCR landfill that receives CCR both before and after October 19, 2015, or for which construction commenced before October 19, 2015 and that receives CCR on or after October 19, 2015. For the purposes of this paragraph, "commenced construction" means the owner or operator of a CCR landfill has obtained the federal, state and local approvals or permits necessary to begin physical construction and a continuous on site, physical construction program had begun before October 19, 2015.

19. "Existing CCR surface impoundment" means a CCR surface impoundment that meets one of the following conditions:

(a) Receives CCR both before and after October 19, 2015.

(b) For which construction commenced before October 19, 2015 and that receives CCR on or after October 19, 2015. For the purposes of this paragraph, "commenced

construction" means the owner or operator of a CCR surface impoundment has obtained the federal, state and local approvals or permits necessary to begin physical construction and a continuous on site, physical construction program had begun before October 19, 2015.

20. "Existing solid waste facility" means a solid waste facility other than a CCR unit that begins construction or is in operation on the effective date of the design and operation rules adopted by the director pursuant to section 49-761 for that type of solid waste facility.

21. "Facility plan" means any design or operating plan for a solid waste facility or group of solid waste facilities other than a permit issued under article 11 of this chapter.

22. "40 C.F.R. part 257, subparts A and B" means 40 Code of Federal Regulations part 257, subparts A and B in effect on May 1, 2004.

23. "40 C.F.R. part 258" means 40 Code of Federal Regulations part 258 in effect on May 1, 2004.

24. "Gasification" means a manufacturing process through which recovered feedstocks are heated and converted into a fuel and gas mixture in an oxygen-deficient atmosphere and the mixture is converted into valuable raw, intermediate and final products, including plastic monomers, chemicals, waxes, lubricants, chemical feedstocks, crude oil, diesel, gasoline, diesel and gasoline blendstocks, home heating oil and other fuels, including ethanol and transportation fuel, that are returned to economic utility in the form of raw materials, products or fuels.

25. "Household hazardous waste" means solid waste as described in 40 Code of Federal Regulations section 261.4(b)(1) as incorporated by reference in the rules adopted pursuant to chapter 5 of this title.

26. "Household waste":

(a) Means any solid waste, including garbage, rubbish and sanitary waste from septic tanks, that is generated from households, including single and multiple-family residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds and day use recreation areas.

(b) Does not include construction debris, landscaping rubble or demolition debris.

27. "Inert material":

(a) Means material that satisfies all of the following conditions:

(i) Is not flammable.

(ii) Will not decompose.

(iii) Will not leach substances in concentrations that exceed applicable aquifer water quality standards prescribed by section 49-201, paragraph 22 when subjected to a water leach test that is designed to approximate natural infiltrating waters.

(b) Includes concrete, asphaltic pavement, brick, rock, gravel, sand, soil and metal, if used as reinforcement in concrete.

(c) Does not include special waste, hazardous waste, glass or other metal.

28. "Land disposal" means placement of solid waste in or on land.

29. "Landscaping rubble" means material that is derived from landscaping or reclamation activities and that may contain inert material and not more than ten percent by volume of vegetative waste.

30. "Lateral expansion" means, for the purposes of the coal combustion residuals program established pursuant to article 11 of this chapter, a horizontal expansion of the waste boundaries of an existing CCR landfill or existing CCR surface impoundment made after October 19, 2015.

31. "Management agency" means any person responsible for the day-to-day operation, maintenance and management of a particular public facility or group of public facilities.

32. "Medical waste":

(a) Means any solid waste that is generated in the diagnosis, treatment or immunization of a human being or animal or in any research relating to that diagnosis, treatment or immunization, or in the production or testing of biologicals.

(b) Includes discarded drugs.

(c) Does not include hazardous waste as defined in section 49-921 other than very small quantity generator waste.

33. "Municipal solid waste landfill" means any solid waste landfill that accepts household waste, household hazardous waste or very small quantity generator waste.

34. "New solid waste facility" means a solid waste facility that begins construction or operation after the effective date of design and operating rules that are adopted pursuant to section 49-761 or article 11 of this chapter for that type of solid waste facility.

35. "On site" means the same or geographically contiguous property that may be divided by public or private right-of-way if the entrance and exit between the properties are at a crossroads intersection and access is by crossing the right-of-way and not by traveling along the right-of-way. Noncontiguous properties that are owned by the same person and connected by a right-of-way that is controlled by that person

and to which the public does not have access are deemed on site property. Noncontiguous properties that are owned or operated by the same person regardless of right-of-way control are also deemed on site property.

36. "Person" means any public or private corporation, company, partnership, firm, association or society of persons, the federal government and any of its departments or agencies, this state or any of its agencies, departments, political subdivisions, counties, towns or municipal corporations, as well as a natural person.

37. "Post-use polymer":

(a) Means a plastic to which all of the following apply:

(i) The plastic is derived from any industrial, commercial, agricultural or domestic activities.

(ii) The plastic is not mixed with solid waste or hazardous waste on site or during processing at the advanced recycling facility.

(iii) The plastic's use or intended use is as a feedstock for manufacturing crude oil, fuels, feedstocks, blendstocks, raw materials or other intermediate products or final products using advanced recycling.

(iv) The plastic has been sorted from solid waste and other regulated waste but may contain residual amounts of solid waste such as organic material and incidental contaminants or impurities such as paper labels and metal rings.

(v) The plastic is processed at an advanced recycling facility or held at an advanced recycling facility before processing.

(b) Does not include solid waste or municipal waste.

38. "Process" or "processing" means the reduction, separation, recovery, conversion or recycling of solid waste.

39. "Public solid waste facility" means a transfer facility and any site owned, operated or used by any person for the storage, processing, treatment or disposal of solid waste that is not generated on site.

40. "Pyrolysis" means a manufacturing process through which post-use polymers are heated in the absence of oxygen until melted, are thermally decomposed and are then cooled, condensed and converted into valuable raw, intermediate and final products, including plastic monomers, chemicals, waxes, lubricants, chemical feedstocks, crude oil, diesel, gasoline, diesel and gasoline blendstocks, home heating oil and other fuels, including ethanol and transportation fuel, that are returned to economic utility in the form of raw materials, products or fuels.

41. "Recovered feedstocks":

(a) Means one or more of the following materials that have been processed so that they may be used as feedstock in an advanced recycling facility:

(i) Post-use polymers.

(ii) Materials for which the United States environmental protection agency has made a nonwaste determination pursuant to 40 Code of Federal Regulations section 241.3(c) or has otherwise determined are feedstocks and not solid waste.

(b) Does not include:

(i) Unprocessed municipal solid waste.

(ii) Materials that are mixed with solid waste or hazardous waste on site or during processing at an advanced recycling facility.

42. "Recycling facility" means a solid waste facility that is owned, operated or used for the storage, treatment or processing of recyclable solid waste.

43. "Salvaging" means the removal of solid waste from a solid waste facility with the permission and in accordance with rules or ordinances of the management agency for purposes of productive reuse.

44. "Scavenging" means the unauthorized removal of solid waste from a solid waste facility.

45. "Solid waste facility" means a transfer facility and any site owned, operated or used by any person for the storage, processing, treatment or disposal of solid waste, very small quantity generator waste or household hazardous waste but does not include the following:

(a) A site at which less than one ton of solid waste that is not household waste, household hazardous waste, very small quantity generator waste, medical waste or special waste and that was generated on site is stored, processed, treated or disposed in compliance with section 49-762.07, subsection F.

(b) A site at which solid waste that was generated on site is stored for ninety days or less.

(c) A site at which nonputrescible solid waste that was generated on site in amounts of less than one thousand kilograms per month per type of nonputrescible solid waste is stored and contained for one hundred eighty days or less.

(d) A site that stores, treats or processes paper, glass, wood, cardboard, household textiles, scrap metal, plastic, vegetative waste, aluminum, steel or other recyclable material and that is not a waste tire facility, a transfer facility or a recycling facility.

(e) A site where sludge from a wastewater treatment facility is applied to the land as a fertilizer or beneficial soil amendment in accordance with sludge application requirements.

(f) A closed solid waste facility.

(g) A solid waste landfill that is performing or has completed postclosure care before July 1, 1996 in accordance with an approved postclosure plan.

(h) A closed solid waste landfill performing a onetime removal of solid waste from the closed solid waste landfill, if the operator provides a written notice that describes the removal project to the department within thirty days after completion of the removal project.

(i) A site where solid waste generated in street sweeping activities is stored, processed or treated before disposal at a solid waste facility authorized under this chapter.

(j) A site where solid waste generated at either a drinking water treatment facility or a wastewater treatment facility is stored, processed, or treated on site before disposal at a solid waste facility authorized under this chapter, and any discharge is regulated pursuant to chapter 2, article 3 of this title.

(k) A closed solid waste landfill where development activities occur on the property or where excavation or removal of solid waste is performed for maintenance and repair if the following conditions are met:

(i) When the project is completed there will not be an increase in leachate that would result in a discharge.

(ii) When the project is completed the concentration of methane gas will not exceed twenty-five percent of the lower explosive limit in on-site structures, or the concentration of methane gas will not exceed the lower explosive limit at the property line.

(iii) Protection has been provided to prevent remaining waste from causing any vector, odor, litter or other environmental nuisance.

(iv) The operator provides a notice to the department containing the information required by section 49-762.07, subsection A, paragraphs 1, 2 and 5 and a brief description of the project.

(l) Agricultural on-site disposal as provided in section 49-766.

(m) The use, storage, treatment or disposal of by-products of regulated agricultural activities as defined in section 49-201 and that are subject to best management practices pursuant to section 49-247 or by-products of livestock, range livestock and

poultry as defined in section 3-1201, pesticide containers that are regulated pursuant to title 3, chapter 2, article 6 or other agricultural crop residues.

(n) Household hazardous waste collection events held at a temporary site for not more than six days in any calendar quarter.

(o) Wastewater treatment facilities as defined in section 49-1201.

(p) An on-site single-family household waste composting facility.

(q) A site at which five hundred or fewer waste tires are stored.

(r) A site at which mining industry off-road waste tires are stored or are disposed of as prescribed by rules in effect on February 1, 1996, until the director by rule determines that on-site recycling methods exist that are technically feasible and economically practical.

(s) A site at which underground piping, conduit, pipe covering or similar structures are abandoned in place in accordance with applicable state and federal laws.

(t) An advanced recycling facility that converts recovered feedstocks to manufacture raw materials and intermediate and final products.

46. "Solid waste landfill":

(a) Means a facility, area of land or excavation in which solid wastes are placed for permanent disposal.

(b) Does not include a land application unit, surface impoundment, injection well, coal combustion residuals landfill, compost pile or waste pile or an area containing ash from the on-site combustion of coal that does not contain household waste, household hazardous waste or very small quantity generator waste.

47. "Solid waste management" means the systematic administration of activities that provide for the collection, source separation, storage, transportation, transfer, processing, treatment or disposal of solid waste in a manner that protects public health and safety and the environment and prevents and abates environmental nuisances.

48. "Solid waste management plan" means the plan that is adopted pursuant to section 49-721 and that provides guidelines for the collection, source separation, storage, transportation, processing, treatment, reclamation and disposal of solid waste in a manner that protects public health and safety and the environment and prevents and abates environmental nuisances.

49. "Solvolysis":

(a) Means a manufacturing process through which post-use polymers are purified with the aid of solvents, allowing additives and contaminants to be removed and producing

polymers capable of being recycled or reused without first being reverted to a monomer.

(b) Includes hydrolysis, aminolysis, ammonoloysis, methanolysis and glycolysis.

50. "Storage" means the holding of solid waste.

51. "Transfer facility":

(a) Means a site that is owned, operated or used by any person for the rehandling or storage for ninety days or less of solid waste that was generated off site for the primary purpose of transporting that solid waste.

(b) Includes those facilities that include significant solid waste transfer activities that warrant the facility's regulation as a transfer facility.

52. "Treatment" means any method, technique or process used to change the physical, chemical or biological character of solid waste so as to render that waste safer for transport, amenable for processing, amenable for storage or reduced in volume.

53. "Vegetative waste":

(a) Means waste derived from plants, including tree limbs and branches, stumps, grass clippings and other waste plant material.

(b) Does not include processed lumber, paper, cardboard and other manufactured products that are derived from plant material.

54. "Very small quantity generator waste" means hazardous waste in quantities as defined by rules adopted pursuant to section 49-922.

55. "Waste pile" means any noncontainerized accumulation of solid, nonflowing waste that is used for treatment or storage.

56. Waste tire does not include tires used for agricultural purposes as bumpers on agricultural equipment or as ballast to maintain covers at an agricultural site, or any tire disposed of using any of the methods in section 44-1304, subsection D, paragraphs 1, 2, 3, 5 through 8 and 11 and means any of the following:

(a) A tire that is no longer suitable for its original intended purpose because of wear, damage or defect.

(b) A tire that is removed from a motor vehicle and is retained for further use.

(c) A tire that has been chopped or shredded.

57. "Waste tire facility" means a solid waste facility at which five thousand or more waste tires are stored outdoors on any day.

Gmail

**GRRC - ADOA <grrc@azdoa.gov>**

# ADEQ CCR rule

1 message

**Julie Riemenschneider** <riemenschneider.julie@azdeq.gov> Fri, Mar 28, 2025 at 4:23 PM
To: GRRC - ADOA <grrc@azdoa.gov>
Cc: Jessica Klein <jessica.klein@azdoa.gov>

Chairperson Klein and GRRC members:

I am writing to provide information in response to Vice Chair Thorwald's questions regarding ADEQ's Coal Combustion Residuals (CCR) rulemaking discussed at the March 25, 2025, Study Session. In a national call between States and the U.S. EPA on March 27, 2025, EPA was clear that their resources for the CCR program are limited; and they will focus those resources on working with States to get their CCR permitting programs approved as directed by the new administration. EPA expects there to be 8 to 10 States who will submit program approval applications for review in the next year; Arizona's application is one of those that they are expecting.

To clarify, EPA has not terminated their permitting program. EPA did acknowledge on the national call, however, that their permitting program, proposed in early 2020, was not yet finalized. Additional work on it would be accomplished in light of other priorities including State program approval and other CCR rule revisions prioritized by the new administration. ADEQ's view is that EPA's permitting program has been continually pushed back in priority and will continue to be indefinitely.

Please find here U.S. EPA's March 12, 2025, announcement clarifying that the CCR permitting program should be in the hands of the States with local expertise, encouraging States to apply for approval, and that authorizing State programs will be a priority under this administration.

ADEQ believes that further information from the utilities answering Vice Chair Thorwald's other questions should be coming by Monday.

Thank you,
Julie

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

**Julie Riemenschneider**
**Director of Waste Programs**
**Arizona Department of Environmental Quality**

1110 W. Washington St., #160
Phoenix, AZ 85007

O: 602-771-4567
AZDEQ.gov

**Phil Smithers**
Director of Environmental, Safety, HOP, & Industrial Hygiene

Tel. 602-250-4345
Mobile 602-809-2334
e-mail: phil.smithers@aps.com

400 North 5th Street
Mail Station 9303
Phoenix, Arizona 85072

March 28, 2025

Chairperson Jessica Klein
Honorable Council Members
Governor's Regulatory Review Council
100 N 15th Avenue
Suite 305
Phoenix, AZ 85007

**Re: Rate Impact of Arizona Coal Combustion Residuals Rule**

Dear Chairperson Klein and Honorable Council Members:

Further to Council Member Frank Thorwald's request, this letter presents the estimated impact to customer electric rates of the regulatory fees in the Arizona Department of Environmental Quality's (ADEQ's) proposed Arizona Coal Combustion Residuals (CCR) Rulemaking, specifically *Arizona Administrative Code (AAC) Title 18, Chapter 13, Article 10 (Coal Combustion Residuals) and Article 17 (Financial Assurance)* (the Proposed Rules). As indicated during the March 25 Governor's Regulatory Review Council (GRRC) Study Session, the analysis presented herein is specific to Arizona Public Service Company ("APS") as applicable regulatory fees, rate structures/mechanisms, and oversight of customer rates are different for each Arizona utility.

APS has one facility that will be subject to the Proposed Rules, Cholla Power Plant which is located near Joseph City, Arizona. Although this power plant is in the process of shutting down this year, two CCR surface impoundments and one CCR landfill will need to be permitted under the Arizona CCR Rule since these units will be undergoing closure and/or require post-closure care for some time. Assuming that the facility is permitted at the maximum application fee of $200,000 and pays the annual unit fees in the proposed rules ($48,050) over the 10-year permit term, the annualized cost of the Arizona CCR permit program regulatory fees will be approximately $68,050 per year. Based on rates developed during our most recent rate case, the rough estimate of this fee on a residential customer's monthly bill is a fraction of a penny (estimated at approximately $0.002 per month for a typical residential customer consuming 1,050 kilowatt hours [kWh] of electricity) assuming costs are recovered on a per kWh basis.

Most of the cost savings associated with implementation of the proposed rules are intangible and a result of promoting certainty in regulatory compliance. However, there is one tangible cost savings that can be directly estimated. Given that both CCR surface impoundments at Cholla Power Plant have dams currently regulated by the Arizona Department of Water Resources (ADWR), the estimated cost savings from incorporating ADWR rules into the Proposed Rules (i.e.,

combining two permits into one) will be at least $23,500 per year based on current regulatory inspection fees and contractor costs. This savings will further reduce the impact of fees in the proposed rules on a customer's bill.

If you would like to discuss the information provided in more detail, please contact Natalie Chrisman Lazarr at (602) 316-1324 or via email at natalie.chrismanlazarr@aps.com.

Thank you,



Phil Smithers
Director, Environmental and Safety

cc: Neal Brown, APS Environmental Support Manager
Jeffrey Allmon, Pinnacle West Associate General Counsel
Lauren Ferrigni, Pinnacle West Senior Environmental Attorney

Tucson Electric Power
88 East Broadway Blvd (85701)
Mail Stop HQE901, Post Office Box 711
Tucson, Arizona 85702

Telephone (520) 549-8640
Email: megan.garvey@tep.com

March 31, 2025

Governor's Regulatory Review Council
100 N. 15th Avenue Suite 302
Phoenix, AZ 85007

RE: Financial Impact Estimate
Arizona Coal Combustion Residuals Program

Dear Honorable Council Members:

As requested during the Governor's Regulatory Review Council ("GRRC") Study Session on March 25, 2025, Tucson Electric Power Company ("TEP" or "Company") respectfully submits this letter regarding estimated potential financial impacts associated with the Arizona Department of Environmental Quality's (ADEQ) Proposed Rulemaking – Coal Combustion Residuals ("CCR") Program published in the Arizona Administrative Register on July 12, 2024 ("Program" or "Proposed Rule").

TEP supports ADEQ's efforts and the clear, consistent and predictable requirements that will stem from the Proposed Rule. We have been actively engaged in ADEQ's stakeholder process for the Proposed Rule, advocating for a Program that protects public health and the environment, mitigates long-term risk and represents reasonable operational / compliance costs.

TEP's financial impact analysis presented below focuses on the estimated potential cost of the proposed permitting fees on our customers' monthly bills (under the Proposed Rule).[1]

TEP's coal-fired power plant in Springerville, Arizona disposes CCR in a landfill that would be subject to the Proposed Rule and associated permitting fees. Per Proposed R18-13-1021.B, Table 3, the maximum initial CCR Facility Permit fee would be $200,000. Each permit term will be ten years, and the initial permit fee would be amortized over the permit term. Per Proposed R18-13-1021.A, Table 2, the annual permit fee would be $13,150 since we only operate one CCR landfill.

[1] The subsequent operational costs associated with Program compliance are not included in this analysis. These costs are unique to each utility / applicable facility operation.

The following table summarizes the maximum potential permitting fees and potential impacts to our customers. The maximum potential impact to an average customer's monthly bill would be a fraction of a penny.

| Initial Permit Fee | Annual Permit Fee | Maximum Potential Impact to Monthly Bill | |
|---|---|---|---|
| $200,000 | $13,150 | $0.001 - $0.003 | 0.001% - 0.003% |

As we noted during the March 25, 2025 Study Session, any potential rate increases for our customers would be presented to the Arizona Corporation Commission for review and approval. GRRC approval of this Proposed Rule is not an approval of a potential future rate increase associated with permitting fees.

Thank you for the opportunity to express our support for the Proposed Rule. We request GRRC approval.

Sincerely,



Megan E. Garvey
Sr. Director, Environmental Services and Sustainability
Tucson Electric Power Company

cc:
Erik Bakken, TEP
Chris Norman, TEP
Gregory Guimond, TEP
Bradley S. Carroll, TEP
Nicholas Loper, TEP
Steven Estes, TEP

Delivering water and power®

Andrea Martinez, Senior Manager
Water Quality & Waste Management Services
P.O. Box 52025 | Mail Stop PAB359
Phoenix, AZ 85072-2025
P: (602) 236-2618 | Andrea.Martinez@srpnet.com

*Submitted electronically via GRRC@azdoa.gov*

March 31, 2025

Council Member Jessica Klein, Chairperson
Governor's Regulatory Review Council
100 N. 5Th Ave., Suite 302
Phoenix, AZ 85003

Dear Chairperson Klein and Council Members,

Salt River Project Agricultural Improvement and Power District (SRP) is a community-based, not-for-profit public power utility and the largest electricity provider in the greater Phoenix metropolitan area, serving approximately 1.1 million customers. SRP appreciates the opportunity to respond to the questions raised by Council Member Thorwald in the Governor's Regulatory Review Council Study Session held on March 25, 2025, relating to the costs and benefits of the Arizona Department of Environmental Quality (ADEQ) assumption of primacy for Coal Combustion Residuals (CCR) permitting in the state of Arizona.

The utility sector, including SRP, must comply with many federal, state, and local environmental regulations. Coal Combustion Residuals from coal-fired power generation facilities are covered by federal regulatory requirements. One benefit of having a state program for Coal Combustion Residuals is the certainty associated with a permit issued by a regulatory authority confirming compliance with all applicable federal regulations.

Without a state issued permit and because the federal CCR rules are currently self-implementing – there is no federal permit program in place – a utility must interpret the rules and demonstrate compliance through certifications by qualified professional engineers and compliance documentation posted to a publicly available website. The state permit program offers certainty and removes the threat of arbitrary policy shifts in regulatory interpretation that have plagued the CCR program for a decade, which can lead to costly rework.

On the other hand, with an ADEQ state permitting program, the costs of compliance are known and can be factored into the budget. As noted below, the costs associated with a permit under the

proposed program represent a very small portion of overall operating costs. A state-issued permit also provides protections for the public and the environment.

SRP commits significant resources to environmental compliance and finds great value in having open lines of communication with the local regulatory authorities. It is worth the limited expense to have the certainty and efficiency of a state administered program. A permit fee is a small fraction of overall SRP operating expenses.

**CCR permitted facilities at Coronado Generating Station**

CCR permitted facilities at Coronado Generating Station include an evaporation pond (CCR Surface Impoundment), ash disposal landfill and a closed CCR unit subject to post-closure requirements. These facilities are considered a CCR multi-unit complex for purposes of ADEQ state permitting fees.

**ADEQ CCR Facility Permitting Fees and Anticipated Fees to Coronado Generating Station**

ADEQ Proposed Fee Schedule:

| License Type | Initial Fee | Maximum Fee |
|---|---|---|
| CCR Facility Permit (new or renewal) | $20,000 | $200,000 |
| Major Modification | $10,000 | $100,000 |
| Minor Modification | $5,000 | $50,000 |
| Administrative Modification | $1,500 flat fee | NA |

SRP anticipates the initial, one-time CCR Facility Permit fee to range between the initial fee of $20,000 and the maximum fee of $200,000, depending on the number of hours of work completed by ADEQ staff to prepare the permit. In addition, SRP anticipates an annual permitting fee of $21,860 for a CCR multi-unit complex.

**CCR Permitting Fees to SRP Operating Expense**

Operating expenses for SRP were $3.8 billion for fiscal year 2024 (FY24), per SRP's 2024 Annual Report.[1] The table below compares maximum fees against SRP's most recent 2024 Total Operating

[1] 2024-annual-report.pdf, available at https://www.srpnet.com/assets/srpnet/pdf/about/2024-annual-report.pdf, (last accessed March 27, 2025).

Expenses based on the highest possible permitting fee to show the worst-case scenario, despite never experiencing a permit fee that reached the maximum amount of an ADEQ permit fee range.

The first year of ADEQ Permitting fees are estimated to be:

| **Fee** | **Cost** |
|---|---|
| Maximum initial permitting fee | $200,000 |
| CCR multi-unit complex annual fee | $21,860 |
| First Year Total Fees | $221,860 |
| SRP 2024 Total Operating Expenses | $3,803,454,000 |
| **Percentage of ADEQ CCR Permitting Fees to 2024 Total Operating Expenses** | **0.00583%** |

As indicated in the table above, the maximum and worst case initial permitting cost is limited in terms of the overall operating expenses. After the initial year, SRP anticipates an annual permitting fee of $21,860, which 0.000575% of the total operating expense for FY2024. On an ongoing basis during the permit term, the annual costs of the CCR program are also limited.

**SRP Pricing Process**

As a political subdivision of the State of Arizona, SRP's publicly elected Board of Directors has the authority to establish electricity prices. The Board reviews and decides on any proposed changes to SRP's standard electric price plans after providing notice to customers and offering them the opportunity to provide their feedback. In establishing prices for retail electric customers, SRP seeks to maintain a stable revenue stream from retail sales that sufficiently covers anticipated operating expenses while also providing a level of funding for additional investments in resources that deliver safe and reliable power to all customers. Consistent with long-established pricing principles, SRP considers the cost to provide electricity, the impact of price increases on customers, and SRP's financial health when evaluating price changes.

SRP remains supportive of ADEQ being the lead agency for CCR permitting in the state of Arizona. ADEQ staff is knowledgeable of local geology and hydrogeology, which can be particularly important when applying broad, programmatic regulations to site-specific circumstances. It is for these reasons that SRP encourages GRRC to approve this rulemaking package. Please contact me at the contact information listed above with any additional questions.

Sincerely,



Andrea Martinez,
Senior Manager
Water Quality & Waste Management Services

Delivering water and power®

Arizona G&T Cooperatives
Touchstone Energy® Cooperatives

March 31, 2025

Governor's Regulatory Review Council
100 N. 15th Avenue
Suite 302
Phoenix, AZ 85007

**RE: Arizona Coal Combustion Residuals Rule Cost Impact**

Dear Chairperson Klein and Honorable Council Members,

As a follow up to the Governor's Regulatory Review Council (GRRC) Study Session held on March 25, 2025 this letter responds to questions raised during the Study Session and the permit fees proposed by the Arizona Department of Environmental Quality (ADEQ).

Arizona Electric Power Cooperative, Inc. (AEPCO) is a not-for-profit generation and transmission electric utility cooperative that owns and operates one electric generating facility, Apache Generating Station (Apache) located in Cochise, Arizona, about 80 miles east of Tucson and about 25 miles northeast of Benson, Arizona. AEPCO operates a Combustion Waste Disposal Facility at Apache, which consists of Ash Ponds 1-4 and Scrubber Pond 2, which are subject to the federal CCR Rule, 40 CFR Part 257 *et seq.* Ash Ponds 1-4 and Scrubber Pond 2 would be subject to the Arizona CCR Permit Program.

AEPCO provides wholesale energy and services to six distribution cooperatives. AEPCO is owned, operated, and governed by its members who use the energy and services AEPCO provides. The member cooperatives to which AEPCO provides energy serve approximately 420,000 residential, agricultural, and industrial member-consumers. Because operating costs incurred by AEPCO are recouped from our distribution cooperative members, we have an incentive to keep costs affordable. AEPCO's top priority is to ensure the safe operation of the regulated CCR facilities which are critical infrastructure to the operation of Apache for the benefit of our members and ultimately their member-consumers at the end of the line.

AEPCO would be subject to paying an initial permit fee and an annual permit fee. AEPCO anticipates these permitting fees to be as follows:

| | **Anticipated Maximum Fee** |
|---|---|
| Initial Facility Permitting Fee | $200,000 |
| Facility Annual Registration Fees (AEPCO operates 2 – approved CCR Multi-unit facilities) | $43,720 ($21,860 each) |

Assuming the maximum initial permitting fee of $200,000 and the annual registration fees of $43,720, the maximum annualized expense would be approximately $63,720, which is 0.03568% of AEPCO's 2024 total

operating expenses of $178,578,915. Any potential rate increases to recover these costs would have to be approved in a rate proceeding by the Arizona Corporation Commission.

| Fee | Cost |
|---|---|
| Total Annual Fee Expense | $63,720 |
| 2024 Total Operating Expenses | $178,578,915 |
| % of 2024 Total Operating Expense | 0.03568% |

AEPCO supports the fees it would need to pay for ADEQ to facilitate the program. Establishing fees to cover the costs of administering a state program is consistent with many programs across ADEQ, and stakeholders, including utilities, are familiar with the benefits of this model.

AEPCO reiterates its support for ADEQ proposed Arizona CCR Rulemaking. AEPCO shares the common goal of a future program that is successful. We continue to believe that state management of CCR is the best approach and beneficial for a multitude of reasons. AEPCO respectfully requests GRRC support the approval of the Arizona CCR permit program.

Sincerely,

Michelle R. Freeark
Executive Director of Regulatory Affairs & Corporate Services

cc: Robin Thomas, ADEQ

**E-1.**

**BOARD OF OSTEOPATHIC EXAMINERS IN MEDICINE AND SURGERY**
Title 4, Chapter 22

# GOVERNOR'S REGULATORY REVIEW COUNCIL

**ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT**

---

**MEETING DATE:** April 1, 2025

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

**FROM:** Council Staff

**DATE:** March 18, 2025

**SUBJECT:** **BOARD OF OSTEOPATHIC EXAMINERS IN MEDICINE AND SURGERY**
Title 4, Chapter 22, Articles 1-5, Board of Osteopathic Examiners in Medicine and Surgery

---

**Summary**

This Five Year Review Report (5YRR) from the Board of Osteopathic Examiners in Medicine and Surgery relates to thirty-two (32) rules and one (1) table in Title 4, Chapter 22. The Board issues licenses, permits, and registrations to doctors of osteopathic medicine, investigates complaints against licensees; and provides information to the public. The Board's purpose is to protect the public from unlawful, incompetent, unqualified, impaired, and unprofessional practitioners of osteopathic medicine. There are currently 6,209 licensed osteopathic physicians in Arizona, this number includes 5,439 active licensees, 732 active permits and 38 active registrations.

The rules in this Chapter address the following:

- **Article 1 (General Provisions);**
- **Article 2 (Licensing);**
- **Article 3 (Dispensing Drugs);**
- **Article 4 (Medical Assistants); and**
- **Article 5 (Office-Based Surgery).**

In the previous report approved by the Council in April 2020, the Board identified two rules, R4-22-302(A) and R4-22-304(A), that needed to be amended because they contained incorrect cross references to A.R.S §32-1901. The Board requested an exemption from the rulemaking moratorium from the Governor's Office in May 2020 but was not approved. The Board submitted a new exemption request on March 4, 2025.

**Proposed Action**

The Board still plans on amending R4-22-302(A) and R4-22-304(A) and additionally plans on making clarifications regarding continuing Medical Education (CME). The Board submitted a request for an exemption from the Governor's Office under A.R.S. § 41-1039(A)(6) on March 4, 2025. Should the exemption be approved, the Board plans on having a final expedited rulemaking before the Council by June 30, 2025.

**1. Has the agency analyzed whether the rules are authorized by statute?**

The Board cites both general and specific statutory authority for these rules

**2. Summary of the agency's economic impact comparison and identification of stakeholders:**

The Board of Osteopathic Examiners in Medicine and Surgery (Board), established under A.R.S. § 32-1801, issues licenses, permits, and registrations to doctors of osteopathic medicine, investigates complaints against licenses, and provides information to the public. According to the Board there are currently 6,209 licensed osteopathic physicians in Arizona, this number includes 5,439 active licensees, 732 active permits and 38 active registrations. The Board states that it regularly reviews its fees to ensure the Board is not collecting fee amounts greatly exceeding its expenditures.

The Board indicates they have no economic impact statement to review.

Stakeholders include the Board, doctors of osteopathic medicine, and the public

**3. Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?**

The Board believes the benefits from the rules outweigh the costs and impose the least burden and cost possible to the regulated community.

**4. Has the agency received any written criticisms of the rules over the last five years?**

The Board indicates it received no written criticisms of the rules in the last five years.

**5. Has the agency analyzed the rules' clarity, conciseness, and understandability?**

The Board indicates the rules are clear, concise, and understandable.

**6. Has the agency analyzed the rules' consistency with other rules and statutes?**

The Board indicates the rules are generally consistent with other rules and statutes except for the following:

- R4-22-302(A) contains an incorrect cross reference to A.R.S. §32-1901. The statute was amended and restructured changing the subsections. The Board is proposing to amend to correct the correct subsection.
- R4-22-304(A) also contains an incorrect cross reference to A.R.S. §32-1901. The statute was amended and restructured changing the subsections. The Board is proposing to amend to correct the correct subsection.

**7. Has the agency analyzed the rules' effectiveness in achieving its objectives?**

The Board indicates the rules are effective in achieving their objectives.

**8. Has the agency analyzed the current enforcement status of the rules?**

The Board indicates the rules are enforced as written.

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

Not applicable. There is no corresponding federal law. The Board has indicated that physicians do have other federal laws that they must comply with.

**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 licenses, permits, registrations, and approvals listed in Table 1 of these rules are not general permits. Under the applicable statute, the Board is required to issue individual licenses to each person that is qualified by statute and rule. Thus, the type of licenses the Board issues are an enumerated exception to the general permit requirement in A.R.S. § 41-1037.

**11. Conclusion**

This Five Year Review Report (5YRR) from the Board of Osteopathic Examiners in Medicine and Surgery relates to thirty-two (32) rules and one (1) table in Title 4, Chapter 22. The Board has identified two rules that need to be updated as a result of changes to statutes.

The Board was unable to complete their previous course of action because their exemption request was not approved. The Board has indicated that they plan on submitting a new exemption request pending the approval of this report. If the exemption is granted, the Board expects to have a Notice of Final Rulemaking before the Council by June 30, 2025.

The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. Staff recommends approval of this report.

**Katie Hobbs**
**Governor**

**Justin Bohall**
**Executive Director**

**ARIZONA BOARD OF OSTEOPATHIC EXAMINERS**
**IN MEDICINE AND SURGERY**
1740 West Adams Street • Suite 2410
Phoenix, Arizona 85007
(480) 657-7703

November 1, 2024

VIA EMAIL: grrc@azdoa.gov

Jessica Klein, Chair
Governor's Regulatory Review Council
100 North 15th Avenue, Suite 305
Phoenix, Arizona 85007

RE: **Board of Osteopathic Examiners in Medicine and Surgery, A.A.C., Title 4, Chapter 22, Five Year Review Report**

Dear Chair Klein:

Please find enclosed the Five Year Review Report of the Board of Osteopathic Examiners in Medicine and Surgery for A.A.C.,Title 4, Chapter 22 which is due on 31 December 2024.

The Board of Osteopathic Examiners in Medicine and Surgery hereby certifies compliance with A.R.S. § 41-1091.

For questions about this report, please contact: Justin Bohall, by phone 480.657.7703, or email justin.bohall@azdo.gov.

Kind Regards,

Justin Bohall
Executive Director

**FIVE YEAR REVIEW REPORT**

**A.A.C. Title 4. Professions and Occupations**

**Chapter 22. Board of Osteopathic Examiners in Medicine and Surgery**

**Submitted for November 1, 2024**

**Amended March 11, 2025**

INTRODUCTION

The Board of Osteopathic Examiners in Medicine and Surgery, established under A.R.S. § 32-1801, issues licenses, permits, and registrations to doctors of osteopathic medicine, investigates complaints against licensees; and provides information to the public. The Board's purpose, as specified under A.R.S. § 32-1803, is to protect the public from unlawful, incompetent, unqualified, impaired, and unprofessional practitioners of osteopathic medicine.

There are currently 6,209 licensed osteopathic physicians in Arizona, this number includes 5,439 active licensees, 732 active permits and 38 active registrations. During recent years, this number nearly doubled. The Board believes the increase is due, in part, to the minimum regulatory burdens imposed on osteopathic physicians, as well as the Board's efforts to streamline licensure processes and implement occupational mobility statutes like that of the Interstate Medical Licensure Compact and the state's enactment of universal licensing recognition, which makes it easier for osteopathic physicians from other states to obtain a license in Arizona. The Board currently has ten FTEs. The Board regularly reviews its fees to ensure the Board is not collecting fee amounts greatly exceeding its expenditures. At this time the Board's collected revenues are consistent with the Board's appropriation from the Legislature.

Statute that generally authorizes the agency to make rules: A.R.S. § 32-1803(C)(1)

1. Specific statute authorizing the rule:

R4-22-101. Definitions: A.R.S. § 32-1803(C)(1)

R4-22-102. Fees and Charges:A.R.S. § 32-1826

R4-22-103. Submitting Documents to the Board: A.R.S. § 32-1803(C)(1)

R4-22-104. Licensing Time Frames: A.R.S. § 41-1072

Table 1. Time Frames (in days): A.R.S. § 41-1072(2)

R4-22-105. Equivalents to an Approved Internship or Residency: A.R.S. § 32-1822(A)(4)

R4-22-106. Specialist Designation: A.R.S. §§ 32-1800(21) and 32-1854(17)

R4-22-107. Petition for Rulemaking or Review: A.R.S. § 41-1033

R4-22-108. Rehearing or Review of Decision: A.R.S. § 41-1092.09

R4-22-201. Application Required: A.R.S. §§ 32-1822, 32-1823, 32-1825, 32-1829, 32-1830, 32-1831

R4-22-202. Determining Qualification for Licensure: A.R.S. § 32-1822 R4-22-203. Examination; Practice Equivalency to an Examination: A.R.S. § 32-1822(A)(5)

R4-22-204. License Issuance; Effective Date of License: A.R.S. § 32-1826 R4-22-205. License Renewal:A.R.S. § 32-1825

R4-22-206. Procedure for Application to Reenter Practice: A.R.S. § 32-1822

R4-22-207 Continuing Medical Education; Waiver; Extension of Time to Complete: A.R.S. § 32-1825

R4-22-212. Confidential Program for Treatment and Rehabilitation of Impaired Osteopathic Physician:A.R.S. § 32-1861

R4-22-301. Registration to Dispense Required: A.R.S. § 32-1871

R4-22-302. Packaging and Inventory: A.R.S. § 32-1871

R4-22-303. Prescribing and Dispensing Requirements: A.R.S. § 32-1871

R4-22-304. Recordkeeping and Reporting Shortages: A.R.S. § 32-1871

R4-22-305. Inspections; Denial and Revocation: A.R.S. § 32-1871

R4-22-401. Approval of Educational Programs for Medical Assistants: A.R.S. § 32- 1803(A)(5)

R4-22-402. Medical Assistants – Authorized Procedures: A.R.S. § 32-1800

R4-22-403. Medical Assistant Training Requirement: A.R.S. § 32-1800

R4-22-501. Definitions: A.R.S. § 32-1800

R4-22-502. Health Care Institution License: A.R.S. § 32-1800

R4-22-503. Administrative Provisions: A.R.S. § 32-1800

R4-22-504. Procedure and Patient Selection: A.R.S. § 32-1800

R4-22-505. Sedation Monitoring Standards: A.R.S. § 32-1800

R4-22-506. Perioperative Period; Patient Discharge: A.R.S. § 32-1800

R4-22-507. Emergency Drugs; Equipment and Space Used for Office-based Surgery: A.R.S.

§ 32-1800

R4-22-508. Emergency and Transfer Provisions: A.R.S. § 32-1800

2. Objective of the rules:

**R4-22-101. Definitions**

**Objective**: define terms used in the rules in a manner that is not explained adequately by a dictionary definition.

**R4-22-102. Fees and Charges**

**Objective**: specify the fees the Board charges for its licensing activities and the charges made for specified Board-provided services.

**R4-22-103. Submitting Documents to the Board**

**Objective**: provide notice of the time within which a document must be submitted if it is to be considered by the Board at a meeting or hearing.

**R4-22-104. Licensing Time Frames**

**Objective**: specify the time frames within which the Board will act on a license, registration, or permit application.

**Table 1. Time Frames (in days)**

**Objective**: specify the time frames, in table form, within which the Board will act on a license, registration, or permit application.

**R4-22-105. Equivalents to an Approved Internship or Residency**

**Objective**: specify training the Board accepts as equivalent to an approved internship or residency.

**R4-22-106. Specialist Designation**

**Objective**: specify the specialty boards recognized by the Board.

**R4-22-107. Petition for Rulemaking or Review**

**Objective**: specify the procedure a person may use to petition the Board under A.R.S. § 41-1033.

**R4-22-108. Rehearing or Review of Decision**

**Objective**: specify the procedures and standards for requesting a rehearing or review of a Board decision.

**R4-22-201. Application Required**

**Objective**: specify an application form is required when seeking a license or other approval from the Board.

**R4-22-202. Determining Qualification for Licensure the time frames**

**Objective**: specify the evidence of qualification an applicant is required to submit to the Board and how the Board evaluates the evidence.

**R4-22-203. Examination; Practice Equivalency to an Examination**

**Objective**: list the licensing examinations approved by the Board for applicants who have taken an examination within seven (7) years before application. The rule also specifies examination practice equivalent for applicants who have not taken an approved examination within seven (7) years prior to application.

**R4-22-204. License Issuance; Effective Date of License**

**Objective**: Specifies how the Board processes an applicant's request for licensure.

**R4-22-205. License Renewal**

**Objective**: Specifies the requirements for renewal of a license and the manner in which renewal application is made.

**R4-22-206. Procedure for Application to Reenter Practice**

**Objective**: Specifies the procedure for an out-of-practice osteopathic physician to reenter practice.

**R4-22-207. Continuing Medical Education ("CME"); Waiver; Extension of Time to Complete**

**Objective**: Specifies the statutorily required CME a licensee must obtain during license renewal period; the documentation acceptable to the Board for compliance; the procedure to obtain a waiver from the CME requirement, and the procedure to obtain an extension of time to complete the required CME.

**R4-22-212. Confidential Program for Treatment and Rehabilitation of Impaired Osteopathic Physician**

**Objective**: Specifies the actions the Board takes when it determines a licensee is impaired by substance abuse threatening public health and safety.

**R4-22-301. Registration to Dispense Required**

**Objective**: Specifies when an osteopathic physician is required to register and outlines the procedure for registration to dispense drugs.

**R4-22-302. Packaging and Inventory**

**Objective**: Specifies the manner in which controlled substances and prescription only drugs are required to be packaged, labeled, and secured. The rule also requires a licensee to maintain a dispensing log for inventory of controlled substances.

**R4-22-303. Prescribing and Dispensing Requirements**

**Objective**: Specifies what information a physician must record in a patient file when a controlled substance or prescription only drug or device is dispensed to the patient. The rule also specifies steps required to ensure accuracy in dispensing.

**R4-22-304. Recordkeeping and Reporting Shortages**

**Objective**: Specifies how dispensing and purchasing records for controlled substances and prescription only drugs are to be maintained. The rule also specifies the procedure for reporting a discovered theft or loss of a controlled substance or dangerous drug.

**R4-22-305. Inspections; Denial and Revocation**

**Objective**: Specifies the Board may inspect the dispensing records maintained by a physician. The rule also specifies the circumstances under which a physician's dispensing authority will be revoked or renewal denied.

**R4-22-401. Approval of Educational Programs for Medical Assistants**

**Objective**: Specifies the Board approves medical assistant training programs accredited by one of the specified entities.

**R4-22-402. Medical Assistants – Authorized Procedures**

**Objective**: Specifies the medical procedures a medical assistant is authorized to perform under direct supervision by a licensed osteopathic physician.

**R4-22-403. Medical Assistant Training Requirement**

**Objective**: Specifies the training required of an individual employed as a medical assistant.

**R4-22-501. Definitions**

**Objective**: Defines terms used in the rules.

**R4-22-502. Health Care Institution License**

**Objective**: Specifies the circumstances when a physician performing surgery in the physician's office or other outpatient setting, using general anesthesia, must obtain a license as a health care institution.

**R4-22-503. Administrative Provisions**

**Objective**: Specifies prerequisites, including written policies and procedures, education, training, and experience of staff assisting or participating in office-based surgery, the necessary equipment, patients' rights, and informed consent a physician must comply with before performing office-based surgery using sedation.

**R4-22-504. Procedure and Patient Selection**

**Objective**: Specifies factors the physician is required to consider when choosing a surgical procedure to perform in an office based environment using sedation and when choosing a patient on whom to perform a surgical procedure in an office based environment using sedation.

**R4-22-505. Sedation Monitoring Standards**

**Objective**: Requires a physician performing office based surgery with sedation to ensure use of a quantitative method, performed by a licensed healthcare professional other than the physician, to assess the patient's oxygenation, ventilator function, circulatory function, and temperature during the surgery.

**R4-22-506. Perioperative Period; Patient Discharge**

**Objective**: Requires a physician to be physically present in the room in which office based surgery is performed using sedation and to be physically present and able to respond to an emergency during the period of post-sedation monitoring. The rule also requires a patient be instructed regarding discharge and properly document the discharge.

**R4-22-507. Emergency Drugs; Equipment and Space Used for Office-based Surgery**

**Objective**: Requires the office space in which an office based surgery (with sedation) is performed be large enough to accommodate all equipment, including a supply of emergency drugs and equipment, required to perform the surgery safely. The rule also requires all equipment used in office based surgery be maintained according to the manufacturer's instructions.

**R4-22-508. Emergency and Transfer Provisions**

**Objective**: Requires a physician performing office based surgery using sedation to ensure all staff assisting or participating in the surgery are instructed in emergency procedures including safe and timely patient transfer.

3. Are the rules effective in achieving their objectives? Yes

4. Are the rules consistent with other rules and statutes?

Mostly yes. R4-22-302(A) and R4-22-304(A): As a result of statutory changes to A.R.S. § 32-1901, the internal cross references are incorrect. The Board plans to request governor approval pursuant to A.R.S §41-1039 to address this correction.

5. Are the rules enforced as written? Yes

6. Are the rules clear, concise, and understandable? Yes

7. Has the agency received written criticisms of the rules within the last five years? No.
The Board incorporated feedback and addressed concerns in past rulemaking processes; it has not received any criticism of current rules.

8. Economic, small business, and consumer impact comparison: None

9. Has the agency received any business competitiveness analyses of the rules? No

10. How the agency completed the course of action indicated in the agency's previous 5YRR: Yes.

The Board's last 5YRR was approved by the Council in 2020. In that report, the Board

indicated that it would continue to review its Rules and make amendments in compliance with Executive Order 2020-02 later codified into statute as A.R.S §41-1039. The Board previously requested approval to begin the Rulemaking process to review R4-22-302(A) and R4-22-304(A) but did not receive approval. The Board plans to request an exemption to A.R.S §41-1039 (A)(6) and file for an expedited rulemaking pursuant to A.R.S. 41-1027 to enact this change.

11. A determination after analysis that the probable benefits of the rule outweigh within this state the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective:

The Board believes the benefits from the rules outweigh the costs and impose the least burden and cost possible to the regulated community.

12. Are the rules more stringent than corresponding federal laws? No.

Although there are many federal laws with which a physician must comply, no federal law is specifically applicable to these rules.

13. For a rule made 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:

All of the Board's rules were made after July 29, 2010. The licenses, permits, registrations, and approvals listed in Table 1 are not general permits. The Board is required by statute to issue individual licenses to each person that is qualified by statute and rule.

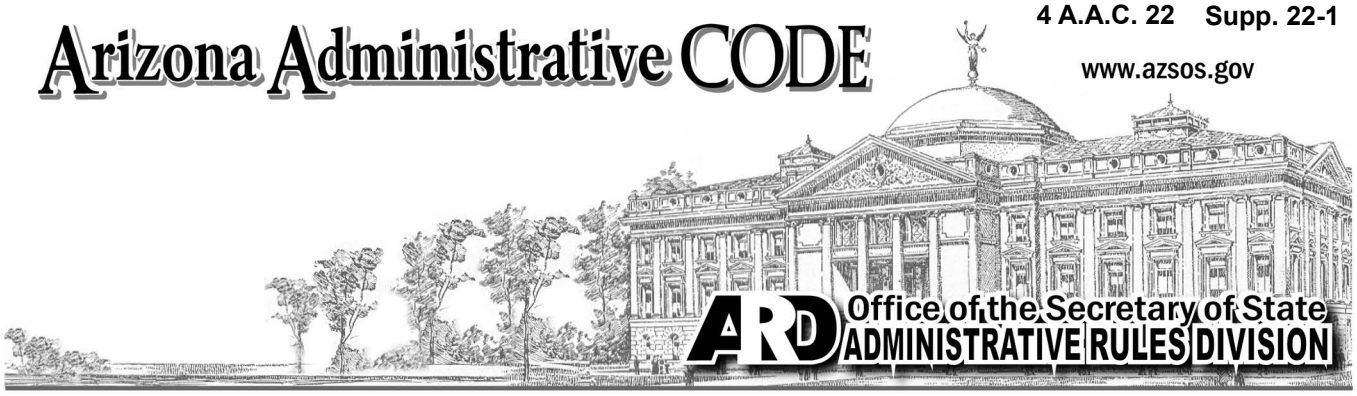
14. Proposed course of action:

The Board continually works to streamline processes and reduce regulatory burdens while balancing the protection of the health, safety, and welfare of the public and plans to request an exemption to A.R.S. §41-1039 (A)(6) and file for an rulemaking pursuant to A.R.S. 41-1027 to enact this change. We submitted a new request to the Governor's office on March 4, 2025. Should it be approved, we are hoping to have the final rules to GRRC by June 30, 2025.

Arizona Administrative CODE

4 A.A.C. 22 Supp. 22-1

www.azsos.gov




# TITLE 4. PROFESSIONS AND OCCUPATIONS

## CHAPTER 22. BOARD OF OSTEOPATHIC EXAMINERS IN MEDICINE AND SURGERY

The table of contents on page one contains links to the referenced page numbers in this Chapter.
Refer to the notes at the end of a Section to learn about the history of a rule as it was published in the *Arizona Administrative Register*.

This Chapter contains rules that were filed to be codified in the *Arizona Administrative Code* between the dates of January 1 through March 31, 2022

R4-22-102. Fees and Charges ..... 2

**Questions about these rules? Contact:**

| | |
|---|---|
| Board: | Board of Examiners in Osteopathic Medicine and Surgery |
| Address: | 1740 W. Adams St., Suite 2410<br>Phoenix, AZ 85007 |
| Website: | www.azdo.gov |
| Name: | Justin Bohall, Executive Director |
| Telephone: | (602) 771-2522 |
| Fax: | (480) 657-7715 |
| E-mail: | Justin.bohall@azdo.gov |


**The release of this Chapter in Supp. 22-1 replaces Supp. 19-3, 1-13 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), Administrative Rules Division, accepts state agency rule notice and other legal filings and is the publisher of Arizona rules. The Office of the Secretary of State does not interpret or enforce rules in the *Administrative Code*. Questions about rules should be directed to the state agency responsible for the promulgation of the rule.

Scott Cancelosi, Director
ADMINISTRATIVE RULES DIVISION

### RULES

The definition for a rule is provided for under A.R.S. § 41-1001. *"'Rule' means an agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of an agency."*

### THE ADMINISTRATIVE CODE

The *Arizona Administrative Code* is where the official rules of the state of Arizona are published. The *Code* is the official codification of rules that govern state agencies, boards, and commissions.

The *Code* is separated by subject into Titles. Titles are divided into Chapters. A Chapter includes state agency rules. Rules in Chapters are divided into Articles, then Sections. The "R" stands for "rule" with a sequential numbering and lettering outline separated into subsections.

Rules are codified quarterly in the *Code*. Supplement release dates are printed on the footers of each Chapter.

First Quarter: January 1 - March 31
Second Quarter: April 1 - June 30
Third Quarter: July 1 - September 30
Fourth Quarter: October 1 - December 31

For example, the first supplement for the first quarter of 2022 is cited as Supp. 22-1. Supplements are traditionally released three to four weeks after the end of the quarter because filings are accepted until the last day of the quarter.

Please note: The Office publishes by Chapter, not by individual rule Section. Therefore there might be only a few Sections codified in each Chapter released in a supplement. This is why the Office lists only updated codified Sections on the previous page.

### RULE HISTORY

Refer to the HISTORICAL NOTE at the end of each Section for the effective date of a rule. The note also includes the *Register* volume and page number in which the notice was published (A.A.R.) and beginning in supplement 21-4, the date the notice was published in the *Register*.

### AUTHENTICATION OF PDF CODE CHAPTERS

The Office began to authenticate Chapters of the Code in Supp. 18-1 to comply with A.R.S. § 41-1012(B) and A.R.S. § 5302(1), (2)(d) through (e), and (3)(d) through (e).

A certification verifies the authenticity of each *Code* Chapter posted as it is released by the Office of the Secretary of State. The authenticated pdf of the *Code* includes an integrity mark with a certificate ID. Users should check the validity of the signature, especially if the pdf has been downloaded. If the digital signature is invalid it means the document's content has been compromised.

### HOW TO USE THE CODE

Rules may be in effect before a supplement is released by the Office. Therefore, the user should refer to issues of the *Arizona Administrative Register* for recent updates to rule Sections.

### ARIZONA REVISED STATUTE REFERENCES

The Arizona Revised Statutes (A.R.S.) are available online at the Legislature's website, www.azleg.gov. An agency's authority note to make rules is often included at the beginning of a Chapter. Other Arizona statutes may be referenced in rule under the A.R.S. acronym.

### SESSION LAW REFERENCES

Arizona Session Law references in a Chapter can be found at the Secretary of State's website, www.azsos.gov under Services-> Legislative Filings.

### EXEMPTIONS FROM THE APA

It is not uncommon for an agency to be exempt from the steps outlined in the rulemaking process as specified in the Arizona Administrative Procedures Act, also known as the APA (Arizona Revised Statutes, Title 41, Chapter 6, Articles 1 through 10). Other agencies may be given an exemption to certain provisions of the Act.

An agency's exemption is written in law by the Arizona State Legislature or under a referendum or initiative passed into law by Arizona voters.

When an agency files an exempt rulemaking package with our Office it specifies the law exemption in what is called the preamble of rulemaking. The preamble is published in the *Register* online at www.azsos.gov/rules, click on the *Administrative Register* link.

Editor's notes at the beginning of a Chapter provide information about rulemaking Sections made by exempt rulemaking. Exempt rulemaking notes are also included in the historical note at the end of a rulemaking Section.

The Office makes a distinction to certain exemptions because some rules are made without receiving input from stakeholders or the public. Other exemptions may require an agency to propose exempt rules at a public hearing.

### PERSONAL USE/COMMERCIAL USE

This Chapter is posted as a public courtesy online, and is for private use only. Those who wish to use the contents for resale or profit should contact the Office about Commercial Use fees. For information on commercial use fees review A.R.S. § 39-121.03 and 1 A.A.C. 1, R1-1-113.

*Rhonda Paschal, rules managing editor, assisted with the editing of this Chapter.*

Arizona Secretary of State
Digitally signed by Arizona Secretary of State
Date: 2022.04.15 10:49:31 -07'00'



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 22. BOARD OF OSTEOPATHIC EXAMINERS IN MEDICINE AND SURGERY

Authority: A.R.S. § 32-1801 et seq.

**Supp. 22-1**

## CHAPTER TABLE OF CONTENTS

### ARTICLE 1. GENERAL PROVISIONS

*New Article 1 consisting of Sections R4-22-101, R4-22-103, and R4-22-104 adopted and former rules R4-22-05 and R4-22-06 amended and renumbered as Sections R4-22-105 and R4-22-106 effective June 29, 1987.*

*Former Article 1 consisting of Sections R4-22-01, R4-22-02, R4-22-04 through R4-22-07, R4-22-09, R4-22-10, and R4-22-12 repealed and Sections R4-22-08 and R4-22-11 amended and renumbered as R4-22-05 and R4-22-06 effective June 29, 1987.*

Section
R4-22-101. Definitions ..... 2
R4-22-102. Fees and Charges ..... 2
R4-22-103. Submitting Documents to the Board ..... 2
R4-22-104. Licensing Time Frames ..... 2
Table 1. Time Frames (in days) ..... 3
R4-22-105. Equivalents to an Approved Internship or Residency ..... 4
R4-22-106. Specialist Designation ..... 4
R4-22-107. Petition for Rulemaking or Review ..... 4
R4-22-108. Rehearing or Review of Decision ..... 4
R4-22-109. Renumbered ..... 5
R4-22-110. Renumbered ..... 5
R4-22-111. Renumbered ..... 5
R4-22-112. Renumbered ..... 5
R4-22-113. Repealed ..... 5
R4-22-114. Repealed ..... 5
R4-22-115. Renumbered ..... 5

### ARTICLE 2. LICENSING

Section
R4-22-201. Application Required ..... 5
R4-22-202. Determining Qualification for Licensure ..... 5
R4-22-203. Examination; Practice Equivalency to an Examination ..... 6
R4-22-204. License Issuance; Effective Date of License ..... 6
R4-22-205. License Renewal ..... 7
R4-22-206. Procedure for Application to Reenter Practice ..... 7
R4-22-207. Continuing Medical Education; Waiver; Extension of Time to Complete ..... 7
R4-22-208. Reserved ..... 8
R4-22-209. Reserved ..... 8
R4-22-210. Reserved ..... 8
R4-22-211. Reserved ..... 8
R4-22-212. Confidential Program for Treatment and Rehabilitation of Impaired Osteopathic Physicians ..... 8
Table 1. Renumbered ..... 8

### ARTICLE 3. DISPENSING DRUGS

Section
R4-22-301. Registration to Dispense Required ..... 8
R4-22-302. Packaging and Inventory ..... 8
R4-22-303. Prescribing and Dispensing Requirements ..... 9
R4-22-304. Recordkeeping and Reporting Shortages ..... 9
R4-22-305. Inspections; Denial and Revocation ..... 10

### ARTICLE 4. MEDICAL ASSISTANTS

Section
R4-22-401. Approval of Educational Programs for Medical Assistants ..... 10
R4-22-402. Medical Assistants – Authorized Procedures ..... 10
R4-22-403. Medical Assistant Training Requirement ..... 10

### ARTICLE 5. OFFICE-BASED SURGERY

Section
R4-22-501. Definitions ..... 10
R4-22-502. Health Care Institution License ..... 11
R4-22-503. Administrative Provisions ..... 11
R4-22-504. Procedure and Patient Selection ..... 12
R4-22-505. Sedation Monitoring Standards ..... 12
R4-22-506. Perioperative Period; Patient Discharge ..... 12
R4-22-507. Emergency Drugs; Equipment and Space Used for Office-based Surgery ..... 12
R4-22-508. Emergency and Transfer Provisions ..... 13

CHAPTER 22. BOARD OF OSTEOPATHIC EXAMINERS IN MEDICINE AND SURGERY

## ARTICLE 1. GENERAL PROVISIONS

**R4-22-101. Definitions**

In addition to the definitions in A.R.S. § 32-1800, in this Chapter:

"ABHES" means Accrediting Bureau of Health Education Schools.

"ABMS" means American Board of Medical Specialties.

"ACCME" means the Accreditation Council for Continuing Medical Education.

"ACGME" means the Accreditation Council on Graduate Medical Education.

"AOA" means the American Osteopathic Association.

"AOIA" means the American Osteopathic Information Association.

"Approved internship," "approved preceptorship," and "approved residency" mean training accredited by the AOA or ACGME.

"CAAHEP" means Commission on Accreditation of Allied Health Education Programs.

"CME" means continuing medical education.

"COMLEX" means Comprehensive Osteopathic Medical Licensing Examination.

"Continuing medical education" means a course, program, or other training that the Board approves for license renewal.

"Controlled substance" means a drug, substance, or immediate precursor, identified, defined, or listed in A.R.S. Title 36, Chapter 27, Article 2.

"FCVS" means Federal Credentials Verification Service.

"Licensee" means an individual who holds a current license issued under A.R.S. Title 32, Chapter 17.

"MAP" means Monitored Aftercare Program.

"NBME" means the National Board of Medical Examiners.

"NBOME" means the National Board of Osteopathic Medical Examiners.

"Post-graduate training program" means an approved internship or residency.

"USMLE" means United States Medical Licensing Examination.

**Historical Note**

Former Rule 1. Former Section R4-22-01 repealed, new Section R4-22-101 adopted effective June 29, 1987 (Supp. 87-2). Former Section R4-22-101 renumbered to R4-22-109, new Section R4-22-101 adopted effective May 3, 1993 (Supp. 93-2). Section expired under A.R.S. § 41-1056(E) at 11 A.A.R. 583, effective November 30, 2004 (Supp. 05-1). New Section made by final rulemaking at 12 A.A.R. 2765, effective September 9, 2006 (Supp. 06-3). Amended by final rulemaking at 20 A.A.R. 2654, effective November 8, 2014 (Supp. 14-3).

**R4-22-102. Fees and Charges**

**A.** Under the specific authority provided by A.R.S. §§ 32-1826(A) and 32-1871(A)(5), the Board establishes and shall collect the following fees for the Board's licensing activities:

1. Application for license to practice osteopathic medicine, $400;
2. Application for a temporary license to practice osteopathic medicine, $250;
3. Issuance of initial license, $180 (prorated);
4. Biennial renewal of license, $636 plus the penalty and reimbursement fees specified in A.R.S. § 32-1826(B), if applicable;
5. Locum tenens registration, $300;
6. Annual registration of an approved internship, residency, or clinical fellowship program or short-term residency program, $50;
7. Teaching license, $318;
8. Five-day educational teaching permit, $106; and
9. Annual registration to dispense drugs and devices, $240 (initial registration fee is prorated).

**B.** Under the specific authority provided by A.R.S. § 36-3606(A)(3), the Board establishes and shall collect the following fees: Annual Registration as an out-of-state health care provider of telehealth services, $300.

**C.** Under the specific authority provided by A.R.S. § 32-1826(C), the Board establishes and shall collect the following charges for services provided by the Board:

1. Verifying a license to practice osteopathic medicine issued by the Board and copy of licensee's complaint history, $10;
2. Issuing a duplicate license, $10;
3. Processing fingerprints for a state and federal criminal records check, $50;
4. Providing a list of physicians licensed by the Board, $25.00 if for non-commercial use or $100 if for commercial use;
5. Copying records, documents, letters, minutes, applications, and files, 25¢ per page;
6. Copying an audio tape, $35.00; and
7. Providing information in a digital medium not requiring programming, $100.

**D.** Except as provided under A.R.S. § 41-1077, the fees listed in subsections (A) and (B) are not refundable.

**Historical Note**

Adopted effective January 24, 1984 (Supp. 84-1). Section R4-22-02 repealed effective June 29, 1987 (Supp. 87-2). New Section R4-22-102 adopted effective August 7, 1992 (Supp. 92-3). Section R4-22-102 renumbered to R4-22-106; new Section R4-22-102 renumbered from R4-22-108 and amended by final rulemaking at 20 A.A.R. 2654, effective November 8, 2014 (Supp. 14-3). Amended by final rulemaking at 25 A.A.R. 1793, effective August 31, 2019 (Supp. 19-3). Amended by final exempt rulemaking at 28 A.A.R. 660 (March 25, 2022), with an immediate effective date of March 1, 2022, under Laws 2021, Ch. 320 (Supp. 22-1).

**R4-22-103. Submitting Documents to the Board**

An individual who wants the Board to consider a document at a meeting or hearing shall submit the document to the Board at least 15 days before the meeting or hearing or at another time as directed by the Board.

**Historical Note**

Former Section R4-22-04 repealed, new Section R4-22-103 adopted effective June 29, 1987 (Supp. 87-2). Amended by final rulemaking at 10 A.A.R. 2793, effective August 7, 2004 (Supp. 04-2). Section R4-22-103 renumbered to R4-22-105; new Section R4-22-103 made by final rulemaking at 20 A.A.R. 2654, effective November 8, 2014 (Supp. 14-3).

**R4-22-104. Licensing Time Frames**

**A.** The overall time frame described in A.R.S. § 41-1072(2) for each type of license issued by the Board is listed in Table 1.

An applicant and the Executive Director of the Board may agree in writing to extend the substantive review and overall time frames by no more than 25 percent of the overall time-frame listed in Table 1.

**B.** The administrative completeness review time frame described in A.R.S. § 41-1072(1) for each type of license issued by the Board is listed in Table 1. The administrative completeness review time frame for a particular license begins on the date the Board receives an application package for that license.
1. If the application package is incomplete, the Board shall send to the applicant a written notice specifying the missing document or incomplete information. The administrative completeness review and overall time frames are suspended from the postmark date on the notice until the date the Board receives the missing document or incomplete information.
2. If the application package is complete, the Board shall send to the applicant a written notice of administrative completeness.
3. If the Board grants or denies a license during the administrative completeness review time frame, the Board shall not issue a separate written notice of administrative completeness.

**C.** The substantive review time frame described in A.R.S. § 41-1072(3) for each type of license issued by the Board is listed in Table 1. The substantive review time frame begins on the postmark date of the Board's notice of administrative completeness.
1. During the substantive review time frame, the Board may make one comprehensive written request for additional information or documentation. The substantive review and overall time frames are suspended from the postmark date on the comprehensive written request for additional information or documentation until the Board receives the additional information or documentation. The Board and applicant may agree in writing to allow the Board to submit supplemental requests for additional information.
2. The Board shall send a written notice of approval to an applicant who meets the requirements of A.R.S. Title 32, Chapter 17 and this Chapter.
3. The Board shall send a written notice of denial to an applicant who fails to meet the requirements of A.R.S. Title 32, Chapter 17 or this Chapter.

**D.** The Board shall administratively close an applicant's file if the applicant fails to submit the information or documentation required under subsection (B)(1) or (C)(1) within 360 days from the date on which the application package was originally submitted. If an individual whose file is administratively closed wishes to be licensed, the individual shall file another application package and pay the application fee.

**E.** The Board shall grant or deny the following licenses within seven days after receipt of an application:
1. Ninety-day extension of locum tenens registration,
2. Waiver of continuing education requirements for a particular period,
3. Extension of time to complete continuing education requirements,
4. Five-day educational training permit,
5. Extension of one-year renewable training permit, and
6. Renewal of retired status.

**F.** In computing any time frame prescribed in this Section, the day of the act or event that begins the time frame is not included. The computation includes intermediate Saturdays, Sundays, and official state holidays. If the last day of a time frame falls on a Saturday, Sunday, or official state holiday, the next business day is the time frame's last day.

**Historical Note**

Former Rule 4. Amended effective May 2, 1978 (Supp. 78-3). Former Section R4-22-05 repealed, new Section R4-22-104 adopted effective June 29, 1987 (Supp. 87-2). Section R4-22-104 renumbered to R4-22-203; new Section R4-22-104 renumbered from R4-22-212 and amended by final rulemaking at 20 A.A.R. 2654, effective November 8, 2014 (Supp. 14-3). Amended by final rulemaking at 23 A.A.R. 763, effective May 12, 2017 (Supp. 17-1).

**Table 1. Time Frames (in days)**

| Type of License | Statutory Authority | Overall Time Frame | Administrative Completeness Time Frame | Substantive Review Time Frame |
|---|---|---|---|---|
| License | A.R.S. § 32-1822 | 120 | 30 | 90 |
| License Renewal | A.R.S. § 32-1825 | 120 | 30 | 90 |
| Temporary License | A.R.S. § 32-1834 | 30 | 20 | 10 |
| 90-day Locum Tenens Registration | A.R.S. § 32-1823 | 60 | 30 | 30 |
| One-year Renewable Training Permit | A.R.S. § 32-1829(A) | 60 | 30 | 30 |
| Short-term Training Permit | A.R.S. § 32-1829(C) | 60 | 30 | 30 |
| One-year Training Permit at Approved School or Hospital | A.R.S. § 32-1830 | 60 | 30 | 30 |
| Two-year Teaching License | A.R.S. § 32-1831 | 60 | 30 | 30 |
| Registration to Dispense Drugs and Devices | A.R.S. § 32-1871 | 90 | 30 | 60 |
| Renewal of Registration to Dispense Drugs and Devices | A.R.S. §§ 32-1826(A)(11) and 32-1871 | 60 | 30 | 30 |
| Approval of Educational Program for Medical Assistants | A.R.S. § 32-1800(17) | 60 | 30 | 30 |
| Retired Status | A.R.S. § 32-1832 | 90 | 30 | 60 |

**Historical Note**

New Table 1, under Section R4-22-104, renumbered from R4-22-212 and amended by final rulemaking at 20 A.A.R. 2654, effective November 8, 2014 (Supp. 14-3). Amended by final rulemaking at 23 A.A.R. 763, effective May 12, 2017 (Supp. 17-1). Amended by final rulemaking at 25 A.A.R. 1793, effective August 31, 2019 (Supp. 19-3).

**R4-22-105. Equivalents to an Approved Internship or Residency**

For purposes of A.R.S. § 32-1822, the equivalent of an approved internship or approved residency is any of the following:

1. One or more years of a fellowship training program approved by the AOA or the ACGME; or
2. A current certification by the AOA in an osteopathic medical specialty.

**Historical Note**

Former Rule 8. Amended by adding subsection (D) effective January 24, 1984 (Supp. 84-1). Former Section R4-22-08 amended and renumbered as Section R4-22-105 effective June 29, 1987 (Supp. 87-2). Section repealed by final rulemaking at 10 A.A.R. 2793, effective August 7, 2004 (Supp. 04-2). New Section R4-22-105 renumbered from R4-22-103 and amended by final rulemaking at 20 A.A.R. 2654, effective November 8, 2014 (Supp. 14-3).

**R4-22-106. Specialist Designation**

**A.** The Board approves specialty boards recognized by the:

1. American Osteopathic Association Bureau of Osteopathic Specialists and listed in the *Handbook of the Bureau of Osteopathic Specialists* (BOS), revised March 2013, available from the AOA at 142 E. Ontario Street, Chicago, IL 60611, 800-621-1773, or www.osteopathic.org; and
2. American Board of Medical Specialties (ABMS) and listed in the *ABMS Guide to Medical Specialties*, 2013, available from the ABMS at 222 N. LaSalle Street, Suite 1500, Chicago, IL 60601, 312-436-2600, or www.abms.org.

**B.** The Board incorporates the materials listed in subsection (A) by reference. The materials include no future editions or amendments. The Board shall make the materials available at the Board office and on its web site.

**Historical Note**

Adopted effective May 8, 1978 (Supp. 78-3). Former Section R4-22-11 amended and renumbered as Section R4-22-106 effective June 29, 1987 (Supp. 87-2). Amended by final rulemaking at 10 A.A.R. 2793, effective August 7, 2004 (Supp. 04-2). Section R4-22-106 renumbered to R4-22-108; new Section R4-22-106 renumbered from R4-22-102 and amended by final rulemaking at 20 A.A.R. 2654, effective November 8, 2014 (Supp. 14-3).

**R4-22-107. Petition for Rulemaking or Review**

**A.** A person may petition the Board under A.R.S. § 41-1033 for either a:

1. Rulemaking action relating to a Board rule, including making a new rule or amending or repealing an existing rule; or
2. Review of an existing Board practice or substantive policy statement alleged to constitute a rule.

**B.** A person shall submit to the Board a written petition including the following information:

1. Name, address, e-mail address, and telephone and fax numbers of the person submitting the petition;
2. Name of any person represented by the person submitting the petition;
3. If requesting a rulemaking action:
   a. Statement of the rulemaking action sought, including the A.A.C. citation of all existing rules, and the specific language of a new rule or rule amendment; and
   b. Reasons for the rulemaking action, including an explanation of why the existing rule is inadequate, unreasonable, unduly burdensome, or unlawful;
4. If requesting a review of an existing practice or a substantive policy statement:
   a. Subject matter of the existing practice or substantive policy statement, and
   b. Reasons why the existing practice or substantive policy statement constitutes a rule; and
5. Dated signature of the person submitting the petition.

**C.** A person may submit supporting information with a petition.

**D.** A person may submit a petition and any supporting information by e-mail, hand delivery, or the U.S. Postal Service.

**E.** The Board shall send the person submitting a petition a written response within 60 days of the date the Board receives the petition.

**Historical Note**

Adopted effective August 7, 1992 (Supp. 92-3). Section R4-22-107 repealed; new Section R4-22-107 renumbered from R4-22-115 and amended by final rulemaking at 20 A.A.R. 2654, effective November 8, 2014 (Supp. 14-3).

**R4-22-108. Rehearing or Review of Decision**

**A.** The Board shall provide for a rehearing and review of its decisions under A.R.S. Title 41, Chapter 6, Article 10 and rules established by the Office of Administrative Hearings.

**B.** Except as provided in subsection (I), a party is required to file a motion for rehearing or review of a decision of the Board to exhaust the party's administrative remedies.

**C.** A party may amend a motion for rehearing or review at any time before the Board rules on the motion.

**D.** The Board 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 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. 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 Board's decision is a result of passion or prejudice; or
8. The findings of fact or decision is not justified by the evidence or is contrary to law.

**E.** The Board 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 (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, the affidavits shall be served with the motion. An opposing party may, within 15 days after service, serve opposing affidavits.

**G.** Not later than 10 days after the date of a decision, after giving parties notice and an opportunity to be heard, 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 a rehearing is granted, the Board shall hold the rehearing within 60 days after the issue date on the order granting the rehearing.

**I.** If the Board makes a specific finding that a particular decision needs to be effective immediately to preserve the public peace, health, or safety and that a review or rehearing of the decision is impracticable, unnecessary, or contrary to the public interest, the Board shall issue the decision as a final decision without an opportunity for rehearing or review.

**J.** A party that has exhausted the party's administrative remedies may appeal a final order of the Board under A.R.S. Title 12, Chapter 7, Article 6.

**Historical Note**
Adopted effective August 7, 1992 (Supp. 92-3). Amended by final rulemaking at 18 A.A.R. 2488, effective November 10, 2012 (Supp. 12-3). Section R4-22-108 renumbered to R4-22-102; new Section R4-22-108 renumbered from R4-22-106 and amended by final rulemaking at 20 A.A.R. 2654, effective November 8, 2014 (Supp. 14-3).

**R4-22-109. Renumbered**

**Historical Note**
Former Rule 1. Former Section R4-22-01 repealed, new Section R4-22-101 adopted effective June 29, 1987 (Supp. 87-2). Renumbered from R4-22-101 effective May 3, 1993 (Supp. 93-2). Former R4-22-109 renumbered to R4-22-207 by final rulemaking at 12 A.A.R. 2765, effective September 9, 2006 (Supp. 06-3).

**R4-22-110. Renumbered**

**Historical Note**
Adopted effective May 3, 1993 (Supp. 93-2). Amended by final rulemaking at 10 A.A.R. 2793, effective August 7, 2004 (Supp. 04-2). Section R4-22-110 renumbered to R4-22-401 by final rulemaking at 20 A.A.R. 2654, effective November 8, 2014 (Supp. 14-3).

**R4-22-111. Renumbered**

**Historical Note**
Adopted effective May 3, 1993 (Supp. 93-2). Amended by final rulemaking at 10 A.A.R. 2793, effective August 7, 2004 (Supp. 04-2). Section R4-22-111 renumbered to R4-22-402 by final rulemaking at 20 A.A.R. 2654, effective November 8, 2014 (Supp. 14-3).

**R4-22-112. Renumbered**

**Historical Note**
Adopted effective May 3, 1993 (Supp. 93-2). Amended by final rulemaking at 10 A.A.R. 2793, effective August 7, 2004 (Supp. 04-2). Section R4-22-112 renumbered to R4-22-403 by final rulemaking at 20 A.A.R. 2654, effective November 8, 2014 (Supp. 14-3).

**R4-22-113. Repealed**

**Historical Note**
Adopted effective May 3, 1993 (Supp. 93-2). Section repealed by final rulemaking at 10 A.A.R. 2793, effective August 7, 2004 (Supp. 04-2).

**R4-22-114. Repealed**

**Historical Note**
Adopted effective May 3, 1993 (Supp. 93-2). Section repealed by final rulemaking at 10 A.A.R. 2793, effective August 7, 2004 (Supp. 04-2).

**R4-22-115. Renumbered**

**Historical Note**
Adopted effective May 3, 1993 (Supp. 93-2). Section R4-22-115 renumbered to R4-22-107 by final rulemaking at 20 A.A.R. 2654, effective November 8, 2014 (Supp. 14-3).

## ARTICLE 2. LICENSING

**R4-22-201. Application Required**
An individual or entity that seeks a license or other approval from the Board shall complete and submit an application form prescribed by the Board. The Board has prescribed the following application forms, which are available from the Board office or web site:

1. License,
2. Temporary license,
3. License renewal,
4. Locum tenens registration,
5. Initial registration to dispense,
6. Registration to dispense renewal,
7. Renewable one-year post-graduate training permit,
8. Renewal of post-graduate training permit,
9. Short-term training permit,
10. Two-year teaching license, and
11. Approval of an educational program for medical assistants.

**Historical Note**
New Section made by final rulemaking at 20 A.A.R. 2654, effective November 8, 2014 (Supp. 14-3). Amended by final rulemaking at 25 A.A.R. 1793, effective August 31, 2019 (Supp. 19-3).

**R4-22-202. Determining Qualification for Licensure**

**A.** To obtain a license, an applicant shall submit:

1. The application form specified in R4-22-201;
2. The proof required under A.R.S. § 32-1822(A);
3. A list of all Board-certified specializations, the certifying entity, and a copy of each certification or letter verifying specialization;
4. A list of each health care facility or employer at which the applicant obtained practice experience. If the applicant has not passed an examination approved under R4-22-203 within the last seven years, the Board may obtain verification of practice experience from the health care facilities or employers listed for the last seven years;
5. A malpractice claim or suit questionnaire for each instance of medical malpractice in which there was an award, settlement, or payment;
6. A full set of fingerprints and the charge specified in R4-22-102(B);
7. A passport-size picture taken within the last 60 days; and
8. The application fee required under R4-22-102(A).

**B.** In addition to the materials required under subsection (A), an applicant shall have the following information submitted directly to the Board by the specified entity:

1. Professional Education Verification form or an official transcript submitted by the osteopathic college from which the applicant graduated;
2. Verification of Postgraduate Training form submitted by each postgraduate facility or program at which the applicant trained;
3. Verification of passing an examination approved under R4-22-203 submitted by the examining entity; and
4. Verification of licensure form submitted by every state in which the applicant is or has been licensed as an osteopathic physician.

**C.** If an applicant has established a credentials portfolio with the FCVS or AOIA, the applicant may request that the FCVS forward to the Board some or all of the materials required under subsection (B).

**D.** The Board shall conduct a substantive review of the information submitted under subsections (A) and (B) and determine whether the applicant is qualified for licensure by virtue of:
1. Possessing the knowledge and skills necessary to practice medicine safely and skillfully;
2. Demonstrating a history of professional conduct; and
3. Possessing the physical, mental, and emotional fitness to practice medicine.

**E.** If the substantive review referenced in subsection (D) does not yield sufficient information for the Board to determine whether an applicant is qualified for licensure, the Board shall request that the applicant appear before the Board for an interview.
1. The Board shall conduct an application interview in the same manner as an informal hearing conducted under A.R.S. § 32-1855 and shall accord the applicant the same rights as a respondent.
2. In conjunction with an application interview, the Executive Director or Board may require that the applicant, at the applicant's expense:
   a. Provide additional documentation,
   b. Submit to a physical or psychological examination,
   c. Submit to a practice assessment evaluation,
   d. Pass an approved special purposes competency examination listed in R4-22-203(A)(3), or
   e. Fulfill any combination of the requirements listed in subsections (E)(2)(a) through (d).

**F.** If the substantive review referenced in subsection (D) reveals that an applicant has been subject to disciplinary action or criminal conviction, the Board shall consider the following factors to determine whether the applicant has been rehabilitated from the conduct underlying the disciplinary action or criminal conviction:
1. Nature of the disciplinary or criminal action including charges and final disposition;
2. Whether all terms of court-ordered sentencing or Board-issued order were satisfied;
3. Whether the disciplinary action or criminal conviction was set aside, dismissed with prejudice, or reduced;
4. Whether a diversion program was entered and completed;
5. Whether the circumstances, relationships, or personal attributes that caused or contributed to the underlying conduct changed;
6. Personal and professional references attesting to rehabilitation; and
7. Other information the Board determines demonstrates whether the applicant has been rehabilitated.

**Historical Note**
New Section made by final rulemaking at 20 A.A.R. 2654, effective November 8, 2014 (Supp. 14-3).
Amended by final rulemaking at 25 A.A.R. 1793, effective August 31, 2019 (Supp. 19-3).

**R4-22-203. Examination; Practice Equivalency to an Examination**

**A.** Approved examinations. For the purposes of licensing, the Board approves the following examinations:
1. All levels and parts of the COMLEX required by the NBOME with a passing score determined by the NBOME;
2. All levels and parts of the USMLE required by the NBME with a passing score determined by the NBME; and
3. A special purposes competency examination given by the NBOME or NBME to an applicant at the request of the Board, with a passing score established by the NBOME or NBME.

**B.** Practice equivalency to an examination. If an applicant has not passed an approved examination within the seven years before the date of application, the Board shall find that the applicant has practice experience equivalent to an approved examination if the applicant submits documentation of all of the following:
1. On the date of application and continuously until the date the applicant is issued or denied a license, the applicant holds:
   a. An active license to practice osteopathic medicine issued by another state, or
   b. An active permit or temporary license to practice in an approved residency or fellowship;
2. For at least seven of the 10 years immediately before the date of application, the applicant:
   a. Was in clinical practice providing direct patient care, or
   b. Was in the second or later year of an approved residency or fellowship; and
   c. Has completed a certification examination provided by a specialty board under R4-22-106; and
3. Within two years immediately before the date of application, the applicant completed at least 40 hours of approved CME, defined and documented as specified in R4-22-207.

**Historical Note**
New Section renumbered from R4-22-104 and amended by final rulemaking at 20 A.A.R. 2654, effective November 8, 2014 (Supp. 14-3).

**R4-22-204. License Issuance; Effective Date of License**

**A.** Within 90 days after an applicant for licensure receives notice from the Board that the applicant is approved, but no later than 360 days after the date on which the application was originally submitted, the approved applicant shall submit to the Board the license issuance fee required by A.R.S. § 32-1826(A) and the following information in writing:
1. Practice address and telephone number,
2. Residential address, and
3. A statement of whether the practice address or residential address should be used by the Board as the address of record.

**B.** The Board shall issue a license to an approved applicant that is effective on the date the information required under subsection (A) is received.

**C.** The Board shall administratively close an approved applicant's file if the approved applicant fails to submit the information required within the time specified under subsection (A). If an applicant whose file is administratively closed wishes to be considered further for licensure, the applicant shall reapply by complying with R4-22-202.

**Historical Note**
New Section made by final rulemaking at 20 A.A.R. 2654, effective November 8, 2014 (Supp. 14-3).

**R4-22-205. License Renewal**
To renew a license, the licensee shall submit to the Board the renewal application required under R4-22-201. Failure to receive notice of the need to renew does not excuse failure to renew timely.

**Historical Note**
New Section made by final rulemaking at 20 A.A.R. 2654, effective November 8, 2014 (Supp. 14-3).

**R4-22-206. Procedure for Application to Reenter Practice**
**A.** The procedures in this Section apply only to an osteopathic physician who:
1. Was licensed and practiced as an osteopathic physician in Arizona or another jurisdiction, and
2. Currently is not licensed and practicing as an osteopathic physician in Arizona or another jurisdiction.

**B.** All applicants to reenter practice shall:
1. Submit the application required under R4-22-201, including all documents specified in the application; and
2. Pay the fee specified in R4-22-102(A).

**C.** In addition to complying with subsection (B), an applicant who has been out of practice for less than two years and has no disciplinary history shall submit documentation of completing at least 40 hours of Category 1-A or Category 1 CME in the applicant's intended field of practice within the two years before the date the application to reenter practice is approved.

**D.** In addition to complying with subsection (B), an applicant who has been out of practice for two or more years and has no disciplinary history shall attend a Board meeting and:
1. Discuss with the Board evidence that the applicant remains competent to practice medicine; and
2. Develop a reentry plan designed to ensure that the applicant is competent to practice medicine. The re-entry plan may include any or all of the following, at the discretion of the Board:
   a. Taking a competency or specialty examination;
   b. Taking continuing education;
   c. Completing a practice assessment program;
   d. Practicing under supervision or with restrictions; and
   e. Submitting to a physical or psychological examination.

**E.** In addition to complying with subsection (B), an applicant who has been out of practice and has a history of disciplinary action shall attend a Board meeting and:
1. Establish to the Board's satisfaction that the applicant is rehabilitated from the underlying unprofessional conduct. In determining whether the applicant is rehabilitated, the Board shall consider the factors listed in R4-22-202(F); and
2. If the Board determines that the applicant is rehabilitated, take the actions listed in subsection (D) to ensure that the applicant is competent to practice medicine.

**Historical Note**
New Section made by final rulemaking at 20 A.A.R. 2654, effective November 8, 2014 (Supp. 14-3).

**R4-22-207. Continuing Medical Education; Waiver; Extension of Time to Complete**
**A.** Under A.R.S. § 32-1825(B), a licensee is required to obtain 40 hours of Board-approved CME in the two years before license renewal. The Board shall approve the CME of a licensee if the CME complies with the following:
1. At least 24 hours are obtained by completing CME classified by the AOA as Category 1A,
2. No more than 16 hours are obtained by completing CME classified as American Medical Association Category 1 approved by an ACCME-accredited CME provider, and
3. At least the number of CME hours specified under A.R.S. § 32-3248.02 address opioid-related, substance use disorder-related, or addiction-related prescribing and are obtained under subsection (A)(1) or (2).

**B.** A licensee may fulfill 40 hours of the CME requirement for a biennial license renewal period by participating in an approved postgraduate training program or preceptorship during that biennial license renewal period.

**C.** The Board shall accept the following documentation as evidence of compliance with the CME requirement:
1. For a CME under subsection (A)(1):
   a. The AOA printout of the licensee's CME, or
   b. A copy of the certificate of attendance from the provider of the CME showing:
      i. Licensee's name,
      ii. Title of the CME,
      iii. Name of the provider of the CME,
      iv. Category of the CME,
      v. Number of hours in the CME, and
      vi. Date of attendance;
2. For a CME under subsection (A)(2):
   a. A copy of the certificate of attendance from the provider of the CME showing the information listed in subsection (C)(1)(b); or
   b. A specialty board's printout showing a licensee's completion of CME.
3. For a CME under subsection (B), either a letter from the Director of Medical Education or a certificate of completion for the approved postgraduate training program or preceptorship.

**D.** Waiver of CME requirements. To obtain a waiver under A.R.S. § 32-1825(C) of the CME requirements, a licensee shall submit to the Board a written request that includes the following:
1. The period for which the waiver is requested,
2. CME completed during the current license period and the documentation required under subsection (C), and
3. Reason that a waiver is needed and the applicable documentation:
   a. For military service. A copy of current orders or a letter on official letterhead from the licensee's commanding officer;
   b. For absence from the United States. A copy of pages from the licensee's passport showing exit and reentry dates;
   c. For disability. A letter from the licensee's treating physician stating the nature of the disability; or
   d. For circumstances beyond the licensee's control:
      i. A letter from the licensee stating the nature of the circumstances, and
      ii. Documentation that provides evidence of the circumstances.

**E.** The Board shall grant a request for waiver of CME requirements that:
1. Is based on a reason listed in subsection (D)(3),
2. Is supported by the documentation required under subsection (D)(3),
3. Is filed no sooner than 60 days before and no later than 30 days after the license renewal date, and
4. Will promote the safe and professional practice of osteopathy in this state.

**F.** Extension of time to complete CME requirements. To obtain an extension of time under A.R.S. § 32-1825(C) to complete the CME requirements, a licensee shall submit to the Board a written request that includes the following:
1. Ending date of the requested extension,
2. CME completed during the current license period and the documentation required under subsection (C),
3. Proof the licensee is registered for additional CME sufficient to enable the licensee to complete all CME required for license renewal before the end of the requested extension, and
4. Licensee's attestation that the CME obtained under the extension will be reported only to fulfill the current license renewal requirement and will not be reported on a subsequent license renewal application.

**G.** The Board shall grant a request for an extension that:
1. Specifies an ending date no later than May 1 following the license renewal date,
2. Includes the documentation and attestation required under subsection (F),
3. Is submitted no sooner than 60 days before and no later than 30 days after the license renewal date, and
4. Will promote the safe and professional practice of osteopathy in this state.

**Historical Note**
Section R4-22-207 renumbered from R4-22-109 and amended by final rulemaking at 12 A.A.R. 2765, effective September 9, 2006 (Supp. 06-3). Amended by final rulemaking at 20 A.A.R. 2654, effective November 8, 2014 (Supp. 14-3). Amended by final rulemaking at 23 A.A.R. 763, effective May 12, 2017 (Supp. 17-1). Amended by final rulemaking at 25 A.A.R. 1793, effective August 31, 2019 (Supp. 19-3).

**R4-22-208. Reserved**

**R4-22-209. Reserved**

**R4-22-210. Reserved**

**R4-22-211. Reserved**

**R4-22-212. Confidential Program for Treatment and Rehabilitation of Impaired Osteopathic Physicians**

**A.** To protect the public health and safety, a licensee is required by A.R.S. § 32-1822 to be physically, mentally, and emotionally able to practice medicine.

**B.** If the Board determines that a licensee may be impaired by substance abuse and there is evidence of an imminent danger to the public health and safety, the Board's Executive Director, with the concurrence of investigative staff, the medical consultant, or a Board member, may enter into:
1. A consent agreement with the licensee to restrict the licensee's practice if there is evidence that a restriction of the licensee's practice is needed to mitigate the danger to the public health and safety;
2. A stipulated agreement with the licensee requiring the licensee to complete a Board-approved evaluation and treatment program for abuse or misuse of chemical substances if there is evidence the program would be successful in enabling the licensee to return to practice safely; and
3. A stipulated agreement with the licensee to enter a Monitored Aftercare Program (MAP) if there is evidence the licensee intends to comply with a program for rehabilitation.

**Historical Note**
New Section made by final rulemaking at 12 A.A.R. 1388, effective June 4, 2006 (Supp. 06-2). Section R4-22-212 renumbered to Section R4-22-104; new Section R4-22-212 made by final rulemaking at 20 A.A.R. 2654, effective November 8, 2014 (Supp. 14-3).

**Table 1. Renumbered**

**Historical Note**
Table 1 made by final rulemaking at 12 A.A.R. 1388, effective June 4, 2006 (Supp. 06-2). Table 1 renumbered to R4-22-104, Table 1 by final rulemaking at 20 A.A.R. 2654, effective November 8, 2014 (Supp. 14-3).

## ARTICLE 3. DISPENSING DRUGS

**R4-22-301. Registration to Dispense Required**

**A.** An osteopathic physician shall register with the Board annually if the osteopathic physician:
1. Maintains a supply of controlled substances, as defined in A.R.S. § 32-1901(13), prescription-only drugs, as defined in A.R.S. § 32-1901(76), or prescription-only devices, as defined in A.R.S. § 32-1901(75), excluding manufacturers' samples;
2. Prescribes the items listed in subsection (A)(1) to a patient of the osteopathic physician for use outside the office of the osteopathic physician; and
3. Obtains payment for the items listed in subsection (A)(1) at a practice location in Arizona.

**B.** To register with the Board to dispense, an osteopathic physician shall:
1. Submit the form referenced in R4-22-201,
2. Submit a copy of the osteopathic physician's current Drug Enforcement Administration certificate of registration for each location from which the osteopathic physician will dispense a controlled substance, and
3. Pay the fee authorized by A.R.S. § 32-1826(A)(11).

**C.** An osteopathic physician who is registered with the Board to dispense shall renew the registration by December 31 of each year by complying with subsection (B). If an osteopathic physician submits a timely and complete application to renew a registration to dispense, the osteopathic physician may continue to dispense until the Board approves or denies the renewal application.

**D.** If an osteopathic physician fails to submit a timely and complete application to renew a registration to dispense, the osteopathic physician shall immediately cease dispensing.
1. If the osteopathic physician wishes to resume dispensing, the osteopathic physician shall register with the Board by complying with subsection (B) and shall not dispense until the osteopathic physician receives notice from the Board that the registration is approved.
2. If the osteopathic physician does not wish to resume dispensing, the osteopathic physician shall, as required by A.R.S. § 32-1871(F), submit to the Board an inventory disposal form, which is available from the Board office or on its web site.

**Historical Note**
New Section made by final rulemaking at 20 A.A.R. 2654, effective November 8, 2014 (Supp. 14-3).

**R4-22-302. Packaging and Inventory**

**A.** An osteopathic physician shall dispense a controlled substance or prescription-only drug in a prepackaged or light-resistant container with a consumer safety cap that complies with standards specified in the official compendium, as defined at A.R.S. § 32-1901(55), and state and federal law, unless a

patient or the patient's representative requests a non-safety cap.

**B.** An osteopathic physician shall ensure that a dispensed controlled substance or prescription-only drug is labeled with the following information:
1. The name, address, and telephone number of the dispensing osteopathic physician;
2. The date the controlled substance or prescription-only drug is dispensed;
3. The patient's name;
4. The name of the controlled substance or prescription-only drug, strength, dosage, form, name of manufacturer, quantity dispensed, directions for use, and any cautionary statement necessary for the safe and effective use of the controlled substance or prescription-only drug; and
5. A beyond-use date not to exceed one year from the date of dispensing or the manufacturer's expiration date if less than one year.

**C.** An osteopathic physician shall:
1. Secure all controlled substances in a locked cabinet or room;
2. Control access to the locked cabinet or room by a written procedure that includes, at a minimum:
   a. Designation of the persons who have access to the locked cabinet or room, and
   b. Procedures for recording requests for access to the locked cabinet or room;
3. Make the written procedure required under subsection (C)(2) available on demand by the Board or its authorized representative for inspection or copying;
4. Store prescription-only drugs so they are not accessible to patients; and
5. Store controlled substances and prescription-only drugs not requiring refrigeration in an area where the temperature does not exceed 85° F.

**D.** An osteopathic physician shall maintain a dispensing log for all controlled substances and the prescription-only drug nalbuphine hydrochloride (Nubain) dispensed. The osteopathic physician shall ensure that the dispensing log includes the following information on a separate inventory sheet for each controlled substance or prescription-only drug:
1. Date the drug is dispensed;
2. Patient's name;
3. Name of controlled substance or prescription-only drug, strength, dosage, form, and name of manufacturer;
4. Number of dosage units dispensed;
5. Running total of each controlled substance or prescription-only drug dispensed; and
6. Written signature of the osteopathic physician next to each entry.

**E.** An osteopathic physician may use a computer to maintain the dispensing log required under subsection (D) if the log is quickly accessible through either on-screen viewing or printing a copy.

**F.** This Section does not apply to a prepackaged manufacturer sample of a controlled substance or prescription-only drug unless otherwise provided by federal law.

**Historical Note**
New Section made by final rulemaking at 20 A.A.R. 2654, effective November 8, 2014 (Supp. 14-3).

**R4-22-303. Prescribing and Dispensing Requirements**

**A.** An osteopathic physician who dispenses a controlled substance, prescription-only drug, or prescription-only device shall record the following information on the patient's medical record:
1. Name, strength, dosage, and form of the controlled substance, prescription-only drug, or prescription-only device dispensed;
2. Quantity or volume dispensed;
3. Date of dispensing;
4. Medical reasons for dispensing; and
5. Number of refills authorized.

**B.** Before dispensing a controlled substance, prescription-only drug, or prescription-only device, an osteopathic physician shall review the prepared controlled substance, prescription-only drug, or prescription-only device to ensure that:
1. The container label and contents comply with the prescription; and
2. The patient is informed of the name of the controlled substance, prescription-only drug, or prescription-only device, directions for use, precautions, and storage requirements.

**C.** An osteopathic physician shall purchase all controlled substance, prescription-only drugs, or prescription-only devices dispensed from a manufacturer or distributor approved by the United State Food and Drug Administration or a pharmacy holding a current permit from the Arizona Board of Pharmacy.

**D.** The individual who prepares a controlled substance, prescription-only drug, or prescription-only device for dispensing shall countersign and date the original prescription form.

**Historical Note**
New Section made by final rulemaking at 20 A.A.R. 2654, effective November 8, 2014 (Supp. 14-3).

**R4-22-304. Recordkeeping and Reporting Shortages**

**A.** An osteopathic physician who dispenses a controlled substance or prescription-only drug shall ensure that an original prescription order, as defined in A.R.S. § 32-1901(77), for the controlled substance or prescription-only drug dispensed is dated, consecutively numbered in the order in which originally dispensed, and filed separately from patient medical records. The osteopathic physician shall ensure that original prescription orders are maintained in three separate files, as follows:
1. Schedule II controlled substances, which are listed at A.R.S. § 36-2513;
2. Schedule III, IV, and V controlled substances, which are defined or listed at A.R.S. §§ 36-2514 through 36-2516, and
3. Prescription-only drugs.

**B.** An osteopathic physician shall ensure that purchase orders and invoices for all dispensed controlled substances and prescription-only drugs are maintained for three years from the date on the purchase order or invoice in three separate files as follows:
1. Schedule II controlled substances;
2. Schedule III, IV, and V controlled substances and nalbuphine; and
3. All other prescription-only drugs.

**C.** An osteopathic physician who discovers a theft or loss of a controlled substance or dangerous drug, as defined in A.R.S. Title 36, Chapter 27, Article 2, from the physician's office shall:
1. Immediately notify the local law enforcement agency,
2. Provide the local law enforcement agency with a written report, and
3. Send a copy of the report to the U.S. Drug Enforcement Administration and the Board within seven days of the discovery of the theft or loss.

**Historical Note**
New Section made by final rulemaking at 20 A.A.R. 2654, effective November 8, 2014 (Supp. 14-3).

**R4-22-305. Inspections; Denial and Revocation**

**A.** An osteopathic physician shall allow the Board or its representative access to the physician's office and the records required under this Article for inspection of compliance with A.R.S. § 32-1871 and this Article.

**B.** Failure to comply with A.R.S. § 32-1871 and this Article is unprofessional conduct and grounds for revocation of the physician's registration to dispense or denial of renewal of registration to dispense.

**C.** The Board shall revoke an osteopathic physician's registration to dispense upon the occurrence of the following:
1. Suspending, revoking, surrendering, or canceling the physician's license;
2. Failing to timely renew the physician's license; or
3. Restricting the physician's ability to prescribe or administer medication, including loss or expiration of the physician's Drug Enforcement Administration Certificate of Registration.

**D.** If the Board denies a registration to dispense to an osteopathic physician, the physician may appeal the decision by filing a written request with the Board no later than 30 days after service of the notice of denial.

**Historical Note**
New Section made by final rulemaking at 20 A.A.R. 2654, effective November 8, 2014 (Supp. 14-3).

## ARTICLE 4. MEDICAL ASSISTANTS

**R4-22-401. Approval of Educational Programs for Medical Assistants**

**A.** For purposes of this Section, a Board-approved medical assistant training program is a program:
1. Accredited by the CAAHEP;
2. Accredited by the ABHES;
3. Accredited by any accrediting agency recognized by the United States Department of Education; or
4. Designed and offered by a licensed osteopathic physician, that meets or exceeds the standards of one of the accrediting programs listed in subsections (A)(1) through (A)(3), and the licensed osteopathic physician verifies that those who complete the program have the entry level competencies referenced in R4-22-402.

**B.** A person seeking approval of a training program for medical assistants shall submit to the Board the application required under R4-22-201 and verification that the program meets the requirements in subsection (A).

**Historical Note**
Section R4-22-401 renumbered from R4-22-110 and amended by final rulemaking at 20 A.A.R. 2654, effective November 8, 2014 (Supp. 14-3).

**R4-22-402. Medical Assistants – Authorized Procedures**

**A.** A medical assistant may, under the direct supervision of a licensed osteopathic physician, perform the medical procedures listed in the Commission on Accreditation of Allied Health Education Programs' *Standards and Guidelines for the Accreditation of Educational Programs in Medical Assisting,* revised 2008. This material is incorporated by reference, does not include any later revisions, amendments or editions, is on file with the Board, and may be obtained from the Commission on Accreditation of Allied Health Education Programs, 1361 Park Street, Clearwater, FL 33756, 727-210-2350, or www.caahep.org.

**B.** Additionally, a medical assistant working under the direct supervision of a licensed osteopathic physician may:
1. Perform physical medicine modalities, including administering whirlpool treatments, diathermy treatments, electronic galvanic stimulation treatments, ultrasound therapy, massage therapy, and traction treatments;
2. Apply Transcutaneous Nerve Stimulation units and hot and cold packs;
3. Administer small volume nebulizers;
4. Draw blood;
5. Prepare proper dosages of medication and administer the medication as directed by the physician;
6. Assist in minor surgical procedures;
7. Perform urine analyses, strep screens, and urine pregnancy tests;
8. Perform EKGs; and
9. Take vital signs.

**Historical Note**
Section R4-22-402 renumbered from R4-22-111 and amended by final rulemaking at 20 A.A.R. 2654, effective November 8, 2014 (Supp. 14-3).

**R4-22-403. Medical Assistant Training Requirement**

**A.** The licensed osteopathic physician who will provide direct supervision to a medical assistant shall ensure that the medical assistant satisfies one of the following training requirements before the medical assistant is employed:
1. Completes an approved medical assistant training program,
2. Completes an unapproved medical assistant training program and passes a medical assistant examination administered by either the American Association of Medical Assistants or the American Medical Technologists, or
3. Completes a medical services training program of the Armed Forces of the United States.

**B.** This Section does not apply to a person who completed a medical assistant training program before August 7, 2004, and was employed continuously as a medical assistant since completing the program.

**Historical Note**
Section R4-22-403 renumbered from R4-22-112 and amended by final rulemaking at 20 A.A.R. 2654, effective November 8, 2014 (Supp. 14-3).

## ARTICLE 5. OFFICE-BASED SURGERY

**R4-22-501. Definitions**

In this Article,

"ACLS" means advanced cardiac life support performed according to certification standards of the American Heart Association.

"Auscultation" means the act of listening to sounds within the human body either directly or through use of a stethoscope or other means.

"BLS" means basic life support performed according to certification standards of the American Heart Association.

"Capnography" means monitoring the concentration of exhaled carbon dioxide of a sedated patient to determine adequacy of the patient's ventilatory function.

"Deep sedation" means a drug-induced depression of consciousness during which a patient:

Cannot be easily aroused, but

Responds purposefully following repeated or painful stimulation, and

May partially lose the ability to maintain ventilatory function.

"Discharge" means a written or electronic documented termination of office-based surgery provided to a patient.

"Emergency" means an immediate threat to the life or health of a patient.

"General anesthesia" means a drug-induced loss of consciousness during which a patient:

Can not be aroused even with painful stimulus; and

May partially or completely lose the ability to maintain ventilatory, neuromuscular, or cardiovascular function or airway.

"Health care professional" means a registered nurse or a registered nurse practitioner, as defined in A.R.S. § 32-1601, physician assistant, as defined in A.R.S. § 32-2501, and any individual authorized to perform surgery under A.R.S. Title 32 who participates in office-based surgery.

"Informed consent" means advising a patient of the:

Purpose for and alternatives to office-based surgery,

Risks associated with office-based surgery, and

Possible benefits and complications from office-based surgery.

"Malignant hyperthermia" means a life-threatening condition in an individual who has a genetic sensitivity to inhalant anesthetics and depolarizing neuromuscular blocking drugs that occurs during or after the administration of an inhalant anesthetic or depolarizing neuromuscular blocking drug.

"Minimal sedation" means a drug-induced state during which:

A patient responds to verbal commands,

Cognitive function and coordination may be impaired, and

A patient's ventilatory and cardiovascular functions are unaffected.

"Moderate sedation" means a drug-induced depression of consciousness during which:

A patient responds to verbal commands or light tactile stimulations, and

No interventions are required to maintain ventilatory or cardiovascular function.

"Monitor" means to assess the condition of a patient.

"Office-based surgery" means a medical procedure performed by an osteopathic physician in the physician's office or other practice location that is not part of a licensed hospital or licensed ambulatory surgical center while using sedation.

"PALS" means pediatric advanced life support performed according to certification standards of the American Academy of Pediatrics or the American Heart Association.

"Rescue" means to correct adverse physiologic consequences of deeper than intended level of sedation and return the patient to the intended level of sedation.

"Staff member" means an individual who:

Is not a health care professional, and

Assists with office-based surgery under the supervision of the osteopathic physician performing the office-based surgery.

"Transfer" means a physical relocation of a patient from the office or other practice location of an osteopathic physician to a licensed health care institution.

**Historical Note**
New Section made by final rulemaking at 20 A.A.R. 2654, effective November 8, 2014 (Supp. 14-3).

**R4-22-502. Health Care Institution License**
An osteopathic physician who performs office-based surgery shall obtain a health care institution license as required by the Arizona Department of Health Services under A.R.S. Title 36, Chapter 4 and 9 A.A.C. 10.

**Historical Note**
New Section made by final rulemaking at 20 A.A.R. 2654, effective November 8, 2014 (Supp. 14-3).

**R4-22-503. Administrative Provisions**

**A.** An osteopathic physician who performs office-based surgery shall:
1. Establish, document, and implement written policies and procedures that cover:
   a. Patients' rights,
   b. Informed consent,
   c. Care of patients in an emergency, and
   d. Transfer of patients to a local accredited or licensed acute-care hospital;
2. Ensure that a staff member who assists with or a health care professional who participates in office-based surgery:
   a. Has sufficient education, training, and experience to perform assigned duties;
   b. If applicable, has a current license or certification required to perform assigned duties; and
   c. Performs only those acts that are within the scope of practice established in the staff member's or health care professional's governing statutes;
3. Ensure that the office or other practice location where office-based surgery is performed has all equipment necessary for:
   a. The physician to perform the office-based surgery safely,
   b. The physician or health care professional to administer the sedation safely,
   c. The physician or health care professional to monitor the use of sedation, and
   d. The physician and health care professional administering the sedation to rescue a patient after the sedation is administered if the patient enters into a deeper state of sedation than was intended by the physician;
4. Ensure that a copy of the patients' rights policy is provided to each patient before performing office-based surgery;
5. Obtain informed consent from the patient before performing office-based surgery that:
   a. Authorizes the office-based surgery, and
   b. Authorizes the office-based surgery to be performed at the specific practice location; and
6. Review all policies and procedures at least every 12 months and update as needed.

**B.** An osteopathic physician who performs office-based surgery shall comply with:
1. The local jurisdiction's fire code;

2. The local jurisdiction's building codes for construction and occupancy;
3. The bio-hazardous waste and hazardous waste standards in 18 A.A.C. 13, Article 14; and
4. The controlled substances administration, supply, and storage standards in 4 A.A.C. 23, Article 5.

**Historical Note**
New Section made by final rulemaking at 20 A.A.R. 2654, effective November 8, 2014 (Supp. 14-3).

**R4-22-504. Procedure and Patient Selection**

**A.** An osteopathic physician shall ensure that each office-based surgery performed:
1. Can be performed safely with the equipment, staff members, and health care professionals at the physician's office;
2. Is of duration and degree of complexity that allows a patient to be discharged from the physician's office within 24 hours;
3. Is within the education, training, experience, skills, and licensure of the physician; and
4. Is within the education, training, experience, skills, and licensure of the staff members and health care professionals at the physician's office.

**B.** An osteopathic physician shall not perform office-based surgery if the patient:
1. Has a medical condition or other condition that indicates the procedure should not be performed in the physician's office, or
2. Will require inpatient services at a hospital.

**Historical Note**
New Section made by final rulemaking at 20 A.A.R. 2654, effective November 8, 2014 (Supp. 14-3).

**R4-22-505. Sedation Monitoring Standards**

**A.** An osteopathic physician who performs office-based surgery when minimal sedation is administered to a patient shall ensure from the time sedation is administered until post-sedation monitoring begins that a quantitative method of assessing the patient's oxygenation, such as pulse oximetry, is used.

**B.** An osteopathic physician who performs office-based surgery when moderate or deep sedation is administered to a patient shall ensure from the time sedation is administered until post-sedation monitoring begins that:
1. A quantitative method of assessing the patient's oxygenation, such as pulse oximetry, is used;
2. The patient's ventilatory function is monitored by any of the following:
   a. Direct observation,
   b. Auscultation, or
   c. Capnography;
3. The patient's circulatory function is monitored by:
   a. Having a continuously displayed electrocardiogram,
   b. Documenting arterial blood pressure and heart rate at least every five minutes, and
   c. Evaluating the patient's cardiovascular function by pulse plethysmography;
4. The patient's temperature is monitored if the physician expects the patient's temperature to fluctuate; and
5. A licensed and qualified health care professional, other than the physician performing the office-based surgery, is:
   a. Present throughout the office-based surgery, and
   b. Has the sole responsibility of attending to the patient.

**Historical Note**
New Section made by final rulemaking at 20 A.A.R. 2654, effective November 8, 2014 (Supp. 14-3).

**R4-22-506. Perioperative Period; Patient Discharge**

An osteopathic physician performing office-based surgery shall ensure all of the following:
1. The physician is physically present in the room where office-based surgery is performed while the office-based surgery is performed;
2. After the office-based surgery is performed and until the patient's post-sedation monitoring is discontinued, a physician is at the physician's office and sufficiently free of other duties to respond to an emergency;
3. If using minimal sedation, the physician or a health care professional certified in ACLS, PALS, or BLS is at the physician's office and sufficiently free of other duties to respond to an emergency until the patient is discharged;
4. If using moderate or deep sedation, the physician or a health care professional certified in ACLS or PALS is at the physician's office and sufficiently free of other duties to respond to an emergency until the patient is discharged;
5. A discharge is documented in the patient's medical record including:
   a. The date and time of the patient's discharge, and
   b. A description of the patient's medical condition at the time of discharge; and
6. The patient receives discharge instructions and receipt of the discharge instructions is documented in the patient's medical record.

**Historical Note**
New Section made by final rulemaking at 20 A.A.R. 2654, effective November 8, 2014 (Supp. 14-3).

**R4-22-507. Emergency Drugs; Equipment and Space Used for Office-based Surgery**

**A.** In addition to the requirements in R4-22-503(A)(3) and R4-22-504(A)(1), an osteopathic physician who performs office-based surgery shall ensure that the physician's office has at a minimum:
1. The following:
   a. A reliable oxygen source with a SaO2 monitor;
   b. Suction;
   c. Resuscitation equipment, including a defibrillator;
   d. Emergency drugs; and
   e. A cardiac monitor;
2. The equipment for patient monitoring according to the standards in R4-22-505;
3. Space large enough to:
   a. Allow access to the patient during office-based surgery, recovery, and any emergency;
   b. Accommodate all equipment necessary to perform the office-based surgery; and
   c. Accommodate all equipment necessary for sedation monitoring;
4. A source of auxiliary electrical power available in the event of a power failure;
5. Equipment, emergency drugs, and resuscitative capabilities required under this Section for patients less than 18 years of age, if office-based surgery is performed on these patients; and
6. Procedures to minimize the spread of infection.

**B.** An osteopathic physician who performs office-based surgery shall:

1. Ensure that all equipment used for office-based surgery is maintained, tested, and inspected according to manufacturer specifications; and
2. Maintain documentation of manufacturer-recommended maintenance of all equipment used in office-based surgery.

**Historical Note**

New Section made by final rulemaking at 20 A.A.R. 2654, effective November 8, 2014 (Supp. 14-3).

**R4-22-508. Emergency and Transfer Provisions**

**A.** An osteopathic physician who performs office-based surgery shall ensure that a health care professional who participates in or a staff member who assists with office-based surgery receives instruction in the following:
1. Policy and procedure in cases of emergency,
2. Policy and procedure for office evacuation, and
3. Safe and timely patient transfer.

**B.** When performing office-based surgery, an osteopathic physician shall not use any drug or agent that may trigger malignant hyperthermia.

**Historical Note**

New Section made by final rulemaking at 20 A.A.R. 2654, effective November 8, 2014 (Supp. 14-3).

## 32-1803. Powers and duties

A. The board shall:

1. Protect the public from unlawful, incompetent, unqualified, impaired and unprofessional practitioners of osteopathic medicine.

2. Issue licenses, conduct hearings, place physicians on probation, revoke or suspend licenses, enter into stipulated orders, issue letters of concern or decrees of censure and administer and enforce this chapter.

3. Maintain a record of its acts and proceedings, including the issuance, denial, renewal, suspension or revocation of licenses to practice according to this chapter. The board shall delete records of complaints only as follows:

(a) If the board dismisses a complaint, the board shall delete the public record of the complaint five years after the board dismissed the complaint.

(b) If the board has issued a letter of concern but has taken no further action on the complaint, the board shall delete the public record of the complaint five years after the board issued the letter of concern.

(c) If the board has required additional continuing medical education pursuant to section 32-1855 but has not taken further action, the board shall delete the public record of the complaint five years after the person satisfies this requirement.

4. Maintain a public directory of all physicians and surgeons who are or were licensed pursuant to this chapter that includes:

(a) The name of the physician.

(b) The physician's current or last known address of record.

(c) The date and number of the license issued to the physician pursuant to this chapter.

(d) The date the license is scheduled to expire if not renewed or the date the license expired or was revoked, suspended or canceled.

(e) Any disciplinary actions taken against the physician by the board.

(f) Letters of concern, remedial continuing medical education ordered and dismissals of complaints against the physician until deleted from the public record pursuant to paragraph 3 of this subsection.

5. Adopt rules regarding the regulation, qualifications and training of medical assistants. The training requirements for a medical assistant may be satisfied through a training program that meets all of the following:

(a) Is designed and offered by a physician.

(b) Meets or exceeds any of the approved training program requirements specified in rule.

(c) Verifies the entry-level competencies of a medical assistant as prescribed by rule.

(d) Provides written verification to the individual of successful completion of the program.

6. Discipline and rehabilitate osteopathic physicians.

7. Determine whether a prospective or current Arizona licensed physician has the training or experience to demonstrate the physician's ability to treat and manage opiate-dependent patients as a qualifying physician

pursuant to 21 United States Code section 823(g)(2)(G)(ii).

8. Issue registrations to administer general anesthesia and sedation in dental offices and dental clinics pursuant to section 32-1272 to physicians who have completed residency training in anesthesiology.

B. The public records of the board are open to inspection at all times during office hours.

C. The board may:

1. Adopt rules necessary or proper to administer this chapter.

2. Appoint one of its members to the jurisdiction arbitration panel pursuant to section 32-2907, subsection B.

3. Accept and spend federal monies and private grants, gifts, contributions and devises. These monies do not revert to the state general fund at the end of a fiscal year.

4. Develop and publish advisory opinions and standards governing the profession.

D. The board shall adopt and use a seal, the imprint of which, together with the signature of either the president, vice president or executive director, is evidence of its official acts.

E. In conducting investigations pursuant to this chapter, the board may receive and review confidential internal staff reports relating to complaints and malpractice claims.

F. The board may make available to academic and research organizations public records regarding statistical information on doctors of osteopathic medicine and applicants for licensure.

# 32-1800. Definitions

In this chapter, unless the context otherwise requires:

1. "Active license" means a valid license to practice medicine and includes the license of a licensee who has been placed on probation or on whose license the board has placed restrictions.

2. "Address of record" means either:

(a) The address where a person who is regulated pursuant to this chapter practices medicine or is otherwise employed.

(b) The residential address of a person who is regulated pursuant to this chapter if that person has made a written request to the board that the board use that address as the address of record.

3. "Adequate records" means legible medical records containing, at a minimum, sufficient information to identify the patient, support the diagnosis, justify the treatment, accurately document the results, indicate advice and cautionary warnings provided to the patient and provide sufficient information for another licensed health care practitioner to assume continuity of the patient's care at any point in the course of treatment.

4. "Administrative warning" means a disciplinary action by the board in the form of a written warning to a physician of a violation of this chapter involving patient care that the board determines falls below the community standard.

5. "Approved postgraduate training program" means that an applicant for licensure successfully completed training when the hospital or other facility in which the training occurred was approved for a postgraduate internship, residency or fellowship by the American osteopathic association or by the accreditation council for graduate medical education.

6. "Approved school of osteopathic medicine" means a school or college offering a course of study that, on successful completion, results in the awarding of the degree of doctor of osteopathy and whose course of study has been approved or accredited by the American osteopathic association.

7. "Board" means the Arizona board of osteopathic examiners in medicine and surgery.

8. "Decree of censure" means a formal written reprimand by the board of a physician for a violation of this chapter that constitutes a disciplinary action against a physician's license.

9. "Direct supervision" means that a physician is within the same room or office suite as the unlicensed person in order to be available for consultation regarding those tasks the unlicensed person performs pursuant to section 32-1859.

10. "Dispense" means the delivery by a physician of a prescription drug or device to a patient, except for samples packaged for individual use by licensed manufacturers or repackagers of drugs, and includes the prescribing, administering, packaging, labeling and security necessary to prepare and safeguard the drug or device for delivery.

11. "Doctor of osteopathy" means a person who holds a license, registration or permit to practice medicine pursuant to this chapter.

12. "Immediate family" means the spouse, natural or adopted children, father, mother, brothers and sisters of the physician and the natural and adopted children, father, mother, brothers and sisters of the physician's spouse.

13. "Inappropriate fee" means a fee that is not supported by documentation of time, complexity or extreme skill required to perform the service.

14. "Investigative hearing" means a meeting between the board and a physician to discuss issues set forth in the investigative hearing notice and during which the board may hear statements from board staff, the complainant, the physician and witnesses, if any.

15. "Letter of concern" means an advisory letter to notify a physician that while there is insufficient evidence to support disciplinary action against the physician's license there is sufficient evidence for the board to notify the physician of its concern.

16. "Limited license" means a license that restricts the scope and setting of a licensee's practice.

17. "Medical assistant" means an unlicensed person who has completed an educational program approved by the board, who assists in a medical practice under the supervision of a doctor of osteopathic medicine and who performs delegated procedures commensurate with the assistant's education and training but who does not diagnose, interpret, design or modify established treatment programs or violate any statute.

18. "Medicine" means osteopathic medicine as practiced by a person who receives a degree of doctor of osteopathy.

19. "Physician" means a doctor of osteopathy who holds a license, a permit or a locum tenens registration to practice osteopathic medicine pursuant to this chapter.

20. "Practice of medicine" or "practice of osteopathic medicine" means all of the following:

(a) To examine, diagnose, treat, prescribe for, palliate, prevent or correct human diseases, injuries, ailments, infirmities and deformities, physical or mental conditions, real or imaginary, by the use of drugs, surgery, manipulation, electricity or any physical, mechanical or other means as provided by this chapter.

(b) Suggesting, recommending, prescribing or administering any form of treatment, operation or healing for the intended palliation, relief or cure of any physical or mental disease, ailment, injury, condition or defect.

(c) The practice of osteopathic medicine alone or the practice of osteopathic surgery or osteopathic manipulative therapy, or any combination of either practice.

21. "Specialist" means a physician who has successfully completed postdoctoral training in an approved postgraduate training program, an approved preceptorship or an approved residency or who is board certified by a specialty board approved by the board.

22. "Subscription provider of health care" means an entity that, through contractual agreement, is responsible for the payment, in whole or in part, of debts incurred by a person for medical or other health care services.

# 32-1822. Qualifications of applicant; application; fingerprinting; fees

A. On a form and in a manner prescribed by the board, an applicant for licensure shall submit proof that the applicant:

1. Is the person named on the application and on all supporting documents submitted.

2. Is a citizen of the United States or a resident alien.

3. Is a graduate of a school of osteopathic medicine approved by the American osteopathic association.

4. Has successfully completed an approved internship, the first year of an approved multiple-year residency or a board-approved equivalency.

5. Has passed the approved examinations for licensure within seven years of application or has the board-approved equivalency of practice experience.

6. Has not engaged in any conduct that, if it occurred in this state, would be considered unprofessional conduct or, if the applicant has engaged in unprofessional conduct, is rehabilitated from the underlying conduct.

7. Is physically, mentally and emotionally able to practice medicine, or, if limited, restricted or impaired in the ability to practice medicine, consents to contingent licensure pursuant to subsection E of this section or to entry into a program prescribed in section 32-1861.

8. Has submitted a full set of fingerprints to the board for the purpose of obtaining a state and federal criminal records check pursuant to section 41-1750 and Public Law 92-544. The department of public safety may exchange this fingerprint data with the federal bureau of investigation.

B. An applicant must submit with the application the nonrefundable application fee prescribed in section 32-1826 and pay the prescribed license issuance fee to the board at the time the license is issued.

C. The board or the executive director may require an applicant to submit to a personal interview, a physical examination or a mental evaluation or any combination of these, at the applicant's expense, at a reasonable time and place as prescribed by the board if the board determines that this is necessary to provide the board adequate information regarding the applicant's ability to meet the licensure requirements of this chapter. An interview may include medical knowledge questions and other matters that are relevant to licensure.

D. The board may deny a license for any unprofessional conduct that would constitute grounds for disciplinary action pursuant to this chapter or as determined by a competent domestic or foreign jurisdiction.

E. The board may issue a license that is contingent on the applicant entering into a stipulated order that may include a period of probation or a restriction on the licensee's practice.

F. The executive director may issue licenses to applicants who meet the requirements of this section.

G. A person whose license has been revoked, denied or surrendered in this or any other state may apply for licensure not sooner than five years after the revocation, denial or surrender.

H. A license issued pursuant to this section is valid for the remainder of the calendar year in which it was issued, at which time it is eligible for renewal.

# 32-1823. Locum tenens registration; application; term; interview; denial of application; discipline

A. A doctor of osteopathy who is licensed to practice osteopathic medicine and surgery by another state may be registered to provide locum tenens medical services to substitute for or temporarily assist a doctor of osteopathy who holds an active license pursuant to this chapter or a doctor of medicine who holds an active license pursuant to chapter 13 of this title under the following conditions:

1. The applicant provides on forms and in a manner prescribed by the board proof that the applicant meets the applicable requirements of section 32-1822.

2. The doctor of medicine or doctor of osteopathy for whom the applicant is substituting or assisting provides to the board a written request for locum tenens registration of the applicant.

B. On completion of the registration form prescribed by the board and payment of the required fees, the executive director may register a qualifying doctor of osteopathy by locum tenens registration and authorize the doctor to provide locum tenens services.

C. Locum tenens registration granted pursuant to this section is valid for ninety days and may be extended once for an additional ninety days on written request by the doctor of medicine or doctor of osteopathy who originally initiated the request for this registration, stating the reason extension is necessary, and by submitting the appropriate fees and other documents requested by the executive director.

D. The board or the executive director may require an applicant to submit to a personal interview to provide the board with adequate information regarding the applicant's ability to practice under locum tenens registration. The applicant is responsible for all costs to attend the interview.

E. The board may deny the application for a locum tenens registration for any unprofessional conduct that would constitute grounds for disciplinary action pursuant to this chapter or as determined by a competent domestic or foreign jurisdiction.

F. A locum tenens registrant is subject to the disciplinary provisions pursuant to this chapter.

# 32-1825. Renewal of licenses; continuing medical education; failure to renew; penalty; reinstatement; waiver of continuing medical education

A. Except as provided in section 32-4301, each licensee shall renew the license every other year on or before January 1 on an application form approved by the board. At least sixty days before that renewal date, the executive director shall notify each licensee of this requirement. The executive director shall send this notification by mail to the licensee at the licensee's address.

B. With the application prescribed pursuant to subsection A of this section, the licensee shall furnish to the executive director a statement of having attended before the license renewal date educational programs, approved by the board, totaling at least forty clock hours during the two preceding years, and a statement that the licensee reported any conduct that may constitute unprofessional conduct in this state or elsewhere. The application must also include the prescribed renewal fee. The executive director shall then issue a renewal receipt to the licensee. The board may require a licensee to submit documentation of continuing medical education.

C. The board shall not renew the license of a licensee who does not fully document the licensee's compliance with the continuing education requirements of subsection B of this section unless that person receives a waiver of those requirements. The board may waive the continuing education requirements of subsection B of this section for a particular period if it is satisfied that the licensee's noncompliance was due to the licensee's disability, military service or absence from the United States or to other circumstances beyond the control of the licensee. If a licensee fails to attend the required number of clock hours for reasons other than those specified in this subsection, the board may grant an extension until May 1 of that year for the licensee to comply.

D. Unless the board grants an extension pursuant to subsection C of this section, a licensee who fails to renew the license within thirty days after the renewal date shall pay a penalty fee and a reimbursement fee in addition to the prescribed renewal fee. Except as provided in sections 32-3202 and 32-4301, a license expires if a person does not renew the license within four months after the renewal date. A person who practices osteopathic medicine after that time is in violation of this chapter. A person whose license expires may reapply for a license pursuant to this chapter.

# 32-1826. Fees; penalty

A. The board shall establish fees of not to exceed the following:

1. For an application to practice osteopathic medicine, four hundred dollars.

2. For issuance of a license, two hundred dollars, prorated by each month remaining in the calendar year of issuance.

3. For biennial renewal of a license, eight hundred dollars.

4. For locum tenens registration or extension, three hundred dollars.

5. For issuance of a duplicate license, one hundred dollars.

6. For an annual training permit for an approved postgraduate training program or short-term residency program, one hundred dollars.

7. For an annual teaching license issued pursuant to section 32-1831, four hundred dollars.

8. For a five-day educational teaching permit at an approved school of medicine or at an approved teaching hospital's accredited graduate medical education program, two hundred dollars.

9. For the sale of a computerized format of the board's licensee directory that does not require programming, one hundred dollars.

10. For initial and annual registration to dispense drugs and devices, two hundred fifty dollars, prorated by each month remaining in the calendar year of issuance.

B. The board shall charge a one hundred fifty dollar penalty fee for late renewal of a license and a twenty-five dollar reimbursement fee to cover the board's expenses in collecting late renewal fees. The board shall deposit this fee in the board fund.

C. The board may charge additional fees for services the board determines are necessary and appropriate to carry out this chapter. These fees shall not exceed the actual cost of providing the services.

# 32-1829. Training permits; issuance of permits

A. The board may grant a one-year renewable training permit to a person who is participating in a teaching hospital's accredited internship, residency or clinical fellowship training program to allow that person to practice medicine only in the supervised setting of that program. Before the board issues the permit, the person shall:

1. Submit an application on a form and in a manner prescribed by the board and proof that the applicant:

(a) Is the person named on the application and on all supporting documentation.

(b) Is a citizen of the United States or a resident alien.

(c) Is a graduate of a school approved by the American osteopathic association.

(d) Participated in postgraduate training, if any.

(e) Has passed approved examinations appropriate to the applicant's level of education and training.

(f) Has not engaged in any conduct that, if it occurred in this state, would be considered unprofessional conduct or, if the applicant has engaged in unprofessional conduct, is rehabilitated from the underlying conduct.

(g) Is physically, mentally and emotionally able to practice medicine, or, if limited, restricted or impaired in the ability to practice medicine, consents to a contingent permit or to entry into a program described in section 32-1861.

2. Pay the nonrefundable application fee prescribed by the board.

B. If a permittee who is participating in a teaching hospital's accredited internship, residency or clinical fellowship training program must repeat or make up time in the program due to resident progression or for other reasons, the board may grant that person an extension of the training permit if requested to do so by the program's director of medical education or a person who holds an equivalent position. The extended permit limits the permittee to practicing only in the supervised setting of that program for a period of time sufficient to repeat or make up the training.

C. The board may grant a training permit to a person who is not licensed in this state and who is participating in a short-term training program of four months or less for continuing medical education conducted in an approved school of osteopathic medicine or a hospital that has an accredited hospital internship, residency or clinical fellowship training program in this state. Before the board issues the permit, the person shall:

1. Submit an application on a form and in a manner prescribed by the board and proof that the applicant meets the requirements prescribed in subsection A, paragraph 1 of this section.

2. Pay the nonrefundable application fee prescribed by the board.

D. A permittee is subject to the disciplinary provisions of this chapter.

E. The executive director may issue a permit to an applicant who meets the requirements of this chapter.

F. If a permit is not issued pursuant to subsection E of this section, the board may issue a permit or may:

1. Issue a permit that is contingent on the applicant entering into a stipulated agreement that may include a period of probation or a restriction on the permittee's practice.

2. Deny a permit to an applicant who does not meet the requirements of this chapter.

# 32-1830. Training permits; approved schools

The executive director may grant a one-year training permit to a person who:

1. Participates in a program at an approved school of medicine or a hospital that has an approved hospital internship, residency or clinical fellowship training program if the purpose of the program is to exchange technical and educational information.

2. Pays the fee as prescribed by the board.

3. Submits a written statement from the dean of the approved school of osteopathic medicine or from the chairman of a teaching hospital's accredited graduate medical education program that:

(a) Includes a request for the permit and describes the purpose of the exchange program.

(b) Specifies that the host institution shall provide liability coverage.

(c) Provides proof that a doctor of medicine will serve as the preceptor of the host institution and provide appropriate supervision of the participant.

(d) States that the host institution has advised the participant that the participant may serve as a member of an organized medical team but shall not practice medicine independently and that this training does not accrue toward postgraduate training requirements for licensure.

# 32-1831. Teaching licenses; definitions

A. A doctor of osteopathic medicine who is not licensed in this state may be employed as a full-time faculty member by a school of osteopathic medicine in this state approved by the American osteopathic association or a teaching hospital's accredited graduate medical education program in this state to provide professional education through lectures, clinics or demonstrations if the doctor holds a teaching license issued pursuant to this section.

B. An applicant for a teaching license shall:

1. Submit a completed application as prescribed by the board.

2. Pay all fees prescribed by the board. Application fees are nonrefundable.

3. Meet the requirements of section 32-1822.

C. A person who is licensed pursuant to this section shall not open an office or designate a place to meet patients or receive calls relating to the practice of osteopathic medicine in this state outside of the facilities and programs of the approved school or teaching hospital.

D. A person who is licensed pursuant to this section shall comply with the requirements of this chapter, with the exception of those that relate to licensing examinations.

E. The board or the executive director may require an applicant to submit to a personal interview, a physical examination or a mental health evaluation, or any combination of these, at the applicant's expense. The board shall prescribe a reasonable time and place if the board determines that this is necessary to provide the board with adequate information regarding the applicant's ability to meet the licensure requirements of this chapter. The interview may include questions regarding medical knowledge and other matters relevant to licensure.

F. The board may deny a license for any unprofessional conduct that would constitute grounds for disciplinary action pursuant to this chapter or as determined by a competent domestic or foreign jurisdiction.

G. A person who is licensed pursuant to this section is subject to the disciplinary provisions pursuant to this chapter.

H. A license issued pursuant to this section is valid for two years. A doctor of osteopathic medicine may apply for licensure once every two years, subject to the continuing medical education requirements prescribed in section 32-1825.

I. For the purposes of this section:

1. "Accredited" means that the school or teaching hospital has an internship, fellowship or residency training program that is accredited by the accreditation council for graduate medical education, the American osteopathic association or a similar body that is approved by the board.

2. "Full-time faculty member" means a full-time faculty member as prescribed by the school of osteopathic medicine or the teaching hospital.

## 32-1854. Definition of unprofessional conduct

For the purposes of this chapter, "unprofessional conduct" includes the following acts, whether occurring in this state or elsewhere:

1. Knowingly betraying a professional secret or wilfully violating a privileged communication except as either of these may otherwise be required by law. This paragraph does not prevent members of the board from exchanging information with the licensing and disciplinary boards of other states, territories or districts of the United States or with foreign countries or with osteopathic medical organizations located in this state or in any state, district or territory of this country or in any foreign country.

2. Committing a felony or a misdemeanor involving moral turpitude. In either case conviction by any court of competent jurisdiction is conclusive evidence of the commission of the offense.

3. Practicing medicine while under the influence of alcohol, a dangerous drug as defined in section 13-3401, narcotic or hypnotic drugs or any substance that impairs or may impair the licensee's ability to safely and skillfully practice medicine.

4. Being diagnosed by a physician licensed under this chapter or chapter 13 of this title or a psychologist licensed under chapter 19.1 of this title as excessively or illegally using alcohol or a controlled substance.

5. Prescribing, dispensing or administering controlled substances or prescription-only drugs for other than accepted therapeutic purposes.

6. Engaging in the practice of medicine in a manner that harms or may harm a patient or that the board determines falls below the community standard.

7. Impersonating another physician.

8. Acting or assuming to act as a member of the board if this is not true.

9. Procuring, renewing or attempting to procure or renew a license to practice osteopathic medicine by fraud or misrepresentation.

10. Having professional connection with or lending one's name to an illegal practitioner of osteopathic medicine or any of the other healing arts.

11. Representing that a manifestly incurable disease, injury, ailment or infirmity can be permanently cured or that a curable disease, injury, ailment or infirmity can be cured within a stated time if this is not true.

12. Failing to reasonably disclose and inform the patient or the patient's representative of the method, device or instrumentality the licensee uses to treat the patient's disease, injury, ailment or infirmity.

13. Refusing to divulge to the board on demand the means, method, device or instrumentality used to treat a disease, injury, ailment or infirmity.

14. Charging a fee for services not rendered or dividing a professional fee for patient referrals. This paragraph does not apply to payments from a medical researcher to a physician in connection with identifying and monitoring patients for clinical trial regulated by the United States food and drug administration.

15. Knowingly making any false or fraudulent statement, written or oral, in connection with the practice of medicine or when applying for or renewing privileges at a health care institution or a health care program.

16. Advertising in a false, deceptive or misleading manner.

17. Representing or claiming to be an osteopathic medical specialist if the physician has not satisfied the applicable requirements of this chapter or board rules.

18. Having a license denied or disciplinary action taken against a license by any other state, territory, district or country, unless it can be shown that this occurred for reasons that did not relate to the person's ability to safely and skillfully practice osteopathic medicine or to any act of unprofessional conduct as provided in this section.

19. Committing any conduct or practice contrary to recognized standards of ethics of the osteopathic medical profession.

20. Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any of the provisions of this chapter.

21. Failing or refusing to establish and maintain adequate records on a patient as follows:

(a) If the patient is an adult, for at least six years after the last date the licensee provided the patient with medical or health care services.

(b) If the patient is a child, either for at least three years after the child's eighteenth birthday or for at least six years after the last date the licensee provided that patient with medical or health care services, whichever date occurs later.

22. Using controlled substances or prescription-only drugs unless they are provided by a medical practitioner, as defined in section 32-1901, as part of a lawful course of treatment.

23. Prescribing controlled substances to members of one's immediate family unless there is no other physician available within fifty miles to treat a member of the family and an emergency exists.

24. Committing nontherapeutic use of injectable amphetamines.

25. Violating a formal order, probation or a stipulation issued by the board under this chapter.

26. Charging or collecting an inappropriate fee. This paragraph does not apply to a fee that is fixed in a written contract between the physician and the patient and entered into before treatment begins.

27. Using experimental forms of therapy without adequate informed patient consent or without conforming to generally accepted criteria and complying with federal and state statutes and regulations governing experimental therapies.

28. Failing to make patient medical records in the physician's possession promptly available to a physician assistant, a nurse practitioner, a person licensed pursuant to this chapter or a podiatrist, chiropractor, naturopathic physician, physician or homeopathic physician licensed under chapter 7, 8, 13, 14 or 29 of this title on receipt of proper authorization to do so from the patient, a minor patient's parent, the patient's legal guardian or the patient's authorized representative or failing to comply with title 12, chapter 13, article 7.1.

29. Failing to allow properly authorized board personnel to have, on presentation of a subpoena, access to any documents, reports or records that are maintained by the physician and that relate to the physician's medical practice or medically related activities pursuant to section 32-1855.01.

30. Signing a blank, undated or predated prescription form.

31. Obtaining a fee by fraud, deceit or misrepresentation.

32. Failing to report to the board an osteopathic physician and surgeon who is or may be guilty of unprofessional conduct or is or may be mentally or physically unable safely to engage in the practice of medicine.

33. Referring a patient to a diagnostic or treatment facility or prescribing goods and services without disclosing that the physician has a direct pecuniary interest in the facility, goods or services to which the patient has been referred or prescribed. This paragraph does not apply to a referral by one physician to another physician within a group of physicians practicing together.

34. Exhibiting a lack of or inappropriate direction, collaboration or supervision of a licensed, certified or registered health care provider or office personnel employed by or assigned to the physician in the medical care of patients.

35. Violating a federal law, a state law or a rule applicable to the practice of medicine.

36. Prescribing or dispensing controlled substances or prescription-only medications without establishing and maintaining adequate patient records.

37. Dispensing a schedule II controlled substance that is an opioid, except as provided in sections 32-1871 and 32-3248.03.

38. Failing to dispense drugs and devices in compliance with article 4 of this chapter.

39. Committing any conduct or practice that endangers a patient's or the public's health or may reasonably be expected to do so.

40. Committing any conduct or practice that impairs the licensee's ability to safely and skillfully practice medicine or that may reasonably be expected to do so.

41. With the exception of heavy metal poisoning, using chelation therapy in the treatment of arteriosclerosis or as any other form of therapy without adequate informed patient consent and without conforming to generally accepted experimental criteria, including protocols, detailed records, periodic analysis of results and periodic review by a medical peer review committee.

42. Prescribing, dispensing or administering anabolic-androgenic steroids to a person for other than therapeutic purposes.

43. Engaging in sexual conduct with a current patient or with a former patient within six months after the last medical consultation unless the patient was the licensee's spouse at the time of the contact or, immediately preceding the physician-patient relationship, was in a dating or engagement relationship with the licensee. For the purposes of this paragraph, "sexual conduct" includes:

(a) Engaging in or soliciting sexual relationships, whether consensual or nonconsensual.

(b) Making sexual advances, requesting sexual favors or engaging in any other verbal conduct or physical conduct of a sexual nature.

44. Committing conduct that is in violation of section 36-2302.

45. Committing conduct that the board determines constitutes gross negligence, repeated negligence or negligence that results in harm or death of a patient.

46. Committing conduct in the practice of medicine that evidences unfitness to practice medicine.

47. Engaging in disruptive or abusive behavior in a professional setting.

48. Failing to disclose to a patient that the licensee has a direct financial interest in a prescribed treatment, good or service if the treatment, good or service is available on a competitive basis. This paragraph does not apply to a referral by one licensee to another licensee within a group of licensees who practice together. A licensee meets the disclosure requirements of this paragraph if both of the following are true:

(a) The licensee makes the disclosure on a form prescribed by the board.

(b) The patient or the patient's guardian or parent acknowledges by signing the form that the licensee has disclosed the licensee's direct financial interest.

49. Prescribing, dispensing or furnishing a prescription medication or a prescription-only device to a person if the licensee has not conducted a physical or mental health status examination of that person or has not previously established a physician-patient relationship. The physical or mental health status examination may be conducted through telehealth as defined in section 36-3601 with a clinical evaluation that is appropriate for the patient and the condition with which the patient presents, unless the examination is for the purpose of obtaining a written certification from the physician for the purposes of title 36, chapter 28.1. This paragraph does not apply to:

(a) Emergencies.

(b) A licensee who provides patient care on behalf of the patient's regular treating licensed health care professional or provides a consultation requested by the patient's regular treating licensed health care professional.

(c) Prescriptions written or antimicrobials dispensed to a contact as defined in section 36-661 who is believed to have had significant exposure risk as defined in section 36-661 with another person who has been diagnosed with a communicable disease as defined in section 36-661 by the prescribing or dispensing physician.

(d) Prescriptions for epinephrine auto-injectors written or dispensed for a school district or charter school to be stocked for emergency use pursuant to section 15-157 or for an authorized entity to be stocked pursuant to section 36-2226.01.

(e) Prescriptions for glucagon written or dispensed for a school district or charter school to be stocked for emergency use pursuant to section 15-344.01.

(f) 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.

(g) Prescriptions for naloxone hydrochloride or any other opioid antagonist approved by the United States food and drug administration that are written or dispensed for use pursuant to section 36-2228 or 36-2266.

50. If a licensee provides medical care by computer, failing to disclose the licensee's license number and the board's address and telephone number.

# 32-1861. Substance abuse treatment and rehabilitation program; private contract; funding

A. The board may establish a confidential program for the treatment and rehabilitation of licensees who are impaired by substance abuse. This program may include education, intervention, therapeutic treatment and posttreatment monitoring and support.

B. The board may contract with other organizations to operate the program established pursuant to subsection A of this section. A contract with a private organization shall include the following requirements:

1. Periodic reports to the board regarding treatment program activity.

2. Release to the board on demand of all treatment records.

3. Quarterly reports to the board regarding each physician's diagnosis and prognosis and recommendations for continuing care, treatment and supervision.

4. Immediate reporting to the board of the name of an impaired physician who the treating organization believes to be incapable of safely practicing medicine.

C. The board may allocate an amount of not more than twenty dollars from each fee it collects from the renewal of licenses pursuant to section 32-1826 for the administration of the program established by this section.

# 32-1871. Dispensing of drugs and devices; conditions; exception; civil penalty

A. Except as provided in subsections B and F of this section, an osteopathic physician may dispense drugs and devices kept by the physician if:

1. All drugs are dispensed in packages labeled with the following information:

(a) The dispensing physician's name, address and telephone number.

(b) The date the drug is dispensed.

(c) The patient's name.

(d) The name and strength of the drug, directions for its use and any cautionary statements.

2. The dispensing physician enters into the patient's medical record the name and strength of the drug dispensed, the date the drug is dispensed and the therapeutic reason.

3. The dispensing physician keeps all drugs in a locked cabinet or room, controls access to the cabinet or room by a written procedure and maintains an ongoing inventory of its contents.

4. The dispensing physician annually registers with the board to dispense drugs and devices.

5. The dispensing physician pays the registration fee prescribed by the board pursuant to section 32-1826. This paragraph does not apply if the physician is dispensing in a nonprofit practice and neither the patient nor a third party pays or reimburses the physician or the nonprofit practice for the drugs or devices dispensed.

6. The dispensing physician labels dispensed drugs and devices and stores them according to rules adopted by the board.

B. An osteopathic physician may not dispense a schedule II controlled substance that is an opioid, except for an implantable device or an opioid that is for medication-assisted treatment for substance use disorders.

C. Except in an emergency situation, a physician who dispenses drugs without being registered by the board to do so is subject to a civil penalty by the board of at least $300 and not more than $1,000 for each transaction and is prohibited from further dispensing for a period of time as prescribed by the board.

D. Before dispensing a drug pursuant to this section, the patient shall be given a written prescription on which appears the following statement in bold type: "This prescription may be filled by the prescribing physician or by a pharmacy of your choice."

E. Except as provided in subsection F of this section, a physician shall dispense only to the physician's patient and only for conditions being treated by that physician.

F. A physician who dispenses not more than a two-day supply of a noncontrolled substance medication that is kept by a health care institution may dispense the noncontrolled substance medication under the dispensing registration of the medical director of the health care institution's emergency department or satellite emergency department and is not required to register to dispense medications pursuant to this section if both of the following apply:

1. The physician dispenses only to patients of the health care institution's emergency department or satellite emergency department for conditions diagnosed or treated at the emergency department or satellite emergency department.

2. The physician works only at the health care institution's emergency department or satellite emergency department.

G. The board shall enforce this section and shall establish rules regarding labeling, recordkeeping, storage and packaging of drugs that are consistent with the requirements of chapter 18 of this title. The board may conduct periodic inspections of dispensing practices to ensure compliance with this section and applicable rules.

H. If a physician fails to renew a registration to dispense or ceases to dispense for any reason, within thirty days that physician must notify the board in writing of the remaining inventory of drugs and devices and the manner in which they were disposed.

# 41-1033. Petition for a rule or review of an agency practice, substantive policy statement, final rule or unduly burdensome licensing requirement; notice

A. Any person may petition an agency to do either of the following:

1. Make, amend or repeal a final rule.

2. Review an existing agency practice or substantive policy statement that the petitioner alleges to constitute a rule.

B. An agency shall prescribe the form of the petition and the procedures for the petition's submission, consideration and disposition. The person shall state on the petition the rulemaking to review or the agency practice or substantive policy statement to consider revising, repealing or making into a rule.

C. Not later than sixty days after submission of the petition, the agency shall either:

1. Reject the petition and state its reasons in writing for rejection to the petitioner.

2. Initiate rulemaking proceedings in accordance with this chapter.

3. If otherwise lawful, make a rule.

D. The agency's response to the petition is open to public inspection.

E. If an agency rejects a petition pursuant to subsection C of this section, the petitioner has thirty days to appeal to the council to review whether the existing agency practice or substantive policy statement constitutes a rule. The petitioner's appeal may not be more than five double-spaced pages.

F. A person may petition the council to request a review of a final rule based on the person's belief that the final rule does not meet the requirements prescribed in section 41-1030. A petition submitted under this subsection may not be more than five double-spaced pages.

G. A person may petition the council to request a review of an existing agency practice, substantive policy statement, final rule or regulatory licensing requirement that the petitioner alleges is not specifically authorized by statute, exceeds the agency's statutory authority, is unduly burdensome or is not demonstrated to be necessary to specifically fulfill a public health, safety or welfare concern. On receipt of a properly submitted petition pursuant to this section, the council shall review the existing agency practice, substantive policy statement, final rule or regulatory licensing requirement as prescribed by this section. A petition submitted under this subsection may not be more than five double-spaced pages. This subsection does not apply to an individual or institution that is subject to title 36, chapter 4, article 10 or chapter 20.

H. If the council receives information that alleges an existing agency practice or substantive policy statement may constitute a rule, that a final rule does not meet the requirements prescribed in section 41-1030 or that an existing agency practice, substantive policy statement, final rule or regulatory licensing requirement exceeds the agency's statutory authority, is not specifically authorized by statute or does not meet the guidelines prescribed in subsection G of this section, or if the council receives an appeal under subsection E of this section, and at least three council members request of the chairperson that the matter be heard in a public meeting:

1. Within ninety days after receiving the third council member's request, the council shall determine whether any of the following applies:

(a) The agency practice or substantive policy statement constitutes a rule.

(b) The final rule meets the requirements prescribed in section 41-1030.

(c) An existing agency practice, substantive policy statement, final rule or regulatory licensing requirement exceeds the agency's statutory authority, is not specifically authorized by statute or meets the guidelines prescribed in subsection G of this section.

2. Within ten days after receiving the third council member's request, the council shall notify the agency that the matter has been or will be placed on the council's agenda for consideration on the merits.

3. Not later than thirty days after receiving notice from the council, the agency shall submit a statement of not more than five double-spaced pages to the council that addresses whether any of the following applies:

(a) The existing agency practice or substantive policy statement constitutes a rule.

(b) The final rule meets the requirements prescribed in section 41-1030.

(c) An existing agency practice, substantive policy statement, final rule or regulatory licensing requirement exceeds the agency's statutory authority, is not specifically authorized by statute or meets the guidelines prescribed in subsection G of this section.

I. At the hearing, the council shall allocate the petitioner and the agency an equal amount of time for oral comments not including any time spent answering questions raised by council members. The council may also allocate time for members of the public who have an interest in the issue to provide oral comments.

J. For the purposes of subsection H of this section, the council meeting shall not be scheduled until the expiration of the agency response period prescribed in subsection H, paragraph 3 of this section.

K. An agency practice, substantive policy statement, final rule or regulatory licensing requirement considered by the council pursuant to this section shall remain in effect while under consideration of the council. If the council determines that the agency practice, substantive policy statement or regulatory licensing requirement exceeds the agency's statutory authority, is not authorized by statute or constitutes a rule or that the final rule does not meet the requirements prescribed in section 41-1030, the practice, policy statement, rule or regulatory licensing requirement shall be void. If the council determines that the existing agency practice, substantive policy statement, final rule or regulatory licensing requirement is unduly burdensome or is not demonstrated to be necessary to specifically fulfill a public health, safety or welfare concern, the council shall modify, revise or declare void any such existing agency practice, substantive policy statement, final rule or regulatory licensing requirement. If an agency decides to further pursue a practice, substantive policy statement or regulatory licensing requirement that has been declared void or has been modified or revised by the council, the agency may do so only pursuant to a new rulemaking.

L. A council decision pursuant to this section shall be made by a majority of the council members who are present and voting on the issue. Notwithstanding any other law, the council may not base any decision concerning an agency's compliance with the requirements of section 41-1030 in issuing a final rule or substantive policy statement on whether any party or person commented on the rulemaking or substantive policy statement.

M. A decision by the council pursuant to this section is not subject to judicial review, except that, in addition to the procedure prescribed in this section or in lieu of the procedure prescribed in this section, a person may seek declaratory relief pursuant to section 41-1034.

N. Each agency and the secretary of state shall post prominently on their websites notice of an individual's right to petition the council for review pursuant to this section.

# 41-1072. Definitions

In this article, unless the context otherwise requires:

1. "Administrative completeness review time frame" means the number of days from agency receipt of an application for a license until an agency determines that the application contains all components required by statute or rule, including all information required to be submitted by other government agencies. The administrative completeness review time frame does not include the period of time during which an agency provides public notice of the license application or performs a substantive review of the application.

2. "Overall time frame" means the number of days after receipt of an application for a license during which an agency determines whether to grant or deny a license. The overall time frame consists of both the administrative completeness review time frame and the substantive review time frame.

3. "Substantive review time frame" means the number of days after the completion of the administrative completeness review time frame during which an agency determines whether an application or applicant for a license meets all substantive criteria required by statute or rule. Any public notice and hearings required by law shall fall within the substantive review time frame.

# 41-1092.09. Rehearing or review

A. Except as provided in subsection B of this section:

1. A party may file a motion for rehearing or review within thirty days after service of the final administrative decision.

2. The opposing party may file a response to the motion for rehearing within fifteen days after the date the motion for rehearing is filed.

3. After a hearing has been held and a final administrative decision has been entered pursuant to section 41-1092.08, a party is not required to file a motion for rehearing or review of the decision in order to exhaust the party's administrative remedies.

B. A party to an appealable agency action of or contested case with a self-supporting regulatory board shall exhaust the party's administrative remedies by filing a motion for rehearing or review within thirty days after the service of the administrative decision that is subject to rehearing or review in order to be eligible for judicial review pursuant to title 12, chapter 7, article 6. The board shall notify the parties in the administrative decision that is subject to rehearing or review that a failure to file a motion for rehearing or review within thirty days after service of the decision has the effect of prohibiting the parties from seeking judicial review of the board's decision.

C. Service is complete on personal service or five days after the date that the final administrative decision is mailed to the party's last known address.

D. Except as provided in this subsection, the agency head, executive director, board or commission shall rule on the motion within fifteen 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. A self-supporting regulatory board shall rule on the motion within fifteen days after the response to the motion is filed or at the board's next meeting after the motion is received, whichever is later.

**E-2.**

**BOARD OF PHYSICAL THERAPY**
Title 4, Chapter 24

# GOVERNOR'S REGULATORY REVIEW COUNCIL

**ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT**

---

**MEETING DATE:** April 1, 2025

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

**FROM:** Council Staff

**DATE:** March 18, 2025

**SUBJECT:** **BOARD OF PHYSICAL THERAPY**
Title 4, Chapter 24, Articles 1-5, Board of Physical Therapy

---

**Summary**

This Five Year Review Report (5YRR) from the Board of Physical Therapy (Board) relates to rules in Title 4, Chapter 24, Articles 1-5 governing the Board of Physical Therapy. As the Board states in its 5YRR, the "purpose of the Board is to protect the public health and safety by promoting the safe and professional practice of physical therapy." The Board currently licenses 6,445 active physical therapists and 2,074 active physical therapist assistants. It also registers 214 business entities.

The rules in this Chapter address the following:

- **Article 1 (General Provisions);**
- **Article 2 (Licensing Provisions);**
- **Article 3 (Practice of Physical Therapy);**
- **Article 4 (Continuing Competence); and**
- **Article 5 (Public Participation Procedures).**

In the previous report approved by the Council in December 2019, the Board indicated that they would amend 4 rules by December 2020. The Board has indicated that this Course of Action was not completed for multiple reasons. The Board indicated they were required to divert

resources to address Covid, the Board's executive director unexpectedly passed away, the Board underwent a Sunset Review audit, and the Board changed software systems. The Board submitted a Notice of Proposed Rulemaking with the Secretary of State on November 6, 2024, which will address the changes proposed in both the 2019 report and this current report.

Additionally, the Board has indicated that they were able to complete an exempt rulemaking in 2021 and that they have created a rulemaking committee. The committee is made up of multiple stakeholders and the Board believes this will aid in the continuous improvement of their rules because the stakeholders have a diverse background in a variety of practice settings and experience.

**Proposed Action**

As mentioned above, the Board is in the middle of the rulemaking process. The Board submitted a Notice of Proposed Rulemaking with the Secretary of State on November 6, 2024, with the rulemaking amending the issues identified in the previous and current report. The Board has indicated that they intend on submitting a final rulemaking to the Council by June 30, 2025.

**1. Has the agency analyzed whether the rules are authorized by statute?**

The Board cites both general and specific statutory authority for these rules

**2. Summary of the agency's economic impact comparison and identification of stakeholders:**

The Board states it has received no information indicating its assessment of the economic impact of rules reviewed in 2019 was incorrect. No appeal of the economic impact of a rule has been made under A.R.S. § 41-1056.01. The Board indicates that it has completed only one rulemaking since 2019 under exempt rulemaking that established a fee for an out-of-state health care prover to register to provide telehealth services in Arizona and amended the Board's time-frame rule to include the new registration. The Board indicates that because this was an exempt rulemaking, no economic, small business, and consumer impact statement was prepared.

**3. Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?**

The Board believes the rules impose the least burden on persons regulated by them. The Board states that to protect both the general and regulated public, the rules also establish minimum standards regarding lawful practice, patient care management, and adequate patent records. The Board goes on to say that all of these requirements impose economic burdens on those who wish to provide physical therapy services. However, the Board believes the requirements are necessary to achieve the underlying regulatory objectives, which is to protect the health and safety of the public that receives physical therapy services.

**4. Has the agency received any written criticisms of the rules over the last five years?**

The Board indicates it received no written criticisms of the rules in the last five years.

**5. Has the agency analyzed the rules' clarity, conciseness, and understandability?**

The Board indicates the rules are clear, concise, and understandable except for the following:

- R4-24-201 and R4-24-207
    - The Board indicated in the 2019 report that both these rules could be improved by adding a fingerprint clearance card requirement with the application for licensure.
- R4-24-304
    - The Board indicated in the 2019 report that the rule could be improved by adding "the patient's current functional status" to the information required under this rule.
- R4-24-313
    - The Board indicated in the 2019 report that this rule contains passive language and needs to be amended to reflect rulewriting standards.

**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 except for the following:

- R4-24-104(1)(b)
    - The Board has indicated that this rule needs to be amended as a result of the 2019 addition of A.R.S. § 32-3226, which added requirements to what information regulatory boards must have for licensees and what information can be disclosed.
- R-24-101(21), R4-24-201(A)(1)(j), R4-24-207(A)(1)(i), and R4-24-208(A)(1)(i)
    - The Board has indicated that these 4 rules need to be amended to remove references to good moral character. This requirement was removed by Laws 2019, Chapter 166, which amended A.R.S § 13-904 to prohibit an individual's denial on these grounds.
- R4-24-101, R4-24-104, R4-24-107, R4-24-202, R4-24-207, R4-24-208. R4-24-209, Table 1, R4-24-305, R4-24-309, R4-24-310, R4-24-311, R4-24-312, R4-24-401, R4-24-402, and R4-24-403
    - The Board has indicated that Laws 2025, Chapter 236 (SB 1267), amended 20 statutes relating to the Board of Physical Therapy. The Board specifically changed certification of physical therapist assistants and the above mentioned rules need to be amended to reflect the change.
- R4-24-101(33)
    - The Board indicated that the rule needs to be amended to reflect that student physical therapists and student physical therapy assistants are not assistive personnel and must be supervised by a licensed physical therapist.

**7. Has the agency analyzed the rules' effectiveness in achieving its objectives?**

The Board indicates the rules are generally effective in achieving their objective but the Board does expect improved effectiveness once the new rules are approved by the Council.

**8. Has the agency analyzed the current enforcement status of the rules?**

The Board indicates the rules are generally enforced as written with the exception of those that do not comply with the statutory changes identified in item 6 of this memo.

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

Not applicable. There is no corresponding federal law.

**10. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

The Board states that its statutes, specifically, A.R.S. §§ 32-2022 (Qualifications for licensure and certification; fingerprint clearance card), 32-2025 (Interim permits), 32-2026 (Licensure or certification by endorsement), 32-2027 (License or certificate renewal; suspension), and 32-2030 (Business entities; patient records; protocol; exemptions; rules) require individualized licenses to be issued. Thus, a general permit is not applicable and is not used.

**11. Conclusion**

This Five Year Review Report (5YRR) from the Board of Physical Therapy (Board) relates to rules in Title 4, Chapter 24, Articles 1-5 governing the Board of Physical Therapy. The Board has identified rules that need to be updated as a result of changes to statutes.

The Board was unable to complete their previous course of action. However, the Board is in the rulemaking process and submitted a Notice of Proposed Rulemaking with the Secretary of State on November 6, 2024, which is listed in the Arizona Administrative Register at 30 A.A.R. 3568. The Board has additionally formed a rulemaking committee to be more responsive to stakeholder feedback. The Board has indicated that they expect to have a final rulemaking before the Council by June 30, 2025, which will include the amendments proposed in both the 2019 and this 5YRR report.

The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. Staff recommends approval of this report.

Katie
Hobbs
Governor

Judy Chepeus
Executive Director

**ARIZONA STATE BOARD OF PHYSICAL THERAPY**
1740 W. Adams Street, Suite 2450 • Phoenix, AZ 85007 • (602) 274
ptboard.az.gov

November 12, 2024

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

**RE: Board of Physical Therapy**
**Five-year-review Report**
**4 A.A.C. 24**

Dear Ms Klein:

The Board submits the referenced 5YRR for the Council's review and approval. The 5YRR is due under an extension on November 28, 2024.

The Board certifies that it complies with A.R.S. § 41-1091.

For questions about this report, please contact me at (602) 271-7365 or judy.chepeus@ptboard.az.gov.

Sincerely,

Judy Chepeus

Judy Chepeus
Executive Director

# Five-year-review Report
# A.A.C. Title 4. Professions and Occupations
# Chapter 24. Board of Physical Therapy
# Submitted for January 7, 2025

## INTRODUCTION

The purpose of the Board is to protect the public health and safety by promoting the safe and professional practice of physical therapy. The Arizona Physical Therapy Practice Act establishes the standards for the practice of physical therapy, continuing competence and testing, and defines the scope and limitations of practice. The Board licenses qualified applicants as physical therapists and physical therapist assistants. The Board also receives, investigates, and adjudicates complaints against licensees. The Board currently licenses 6,445 active physical therapists and 2,074 active physical therapist assistants. It also registers 214 business entities. During FY2024, the Board received applications for initial licensure from 846 individuals and 190 business entities. The Board collected $147,584 in licensing fees in FY 2024. The amount of licensing fees collected does not include any amount for license renewal because license renewal occurs in odd-numbered fiscal years (See R4-24-208). The Board was appropriated $591,500. The Board received 45 complaints last year and disciplined 24 licensees. There are currently five accredited physical therapist programs in Arizona and seven physical therapist assistant programs.

The legislature amended the Board's rules once since the Board's 2019 5YRR. Under Laws 2024, Chapter 236, the legislature changed certification of physical therapist assistants to licensure. The Board currently is amending the many rules affected by this legislative change. The legislature also defined student physical therapist and student physical therapist assistant, clarified these individuals are not assistive personnel, and required a licensed physical therapist to supervise the patient care activities of these individuals.

Statute that generally authorizes the agency to make rules: A.R.S. § 32-2003(A)(5)

1. Specific statute authorizing the rule:

| | |
|---|---|
| R4-24-101. | Definitions: A.R.S. § 32-2003(A)(5) |
| R4-24-103. | Board Officers: A.R.S. § 32-2003(A)(8) |
| R4-24-104. | Confidential Information and Records: A.R.S. §§ 32-2045(E) and 32-2051 |
| R4-24-107. | Fees: A.R.S. §§ 32-2029, 32-2030, 32-2032, and 32-2053 |
| R4-24-201. | Application for a Physical Therapist License: A.R.S. §§ 32-2022 and 32-2026 |
| R4-24-202. | Reinstatement of License or Certificate: A.R.S. § 32-2028 |
| R4-24-203. | Foreign-educated Applicant Requirements: A.R.S. § 32-2022(B) and (E) |
| R4-24-204. | Supervised Clinical Practice: A.R.S. §§ 32-2022(B)(6) and 32-2025 |
| R4-24-205. | Examination Scores: A.R.S. §§ 32-2003(A)(2), 32-2022, and 32-2024 |
| R4-24-207. | Application for a Physical Therapist Assistant Certificate: A.R.S. §§ 32-2022(D) and 32-2026 |
| R4-24-208. | License or Certificate Renewal; Address Change: A.R.S. §§ 32-2027 and 32-2044(23) |
| R4-24-209. | Time-frames for Board Approvals: A.R.S. §§ 41-1072 through 41-1079 |
| Table 1. | Time-frames (in days): A.R.S. §§ 41-1072 through 41-1079 |
| R4-24-210. | Business Entity Registration; Display of Registration Certificate: A.R.S. § 32-2030 |
| R4-24-211. | Renewal of Business Entity Registration: A.R.S. §§ 32-2030(D) and 32-2051(G) |
| R4-24-212. | Regulation of a Business Entity: A.R.S. §§ 32-2030 and 32-2045(D) |
| R4-24-213. | Business Entity Participation: A.R.S. § 32-2030(K) |
| R4-24-301. | Lawful Practice: A.R.S. § 32-2041 |
| R4-24-302. | Use of Titles: A.R.S. § 32-2042 |
| R4-24-303. | Patient Care Management: A.R.S. §§ 32-2043 and 32-2044 |
| R4-24-304. | Adequate Patient Records: A.R.S. §§ 32-2043 and 32-2044 |
| R4-24-305. | Complaints and Investigations: A.R.S. § 32-2045 |
| R4-24-306. | Hearings: A.R.S. § 32-2046 |
| R4-24-307. | Subpoenas: A.R.S. § 32-2045(A)(3) |
| R4-24-308. | Rehearing or Review of Board Decisions: A.R.S. § 41-1092.09 |
| R4-24-309. | Disciplinary Actions: A.R.S. § 32-2047 |

R4-24-310. Substance Abuse Recovery Program: A.R.S. § 32-2050

R4-24-311. Display of License; Disclosure: A.R.S. § 32-2051

R4-24-312. Mandatory Reporting Requirement: A.R.S. § 32-3208

R4-24-313. Professional Standards of Care and Training and Education Qualifications for Delivery of Dry Needling Skilled Intervention: A.R.S. §§ 32-2001 and 32-2044(25)

R4-24-401. Continuing Competence Requirements for Renewal: A.R.S. § 32-2003(A)(7)

R4-24-402. Continuing Competence Activities: A.R.S. § 32-2003(A)(7)

R4-24-403. Activities Not Eligible for Continuing Competence Credit: A.R.S. § 32-2003(A)(7)

R4-24-502. Petition for Rulemaking; Review of Agency Practice or Substantive Policy Statement; Objection to a Section Based Upon Economic, Small Business, or Consumer Impact: A.R.S. §§ 41-1003, 41-1033, and 41-1056.01

R4-24-506. Written Criticism of Rule: A.R.S. §§ 41-1003 and 41-1056(A)(2)

2. Objective of the rules:

R4-24-101. Definitions: The objective of the rule is to define terms used in the rules in a manner that is not explained adequately by a dictionary definition.

R4-24-103. Board Officers: The objective of this rule is to specify the officers the Board will elect and the primary duty of the president and vice-president.

R4-24-104. Confidential Information and Records: The objective of this rule is to specify that both the information regarding an applicant, licensee, or certificate holder and diagnosis and treatment records are confidential.

R4-24-107. Fees: The objective of the rule is to specify the fees the Board charges for its licensing activities.

R4-24-201. Application for a Physical Therapist License: The objective of this rule is to specify the content of an application for a physical therapist license including information required to be submitted directly to the Board by third parties.

R4-24-202. Reinstatement of License or Certificate: The objective of this rule is to specify applicable conditions and the procedure for applying to have a license or certificate reinstated after the license or certificate has lapsed.

R4-24-203. Foreign-educated Applicant Requirements: The objective of this rule is to specify the special requirements applicable to a foreign-educated applicant.

R4-24-204. Supervised Clinical Practice: The objective of this rule is to specify the conditions under which the Board will issue an interim permit, the responsibilities of the licensee who supervises an interim-permit holder, and the requirements for an interim-permit holder to become licensed or certified.

R4-24-205. Examination Scores: The objective of this rule is to specify the scores an applicant must obtain on a national examination and a jurisprudence examination before the Board will license or certify the applicant.

R4-24-207. Application for a Physical Therapist Assistant Certificate: The objective of this rule is to outline the procedure for applying for a certificate as a physical therapist assistant.

R4-24-208. License or Certificate Renewal; Address Change: The objective of this rule is to specify the procedure for biennial renewal of a license or certificate and to reiterate the statutory requirement that the Board have current information regarding a licensee's or certificate holder's name and home and business address.

R4-24-209. Time-frames for Board Approvals: The objective of this rule is to specify the time frames within which the Board will review and act on an application for licensure, certification, or registration.

Table 1. Time-frames (in days): The objective of this rule is to specify in table form the time frames within which the Board will act on a license, certificate, or registration application.

R4-24-210. Business Entity Registration; Display of Registration Certificate: The objective of this rule is to specify the content of an application for a business entity that offers physical therapy services to register with the Board and to provide notice that a registered business entity is required to publicly display the registration certificate.

R4-24-211. Renewal of Business Entity Registration: The objective of this rule is to specify the procedure for biennial renewal of a business entity registration and the consequences of failing to renew timely.

R4-24-212. Regulation of a Business Entity: The objective of this rule is to provide notice that a business entity is subject to the same complaint, investigation, and discipline process as any other licensee.

R4-24-213. Business Entity Participation: The objective of this rule is to provide notice to business entities that procedures in the Arizona Administrative Procedure Act apply to them.

R4-24-301. Lawful Practice: The objective of this rule is to specify the information a licensee is required to provide to a referring practitioner, requirements regarding patient records, and patients' rights.

R4-24-302. Use of Titles: The objective of this rule is to specify the manner in which a licensee or certificate holder is required to denote licensure or certification, to indicate the manner in which a licensee may denote academic degrees or professional specialty

certification, and to indicate the manner in which a licensee or certificate holder is required to denote retired status.

R4-24-303. Patient Care Management: The objective of this rule is to identify the patient care management responsibilities of a physical therapist, supervision of assistive personnel, qualification of a physical therapist assistant to perform selected treatment interventions, the requirements for a physical therapist to provide general supervision of a physical therapist assistant, and the recordkeeping responsibilities of a physical therapist assistant working under general supervision.

R4-24-304. Adequate Patient Records: The objective of this rule is to specify the general manner in which a licensee is to maintain a patient record and provide detail regarding the information that must be in the patient record at various points in the licensee-patient relationship.

R4-24-305. Complaints and Investigations: The objective of this rule is to clarify against whom a complaint may be made, the form in which a complaint is to be made, and the manner in which the Board responds to a complaint.

R4-24-306. Hearings: The objective of this rule is to inform an individual against whom a complaint has been filed what to expect at an informal hearing before the Board.

R4-24-307. Subpoenas: The objective of this rule is to specify the procedure for obtaining and serving or objecting to a subpoena and the circumstances under which the Board will quash or modify a subpoena.

R4-24-308. Rehearing or Review of Board Decisions: The objective of this rule is to specify the procedures and standards for requesting a rehearing or review of a Board decision.

R4-24-309. Disciplinary Actions: The objective of this rule is to reiterate that Board records regarding disciplinary actions are public records and to provide guidance regarding working under a restricted license or certificate. The rule also indicates that an applicant whose previous license or certificate was revoked must appear before the Board before the Board acts on the application.

R4-24-310. Substance Abuse Recovery Program: The objective of this rule is to specify the circumstances under which the Board will allow a licensee or certificate holder to enter into a substance abuse recovery program rather than taking disciplinary action against the licensee or certificate holder.

R4-24-311. Display of License; Disclosure: The objective of this rule is to require that a licensee or certificate holder display or make available to the public evidence of the license or certificate. It also specifies information that must be disclosed to the public or a patient.

R4-24-312. Mandatory Reporting Requirement: The objective of the rule is to protect the public by requiring a licensee or certificate holder notify the Board within 10 days after being charged with certain crimes.

R4-24-313. Professional Standards of Care and Training and Education Qualifications for Delivery of Dry Needling Skilled Intervention: The objective of this rule is to establish the training and education qualifications of a physical therapist that provides the skilled intervention of dry needling and to specify the nature of a course that results in qualification.

R4-24-401. Continuing Competence Requirements for Renewal: The objective of this rule is to establish the continuing competence requirements for license and certificate renewal. The rule also provides information regarding waiver and audit of compliance with the requirement.

R4-24-402. Continuing Competence Activities: The objective of this rule is to categorize activities that may be used to satisfy the continuing competence requirement and establish limits regarding use of the various categories of activities.

R4-24-403. Activities Not Eligible for Continuing Competence Credit: The objective of this rule is to specify activities that may not be used to satisfy the continuing competence requirement.

R4-24-502. Petition for Rulemaking; Review of Agency Practice or Substantive Policy Statement; Objection to a Section Based Upon Economic, Small Business, or Consumer Impact: The objective of this rule is to specify the manner in which an individual may petition the Board to make, amend, or repeal a rule, review an existing practice or substantive policy statement, or object to a rule based on its economic impact.

R4-24-506. Written Criticism of Rule: The objective of this rule is to specify the manner in which an individual may criticize an existing rule and the grounds on which the criticism may be based.

3. Are the rules effective in achieving their objectives? Yes

The Board is able to protect public health and safety by using the rules to license and regulate physical therapists and physical therapist assistants. The Board also registers and regulates business entities that offer physical therapy services. However, the Board expects the rules to be more effective when the Board completes a rulemaking that addresses recent statutory changes and updates materials incorporated by reference.

4. Are the rules consistent with other rules and statutes? Mostly yes

Although the rules are generally consistent with A.R.S. Title 32, Chapter 19, the Board is amending many of the rules to make them consistent with recent statutory changes. For example:

Under Laws 2019, Chapter 299, the legislature added A.R.S. § 32-3226 requiring health profession regulatory boards to have for each licensee an address of record the Board can disclose to the public and a telephone number and e-mail address the Board can disclose to those seeking

patient records. The statute also requires the Board to designate associations of licensed health professionals to which the Board will disclose the contact information and address of record for licensees. The Board addresses this statutory change in the rulemaking it is completing (See R4-24-104(1)(b) in 30 A.A.R. 3568, November 29, 2024).

Laws 2019, Chapter 195, also adds A.R.S. § 32-3123 authorizing a health profession regulatory board to delegate certain licensing functions to the Board's executive director. The Board made this delegation at an open meeting and in consultation with the Board's AAG. It was determined no rules were needed.

Under Laws 2019, Chapter 166, the legislature amended A.R.S. § 13-904 regarding suspension of civil rights and occupational disabilities. The amendment prohibits an agency from denying, except in certain circumstances, a license to an individual who has a criminal conviction that occurred more than seven years ago, excluding any time of incarceration. In the rulemaking the Board is completing, the Board removes reference to "good moral character" in R4-24-101(21) and R4-24-201(A)(1)(j), R4-24-207(A)(1)(i), and R4-24-208(A)(1)(i) (See 30 A.A.R. 3568, November 29, 2024).

Under Laws 2024, Chapter 236, the legislature changed certification of physical therapist assistants to licensure. This change is addressed in the rulemaking the Board is completing at R4-24-101, R4-24-104, R4-24-107, R4-24-202, R4-24-207, R4-24-208. R4-24-209, Table 1, R4-24-305, R4-24-309, R4-24-310, R4-24-311, R4-24-312, R4-24-401, R4-24-402, and R4-24-403. (See 30 A.A.R. 3568, November 29, 2024).

The rulemaking also clarifies that student physical therapists and student physical therapist assistants are not assistive personnel and must be supervised by a licensed physical therapist. See R4-24-101(33) in 30 A.A.R. 3568, November 29, 2024.

5. Are the rules enforced as written? Mostly yes

The Board enforces the rules in a manner consistent with statute.

6. Are the rules clear, concise, and understandable? Mostly yes

In the Board's 2019 5YRR, the Board identified minor issues with R4-24-201, R4-24-207, R4-24-304, and R4-24-313. All of these Sections are amended in the rulemaking the Board is completing.

7. Has the agency received written criticisms of the rules within the last five years? No

Although there have been no written criticisms of the rules, the Arizona Physical Therapy Association regularly works with the Board and legislature regarding wanted statutory amendments.

8. Economic, small business, and consumer impact comparison:

The Board has received no information indicating its assessment of the economic impacts of the rules reviewed in 2019 was incorrect. No appeal of the economic impact of a rule has been made under A.R.S. § 41-1056.01. The Board has completed only one rulemaking since 2019.

July 2021 rulemaking, 27 A.A.R. 1105, July 23, 2021

In this exempt rulemaking, the Board amended R4-24-107 and Table 1. The rulemaking established a fee for an out-of-state health care provider to register to provide telehealth services in Arizona and amended the Board's time-frame rule to include the new registration.

Because this was an exempt rulemaking, no economic, small business, and consumer impact statement was prepared. However, because the rulemaking established a fee, the rule clearly had an economic impact on out-of-state health care providers who chose to register in Arizona. In the 1YRR prepared by the Board as required under A.R.S. § 41-1095(A), the Board indicated that in the 11 months since the rule went into effect, the Board had received 13 applications to register as an out-of-state provider of physical therapy telehealth. Only three of the applications were complete. The Board approved the complete applications. The 13 applicants each paid $100 to submit an application for registration. This means that under A.R.S. § 32-2004, the Board deposited $130 into the state's general fund and $1,170 into the Board of Physical Therapy fund. Since the 1YRR was submitted to the Council in 2022, the Board has received 26 additional applications for registration and approved 24 of them. This means an additional $270[1] was deposited into the state's general fund. Currently there are 27 out-of-state health care providers registered to provide physical therapy telehealth in Arizona.

[1] See Laws 2024, Chapter 222, amending A.R.S. § 32-2004, requiring the Board to increase the amount of fees deposited into the state general fund.

9. Has the agency received any business competitiveness analyses of the rules? No

10. Has the agency completed the course of action indicated in the agency's previous 5YRR: No
In the 5YRR completed in 2019, the Board indicated it would submit a rulemaking by the end of December 2020 that would update materials incorporated by reference, amend Sections to ensure they are consistent with applications, and amend R4-24-304 to reference a patient's current functional status. The Board did not complete the rulemaking because of events that moved rulemaking down the Board's list of priorities. First, the Board needed to deal with the impact of the COVID pandemic. Then, the Board dealt was the untimely death of the Board's executive director. Next, with staffing deficiencies and new staff learning their responsibilities, the Board went through a Sunset Review and a two-year migration from one software program to another. The Board filed a Notice of Proposed Rulemaking that addresses all the issues identified in this report on November 6, 2024.

11. A determination after analysis that the probable benefits of the rule outweigh within this state the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective:
The Board believes the rules impose the least burden on persons regulated by them. By making application and complying with the rules, those who obtain licensure or registration as a physical therapist, physical therapist assistant, or business entity indicate they have personally determined the benefits of being licensed outweigh the costs associated with the licensure and regulatory process. The rules establish minimum standards for being licensed by the Board and, as specified in statute, require that an application be submitted (See A.R.S. §§ 2022 and 32-2030), fees paid (See A.R.S. § 32-2029), examinations taken (See A.R.S. 32-2022), licenses renewed biennially (See A.R.S. §§ 32-2027 and 32-2030), and continuing competence maintained (See A.R.S. §§ 32-2003(A)(7) and 32-2044(24)). To protect both the general and regulated public, the rules also establish minimum standards regarding lawful practice, patient care management, and adequate patient records. All of these requirements impose economic burdens on those who wish to provide physical therapy services. However,

the requirements are necessary to achieve the underlying regulatory objective, which is to protect the health and safety of the public that receives physical therapy services.

12. Are the rules more stringent than corresponding federal laws? No

    There are no corresponding federal laws.

13. For a rule made after July 29, 2010, that require issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037:

    The Board's statutes (See A.R.S. §§ 32-2022, 32-2025, 32-2026, 32-2027, and 32-2030), require individualized licenses be issued so a general permit is not applicable.

14. Proposed course of action:

    The Board expects to submit to GRRC a rulemaking that addresses the issues identified in this report by June 30, 2025. The Board has created a rules committee that is continuing to review the rules. If the committee makes recommendations for change, the Board will initiate another rulemaking.

**Unofficial version. This rtf is posted as a public courtesy online and is for private use only. The authenticated pdf is the official version. Those who intend to use the contents for resale or profit shall contact the Administrative Rules Division to pay Commercial Use fees under A.R.S. § 39-121.03 and 1 A.A.C. 1, R1-1-113.**

# TITLE 4. PROFESSIONS AND OCCUPATIONS

# CHAPTER 24. BOARD OF PHYSICAL THERAPY

**Supp. 21-2**

This Chapter contains rule Sections that were filed to be codified in the *Arizona Administrative Code* between the dates of
April 1, 2021 through June 30, 2021.

## Questions about these rules? Contact:


| | |
|---|---|
| Name: | Karen Donahue, Executive Director |
| Address: | Board of Physical Therapy |
| | 1740 W. Adams, Suite 2450 |
| | Phoenix, AZ 85007 |
| Telephone: | (602) 274-1361 |
| Fax: | (602) 274-1378 |
| Email: | Karen.donahue@ptboard.az.gov |
| Website: | www.ptboard.az.gov |

# TITLE 4. PROFESSIONS AND OCCUPATIONS

# CHAPTER 24. BOARD OF PHYSICAL THERAPY

**Supp. 21-2**

Authority: A.R.S. § 32-2002 et seq.

## ARTICLE 1. GENERAL PROVISIONS

*Article 1 consisting of Sections R4-24-101 through R4-24-109 adopted effective June 3, 1982 (Supp. 82-3).*

*Former Article 1 consisting of Sections R4-24-01 through R4-24-06 repealed effective June 3, 1982 (Supp. 82-3).*

Section


R4-24-101. Definitions ..... 2
R4-24-102. Expired ..... 3
R4-24-103. Board Officers ..... 3
R4-24-104. Confidential Information and Records ..... 3
R4-24-105. Expired ..... 3
R4-24-106. Repealed ..... 4
R4-24-107. Fees ..... 4
R4-24-108. Repealed ..... 4
R4-24-109. Renumbered ..... 4


## ARTICLE 2. LICENSING PROVISIONS

*Article 2 consisting of Sections R4-24-201 through R4-24-203 adopted effective June 3, 1982 (Supp. 82-3).*

*Former Article 2 consisting of Sections R4-24-16 through R4-24-26 repealed effective June 3, 1982 (Supp. 82-3).*

Section


R4-24-201. Application for a Physical Therapist License ..... 4
R4-24-202. Reinstatement of License or Certificate ..... 5
R4-24-203. Foreign-educated Applicant Requirements ..... 6
R4-24-204. Supervised Clinical Practice ..... 6
R4-24-205. Examination Scores ..... 7
R4-24-206. Renumbered ..... 8
R4-24-207. Application for a Physical Therapist Assistant Certificate 8
R4-24-208. License or Certificate Renewal; Address Change 9
R4-24-209. Time-frames for Board Approvals ..... 10
Table 1. Time Frames (in days) 10
R4-24-210. Business Entity Registration; Display of Registration Certificate ..... 11
R4-24-211. Renewal of Business Entity Registration 12
R4-24-212. Regulation of a Business Entity 12
R4-24-213. Business Entity Participation 12
Exhibit 1. Repealed ..... 12


## ARTICLE 3. PRACTICE OF PHYSICAL THERAPY

*Article 3 consisting of Sections R4-24-301 and R4-24-302 adopted effective April 10, 1986 (Supp. 86-2).*

*Former Article 3 consisting of Sections R4-24-301 through R4-24-303 repealed effective April 10, 1986 (Supp. 86-2).*

Section


R4-24-301. Lawful Practice ..... 12
R4-24-302. Use of Titles ..... 13
R4-24-303. Patient Care Management ..... 13
R4-24-304. Adequate Patient Records ..... 14

R4-24-305. Complaints and Investigations ..... 14
R4-24-306. Hearings ..... 15
R4-24-307. Subpoenas ..... 15
R4-24-308. Rehearing or Review of Board Decisions ..... 15
R4-24-309. Disciplinary Actions ..... 16
R4-24-310. Substance Abuse Recovery Program ..... 16
R4-24-311. Display of License; Disclosure ..... 16
R4-24-312. Mandatory Reporting Requirement ..... 17
R4-24-313. Professional Standards of Care and Training and Education Qualifications for Delivery of Dry Needling Skilled Intervention ..... 17
Appendix A. Repealed ..... 17
Appendix B. Repealed ..... 17

## ARTICLE 4. CONTINUING COMPETENCE

*Article 4, consisting of Sections R4-24-401 through R4-24-403, adopted by final rulemaking at 6 A.A.R. 2399, effective June 9, 2000 (Supp. 00-2).*

Section

R4-24-401. Continuing Competence Requirements for Renewal 17
R4-24-402. Continuing Competence Activities ..... 18
R4-24-403. Activities Not Eligible for Continuing Competence Credit 19

## ARTICLE 5. PUBLIC PARTICIPATION PROCEDURES

*Article 5, consisting of Sections R4-24-501 through R4-24-506, adopted by final rulemaking at 6 A.A.R. 2399, effective June 9, 2000 (Supp. 00-2).*

Section

R4-24-501. Expired ..... 19
R4-24-502. Petition for Rulemaking; Review of Agency Practice or Substantive Policy Statement; Objection to a Section Based Upon Economic, Small Business, or Consumer Impact 19
R4-24-503. Expired ..... 20
R4-24-504. Expired ..... 20
R4-24-505. Expired ..... 20
R4-24-506. Written Criticism of Rule ..... 20

## ARTICLE 1. GENERAL PROVISIONS

**R4-24-101. Definitions**

In addition to the definitions in A.R.S. § 32-2001, in this Chapter:

1. "Accredited" means accredited by a nationally recognized accreditation organization.
2. "Accredited educational program" means a physical therapist or physical therapist assistant educational program that is accredited by:
   a. The Commission on Accreditation of Physical Therapy Education, or
   b. An agency recognized as qualified to accredit physical therapist or physical therapist assistant programs by either the U.S. Department of Education or the Council on Higher Education Accreditation at the time of the applicant's graduation.
3. "Administratively suspend," as used in A.R.S. § 32-2027, means the Board places a license or certificate issued under A.R.S. Title 32, Chapter 19 and this Chapter on suspended status because the license or certificate was not renewed timely.
4. "Applicant" means an individual or business entity seeking an initial or renewal license, initial or renewal certificate, initial or renewal registration, interim permit, or reinstatement from the Board.
5. "Applicant packet" means the forms and additional information the Board requires to be submitted by an applicant or on the applicant's behalf.
6. "Campus" means a facility and immediately adjacent buildings.
7. "College Board" means an association composed of schools, colleges, universities, and other educational organizations across the United States that is responsible for the development of assessment tests that are used to provide college credit or for college placement.
8. "College level examination program" means services offered by the College Board for an individual to demonstrate college-level achievement by taking an examination approved by the College Board.
9. "Compliance period" means a two-year license renewal cycle that ends August 31 of even-numbered years.
10. "Continuing competence" means maintaining the professional skill, knowledge, and ability of a physical therapist or physical therapist assistant by successfully completing scholarly and professional activities

related to physical therapy.

11. "Course" means an organized subject matter in which instruction is offered within a specified period of time.
12. "Course evaluation tool" means the Coursework Evaluation Tool for Foreign Educated Physical Therapists who Graduated after June 30, 2009, Fifth Edition, 2004 (effective July 1, 2009), published by the Federation of State Boards of Physical Therapy, 124 West Street, South Alexandria, VA, 22314, incorporated by reference and on file with the Board. This incorporation by reference contains no future editions or amendments.
13. "Credential evaluation" means a written assessment of a foreign-educated applicant's general and professional educational course work.
14. "Credential evaluation agency" means an organization that evaluates a foreign-educated applicant's education and provides recommendations to the Board about whether the applicant's education is substantially equivalent to physical therapy education provided in an accredited educational program.
15. "Days" means calendar days.
16. "Endorsement" means a procedure for granting an Arizona license or certificate to an applicant already licensed as a physical therapist or certified as a physical therapist assistant in another jurisdiction of the United States.
17. "ETS" means Educational Testing Service, an organization that provides educational learning and assessment services, including the Test of English as a Foreign Language Program.
18. "Facility" means a building where:
    a. A physical therapist is engaged in the practice of physical therapy;
    b. An applicant, licensee, or certificate holder is engaged in a supervised clinical practice; or
    c. A physical therapist assistant performs physical therapy-related tasks delegated by an onsite supervisor.
19. "Foreign-educated applicant" means an individual who graduated from a physical therapist educational program outside the United States, Puerto Rico, District of Columbia, or a U.S. territory.
20. "Functional limitation" means restriction of the ability to perform a physical action, activity, or task in an efficient, typically expected or competent manner.
21. "Good moral character" means the applicant has not taken any action that is grounds for disciplinary action against a licensee or certificate holder under A.R.S. § 32-2044.
22. "Hour" means 60 minutes.
23. "iBT" means internet-based TOEFL.
24. "National disciplinary database" means the disciplinary database of the U.S. Department of Health and Human Services' Health Integrity and Protection Data Base, which contains previous or current disciplinary actions taken against a licensed physical therapist or certified physical therapist assistant by state licensing agencies.
25. "National examination" means an examination produced by the Federation of State Boards of Physical Therapy or an examination produced by the American Physical Therapy Association.
26. "On call," as used in the definition of "general supervision" prescribed under A.R.S. § 32-2001, means a supervising physical therapist is able to go to the location at which and on the same day that a physical therapist assistant provides a selected treatment intervention if the physical therapist, after consultation with the physical therapist assistant, determines that going to the location is in the best interest of the patient.
27. "Onsite supervisor" means a physical therapist who provides onsite supervision as defined in A.R.S. § 32-2001.
28. "Physical Therapist Assistant Clinical Performance Instrument" means the document used to assess an individual's knowledge, skills, and attitudes to determine the individual's readiness to work as a physical therapist assistant that is published by the American Physical Therapy Association, Division of Education, March 1998, 1111 North Fairfax Street, Alexandria, VA 22314-1488 and incorporated by reference and on file with the Board. This incorporation by reference contains no future editions or amendments.
29. "Physical Therapist Clinical Performance Instrument" means the document used to assess an individual's knowledge, skills, and attitudes to determine the individual's readiness to practice physical therapy that is published by the American Physical Therapy Association, Division of Education, December 1997, 1111 North Fairfax Street, Alexandria, VA 22314-1488 and incorporated by reference and on file with the Board. This incorporation by reference contains no future editions or amendments.
30. "Physical therapy services" means any of the actions stated in the definition of practice of physical therapy in A.R.S. § 32-2001.
31. "Qualified translator" means an individual, other than an applicant, who is:
    a. An officer or employee of an official translation bureau or government agency,
    b. A professor or instructor who teaches a translated language in an accredited college or university in the United States,
    c. An American consul in the country where the translated document is issued or another individual

designated by the American consul in the country where the translated document is issued, or

d. A consul general or diplomatic representative of the United States or individual designated by the consul general or diplomatic representative.

32. "Readily available," as used in the definition of "general supervision" prescribed under A.R.S. § 32-2001, means a supervising physical therapist is able to respond within 15 minutes to a communication from a physical therapist assistant providing a selected treatment intervention under general supervision.
33. "Recognized standards of ethics" means the *Code of Ethics* (amended June 2000) and the accompanying *Guide for Professional Conduct* (amended January 2004) of the American Physical Therapy Association, 1111 North Fairfax Street, Alexandria, VA 22314-1488, which is incorporated by reference and on file with the Board. This incorporation includes no later editions or amendments.
34. "Supervised clinical practice" means the period of time a physical therapist is engaged in the practice of physical therapy or a physical therapist assistant is engaged in work as a physical therapist assistant after being issued an interim permit by the Board.
35. "Supervising physical therapist" means an individual licensed under this Chapter who provides onsite or general supervision to assistive personnel.
36. "Suspend" means the Board places a license, certificate, permit, or registration in a status that restricts the holder of the license, certificate, permit, or registration from practicing as a physical therapist, working as a physical therapist assistant, or offering physical therapy services.
37. "TOEFL" means test of English as a foreign language.
38. "Week" means the period beginning on Sunday at 12:00 a.m. and ending the following Saturday at 11:59 p.m.

**Historical Note**

Adopted effective June 3, 1982 (Supp. 82-3). Amended effective April 10, 1986 (Supp. 86-2). Amended effective May 7, 1990 (Supp. 90-2). Amended effective March 14, 1996 (Supp. 96-1). Amended by final rulemaking at 5 A.A.R. 2988, effective August 12, 1999 (Supp. 99-3). Amended by final rulemaking at 6 A.A.R. 2399, effective June 9, 2000 (Supp. 00-2). Amended by final rulemaking at 9 A.A.R. 307, effective January 13, 2003 (Supp. 03-1). Amended by final rulemaking at 12 A.A.R. 2401, effective August 5, 2006 (Supp. 06-2). Amended by final rulemaking at 13 A.A.R. 1640, effective June 30, 2007 (Supp. 07-2). Amended by final rulemaking at 15 A.A.R. 1788, effective December 5, 2009 (Supp. 09-4). Amended by final rulemaking at 18 A.A.R. 841, effective May 11, 2012 (Supp. 12-1). Amended by final rulemaking at 25 A.A.R. 404, effective April 6, 2019 (Supp. 19-1).

**R4-24-102. Expired**

**Historical Note**

Adopted effective June 3, 1982 (Supp. 82-3). Former Section R4-24-102 repealed, former Section R4-24-103 renumbered and amended as Section R4-24-102 effective April 10, 1986 (Supp. 86-2). Former Section R4-24-102 renumbered to R4-24-103; new Section R4-24-102 adopted by final rulemaking at 6 A.A.R. 2399, effective June 9, 2000 (Supp. 00-2). Section expired under A.R.S. § 41-1056(E) at 10 A.A.R. 3897, effective July 31, 2004 (Supp. 04-3).

**R4-24-103. Board Officers**

The Board shall elect a president, vice-president, and secretary at its first regular Board meeting each year.

1. The president shall preside at all Board meetings.
2. When the president is unable to preside at a Board meeting, the vice-president shall preside.

**Historical Note**

Adopted effective June 3, 1982 (Supp. 82-3). Former Section R4-24-103 renumbered and amended as Section R4-24-102, former Section R4-24-104 renumbered and amended as Section R4-24-103 effective April 10, 1986 (Supp. 86-2). Former Section R4-24-103 renumbered to Section R4-24-204 effective May 7, 1990 (Supp. 90-2). New Section R4-24-103 renumbered from R4-24-102 and amended by final rulemaking at 6 A.A.R. 2399, effective June 9, 2000 (Supp. 00-2). Amended by final rulemaking at 12 A.A.R. 2401, effective August 5, 2006 (Supp. 06-2).

**R4-24-104. Confidential Information and Records**

The following information or a record containing this information is confidential and is not provided to the public by the Board:

1. An applicant's, licensee's, or certificate-holder's:
   a. Social Security number;
   b. Home address or home telephone number unless the address or telephone number is the only address or telephone number of record;

c. Credential evaluation report, education transcript, grades, or examination scores;
d. National physical therapist or physical therapist assistant examination score;
e. Diagnosis and treatment records; and

2. According to A.R.S. § 32-2045, information or a document related to investigations by the Board until the information or document becomes a public record or as required by law.

**Historical Note**

Adopted effective June 3, 1982 (Supp. 82-3). Former Section R4-24-104 renumbered and amended as Section R4-24-103 effective April 10, 1986 (Supp. 86-2). New Section R4-24-104 adopted by final rulemaking at 6 A.A.R. 2399, effective June 9, 2000 (Supp. 00-2). Amended by final rulemaking at 12 A.A.R. 2401, effective August 5, 2006 (Supp. 06-2).

**R4-24-105. Expired**

**Historical Note**

Adopted effective June 3, 1982 (Supp. 82-3). Amended subsection (B) effective April 10, 1986 (Supp. 86-2). Amended effective May 7, 1990 (Supp. 90-2). Amended effective March 14, 1996 (Supp. 96-1). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 2399, effective June 9, 2000 (Supp. 00-2). Section expired under A.R.S. § 41-1056(E) at 10 A.A.R. 3897, effective July 31, 2004 (Supp. 04-3).

**R4-24-106. Repealed**

**Historical Note**

Adopted effective June 3, 1982 (Supp. 82-3). Amended subsection (A) effective April 10, 1986 (Supp. 86-2). Amended effective May 7, 1990 (Supp. 90-2). Amended effective March 14, 1996 (Supp. 96-1). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 2399, effective June 9, 2000 (Supp. 00-2). Section repealed by final rulemaking at 12 A.A.R. 2401, effective August 5, 2006 (Supp. 06-2).

**R4-24-107. Fees**

**A.** Under the authority provided by A.R.S. §§ 32-2029 and 32-2030, the Board establishes and shall collect the following fees:

1. For a physical therapist:
   a. Application for an original license if the applicant applies on or after September 1 in an even-numbered year and no later than August 31 in an odd-numbered year, $260;
   b. Application for an original license if the applicant applies on or after September 1 in an odd-numbered year and no later than August 31 in an even-numbered year, $190;
   c. Renewal of an active license, $160;
   d. Renewal of an inactive license, $80;
   e. Reinstatement of an administratively suspended license, $100 plus the renewal fee; and
   f. Duplicate license, $10.
2. For a physical therapist assistant:
   a. Application for an original certificate if the applicant applies on or after September 1 in an even-numbered year and no later than August 31 in an odd-numbered year, $160;
   b. Application for an original certificate if the applicant applies on or after September 1 in an odd-numbered year and no later than August 31 in an even-numbered year, $120;
   c. Renewal of an active certificate, $55;
   d. Renewal of an inactive certificate, $27.50;
   e. Reinstatement of an administratively suspended certificate, $50 plus the renewal fee; and
   f. Duplicate certificate, $10.
3. For a business entity:
   a. Application for an original registration, $50;
   b. Renewal, $50;
   c. Late fee, $25; and
   d. Duplicate registration, $10.

**B.** Under the authority provided by A.R.S. § 36-3606(A)(3), the Board establishes and shall collect a registration fee from an out-of-state health care provider of telehealth services: $100.

**C.** The fees specified in subsections (A) and (B) are nonrefundable unless A.R.S. § 41-1077 applies.

**Historical Note**

Adopted effective June 3, 1982 (Supp. 82-3). Amended effective May 7, 1990 (Supp. 90-2). Section R4-24-107 renumbered to R4-24-306 by final rulemaking at 6 A.A.R. 2399, effective June 9, 2000 (Supp. 00-2). Section R4-24-107 renumbered from R4-24-206 by final rulemaking at 12 A.A.R. 2401, effective August 5, 2006

(Supp. 06-2). Amended by final rulemaking at 18 A.A.R. 841, effective May 11, 2012 (Supp. 12-1). Amended by final rulemaking at 18 A.A.R. 1858, effective July 10, 2012 (Supp. 12-3). Amended by final exempt rulemaking at 27 A.A.R. 1105, with an immediate effective date of June 29, 2021 (Supp. 21-2).

**R4-24-108. Repealed**

**Historical Note**

Adopted effective June 3, 1982 (Supp. 82-3). Repealed effective May 7, 1990 (Supp. 90-2).

**R4-24-109. Renumbered**

**Historical Note**

Adopted effective June 3, 1982 (Supp. 82-3). Amended effective May 7, 1990 (Supp. 90-2). Amended effective March 14, 1996 (Supp. 96-1). Section R4-24-109 renumbered to R4-24-307 by final rulemaking at 6 A.A.R. 2399, effective June 9, 2000 (Supp. 00-2).

## ARTICLE 2. LICENSING PROVISIONS

**R4-24-201. Application for a Physical Therapist License**

**A.** An applicant for a physical therapist license shall submit to the Board an application packet that includes:

1. An application form provided by the Board that is signed, dated, and verified by the applicant and contains:
   a. The applicant's name, business, residential, and e-mail addresses, business and residential telephone numbers, birth date, and Social Security number;
   b. The name and address of each university or college attended by the applicant, the dates of attendance, and the date of graduation and degree received, if applicable;
   c. The name and address of the university or college where the applicant completed an accredited educational program and dates of attendance;
   d. A statement of whether the applicant has ever been licensed as a physical therapist in any other jurisdiction of the United States or foreign country;
   e. Professional employment history for the past five years, including the name, address, and telephone number for each place of employment, job title, description of the work completed, and explanation of any breaks in employment, if applicable;
   f. A statement of whether the applicant has ever been convicted of, pled guilty or no contest to, or entered into diversion in lieu of prosecution for any criminal offense in any jurisdiction of the United States or foreign country and if so, an explanation;
   g. A statement of whether the applicant has ever had an application for a professional or occupational license, certificate, or registration, other than a driver's license, denied, rejected, suspended, or revoked by any jurisdiction of the United States or foreign country and if so, an explanation;
   h. A statement of whether the applicant is currently or ever has been under investigation, suspension, or restriction by a professional licensing board in any jurisdiction of the United States or foreign country for any act that occurred in that jurisdiction that would be the subject of discipline under this Chapter and if so, an explanation;
   i. A statement of whether the applicant has ever been the subject of disciplinary action by a professional association or postsecondary educational institution;
   j. A statement of whether the applicant has committed any of the actions referenced in the definition of good moral character in R4-24-101;
   k. A statement of whether the applicant has ever had a malpractice judgment, has a lawsuit currently pending for malpractice, or entered into a settlement from a malpractice suit and if so, an explanation;
   l. A statement of whether the applicant is currently more than 30 days in arrears for payment required by a judgment and order for child support in Arizona or any other jurisdiction;
   m. A statement of whether the applicant has any impairment to the applicant's cognitive, communicative, or physical ability to engage in the practice of physical therapy with skill and safety and if so, an explanation;
   n. A statement of whether the applicant has, within the past 10 years, used alcohol, any illegal chemical substance, or prescription medications, that in any way has impaired or limited the applicant's ability to practice physical therapy with skill and safety and if so, an explanation;
   o. A statement of whether the applicant has, within the past 10 years, been diagnosed as having or is being treated for bipolar disorder, schizophrenia, paranoia, or other psychotic disorder that in any way has impaired or limited the applicant's ability to practice physical therapy with skill and safety and if so, an explanation;
   p. A statement of whether the applicant has ever violated A.R.S. § 32-2044(10); and

q. A statement by the applicant attesting to the truthfulness of the information provided by the applicant;

2. A passport photograph of the applicant no larger than 1 1/2 x 2 inches that was taken not more than six months before the date of the application;
3. Documentation, as described under A.R.S. § 41-1080, of the applicant's U.S. citizenship, alien status, legal residency, or lawful presence in the U.S.; and
4. The fee required in R4-24-107.

**B.** In addition to the requirements in subsection (A), an applicant shall arrange to have submitted directly to the Board:

1. An official transcript or letter showing that the applicant completed all requirements of an accredited educational program that includes the official seal of the university or college where the applicant completed the accredited educational program and signature of the registrar of the university or college,
2. Verification of passing a national examination in physical therapy as evidenced by an original notice of examination results, and
3. Verification of passing a jurisprudence examination as evidenced by an original notice of examination results.

**C.** In addition to the requirements in subsections (A) and (B), an applicant for a physical therapist license by endorsement shall submit to the Board:

1. The name of the licensing or certifying agency of any jurisdiction in which the applicant is currently or has been previously licensed;
2. A verification of each license, signed and dated by an official of the agency licensing or certifying the applicant, that includes the official seal of the licensing or certifying agency and all of the following:
   a. The name of the applicant;
   b. The license number and date of issuance;
   c. The current status of the license;
   d. The expiration date of the license;
   e. A statement of whether the applicant was ever denied a license by the agency and if so, an explanation; and
   f. A statement of whether any disciplinary action is pending or has ever been taken against the applicant and if so, an explanation.

**D.** The Board shall deny a license to an applicant who fails to meet the requirements of this Section or A.R.S. Title 32, Chapter 19. An applicant denied a license may request a hearing under A.R.S. Title 41, Chapter 6, Article 10.

**Historical Note**

Adopted effective June 3, 1982 (Supp. 82-3). Amended subsection (C) and added subsection (D) effective April 10, 1986 (Supp. 86-2). Amended effective May 7, 1990 (Supp. 90-2). Amended effective March 14, 1996 (Supp. 96-1). Section repealed; new Section adopted by final rulemaking at 5 A.A.R. 2988, effective August 12, 1999 (Supp. 99-3). Amended by final rulemaking at 6 A.A.R. 2399, effective June 9, 2000 (Supp. 00-2). Amended by final rulemaking at 12 A.A.R. 2401, effective August 5, 2006 (Supp. 06-2). Amended by final rulemaking at 14 A.A.R. 3418, effective October 4, 2008, (Supp. 08-3). Amended by final rulemaking at 25 A.A.R. 404, effective April 6, 2019 (Supp. 19-1).

**R4-24-202. Reinstatement of License or Certificate**

**A.** An applicant whose Arizona license or certificate is administratively suspended for three consecutive years or less after the date of renewal of the license or certificate may apply for reinstatement of the license or certificate by submitting the application in R4-24-208 and the reinstatement fee and renewal fee required in R4-24-107.

**B.** An applicant whose Arizona license or certificate is administratively suspended for more than three consecutive years after the date of renewal of the license or certificate may apply for reinstatement of the license or certificate by submitting the reinstatement fee and renewal fee in R4-24-107, and:

1. For an applicant educated in the United States requesting reinstatement of a license, the application in R4-24-201(A) and (B);
2. For a foreign-educated applicant requesting reinstatement of a license, the application in R4-24-203; or
3. For an applicant requesting reinstatement of a certificate, the application in R4-24-207(A) and (B).

**C.** If an applicant submits an application according to subsection (B), the Board shall require the applicant to demonstrate competency by doing one or more of the following:

1. Practice physical therapy or work as a physical therapist assistant under an interim permit that allows the applicant to participate in a supervised clinical practice,
2. Complete one or more courses relevant to the practice of physical therapy or the work of a physical therapist assistant,
3. Complete continuing competence requirements for the period of time of the lapsed license, or
4. Take and pass a jurisprudence examination or national examination.

**Historical Note**

Adopted effective June 3, 1982 (Supp. 82-3). Amended subsection (C) effective April 10, 1986 (Supp. 86-2). Amended effective May 7, 1990 (Supp. 90-2). Amended effective March 14, 1996 (Supp. 96-1). Former Section R4-24-202 renumbered to R4-24-204; new Section R4-24-202 adopted by final rulemaking at 6 A.A.R. 2399, effective June 9, 2000 (Supp. 00-2). Amended by final rulemaking at 12 A.A.R. 2401, effective August 5, 2006 (Supp. 06-2). Subsection (A) corrected at request of the Board, Office File No. M12-209, filed June 8, 2012 (Supp. 12-1). Amended by final rulemaking at 18 A.A.R. 841, effective May 11, 2012 (Supp. 12-1).

**R4-24-203. Foreign-educated Applicant Requirements**

**A.** A foreign-educated applicant shall meet the requirements in A.R.S. § 32-2022(B) and the following:

1. The applicant shall comply with the requirements in R4-24-201.
2. The applicant shall ensure that a document required by R4-24-201 or this subsection is:
   a. Submitted to the Board in English; or
   b. Accompanied by an original English translation by a qualified translator if the document is submitted to the Board in a language other than English and includes an affidavit of accuracy by the qualified translator affirming:
      i. The qualified translator has translated the entire document,
      ii. The qualified translator has not omitted anything from or added to the translation, and
      iii. The translation is true and accurate.
3. To meet the requirements in A.R.S. § 32-2022(B)(4), the applicant shall state on the application form whether the applicant's practice as a physical therapist was limited in the country where the professional education occurred. If the applicant's practice was limited in the country where the professional education occurred, the applicant shall submit to the Board documentation of the limitation, or arrange to have documentation of limitation sent directly to the Board, that includes:
   a. The name, address, and telephone number of the entity that limited the applicant's practice of physical therapy;
   b. A description of the action or lack of action that led to the limitation on the applicant's practice as a physical therapist;
   c. A description of the limitation on the applicant's practice of physical therapy; and
   d. If the limitation is based on citizenship requirements of the country in which the professional education was obtained, the applicant shall provide the Board with the legal reference for the restriction in the laws of the country in which the professional education was obtained, a copy of the referenced laws, and an English translation of the laws that meets the standards in subsection (A)(2)(b).
4. If English is not the native language of the foreign-educated applicant, to meet the requirements in A.R.S. § 32-2022(B)(6), the applicant shall take and pass either of the following tests no more than 18 months before the date on which the application submitted under R4-24-201 is administratively complete and ensure that the test scores are sent directly to the Board by the testing entity:
   a. The TOEFL. An applicant who takes the TOEFL passes with the following:
      i. A score of 560 or more if a paper-based test or a score of 220 or more if a computer-based test;
      ii. Test of Spoken English with a score of 50 or more; and
      iii. Test of Written English with a score of 4.5 or more; or
   b. The iBT. An applicant who takes the iBT passes with an overall test score of a minimum of 100 and a:
      i. Writing section with a minimum score of 25,
      ii. Speaking section with a minimum score of 25,
      iii. Reading section with a minimum score of 25, and
      iv. Listening section with a minimum score of 25.
5. To demonstrate that the applicant meets uniform criteria for educational requirements according to A.R.S. § 32-2022(E)(3), the applicant shall undergo a credential evaluation to determine that the applicant meets the requirements in the course evaluation tool and arrange to have a credential evaluation report, prepared within 18 months from the date of the application, sent directly to the Board by the credential evaluation agency.
6. To meet the requirements in A.R.S. § 32-2022(B)(5), the applicant shall obtain a work visa to reside and seek employment in the United States issued by the Bureau of Citizenship and Immigration Services and submit a copy of the work visa to the Board.

**B.** After receiving a credential evaluation report from a credential evaluation agency, the Board:

1. If the credential evaluation report does not establish that the education obtained by the foreign-educated applicant is substantially equivalent to the education required of a physical therapist in an accredited education program, may require the applicant to:
   a. Complete one or more university or college courses and obtain a grade of C or better in each course;

b. Complete a college level examination program; or
c. If an applicant for a license, complete one or more continuing competence courses; and

2. Shall issue, within the time-frames stated in Table 1, an interim permit to complete a supervised clinical practice to the applicant if:
   a. The applicant was required to meet one or more of the requirements in subsection (B)(1) and completes the requirements; or
   b. The credential evaluation report establishes that the education obtained by the foreign-educated applicant is substantially equivalent to the education required of a physical therapist in an accredited education program; and
   c. The applicant has passed the national examination and jurisprudence examination; and
   d. The applicant meets the requirements in A.R.S. Title 32, Chapter 19 and R4-24-201.

**Historical Note**

Adopted effective June 3, 1982 (Supp. 82-3). Amended subsection (B) effective April 10, 1986 (Supp. 86-2). Amended effective March 14, 1996 (Supp. 96-1). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 2399, effective June 9, 2000 (Supp. 00-2). Amended by final rulemaking at 12 A.A.R. 2401, effective August 5, 2006 (Supp. 06-2). Amended by final rulemaking at 14 A.A.R. 3418, effective October 4, 2008, (Supp. 08-3). Amended by final rulemaking at 18 A.A.R. 841, effective May 11, 2012 (Supp. 12-1).

**R4-24-204. Supervised Clinical Practice**

**A.** An interim permit holder shall complete a supervised clinical practice under onsite supervision. The supervised clinical practice shall consist of at least 500 hours.

**B.** Before an individual is issued an interim permit, the individual shall submit to the Board:
1. A written request for Board approval of the facility where supervised clinical practice will take place that includes:
   a. The name, address, and telephone number of the facility; and
   b. A description of the physical therapy services provided at the facility; and
2. The name of the individual who holds an unrestricted license to practice physical therapy in this state and agrees to provide onsite supervision of the individual.

**C.** The Board shall approve or deny a request made under subsection (B)(1):
1. After assessing whether the facility provides the opportunity for an interim permit holder to attain the knowledge, skills, and attitudes to be evaluated according to the Physical Therapist Assistant Clinical Performance Instrument or Physical Therapist Clinical Performance Instrument; and
2. According to the time-frames in Table 1.

**D.** An onsite supervisor shall:
1. Observe the interim permit holder during the supervised clinical practice and:
   a. Rate the interim permit holder's performance, at both the mid-point and completion of the clinical practice, on each of the clinical performance criteria in the Physical Therapist Clinical Performance Instrument or Physical Therapist Assistant Clinical Performance Instrument, including the dates and hours the onsite supervisor provided onsite supervision;
   b. Recommend following the mid-point rating whether the interim permit holder be allowed to continue the clinical practice and changes needed, if any, to ensure successful completion of the clinical practice; and
   c. Recommend following the completion rating whether the interim permit holder be licensed or required to complete further supervised clinical practice; and
2. Submit the ratings on the Physical Therapist Clinical Performance Instrument or Physical Therapist Assistant Clinical Performance Instrument to the Board as follows:
   a. No later than the 55th day of the clinical practice for the mid-point rating, and
   b. No later than 30 days after the end of the supervised clinical practice for the completion rating.

**E.** After the Board receives the mid-point rating on the Physical Therapist Clinical Performance Instrument or Physical Therapist Assistant Clinical Performance Instrument, the Board shall review the rating and recommendation of the onsite supervisor and decide whether to allow the interim permit holder to continue the clinical practice or recommend changes in the clinical practice to the onsite supervisor.

**F.** After the Board receives the completion rating on the Physical Therapist Clinical Performance Instrument or Physical Therapist Assistant Clinical Performance Instrument, the Board:
1. May require the interim permit holder to complete additional onsite supervision under the interim permit if the additional onsite supervision does not cause the interim permit holder to exceed six months from the date the interim permit was issued and:
   a. The onsite supervisor does not approve one or more of the skills listed on the Physical Therapist Clinical Performance Instrument or Physical Therapist Assistant Clinical Performance Instrument;

b. The onsite supervisor recommends that the interim permit holder complete further supervised clinical practice; or
c. The Board determines that the interim permit holder has not met the requirements in A.R.S. Title 32, Chapter 19 and this Chapter.

2. If the interim permit holder meets all of the requirements in A.R.S. Title 32, Chapter 19 and this Chapter, shall issue:
a. A license to an applicant for a license, or
b. A certificate to an applicant for a certificate.

3. If the applicant, licensee, or certificate-holder does not meet all of the requirements in A.R.S. Title 32, Chapter 19 and this Chapter, shall deny:
a. A license to an applicant for a license, or
b. A certificate to an applicant for a certificate.

**G.** An applicant who has been denied a license or certificate may request a hearing under A.R.S. Title 41, Chapter 6, Article 10.

**Historical Note**

Adopted effective June 3, 1982 (Supp. 82-3). Former Section R4-24-103 renumbered and amended as Section R4-24-102, former Section R4-24-104 renumbered and amended as Section R4-24-103 effective April 10, 1986 (Supp. 86-2). Former Section R4-24-204 renumbered to R4-24-205, new Section R4-24-204 renumbered from Section R4-24-103 and amended effective May 7, 1990 (Supp. 90-2). Amended effective march 14, 1996 (Supp. 96-1). Former Section R4-24-204 renumbered to R4-24-206; new Section R4-24-204 renumbered from R4-24-202 and amended by final rulemaking at 6 A.A.R. 2399, effective June 9, 2000 (Supp. 00-2). Amended by final rulemaking at 9 A.A.R. 307, effective January 13, 2003 (Supp. 03-1). Former Section R4-24-204 renumbered to R4-24-205; new Section R4-24-204 made by final rulemaking at 12 A.A.R. 2401, effective August 5, 2006 (Supp. 06-2). Amended by final rulemaking at 14 A.A.R. 376, effective March 8, 2008 (Supp. 08-1). Amended by final rulemaking at 14 A.A.R. 3418, effective October 4, 2008, (Supp. 08-3).

**R4-24-205. Examination Scores**

**A.** To be licensed as a physical therapist, an applicant shall obtain:
1. A scaled score of 600 or more, based on a scale ranging from 200 to 800 on a national examination for physical therapists taken on or after March 14, 1996; or
2. A raw score that is no lower than 1.50 standard deviation below the national average for a national examination for physical therapists taken before March 14, 1996.

**B.** To be certified as a physical therapist assistant, an applicant for certification shall obtain:
1. A scaled score of 600 or more based on a scale ranging from 200 to 800 on a national examination for physical therapist assistants taken on or after March 14, 1996; or
2. A raw score that is no lower than 1.50 standard deviation below the national average for a national examination for physical therapist assistants taken before March 14, 1996.

**C.** In addition to the requirements in subsections (A) and (B), to be licensed as a physical therapist or certified as a physical therapist assistant, an applicant shall obtain a scaled score of 600 or more based on a scale ranging from 200 to 800 on a jurisprudence examination.

**Historical Note**

Adopted effective April 10, 1986 (Supp. 86-2). Former Section R4-24-205 renumbered to R4-24-206, new Section R4-24-205 renumbered from Section R4-24-204 and amended effective May 7, 1990 (Supp. 90-2). Section repealed; new Section adopted by final rulemaking at 5 A.A.R. 2988, effective August 12, 1999 (Supp. 99-3). Former Section R4-24-205 renumbered to R4-24-207; new Section R4-24-205 adopted by final rulemaking at 6 A.A.R. 2399, effective June 9, 2000 (Supp. 00-2). Former Section R4-24-205 repealed; new Section R4-24-205 renumbered from R4-24-204 and amended by final rulemaking at 12 A.A.R. 2401, effective August 5, 2006 (Supp. 06-2).

**R4-24-206. Renumbered**

**Historical Note**

Section R4-24-205 adopted effective April 10, 1986 (Supp. 86-2). Section R4-24-206 renumbered from Section R4-24-205 and amended effective May 7, 1990 (Supp. 90-2). Amended by final rulemaking at 5 A.A.R. 2988, effective August 12, 1999 (Supp. 99-3). Former Section R4-24-206 repealed; new Section R4-24-206 renumbered from R4-24-204 and amended by final rulemaking at 6 A.A.R. 2399, effective June 9, 2000 (Supp. 00-2). Amended by final rulemaking at 11 A.A.R. 5465, effective February 4, 2006 (Supp. 05-4). Section R4-24-206 renumbered to R4-24-107 by final rulemaking at 12 A.A.R. 2401, effective August 5,

**R4-24-207. Application for a Physical Therapist Assistant Certificate**

**A.** An applicant for an original physical therapist assistant certificate shall submit to the Board an application packet that includes:

1. An application form provided by the Board, signed, dated, and verified by the applicant that contains:
   a. The applicant's name, business, residential, and e-mail addresses, business and residential telephone numbers, birth date, and Social Security number;
   b. The name and address of the college or university where the applicant completed an accredited educational program for physical therapist assistants, dates of attendance, and date of completion;
   c. A statement of whether the applicant has ever been licensed or certified as a physical therapist assistant in any other jurisdiction of the United States or foreign country;
   d. Professional employment history for the five years before the date of application including the name, address, and telephone number for each place of employment, job title, description of the work completed, and explanation of any breaks in employment, if applicable;
   e. A statement of whether the applicant has ever been convicted of, pled guilty or no contest to, or entered into diversion in lieu of prosecution for any criminal offense in any jurisdiction of the United States or foreign country and if so, an explanation;
   f. A statement of whether the applicant has ever had an application for a professional or occupational license, certificate, or registration, other than a driver's license, denied, rejected, suspended, or revoked by any jurisdiction of the United States or foreign country and if so, an explanation;
   g. A statement of whether the applicant is currently or ever has been under investigation, suspension, or restriction by a professional licensing board in any jurisdiction of the United States or foreign country for any act that occurred in that jurisdiction that would be the subject of discipline under this Chapter and if so, an explanation;
   h. A statement of whether the applicant has ever been the subject of disciplinary action by a professional association or postsecondary educational institution;
   i. A statement of whether the applicant has committed any of the actions referenced in the definition of good moral character in R4-24-101;
   j. A statement of whether the applicant has ever had a malpractice judgment or has a lawsuit currently pending for malpractice and if so, an explanation;
   k. A statement of whether the applicant is currently more than 30 days in arrears for payment required by a judgment and order for child support in Arizona or any other jurisdiction;
   l. A statement of whether the applicant has any impairment to the applicant's cognitive, communicative, or physical ability to participate in therapeutic interventions with skill and safety and if so, an explanation;
   m. A statement of whether the applicant has, within the past 10 years, used alcohol, any illegal chemical substance, or prescription medications, that in any way has impaired or limited the applicant's ability to participate in therapeutic interventions with skill and safety and if so, an explanation;
   n. A statement of whether the applicant has, within the past 10 years, been diagnosed as having or is being treated for bipolar disorder, schizophrenia, paranoia, or other psychotic disorder that in any way has impaired or limited the applicant's ability to participate in therapeutic interventions with skill and safety and if so, an explanation;
   o. A statement of whether the applicant has ever violated A.R.S. § 32-2044(10); and
   p. A sworn statement by the applicant verifying the truthfulness of the information provided by the applicant;
2. A passport photograph of the applicant no larger than 1 1/2 x 2 inches that was taken not more than six months before the date of the application;
3. Documentation, as described under A.R.S. § 41-1080, of the applicant's U.S. citizenship, alien status, legal residency, or lawful presence in the U.S.; and
4. The fee required in R4-24-107.

**B.** In addition to the requirements in subsection (A), an applicant shall arrange to have directly submitted to the Board:

1. An official transcript or letter showing the applicant completed all requirements of an accredited educational program that includes the official seal of the school or college where the applicant completed the accredited educational program and signature of the registrar of the school or college;
2. Verification of passing a national examination for physical therapist assistants as evidenced by an original notice of examination results; and
3. Verification of passing a jurisprudence examination as evidenced by an original notice of examination

results.

**C.** In addition to the requirements in subsections (A) and (B), an applicant for a physical therapist assistant certificate by endorsement shall submit to the Board:
1. The name of the licensing or certifying agency of any jurisdiction in which the applicant is currently or has been previously licensed or certified; and
2. A verification of license or certificate, signed and dated by an official of the agency licensing or certifying the applicant, that includes the official seal of the licensing or certifying agency and all of the following:
   a. The name of the applicant;
   b. The license or certificate number and date of issuance;
   c. The current status of the license or certificate;
   d. The expiration date of the license or certificate;
   e. A statement of whether the applicant was ever denied a license or certificate by the agency and if so, an explanation; and
   f. A statement of whether any disciplinary action is pending or has ever been taken against the applicant and if so, an explanation.

**D.** The Board shall deny a certificate to an applicant who fails to meet the requirements of this Section or A.R.S. Title 32, Chapter 19. A person denied a certificate may request a hearing under A.R.S. Title 41, Chapter 6, Article 10.

**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 2988, effective August 12, 1999 (Supp. 99-3). Former Section R4-24-207 renumbered to R4-24-209; new Section R4-24-207 renumbered from R4-24-205 and amended by final rulemaking at 6 A.A.R. 2399, effective June 9, 2000 (Supp. 00-2). Amended by final rulemaking at 12 A.A.R. 2401, effective August 5, 2006 (Supp. 06-2). Amended by final rulemaking at 14 A.A.R. 376, effective March 8, 2008 (Supp. 08-1). Amended by final rulemaking at 14 A.A.R. 3418, effective October 4, 2008, (Supp. 08-3). Amended by final rulemaking at 25 A.A.R. 404, effective April 6, 2019 (Supp. 19-1).

**R4-24-208. License or Certificate Renewal; Address Change**

**A.** A licensee or certificate holder shall submit a renewal application packet to the Board on or before August 31 of an even-numbered year that includes:
1. The following information for the compliance period immediately preceding the renewal application:
   a. The licensee's or certificate holder's:
      i. Name;
      ii. Home, business, and e-mail addresses; and
      iii. Home and business telephone numbers;
   b. A statement of whether the licensee or certificate holder has been convicted of, pled guilty or no contest to, or entered into diversion in lieu of prosecution for any criminal offense in any jurisdiction of the United States or foreign country and if so, an explanation;
   c. A statement of whether the licensee or certificate holder has had an application for a professional or occupational license, certificate, or registration, other than a driver's license, denied, rejected, suspended, or revoked by any jurisdiction of the United States or foreign country and if so, an explanation;
   d. A statement of whether the licensee or certificate holder is currently or ever has been under investigation, suspension, or restriction by a professional licensing board in any jurisdiction of the United States or foreign country for any act that occurred in that jurisdiction that would be the subject of discipline under this Chapter and if so, an explanation;
   e. A statement of whether the licensee or certificate holder has been the subject of disciplinary action by a professional association or postsecondary educational institution;
   f. A statement of whether the licensee or certificate holder has had a malpractice judgment against the licensee or certificate holder or has a lawsuit currently pending for malpractice and if so, an explanation;
   g. A statement of whether the licensee or certificate holder is currently more than 30 days in arrears for payment required by a judgment and order for child support in Arizona or any other jurisdiction;
   h. A statement of whether the licensee or certificate holder has adhered to the recognized standards of ethics;
   i. A statement of whether the licensee or certificate holder has or has not committed any of the actions referenced in the definition of good moral character in R4-24-101;
   j. A statement of whether the licensee or certificate holder has been the subject of any criminal investigation by a federal, state, or local agency or had criminal charges filed against the licensee or

certificate holder;

k. If a licensee, a statement of whether the licensee has:
   i. Any impairment to the licensee's cognitive, communicative, or physical ability to engage in the practice of physical therapy with skill and safety and if so, an explanation;
   ii. Used alcohol, any illegal chemical substance, or prescription medicine, that in any way has impaired or limited the licensee's ability to practice physical therapy with skill and safety and if so, an explanation;
   iii. Been diagnosed as having or is being treated for bipolar disorder, schizophrenia, paranoia, or other psychotic disorder that in any way has impaired or limited the licensee's ability to practice physical therapy with skill and safety and if so, an explanation;

l. If a certificate holder, a statement of whether the certificate holder has:
   i. Any impairment to the certificate holder's cognitive, communicative, or physical ability to work as a physical therapist assistant with skill and safety and if so, an explanation;
   ii. Used alcohol, any illegal chemical substance or prescription medicine, that in any way has impaired or limited the certificate holder's ability to work as a physical therapist assistant with skill and safety and if so, an explanation;
   iii. Been diagnosed as having or is being treated for bipolar disorder, schizophrenia, paranoia, or other psychotic disorder that in any way has impaired or limited certificate holder's ability to work as a physical therapist assistant with skill and safety and if so, an explanation;

m. A statement of whether the licensee or certificate holder has ever violated A.R.S. § 32-2044(10);

n. If a licensee, a statement of whether the licensee has completed the 20 contact hours of continuing competence for the previous compliance period as required in R4-24-401;

o. If a certificate holder, a statement of whether the certificate holder has completed the 10 contact hours of continuing competence for the previous compliance period as required in R4-24-401;

p. If a licensee, a statement of whether the licensee has complied with the medical records protocol as required in A.R.S. § 32-3211; and

q. If a licensee, a statement of whether the licensee has completed the dry needling course content requirements in A.A.C. R4-24-313.

2. The signature of the applicant attesting to the truthfulness of the information provided by the licensee or certificate holder;

3. If the documentation previously submitted under R4-24-201(A)(3) or R4-24-207(A)(3) did not establish citizenship in the United States or was not a non-expiring work authorization, documentation specified under A.R.S. § 41-1080 that the presence of the licensee or certificate holder in the United States continues to be authorized under federal law; and

4. The fee required by the Board in R4-24-107.

**B.** Failure of the Board to inform a licensee or certificate holder of license or certificate expiration does not excuse the licensee's or certificate holder's non-renewal or untimely renewal.

**C.** The Board shall:

1. Approve or deny the application within the time frames in R4-24-209 and Table 1, and
2. Deny the application of an applicant who does not meet the requirements in A.R.S. § 32-2001 et seq. or this Chapter.

**D.** A licensee or certificate holder denied renewal of a license or certificate may request a hearing under A.R.S. Title 41, Chapter 6, Article 10.

**E.** A licensee or certificate holder shall send to the Board written notification of a change in any of the information provided under subsection (A)(1)(a) no later than 30 days after the date of the change.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2399, effective June 9, 2000 (Supp. 00-2). Amended by final rulemaking at 12 A.A.R. 2401, effective August 5, 2006 (Supp. 06-2). Amended by final rulemaking at 14 A.A.R. 376, effective March 8, 2008 (Supp. 08-1). Amended by final rulemaking at 14 A.A.R. 3418, effective October 4, 2008, (Supp. 08-3). Amended by final rulemaking at 18 A.A.R. 1858, effective July 10, 2012 (Supp. 12-3). Amended by final exempt rulemaking at 21 A.A.R. 924, effective July 1, 2015 (Supp. 15-2). Amended by final rulemaking at 25 A.A.R. 404, effective April 6, 2019 (Supp. 19-1).

**R4-24-209. Time-frames for Board Approvals**

**A.** The overall time-frame described in A.R.S. § 41-1072(2) for each type of approval granted by the Board is listed in Table 1. The applicant and the Executive Director of the Board may agree in writing to extend the substantive review time-frame and overall time-frame. The overall time-frame and the substantive review time-frame may not be extended by more than 25% of the overall time-frame.

**B.** The administrative completeness review time-frame described in A.R.S. § 41-1072(1) for each type of approval

granted by the Board is listed in Table 1.

1. The administrative completeness review time-frame begins:
   a. When the Board receives an application packet for an initial or renewal license or certificate or
   b. When the Board receives a request for approval of a facility.
2. If the application packet is incomplete, the Board shall send to the applicant a written notice specifying the missing document or incomplete information.
   a. The administrative completeness review time-frame and the overall time-frame are suspended from the postmark date of the notice until the date the Board receives a complete application packet from the applicant.
   b. An applicant who disagrees with the Board's statement of deficiencies may request a hearing as provided in A.R.S. § 32-2023.
3. If an application packet is complete, the Board shall send a written notice of administrative completeness to the applicant.
4. If the Board grants a license, certificate, or approval during the time provided to assess administrative completeness, the Board shall not issue a separate written notice of administrative completeness.

**C.** The substantive review time-frame described in A.R.S. § 41-1072(3) is listed in Table 1 and begins on the postmark date of the notice of administrative completeness.

1. During the substantive review time-frame, the Board may make one comprehensive written request for additional information or documentation. The time-frame for the Board to complete the substantive review is suspended from the postmark date of the comprehensive written request for additional information or documentation until the Board receives the additional information or documentation.
2. The Board shall send a written notice of approval of a license or certificate to an applicant who meets the qualifications in A.R.S. §§ 32-2001 through 32-2027 and this Chapter.
3. The Board shall send a written notice of denial to an applicant who fails to meet the qualifications in A.R.S. §§ 32-2001 through 32-2027 and these rules.

**D.** The Board shall consider an application withdrawn if within 360 days from the application submission date the applicant fails to:

1. Supply the missing information requested under subsection (B)(2) or (C)(1); or
2. Take the national physical therapist examination or national physical therapist assistant examination.

**E.** An applicant who does not wish an application withdrawn may request a denial in writing within 360 days from the application submission date.

**F.** If a time-frame's last day falls on a Saturday, Sunday, or an official state holiday, the Board shall consider the next business day the time-frame's last day.

**Historical Note**

New Section R4-24-209 renumbered from R4-24-207 and amended by final rulemaking at 6 A.A.R. 2399, effective June 9, 2000 (Supp. 00-2). Amended by final rulemaking at 12 A.A.R. 2401, effective August 5, 2006 (Supp. 06-2).

**Table 1. Time Frames (in days)**

| Type of Applicant | Type of Approval | Statutory Authority | Overall Time Frame | Administrative Completeness Time Frame | Substantive Review Time Frame |
|---|---|---|---|---|---|
| Original License (R4-24-201) or Registration as an Out-of-state Health Care Provider of Telehealth Services (A.R.S. § 36-3606) | License<br><br>Registration | A.R.S. §§ 32-2022; 32-2023; 36-3606 | 75 | 30 | 45 |
| License or Certificate by Endorsement (R4-24-201; R4-24-207) | License or certificate by Endorsement | A.R.S. § 32-2026 | 75 | 30 | 45 |
| Physical Therapist Assistant Certificate (R4-24-207) | Certificate | A.R.S. §§ 32-2022; 32-2023 | 75 | 30 | 45 |
| Foreign-educated (R4-24-203) | License | A.R.S. §§ 32-2022; 32-2025 | 75 | 45 | 30 |

| | | | | | |
|---|---|---|---|---|---|
| Renewal of license or certificate (R4-24-208) | License or certificate | A.R.S. § 32-2027 | 30 | 15 | 15 |
| Foreign-educated and Supervised Clinical Practice (R4-24-203, R4-24-204) | Interim Permit and Approval of Facility | A.R.S. § 32-2025 | 60 | 30 | 30 |
| Reinstatement (R4-24-202) | Reinstatement of License or Certificate | A.R.S. § 32-2028 | 30 | 15 | 15 |
| Initial Registration of a Business Entity | Registration | A.R.S. § 32-2030 | 30 | 15 | 15 |
| Renewal of Registration of a Business Entity | Registration | A.R.S. § 32-2030(D) | 15 | 7 | 8 |

**Historical Note**

Table 1 adopted by final rulemaking at 5 A.A.R. 2988, effective August 12, 1999 (Supp. 99-3). Amended by final rulemaking at 6 A.A.R. 2399, effective June 9, 2000 (Supp. 00-2). Amended by final rulemaking at 12 A.A.R. 2401, effective August 5, 2006 (Supp. 06-2). Amended by final rulemaking at 15 A.A.R. 1788, effective December 5, 2009 (Supp. 09-4). Amended by final rulemaking at 18 A.A.R. 841, effective May 11, 2012 (Supp. 12-1). Amended by final rulemaking at 25 A.A.R. 404, effective April 6, 2019 (Supp. 19-1). Amended by final exempt rulemaking at 27 A.A.R. 1105, with an immediate effective date of June 29, 2021 (Supp. 21-2).

**R4-24-210. Business Entity Registration; Display of Registration Certificate**

**A.** A business entity that offers physical therapy services to the public and is not exempt from registration under A.R.S. § 32-2030(H) shall separately register with the Board each location from which physical therapy services are offered in Arizona.

**B.** A business entity shall not offer physical therapy services at a location in Arizona until that location is registered with the Board.

**C.** To register with the Board an Arizona location at which physical therapy services are offered, a business entity shall submit to the Board an application packet that includes the following:

1. An application form, which is available from the Board and requires the following information:
   a. Name, primary address, and e-mail address of the business entity;
   b. Name, title, address, e-mail address, and telephone number of the manager of the location being registered;
   c. Name and business address of each officer or director of the business entity;
   d. Name and license number of each physical therapist who provides physical therapy services at the location being registered;
   e. Name and certificate number of each physical therapy assistant who works at the location being registered;
   f. Description of the physical therapy services offered at the location being registered;
   g. For the business entity, a statement of whether any state, territory, district, or country has ever:
      i. Refused to issue or renew a registration, permit, license, or other authorization;
      ii. Accepted surrender of a registration, permit, license, or other authorization in lieu of other disciplinary action; or
      iii. Suspended, revoked, cancelled, or taken other disciplinary action against a registration, permit, license, or other authorization; and
   h. Dated signature of an officer or director attesting that:
      i. The business entity has a written protocol that meets the standards in A.R.S. § 32-2030(F) for the secure storage, transfer, and access of the physical therapy records of the business entity's patients; and
      ii. The information provided is true and correct; and
2. The application fee required under R4-24-107(A)(3).

**D.** For each location registered, a business entity shall display, in a location accessible to public view, the:

1. Registration certificate and current renewal verification of the business entity,

2. License and current renewal verification of every physical therapist who provides physical therapy services at the location, and
3. Certificate and current renewal verification of every physical therapy assistant who works at the location.

**Historical Note**

New Section made by final rulemaking at 18 A.A.R. 841, effective May 11, 2012 (Supp. 12-1). Amended by final rulemaking at 25 A.A.R. 404, effective April 6, 2019 (Supp. 19-1).

**R4-24-211. Renewal of Business Entity Registration**

**A.** The registration of a business entity expires for each location registered on August 31 of every odd-numbered year.

**B.** A business entity shall separately renew the registration of each location from which the business entity offers physical therapy services in Arizona.

**C.** To renew the registration of an Arizona location from which physical therapy services are offered, a business entity shall submit to the Board an application form, which is available from the Board and requires the following information:

1. Name, primary address, and e-mail address of the business entity;
2. Name, title, address, e-mail address, and telephone number of the manager of the location being registered;
3. Name and business address of each officer or director of the business entity;
4. Name and license number of each physical therapist who provides physical therapy services at the location being registered;
5. Name and certificate number of each physical therapy assistant who works at the location being registered;
6. Description of the physical therapy services offered at the location being registered;
7. For the business entity, a statement of whether any state, territory, district, or country has ever:
   a. Refused to issue or renew a registration, permit, license, or other authorization;
   b. Accepted surrender of a registration, permit, license, or other authorization in lieu of other disciplinary action; or
   c. Suspended, revoked, cancelled, or taken other disciplinary action against a registration, permit, license, or other authorization;
8. Statement of whether the business entity complies with A.R.S. § 32-2030(F); and
9. Dated signature of an officer or director attesting that the information provided is true and correct.

**D.** A business entity that timely complies with subsection (C) may continue to offer physical therapy services from the location for which application is made until the Board grants or denies the renewed registration.

**E.** A business entity that fails to comply timely with subsection (C) shall immediately stop offering physical therapy services from the location for which application is not made. To be authorized to offer physical therapy services again from that location, the business entity shall comply with R4-24-210 and pay both the application and late fee specified in R4-24-107(A)(3).

**Historical Note**

New Section made by final rulemaking at 18 A.A.R. 841, effective May 11, 2012 (Supp. 12-1). Amended by final rulemaking at 25 A.A.R. 404, effective April 6, 2019 (Supp. 19-1).

**R4-24-212. Regulation of a Business Entity**

**A.** A business entity may submit a complaint under A.R.S. § 32-2030 or 32-2045(D) by complying with R4-24-305.

**B.** The Board shall investigate and act on a complaint, whether submitted by or against a business entity, in a manner consistent with R4-24-305, R4-24-306, R4-24-307, R4-24-308, and R4-24-309.

**C.** As provided under A.R.S. § 32-2047, a business entity that violates a requirement of A.R.S. § 32-2030 is subject to disciplinary action by the Board.

**Historical Note**

New Section made by final rulemaking at 18 A.A.R. 841, effective May 11, 2012 (Supp. 12-1).

**R4-24-213. Business Entity Participation**

A registered business entity may provide assistance and advice to the Board relating to the regulation of business

entities by:

1. Participating in the rulemaking process in a manner described under A.R.S. Title 41, Chapter 6, Article 3;
2. Submitting a petition under A.R.S. § 41-1033 and R4-24-502;
3. Submitting an appeal under A.R.S. § 41-1056.01 and R4-24-502;
4. Submitting a written criticism under R4-24-506; and
5. Attending a Board meeting.

**Historical Note**

New Section made by final rulemaking at 18 A.A.R. 841, effective May 11, 2012 (Supp. 12-1).

**Exhibit 1. Repealed**

**Historical Note**

Exhibit 1 adopted by final rulemaking at 6 A.A.R. 2399, effective June 9, 2000 (Supp. 00-2). Exhibit 1 repealed by final rulemaking at 12 A.A.R. 2401, effective August 5, 2006 (Supp. 06-2).

## ARTICLE 3. PRACTICE OF PHYSICAL THERAPY

**R4-24-301. Lawful Practice**

**A.** A physical therapist shall provide the referring practitioner, if any, with information from the patient assessment, diagnosis, and plan of care. Within one week after a patient is initially evaluated, the physical therapist shall provide this information:
   1. In writing and place a copy of the written notice in the patient's record, or
   2. Orally and place a contemporaneously made note of the verbal communication in the patient's record.

**B.** A physical therapist shall maintain the confidentiality of patient records as required by federal and state law.

**C.** On written request by a patient or the patient's health care decision maker, a physical therapist shall provide access to or a copy of the patient's medical or payment record in accordance with A.R.S. § 12-2293.

**D.** A physical therapist shall obtain a patient's consent before examination and treatment and document the consent in the patient's record.

**E.** A physical therapist shall respect a patient's right to make decisions regarding examination and the recommended plan of care including the patient's decision regarding consent, modification of the plan of care, or refusal of examination or treatment. To assist the patient in making these decisions, the physical therapist shall:
   1. Communicate to the patient:
      a. Examination findings,
      b. Evaluation of the findings, and
      c. Diagnosis and prognosis,
   2. Collaborate with the patient to establish the goals of treatment and the plan of care, and
   3. Inform the patient that the patient is free to select another physical therapy provider.

**Historical Note**

Adopted effective June 3, 1982 (Supp. 82-3). Former Section R4-24-301 repealed, new Section R4-24-301 adopted effective April 10, 1986 (Supp. 86-2). Amended effective March 14, 1996 (Supp. 96-1). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 2399, effective June 9, 2000 (Supp. 00-2). Amended by final rulemaking at 15 A.A.R. 1788, effective December 5, 2009 (Supp. 09-4).

**R4-24-302. Use of Titles**

**A.** As required under A.R.S. § 32-2042, a licensed physical therapist shall use the designation "P.T." immediately following the licensee's name or signature to denote licensure. A licensed physical therapist shall not use the designations "R.P.T." or "L.P.T." in connection with the physical therapist's name or place of business.

**B.** In addition to and immediately following the "P.T." designation, a physical therapist may list academic degrees earned and professional specialty certifications held.

**C.** As required under A.R.S. § 32-2042, a physical therapist assistant shall use the designation "P.T.A." immediately following the physical therapist assistant's name to denote certification.

**D.** As required under A.R.S. § 32-2042, a physical therapist or physical therapist assistant who is on retired status shall use "(retired)" or "(ret.)" immediately after the designation required under subsection (A) or (C), as applicable.

**Historical Note**

Adopted effective June 1, 1982 (Supp. 82-3). Former Section R4-24-302 repealed, new Section R4-24-302 adopted effective April 10, 1986 (Supp. 86-2). Amended effective March 14, 1996 (Supp. 96-1). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 2399, effective June 9, 2000 (Supp. 00-2). Amended by final rulemaking at 14 A.A.R. 3418, effective October 4, 2008 (Supp. 08-3). Amended by final

rulemaking at 18 A.A.R. 1858, effective July 10, 2012 (Supp. 12-3).

**R4-24-303. Patient Care Management**

**A.** A physical therapist is responsible for the scope of patient management in the practice of physical therapy as defined by A.R.S. § 32-2001. For each patient, the physical therapist shall:
1. Perform and document an initial evaluation;
2. Perform and document periodic reevaluation;
3. Document a discharge summary and the patient's response to the course of treatment at discharge;
4. Ensure that the patient's physical therapy record is complete and accurate; and
5. Ensure that services reported for billing, whether billed directly to the patient or through a third party, are accurate and consistent with information in the patient's physical therapy record.

**B.** On each date of service, a physical therapist shall:
1. Perform and document each therapeutic intervention that requires the expertise of a physical therapist; and
2. Determine, based on a patient's acuity and treatment plan, whether it is appropriate to use assistive personnel to perform a selected treatment intervention or physical therapy task for the patient.

**C.** A physical therapist shall not supervise more than three assistive personnel at any time. If a physical therapist supervises three assistive personnel, the physical therapist shall ensure that:
1. At least one of the assistive personnel is a physical therapist assistant,
2. No more than two of the assistive personnel are physical therapist assistants performing selected treatment interventions under general supervision, and
3. Assistive personnel other than a physical therapist assistant perform a physical therapy task only under the onsite supervision of a physical therapist.

**D.** Before delegating performance of a selected treatment intervention to a physical therapist assistant working under general supervision, the supervising physical therapist shall ensure that the physical therapist assistant:
1. Is certified under this Chapter, and
2. Has completed at least 2,000 hours of experience as a physical therapist assistant working with patients under onsite supervision.

**E.** Before delegating performance of a selected physical therapy intervention or physical therapy task to assistive personnel working under general or onsite supervision, the supervising physical therapist shall ensure that the assistive personnel is qualified by education or training to perform the selected physical therapy intervention or physical therapy task in a safe, effective, and efficient manner.

**F.** A physical therapist who provides general supervision for a physical therapist assistant shall:
1. Be licensed under this Chapter;
2. Respond to a communication from the physical therapist assistant within 15 minutes;
3. Go to the location at which and on the same day that the physical therapist assistant provides a selected treatment intervention if the physical therapist, after consultation with the physical therapist assistant, determines that going to the location is in the best interest of the patient; and
4. Perform a reevaluation and provide each therapeutic intervention for the patient that is done on the day of the reevaluation every fourth treatment visit or every 30 days, whichever occurs first.

**G.** A physical therapist assistant who provides a selected treatment intervention under general supervision shall document in the patient record:
1. The name and license number of the supervising physical therapist;
2. The name of the patient to whom the selected treatment intervention is provided;
3. The date on which the selected treatment intervention is provided;
4. The selected treatment intervention provided; and
5. Whether the physical therapist assistant consulted with the supervising physical therapist during the course of the selected treatment intervention and if so, the subject of the consultation and any decision made.

**Historical Note**

Adopted effective June 3, 1982 (Supp. 82-3). Repealed effective April 10, 1986 (Supp. 86-2). New Section R-24-303 adopted by final rulemaking at 6 A.A.R. 2399, effective June 9, 2000 (Supp. 00-2). Amended by final rulemaking at 13 A.A.R. 1640, effective June 30, 2007 (Supp. 07-2).

**R4-24-304. Adequate Patient Records**

**A.** A physical therapist shall ensure that a patient record meets the following minimum standards:
1. Each entry in the patient record is:
   a. Legible,
   b. Accurately dated, and
   c. Signed with the name and legal designation of the individual making the entry;
2. If an electronic signature is used to sign an entry, the electronic signature is secure;

3. The patient record contains sufficient information to:
    a. Identify the patient on each page of the patient record,
    b. Justify the therapeutic intervention,
    c. Document results of the therapeutic intervention,
    d. Indicate advice or cautionary warnings provided to the patient,
    e. Enable another physical therapist to assume the patient's care at any point in the course of therapeutic intervention, and
    f. Describe the patient's medical history.
4. If an individual other than a physical therapist or physical therapist assistant makes an entry into the patient record, the supervising physical therapist co-signs the entry;
5. If it is determined that erroneous information is entered into the patient record:
    a. The error is corrected in a manner that allows the erroneous information to remain legible, and
    b. The individual making the correction dates and initials the correct information; and
6. For each date of service there is an accurate record of the physical therapy services provided and billed.

**B.** Initial evaluation. As required by A.R.S. § 32-2043(F)(1), a physical therapist shall perform the initial evaluation of a patient. The physical therapist who performs an initial evaluation shall make an entry that meets the standards in subsection (A) in the patient record and document:
1. The patient's reason for seeking physical therapy services;
2. The patient's relevant medical diagnoses or conditions;
3. The patient's signs and symptoms;
4. Objective data from tests or measurements;
5. The physical therapist's interpretation of the results of the examination;
6. Clinical rationale for therapeutic intervention;
7. A plan of care that includes the proposed therapeutic intervention, measurable goals, and frequency and duration of therapeutic intervention; and
8. The patient's prognosis.

**C.** Therapeutic-intervention notes. For each date that a therapeutic intervention is provided to a patient, the individual who provides the therapeutic intervention shall make an entry that meets the standards in subsection (A) in the patient record and document:
1. The patient's subjective report of current status or response to therapeutic intervention;
2. The therapeutic intervention provided or appropriately supervised;
3. Objective data from tests or measures, if collected;
4. Instructions provided to the patient, if any; and
5. Any change in the plan of care required under subsection (B)(7).

**D.** Re-evaluation. As required by A.R.S. § 32-2043(F)(2), a physical therapist shall perform a re-evaluation when a patient fails to progress as expected, progresses sufficiently to warrant a change in the plan of care, or in accordance with R4-24-303(F)(4). A physical therapist who performs a re-evaluation shall make an entry that meets the standards in subsection (A) in the patient record and document:
1. The patient's subjective report of current status or response to therapeutic intervention;
2. Assessment of the patient's progress;
3. The patient's current functional status;
4. Objective data from tests or measures, if collected;
5. Rationale for continuing therapeutic intervention; and
6. Any change in the plan of care required under subsection (B)(7).

**E.** Discharge summary. As required by A.R.S. § 32-2043(F)(3), a physical therapist shall document the conclusion of care in a patient's record regardless of the reason that care is concluded.
1. If care is provided in an acute-care hospital, the entry made under subsection (C) on the last date that a therapeutic intervention is provided constitutes documentation of the conclusion of care if the entry is made by a physical therapist.
2. If care is not provided in an acute-care hospital or if a physical therapist does not make the entry under subsection (C) on the last date that a therapeutic intervention is provided, a physical therapist shall make an entry that meets the standards in subsection (A) in the patient record and document:
    a. The date on which therapeutic intervention terminated;
    b. The reason that therapeutic intervention terminated;
    c. Inclusive dates for the episode of care being terminated;
    d. The total number of days on which therapeutic intervention was provided during the episode of care;
    e. The patient's current functional status;
    f. The patient's progress toward achieving the goals in the plan of care required under subsection (B)(7); and

g. The recommended discharge plan.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2399, effective June 9, 2000 (Supp. 00-2). R4-24-304 renumbered to R4-24-305; new Section R4-24-304 made by final rulemaking at 14 A.A.R. 3418, effective October 4, 2008 (Supp. 08-3).

**R4-24-305. Complaints and Investigations**

**A.** A complainant shall ensure that a complaint filed with the Board is about:
1. An individual licensed or certified under this Chapter; or
2. An individual believed to be engaged in unlawful practice as described in A.R.S. § 32-2048.

**B.** If the Board determines under A.R.S. § 32-2045(A)(2) that there is reason to believe that an individual may have violated A.R.S. Title 32, Chapter 19, or this Chapter, the Board shall prepare a complaint and serve the complaint as described in subsection (D)(2).

**C.** Complaint requirements. A complainant shall:
1. Submit the complaint to the Board in writing; and
2. Provide the following information:
   a. Name of licensee, certificate holder, or other individual who is the subject of complaint;
   b. Name and address of complainant;
   c. Nature of the complaint;
   d. Details of the complaint with pertinent dates and activities;
   e. Whether the complainant has contacted any other organization regarding the complaint; and
   f. Whether complainant has contacted the licensee, certificate holder, or other individual concerning the complaint, and if so, the response, if any.

**D.** Within 90 days after receiving a complaint, the Board shall ensure that the complaint is reviewed to determine whether the complaint is within the Board's jurisdiction, and:
1. If the complaint is not within the Board's jurisdiction, dismiss the complaint and provide written notice of the dismissal to the complainant; or
2. If the complaint is within the Board's jurisdiction, serve a copy of the complaint on the individual complained against and provide the individual complained against with 30 days to respond and admit, deny, or further explain each allegation in the complaint.

**E.** If a complaint is within the Board's jurisdiction, the Board shall ensure that an investigation regarding the matters alleged in the complaint is conducted.

**F.** After expiration of the 30 days provided under subsection (D)(2), the Board shall review the complaint, response, and investigation results and take action as prescribed under A.R.S. §§ 32-2045(B) or 32-2046.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2399, effective June 9, 2000 (Supp. 00-2). R4-24-305 renumbered to R4-24-306; new Section R4-24-305 renumbered from R4-24-304 and amended by final rulemaking at 14 A.A.R. 3418, effective October 4, 2008 (Supp. 08-3).

**R4-24-306. Hearings**

**A.** To facilitate investigation of a complaint, the Board may conduct an informal hearing. The Board shall send written notice of an informal hearing to the individual who is the subject of the complaint, by personal service or certified mail, return receipt requested, at least 30 days before the informal hearing.

**B.** The Board shall ensure that the written notice of informal hearing contains the following information:
1. The time, date, and place of the informal hearing;
2. An explanation of the informal nature of the proceedings;
3. The individual's right to appear with or without legal counsel;
4. A statement of the allegations and issues involved with a citation to relevant statutes and rules;
5. The individual's right to a formal hearing under A.R.S. Title 41, Chapter 6, Article 10 instead of the informal hearing;
6. The licensee's or certificate holder's right to request under A.R.S. § 32-3206(A) a copy of information the Board will use in making its determination; and
7. Notice that the Board may take disciplinary action as a result of the informal hearing if it finds the individual violated A.R.S. Title 32, Chapter 19, or this Chapter;

**C.** The Board shall ensure that an informal hearing proceeds as follows:
1. Introduction of the respondent and, if applicable, legal counsel for the respondent;
2. Introduction of the Board members, staff, and Assistant Attorney General present;
3. Swearing in of the respondent and witnesses;
4. Brief summary of the allegations and purpose of the informal hearing;

5. Optional opening comment by the respondent;
6. Questioning of the respondent by the Board and questioning of witnesses by the Board and the respondent;
7. Optional additional comments by the respondent; and
8. Deliberation and deciding the case by the Board.

**Historical Note**

New Section R4-24-306 renumbered from R4-24-107 and amended by final rulemaking at 6 A.A.R. 2399, effective June 9, 2000 (Supp. 00-2). R4-24-306 renumbered to R4-24-307; new Section R4-24-306 renumbered from R4-24-305 and amended by final rulemaking at 14 A.A.R. 3418, effective October 4, 2008 (Supp. 08-3).

**R4-24-307. Subpoenas**

**A.** A party desiring issuance of a subpoena to compel the appearance of a witness or the production of documents or other evidence at a hearing shall file a written request with the Board that includes the following information:
1. The caption and docket number of the matter;
2. A list or description of any documents or other evidence sought;
3. The name and business address of the custodian of the documents or other evidence sought;
4. The name and business or residential address of all persons to be subpoenaed;
5. A brief statement of the reason the evidence is relevant to the matter;
6. The date, time, and place to appear or produce documents or other evidence; and
7. The name, address, and telephone number of the party, or the party's attorney, requesting the subpoena.

**B.** The party requesting a subpoena be issued shall ensure that the subpoena is served in the manner prescribed by the Arizona Rules of Civil Procedure and pay all costs involved in serving the subpoena.

**C.** A party or the person served with a subpoena who objects to the subpoena, in whole or in part, may file a written objection with the Board within five days after service of the subpoena or at the beginning of the hearing if the subpoena is served fewer than five days before the hearing.

**D.** The Board shall quash or modify a subpoena if:
1. It is unreasonable or oppressive,
2. It requests information that is confidential or privileged, or
3. The desired testimony or evidence can be obtained by an alternative method.

**Historical Note**

New Section R4-24-307 renumbered from R4-24-109 and amended by final rulemaking at 6 A.A.R. 2399, effective June 9, 2000 (Supp. 00-2). R4-24-307 renumbered to R4-24-308; new Section R4-24-307 renumbered from R4-24-306 and amended by final rulemaking at 14 A.A.R. 3418, effective October 4, 2008 (Supp. 08-3).

**R4-24-308. Rehearing or Review of Board Decisions**

**A.** The Board shall provide for a rehearing and review of its decisions under A.R.S. Title 41, Chapter 6, Article 10.

**B.** Except as provided in subsection (I), a party is required to file a motion for rehearing or review of a decision of the Board to exhaust the party's administrative remedies.

**C.** A party may amend a motion for rehearing or review at any time before the Board rules on the motion.

**D.** The Board 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 Board or any order or abuse of discretion that deprived the moving party of a fair hearing;
2. Misconduct of the Board, its staff, 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 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; and
7. The findings of fact or decision is not justified by the evidence or is contrary to law.

**E.** The Board may affirm or modify a decision or grant a rehearing or review to any or all of the parties on all or part of the issues for any of the reasons listed in subsection (D). An order modifying a decision or granting a rehearing or review shall specify with particularity the grounds for the order. If a rehearing or review is granted, the rehearing or review shall cover only the matters specified in the order.

**F.** No later than 30 days after making a decision and after giving the parties notice and an opportunity to be heard, the Board may order a rehearing or review on its own initiative for any of the reasons listed in subsection (D). The Board may grant a motion for rehearing or review, timely served, for a reason not stated in the motion. An order granting a rehearing or review shall specify with particularity the grounds on which the rehearing or review is

granted.

**G.** When a motion for rehearing or review is based upon affidavits, the affidavits shall be served with the motion. An opposing party may, within 15 days after service, serve opposing affidavits. This period may be extended for not more than 20 days by the Board for good cause as described in subsection (I) or by written stipulation of the parties. The Board may permit reply affidavits.

**H.** If a rehearing is granted, the Board shall hold the rehearing within 60 days after the issue date on the order granting the rehearing.

**I.** If the Board makes a specific finding that immediate effectiveness of a particular decision is necessary for preservation of the public health, safety, or welfare and that rehearing or review is impracticable, unnecessary, or contrary to public interest, the decision may be issued as a final decision without an opportunity for rehearing or review. If an application for judicial review of the decision is made, it shall be made under A.R.S. § 12-901 et seq.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2399, effective June 9, 2000 (Supp. 00-2). R4-24-308 renumbered to R4-24-309; new Section R4-24-308 renumbered from R4-24-307 and amended by final rulemaking at 14 A.A.R. 3418, effective October 4, 2008 (Supp. 08-3). Amended by final rulemaking at 18 A.A.R. 1858, effective July 10, 2012 (Supp. 12-3).

**R4-24-309. Disciplinary Actions**

**A.** As required by A.R.S. § 39-121.01, a record of Board disciplinary actions, including a decree of censure, is a public record open to public inspection.

**B.** If the Board decides to restrict a license or certificate, the Board shall ensure that the restriction and any required corrective action address the conduct that led to the restriction and protect the public. If the Board decides to require that an individual with a restricted license or certificate be supervised during the period of restriction, the Board shall appoint an unrestricted licensee to provide the supervision.

**C.** A physical therapist or physical therapist assistant whose license or certificate is suspended, revoked, or voluntarily surrendered shall return the license or certificate to the Board within 10 days after receipt of the Board's final order.

**D.** At the end of a period of license or certificate restriction, the Board shall terminate the restriction only if the licensee or certificate holder submits to the Board evidence of having completed all required corrective actions and complied with all terms of the restriction. If the Board believes it will help the Board determine whether to terminate a restriction, the licensee or certificate holder shall appear before the Board.

**E.** An applicant who had a previous license or certificate revoked by the Board shall appear before the Board before the Board acts on the application.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2399, effective June 9, 2000 (Supp. 00-2). R4-24-309 renumbered to R4-24-310; new Section R4-24-309 renumbered from R4-24-308 and amended by final rulemaking at 14 A.A.R. 3418, effective October 4, 2008 (Supp. 08-3).

**R4-24-310. Substance Abuse Recovery Program**

**A.** Under A.R.S. § 32-2044(8), practicing as a physical therapist or working as a physical therapist assistant while mentally or physically impaired is grounds for disciplinary action.

**B.** The Board shall allow an impaired licensee or certificate holder to enter into a substance abuse recovery program rather than conduct a disciplinary proceeding if:

1. The impaired licensee or certificate holder is qualified under A.R.S. § 32-2050(2),
2. The Board believes the proposed program will assist the impaired licensee or certificate holder to recover, and
3. The impaired licensee or certificate holder enters into the written agreement required under A.R.S. § 32-2050(3) and (4).

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2399, effective June 9, 2000 (Supp. 00-2). Section expired under A.R.S. § 41-1056(E) at 10 A.A.R. 3897, effective July 31, 2004 (Supp. 04-3). New Section R4-24-310 renumbered from R4-24-309 and amended by final rulemaking at 14 A.A.R. 3418, effective October 4, 2008 (Supp. 08-3).

**R4-24-311. Display of License; Disclosure**

**A.** A licensee or certificate holder shall display a copy or provide documentation of the license or certificate and current renewal verification as specified in A.R.S. § 32-2051(G).

**B.** Upon request, a licensee or certificate holder shall inform a member of the public how to file a complaint by

providing the address and telephone number of the Board office and a statement that a complaint against a licensee or certificate holder should be directed to the Board.

**C.** Before conducting an evaluation or initiating physical therapy, a licensee shall disclose to a patient when a referring practitioner is deriving direct or indirect compensation from the referral. The licensee shall ensure that the disclosure is in writing and states "Under A.R.S. § 32-2051(C), I am required by law to inform you in writing that your referring physician [or specify if different from a physician] derives either direct or indirect compensation related to your physical therapy."

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2399, effective June 9, 2000 (Supp. 00-2). Amended by final rulemaking at 14 A.A.R. 3418, effective October 4, 2008 (Supp. 08-3).

**R4-24-312. Mandatory Reporting Requirement**

**A.** As required by A.R.S. § 32-3208, an applicant, licensee, or certificate holder who is charged with a misdemeanor involving conduct that may affect patient safety or a felony shall provide written notice of the charge to the Board within 10 working days after the charge is filed.

**B.** An applicant, licensee, or certificate holder may request a list of reportable misdemeanors from the Board.

**Historical Note**

New Section made by final rulemaking at 14 A.A.R. 3418, effective October 4, 2008 (Supp. 08-3). Amended by final rulemaking at 18 A.A.R. 1858, effective July 10, 2012 (Supp. 12-3).

**R4-24-313. Professional Standards of Care and Training and Education Qualifications for Delivery of Dry Needling Skilled Intervention**

**A.** Effective July 1, 2015 and in accordance with A.R.S. § 32-2044(25), a physical therapist shall meet the qualifications established in subsection (C) before providing the skilled intervention "dry needling", as defined in A.R.S. § 32-2001(4).

**B.** A physical therapist offering to provide or providing "dry needling" intervention shall provide documented proof of compliance with the qualifications listed in subsection (C) to the board within 30 days of completion of the course content in subsection (C) or within 30 days of initial licensure as a physical therapist in Arizona.

**C.** Course content that meets the training and education qualifications for "dry needling" shall contain all of the following:

1. The course content shall be approved by one or more of the following entities prior to the course(s) being completed by the physical therapist.
   a. Commission On Accreditation In Physical Therapy Education,
   b. American Physical Therapy Association,
   c. State Chapters Of The American Physical Therapy Association,
   d. Specialty Groups Of The American Physical Therapy Association, or
   e. The Federation of State Boards Of Physical Therapy.
2. The course content shall include the following components of education and training:
   a. Sterile needle procedures to include one of the following standards:
      i. The U.S. Centers For Disease Control And Prevention, or
      ii. The U.S. Occupational Safety And Health Administration
   b. Anatomical Review,
   c. Blood Borne Pathogens
   d. Contraindications and indications for "dry needling",
3. The course content required in subsection (C) of this Section shall include, but is not limited to, passing of both a written examination and practical examination before completion of the course content. Practice application course content and examinations shall be done in person to meet the qualifications of subsection (C).
4. The course content required in subsection (C) of this subsection shall total a minimum of 24 contact hours of education.

**D.** The standard of care for the intervention "dry needling" includes, but is not limited to the following:

1. "Dry needling" cannot be delegated to any assistive personnel.
2. Consent for treatment for the intervention "dry needling" is the same as required under R4-24-301.
3. Documentation of the intervention "dry needling" shall be done in accordance with R4-24-304.

**Historical Note**

New Section made by exempt rulemaking at 21 A.A.R. 924, effective July 1, 2015 (Supp. 15-2).

**Appendix A. Repealed**

**Historical Note**
Appendix A adopted effective June 3, 1982 (Supp. 82-3). Amended effective April 10, 1986 (Supp. 86-2). Repealed effective May 7, 1990 (Supp. 90-2)

**Appendix B. Repealed**

**Historical Note**
Appendix B adopted effective June 3, 1982 (Supp. 82-3). Amended effective April 10, 1986 (Supp. 86-2). Repealed effective May 7, 1990 (Supp. 90-2).

## ARTICLE 4. CONTINUING COMPETENCE

### R4-24-401. Continuing Competence Requirements for Renewal

**A.** Except as provided in subsection (G), a licensed physical therapist shall earn 20 contact hours of continuing competence for each compliance period to be eligible for license renewal.
1. The licensee shall earn at least 10 contact hours from Category A continuing competence activities. No more than five of the required contact hours from Category A may be obtained from nonclinical course work.
2. No change
3. If the licensee's initial license is for one year or less, the licensee shall earn 10 contact hours from Category A continuing competence activities during the initial compliance period. No more than five of the required contact hours from Category A may be obtained from nonclinical course work.

**B.** Except as provided in subsection (G), a certified physical therapist assistant shall earn 10 contact hours of continuing competence for each compliance period to be eligible for certificate renewal.
1. The certificate holder shall earn at least six contact hours from Category A continuing competence activities. No more than three of the required contact hours from Category A may be obtained from nonclinical course work.
2. No more than four contact hours may be earned by the certificate holder during any compliance period from Categories B and C continuing competence activities. No more than two contact hours from Categories B and C may be obtained from nonclinical course work.
3. If the certificate holder's initial certificate is for one year or less, the certificate holder shall earn six contact hours from Category A continuing competence activities during the initial compliance period. No more than three of the required contact hours from Category A may be obtained from nonclinical course work.

**C.** A licensee or certificate holder shall not receive contact hour credit for repetitions of the same activity.

**D.** The continuing competence compliance period for a licensee or certificate holder begins on September 1 following the issuance of an initial or renewal license or certificate and ends on August 31 of even-numbered years.

**E.** A licensee or certificate holder shall not carry over contact hours from one compliance period to another.

**F.** An applicant for renewal shall submit a signed statement to the Board with the renewal application stating whether continuing competence requirements have been fulfilled for the current compliance period.

**G.** The Board may, at its discretion, waive continuing competence requirements on an individual basis for reasons of extreme hardship such as illness, disability, active service in the military, or other extraordinary circumstance as determined by the Board. A licensee or certificate holder who seeks a waiver of the continuing competence requirements shall provide to the Board, in writing, the specific reasons for requesting the waiver and additional information the Board may request in support of the waiver.

**H.** A licensee or certificate holder is subject to Board auditing for continuing competence compliance.
1. Selection for audit shall be random and notice of audit sent within 60 calendar days following the renewal deadline.
2. Within 30 days of receipt of a notice of audit, a licensee or certificate holder shall submit evidence to the Board that shows compliance with the requirements of continuing competence. Documentation of a continuing competence activity shall include:
   a. The date, place, course title, sponsor, schedule, and presenter;
   b. The number of contact hours received for the activity; and
   c. Proof of completion, such as an abstract, certificate of attendance, sign-in log, or other certification of completion.

**I.** A licensee or certificate holder shall retain evidence of participation in a continuing competence activity for two compliance periods after participation.

**J.** The Board shall notify a licensee or certificate holder who has been audited whether the licensee or certificate holder is in compliance with continuing competence requirements. The Board shall provide the notice electronically or by certified mail within 30 working days following the determination by the Board.

**K.** The Board shall provide six months from the date of the notice under subsection (J) for a licensee or certificate holder found not in compliance with continuing competence requirements to satisfy the continuing competence requirements. A licensee or certificate holder may request a hearing to contest the Board's decision under A.R.S. Title 41, Chapter 6, Article 10.

**L.** Penalties for failure to comply with continuing competence requirements may be imposed by the Board under A.R.S § 32-2047 following a hearing conducted under A.R.S. Title 41, Chapter 6, Article 10.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2399, effective June 9, 2000 (Supp. 00-2). Amended by final rulemaking at 25 A.A.R. 404, effective April 6, 2019 (Supp. 19-1).

**R4-24-402. Continuing Competence Activities**

**A.** Category A continuing competence activities shall be approved by:
1. An accredited medical, health care, or physical therapy program;
2. A state or national medical, health care, or physical therapy association, or a component of the association; or
3. A national medical, health care, or physical therapy specialty society.

**B.** Category A continuing competence activities include:
1. A physical therapy continuing education course designed to provide necessary understanding of current research, clinical skills, administration, or education related to the practice of physical therapy. Calculation of contact hours is determined by dividing the total minutes of instruction by 60. Breaks shall not be included as part of instructional time;
2. Coursework towards granting or renewal of a physical therapy clinical specialty certification approved by the Board. Each 60 minutes of instruction equals one contact hour;
3. Coursework in a physical therapy clinical residency program. Each 60 minutes of instruction equals one contact hour; and
4. Coursework in a postgraduate physical therapy education from an accredited college or university. Each 60 minutes of instruction equals one contact hour.

**C.** Category B continuing competence activities include:
1. Study group: Maximum five contact hours for physical therapists and two contact hours for physical therapist assistants.
   a. A study group is a structured meeting designed for the study of a clinical physical therapy topic dealing with current research, clinical skills, procedures, or treatment related to the practice of physical therapy.
   b. No change
2. Self instruction: Maximum five contact hours for physical therapists and two contact hours for physical therapist assistants.
   a. Self instruction is a structured course of study relating to one clinical physical therapy topic dealing with current research, clinical skills, procedures, or treatment related to the practice of physical therapy. Self instruction may be directed by a correspondence course, video, internet, or satellite program.
   b. Each 60 minutes of self instruction equals one contact hour.
3. Inservice education: Maximum five contact hours for physical therapists and two contact hours for physical therapist assistants.
   a. Inservice education is attendance at a presentation pertaining to current research, clinical skills, procedures, or treatment related to the practice of physical therapy or relating to patient welfare or safety, including CPR certification.
   b. Each 60 minutes of inservice education equals one contact hour.

**D.** Category C modes of continuing competence include:
1. Physical therapy practice management coursework: Maximum of five contact hours for physical therapists and two contact hours for physical therapist assistants.
   a. Physical therapy practice management course work is course work concerning physical therapy administration, professional responsibility, ethical obligations, or legal requirements applicable to physical therapy practice settings.
   b. If the course is graded, a licensee or certificate holder shall receive a "pass" in a pass/fail course or a minimum of a C in a graded course to receive credit.
   c. Each 60 minutes of practice management coursework equals one contact hour.
2. Teaching or lecturing: Maximum five contact hours for physical therapists and two contact hours for physical therapist assistants.
   a. Teaching or lecturing is the presentation of an original educational program dealing with current research, clinical skills, procedures, treatment, or practice management related to the practice of physical therapy principally for health care professionals. Credit may be earned for teaching when the

presentation is accompanied by written materials prepared, augmented, or updated by the presenter including course objectives and program content.
b. One 60 minute instructional period equals 2.5 contact hours.
c. Credit shall be given only once for a presentation within a compliance period.

3. Publication: Maximum five contact hours for physical therapists and two contact hours for physical therapist assistants.
   a. Publication includes writing for professional publication, platform, or poster presentation abstracts that have direct application to the practice of physical therapy. Credit may be earned for publication of material that is a minimum of 1500 words in length and published by a recognized third-party publisher of physical therapy material.
   b. Each article published in a refereed journal, book chapter, or book equals five contact hours for physical therapists and two contact hours for physical therapist assistants. Articles published in non-refereed journals, magazines, newsletters, or periodicals equal two contact hours for physical therapists and one contact hour for physical therapist assistants.
4. Clinical instruction: Maximum five contact hours for physical therapists and two contact hours for physical therapist assistants.
   a. Clinical instruction involves assisting a student physical therapist or physical therapist assistant or a physical therapist resident or fellow acquire clinical skills required of a physical therapist or physical therapist assistant.
   b. An individual to whom clinical instruction is provided shall be enrolled in:
      i. A physical therapist or physical therapist assistant program accredited by the Commission on Accreditation of Physical Therapy Education; or
      ii. A physical therapist residency or fellowship program approved by the American Physical Therapy Association.
   c. The program referenced under subsection (D)(4)(b) shall provide the enrolled individual with proof of completing the hours of clinical instruction.
   d. Each 120 hours of clinical instruction equals one contact hour.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2399, effective June 9, 2000 (Supp. 00-2). Amended by final rulemaking at 25 A.A.R. 404, effective April 6, 2019 (Supp. 19-1).

**R4-24-403. Activities Not Eligible for Continuing Competence Credit**

A licensee or certificate holder shall not receive continuing competence credit for the following activities:

1. A regularly scheduled educational opportunity provided within an institution, such as rounds or case conferences;
2. A staff meeting;
3. A publication or presentation by the licensee or certificate holder to a lay or nonprofessional group; and
4. Routine teaching of personnel, students, or staff as part of a job requirement.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2399, effective June 9, 2000 (Supp. 00-2). Amended by final rulemaking at 25 A.A.R. 404, effective April 6, 2019 (Supp. 19-1).

## ARTICLE 5. PUBLIC PARTICIPATION PROCEDURES

**R4-24-501. Expired**

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2399, effective June 9, 2000 (Supp. 00-2). Section expired under A.R.S. § 41-1056(E) at 10 A.A.R. 3897, effective July 31, 2004 (Supp. 04-3).

**R4-24-502. Petition for Rulemaking; Review of Agency Practice or Substantive Policy Statement; Objection to a Section Based Upon Economic, Small Business, or Consumer Impact**

A petition to adopt, amend, or repeal a Section or to review an existing agency practice or substantive policy statement that the petitioner alleges to constitute a rule under A.R.S. § 41-1033 or to object to a Section in accordance with A.R.S. § 41-1056.01 shall be filed with the Board as prescribed in this Section. Each petition shall contain:

1. The name and current address of the petitioner;
2. For adoption of a new Section, specific language of the proposed new Section;
3. For amendment of a current Section, citation for the applicable Arizona Administrative Code Section number and heading of the current Section and the specific language of the current Section with language to be

deleted stricken and new language underlined;

4. For the repeal of a current Section, citation for the applicable A.A.C. Section number and heading of the Section proposed for repeal;
5. The reasons a Section should be adopted, amended, or repealed, and if in reference to an existing Section, why the Section is inadequate, unreasonable, unduly burdensome, or otherwise not acceptable. The petitioner may provide additional supporting information, including:
   a. Statistical data or other justification, with clear reference to an attached exhibit;
   b. Identification of what person or segment of the public would be affected and how the person or segment would be affected; and
   c. If the petitioner is a public agency, a summary of a relevant issue raised in any public hearing, or as a written comment offered by the public;
6. For a review of an existing Board practice or substantive policy statement alleged to constitute a rule, the reason the existing Board practice or substantive policy statement constitutes a rule and the proposed action requested of the Board;
7. For an objection to a Section based upon the economic, small business, or consumer impact, evidence that:
   a. The actual economic, small business, or consumer impact significantly exceeded the impact estimated in the economic, small business, and consumer impact statement submitted during the making of the Section;
   b. The actual economic, small business, or consumer impact was not estimated in the economic, small business, and consumer impact statement submitted during the making of the Section and that actual impact imposes a significant burden on a person subject to the Section; or
   c. The agency did not select the alternative that imposes the least burden and costs to persons regulated by the Section, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective; and
8. The signature of the person submitting the petition.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2399, effective June 9, 2000 (Supp. 00-2). Amended by final rulemaking at 18 A.A.R. 1858, effective July 10, 2012 (Supp. 12-3).

**R4-24-503. Expired**

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2399, effective June 9, 2000 (Supp. 00-2). Section expired under A.R.S. § 41-1056(E) at 10 A.A.R. 3897, effective July 31, 2004 (Supp. 04-3).

**R4-24-504. Expired**

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2399, effective June 9, 2000 (Supp. 00-2). Section expired under A.R.S. § 41-1056(E) at 10 A.A.R. 3897, effective July 31, 2004 (Supp. 04-3).

**R4-24-505. Expired**

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2399, effective June 9, 2000 (Supp. 00-2). Section expired under A.R.S. § 41-1056(E) at 10 A.A.R. 3897, effective July 31, 2004 (Supp. 04-3).

**R4-24-506. Written Criticism of Rule**

**A.** Any person may file a written criticism of an existing rule with the Board.

**B.** The criticism shall clearly identify the rule and specify why the existing rule is inadequate, unduly burdensome, unreasonable, or otherwise improper.

**C.** The Board shall acknowledge receipt of a criticism within 15 days and shall place the criticism in the official record for review by the Board under A.R.S. § 41-1056.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2399, effective June 9, 2000 (Supp. 00-2).

As of October 28, 2024

32-2001. Definitions

In this chapter, unless the context otherwise requires:

1. "Assistive personnel":

(a) Includes:

(i) Physical therapist assistants.

(ii) Physical therapy aides.

(iii) Other assistive personnel who are trained or educated health care providers and who are not physical therapist assistants or physical therapy aides but who perform specific designated tasks related to physical therapy under the supervision of a physical therapist. At the discretion of the supervising physical therapist, and if properly credentialed and not prohibited by any other law, other assistive personnel may be identified by the title specific to their training or education.

(b) Does not include either:

(i) Personnel assisting other health care professionals licensed pursuant to this title in performing delegable treatment responsibilities within their scope of practice.

(ii) Student physical therapists and student physical therapist assistants.

2. "Board" means the board of physical therapy.

3. "Business entity" means a business organization that has an ownership that includes any persons who are not licensed or certified to provide physical therapy services in this state, that offers to the public professional services regulated by the board and that is established pursuant to the laws of any state or foreign country.

4. "Dry needling" means a skilled intervention performed by a physical therapist that uses a thin filiform needle to penetrate the skin and stimulate underlying neural, muscular and connective tissues to evaluate and manage neuromusculoskeletal conditions, pain and movement impairments.

5. "General supervision":

(a) Means that the supervising physical therapist is on call and is readily available via telecommunications when the physical therapist assistant is providing treatment interventions.

(b) Includes supervision provided through telehealth as defined in section 36-3601.

6. "Interim permit" means a permit issued by the board that allows a person to practice as a physical therapist in this state or to work as a physical therapist assistant for a specific period of time and under conditions prescribed by the board before that person is issued a license.

7. "Manual therapy techniques" means a broad group of passive interventions in which physical therapists use their hands to administer skilled movements designed to modulate pain, increase joint range of motion, reduce or eliminate soft tissue swelling, inflammation or restriction, induce relaxation, improve contractile and noncontractile tissue extensibility, and improve pulmonary function. These interventions involve a variety of techniques, such as the application of graded forces.

8. "On-site supervision" means that the supervising physical therapist is on-site and is present in the facility or on the campus where assistive personnel, a holder of an interim permit, a student physical therapist or a student physical therapist assistant is performing services, is immediately available to assist

the person being supervised in the services being performed and maintains continued involvement in appropriate aspects of each treatment session in which a component of treatment is delegated.

9. "Physical therapist" means a person who is licensed pursuant to this chapter.

10. "Physical therapist assistant" means a person who meets the requirements of this chapter for licensure and who performs physical therapy procedures according to the physical therapy plan of care of the supervising physical therapist.

11. "Physical therapy" means the care and services provided by or under the direction and supervision of a physical therapist who is licensed pursuant to this chapter.

12. "Physical therapy aide" means a person who is trained under the direction of a physical therapist and who performs designated and supervised routine physical therapy tasks.

13. "Practice of physical therapy" means:

(a) Examining, evaluating and testing persons who have mechanical, physiological and developmental impairments, functional limitations and disabilities or other health and movement related conditions in order to determine a diagnosis, a prognosis and a plan of therapeutic intervention and to assess the ongoing effects of intervention, including ordering imaging.

(b) Alleviating impairments and functional limitations by managing, designing, implementing and modifying therapeutic interventions including:

(i) Therapeutic exercise.

(ii) Functional training in self-care and in home, community or work reintegration.

(iii) Manual therapy techniques.

(iv) Therapeutic massage.

(v) Assistive and adaptive orthotic, prosthetic, protective and supportive devices and equipment.

(vi) Pulmonary hygiene.

(vii) Debridement and wound care.

(viii) Physical agents or modalities.

(ix) Mechanical and electrotherapeutic modalities.

(x) Patient related instruction.

(c) Reducing the risk of injury, impairments, functional limitations and disability by means that include promoting and maintaining a person's fitness, health and quality of life.

(d) Engaging in administration, consultation, education and research.

14. "Restricted license" means a license on which the board places restrictions or conditions, or both, as to the scope of practice, place of practice, supervision of practice, duration of licensed status or type or condition of a patient to whom the licensee may provide services.

15. "Restricted registration" means a registration on which the board places any restrictions as the result of disciplinary action.

16. "Student physical therapist" means a person who is enrolled in a doctor of physical therapy program that is accredited by or has candidate status by the commission on accreditation in physical therapy education.

17. "Student physical therapist assistant" means a person who is enrolled in an academic physical therapist assistant program that is accredited by or has candidate status by the commission on accreditation in physical therapy education.

32-2002. Board of physical therapy; membership; appointment; qualifications; terms; removal; reimbursement; immunity

A. The board of physical therapy is established consisting of members appointed by the governor pursuant to section 38-211. Four members shall be physical therapists who are residents of this state, possess an unrestricted license to practice physical therapy in this state and have been practicing in this state for at least five years before their appointment. One member shall be a physical therapist assistant who is a resident of this state, possesses an unrestricted license issued pursuant to this chapter and has been performing selected interventions in this state for at least five years before the person's appointment. The governor shall also appoint two public members who are residents of this state and who are not affiliated with, and do not have a financial interest in, any health care profession but who have an interest in consumer rights.

B. Board members serve staggered four-year terms. Board members shall not serve for more than two successive four-year terms or for more than ten consecutive years. By approval of a majority of the board, a member's service may extend at the completion of a four-year term until a new member is appointed or the current member is reappointed.

C. If requested by the board the governor may remove a board member for misconduct, incompetence or neglect of duty.

D. Board members are eligible for reimbursement of expenses pursuant to title 38, chapter 4, article 2 to cover necessary expenses for attending each board meeting or for representing the board in an official board approved activity.

E. A board member who acts within the scope of board duties, without malice and in the reasonable belief that the person's action is warranted by law is immune from civil liability.

32-2003. Board; powers and duties

A. The board shall:

1. Evaluate the qualifications of applicants for licensure.

2. Provide for national examinations for physical therapists and physical therapist assistants and adopt passing scores for these examinations.

3. Issue licenses and permits to persons who meet the requirements of this chapter.

4. Regulate the practice of physical therapy by interpreting and enforcing this chapter.

5. Adopt and revise rules to enforce this chapter.

6. Meet at least once each quarter in compliance with the open meeting requirements of title 38, chapter 3, article 3.1 and keep an official record of these meetings.

7. Establish the mechanisms for assessing continuing professional competence of physical therapists to engage in the practice of physical therapy and the competence of physical therapist assistants to work in the field of physical therapy.

8. At its first regular meeting after the start of each calendar year, elect officers from among its members and as necessary to accomplish board business.

9. Provide for the timely orientation and training of new professional and public appointees to the board regarding board licensing and disciplinary procedures, this chapter, board rules and board procedures.

10. Maintain a current list of all persons regulated under this chapter. This list shall include the person's name, current business and residential addresses, telephone numbers and license number.

11. Subject to title 41, chapter 4, article 4, employ necessary personnel to carry out the administrative work of the board. Board personnel are eligible to receive compensation pursuant to section 38-611.

12. Enter into contracts for services necessary for adequate enforcement of this chapter.

13. Report final disciplinary action taken against a licensee to a national disciplinary database recognized by the board.

14. Publish, at least annually, final disciplinary actions taken against a licensee.

15. Publish, at least annually, board rulings, opinions and interpretations of statutes or rules in order to guide persons who are regulated pursuant to this chapter.

16. Not later than December 31 of each year, submit a written report of its actions and proceedings to the governor.

17. Establish and collect fees.

18. Provide information to the public regarding the board, its processes and consumer rights.

B. The board may establish a committee or committees to assist it in carrying out its duties for a time prescribed by the board. The board may require a committee appointed pursuant to this subsection to make regular reports to the board.

32-2004. Board of physical therapy fund

(L24, Ch. 222, sec. 29. Eff. until 7/1/28)

A. The board of physical therapy fund is established. The board shall administer the fund.

B. Except as provided in section 32-2048, pursuant to sections 35-146 and 35-147, the board shall deposit fifteen percent of all monies collected under this chapter in the state general fund and deposit the remaining eighty-five percent in the board of physical therapy fund.

C. Monies deposited in the physical therapy fund are subject to section 35-143.01.

32-2004. Board of physical therapy fund

(L24, Ch. 222, sec. 30. Eff. 7/1/28)

A. The board of physical therapy fund is established. The board shall administer the fund.

B. Except as provided in section 32-2048, pursuant to sections 35-146 and 35-147, the board shall deposit ten percent of all monies collected under this chapter in the state general fund and deposit the remaining ninety percent in the board of physical therapy fund.

C. Monies deposited in the physical therapy fund are subject to section 35-143.01.

32-2021. Persons and activities not required to be licensed

A. This chapter does not restrict a person who is licensed under any other law of this state from engaging in the profession or practice for which that person is licensed if that person does not claim to be a physical therapist or a provider of physical therapy.

B. This chapter does not restrict the use of physical agents, modalities or devices by persons qualified under this title to personally render or delegate the use of this treatment.

C. The following persons are exempt from the licensure requirements of this chapter:

1. A person in a professional education program approved by the board who is satisfying supervised clinical education requirements related to the person's physical therapist or physical therapist assistant education while under the on-site supervision of a physical therapist.

2. A physical therapist who is practicing or a physical therapist assistant who is working in the United States armed services, United States public health service or veterans administration pursuant to federal regulations for state licensure of health care providers.

3. A physical therapist who is licensed in another jurisdiction of the United States or a foreign educated physical therapist credentialed in another country if that person is performing physical therapy in connection with teaching or participating in an educational seminar for not more than sixty days in any twelve month period.

4. A physical therapist who is licensed in another jurisdiction of the United States or who is credentialed in another country if that person by contract or employment is providing physical therapy to persons who are affiliated with or employed by established athletic teams, athletic organizations or performing arts companies temporarily practicing, competing or performing in this state for not more than sixty days in a calendar year.

5. A physical therapist who is licensed in another jurisdiction of the United States and who enters this state to provide physical therapy to victims of a declared local, state or national disaster or emergency. This exemption applies for the duration of the declared emergency but not longer than sixty days. The physical therapist must also register with the board before practicing.

32-2022. Qualifications for licensure; fingerprint clearance card

A. An applicant for a license as a physical therapist who has been educated in the United States shall:

1. Complete the application process.

2. Be a graduate of a professional physical therapy education program that is accredited by a national accreditation agency approved by the board.

3. Have successfully passed the national examination approved by the board.

4. Have successfully passed a jurisprudence examination that tests the applicant's knowledge of board statutes and rules.

5. Obtain a valid fingerprint clearance card issued pursuant to section 41-1758.03.

B. An applicant for a license as a physical therapist who has been educated outside of the United States shall:

1. Complete the application process.

2. Provide satisfactory evidence that the applicant's education is substantially equivalent to the requirements of physical therapists educated in accredited educational programs as determined by the board. If the board determines that a foreign-educated applicant's education is not substantially equivalent, it may require the person to complete additional coursework before it proceeds with the application process. It is not necessary that coursework completed by the applicant be identical in all respects to that required by an education program in the United States for an entry-level physical therapy degree, but all required content areas must be evident as required by board rules. Deficiencies may occur only in coursework and not in essential areas of professional education and shall not be of a magnitude that would cause the education to be deemed below entry-level preparation for practice in this state.

3. Provide written proof of legal authorization to practice as a physical therapist without limitation in the country where the professional education occurred. The board may waive this requirement on receipt of written proof that the applicant cannot demonstrate legal authorization based on the citizenship requirements of the country where the professional education occurred.

4. Provide proof of legal authorization to reside and seek employment in the United States or its territories.

5. Have passed the board-approved English proficiency examinations if the applicant's native language is not English.

6. Have participated in an interim supervised clinical practice period before licensure as approved by the board or shall have already met this requirement to the board's satisfaction by virtue of the applicant's clinical practice in another jurisdiction of the United States.

7. Have successfully passed the national examination approved by the board.

8. Have successfully passed a jurisprudence examination that tests the applicant's knowledge of board statutes and rules.

9. Obtain a valid fingerprint clearance card issued pursuant to section 41-1758.03.

C. Notwithstanding the requirements of subsection B of this section, if the foreign-educated physical therapist applicant is a graduate of an accredited educational program as determined by the board, the board may waive the requirements of subsection B, paragraphs 2 and 6 of this section.

D. An applicant for licensure as a physical therapist assistant shall meet the following requirements:

1. Complete the application process.

2. Be a graduate of a physical therapist assistant education program accredited by an agency approved by the board.

3. Have successfully passed the national examination approved by the board.

4. Have successfully passed a jurisprudence examination that tests the applicant's knowledge of board statutes and rules.

5. Obtain a valid fingerprint clearance card issued pursuant to section 41-1758.03.

E. For the purposes of subsection B, paragraph 2 of this section, "substantially equivalent" means that the applicant provides documentation satisfactory to the board that:

1. The applicant graduated from a physical therapist education program that prepares the applicant to engage without restriction in the practice of physical therapy.

2. The applicant's school of physical therapy education is recognized by its own ministry of education. The board may waive this requirement for good cause shown.

3. The applicant has undergone a credentials evaluation as directed by the board that determines that the applicant has met uniform criteria for educational requirements pursuant to board rules.

4. The applicant has completed any additional education required by the board.

### 32-2023. Application; denial; hearing

A. An applicant for licensure shall file a completed application as required by the board. The applicant shall include the application fee prescribed in section 32-2029.

B. The board may deny a license to an applicant or a licensee for any of the following:

1. Knowingly making a false statement of fact required to be revealed in the initial application, renewal application or reinstatement application for a license.

2. Committing fraud in the procurement of a license.

3. Committing a felony, whether or not involving moral turpitude, or a misdemeanor involving moral turpitude. In either case conviction by a court of competent jurisdiction is conclusive evidence of the commission.

4. Attempting to engage in conduct that subverts or undermines the integrity of the examination or the examination process, including using in any manner recalled or memorized examination questions from or with a person or entity, failing to comply with all test center security procedures, communicating or attempting to communicate with other examinees during the examination or copying or sharing examination questions or portions of questions.

5. Engaging in any conduct that would be considered a violation of section 32-2044.

C. If the board denies an application because of deficiencies or reasons in an application or for a reason prescribed in subsection B of this section, the board must inform an applicant of those specific deficiencies. On receipt of a written request by an applicant who disagrees with the board's decision to deny an application, the board shall hold a hearing pursuant to title 41, chapter 6, article 10.

### 32-2024. Examinations

A. The board shall prescribe examinations for licensure and determine the passing score.

B. An applicant may take the examinations for licensure if either of the following applies:

1. The applicant has met all of the requirements of section 32-2022, subsection A, paragraphs 1 and 2 and has paid the fees prescribed by this chapter.

2. The applicant has:

(a) Met all of the requirements of section 32-2022, subsection A, paragraph 1.

(b) Paid the fees prescribed by this chapter.

(c) Submitted with the application a letter on the official letterhead of the accredited educational institution where the applicant is completing an accredited educational program that includes the signature

of the program director, the department chairperson or a similarly authorized person of the university or college and that states that:

(i) The applicant is a candidate for a degree as a physical therapist at the next scheduled graduation date.

(ii) The date the national examination for licensure is to be taken by the applicant is the one nearest to and before the applicant's expected graduation date and is not more than one hundred twenty days before the date of the applicant's expected graduation date.

(iii) The applicant meets any other established requirements of the accredited educational program, if applicable.

C. An applicant may take the examinations for licensure if the applicant has met all of the requirements of section 32-2022, subsection B, paragraphs 1 through 5 and has paid the fees prescribed by this chapter.

D. An applicant may take the examinations for licensure if either of the following applies:

1. The applicant has met all of the requirements of section 32-2022, subsection D, paragraphs 1 and 2 and has paid the fees prescribed by this chapter.

2. The applicant has:

(a) Met all of the requirements of section 32-2022, subsection D, paragraph 1.

(b) Paid the fees prescribed by this chapter.

(c) Submitted with the application a letter on the official letterhead of the accredited educational institution where the applicant is completing an accredited educational program that includes the signature of the program director, the department chairperson or a similarly authorized person of the university, school or college and that states that:

(i) The applicant is a candidate for a certificate or degree as a physical therapist assistant at the next scheduled graduation date.

(ii) The date the national examination for licensure is to be taken by the applicant is the one nearest to and before the applicant's expected graduation date and is not more than one hundred twenty days before the date of the applicant's expected graduation date.

(iii) The applicant meets any other established requirements of the accredited educational program, if applicable.

E. An applicant for licensure who does not pass the national examination after the first attempt may retake the examination one additional time within six months after the first failure without reapplication for licensure. An applicant may retake the examinations as prescribed by the organization that administers the examinations.

F. The board shall not issue a license to a person who passes an examination through fraud.

G. The national examination for licensure as a physical therapist shall test entry-level competence related to physical therapy theory, examination and evaluation, diagnosis, prognosis, treatment intervention, prevention and consultation. The national examination for licensure as a physical therapist assistant shall test for requisite knowledge and skills in the technical application of physical therapy services.

32-2025. Interim permits

A. If a foreign educated applicant satisfies the requirements of section 32-2022, subsection B, before the board issues a license it shall issue an interim permit to the applicant for the purpose of participating in a

supervised clinical practice period. An applicant who fails the national examination is not eligible for an interim permit until the applicant passes the examination.

B. If an applicant who has been educated in the United States satisfies the requirements of section 32-2022, subsection A or D, but the board determines that there is evidence that the applicant lacks the competence to practice as a physical therapist or work as a physical therapist assistant, the board shall issue an interim permit to the applicant to allow that person to participate in a supervised clinical practice.

C. The board may issue an interim permit for at least ninety days but not more than six months.

D. An interim permit holder shall complete, to the satisfaction of the board, a period of clinical practice in a facility approved by the board and under the continuous and on-site supervision of a physical therapist who holds an unrestricted license issued pursuant to this chapter.

E. At any time during an interim supervised clinical practice period, the board may revoke an interim permit because of the permit holder's incompetence or for a violation of this chapter. Pursuant to title 41, chapter 6, article 10, the board shall hold a hearing on request of a permit holder whose permit is revoked.

32-2026. Licensure by endorsement

A. The board shall issue a license to a physical therapist who has a valid unrestricted license from another jurisdiction of the United States if that person, when granted the license, met all of the requirements prescribed in section 32-2022, subsection A or B and any applicable board rules.

B. The board shall issue a license to a physical therapist assistant who has a valid unrestricted license or certificate from another jurisdiction of the United States if that person, when granted the license or certificate, met all of the requirements prescribed in section 32-2022, subsection D and any applicable board rules.

32-2027. License renewal; suspension

A. A licensee shall renew the license pursuant to board rules. Except as provided in section 32-4301, a licensee who fails to renew the license on or before its expiration date shall not practice as a physical therapist or work as a physical therapist assistant in this state.

B. The board shall administratively suspend a license if the licensee does not submit a complete application for renewal and pay the renewal fee pursuant to board rules.

32-2028. Reinstatement of license

A. The board may reinstate a license that it suspended pursuant to section 32-2027, subsection B on payment of a renewal fee and reinstatement fee and completion of the application process as prescribed by the board.

B. If a person's license has been suspended pursuant to section 32-2027, subsection B for more than three consecutive years, the license expires and that person shall reapply for a license pursuant to section 32-2022 or 32-2026 and pay all applicable fees. The person must also demonstrate to the board's satisfaction competency by satisfying one or more of the following as prescribed by the board:

1. Practicing for a specified time under an interim permit.

2. Completing remedial courses.

3. Completing continuing competence requirements for the period of the lapsed license.

4. Passing an examination.

## 32-2029. Fees

The board shall establish and collect fees of not more than:

1. $300 for an application for an original license. This fee is nonrefundable.

2. $300 for a certificate of renewal of a license.

3. $300 for an application for reinstatement of licensure.

4. $50 for each duplicate license.

## 32-2030. Business entities; patient records; protocol; exemptions; rules

A. A business entity shall not offer physical therapy services pursuant to this chapter unless:

1. The business entity is registered with the board pursuant to this section.

2. The physical therapy services are conducted by a licensee pursuant to this chapter.

B. The business entity must file a registration application on a form prescribed by the board. The application shall include:

1. A description of the entity's services offered to the public.

2. The name of the manager who is authorized and who is responsible for managing the physical therapy services offered at each office.

3. The names and addresses of the officers and directors of the business entity.

4. A registration fee prescribed by the board by rule.

C. A business entity must file a separate registration application and pay a fee for each branch office in this state.

D. A registration expires on August 31 of odd-numbered years in accordance with the physical therapist professional licensing schedule. A business entity that wishes to renew a registration must submit an application for renewal as prescribed by the board on a biennial basis on a form prescribed by the board before the expiration date. An entity that fails to renew the registration before the expiration date is subject to a late fee as prescribed by the board by rule.

E. The business entity must notify the board in writing within thirty days after any change:

1. In the business entity's name, address or telephone number.

2. In the officers or directors of the business entity.

3. In the name of the manager who is authorized and who is responsible for managing the physical therapy services in any facility.

F. The business entity must establish and implement a written protocol for the secure storage, transfer and access of the physical therapy records of the business entity's patients. This protocol must include, at a minimum, procedures for:

1. Notifying patients of the future locations of their records if the business entity terminates or sells the practice.

2. Disposing of unclaimed physical therapy records.

3. The timely response to requests by patients for copies of their records.

G. The business entity must notify the board within thirty days after the dissolution of any registered business entity or the closing or relocation of any facility and must disclose to the board the entity's procedure by which its patients may obtain their records.

H. This section does not apply to:

1. A sole proprietorship or partnership that consists exclusively of persons who are licensed by a health profession regulatory board as defined in section 32-3201.

2. A facility regulated by the federal government or a state, district or territory of the United States.

3. An administrator or executor of the estate of a deceased physical therapist or a person who is legally authorized to act for a physical therapist who has been adjudicated to be mentally incompetent for not more than one year from the date the board receives notice of the physical therapist's death or incapacitation.

4. A health care institution that is licensed pursuant to title 36.

I. A facility that offers physical therapy services to the public by persons licensed under this chapter must be registered by the board unless the facility is any of the following:

1. Owned by a licensee.

2. Regulated by the federal government or a state, district or territory of the United States.

J. Except for issues relating to insurance coding and billing that require the name, signature and license number of the physical therapist providing treatment, this section does not:

1. Authorize a licensee in the course of providing physical therapy services for an entity registered pursuant to this section to disregard or interfere with a policy or practice established by the entity for the operation and management of the business.

2. Authorize a business entity registered pursuant to this section to establish or enforce a business policy or practice that may interfere with the professional judgment of the licensee in providing physical therapy services for the business entity or may compromise a licensee's ability to comply with this chapter.

K. The board shall adopt rules that provide a method for the board to receive the assistance and advice of business entities registered pursuant to this section in all matters relating to the regulation of business entities.

L. The board shall adopt rules necessary to enforce this chapter in the practice settings of its licensees and registrants if the practice settings are not regulated by the department of health services.

32-2031. Retired status; reinstatement to active status

A. The board shall place a licensee on retired status and waive the renewal fee and continuing competence requirements if a licensee presents a written affidavit to the board that the licensee has retired from the practice of physical therapy or from work as a physical therapist assistant, is in good standing with the board and has paid all fees required by this chapter before the waiver.

B. During the period of waiver pursuant to subsection A of this section, the retired licensee may not engage in the practice of physical therapy or work as a physical therapist assistant.

C. A retired licensee must renew the retired license every two years by verifying the person's contact information and using the same schedule for renewal of an active license. The board may not charge a fee for renewal of a retired license.

D. If a licensee fails to renew the retired status of the license on or before its expiration date, the retired license expires. If the person seeks to reinstate the person's retired status after the retired license has expired, the person must make a request for retired status pursuant to subsection A of this section.

E. The board may reinstate a retired licensee to active practice or work on payment of the renewal fee and presentation of evidence satisfactory to the board that the retired licensee is professionally able to engage in the practice of physical therapy or work as a physical therapist assistant and still possesses the professional knowledge required. If the retired licensee has held a retired license for more than three consecutive years, the person must also demonstrate competency to the board's satisfaction by satisfying one or more of the following as prescribed by the board:

1. Practicing or working for a specified time under an interim permit.

2. Completing remedial courses.

3. Completing continuing competence requirements for the period of the retired license.

4. Passing an examination as prescribed by the board.

32-2032. Inactive status; reinstatement to active status

A. The board shall place a licensee on inactive status and waive the continuing competence requirements if a licensee presents a written affidavit to the board that the licensee is not currently engaged in the practice of physical therapy or working as a physical therapist assistant in this state, is in good standing with the board and has paid all fees required by this chapter.

B. During the period of inactive status pursuant to subsection A of this section, the inactive licensee may not engage in the practice of physical therapy or work as a physical therapist assistant in this state.

C. A licensee on inactive status must renew the inactive license every two years using the same schedule for renewal of an active license. The board by rule shall prescribe the fee for the renewal of an inactive license.

D. An inactive licensee who applies to the board for reinstatement to active licensure within three years after the date the board issues a notice of inactive status must submit the full annual renewal fee and prove to the board's satisfaction that the licensee has met continuing competence requirements as prescribed by the board by rule.

E. An inactive licensee who applies to the board for reinstatement to active licensure and who has not been actively engaged in the practice of physical therapy or working as a physical therapist assistant in this state for more than three consecutive years after the date the board issues a notice of inactive status must submit the full annual renewal fee and demonstrate competency to the board's satisfaction by satisfying one or more of the following as prescribed by the board:

1. Practicing or working for a specified time under an interim permit.

2. Completing remedial courses.

3. Completing continuing competence requirements for the period of the inactive license.

4. Passing an examination.

32-2041. Lawful practice

A. A physical therapist shall refer a client to appropriate health care practitioners if the physical therapist has reasonable cause to believe symptoms or conditions are present that require services beyond the scope of practice or if physical therapy is contraindicated.

B. A physical therapist shall adhere to the recognized standards of ethics of the physical therapy profession and as further established by rule.

C. A physical therapist licensed under this chapter shall practice physical therapy as prescribed by this chapter.

32-2041.01. Musculoskeletal imaging; ordering; requirements; reporting

A. A physical therapist may order musculoskeletal imaging consisting of plain film radiographs. The imaging shall be performed by a health care practitioner who is authorized pursuant to this title to perform the imaging and shall be interpreted by a physician who is licensed pursuant to chapter 13, 14 or 17 of this title and trained in radiology interpretation.

B. A physical therapist shall report results for all imaging tests the physical therapist orders pursuant to subsection A of this section to the patient's health care practitioner of record or the referring health care practitioner, if designated, within seven days after receiving the results. If the patient does not have a health care practitioner of record, the physical therapist shall refer the patient to an appropriate health care practitioner if the physical therapist has reasonable cause to believe that any symptoms or conditions are present that may require services beyond the physical therapist's scope of practice.

32-2042. Use of titles; restrictions; violation; classification

A. A physical therapist shall use the letters "PT" in connection with the physical therapist's name or place of business to denote licensure under this chapter. A physical therapist on retired status shall use "(retired)" or "(ret.)" after the letters "PT" in connection with the physical therapist's name or place of business to denote the physical therapist's retired status pursuant to section 32-2031.

B. A physical therapist assistant shall use the letters "PTA" in connection with that person's name to denote licensure pursuant to this chapter. A physical therapist assistant on retired status shall use "(retired)" or "(ret.)" after the letters "PTA" in connection with the physical therapist assistant's name or place of business to denote the physical therapist assistant's retired status pursuant to section 32-2031.

C. A person or business entity or its employees, agents or representatives shall not use in connection with that person's name or the name or activity of the business the words "physical therapy", "physical therapist", "physiotherapy", "physiotherapist" or "registered physical therapist", the letters "PT", "LPT", "RPT", "MPT", "DScPT" or "DPT" or any other words, abbreviations or insignia indicating or implying directly or indirectly that physical therapy is provided or supplied, including the billing of services labeled as physical therapy, unless these services are provided by or under the direction of a physical therapist who is licensed pursuant to this chapter. A person or entity that violates this subsection is guilty of a class 1 misdemeanor.

D. A person or business entity shall not advertise, bill or otherwise promote a person who is not licensed pursuant to this chapter as being a physical therapist or offering physical therapy services.

E. A person shall not use the title "physical therapist assistant" or use the letters "PTA" in connection with that person's name or any other words, abbreviations or insignia indicating or implying directly or indirectly that the person is a physical therapist assistant unless that person is licensed as a physical therapist assistant pursuant to this chapter. A person who violates this subsection is guilty of a class 1 misdemeanor.

32-2043. Supervision; patient care management

A. A physical therapist is responsible for patient care given by assistive personnel, student physical therapists and student physical therapist assistants under the physical therapist's supervision. A physical therapist may delegate to assistive personnel and supervise selected acts, tasks or procedures that fall

within the scope of physical therapy practice but that do not exceed the education or training of the assistive personnel.

B. A physical therapist assistant who is licensed pursuant to this chapter may provide physical therapy services under the general supervision of a physical therapist who is licensed pursuant to this chapter.

C. A physical therapy aide and other assistive personnel shall perform designated routine tasks only under the on-site supervision of a licensed physical therapist.

D. A licensed physical therapist must provide on-site supervision of an interim permit holder.

E. A physical therapist student and a physical therapist assistant student must practice under the on-site supervision of a licensed physical therapist.

F. A physical therapist is responsible for managing all aspects of the physical therapy care of each patient. A physical therapist must provide:

1. The initial evaluation of and documentation for a patient.

2. Periodic reevaluation of and documentation for a patient.

3. The documented discharge of a patient, including the response to therapeutic intervention at the time of discharge.

G. A physical therapist must verify the qualifications of physical therapist assistants and other assistive personnel under the physical therapist's direction and supervision.

H. For each patient on each date of service, a physical therapist must provide and document all of the therapeutic intervention that requires the expertise of a physical therapist to ensure the delivery of care that is safe, effective and efficient. Documentation for each date of service must be as prescribed by the board by rule.

I. A physical therapist assistant must document care provided but may do so without the cosignature of the supervising physical therapist if the physical therapist complies with the requirements of subsections G and H of this section.

J. A physical therapist's responsibility for patient care management includes accurate documentation and billing of the services provided.

32-2044. Grounds for disciplinary action

The following are grounds for disciplinary action:

1. Violating this chapter, board rules or a written board order.

2. Practicing or offering to practice beyond the scope of the practice of physical therapy.

3. Obtaining or attempting to obtain a license by fraud or misrepresentation.

4. Engaging in the performance of substandard care by a physical therapist due to a deliberate or negligent act or failure to act regardless of whether actual injury to the patient is established.

5. Engaging in the performance of substandard care by a physical therapist assistant, including exceeding the authority to perform tasks selected and delegated by the supervising licensee regardless of whether actual injury to the patient is established.

6. Failing to supervise assistive personnel, physical therapy students or interim permit holders in accordance with this chapter and rules adopted pursuant to this chapter.

7. Conviction of a felony, whether or not involving moral turpitude, or a misdemeanor involving moral turpitude. In either case conviction by a court of competent jurisdiction is conclusive evidence of the commission and the board may take disciplinary action when the time for appeal has lapsed, when the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order. For the purposes of this paragraph, "conviction" means a plea or verdict of guilty or a conviction following a plea of nolo contendere.

8. Practicing as a physical therapist or working as a physical therapist assistant when physical or mental abilities are impaired by disease or trauma, by the use of controlled substances or other habit-forming drugs, chemicals or alcohol or by other causes.

9. Having had a license or certificate revoked or suspended or other disciplinary action taken or an application for licensure or certification refused, revoked or suspended by the proper authorities of another state, territory or country.

10. Engaging in sexual misconduct. For the purposes of this paragraph, "sexual misconduct" includes:

(a) Engaging in or soliciting sexual relationships, whether consensual or nonconsensual, while a provider-patient relationship exists.

(b) Making sexual advances, requesting sexual favors or engaging in other verbal conduct or physical contact of a sexual nature with patients.

(c) Intentionally viewing a completely or partially disrobed patient in the course of treatment if the viewing is not related to patient diagnosis or treatment under current practice standards.

11. Directly or indirectly requesting, receiving or participating in the dividing, transferring, assigning, rebating or refunding of an unearned fee or profiting by means of any credit or other valuable consideration such as an unearned commission, discount or gratuity in connection with the furnishing of physical therapy services. This paragraph does not prohibit the members of any regularly and properly organized business entity recognized by law and composed of physical therapists from dividing fees received for professional services among themselves as they determine necessary to defray their joint operating expense.

12. Failing to adhere to the recognized standards of ethics of the physical therapy profession.

13. Charging unreasonable or fraudulent fees for services performed or not performed.

14. Making misleading, deceptive, untrue or fraudulent representations in violation of this chapter or in the practice of the profession.

15. Having been adjudged mentally incompetent by a court of competent jurisdiction.

16. Aiding or abetting a person who is not licensed in this state and who directly or indirectly performs activities requiring a license.

17. Failing to report to the board any direct knowledge of an unprofessional, incompetent or illegal act that appears to be in violation of this chapter or board rules.

18. Interfering with an investigation or disciplinary proceeding by failing to cooperate, by wilful misrepresentation of facts or by the use of threats or harassment against any patient or witness to prevent the patient or witness from providing evidence in a disciplinary proceeding or any legal action.

19. Failing to maintain patient confidentiality without prior written consent of the patient or unless otherwise required by law.

20. Failing to maintain adequate patient records. For the purposes of this paragraph, "adequate patient records" means legible records that comply with board rules and that contain at a minimum an evaluation of objective findings, a diagnosis, the plan of care, the treatment record, a discharge summary and sufficient information to identify the patient.

21. Promoting an unnecessary device, treatment intervention or service for the financial gain of the practitioner or of a third party.

22. Providing treatment intervention unwarranted by the condition of the patient or treatment beyond the point of reasonable benefit.

23. Failing to report to the board a name change or a change in business or home address within thirty days after that change.

24. Failing to complete continuing competence requirements as established by the board by rule.

25. Failing to demonstrate professional standards of care and training and education qualifications, as established by the board by rule, in the performance of dry needling when provided as a therapeutic modality.

32-2045. Investigative powers; emergency action

A. To enforce this chapter the board may:

1. Receive complaints filed against licensees or certificate holders and conduct a timely investigation.

2. Conduct an investigation at any time and on its own initiative without receipt of a written complaint if the board has reason to believe that there may be a violation of this chapter.

3. Issue subpoenas to compel the attendance of any witness or the production of any documentation relative to a case.

4. Take emergency action ordering the summary suspension of a license or certificate or the restriction of the licensee's practice or certificate holder's employment pending proceedings by the board.

5. Require a licensee or certificate holder to be examined in order to determine the licensee's or certificate holder's mental, physical or professional competence to practice or work in the field of physical therapy.

B. If the board finds that the information received in a complaint or an investigation is not of sufficient seriousness to merit direct action against the licensee or certificate holder it may take either of the following actions:

1. Dismiss the complaint if the board believes the information or complaint is without merit.

2. Issue an advisory letter. The issuance of an advisory letter is a nondisciplinary action to notify a licensee or certificate holder that, while there is not sufficient evidence to merit disciplinary action, the board believes that the licensee or certificate holder should be educated about the requirements of this chapter and board rules. An advisory letter is a public document and may be used in future disciplinary actions against a licensee or certificate holder.

3. Issue a nondisciplinary order requiring the licensee or certificate holder to complete a prescribed number of hours of continuing education in an area or areas prescribed by the board to provide the licensee or certificate holder with the necessary understanding of current standards, skills, procedures or treatment.

C. The board shall notify a licensee or certificate holder of a complaint and the nature of the complaint within ninety days after receiving the complaint.

D. Any person may submit a complaint regarding any licensee, certificate holder or other person potentially in violation of this chapter. Confidentiality shall be maintained subject to law.

E. The board shall keep confidential all information relating to the receipt and investigation of complaints filed against licensees and certificate holders until the information becomes public record or as required by law.

32-2046. Informal and formal hearings

A. The board may request an informal hearing with a licensee or any unlicensed person in order to further its investigation or to resolve a complaint.

B. If at an informal hearing the board finds a violation of this chapter has occurred that constitutes grounds for disciplinary action, it may take any disciplinary actions prescribed in section 32-2047, paragraph 1, 2 or 6, except that a civil penalty may not exceed $500.

C. If the results of an informal hearing indicate that suspension, revocation or a civil penalty might be in order, the board shall notify the subject of the investigation of the time and place for a hearing pursuant to title 41, chapter 6, article 10.

D. In lieu of or in addition to an informal hearing as provided in subsection A of this section, the board may serve on a licensee a summons and complaint setting forth the grounds for disciplinary action and notice of a hearing to be held before the board at least thirty days after the date of the notice. The notice shall state the time and place of the hearing.

E. A motion for rehearing or review of the board's decision in a disciplinary action shall be filed pursuant to title 41, chapter 6, article 10.

F. The service of a summons and complaint and the service of a subpoena shall be as provided for service in civil cases.

G. If a person disobeys a subpoena, the board may petition the superior court for an order requiring appearance or the production of documents.

32-2047. Disciplinary actions; penalties

On proof that any grounds prescribed in section 32-2044 have been violated or that any requirements prescribed in section 32-2030 have been violated, the board may take the following disciplinary actions singly or in combination:

1. Issue a decree of censure.

2. Restrict a license or registration. The board may require a licensee or registrant to report regularly to the board on matters related to the grounds for the restricted license or registration.

3. Suspend a license or registration for a period prescribed by the board.

4. Revoke a license or registration.

5. Refuse to issue or renew a license or registration.

6. Impose a civil penalty of at least $250 but not more than $10,000 for each violation of this chapter. In addition, the board may assess and collect the reasonable costs incurred in a disciplinary hearing when action is taken against a person's license.

7. Accept a voluntary surrendering of a license or registration pursuant to an order of consent by the board.

## 32-2048. Unlawful practice; classification; injunctive relief; deposit of civil penalties

A. It is unlawful for any person to practice or in any manner to claim to practice physical therapy or for a person to claim the designation of a physical therapist unless that person is licensed pursuant to this chapter. A person who engages in an activity requiring a license pursuant to this chapter or who uses any word, title or representation in violation of section 32-2042 that implies that the person is licensed to engage in the practice of physical therapy is guilty of a class 1 misdemeanor.

B. The board may investigate any person to the extent necessary to determine if the person is engaged in the unlawful practice of physical therapy. If an investigation indicates that a person may be practicing physical therapy unlawfully, the board shall inform the person of the alleged violation. The board may refer the matter for prosecution regardless of whether the person ceases the unlawful practice of physical therapy.

C. The board, through the appropriate county attorney or the office of the attorney general, may apply for injunctive relief in any court of competent jurisdiction to enjoin any person from committing any act in violation of this chapter. Injunction proceedings are in addition to, and not in lieu of, all penalties and other remedies prescribed in this chapter.

D. The board shall deposit, pursuant to sections 35-146 and 35-147, all monies it collects from civil penalties pursuant to this chapter in the state general fund.

## 32-2049. Disclosure prohibition

The board shall not disclose the identity of a person who provides information unless this information is essential to proceedings conducted pursuant to sections 32-2045 and 32-2046 or unless required by a court.

## 32-2050. Substance abuse recovery program

In lieu of a disciplinary proceeding prescribed by this article, the board may allow a licensee to actively participate in a board-approved substance abuse recovery program if:

1. The board has evidence that the licensee is an impaired professional.

2. The licensee has not been convicted of a felony relating to a controlled substance in a court of law of the United States or any other territory or country.

3. The licensee enters into a written agreement with the board for a restricted license and complies with all of the terms of the agreement, including making satisfactory progress in the program and adhering to any limitations on the licensee's practice imposed by the board to protect the public. Failure to enter into such an agreement shall activate an immediate investigation and disciplinary proceedings by the board.

4. As part of the agreement established between the licensee and the board, the licensee signs a waiver allowing the substance abuse program to release information to the board if the licensee does not comply with the requirements of this section or is unable to practice with reasonable skill or safety.

## 32-2051. Rights of consumers

A. The public has access to the following information:

1. A list of licensees and interim permit holders that includes the licensee's and interim permit holder's place of practice, license or interim permit number, date of license or interim permit expiration and status of license or interim permit.

2. A list of physical therapist assistants who are licensed in this state, including place of employment, license number, date of license expiration and status of license.

3. Public records.

B. The home addresses and telephone numbers of physical therapists and physical therapist assistants are not public records and shall be kept confidential by the board unless they are the only addresses and telephone numbers of record.

C. If a referring practitioner is deriving direct or indirect compensation from the referral to physical therapy, the physical therapist shall disclose this information in writing to the patient.

D. A physical therapist shall disclose in writing to a patient any financial interest in products the physical therapist endorses and recommends to the patient and shall document this disclosure in the patient's record.

E. A physical therapist shall ensure that each patient understands that the patient has freedom of choice in services and products.

F. Information relating to the physical therapist-patient relationship is confidential and shall not be communicated to a third party who is not involved in that patient's care without the prior written consent of the patient. The physical therapist shall divulge to the board information it requires in connection with any investigation, public hearing or other proceeding. The physical therapist-patient privilege does not extend to cases in which the physical therapist has a duty to report information as required by law. The confidentiality requirements and privileges of this subsection also apply to physical therapist assistants.

G. Each licensee shall display a copy of the license and current renewal verification in a location accessible to public view at the licensee's place of practice. If the licensee is unable to display the license or current renewal verification, the licensee must produce that documentation on request.

H. The board shall keep all information relating to the receipt and investigation of complaints filed against a licensee confidential unless the information is disclosed in the course of the investigation or any subsequent proceeding or if that information is required to be disclosed by law.

I. The following are confidential and are not available to the public:

1. Patient records, including clinical records, patient files and any report or oral statement relating to a diagnostic finding or treatment of a patient.

2. Any information from which a patient or a patient's family might be identified.

3. Information received and records or reports kept by the board as a result of an investigation made pursuant to this chapter.

32-2052. Judicial review

Except as provided in section 41-1092.08, subsection H, final board decisions are subject to judicial review pursuant to title 12, chapter 7, article 6.

32-2053. Physical therapy licensure compact

The physical therapy licensure compact is adopted and enacted into law as follows:

Section 1

Purpose

The purpose of this compact is to facilitate the interstate practice of physical therapy with the goal of improving public access to physical therapy services. The practice of physical therapy occurs in the state where the patient/client is located at the time of the patient/client encounter. This compact preserves the

regulatory authority of states to protect the public health and safety through the current system of state licensure. This compact is designed to achieve the following objectives:

1. Increase public access to physical therapy services by providing for the mutual recognition of other member state licenses.

2. Enhance the states' ability to protect the public health and safety.

3. Encourage the cooperation of member states in regulating multistate physical therapy practice.

4. Support spouses of relocating military members.

5. Enhance the exchange of licensure, investigative and disciplinary information between member states.

6. Allow a remote state to hold a provider of services with a compact privilege in that state accountable to that state's practice standards.

Section 2

Definitions

As used in this compact, and except as otherwise provided, the following definitions shall apply:

1. "Active duty military" means full-time duty status in the active uniformed service of the United States, including members of the national guard and reserve on active duty orders pursuant to 10 United States Code section 1211.

2. "Adverse action" means disciplinary action taken by a physical therapy licensing board based on misconduct or unacceptable performance, or both.

3. "Alternative program" means a nondisciplinary monitoring or practice remediation process approved by a physical therapy licensing board, including a program relating to substance abuse issues.

4. "Compact privilege" means the authorization granted by a remote state to allow a licensee from another member state to practice as a physical therapist or work as a physical therapist assistant in the remote state under its laws and rules. The practice of physical therapy occurs in the member state where the patient/client is located at the time of the patient/client encounter.

5. "Continuing competence" means a requirement, as a condition of license renewal, to provide evidence of participation in or completion of educational and professional activities relevant to the practice or area of work.

6. "Data system" means a repository of information about licensees, including examination, licensure, investigative information, compact privilege and adverse action.

7. "Encumbered license" means a license that a physical therapy licensing board has limited in any way.

8. "Executive board" means a group of directors elected or appointed to act on behalf of, and within the powers granted by, the commission.

9. "Home state" means the member state that is the licensee's primary state of residence.

10. "Investigative information" means information, records and documents received or generated by a physical therapy licensing board pursuant to an investigation.

11. "Jurisprudence requirement" means the assessment of an individual's knowledge of the laws and rules governing the practice of physical therapy in a state.

12. "Licensee" means an individual who currently holds an authorization from the state to practice as a physical therapist or to work as a physical therapist assistant.

13. "Member state" means a state that has enacted the compact.

14. "Party state" means any member state in which a licensee holds a current license or compact privilege or is applying for a license or compact privilege.

15. "Physical therapist" means an individual who is licensed by a state to practice physical therapy.

16. "Physical therapist assistant" means an individual who is licensed or certified by a state and who assists the physical therapist in selected components of physical therapy.

17. "Physical therapy", "physical therapy practice" or "practice of physical therapy" means the care and services provided by or under the direction and supervision of a licensed physical therapist.

18. "Physical therapy compact commission" or "commission" means the national administrative body whose membership consists of all states that have enacted this compact.

19. "Physical therapy licensing board" or "licensing board" means the agency of a state that is responsible for the licensing and regulation of physical therapists and physical therapist assistants.

20. "Remote state" means a member state, other than the home state, where a licensee is exercising or seeking to exercise the compact privilege.

21. "Rule" means a regulation, principle or directive adopted by the commission that has the force of law.

22. "State" means any state, commonwealth, district or territory of the United States that regulates the practice of physical therapy.

Section 3

State participation in the compact

A. To participate in the compact, a state must do all of the following:

1. Participate fully in the commission's data system, including using the commission's unique identifier as defined in rules.

2. Have a mechanism in place for receiving and investigating complaints about licensees.

3. Notify the commission, in compliance with the terms of the compact and rules, of any adverse action or the availability of investigative information regarding a licensee.

4. Fully implement a criminal background check requirement, within a time frame established by rule, by receiving the results of the federal bureau of investigation record search on criminal background checks and use the results in making licensure decisions.

5. Comply with the rules of the commission.

6. Utilize a recognized national examination as a requirement for licensure pursuant to the rules of the commission.

7. Have continuing competence requirements as a condition for license renewal.

B. On adoption of this compact, the member state shall have the authority to obtain biometric-based information from each physical therapy licensure applicant and submit this information to the federal

bureau of investigation for a criminal background check in accordance with 28 United States Code section 534 and 42 United States Code section 14616.

C. A member state shall grant the compact privilege to a licensee holding a valid unencumbered license in another member state in accordance with the terms of the compact and rules.

D. Member states may charge a fee for granting a compact privilege.

Section 4

Compact privilege

A. To exercise the compact privilege under the terms and provisions of the compact, the licensee shall meet all of the following requirements:

1. Hold a license in the home state.

2. Have no encumbrance on any state license.

3. Be eligible for a compact privilege in any member state in accordance with subsections D, G and H of this section.

4. Not have had any adverse action taken against any license or compact privilege within the previous two years.

5. Notify the commission that the licensee is seeking the compact privilege within a remote state or states.

6. Pay any applicable fees, including any state fee, for the compact privilege.

7. Meet any jurisprudence requirement established by the remote state or states in which the licensee is seeking a compact privilege.

8. Report to the commission any adverse action taken by any nonmember state within thirty days after the date the adverse action is taken.

B. The compact privilege is valid until the expiration date of the home license. The licensee must comply with the requirements of subsection A of this section to maintain the compact privilege in the remote state.

C. A licensee providing physical therapy in a remote state under the compact privilege shall function within the laws and regulations of the remote state.

D. A licensee providing physical therapy in a remote state is subject to that state's regulatory authority. A remote state, in accordance with due process and that state's laws, may remove a licensee's compact privilege in the remote state for a specific period of time, impose fines or take any other necessary actions to protect the health and safety of its citizens. The licensee is not eligible for a compact privilege in any state until the specific time for removal has passed and all fines are paid.

E. If a home state license is encumbered, the licensee shall lose the compact privilege in any remote state until both of the following occur:

1. The home state license is no longer encumbered.

2. Two years have elapsed from the date of the adverse action.

F. Once an encumbered license in the home state is restored to good standing, the licensee must meet the requirements of subsection A of this section to obtain a compact privilege in any remote state.

G. If a licensee's compact privilege in any remote state is removed, the individual shall lose the compact privilege in any remote state until all of the following occur:

1. The specific period of time for which the compact privilege was removed has ended.

2. All fines have been paid.

3. Two years have elapsed from the date of the adverse action.

H. Once the requirements of subsection G of this section have been met, the licensee must meet the requirements in subsection A of this section to obtain a compact privilege in a remote state.

Section 5

Active duty military personnel or their spouses

A licensee who is active duty military or is the spouse of an individual who is active duty military may designate one of the following as the home state:

1. The home of record.

2. The permanent change of station.

3. The state of current residence if it is different than the permanent change of station state or home of record.

Section 6

Adverse actions

A. A home state shall have exclusive power to impose an adverse action against a license issued by the home state.

B. A home state may take an adverse action based on the investigative information of a remote state, so long as the home state follows its own procedures for imposing an adverse action.

C. Nothing in this compact shall override a member state's decision that participation in an alternative program may be used in lieu of adverse action and that such participation shall remain nonpublic if required by the member state's laws. Member states must require licensees who enter any alternative programs in lieu of discipline to agree not to practice in any other member state during the term of the alternative program without prior authorization from such other member state.

D. Any member state may investigate actual or alleged violations of the statutes and rules authorizing the practice of physical therapy in any other member state in which a physical therapist or physical therapist assistant holds a license or compact privilege.

E. A remote state shall have the authority to do all of the following:

1. Take adverse actions as set forth in section 4, subsection D of this compact against a licensee's compact privilege in the state.

2. Issue subpoenas for both hearings and investigations that require the attendance and testimony of witnesses and the production of evidence. Subpoenas issued by a physical therapy licensing board in a party state for the attendance and testimony of witnesses or the production of evidence from another party state shall be enforced in the latter state by any court of competent jurisdiction, according to the practice and procedure of that court applicable to subpoenas issued in proceedings pending before it. The issuing authority shall pay any witness fees, travel expenses, mileage and other fees required by the service statutes of the state where the witnesses or evidence are located.

3. If otherwise permitted by state law, recover from the licensee the costs of investigations and disposition of cases resulting from any adverse action taken against that licensee.

F. Joint investigations are as follows:

1. In addition to the authority granted to a member state by its respective physical therapy practice act or other applicable state law, a member state may participate with other member states in joint investigations of licensees.

2. Member states shall share any investigative, litigation or compliance materials in furtherance of any joint or individual investigation initiated under the compact.

Section 7

Establishment of the physical therapy compact commission

A. The compact member states hereby create and establish a joint public agency known as the physical therapy compact commission to which the following apply:

1. The commission is an instrumentality of the compact states.

2. Venue is proper and judicial proceedings by or against the commission shall be brought solely and exclusively in a court of competent jurisdiction where the principal office of the commission is located. The commission may waive venue and jurisdictional defenses to the extent it adopts or consents to participate in alternative dispute resolution proceedings.

3. Nothing in this compact shall be construed to be a waiver of sovereign immunity.

B. Membership, voting and meetings are as follows:

1. Each member state shall have and be limited to one delegate selected by that member state's licensing board.

2. The delegate shall be a current member of the licensing board, who is a physical therapist, physical therapist assistant or public member or the board administrator.

3. Any delegate may be removed or suspended from office as provided by the law of the state from which the delegate is appointed.

4. The member state board shall fill any vacancy occurring in the commission.

5. Each delegate shall be entitled to one vote with regard to the adoption of rules and creation of bylaws and shall otherwise have an opportunity to participate in the business and affairs of the commission.

6. A delegate shall vote in person or by such other means as provided in the bylaws. The bylaws may provide for the delegate's participation in meetings by telephone or other means of communication.

7. The commission shall meet at least once during each calendar year. Additional meetings shall be held as set forth in the bylaws.

C. The commission shall have the following powers and duties:

1. Establish the fiscal year of the commission.

2. Establish bylaws.

3. Maintain its financial records in accordance with the bylaws.

4. Meet and take such actions as are consistent with the provisions of this compact and the bylaws.

5. Adopt uniform rules to facilitate and coordinate implementation and administration of this compact. The rules shall have the force and effect of law and shall be binding in all member states.

6. Bring and prosecute legal proceedings or actions in the name of the commission, provided that the standing of any state physical therapy licensing board to sue or be sued under applicable law shall not be affected.

7. Purchase and maintain insurance and bonds.

8. Borrow, accept or contract for services of personnel, including employees of a member state.

9. Hire employees, elect or appoint officers, fix compensation, define duties and grant such individuals appropriate authority to carry out the purposes of the compact and to establish the commission's personnel policies and programs relating to conflicts of interest, qualifications of personnel, and other related personnel matters.

10. Accept any and all appropriate donations and grants of money, equipment, supplies, materials and services, and receive, utilize and dispose of the same, if at all times the commission avoids any appearance of impropriety or conflict of interest.

11. Lease, purchase, accept appropriate gifts or donations of or otherwise own, hold, improve or use any property, real, personal or mixed.  at all times the commission shall avoid any appearance of impropriety.

12. Sell, convey, mortgage, pledge, lease, exchange, abandon or otherwise dispose of any property, real, personal or mixed.

13. Establish a budget and make expenditures.

14. Borrow money.

15. Appoint committees, including standing committees composed of members, state regulators, state legislators or their representatives and consumer representatives, and such other interested persons as may be designated in this compact and the bylaws.

16. Provide and receive information from, and cooperate with, law enforcement agencies.

17. Establish and elect an executive board.

18. Perform such other functions as may be necessary or appropriate to achieve the purposes of this compact consistent with the state regulation of physical therapy licensure and practice.

D. Provision for the executive board is as follows:

1. The executive board shall have the power to act on behalf of the commission according to the terms of this compact and shall be composed of the following nine members:

(a) Seven voting members who are elected by the commission from the current membership of the commission.

(b) One ex officio, nonvoting member from the recognized national physical therapy professional association.

(c) One ex officio, nonvoting member from the recognized membership organization of the physical therapy licensing boards.

2. The ex officio members will be selected by their respective organizations.

3. The commission may remove any member of the executive board as provided in bylaws.

4. The executive board shall meet at least annually.

5. The executive board shall have the following duties and responsibilities:

(a) Recommend to the entire commission changes to the rules or bylaws, to this compact legislation, to fees paid by compact member states such as annual dues and to any commission compact fee charged to licensees for the compact privilege.

(b) Ensure compact administration services are appropriately provided, contractual or otherwise.

(c) Prepare and recommend the budget.

(d) Maintain financial records on behalf of the commission.

(e) Monitor compact compliance of member states and provide compliance reports to the commission.

(f) Establish additional committees as necessary.

(g) Other duties as provided in rules or bylaws.

E. Meetings of the commission are as follows:

1. All meetings shall be open to the public, and public notice of meetings shall be given in the same manner as required under the rulemaking provisions in section 9 of this compact.

2. The commission or the executive board or other committees of the commission may convene in a closed, nonpublic meeting if the commission or executive board or other committees of the commission must discuss any of the following:

(a) Noncompliance of a member state with its obligations under the compact.

(b) The employment, compensation or discipline of or other matters, practices or procedures related to specific employees, or other matters related to the commission's internal personnel practices and procedures.

(c) Current, threatened or reasonably anticipated litigation.

(d) The negotiation of contracts for the purchase, lease or sale of goods, services or real estate.

(e) Accusing any person of a crime or formally censuring any person.

(f) The disclosure of trade secrets or commercial or financial information that is privileged or confidential.

(g) The disclosure of information of a personal nature for which disclosure would constitute a clearly unwarranted invasion of personal privacy.

(h) The disclosure of investigative records compiled for law enforcement purposes.

(i) The disclosure of information related to any investigative report prepared by or on behalf of or for use of the commission or other committee charged with the responsibility of investigating or determining compliance issues pursuant to this compact.

(j) Matters specifically exempt from disclosure by federal or member state statute.

3. If a meeting, or portion of a meeting, is closed pursuant to this section, the commission's legal counsel or designee shall certify that the meeting may be closed and shall reference each relevant exempting provision.

4. The commission shall keep minutes that fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, and the reasons therefore, including a description of the views expressed. All documents considered in connection with an action shall be identified in such minutes. All minutes and documents of a closed meeting shall remain under seal, subject to release by a majority vote of the commission or order of a court of competent jurisdiction.

F. Financing of the commission is as follows:

1. The commission shall pay, or provide for the payment of, the reasonable expenses of its establishment, organization and ongoing activities.

2. The commission may accept any and all appropriate revenue sources, donations and grants of money, equipment, supplies, materials and services.

3. The commission may levy on and collect an annual assessment from each member state or impose fees on other parties to cover the cost of the operations and activities of the commission and its staff, which must be in a total amount sufficient to cover its annual budget as approved each year for which revenue is not provided by other sources. The aggregate annual assessment amount shall be allocated based on a formula to be determined by the commission, which shall adopt a rule that is binding on all member states.

4. The commission may not incur obligations of any kind before securing the monies adequate to meet those obligations, and the commission may not pledge the credit of any of the member states, except by and with the authority of the member state.

5. The commission shall keep accurate accounts of all of its receipts and disbursements, which are subject to the audit and accounting procedures established under its bylaws. All receipts and disbursements of monies handled by the commission shall be audited yearly by a certified or licensed public accountant, and the report of the audit shall be included in and become part of the annual report of the commission.

G. Qualified immunity, defense and indemnification provisions are as follows:

1. The members, officers, executive director, employees and representatives of the commission are immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of commission employment, duties or responsibilities. this paragraph does not protect any such person from suit or liability for any damage, loss, injury or liability caused by the intentional or wilful or wanton misconduct of that person.

2. The commission shall defend any member, officer, executive director, employee or representative of the commission in any civil action seeking to impose liability arising out of any actual or alleged act, error or omission that occurred within the scope of commission employment, duties or responsibilities, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of commission employment, duties or responsibilities. This paragraph does not prohibit that person from retaining the person's own counsel if the actual or alleged act, error or omission did not result from that person's intentional or wilful or wanton misconduct.

3. The commission shall indemnify and hold harmless any member, officer, executive director, employee or representative of the commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error or omission that occurred within the scope of commission employment, duties, or responsibilities, or that such person had a reasonable basis for believing occurred within the scope of commission employment, duties or responsibilities if the actual or

alleged act, error or omission did not result from the intentional or wilful or wanton misconduct of that person.

Section 8

Data system

A. The commission shall provide for the development, maintenance and utilization of a coordinated database and reporting system containing licensure, adverse action and investigative information on all licensed individuals in member states.

B. Notwithstanding any other provision of state law to the contrary, a member state shall submit a uniform data set to the data system on all individuals to whom this compact applies as required by the rules of the commission, including all of the following:

1. Identifying information.

2. Licensure data.

3. Adverse actions against a license or compact privilege.

4. Nonconfidential information related to alternative program participation.

5. Any denial of an application for licensure and the reason or reasons for such denial.

6. Other information that may facilitate the administration of this compact, as determined by the rules of the commission.

C. Investigative information pertaining to a licensee in any member state will only be available to other party states.

D. The commission shall promptly notify all member states of any adverse action taken against a licensee or an individual applying for a license. Adverse action information pertaining to a licensee in any member state will be available to any other member state.

E. Member states contributing information to the data system may designate information that may not be shared with the public without the express permission of the contributing state.

F. Any information submitted to the data system that is subsequently required to be expunged by the laws of the member state contributing the information shall be removed from the data system.

Section 9

Rulemaking

A. The commission shall exercise its rulemaking powers pursuant to the criteria set forth in this section and the rules adopted under this section. Rules and amendments become binding as of the date specified in each rule or amendment.

B. If a majority of the legislatures of the member states reject a rule by enactment of a statute or resolution in the same manner used to adopt the compact within four years after the date of adoption of the rule, the rule has no further force and effect in any member state.

C. Rules or amendments to the rules shall be adopted at a regular or special meeting of the commission.

D. Before the adoption of a final rule or rules by the commission, and at least thirty days before the meeting at which the rule will be considered and voted on, the commission shall file a notice of proposed rulemaking on both:

1. The website of the commission or other publicly accessible platform.

2. The website of each member state's physical therapy licensing board or other publicly accessible platform or the publication in which each state would otherwise publish proposed rules.

E. The notice of proposed rulemaking shall include all of the following:

1. The proposed time, date and location of the meeting in which the rule will be considered and voted on.

2. The text of the proposed rule or amendment and the reason for the proposed rule.

3. A request for comments on the proposed rule from any interested person.

4. The manner in which interested persons may submit notice to the commission of their intention to attend the public hearing, and any written comments.

F. Before the adoption of a proposed rule, the commission shall allow persons to submit written data, facts, opinions and arguments, which shall be made available to the public.

G. The commission shall grant an opportunity for a public hearing before it adopts a rule or amendment if a hearing is requested by any of the following:

1. At least twenty-five persons.

2. A state or federal governmental subdivision or agency.

3. An association having at least twenty-five members.

H. If a hearing is held on the proposed rule or amendment, the commission shall publish the place, time and date of the scheduled public hearing. If the hearing is held via electronic means, the commission shall publish the mechanism for access to the electronic hearing. Additionally:

1. All persons wishing to be heard at the hearing shall notify the executive director of the commission or other designated member in writing of their desire to appear and testify at the hearing at least five business days before the scheduled date of the hearing.

2. Hearings shall be conducted in a manner providing each person who wishes to comment a fair and reasonable opportunity to comment orally or in writing.

3. All hearings will be recorded. A copy of the recording will be made available on request.

4. This section does not require a separate hearing on each rule. Rules may be grouped for the convenience of the commission at hearings required by this section.

I. Following the scheduled hearing date, or by the close of business on the scheduled hearing date if the hearing was not held, the commission shall consider all written and oral comments received.

J. If no written notice of intent to attend the public hearing by interested parties is received, the commission may proceed with the adoption of the proposed rule without a public hearing.

K. The commission, by majority vote of all members, shall take final action on the proposed rule and shall determine the effective date of the rule, if any, based on the rulemaking record and the full text of the rule.

L. On a determination that an emergency exists, the commission may consider and adopt an emergency rule without prior notice, an opportunity for comment or a hearing if the usual rulemaking procedures provided in the compact and in this section are retroactively applied to the rule as soon as reasonably possible, but not later than ninety days after the effective date of the rule. For the purposes of this

subsection, an emergency rule is one that must be adopted immediately in order to do any of the following:

1. Meet an imminent threat to public health, safety or welfare.

2. Prevent a loss of commission or member state funds.

3. Meet a deadline for the adoption of an administrative rule that is established by federal law or rule.

4. Protect the public health and safety.

M. The commission or an authorized committee of the commission may direct revisions to a previously adopted rule or amendment for purposes of correcting typographical errors, errors in format, errors in consistency or grammatical errors. Public notice of any revisions shall be posted on the website of the commission. The revision is subject to challenge by any person for a period of thirty days after posting. The revision may be challenged only on grounds that the revision results in a material change to a rule. A challenge shall be made in writing and delivered to the chairperson of the commission before the end of the notice period. If no challenge is made, the revision will take effect without further action. If the revision is challenged, the revision may not take effect without the approval of the commission.

Section 10

Oversight, dispute resolution and enforcement

A. Oversight of the commission is as follows:

1. The executive, legislative and judicial branches of state government in each member state shall enforce this compact and take all actions necessary and appropriate to effectuate the compact's purposes and intent. The provisions of this compact and the rules adopted under this compact have standing as statutory law.

2. All courts shall take judicial notice of the compact and the rules in any judicial or administrative proceeding in a member state pertaining to the subject matter of this compact that may affect the powers, responsibilities or actions of the commission.

3. The commission is entitled to receive service of process in any such proceeding and shall have standing to intervene in such a proceeding for all purposes. Failure to provide service of process to the commission shall render a judgment or order void as to the commission, this compact or rules adopted under this compact.

B. Default, technical assistance and termination provisions are as follows:

1. If the commission determines that a member state has defaulted in the performance of its obligations or responsibilities under this compact or rules adopted under this compact, the commission shall do both of the following:

(a) Provide written notice to the defaulting state and other member states of the nature of the default, the proposed means of curing the default or any other action to be taken by the commission.

(b) Provide remedial training and specific technical assistance regarding the default.

2. If a state in default fails to cure the default, the defaulting state may be terminated from the compact on an affirmative vote of a majority of the member states, and all rights, privileges and benefits conferred by this compact may be terminated on the effective date of termination. A cure of the default does not relieve the offending state of obligations or liabilities incurred during the period of default.

3. Termination of membership in the compact shall be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate shall be given by the commission to the governor, the majority and minority leaders of the defaulting state's legislature and each of the member states.

4. A state that has been terminated is responsible for all assessments, obligations and liabilities incurred through the effective date of termination, including obligations that extend beyond the effective date of termination.

5. The commission may not bear any costs related to a state that is found to be in default or that has been terminated from the compact, unless agreed on in writing between the commission and the defaulting state.

6. The defaulting state may appeal the action of the commission by petitioning the United States district court for the District of Columbia or the federal district where the commission has its principal offices. The prevailing party shall be awarded all costs of such litigation, including reasonable attorney fees.

C. Dispute resolution provisions are as follows:

1. On request by a member state, the commission shall attempt to resolve disputes related to the compact that arise among member states and between member and nonmember states.

2. The commission shall adopt a rule providing for both mediation and binding dispute resolution for disputes as appropriate.

D. Enforcement provisions are as follows:

1. The commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this compact.

2. By majority vote, the commission may initiate legal action in the United States district court for the District of Columbia or the federal district where the commission has its principal offices against a member state in default to enforce compliance with the provisions of the compact and its adopted rules and bylaws. The relief sought may include both injunctive relief and damages. If judicial enforcement is necessary, the prevailing member shall be awarded all costs of such litigation, including reasonable attorney fees.

3. The remedies in this compact are not the exclusive remedies of the commission. The commission may pursue any other remedies available under federal or state law.

Section 11

Date of implementation of the interstate commission

for physical therapy practice and associated

rules, withdrawal and amendment

A. This compact is effective on the date on which the compact statute is enacted into law in the tenth member state. The provisions, which become effective at that time, shall be limited to the powers granted to the commission relating to assembly and the adoption of rules. Thereafter, the commission shall meet and exercise rulemaking powers necessary to the implementation and administration of this compact.

B. Any state that joins the compact subsequent to the commission's initial adoption of the rules is subject to the rules as they exist on the date on which the compact becomes law in that state. Any rule that has been previously adopted by the commission shall have the full force and effect of law on the day the compact becomes law in that state.

C. Any member state may withdraw from this compact by enacting a statute repealing the same:

1. A member state's withdrawal shall not take effect until six months after enactment of the repealing statute.

2. Withdrawal shall not affect the continuing requirement of the withdrawing state's physical therapy licensing board to comply with the investigative and adverse action reporting requirements of this act before the effective date of withdrawal.

D. This compact does not invalidate or prevent any physical therapy licensure agreement or other cooperative arrangement between a member state and a nonmember state that does not conflict with the provisions of this compact.

E. This compact may be amended by the member states. An amendment to this compact does not become effective and binding on any member state until it is enacted into the laws of all member states.

Section 12

Construction and severability

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable, and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or if the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact is held contrary to the constitution of any party state, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the party state affected as to all severable matters.

32-2054. Participation in compact as condition of employment; prohibition

An employer may not require a physical therapist to seek licensure through the physical therapy licensure compact enacted by section 32-2053 as a condition of initial or continued employment as a physical therapist in this state. An employer may require that a physical therapist obtain and maintain a license to practice physical therapy in multiple states, if the physical therapist is free to obtain and maintain the licenses by any means authorized by the laws of the respective states.

32-2055. Open meeting requirements

If a meeting, or a portion of a meeting, of the physical therapy compact commission is closed pursuant to section 32-2053, section 7, subsection E, the commission's legal counsel or designee shall certify that the meeting may be closed and shall reference each relevant exempting provision consistent with title 38, chapter 3, article 3.1.

32-2056. Board of physical therapy; notice of commission actions; expenditure of certain monies prohibited

The board of physical therapy:

1. Within thirty days after a physical therapy compact commission action shall post on the board's public website notice of any commission action that may affect a physical therapist's license.

2. May not spend any monies received from physical therapists or applicants for licensure who are not applying for licensure through this compact on any activities, obligations or duties required by this compact.

**E-3.**

**DEPARTMENT OF TRANSPORTATION**
Title 17, Chapter 4, Article 5

# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

---

**MEETING DATE:** April 1, 2025

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

**FROM:** Council Staff

**DATE:** March 18, 2025

**SUBJECT:** **DEPARTMENT OF TRANSPORTATION**
Title 17, Chapter 4, Article 5

---

**Summary**

This Five-Year Review Report (5YRR) from the Department of Transportation (Department) covers six (6) rules Title 17, Chapter 4, Article 5 regarding safety.

The Department completed the course of action identified in their last Five Year Review Report (5YRR) approved by the Council in February 2020. The Department completed an expedited rulemaking approved by the Council on December 1, 2020 and a subsequent rulemaking approved by the Council on November 2, 2021.

**Proposed Action**

The Department has indicated that R17-4-501, R17-4-502, R17-4-504, and R17-4-508 need to be amended to improve their consistency and clarity. The Department has also indicated that R17-4-502 needs to be amended to change the term substance abuse counselor to addiction counselor to comply with statutory changes.

The Department intends on completing this proposed course of action through two separate rulemakings. For R17-4-501, R17-4-502, and R17-4-504 the Department intends on

requesting Governor's Office permission to begin rulemaking pending the approval of this report. The Department intends on completing this rulemaking by November 2025.

For R17-4-508, the Department intends on updating the incorporation by reference as part of an upcoming rulemaking that the Department intends sending to the Council by the end of April 2025. The Department sent a Notice of Proposed Rulemaking to the Secretary of State on October 31, 2024.

**1. Has the agency analyzed whether the rules are authorized by statute?**

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

**2. Summary of the agency's economic impact comparison and identification of stakeholders:**

The Department indicates these rules, except R17-4-508, were last amended by expedited rulemaking in 2020; and an economic, small business and consumer impact statement was not required. R17-4-508 was last amended by regular rule making in 2021. The Board stated that the last full economic, small business and consumer impact statements prepared in connection with regular rulemaking for the rules in Article 5 have been in 2018 (R17-4-501), 2008 (R17-4-504), 2005 (R17-4-503), and 2002 (R17-4-506).

The Department states that, overall, it incurs substantial costs to review driver license applications, to maintain and review licensees' driving records, to run the medical screening process, and to monitor the CDL medical evaluation process. However, the Department states that these processes fulfill the Department's federal and statutory obligations, protects the public, and keeps persons with disabilities, who can safely operate a motor vehicle, mobile. In addition, the Department goes on to say, by staying consistent with federal regulations, this allows the state to be eligible for federal funds.

The Department indicates that for FY 2024, the Arizona Department of Public Safety (DPS) can apply for an estimated $16,000,000 - $17,000,000 in total federal funding from the Department having regulations that are identical to or have the same effect as the Federal Motor Carrier Safety Regulations.

The Department indicates that DPS and local law enforcement agencies provide secondary enforcement of the driver license requirement and of driver license restrictions. The Department's medical screen process does not result in additional costs to DPS or other Arizona law enforcement agencies.

The Department states that political subdivisions and other agencies of this Sate may

incur minimal to substantial costs only when the agency either pays for or provides the medical evaluations required under 49 CFR 391.43 to their employees who hold a CDL, or if they cover the costs for vehicle modification and for driver rehabilitation specialists' services to drivers with disabilities.

The Department states that besides driver licensees and permittees paying the costs for the required medical evaluations and equipment, these are non-profit organizations, medical insurance carriers, and non-governmental third-party payers (e.g. State Compensation Fund) that may provide some payment for vehicle modification and driver rehabilitation in Arizona. The Department indicates that the costs for the medical evaluations, medical equipment, including adaptive equipment and modified vehicles, may range in cost from minimal to substantial. The Department believes the substantial benefit of keeping some persons with disabilities mobile offsets these costs.

The Department states those who benefit from these rules include vehicle modifiers, manufacturers, and dealers; addictions counselors; driver rehabilitation specialists; physicians, medical specialists, optometrists, and registered nurse practitioners. The Department indicates these entities receive moderate to substantial benefits depending on the cost of service and how many customers they have.

The Department states that some of the medical review related to licensing actions include the need for a medical report, vision report, substance abuse evaluation, and failure to submit the U.S. Department of Transportation medical examiner's certificate. In addition, the Department goes on to say special performance evaluations are more comprehensive road and skills tests conducted to evaluate adaptive equipment and/or drivers with special needs and any appropriate restrictions.

The Department indicates that as of November 2024, there are a total of 5,801,343 non-commercial driver licenses, 124,861 commercial driver licenses, 84,934 non-commercial permit holders, and 3,681 commercial driver licenses learner's permit holders. In addition, As of November 2024, the Department's record indicated that 2,028 licenses have opted to have a medical alert code retained on their record and 2,018,986 licensees have a medical-related restriction on their driver license (2 million are for wearing corrective lenses).

**3. <u>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?</u>**

The Department believes the probable benefits of the rules to the public and political

subdivisions outweigh the costs to the rule. The Department states it routinely chooses the rulemaking option that is the least costly and burdensome to the regulated public or industry. The Department goes on to say the rules are designed to minimally impact regulated persons and small businesses. Applicants and licensees may see a variety of indirect costs ranging from minimal to substantial from the examinations or evaluations performed by physicians, specialists, addiction counselors, optometrists, or registered nurse practitioners or from any necessary equipment (adaptive equipment, modified van, bioptic telescopic lenses, etc.). The Department believes the benefit of being able to drive and the benefit of the Department being able to ensure public safety with physically qualified drivers outweigh the costs. Plus, the Department believes in some instances the costs may already be necessary for the applicant or licensee for other purposes beyond driving.

**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:

- R17-4-501
    - The Board has indicated that this rule could be improved by improving cross references to other rules and removing the term substance abuse evaluation because that term is not used. Additionally, the board plans on adding the terms physician and certified addiction counselor to the addition of evaluation, more specifically allowing both to determine if there is a disqualifying medical condition. This would bring the rule in line with other rules and the Department process.
- R17-4-502
    - The Board is proposing to replace the term substance abuse counselor with addiction counselor to bring the language in line with 2024 statutory changes.
- R17-4-504
    - The Board is proposing to add a reference to A.R.S. §28-3167 to provide clarity and consistency with the statute.
- R17-4-508
    - The Board is proposing 6 changes; to add references to the new electronic verification system through the Federal Motor Carrier Safety Administration, remove duplicative references, and to generally improve clarity.

**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 except for R17-4-502 which contains the obsolete term substance abuse counselor which should be an addiction calendar as a result of 2024 legislation.

**7. Has the agency analyzed the rules' effectiveness in achieving its objectives?**

The Department indicates the rules are generally 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.

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

The Department indicates that the rules are not more stringent than corresponding federal law, which is 49 CFR 391.

**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 has indicated that they do issue general permits and are in compliance with A.R.S. § 41-1037. Specifically, the Department states that R17-4-508 does contain certain requirements for applicants of a commercial driver license. A commercial driver license is a general permit since the activities and practices authorized by it are substantially similar in nature for all holders per each type of commercial driver license. The rule though does not require the issuance of the commercial driver license, that requirement is under 17 A.A.C. 5, Article 2.

**11. Conclusion**

This Five-Year Review Report (5YRR) from the Department of Transportation (Department) covers six (6) rules Title 17, Chapter 4, Article 5 regarding safety. The Department has previously met their previous report's course of action. The Department is proposing to amend their rules to their clarity, conciseness, understandability, effectiveness and consistency with other rules and statutes. The Department is proposing to complete rulemaking with two separate rulemakings. The Department anticipates one rulemaking to be sent to GRRC by the end of April 2025 and the other by November 2025

The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. Staff recommends approval of this report.

ARIZONA DEPARTMENT OF TRANSPORTATION
206 S. 17th Ave.
Phoenix, AZ 85007
KATIE HOBBS
GOVERNOR
JENNIFER TOTH
DIRECTOR

November 20, 2024

VIA EMAIL: grrc@azdoa.gov

Jessica Klein
Chairperson
Governor's Regulatory Review Council
100 N 15th Ave., Suite 305
Phoenix, AZ 85007

Subject: Arizona Department of Transportation, 17 A.A.C. Chapter 4, Article 5, Five-Year Review Report

Dear Chairperson Klein:

Please find enclosed the Five-year Review Report from the Arizona Department of Transportation (ADOT) for 17 A.A.C. Chapter 4, Article 5, which is due on or before November 30, 2024. This document complies with all requirements under A.R.S. § 41-1056 and A.A.C. R1-6-301.

ADOT hereby certifies that it is in full compliance with the requirements of A.R.S. § 41-1091.

For information regarding the report, please communicate directly with Candace Olson, Senior Rules Analyst, at (480) 267-6610 or at COlson2@azdot.gov.

Sincerely,



Jennifer Toth
Director

Enclosures: ADOT Five-year Review Report

ARIZONA DEPARTMENT OF TRANSPORTATION

**A.A.C. Title 17 – Transportation**

**Chapter 4**

**Department of Transportation**

**Title, Registration, and Driver Licenses**

**Article 5 – Safety**

# Five-Year Review Report

Submitted to the Governor's Regulatory Review Council

November 2024

**Arizona Department of Transportation**

**Five-Year Review Report**

**17 A.A.C. Chapter 4, Article 5**

**November 2024**

**1. Authorization of the rule by existing statutes**

General Statutory Authority: A.R.S. §§ 28-366 and 28-5204

Specific Statutory Authority: A.R.S. §§ 28-364, 28-3005, 28-3153, 28-3158, 28-3159, 28-3164, 28-3167, 28-3171, 28-3173, 28-3223, 28-3306, 28-3314, and 28-3315

**2. The objective of each rule:**

| Rule | Objective |
|---|---|
| R17-4-501 | This rule provides industry representatives and the public with a better understanding of terms specific to the rules contained in this Article. |
| R17-4-502 | This rule provides Arizona driver license applicants and licensees with information regarding driver license eligibility requirements and the screening processes used by the Department to assess a person's visual, physical, and psychological ability to safely operate a motor vehicle. |
| R17-4-503 | This rule provides physicians, optometrists, and Arizona driver license applicants and licensees with information regarding the vision standards, screening process, and reporting requirements of the Department for use in assessing a person's ability to safely operate a motor vehicle. |
| R17-4-504 | This rule details the ability to have a medical alert on a license, where to obtain a listing of recognized medical alert conditions, record retention, and proof required to establish the alert. This is to provide clarification to the requirements under A.R.S. § 28-3167. |
| R17-4-506 | This rule provides information regarding the Department's medical examination and reporting requirements for use by a person who has had a seizure in the three months preceding application for a driver license and the person's physician. Additionally, the rule provides information regarding the revocation and restoration of driving privileges for a person with a driver license or nonresident driving privileges who experiences a seizure, including specific examination and reporting guidelines for use by the person's physician to reassess the person's ability to operate a motor vehicle safely. |
| R17-4-508 | This rule establishes physical qualifications required for a commercial driver license applicant, prescribes the form and manner in which to report these findings to the Department, and prescribes the process used by the Department to summarily suspend and/or revoke a commercial driver license if the Department receives a report indicating that a commercial driver license holder no longer meets physical qualifications in order to ensure consistency and compliance from the commercial driver licensees and with the federal requirements. |

**3. Are the rules effective in achieving their objectives?** **Yes** X **No** ___

**4. Are the rules consistent with other rules and statutes?** **Yes ___ No X**

| Rule | Explanation |
|---|---|
| R17-4-502 | Pursuant to Laws 2024, Chapter 169, the term "substance abuse counselor" has been changed to "addiction counselor," so the term needs to be updated in the rules. |

**5. Are the rules enforced as written?** **Yes X No ___**

**6. Are the rules clear, concise, and understandable?** **Yes ___ No X**

While the Department believes the rules under this Article are generally clear, concise, and understandable, the Department has determined that the following changes would improve consistency and clarity:

| Rule | Explanation |
|---|---|
| R17-4-501 | a. Replace the reference to §§ 28-101 and 28-3001 in the introductory sentence with a reference to R17-4-101 since R17-4-101 contains a reference to both those statutes as relevant for definitions and indicates those terms are for all of Chapter 4 so it is unnecessary to mention them specifically to Article 5.<br>b. Add "physician" and "certified addiction counselor" in the definition of "evaluation" as an applicable entity that may determine whether a disqualifying medical condition exists for better clarity and consistency with the other rules and with the Department's process.<br>c. Remove the definition for "substance abuse evaluation" since the exact term is not used in Article 5. |
| R17-4-502 | Replace the term "substance abuse counselor" with "addiction counselor" in subsections (B) and (C) to be consistent with the verbiage change in §§ 28-3005, 28-3153, and 28-3315 due to Laws 2024, Chapter 169. |
| R17-4-504 | Add the verbiage, "as indicated in A.R.S. § 28-3167" after "registered nurse practitioner" to ensure consistency with the statute and clarity of which types of physicians and registered nurse practitioners. |
| R17-4-508 | a. Replace the paper medical examiner's certificate process with the new electronic verification system through the Federal Motor Carrier Safety Administration (FMCSA). This includes updating verbiage in subsections (A), (C)(2)(a), (D), and removing subsections (A)(1) and (C)(2)(b) due to this change.<br>b. Remove subsections (A)(1)(a), (A)(1)(c), and (A)(2) due to the information being unnecessary either because it is contained in 49 CFR 391 that is incorporated by reference in 17 A.A.C. 5, Article 2 or the federal regulation has changed its requirement, for example FMCSA will no longer require a copy of the medical examiner's certificate to be carried and the vision standards have changed.<br>c. Replace the phrase "as soon as the licensee's medical condition allows" with "within 10 days" in subsection (A)(3) to provide better clarity on the time-frame.<br>d. Remove the verbiage, "or actual submission date" from subsection (B) since the medical examiner's certificate is no longer being submitted due to the new electronic verification system. |

| | |
|---|---|
| | e. Update the references from subsection (A)(1) to (A) to be consistent with the updates to that subsection.<br>f. Remove the vision test as one of the required tests of an expired commercial driver license holder and remove the unnecessary verbiage "original application" from subsection (D). |

**7. Has the agency received written criticisms of the rules within the last five years? Yes ___ No X**

8. **Economic, small business, and consumer impact comparison:**

These rules, except R17-4-508, were last amended by expedited rulemaking in 2020 (26 A.A.R. 3147, December 11, 2020); and an economic, small business and consumer impact statement was not required. R17-4-508 was last amended by regular rulemaking in 2021 (27 A.A.R. 2730, November 26, 2021). The last full economic, small business and consumer impact statements prepared in connection with regular rulemaking for the rules in Article 5 have been in 2018 (R17-4-501), 2008 (R17-4-504), 2007 (R17-4-502), 2005 (R17-4-503), and 2002 (R17-4-506).

For the purpose of this economic, small business, and consumer impact:
Cost-revenue scale. Annual costs or revenues are defined as follows:
Minimal: less than $1,000
Moderate: $1,000 to $9,999
Substantial: $10,000 or more

Overall, the Department incurs substantial costs to review driver license applications, to maintain and review licensees' driving records, to run the medical screening process, and to monitor and maintain the CDL medical evaluation process. However, these processes fulfill the Department's federal and statutory obligations, protects the public, and keeps persons with disabilities, who can safely operate a motor vehicle, mobile. In addition, by staying consistent with the federal regulations, this allows the state to be eligible for federal funds. For FY 2024, the Arizona Department of Public Safety (DPS) can apply for an estimated $16,000,000 - $17,000,000 in total federal funding from the Department's having regulations that are identical to or have the same effect as the Federal Motor Carrier Safety Regulations.

DPS and local law enforcement agencies provide secondary enforcement of the driver license requirement and of driver license restrictions. The Department's medical screening process does not result in additional costs to DPS or to other Arizona law enforcement agencies.

Political subdivisions and other agencies of this State may incur minimal to substantial costs only when the agency either pays for or provides the medical evaluations required under 49 CFR 391.43 to their employees who hold a CDL or if they cover the costs for vehicle modification and for driver rehabilitation specialists' services to drivers with disabilities. The actual cost is difficult to quantify as the amount is dependent upon the number of agency employees subject to these requirements and their individual costs.

Besides the driver licensees and permittees paying the costs for the required medical evaluations and equipment, there are non-profit organizations, medical insurance carriers, and non-governmental third-party payers (e.g. State Compensation Fund) that may provide some payment for vehicle modification and driver rehabilitation in Arizona. The costs for the medical evaluations,

medical equipment, including adaptive equipment and modified vehicles, may range in cost from minimal to substantial. The substantial benefit of keeping some persons with disabilities mobile offsets these costs.

Those who also benefit from these rules include vehicle modifiers, manufacturers, and dealers; addiction counselors; driver rehabilitation specialists; physicians, medical specialists, optometrists, and registered nurse practitioners. These entities receive moderate to substantial benefits depending on the cost of their service and how many customers they have.

The Department believes these rules have a minimal impact on private and public employment. Employers may benefit from being able to hire from a slightly larger pool of licensed drivers. Employers that assist in their employee costs may retain more drivers.

As of November 2024, there are a total of 5,801,343 non-commercial driver licenses, 124,861 commercial driver licenses, 84,934 non-commercial instruction permit holders, and 3,681 commercial driver license learner's permit holders.

As of November 2024, the Department's records indicate that 2,028 licensees have opted to have a medical alert code retained on their record and 2,018,986 licensees have a medical-related restriction on their driver license (2 million are for wearing corrective lenses). For fiscal year 2024, 33,255 individuals had an active medical review related licensing action on their record, 25,616 individuals completed and satisfied a medical review related licensing action, and 9,589 individuals were able to satisfy a medical review related licensing action prior to the start date of a suspension or revocation. Some of the medical review related licensing actions include the need for a medical report, vision report, substance abuse evaluation, and failure to submit the U.S. Department of Transportation medical examiner's certificate. In addition, the Medical Review Program received 69,266 medical examiner's certificates for commercial drivers and processed 35 special performance evaluations for commercial drivers. Special performance evaluations are more comprehensive road and skills tests conducted to evaluate adaptive equipment and/or drivers with special needs and any appropriate restrictions.

**9. Has the agency received any business competitiveness analyses of the rules? Yes ___ No X**

**10. Has the agency completed the course of action indicated in the agency's previous five-year-review report?**

In the last five-year review report, the Department proposed to amend the rules in Article 5 as identified in item 6 of that report through expedited rulemaking. The Notice of Final Expedited Rulemaking was approved by the Council on December 1, 2020. The Department did not propose any changes to R17-4-508 since the rule at that time was correct and the verbiage allowed for recent federal regulation updates. R17-4-508 was subsequently updated by regular rulemaking approved by the Council on November 2, 2021, due to the Department's incorporation by reference of the 2020 edition of the Federal Motor Carrier Safety Regulations and Hazardous Materials Regulations in the *Code of Federal Regulations*.

| Rule | Explanation |
|---|---|
| Throughout the Article | a. Update and make various grammatical and technical amendments throughout this Article that will help ensure consistency and conformity with the Arizona Administrative Procedure Act and Secretary of State rulemaking format and style requirements.<br>b. Replace the term "Motor Vehicle Division" (R17-4-512) or "Division" with the term "Department" to reflect organizational changes made by the Department. |

| | |
|---|---|
| | *(Completed December 1, 2020)* |
| R17-4-501 | a. Remove the reference to A.R.S. § 32-1601 from the introductory paragraph since the term "licensee" as defined under that section is not applicable to these rules and may create confusion and the term "registered nurse practitioner" from A.R.S. § 32-1601 is the only definition in that statute applicable to these rules and that term is also defined in A.R.S. § 28-3005, which defines it to have the same meaning as in A.R.S. § 32-1601.<br>b. Remove the word "licensee" from the term "applicant" or "licensee" since there is a differing definition of "licensee" in this Section that is more applicable to the word's usage.<br>c. Remove the definition of "Division" as it will be obsolete since the Department plans to replace all the usages of "Division" with "Department" to reflect organizational changes made by the Department.<br>d. Insert the phrase "or driving privileges" after "driver license" in the definition to "licensing action" to provide better clarity since in some cases the action may be against an out-of-state driver.<br>e. Amend the definition and all instances of the term "medical code" to read "medical alert code" to be more consistent in usage since the terms are used interchangeably with the undefined term "medical alert code" under R17-4-504.<br>f. Remove the definition of "substance abuse counselor" since that term is defined in A.R.S. § 28-3005, which is included in the introductory sentence.<br>*(Completed December 1, 2020)* |
| R17-4-502 | a. Remove subsection (A) since the information provided is better detailed and explained further in the rule and it could be read to say the applicant or licensee has to perform all those provisions when it may be necessary to only perform one.<br>b. Remove the second sentence from the beginning of subsection (B) since it is unnecessary.<br>c. Clarify the introductory sentence in subsection (B)(2) to indicate that the applicant shall complete an examination or obtain an evaluation since completing an examination does not necessarily require an evaluation.<br>d. Remove the additional uses of "subsection" from the reference in subsection (B)(2)(b) in order to ensure compliance with the proper format.<br>e. In subsection (B)(3), insert "or obtain an evaluation" after "examination" since certain conditions will require this instead of the examination, plus replace the usage of "renewal" at the end of the sentence with "issuance" since it is possible the renewal application is occurring after the first issuance and not a renewal.<br>f. Clarify subsection (B)(4) by replacing the usages of "applicant" with "licensee" since in this instance the person would already have a driver license, remove the option of notifying by telephone since it is more clear and better retention for the information to be obtained in writing. In addition, add the following sentence: "On receipt of the required notification, the Department shall require the licensee to complete an examination or evaluation."<br>g. Remove subsection (B)(5) since the pertinent information is being added for clarity to subsection (B)(4). |

| | |
|---|---|
| | h. Remove references to an "interview" and "additional evaluation" from subsections (C) and (D) since the Department no longer performs this burdensome and unnecessary process. Also remove subsections (C)(3) and (4).<br>i. Correct the words "licensee's driver license" under subsection (D)(2) to read "person's driving privileges," since the summary suspension for a disqualifying medical condition is actually more applicable to the person's entire driving privileges and not just a process used to suspend a driver license already issued and there may be actions taken against a nonresident driver. (*Instead of "person's," the Department used "an applicant or licensee's" to be more specific.*)<br>j. Add "prosthetic aid" to subsection (E) as an applicable restriction used with adaptive driving.<br>k. Restructure subsection (F) by removing subsections (F)(1) through (3) and replacing with the sentence "The Department's Executive Hearing Office shall conduct the hearing as provided under A.R.S. Title 41, Chapter 6, Article 6, and 17 A.A.C. 1, Article 5" in order to simply and maintain consistency with the Department's other rules.<br>*(Completed December 1, 2020)* |
| R17-4-503 | a. Clarify that the vision standards located under this Section are applicable only to a class D, G, or M applicant or licensee in subsection (B).<br>b. Clarify the field of vision readings in subsection (B) to be "70 degrees or greater" and "35 degrees or greater."<br>c. Relocate subsections (C)(4) and (5) to subsection (B) since these standards would not be applicable to restrictions and would be clearer to be with the other standards.<br>d. Clarify that visual screening equipment or the Snellen Chart may be used to determine visual acuity and visual screening equipment is used for field of vision in subsection (D)(1).<br>e. Correct the typo under subsection (D)(2)(a), by replacing the words "a initial" with "an initial."<br>f. Correct the written statement referenced under subsection (D)(2)(b) to require a vision examination form provided by the Department and completed by a physician or an optometrist.<br>g. Remove subsection (D)(3) since clarification is being added to subsection (D)(1) so this subsection is unnecessary.<br>h. Clarify that subsection (F) concerns the results from a physician or optometrist by inserting "from a physician or optometrist" after "visual field screening" in the introductory sentence.<br>*(Completed December 1, 2020)* |
| R17-4-504 | a. Replace the term "medical code" with "medical alert code" in subsection (D) since the term "medical code" in R17-4-501 is being revised to "medial alert code" and appears to be used interchangeably with the undefined term "medical alert code" in subsections (C) and (D) of this rule.<br>b. Clarify subsection (D) to indicate the code is maintained on a computer record and not just the Department computer.<br>*(Completed December 1, 2020)* |
| R17-4-506 | a. Replace the "medical examination" verbiage with "evaluation" verbiage since it is necessary to have the person seen by a specialist for an evaluation instead of the examination; this does not apply to the term "medical examination report." |

| | |
|---|---|
| | b. Replace the usage of "non-resident" in subsection (B)(1) with "nonresident" to be consistent in its usage in subsection (B)(3).<br>c. Replace the phrase "driver privileges" with "driving privileges" to ensure consistency in use throughout the Article and usage in state statutes.<br>*(Completed December 1, 2020)* |
| R17-4-510 | Remove the current provisions under this rule and update, reword and restructure the rule language to incorporate by reference the federal regulations under 40 CFR 205.152 and 205.166 to be more consistent with the requirements of the Office of the Secretary of State.<br>*(Completed December 1, 2020. This rule expired on December 7, 2021 (28 A.A.R. 121, January 7, 2022) due to the removal of the legislative rulemaking authority in Laws 2021, Chapter 257 (HB2144).)* |
| R17-4-512 | a. Update this rule for consistency with current federal standards by incorporating by reference the 2019 edition.<br>b. Reword and restructure the rule language to be more consistent with the requirements of the Office of the Secretary of State.<br>*(Completed December 1, 2020. This rule expired on December 7, 2021 (28 A.A.R. 121, January 7, 2022) due to the removal of the legislative rulemaking authority in Laws 2021, Chapter 257 (HB2144).)* |

**11. A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:**

The probable benefits of the rules to the public and political subdivisions outweigh the costs of the rule. The Department routinely chooses the rulemaking option that is the least costly and burdensome to the regulated public or industry. The following rules are designed to minimally impact regulated persons and small businesses. Applicants and licensees may see a variety of indirect costs ranging from minimal to substantive from the examinations or evaluations performed by physicians, specialists, addiction counselors, optometrists, or registered nurse practitioners or from any necessary equipment (adaptive equipment, modified van, bioptic telescopic lenses, etc.). The benefit of being able to drive and the benefit of the Department being able to ensure public safety with physically qualified drivers outweigh the costs. Plus, in some instances the costs may already be necessary for the applicant or licensee for other purposes beyond driving.

**12. Are the rules more stringent than corresponding federal laws? Yes ___ No X**

There are no corresponding federal laws for R17-4-501 through R17-4-504 and R17-4-506. R17-4-508 is not more stringent than its corresponding federal regulations in 49 CFR 391.

**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:**

R17-4-501 through R17-4-504 and R17-4-506 do not require the issuance of a regulatory permit, license, or agency authorization.

R17-4-508 does contain certain requirements for applicants of a commercial driver license. A commercial driver license is a general permit since the activities and practices authorized by it are substantially similar in nature for all holders per each type of commercial driver license. The rule though does not require the issuance of the commercial driver license, that requirement is under 17 A.A.C. 5, Article 2.

## 14. Proposed course of action

The Department proposes to amend R17-4-501, R17-4-502, and R17-4-504 as identified in item 6 through expedited rulemaking. The Department plans to request approval from the Governor's Office, pursuant to A.R.S. § 41-1039, upon approval of this report. The Department intends to submit the Notice of Final Expedited Rulemaking to the Council by the end of November 2025.

The Department is working on a rulemaking package to update its incorporation by reference of the Federal Motor Carrier Safety Regulations which includes the proposed amendments detailed for R17-4-508 in item 6. A Notice of Proposed Rulemaking has been filed with the Office of Secretary of State on October 31, 2024. The Department intends to submit the Notice of Final Rulemaking to the Council by the end of April 2025.

The Department does not believe any rule changes are necessary at this time for R17-4-503 and R17-4-506.

Arizona Administrative CODE
www.azsos.gov
Office of the Secretary of State
ADMINISTRATIVE RULES DIVISION



# TITLE 17. TRANSPORTATION

## CHAPTER 4. DEPARTMENT OF TRANSPORTATION - TITLE, REGISTRATION, AND DRIVER LICENSES

The table of contents on page one contains links to the referenced page numbers in this Chapter.
Refer to the notes at the end of a Section to learn about the history of a rule as it was published in the *Arizona Administrative Register*.

This Chapter contains rules that were filed to be codified in the *Arizona Administrative Code* between the dates of
July 1, 2022 through September 30, 2022

R17-4-313. Expired ..... 14

**Questions about these rules? Contact:**

| | |
|---|---|
| Department: | Department of Transportation<br>Rules and Policy Development |
| Address: | 206 S. 17th Ave., Mail Drop 180A<br>Phoenix, AZ 85007 |
| Website: | https://azdot.gov/about/government-relations |
| Name: | Candace Olson, Rules Analyst |
| Telephone: | (480) 267-6610 |
| Email: | COlson2@azdot.gov |


**The release of this Chapter in Supp. 22-3 replaces Supp. 21-4, 1-39 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), Administrative Rules Division, accepts state agency rule notice and other legal filings and is the publisher of Arizona rules. The Office of the Secretary of State does not interpret or enforce rules in the *Administrative Code*. Questions about rules should be directed to the state agency responsible for the promulgation of the rule.

Scott Cancelosi, Director
ADMINISTRATIVE RULES DIVISION

---

### RULES

The definition for a rule is provided for under A.R.S. § 41-1001. *"'Rule' means an agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of an agency."*

### THE ADMINISTRATIVE CODE

The *Arizona Administrative Code* is where the official rules of the state of Arizona are published. The *Code* is the official codification of rules that govern state agencies, boards, and commissions.

The *Code* is separated by subject into Titles. Titles are divided into Chapters. A Chapter includes state agency rules. Rules in Chapters are divided into Articles, then Sections. The "R" stands for "rule" with a sequential numbering and lettering outline separated into subsections.

Rules are codified quarterly in the *Code*. Supplement release dates are printed on the footers of each Chapter.

First Quarter: January 1 - March 31
Second Quarter: April 1 - June 30
Third Quarter: July 1 - September 30
Fourth Quarter: October 1 - December 31

For example, the first supplement for the first quarter of 2022 is cited as Supp. 22-1. Supplements are traditionally released three to four weeks after the end of the quarter because filings are accepted until the last day of the quarter.

Please note: The Office publishes by Chapter, not by individual rule Section. Therefore there might be only a few Sections codified in each Chapter released in a supplement. This is why the Office lists only updated codified Sections on the previous page.

### RULE HISTORY

Refer to the HISTORICAL NOTE at the end of each Section for the effective date of a rule. The note also includes the *Register* volume and page number in which the notice was published (A.A.R.) and beginning in supplement 21-4, the date the notice was published in the *Register*.

### AUTHENTICATION OF PDF CODE CHAPTERS

The Office began to authenticate Chapters of the *Code* in Supp. 18-1 to comply with A.R.S. §§ 41-1012(B) and A.R.S. § 41-5505.

A certification verifies the authenticity of each *Code* Chapter posted as it is released by the Office of the Secretary of State. The authenticated pdf of the *Code* includes an integrity mark with a certificate ID. Users should check the validity of the signature, especially if the pdf has been downloaded. If the digital signature is invalid it means the document's content has been compromised.

### HOW TO USE THE CODE

Rules may be in effect before a supplement is released by the Office. Therefore, the user should refer to issues of the *Arizona Administrative Register* for recent updates to rule Sections.

### ARIZONA REVISED STATUTE REFERENCES

The Arizona Revised Statutes (A.R.S.) are available online at the Legislature's website, www.azleg.gov. An agency's authority note to make rules is often included at the beginning of a Chapter. Other Arizona statutes may be referenced in rule under the A.R.S. acronym.

### SESSION LAW REFERENCES

Arizona Session Law references in a Chapter can be found at the Secretary of State's website, www.azsos.gov under Services-> Legislative Filings.

### EXEMPTIONS FROM THE APA

It is not uncommon for an agency to be exempt from the steps outlined in the rulemaking process as specified in the Arizona Administrative Procedures Act, also known as the APA (Arizona Revised Statutes, Title 41, Chapter 6, Articles 1 through 10). Other agencies may be given an exemption to certain provisions of the Act.

An agency's exemption is written in law by the Arizona State Legislature or under a referendum or initiative passed into law by Arizona voters.

When an agency files an exempt rulemaking package with our Office it specifies the law exemption in what is called the preamble of rulemaking. The preamble is published in the *Register* online at www.azsos.gov/rules, click on the *Administrative Register* link.

Editor's notes at the beginning of a Chapter provide information about rulemaking Sections made by exempt rulemaking. Exempt rulemaking notes are also included in the historical note at the end of a rulemaking Section.

The Office makes a distinction to certain exemptions because some rules are made without receiving input from stakeholders or the public. Other exemptions may require an agency to propose exempt rules at a public hearing.

### PERSONAL USE/COMMERCIAL USE

This Chapter is posted as a public courtesy online, and is for private use only. Those who wish to use the contents for resale or profit should contact the Office about Commercial Use fees. For information on commercial use fees review A.R.S. § 39-121.03 and 1 A.A.C. 1, R1-1-113.

*Rhonda Paschal, rules managing editor, assisted with the editing of this Chapter.*


| | | |
|---|---|---|
| ***Arizona Administrative Code***<br>Publisher<br>Department of State<br>Office of the Secretary of State<br>Administrative Rules Division | Published electronically under the authority of A.R.S. § 41-1012.<br>Authentication authorized under Arizona Revised Statutes, Chapter 54, Uniform Electronic Legal Material Act. | Mailing Address:<br>Administrative Rules Division<br>Office of the Secretary of State<br>1700 W. Washington Street, Fl. 2<br>Phoenix, AZ 85007 |

Arizona Secretary of State
Digitally signed by Arizona Secretary of State
Date: 2022.11.14 09:53:42 -07'00'



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 17. TRANSPORTATION

## CHAPTER 4. DEPARTMENT OF TRANSPORTATION - TITLE, REGISTRATION, AND DRIVER LICENSES

Authority: A.R.S. §§ 28-366 and 28-5204

**Supp. 22-3**

### CHAPTER TABLE OF CONTENTS

### ARTICLE 1. GENERAL PROVISIONS

*Article 1, consisting of Section R17-4-101, made by final rulemaking at 25 A.A.R. 1885, effective July 2, 2019 (Supp. 19-3).*

Section
R17-4-101. Definitions ..... 4

### ARTICLE 2. VEHICLE TITLE

Section
R17-4-201. Definitions ..... 4
R17-4-202. Certificate of Title Form ..... 4
R17-4-203. Certificate of Title and Registration Application .. 5
R17-4-204. Seller's Signature Acknowledgement ..... 5
R17-4-205. Co-ownership and Vehicle Title ..... 5
R17-4-206. Additional Titling Standards for Vehicles Not Manufactured in Compliance with United States Safety and Emission Standards; "Gray-market Vehicles" ..... 5
R17-4-207. Lien Filing ..... 6
R17-4-208. Lien Clearance ..... 6
R17-4-209. Recodified ..... 7
R17-4-210. Repealed ..... 7
Appendix A. Repealed ..... 7
R17-4-211. Reserved ..... 7
R17-4-212. Reserved ..... 7
R17-4-213. Reserved ..... 7
R17-4-214. Reserved ..... 7
R17-4-215. Reserved ..... 7
R17-4-216. Recodified ..... 7
R17-4-217. Recodified ..... 7
R17-4-218. Recodified ..... 7
R17-4-219. Recodified ..... 7
R17-4-220. Repealed ..... 7
R17-4-221. Repealed ..... 8
R17-4-222. Recodified ..... 8
R17-4-223. Repealed ..... 8
R17-4-224. Recodified ..... 8
R17-4-225. Reserved ..... 8
R17-4-226. Recodified ..... 8
Appendix A. Repealed ..... 8
R17-4-226.01. Recodified ..... 8
R17-4-227. Recodified ..... 8
R17-4-228. Reserved ..... 8
R17-4-229. Reserved ..... 8
R17-4-230. Recodified ..... 8
R17-4-231. Recodified ..... 8
R17-4-232. Reserved ..... 8
R17-4-233. Reserved ..... 8
R17-4-234. Reserved ..... 8
R17-4-235. Reserved ..... 8
R17-4-236. Reserved ..... 8
R17-4-237. Repealed ..... 8
R17-4-238. Repealed ..... 8
R17-4-239. Repealed ..... 8
R17-4-240. Recodified ..... 8
R17-4-241. Recodified ..... 8
R17-4-242. Repealed ..... 9
R17-4-243. Repealed ..... 9
R17-4-244. Reserved ..... 9
R17-4-245. Recodified ..... 9
R17-4-246. Recodified ..... 9
R17-4-247. Reserved ..... 9
R17-4-248. Reserved ..... 9
R17-4-249. Reserved ..... 9
R17-4-250. Repealed ..... 9
R17-4-251. Repealed ..... 9
R17-4-252. Recodified ..... 9
R17-4-253. Reserved ..... 9
R17-4-254. Reserved ..... 9
R17-4-255. Reserved ..... 9
R17-4-256. Reserved ..... 9
R17-4-257. Reserved ..... 9
R17-4-258. Reserved ..... 9
R17-4-259. Reserved ..... 9
R17-4-260. Recodified ..... 9
R17-4-261. Reserved ..... 9
R17-4-262. Reserved ..... 9
R17-4-263. Reserved ..... 9
R17-4-264. Reserved ..... 9
R17-4-265. Repealed ..... 9

### ARTICLE 3. VEHICLE REGISTRATION

*Article 3, consisting of Sections R17-4-301 through R17-4-349, transferred to Title 17, Chapter 1, Article 3, Sections R17-1-301 through R17-1-349 (Supp. 92-4).*

Section
R17-4-301. Definitions ..... 9
R17-4-302. Staggered Registration for Apportioned Commercial Vehicles ..... 10
R17-4-303. Biennial Registration ..... 10
R17-4-304. Staggered Registration for Included Vehicles .... 11
R17-4-305. Temporary Registration Plate "TRP" Procedure 12
R17-4-306. Nonresident Daily Commuter Fee ..... 12
R17-4-307. Motor Vehicle Registration and License Plate Reinstatement Fee ..... 12
R17-4-308. Official Vehicle License Plates ..... 12
R17-4-309. Private Fire Emergency Vehicle Permit ..... 12
Appendix A. Repealed ..... 13
R17-4-310. Personalized License Plates ..... 13
R17-4-311. Special Organization Plate List ..... 14
R17-4-312. Off-highway Vehicle User Indicia ..... 14
R17-4-313. Expired ..... 14
R17-4-314. Transferred ..... 14
R17-4-315. Transferred ..... 14
R17-4-316. Transferred ..... 14

R17-4-317. Transferred ..... 15
R17-4-318. Transferred ..... 15
R17-4-319. Transferred ..... 15
R17-4-320. Transferred ..... 15
R17-4-321. Transferred ..... 15
R17-4-322. Transferred ..... 15
R17-4-323. Transferred ..... 15
R17-4-324. Transferred ..... 15
R17-4-325. Transferred ..... 15
R17-4-326. Transferred ..... 15
R17-4-327. Transferred ..... 15
R17-4-328. Transferred ..... 15
R17-4-329. Transferred ..... 15
R17-4-330. Transferred ..... 15
R17-4-331. Transferred ..... 15
R17-4-332. Transferred ..... 15
R17-4-333. Transferred ..... 15
R17-4-334. Transferred ..... 15
R17-4-335. Transferred ..... 15
R17-4-336. Transferred ..... 15
R17-4-337. Transferred ..... 16
R17-4-338. Transferred ..... 16
R17-4-339. Transferred ..... 16
R17-4-340. Transferred ..... 16
R17-4-341. Transferred ..... 16
R17-4-342. Transferred ..... 16
R17-4-343. Transferred ..... 16
R17-4-344. Transferred ..... 16
R17-4-345. Transferred ..... 16
R17-4-346. Transferred ..... 16
R17-4-347. Transferred ..... 16
R17-4-348. Transferred ..... 16
R17-4-349. Transferred ..... 16
R17-4-350. Rental Vehicle Surcharge Reimbursement ..... 16
R17-4-351. Special License Plate; Definition ..... 17
R17-4-352. Duplicate Special License Plate; Fee ..... 17

## ARTICLE 4. DRIVER LICENSES

Section
R17-4-401. Definitions ..... 17
R17-4-402. Restricted Permit During a Financial Responsibility (Accident) Suspension ..... 18
R17-4-403. Application for Duplicate Driver License or Duplicate Nonoperating Identification License; Fees ..... 18
R17-4-404. Driver Point Assessment; Traffic Survival Schools ..... 18
Table 1. Driver Point Valuation ..... 19
R17-4-405. Emergency Expired ..... 19
R17-4-406. Minor's Application for Permit or License ..... 19
R17-4-407. Travel-compliant Driver License or Travel-compliant Non-operating Identification License Application; Fee ..... 20
R17-4-408. Mandatory Extension of a Certified Ignition Interlock Device Order ..... 20
R17-4-409. Non-operating Identification License Application; Applicability; Fee ..... 20
R17-4-410. Voter Registration Through the Motor Vehicle Division ..... 21
R17-4-411. Special Ignition Interlock Restricted Driver License: Application, Restrictions, Reporting, Fee ..... 21
R17-4-412. Extension of a Special Ignition Interlock Restricted Driver License: Hearing, Burden of Proof and Presumptions ..... 22
R17-4-413. Lifetime Disqualification Reinstatement ..... 22
R17-4-414. Commercial Driver License Applicant Driver History Check; Required Action; Hearing ..... 23
R17-4-415. Reserved ..... 24
R17-4-416. Reserved ..... 24
R17-4-417. Reserved ..... 24
R17-4-418. Reserved ..... 24
R17-4-419. Reserved ..... 24
R17-4-420. Recodified ..... 24
R17-4-421. Recodified ..... 24
R17-4-422. Recodified ..... 24
R17-4-423. Recodified ..... 24
R17-4-424. Recodified ..... 24
R17-4-425. Recodified ..... 24
R17-4-426. Recodified ..... 24
R17-4-427. Recodified ..... 24
R17-4-428. Recodified ..... 24
R17-4-429. Reserved ..... 24
R17-4-430. Reserved ..... 24
R17-4-431. Reserved ..... 24
R17-4-432. Reserved ..... 24
R17-4-433. Reserved ..... 24
R17-4-434. Reserved ..... 24
R17-4-435. Recodified ..... 24
R17-4-435.01. Recodified ..... 25
R17-4-435.02. Recodified ..... 25
R17-4-435.03. Recodified ..... 25
R17-4-435.04. Recodified ..... 25
R17-4-435.05. Recodified ..... 25
R17-4-435.06. Recodified ..... 25
R17-4-436. Recodified ..... 25
R17-4-437. Emergency Expired ..... 25
R17-4-437.01. Emergency Expired ..... 25
R17-4-437.02. Emergency Expired ..... 25
R17-4-437.03. Emergency Expired ..... 25
Appendix A. Emergency Expired ..... 25
R17-4-437.04. Emergency Expired ..... 25
R17-4-438. Recodified ..... 26
R17-4-439. Recodified ..... 26
R17-4-440. Recodified ..... 26
R17-4-441. Reserved ..... 26
R17-4-442. Reserved ..... 26
R17-4-443. Reserved ..... 26
R17-4-444. Repealed ..... 26
R17-4-445. Recodified ..... 26
R17-4-446. Recodified ..... 26
R17-4-447. Recodified ..... 26
R17-4-448. Recodified ..... 26
R17-4-449. Reserved ..... 26
R17-4-450. Repealed ..... 26
R17-4-451. Repealed ..... 26
R17-4-452. Repealed ..... 26
R17-4-453. Repealed ..... 26
R17-4-454. Repealed ..... 26
R17-4-455. Repealed ..... 26
R17-4-456. Repealed ..... 26
R17-4-457. Repealed ..... 27
R17-4-458. Repealed ..... 27
R17-4-459. Repealed ..... 27
R17-4-460. Repealed ..... 27
R17-4-461. Repealed ..... 27

R17-4-462. Repealed ..... 27
R17-4-463. Repealed ..... 27
R17-4-464. Repealed ..... 27
R17-4-465. Repealed ..... 27
R17-4-466. Repealed ..... 27
R17-4-467. Repealed ..... 27

## ARTICLE 5. SAFETY

Section
R17-4-501. Definitions ..... 27
R17-4-502. General Provisions for Visual, Physical, and Psychological Ability to Operate a Motor Vehicle Safely ..... 28
Exhibit A. Repealed ..... 29
R17-4-503. Vision Standards ..... 29
R17-4-504. Medical Alert Conditions ..... 30
R17-4-505. Repealed ..... 30
R17-4-506. Neurological Standards ..... 30
R17-4-507. Repealed ..... 31
R17-4-508. Commercial Driver License Physical Qualifications ..... 31
R17-4-509. Repealed ..... 32
R17-4-510. Expired ..... 32
R17-4-511. Repealed ..... 32
R17-4-512. Expired ..... 32
R17-4-513. Emergency Expired ..... 32
R17-4-514. Emergency Expired ..... 32
R17-4-515. Reserved ..... 32
R17-4-516. Reserved ..... 32
R17-4-517. Reserved ..... 32
R17-4-518. Reserved ..... 33
R17-4-519. Reserved ..... 33
R17-4-520. Recodified ..... 33
R17-4-521. Recodified ..... 33
R17-4-522. Recodified ..... 33

## ARTICLE 6. EXPIRED

*Editor's Note: Sections R17-4-606, R17-4-607 and its Appendix A and Appendices A and B were repealed under a Notice of Proposed Summary Rulemaking in Supp. 96-1. R17-4-612 was amended under the same Notice of Proposed Summary Rulemaking at 2 A.A.R. 1486. The Office did not receive a Notice of Final Summary Rulemaking on these Sections (Editor's Note added Supp. 10-2).*

Section
R17-4-601. Reserved ..... 33
R17-4-602. Reserved ..... 33
R17-4-603. Reserved ..... 33
R17-4-604. Reserved ..... 33
R17-4-605. Reserved ..... 33
R17-4-606. Repealed ..... 33
R17-4-607. Repealed ..... 33
R17-4-608. Expired ..... 33
R17-4-609. Expired ..... 33
R17-4-610. Expired ..... 33
R17-4-611. Expired ..... 33
R17-4-612. Expired ..... 33

## ARTICLE 7. HAZARDOUS MATERIALS ENDORSEMENT

Section
R17-4-701. Definitions ..... 33
Appendix A. Recodified ..... 34
R17-4-702. Scope ..... 34
R17-4-703. Expired ..... 34
R17-4-704. Requirements for an HME ..... 34
R17-4-705. Required Testing ..... 34
R17-4-706. Fees ..... 34
R17-4-707. 60-Day Notice to Apply ..... 34
R17-4-708. Security Threat Assessment ..... 35
R17-4-709. Determination of Security Threat ..... 35
R17-4-709.01. Recodified ..... 35
R17-4-709.02. Recodified ..... 35
R17-4-709.03. Recodified ..... 35
R17-4-709.04. Recodified ..... 35
R17-4-709.05. Recodified ..... 35
R17-4-709.06. Recodified ..... 35
Appendix A. Recodified ..... 35
Appendix B. Recodified ..... 36
Appendix C. Recodified ..... 36
R17-4-709.07. Recodified ..... 36
R17-4-709.08. Recodified ..... 36
R17-4-709.09. Recodified ..... 36
Exhibit A. Recodified ..... 36
Exhibit B. Recodified ..... 36
R17-4-709.10. Recodified ..... 36
R17-4-710. Requests for Administrative Hearing ..... 36
R17-4-711. Expired ..... 36
R17-4-712. Transfer Applicant ..... 36
Table A. Recodified ..... 37

## ARTICLE 8. MOTOR VEHICLE RECORDS

Section
R17-4-801. Definitions ..... 37
R17-4-802. Motor Vehicle Record Request ..... 37
R17-4-803. Record Copy Charges ..... 38
R17-4-804. Repealed ..... 38
R17-4-805. Recodified ..... 38
R17-4-806. Recodified ..... 38
R17-4-807. Recodified ..... 38
R17-4-808. Recodified ..... 38

## ARTICLE 9. RESERVED

Section
R17-4-901. Recodified ..... 38
R17-4-902. Recodified ..... 38
R17-4-903. Recodified ..... 39
R17-4-904. Recodified ..... 39
R17-4-905. Recodified ..... 39
R17-4-906. Recodified ..... 39
R17-4-907. Recodified ..... 39
R17-4-908. Recodified ..... 39
R17-4-909. Recodified ..... 39
R17-4-910. Recodified ..... 39
R17-4-911. Recodified ..... 39
R17-4-912. Recodified ..... 39
R17-4-913. Recodified ..... 39
R17-4-914. Repealed ..... 39

## ARTICLE 1. GENERAL PROVISIONS

**R17-4-101. Definitions**

In addition to the definitions prescribed under A.R.S. § 28-101, A.R.S. § 28-3001, and 6 CFR 37.3, the following terms apply to this Chapter, unless otherwise specified:

"Non-operating identification license" means a credential issued by the Department for identification purposes only, as prescribed under A.R.S. § 28-3165, which does not grant authority to operate a motor vehicle and is not intended to be accepted by federal agencies for an official purpose defined under 6 CFR 37.3.

"Travel-compliant driver license" has the same meaning as the term REAL ID Driver's License defined under 6 CFR 37.3, which is a driver license issued by the Department as prescribed under A.R.S. § 28-3175 in compliance with A.R.S. Title 28, Chapter 8, and the federal standards provided under 6 CFR 37 for state issuance of secure credentials intended to be accepted by federal agencies for official purposes.

"Travel-compliant identification license" has the same meaning as the term REAL ID Identification Card as defined under 6 CFR 37.3, which is a non-operating identification license issued by the Department as prescribed under A.R.S. § 28-3175 in compliance with A.R.S. Title 28, Chapter 8, and the federal standards provided under 6 CFR 37 for state issuance of secure credentials acceptable by federal agencies for official purposes.

**Historical Note**

New Section made by final rulemaking at 25 A.A.R. 1885, with an immediate effective date of July 2, 2019 (Supp. 19-3).

## ARTICLE 2. VEHICLE TITLE

**R17-4-201. Definitions**

In addition to the definitions prescribed under A.R.S. §§ 28-101, 28-2001, and 28-3001, the following definitions apply to this Article, unless otherwise specified:

"Authorized ELT Participant" means a lending institution or finance company authorized by the Division to electronically release a lien or encumbrance.

"Date of lien" means the date identified by the lienholder as the date the loan was issued to the borrower.

"Division" means the Arizona Department of Transportation's Motor Vehicle Division.

"Encumbrance" means a lien recorded, by the Division, on a vehicle or mobile home record and the Arizona Certificate of Title.

"ELT" means Electronic Lien and Title.

"EPA standards" means the emission standards of the Environmental Protection Agency, as prescribed under 40 CFR 86.

"FMVSS" means the Federal Motor Vehicle Safety Standards as prescribed under 49 CFR 571.

"Joint tenancy with right of survivorship" means vehicle ownership by two or more persons and the deceased joint owner's interest in the vehicle is transferred to the surviving owners.

"Lienholder" means a person or entity retaining legal possession of a vehicle or mobile home until the debtor has satisfactorily repaid the loan for which the vehicle or mobile home is designated as collateral.

"Lienholder Number" means the computer-generated record number assigned by the Division to a lienholder.

"Low-speed vehicle" has the same meaning as prescribed under 49 CFR 571.3.

"MPV" means multipurpose passenger vehicle, which has the same meaning as prescribed under 49 CFR 571.3.

"MVD" means the Arizona Department of Transportation's Motor Vehicle Division.

"NHTSA" means National Highway Traffic Safety Administration of the United States Department of Transportation.

"Operation of law lien" means a lien resulting from the application of a state or federal statute.

"Primary lien" means the first of any multiple liens recorded on a vehicle or mobile home record.

"Registered importer" means a person registered by the NHTSA Administrator to import vehicles, as prescribed under 49 CFR 30141.

"Tenancy in common" means vehicle ownership by two or more people without the right of survivorship.

"Valid titling document" means one of the following documents showing a vehicle's compliance with FMVSS and EPA standards:

A NHTSA Declaration,

A manufacturer's letter, or

A U.S. federal compliance label printed in English.

**Historical Note**

New Section made by final rulemaking at 9 A.A.R. 1353, effective June 6, 2003 (Supp. 03-2). Amended by final rulemaking at 13 A.A.R. 3281, effective November 10, 2007 (Supp. 07-3).

**R17-4-202. Certificate of Title Form**

**A.** The Motor Vehicle Division (MVD) shall produce the Certificate of Title form on tamper-resistant and counterfeit-resistant paper.

**B.** MVD shall provide space on the Certificate of Title form for the following information:

1. Title information:
   a. Title number;
   b. Issue date;
   c. Previous title number; and
   d. State and date of previous title.
2. Vehicle information:
   a. Vehicle identification number (VIN);
   b. Vehicle make, model, year, and body style;
   c. Fuel type;
   d. Odometer information; and
   e. Vehicle mechanical or structural condition.
3. Lienholder information:
   a. Lienholder name and address;
   b. Lienholder customer or federal identification number; and
   c. Lien amount and lien date.
4. Vehicle owner's or owner's legal designee information:
   a. Name; and
   b. Mailing address.
5. Ownership change information:
   a. Sale date;

b. Purchaser's name and address;
c. Odometer mileage disclosure statement;
d. Seller's signature; and
e. Seller's signature certification.
6. Dealer reassignment information.
7. Other information as required by the Division for internal processing and recordkeeping.

**Historical Note**
New Section recodified from R17-4-204 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

**R17-4-203. Certificate of Title and Registration Application**

**A.** In addition to the requirements of A.R.S. §§ 28-2051 and 28-2157, a person applying for an Arizona motor vehicle title certificate and registration shall complete a form supplied by the Motor Vehicle Division that contains the following information:
1. Vehicle information:
a. Tab number;
b. Initial registration month and year;
c. Vehicle make, model, year, and body style;
d. Mechanical or structural status indicating whether the vehicle is:
i. Dismantled,
ii. Reconstructed,
iii. Salvaged, or
iv. Specially constructed;
e. Gross vehicle weight;
f. Fuel type;
g. Odometer information;
h. Current title number and titling state.
2. An owner's or lessee's legal ownership status.
3. Lienholder information:
a. Lienholder names and addresses, and
b. Lien amount and date incurred.
4. If a mobile home, the physical site.
5. Co-ownership information:
a. A statement of whether any survivorship rights in the vehicle exist; and
b. A statement providing co-ownership legal status prescribed in R17-4-205(B).
6. Owner certification information verifying:
a. Ownership,
b. Inclusion of all liens and encumbrances, and
c. Seller-verified odometer reading.
7. Applicant signatures.
8. An acknowledgement that:
a. The applicant agrees or disagrees to the Division's release of the applicant's name on a commercial mailing list; and
b. The applicant has read a printed explanation of odometer reading codes.
9. Other information required by the Division for internal processing and recordkeeping.

**B.** An applicant may voluntarily provide the following information on the form:
1. Applicant's birth date;
2. Applicant's driver license number; and
3. Applicant's federal employer identification number, if the applicant is taking title as a sole proprietor, partnership, corporation, or other legal business entity.

**Historical Note**
New Section recodified from R17-4-205 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

**R17-4-204. Seller's Signature Acknowledgement**

A seller shall ensure that a Notary Public or a Motor Vehicle Division (MVD) agent witnesses the seller sign the title transfer. The Notary Public or MVD agent shall sign the title transfer acknowledging witnessing the seller's signature. "Motor Vehicle Division agent" has the meaning prescribed in A.R.S. § 28-370.

**Historical Note**
Adopted effective November 10, 1986 (Supp. 86-6). Former Section R17-4-75 renumbered without change as Section R17-4-204 (Supp. 87-2). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 2468, effective June 8, 2000 (Supp. 00-2). Section recodified to R17-4-202 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section recodified from R17-4-206 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

**R17-4-205. Co-ownership and Vehicle Title**

**A.** A title certificate application shall specify the form of co-ownership and names of a vehicle's co-owners as follows.
1. If co-ownership is a joint tenancy with right of survivorship in which all owners must sign to transfer or encumber the vehicle, the applicant shall provide the name of each owner separated by "and/or."
2. If co-ownership is a joint tenancy that allows one owner to transfer or encumber the vehicle title, the applicant shall provide:
a. The name of each co-owner separated by "or"; and
b. A form, signed by each co-owner authorizing title transfer or encumbrance on the signature of any co-owner.
3. If co-ownership is a tenancy in common, the applicant shall provide the name of each owner separated by "and."

**B.** Before a surviving joint tenant under subsection (A)(1) obtains a title certificate as owner or transfers or encumbers the vehicle title, the surviving joint tenant shall present to the Division a death certificate for each deceased joint tenant.

**C.** After the death of a tenant in common, the Division shall issue a new title certificate only as directed by:
1. A certified probate court order, or
2. A successor's affidavit under A.R.S. § 14-3971(B).

**Historical Note**
Adopted effective November 13, 1986 (Supp. 86-6). Former Section R17-4-75 renumbered without change as Section R17-4-205 (Supp. 87-2). Amended by final rulemaking at 7 A.A.R. 2752, effective June 8, 2001 (Supp. 01-2). Section recodified to R17-4-203 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section recodified from R17-4-207 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 9 A.A.R. 1353, effective June 6, 2003 (Supp. 03-2).

**R17-4-206. Additional Titling Standards for Vehicles Not Manufactured in Compliance with United States Safety and Emission Standards; "Gray-market Vehicles"**

**A.** Titling standards.
1. The Division shall issue a title to a foreign-manufactured vehicle imported to the United States if an applicant presents the following:
a. A valid titling document,

b. A completed MVD title and registration application as prescribed under R17-4-203,
c. A completed Vehicle Verification Form certifying that the vehicle passed the Division's physical inspection,
d. A document stating that the vehicle passed an Arizona emissions inspection under A.R.S. § 49-542, and
e. A certificate that the vehicle was converted to meet:
i. EPA standards, and
ii. FMVSS.

2. A foreign-manufactured vehicle imported to the United States is exempt from this subsection if it is older than 25 years from its manufacture date.
3. A foreign-manufactured vehicle imported to the United States that is between 21 and 25 years from the manufacture date is exempt from subsection (A)(1)(e)(i).
4. Titling standards for vehicles manufactured according to Canadian specifications.
a. The Division shall issue a title to a vehicle manufactured according to Canadian specifications if it:
i. Is not for resale;
ii. Has a GVWR of less than 10,000 pounds; and
iii. Is a passenger vehicle, motorcycle, or MPV.
b. Before titling a vehicle manufactured according to Canadian specifications, the owner shall submit to the Division manufacturer documentation verifying that the vehicle complies with FMVSS and EPA standards.
i. The Division shall waive the FMVSS and EPA labeling location requirements as prescribed in 49 CFR 571 and 40 CFR 86.
ii. If manufacturer documentation indicates that a vehicle's speedometer or headlights do not comply with FMVSS and EPA standards, the owner shall file additional documentation with the Division to verify completion of a modification that brings the vehicle into compliance.
c. A registered importer shall certify a vehicle manufactured according to Canadian specifications if:
i. The vehicle meets FMVSS standards except for occupant crash protection provisions prescribed under 49 CFR 571.208, or
ii. The owner did not submit manufacturer documentation as prescribed under subsection (A)(4)(b).

**B.** The Division shall require a registered importer's certification of a foreign-manufactured vehicle imported to the United States that:
1. Is not exempt under subsections (A)(2) or (A)(3), or
2. Does not qualify under subsection (A)(4).

**Historical Note**

Former Rule, General Order 55. Former Section R17-4-19 renumbered without change as Section R17-4-206 (Supp. 87-2). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 2468, effective June 8, 2000 (Supp. 00-2). Section recodified to R17-4-204 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section recodified from R17-4-209 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 9 A.A.R. 1353, effective June 6, 2003 (Supp. 03-2).

**R17-4-207. Lien Filing**

**A.** Lien filing. When filing a lien with the Division, a person shall submit a Title and Registration Application (available online at www.azdot.gov/mvd/FormsandPub/mvd.asp), the most recently issued certificate of title, the fee or fees to be paid as provided by law, and any other documentation required pursuant to A.R.S. Title 28.
1. The Division shall record a statement of all liens and encumbrances on the vehicle or mobile home record upon receiving a lien filing that meets all requirements prescribed in this subsection.
2. The Division shall immediately return a lien filing, with a letter stating why the lien filing was returned, when the lien filing does not meet the requirements prescribed in this subsection.

**B.** Multiple liens. The Division will record up to three liens on any one vehicle or mobile home record. Additional liens are recorded through the County Recorder's office. Liens are valued in the order that they are filed and recorded on the vehicle or mobile home record. However, the Division considers the primary lien recorded on the vehicle or mobile home record to be above all other subsequent liens or encumbrances. In the absence of an operation of law lien, only the lienholder in the primary position may repossess a vehicle or mobile home.

**C.** Lien filing notice. The Division shall notify the lienholder of the recording of a lien.
1. The Division shall issue an Arizona Certificate of Title or, when the lienholder is an Authorized ELT Participant, transmit an electronic lien notification to the primary lienholder.
2. The Division shall issue a computer-generated Lienholder Record to each subsequent lienholder recorded on the vehicle or mobile home record. The Division shall not issue a duplicate Lienholder Record.

**Historical Note**

Former Rule, General Order 62. Former Section R17-4-24 renumbered without change as Section R17-4-207 (Supp. 87-2). Section repealed; new Section made by final rulemaking at 7 A.A.R. 2752, effective June 8, 2001 (Supp. 01-2). Section recodified to R17-4-205 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section recodified from R17-4-230 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed; new Section made by final rulemaking at 13 A.A.R. 3281, effective November 10, 2007 (Supp. 07-3).

**R17-4-208. Lien Clearance**

**A.** Lien clearance. The Division shall remove the lien from the vehicle or mobile home record indicated on the lien clearance and issue a new Arizona Certificate of Title upon receiving proof that the lien is satisfied and an application furnished by the Division, the most recently issued certificate of title, the fee or fees to be paid as provided by law, and any other documentation required pursuant to A.R.S. Title 28. The Division considers the following instruments satisfactory proof that the lien or encumbrance recorded on a vehicle or mobile home record is satisfied:
1. The transmission of an electronic lien release from an ELT Participant,
2. A certificate of title acknowledged by the lienholder as prescribed under subsection (B)(1),
3. An original lien filing receipt acknowledged by the lienholder as prescribed under subsection (B)(1),

4. An original computer-generated Lienholder Record acknowledged by the lienholder as prescribed under subsection (B)(1),
5. A lender copy of the original lien instrument indicating the lien is paid in full acknowledged by the lienholder as prescribed under subsection (B)(1); or
6. Any document giving a complete description of the vehicle, as recorded on the Arizona Certificate of Title, indicating that the lien is either "paid in full" or "satisfied" acknowledged by the lienholder as prescribed under subsection (B)(1).

**B.** Lienholder satisfaction of lien requirements.

1. The Division shall not accept a satisfaction of lien when the authorized signature of the lienholder or authorized agent of the lienholder, appearing on the lien clearance instrument, is not acknowledged before a Notary Public or witnessed by an authorized Division employee.
2. The lienholder shall deliver the Arizona Certificate of Title to the next lienholder or, if there is not another lienholder, to the owner of the vehicle or mobile home within 15 business days after receiving payment in full satisfaction of the lien.
3. A lienholder that fails to deliver the certificate of title within 15 business days may be assessed a civil penalty, as prescribed under A.R.S. § 28-2134.

**C.** Lien release received in error. The Division will not reimburse any parties for any monetary damages that may occur when a lienholder issues a lien clearance to the Division in error.

**D.** Administrative hearing. A lienholder who is assessed a civil penalty, as prescribed under A.R.S. § 28-2134, may request a hearing in accordance with the procedures prescribed under 17 A.A.C. 1, Article 5.

**Historical Note**

Former Rule, General Order 83. Former Section R17-4-35 renumbered without change as Section R17-4-208 (Supp. 87-2). Section repealed by final rulemaking at 6 A.A.R. 2468, effective June 8, 2000 (Supp. 00-2). Section recodified from R17-4-231 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed; new Section made by final rulemaking at 13 A.A.R. 3281, effective November 10, 2007 (Supp. 07-3).

**R17-4-209. Recodified**

**Historical Note**

Adopted as Section R17-4-81 and renumbered as Section R17-4-209 effective May 29, 1987 (Supp. 87-2). Amended by final rulemaking at 7 A.A.R. 2755, effective June 8, 2001 (Supp. 01-2). Section recodified to R17-4-206 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

**R17-4-210. Repealed**

**Historical Note**

Adopted effective July 30, 1992 (Supp. 92-3). Section R17-4-210 repealed by summary action with an interim effective date of August 28, 1998; filed in the Office of the Secretary of State August 4, 1998 (Supp. 98-3). The Department failed to submit to the Governor's Regulatory Review Council an adopted summary rule pursuant to A.R.S. § 41-1027, and therefore the rule went back into effect November 26, 1998; Section repealed by summary rulemaking with an interim effective date of August 20, 1999, filed in the Office of the Secretary of State July 30, 1999 (Supp. 99-3). Interim effective date of August 20, 1999 now the permanent effective date (Supp. 99-4).

**Appendix A. Repealed**

**Historical Note**

Adopted effective July 30, 1992 (Supp. 92-3). Appendix A repealed by summary action with an interim effective date of August 28, 1998; filed in the Office of the Secretary of State August 4, 1998 (Supp. 98-3). The Department failed to submit to the Governor's Regulatory Review Council an adopted summary rule pursuant to A.R.S. § 41-1027, and therefore Appendix A went back into effect November 26, 1998; Appendix A repealed by summary rulemaking with an interim effective date of August 20, 1999; filed in the Office of the Secretary of State July 30, 1999 (Supp. 99-3). Interim effective date of August 20, 1999 now the permanent effective date (Supp. 99-4).

**R17-4-211. Reserved**

**R17-4-212. Reserved**

**R17-4-213. Reserved**

**R17-4-214. Reserved**

**R17-4-215. Reserved**

**R17-4-216. Recodified**

**Historical Note**

Adopted effective October 21, 1997 (Supp. 97-4). Section recodified to R17-4-302 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

**R17-4-217. Recodified**

**Historical Note**

Adopted effective September 12, 1997 (Supp. 97-3). Section recodified to R17-4-303 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

**R17-4-218. Recodified**

**Historical Note**

Amended effective April 21, 1980 (Supp. 80-2). Former Section R17-4-54 renumbered without change as Section R17-4-218 (Supp. 87-2). R17-4-218 and Appendix A repealed; new Section adopted effective December 8, 1998 (Supp. 98-4). Section recodified to R17-4-304 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

**R17-4-219. Recodified**

**Historical Note**

Former Rule, General Order 101. Former Section R17-4-42 renumbered without change as Section R17-4-219 (Supp. 87-2). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 4602, effective November 14, 2000 (Supp. 00-4). Section recodified to R17-4-305 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

**R17-4-220. Repealed**

**Historical Note**

Former Rule, General Order 103; Former Section R17-4-44 repealed, new Section R17-4-44 adopted effective April 21, 1980 (Supp. 80-2). Former Section R17-4-44

renumbered without change as Section R17-4-220 (Supp. 87-2). Repealed effective July 29, 1992 (Supp. 92-3).

**R17-4-221. Repealed**

**Historical Note**
Former Rule, General Order 75. Former Section R17-4-30 renumbered without change as Section R17-4-221 (Supp. 87-2). Repealed effective July 29, 1992 (Supp. 92-3).

**R17-4-222. Recodified**

**Historical Note**
Adopted effective December 3, 1986 (Supp. 86-6). Former Section R17-4-80 renumbered without change as Section R17-4-222 (Supp. 87-2). Section recodified to R17-4-306 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

**R17-4-223. Repealed**

**Historical Note**
Emergency rule adopted effective August 8, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-3). Emergency expired. Former emergency rule permanently adopted with changes effective December 31, 1991 (Supp. 91-4). Repealed effective July 18, 1994 (Supp. 94-3).

**R17-4-224. Recodified**

**Historical Note**
Adopted effective September 25, 1991 (Supp. 91-3). Section recodified to R17-4-307 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

**R17-4-225. Reserved**

**R17-4-226. Recodified**

**Historical Note**
Emergency rule adopted effective January 21, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Emergency expired. Adopted with changes effective February 1, 1993 (Supp. 93-1). Amended effective January 31, 1995 (Supp. 95-1). Amended by final rulemaking at 5 A.A.R. 702, effective February 10, 1999 (Supp. 99-1). Section repealed effective August 1, 1999 pursuant to subsection (C); new Section adopted by final rulemaking at 6 A.A.R. 1906, effective May 3, 2000 (Supp. 00-2). Section recodified to R17-5-502 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

**Appendix A. Repealed**

**Historical Note**
Emergency rule adopted effective January 21, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Emergency expired. Adopted effective February 1, 1993 (Supp. 93-3). Amended by final rulemaking at 5 A.A.R. 702, effective February 10, 1999 (Supp. 99-1). Appendix repealed effective August 1, 1999 pursuant to R17-4-226(C) (Supp. 00-2).

**R17-4-226.01. Recodified**

**Historical Note**
New Section adopted by final rulemaking at 6 A.A.R. 1906, effective May 3, 2000 (Supp. 00-2). Section recodified to R17-5-503 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

**R17-4-227. Recodified**

**Historical Note**
Adopted effective June 16, 1992 (Supp. 92-2). Section recodified to R17-4-402 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

**R17-4-228. Reserved**

**R17-4-229. Reserved**

**R17-4-230. Recodified**

**Historical Note**
Former Rule, General Order 47. Former Section R17-4-15 renumbered without change as Section R17-4-230 (Supp. 87-2). Section recodified to R17-4-207 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

**R17-4-231. Recodified**

**Historical Note**
Former Rule, General Order 70. Former Section R17-4-28 renumbered without change as Section R17-4-231 (Supp. 87-2). Section recodified to R17-4-208 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

**R17-4-232. Reserved**

**R17-4-233. Reserved**

**R17-4-234. Reserved**

**R17-4-235. Reserved**

**R17-4-236. Reserved**

**R17-4-237. Repealed**

**Historical Note**
Former Rule, General Order 50. Former Section R17-4-16 renumbered without change as Section R17-4-237 (Supp. 87-2). Section repealed by final rulemaking at 6 A.A.R. 4830, effective December 7, 2000 (Supp. 00-4).

**R17-4-238. Repealed**

**Historical Note**
Former Rule, General Order 51. Former Section R17-4-17 renumbered without change as Section R17-4-238 (Supp. 87-2). Section repealed by final rulemaking at 6 A.A.R. 4830, effective December 7, 2000 (Supp. 00-4).

**R17-4-239. Repealed**

**Historical Note**
Former Rule, General Order 60. Former Section R17-4-22 renumbered without change as Section R17-4-239 (Supp. 87-2). Section repealed by final rulemaking at 6 A.A.R. 4830, effective December 7, 2000 (Supp. 00-4).

**R17-4-240. Recodified**

**Historical Note**
Former Rule, General Order 65; Amended effective January 11, 1982 (Supp. 82-1). Former Section R17-4-25 renumbered without change as Section R17-4-240 (Supp. 87-2). Section recodified to R17-5-402 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

**R17-4-241. Recodified**

**Historical Note**
Former Rule, General Order 76. Former Section R17-4-31 renumbered without change as Section R17-4-241 (Supp. 87-2). Section amended by final rulemaking at 6 A.A.R. 4830, effective December 7, 2000 (Supp. 00-4). Section recodified to R17-5-404 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

**R17-4-242. Repealed**

**Historical Note**
Former Rule, General Order 77. Former Section R17-4-32 renumbered without change as Section R17-4-242 (Supp. 87-2). Section repealed by final rulemaking at 7 A.A.R. 869, effective January 22, 2001 (Supp. 01-1).

**R17-4-243. Repealed**

**Historical Note**
Former Rule, General Order 85. Former Section R17-4-36 renumbered without change as Section R17-4-243 (Supp. 87-2). Section repealed by final rulemaking at 6 A.A.R. 4830, effective December 7, 2000 (Supp. 00-4).

**R17-4-244. Reserved**

**R17-4-245. Recodified**

**Historical Note**
Adopted effective September 13, 1993 (Supp. 93-3). Section recodified to R17-5-405 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

**R17-4-246. Recodified**

**Historical Note**
Adopted effective September 13, 1993 (Supp. 93-3). Section recodified to R17-5-406 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

**R17-4-247. Reserved**

**R17-4-248. Reserved**

**R17-4-249. Reserved**

**R17-4-250. Repealed**

**Historical Note**
Former Rule, General Order 111. Former Section R17-4-47 renumbered without change as Section R17-4-250 (Supp. 87-2). Section repealed by final rulemaking at 6 A.A.R. 3839, effective September 13, 2000 (Supp. 00-3).

**R17-4-251. Repealed**

**Historical Note**
Former Rule, General Order 112. Former Section R17-4-48 renumbered without change as Section R17-4-251 (Supp. 87-2). Section repealed by final rulemaking at 6 A.A.R. 3839, effective September 13, 2000 (Supp. 00-3).

**R17-4-252. Recodified**

**Historical Note**
Former Rule, General Order 82. Former Section R17-4-34 renumbered without change as Section R17-4-252 (Supp. 87-2). Section recodified to R17-4-308 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

**R17-4-253. Reserved**

**R17-4-254. Reserved**

**R17-4-255. Reserved**

**R17-4-256. Reserved**

**R17-4-257. Reserved**

**R17-4-258. Reserved**

**R17-4-259. Reserved**

**R17-4-260. Recodified**

**Historical Note**
Former Rule, General Order 72. Former Section R17-4-29 renumbered without change as Section R17-4-260 (Supp. 87-2). Section recodified to R17-5-407 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

**R17-4-261. Reserved**

**R17-4-262. Reserved**

**R17-4-263. Reserved**

**R17-4-264. Reserved**

**R17-4-265. Repealed**

**Historical Note**
Adopted as an emergency effective June 29, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-3). Emergency expired. Permanent rule adopted effective October 1, 1984 (Supp. 84-5). Former Section R17-4-72 renumbered without change as Section R17-4-265 (Supp. 87-2). Section repealed by final rulemaking at 7 A.A.R. 2154, effective May 1, 2001 (Supp. 01-2).

## ARTICLE 3. VEHICLE REGISTRATION

**R17-4-301. Definitions**

Definitions. In addition to the definitions prescribed under A.R.S. §§ 28-101, 28-2231, and 28-5100, the following definitions apply to this Article, unless otherwise specified:

"Apportioned commercial vehicle" means a commercial vehicle that is subject to the proportional registration provisions prescribed under A.R.S. § 28-2233.

"Biennial" means once every two years.

"Business day" means a day other than a Sunday or holiday.

"Calendar quarter" means the following time periods established by the Division: January 1 to March 31, April 1 to June 30, July 1 to September 30, and October 1 to December 31.

"Day" means the 24-hour period from one midnight to the following midnight.

"Disabled person" means a recipient of public monies as a disabled individual under Title 16 of the Social Security Act.

"Division" means the Arizona Department of Transportation's Motor Vehicle Division.

"Division Director" means the Assistant Director for the Arizona Department of Transportation's Motor Vehicle Division or the Assistant Director's designee.

"Drop box" means a receptacle designated by the Division into which a person places vehicle registration forms and fees, and from which the Division retrieves these items daily.

"Effective date of registration" means the date the vehicle first becomes subject to registration fees in Arizona.

"Electronic delivery" means the transmission of registration and credit card information to the Division, by computer, through an authorized third party electronic service provider.

"Emergency Vehicle Permit" means a document issued by the Division's Enforcement Services Program to a private fire department for a single fire engine that authorizes the driver of a permitted vehicle to exercise the privileges prescribed under A.R.S. § 28-624.

"Expiration date" means the day, month, and year in which a vehicle registration expires.

"Fire Engine" means a motor vehicle containing fire-fighting equipment capable of extinguishing fires.

"IM147 Test" means the emissions test prescribed under A.R.S. § 49-542(F)(2)(a).

"Included vehicle" means a vehicle subject to annual or biennial Arizona registration unless otherwise excluded from the staggered registration prescribed under A.R.S. § 28-2159 and R17-4-304.

"Initial registration" means the first registration of an included vehicle in Arizona.

"OBD" means the On-Board Diagnostics emissions test prescribed under A.R.S. § 49-542(F)(2)(a).

"Off-highway vehicle" has the same meaning as prescribed under A.R.S. § 28-1171.

"Operator Requirements" means the requirements given in Chapter 2, Basic Driver/Operator Requirements, of the National Fire Protection Association Standard for Fire Apparatus Driver/Operator Professional Qualification (NFPA 1002), 1998 edition, which is incorporated by reference and on file with the Arizona Department of Transportation and the Office of the Secretary of State. This incorporation by reference contains no future editions or amendments.

"Private fire department" means a fire fighting business equipped to provide emergency fire-fighting devices for a private purpose that is neither a public service corporation nor a municipal entity.

"Private Fire Emergency Vehicle" means a fire engine operated by a private fire department for which an Emergency Vehicle Permit is issued.

"Registration" means the authorization, issued by the Division that allows a vehicle to use state highways.

"Registration fees" means the fees due to the Division at the time of registration and consisting of the general registration fees imposed under A.R.S. § 28-2003, the vehicle license tax imposed under A.R.S. § 28-5801, and the commercial registration and gross weight fees imposed under A.R.S. § 28-5433.

"Registration period" means the time-frame during which a vehicle registration is valid.

"Renewal registration" means the second and subsequent registration of an included vehicle.

**Historical Note**

Transferred to R17-1-301 (Supp. 92-4). New Section made by final rulemaking at 13 A.A.R. 3589, effective December 1, 2007 (Supp. 07-4). Amended by final rulemaking at 16 A.A.R. 1132, effective August 7, 2010 (Supp. 10-2).

**R17-4-302. Staggered Registration for Apportioned Commercial Vehicles**

Apportioned commercial vehicle fleet registration periods. The Division shall assign a registration period to a newly registered apportioned commercial vehicle fleet. The fleet owner and the Director shall mutually agree to the registration period and expiration date.

1. The Division shall:
   a. Establish a registration period that expires on the last day of the calendar quarter selected by the fleet owner, not to exceed 12 months from the initial registration date.
   b. Apply the original fleet registration fees towards the registration fees required for a replaced vehicle when an owner replaces a vehicle within a fleet.
   c. Apply the original fleet registration fees towards the registration fees required for a transferred vehicle when an owner transfers a vehicle between fleets.
   d. Refund any excess credit of registration fees in accordance with the provisions prescribed under A.R.S. § 28-2356.
2. The owner of an apportioned commercial fleet vehicle shall:
   a. Ensure that all vehicles within a fleet have the same registration period.
   b. Ensure that the fleet vehicle is not operated with an expired vehicle registration.
   c. Maintain the assigned or selected registration period for at least three consecutive registration periods.
3. The Division shall not provide a grace period for late registration or late payment of fees.

**Historical Note**

Adopted effective August 1, 1988 (Supp. 88-3). Transferred to R17-1-302 (Supp. 92-4). New Section recodified from R17-4-216 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 13 A.A.R. 3589, effective December 1, 2007 (Supp. 07-4).

**R17-4-303. Biennial Registration**

**A.** Biennial registration.
1. The Division may register any vehicle biennially, unless excluded.
2. The Division shall register a newly licensed or newly leased vehicle biennially, unless the owner chooses to register the vehicle on an annual basis.

**B.** Excluded vehicles. The owner of a vehicle that meets any one of the following criteria is excluded from the biennial registration program:
1. A vehicle required to have an IM147 or OBD test within 12 months after the date of registration.
2. A vehicle that requires an annual emissions test.
3. A vehicle subject to any one of the following types of registration:
   a. Allocated registration under A.R.S. § 28-2261,
   b. Apportioned registration under A.R.S. § 28-2261,
   c. Fleet registration under A.R.S. § 28-2202, or
   d. Interstate registration under A.R.S. § 28-2052.
4. A vehicle with an undersized mobile home plate registration.
5. A vehicle that requires the owner to certify eligibility for a registration fee exemption on an annual basis; such as the registration exemption available to an active duty mil-

itary member, a widow, widower, or disabled person other than a 100% disabled veteran.

**Historical Note**

Transferred to R17-1-303 (Supp. 92-4). New Section recodified from R17-4-217 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 13 A.A.R. 3589, effective December 1, 2007 (Supp. 07-4).

**R17-4-304. Staggered Registration for Included Vehicles**

**A.** Included vehicles. The Division shall assign one of the following staggered expiration dates when issuing an initial registration to an included vehicle:
1. If a vehicle has an effective date of registration from the first day through the 15th day of the month:
   a. Annual registration expires on the 15th day of the month 12 months from the month the vehicle is subject to Arizona registration; or
   b. Biennial registration expires on the 15th day of the month 24 months from the month the vehicle is subject to Arizona registration.
2. If a vehicle has an effective date of registration from the 16th day through the last day of the month:
   a. Annual registration expires on the last day of the month 12 months from the month the vehicle is subject to Arizona registration; or
   b. Biennial registration expires on the last day of the month 24 months from the month the vehicle is subject to Arizona registration.

**B.** Excluded vehicles. The staggered registration prescribed by this Section excludes the following vehicles:
1. A vehicle exempt from registration;
2. A vehicle subject to any one of the following types of registration:
   a. Allocated registration under A.R.S. § 28-2261,
   b. Apportioned registration under A.R.S. § 28-2261,
   c. Fleet registration under A.R.S. § 28-2202,
   d. Interstate registration under A.R.S. § 28-2052, or
   e. Seasonal agricultural registration under A.R.S. § 28-5436;
3. A vehicle subject to a one-time registration fee;
4. A government vehicle, a vehicle owned by an official representative of a foreign government, or an emergency vehicle owned by a nonprofit organization as provided under A.R.S. § 28-2511(A);
5. A noncommercial trailer that is not a travel trailer as defined by A.R.S. § 28-2003(B) and is less than 6000 pounds gross vehicle weight under A.R.S. §§ 28-2003(A)(7) and 28-5801(C);
6. A moped;
7. A motorized electric or gas powered bicycle or tricycle capable of reaching speeds of 20 to 25 miles per hour.

**C.** Proration of fees. The Division shall prorate registration fees under A.R.S. §§ 28-2159, 28-5807, and 28-5434.

**D.** Expiration dates. The Division shall utilize the following expiration dates, regardless of the effective date of the initial registration:
1. Annual registration: Expires 12 months from the expiration of the previous registration period; or
2. Biennial registration: Expires 24 months from the expiration of the previous registration period.

**E.** Application for registration. A person applying for an initial registration or renewal registration for an included vehicle shall submit the requirements prescribed under subsection (1) or (2):
1. If a person submits the registration to the Division or an Authorized Third-party Provider of registration functions in person or by mail:
   a. The application for registration or registration card, and
   b. Payment of registration fees.
2. If a person submits the registration to an Authorized Third-party Electronic Delivery Provider:
   a. Required registration information, and
   b. Credit card information.

**F.** Timely submission of registration. A person shall submit the renewal registration of an included vehicle not later than the day the prior registration period expires. If the prior registration period expires on a day other than an established business day, a person shall submit the renewal registration of an included vehicle not later than the first business day after the prior registration period expires.

**G.** Penalties. The penalties imposed under A.R.S. § 28-2162 for delinquent renewal registration of an included vehicle shall apply when either of the following occurs:
1. A person does not submit to the Division or an Authorized Third-party Provider of registration functions the items set forth in subsection (E)(1) so that the items are received by the due date; or
2. A person does not electronically submit to an Authorized Third-party Electronic Delivery Provider the items required under subsection (E)(2) so that the items are received by the due date.

**H.** Date of receipt. The date of receipt for the items required under subsection (E)(1) or (E)(2) shall be the following:
1. The date a person presents the items required under subsection (E)(1) to a Division facility or the facility of an Authorized Third-party Provider of registration functions in person;
2. The date an Authorized Third-party Electronic Delivery Provider receives by computer or telephone the items set forth in subsection (E)(2);
3. The date a private express mail carrier receives the package containing the items set forth in subsection (E)(1), as indicated on the shipping package;
4. The date of the last business day prior to the day the Division retrieves the items set forth at subsection (E)(1) from a designated Division drop box; or
5. The date of the United States Postal Service postmark stamped on the envelope containing the items set forth in subsection (E)(1), unless the vehicle is not in compliance with the motor vehicle emissions testing requirements.

**I.** Evidence of registration. The Division or Authorized Third-party Provider of registration functions shall assign and issue a number plate or plates to an included vehicle as evidence of registration.
1. The assigned number plate shall be attached and displayed on the rear of the assigned vehicle. When two plates are issued, the second plate may be attached to the front of the assigned vehicle.
2. Improper number plate display shall subject the owner and operator of the vehicle to the sanctions imposed under A.R.S. §§ 28-2531(B) and 28-2532.
3. Any registration tabs or stickers issued by the Division or Authorized Third-party Provider of registration functions shall be displayed on the appropriate number plate of the assigned vehicle.

**Historical Note**
Transferred to R17-1-304 (Supp. 92-4). New Section recodified from R17-4-218 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 13 A.A.R. 3589, effective December 1, 2007 (Supp. 07-4).

**R17-4-305. Temporary Registration Plate "TRP" Procedure**

**A.** Definitions.
1. "Charitable Event TRP" means a TRP issued to a motor vehicle dealership or manufacturer for a charitable event as prescribed by A.R.S. § 28-4548.
2. "Deal Unwound" means the vehicle was returned to the dealership and the sale was not completed.
3. "Voided TRP" means a TRP that the issuer records as voided after issuing the TRP.

**B.** Issuing.
1. New and used motor vehicle dealers and title service companies that issue TRPs shall send an electronic record of the TRP to the Division before placing the TRP on the vehicle.
2. The TRP expiration date shall be 45 days from the issue date.
3. TRPs issued for charitable events are valid for the duration of the event not to exceed 45 days.
4. An issuer shall not issue more than one TRP per vehicle sale.
5. An issuer shall attach the TRP to the vehicle rear in the same manner and position as a permanent license plate prescribed under A.R.S. § 28-2354.

**C.** Voiding. An issuer shall void a TRP when:
1. The TRP is lost,
2. The TRP is damaged,
3. The dealer reports a deal unwound,
4. The issuer enters the wrong vehicle identification number, or
5. The issuer enters the wrong customer identification number.

**Historical Note**
Transferred to R17-1-305 (Supp. 92-4). New Section R17-4-305 recodified from R17-4-219 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 11 A.A.R. 5320, effective February 6, 2006 (Supp. 05-4).

**R17-4-306. Nonresident Daily Commuter Fee**

A nonresident daily commuter shall pay a fee of $8 for each motor vehicle exempt from registration under A.R.S. § 28-2294.

**Historical Note**
Former Rule, General Order 14. Former Section R17-4-05 renumbered without change as Section R17-4-306 (Supp. 87-2). Transferred to R17-1-306 (Supp. 92-4). New Section R17-4-306 recodified from R17-4-222 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 8 A.A.R. 571, effective January 14, 2002 (Supp. 02-1).

**R17-4-307. Motor Vehicle Registration and License Plate Reinstatement Fee**

**A.** Under A.R.S. § 28-4151(A), the Division shall assess a $50 fee for reinstatement of a motor vehicle registration and license plate suspended under A.R.S. §§ 28-4148 and 28-4149.

**B.** Subsection (A) does not apply to a motor carrier subject to the financial responsibility requirements prescribed under A.R.S. Title 28, Chapter 9, Article 2.

**Historical Note**
Former Rule, General Order 5. Former Section R17-4-03 renumbered without change as Section R17-4-307 (Supp. 87-2). Transferred to R17-1-307 (Supp. 92-4). New Section R17-4-307 recodified from R17-4-224 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 7 A.A.R. 5439, effective November 14, 2001 (Supp. 01-4).

**R17-4-308. Official Vehicle License Plates**

**A.** The Motor Vehicle Division shall issue license plates without charge for official vehicles owned by any entity listed in A.R.S. § 28-2511(A).

**B.** A license plate issued under A.R.S. § 28-2511 has no expiration date.

**C.** An entity listed in A.R.S. § 28-2511(A) may transfer a license plate to another vehicle the entity owns.

**D.** A person who has custody of vehicles governed by A.R.S. § 28-2511 shall:
1. Complete title and registration procedures as prescribed under A.R.S. Title 28, Chapter 7;
2. Display each license plate as prescribed by A.R.S. § 28-2354; and
3. Maintain a record of each license plate transfer that includes:
   a. The date of the transfer;
   b. The year, make, and model of the vehicle, and
   c. The vehicle identification number (VIN) for each car involved in the transfer.

**Historical Note**
Former Rule, General Order 20. Former Section R17-4-06 renumbered without change as Section R17-4-308 (Supp. 87-2). Transferred to R17-1-308 (Supp. 92-4). New Section R17-4-308 recodified from R17-4-252 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed; new Section made by final rulemaking at 8 A.A.R. 573, effective January 14, 2002 (Supp. 02-1).

**R17-4-309. Private Fire Emergency Vehicle Permit**

**A.** Private Fire Emergency Vehicle Permit. A Private Fire Emergency Vehicle Permit may be issued to a private fire department if all requirements provided under subsections (B) and (C) are met.
1. The Private Fire Emergency Vehicle Permit is valid until revoked or surrendered.
2. The Private Fire Emergency Vehicle Permit shall be carried at all times in the fire engine for which the permit is issued.
3. The Private Fire Emergency Vehicle Permit is not transferable.
4. The Private Fire Emergency Vehicle Permit shall remain the property of the Division and shall be surrendered to the Division when the fire engine is no longer being used to respond to an emergency.

**B.** Private Fire Emergency Vehicle Permit application. A person applying for a Private Fire Emergency Vehicle Permit shall submit the required documentation to the Division's Enforcement Services Program, P.O. Box 2100, Mail Drop 513M, Phoenix, Arizona 85007. The following documentation is required at the time of initial application:
1. Private Fire Emergency Vehicle Permit Application. Multiple fire engines may be listed on one application. The Private Fire Emergency Vehicle Permit Application is furnished by the Division and is available upon request from the Division's Enforcement Services Program; and

2. Proof of acceptable financial responsibility to cover any liability that may arise from the use of the Private Fire Emergency Vehicle Permit. Acceptable proof of financial responsibility is an insurance policy that:
   a. Is issued by an insurance company licensed to conduct business in Arizona by the Arizona Department of Insurance;
   b. Is written for a combined single-limit coverage of at least $5 million;
   c. Contains a provision stating that the state of Arizona shall be notified at least 30 days prior to any policy cancellation, nonrenewal, or change in provisions; and
   d. Contains a provision stating that the state of Arizona shall be notified immediately if the insurance company becomes insolvent.

**C.** Operational requirements.
1. A fire engine may be operated with the privileges prescribed under A.R.S. § 28-624, but shall be subject to all other applicable provisions prescribed under A.R.S. Title 28, A.A.C. Title 17, and any other applicable statutes or ordinances.
2. A fire engine shall only be driven by an operator who meets the Operator Requirements as defined under R17-4-301.
3. A fire engine with a Private Fire Emergency Vehicle Permit, shall meet the National Fire Protection Association's (NFPA) fire engine and fire apparatus standards in effect for the manufacture date of the emergency vehicle.
4. The private fire department is responsible for ensuring that the fire engine is not operated using the privileges prescribed under A.R.S. § 28-624 with an invalid Private Fire Emergency Vehicle Permit.

**D.** Denial. If an application for a Private Fire Emergency Vehicle Permit is denied, a notice of denial shall be sent to the applicant at the address of record. An applicant is allowed to reapply for a permit following denial, provided all requirements listed under this Section are met.

**E.** Revocation. If a Private Fire Emergency Vehicle Permit is revoked, a notice of the revocation shall be sent to the address of the applicant. An applicant is allowed to reapply for a permit following revocation, provided all requirements listed under this Section are met.
1. The emergency vehicle permit is immediately revoked upon a determination that:
   a. The permitted vehicle or the private fire department no longer meets the requirements for the permit; or
   b. The vehicle was operated in violation of the provisions of this rule, any other applicable rule, or statute.
2. The revocation shall be preceded by a notice of intent to revoke.
   a. The notice of intent to revoke shall be sent by first-class mail to the address of the applicant as shown on the permit application.
   b. The notice of intent to revoke shall inform the applicant of the right to an administrative hearing and the procedure for requesting a hearing.
3. The revocation shall become effective 25 days after the mailing date of the notice of intent to revoke unless a timely request for hearing is submitted.

**F.** Administrative hearing. The administrative hearing is held in accordance with the procedures prescribed under 17 A.A.C. 1, Article 5.

**Historical Note**

Former Rule, General Order 31. Former Section R17-4-11 renumbered without change as Section R17-4-309 (Supp. 87-2). Transferred to R17-1-309 (Supp. 92-4). New Section recodified from R17-4-701 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 14 A.A.R. 2106, effective July 5, 2008 (Supp. 08-2).

**Appendix A. Repealed**

**Historical Note**

Appendix A recodified from 17 A.A.C. 4, Article 7 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Appendix A repealed by final rulemaking at 14 A.A.R. 2106, effective July 5, 2008 (Supp. 08-2).

**R17-4-310. Personalized License Plates**

**A.** Definitions.
1. "Division" means the Motor Vehicle Division of the Arizona Department of Transportation.
2. "Division Director" means the Assistant Division Director for the Motor Vehicle Division of the Arizona Department of Transportation.
3. "Personalized plate" means a license plate with a registration number chosen by a person rather than assigned by the Division.
4. "Plate number" means the combination of letters, numbers, and spaces on a vehicle license plate.

**B.** A person who wants to receive a personalized plate shall file an application with the Division on a form provided by the Division.
1. An applicant shall provide the following information on the form:
   a. Name of the vehicle's owner or lessee;
   b. Vehicle owner's or lessee's mailing address;
   c. Vehicle's make and year;
   d. Vehicle identification number;
   e. Vehicle's current plate number;
   f. Date the vehicle's current registration expires;
   g. Plate number to appear on the personalized plate;
   h. Meaning or message of the personalized plate; and
   i. Other information required by the Division.
2. If an applicant is purchasing the personalized plate as a gift for the vehicle's owner or lessee, the applicant shall also provide the applicant's name and mailing address.

**C.** The Division shall reject the application if the requested plate number:
1. Refers to or connotes breasts, genitalia, pubic area, buttocks, or relates to sexual or eliminatory functions;
2. Refers to or connotes the substance, paraphernalia, sale, use, purveyor of, or physiological state produced by any illicit drug, narcotic, or intoxicant;
3. Expresses contempt for or ridicule or superiority of a class of persons;
4. Duplicates another registration number;
5. Has connotations that are profane or obscene; or
6. Uses linguistics, numbers, phonetics, translations from foreign languages or upside-down or reverse reading to achieve a reference or connotation prohibited in subsection (C)(1) through (C)(3) or (C)(5).

**D.** Rejection of application.
1. If the Division does not issue personalized plates to an applicant, the Division shall inform the applicant by mail.

2. An applicant may make a written appeal by letter for a review of the rejection, within 10 days after the date of the Division's notice, to the following address:
Motor Vehicle Division
Special Plates Unit, Mail Drop 801Z
PO Box 2100
Phoenix, Arizona 85001-2100.

**E.** Revocation of personalized plates; appeal.
1. If the Division determines that a personalized plate should not have been issued because it contains a plate number prohibited under subsection (C), the Division shall require the plate holder to surrender the plates to the division within 30 days after the date of the Division's mailed notice, unless the plate holder requests an appeal under subsection (D)(2).
2. A person who has been directed to surrender a personalized plate may submit a written appeal by letter as prescribed under subsection (D)(2).
3. Refund of personalized plate fees on revocation.
   a. The Division shall refund the amount of the personalized plate fee and the pro rated amount of the special annual renewal fee to the person holding the revoked personalized plate along with any credit or refund calculated by the Division.
   b. A person whose plate is revoked may request that instead of a refund, the Division issue the person a different personalized plate. The person shall apply for the personalized plate as prescribed under subsection (B).
4. The Division shall cancel the vehicle plate of a vehicle if the person who holds a revoked personalized plate does not surrender the plate within 30 days after the date of the Division's notice or, if the person timely requests an appeal, within 30 days after the Division issues a final decision.

**Historical Note**
Former Rule, General Order 25. Former Section R17-4-09 renumbered without change as Section R17-4-310 (Supp. 87-2). Transferred to R17-1-310 (Supp. 92-4). New Section recodified from R17-4-708 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 8 A.A.R. 4227, effective November 15, 2002 (Supp. 02-3).

**R17-4-311. Special Organization Plate List**
As required under A.R.S. § 28-2404(D), the Division provides the following list of special organization license plates authorized by the state license plate commission and available for issue to qualified applicants:
1. Arizona Historical Society,
2. Firefighter,
3. Fraternal Order of Police,
4. Legion of Valor,
5. University of Phoenix, and
6. Wildlife Conservation.

**Historical Note**
Former Rule, General Order 24. Former Section R17-4-08 renumbered without change as Section R17-4-311 (Supp. 87-2). Transferred to R17-1-311 (Supp. 92-4). New Section made by exempt rulemaking at 7 A.A.R. 5251, effective November 2, 2001 (Supp. 01-4). Amended by exempt rulemaking at 8 A.A.R. 4007, effective November 1, 2002 (Supp. 02-3). Amended by exempt rulemaking at 13 A.A.R. 1894, effective June 1, 2007 (Supp. 07-2).

**R17-4-312. Off-highway Vehicle User Indicia**
**A.** For lawful Arizona off-highway operation, the owner or operator of a qualifying all-terrain vehicle, off-highway vehicle, or off-road recreational motor vehicle shall apply to the Department for an off-highway vehicle user indicia as prescribed under A.R.S. § 28-1177. The owner or operator shall submit to the Division:
1. The off-highway vehicle user indicia application provided by the Division, and
2. The fee prescribed under subsection (C).

**B.** The owner or operator shall indicate, on the application submitted to the Division under subsection (A), one of the following categories of intended vehicle usage:
1. Exclusively off-highway;
2. Primarily off-highway, occasionally on-highway; or
3. Primarily on-highway, occasionally off-highway.

**C.** The fee for each off-highway vehicle user indicia issued or renewed by the Department under A.R.S. § 28-1177 is $25.

**D.** The off-highway vehicle user indicia, issued by the Division under subsection (A), shall have the same basic design as the license plate tab issued by the Division for other types of vehicles and shall contain the letters OHV.

**E.** The applicant shall display the off-highway vehicle user indicia in the upper left corner of the license plate issued by the Division under A.R.S. Title 28, Chapter 7, Articles 11 through 15.

**Historical Note**
Former Rule, General Order 39. Former Section R17-4-13 renumbered without change as Section R17-4-312 (Supp. 87-2). Transferred to R17-1-312 (Supp. 92-4). New Section made by final rulemaking at 16 A.A.R. 1132, effective August 7, 2010 (Supp. 10-2).

**R17-4-313. Expired**

**Historical Note**
Former Rule, General Order 27. Former Section R17-4-10 renumbered without change as Section R17-4-313 (Supp. 87-2). Transferred to R17-1-313 (Supp. 92-4). Amended by exempt rulemaking at 24 A.A.R. 3512, effective December 1, 2018 (Supp. 18-4). Amended by exempt rulemaking at 25 A.A.R. 104, effective December 21, 2018 (Supp. 19-2). Section repealed; new Section made by exempt rulemaking at 25 A.A.R. 2261, with an effective date of August 19, 2019 (Supp. 19-3). Section expired under A.R.S. § 41-1052(M) at 28 A.A.R. 2061 (August 19, 2022), with an immediate effective date of August 2, 2022 (Supp. 22-3).

**R17-4-314. Transferred**

**Historical Note**
Former Rule, General Order 69. Former Section R17-4-27 renumbered without change as Section R17-4-314 (Supp. 87-2). Transferred to R17-1-314 (Supp. 92-4).

**R17-4-315. Transferred**

**Historical Note**
Former Rule, General Order 61. Former Section R17-4-23 renumbered without change as Section R17-4-315 (Supp. 87-2). Transferred to R17-1-315 (Supp. 92-4).

**R17-4-316. Transferred**

**Historical Note**
Former Rule, General Order 57. Former Section R17-4-20 renumbered without change as Section R17-4-316 (Supp. 87-2). Transferred to R17-1-316 (Supp. 92-4).

**R17-4-317. Transferred**

**Historical Note**
Former Rule, General Order 36. Former Section R17-4-12 renumbered without change as Section R17-4-317 (Supp. 87-2). Transferred to R17-1-317 (Supp. 92-4).

**R17-4-318. Transferred**

**Historical Note**
Former Rule, General Order 7. Former Section R17-4-04 renumbered without change as Section R17-4-318 (Supp. 87-2). Transferred to R17-1-318 (Supp. 92-4).

**R17-4-319. Transferred**

**Historical Note**
Former Rule, General Order 44. Former Section R17-4-14 renumbered without change as Section R17-4-319 (Supp. 87-2). Transferred to R17-1-319 (Supp. 92-4).

**R17-4-320. Transferred**

**Historical Note**
Former Rule, General Order 54 (Amended). Former Section R17-4-18 renumbered without change as Section R17-4-320 (Supp. 87-2). Transferred to R17-1-320 (Supp. 92-4).

**R17-4-321. Transferred**

**Historical Note**
Former Rule, General Order 21. Former Section R17-4-07 renumbered without change as Section R17-4-321 (Supp. 87-2). Transferred to R17-1-321 (Supp. 92-4).

**R17-4-322. Transferred**

**Historical Note**
Former Rule, General Order 3. Former Section R17-4-02 renumbered without change as Section R17-4-322 (Supp. 87-2). Transferred to R17-1-322 (Supp. 92-4).

**R17-4-323. Transferred**

**Historical Note**
Former Rule, General Order 2A. Former Section R17-4-01 renumbered without change as Section R17-4-323 (Supp. 87-2). Transferred to R17-1-323 (Supp. 92-4).

**R17-4-324. Transferred**

**Historical Note**
Transferred to R17-1-301 (Supp. 92-4).

**R17-4-325. Transferred**

**Historical Note**
Transferred to R17-1-301 (Supp. 92-4).

**R17-4-326. Transferred**

**Historical Note**
Transferred to R17-1-301 (Supp. 92-4).

**R17-4-327. Transferred**

**Historical Note**
Transferred to R17-1-301 (Supp. 92-4).

**R17-4-328. Transferred**

**Historical Note**
Transferred to R17-1-301 (Supp. 92-4).

**R17-4-329. Transferred**

**Historical Note**
Transferred to R17-1-301 (Supp. 92-4).

**R17-4-330. Transferred**

**Historical Note**
Adopted effective March 1, 1984 (Supp. 84-1). Former Section R17-4-67 renumbered without change as Section R17-4-330 (Supp. 87-2). Transferred to R17-1-330 (Supp. 92-4).

**R17-4-331. Transferred**

**Historical Note**
Adopted effective March 1, 1984 (Supp. 84-1). Former Section R17-4-68 renumbered without change as Section R17-4-331 (Supp. 87-2). Transferred to R17-1-331 (Supp. 92-4).

**R17-4-332. Transferred**

**Historical Note**
Adopted effective March 1, 1984 (Supp. 84-1). Former Section R17-4-69 renumbered without change as Section R17-4-332 (Supp. 87-2). Transferred to R17-1-332 (Supp. 92-4).

**R17-4-333. Transferred**

**Historical Note**
Adopted effective March 1, 1984 (Supp. 84-1). Former Section R17-4-71 renumbered without change as Section R17-4-333 (Supp. 87-2). Amended effective December 30, 1987 (Supp. 87-4). Transferred to R17-1-333 (Supp. 92-4).

**R17-4-334. Transferred**

**Historical Note**
Adopted effective March 1, 1984 (Supp. 84-1). Former Section R17-4-70 renumbered without change as Section R17-4-334 (Supp. 87-2). Transferred to R17-1-334 (Supp. 92-4).

**R17-4-335. Transferred**

**Historical Note**
Adopted as an emergency effective July 1, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R17-4-401 adopted as an emergency now adopted and amended as a permanent rule effective October 6, 1982 (Supp. 82-5). Amended effective November 13, 1986 (Supp. 86-6). Former Section R17-4-401 renumbered without change as Section R17-4-335 (Supp. 87-2). Transferred to R17-1-335 (Supp. 92-4).

**R17-4-336. Transferred**

**Historical Note**
Adopted as an emergency effective July 1, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R17-4-402 adopted as an emergency now adopted and amended as a permanent rule effective October 6, 1982 (Supp. 82-5). Amended effective November 13, 1986 (Supp. 86-6). Former Section R17-4-402 renumbered without change as Section R17-4-336 (Supp. 87-2). Transferred to R17-1-336 (Supp. 92-4).

**R17-4-337. Transferred**

**Historical Note**
Adopted as an emergency effective July 1, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R17-4-403 adopted as an emergency now adopted and amended as a permanent rule effective October 6, 1982 (Supp. 82-5). Amended effective November 13, 1986 (Supp. 86-6). Former Section R17-4-403 renumbered without change as Section R17-4-337 (Supp. 87-2). Transferred to R17-1-337 (Supp. 92-4).

**R17-4-338. Transferred**

**Historical Note**
Transferred to R17-1-338 (Supp. 92-4).

**R17-4-339. Transferred**

**Historical Note**
Transferred to R17-1-339 (Supp. 92-4).

**R17-4-340. Transferred**

**Historical Note**
Transferred to R17-1-340 (Supp. 92-4).

**R17-4-341. Transferred**

**Historical Note**
Transferred to R17-1-341 (Supp. 92-4).

**R17-4-342. Transferred**

**Historical Note**
Transferred to R17-1-342 (Supp. 92-4).

**R17-4-343. Transferred**

**Historical Note**
Transferred to R17-1-343 (Supp. 92-4).

**R17-4-344. Transferred**

**Historical Note**
Transferred to R17-1-344 (Supp. 92-4).

**R17-4-345. Transferred**

**Historical Note**
Transferred to R17-1-345 (Supp. 92-4).

**R17-4-346. Transferred**

**Historical Note**
Adopted effective October 8, 1987 (Supp. 87-4). Transferred to R17-1-346 (Supp. 92-4).

**R17-4-347. Transferred**

**Historical Note**
Adopted effective October 8, 1987 (Supp. 87-4). Transferred to R17-1-347 (Supp. 92-4).

**R17-4-348. Transferred**

**Historical Note**
Adopted effective October 8, 1987 (Supp. 87-4). Transferred to R17-1-348 (Supp. 92-4).

**R17-4-349. Transferred**

**Historical Note**
Adopted effective October 8, 1987 (Supp. 87-4). Transferred to R17-1-349 (Supp. 92-4).

**R17-4-350. Rental Vehicle Surcharge Reimbursement**

**A.** Definitions. In addition to the definitions prescribed under A.R.S. § 28-5810, the following terms apply to this Section, unless otherwise specified:

"Person" means an individual, a sole proprietorship, firm, partnership, joint venture, association, corporation, limited liability company, limited liability partnership, estate, trust, business trust, receiver or syndicate, this state, any county, city, town, district or other subdivision of this state, an Indian tribe, or any other group or combination acting as a unit.

"Previous year" means the prior calendar year, January 1 through December 31.

"Rental revenue" means the total contract amount stated in the retail contract less any taxes and fees imposed by A.R.S. Title 42, Chapter 5, Article 1, A.R.S. Title 48, Chapter 26, Article 2, and selected non-vehicle related charges, including boxes, packing blankets, straps, and tow bars.

"Surcharge" means the amount equal to five percent of the total contract amount stated in the rental contract less any taxes and fees imposed by A.R.S. Title 42, Chapter 5, Article 1, A.R.S. Title 48, Chapter 26, Article 2, and selected non-vehicle related items, including boxes, packing blankets, straps, and tow bars.

"Vehicle License Tax" means the tax imposed by A.R.S. § 28-5801, less any tax credited under A.R.S. § 28-2356.

**B.** Reports. Each person subject to A.R.S. § 28-5810, who has conducted a vehicle rental business for any time period during the previous year, shall file an annual report, for the previous year, with the Department. The annual report is due no later than February 15 of each year, unless the rental business is closed before December 31, in which case the annual report is due immediately. The report shall be made on a form furnished by the Department and shall contain all of the following:

1. Address where business records are secured;
2. Name, title, phone number, and signature of the person authorized to sign the form;
3. Business name;
4. Business type, including sole proprietorship, partnership, corporation, limited liability company, and limited liability partnership;
5. Name, title, phone number, mailing address, and e-mail address of the contact person;
6. Federal Employer Identification Number (FEIN);
7. Mailing address (if different from principal business address);
8. Principal business address;
9. Rental vehicle revenue collected, by county;
10. Total Arizona Vehicle License Tax paid on rental vehicles;
11. Total rental vehicle revenue collected;
12. Total surcharge collected;
13. Total surcharge due to the Department; and
14. Type of rental business, including passenger vehicle, semitrailer, trailer, truck, motorcycle, moped, and recreational vehicle.

**C.** Records. A person in the business of renting vehicles, as defined under A.R.S. § 28-5810, is required to maintain records in support of the required annual reports for a period of four years after the date of the filing of the required annual report or the due date of the report, whichever is longer. The records shall contain all information in support of:

1. The total amount of Vehicle License Tax paid during the previous year. Supporting Vehicle License Tax records for each rental vehicle shall include:
   a. The Vehicle Identification Number,
   b. The Arizona vehicle license plate number,
   c. A copy of the Arizona registration,
   d. The amount paid for Vehicle License Tax minus any Vehicle License Tax credited under A.R.S. § 28-2356,
   e. The date on which the Vehicle License Tax was paid, and
   f. The dates the rental vehicle was in and out of service.
2. The total gross amount of Arizona vehicle rental revenues collected for the previous year. Supporting Arizona vehicle rental revenue records shall include:
   a. The rental contract for each rental vehicle,
   b. The amount of surcharge collected,
   c. Chart of accounts,
   d. General ledger,
   e. Financial statements,
   f. Federal tax returns, and
   g. Monthly trial balance.
3. The amount of the surcharge collected during the previous year. Supporting surcharge collection records shall include:
   a. All applicable rental contracts; and
   b. The total amount stated in each rental contract, supported by relevant documentation.
4. Failure to keep and maintain proper records or failure to provide records for audit purposes may result in the Department making an assessment against the rental business for the total surcharge amount estimated to have been collected, as determined from the best information available to the Director.

**D.** Audits. The Department shall conduct each audit of a person who collects the surcharge in accordance with generally accepted government auditing standards as set forth in *Government Auditing Standards: 2011 Revision* (commonly referred to as the Yellow Book,) issued by the U.S. Government Accountability Office. The Department incorporates by reference *Government Auditing Standards: 2011 Revision* and no later amendments or editions. The incorporated material is on file with the Department. The printed version is available from the U.S. Government Printing Office, P. O. Box 979050, St. Louis, MO 63197-9000. The incorporated material is available free of charge at http://www.gao.gov/yellowbook or can be ordered online by visiting the U.S. Government Online Bookstore at http://bookstore.gpo.gov.

1. The rental business shall have records made available for audit during normal business hours at the rental business location in Arizona. The Department may conduct audits at an out-of-state location, which are paid for by the rental business. The rental business shall pay the audit expenses, per diem, and travel in accordance with the Arizona Department of Transportation expense guidelines in effect at the time of the audit.
2. The Director has appropriate subpoena powers to require records to be produced for examination and to take testimony. In accordance with A.R.S. § 28-5922, if a person fails to respond to the Director's or agent of the Director's request for records, the Director shall issue subpoenas for the production of records or allow seizure of records.

**Historical Note**

New Section made by final rulemaking at 13 A.A.R. 2058, effective August 4, 2007 (Supp. 07-2). Amended by final rulemaking at 19 A.A.R. 888, effective, June 1, 2013 (Supp. 13-2).

**R17-4-351. Special License Plate; Definition**

For the purposes of R17-4-352, "special license plate" or "special plate" has the meaning prescribed in A.R.S. § 28-2401.

**Historical Note**

New Section made by final rulemaking at 25 A.A.R. 1890, effective October 1, 2019 (Supp. 19-3).

**R17-4-352. Duplicate Special License Plate; Fee**

**A.** The Department shall charge and collect from a motor vehicle owner a one-time fee of $10 for each duplicate special license plate requested.

**B.** The Department shall charge and collect the current applicable U.S. Postal Service postage rate as provided in A.R.S. § 28-2151 and A.A.C. R17-1-204 to mail a duplicate special license plate to a motor vehicle owner.

**Historical Note**

New Section made by final rulemaking at 25 A.A.R. 1890, effective October 1, 2019 (Supp. 19-3).

## ARTICLE 4. DRIVER LICENSES

**R17-4-401. Definitions**

In addition to the definitions provided under A.R.S. §§ 28-101, 28-1301, and 28-3001, the following definitions apply to this Article unless otherwise specified:

"Division" means the Arizona Department of Transportation, Motor Vehicle Division.

"Financial responsibility (accident) suspension" means a suspension, by the Department, of:

The Arizona driver license or driving privilege of an owner of a vehicle that:

Lacks the coverage required under A.R.S. § 28-4135, and

Is involved in an accident in Arizona; and

The Arizona registration of a vehicle, unless the Department receives proof the vehicle was sold.

"Gore area" is defined under A.R.S. § 28-644.

"Proof the vehicle was sold" means a written statement to the Department from an owner that includes the following:

The seller's name;

The VIN;

The sale date; and

The purchaser's name and address.

"Restricted permit" means written permission from the Department for:

A person subject to a financial responsibility (accident) suspension to operate a motor vehicle only:

Between the person's home and workplace,

During the person's work-related activities, or

Between the person's home and school; and

A vehicle with an Arizona registration subject to a financial responsibility (accident) suspension to be operated by a person specified under R17-4-402 only:

Between the person's home and workplace;

During the person's work-related activities; or

Between the person's home and school.

"State" means a state, territory or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

"SR22" means a certificate of insurance that complies with requirements under A.R.S. § 28-4077(A).

"Thirty-six-month period" means the time measured from the date of the most recent violation with assigned points for which a driver has a conviction or judgment to that day and month three years before the date of the violation.

"Twelve-month period" means the time measured from the date of the most recent violation with assigned points for which a driver has a conviction or judgment to that day and month one year before the date of the violation.

"Twenty-four-month period" means the time measured from the date of the most recent violation with assigned points for which a driver has a conviction or judgment to that day and month two years before the date of the violation.

"VIN" or "vehicle identification number" is defined under A.R.S. § 13-4701(4).

"Withdrawal action" means a Department action that invalidates a person's Arizona driving privilege or a vehicle's Arizona registration, which includes:

A cancellation;

A suspension;

A revocation;

Any outstanding warrant; or

Any unresolved citation.

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 5220, effective February 3, 2003 (Supp. 02-4). Amended by final rulemaking at 12 A.A.R. 871, effective March 7, 2006 (Supp. 06-1). Amended by final rulemaking at 14 A.A.R. 839, effective March 4, 2008 (Supp. 08-1). Amended by exempt rulemaking at 21 A.A.R. 1092, effective September 1, 2015 (Supp. 15-2).

**R17-4-402. Restricted Permit During a Financial Responsibility (Accident) Suspension**

**A.** An applicant for a restricted permit shall:
1. Have no withdrawal action other than the financial responsibility (accident) suspension;
2. Provide an SR22 Certificate of Insurance as proof of future financial responsibility that must be kept in force for three consecutive years after the effective date of the financial responsibility (accident) suspension;
3. Pay the $10 driving privilege reinstatement fee under A.R.S. § 28-4144(C)(2)(b); and
4. Pay the $25 motor vehicle registration and license plate reinstatement fee under A.R.S. § 28-4144(C)(2)(b), or if the vehicle was sold before the date of the accident, provide proof the vehicle was sold as defined under R17-4-401;
5. Pay the driving privilege reinstatement application fee under A.R.S. § 28-3002(A)(2); and
6. Satisfy any applicable requirements of A.R.S. § 28-4033(A)(2)(c) or 28-4144(C).

**B.** In addition to subsection (A) during a financial responsibility (accident) suspension, a restricted permit applicant may:
1. Apply for an original or renew an Arizona driver license by:
   a. Complying with A.R.S. §§ 28-3153, 28-3158, or 28-3171; and
   b. Paying the application fee under A.R.S. § 28-3002(A)(2) determined by the applicant's age on the application date; or
2. Obtain a duplicate Arizona driver license by paying the $12 duplicate driver license application fee under A.R.S. § 28-3002(A)(7).

**C.** At the end of the financial responsibility (accident) suspension, the Division shall immediately remove the driving privilege restriction from the Arizona driving record when the person surrenders an expired restricted permit to the Division.

**Historical Note**

New Section recodified from R17-4-227 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 8 A.A.R. 5220, effective February 3, 2003 (Supp. 02-4). Amended by final rulemaking at 16 A.A.R. 2448, effective February 5, 2011 (Supp. 10-4).

**R17-4-403. Application for Duplicate Driver License or Duplicate Nonoperating Identification License; Fees**

**A.** An applicant shall apply to the Division, on a form provided by the Division, for a duplicate driver license or a duplicate nonoperating identification license.

**B.** The fee for the duplicate driver license or duplicate nonoperating identification license issued by the Division is $12 under A.R.S. §§ 28-3002(A) and 28-3165.

**Historical Note**

New Section made by final rulemaking at 16 A.A.R. 2448, effective February 5, 2011 (Supp. 10-4).

**R17-4-404. Driver Point Assessment; Traffic Survival Schools**

**A.** Point assessment. The Department shall assign points to a driver, as prescribed under Table 1, Driver Point Valuation, for each violation resulting in a conviction or judgment.

**B.** Actions after point assessment. Under A.R.S. § 28-3306(A)(3), if a driver accumulates eight or more points in a twelve-month period, the Department shall:
1. Order the driver to successfully complete the curriculum of a licensed traffic survival school; or
2. Suspend the driver's Arizona driver license or driving privilege.

**C.** Traffic survival school order of assignment. The Department or the private entity under contract with the Department shall send a dated order of assignment to traffic survival school, as prescribed under A.R.S. § 28-3318, to a driver who accumulates 8 to 12 points in a twelve-month period, and who did not complete a traffic survival school course in the previous twenty-four-month period.
1. The order of assignment shall:
   a. Instruct the driver to submit any hearing request to the Department within 15 days after the date of the order of assignment; and

b. Instruct the driver that failure to successfully complete traffic survival school within 60 days after the date of the order of assignment will result in the Department issuing a six-month order of suspension.

2. The Department shall record that a driver completed traffic survival school if:
   a. A licensed traffic survival school reports that the driver successfully completed the curriculum; or
   b. The driver presents to the Department an original certificate of completion issued by a licensed traffic survival school, within 30 days of issuance of the certificate.

**D.** Suspension for failure to complete traffic survival school. The Department or the private entity under contract with the Department shall mail a driver a six-month order of suspension, as prescribed under A.R.S. § 28-3318, if the driver failed to establish completion of traffic survival school in accordance with subsection (C). The order of suspension shall:
1. Specify the period within which the driver may submit a hearing request to the Department, and
2. Specify the effective date of the suspension.

**E.** Suspension for accumulation of excessive points. The Department shall mail an order of suspension as prescribed under A.R.S. § 28-3318 to a driver who accumulates an excessive amount of points. The order of suspension shall:
1. Specify the length of the suspension as follows:
   a. A three-month suspension for accumulation of 8 to 12 points in a twelve-month period if a traffic survival school course was successfully completed in the previous twenty-four-month period;
   b. A three-month suspension for accumulation of 13 to 17 points in a twelve-month period;
   c. A six-month suspension for accumulation of 18 to 23 points in a twelve-month period; and
   d. A twelve-month suspension for accumulation of 24 or more points in a thirty-six-month period;
2. Specify the period within which the driver may submit a hearing request to the Department; and
3. Specify the effective date of the suspension.

**Historical Note**

New Section recodified from R17-4-506 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 12 A.A.R. 4446, effective November 7, 2006 (Supp. 06-4). Amended by final rulemaking at 14 A.A.R. 839, effective March 4, 2008 (Supp. 08-1) Amended by final rulemaking at 19 A.A.R. 3897, effective January 4, 2014 (Supp. 13-4). Amended by exempt rulemaking at 21 A.A.R. 1092, effective September 1, 2015 (Supp. 15-2).

**Table 1. Driver Point Valuation**

| Violation | Points |
|---|---|
| A.R.S. § 28-1381, driving or actual physical control of a vehicle while under the influence. | 8 |
| A.R.S. § 28-1382, driving or actual physical control of a vehicle while under the extreme influence of intoxicating liquor. | 8 |
| A.R.S. § 28-1383, aggravated driving or actual physical control while under the influence. | 8 |
| A.R.S. § 28-693, reckless driving. | 8 |
| A.R.S. § 28-708, racing on highways. | 8 |
| A.R.S. § 28-695, aggressive driving. | 8 |
| A.R.S. §§ 28-662, 28-663, 28-664, or 28-665, relating to a driver's duties after an accident. | 6 |
| A.R.S. § 28-672(A), failure to comply with a red traffic-control signal, failure to yield the right of way when turning left at an intersection, failure to yield the right of way to a pedestrian, failure to exercise due care, failure to stop for a school bus stop signal, or failure to comply with a stop sign, and the failure results in an accident causing death to another person. | 6 |
| A.R.S. § 28-672(A), failure to comply with a red traffic-control signal, failure to yield the right of way when turning left at an intersection, failure to yield the right of way to a pedestrian, failure to exercise due care, failure to stop for a school bus stop signal, or failure to comply with a stop sign, and the failure results in an accident causing serious physical injury to another person. | 4 |
| A.R.S. § 28-701, reasonable and prudent speed. | 3 |
| A.R.S. § 28-644(A)(2), driving over, across, or parking in any part of a gore area. | 3 |
| Any other traffic regulation that governs a vehicle moving under its own power. | 2 |

**Historical Note**

New Table 1 made by final rulemaking at 14 A.A.R. 839, effective March 4, 2008 (Supp. 08-1).

**R17-4-405. Emergency Expired**

**Historical Note**

Emergency rule adopted effective August 6, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-3). Emergency expired.

**R17-4-406. Minor's Application for Permit or License**

**A.** For the purposes of administering the provisions of A.R.S. § 28-3160, the following definitions apply to this Section:
1. "Application," means a form provided by the Division that includes the Legal Guardian Affidavit required by the Division to be submitted with each minor's driver license application.
2. "Guardian" means one who has been appointed by a court of law to care for a minor child, but only if both parents of the child are deceased, or an agency as defined in A.R.S. § 8-513.
3. "Parent" means the natural or adoptive father or mother of a child.

**B.** Procedure when both parents sign: If both parents sign a child's application, no proof of custody need be furnished.

**C.** Procedure when only one parent signs:
1. If the signing parent is married to the child's other parent, that fact shall be stated and it shall be presumed the signing parent has custody of the child.
2. If the signing parent is not married to the child's parent because the other parent is deceased, that fact shall be stated and it shall be presumed the signing parent has custody of the child.
3. If the signing parent is not married to the child's other parent, the signing parent shall affirm, by sworn statement to the Division or a notary public, that the other parent does not have custody of the child, in which event the Division shall presume the signing parent has custody of the child.

**D.** Procedure when both parents are deceased:
1. If both parents are deceased, the minor or minor's guardian shall attach certified copies of certificates of death or other satisfactory proof of death, that includes a court

judgment, affidavits of close relatives of the child, or school records.

2. A person who is guardian of a child shall sign an application as defined by this rule or furnish a certified court order appointing guardianship.
3. An employer signing the application shall certify the person employs the minor on the date of application.
4. A person who has custody of a child shall sign a Legal Guardian Affidavit affirming custody or furnish a certified court order awaiting custody.

**E.** Proof of custody. Proof of custody may be established by a certified copy of the court order awarding custody or a written affirmation by the person signing the application.

**Historical Note**

Adopted as an emergency effective August 18, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-4). Former Section R17-4-201 adopted as an emergency effective August 18, 1983, now adopted without change as a permanent rule effective November 30, 1983 (Supp. 83-6). Correction, (C)(4) should read "... governed by R17-4-58" as certified effective November 30, 1983 (Supp. 84-3). Former Section R17-4-201 renumbered without change as Section R17-4-406 Supp. (87-2). Former Section R17-4-406 repealed, new Section R17-4-406 adopted effective July 14, 1989 (Supp. 89-3). Section recodified to R17-4-450 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section recodified from R17-4-510 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 12 A.A.R. 4446, effective November 7, 2006 (Supp. 06-4).

**R17-4-407. Travel-compliant Driver License or Travel-compliant Non-operating Identification License Application; Fee**

**A.** A person seeking a travel-compliant driver license or travel-compliant identification license shall meet and comply with all:

1. State laws and rules applicable to every applicant who seeks issuance of any other driver license class, type, endorsement or non-operating identification license issued by the Department; and
2. Federal laws and regulations regarding the application and minimum documentation, verification, and card issuance requirements prescribed in the most recent edition of 6 CFR 37.11 for establishing satisfactory proof of a person's identity, date of birth, social security number, principal residence address of domicile in this state, and lawful status in the United States.

**B.** A person seeking a travel-compliant driver license or travel-compliant identification license shall:

1. Apply to the Department using an application form provided by the Department; and
2. Submit to the Department for authentication, satisfactory proof of the applicant's full legal name, date of birth, sex, social security number, principal residence address of domicile in this state, and that the applicant's presence in the United States is authorized under federal law. A list of all source documents the Department may accept as satisfactory proof under state and federal law is maintained by the Department on its website at www.azdot.gov.

**C.** An applicant for a travel-compliant driver license or travel-compliant identification license shall submit to the Department a fee of $25:

1. On original application, reinstatement, or renewal of any travel-compliant driver license class; or
2. On original application or renewal of a travel-compliant identification license.

**D.** A travel-compliant driver license or travel-compliant identification license issued by the Department, as prescribed under A.R.S. § 28-3175 and this Section, is:

1. Valid for a period of up to eight years;
2. Renewable for successive periods of up to eight years; and
3. Subject to all state and federal laws or restrictions requiring the issuance of a shorter expiration period (e.g., up to age 65, as provided under A.R.S. § 28-3171, or for a time period equal to the applicant's authorized stay in the United States, as provided under 6 CFR 37.21, etc.).

**Historical Note**

Adopted as an emergency effective August 18, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-4). Former Section R17-4-202 adopted as an emergency effective August 18, 1983, now adopted without change as a permanent rule effective November 30, 1983 (Supp. 83-6). Correction, subsection (D) as certified effective November 30, 1983 (Supp. 84-3). Former Section R17-4-202 renumbered without change as Section R17-4-407 (Supp. 87-2). Section recodified to R17-4-451 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section recodified from R17-4-706 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 1158, effective May 12, 2003 (Supp. 03-1). New Section made by final exempt rulemaking under Laws 2015, Ch. 294, § 5 at 22 A.A.R. 819, effective March 28, 2016 (Supp. 16-1). Section repealed; new Section made by final rulemaking at 25 A.A.R. 1885, with an immediate effective date of July 2, 2019 (Supp. 19-3).

**R17-4-408. Mandatory Extension of a Certified Ignition Interlock Device Order**

**A.** For purposes of this Section, "conviction" has the meaning prescribed in A.R.S. § 28-101(12).

**B.** For the duration of a certified ignition interlock device order, each conviction for violating A.R.S. §§ 28-1464(A), 28-1464(C), 28-1464(D), 28-1464(F), or 28-1464(H) of the person subject to the order will result in the Division's extension of the order.

**C.** Each extension by the Division of a person's certified ignition interlock device order shall be for one year.

**Historical Note**

Adopted as an emergency effective August 18, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-4). Former Section R17-4-203 and Appendix D adopted as an emergency effective August 18, 1983, now adopted without change as a permanent rule effective November 30, 1983 (Supp. 83-6). Correction, added (C)(5) as certified effective November 30, 1983 (Supp. 84-3). Former Section R17-4-203 renumbered without change as Section R17-4-408 (Supp. 87-2). Section recodified to R17-4-452 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section recodified from R17-4-709.10 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

**R17-4-409. Non-operating Identification License Application; Applicability; Fee**

**A.** A person seeking a non-operating identification license, issued by the Department as prescribed under A.R.S. § 28-3165 and

this Section, shall apply to the Department using a form provided by the Department.

**B.** An applicant shall submit a $12 fee to the Department, on application for a non-operating identification license, unless the applicant is provided a specific statutory exemption from payment of the fee.

**C.** An applicant shall provide to the Department, on application for a non-operating identification license, satisfactory proof of the applicant's full legal name, date of birth, sex, principal residence address of domicile in this state, and evidence that the applicant's presence in the United States is authorized under federal law as listed by the Department on its website at www.azdot.gov.

**D.** A person seeking a travel-compliant identification license issued by the Department under A.R.S. § 28-3175, which is recognized by federal agencies as proof of identity for use when accessing federal facilities, boarding federally-regulated commercial aircraft, or entering nuclear power plants, shall apply to the Department as provided under R17-4-407.

**Historical Note**

Adopted as an emergency effective August 18, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-4). Former Section R17-4-204 and Appendix B adopted as an emergency effective August 18, 1983, now adopted without change as a permanent rule effective November 30, 1983 (Supp. 83-6). Former Section R17-4-204 renumbered without change as Section R17-4-409 (Supp. 87-2). Section recodified to R17-4-453 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section recodified from R17-4-508 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 12 A.A.R. 4446, effective November 7, 2006 (Supp. 06-4). Amended by final rulemaking at 16 A.A.R. 2448, effective February 5, 2011 (Supp. 10-4). Amended by final exempt rulemaking under Laws 2015, Ch. 294, § 5 at 22 A.A.R. 819, effective March 28, 2016 (Supp. 16-1). Amended by final rulemaking at 25 A.A.R. 1885, with an immediate effective date of July 2, 2019 (Supp. 19-3).

**R17-4-410. Voter Registration Through the Motor Vehicle Division**

**A.** For purposes of this Section:
1. "License" has the same meaning as "driver's license" under A.R.S. § 16-111(2).
2. "MVD" means the Arizona Department of Transportation, Motor Vehicle Division.

**B.** To register to vote in Arizona through the MVD as provided for in A.R.S. § 16-112, a person who completes a transaction listed in subsection (C) shall complete and return to MVD:
1. A Secretary of State-approved hardcopy voter registration form for the county of the person's residence, or
2. An electronic voter registration form through MVD's ServiceArizona web site or through MVD's driver license system along with an electronic verification that the person meets voter eligibility criteria under A.R.S. § 16-101.

**C.** Subsection (B) applies to the following license transactions:
1. Initial licensee application;
2. License renewal;
3. Duplicate driver license; or
4. Licensee personal information update.

**D.** MVD shall transfer the voter registration forms and the data collected under this Section by:
1. Mailing the completed hardcopy forms to the appropriate county recorder; and
2. Transmitting the data from completed electronic voter registration forms and licensee personal information updates to the Secretary of State as prescribed under A.A.C. R2-12-605 for further distribution to the appropriate county recorder.

**E.** MVD shall maintain the confidentiality of applicant information as required under A.R.S. Title 16, Chapter 1.

**Historical Note**

Adopted as an emergency effective August 18, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-4). Former Section R17-4-205 adopted as an emergency effective August 18, 1983, now adopted without change as a permanent rule effective November 30, 1983 (Supp. 83-6). Former Section R17-4-205 renumbered without change as Section R17-4-410 (Supp. 87-2). Section recodified to R17-4-454 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 8 A.A.R. 2394, effective May 9, 2002 (Supp. 02-2). Amended by final rulemaking at 12 A.A.R. 1329, effective June 4, 2006 (Supp. 06-2).

**R17-4-411. Special Ignition Interlock Restricted Driver License: Application, Restrictions, Reporting, Fee**

**A.** In addition to the requirements prescribed in A.R.S. § 28-3158, an person applying for a special ignition interlock restricted driver license shall:
1. If the person is suspended for a first offense of A.R.S. § 28-1321:
   a. Complete at least 90 consecutive days of the period of the suspension, and
   b. Maintain a functioning certified ignition interlock device during the remaining period of the suspension.
2. If the person is revoked for a first offense of A.R.S. § 28-1383(A)(3):
   a. Complete at least 90 consecutive days of the suspension under A.R.S. § 28-1385,
   b. Submit proof to the Division that the person has completed an approved alcohol or drug screening or treatment program, and
   c. Maintain a functioning certified ignition interlock device during the remaining period of the revocation.
3. If the person has a court-ordered restriction under A.R.S. §§ 28-3320 or 28-3322:
   a. Comply with the restrictions in subsection (C), and
   b. Maintain a functioning certified ignition interlock device during the remaining period of the court-ordered restriction.

**B.** The Division shall not issue a special ignition interlock restricted driver license if the person's driver license or driving privilege is suspended or revoked for a reason not under subsections (A)(1), (2), or (3).

**C.** A person applying for a special ignition interlock restricted driver license shall pay the following fees:

| | | |
|---|---|---|
| 1. | Age 50 or older | $10.00 |
| 2. | Age 45 – 49 | $15.00 |
| 3. | Age 40 – 44 | $20.00 |
| 4. | Age 39 or younger | $25.00 |

**D.** A special ignition interlock restricted driver license issued under subsection (A), permits a person to operate a motor

vehicle equipped with a functioning certified ignition interlock device as prescribed in A.R.S. § 28-1402(A).

**E.** Reporting. On the eleventh month after the initial date of installation and each eleventh month thereafter for as long as the person is required to maintain a functioning certified ignition interlock device, each installer shall electronically provide the Division all of the following information as recorded by the certified ignition interlock device:
1. Date installed;
2. Person's full name;
3. Person's date of birth;
4. Person's customer or driver license number;
5. Installer and manufacturer name;
6. Installer fax number;
7. Date report interpreted;
8. Report period;
9. Any tampering of the device within the meaning of A.R.S. § 28-1301(9);
10. Any failure of the person to provide proof of compliance or inspection as prescribed in A.R.S. § 28-1461;
11. Any attempts to operate the vehicle with an alcohol concentration exceeding the presumptive limit prescribed in A.R.S. § 28-1381(G)(3), or if the person is younger than 21 years of age, attempts to operate the vehicle with any spirituous liquor in the person's body; and
12. Any other information required by the Director.

**F.** A person applying for a special ignition interlock restricted driver license shall provide proof of financial responsibility prescribed in Title 28, Arizona Revised Statutes, Chapter 9, Article 3.

**Historical Note**

Adopted as an emergency effective August 18, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-4). Former Section R17-4-206 and Appendices C and E adopted as an emergency effective August 18, 1983, now adopted without change as a permanent rule effective November 30, 1983 (Supp. 83-6). Former Section R17-4-206 renumbered without change as Section R17-4-411 (Supp. 87-2). Section recodified to R17-4-455 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 12 A.A.R. 871, effective March 7, 2006 (Supp. 06-1).

**R17-4-412. Extension of a Special Ignition Interlock Restricted Driver License: Hearing, Burden of Proof and Presumptions**

**A.** Extension. The Division shall extend a person's special ignition interlock restricted driver license for a period of one year if the Division has reasonable grounds to believe:
1. The person tampered with the certified ignition interlock device within the meaning of A.R.S. § 28-1301(9),
2. The person fails to provide proof of compliance prescribed in A.R.S. § 28-1461, or
3. The person attempted to operate the vehicle with an alcohol concentration exceeding the presumptive limit prescribed in A.R.S. § 28-1381(G)(3) three or more times during the period of license restriction or limitation, or if the person is younger than 21 years of age, attempted to operate the vehicle with any spirituous liquor in the person's body three or more times during the period of license restriction or limitation.

**B.** Hearing. If a person's special ignition interlock restricted driver license is extended under subsection (A), the person may submit, within 15 days of the date of the order of extension of the restriction, a written request to the Division requesting a hearing. A request for hearing stays the extension of the restriction.

**C.** Burden of proof and presumptions.
1. The hearing office shall presume that the person's whose special ignition interlock restricted driver license is extended under subsection (A)(3), was the person in control of the vehicle and the person attempted to operate the vehicle with an alcohol concentration exceeding the presumptive limit in A.R.S. § 28-1381, or tampered with the device within the meaning of A.R.S. § 28-1301(9).
2. The person may be rebut the presumption by a showing of clear and convincing evidence that the person whose special ignition interlock restricted driver license being extended, was not the person in control of the vehicle or attempted to operate the vehicle with an alcohol concentration exceeding the presumptive limit in A.R.S. § 28-1381, or tampered with the device within the meaning of A.R.S. § 28-1301(9).

**D.** Except for subsection (A)(2), if the Division suspends, revokes, cancels, or otherwise rescinds a person's special ignition interlock restricted driver license for any reason, the Division shall not issue a new license or reinstate the special ignition interlock restricted driver license during the original period of suspension or revocation or while the person is otherwise ineligible to receive a license.

**Historical Note**

Adopted as an emergency effective August 18, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-4). Former Section R17-4-207 adopted as an emergency effective August 18, 1983, now adopted as a permanent rule effective November 30, 1983 (Supp. 83-6). Correction, (A)(3) as certified effective November 30, 1983 (Supp. 84-3). Former Section R17-4-207 renumbered without change as Section R17-4-412. Correction: subsection (F), paragraph (6), "overweight" corrected to read: "overheight" (Supp. 87-2). Section recodified to R17-4-456 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 12 A.A.R. 871, effective March 7, 2006 (Supp. 06-1).

**R17-4-413. Lifetime Disqualification Reinstatement**

**A.** Definitions. In addition to the definitions prescribed under A.R.S. §§ 28-101 and 28-3001, the following definitions apply to this Section, unless otherwise specified:
"CDL" means Commercial Driver License.
"Lifetime disqualification" means the individual is disqualified for life from operating a commercial motor vehicle as prescribed under 49 CFR 391.15.
"Permanently disqualified" means the individual will never be able to obtain a commercial driver license.

**B.** Eligibility. An individual with a lifetime disqualification may request reinstatement of the individual's commercial driving privilege if:
1. Ten years have passed since the date of the lifetime disqualification.
2. The individual:
   a. Is otherwise eligible for licensure.
   b. Has continuously been eligible for a driver license during the most recent 10-year period.
   c. Has not previously reinstated CDL privileges for another lifetime disqualification.

d. Has no record of a conviction for any of the following violations, in any state, within the previous 10-year period:
   i. Driving while under the influence of alcohol or a controlled substance.
   ii. Having a blood alcohol concentration of .04 or greater while driving a commercial motor vehicle.
   iii. Refusal to submit to a blood alcohol concentration test.
   iv. Leaving the scene of an accident.
   v. Using a vehicle in the commission of a felony.
   vi. Operating a commercial motor vehicle as defined under A.R.S. § 28-3001 while his or her commercial driving privileges are canceled, disqualified, suspended, or revoked.
   vii. Causing a fatality through the negligent operation of a commercial motor vehicle.

**C.** Application after lifetime disqualification. If the Division determines that the individual is eligible to reinstate his or her commercial driving privilege, the individual may obtain a new CDL by paying all required fees, submitting the medical examination form prescribed under Section R17-4-508(A)(1), and successfully completing all CDL written, vision, and demonstration-skill testing applicable to the type of CDL, including any endorsements, for which the individual is applying.

**D.** Permanent disqualification.
1. An individual who reinstated his or her commercial driving privilege in accordance with this Section and who is subsequently given a lifetime disqualification under A.R.S. § 28-3312 is permanently disqualified.
2. An individual convicted of using any vehicle in the commission of a felony involving manufacturing, distributing, or dispensing a controlled substance is permanently disqualified.
3. An individual who more than once refuses a test in violation of A.R.S. § 28-1321 if the refusals involve more than one incident is permanently disqualified.
4. An individual who more than once is convicted of violating A.R.S. § 28, Chapter 4, Article 3 is permanently disqualified.

**Historical Note**

Adopted as an emergency effective August 18, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-4). Former Section R17-4-208 adopted as an emergency effective August 18, 1983, now adopted without change as a permanent rule effective November 30, 1983 (Supp. 83-6). Former Section R17-4-208 renumbered without change as Section R17-4-413 (Supp. 87-2). Section recodified to R17-4-457 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 13 A.A.R. 2155, effective August 4, 2007 (Supp. 07-2).

**R17-4-414. Commercial Driver License Applicant Driver History Check; Required Action; Hearing**

**A.** Applicability. The provisions of this Section shall apply to all applicants requesting an original, renewal, reinstatement, transfer, or upgrade of a commercial driver license or commercial driver license instruction permit.

**B.** Driver History Check. In compliance with 49 CFR 384.206, 384.210, 384.225, and 384.232:
1. The Department shall require each applicant for a commercial driver license to supply the names of all states where the applicant has previously been licensed to operate a motor vehicle.
2. The Department shall request the complete driver history record from all states where the applicant was licensed to operate a motor vehicle within the previous 10 years. The Department shall make a driver history request no earlier than:
   a. Twenty-four hours prior to the issuance of a commercial driver license or commercial driver license instruction permit for an applicant who does not currently possess a valid Arizona commercial driver license; or
   b. Ten days prior to the issuance of a commercial driver license or commercial driver license instruction permit for an applicant who currently possesses a valid Arizona commercial driver license.
3. The Department shall record and maintain as part of the driver history all convictions, disqualifications, and other licensing actions for violations of any state or local law relating to motor vehicle traffic control, other than a parking violation, committed in any type of vehicle by a commercial driver licensee or any driver operating a commercial motor vehicle.

**C.** Required Action. In compliance with 49 CFR 384.210 and 384.231:
1. The Department shall, based on the findings of the driver history checks, issue a commercial driver license or commercial driver license instruction permit to a qualified applicant.
2. In the case of a reported conviction, disqualification, or other licensing action, the Department shall promptly cancel, disqualify, suspend, or revoke the person's commercial driving privilege as prescribed under A.R.S. Title 28, Chapters 4, 6, 8, and 14 and A.A.C. Title 17.
3. The Department shall send written notification of the action to the person describing the action taken by the Department.

**D.** Hearing. A hearing may be allowed when the driver history information received by the Department is a result of a case of mistaken identity or identity theft.
1. The person shall submit a hearing request in writing and comply with A.A.C. R17-1-502.
2. The hearing request shall be submitted within 20 days from the date the notice of action was mailed.
3. The hearing request shall indicate whether the request for the hearing is based on a case of identity theft or mistaken identity.
4. The hearing shall be held in accordance with the procedures prescribed under A.R.S. § 28-3317 and 17 A.A.C. 1, Article 5.
5. It shall be presumed that the information received from the driver history check belongs to the person. The person may overcome this presumption if the person is able to present evidence that either:
   a. The person is not the driver convicted of the reported violation as in a case of mistaken identity; or
   b. The person's identity was stolen and the applicant or licensee was not the driver convicted of the violation.
6. The scope of the hearing is limited to determining whether the person is the driver convicted of the reported

driver history information, not the validity of the underlying conviction or licensing action that occurred in another licensing jurisdiction.

**Historical Note**
Adopted effective December 18, 1995 (Supp. 95-4). Section recodified to R17-4-458 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 14 A.A.R. 4100, effective October 7, 2008 (Supp. 08-4).

**R17-4-415. Reserved**

**R17-4-416. Reserved**

**R17-4-417. Reserved**

**R17-4-418. Reserved**

**R17-4-419. Reserved**

**R17-4-420. Recodified**

**Historical Note**
Former Rule, General Order 58. Former Section R17-4-21 renumbered without change as Section R17-4-420 (Supp. 87-2). Section recodified to R17-4-459 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

**R17-4-421. Recodified**

**Historical Note**
Former Rule, General Order 79. Former Section R17-4-33 renumbered without change as Section R17-4-421 (Supp. 87-2). Section recodified to R17-4-460 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

**R17-4-422. Recodified**

**Historical Note**
Adopted as an emergency effective July 29, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-4). Emergency expired. Permanent rule adopted effective February 12, 1986 (Supp. 86-1). Former Section R17-4-73 renumbered without change as Section R17-4-422 (Supp. 87-2). Section recodified to R17-4-461 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

**R17-4-423. Recodified**

**Historical Note**
Former Rule, General Order 94. Former Section R17-4-38 renumbered without change as Section R17-4-423 (Supp. 87-2). Section R17-4-423 repealed, new Section adopted effective February 21, 1990 (Supp. 90-1). Section recodified to R17-4-462 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

**R17-4-424. Recodified**

**Historical Note**
Former Rule, General Order 99. Former Section R17-4-40 renumbered without change as Section R17-4-424 (Supp. 87-2). Section recodified to R17-4-463 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

**R17-4-425. Recodified**

**Historical Note**
Former Section R17-4-53 renumbered without change as Section R17-4-425 (Supp. 87-2). Section recodified to R17-4-464 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

**R17-4-426. Recodified**

**Historical Note**
Adopted effective January 12, 1977 (Supp. 77-1). Amended subsections (A), (C), (D), and (H) effective January 23, 1981 (Supp. 81-1). Former Section R17-4-55 renumbered without change as Section R17-4-426 (Supp. 87-2). Section recodified to R17-4-465 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

**R17-4-427. Recodified**

**Historical Note**
Adopted effective March 31, 1978 (Supp. 78-2). Former Section R17-4-58 renumbered without change as Section R17-4-427 (Supp. 87-2). Section recodified to R17-4-466 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

**R17-4-428. Recodified**

**Historical Note**
New Section recodified from A.A.C. R17-3-403 at 7 A.A.R. 1260, effective February 20, 2001 (Supp. 01-1). Section recodified to R17-4-467 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

**R17-4-429. Reserved**

**R17-4-430. Reserved**

**R17-4-431. Reserved**

**R17-4-432. Reserved**

**R17-4-433. Reserved**

**R17-4-434. Reserved**

**R17-4-435. Recodified**

**Historical Note**
Adopted as an emergency effective July 1, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R17-4-63 adopted as an emergency now adopted and amended as a permanent rule effective October 8, 1982 (Supp. 82-5). Amended effective August 19, 1983 (Supp. 83-4). Correction to amendments shown effective August 19, 1983. The subsection "IT IS ORDERED: --" was also amended effective August 19, 1983, but not shown (Supp. 83-5). Amended effective February 18, 1986 (Supp. 86-1). Amended effective May 12, 1986 (Supp. 86-3). Adding Historical Note for Supp. 87-1, "Amended effective February 28, 1987." Former Section R17-4-63 renumbered as Section R17-4-435 and amended by adding a new subsection (C) effective April 7, 1987 (Supp. 87-2). Amended by adding paragraph (20) in subsection (B) and renumbering accordingly effective March 23, 1989 (Supp. 89-1). Amended as an emergency effective January 4, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-1). Emergency expired. Emergency amendments re-adopted effective April 25, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days; permanent amendments adopted effective May 18, 1990 (Supp. 90-2). Section R17-4-435 repealed, new Section R17-4-435 adopted effective October 24, 1990 (Supp. 90-4). Emergency amendments effective November 27, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-4) Emergency expired. Emergency

amendments readopted effective May 6, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-2). Emergency expired. Amended and renumbered to R17-4-435 and R17-4-435.01 through R17-4-435.04 effective August 16, 1991 (Supp. 91-3). Amended effective February 23, 1993 (Supp. 93-1). Amended effective April 4, 1994 (Supp. 94-2). Amended effective October 16, 1996 (Supp. 96-4). Amended by final rulemaking at 6 A.A.R. 770, effective February 1, 2000 (Supp. 00-1). Amended by final rulemaking at 7 A.A.R. 662, effective January 11, 2001 (Supp. 01-1). Amended by final rulemaking at 7 A.A.R. 3215, effective July 12, 2001 (Supp. 01-3). Section recodified to R17-5-202 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

**R17-4-435.01. Recodified**

**Historical Note**

Section R17-4-435.01 renumbered from R17-4-435(C) and amended effective August 16, 1991 (Supp. 91-3). Amended effective February 23, 1993 (Supp. 93-1). Amended effective April 4, 1994 (Supp. 94-2). Amended effective October 16, 1996 (Supp. 96-4). Amended by final rulemaking at 6 A.A.R. 770, effective February 1, 2000 (Supp. 00-1). Amended by final rulemaking at 7 A.A.R. 662, effective January 11, 2001 (Supp. 01-1). Amended by final rulemaking at 7 A.A.R. 3215, effective July 12, 2001 (Supp. 01-3). Section recodified to R17-5-203 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

**R17-4-435.02. Recodified**

**Historical Note**

Section R17-4-435.02 renumbered from R17-4-435(D) and amended effective August 16, 1991 (Supp. 91-3). Amended effective February 23, 1993 (Supp. 93-1). Amended effective April 4, 1994 (Supp. 94-2). Amended effective October 16, 1996 (Supp. 96-4). Amended by final rulemaking at 6 A.A.R. 770, effective February 1, 2000 (Supp. 00-1). Amended by final rulemaking at 7 A.A.R. 662, effective January 11, 2001 (Supp. 01-1). Amended by final rulemaking at 7 A.A.R. 3215, effective July 12, 2001 (Supp. 01-3). Section recodified to R17-5-204 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

**R17-4-435.03. Recodified**

**Historical Note**

Section R17-4-435.03 adopted effective August 16, 1991 (Supp. 91-3). Amended effective February 23, 1993 (Supp. 93-1). Amended effective April 4, 1994 (Supp. 94-2). Amended by final rulemaking at 6 A.A.R. 770, effective February 1, 2000 (Supp. 00-1). Amended by final rulemaking at 7 A.A.R. 662, effective January 11, 2001 (Supp. 01-1). Amended by final rulemaking at 7 A.A.R. 3215, effective July 12, 2001 (Supp. 01-3). Section recodified to R17-5-205 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

**R17-4-435.04. Recodified**

**Historical Note**

Section R17-4-435.04 renumbered from R17-4-435(E), (F) and (G) and amended effective August 16, 1991 (Supp. 91-3). Amended by final rulemaking at 6 A.A.R. 770, effective February 1, 2000 (Supp. 00-1). Section recodified to R17-5-206 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

**R17-4-435.05. Recodified**

**Historical Note**

Section R17-4-435.02 renumbered from R17-4-435(D) and amended effective August 16, 1991 (Supp. 91-3). Amended by final rulemaking at 6 A.A.R. 770, effective February 1, 2000 (Supp. 00-1). Section recodified to R17-5-207 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

**R17-4-435.06. Recodified**

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 770, effective February 1, 2000 (Supp. 00-1). Section recodified to R17-5-208 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

**R17-4-436. Recodified**

**Historical Note**

Adopted effective October 24, 1990 (Supp. 90-4). Amended effective July 3, 1991 (Supp. 91-3). Amended effective February 28, 1992 (Supp. 92-1). Amended effective October 21, 1993 (Supp. 93-4). Amended effective August 12, 1994 (Supp. 94-3). Amended effective November 21, 1995 (Supp. 95-4). Amended by final rulemaking at 6 A.A.R. 3841, effective September 13, 2000 (Supp. 00-3). Amended by final rulemaking at 7 A.A.R. 3215, effective July 12, 2001 (Supp. 01-3). Section recodified to R17-5-209 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

**R17-4-437. Emergency Expired**

**Historical Note**

Emergency rule adopted effective April 9, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency expired.

**R17-4-437.01. Emergency Expired**

**Historical Note**

Emergency rule adopted effective April 9, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency expired.

**R17-4-437.02. Emergency Expired**

**Historical Note**

Emergency rule adopted effective April 9, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency expired.

**R17-4-437.03. Emergency Expired**

**Historical Note**

Emergency rule adopted effective April 9, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency expired.

**Appendix A. Emergency Expired**

**Historical Note**

Emergency rule adopted effective April 9, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency expired.

**R17-4-437.04. Emergency Expired**

**Historical Note**
Emergency rule adopted effective April 9, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency expired.

**R17-4-438. Recodified**

**Historical Note**
Adopted effective March 21, 1994 (Supp. 94-1). Section recodified to R17-5-210 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

**R17-4-439. Recodified**

**Historical Note**
Adopted effective March 21, 1994 (Supp. 94-1). Section recodified to R17-5-211 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

**R17-4-440. Recodified**

**Historical Note**
Adopted effective March 21, 1994 (Supp. 94-1). Section recodified to R17-5-212 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

**R17-4-441. Reserved**

**R17-4-442. Reserved**

**R17-4-443. Reserved**

**R17-4-444. Repealed**

**Historical Note**
Amended effective January 5, 1977 (Supp. 77-1). Repealed as an emergency effective August 18, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-4). Repealed effective November 30, 1983 (Supp. 83-6). New Section R17-4-52 adopted as an emergency effective July 25, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-4). Emergency expired. Permanent rule adopted effective February 27, 1986 (Supp. 86-1). Amended subsections (A) and (B) effective February 18, 1987 (Supp. 87-1). Former Section R17-4-52 renumbered without change as Section R17-4-444 (Supp. 87-2). Repealed effective October 13, 1987 (Supp. 87-4).

**R17-4-445. Recodified**

**Historical Note**
Section R17-4-421 adopted and renumbered as Section R17-4-445 effective October 13, 1987 (Supp. 87-4). Amended subsection (A) effective May 20, 1988 (Supp. 88-2). Amended effective January 2, 1996 (Supp. 96-3). Section recodified to R17-5-504 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

**R17-4-446. Recodified**

**Historical Note**
Section R17-4-422 adopted and renumbered as Section R17-4-446 effective October 13, 1987 (Supp. 87-4). Section recodified to R17-5-505 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

**R17-4-447. Recodified**

**Historical Note**
Section R17-4-423 adopted and renumbered as Section R17-4-447 effective October 13, 1987 (Supp. 87-4). Section recodified to R17-5-506 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

**R17-4-448. Recodified**

**Historical Note**
Section R17-4-424 adopted and renumbered as Section R17-4-448 effective October 13, 1987 (Supp. 87-4). Amended effective January 2, 1996 (Supp. 96-3). Section recodified to R17-5-507 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

**R17-4-449. Reserved**

**R17-4-450. Repealed**

**Historical Note**
New Section recodified from R17-4-406 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

**R17-4-451. Repealed**

**Historical Note**
New Section recodified from R17-4-407 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

**R17-4-452. Repealed**

**Historical Note**
New Section recodified from R17-4-408 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

**R17-4-453. Repealed**

**Historical Note**
New Section recodified from R17-4-409 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

**R17-4-454. Repealed**

**Historical Note**
New Section recodified from R17-4-410 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

**R17-4-455. Repealed**

**Historical Note**
New Section recodified from R17-4-411 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 7 A.A.R. 4351, effective September 17, 2001 (Supp. 01-3). Amended by final rulemaking at 8 A.A.R. 926, effective February 13, 2002 (Supp. 02-1). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

**R17-4-456. Repealed**

**Historical Note**
New Section recodified from R17-4-412 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section

repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

**R17-4-457. Repealed**

**Historical Note**
New Section recodified from R17-4-413 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

**R17-4-458. Repealed**

**Historical Note**
New Section recodified from R17-4-414 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

**R17-4-459. Repealed**

**Historical Note**
Former Rule, General Order 58. Former Section R17-4-21 renumbered without change as Section R17-4-420 (Supp. 87-2). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

**R17-4-460. Repealed**

**Historical Note**
New Section recodified from R17-4-421 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

**R17-4-461. Repealed**

**Historical Note**
New Section recodified from R17-4-422 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

**R17-4-462. Repealed**

**Historical Note**
New Section recodified from R17-4-423 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

**R17-4-463. Repealed**

**Historical Note**
New Section recodified from R17-4-424 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

**R17-4-464. Repealed**

**Historical Note**
New Section recodified from R17-4-425 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

**R17-4-465. Repealed**

**Historical Note**
New Section recodified from R17-4-426 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

**R17-4-466. Repealed**

**Historical Note**
New Section recodified from R17-4-427 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

**R17-4-467. Repealed**

**Historical Note**
New Section recodified from R17-4-428 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

## ARTICLE 5. SAFETY

**R17-4-501. Definitions**

In addition to the definitions provided under A.R.S. §§ 28-101, 28-3001, and 28-3005, in this Article, unless otherwise specified:

"Adaptation" means a modification of or addition to the standard operating controls or equipment of a motor vehicle.

"Applicant" means a person:

Applying for an Arizona driver license or driver license renewal, or

Required by the Department to complete an examination successfully or to obtain an evaluation.

"Application" means the Department form required to be completed by or for an applicant for a driver license or driver license renewal.

"Aura" means a sensation experienced before the onset of a neurological disorder.

"Commercial driver license physical qualifications" means driver medical qualification standards for a person licensed in class A, B, or C to operate a commercial vehicle as prescribed under 49 CFR 391, incorporated by reference under A.A.C. R17-5-202 and R17-5-204.

"Disqualifying medical condition" means a visual, physical, or psychological condition, including substance abuse, that impairs functional ability.

"Evaluation" means a medical assessment of an applicant or licensee by a specialist to determine whether a disqualifying medical condition exists.

"Examination" means testing or evaluating an applicant's or licensee's:

Ability to read and understand official traffic control devices,

Knowledge of safe driving practices and the traffic laws of this state, and

Functional ability.

"Functional ability" means the ability to operate safely a motor vehicle of the type permitted by an Arizona driver license class or endorsement.

"Licensee" means a person issued a driver license by this state.

"Licensing action" means an action by the Department to:

Issue, deny, suspend, revoke, cancel, or restrict a driver license or driving privileges; or

Require an examination or evaluation of an applicant or licensee.

"Medical alert code" means a system of numerals or letters indicating the licensee suffers from some type of adverse medical condition.

"Medical screening questions and certification" means the questions and certification on the application.

"Neurological disorder" means a malfunction or disease of the nervous system.

"Seizure" means a neurological disorder characterized by a sudden alteration in consciousness, sensation, motor control, or behavior, due to an abnormal electrical discharge in the brain.

"Specialist" means:

A physician who is a surgeon or a psychiatrist,

A physician whose practice is limited to a particular anatomical or physiological area or function of the human body or to patients with a specific age range, or

A psychologist.

"Substance abuse" means:

Use of alcohol in a manner that makes the user an alcoholic as defined in A.R.S. § 36-2021, or

Use of a controlled substance in a manner that makes the user a drug dependent person as defined in A.R.S. § 36-2501.

"Substance abuse evaluation" means an assessment by a physician, specialist, or certified substance abuse counselor to determine whether the use of alcohol or a drug impairs functional ability.

"Successful completion of an examination" means an applicant or licensee:

Establishes the visual, physical, and psychological ability to operate a motor vehicle safely, or

Achieves a score of at least 80% on any required tests.

**Historical Note**

Adopted effective December 14, 1995 (Supp. 95-4). Section recodified to R17-5-706 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 8 A.A.R. 3241, effective July 12, 2002 (Supp. 02-3). Amended by final rulemaking at 8 A.A.R. 5223, effective December 5, 2002 (Supp. 02-4). Amended by final rulemaking at 10 A.A.R. 2829, effective August 7, 2004 (Supp. 04-2). Amended by final rulemaking at 13 A.A.R. 1127, effective May 5, 2007 (Supp. 07-1). Amended by final rulemaking at 14 A.A.R. 227, effective March 8, 2008 (Supp. 08-1). Amended by final rulemaking at 24 A.A.R. 1543, effective May 1, 2018 (Supp. 18-2). Amended by final expedited rulemaking at 26 A.A.R. 3147, with an immediate effective date of December 3, 2020 (Supp. 20-4).

**R17-4-502. General Provisions for Visual, Physical, and Psychological Ability to Operate a Motor Vehicle Safely**

**A.** Screening process for safe operation of a motor vehicle.

1. An applicant shall complete the application, including the medical screening questions and certification.
2. An applicant without a valid driver license shall successfully complete all required examinations or obtain an evaluation if:
   a. The Department informs the applicant that the applicant's responses to the medical screening questions indicate the existence of a disqualifying medical condition; or
   b. The applicant comes under subsection (B)(1)(a), (B)(1)(c), or (B)(1)(d).
3. An applicant for license renewal shall successfully complete an examination or obtain an evaluation if the applicant's responses to the medical screening questions indicate that since the applicant's last driver license issuance:
   a. The applicant has developed a visual, physical, or psychological condition that may constitute a disqualifying medical condition; or
   b. There has been a change in an existing visual, physical, or psychological condition that may constitute a disqualifying medical condition.
4. As soon as a licensee's medical condition allows, the licensee shall notify the Department, in writing, that a medical condition exists not previously reported to the Department that may affect the licensee's functional ability. On receipt of the required notification, the Department shall require the licensee to complete an examination or evaluation.

**B.** Evaluation. An applicant or licensee shall submit to an evaluation as required by the Department.

1. The Department shall require an evaluation if the Department notifies the applicant or licensee in writing that:
   a. The applicant or licensee comes under the provisions of R17-4-503 or R17-4-506;
   b. The applicant or licensee reports a possible disqualifying medical condition or fails to successfully complete an examination;
   c. The applicant or licensee shows unexplained confusion, loss of consciousness, or incoherence that is observed by Department personnel; or
   d. A person with direct knowledge submits to the Department written information about specific events or conduct indicating the applicant or licensee may have a disqualifying medical condition.
2. The applicant or licensee shall have the physician, appropriate specialist, or certified substance abuse counselor who performs an evaluation submit timely an evaluation report on a form provided by the Department to the Department's Medical Review Program.
3. An applicant or licensee shall pay for any expense incurred by the applicant or licensee to show compliance with the visual, physical, and psychological standards for a driver license.

**C.** Licensing action. The Department shall take a licensing action after requiring an applicant or licensee to complete an examination successfully or obtain an evaluation and submit an evaluation report.

1. The Department shall deny a driver license if an applicant or licensee:
   a. Fails to complete successfully an examination; or
   b. Fails to:
      i. Obtain an evaluation; or

ii. Have a physician, appropriate specialist, or certified substance abuse counselor submit an evaluation report to the Department within 30 days after the Department notifies the applicant that an evaluation is required; or

c. Has an evaluation report submitted that indicates a disqualifying medical condition.

2. The Department shall summarily suspend an applicant's or licensee's driving privileges under A.R.S. §§ 28-3306 and 41-1064 for a reason stated in subsection (C)(1).

3. The Department shall issue a revocation notice with a notice of summary suspension. The revocation notice shall inform the applicant or licensee that:

a. Unless the Department receives the applicant or licensee's timely hearing request under subsection (E), the revocation becomes effective:

i. Fifteen days after the date the applicant or licensee is personally served with the notice, or

ii. Twenty days after the date the notice is mailed to the applicant or licensee.

b. An applicant or licensee who wishes to obtain a license after suspension or revocation shall reapply for a license as specified in A.R.S. § 28-3315.

4. The Department shall issue a driver license or shall not suspend or revoke an applicant or licensee's driving privileges if:

a. The applicant or licensee successfully completes all required examinations and the Department does not require an evaluation, or

b. The applicant or licensee obtains all required evaluations and the most recent evaluation report submitted on behalf of the applicant or licensee conclusively indicates no disqualifying medical condition.

**D.** Driver license restrictions. If an applicant or licensee uses an adaptation, including those listed below, to demonstrate functional ability during an examination, the Department shall indicate the adaptation as a restriction on a driver license issued to the applicant or licensee and on the applicant's or licensee's driving record:

1. Automatic transmission,
2. Hand dimmer switch,
3. Left-foot gas pedal,
4. Parking-brake extension,
5. Power steering,
6. Power brakes,
7. Six-way power seat,
8. Right-side directional signal,
9. A device that enables an operator to spin the steering wheel,
10. A device that enables full foot control,
11. Dual outside mirrors,
12. Chest restraints,
13. Shoulder restraints,
14. A device that extends pedals,
15. A device that enables full hand control,
16. Adapted seat, and
17. Prosthetic aid.

**E.** Hearings. The Department's Executive Hearing Office shall conduct the hearing as provided under A.R.S. Title 41, Chapter 6, Article 6, and 17 A.A.C. 1, Article 5.

**F.** The Department shall not release information required to be submitted to the Department under this Section by an applicant or licensee except to a person or entity qualified under A.R.S. § 28-455.

**Historical Note**

New Section recodified from R17-4-520 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 8 A.A.R. 3241, effective July 12, 2002 (Supp. 02-3). Amended by final rulemaking at 9 A.A.R. 1861, effective June 3, 2003 (Supp. 03-2). Amended by final rulemaking at 13 A.A.R. 1127, effective May 5, 2007 (Supp. 07-1). Amended by final expedited rulemaking at 26 A.A.R. 3147, with an immediate effective date of December 3, 2020 (Supp. 20-4).

**Exhibit A. Repealed**

**Historical Note**

New Exhibit made by final rulemaking at 8 A.A.R. 3241, effective July 12, 2002 (Supp. 02-3). Section repealed by final rulemaking at 13 A.A.R. 1127, effective May 5, 2007 (Supp. 07-1).

**R17-4-503. Vision Standards**

**A.** Definitions.

1. "Binocular vision" means the ability to see in both eyes.
2. "Bioptic telescopic lens system" means a bioptic, spectacle-mounted corrective lens prescribed by a physician or optometrist for meeting vision acuity requirements for driving that uses magnification as the main method of obtaining minimal visual acuity.
3. "Corrected visual acuity" means distance vision corrected by eyeglasses, contact lenses, or a bioptic telescopic lens system.
4. "Corrective lens" means eyeglasses, contact lenses, or a bioptic telescopic lens system used to correct distance vision.
5. "Diplopia" means double vision.
6. "Impaired night vision" means below normal ability to see in reduced light.
7. "Monocular vision" means the ability to see in one eye only.
8. "Optometrist" means a person licensed to practice optometry in any state, territory, or possession of the United States or the Commonwealth of Puerto Rico.
9. "Retinitis pigmentosa" means a chronic progressive inflammation of the retina with atrophy and pigmentary infiltration of the inner layers of the retina.
10. "Snellen Chart" means a chart imprinted with lines of black letters of decreasing size for testing visual acuity.
11. "Visual acuity" means the clarity of a person's vision.
12. "Visual field" means the area in which objects may be seen when the eye is fixed.

**B.** Standard. The following applies only to class D, G, or M applicants or licensees.

1. Visual acuity. A person shall have binocular or monocular vision and visual acuity of 20/40 in at least one eye.
   a. The Department shall not license a person with monocular vision and visual acuity of 20/50 or greater.
   b. The Department shall not license a person with binocular vision and visual acuity of 20/70 or greater.
2. Visual field. Visual field shall be 70 degrees or greater temporally, and 35 degrees or greater nasally, in at least one eye.

**C.** Restrictions.

1. A person with corrected vision shall wear corrective lenses at all times when driving if the corrective lens is required to achieve the vision standards in subsection (B).
2. The Department shall restrict a person with diagnosed impaired night vision to daytime driving only.
3. The Department shall restrict a person with binocular vision and corrected or uncorrected visual acuity of 20/50 or 20/60, when using both eyes, to daytime driving only.

**D.** Screening process.
1. The Department, a physician, or an optometrist may administer visual acuity and visual field screening through the use of visual screening equipment or the Snellen Chart to determine if a person's visual acuity meets minimum standards and through the use of visual screening equipment to determine if a person's visual field meets minimum standards.
2. A person may use a bioptic telescopic lens system during vision screening.
   a. Beginning on the date of an initial application and every year thereafter, a person using a bioptic telescopic lens system shall submit to the Department an annual exam performed by a physician or optometrist to ascertain whether the person has a progressive eye disease.
   b. The Department shall not license a person using a bioptic telescopic lens system unless the person submits to the Department a vision examination form provided by the Department and completed by a physician or an optometrist indicating that the individual meets the visual acuity standard as prescribed in subsection (B).
   c. The Department shall not license a person using a bioptic telescopic lens system with magnification of the lens that is more than 4X.

**E.** Reporting requirements.
1. A person choosing to have initial visual acuity and visual field screening done by a physician or an optometrist shall submit the results to the Department.
2. If the Department does initial visual acuity and visual field screening and the person does not meet vision standards of subsection (B), the Department shall require the person to submit the results of the person's visual acuity and visual field screening by a physician or an optometrist.
3. The Department shall require a person diagnosed with any of the following conditions to file the results of the person's visual acuity and visual field screening completed by the physician or optometrist:
   a. Any progressive eye disease,
   b. Diplopia, or
   c. Impaired night vision.

**F.** Results of visual acuity and visual field screening from a physician or optometrist shall contain the following.
1. An examination date no more than three months before the submission date to the Department;
2. Visual acuity and visual field;
3. If applicable, specification that the person is monocular;
4. If applicable, diagnosis of any condition described in subsection (E)(3);
5. Any recommendations on frequency of reporting requirements for the person, in addition to those required by the Department;
6. Suggested restrictions on driving, in addition to those required by the Department; and
7. Any recommendations on the person's ability to safely operate a motor vehicle.

**G.** The Department shall require a driving test if a person's eye disease is determined by a physician or optometrist to be progressive.

**Historical Note**
New Section recodified from R17-4-521 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 12 A.A.R. 221, effective January 10, 2006 (Supp. 06-1). Amended by final expedited rulemaking at 26 A.A.R. 3147, with an immediate effective date of December 3, 2020 (Supp. 20-4).

### R17-4-504. Medical Alert Conditions

**A.** Definition. In this Section, "license" means any class of driver license, commercial driver license, non-operating identification license, or instruction permit.

**B.** Medical alert condition displayed on license. The Department will provide on each license a space to indicate a medical alert condition. A list of recognized medical alert conditions is available at all Motor Vehicle Division Customer Service offices and Authorized Third Party Driver License offices.

**C.** Retention of medical alert condition authorization. The Department will not maintain the medical alert code on the Department computer record unless written authorization is submitted.

**D.** A person shall submit a signed statement, from a physician or registered nurse practitioner, stating that the person is diagnosed with a medical condition. The signed statement is required every time the person requests a license unless the person authorizes the Department to maintain the medical alert code on the Department computer record.

**Historical Note**
Adopted effective September 25, 1991 (Supp. 91-3). Section repealed by final rulemaking at 7 A.A.R. 3831, effective August 10, 2001 (Supp. 01-3). New Section made by final rulemaking at 13 A.A.R. 1127, effective May 5, 2007 (Supp. 07-1). Amended by final rulemaking at 14 A.A.R. 227, effective March 8, 2008 (Supp. 08-1). Amended by final expedited rulemaking at 26 A.A.R. 3147, with an immediate effective date of December 3, 2020 (Supp. 20-4).

### R17-4-505. Repealed

**Historical Note**
Adopted effective May 2, 1990 (Supp. 90-2). Section repealed by final rulemaking at 7 A.A.R. 3831, effective August 10, 2001 (Supp. 01-3).

### R17-4-506. Neurological Standards

**A.** Driver license application.
1. A person who has a seizure in the three months before applying for a driver license shall undergo an evaluation as provided in R17-4-502.
2. After the evaluation under R17-4-502, the person or the person's physician shall submit the medical examination report to the Department.
3. The Department shall not issue a driver license to a person if the medical examination report shows that the person has a neurological disorder that affects the person's ability to operate a motor vehicle safely.

**B.** Driver license revocation.

1. A person with a driver license or nonresident driving privileges who experiences a seizure shall cease driving and:
   a. Undergo an evaluation as provided in R17-4-502;
   b. Submit the medical examination report to the Department; and
   c. Undergo a follow-up evaluation within one year after the seizure or within a shorter time, as recommended by a physician.
2. After each evaluation, the person or the person's physician shall submit the applicable medical examination report to the Department.
3. The Department shall revoke a person's driver license or nonresident driving privileges if any medical examination report shows the person has a neurological disorder that affects the person's ability to operate a motor vehicle safely.

**C.** Medical examination report. A medical examination report under this Section shall include the following information:
1. Age at onset of seizures, diagnosis, and history;
2. Aftereffects of seizures;
3. EEG findings, if any;
4. Description, cause, frequency, duration, and date of most recent seizure;
5. Current medications, including dosage, side effects, and serum level; and
6. A physician's medical opinion as to whether the neurological disorder will affect the person's ability to operate a motor vehicle safely.

**D.** Physician's medical opinion. A neurological disorder does not affect a person's ability to operate a motor vehicle safely if a physician concludes with reasonable medical certainty that:
1. Any seizure that occurred within the last three months was due to a change in anticonvulsant medication ordered by a physician and that seizures are under control after the change in medication;
2. Any seizure that occurred within the last three months was a single event that will not recur in the future;
3. Any seizure is likely to occur but has an established pattern of occurring only during sleep; or
4. There is an established pattern of an aura of sufficient duration to allow the person to cease operating a motor vehicle immediately at the onset of the aura.

**Historical Note**

Former Rule, General Order 107; Amended effective April 28, 1981 (Supp. 81-2). Amended effective July 1, 1985 (Supp. 85-4). Former Section R17-4-46 renumbered without change as Section R17-4-506 (Supp. 87-2). Emergency amendment adopted effective December 31, 1998, pursuant to A.R.S. § 28-366, for a maximum of 180 days (Supp. 98-4). Emergency amendment expired June 29, 1999 pursuant to A.R.S. § 41-1026(C) (Supp. 99-3). Emergency amendment adopted effective October 1, 1999, pursuant to A.R.S. § 28-366, for a maximum of 180 days (Supp. 99-4). Amended by final rulemaking at 6 A.A.R. 1172, effective March 9, 2000 (Supp. 00-1). Amended by final rulemaking at 7 A.A.R. 3221, effective July 12, 2001 (Supp. 01-3). Section recodified to R17-4-404 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section recodified from R17-4-522 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 7 A.A.R. 5440, effective November 14, 2001 (Supp. 01-4). Amended by final rulemaking at 8 A.A.R. 5223, effective December 5, 2002 (Supp. 02-4). Amended by final expedited rulemaking at 26 A.A.R. 3147, with an immediate effective date of December 3, 2020 (Supp. 20-4).

**R17-4-507. Repealed**

**Historical Note**

Adopted effective July 24, 1985 (Supp. 85-4). Amended effective March 13, 1986 (Supp. 86-2). Former Section R17-4-50 renumbered without change as Section R17-4-507 (Supp. 87-2). Amended by final rulemaking at 7 A.A.R. 4355, effective September 14, 2001 (Supp. 01-3). Amended by final rulemaking at 8 A.A.R. 5223, effective December 5, 2002 (Supp. 02-4). Section repealed by final rulemaking at 24 A.A.R. 1543, effective May 1, 2018 (Supp. 18-2).

**R17-4-508. Commercial Driver License Physical Qualifications**

**A.** Requirements.
1. A commercial driver license applicant shall submit a U.S. Department of Transportation medical examiner's certificate, available online from the Federal Motor Carrier Safety Administration at https://www.fmcsa.dot.gov, completed as prescribed under 49 CFR 391.43 to the Department.
   a. Except as provided in subsection (A)(1)(c), the medical examiner's certificate must be completed by a medical examiner who is listed on the current National Registry of Certified Medical Examiners. A search of certified medical examiners is available on the Federal Motor Carrier Safety Administration's website.
   b. The medical examiner's certificate must be completed upon the applicant's initial application and upon or prior to expiration of the applicant's current medical examiner's certificate.
   c. An optometrist, licensed to practice by the federal government, any state, or U.S. territory, may perform the medical examination as it pertains to visual acuity, field of vision, and the ability to recognize colors as specified in 49 CFR 391.41(b)(10).
2. As prescribed under 49 CFR 391.41(a)(2), a licensee who possesses a commercial driver license shall keep an original or photographic copy of the licensee's current medical examiner's certificate required under subsection (A)(1) available for law enforcement inspection upon request for no more than 15 days after the date it was issued as valid proof of medical certification.
3. A licensee who possesses a commercial driver license shall notify the Department of a physical condition that develops or worsens causing noncompliance with the commercial driver license physical qualifications as soon as the licensee's medical condition allows.

**B.** Commercial driver license suspension and revocation notification procedure. To notify a licensee of any commercial driver license suspension and revocation under subsection (C), the Department shall simultaneously mail two notices within 15 days after a medical examiner's certificate's due date or actual submission date to the licensee's address of record that:
1. Suspends the licensee's commercial driver license beginning on the notice's date; and
2. Revokes the licensee's commercial driver license 15 days after the date of the suspension notice issued under subsection (B)(1).

**C.** Noncompliance actions.

1. Initial application denial. If an applicant's initial medical examiner's certificate required under subsection (A)(1) shows that the applicant does not comply with the commercial driver license physical qualifications, the Department shall immediately mail the commercial driver license denial notification to the applicant's address of record.
2. Medical examiner's certificate renewal suspension and revocation. If a renewing commercial driver licensee submits:
   a. No medical examiner's certificate required under subsection (A)(1) or a form indicating noncompliance with commercial driver license physical qualifications, the Department shall follow the suspension and revocation notification procedure prescribed under subsection (B).
   b. An incomplete medical examiner's certificate required under subsection (A)(1), the Department shall immediately return the incomplete form with a letter requesting that the licensee provide missing information to the Department within 45 days after the date of the Department's letter. The Department shall follow the suspension and revocation notification procedure prescribed under subsection (B) if the licensee fails to return the requested information in the time-frame prescribed in this subsection.

**D.** A commercial driver license that remains revoked for longer than 12 months expires. The holder of an expired commercial driver license may obtain a new commercial driver license by successfully completing all commercial driver license original-application written, vision, and skills testing and by submitting the medical examiner's certificate prescribed under subsection (A)(1).

**E.** Administrative hearing. A person who is denied a commercial driver license or whose commercial driver license is suspended or revoked under this Section may request a hearing from the Department as prescribed under 17 A.A.C. 1, Article 5. The hearing is held in accordance with the procedures prescribed under A.R.S. Title 41, Chapter 6, Article 6 and 17 A.A.C. 1, Article 5.

**Historical Note**

Adopted effective October 31, 1975 (Supp. 75-1). Former Section R17-4-57 renumbered without change as Section R17-4-508 (Supp. 87-2). Emergency amendments adopted effective July 30, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency amendments permanently adopted effective October 27, 1993 (Supp. 93-4). Section recodified to R17-4-409 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section recodified from R17-4-802 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-1). Amended by final rulemaking at 10 A.A.R. 2829, effective August 7, 2004 (Supp. 04-2). Amended by final rulemaking at 13 A.A.R. 1127, effective May 5, 2007 (Supp. 07-1). Amended by final rulemaking at 14 A.A.R. 395, effective March 8, 2008 (Supp. 08-1). Amended by final rulemaking at 24 A.A.R. 1543, effective May 1, 2018 (Supp. 18-2). Amended by final rulemaking at 27 A.A.R. 2730 (November 26, 2021), with an immediate effective date of November 2, 2021 (Supp. 21-4).

**R17-4-509. Repealed**

**Historical Note**

Adopted effective February 14, 1984 (Supp. 84-1). Former Section R17-4-56 renumbered without change as Section R17-4-509 (Supp. 87-2). Repealed effective December 17, 1993 (Supp. 93-4).

**R17-4-510. Expired**

**Historical Note**

Adopted effective October 17, 1986 (Supp. 86-5). Former Section R17-4-76 renumbered without change as Section R17-4-510 (Supp. 87-2). Section recodified to R17-4-406 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section recodified from R17-4-705 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final expedited rulemaking at 26 A.A.R. 3147, with an immediate effective date of December 3, 2020 (Supp. 20-4). Section expired under A.R.S. § 41-1052(M) at 28 A.A.R. 121 (January 7, 2022), effective December 7, 2021 (Supp. 21-4).

**R17-4-511. Repealed**

**Historical Note**

Adopted effective April 21, 1980 (Supp. 80-2). Former Section R17-4-62 renumbered without change as Section R17-4-511 (Supp. 87-2). Section repealed by final rulemaking at 7 A.A.R. 3831, effective August 10, 2001 (Supp. 01-3).

**R17-4-512. Expired**

**Historical Note**

Former Rule, General Order 92. Former Section R17-4-37 renumbered without change as Section R17-4-512 (Supp. 87-2). Section recodified to R17-5-302 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). New Section R17-4-512 recodified from R17-4-704 at 7 A.A.R. 4157, effective September 7, 2001 (Supp. 01-3). Amended by final rulemaking at 14 A.A.R. 397, effective March 8, 2008 (Supp. 08-1). Amended by final expedited rulemaking at 26 A.A.R. 3147, with an immediate effective date of December 3, 2020 (Supp. 20-4). Section expired under A.R.S. § 41-1052(M) at 28 A.A.R. 121 (January 7, 2022), effective December 7, 2021 (Supp. 21-4).

**R17-4-513. Emergency Expired**

**Historical Note**

Emergency rule adopted effective January 4, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-1). Emergency expired. Emergency rule re-adopted effective May 2, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-2). Emergency expired.

**R17-4-514. Emergency Expired**

**Historical Note**

Emergency rule adopted effective January 4, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-1). Emergency expired. Emergency rule re-adopted effective April 25, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-2). Emergency expired.

**R17-4-515. Reserved**

**R17-4-516. Reserved**

**R17-4-517. Reserved**

**R17-4-518. Reserved**

**R17-4-519. Reserved**

**R17-4-520. Recodified**

**Historical Note**
Adopted as Section R17-4-301 and renumbered as Section R17-4-520 effective September 22, 1987 (Supp. 87-3). Section recodified to R17-4-502 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

**R17-4-521. Recodified**

**Historical Note**
Adopted as Section R17-4-310 and renumbered as Section R17-4-521 effective September 22, 1987 (Supp. 87-3). Section recodified to R17-4-503 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

**R17-4-522. Recodified**

**Historical Note**
Adopted as Section R17-4-320 and renumbered as Section R17-4-522 effective September 22, 1987 (Supp. 87-3). Amended effective April 12, 1994 (Supp. 94-2). Section recodified to R17-4-506 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

## ARTICLE 6. EXPIRED

**R17-4-601. Reserved**

**R17-4-602. Reserved**

**R17-4-603. Reserved**

**R17-4-604. Reserved**

**R17-4-605. Reserved**

**R17-4-606. Repealed**

**Historical Note**
Adopted effective February 6, 1984 (Supp. 84-1). Former Section R17-4-507 renumbered without change as Section R17-4-606 (Supp. 87-2). Repealed by summary rulemaking with an interim effective date of March 8, 1996; filed in the Office of the Secretary of State February 16, 1996 (Supp. 96-1).

**R17-4-607. Repealed**

**Historical Note**
Adopted effective August 24, 1982 (Supp. 82-4). Former Section R17-4-501 renumbered without change as Section R17-4-607 (Supp. 87-2). Emergency amendments adopted and filed August 24, 1990, effective September 27, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-3). Emergency amendments repealed, new emergency amendments adopted effective October 1, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-4). Emergency expired. Emergency amendments re-repealed, new emergency amendments readopted effective February 12, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-1). Emergency expired. Emergency amendments re-repealed, new emergency amendments re-adopted effective August 6, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-3). Emergency expired. Emergency amendments re-adopted with changes effective November 14, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency expired. Repealed by summary rulemaking with an interim effective date of March 8, 1996; filed in the Office of the Secretary of State February 16, 1996 (Supp. 96-1).

**R17-4-608. Expired**

**Historical Note**
Adopted effective August 18, 1983 (Supp. 83-4). Former Section R17-4-504 renumbered without change as Section R17-4-608 (Supp. 87-2). Section expired under A.R.S. § 41-1056(J) at 19 A.A.R. 2855, effective June 28, 2013 (Supp. 13-3).

**R17-4-609. Expired**

**Historical Note**
Adopted effective March 7, 1983, to apply to chassis and bodies placed in production after May 1, 1983 (Supp. 83-2). Former Section R17-4-502 renumbered without change as Section R17-4-609 (Supp. 87-2). Section expired under A.R.S. § 41-1056(J) at 19 A.A.R. 2855, effective June 28, 2013 (Supp. 13-3).

**R17-4-610. Expired**

**Historical Note**
Adopted effective February 11, 1983 (Supp. 83-1). Former Section R17-4-503 renumbered without change as Section R17-4-610 (Supp. 87-2). Section expired under A.R.S. § 41-1056(J) at 19 A.A.R. 2855, effective June 28, 2013 (Supp. 13-3).

**R17-4-611. Expired**

**Historical Note**
Adopted effective August 24, 1983 (Supp. 83-4). Former Section R17-4-506 renumbered without change as Section R17-4-611 (Supp. 87-2). Section expired under A.R.S. § 41-1056(J) at 19 A.A.R. 2855, effective June 28, 2013 (Supp. 13-3).

**R17-4-612. Expired**

**Historical Note**
Adopted effective August 18, 1983 (Supp. 83-4). Former Section R17-4-505 renumbered without change as Section R17-4-612 (Supp. 87-2). R17-4-612 amended by summary action; Appendices A and B repealed by summary action with an interim effective date March 8, 1996; filed in the Office of the Secretary of State February 16, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 19 A.A.R. 2855, effective June 28, 2013 (Supp. 13-3).

## ARTICLE 7. HAZARDOUS MATERIALS ENDORSEMENT

**R17-4-701. Definitions**

In addition to the definitions contained in 49 CFR 1572, the following words and phrases apply to this Article:

"Applicant" means an individual who applies to obtain an original or renewal HME.

"CDL" means commercial driver license.

"Department" has the same meaning as defined in A.R.S. § 28-101.

"HME" means hazardous materials endorsement.

"Security Threat Assessment" means a check by TSA that includes a fingerprint-based criminal history records check, an intelligence-related background check, and a final disposition.

"Transfer applicant" means an individual with an existing HME issued by another state, applying to the state of Arizona for an HME.

"TSA" means the U.S. Transportation Security Administration.

**Historical Note**
Adopted effective February 1, 1994 (Supp. 94-1). Section recodified to R17-4-309 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 13 A.A.R. 684, effective April 9, 2007 (Supp. 07-1). Amended by final rulemaking at 13 A.A.R. 3368, effective November 10, 2007 (Supp. 07-3). Amended by final rulemaking at 24 A.A.R. 1543, effective May 1, 2018 (Supp. 18-2). Amended by final rulemaking at 27 A.A.R. 2730 (November 26, 2021), with an immediate effective date of November 2, 2021 (Supp. 21-4).

**Appendix A. Recodified**

**Historical Note**
Adopted effective February 1, 1994 (Supp. 94-1). Appendix recodified to 17 A.A.C. 4, Article 3 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

**R17-4-702. Scope**
This Article applies to commercial drivers who are applying for an original, renewal, or transfer of an HME, in accordance with 49 CFR 1572. The Department incorporates by reference 49 CFR 1572, revised as of October 1, 2020, and no later amendments or editions. The incorporated material is on file with the Department at 206 S. 17th Avenue, Phoenix, AZ 85007. The incorporated material is published by National Archives and Records Administration, Office of the Federal Register, 8601 Adelphi Road, College Park, MD 20740-6001, and is printed and distributed by the U.S. Government Publishing Office, P.O. Box 979050, St. Louis, MO 63197-9000. The incorporated material can be viewed online at https://www.govinfo.gov and ordered online by visiting the U.S. Government Bookstore at http://bookstore.gpo.gov. The International Standard Book Number is 9780160958861.

**Historical Note**
Adopted effective November 15, 1989 (Supp. 89-4). Amended effective October 11, 1995 (Supp. 95-4). Section recodified to R17-1-202 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 13 A.A.R. 684, effective April 9, 2007 (Supp. 07-1). Amended by final rulemaking at 13 A.A.R. 3368, effective November 10, 2007 (Supp. 07-3). Amended by final rulemaking at 24 A.A.R. 1543, effective May 1, 2018 (Supp. 18-2). Amended by final rulemaking at 27 A.A.R. 2730 (November 26, 2021), with an immediate effective date of November 2, 2021 (Supp. 21-4).

**R17-4-703. Expired**

**Historical Note**
New Section made by exempt rulemaking at 7 A.A.R. 2518, effective May 25, 2001 (Supp. 01-2). Section recodified to R17-1-204 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 13 A.A.R. 684, effective April 9, 2007 (Supp. 07-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 34, effective June 30, 2016 (Supp. 16-4).

**R17-4-704. Requirements for an HME**
To receive an HME an applicant shall:
1. Possess a valid Arizona CDL,
2. Be at least 21 years of age,
3. Successfully complete all required testing under R17-4-705,
4. Pay all applicable fees under R17-4-706,
5. Make application to TSA for a Security Threat Assessment, and
6. Receive a Determination of No Security Threat from TSA.

**Historical Note**
Adopted effective October 6, 1983 (Supp. 83-5). Former Section R17-4-49 renumbered without change as Section R17-4-704 (Supp. 87-2). Amended by final rulemaking at 7 A.A.R. 3834, effective August 10, 2001 (Supp. 01-3). Section recodified to R17-4-512 at 7 A.A.R. 4157, effective September 7, 2001 (Supp. 01-3). New Section made by final rulemaking at 13 A.A.R. 684, effective April 9, 2007 (Supp. 07-1).

**R17-4-705. Required Testing**
**A.** Original and renewal applicants shall successfully complete the testing requirements under A.R.S. § 28-3223.
**B.** A transfer applicant shall be required to comply with HME knowledge test requirements under A.R.S. § 28-3223, and pay any applicable fee under R17-4-706.

**Historical Note**
Adopted effective August 2, 1978 (Supp. 78-4). Former Section R17-4-61 renumbered without change as Section R17-4-705 (Supp. 87-2). Section recodified to R17-4-510 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 13 A.A.R. 684, effective April 9, 2007 (Supp. 07-1). Amended by final rulemaking at 13 A.A.R. 3368, effective November 10, 2007 (Supp. 07-3). Amended by final rulemaking at 24 A.A.R. 1543, effective May 1, 2018 (Supp. 18-2).

**R17-4-706. Fees**
All applicants and transfer applicants shall pay all applicable fees as prescribed by:
1. TSA for a Security Threat Assessment, and
2. A.R.S. § 28-3002.

**Historical Note**
Former Rule, General Order 96. Former Section R17-4-39 renumbered without change as Section R17-4-706 (Supp. 87-2). Section recodified to R17-4-407 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 13 A.A.R. 684, effective April 9, 2007 (Supp. 07-1). Amended by final rulemaking at 24 A.A.R. 1543, effective May 1, 2018 (Supp. 18-2).

**R17-4-707. 60-Day Notice to Apply**
**A.** The Department shall notify an existing HME holder that a new Security Threat Assessment shall be successfully passed in order to retain the HME 60 days prior to the expiration of the Security Threat Assessment and the corresponding HME.
**B.** Upon expiration of the Department's 60 Day Notice to Apply, the Department shall cancel the Arizona driver license privi-

leges of an applicant who fails to apply for a Security Threat Assessment and fails to remove the HME.

**Historical Note**

Adopted as an emergency effective April 24, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-2). Emergency expired. Former Section R17-4-66 renumbered and reserved as R17-4-707 (Supp. 87-2). New Section R17-4-66 adopted and renumbered as Section R17-4-707 effective August 11, 1987 (Supp. 87-3). Amended by final rulemaking at 6 A.A.R. 4668, November 14, 2000 (Supp. 00-4). Section recodified to R17-1-203 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 13 A.A.R. 684, effective April 9, 2007 (Supp. 07-1). Amended by final rulemaking at 24 A.A.R. 1543, effective May 1, 2018 (Supp. 18-2).

**R17-4-708. Security Threat Assessment**

**A.** An applicant for an HME shall successfully pass a Security Threat Assessment every five years.

**B.** An applicant subject to any of the following actions, as defined in A.R.S. § 28-3001, shall obtain a new Security Threat Assessment and HME:

1. Cancellation,
2. Suspension for a period of one year or more,
3. Expiration for a period of one year or more, and
4. Revocation for a period of one year or more.

**Historical Note**

Adopted effective January 13, 1993 (Supp. 93-1). Section recodified to R17-4-310 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 13 A.A.R. 684, effective April 9, 2007 (Supp. 07-1). Amended by final rulemaking at 27 A.A.R. 2730 (November 26, 2021), with an immediate effective date of November 2, 2021 (Supp. 21-4).

**R17-4-709. Determination of Security Threat**

Upon notification by TSA that an applicant has failed to successfully pass the Security Threat Assessment:

1. For an original applicant:
   a. The Department will deny the request for an HME; and
   b. If otherwise qualified, the applicant may apply for a CDL without an HME.
2. For a renewal applicant:
   a. The Department shall immediately cancel the HME.
   b. The Department will notify an HME applicant with a Notice of Action that the applicant has 15 days from the notice date to have the HME removed.
   c. The applicant shall visit a Motor Vehicle Division Customer Service office for removal of the HME.
   d. If the applicant fails to comply with the Department's Notice of Action, the Department shall cancel the applicant's Arizona driver license privilege.
   e. Upon removal of an HME by the Department under this Section, an applicant, if otherwise qualified, may continue to hold a CDL.

**Historical Note**

Adopted by an emergency action effective December 1, 1998, pursuant to A.R.S. § 41-1026, effective for a maximum of 180 days (Supp. 98-4). Emergency expired May 29, 1999; Section renewed and amended by emergency rulemaking, pursuant to A.R.S. § 41-1026, at 5 A.A.R. 2433, effective July 7, 1999 for a maximum of 180 days (Supp. 99-3). Emergency Section expired January 3, 2000, pursuant to A.R.S. § 1026(C); new Section adopted by final rulemaking at 6 A.A.R. 549, effective January 11, 2000 (Supp. 00-1). Amended by final rulemaking at 7 A.A.R. 59, effective December 7, 2000 (Supp. 00-4). Section recodified to R17-5-601 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 13 A.A.R. 684, effective April 9, 2007 (Supp. 07-1). Amended by final rulemaking at 24 A.A.R. 1543, effective May 1, 2018 (Supp. 18-2). Amended by final rulemaking at 27 A.A.R. 2730 (November 26, 2021), with an immediate effective date of November 2, 2021 (Supp. 21-4).

**R17-4-709.01. Recodified**

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 549, effective January 11, 2000 (Supp. 00-1). Section recodified to R17-5-602 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

**R17-4-709.02. Recodified**

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 549, effective January 11, 2000 (Supp. 00-1). Section recodified to R17-5-603 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

**R17-4-709.03. Recodified**

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 549, effective January 11, 2000 (Supp. 00-1). Section recodified to R17-5-604 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

**R17-4-709.04. Recodified**

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 549, effective January 11, 2000 (Supp. 00-1). Amended by final rulemaking at 7 A.A.R. 59, effective December 7, 2000 (Supp. 00-4). Section recodified to R17-5-605 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

**R17-4-709.05. Recodified**

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 549, effective January 11, 2000 (Supp. 00-1). Section recodified to R17-5-606 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

**R17-4-709.06. Recodified**

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 549, effective January 11, 2000 (Supp. 00-1). Section recodified to R17-5-607 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

**Appendix A. Recodified**

**Historical Note**

Appendix A adopted by an emergency action effective December 1, 1998, pursuant to A.R.S. § 41-1026, effective for a maximum of 180 days (Supp. 98-4). Emergency expired May 29, 1999; Appendix A renewed and amended by emergency rulemaking, pursuant to A.R.S. §

41-1026, at 5 A.A.R. 2433, effective July 7, 1999 for a maximum of 180 days (Supp. 99-3). Emergency Appendix A expired January 3, 2000, pursuant to A.R.S. § 1026(C); new Appendix A adopted by final rulemaking at 6 A.A.R. 549, effective January 11, 2000 (Supp. 00-1). Amended by final rulemaking at 7 A.A.R. 59, effective December 7, 2000 (Supp. 00-4). Appendix recodified to 17 A.A.C. 5, Article 6 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

**Appendix B. Recodified**

**Historical Note**

Appendix B adopted by an emergency action effective December 1, 1998, pursuant to A.R.S. § 41-1026, effective for a maximum of 180 days (Supp. 98-4). Emergency expired May 29, 1999; Appendix B renewed and amended by emergency rulemaking, pursuant to A.R.S. § 41-1026, at 5 A.A.R. 2433, effective July 7, 1999 for a maximum of 180 days (Supp. 99-3). Emergency Appendix B expired January 3, 2000, pursuant to A.R.S. § 1026(C); new Appendix B adopted by final rulemaking at 6 A.A.R. 549, effective January 11, 2000 (Supp. 00-1). Appendix recodified to 17 A.A.C. 5, Article 6 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

**Appendix C. Recodified**

**Historical Note**

Appendix C adopted by an emergency action effective December 1, 1998, pursuant to A.R.S. § 41-1026, effective for a maximum of 180 days (Supp. 98-4). Emergency expired May 29, 1999; Appendix C renewed by emergency rulemaking, pursuant to A.R.S. § 41-1026, at 5 A.A.R. 2433, effective July 7, 1999 for a maximum of 180 days (Supp. 99-3). Emergency Appendix C expired January 3, 2000, pursuant to A.R.S. § 1026(C); new Appendix C adopted by final rulemaking at 6 A.A.R. 549, effective January 11, 2000 (Supp. 00-1). Appendix recodified to 17 A.A.C. 5, Article 6 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

**R17-4-709.07. Recodified**

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 549, effective January 11, 2000 (Supp. 00-1). Amended by final rulemaking at 7 A.A.R. 59, effective December 7, 2000 (Supp. 00-4). Section recodified to R17-5-608 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

**R17-4-709.08. Recodified**

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 549, effective January 11, 2000 (Supp. 00-1). Section recodified to R17-5-609 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

**R17-4-709.09. Recodified**

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 654, effective January 11, 2000 (Supp. 00-1). Amended by final rulemaking at 7 A.A.R. 59, effective December 7, 2000 (Supp. 00-4). Section recodified to R17-5-610 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

**Exhibit A. Recodified**

**Historical Note**

New Form adopted by final rulemaking at 6 A.A.R. 654, effective January 11, 2000 (Supp. 00-1). Heading "Form A" changed to "Exhibit A" to conform with R1-1-412 (Supp. 00-3). Exhibit recodified to 17 A.A.C. 5, Article 6 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

**Exhibit B. Recodified**

**Historical Note**

New Exhibit adopted by final rulemaking at 7 A.A.R. 59, effective December 7, 2000 (Supp. 00-4). Exhibit recodified to 17 A.A.C. 5, Article 6 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

**R17-4-709.10. Recodified**

**Historical Note**

New Section adopted by final rulemaking at 7 A.A.R. 59, effective December 7, 2000 (Supp. 00-4). Section recodified to R17-4-408 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

**R17-4-710. Requests for Administrative Hearing**

**A.** In the event an applicant has failed to successfully complete the Security Threat Assessment or failed to receive a Determination of No Security Threat, the applicant may make an appeal directly through TSA, but cannot request an administrative hearing from the Department.

**B.** An applicant whose Arizona driver license privileges have been canceled under R17-4-707 or R17-4-709 may request an administrative hearing from the Department as prescribed under 17 A.A.C. 1, Article 5. The hearing is held in accordance with the procedures prescribed under A.R.S. Title 41, Chapter 6, Article 6 and 17 A.A.C. 1, Article 5.

**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 2928, effective August 5, 1999 (Supp. 99-3). Section recodified to R17-1-101 at 7 A.A.R. 919, effective January 24, 2001 (Supp. 01-1). New Section made by final rulemaking at 13 A.A.R. 684, effective April 9, 2007 (Supp. 07-1). Amended by final rulemaking at 24 A.A.R. 1543, effective May 1, 2018 (Supp. 18-2).

**R17-4-711. Expired**

**Historical Note**

New Section made by final rulemaking at 13 A.A.R. 684, effective April 9, 2007 (Supp. 07-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 34, effective June 30, 2016 (Supp. 16-4).

**R17-4-712. Transfer Applicant**

**A.** Applicability. A transfer applicant shall comply with the provisions of this Article except as otherwise required by this Section.

**B.** Existing TSA approval. Upon application by a transfer applicant who has successfully passed a Security Threat Assessment prior to application in Arizona, the Department shall:

1. Verify the TSA approval of a Determination of No Security Threat;
2. Issue an Arizona CDL with an HME; and
3. Consider an applicant who has been subject to any action under R17-4-708(B) an original applicant and shall require the applicant to undergo a new Security Threat Assessment and testing requirements under R17-4-705.

**Historical Note**

New Section made by final rulemaking at 13 A.A.R. 3368, effective November 10, 2007 (Supp. 07-3). Amended by final rulemaking at 24 A.A.R. 1543, effective May 1, 2018 (Supp. 18-2).

**Table A. Recodified**

**Historical Note**

Table A adopted by final rulemaking at 5 A.A.R. 2928, effective August 5, 1999 (Supp. 99-3). Table recodified to 17 A.A.C. 1, Article 1 at 7 A.A.R. 919, effective January 24, 2001 (Supp. 01-1).

## ARTICLE 8. MOTOR VEHICLE RECORDS

**R17-4-801. Definitions**

"Batch" means a query-command method that initiates simultaneous production of an electronic file or series of requests that may have delayed results.

"Certified record" means a copy of a document designated as a true copy by the agency officer entrusted with custody of the original to be used for purposes prescribed under A.R.S. § 28-442.

"Commercial driver license record" has the same meaning as a CDLIS motor vehicle record as defined in 49 CFR 384.105.

"Customer number" means the system-generated, or other distinguishing number, assigned by the Department to each person with a record on the Department's database, which includes the driver license number assigned to a person for a driver license, identification card, or instruction permit.

"Driver record" means a motor vehicle record more specifically defined to include any data that pertains to a driver license, identification card, instruction permit, or driver related activities.

"Interactive" means an electronic query-command method individually initiated by a person that produces immediate results.

"Reasonable costs" has the same meaning as defined in A.R.S. § 12-351.

"Requester" means the person, as defined in A.R.S. § 41-1001, requesting a motor vehicle record.

"Special MVR" means a motor vehicle record that is comprised of the least possible subset of information necessary to respond to the type of request received.

"Support document" means any customer record maintained by the Department in an electronic, hardcopy, or microfilm file storage format.

"Title and registration record" means a motor vehicle record more specifically defined to include any data that pertains to a vehicle title or registration record.

**Historical Note**

Adopted effective June 29, 1990 (Supp. 90-2). Section recodified to R17-5-701 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 13 A.A.R. 4376, effective February 2, 2008 (Supp. 07-4). Amended by final expedited rulemaking at 24 A.A.R. 3498, effective December 4, 2018 (Supp. 18-4).

**R17-4-802. Motor Vehicle Record Request**

**A.** Identification requirements. The requester of a motor vehicle record shall present valid identification as indicated on the motor vehicle record request form or at the request of the Department at the time a motor vehicle record request is made.

**B.** Charges and exemptions. The requester of a motor vehicle record shall pay the appropriate motor vehicle record copy charge under R17-4-803, unless exempt under A.R.S. § 28-446.

**C.** Motor vehicle record types. Under this Article, the Department may release any of the following motor vehicle record types:
1. Title and Registration record, uncertified;
2. Title and Registration record, certified;
3. Driver 39-month record, uncertified;
4. Driver five-year record, certified;
5. Driver extended history record, certified;
6. Special MVR, uncertified;
7. Commercial driver license record, uncertified;
8. Support documents, uncertified; and
9. Support documents, certified.

**D.** Search Criteria. A requester who has a permissible use under A.R.S. § 28-455, except as indicated under subsection (E) when using the permissible use under A.R.S. § 28-455(C)(11), shall provide at least one of the items of information listed in this subsection when requesting a motor vehicle record. The requester may need to provide additional information as needed in order to locate the record.
1. For a title and registration motor vehicle record:
   a. Vehicle identification number,
   b. License plate number, or
   c. Vehicle owner's full name.
2. For a driver motor vehicle record:
   a. The full name of the person whose record is requested, or
   b. Customer number.

**E.** Consent to release motor vehicle record. A requester who uses the permissible use under A.R.S. § 28-455(C)(13) shall present a properly signed Consent To Release Motor Vehicle Record - One-Time form from the person whose motor vehicle record is requested. A requester who uses the permissible use under A.R.S. § 28-455(C)(11) shall present a properly signed Consent To Release Motor Vehicle Record - General form from the person whose motor vehicle record is requested if that person has not previously submitted this form to the Department. In addition, a requester who uses the permissible use under A.R.S. § 28-455(C)(11) shall provide the items of information listed in this subsection. The Consent To Release Motor Vehicle Record forms are available at all Customer Service and Authorized Third Party Provider offices and online at https://www.azdot.gov.
1. For a title and registration motor vehicle record:
   a. Two items under subsection (D)(1), and
   b. The vehicle owner's residence address.
2. For a driver motor vehicle record:
   a. The name and customer number of the person whose record is requested, and
   b. The person's date of birth, or
   c. The person's address, or
   d. The person's Arizona driver license expiration date.

**F.** General consent to release information. The Department shall record a person's general consent to release information on the person's driver and title and registration records.
1. The general consent to release information is valid until revoked, in writing, by the person.
2. A person may submit the written notice of revocation:

a. In person, at a Customer Service office or Authorized Third Party Provider; or
b. By mail, to Motor Vehicle Division, P.O. Box 2100, Mail Drop 500M, Phoenix, AZ 85001-2100.

**G.** Insurance companies requesting a driver record. The Department shall not release to an insurer, broker, managing general agent, authorized agent or insurance producer any information in a person's driving record pertaining to a traffic violation that occurred 40 months or more before the date of a request for the release of the information.

**Historical Note**
Adopted effective August 16, 1991 (Supp. 91-3). Section repealed, new Section adopted effective April 19, 1994 (Supp. 94-2). Section recodified to R17-4-508 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 13 A.A.R. 4376, effective February 2, 2008 (Supp. 07-4). Amended by final expedited rulemaking at 24 A.A.R. 3498, effective December 4, 2018 (Supp. 18-4).

**R17-4-803. Record Copy Charges**
In accordance with A.R.S. §§ 12-351 and 28-446, for each separate request, the Department shall assess a charge as provided in Table 1. Certified and Uncertified Motor Vehicle Record Fees. Therefore, a fee is collected if the request results in a motor vehicle record or "No Record Found."

**Historical Note**
New Section made by final expedited rulemaking at 24 A.A.R. 3498, effective December 4, 2018 (Supp. 18-4).

**Table 1. Certified and Uncertified Motor Vehicle Record Fees**

| Description | Method of Delivery | Amount |
|---|---|---|
| A certified record: | Over-the-counter immediate or drop-off service;<br>Mail-in request; or<br>Electronic interactive. | $5 |
| | Electronic batch. | $3 |
| A certified support document: | Over-the-counter immediate or drop-off service; or<br>Mail-in request. | $5 |
| An uncertified record: | Over-the-counter immediate service;<br>Mail-in request; or<br>Electronic interactive. | $3 |
| | Electronic batch; or<br>Over-the-counter drop-off service. | $2 |
| An uncertified support document: | Over-the-counter immediate or drop-off service; or<br>Mail-in request. | $3 |
| An uncertified Special MVR: | Over-the-counter immediate or drop-off service;<br>Mail-in request; or<br>Electronic interactive. | $1.50 |
| Civil subpoena support documentation: | Served by a process server. | Reasonable costs |
| Any photocopied item:<br>(Does not include… etc.) | Over-the-counter immediate or drop-off service; or<br>Mail-in request. | 25¢ per page |

**Historical Note**
Table 1 made by final expedited rulemaking at 24 A.A.R. 3498, effective December 4, 2018 (Supp. 18-4).

**R17-4-804. Repealed**

**Historical Note**
Adopted effective June 29, 1990 (Supp. 90-2). Repealed effective November 21, 1995 (Supp. 95-4).

**R17-4-805. Recodified**

**Historical Note**
Adopted effective June 29, 1990 (Supp. 90-2). Section recodified to R17-5-702 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

**R17-4-806. Recodified**

**Historical Note**
Adopted effective June 29, 1990 (Supp. 90-2). Section recodified to R17-5-703 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

**R17-4-807. Recodified**

**Historical Note**
Adopted effective June 29, 1990 (Supp. 90-2). Section recodified to R17-5-704 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

**R17-4-808. Recodified**

**Historical Note**
Adopted effective June 29, 1990 (Supp. 90-2). Section recodified to R17-5-705 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

## ARTICLE 9. RESERVED

**R17-4-901. Recodified**

**Historical Note**
Adopted effective March 31, 1978 (Supp. 78-2). Former Section R17-4-59 renumbered without change as Section R17-4-901 (Supp. 87-2). Former Section R17-4-901 repealed, new Section R17-4-901 adopted effective June 15, 1988 (Supp. 88-2). Section recodified to R17-1-501 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3).

**R17-4-902. Recodified**

**Historical Note**
Adopted effective March 31, 1978 (Supp. 78-2). Amended subsections (A), (E) and (F) effective April 4, 1984 (Supp. 84-2). Former Section R17-4-60 renumbered without change as Section R17-4-902 (Supp. 87-2). Former Section R17-4-902 repealed, new Section R17-4-902 adopted effective June 15, 1988 (Supp. 88-2). Section recodified to R17-1-502 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3).

**R17-4-903. Recodified**

**Historical Note**
Adopted effective June 15, 1988 (Supp. 88-2). Section recodified to R17-1-503 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3).

**R17-4-904. Recodified**

**Historical Note**
Adopted effective June 15, 1988 (Supp. 88-2). Section recodified to R17-1-504 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3).

**R17-4-905. Recodified**

**Historical Note**
Adopted effective June 15, 1988 (Supp. 88-2). Section recodified to R17-1-505 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3).

**R17-4-906. Recodified**

**Historical Note**
Adopted effective June 15, 1988 (Supp. 88-2). Section recodified to R17-1-506 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3).

**R17-4-907. Recodified**

**Historical Note**
Adopted effective June 15, 1988 (Supp. 88-2). Section recodified to R17-1-507 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3).

**R17-4-908. Recodified**

**Historical Note**
Adopted effective June 15, 1988 (Supp. 88-2). Section recodified to R17-1-508 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3).

**R17-4-909. Recodified**

**Historical Note**
Adopted effective June 15, 1988 (Supp. 88-2). Section recodified to R17-1-509 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3).

**R17-4-910. Recodified**

**Historical Note**
Adopted effective June 15, 1988 (Supp. 88-2). Section recodified to R17-1-513 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3).

**R17-4-911. Recodified**

**Historical Note**
Adopted effective June 15, 1988 (Supp. 88-2). Section recodified to R17-1-511 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3).

**R17-4-912. Recodified**

**Historical Note**
Adopted effective June 15, 1988 (Supp. 88-2). Section recodified to R17-1-512 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3).

**R17-4-913. Recodified**

**Historical Note**
Adopted as an emergency effective December 30, 1987, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 87-4). Readopted as an emergency with a correction in subsection (A), paragraph (A) effective March 29, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-1). Adopted without change as a permanent rule effective June 15, 1988 (Supp. 88-2). Amended effective July 13, 1989 (Supp. 89-3). Section recodified to R17-1-510 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3).

**R17-4-914. Repealed**

**Historical Note**
Former General Order 68. Former Section R17-4-26 renumbered without change as Section R17-4-914 (Supp. 87-2). Repealed effective July 29, 1992 (Supp. 92-3).

## 28-366. Director; rules

The director shall adopt rules pursuant to title 41, chapter 6 as the director deems necessary for:

1. Collection of taxes and license fees.

2. Public safety and convenience.

3. Enforcement of the provisions of the laws the director administers or enforces.

4. The use of state highways and routes to prevent the abuse and unauthorized use of state highways and routes.

# 28-5204. Administration and enforcement; rules

A. In the administration and enforcement of this chapter, the department of transportation shall adopt:

1. Reasonable rules it deems proper governing the safety operations of motor carriers, including rules governing safety operations of motor carriers, shippers and vehicles transporting hazardous materials, hazardous substances or hazardous wastes and shall prescribe necessary forms. In determining reasonable rules, the department of transportation shall consider:

(a) The nature of the operations and regulation of public service corporations as defined in article XV, sections 2 and 10, Constitution of Arizona.

(b) Rules adopted by the director of environmental quality pursuant to section 49-855.

2. Rules necessary to enforce and administer this chapter, including rules setting forth reasonable procedures to be followed in the enforcement of this chapter and rules adopting transporter safety standards for hazardous materials, hazardous substances and hazardous waste. In adopting the rules, the department shall consider, as evidence of generally accepted safety standards, the publications of the United States department of transportation and the environmental protection agency.

B. Rules adopted by the department of transportation also apply to a manufacturer, shipper, motor carrier and driver.

C. The department of public safety shall and a political subdivision may enforce this chapter and any rule adopted pursuant to this chapter by the department of transportation. A person acting for a political subdivision in enforcing this chapter is required to be certified by the department of public safety as qualified for the enforcement activities.

D. The department may audit records and inspect vehicles that are subject to this chapter.

# 28-364. Powers of the director

A. The director may provide technical transportation planning expertise to local governments when requested, coordinate local government transportation planning with regional and state transportation planning and guide local transportation planning to ensure compliance with federal requirements. The planning authority granted by this subsection does not preempt planning responsibilities and decisions of local governments.

B. If the governor declares a state of emergency, the director may contract and do all things necessary to provide emergency transportation services for the residents in the affected areas whether the emergency transportation is by street, rail or air.

C. On a determination that it is in this state's best interest, the director may authorize payment for necessary relocation costs in advance of work being performed if an existing facility owned by the United States must be relocated or adjusted due to construction, modification or improvement of a state highway. The director shall base each advance payment on an estimate of cost of the proposed relocation or adjustment prepared by the federal government and acceptable to the director and shall base the final compensation on the actual agreed cost.

D. The director of the department of transportation in consultation with the director of the department of public safety shall develop procedures to exchange information for any purpose related to sections 28-1324, 28-1325, 28-1326, 28-1462 and 28-3318.

E. The director may establish a system or process that does all of the following:

1. Allows for mailing notices of service or other legal documents or records of the department electronically or digitally to a person who consents to receiving these notices, documents or records through a secure electronic or digital system.

2. Enables a person to establish a financial account in the department's database. The account shall be accessible by the person or the person's authorized representative to review statements of all transactions associated with the person's account and to make prepayments or payments for authorized transactions with the department. Notwithstanding any other law, monies in financial accounts established pursuant to this section that remain unexpended for a period of five years or more revert to the Arizona highway user revenue fund and shall be distributed pursuant to section 28-6538.

3. Allows a person to comply with the photograph update and proof of vision test requirements prescribed by section 28-3173 through electronic or digital means that meet the department's standards.

4. Enables the department to accept certificate of title brands from other states or jurisdictions and to record these brands on the appropriate vehicle records.

F. The director, in consultation with the Arizona medical board or the state board of optometry, may do all of the following:

1. Establish medical and vision standards for driver license applicants and examinations.

2. Establish courses of training, training facilities and qualifications and methods of training for driver license examining personnel.

3. Establish procedures for the certification of driver license examining personnel and driver license instructors personnel.

4. Direct research in the field of licensing drivers. The director may accept public or private grants for the research.

5. Conduct research in the field of examination or reexamination of licensing individual drivers with medical or vision problems.

6. Set minimum vision standards for the operation of a motor vehicle in this state.

G. The director may implement electronic or digital versions of driver licenses, nonoperating identification licenses, vehicle registration cards, license plates or other official records of the department.

# 28-3005. Medical or psychological reports; immunity; definitions

A. For medical conditions, a physician or registered nurse practitioner, or for psychological conditions, a psychologist, physician, psychiatric mental health nurse practitioner or addiction counselor who provides information to the director in good faith and at the written request of a driver license applicant or licensee concerning a person's medical or psychological condition with respect to operation of a motor vehicle is immune from personal liability with respect to the information provided.

B. Notwithstanding the physician-patient, nurse-patient or psychologist-client confidentiality relationship, a physician, registered nurse practitioner or psychologist may voluntarily report a patient to the department who has a medical or psychological condition that in the opinion of the physician, registered nurse practitioner or psychologist could significantly impair the person's ability to safely operate a motor vehicle. If a report is made, the physician, registered nurse practitioner or psychologist shall make the report in writing, including the name, address and date of birth of the patient. On receipt of the report, the department may require an examination of the person reported in the manner provided by section 28-3314. A person shall not bring an action against a physician, registered nurse practitioner or psychologist for not making a report pursuant to this subsection. The physician, registered nurse practitioner or psychologist submitting the report in good faith is immune from civil or criminal liability for making the report pursuant to this subsection. The physician's, registered nurse practitioner's or psychologist's report is subject to subpoena or order to produce in an action except an action against the physician, registered nurse practitioner or psychologist submitting the report.

C. In this section:

1. "Addiction counselor" means a person who is licensed by the board of behavioral health examiners in this state, who is licensed or certified in another state, who is certified by a board for certification of addiction counselors, who is a nationally certified addiction counselor or who is employed by the federal government and practicing in this state.

2. "Medical or psychological condition" means a condition that could affect a person's functional ability to safely operate a motor vehicle.

3. "Physician" means a medical doctor, optometrist, chiropractor, naturopathic physician, doctor of osteopathy or doctor of homeopathy who is licensed to practice in this state or another state or who is employed by the federal government and practicing in this state or their agents.

4. "Psychiatric mental health nurse practitioner" means a person certified as a registered nurse practitioner in a psychiatric mental health specialty area under the provisions of title 32, chapter 15.

5. "Psychologist" means a person who is licensed pursuant to title 32, chapter 19.1, who is licensed to practice psychology in another state or who is employed by the federal government and practicing in this state.

6. "Registered nurse practitioner" has the same meaning prescribed in section 32-1601.

## 28-3153. Driver license issuance; prohibitions

A. The department shall not issue the following:

1. A driver license to a person who is under eighteen years of age, except that the department may issue:

(a) A restricted instruction permit for a class D or G license to a person who is at least fifteen years of age.

(b) An instruction permit for a class D, G or M license as provided by this chapter to a person who is at least fifteen years and six months of age.

(c) A class G or M license as provided by this chapter to a person who is at least sixteen years of age.

2. A class D, G or M license or instruction permit to a person who is under eighteen years of age and who has been tried in adult court and convicted of a second or subsequent violation of criminal damage to property pursuant to section 13-1602, subsection A, paragraph 1 or convicted of a felony offense in the commission of which a motor vehicle is used, including theft of a motor vehicle pursuant to section 13-1802, unlawful use of means of transportation pursuant to section 13-1803 or theft of means of transportation pursuant to section 13-1814, or who has been adjudicated delinquent for a second or subsequent act that would constitute criminal damage to property pursuant to section 13-1602, subsection A, paragraph 1 or adjudicated delinquent for an act that would constitute a felony offense in the commission of which a motor vehicle is used, including theft of a motor vehicle pursuant to section 13-1802, unlawful use of means of transportation pursuant to section 13-1803 or theft of means of transportation pursuant to section 13-1814, if committed by an adult.

3. A class A, B or C license to a person who is under twenty-one years of age, except that the department may issue a class A, B or C license that is restricted to only intrastate driving to a person who is at least eighteen years of age.

4. A license to a person whose license or driving privilege has been suspended, during the suspension period.

5. Except as provided in section 28-3315, a license to a person whose license or driving privilege has been revoked.

6. A class A, B or C license to a person who has been disqualified from obtaining a commercial driver license.

7. A license to a person who on application notifies the department that the person is an alcoholic as defined in section 36-2021 or a drug dependent person as defined in section 36-2501, unless the person submits a medical examination report that includes a current evaluation from an addiction counselor indicating that, in the opinion of the counselor, the condition does not affect or impair the person's ability to safely operate a motor vehicle.

8. A license to a person who has been adjudged to be incapacitated pursuant to section 14-5304 and who at the time of application has not obtained either a court order that allows the person to drive or a termination of incapacity as provided by law.

9. A license to a person who is required by this chapter to take an examination unless the person successfully passes the examination.

10. A license to a person who is required under the motor vehicle financial responsibility laws of this state to deposit proof of financial responsibility and who has not deposited the proof.

11. A license to a person if the department has good cause to believe that the operation of a motor vehicle on the highways by the person would threaten the public safety or welfare.

12. A license to a person whose driver license has been ordered to be suspended for failure to pay child support, except that a noncommercial restricted license may be issued pursuant to section 25-518.

13. A class A, B or C license to a person whose license or driving privilege has been canceled until the cause for the cancellation has been removed.

14. A class A, B or C license or instruction permit to a person whose state of domicile is not this state.

15. A class A, B or C license to a person who fails to demonstrate proficiency in the English language as determined by the department.

B. The department shall not issue a driver license to or renew the driver license of the following persons:

1. A person about whom the court notifies the department that the person violated the person's written promise to appear in court when charged with a violation of the motor vehicle laws of this state until the department receives notification in a manner approved by the department that the person appeared either voluntarily or involuntarily or that the case has been adjudicated, that the case is being appealed or that the case has otherwise been disposed of as provided by law.

2. If notified pursuant to section 28-1601, a person who fails to pay a civil penalty as provided in section 28-1601, except for a parking violation, until the department receives notification in a manner approved by the department that the person paid the civil penalty, that the case is being appealed or that the case has otherwise been disposed of as provided by law.

C. The magistrate or the clerk of the court shall provide the notification to the department prescribed by subsection B of this section.

D. Notwithstanding any other law, the department shall not issue to or renew a driver license or nonoperating identification license for a person who does not submit proof satisfactory to the department that the applicant's presence in the United States is authorized under federal law. For an application for a driver license or a nonoperating identification license, the department shall not accept as a primary source of identification a driver license issued by a state if the state does not require that a driver licensed in that state be lawfully present in the United States under federal law. The director shall adopt rules necessary to carry out the purposes of this subsection. The rules shall include procedures for:

1. Verification that the applicant's presence in the United States is authorized under federal law.

2. Issuance of a temporary driver permit pursuant to section 28-3157 pending verification of the applicant's status in the United States.

# 28-3158. Driver license or instruction permit application

A. A person who applies for an instruction permit or for a driver license shall use a form furnished by the department.

B. An applicant shall pay the fee prescribed by section 28-3002 for a driver license or for an instruction permit issued under section 28-3154, 28-3155, 28-3156 or 28-3225. The department shall refund an application fee pursuant to section 28-373.

C. An applicant for an instruction permit or a driver license shall give the department satisfactory proof of the applicant's full legal name, date of birth, sex and domicile residence address in this state, if the applicant has a residence address, and that the applicant's presence in the United States is authorized under federal law.

D. The application for an instruction permit or a driver license shall state the following:

1. A brief description of the applicant and any other identifying information required by the department.

2. Whether the applicant has been licensed, and if so, the type of license issued, when the license was issued and what state or country issued the license.

3. If the applicant was never licensed, the applicant's last previous state or country of residence.

4. The social security number of the applicant.

E. The department shall:

1. Verify that a social security number provided by an applicant is a valid number assigned to that applicant.

2. Retain the social security number in its records.

F. The social security number provided to the department pursuant to subsection D of this section for an applicant's driver license or instruction permit shall not appear on an applicant's driver license or instruction permit unless the applicant requests that the social security number appear on the applicant's driver license or instruction permit as the driver license or instruction permit number. Except as provided in sections 28-455 and 41-1954, the department shall not release the social security number to any person unless the applicant requests that the social security number appear on the applicant's driver license or instruction permit as the driver license or instruction permit number. The provisions of this subsection shall be included in each application.

G. The department may adopt and implement procedures to deny a driver license or instruction permit to a person who has been deported. The department may adopt and implement procedures to reinstate a person's privilege to apply for a driver license or permit if the person's legal presence status is restored.

H. On request of an applicant, the department shall allow the applicant to provide on the license or permit a post office box address that is regularly used by the applicant.

I. The department may request an applicant who appears in person for a license, a duplicate license or reinstatement of a driving privilege to complete satisfactorily the vision screening prescribed by the department.

J. If a driver license applicant submits satisfactory proof to the department that the applicant is a veteran, on request of the applicant, the department shall allow a distinguishing mark to appear on the license that identifies the person as a veteran.

# 28-3159. Restricted licenses

A. With good cause, the department may issue the following restricted driver licenses:

1. A driver license with any of the following:

(a) Restrictions suitable to the licensee's driving ability for the type of motor vehicle or special mechanical control devices required on a motor vehicle that the licensee may operate.

(b) Restrictions suitable to the licensee's ability to drive a motor vehicle in areas, at locations or on highways or during certain times.

(c) Other restrictions as the department determines appropriate to ensure the safe operation of a motor vehicle by the licensee.

2. A class A, B or C driver license that restricts the driver from operating:

(a) A commercial motor vehicle equipped with air brakes, if the applicant either fails the air brake component of the knowledge examination or performs the skills test in a vehicle that is not equipped with air brakes.

(b) A vehicle in interstate commerce, if the applicant is not subject to 49 Code of Federal Regulations part 391.

(c) A motor vehicle for the purposes of interstate commerce, if an applicant for a class A, B or C license is at least eighteen years of age.

3. A class A, B or C driver license with other restrictions that the department determines are appropriate to ensure the safe operation of a commercial motor vehicle by the licensee.

4. A class M license that restricts the driver from driving a vehicle other than a motorcycle, motor driven cycle or moped with a maximum piston displacement of one hundred cubic centimeters or less, if the applicant performs the driving examination with a motorcycle, motor driven cycle or moped with a maximum piston displacement of one hundred cubic centimeters or less.

5. A special ignition interlock restricted driver license pursuant to chapter 4, article 3.1 of this title.

6. A license restricting the travel of the driver as provided in section 25-518.

B. The department may either issue a special restricted license or display the restrictions on the usual driver license form.

# 28-3164. Original applicants; examination

A. The department may do any of the following:

1. Examine an applicant for an original driver license.

2. Accept the examination conducted by an authorized third party pursuant to chapter 13 of this title. Beginning July 1, 2014, the third party must be authorized pursuant to section 28-5101.01 or 28-5101.03.

3. Accept documentation of successful completion of a driver training course approved by the department. Beginning July 1, 2014, for a class D or G license the documentation must be provided by a third party authorized pursuant to section 28-5101.02.

4. Accept documentation that the applicant has successfully completed education on special performance equipment and medically related driving circumstances. Beginning July 1, 2014, the documentation must be provided by a third party authorized pursuant to section 28-5101.02.

5. Accept documentation that the applicant has successfully completed driver education lessons provided by an instructor who is certified by the superintendent of public instruction.

B. The examination shall include all of the following:

1. A test of the applicant's:

(a) Eyesight.

(b) Ability to read and understand official traffic control devices.

(c) Knowledge of safe driving practices and the traffic laws of this state, including those practices and laws relating to bicycles.

(d) Knowledge of the effect of using a portable wireless communication device as defined in section 28-914 or engaging in other actions that could distract a driver on the safe or effective operation of a motor vehicle.

2. An actual demonstration of ability to exercise ordinary and reasonable control in the operation of a vehicle or vehicle combination of the type covered by the license classification or endorsement for which the applicant applies.

3. Other physical and mental examinations if the department finds them necessary to determine the applicant's fitness to safely operate a motor vehicle on the highways.

C. The department may examine an original applicant for a class M license or a motorcycle endorsement or the department may accept the examination conducted by an authorized third party pursuant to chapter 13, article 1 of this title or documentation of successful completion of a motorcycle training program approved by the department. Beginning July 1, 2014, the documentation of successful completion of a motorcycle training program must be provided by a third party motorcycle driver license training provider authorized pursuant to section 28-5101.02 or a motorcycle training program approved by the department and provided in another state or by the United States military. The department may examine an applicant who has a motorcycle license from another jurisdiction. This examination shall be the same as for all applicants, except that the department may make modifications it finds necessary to determine the applicant's fitness to operate a motorcycle, motor driven cycle or moped on the highways.

D. The department shall examine a person who holds a driver license issued by another country and who applies for an initial license in this state as an original applicant, except that the department may waive an actual demonstration of the ability to exercise ordinary and reasonable control in the operation of a motor vehicle if the

person applies for a class D or G license and appears to meet the department's medical qualifications and if the out-of-state license is not revoked or is not expired for more than one year.

E. The department may waive the driving examination for initial applicants for a class M license or a motorcycle endorsement if all of the following conditions exist:

1. The applicant's current license indicates the applicant has been specifically licensed to operate a motorcycle.

2. The applicant appears to meet the department's medical qualifications.

3. The applicant's out-of-state license is not revoked or is not expired for more than one year.

# 28-3167. Medical code information on license; rules; immunity

A. The department shall provide on each driver license and on each nonoperating identification license a space where a licensee may indicate that the licensee suffers from some type of adverse medical condition using a medical code prescribed by the department if the licensee presents a signed statement from a physician who is licensed pursuant to title 32, chapter 13, 14 or 17 or a registered nurse practitioner who is licensed pursuant to title 32, chapter 15 stating that the person suffers from the condition.

B. The department shall prescribe by rule a medical code to identify the medical conditions using a system of numerals or letters commonly accepted by the medical profession. Except for the purposes of entering the medical code on the driver license or nonoperating identification license, and unless the person affirmatively requests in writing that the person wants the medical code as part of the computer record, the department shall not maintain the medical code in the department computer after the department issues the driver license or nonoperating identification license.

C. The department and this state are exempt from liability for damages from the use of medical code information provided on a license pursuant to this section.

# 28-3171. Driver license expiration and renewal; exception; extension

A. Except as provided in subsection B, D or E of this section and unless medical restrictions require a shorter expiration period, a driver license is:

1. Except as provided in paragraph 3 of this subsection, valid until the applicant's sixty-fifth birthday.

2. Renewable for successive periods of five years after the applicant's sixtieth birthday.

3. Valid for a period of up to five years if initially issued to an applicant who is sixty years of age or older.

B. Notwithstanding subsection A of this section, on presentation of satisfactory proof of qualification, the director may issue a class D, G or M license or permit for a period of up to five years to:

1. A person who is an out-of-state student or who is the spouse of an out-of-state student. For the purposes of this paragraph, "out-of-state student" has the same meaning prescribed in section 28-2001.

2. An immediate family member of any active duty military personnel temporarily stationed in this state.

3. Any other person for whom the director determines other circumstances justify the issuance.

C. An applicant shall apply for renewal of a driver license before the expiration of a current license. The department may require an examination of a renewal applicant for a class D, G or M license as required of an original applicant.

D. A veteran, as defined in section 41-601, whose driver license expires is not required to renew the veteran's driver license for six months after the date of the veteran's discharge from military service.

E. The department may extend the expiration date of a class D or M license for a resident if the applicant is not in this state at the time the license expires and will not be in this state for at least thirty consecutive days after the expiration of the driver license. On payment by the applicant of the fee prescribed in section 28-3002, the department shall issue a certificate of extension that is valid only if accompanied by the applicant's previous license. An applicant for extension of a license shall comply with the following:

1. The application requirements of section 28-3158.

2. The licensing requirements of section 28-3153.

3. Medical requirements applicable to all license applicants, except that the applicant is not required to obtain an eyesight examination.

## 28-3173. License update

A. By written notice the department shall require a licensee to update the licensee's photograph or present or mail to the department in a form prescribed by the department a report based on a vision test performed by the department or an examination by an optometrist or an ophthalmologist or physician licensed to practice medicine, if the license has not been updated in the preceding twelve years.

B. The director may require a licensee to update the licensee's license at any time during the twelve year period from the date of issuance.

# 28-3223. Original applicant; requirements; expiration; renewal examination

A. In addition to the requirements applicable to all driver license applicants, an original applicant for a class A, B or C license is subject to the following requirements:

1. The applicant shall submit evidence of compliance with medical standards and requirements that the department adopts by rule.

2. The applicant must have held a driver license for at least one year either in this state, any other state or a foreign country.

3. The applicant shall take additional knowledge examinations to demonstrate understanding of the following:

(a) Safety operation rules.

(b) Commercial motor vehicle safety control systems.

(c) Safe vehicle control.

(d) The relationship of cargo to vehicle control.

(e) Basic hazardous materials knowledge.

(f) The objectives and proper procedures for performing vehicle safety inspections.

(g) Air brake systems.

(h) Legal requirements for size, weight and vehicle configurations.

(i) Emergency procedures.

4. In addition to the other requirements of this section, an applicant for a class A driver license shall demonstrate a knowledge and understanding of:

(a) Vehicle coupling and uncoupling.

(b) Unique combination vehicle inspections.

5. The applicant shall take a driving test in a vehicle or vehicle combination that at least meets the minimum size requirements for the class of driver license sought. The driving test shall include a demonstration of familiarity with pretrip inspection procedures.

B. A person possessing a commercial driver license on or before June 30, 2005 shall renew the license within eight years according to procedures established by the department.

C. Notwithstanding section 28-3171, the holder of a class A, B or C driver license shall renew the license every eight years in a manner prescribed by the department.

D. The department may administer an examination to a renewal applicant for a class A, B or C driver license. This examination on renewal shall include the following:

1. Evidence of compliance with medical standards adopted by the department.

2. Administration of knowledge tests or road tests, or both, as required of an original applicant.

# 28-3306. Discretionary license suspension or revocation; traffic survival school; hearing

A. The department may suspend or revoke the license of a driver or require a licensee to attend and successfully complete approved traffic survival school educational sessions designed to improve the safety and habits of drivers on a showing by department records or other sufficient evidence that the licensee:

1. Has committed an offense for which mandatory revocation of the license is required on conviction.

2. Has been involved as a driver in an accident resulting in the death or personal injury of another or serious property damage.

3. Has been convicted of or adjudged to have violated traffic regulations governing the movement of vehicles with such a frequency that it indicates a disrespect for traffic laws and a disregard for the safety of other persons on the highways.

4. Has been convicted of reckless driving as provided in section 28-693 or is a habitually reckless or negligent driver of a motor vehicle.

5. Is medically, psychologically or physically incapable of operating a motor vehicle and, based on law enforcement, medical or other department information, the continued operation of a motor vehicle by the licensee would endanger the public health, safety and welfare.

6. Has committed or permitted an act involving an unlawful or fraudulent use of the license.

7. Has committed an offense in another jurisdiction that if committed in this state is grounds for suspension or revocation.

8. Has been convicted of a violation of section 28-1381 or 28-1382.

9. Has been convicted of a violation of section 28-1464.

B. On receipt of satisfactory evidence of a violation of a driver license restriction, the department may suspend or revoke the driver license.

C. On suspending or revoking the license of a person or requiring a licensee to attend and successfully complete approved traffic survival school educational sessions designed to improve the safety and habits of drivers pursuant to this section, the department shall notify the licensee in writing immediately.

D. On the receipt of the person's request for a hearing, the department shall set the hearing within sixty days. The department may hold the hearing in person, by telephone or by videoconference. If the department holds the hearing in person, the department shall hold the hearing in the county where the licensee resides unless the law enforcement agency issuing the citation or affidavit that authorizes the suspension or revocation requests at the time of issuance that the hearing be held in the county where the violation allegedly occurred.

E. If a hearing is held, the department or its duly authorized agent may administer oaths, may issue subpoenas for the attendance of witnesses and the production of relevant books and papers and may require a reexamination of the licensee.

F. At the hearing, the department shall either rescind its order of suspension or its order requiring the licensee to attend and successfully complete approved traffic survival school educational sessions or, if good cause exists, the department may uphold or extend the order, revoke the license or make any order that is within its discretionary power under this section and that is in the interest of public safety.

G. If a licensee receives notice requiring the licensee to attend and successfully complete approved traffic survival school educational sessions and the department receives information of noncompliance with this order,

the department shall amend the order to suspend or revoke the license.

H. A person whose driver license is suspended or revoked as provided in subsection A, paragraph 5 of this section may submit a written request to the department for an administrative hearing. The person shall submit the request for a hearing within fifteen days after the department provides the person with notice of suspension or revocation. On receipt of a proper request for a hearing, the department shall provide the person with an opportunity for a hearing in the county where the person resides within thirty days after the department receives the request. The request for a hearing does not stay a summary suspension issued by the department.

I. The department shall remove a suspension from a record if the person has completed all requirements imposed under this title or by a court in this state, including the successful completion of traffic survival school educational sessions, except for payment of reinstatement fees as prescribed by section 28-3002. The person shall pay the appropriate reinstatement fees that are required under section 28-3002 when conducting a transaction with the department.

# 28-3314. License reexamination

A. If the department has good cause to believe that a licensed driver is incapable of operating a motor vehicle pursuant to section 28-3306, subsection A, paragraph 5 or is otherwise not qualified to be licensed, the department may require the licensee to submit to an examination as prescribed by the department after the department gives at least five days' advance written notice to the licensee. After the examination, the department shall take action as appropriate and may:

1. Suspend or revoke the license.

2. Permit the licensee to retain the license.

3. Restrict the licensee's driving privileges as permitted under section 28-3159.

B. Refusal or neglect of the licensee to submit to the examination under this section is grounds for suspension or revocation of the license.

C. The department may use accident information received pursuant to this title and from other governmental agencies to determine if good cause exists to believe that a licensed driver is incapable of operating a motor vehicle pursuant to section 28-3306, subsection A, paragraph 5 or is otherwise not qualified to be licensed.

# 28-3315. Period of suspension, revocation or disqualification; unlicensed drivers; definitions

A. The department shall not suspend, revoke or disqualify a driver license or privilege to drive a motor vehicle on the public highways for more than one year from the date of a conviction or judgment, if any, against a person for which this chapter makes revocation, suspension or disqualification mandatory or from the date the notice is sent pursuant to section 28-3318 if no conviction was involved, except as permitted under subsection E of this section and sections 28-3312, 28-3319 and 28-3320.

B. A person whose license or privilege to drive a motor vehicle on the public highways has been revoked may apply for reinstatement of the person's license as provided by law after the cause of the revocation is removed or after expiration of the revocation period prescribed by law. The department may reinstate the person's driver license after the department reviews an applicant's driving record in this state or another state or other sufficient evidence to determine that:

1. All withdrawal actions are complete.

2. The applicant has not been convicted of or found responsible for any traffic violations within twelve months preceding application.

3. All other statutory requirements are satisfied.

C. The department shall not accept an application for reinstatement of a driver license until after the twelve month period prescribed in subsection B of this section has elapsed.

D. If the department reinstates a person's driver license or driving privilege for a revocation that is related to alcohol or other drugs, the department may accept an evaluation that was performed within the previous twelve months from a physician, a psychologist, a physician assistant, a registered nurse practitioner or an addiction counselor indicating that, in the opinion of the physician, psychologist, physician assistant, registered nurse practitioner or addiction counselor, the condition does not affect or impair the person's ability to safely operate a motor vehicle. For the purposes of reinstating a license or driving privilege pursuant to this article, the department may rely on the opinion of a physician, a psychologist, a physician assistant, a registered nurse practitioner or an addiction counselor.

E. Notwithstanding subsections A and B of this section:

1. A person whose license or privilege to drive is revoked pursuant to section 28-3304, subsection A, paragraph 1 or 10 is not entitled to have the person's license or privilege renewed or restored for three years.

2. A person whose license or privilege to drive is revoked pursuant to section 13-1209 is not entitled to have the person's license or privilege renewed or restored for the period of time ordered by the court.

3. If a license, permit or privilege to drive is revoked pursuant to section 28-661, subsection F the license, permit or privilege may not be renewed or restored except as prescribed by section 28-661, subsections F and G.

4. A person whose license, permit or privilege to drive is revoked pursuant to section 28-661, subsection H is not entitled to have the person's license, permit or privilege renewed or restored for three years.

F. If an unlicensed driver commits an offense for which a driver license could be suspended, revoked or disqualified, the department shall not accept the unlicensed driver's application for a driver license for a period equal to the period of time that applies to a driver with a license. If the offense is one for which a driver license could be revoked, the department shall not accept the unlicensed driver's application for a driver license unless the application includes an evaluation from a physician, psychologist, physician assistant, registered nurse practitioner or addiction counselor on the habits and driving ability of the person and the evaluator is satisfied that it is safe to grant the privilege of driving a motor vehicle on the public highways.

G. The expiration of a person's license during the period of time it is under suspension, revocation or disqualification does not invalidate or terminate the suspension, revocation or disqualification.

H. A person whose license or privilege to drive a motor vehicle on the public highways has been suspended pursuant to section 28-3306, subsection A, paragraph 5 or section 28-3314 may apply for a new license as provided by law after the cause for suspension is removed or after expiration of the suspension period prescribed by law if both of the following conditions are met:

1. The department is satisfied, after reviewing the medical condition and driving ability of the person, that it is safe to grant the person the privilege of driving a motor vehicle on the public highways.

2. If the person has a medical condition related to alcohol or other drugs, the department may accept an evaluation form from a physician, a psychologist, a physician assistant, a registered nurse practitioner or an addiction counselor indicating that, in the opinion of the physician, psychologist, physician assistant, registered nurse practitioner or addiction counselor, the condition does not affect or impair the person's ability to operate a motor vehicle in a safe manner.

I. For the purposes of this section:

1. "Addiction counselor" has the same meaning prescribed in section 28-3005.

2. "Physician" means a physician who is licensed pursuant to title 32, chapter 13, 14, 17 or 29.

3. "Physician assistant" means a physician assistant who is licensed pursuant to title 32, chapter 25.

4. "Psychologist" means a psychologist who is licensed pursuant to title 32, chapter 19.1.

5. "Registered nurse practitioner" means a registered nurse practitioner who is licensed pursuant to title 32, chapter 15.

**E-4.**

**BOARD OF FINGERPRINTING**
Title 13, Chapter 11, Article 1

# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

---

**MEETING DATE: April 1, 2025**

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

**FROM:** Council Staff

**DATE:** March 12, 2025

**SUBJECT:** **BOARD OF FINGERPRINTING**
Title 13, Chapter 11, Article 1

---

**Summary**

This Five-Year Review Report (5YRR) from the Board of Fingerprinting (Board) relates to eight (8) rules in Title 13, Chapter 11, Article 1 regarding fingerprint clearance card system processes. This system is designed to standardize the process for conducting employment or license-related criminal background checks.

In the Board's prior 5YRR, which was approved by the Council in March 2020, the Board proposed to amend several rules to improve their clarity, conciseness, understandability, consistency, effectiveness, and enforcement. The Board indicates it completed its prior proposed course of action and all rule changes were adopted by final exempt rulemaking and became effective on September 30, 2020.

**Proposed Action**

In the current report, the Board indicates several rules are not clear, concise, and understandable as outlined in more detail below. The Board indicates it intends to complete a rulemaking addressing all issues identified in this report before the end of June 2025. The Board notes that it is exempt from the procedures of the Arizona Administrative Procedure Act pursuant to A.R.S. § 41-619.53(A)(2). Therefore, the Board indicates that it will obtain an

exception from the rulemaking moratorium, prepare a notice of final exempt rulemaking, and file the notice with the Secretary of State's office.

**1. Has the agency analyzed whether the rules are authorized by statute?**

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

**2. Summary of the agency's economic impact comparison and identification of stakeholders:**

The Board indicates that the fingerprint clearance card system is designed to standardize the process for conducting employment or licensure-related criminal background checks. The Board states that a clearance card is automatically issued if an applicant has not been convicted of or is not awaiting trial for certain precluding criminal offenses. The Board states that during FY 2024, it received 5,441 applications for a good cause exception and 84 applications for a central registry exception. An exception was granted to 4,886 after an expedited review of the application and attached materials and 211 applicants were referred for an administrative hearing. Following the hearing, 187 additional applicants were granted an exception and 24 were denied. The Board indicates it currently has seven FTEs and during FY 2024 it collected $827,688 in fees.

The Board states that under A.R.S. § 41-619.53(A)(2), all Board rulemakings are exempt from the Arizona Administrative Procedures Act. As a result, the Board has never prepared an economic, small business, and consumer impact statement.

Stakeholders include the Board, the Department of Child Safety, employers, and Good cause exemption applicants.

**3. Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?**

The Board determined the benefits of the rules, which are substantial for individuals who need a fingerprint clearance card to obtain employment and who have a record of a precluding offense for which an exception may be provided, outweigh the minimal cost of making application. The Board states that the primary cost of making an application for an exception is the time required to complete the application form, have it notarized, assemble supporting documentation, and prepare a written statement. The Board indicates that the $4 fee, which is charged to everyone who applies for a fingerprint clearance card, is minimal.

**4. Has the agency received any written criticisms of the rules over the last five years?**

The Board indicates it received feedback in writing from the office of the Arizona Ombudsman-Citizens' Aide in September 2024. Specifically, the Board indicates an applicant with the Board submitted a complaint to the Ombudsman office regarding the length of time that the Department of Public Safety (DPS) was taking to produce required documents for the Board.

The Board states the suggested changes will help clarify definitions that are out of date and to align the Board's process for reviewing a Central Registry Exception with the Board's current rules. The Board states the suggested changes will be included in the rulemaking process.

**5. Has the agency analyzed the rules' clarity, conciseness, and understandability?**

The Board indicates the rules are mostly clear, concise, and understandable except for the following:

- **R13-11-102**
  - Some of the statutory terms as defined in R13-11-102 need to be updated. Specifically, "CPS" Child Protective Services needs to be updated to "DCS" Department of Child Safety. The reference to DES Department of Economic Security should be removed and all further references to "CPS" should be modified to "DCS."
- **R13-11-102(2)**
  - This rule defines a central registry exception application as: all the documents required by A.A.C. R13-11-104(B). The Board must receive the investigative information from DCS and criminal history records from DPS for the application to be considered "complete." Therefore, it is recommended to amend R13-11-102(2) to include: all the documents required by A.A.C. R13-11-104(B) and obtained by the Board under A.A.C. R13-11-104(C).
- **R13-11-104(B)(2)**
  - This rule indicates that the applicant for a central registry exception must submit a copy of the denial letter from DCS or DPS. This language is outdated and should be corrected to state that the applicant must submit a copy of the notice of denial from their employer, which includes the DCS Investigation or Report number.

**6. Has the agency analyzed the rules' consistency with other rules and statutes?**

The Board indicates the rules are consistent with other rules and statutes.

**7. Has the agency analyzed the rules' effectiveness in achieving its objectives?**

The Board indicates the rules are effective in achieving their objectives.

**8. Has the agency analyzed the current enforcement status of the rules?**

The Board indicates the rules are currently enforced as written.

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

The Board indicates there are no 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?**

The Board indicates it does not issue a permit, license, or agency authorization.

**11. Conclusion**

This 5YRR from the Board relates to eight (8) rules in Title 13, Chapter 11, Article 1 regarding fingerprint clearance card system processes. This system is designed to standardize the process for conducting employment or license-related criminal background checks.

The Board indicates several rules are not clear, concise, and understandable. The Board indicates it intends to complete a rulemaking addressing all issues identified in this report before the end of June 2025. The Board notes that it is exempt from the procedures of the Arizona Administrative Procedure Act pursuant to A.R.S. § 41-619.53(A)(2). Therefore, the Board indicates that it will obtain an exception from the rulemaking moratorium, prepare a notice of final exempt rulemaking, and file the notice with the Secretary of State's office.

Council staff recommends approval of this report.

Keith Packard
**Chair**

Carol Kachidurian
**Vice Chair**

Katie Hobbs
**Governor**

Matthew A. Scheller
**Executive Director**

**ARIZONA BOARD OF FINGERPRINTING**
Post Office Box 6129 • Phoenix, Arizona 85005-6129 • Telephone (602) 265-0135 • Fax (602) 265-6240
info@fingerprint.az.gov • https://fingerprint.az.gov

November 25, 2024

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

**RE: Board of Fingerprinting**
**Five-year-review Report**
**A.A.C. Title 13, Chapter 11, Article 1**

Dear Ms. Klein:

The Five-year-review Report of the Board of Fingerprinting for 13 A.A.C. 11, Article 1 is enclosed. The report is due on Thursday, November 28, 2024 under an extension.

The Board of Fingerprinting certifies compliance with A.R.S. § 41-1091.

For questions about this report, please contact Matthew Scheller at 602-265-3747 or matthew.scheller@fingerprint.az.gov.

Sincerely,

Matthew A. Scheller
Executive Director

# Five-year-review Report
# A.A.C. Title 13. Public Safety
# Chapter 11. Board of Fingerprinting

## INTRODUCTION

The Arizona Board of Fingerprinting was established by Laws 1998, Ch. 270, § 27, and is currently statutorily authorized by A.R.S. § 41-619.53(A)(2) to determine:

- Good cause exceptions by considering applications from individuals whose fingerprint clearance cards have been denied or suspended by the Arizona Department of Public Safety and who are trying to demonstrate they are rehabilitated and not recidivists, and
- Central registry exceptions by considering applications from individuals who are listed in a set of Department of Child Safety databases called the Central Registry, have been disqualified after a central registry background check, and are trying to demonstrate they are rehabilitated and not recidivists.

The fingerprint clearance card system is designed to standardize the process for conducting employment or licensure-related criminal background checks. A clearance card is automatically issued if an applicant has not been convicted of or is not awaiting trial for certain precluding criminal offenses. Statute defines two categories of precluding criminal offenses. The first are offenses for which an exception can be granted by the Board of Fingerprinting. The second are offenses for which an exception cannot be granted.

During FY2024, the Board received 5,441 applications for a good cause exception and 84 applications for a central registry exception. An exception was granted to 4,886 after an expedited review of the application and attached materials and 211 applicants were referred for an administrative hearing. Following the hearing, 187 additional applicants were granted an exception and 24 were denied. The Board currently has seven FTEs. During FY2024, the Board collected $827,688 in fees. The fees collected by the Board are continuously appropriated to the Board.

Statute that generally authorizes the agency to make rules: A.R.S. § 41-619.53(A)(2)

1. Specific statute authorizing the rule:

   R13-11-102. Definitions: A.R.S. § 41-619.53(A)(3)

   R13-11-104. Application Requirements: A.R.S. §§ 41-619.55 and 41-619.57

   R13-11-105. Expedited Review: A.R.S. §§ 41-619.55 and 41-619.57

   R13-11-106. Hearing Matters: A.R.S. §§ 41-619.55 and 41-619.57

   R13-11-109. Ex Parte Communications: A.R.S. §§ 41-619.55 and 41-619.57

   R13-11-110. Rehearing or Review of Decision: A.R.S. § 41-1092.09

   R13-11-113. Fees: A.R.S. § 41-619.53(A)(5)

   R13-11-114. Interim Work Permit: A.R.S. § 41-619.55(I)

2. Objective of the rules:

   R13-11-102. Definitions: The objective of the rule is to define terms used in the rules in a manner that is not explained adequately by a dictionary definition.

   R13-11-104. Application Requirements: The objective of the rule is to specify the documents required to be submitted as part of an application for an exception.

   R13-11-105. Expedited Review: The objective of the rule is to specify the factors considered when reviewing an application for an exception and the consequences of granting or denying the exception under the expedited review process.

   R13-11-106. Hearing Matters: The objective of the rule is to inform an applicant how to request that a scheduled hearing be vacated, rescheduled, continued, or to request telephonic testimony. The rule also informs applicant on consequences of failing to appear at a scheduled hearing and the timeframe the Board has to make a final decision.

   R13-11-109. Ex Parte Communications: The objective of the rule is to state the prohibition against ex parte communications, identify the individuals to whom the prohibition applies, and state the consequences of an ex parte communication.

R13-11-110. Rehearing or Review of Decision: The objective of this rule is to specify the procedures and standards for requesting a rehearing or review of a Board decision.

R13-11-113. Fees: The objective of the rule is to specify the fee the Board established for applications for exceptions.

R13-11-114. Interim Work Permit: The objective of this rule is to specify the procedures and standards for granting an interim work permit.

3. Are the rules effective in achieving their objectives? Yes

4. Are the rules consistent with other rules and statutes? Yes

5. Are the rules enforced as written? Yes

.

6. Are the rules clear, concise, and understandable? Mostly yes

Some of the statutory terms as defined in R13-11-102 need to be updated. Specifically, "CPS" Child Protective Services needs to be updated to “DCS” Department of Child Safety. The reference to DES Department of Economic Security should be removed and all further references to “CPS” should be modified to “DCS.”

R13-11-102(2) defines a central registry exception application as: all the documents required by A.A.C. R13-11-104(B). The Board must receive the investigative information from DCS and criminal history records from DPS for the application to be considered “complete.” Therefore, it is recommended to amend R13-11-102(2) to include: all the documents required by A.A.C. R13-11-104(B) and obtained by the Board under A.A.C. R13-11-104(C).

R13-11-104(B)(2) indicates that the applicant for a central registry exception must submit a copy of the denial letter from DCS or DPS. This language is outdated and should be corrected to state that the applicant must submit a copy of the notice of denial from their employer, which includes the DCS Investigation or Report number.

7. Has the agency received written criticisms of the rules within the last five years? Yes

The Board received feedback in writing from the office of the Arizona Ombudsman-Citizens' Aide in September 2024. An Applicant with the Board submitted a complaint to the Ombudsman office regarding the length of time that the Department of Public Safety (DCS) was taking to produce required documents for the Board. The suggested changes will help clarify definitions that are out of date and to align the Board's process for reviewing a Central Registry Exception with the Board's current rules. The suggested changes will be included in the rulemaking process.

8. Economic, small business, and consumer impact comparison:

Under A.R.S. § 41-619.53(A)(2), all Board rulemakings are exempt from the Arizona Administrative Procedure Act. As a result, the Board has never prepared an economic, small business, and consumer impact statement. The following is an analysis of the economic impact of each rule.

R13-11-102. Definitions: The economic impact of this rule is positive because the rule provides clarity for those who use the rules.

R13-11-104. Application Requirements: This rule imposes economic costs on individuals who apply for a good cause or central registry exception. The individuals must prepare an application, have the application notarized, assemble supporting materials, prepare a written statement, and submit to the Board. These requirements are time consuming but otherwise, the cost is minimal. Those making application have the benefit of potentially obtaining a fingerprint clearance card by exception.

R13-11-105. Expedited Review: Most of the cost of this rule is on the Board which is required by statute to conduct an expedited review of every application within 20 days of receiving the application. An expedited review is based on the materials submitted with the application. The Board is generally able to grant an exception based on the expedited review. This is economically beneficial to the applicant who is able to obtain a fingerprint clearance

card without going through a formal hearing. It is also beneficial to the Board because it avoids the cost of conducting a formal hearing.

R13-11-106. Hearing Matters: The cost of this rule is minimal and applies only to an individual who is not granted an exception during the expedited review and must go to a formal hearing and wishes to have the formal hearing vacated, rescheduled, continued, or held by telephonic testimony. The minimal cost consists only of making a written request. The rule has the economic benefit of informing both the individual and the Board of the standards applicable to acting on a request. It has the benefit of informing the individual of the circumstances under which telephonic testimony will be allowed, and provides an opportunity for the applicant to demonstrate good cause for failing to appear at the hearing.

R13-11-109. Ex Parte Communications: The cost of this rule is minimal and applies primarily to those involved in the hearing process regarding an application for exception. The rule reinforces the prohibition of ex parte communications and explains actions to be taken to correct receipt of ex parte communications. The rule has the benefit of ensuring due process for an applicant.

R13-11-110. Rehearing or Review of Decision: The cost of this rule is minimal and applies only to individuals who are unsatisfied with a Board decision. The cost involves making a written request to the Board. The rule has the benefit of specifying the grounds on which the Board will base a decision and provides a time frame for submitting a request.

R13-11-113. Fees: The $4-dollar fee for an exception is minimal. The Board reviews the appropriateness of its fee rate on an annual basis. On August 30, 2024, the Board unanimously voted to keep the rate at its current amount of $4 dollars per applicant. The fee is charged to everyone who makes application for a fingerprint clearance card rather than only those who apply for an exception because the exception process is not considered separate from the fingerprint clearance card process. Obtaining an exception is not an appeal of the denial of a fingerprint clearance card, but rather, an assessment of whether the applicant has demonstrated the applicant is rehabilitated and not a recidivist.

R13-11-114. Interim Work Permit: The cost of this rule is minimal and applies only to individuals who qualify for an interim work permit. The cost involves making a written request to the Board and submitting a letter of reference from the applicant's employer. The rule has the benefit of specifying the qualifications for the interim work permit and provides the effective time frame of the permit prior to the Board's final decision on the applicant's good cause exception application.

9. Has the agency received any business competitiveness analyses of the rules? No

10. Has the agency completed the course of action indicated in the agency's previous 5YRR? Yes

The Board completed the course of action indicated in the agency's previous 5YRR. All rule changes were adopted by final exempt rulemaking and became effective on September 30, 2020.

11. A determination after analysis that the probable benefits of the rule outweigh within this state the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective:

The Board determined the benefits of the rules, which are substantial for individuals who need a fingerprint clearance card to obtain employment and who have a record of a precluding offense for which an exception may be provided, outweigh the minimal cost of making application. The primary cost of making an application for an exception is the time required to complete the application form, have it notarized, assemble supporting documentation, and prepare a written statement. The $4 fee, which is charged to everyone who applies for a fingerprint clearance card, is minimal.

12. Are the rules more stringent than corresponding federal laws? No

There are no corresponding federal laws.

13. For a rule made after July 29, 2010, that require issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037: Yes

    The Board does not issue a regulatory permit, license, or other authorization.

14. Proposed course of action:

    The Board intends to complete a rulemaking addressing all issues identified in this 5YRR before the end of June 2025. The Board is exempt from the procedures in the Arizona Administrative Procedure Act (See A.R.S. § 41-619.53(A)(2)), but the Board must obtain approval of the governor pursuant to A.R.S. § 41-1039(A). In addition, the Board has to prepare a notice of final exempt rulemaking, and file the notice with the Office of the Secretary of State.

# TITLE 13. PUBLIC SAFETY

## CHAPTER 11. BOARD OF FINGERPRINTING

(Authority: A.R.S. §§ 41-619.53(A)(2) and 41-619.55(A)(1))

*Title 13, Chapter 11, consisting of Sections R13-11-101 through R13-11-105, adopted by exempt rulemaking at 5 A.A.R. 3087, effective August 19, 1999 (Supp. 99-3).*

## ARTICLE 1. BOARD OF FINGERPRINTING

Section

R13-11-102. Definitions
R13-11-104. Application Requirements
R13-11-105. Expedited Review
R13-11-106. Hearing Matters
R13-11-109. Ex Parte Communications
R13-11-110. Rehearing or Review of Decision
R13-11-113. Fees
R13-11-114. Interim Work Permit

## ARTICLE 1. BOARD OF FINGERPRINTING

### R13-11-102. Definitions

The definitions at A.R.S. § 41-619.51 apply to this Article. Additionally, in this Article, the following definitions apply, unless the context otherwise requires:

1. "Applicant" means a person who applies for a:
   a. Good cause exception under A.R.S. § 41-619.55 and who is qualified for a good cause exception under A.R.S. §§ 41-1758.03(C) or (L), 41-1758.04(D), or 41-1758.07(C) or (L); or
   b. Central registry exception under A.R.S. § 41-619.57 and who is qualified for a central registry exception under A.R.S. § 8-804(J).
2. "Central registry exception application" means all the documents required by A.A.C. R13-11-104(B).
3. "CPS" means Child Protective Services.
4. "DES" means the Department of Economic Security.
5. "DES notice" means the notice of disqualification because of a central registry background check that the Department of Economic Security sends to an applicant under A.R.S. § 8-804(H).
6. "DPS" means the Department of Public Safety.
7. "DPS notice" means the notice of denial or suspension of a fingerprint clearance card that DPS sends to a fingerprint clearance card applicant under A.R.S. § 41-1758.04.
8. "Expedited review" means an examination by the Board, without the applicant being present and in accordance with R13-11-105, of the documents an applicant submits.
9. "Good cause exception" means the issuance of a fingerprint clearance card to an applicant under A.R.S. § 41-619.55.
10. "Good cause exception application" means all of the documents required by A.A.C. R13-11-104(A).
11. "Hearing officer" means an administrative law judge or other person appointed by the Board to determine good cause exceptions or central registry exceptions.

**Historical Note**

New Section adopted by exempt rulemaking at 5 A.A.R. 3087, effective August 19, 1999 (Supp. 99-3). Former Section R13-11-102 renumbered to R13-11-103; new Section R13-11-102made by exempt rulemaking at 9 A.A.R. 3744, effective August 1, 2003 (Supp. 03-3). Amended by exempt rulemaking at 9 A.A.R. 4449, effective September 26, 2003 (Supp. 03-3). Amended by exempt rulemaking at 13 A.A.R. 3435, effective September 19, 2007 (Supp. 07-3). Amended by exempt rulemaking at 18 A.A.R. 2146, effective August 8, 2012 (Supp. 12-3). Amended by exempt rulemaking at 18 A.A.R. 2564, effective September 25, 2012 (Supp. 12-3). Amended by final exempt rulemaking at 26 A.A.R. 2091, effective 9/30/2020.

**R13-11-104. Application Requirements**

**A.** Good cause exception application. To apply for a good cause exception, an applicant shall submit the following materials to the Board within one year from the date of the denial or suspension letter from DPS:

**1.** The good cause exception application form, which is available on the Board's website. The applicant shall have the completed form notarized before submitting the form.

**2.** A copy of the denial or suspension letter from DPS.

**3.** Two letters of reference, using the form available on the Board's website, which meet the following requirements:

**a.** Both letters of reference are from individuals who have known the applicant for at least one year; and

**b.** At least one letter of reference is from the applicant's current or former employer or from an individual who has known the applicant for at least three years.

**4.** If the DPS notice indicates that DPS could not determine the disposition of a charge, documents from the appropriate court showing the disposition of the charge or showing that records pertaining to the applicant either do not exist or have been purged.

**5.** For any charge that occurred no more than five years before the date on the DPS notice, regardless of whether the charge is listed on the DPS notice, the police report for each charge and documents from the appropriate court showing the disposition of the charge.

**6.** For any criminal conviction, regardless of whether the offense is listed on the DPS notice, documents from the appropriate court showing either the applicant has met all judicially imposed obligations or sentencing conditions or records pertaining to the applicant do not exist or have been purged. If the applicant has not met all judicially imposed obligations or sentencing conditions, the applicant shall provide a written statement indicating or documents from the appropriate court showing the status of the applicant's efforts toward meeting the obligations.

**7.** A statement written by the applicant that explains each charge, regardless of whether the charge is listed on the DPS notice.

**B.** Central registry exception application. To apply for a central registry exception, an applicant shall submit the following materials to the Board:

**1.** The central registry exception application form, which is available on the Board's website. The applicant shall have the completed form notarized before submitting the form.

**2.** A copy of the denial letter from DCS or DPS.

**3.** Two letters of reference, using the form available on the Board's website, which meet the following requirements:

**a.** Both letters of reference are from individuals who have known the applicant for at least one year; and

**b.** At least one letter of reference is from the applicant's current or former employer or from an individual who has known the applicant for at least three years.

**4.** If the applicant has had any criminal charges:

**a.** Documents from the appropriate court showing either the disposition of the criminal charges or that records pertaining to the applicant do not exist or have been purged;

**b.** For any charge that occurred no more than five years before the date on the DES notice, the police report for the charge and documents from the appropriate court showing the disposition of the charge;

**c.** For any criminal conviction, documents from the appropriate court showing either the applicant has met all judicially imposed obligations or sentencing conditions or records pertaining to the applicant do not exist or have been purged. If the applicant has not met all judicially imposed obligations or sentencing conditions, the applicant shall provide a written statement indicating or documents from the appropriate court showing the status of the applicant's efforts toward meeting the obligations; and

**d.** A statement written by the applicant that explains each criminal charge.

**5.** A statement written by the applicant that explains each incident that led to a substantiated allegation of child abuse or neglect.

**6.** If CPS assigned a case plan to the applicant, the current CPS case plan or documentation from CPS showing that the case plan is unavailable.

**C.** After receiving the application form required under subsection (A) or (B), the Board shall conduct an investigation that includes obtaining the applicant's full criminal history record from DPS and, if applicable, the redacted CPS report and other investigative information available from DES.

**D.** The Board or its hearing officer may accept any other documents an applicant submits, as allowed by A.R.S. § 41-1062.

**Historical Note**

New Section adopted by exempt rulemaking at 5 A.A.R. 3087, effective August 19, 1999 (Supp. 99-3). Former Section R13-11-104 renumbered to R13-11-105; new Section R13-11-104 renumbered from R13-11-103 by exempt rulemaking at 9 A.A.R. 3744, effective August 1, 2003 (Supp. 03-3). Former Section R13-11-104 renumbered to R13-11-109; new Section R13-11-104made by exempt rulemaking at 9 A.A.R. 4449, effective September 26, 2003 (Supp. 03-3). Amended by exempt rulemaking at 13 A.A.R. 3435, effective September 19, 2007 (Supp. 07-3). Amended by exempt rulemaking at 18 A.A.R. 2146, effective August 8, 2012 (Supp. 12-3). Amended by final exempt rulemaking at 26 A.A.R. 2091, effective 9/30/2020.

**R13-11-105. Expedited Review**

**A.** Within 20 days after receiving an application, the Board shall conduct an expedited review. When determining whether the applicant should receive a good cause exception or central registry exception under an expedited review, the Board shall consider the following:

**1.** The criteria listed in A.R.S. § 41-619.55(E) for a good cause exception application or A.R.S. § 41-619.57(E) for a central registry exception application; and

**2.** Whether the documentation submitted in support of a good cause exception application or central registry exception application is sufficient to allow the Board to grant a good cause exception or central registry exception, or whether the Board requires further documentation or oral testimony.

**B.** If the Board determines under an expedited review that the applicant is eligible for a good cause exception or central registry exception, the Board shall grant the applicant a good cause or central registry exception.

**C.** If the Board determines under an expedited review that the applicant is not eligible for a good cause exception or central registry exception, the Board shall direct the Board's executive director to schedule a hearing. The Board's executive director shall give the applicant reasonable notice of the hearing in accordance with A.R.S. § 41-1061. The hearing shall take place within 45 days after the expedited review.

**Historical Note**

New Section adopted by exempt rulemaking at 5 A.A.R. 3087, effective August 19, 1999 (Supp. 99-3). Former Section R13-11-105 renumbered to R13-11-106; new Section R13-11-105 renumbered from R13-11-104by exempt rulemaking at 9 A.A.R. 3744, effective August 1, 2003 (Supp. 03-3). Section repealed; new Section made by exempt rulemaking at 9 A.A.R. 4449, effective September 26, 2003 (Supp. 03-3). Amended by exempt rulemaking at 13 A.A.R. 3435, effective September 19, 2007 (Supp. 07-3). Amended by exempt rulemaking at 18 A.A.R. 2146, effective August 8, 2012 (Supp. 12-3). Amended by final exempt rulemaking at 26 A.A.R. 2091, effective 9/30/2020.

**R13-11-106. Hearing Matters**

**A.** Request to vacate or reschedule a hearing. To request that the Board or its hearing officer vacate or reschedule a hearing, an applicant shall submit a written request to the Board before the date of the scheduled hearing.

**1.** The Board or its hearing officer shall give the applicant written notice of whether the request to vacate or reschedule the hearing is vacated or rescheduled granted or denied. If the hearing is rescheduled, the Board or its hearing officer shall include in the notice the date of the rescheduled hearing.

**2.** Vacating a hearing. The Board or its hearing officer may vacate a hearing if:

**a.** The applicant no longer requires a good cause exception or central registry exception;

**b.** The applicant withdraws the application by submitting a written notice to the Board; or

**c.** Facts demonstrate to the Board or its hearing officer that it is appropriate to vacate the hearing for the purpose of administrative convenience, expediency, or economy and the action does not conflict with law or cause undue prejudice to any party.

**3.** Rescheduling a hearing. The Board or its hearing officer may reschedule a hearing if:

**a.** The applicant shows that attending the calendared hearing would cause excessive or undue prejudice or hardship.;

**b.** The applicant shows that attending the calendared hearing would be impossible, using the effort expected from a reasonable person under the circumstances; or

**c.** Facts demonstrate to the Board or its hearing officer that it is appropriate to reschedule the hearing for the purpose of administrative convenience, expediency, or economy and the action does not conflict with law or cause undue prejudice to any party.

**B.** Continuing a hearing. The Board or its hearing officer shall consider the following factors when ruling on a motion to continue a hearing:

**1.** The reasons for continuing the hearing; and

**2.** Whether the continuance will cause undue prejudice to any party.

**C.** Reconvening a hearing. The Board or its hearing officer may recess a hearing and reconvene at a future date by a verbal ruling.

**D.** Testimony by telephone or electronic means. An applicant who wishes to submit or have a witness submit testimony at a hearing by telephone or electronic means shall submit a written request to the Board before the time of the scheduled hearing. The Board or its hearing officer may allow the applicant or the applicant's witness to submit testimony by telephone or electronic means at the hearing if:

**1.** Personal attendance by the applicant or the applicant's witness at the hearing will present an undue hardship for the applicant or the applicant's witness;

**2.** Testimony by telephone or electronic means will not cause undue prejudice to any party; and

**3.** The applicant or the applicant's witness assumes the cost of testifying by telephone or electronic means.

**E.** Failure to appear. Absent good cause, if an applicant fails to appear at a scheduled hearing, the Board may deny a good cause exception or central registry exception to the applicant. The Board, using its discretion, shall determine whether good cause exists.

**1.** An applicant demonstrates good cause by showing that the applicant:

**a.** Could not have been present at the hearing using the effort expected from a reasonable person under the circumstances, or

**b.** Requested that the hearing be rescheduled under R13-11-106.

**2.** The Board shall not accept the applicant's failure to inform the Board of a change in address as grounds for good cause.

**F.** Board decision. The Board shall grant or deny a good cause exception or central registry exception within 80 days after the hearing.

**Historical Note**

New Section R13-11-106 renumbered from R13-11-105 by exempt rulemaking at 9 A.A.R. 3744, effective August 1, 2003 (Supp. 03-3). Former Section R13-11-106 renumbered to R13-11-110; new Section R13-11-106made by exempt rulemaking at 9 A.A.R. 4449, effective September 26, 2003 (Supp. 03-3). Amended by exempt rulemaking at 18 A.A.R. 2146, effective August 8, 2012 (Supp. 12-3). Amended by final exempt rulemaking at 26 A.A.R. 2091, effective 9/30/2020.

**R13-11-109. Ex Parte Communications**

**A.** In any good cause exception or central registry exception case, except to the extent required for disposition of *ex parte* matters as authorized by law:

**1.** An interested person outside the Board shall not make or knowingly cause to be made to any Board member, hearing officer, or other employee or consultant who may reasonably be expected to be involved in the decisional process of the proceeding, an *ex parte* communication relevant to the merits of the proceeding; and

**2.** A Board member, hearing officer, or other employee or consultant who is or may be reasonably expected to be involved in the decisional process of the proceeding, shall not make or knowingly cause to be made to any interested person outside the Board an *ex parte* communication relevant to the merits of the determination.

**B.** A Board member, hearing officer, or other employee or consultant who is or may be reasonably expected to be involved in the decisional process of the proceeding, who receives, makes, or knowingly causes to be made a communication prohibited under subsection (A), shall place on the record of the proceeding and serve on all parties to the proceeding:

**1.** All prohibited written communications;
**2.** Memoranda stating the substance of all prohibited oral communications; and
**3.** All written responses, and memoranda stating the substance of all oral responses, to the communications described in subsections (B)(1) and (B)(2).

**C.** If the Board receives a communication made or knowingly caused to be made by a party in violation of this Section, the Board or its hearing officer may require the party to show cause why the party's claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected because of the violation.

**D.** The provisions of this Section apply beginning when an application for a good cause exception or central registry exception is filed.

**E.** For the purposes of this Section:
**1.** "Person outside the Board" means any person other than a Board member, employee or consultant of the Board, or attorney representing the Board in its adjudicatory role.
**2.** "*Ex parte* communication" means an oral or written communication not on the administrative record and not the subject of reasonable prior notice to all parties.

**Historical Note**

Section renumbered from R13-11-104 and amended by exempt rulemaking at 9 A.A.R. 4449, effective September 26, 2003 (Supp. 03-3). Former R13-11-109 renumbered to R13-11-111; new R13-11-109made by exempt rulemaking at 12 A.A.R. 4898, effective December 6, 2006 (Supp. 06-4). Amended by exempt rulemaking at 18 A.A.R. 2146, effective August 8, 2012 (Supp. 12-3). Amended by exempt rulemaking at 18 A.A.R. 2564, effective September 25, 2012 (Supp. 12-3). Amended by final exempt rulemaking at 26 A.A.R. 2091, effective 9/30/2020.

**R13-11-110. Rehearing or Review of Decision**

**A.** An applicant may seek a review or rehearing of a Board decision that results from an administrative hearing by submitting a written request for a review or rehearing to the Board within 30 days after the date the decision is served. The Board shall grant a request for review or rehearing for any of the following reasons materially affecting the rights of the applicant:
**1.** The findings of fact, conclusions of law, or decision are not supported by the evidence or are contrary to law;
**2.** The applicant was deprived of a fair hearing due to irregularity in the proceedings, abuse of discretion, or misconduct by the hearing officer;
**3.** Newly discovered material evidence exists that could have a bearing on the decision and that could not have been discovered and produced earlier using the effort expected from a reasonable person under the circumstances; or
**4.** Error in admission or rejection of evidence or other errors of law occurring at the hearing.

**B.** The applicant shall specify in the request under subsection (A) the grounds for a review or rehearing and provide reasonable evidence that the applicant's rights were materially affected.

**C.** The Board or its hearing officer may take additional testimony; amend or make new findings of fact and conclusions of law; and affirm, modify, or reverse the original decision.

**D.** A rehearing or review, if granted, shall be a rehearing or review only of the issue upon which the decision is found erroneous. The Board shall specify in the order granting or denying a rehearing or review, the basis for the order.

**Historical Note**

Section renumbered from R13-11-106 and amended by exempt rulemaking at 9 A.A.R. 4449, effective September 26, 2003 (Supp. 03-3). Former R13-11-110 renumbered to R13-11-112; new R13-11-110made by exempt rulemaking at 12 A.A.R. 4898, effective December 6, 2006 (Supp. 06-4). Amended by exempt rulemaking at 13 A.A.R. 3435, effective September 19, 2007 (Supp. 07-3). Amended by exempt rulemaking at 18 A.A.R. 2146, effective August 8, 2012 (Supp. 12-3). Amended by final exempt rulemaking at 26 A.A.R. 2091, effective 9/30/2020.

**R13-11-113. Fees**

**A.** When an individual applies to DPS for a fingerprint clearance card, the individual pays a fee to DPS that includes an amount for the fingerprint clearance card and, if necessary, a good cause or central registry exception determination.

**B.** The portion of the fee paid under subsection (A) that is for a good cause or central registry exception determination is $4.

**Historical Note**

Section R13-11-113 renumbered from R13-11-111by exempt rulemaking at 12 A.A.R. 4898, effective December 6, 2006 (Supp. 06-4). Amended by exempt rulemaking at 18 A.A.R. 2564, effective September 25, 2012 (Supp. 12-3). Amended by final exempt rulemaking at 26 A.A.R. 2091, effective 9/30/2020.

**R13-11-114. Interim Work Permit**

**A.** Under A.R.S. § 41-619.55(I), the Board may grant an interim work permit to an applicant for a good cause exception if the applicant for a good cause exception:

**1.** Is required by newly effective legislation to obtain a fingerprint clearance card for the applicant's job;

**2.** Held the job at the time the new legislation went into effect; and

**3.** Was not previously required to have a fingerprint clearance card for the job.

**B.** The employer of an applicant who meets the standards under subsection (A) shall submit a letter of reference under R13-11-104(A)(3)(b) with the applicant's good cause exception application.

**C.** The Board shall not grant an interim work permit to an applicant who is precluded from receiving a fingerprint clearance card under A.R.S. § 41-1758.03(B) or 41-1758.07(B).

**D.** An interim work permit ceases to have effect when the Board makes a final decision on the applicant's good cause exception application.

**Historical Note**

Adopted by final exempt rulemaking at 26 A.A.R. 2091, effective 9/30/2020

As of September 14, 2024

## 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, the board of physical therapy, the state board of psychologist examiners, the board of athletic training, the board of occupational therapy examiners, the state board of podiatry examiners, the acupuncture board of examiners the state board of technical registration or the board of massage therapy or the Arizona department of housing.

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 32-823.

(w) Section 32-1232.

(x) Section 32-1276.01.

(y) Section 32-1284.

(z) Section 32-1297.01.

(aa) Section 32-1904.

(bb) Section 32-1941.

(cc) Section 32-1982.

(dd) Section 32-2022.

(ee) Section 32-2063.

(ff) Section 32-2108.01.

(gg) Section 32-2123.

(hh) Section 32-2371.

(ii) Section 32-3430.

(jj) Section 32-3620.

(kk) Section 32-3668.

(ll) Section 32-3669.

(mm) Section 32-3922.

(nn) Section 32-3924.

(oo) Section 32-4222.

(pp) Section 32-4128.

(qq) Section 36-113.

(rr) Section 36-207.

(ss) Section 36-411.

(tt) Section 36-425.03.

(uu) Section 36-446.04.

(vv) Section 36-594.01.

(ww) Section 36-594.02.

(xx) Section 36-766.01.

(yy) Section 36-882.

(zz) Section 36-883.02.

(aaa) Section 36-897.01.

(bbb) Section 36-897.03.

(ccc) Section 36-3008.

(ddd) Section 41-619.53.

(eee) Section 41-1964.

(fff) Section 41-1967.01.

(ggg) Section 41-1968.

(hhh) Section 41-1969.

(iii) Section 41-2814.

(jjj) Section 41-4025.

(kkk) Section 46-141, subsection A or B.

(lll) Section 46-321.

41-619.52. Board of fingerprinting; organization; meetings

A. The board of fingerprinting is established consisting of the following members:

1. A representative of the supreme court who is appointed by the chief justice of the supreme court.

2. A representative of the department of economic security who is appointed by the director of the department of economic security.

3. A representative of the department of education who is appointed by the superintendent of public instruction.

4. A representative of the department of health services who is appointed by the director of the department of health services.

5. A representative of the department of juvenile corrections who is appointed by the director of the department of juvenile corrections.

6. A representative of the department of child safety who is appointed by the director of the department of child safety.

B. At its initial meeting and annually thereafter, the board shall elect a chairperson and vice-chairperson from among its members and any other officers that are deemed necessary or advisable.

C. The board shall meet at least once each calendar quarter and additionally as the chairperson deems necessary. A majority of the members constitutes a quorum for the transaction of business.

D. Board members:

1. Serve at the pleasure of the appointing authority.

2. Are not eligible for compensation but are eligible for reimbursement of expenses pursuant to title 38, chapter 4, article 2.

3. Shall have a valid fingerprint clearance card issued pursuant to section 41-1758.07.

E. The chief justice, the superintendent of public instruction or a department director may designate an alternate member to represent a member who is appointed pursuant to subsection A by the chief justice, the superintendent of public instruction or a department director, respectively.

41-619.53. Board of fingerprinting; powers and duties; personnel; liability

A. The board of fingerprinting shall:

1. Determine good cause exceptions pursuant to section 41-619.55 and central registry exceptions pursuant to section 41-619.57. The board may appoint a hearing officer to recommend that an applicant be granted or denied a good cause exception or central registry exception after the hearing officer conducts an expedited review, a good cause exception hearing or a central registry exception hearing.

2. Adopt rules to implement this article, including rules to establish good cause exceptions for the issuance of fingerprint clearance cards pursuant to sections 41-1758.03

and 41-1758.07 and central registry exceptions pursuant to section 8-804. This rule making is exempt from the requirements of chapter 6 of this title.

3. Administer and enforce this article and rules adopted pursuant to this article.

4. Furnish a copy of its rules, on request, to all applicants who petition the board for a good cause exception pursuant to sections 41-1758.03 and 41-1758.07 or a central registry exception pursuant to section 8-804 and, on request, to licensees, contract providers and state agencies.

5. Establish fees.

B. In order to grant a good cause exception or a central registry exception, a majority plus an additional member, of the members present, must vote to approve the application. If the board grants a good cause exception, the board shall request in writing that the department of public safety issue a card to the applicant. If the board grants a central registry exception, the board shall notify the department of child safety, the department of economic security or the department of health services, as appropriate, in writing.

C. Subject to chapter 4, article 4 of this title, the board may employ clerical, professional and technical personnel subject to fee monies that are collected and to the budget that is approved by the board members and shall prescribe personnel duties and determine personnel compensation. Personnel employed by the board must have a valid fingerprint clearance card issued pursuant to section 41-1758.07. If the applicant is denied a fingerprint clearance card, in order to be employed by the board, the board must grant a good cause exception pursuant to this article by a unanimous vote.

D. In making any recommendation to the board to grant or deny a good cause exception or central registry exception, the hearing officer shall consider all of the reasons and criteria prescribed in section 41-619.55, subsection E or section 41-619.57, subsection E.

E. Members and employees of the board are not liable for acts done or actions taken by any board member or employee if the members or employees act in good faith following the requirements of this article.

41-619.54. Confidentiality of criminal record and central registry information; exception; reporting

A. All criminal history record information and central registry information that is maintained by the board is confidential, except that criminal history record information and central registry information may be disclosed pursuant to a determination for a good cause exception pursuant to section 41-619.55 or pursuant to a central registry exception pursuant to section 41-619.57.

B. Persons who are present at a good cause exception hearing or a central registry exception hearing shall not discuss or share any criminal history record information or central registry information outside of the good cause exception hearing.

C. Except as provided in subsection D of this section, criminal history record information, central registry information, good cause exception determinations and hearings and central registry exception determinations and hearings are exempt from title 39, chapter 1.

D. On or before December 1 of each year the board shall report the number of applications for a good cause exception and for a central registry exception and the number of good cause exceptions and central registry exceptions that were granted for the twelve month period ending September 30. The report shall itemize the number of applications and the number of applications granted for each of the sections listed in section 41-619.51, paragraph 5. For each of these sections, the report shall further itemize each offense listed in section 41-1758.03, subsections B and C and section 41-1758.07, subsections B and C for which a good cause exception was applied for and for which a good cause exception was granted. The board shall provide a copy of the report to the governor, the speaker of the house of representatives and the president of the senate.

41-619.55. Good cause exceptions; expedited review; hearing; revocation

A. The board shall determine good cause exceptions. The board shall determine a good cause exception after an expedited review or after a good cause exception hearing. The board shall conduct an expedited review within twenty days after receiving an application for a good cause exception.

B. Within forty-five days after conducting an expedited review, the board shall hold a good cause exception hearing if the board determines that the applicant does not qualify for a good cause exception under an expedited review but is qualified to apply for a good cause exception and the applicant submits an application for a good cause exception within the time limits prescribed by rule.

C. When determining whether a person is eligible to receive a good cause exception under an expedited review, the board shall consider whether the person has shown to the board's satisfaction that the person is not awaiting trial on or has not been convicted of committing any of the offenses listed in section 41-1758.03, subsection B or section 41-1758.07, subsection B or that the person is successfully rehabilitated and is not a recidivist. Before granting a good cause exception under an expedited review, the board shall consider all of the criteria listed in subsection E of this section.

D. The following persons shall be present during good cause exception hearings:

1. The board or its hearing officer.

2. The person who requested the good cause exception hearing. The person may be accompanied by a representative at the hearing.

E. The board may grant a good cause exception at a hearing if the person shows to the board's satisfaction that the person is not awaiting trial on or has not been convicted of committing any of the offenses listed in section 41-1758.03, subsection B or section 41-1758.07, subsection B or that the person is successfully rehabilitated and is not a recidivist. Notwithstanding any other law, the board may require applicants to disclose evidence regarding substantiated allegations of child or vulnerable adult abuse or neglect for consideration in determining an applicant's successful rehabilitation. If the applicant fails to appear at the hearing without good cause, the board may deny a good cause exception. The board shall grant or deny a good cause exception within eighty days after the good cause exception hearing. Before granting a good cause exception at a hearing, the board shall consider all of the following in accordance with board rule:

1. The extent of the person's criminal record.

2. The length of time that has elapsed since the offense was committed.

3. The nature of the offense.

4. Any applicable mitigating circumstances.

5. The degree to which the person participated in the offense.

6. The extent of the person's rehabilitation, including:

(a) Completion of probation, parole or community supervision.

(b) Whether the person paid restitution or other compensation for the offense.

(c) Evidence of positive action to change criminal behavior, such as completion of a drug treatment program or counseling.

(d) Personal references attesting to the person's rehabilitation.

F. If the board grants a good cause exception to a person, the board shall request in writing that the department of public safety issue a fingerprint clearance card to the person.

G. When determining if a person is eligible to receive a good cause exception, the board's staff, under the direction of the executive director of the board and only in conjunction

with the person's application for a good cause exception, shall review reports it receives of the arrest, charging or conviction of the person for offenses listed in sections 41-1758.03 and 41-1758.07 who previously received or who was denied a fingerprint clearance card.

H. The board may request in writing that the department of public safety revoke a person's fingerprint clearance card pursuant to section 41-1758.04 if the person received a fingerprint clearance card and the person is subsequently convicted of an offense listed in section 41-1758.03, subsection B or C or section 41-1758.07, subsection B or C.

I. Pending the outcome of a good cause exception determination, the board or its hearing officer may issue interim approval in accordance with board rule to continue working to a good cause exception applicant.

J. The board is exempt from chapter 6, article 10 of this title.

K. A person who is required to obtain a fingerprint clearance card pursuant to section 41-619.52 is not eligible to receive a good cause exception pursuant to this section.

41-619.56. Board of fingerprinting fund

A. The board of fingerprinting fund is established consisting of monies appropriated by the legislature and fees established by the board pursuant to section 41-619.53. The board shall administer the fund subject to legislative appropriation. Monies in the fund are continuously appropriated for the purposes provided in this article.

B. Monies deposited in the fingerprinting fund are exempt from the provisions of section 35-190 relating to lapsing of appropriations

41-619.57. Central registry exceptions; expedited review; hearing

A. The board shall determine central registry exceptions pursuant to section 8-804. The board shall determine a central registry exception after an expedited review or after a central registry exception hearing. The board shall conduct an expedited review within twenty days after receiving an application for a central registry exception.

B. Within forty-five days after conducting an expedited review, the board shall hold a central registry exception hearing if the board determines that the applicant does not qualify for a central registry exception under an expedited review but is qualified to apply for a central registry exception and the applicant submits an application for a central registry exception within the time limits prescribed by rule.

C. When determining whether a person is eligible to receive a central registry exception pursuant to section 8-804, the board shall consider whether the person has shown to the

board's satisfaction that the person is successfully rehabilitated and is not a recidivist. Before granting a central registry exception under expedited review, the board shall consider all of the criteria listed in subsection E of this section.

D. The following persons shall be present during central registry exception hearings:

1. The board or its hearing officer.

2. The person who requested the central registry exception hearing. The person may be accompanied by a representative at the hearing.

E. The board may grant a central registry exception at a hearing if the person shows to the board's satisfaction that the person is successfully rehabilitated and is not a recidivist. The board may consider the person's criminal record in determining if a person has been successfully rehabilitated. If the applicant fails to appear at the hearing without good cause, the board may deny a central registry exception. The board shall grant or deny a central registry exception within eighty days after the central registry exception hearing. Before granting a central registry exception at a hearing the board shall consider all of the following in accordance with board rule:

1. The extent of the person's central registry records.

2. The length of time that has elapsed since the abuse or neglect occurred.

3. The nature of the abuse or neglect.

4. Any applicable mitigating circumstances.

5. The degree to which the person participated in the abuse or neglect.

6. The extent of the person's rehabilitation, including:

(a) Evidence of positive action to change the person's behavior, such as completion of counseling or a drug treatment, domestic violence or parenting program.

(b) Personal references attesting to the person's rehabilitation.

F. If the board grants a central registry exception to a person, the board shall notify the department of child safety, the department of economic security or the department of health services, as appropriate, in writing.

G. A person who is granted a central registry exception is not entitled to have the person's report and investigation outcome purged from the central registry except as required pursuant to section 8-804, subsections G and H.

H. Pending the outcome of a central registry exception determination, a central registry exception applicant may not provide direct services to children pursuant to title 36, chapter 7.1.

I. The board is exempt from chapter 6, article 10 of this title.

**E-5.**

**DEPARTMENT OF PUBLIC SAFETY**
Title 13, Chapter 9

# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

---

**MEETING DATE: April 1, 2025**

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

**FROM:** Council Staff

**DATE:** March 12, 2025

**SUBJECT:** **DEPARTMENT OF PUBLIC SAFETY**
Title 13, Chapter 9

---

**Summary**

This Five-Year Review Report (5YRR) from the Department of Public Safety (Department) relates to twenty-one (21) rules and one (1) table in Title 13, Chapter 9 regarding Concealed Weapons Permits. Specifically, the rules address the following Articles:

- Article 1: General Provisions;
- Article 2: Concealed Weapons Permit: Application; Renewal; Responsibilities;
- Article 3: Firearms-Safety Training: Organizations and Instructors;
- Article 4: Certificate of Firearms Proficiency;
- Article 5: LEOSA-Recognized Instructors; and
- Article 6: Hearings and Disciplinary Proceedings.

In the prior 5YRR for these rules, which was approved by the Council in March 2020, the Department proposed to amend nine (9) rules to improve their consistency and effectiveness. The Department indicates it mostly completed its prior proposed course of action except as to those changes related to the Department's new online permit and payment system which was expected to go live in July 2021. Specifically, the Department previously proposed to amend the rules to indicate acceptance of credit cards for payment. However, the Department indicates the new online system encountered substantial delays due to programming and funding. The

Department did not want to include credit cards as a payment until such time as the system was capable of accepting electronic payment. Additionally, the agency's government liaison and policy advisor recommended against opening a rulemaking for this one item and to simply accept credit cards until such time as a more substantial rulemaking is needed. The Department indicates this will be updated in the next rulemaking as the online system is now functional and the Department has been accepting credit cards.

**Proposed Action**

In the current report, the Department indicates the rules are not clear, concise, understandable, consistent, effective, or enforced as written as outlined in more detail below. The Department indicates it has not reviewed Table 1 with the intention that it expires pursuant to A.R.S. § 41-1056(J) as the timeframes contained therein do not conform to A.R.S. § 13-3112(H). Additionally, the Department indicates, upon the Council's approval of this report, the Department will immediately begin the rulemaking process and expects to have final rules to the Council by the end of July 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 that the rules provide procedural instructions to administer concealed weapons permits and are for use by the Department personnel and permit holders and applicants. The Department states that it is not recommending any fee increases and has held fees steady for more than 15 years. The Department states that pursuant to A.R.S. § 13-3112, the Department shall adopt rules for the purpose of implementing and administering fees relating to permits that are issued pursuant to statute. The Department indicates that as of the time the five-year report was drafted, there were 386,272 permit holders. In addition, the Department states that in 2023, 106,071 individuals applied for a permit, 538 permits were suspended, and 27 permits were revoked.

The Department states the statutes set the mandate for the minimal record-keeping; the rules provide guidelines for applicants to assist them in complying with statute, enact minimal restrictions, and result in minimal financial costs to the consumer. The Department indicates making planned changes are intended for clarification on existing practices, such as clarifying definitions, and do not in themselves create an additional burden.

Stakeholders are identified as the Department and individual permit and certificate holders.

**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 within the current scope of statutory regulation, the rules impose the least burden and cost to the regulated public. The Department indicates the rules are a necessity in meeting statutory requirements and expectations along with providing sufficient information upon which to make a permitting determination. The rules provide the criteria for what the Department considers to be pertinent information in support of statutory requirements. The Department believes the information is minimal but necessary to issue or retract a permit. The Department also believes the regulatory rule follows the statutory requirement for persons to obtain a permit with no additional burden beyond statute, but may be reviewed again before rulemaking for any duplication or inconsistency with statute. The Department believes the procedures in place provide for an equitable issuance or denial and hearing process that protects both the Department and the person and is not able to identify any better alternatives.

**4. Has the agency received any written criticisms of the rules over the last five years?**

The Department indicates it has not received any written criticisms of the rules 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:

- **R13-9-204**
    - The statutory reference was erroneously listed as 31-3112(E). It should be 13-3112(E). This reference should ultimately be removed as it provides no clarifying information to the statute. The public and the Department should be referencing statute first and then looking to the rule for clarification.

**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:

- **R13-9-101**
    - "Honorably retired peace officer" is no longer defined in 18 USC 926(c). It is not defined as a qualified retired law enforcement officer.
- **R13-9-104, Table 1**
    - The table does not conform to A.R.S. § 13-3112(H) which provides specific timeframes and is set to expire pursuant to A.R.S. § 41-1056(J).
- **R13-9-202**

    - Amending the rule to require a DD-214 for persons with military service to validate if they were dishonorably discharged to be consistent with 18 USC 922(g)
- **R13-9-401 and 402**
    - Law enforcement officers are required to comply with 18 USC 926c.
- **R13-9-501**
    - The rule is not current with the acceptable forms of certification/training in A.R.S. § 38-1113.
- **R13-9-601**
    - The rule is outdated in comparison to the current statute, A.R.S. § 38-3112, requiring the removal of Paragraph E.

**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:

- **R13-9-101**
    - Add a definition for "law enforcement officer" as defined in A.R.S. § 38-1112.
    - Amend the statutory reference for "peace officer" to A.R.S. § 38-1113.
    - Remove "honorably retired peace officer" and amend "qualified retired officer" to "qualified law enforcement officer" pursuant to 18 U.S.C. 926C.
    - Add a definition for separated from service in good standing.
- **R13-9-102**
    - Amend for the allowance of credit card use which the Department already accepts for online applications.
- **R13-9-103**
    - Update the website address.
- **R13-9-104**
    - Amend to remove Table 1 references and A.R.S. § 41-1073(E) as the timeframe amounts are now specifically stated in A.R.S. § 13-3112(H).
    - Remove the requirement in (C)(3) for the agreement and request to be in writing. The unit accepts extension requests by phone or the applicant may upload the request via the application website or send in a written request by postal mail.
    - Amend (D) to remove the reference to Table 1. Add a reference to 13-3112 for the timeframe.
    - Delete (D)(1) through (4). The repository allows for the Department to notify applicants via e-mail or phone on the approval, denial or if additional information is needed to complete their application.
    - Amend (E) to remove "in writing."
    - Amend (F) to the statutory reference of ARS § 41-1092.03.
- **Table 1**
    - The timeframes are specified in A.R.S. § 13-3112(H) making this table duplicative to statute and will expire pursuant to A.R.S. § 41-1056(J).
- **R13-9-202**

    - Amend (1) to add an e-mail address to send automated updates to the applicant and to add a requirement if discharged from the armed forces to provide a copy of the DD-214 to meet the requirements of A.R.S. § 13-3112(E)(2) and the Federal Gun Control Act 18 U.S.C. 922(g) states it is unlawful for a person who was dishonorably discharged from the armed services to possess a firearm.
- **R13-9-204**
    - Amend (C) the statutory reference to 13-3112(E).
- **R13-9-206**
    - Amend (B) to allow for an electronic request for a lost, stolen or damaged permit on a form established by the Department. The current rule requires this in writing, but the applicant may now do this on the website.
- **R13-9-208**
    - Amend (A)(2) to specify the applicant could also supply a driver license or social security card in lieu of the other listed documents.
- **R13-9-401**
    - Amend the requirements to reference the requirements in 18 U.S.C. 926c for law enforcement officers and any specific state requirements.
    - Amend (2)(a) to change "retired" to "separated from service."
    - Amend (2)(c) to 10 years or more separated from service with the agency.
    - Delete "if employed as a law enforcement officer for fewer than 15 years retired."
    - Delete (2)(d) reference retirement plan benefits.
- **R13-9-402**
    - In all instances amend "retired" to "separated" as in Rule 401
- **R13-9-501**
    - Amend (A)(1) and (B) to include acceptable forms of certification/training pursuant to A.R.S. § 38-1113. Text may be removed for portions that are 100% duplicative to statute with no further clarification to statute.
    - Amend (A)(2) to specify full legal name.
- **R13-9-601**
    - Remove (E). There is no documentation or rule that defines what emergency action means and the Department maintains no documentation nor does it have a statutory obligation to take emergency action. Action is only made by the Department if the permit holder no longer maintains all conditions as defined in A.R.S. § 13-3113.

**8. <u>Has the agency analyzed the current enforcement status of the rules?</u>**

The Department indicates the rules are mostly enforced as written except for the following:

- **Table 1**
    - The Department is enforcing the timeframes specified in the authorizing statute. This table is slated for expiration.
- **R13-9-204**
    - The Department is accepting credit cards for online applications.

- **R13-9-601(E)**
    - As stated in Section 4 above, the rule does not conform to A.R.S. § 38-3112. The statute is being enforced.

**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 rule R13-9-202 corresponds to 18 U.S.C. 922(g). The Department indicates R13-9-401 and 402 correspond to 18 U.S.C. 926(c). The Department states the rules are not more stringent than federal law, but to the extent the rules are inconsistent with applicable federal law, the Department has indicated its intention to amend those rules as outlined above.

**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?**

Except for the following rules, the rules reviewed in this report were adopted on January 31, 2009, and are thus exempt from A.R.S. § 41-1037:

- R13-9-101 (Definitions);
- R13-9-102 (Application and Processing Fees);
- R13-9-103 (Application Forms);
- R13-9-104 (Time-Frames for Department Action on Applications); and
- Table 1 (Time-Frames for Department Action on Application).

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, for the rules that were adopted after July 29, 2010 that relate to the issuing permits deal with permits to an individual. The Department states, due to the statutory qualifications, individual background checks, and training certification a permit can only be issued to an individual. As such, the issuance of a general permit is not technically feasible or would not meet the applicable statutory requirements pursuant to A.R.S. § 41-1037(A)(3). Council staff believes the Department is in compliance with A.R.S. § 41-1037.

## 11. Conclusion

This 5YRR from the Department relates to twenty-one (21) rules and one (1) table in Title 13, Chapter 9 regarding Concealed Weapons Permits. Specifically, the rules address the following Articles: Article 1: General Provisions; Article 2: Concealed Weapons Permit: Application; Renewal; Responsibilities; Article 3: Firearms-Safety Training: Organizations and Instructors; Article 4: Certificate of Firearms Proficiency; Article 5: LEOSA-Recognized Instructors; and Article 6: Hearings and Disciplinary Proceedings.

The Department indicates the rules are not clear, concise, understandable, consistent, effective, or enforced as written as outlined in more detail below. The Department indicates it has not reviewed Table 1 with the intention that it expires pursuant to A.R.S. § 41-1056(J) as the timeframes contained therein do not conform to A.R.S. § 13-3112(H). Additionally, the Department indicates, upon the Council's approval of this report, the Department will immediately begin the rulemaking process and expects to have final rules to the Council by the end of July 2025.

Council staff recommends approval of this report.

November 26, 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. 9, Concealed Weapons Permits Five-year Review Report**

Chair Klein:

Please find enclosed the Five-year Review Report for 13 A.A.C. 9, Concealed Weapons Permits which is due by November 29, 2024.

The Department does intend for one table to expire under A.R.S. § 41-1056(J): Table 1

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. There are no substantive policy statements for these rules.

For questions about this report, please contact Paul Swietek, rulewriter, at (602) 223-2049 or pswietek@azdps.gov.

Sincerely,

Kenneth Hunter

Kenneth Hunter, Lieutenant Colonel
Deputy Director

Arizona Department of Public Safety
Five-year Review Report
13 A.A.C. 9, Concealed Weapons Permits
November 26, 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.

The Department intends for Table 1 to expire as the timeframes are already specified in A.R.S. § 13-3112(H) making this table duplicative to statute.

B. Provide a certification the rules are in compliance with A.R.S. § 41-1091 on substantive policy statements.

The Department is in compliance as there are no substantive policy statements for these rules.

**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. § 13-3112 states the Director shall adopt rules for the purpose of implementing and administering the program including fees related to the permits that are issued.

2. The objective of the rule:

| Rule | Objective |
|---|---|
| 101 | To define words that are used in the rules. |
| 102 | To specify the fees the Department charges for various activities associated with implementing the program. |
| 103 | To specify the application forms the Department uses to fulfill its statutory responsibility to implement the program and how to obtain the forms. |
| 104 | To specify the time frames the Department will act on an application for a permit. |
| Table 1 | This table is to expire pursuant to A.R.S. § 41-1056(J). To specify the time frames the Department will act on an application for a permit. |
| 201 | To provide detail regarding eligibility for a permit. |
| 202 | To specify the information required on an application for a permit. |
| 203 | To specify the information the Department will place on a permit card. |
| 204 | To specify the requirements for renewal of a permit, the manner the renewal application is made and consequences of failing to renew. |

| | |
|---|---|
| 205 | To provide information regarding a permit holder's responsibilities in addition to those specified in statute. |
| 206 | To provide information regarding the procedure for replacing a permit that has been lost, stolen or damaged. |
| 208 | To prescribe the procedure for obtaining a permit when the permit holder's name has changed. |
| 401 | To list the eligibility requirements for an individual to obtain a LEOSA-authorized certificate of firearms proficiency. |
| 402 | To list the information an applicant is required to provide with an application for a certificate of firearms proficiency. |
| 403 | To list the information the Department will put on a certificate of firearms proficiency. |
| 404 | To establish when a certificate of firearms proficiency expires, the procedure for renewing the certificate and the consequences of failing to renew timely. |
| 405 | To inform a certificate holder of the responsibility to carry the certificate when in actual possession of a concealed weapon and to show the certificate and photographic identification upon request of a peace officer. |
| 501 | To establish the procedure by with a POST-certified firearms instructor can become recognized by the Department as an instructor of applicants for a LEOSA certificate of firearms proficiency. |
| 502 | To list the responsibilities of an individual recognized by the Department as a LEOSA instructor. |
| 601 | To prescribe the circumstances under which and the procedure by which the Department will suspend or revoke a permit or authorization as a firearms-safety training organization or instructor. |
| 602 | To prescribe the hearing procedure used by the Department. |
| 603 | To specify the procedures and standards for requesting a rehearing or review of a Department decision. |

3. Are the rules effective in achieving their objectives? No

| Rule | Explanation |
|---|---|
| 101 | Add a definition for *law enforcement officer* as defined in ARS 38-1112.<br><br>Amend the statutory reference for *peace officer* to ARS 38-1113.<br><br>Remove *honorably retired peace officer* and amend *qualified retired officer* to *qualified law enforcement officer* pursuant to 18 USC 926C.<br><br>Add a definition for *separated from service in good standing*. |
| 102 | Amend for the allowance of credit card use which the Department already accepts for online applications. |
| 103 | Update the website address. |
| 104 | Amend to remove Table 1 references and ARS 41-1073(E) as the timeframe amounts are now specifically stated in ARS 13-3112(H). |

| | |
|---|---|
| | Remove the requirement in (C)(3) for the agreement and request to be in writing. The unit accepts extension requests by phone or the applicant may upload the request via the application website or send in a written request by postal mail.<br><br>Amend (D) to remove the reference to Table 1. Add a reference to 13-3112 for the timeframe. Delete (D) (1) through (4). The repository allows for the Department to notify applicants via e-mail or phone on the approval, denial or it additional information is needed to complete their application.<br><br>Amend (E) to remove *in writing*.<br><br>Amend (F) to the statutory reference of ARS § 41-1092.03. |
| Table 1 | The timeframes are specified in A.R.S. § 13-3112(H) making this table duplicative to statute and will expire pursuant to A.R.S. § 41-1056(J). |
| 202 | Amend (1) to add an e-mail address to send automated updates to the applicant and to add a requirement if discharged from the armed forces to provide a copy of the DD-214 to meet the requirements of ARS § 13-3112(E)(2) and the Federal Gun Control Act 18 USC 922(g) states it is unlawful for a person who was dishonorably discharged from the armed services to possess a firearm. |
| 204 | Amend (C) the statutory reference to 13-3112(E). |
| 206 | Amend (B) to allow for an electronic request for a lost, stolen or damaged permit on a form established by the Department. The current rule requires this in writing, but the applicant may now do this on the website. |
| 208 | Amend (A)(2) to specify the applicant could also supply a driver license or social security card in lieu of the other listed documents. |
| 401 | Amend the requirements to reference the requirements in 18 USC 926c for law enforcement officers and any specific state requirements.<br><br>Amend (2)(a) to change *retired* to *separated from service*.<br><br>Amend (2)(c) to 10 years or more separated from service with the agency. Delete *if employed as a law enforcement officer for fewer than 15 years retired.*<br><br>Delete (2)(d) reference retirement plan benefits. |
| 402 | In all instances amend *retired* to *separated* as in Rule 401 |
| 501 | Amend (A)(1) and (B) to include acceptable forms of certification/training pursuant to ARS § 38-1113. Text may be removed for portions that are 100% duplicative to statute with no further clarification to statute.<br><br>Amend (A)(2) to specify full legal name. |
| 601 | Remove (E). There is no documentation or rule that defines what *emergency action* means and the Department maintains no documentation nor does it have a statutory obligation to take emergency action. Action is |

| | |
|---|---|
| | only made by the Department if the permit holder no longer maintains all conditions as defined in ARS § 13-3113. |

4. Are the rules consistent with other rules and statutes? No

| Rule | Statute | Explanation |
|---|---|---|
| 101 | 18 USC 926(c) | *Honorably retired peace officer* is no longer defined in this reference. It is not defined as a *qualified retired law enforcement officer*. |
| 104, Table 1 | ARS § 13-3112(H) | The table does not conform to A.R.S. § 13-3112(H) which provides specific timeframes and is set to expire pursuant to A.R.S. § 41-1056(J). |
| 202 | 18 USC 922(g) | Amending the rule to require a DD-214 for persons with military service to validate if they were dishonorably discharged. |
| 401 and 402 | 18 USC 926c | Law enforcement officers are required to comply with this federal code. |
| 501 | ARS § 38-1113 | The rule is not current with the acceptable forms of certification/training. |
| 601 | ARS § 38-3112 | The rule is outdated in comparison to the current statute requiring the removal of Paragraph E. |

5. Are the rules enforced as written? No

| Rule | Explanation |
|---|---|
| Table 1 | The Department is enforcing the timeframes specified in the authorizing statute. This table is slated for expiration. |
| 204 | The Department is accepting credit cards for online applications. |
| 601(E) | As stated in Section 4 above, the rule does not conform to ARS § 38-3112. The statute is being enforced. |

6. Are the rules clear, concise and understandable? No

| Rule | Explanation |
|---|---|
| 204 | The statutory reference was erroneously listed as 31-3112(E). It should be 13-3112(E). This reference should ultimately be removed as it provides no clarifying information to the statute. The public and the Department should be referencing statute first and then looking to the rule for clarification. |

7. Has the agency received written criticisms of the rules within the last five years? No

| Rule | Criticism | Action |
|---|---|---|
| N/A | | |
| | | |

8. Economic, small business and consumer impact comparison:

The Department is not recommending any fee increases and has held fees steady for more than 15 years.

These rules impact the Department and individual permit and certificate holders.

The rules provide procedural instructions to administer concealed weapons permits and are for use by Department personnel and permit holders and applicants. Statutes set the mandate for the minimal record-keeping; the rules provide guidelines for applicants to assist them in complying with statute, enact minimal restrictions, and result in minimal financial costs to the consumer. Making the planned changes are intended for clarification on existing practices, such as clarifying definitions, and do not in themselves create an additional burden.

Firearms safety training organizations and instructors are businesses directly affected by this rulemaking. Both must incur the minimal cost to apply for and be approved by the Department. There is a fee to obtain either of these approvals and approval of a firearms safety training organization does not have to be renewed. After approval, a firearms safety organization or instructor may collect a fee for providing the required firearms safety training to individuals seeking to obtain a new concealed weapons permit. The Department does not set any standard for what those private organizations/instructors charge for their services. The Department does not receive any impact or benefit from the fees the private entities charge for their services.

Pursuant to A.R.S. §13-3112, the Department shall adopt rules for the purpose of implementing and administering fees relating to permits that are issued pursuant to statute. However, the unit is funded by the General Fund. This is because the Legislature awards monies to the unit each year and allocates concealed weapons permit monies. Part of this allocation is for the General Fund transfers that are listed within the expenditures chart, as well as the monies the unit is authorized to spend. The unit, which is not the same for other fee-based units, can only spend what is allowed by the Legislature.

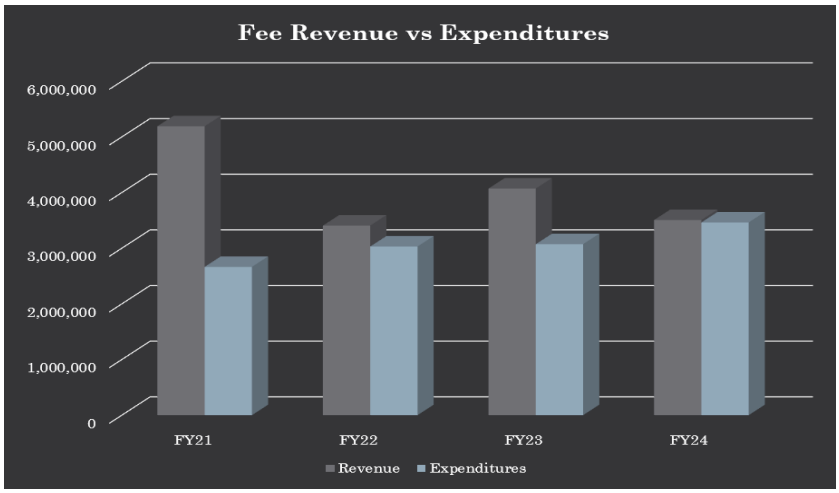
As of the time when this report was drafted, there were 386,272 active permit holders. In 2023, 106,071 individuals applied for a permit, 538 permits were suspended, and 27 permits were revoked. The majority of the suspensions and revocations resulted from the permit holder becoming a prohibited possessor or being charged or convicted of a misdemeanor domestic violence crime.

The Concealed Weapons Permit Unit has 24 full-time positions; four of which are vacant. These positions include two supervisors, one in Phoenix and one in Tucson, and are

all considered administrative support staff. Less staffing can cause an impact to customers through increased processing and wait times. Currently, the average wait time from the time of receipt of application to issuance is 2 days for an applicant with no criminal history and or "hits". For applicants with a criminal history or "hit", the wait time from time of receipt of application to issuance could be up to 150 days due to previous criminal history backlog the unit is working through, awaiting court documentation, awaiting international criminal history background information for citizens born outside of the United States, etc. Additionally, the time frame outlined in Table 1 of the current rule is not consistent with the time frame outlined in A.R.S. § 13-3112; therefore, this rulemaking is simply making the rules consistent with existing state laws and has no economic impact to applicants. The benefits to the industry will include better and more efficient processing of applications and permit issuance.

The Department has made the permitting process less burdensome by offering a new online application and renewal process in addition to traditional application methods. The Concealed Weapons Permit Unit underwent extensive process reviews in the past two years to review and streamline processes. Another phase of process reviews is underway, with a new method of printing permits and technological enhancements to improve the background check process and permit issuance.

Since the last rulemaking, FY21 showed the greatest revenue with $5,190,581 and unit expenditures at $2,664,466. In the following years, revenue vs expenditures began to level out; however, the unit has increased its staffing in both Phoenix and Tucson. In FY23, the unit also gained a new computerized repository upgrade funded by Automated Project Funds (APF). This upgrade allowed for an interface for application submissions to applicants and ease of use for unit personnel. Additional upgrades are scheduled for the repository in FY25 including an enhancement to criminal history background check reviews to reduce wait time for permit issuance for applicants who have criminal history "hits", automated notifications to applicants addressing permit issuance status, and an automated notification to Department personnel if an existing permit holder commits a prohibiting offense in another state. These upgrades will be covered by the APF account negating the need for any fee increases.




The Department remains the only governmental agency affected by these rules.

9. Has the agency received any business competitiveness analysis of the rules? No.

10. Has the agency completed the course of action indicated in the agency's previous five-year review report?

| Rule | Action Needed | Action Taken |
|---|---|---|
| 101 | Items 5, 10, 11, 15, 17, 26 and 27 required amendment. | Notice of Final Expedited Rulemaking 27 A.A.R. 2524 dated October 29, 2021 |
| 102 | Amend to specify credit card payment is approved. | No action taken. The new online system encountered substantial delays due to programming and funding. The Department did not want to include credit cards as a payment until such time as the system was capable of accepting electronic payment.<br><br>Additionally, the agency's government liaison and policy advisor recommended against opening a rulemaking for this one item and to simply accept credit cards until such time as a more substantial rulemaking is needed.<br><br>This will be updated in the next rulemaking as the online system is now functional and the Department has been accepting credit cards. |
| 103 | Website update and statutory changes removing instructors and organizations. | Notice of Final Expedited Rulemaking 27 A.A.R. 2524 dated October 29, 2021. |
| 104 | Statutory changes removing instructors and organizations. | |
| Table 1 | Statutory changes removing instructors and organizations. | |
| 201 | Amend Paragraph B due to statutory change and make the rule more concise. | |
| 202 | Residency clarification. | After later review, the text regarding residency was determined to be correct and |

| | | |
|---|---|---|
| | Update the rule to meet statutory requirements for peace officers and detention officers. | sufficient as-is; no further amendment required.<br><br>Notice of Final Expedited Rulemaking 27 A.A.R. 2524 dated October 29, 2021. |
| 204 | Amend to specify the statutory reference. | Notice of Final Expedited Rulemaking 27 A.A.R. 2524 dated October 29, 2021. |
| 601 | Statutory changes removing instructors and organizations. | |
| 603 | Statutory changes removing instructors and organizations. | |

11. A determination the probably 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:

    Within in the current scope of statutory regulation, the rules impose the least burden and cost to the regulated public. The rules are a necessity in meeting statutory requirements and expectations along with providing sufficient information upon which to make a permitting determination. The rules provide the criteria for what the Department considers to be pertinent information in support of statutory requirements. The Department believes the information is minimal but necessary to issue or retract a permit. The regulatory rule follows the statutory requirement for persons to obtain a permit with no additional burden beyond statute; but may be reviewed again before rulemaking for any duplication or inconsistency with statute. The Department believes the procedures in place provide for an equitable issuance or denial and hearing process that protects both the Department and the person and is not able to identify any better alternatives beyond what is mentioned above.

12. Are the rules more stringent than corresponding federal laws? No

| Rule | Federal Law | Explanation |
|---|---|---|
| 202 | 18 USC 922(g) | Covered in Section 3 above. |
| 401 and 402 | 18 USC 926(c) | Covered in Section 3 above. |

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:

    The Department is in compliance. The rules issue a permit to an individual. Due to the statutory qualifications, individual background checks and training certification a permit can only be issued to an individual.

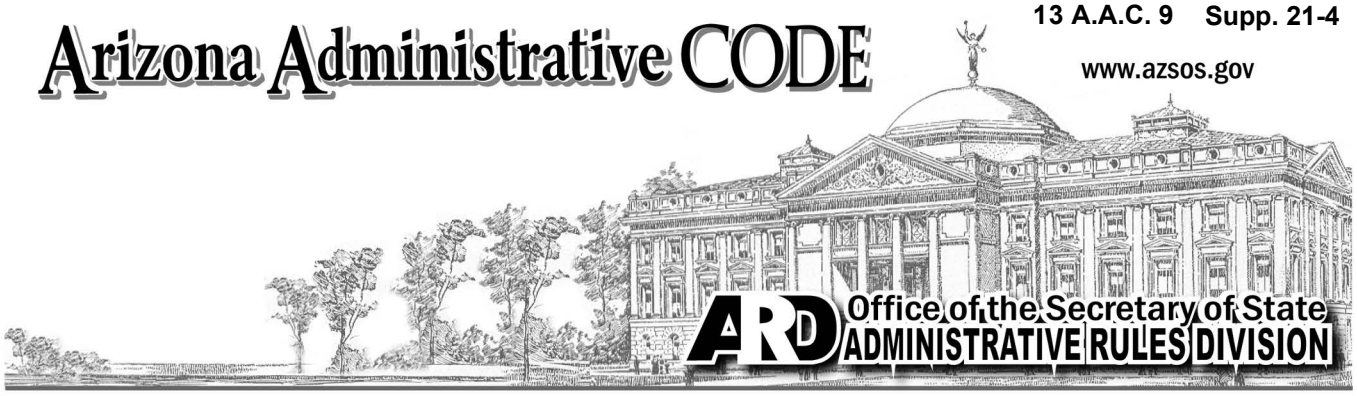
14. Proposed course of action:

Upon the Council's approval of this report, the Department will immediately begin a rulemaking process by first applying for a rulemaking waiver with the Governor's Office pursuant to ARS § 41-1039. Upon the approval of a waiver, the Department expects a normal rulemaking timeline and anticipates (primarily dependent on how long it takes the Governor's Office to approve the waiver) to have final rules to the Council by the end of July 2025.

Arizona Administrative CODE

13 A.A.C. 9 Supp. 21-4

www.azsos.gov




# TITLE 13. PUBLIC SAFETY

## CHAPTER 9. DEPARTMENT OF PUBLIC SAFETY - CONCEALED WEAPONS PERMITS

The table of contents on page one contains links to the referenced page numbers in this Chapter.
Refer to the notes at the end of a Section to learn about the history of a rule as it was published in the *Arizona Administrative Register*.

This Chapter contains rules that were filed to be codified in the *Arizona Administrative Code* between the dates of October 1, 2021 through December 31, 2021


| | | | |
|---|---|---|---|
| R13-9-101. | Definitions ..... 2 | R13-9-201. | Concealed Weapons Permit Eligibility ..... 4 |
| R13-9-103. | Application Forms ..... 2 | R13-9-202. | Application for a Concealed Weapons Permit ..... 4 |
| R13-9-104. | Time-frames for Department Action on Applications ..... 3 | R13-9-204. | Renewal of Concealed Weapons Permit ..... 5 |
| | | R13-9-601. | Suspension and Revocation ..... 8 |
| Table 1. | Time-frames for Department Action on Applications (in days) ..... 3 | R13-9-603. | Rehearing or Review of Decision ..... 8 |


**Questions about these rules? Contact:**

Department: Arizona Department of Public Safety
Address: POB 6638, Mail Drop 1205
Phoenix, AZ 85005-6638
Website: https://www.azdps.gov
Name: Paul Swietek
Telephone: (602) 223-2049
E-mail: pswietek@azdps.gov

**The release of this Chapter in Supp. 21-4 replaces Supp. 17-4, 1-9 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), Administrative Rules Division, accepts state agency rule notice and other legal filings and is the publisher of Arizona rules. The Office of the Secretary of State does not interpret or enforce rules in the *Administrative Code*. Questions about rules should be directed to the state agency responsible for the promulgation of the rule.

Scott Cancelosi, Director
ADMINISTRATIVE RULES DIVISION

### RULES

The definition for a rule is provided for under A.R.S. § 41-1001. *"'Rule' means an agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of an agency."*

### THE ADMINISTRATIVE CODE

The *Arizona Administrative Code* is where the official rules of the state of Arizona are published. The *Code* is the official codification of rules that govern state agencies, boards, and commissions.

The *Code* is separated by subject into Titles. Titles are divided into Chapters. A Chapter includes state agency rules. Rules in Chapters are divided into Articles, then Sections. The "R" stands for "rule" with a sequential numbering and lettering outline separated into subsections.

Rules are codified quarterly in the *Code*. Supplement release dates are printed on the footers of each Chapter.

First Quarter: January 1 - March 31
Second Quarter: April 1 - June 30
Third Quarter: July 1 - September 30
Fourth Quarter: October 1 - December 31

For example, the first supplement for the first quarter of 2021 is cited as Supp. 21-1. Supplements are traditionally released three to four weeks after the end of the quarter because filings are accepted until the last day of the quarter.

Please note: The Office publishes by Chapter, not by individual rule Section. Therefore there might be only a few Sections codified in each Chapter released in a supplement. This is why the Office lists only updated codified Sections on the previous page.

### RULE HISTORY

Refer to the HISTORICAL NOTE at the end of each Section for the effective date of a rule. The note also includes the *Register* volume and page number in which the notice was published (A.A.R.) and beginning in supplement 21-4, the date the notice was published in the *Register*.

### AUTHENTICATION OF PDF CODE CHAPTERS

The Office began to authenticate Chapters of the Code in Supp. 18-1 to comply with A.R.S. § 41-1012(B) and A.R.S. § 5302(1), (2)(d) through (e), and (3)(d) through (e).

A certification verifies the authenticity of each *Code* Chapter posted as it is released by the Office of the Secretary of State. The authenticated pdf of the *Code* includes an integrity mark with a certificate ID. Users should check the validity of the signature, especially if the pdf has been downloaded. If the digital signature is invalid it means the document's content has been compromised.

### HOW TO USE THE CODE

Rules may be in effect before a supplement is released by the Office. Therefore, the user should refer to issues of the *Arizona Administrative Register* for recent updates to rule Sections.

### ARIZONA REVISED STATUTE REFERENCES

The Arizona Revised Statutes (A.R.S.) are available online at the Legislature's website, www.azleg.gov. An agency's authority note to make rules is often included at the beginning of a Chapter. Other Arizona statutes may be referenced in rule under the A.R.S. acronym.

### SESSION LAW REFERENCES

Arizona Session Law references in a Chapter can be found at the Secretary of State's website, www.azsos.gov under Services-> Legislative Filings.

### EXEMPTIONS FROM THE APA

It is not uncommon for an agency to be exempt from the steps outlined in the rulemaking process as specified in the Arizona Administrative Procedures Act, also known as the APA (Arizona Revised Statutes, Title 41, Chapter 6, Articles 1 through 10). Other agencies may be given an exemption to certain provisions of the Act.

An agency's exemption is written in law by the Arizona State Legislature or under a referendum or initiative passed into law by Arizona voters.

When an agency files an exempt rulemaking package with our Office it specifies the law exemption in what is called the preamble of rulemaking. The preamble is published in the *Register* online at www.azsos.gov/rules, click on the *Administrative Register* link.

Editor's notes at the beginning of a Chapter provide information about rulemaking Sections made by exempt rulemaking. Exempt rulemaking notes are also included in the historical note at the end of a rulemaking Section.

The Office makes a distinction to certain exemptions because some rules are made without receiving input from stakeholders or the public. Other exemptions may require an agency to propose exempt rules at a public hearing.

### PERSONAL USE/COMMERCIAL USE

This Chapter is posted as a public courtesy online, and is for private use only. Those who wish to use the contents for resale or profit should contact the Office about Commercial Use fees. For information on commercial use fees review A.R.S. § 39-121.03 and 1 A.A.C. 1, R1-1-113.

*Rhonda Paschal, rules managing editor, assisted with the editing of this Chapter.*

Arizona Secretary of State
Digitally signed by Arizona Secretary of State
Date: 2022.02.09 11:51:18 -07'00'



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 9. DEPARTMENT OF PUBLIC SAFETY - CONCEALED WEAPONS PERMITS

Authority: A.R.S. § 41-1713(A)(4)

**Supp. 21-4**

## CHAPTER TABLE OF CONTENTS

### ARTICLE 1. GENERAL PROVISIONS

Section
R13-9-101. Definitions ..... 2
R13-9-102. Application and Processing Fees ..... 2
R13-9-103. Application Forms ..... 2
R13-9-104. Time-frames for Department Action on Applications ..... 3
Table 1. Time-frames for Department Action on Applications (in days) ..... 3
R13-9-105. Repealed ..... 4
R13-9-106. Repealed ..... 4
R13-9-107. Repealed ..... 4
R13-9-108. Repealed ..... 4
R13-9-109. Repealed ..... 4
R13-9-110. Repealed ..... 4
R13-9-111. Repealed ..... 4
R13-9-112. Repealed ..... 4
R13-9-113. Repealed ..... 4

### ARTICLE 2. CONCEALED WEAPONS PERMIT: APPLICATION; RENEWAL; RESPONSIBILITIES

*Article 2, consisting of Sections R13-9-201 through R13-9-208, made by final rulemaking at 10 A.A.R. 4752, effective January 1, 2005 (Supp. 04-4).*

Section
R13-9-201. Concealed Weapons Permit Eligibility ..... 4
R13-9-202. Application for a Concealed Weapons Permit ..... 4
R13-9-203. Issuance of a Concealed Weapons Permit ..... 5
R13-9-204. Renewal of Concealed Weapons Permit ..... 5
R13-9-205. Permit Holder Responsibilities ..... 5
R13-9-206. Lost, Stolen, or Damaged Concealed Weapons Permit ..... 5
R13-9-207. Repealed ..... 5
R13-9-208. Change in Name of Permit Holder ..... 6

### ARTICLE 3. FIREARMS-SAFETY TRAINING: ORGANIZATIONS AND INSTRUCTORS

*Article 3, consisting of Sections R13-9-301 through R13-9-309, made by final rulemaking at 10 A.A.R. 4752, effective January 1, 2005 (Supp. 04-4).*

Section
R13-9-301. Repealed ..... 6
R13-9-302. Expired ..... 6
R13-9-303. Repealed ..... 6
R13-9-304. Repealed ..... 6
R13-9-305. Expired ..... 6
R13-9-306. Repealed ..... 6
R13-9-307. Expired ..... 6
R13-9-308. Expired ..... 6
R13-9-309. Expired ..... 6
R13-9-310. Expired ..... 6

### ARTICLE 4. CERTIFICATE OF FIREARMS PROFICIENCY

*Article 4, consisting of Sections R13-9-401 and R13-9-402, made by final rulemaking at 10 A.A.R. 4752, effective January 1, 2005 (Supp. 04-4).*

Section
R13-9-401. Certificate of Firearms Proficiency Eligibility ..... 6
R13-9-402. Application for a Certificate of Firearms Proficiency ..... 7
R13-9-403. Issuance of a Certificate of Firearms Proficiency 7
R13-9-404. Renewal of a Certificate of Firearms Proficiency 7
R13-9-405. Certificate Holder Responsibilities ..... 7

### ARTICLE 5. LEOSA-RECOGNIZED INSTRUCTORS

*Article 5, consisting of Sections R13-9-501 and R13-9-502, made by final rulemaking at 13 A.A.R. 550, effective April 7, 2007 (Supp. 07-1).*

Section
R13-9-501. Application for Recognition as a LEOSA Instructor ..... 7
R13-9-502. LEOSA Instructor Responsibilities ..... 8

### ARTICLE 6. HEARINGS AND DISCIPLINARY PROCEEDINGS

Section
R13-9-601. Suspension and Revocation ..... 8
R13-9-602. Hearing Procedures ..... 8
R13-9-603. Rehearing or Review of Decision ..... 8

CHAPTER 9. DEPARTMENT OF PUBLIC SAFETY - CONCEALED WEAPONS PERMITS

## ARTICLE 1. GENERAL PROVISIONS

**R13-9-101. Definitions**

In this Chapter, unless otherwise specified:

1. "Adequate documentation" has the same meaning as prescribed in A.R.S. § 13-3112(E)(6).
2. "Administrative completeness review time-frame" has the same meaning as prescribed in A.R.S. § 41-1072.
3. "Applicant" means an individual or organization that submits an application form and the required fee to the Department for:
   a. A Concealed Weapons Permit,
   b. Renewal of a Concealed Weapons Permit,
   c. A certificate of firearms proficiency, or
   d. Recognition as a firearms-proficiency instructor.
4. "Certificate of firearms proficiency" means a document issued by the Department to an individual who meets the requirements of LEOSA.
5. "Classifiable fingerprints" means fingerprint impressions that meet the criteria of the Federal Bureau of Investigation, as contained in Form FD-258 (Rev. 5-15-17), published by the U.S. Government Printing Office. This form is incorporated by reference and available from the Department and the FBI (Attn: Logistical Support Unit, CJIS Division, 1000 Custer Hollow Road, Clarksburg, WV 26306) or online at www.bookstore.gpo.gov. The material incorporated by reference contains no future editions or amendments.
6. "Completion certificate" means adequate documentation that an individual completed an eight-hour, Department-authorized, firearms-safety training program.
7. "Department" means the Department of Public Safety.
8. "Director" means the Director of the Arizona Department of Public Safety.
9. "Firearm" has the same meaning as prescribed in A.R.S. § 13-3101.
10. "Honorably retired peace officer" means an individual who separates from a law enforcement agency after at least 10 years of service, receives a medical, disability, or regular retirement pension or annuity as a result of qualifying years of service as a peace officer, and has a letter from the law enforcement agency confirming these facts.
11. "LEOSA" means the federal Law Enforcement Officers Safety Act of 2004.
12. "LEOSA instructor" means an individual who is certified by POST as a firearms instructor and authorized by the Department to provide training to individuals seeking a certificate of firearms proficiency.
13. "Original application" means a form referenced in this Chapter that is not a copy and contains the original signature of an applicant.
14. "Party" has the same meaning as prescribed in A.R.S. § 41-1001.
15. "Peace officer" has the same meaning as prescribed in A.R.S. § 13-105.
16. "Permit" means an identification card issued by the Department that authorizes the named holder to carry concealed weapons subject to the requirements of A.R.S. § 13-3112 and this Chapter.
17. "Permit holder" means an individual who has a Department-issued permit to carry concealed weapons.
18. "POST" means the Arizona Peace Officer Standards and Training Board.
19. "Prohibited possessor" has the same meaning as prescribed in A.R.S. § 13-3101(7) and means any individual to whom it is unlawful to sell or otherwise dispose of a firearm under 18 U.S.C. 922(d) or (g).
20. "Qualified retired officer" means a qualified retired law enforcement officer as defined by 18 U.S.C. 926C(c).
21. "Resident" has the same meaning as prescribed in A.R.S. § 28-2001.
22. "Substantive review time-frame" has the same meaning as prescribed in A.R.S. § 41-1072.
23. "Weapon" has the same meaning as deadly weapon as defined in A.R.S. § 13-3101.

**Historical Note**

Adopted effective January 12, 1996 (Supp. 96-1). Amended by final rulemaking at 10 A.A.R. 4752, effective January 1, 2005 (Supp. 04-4). Amended by final rulemaking at 13 A.A.R. 550, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 14 A.A.R. 4658, effective January 31, 2009 (Supp. 08-4). Amended by final expedited rulemaking at 27 A.A.R. 2524 (October 29, 2021), with an immediate effective date of October 8, 2021 (Supp. 21-4).

**R13-9-102. Application and Processing Fees**

**A.** Under the authority provided by A.R.S. § 13-3112, the Department establishes and shall collect the following fees:
1. New Concealed Weapons Permit – $43;
2. Renewal of a Concealed Weapons Permit – $43;
3. Certificate of firearms proficiency – $20;
4. Replacing a lost, stolen, or damaged permit or certificate – $10;
5. Name change on a permit or certificate – $10.

**B.** The Department shall collect a fee in an amount necessary to cover the cost of federal and state fingerprint processing for criminal history record checks from all applicants required under this Chapter to submit fingerprints for a criminal history record check.

**C.** An applicant shall submit the required fees by a cashier's or certified check or money order made payable to the Arizona Department of Public Safety. The Department does not accept credit cards or personal checks. All fees are non-refundable unless A.R.S. § 41-1077 applies.

**Historical Note**

Adopted effective January 12, 1996 (Supp. 96-1). Section repealed; new Section made by final rulemaking at 10 A.A.R. 4752, effective January 1, 2005 (Supp. 04-4). Amended by final rulemaking at 13 A.A.R. 550, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 14 A.A.R. 4658, effective January 31, 2009 (Supp. 08-4).

**R13-9-103. Application Forms**

**A.** The Department shall provide and an applicant shall use an application form for:
1. An initial Concealed Weapons Permit or renewal of the permit,
2. A certificate of firearms proficiency, or
3. Authorization as a LEOSA instructor.

**B.** Application forms may be obtained from the Concealed Weapons Permit Unit of the Department or online at www.azdps.gov/services/public/cwp. Upon request, the Concealed Weapons Permit Unit shall advise an individual or organization of other locations where application forms may be obtained.

**Historical Note**

Adopted effective January 12, 1996 (Supp. 96-1). Section repealed; new Section made by final rulemaking at 10 A.A.R. 4752, effective January 1, 2005 (Supp. 04-4). Amended by final rulemaking at 13 A.A.R. 550, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 14 A.A.R. 4658, effective January 31, 2009 (Supp. 08-

4). Amended by final expedited rulemaking at 27 A.A.R. 2524 (October 29, 2021), with an immediate effective date of October 8, 2021 (Supp. 21-4).

**R13-9-104. Time-frames for Department Action on Applications**

**A.** For the purpose of compliance with A.R.S. § 41-1072 et seq., the Department establishes the time-frames listed in Table 1. Under A.R.S. § 41-1073(E)(2), the Department is not establishing a time-frame for issuance of the following licenses because the Department shall grant or deny each license within seven days after receipt of an application:
1. A certificate of firearms proficiency under R13-9-402, and
2. Recognition as a LEOSA instructor under R13-9-501.

**B.** An administratively complete application consists of all the information and documents listed in:
1. R13-9-202 for a Concealed Weapons Permit, or
2. R13-9-204 for renewal of a Concealed Weapons Permit.

**C.** The administrative completeness review time-frame listed in Table 1 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 Department shall include in the deficiency notice a list of the documents and information needed to complete the application.
2. From the date of the deficiency notice, the applicant shall submit to the Department, within the time for response to a deficiency notice provided in Table 1, the missing documents and information. The time-frame for the Department to finish the administrative completeness review is suspended from the date of the deficiency notice until the date the Department receives the missing documents and information.
3. The Department and applicant may agree in writing to extend the time in subsection (C)(2) upon written request by the applicant before the end of the time.
4. If the applicant fails to provide the missing documents and information within the time allowed, the Department shall close the applicant's file. If an individual whose file is closed wants to be considered further for a permit or approval, the individual shall submit a new application under R13-9-202 or R13-9-204.

**D.** The substantive review time-frame listed in Table 1 begins on the date that the Department determines an application is administratively complete.
1. During the substantive review time-frame, the Department may make one comprehensive written request for additional information. The Department and applicant may agree in writing to allow the Department to make a supplemental request for additional information.
2. From the date of the comprehensive request for additional information, the applicant shall submit to the Department, within the time for response to a comprehensive request provided in Table 1, the additional information. The time-frame for the Department to finish the substantive review of the application is suspended from the date of the comprehensive request for additional information until the Department receives the additional information.
3. The Department and applicant may agree in writing to extend the time in subsection (D)(2) upon written request by the applicant before the end of the time.
4. If the applicant fails to provide the additional information within the time allowed, the Department shall close the applicant's file. If an individual whose file is closed wants to be considered further for a permit or approval, the individual shall submit a new application under R13-9-202 or R13-9-204.

**E.** When the substantive review is complete, the Department shall inform the applicant in writing of its decision whether to grant or deny a permit or authorization to the applicant.

**F.** The Department shall deny a permit, certificate, authorization, or recognition if it determines that the applicant does not meet all criteria required by statute and rule.
1. The Department shall include in its notice of denial the information required under A.R.S. § 41-1092.03(A).
2. Under A.R.S. § 13-3112(H), an individual who is denied a Concealed Weapons Permit may submit additional documentation to the Department within 20 days of receipt of the notice of denial and the Department shall reconsider its denial.
3. An applicant who is denied a permit, certificate, authorization, or recognition may appeal the Department's decision under A.R.S. Title 41, Chapter 6, Article 10.

**G.** The Department shall grant a permit, certificate, authorization, or recognition if it determines that the applicant meets all criteria required by statute and rule.

**Historical Note**

Adopted effective January 12, 1996 (Supp. 96-1). Section repealed; new Section made by final rulemaking at 10 A.A.R. 4752, effective January 1, 2005 (Supp. 04-4). Amended by final rulemaking at 13 A.A.R. 550, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 14 A.A.R. 4658, effective January 31, 2009 (Supp. 08-4). Amended by final expedited rulemaking at 27 A.A.R. 2524 (October 29, 2021), with an immediate effective date of October 8, 2021 (Supp. 21-4).

**Table 1. Time-frames for Department Action on Applications (in days)**

| Application Type | Administrative Review Time-frame | Time for Response to Deficiency Notice | Substantive Review Time-frame | Time for Response to Comprehensive Request | Over-all Time-frame |
|---|---|---|---|---|---|
| Concealed Weapons Permit R13-9-202 | 14 | 40 | 46 | 20 | 60 |
| Renewal of Concealed Weapons Permit R13-9-204 | 14 | 40 | 46 | 20 | 60 |

**Historical Note**

Table 1 made by final rulemaking at 13 A.A.R. 550, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 14 A.A.R. 4658, effective January 31, 2009 (Supp. 08-4). Amended by final expedited rulemaking at 27 A.A.R. 2524 (October 29, 2021), with an immediate effective date of October 8, 2021 (Supp. 21-4).

**R13-9-105. Repealed**

**Historical Note**
Adopted effective January 12, 1996 (Supp. 96-1). Section repealed by final rulemaking at 10 A.A.R. 4752, effective January 1, 2005 (Supp. 04-4).

**R13-9-106. Repealed**

**Historical Note**
Adopted effective January 12, 1996 (Supp. 96-1). Section repealed by final rulemaking at 10 A.A.R. 4752, effective January 1, 2005 (Supp. 04-4).

**R13-9-107. Repealed**

**Historical Note**
Adopted effective January 12, 1996 (Supp. 96-1). Section repealed by final rulemaking at 10 A.A.R. 4752, effective January 1, 2005 (Supp. 04-4).

**R13-9-108. Repealed**

**Historical Note**
Adopted effective January 12, 1996 (Supp. 96-1). Section repealed by final rulemaking at 10 A.A.R. 4752, effective January 1, 2005 (Supp. 04-4).

**R13-9-109. Repealed**

**Historical Note**
Adopted effective January 12, 1996 (Supp. 96-1). Section repealed by final rulemaking at 10 A.A.R. 4752, effective January 1, 2005 (Supp. 04-4).

**R13-9-110. Repealed**

**Historical Note**
Adopted effective January 12, 1996 (Supp. 96-1). Section repealed by final rulemaking at 10 A.A.R. 4752, effective January 1, 2005 (Supp. 04-4).

**R13-9-111. Repealed**

**Historical Note**
Adopted effective January 12, 1996 (Supp. 96-1). Section repealed by final rulemaking at 10 A.A.R. 4752, effective January 1, 2005 (Supp. 04-4).

**R13-9-112. Repealed**

**Historical Note**
Adopted effective January 12, 1996 (Supp. 96-1). Section repealed by final rulemaking at 10 A.A.R. 4752, effective January 1, 2005 (Supp. 04-4).

**R13-9-113. Repealed**

**Historical Note**
Adopted effective January 12, 1996 (Supp. 96-1). Section repealed by final rulemaking at 10 A.A.R. 4752, effective January 1, 2005 (Supp. 04-4).

## ARTICLE 2. CONCEALED WEAPONS PERMIT: APPLICATION; RENEWAL; RESPONSIBILITIES

**R13-9-201. Concealed Weapons Permit Eligibility**
An applicant for a Concealed Weapons Permit shall meet all requirements under A.R.S. § 13-3112(E) and (N), and not currently be a prohibited possessor under state or federal law.

**Historical Note**
New Section made by final rulemaking at 10 A.A.R. 4752, effective January 1, 2005 (Supp. 04-4). Amended by final rulemaking at 13 A.A.R. 550, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 14 A.A.R. 4658, effective January 31, 2009 (Supp. 08-4). Amended by final expedited rulemaking at 27 A.A.R. 2524 (October 29, 2021), with an immediate effective date of October 8, 2021 (Supp. 21-4).

**R13-9-202. Application for a Concealed Weapons Permit**
To obtain a Concealed Weapons Permit, an applicant who is eligible under R13-9-201 shall:

1. Submit to the Department an original application, using a form available from the Department, that includes the following information:
   a. Full legal name;
   b. County of residence and residential address, including zip code, or descriptive location of residence if an address is not assigned;
   c. Mailing address if different from residential address;
   d. Social Security number (optional);
   e. Contact telephone numbers;
   f. Descriptive information about the applicant including race, gender, height, weight, eye and hair colors, and date and place of birth;
   g. A statement of whether the applicant:
      i. Is a citizen of the United States;
      ii. Was born outside of the United States or one of its territories;
      iii. Has satisfactorily completed the firearms-safety training program;
      iv. Is currently under indictment for a felony offense;
      v. Has ever been convicted of a felony offense, and if so, whether the conviction was expunged, set aside, or vacated, or whether the applicant's civil rights were restored;
      vi. Is currently under indictment for a misdemeanor domestic violence offense;
      vii. Has ever been convicted for a misdemeanor domestic violence offense and if so, whether the conviction was expunged, set aside, or vacated;
      viii. Has been discharged from the United States Armed Forces under dishonorable conditions;
      ix. Suffers from a mental illness and has ever been adjudicated mentally incompetent or committed to a mental institution by court order; and
   h. The applicant's dated signature attesting that the information provided in the application is true to the best of the applicant's knowledge.
2. In addition to the application form required under subsection (1), an applicant shall:
   a. Submit adequate documentation under A.R.S. § 31-3112(E)(6)(a) through (d) or (N)(1) through (8); or
   b. Submit a copy of one of the following if born outside the United States or one of its territories or if not a citizen of the United States:
      i. Certificate of naturalization,
      ii. Both the front and back of a permanent resident alien card, USCIS Form I-94, or other federally

issued document authorizing the applicant to be in the United States,
iii. Record of birth abroad to an American citizen,
iv. Record of birth to Armed Service personnel, or
v. Passport issued by the United States;
c. Submit two full sets of classifiable fingerprints; and
d. Submit the fees required under R13-9-102(A) and (B).

**Historical Note**
New Section made by final rulemaking at 10 A.A.R. 4752, effective January 1, 2005 (Supp. 04-4). Amended by final rulemaking at 13 A.A.R. 550, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 14 A.A.R. 4658, effective January 31, 2009 (Supp. 08-4). Amended by final expedited rulemaking at 27 A.A.R. 2524 (October 29, 2021), with an immediate effective date of October 8, 2021 (Supp. 21-4).

**R13-9-203. Issuance of a Concealed Weapons Permit**

**A.** If an applicant meets the requirements of A.R.S. § 13-3112 and this Chapter and is not currently a prohibited possessor under state or federal law, the Department shall issue to the applicant a Concealed Weapons Permit containing:
1. The permit holder's legal name, as shown on the application;
2. The permit holder's date of birth;
3. The permit holder's physical description, including race, gender, height, weight, and hair and eye colors;
4. A permit number;
5. The dates of issuance and expiration; and
6. The title of the permit, "State of Arizona Concealed Weapons Permit."

**B.** The Department shall mail the permit to the residential or mailing address shown on the application.

**Historical Note**
New Section made by final rulemaking at 10 A.A.R. 4752, effective January 1, 2005 (Supp. 04-4). Amended by final rulemaking at 13 A.A.R. 550, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 14 A.A.R. 4658, effective January 31, 2009 (Supp. 08-4).

**R13-9-204. Renewal of Concealed Weapons Permit**

**A.** A Concealed Weapons Permit expires five years after it is issued. If a Concealed Weapons Permit expires, the former permit holder shall not unlawfully carry a concealed weapon until the former permit holder applies for and is issued a new Concealed Weapons Permit.

**B.** To renew a Concealed Weapons Permit, the permit holder shall, no more than 90 days before or 60 days after the date of expiration:
1. Submit to the Department the application required under R13-9-202(1);
2. Submit the fee required under R13-9-102(A);
3. If not a citizen of the United States, submit a copy of the front and back of the federally issued document that authorizes the permit holder to be in the United States; and

**C.** The permit holder shall be in compliance with A.R.S. § 31-3112(E).

**D.** If a former permit holder fails to comply with subsection (B), the former permit holder may obtain a new Concealed Weapons Permit only by complying with all provisions of R13-9-202.

**E.** If a permit holder is a member of the United States armed forces, Arizona national guard, or reserves of any military establishment of the United States and is on federal active duty and deployed overseas at the time the permit holder's Concealed Weapons Permit expires, the permit holder may renew the permit by complying with subsection (B) within 90 days after the end of the overseas deployment. To renew a permit under this subsection, the permit holder shall include evidence of the deployment with the renewal application.

**Historical Note**
New Section made by final rulemaking at 10 A.A.R. 4752, effective January 1, 2005 (Supp. 04-4). Amended by final rulemaking at 13 A.A.R. 550, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 14 A.A.R. 4658, effective January 31, 2009 (Supp. 08-4). Amended by final expedited rulemaking at 27 A.A.R. 2524 (October 29, 2021), with an immediate effective date of October 8, 2021 (Supp. 21-4).

**R13-9-205. Permit Holder Responsibilities**

**A.** Upon request of any peace officer, a permit holder who is in actual possession of a concealed weapon shall present the permit to the peace officer for inspection. If the permit does not include a photograph of the permit holder, the permit holder shall also present one of the following types of official photographic identification:
1. Driver license issued by any state,
2. Military identification card,
3. Identification license issued under A.R.S. § 28-3165, or
4. Passport.

**B.** A permit holder shall not deface, alter, mutilate, reproduce, lend, transfer, or sell a permit.

**C.** To ensure timely communication from the Department, a permit holder shall provide notice to the Department within 10 days after a change of address.

**D.** A permit holder shall inform the Department by telephone within 72 hours if the permit holder is arrested or indicted for an offense that would make the permit holder unqualified under A.R.S. § 13-3112 or if the permit holder becomes a prohibited possessor.

**Historical Note**
New Section made by final rulemaking at 10 A.A.R. 4752, effective January 1, 2005 (Supp. 04-4). Amended by final rulemaking at 13 A.A.R. 550, effective April 7, 2007 (Supp. 07-1).

**R13-9-206. Lost, Stolen, or Damaged Concealed Weapons Permit**

**A.** A permit holder whose Concealed Weapons Permit is lost, stolen, or damaged shall notify the Department in writing within 10 days of determining that the permit is lost, stolen, or damaged. When advised of a lost, stolen, or damaged permit, the Department shall invalidate the permit. The permit holder shall not carry a concealed weapon until the Department issues a replacement permit.

**B.** The Department shall issue a replacement permit to a permit holder who:
1. Submits a written request;
2. Submits the fee specified in R13-9-102; and
3. Returns the permit if it is damaged.

**C.** The Department shall ensure that the replacement permit has the same expiration date as the lost, stolen, or damaged permit.

**Historical Note**
New Section made by final rulemaking at 10 A.A.R. 4752, effective January 1, 2005 (Supp. 04-4). Amended by final rulemaking at 13 A.A.R. 550, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 14 A.A.R. 4658, effective January 31, 2009 (Supp. 08-4).

**R13-9-207. Repealed**

**Historical Note**
New Section made by final rulemaking at 10 A.A.R. 4752, effective January 1, 2005 (Supp. 04-4). Section repealed by final rulemaking at 13 A.A.R. 550, effective April 7, 2007 (Supp. 07-1).

**R13-9-208. Change in Name of Permit Holder**

**A.** A permit holder whose name is legally changed shall provide written notice to the Department and request a revised Concealed Weapons Permit within 10 days of the name change. The permit holder shall ensure that the written request for a revised Concealed Weapons Permit:
1. Contains both the previous and new names,
2. Is accompanied by a copy of the court document or marriage certificate authorizing the name change, and
3. Includes the fee specified in R13-9-102.

**B.** Within 15 working days after receipt of a request for a revised permit, the Department shall mail the revised permit to the permit holder.

**C.** The Department shall ensure that a revised permit has the same expiration date as the previous permit.

**D.** Upon receipt of a revised permit, the permit holder shall return the previous permit to the Department.

**Historical Note**
New Section made by final rulemaking at 10 A.A.R. 4752, effective January 1, 2005 (Supp. 04-4). Amended by final rulemaking at 13 A.A.R. 550, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 14 A.A.R. 4658, effective January 31, 2009 (Supp. 08-4).

## ARTICLE 3. FIREARMS-SAFETY TRAINING: ORGANIZATIONS AND INSTRUCTORS

**R13-9-301. Repealed**

**Historical Note**
New Section made by final rulemaking at 10 A.A.R. 4752, effective January 1, 2005 (Supp. 04-4). Section repealed by final rulemaking at 13 A.A.R. 550, effective April 7, 2007 (Supp. 07-1).

**R13-9-302. Expired**

**Historical Note**
New Section made by final rulemaking at 10 A.A.R. 4752, effective January 1, 2005 (Supp. 04-4). Amended by final rulemaking at 13 A.A.R. 550, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 14 A.A.R. 4658, effective January 31, 2009 (Supp. 08-4). Section expired under A.R.S. § 41-1056(J) at 21 A.A.R. 795, effective March 27, 2015; expired Section removed in Supp. 17-4.

**R13-9-303. Repealed**

**Historical Note**
New Section made by final rulemaking at 10 A.A.R. 4752, effective January 1, 2005 (Supp. 04-4). Section repealed by final rulemaking at 13 A.A.R. 550, effective April 7, 2007 (Supp. 07-1).

**R13-9-304. Repealed**

**Historical Note**
New Section made by final rulemaking at 10 A.A.R. 4752, effective January 1, 2005 (Supp. 04-4). Section repealed by final rulemaking at 13 A.A.R. 550, effective April 7, 2007 (Supp. 07-1).

**R13-9-305. Expired**

**Historical Note**
New Section made by final rulemaking at 10 A.A.R. 4752, effective January 1, 2005 (Supp. 04-4). Amended by final rulemaking at 13 A.A.R. 550, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 14 A.A.R 4658, effective January 31, 2009 (Supp. 08-4). Section expired under A.R.S. § 41-1056(J) at 21 A.A.R. 795, effective March 27, 2015 (Supp. 15-2).

**R13-9-306. Repealed**

**Historical Note**
New Section made by final rulemaking at 10 A.A.R. 4752, effective January 1, 2005 (Supp. 04-4). Section repealed by final rulemaking at 13 A.A.R. 550, effective April 7, 2007 (Supp. 07-1).

**R13-9-307. Expired**

**Historical Note**
New Section made by final rulemaking at 10 A.A.R. 4752, effective January 1, 2005 (Supp. 04-4). Amended by final rulemaking at 13 A.A.R. 550, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 14 A.A.R 4658, effective January 31, 2009 (Supp. 08-4). Section expired under A.R.S. § 41-1056(J) at 21 A.A.R. 795, effective March 27, 2015 (Supp. 15-2).

**R13-9-308. Expired**

**Historical Note**
New Section made by final rulemaking at 10 A.A.R. 4752, effective January 1, 2005 (Supp. 04-4). Amended by final rulemaking at 13 A.A.R. 550, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 14 A.A.R 4658, effective January 31, 2009 (Supp. 08-4). Section expired under A.R.S. § 41-1056(J) at 21 A.A.R. 795, effective March 27, 2015 (Supp. 15-2).

**R13-9-309. Expired**

**Historical Note**
New Section made by final rulemaking at 10 A.A.R. 4752, effective January 1, 2005 (Supp. 04-4). Amended by final rulemaking at 13 A.A.R. 550, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 14 A.A.R 4658, effective January 31, 2009 (Supp. 08-4). Section expired under A.R.S. § 41-1056(J) at 21 A.A.R. 795, effective March 27, 2015 (Supp. 15-2).

**R13-9-310. Expired**

**Historical Note**
New Section made by final rulemaking at 13 A.A.R. 550, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 14 A.A.R 4658, effective January 31, 2009 (Supp. 08-4). Section expired under A.R.S. § 41-1056(J) at 21 A.A.R. 795, effective March 27, 2015 (Supp. 15-2).

## ARTICLE 4. CERTIFICATE OF FIREARMS PROFICIENCY

**R13-9-401. Certificate of Firearms Proficiency Eligibility**

To be eligible to receive a LEOSA-authorized certificate of firearms proficiency from the Department, an individual shall:
1. Be a resident of Arizona; and
2. Be a qualified retired law enforcement officer. An individual is a qualified retired law enforcement officer if the individual:
   a. Is retired in good standing from service with a public agency as a law enforcement officer for a reason other than mental instability;

b. While in service as a law enforcement officer, was authorized by law to engage in or supervise the prevention, detection, investigation, prosecution, or incarceration of a person for any violation of law, and had statutory powers of arrest;
c. Was regularly employed as a law enforcement officer for a total of 15 years or more or, if employed as a law enforcement officer for fewer than 15 years, retired after any applicable probationary period of service due to a service-connected disability, as determined by the agency;
d. Has a non-forfeitable right to benefits under the retirement plan of the agency;
e. Meets the training and qualification standards of an active-duty law enforcement officer in Arizona;
f. Is not under the influence of alcohol or another intoxicating or hallucinatory drug or substance; and
g. Is not prohibited by federal law from possessing a firearm.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 4752, effective January 1, 2005 (Supp. 04-4). Former R13-9-401 renumbered to R13-9-601; new R13-9-401 made by final rulemaking at 13 A.A.R. 550, effective April 7, 2007 (Supp. 07-1).

**R13-9-402. Application for a Certificate of Firearms Proficiency**

To obtain a certificate of firearms proficiency, an applicant who is eligible under R13-9-401 shall submit:

1. An original application, using a form available from the Department, which provides the following information about the applicant:
   a. Full legal name;
   b. Residential address or descriptive location of residence if an address is not assigned;
   c. Mailing address if different from the residential address;
   d. Social Security number (optional);
   e. Telephone number;
   f. E-mail address;
   g. Descriptive information including race, gender, height and weight, eye and hair colors, and date and place of birth;
   h. Name and address of the law enforcement agency from which the applicant is retired; and
   i. The applicant's dated signature affirming that the information provided is true and accurate;
2. Documentation that the applicant met the requirement under R13-9-401(2)(e) within the last 12 months;
3. A copy of photographic identification from a law enforcement agency indicating that the applicant is retired from the agency;
4. A letter from the law enforcement agency from which the applicant is retired that:
   a. Is on agency letterhead,
   b. Includes the applicant's name, rank, employee or badge number, dates of employment, and retired status; and
   c. Provides the name and telephone number of an individual within the agency who can verify the information provided; and
5. The fee required under R13-9-102.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 4752, effective January 1, 2005 (Supp. 04-4). Former R13-9-402 renumbered to R13-9-603; new R13-9-402 made by final rulemaking at 13 A.A.R. 550, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 14 A.A.R 4658, effective January 31, 2009 (Supp. 08-4).

**R13-9-403. Issuance of a Certificate of Firearms Proficiency**

The Department shall issue a certificate of firearms proficiency to an individual who is eligible under R13-9-401 and submits the information and documents required under R13-9-402. The Department shall ensure that the certificate of firearms proficiency contains:

1. The following information about the certificate holder:
   a. Legal name as shown on the application submitted under R13-9-402;
   b. Birth date;
   c. Physical description including race, gender, height and weight, and eye and hair colors; and
   d. Name of the law enforcement agency from which retired;
2. The statement, "Retired Law Enforcement Officer," following the certificate holder's name;
3. A certificate number;
4. The date of qualification;
5. The title "Retired Law Enforcement Officer's Certificate of Firearms Proficiency"; and
6. A brief statement on the reverse side identifying the certificate and its purpose.

**Historical Note**

New Section made by final rulemaking at 13 A.A.R. 550, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 14 A.A.R 4658, effective January 31, 2009 (Supp. 08-4).

**R13-9-404. Renewal of a Certificate of Firearms Proficiency**

**A.** A certificate of firearms proficiency expires one year after the date of qualification.
**B.** To renew a certificate of firearms proficiency before it expires, the certificate holder shall comply with the requirements in R13-9-402(1), (2), and (5).
**C.** If a certificate of firearms proficiency expires, the former certificate holder may obtain a new certificate only by complying with all of the requirements in R13-9-402.

**Historical Note**

New Section made by final rulemaking at 13 A.A.R. 550, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 14 A.A.R 4658, effective January 31, 2009 (Supp. 08-4).

**R13-9-405. Certificate Holder Responsibilities**

**A.** A certificate holder who is in actual possession of a concealed weapon shall also be in possession of:
   1. Photographic identification issued by a law enforcement agency indicating that the certificate holder is a retired law enforcement officer; and
   2. The certificate of firearms proficiency issued under R13-9-403.
**B.** On request by any peace officer, a certificate holder who is in actual possession of a concealed weapon shall present the documents listed in subsection (A).

**Historical Note**

New Section made by final rulemaking at 13 A.A.R. 550, effective April 7, 2007 (Supp. 07-1).

## ARTICLE 5. LEOSA-RECOGNIZED INSTRUCTORS

**R13-9-501. Application for Recognition as a LEOSA Instructor**

**A.** To be recognized as a LEOSA instructor, an individual shall:

1. Be certified as a firearms instructor by POST; and
2. Submit an application, available from the Department, which provides the following information about the applicant:
   a. Name,
   b. Mailing address,
   c. Telephone number,
   d. E-mail address,
   e. Social Security number (optional), and
   f. Name of the law enforcement agency with which the applicant is or was employed.

**B.** After receiving the application required under subsection (A)(2) and confirming that the applicant is certified by POST as a firearms instructor, the Department shall recognize the applicant as a LEOSA instructor and assign a LEOSA-instructor number.

**Historical Note**

New Section made by final rulemaking at 13 A.A.R. 550, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 14 A.A.R 4658, effective January 31, 2009 (Supp. 08-4).

**R13-9-502. LEOSA Instructor Responsibilities**

An individual recognized by the Department as a LEOSA instructor shall:

1. Comply with all POST firearms-certification rules and requirements when performing firearms-qualification services for a retired law enforcement officer;
2. Complete the documentation required under R13-9-402(2) for a retired law enforcement officer who successfully completes the firearms-qualification requirement;
3. Maintain for five years the following information about a retired law enforcement officer to whom firearms-qualification services are provided:
   a. Name and age of the retired law enforcement officer at the time firearms-qualification services are provided;
   b. Date and number of hours that the retired law enforcement officer received firearms-qualification services;
   c. Physical location at which firearms-qualification services were provided;
   d. Name of LEOSA instructor and LEOSA-instructor number; and
   e. Whether the retired law enforcement officer passed, failed, or withdrew from the firearms qualification; and
4. Provide notice to the Department within 10 days:
   a. Of a change in mailing address or telephone number;
   b. Of a change in the information regarding the LEOSA instructor posted on the Department's web site;
   c. If the individual no longer wants to be recognized as a LEOSA instructor; and
   d. If the individual's POST certification as a firearms instructor is suspended or revoked.

**Historical Note**

New Section made by final rulemaking at 13 A.A.R. 550, effective April 7, 2007 (Supp. 07-1).

## ARTICLE 6. HEARINGS AND DISCIPLINARY PROCEEDINGS

**R13-9-601. Suspension and Revocation**

**A.** If a permit holder is arrested or indicted for an offense that would disqualify the permit holder under A.R.S. § 13-3112 or if the permit holder is a prohibited possessor, the Department shall immediately suspend and seize the permit. The Department shall restore the permit under the conditions specified in A.R.S. § 13-3112(C).

**B.** If a permit holder is convicted of an offense that disqualifies the permit holder under A.R.S. § 13-3112, the Department shall revoke the permit. The Department shall restore the permit under the conditions specified in A.R.S. § 13-3112(C).

**C.** After providing notice and an opportunity for hearing, the Department shall suspend or revoke a permit or Department authorization if the Department determines that the permit holder:

1. Failed to maintain all conditions specified in A.R.S. § 13-3112 and this Chapter; or
2. Provided false, incomplete, or misleading information to the Department.

**D.** If the Department revokes a permit or authorization, the affected individual shall not apply for another permit or authorization for at least two years from the date of revocation.

**E.** If the Department determines that emergency action is required to suspend a permit or Department authorization, the Department shall send a notice of summary suspension by certified mail to the last known address of the individual. The Department shall ensure that the notice includes all requirements under A.R.S. § 41-1092 et seq.

**F.** Upon receipt of a notice of a summary suspension or final administrative decision suspending or revoking a permit or authorization, the permit holder shall not unlawfully carry a concealed weapon and shall return the permit to the Department within five business days.

**G.** The Department shall require that a permit be surrendered or seize a permit when required to do so under law.

**Historical Note**

Section R13-9-601 renumbered from R13-9-401 and amended by final rulemaking at 13 A.A.R. 550, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 14 A.A.R 4658, effective January 31, 2009 (Supp. 08-4). Amended by final expedited rulemaking at 27 A.A.R. 2524 (October 29, 2021), with an immediate effective date of October 8, 2021 (Supp. 21-4).

**R13-9-602. Hearing Procedures**

The Department shall conduct all hearings according to the procedures in A.R.S. Title 41, Chapter 6, Article 10 and the rules issued by the Office of Administrative Hearings.

**Historical Note**

New Section made by final rulemaking at 13 A.A.R. 550, effective April 7, 2007 (Supp. 07-1).

**R13-9-603. 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 issued by the Office of Administrative Hearings.

**B.** Within 30 days after the Department enters a final administrative decision, the affected individual may, but is not required to, file a motion for rehearing or review of the decision.

**C.** A party may amend a motion for rehearing or review at any time before the Department rules on the motion.

**D.** 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 by the Department, its staff, or an administrative law judge;
3. Accident or surprise that could not have been prevented by ordinary prudence;

4. Newly discovered 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; or
7. The findings of fact or decision is not justified by the evidence or is contrary to law.

**E.** The Department may affirm or modify a decision or grant a rehearing or review to all or some of the parties on all or some of the issues for any of the reasons in subsection (D). An order modifying a decision or granting a rehearing or review shall specify with particularity the grounds for the order. If a rehearing or review is granted, the rehearing or review shall cover only the matters specified in the order.

**F.** Not later than 15 days after the date of a decision, and after giving the parties notice and an opportunity to be heard, the Department may, on its own initiative, order a rehearing or review of its decision for any reason it might have granted a rehearing or review 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. An order granting a rehearing or review shall specify the grounds on which the rehearing or review is granted.

**G.** When a motion for rehearing or review is based upon affidavits, they shall be served with the motion. An opposing party may serve opposing affidavits within 15 days after service of the motion. This period may be extended by the Department for a maximum of 20 days for good cause as described in subsection (H) or upon written stipulation of the parties. Reply affidavits may be permitted.

**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 a ruling on the motion will:

1. Further administrative convenience, expedition, or economy; or
2. Avoid undue prejudice to any party.

**I.** If, in a particular decision, the Department makes a specific finding that the immediate effectiveness of the decision is necessary for preservation of the public health, safety, or welfare, the decision may be issued as a final decision without an opportunity for rehearing or review. If an application for judicial review of the decision is made, it shall be made under A.R.S. § 12-901 et seq.

**Historical Note**

Section R13-9-603 renumbered from R13-9-402. Section repealed; new Section made by final rulemaking at 13 A.A.R. 550, effective April 7, 2007 (Supp. 07-1). Amended by final expedited rulemaking at 27 A.A.R. 2524 (October 29, 2021), with an immediate effective date of October 8, 2021 (Supp. 21-4).

# 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.

# 13-3112. Concealed weapons; qualification; application; permit to carry; civil penalty; report; applicability; annual report

A. The department of public safety shall issue a permit to carry a concealed weapon to a person who is qualified under this section. The person shall carry the permit at all times when the person is in actual possession of the concealed weapon and is required by section 4-229 or 4-244 to carry the permit. If the person is in actual possession of the concealed weapon and is required by section 4-229 or 4-244 to carry the permit, the person shall present the permit for inspection to any law enforcement officer on request. The department of public safety shall prioritize applications of in-state residents when issuing a permit to carry a concealed weapon.

B. The permit of a person who is arrested or indicted for an offense that would make the person unqualified under section 13-3101, subsection A, paragraph 7 or this section shall be immediately suspended and seized. The permit of a person who becomes unqualified on conviction of that offense shall be revoked. The permit shall be restored on presentation of documentation from the court if the permittee is found not guilty or the charges are dismissed. The permit shall be restored on presentation of documentation from the county attorney that the charges against the permittee were dropped or dismissed.

C. A permittee who carries a concealed weapon, who is required by section 4-229 or 4-244 to carry a permit and who fails to present the permit for inspection on the request of a law enforcement officer commits a violation of this subsection and is subject to a civil penalty of not more than $300. The department of public safety shall be notified of all violations of this subsection and shall immediately suspend the permit. A permittee shall not be convicted of a violation of this subsection if the permittee produces to the court a legible permit that is issued to the permittee and that was valid at the time the permittee failed to present the permit for inspection.

D. A law enforcement officer shall not confiscate or forfeit a weapon that is otherwise lawfully possessed by a permittee whose permit is suspended pursuant to subsection C of this section, except that a law enforcement officer may take temporary custody of a firearm during an investigatory stop of the permittee.

E. The department of public safety shall issue a permit to an applicant who meets all of the following conditions:

1. Is a resident of this state or a United States citizen.

2. Is twenty-one years of age or older or is at least nineteen years of age and provides evidence of current military service or proof of honorable discharge or general discharge under honorable conditions from the United States armed forces, the United States armed forces reserve or a state national guard.

3. Is not under indictment for and has not been convicted in any jurisdiction of a felony unless that conviction has been expunged, set aside or vacated or the applicant's rights have been restored and the applicant is currently not a prohibited possessor under state or federal law.

4. Does not suffer from mental illness and has not been adjudicated mentally incompetent or committed to a mental institution.

5. Is not unlawfully present in the United States.

6. Has ever demonstrated competence with a firearm as prescribed by subsection N of this section and provides adequate documentation that the person has satisfactorily completed a training program or demonstrated competence with a firearm in any state or political subdivision in the United States. For the purposes of this paragraph, "adequate documentation" means:

(a) A current or expired permit issued by the department of public safety pursuant to this section.

(b) An original or copy of a certificate, card or document that shows the applicant has ever completed any course or class prescribed by subsection N of this section or an affidavit from the instructor, school, club or organization that conducted or taught the course or class attesting to the applicant's completion of the course or class.

(c) An original or a copy of a United States department of defense form 214 (DD-214) indicating an honorable discharge or general discharge under honorable conditions, a certificate of completion of basic training or any other document demonstrating proof of the applicant's current or former service in the United States armed forces as prescribed by subsection N, paragraph 5 of this section.

(d) An original or a copy of a concealed weapon, firearm or handgun permit or a license as prescribed by subsection N, paragraph 6 of this section.

F. The application shall be completed on a form prescribed by the department of public safety. The form shall not require the applicant to disclose the type of firearm for which a permit is sought. The applicant shall attest under penalty of perjury that all of the statements made by the applicant are true, that the applicant has been furnished a copy of this chapter and chapter 4 of this title and that the applicant is knowledgeable about the provisions contained in those chapters. The applicant shall submit the application to the department with any documentation prescribed by subsection E of this section, two sets of fingerprints and a reasonable fee determined by the director of the department.

G. On receipt of a concealed weapon permit application, the department of public safety shall conduct a check of the applicant's criminal history record pursuant to section 41-1750. The department of public safety may exchange fingerprint card information with the federal bureau of investigation for federal criminal history record checks.

H. The department of public safety shall complete all of the required qualification checks within sixty days after receiving the application and shall issue a permit within fifteen working days after completing the qualification checks if the applicant meets all of the conditions specified in subsection E of this section. If a permit is denied, the department of public safety shall notify the applicant in writing within fifteen working days after completing all of the required qualification checks and shall state the reasons why the application was denied. On receipt of the notification of the denial, the applicant has twenty days to submit any additional documentation to the department. On receipt of the additional documentation, the department shall reconsider its decision and inform the applicant within twenty days of the result of the reconsideration. If denied, the applicant shall be informed that the applicant may request a hearing pursuant to title 41, chapter 6, article 10. For the purposes of this subsection, "receiving the application" means the first day that the department has physical control of the application and that is presumed to be on the date of delivery as evidenced by proof of delivery by the United States postal service or a written receipt, which shall be provided by the department on request of the applicant.

I. On issuance, a permit is valid for five years, except a permit that is held by a member of the United States armed forces, including a member of the Arizona national guard or a member of the reserves of any military establishment of the United States, who is on federal active duty and who is deployed overseas shall be extended until ninety days after the end of the member's overseas deployment.

J. The department of public safety shall maintain a computerized permit record system that is accessible to criminal justice agencies for the purpose of confirming the permit status of any person who is contacted by a law enforcement officer and who claims to hold a valid permit issued by this state. This information and any other records that are maintained regarding applicants, permit holders or instructors shall not be available to any other person or entity except on an order from a state or federal court. A criminal justice agency shall not use the computerized permit record system to conduct inquiries on whether a person is a concealed weapons permit holder unless the criminal justice agency has reasonable suspicion to believe the person is carrying a concealed weapon and the person is subject to a lawful criminal investigation, arrest, detention or investigatory stop.

K. A permit issued pursuant to this section is renewable every five years. At least sixty days before the expiration date of a permit, the department of public safety shall send a renewal reminder notice and renewal application form to the permit holder. Before a permit may be renewed, a criminal history records check shall be conducted pursuant to section 41-1750 within sixty days after receipt of the application for renewal. For the purposes of permit renewal, the permit holder is not required to submit additional fingerprints.

L. Applications for renewal shall be accompanied by a fee determined by the director of the department of public safety.

M. The department of public safety shall suspend or revoke a permit issued under this section if the permit holder becomes ineligible pursuant to subsection E of this section. The department of public safety shall notify the permit holder in writing within fifteen working days after the revocation or suspension and shall state the reasons for the revocation or suspension.

N. An applicant shall demonstrate competence with a firearm through any of the following:

1. Completion of any firearms safety or training course or class that is available to the general public, that is offered by a law enforcement agency, a junior college, a college or a private or public institution, academy, organization or firearms training school and that is approved by the department of public safety or that uses instructors who are certified by the national rifle association.

2. Completion of any hunter education or hunter safety course approved by the Arizona game and fish department or a similar agency of another state.

3. Completion of any national rifle association firearms safety or training course.

4. Completion of any law enforcement firearms safety or training course or class that is offered for security guards, investigators, special deputies or other divisions or subdivisions of law enforcement or security enforcement and that is approved by the department of public safety.

5. Evidence of current military service or proof of honorable discharge or general discharge under honorable conditions from the United States armed forces.

6. A valid current or expired concealed weapon, firearm or handgun permit or license that is issued by another state or a political subdivision of another state and that has a training or testing requirement for initial issuance.

7. Completion of any governmental police agency firearms training course and qualification to carry a firearm in the course of normal police duties.

8. Completion of any other firearms safety or training course or class that is conducted by a department of public safety approved or national rifle association certified firearms instructor.

O. The department of public safety shall maintain information comparing the number of permits requested, the number of permits issued and the number of permits denied. The department shall annually report this information electronically to the governor and the legislature.

P. The director of the department of public safety shall adopt rules for the purpose of implementing and administering this section including fees relating to permits that are issued pursuant to this section.

Q. This state and any political subdivision of this state shall recognize a concealed weapon, firearm or handgun permit or license that is issued by another state or a political subdivision of another state if both:

1. The permit or license is recognized as valid in the issuing state.

2. The permit or license holder is all of the following:

(a) Legally present in this state.

(b) Not legally prohibited from possessing a firearm in this state.

R. For the purpose of establishing mutual permit or license recognition with other states, the department of public safety shall enter into a written agreement if another state requires a written agreement. The department of

public safety shall submit an electronic report to the governor and the legislature each year that includes any changes that were made in the previous year to a written agreement with another state.

S. Notwithstanding the provisions of this section, a person with a concealed weapons permit from another state may not carry a concealed weapon in this state if the person is under twenty-one years of age or is under indictment for, or has been convicted of, a felony offense in any jurisdiction, unless that conviction is expunged, set aside or vacated or the person's rights have been restored and the person is currently not a prohibited possessor under state or federal law.

T. The department of public safety may issue certificates of firearms proficiency according to the Arizona peace officer standards and training board firearms qualification for the purposes of implementing the law enforcement officers safety act of 2004 (P.L. 108-277; 118 Stat. 865; 18 United States Code sections 926B and 926C). A law enforcement or prosecutorial agency shall issue to a qualified retired law enforcement officer who has honorably retired a photographic identification that states that the officer has honorably retired from the agency. A person who was a municipal, county or state prosecutor is deemed to meet the qualifications of 18 United States Code section 926C(c)(2). The chief law enforcement officer shall determine whether an officer has honorably retired and the determination is not subject to review. A law enforcement or prosecutorial agency has no obligation to revoke, alter or modify the honorable discharge photographic identification based on conduct that the agency becomes aware of or that occurs after the officer has separated from the agency. For the purposes of this subsection, "qualified retired law enforcement officer" has the same meaning prescribed in 18 United States Code section 926C.

U. The initial and renewal application fees collected pursuant to this section shall be deposited, pursuant to sections 35-146 and 35-147, in the concealed weapons permit fund established by section 41-1722.

V. On or before July 31 of each year, the department of public safety shall report to the joint legislative budget committee on the number of concealed weapons permits issued in the prior fiscal year. The report shall also include the number of outstanding concealed weapons permit applications that have not been issued and the average turnaround time to issue a concealed weapons permit.

**DEPARTMENT OF PUBLIC SAFETY**
Title 13, Chapter 2

# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

---

**MEETING DATE: April 1, 2025**

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

**FROM:** Council Staff

**DATE:** March 12, 2025

**SUBJECT:** **DEPARTMENT OF PUBLIC SAFETY**
Title 13, Chapter 2

---

**Summary**

This Five-Year Review Report (5YRR) from the Department of Public Safety (Department) relates to twenty (20) rules in Title 13, Chapter 2 regarding Private Investigators. Specifically, the rules address the following Articles:

- Article 1 - General Provisions
- Article 2 - Agency Licenses
- Article 3 - Registration Certificates
- Article 4 - Regulation

In the prior 5YRR for these rules, which was approved by the Council in April 2020, the Department proposed to amend twelve (12) rules to improve their clarity, conciseness, understandability, consistency, effectiveness, and enforcement. The Department indicates it completed its prior proposed course of action through a rulemaking that became effective in August 2021.

**Proposed Action**

In the current report, the Department indicates the rules are not clear, concise, understandable, consistent, effective, or enforced as written as outlined in more detail below. The Department indicates it has not reviewed rule R13-2-303 with the intention that it expires pursuant to A.R.S. § 41-1056(J). Specifically, the Department indicates the rule clarifies a registration certificate expires at the same time as the agency license with which the registration is associated and must be renewed as a part of the agency license renewal. The Department states this rule is duplicative and conflicts with statute and other rules and provides no additional clarity or purpose.

The Department intends to submit changes to these rules before December 2025. However, the Department indicates legislative changes are being proposed which would substantially affect renewal timeframes and require rule adjustments. The Department states it also intends to seek relief for rising operating and technology expenses by raising fees, and potential legislation will substantially affect the fee adjustment. Third, the Department indicates it intends to align private investigator license processes and security guard license processes as much as possible since both are processed by the same unit and require similar handling. Additionally, the Department indicates specifics in the rules will need to be adjusted for technological advances; for example, color photographs are no longer required. The Department states, given the legislative dependent timeline and the co-dependence on security guard legislation, the Department intends to delay rule-making until after the conclusion of the FY25 legislative session in order to prevent having to adjust and implement rules, and then submit for additional adjustment within the same calendar year.

**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 says the rules provide procedural instructions to administer private investigator licensing and are used by the Department personnel and private investigator agency license and employee applicants. The Department states that almost all agencies in the private investigations industry are small businesses. The Department indicates that statute sets the mandate for the minimal record-keeping; the rules provide guidelines for applicants to assist them in complying with statute, enact minimal restrictions, and result in minimal financial costs to small businesses. The Department says making any planned changes are intended for clarification on existing practices, such as clarifying definitions, and do not in themselves create an additional burden.

The Department states that pursuant to A.R.S. § 32-2407, the Department is required to set fees that cover the operational and equipment cost of the Private Investigator and Security Guard Licensing Unit (Licensing Unit). The Department also indicates that this places the

operational cost for the Licensing Unit on the consumers and not on the general public by not relying on general funds for full operations. However, the Department states that licensing fees established for the Licensing Unit have remained unchanged since 2005, causing the business unit to need to be subsidized from other funding sources for increased cost and technical improvements. The Department also states that the cost of compliance and investigation activities, also mandated by statute, is not supported through any other means other than the fees obtained from licenses.

The Department says it currently licenses 799 private investigator agencies (not including those in pending or renewal waiting status) and has issued registrations to 1,793 private investigator qualifying parties, associates, and employees. The Department states that last year, the Licensing Unit entered over 26,000 applications of all types.

**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 within the current scope of statutory regulation, the rules impose the least burden and cost to the regulated public. The Department indicates that all information requests for applications were reviewed in 2024 for necessity in meeting statutory requirements and expectations along with providing sufficient information upon which to make a licensing determination. The Department believes the rules provide the criteria for what the Department considers to be pertinent information in support of statutory requirements. The Department believes the information is minimal but necessary should an investigation be required under R13-2-404 and pursuant to statute. The Department says the regulatory rule follows the statutory requirement for business to keep pertinent information on all employees; this rule imposes no additional burden beyond statute but may be reviewed again before rule making for being duplicative with statute and therefore unnecessary should legislation not substantially change those requirements. In addition, the Department believes the procedures in place provide for an equitable denial and hearing process that protects both the Department and the person and is not able to identify any better alternatives. The Department does recognize that over time some of these rules became/are duplicative to statute where the statute is sufficiently specific to operate the program. The Department does intend to reduce rule language in the next rulemaking to eliminate all text and references from the rules that are duplicative to the statutes where the rule text provides no clarification or other purpose. The Department believes the public should first read the statute and then refer to the rule only for clarification/guidance.

**4. Has the agency received any written criticisms of the rules over the last five years?**

The Department indicates it has not received any written criticisms of the rules 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:

- **R13-2-105**
    - The process for evaluating an applicant for a license is inconsistent with the rule, and the timeframes are misleading as to what is actually accomplished. The administrative and substantive timeframes need clarifying as to what occurs in what timeframe, the timeframes re-written to provide a clear expectation of processing to the applicants, and a definition regarding "administrative completeness" added to 101.
- **R13-2-203**
    - When using similar language about an application being complete in this rule and in the rule discussing administrative review timeframes, the agency license issuance requirements may be confused with the agency license application requirements.

**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:

- **R13-2-104**
    - The rule text requires amendment to reduce duplication or conflict with existing statute text in A.R.S. §§ 32-2461, 2442 and 2451. Users should first refer to the statues and then refer to the rule for clarification of the statute.
- **R13-2-204**
    - The rule text requires amendment to reduce duplication or conflict with existing statute regarding timeframes at A.R.S. §§ 32-2442 and 2423.
- **R13-2-302**
    - The rule requires amendment to reduce duplication or conflict with A.R.S. § 32-2442(A)(6). Specifying information to be included with registration is duplicative and in some instances could be perceived as contrary to statute and other rules. The true purpose of this rule is to clarify the agency responsibility and how employees can register with multiple companies and the rule needs to be updated to reflect that.
- **R13-2-303**
    - The rule is intended to expire as it is duplicative and conflicting with A.R.S. § 32-2442 providing no additional clarity or purpose.

**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:

- **R13-2-101**
    - The current definitions are applicable, but the rule could benefit from additional definitions clarifying administrative and substantive timeframes.

- **R13-2-102**
    - This rule meets its objective in specifying fees. However, it could be improved by removing the fees for fingerprints and digital photographs of the licensee as the Department does not provide those services. The Department has no plans to provide photograph services and the staff is focused only on processing licenses. Licensees are responsible for obtaining and supplying the required photograph. In the event the Department would provide future fingerprint services, the service would be completed by a different section within the Department. That section would therefore need to establish its own fees. Overall, it is ineffective to have a price set for a service that does not currently exist.
    - The allowance for credit card transactions is needed.
    - The previous report stated: "The Department has changed its position and intends to continue offering fingerprints and photos as it is still requested by the public." To facilitate this service, the Department is exploring options for an automated kiosk to be placed in the lobby for public use. The Department ended up not offering those services over the last five years. The electronic fingerprint vendor for the online portal, Fieldprint, does photos along with the electronic fingerprints when an applicant does an online application. The Department does not have the ability to do photographs itself. The Department does not provide open fingerprint services and the very limited reprint services it does supply are completed by another section in the Department; and only for difficult previously rejected fingerprints.
- **R13-2-103**
    - The rule is partially effective. The rule provides information regarding how to obtain application forms, but this information can easily become outdated and require updates. It is also excessively wordy in explaining an application is needed and specifying each type.
- **R13-2-104**
    - The rule text requires amendment to reduce duplication or conflict with existing statute text. Users should first refer to the statues and then refer to the rule for clarification of the statute.
    - A.R.S. § 32-2461, 2442 and 2451 (duplicative and statute is more expansive than the rule).
- **R13-2-105**
    - The administrative and substantive timeframes as written are misleading and inconsistent with the requirements needed to evaluate the application. Since the purpose of the rule is to clarify timeframes, setting up an expectation inconsistent with current processing requirements does not accomplish this. A preliminary administrative review can begin on an application upon receipt, but the viability of the classifiable fingerprints is not determined until the fingerprints are submitted outside of the Licensing Unit and return as valid or rejected. An application cannot be evaluated for substantive review until all this information is received, therefore no application is "complete" upon receipt by the agency. The most the agency can do within the listed administrative timeframe is reject the application as insufficient on its face as missing required information, and then

submit the fingerprints to see if they are classifiable and valid. As written, this would signal the beginning of the substantive review timeframe, which cannot begin until fingerprint results are received, and fingerprint results are required for administrative completeness. Also, with current electronic procedures, an applicant can apply online and be fingerprinted later. This would appear that the agency "received" the application long before receiving the fingerprints.

- In addition, agency licenses are processed in multiple steps. Rule 203 gives a description of when an agency application has been processed, not when the application received is complete; the administrative and substantive timeframes listed in Rule 105 are not applicable to Rule 203 issuance due to the multiple steps involved, but the way it is written makes that unclear. A notice is sent once the application is evaluated, but other items must be submitted to move the application along in the process. The license fee and the application fee are separate, and the issuance of the license takes place after the application has been processed.
- As written, the administrative and substantive times are unrealistic and inconsistent with the review standards required under statute to determine if an applicant is eligible for a license. This rule needs to be extensively re-written to clarify timeframe definitions and set realistic timeframes and processing expectations. The rewrite of this rule may also be affected by legislation being proposed during the FY25 legislative session and will need to be clarified following the session to avoid successive rewrites.

- **R13-2-202**
  - Requirements have changed, and the rule needs to be updated. Color photographs are no longer required. The Department has no plans to provide photograph services, and the staff is focused on processing licenses. Licensees are responsible for obtaining and supplying the required photograph. In the event that the Department would provide fingerprint services, the fingerprints would be done by a different section within the Department and the fees for that would be set at that time. It is ineffective to have a price set for a service that does not currently exist.
- **R13-2-203**
  - Agency licenses are processed in multiple steps. Rule 203 gives a description of when an agency application has been processed, not when the application received is complete; the administrative and substantive timeframes listed in Rule 105 are not applicable to Rule 203 issuance due to the multiple steps involved, but the way it is written makes that unclear. A notice is sent once the application is evaluated, but other items must be submitted to move the application along in the process. The license fee and the application fee are separate, and the issuance of the license takes place after the application has been processed.
- **R13-2-204**
  - The rule text requires amendment to reduce duplication or conflict with existing statute regarding timeframes. A.R.S. § 32-2423 for paragraph B where the rule refers to another rule and not the statute and 2442 for paragraph C where a timeframe is not specified in the statute but would be heavily affected by

proposed legislative changes. The rule also does not contain any consequences and should be changed to contain them.

- **R13-2-205**
  - The rule requires amendment to reflect the requirements per A.R.S. § 32-2426.
- **R13-2-302**
  - The rule requires amendment to reduce duplication or conflict with statute. Specifying information to be included with registration is duplicative and in some instances could be perceived as contrary to statute and other rules. The true purpose of this rule is to clarify the agency responsibility and how employees can register with multiple companies and the rule needs to be updated to reflect that. A.R.S. § 32-2442 describes the basic requirements. This rule should clarify that, particularly A.R.S. § 32-2442.6. No regulatory authority has been found for paragraph F. The description of "writing across the top of an application" is no longer applicable given electronic applications. The relationship between agency and employee applications is being explored legislatively this session and may change.
- **R13-2-303**
  - This rule is intended to expire. The rule is duplicative and conflicts with statute and other rules and provides no additional clarity or purpose.

**8. <u>Has the agency analyzed the current enforcement status of the rules?</u>**

The Department indicates the rules are mostly enforced as written except for the following:

- **R13-2-105**
  - The administrative and substantive timeframes as written are confusing and inconsistent with the requirements needed to evaluate the application. A preliminary administrative review can begin on an application upon receipt, but the viability of the classifiable fingerprints is not determined until the fingerprints are submitted outside of the Licensing Unit and return as valid or rejected. An application cannot be evaluated for substantive review until all this information is received, therefore no application is "complete" upon receipt by the agency. The most the agency can do within the listed administrative timeframe is reject the application as insufficient on its face as missing required information, and then submit the fingerprints to see if they are classifiable and valid. As written, this would signal the beginning of the substantive review timeframe, which cannot begin until fingerprint results are received, and fingerprint results are required for administrative completeness. Also, with current electronic procedures, an applicant can submit an application online and be fingerprinted later. This would appear that the agency "received" the application long before receiving the fingerprints. As written, the administrative and substantive times are unrealistic and inconsistent with the review standards required under statute to determine if an applicant is eligible for a license. This rule needs to be extensively re-written to clarify timeframe definitions and set realistic timeframes and processing

expectations. The rewrite of this rule may also be affected by legislation being proposed during the FY25 legislative session and will need to be clarified following the session to avoid successive rewrites.

- **R13-2-202**
  - Requirements have changed, and the rule needs to be updated. Color photographs are no longer required.
- **R13-2-304**
  - Other methods of notifying the Department in writing are available. The rule needs to be updated.
- **R13-2-401**
  - The only purpose of this rule should be to ensure that the denial is properly communicated to the applicant in writing along with information on hearings and appeals. Statute only requires the notification be in writing, not by mail.

**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 is no corresponding federal law.

**10. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

Pursuant to A.R.S. § 41-1037(A), if an agency proposes an amendment to an existing rule that requires the issuance of a regulatory permit, license, or agency authorization, the agency shall use a general permit, as defined by A.R.S. § 41-1001(12), if the facilities, activities or practices in the class are substantially similar in nature unless certain exceptions apply.

A.R.S. § 41-1001(12) defines "general permit" to mean "a regulatory permit, license or agency authorization that is for facilities, activities or practices in a class that are substantially similar in nature and that is issued or granted by an agency to a qualified applicant to conduct identified operations or activities if the applicant meets the applicable requirements of the general permit, that requires less information than an individual or traditional permit, license or authorization and that does not require a public hearing."

The Department indicates, the issuance of a general permit is not applicable as there are specific statutory requirements for each license or certificate authorized by statute. Individuals receive a background check and verification of training including firearms training; therefore, a blanket general license cannot be issued for all employees. As such, the issuance of a general permit is not technically feasible or would not meet the applicable statutory requirements pursuant to A.R.S. § 41-1037(A)(3). Council staff believes the Department is in compliance with A.R.S. § 41-1037.

## 11. Conclusion

This 5YRR from the Department relates to twenty (20) rules in Title 13, Chapter 2 regarding Private Investigators. Specifically, the rules address the following Articles: Article 1 - General Provisions; Article 2 - Agency Licenses; Article 3 - Registration Certificates; Article 4 - Regulation.

The Department indicates the rules are not clear, concise, understandable, consistent, effective, or enforced as written as outlined in more detail below. The Department indicates it has not reviewed rule R13-2-303 with the intention that it expires pursuant to A.R.S. § 41-1056(J). Specifically, the Department indicates the rule clarifies a registration certificate expires at the same time as the agency license with which the registration is associated and must be renewed as a part of the agency license renewal. The Department states this rule is duplicative and conflicts with statute and other rules and provides no additional clarity or purpose.

The Department intends to submit changes to these rules before December 2025. However, the Department indicates legislative changes are being proposed which would substantially affect renewal timeframes and require rule adjustments. The Department states it also intends to seek relief for rising operating and technology expenses by raising fees, and potential legislation will substantially affect the fee adjustment. Third, the Department indicates it intends to align private investigator license processes and security guard license processes as much as possible since both are processed by the same unit and require similar handling. Additionally, the Department indicates specifics in the rules will need to be adjusted for technological advances; for example, color photographs are no longer required. The Department states, given the legislative dependent timeline and the co-dependence on security guard legislation, the Department intends to delay rule-making until after the conclusion of the FY25 legislative session in order to prevent having to adjust and implement rules, and then submit for additional adjustment within the same calendar year.

Council staff recommends approval of this report.

November 13, 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. 2, Private Investigators Five-year Review Report**

Chair Klein:

Please find enclosed the Five-year Review Report for 13 A.A.C. 2, Private Investigators which is due by December 31, 2024.

The Department does intend for one rule to expire under A.R.S. § 41-1056(J): R13-2-303

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 as there are no substantive policy statements for these rules.

For questions about this report, please contact Paul Swietek, rulewriter, at (602) 223-2049 or pswietek@azdps.gov.

Sincerely,

Kenneth Hendricks

Jeffrey Glover, Colonel
Director

Arizona Department of Public Safety
Five-year Review Report
13 A.A.C. 2, Private Investigators
November 13, 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.

The Department does intend for R13-2-303 to expire as the rule is entirely duplicative and conflicting with statute providing no additional clarity or purpose to the statute.

B. Provide a certification the rules are in compliance with A.R.S. § 41-1091 on substantive policy statements.

The Department is in compliance as there are no substantive policy statements for these rules.

**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:

**General Authority**
A.R.S. § 41-1713(A)(4) specifies to make rules necessary for the operation of the Department.

**Specific Authority**
A.R.S § 32-2401 defines the identification card; sets the definition of an agency license; defines restructuring.

A.R.S. § 32-2402(D) states the Director shall make rules to enforce A.R.S. Title 32, Chapter 24.

A.R.S. § 32-2407 states the Department shall charge and collect fees to recover costs; states the criteria to renew a license or registration certificate.

A.R.S. § 32-2407(B) states an applicant shall use an application and forms prescribed by the Department.

A.R.S. § 32-2421 defines a qualifying party.

A.R.S. § 32-2422 specifies the qualifications and denial of an applicant for an agency license.

A.R.S. § 32-2423 specifies the requirements for the agency license application and allows the Department to reasonably require other information, evidence, statements or documents; specifies the financial responsibility for a license.

A.R.S. § 32-2425 specifies issuance and surrender of the identification card; states new associates shall submit applications on forms prescribed by the Department; states specifics on the issuance of the license.

A.R.S. § 32-2426 states the application shall be on a form the Department prescribes.

A.R.S. § 32-2442 prescribes the application requirements for an employee registration certificate; specifies the valid dates of a registration certificate, the renewal period and criteria for denial.

A.R.S. § 32-2443 specifies issuance and surrender of the identification card; specifies the identification card requirements and denial criteria.

A.R.S. § 32-2452 specifies the requirements to conduct business under a fictitious name.

A.R.S. § 32-2453 states the requirements for the branch business address and posting of the license.

A.R.S. § 32-2454 specifies the requirement for a business to advertise.

A.R.S. § 32-2456 specifies the Department's authority to investigate a complaint.

A.R.S. § 32-2457 specifies if a business is not using its licensed name it could be subject to disciplinary action by the Department; specifies failing to display the identification card on request constitutes grounds for disciplinary action.

A.R.S. § 32-2459 specifies the grounds for refusal to issue an agency license.

A.R.S. § 32-2460 specifies the requirements for a licensee to employ unlicensed or unregistered persons to assist the business but who do not perform the duties of a private investigator.

A.R.S. § 32-2461 lists the required information on the identification card and grants the Department authority to include additional information as it deems necessary.

A.R.S. § 41-1073 specifies the steps, considerations and requirements for agencies to establish time frames.

2. The objective of the rule:

| Rule | Objective |
|---|---|
| 101 | To make the rules more understandable by defining terms used in statute and rule. |

| | |
|---|---|
| 102 | To specify the fees charged by the Department for various activities associated with regulating the private investigatory industry. |
| 103 | To specify the application forms the Department uses to fulfill its statutory responsibility to regulate the private investigator industry. |
| 104 | To specify information regarding the proper use of the identification card. |
| 105 | To specify the time frames within and the manner in which the Department will act on applications regarding the private investigator industry. |
| 202 | To specify the information required with an application for an agency license. |
| 203 | To provide information regarding the final steps leading to the issuance of an agency license and requirements regarding the use of the license. |
| 204 | To provide information about the procedure for renewing an agency license. |
| 205 | To specify the contents and validity range of the branch office certificate. |
| 206 | To emphasize that because it is the qualifying party who is authorized by an agency license to conduct the business of private investigations if the qualifying party leaves the agency, the agency cannot engage in the business of private investigations until a new qualifying party obtains a new license. |
| 207 | To clarify the procedure for obtaining a new agency license when the legal status of the agency changes. |
| 208 | To avoid public confusion by requiring an agency licensee and the licensee's associates and employees to do business under the name used on the licensee's application and the associate's or employee's identification card. |
| 302 | To specify the responsibilities of the employing agencies with regard to verifying an employee's eligibility to apply as a private investigator and include information on how to register with multiple employers. |
| 303 | This rule is intended to expire. To clarify a registration certificate expires at the same time as the agency license with which the registration is associated and must be renewed as a part of the agency license renewal. |
| 304 | To provide instructions for obtaining a replacement registration certificate or identification card when the original certificate or card is lost or stolen. |
| 305 | To communicate timely with a registrant by requiring the registrant to provide notice of a change of address. |
| 306 | To ensure a registrant has an identification card issued in the registrant's legal name. |
| 401 | To specify the methods by which the Department may notify an applicant of a license or certification denial and provide basic information regarding hearing and appeal procedures. |
| 403 | To specify records a licensee is required to maintain and the manner in which the records are to be handled. |
| 404 | To specify the procedure the Department uses to handle complaints made against an entity or person engaged in the business of a private investigation. |

3. Are the rules effective in achieving their objectives? No.

| Rule | Explanation |
|---|---|
| 101 | The current definitions are applicable, but the rule could benefit from additional definitions clarifying *administrative* and *substantive timeframes*. |

| | |
|---|---|
| 102 | This rule meets its objective in specifying fees. However, it could be improved by removing the fees for fingerprints and digital photographs of the licensee as the Department does not provide those services. The Department has no plans to provide photograph services and the staff is focused only on processing licenses. Licensees are responsible for obtaining and supplying the required photograph. In the event the Department would provide future fingerprint services, the service would be completed by a different section within the Department. That section would therefore need to establish its own fees. Overall, it is ineffective to have a price set for a service that does not currently exist.<br><br>The allowance for credit card transactions is needed.<br><br>The previous report stated: *The Department has changed its position and intends to continue offering fingerprints and photos as it is still requested by the public. To facilitate this service, the Department is exploring options for an automated kiosk to be placed in the lobby for public use.* The Department ended up not offering those services over the last five years. The electronic fingerprint vendor for the online portal, Fieldprint, does photos along with the electronic fingerprints when an applicant does an online application. The Department does not have the ability to do photographs itself. The Department does not provide open fingerprint services and the very limited reprint services it does supply are completed by another section in the Department; and only for difficult previously rejected fingerprints. |
| 103 | The rule is partially effective. The rule provides information regarding how to obtain application forms, but this information can easily become outdated and require updates. It is also excessively wordy in explaining an application is needed and specifying each type. |
| 104 | The rule text requires amendment to reduce duplication or conflict with existing statute text. Users should first refer to the statues and then refer to the rule for clarification of the statute.<br>A.R.S. § 32-2461, 2442 and 2451 (duplicative and statute is more expansive than the rule). |
| 105 | The administrative and substantive timeframes as written are misleading and inconsistent with the requirements needed to evaluate the application. Since the purpose of the rule is to clarify timeframes, setting up an expectation inconsistent with current processing requirements does not accomplish this. A preliminary administrative review can begin on an application upon receipt, but the viability of the classifiable fingerprints is not determined until the fingerprints are submitted outside of the Licensing Unit and return as valid or rejected. An application cannot be evaluated for substantive review until all this information is received, therefore no application is “complete” upon receipt by the agency. The most the agency can do within the listed administrative timeframe is reject the application as insufficient on its face as missing required information, and then submit the |

| | |
|---|---|
| | fingerprints to see if they are classifiable and valid. As written, this would signal the beginning of the substantive review timeframe, which cannot begin until fingerprint results are received, and fingerprint results are required for administrative completeness. Also, with current electronic procedures, an applicant can apply online and be fingerprinted later. This would appear that the agency "received" the application long before receiving the fingerprints.<br><br>In addition, agency licenses are processed in multiple steps. Rule 203 gives a description of when an agency application has been processed, not when the application received is complete; the administrative and substantive timeframes listed in Rule 105 are not applicable to Rule 203 issuance due to the multiple steps involved, but the way it is written makes that unclear. A notice is sent once the application is evaluated, but other items must be submitted to move the application along in the process. The license fee and the application fee are separate, and the issuance of the license takes place after the application has been processed.<br><br>As written, the administrative and substantive times are unrealistic and inconsistent with the review standards required under statute to determine if an applicant is eligible for a license. This rule needs to be extensively re-written to clarify timeframe definitions and set realistic timeframes and processing expectations. The rewrite of this rule may also be affected by legislation being proposed during the FY25 legislative session and will need to be clarified following the session to avoid successive rewrites. |
| 202 | Requirements have changed, and the rule needs to be updated. Color photographs are no longer required. The Department has no plans to provide photograph services, and the staff is focused on processing licenses. Licensees are responsible for obtaining and supplying the required photograph. In the event that the Department would provide fingerprint services, the fingerprints would be done by a different section within the Department and the fees for that would be set at that time. It is ineffective to have a price set for a service that does not currently exist. |
| 203 | Agency licenses are processed in multiple steps. Rule 203 gives a description of when an agency application has been processed, not when the application received is complete; the administrative and substantive timeframes listed in Rule 105 are not applicable to Rule 203 issuance due to the multiple steps involved, but the way it is written makes that unclear. A notice is sent once the application is evaluated, but other items must be submitted to move the application along in the process. The license fee and the application fee are separate, and the issuance of the license takes place after the application has been processed. |
| 204 | The rule text requires amendment to reduce duplication or conflict with existing statute regarding timeframes. A.R.S. § 32-2423 for paragraph B where the rule refers to another rule and not the statute and 2442 for paragraph C where a timeframe is not specified in the statute but would be |

| | |
|---|---|
| | heavily affected by proposed legislative changes. The rule also does not contain any consequences and should be changed to contain them. |
| 205 | The rule requires amendment to reflect the requirements per A.R.S. § 32-2426. |
| 302 | The rule requires amendment to reduce duplication or conflict with statute. Specifying information to be included with registration is duplicative and in some instances could be perceived as contrary to statute and other rules. The true purpose of this rule is to clarify the agency responsibility and how employees can register with multiple companies and the rule needs to be updated to reflect that. A.R.S. § 32-2442 describes the basic requirements. This rule should clarify that, particularly A.R.S. § 32-2442.6. No regulatory authority has been found for paragraph F. The description of "writing across the top of an application" is no longer applicable given electronic applications. The relationship between agency and employee applications is being explored legislatively this session and may change. |
| 303 | This rule is intended to expire. The rule is duplicative and conflicts with statute and other rules and provides no additional clarity or purpose. |

4. Are the rules consistent with other rules and statutes? No.

| Rule | Statute | Explanation |
|---|---|---|
| 104 | A.R.S. §§ 32-2461, 2442 and 2451 (duplicative and statute is more expansive than the rule. | The rule text requires amendment to reduce duplication or conflict with existing statute text. Users should first refer to the statues and then refer to the rule for clarification of the statute. |
| 204 | A.R.S. §§ 32-2442 and 2423 | The rule text requires amendment to reduce duplication or conflict with existing statute regarding timeframes. |
| 302 | A.R.S. § 32-2442(A)(6) | The rule requires amendment to reduce duplication or conflict with statute. Specifying information to be included with registration is duplicative and in some instances could be perceived as contrary to statute and other rules. The true purpose of this rule is to clarify the agency responsibility and how employees can register with multiple companies and the rule needs to be updated to reflect that. |
| 303 | A.R.S. § 32-2442 | The rule is intended to expire as it is duplicative and conflicting with statute providing no additional clarity or purpose. |

5. Are the rules enforced as written? No.

| Rule | Explanation |
|---|---|
| 105 | The administrative and substantive timeframes as written are confusing and inconsistent with the requirements needed to evaluate the application. A preliminary administrative review can begin on an application upon receipt, but the viability of the classifiable fingerprints is not determined until the fingerprints are submitted outside of the Licensing Unit and return as valid or rejected. An application cannot be evaluated for substantive review until all this information is received, therefore no application is "complete" upon receipt by the agency. The most the agency can do within the listed administrative timeframe is reject the application as insufficient on its face as missing required information, and then submit the fingerprints to see if they are classifiable and valid. As written, this would signal the beginning of the substantive review timeframe, which cannot begin until fingerprint results are received, and fingerprint results are required for administrative completeness. Also, with current electronic procedures, an applicant can an application online and be fingerprinted later. This would appear that the agency "received" the application long before receiving the fingerprints. As written, the administrative and substantive times are unrealistic and inconsistent with the review standards required under statute to determine if an applicant is eligible for a license. This rule needs to be extensively re-written to clarify timeframe definitions and set realistic timeframes and processing expectations. The rewrite of this rule may also be affected by legislation being proposed during the FY25 legislative session and will need to be clarified following the session to avoid successive rewrites. |
| 202 | Requirements have changed, and the rule needs to be updated. Color photographs are no longer required. |
| 304 | Other methods of notifying the Department in writing are available. The rule needs to be updated. |
| 401 | The only purpose of this rule should be to ensure that the denial is properly communicated to the applicant in writing along with information on hearings and appeals. Statute only requires the notification be in writing, not by mail. |

6. Are the rules clear, concise and understandable? No.

| Rule | Explanation |
|---|---|
| 105 | As explained above, the process for evaluating an applicant for a license is inconsistent with the rule, and the timeframes are misleading as to what is actually accomplished. The administrative and substantive timeframes need clarifying as to what occurs in what timeframe, the timeframes re-written to provide a clear expectation of processing to the applicants, and a definition regarding "administrative completeness" added to 101. |

| | |
|---|---|
| 203 | As explained above, when using similar language about an application being complete in this rule and in the rule discussing administrative review timeframes, the agency license issuance requirements may be confused with the agency license application requirements. |

7. Has the agency received written criticisms of the rules within the last five years? No.

| Rule | Criticism | Action |
|---|---|---|
| N/A | | |
| | | |

8. Economic, small business and consumer impact comparison:

The rules provide procedural instructions to administer private investigator licensing and are for use by Department personnel and private investigator agency license and employee applicants. Almost all agencies in the private investigations industry are small businesses. Statutes sets the mandate for the minimal record-keeping; the rules provide guidelines for applicants to assist them in complying with statute, enact minimal restrictions, and result in minimal financial costs to small businesses. Making the planned changes are intended for clarification on existing practices, such as clarifying definitions, and do not in themselves create an additional burden.

Pursuant to A.R.S. § 32-2407, the Department is required to set fees that cover the operational and equipment costs of the Private Investigator and Security Guard Licensing Unit (Licensing Unit). This places the operational cost for the Licensing Unit on the consumers and not on the general public by not relying on general funds for full operation. However, the licensing fees established for the Licensing Unit have remained unchanged since 2005 causing the business unit to need to be subsidized from other funding sources for increased costs and technical improvements. Operational costs such as rent, utilities, hardware, software and supplies have substantially increased since 2005, and technological costs to maintain and improve systems has risen exponentially. The Licensing Unit oversees both the security guard and private investigator industries for licensing and compliance; therefore, the cost to operate only for private investigators cannot be separated out from the whole. The cost for compliance and investigation activities, also mandated by statute, is not supported through any other means other than the fees obtained from licenses.

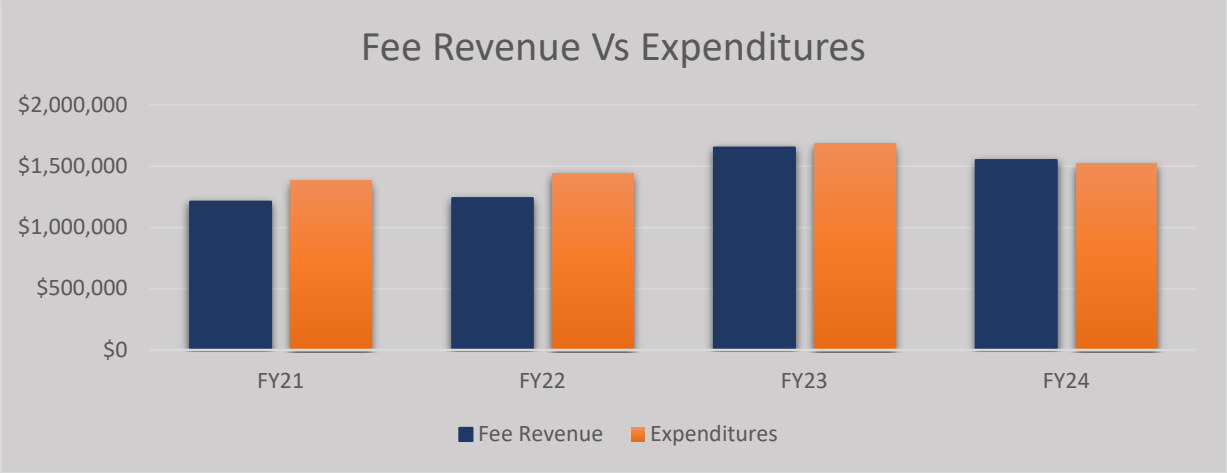
The Department currently licenses 799 private investigator agencies (not including those in pending or renewal waiting status) and has issued registrations to 1,793 private investigator qualifying parties, associates, and employees. Last year, the Licensing Unit entered over 26,000 applications of all types. Private investigator licensing comprises between five and ten percent of the unit's operations by number annually, but private investigator licenses are more time-consuming to process due to additional restrictions placed by statute.

The Licensing Unit has 17 full time positions, five of which are vacant. These positions include the supervisor as well as administrative support staff and investigators who oversee

budget, hearing board processes, and complaints and are not directly involved in processing applications. Less staffing can cause an impact to customers through increased processing and wait times. The rules have a minimal impact on individual private investigator agencies and employees even if fees are increased to all applicants. The benefits to the industry will include better and more efficient processing of applications, professional identification cards, and increased regulation.

The Licensing Unit underwent extensive process reviews in the past fiscal year to review and streamline processes. A second phase of process reviews is underway, with a new method of printing licenses and proposed technological enhancements to upgrade/replace an internal system that is over a decade old. External-facing digital application and management options are being provided and developed for both individual applicants and agencies.

In 2004, when the last fee changes were proposed, the cost to run the Licensing Unit was approximately $700,000. In fiscal year 2024, unit expenditures topped $1,518,000 without including technical development costs paid for by alternative funds or the information technology resources necessary to maintain and upgrade the internal required record-keeping systems. In July 2024, revenue for the unit was recorded at $1,549,000, showing that the unit operates at a bare minimum with no funds available for upgrades or improvements or to fill additional vacancies. More than two thirds of the cost was for salary/ERE of employees, including overtime and temporary staff brought in to help recover from the backlogs created by the demand from the Super Bowl; this cost is with the unit carrying vacancies.




The Licensing Unit has fluctuating demand during large local events and other external influences that increase the need for security guards, placing a strain on the resources required for processes both classes of licenses. Over $25,000 in overtime and over $110,000 for technology costs was covered by other funding other than licensing fees in FY2024 in spite of intensive streamlining efforts and carrying staff vacancies. Over the last three fiscal years, the Licensing Unit has operated at a loss and was subsidized for additional costs, generally overtime and technology costs.

Too many external factors outside of the Department's control contribute to application volume, business unit staffing levels, and operating expenses. The widely accepted, and statutorily codified, economic benchmark of the Consumer Price Index shows a drastic

increase since 2005, and recent fiscal year trends show that current fee levels are not sufficient for the business unit to operate at modern levels even while carrying several vacant FTE positions and using cumbersome, outdated technology. Expenditures will only increase in the future as technology, consumer items, postage, and other costs continue to rise.

9. Has the agency received any business competitiveness analysis of the rules? No.

10. Has the agency completed the course of action indicated in the agency's previous five-year review report?

| Rule | Action Needed | Action Taken |
|---|---|---|
| 101 | Not noted in previous report. | Notice of Final Expedited Rulemaking 28 A.A.R. 1976 dated August 5, 2021.<br><br>Not in the previous review but later identified for repeal: an update to the incorporated by reference and delinquent definition. |
| 102 | Amend to include credit card payments. | Notice of Final Expedited Rulemaking 28 A.A.R. 1976 dated August 5, 2021. |
| 103 | Updated address and website information. | Notice of Final Expedited Rulemaking 28 A.A.R. 1976 dated August 5, 2021.<br><br>Not in the previous review but later identified: repealed text duplicative to statute. |
| 104 | Update address and contact information. | Notice of Final Expedited Rulemaking 28 A.A.R. 1976 dated August 5, 2021.<br><br>Not in the previous review but later identified: repealed text duplicative to statute. |
| 201 | Not noted in previous report. | Notice of Final Expedited Rulemaking 28 A.A.R. 1976 dated August 5, 2021.<br><br>Not in the previous review. Later identified for repeal. A.R.S. is the governing document and there is no reason to repeat the statute in |

| | | |
|---|---|---|
| | | rule when the text of the rule provides no substantive clarification or additional requirements. |
| 202 | Include instructions for online submission and mailing addresses. Remove the notary requirement as it is not possible for online submission. | Notice of Final Expedited Rulemaking 28 A.A.R. 1976 dated August 5, 2021.<br><br>Not in the previous review but later identified text that could be removed due to duplication to statute. |
| 203 | Changes were needed to conform to statute. | Notice of Final Expedited Rulemaking 28 A.A.R. 1976 dated August 5, 2021.<br><br>All references to statutes that did not provide clarifying information was repealed as the statutes stand alone. |
| 204 | Not noted in previous report. | Notice of Final Expedited Rulemaking 28 A.A.R. 1976 dated August 5, 2021.<br><br>Not in the previous review but later identified and repealed was text duplicative to statute with no additional clarification. |
| 205 | Changes were needed to conform to statute. | Notice of Final Expedited Rulemaking 28 A.A.R. 1976 dated August 5, 2021.<br><br>All references to statutes that did not provide clarifying information was repealed as the statutes stand alone. |
| 206 | Not noted in previous report. | Notice of Final Expedited Rulemaking 28 A.A.R. 1976 dated August 5, 2021.<br><br>Not in the previous review but later identified and repealed was text duplicative to statute with no additional clarification. |

| | | |
|---|---|---|
| 207 | Not noted in previous report. | Notice of Final Expedited Rulemaking 28 A.A.R. 1976 dated August 5, 2021.<br><br>Not in the previous review but later identified and repealed was text duplicative to statute with no additional clarification. |
| 208 | Not noted in previous report. | Notice of Final Expedited Rulemaking 28 A.A.R. 1976 dated August 5, 2021.<br><br>Not in the previous review but later identified and repealed was text duplicative to statute with no additional clarification. |
| 301 | Add a statutory cross reference. | Notice of Final Expedited Rulemaking 28 A.A.R. 1976 dated August 5, 2021.<br><br>After additional analysis this rule was repealed as the statute stands alone and the rule provided no additional clarification. |
| 302 | Amend to include specific addresses. Unnecessary references removed. The Department does not have statutory authority to verify the applicant's status and therefore should not be prescribing a limiting list of approved forms. Substantial federal and state law on employment verification already exists and the employers and applicants should follow those applicable statutes. | Notice of Final Expedited Rulemaking 28 A.A.R. 1976 dated August 5, 2021. |
| 303 | Clarify the registration certificate expiration. | No action. After additional analysis, this requirement is already specified in A.R.S. § 32-2442(C) which states the employee registration runs concurrently with the agency license. |

| | | |
|---|---|---|
| 304 | Specify addresses and instructions to notify the Department. | Notice of Final Expedited Rulemaking 28 A.A.R. 1976 dated August 5, 2021. |
| 306 | Specify addresses and instructions to notify the Department. | Notice of Final Expedited Rulemaking 28 A.A.R. 1976 dated August 5, 2021. |
| 401 | Regarding an applicant who is denied. | Notice of Final Expedited Rulemaking 28 A.A.R. 1976 dated August 5, 2021.<br><br>After additional analysis, the Department determined it was exceeding its statutory authority in this rule as it conflicted with 13 A.A.C. 12, Private Investigator and Security Guard Hearing Board. The rule was substantially amended to reference that board. |
| 402 | Not noted in previous report. | Notice of Final Expedited Rulemaking 28 A.A.R. 1976 dated August 5, 2021.<br><br>Not in the previous review but later identified for repeal. The rule is duplicative to statute. The rule text is but one of several possible actions the Board may recommend to the Director. Additionally, text allowing a licensee to continue to operate blanketly does not meet the statutory authorization to evaluate and issue a probation that is best adapted to the particular situation limiting the Department's ability to take action. |

11. A determination the probably 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:

Within in the current scope of statutory regulation, the rules impose the least burden and cost to the regulated public. All information requests for applications were reviewed in 2024 for necessity in meeting statutory requirements and expectations along with providing sufficient information upon which to make a licensing determination. The rules provide the criteria for what the Department considers to be pertinent information in support of statutory requirements. The Department believes the information is minimal but necessary should an investigation be required under R13-2-404 and pursuant to statute. The regulatory rule follows the statutory requirement for business to keep pertinent information on all employees; this rule imposes no additional burden beyond statute but may be reviewed again before rule-making for being duplicative with statute and therefore unnecessary should legislation not substantively change those requirements. In addition, the Department believes the procedures in place provide for an equitable denial and hearing process that protects both the Department and the person and is not able to identify any better alternatives beyond what is mentioned above. The Department does recognize that over time some of these rules became/are duplicative to statute where the statute is sufficiently specific to operate the program. The Department does intend to reduce rule language in the next rulemaking to eliminate all text and references from the rules that are duplicative to the statutes where the rule text provides no clarification or other purpose. The Department believes the public should first read the statute and then refer to the rule only for clarifications/guidance.

12. Are the rules more stringent than corresponding federal laws? No. There is no corresponding federal law.

| 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:

    The issuance of a general permit is not applicable as there are specific statutory requirements for each license or certificate authorized by statute. Individuals receive a background check and verification of training including firearms training; therefore, a blanket general license cannot be issued for all employees.

14. Proposed course of action:

    The Department intends to submit changes to these rules before December 2025. Legislative changes are being proposed which would substantially affect renewal timeframes and require rule adjustments. The Department also intends to also seek relief for rising operating and technology expenses by raising fees, and potential legislation will substantially affect the fee adjustment. Third, the Department intends to align private investigator license processes and security guard license processes as much as possible since both are processed by the same unit and require similar handling. Additionally, specifics in the rules will need to be adjusted for technological advances; for example, color photographs are no longer required. Given the

legislative dependent timeline and the co-dependence on security guard legislation, the Department intends to delay rule-making until after the conclusion of the FY25 legislative session in order to prevent having to adjust and implement rules, and then submit for additional adjustment within the same calendar year.

Arizona Administrative CODE
www.azsos.gov
Office of the Secretary of State
ADMINISTRATIVE RULES DIVISION



# TITLE 13. PUBLIC SAFETY

## CHAPTER 2. DEPARTMENT OF PUBLIC SAFETY - PRIVATE INVESTIGATORS

The table of contents on page one contains links to the referenced page numbers in this Chapter.
Refer to the notes at the end of a Section to learn about the history of a rule as it was published in the *Arizona Administrative Register*.

This Chapter contains rules that were filed to be codified in the *Arizona Administrative Code* between the dates of July 1, 2022 through September 30, 2022


| | | | |
|---|---|---|---|
| R13-2-101. | Definitions ..... 2 | R13-2-206. | Change of Qualifying Party ..... 4 |
| R13-2-102. | Application and Processing Fees ..... 2 | R13-2-207. | Restructure of an Agency ..... 5 |
| R13-2-103. | Application Forms ..... 3 | R13-2-208. | Business and Employee Names ..... 5 |
| R13-2-104. | Identification Cards ..... 3 | R13-2-301. | Repealed ..... 5 |
| R13-2-105. | Time-frames for Making Licensing and Registration Determinations ..... 3 | R13-2-302. | Application for Registration Certificate ..... 5 |
| R13-2-201. | Repealed ..... 4 | R13-2-304. | Lost or Stolen Registration Certificate or Identification Card ..... 6 |
| R13-2-202. | Submission of Application for an Agency License ..... 4 | R13-2-306. | Change in Name of Registrant ..... 6 |
| R13-2-203. | Issuance of Agency License ..... 4 | R13-2-401. | Denial of Agency License or Registration Certificate ..... 6 |
| R13-2-204. | Agency License Renewal ..... 4 | R13-2-402. | Repealed ..... 6 |
| R13-2-205. | Branch Office Certificate ..... 4 | R13-2-404. | Complaints ..... 6 |


**Questions about these rules? Contact:**

Department: Arizona Department of Public Safety
Address: POB 6638, MD1280
Phoenix, AZ 85005-6638
Website: www.azdps.gov
Name: Michelle Riley, Licensing Manager
Telephone: (602) 223-2862
Email: mriley@azdps.gov

**The release of this Chapter in Supp. 22-3 replaces Supp. 04-4, 1-6 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), Administrative Rules Division, accepts state agency rule notice and other legal filings and is the publisher of Arizona rules. The Office of the Secretary of State does not interpret or enforce rules in the *Administrative Code*. Questions about rules should be directed to the state agency responsible for the promulgation of the rule.

Scott Cancelosi, Director
ADMINISTRATIVE RULES DIVISION

---

### RULES

The definition for a rule is provided for under A.R.S. § 41-1001. *"'Rule' means an agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of an agency."*

### THE ADMINISTRATIVE CODE

The *Arizona Administrative Code* is where the official rules of the state of Arizona are published. The *Code* is the official codification of rules that govern state agencies, boards, and commissions.

The *Code* is separated by subject into Titles. Titles are divided into Chapters. A Chapter includes state agency rules. Rules in Chapters are divided into Articles, then Sections. The "R" stands for "rule" with a sequential numbering and lettering outline separated into subsections.

Rules are codified quarterly in the *Code*. Supplement release dates are printed on the footers of each Chapter.

First Quarter: January 1 - March 31
Second Quarter: April 1 - June 30
Third Quarter: July 1 - September 30
Fourth Quarter: October 1 - December 31

For example, the first supplement for the first quarter of 2022 is cited as Supp. 22-1. Supplements are traditionally released three to four weeks after the end of the quarter because filings are accepted until the last day of the quarter.

Please note: The Office publishes by Chapter, not by individual rule Section. Therefore there might be only a few Sections codified in each Chapter released in a supplement. This is why the Office lists only updated codified Sections on the previous page.

### RULE HISTORY

Refer to the HISTORICAL NOTE at the end of each Section for the effective date of a rule. The note also includes the *Register* volume and page number in which the notice was published (A.A.R.) and beginning in supplement 21-4, the date the notice was published in the *Register*.

### AUTHENTICATION OF PDF CODE CHAPTERS

The Office began to authenticate Chapters of the *Code* in Supp. 18-1 to comply with A.R.S. §§ 41-1012(B) and A.R.S. § 41-5505.

A certification verifies the authenticity of each *Code* Chapter posted as it is released by the Office of the Secretary of State. The authenticated pdf of the *Code* includes an integrity mark with a certificate ID. Users should check the validity of the signature, especially if the pdf has been downloaded. If the digital signature is invalid it means the document's content has been compromised.

### HOW TO USE THE CODE

Rules may be in effect before a supplement is released by the Office. Therefore, the user should refer to issues of the *Arizona Administrative Register* for recent updates to rule Sections.

### ARIZONA REVISED STATUTE REFERENCES

The Arizona Revised Statutes (A.R.S.) are available online at the Legislature's website, www.azleg.gov. An agency's authority note to make rules is often included at the beginning of a Chapter. Other Arizona statutes may be referenced in rule under the A.R.S. acronym.

### SESSION LAW REFERENCES

Arizona Session Law references in a Chapter can be found at the Secretary of State's website, www.azsos.gov under Services-> Legislative Filings.

### EXEMPTIONS FROM THE APA

It is not uncommon for an agency to be exempt from the steps outlined in the rulemaking process as specified in the Arizona Administrative Procedures Act, also known as the APA (Arizona Revised Statutes, Title 41, Chapter 6, Articles 1 through 10). Other agencies may be given an exemption to certain provisions of the Act.

An agency's exemption is written in law by the Arizona State Legislature or under a referendum or initiative passed into law by Arizona voters.

When an agency files an exempt rulemaking package with our Office it specifies the law exemption in what is called the preamble of rulemaking. The preamble is published in the *Register* online at www.azsos.gov/rules, click on the *Administrative Register* link.

Editor's notes at the beginning of a Chapter provide information about rulemaking Sections made by exempt rulemaking. Exempt rulemaking notes are also included in the historical note at the end of a rulemaking Section.

The Office makes a distinction to certain exemptions because some rules are made without receiving input from stakeholders or the public. Other exemptions may require an agency to propose exempt rules at a public hearing.

### PERSONAL USE/COMMERCIAL USE

This Chapter is posted as a public courtesy online, and is for private use only. Those who wish to use the contents for resale or profit should contact the Office about Commercial Use fees. For information on commercial use fees review A.R.S. § 39-121.03 and 1 A.A.C. 1, R1-1-113.

*Rhonda Paschal, rules managing editor, assisted with the editing of this Chapter.*


| | | |
|---|---|---|
| ***Arizona Administrative Code***<br>Publisher<br>Department of State<br>Office of the Secretary of State<br>Administrative Rules Division | Published electronically under the authority of A.R.S. § 41-1012.<br>Authentication authorized under Arizona Revised Statutes, Chapter 54, Uniform Electronic Legal Material Act. | Mailing Address:<br>Administrative Rules Division<br>Office of the Secretary of State<br>1700 W. Washington Street, Fl. 2<br>Phoenix, AZ 85007 |

Arizona Secretary of State
Digitally signed by Arizona Secretary of State
Date: 2022.11.14 09:50:35 -07'00'



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 2. DEPARTMENT OF PUBLIC SAFETY - PRIVATE INVESTIGATORS

Authority: A.R.S. § 32-2401 et seq.

**Supp. 22-3**

## CHAPTER TABLE OF CONTENTS

### ARTICLE 1. GENERAL PROVISIONS

*Article 1, consisting of Sections R13-2-101 through R13-2-105, made by final rulemaking at 10 A.A.R. 5190, effective February 5, 2005 (Supp. 04-4).*

*Article 1, consisting of Sections R13-2-01 through R13-2-12, repealed by final rulemaking at 10 A.A.R. 5190, effective February 5, 2005 (Supp. 04-4).*

Section
R13-2-01. Repealed ..... 2
R13-2-02. Repealed ..... 2
R13-2-03. Repealed ..... 2
R13-2-04. Repealed ..... 2
R13-2-05. Repealed ..... 2
R13-2-06. Repealed ..... 2
R13-2-07. Repealed ..... 2
R13-2-08. Repealed ..... 2
R13-2-09. Repealed ..... 2
R13-2-10. Repealed ..... 2
R13-2-11. Repealed ..... 2
R13-2-12. Repealed ..... 2
R13-2-101. Definitions ..... 2
R13-2-102. Application and Processing Fees ..... 2
R13-2-103. Application Forms ..... 3
R13-2-104. Identification Cards ..... 3
R13-2-105. Time-frames for Making Licensing and Registration Determinations ..... 3

### ARTICLE 2. AGENCY LICENSES

*Article 2, consisting of Sections R13-2-201 through R13-2-208, made by final rulemaking at 10 A.A.R. 5190, effective February 5, 2005 (Supp. 04-4).*

Section
R13-2-201. Repealed ..... 4
R13-2-202. Submission of Application for an Agency License ..... 4
R13-2-203. Issuance of Agency License ..... 4
R13-2-204. Agency License Renewal ..... 4
R13-2-205. Branch Office Certificate ..... 4
R13-2-206. Change of Qualifying Party ..... 4
R13-2-207. Restructure of an Agency ..... 5
R13-2-208. Business and Employee Names ..... 5

### ARTICLE 3. REGISTRATION CERTIFICATES

*Article 3, consisting of Sections R13-2-301 through R13-2-306, made by final rulemaking at 10 A.A.R. 5190, effective February 5, 2005 (Supp. 04-4).*

Section
R13-2-301. Repealed ..... 5
R13-2-302. Application for Registration Certificate ..... 5
R13-2-303. Renewal of Registration Certificate ..... 5
R13-2-304. Lost or Stolen Registration Certificate or Identification Card ..... 6
R13-2-305. Change of Address ..... 6
R13-2-306. Change in Name of Registrant ..... 6

### ARTICLE 4. REGULATION

*Article 4, consisting of Sections R13-2-401 through R13-2-404, made by final rulemaking at 10 A.A.R. 5190, effective February 5, 2005 (Supp. 04-4).*

Section
R13-2-401. Denial of Agency License or Registration Certificate ..... 6
R13-2-402. Repealed ..... 6
R13-2-403. Employee and Business Records ..... 6
R13-2-404. Complaints ..... 6

## ARTICLE 1. GENERAL PROVISIONS

**R13-2-01. Repealed**

**Historical Note**
Former rule 1. Section repealed by final rulemaking at 10 A.A.R. 5190, effective February 5, 2005 (Supp. 04-4).

**R13-2-02. Repealed**

**Historical Note**
Former rule 2. Section repealed by final rulemaking at 10 A.A.R. 5190, effective February 5, 2005 (Supp. 04-4).

**R13-2-03. Repealed**

**Historical Note**
Former rule 3. Section repealed by final rulemaking at 10 A.A.R. 5190, effective February 5, 2005 (Supp. 04-4).

**R13-2-04. Repealed**

**Historical Note**
Former rule 4. Section repealed by final rulemaking at 10 A.A.R. 5190, effective February 5, 2005 (Supp. 04-4).

**R13-2-05. Repealed**

**Historical Note**
Former rule 5. Section repealed by final rulemaking at 10 A.A.R. 5190, effective February 5, 2005 (Supp. 04-4).

**R13-2-06. Repealed**

**Historical Note**
Former rule 6. Section repealed by final rulemaking at 10 A.A.R. 5190, effective February 5, 2005 (Supp. 04-4).

**R13-2-07. Repealed**

**Historical Note**
Former rule 7. Section repealed by final rulemaking at 10 A.A.R. 5190, effective February 5, 2005 (Supp. 04-4).

**R13-2-08. Repealed**

**Historical Note**
Former rule 8. Section repealed by final rulemaking at 10 A.A.R. 5190, effective February 5, 2005 (Supp. 04-4).

**R13-2-09. Repealed**

**Historical Note**
Former rule 9. Section repealed by final rulemaking at 10 A.A.R. 5190, effective February 5, 2005 (Supp. 04-4).

**R13-2-10. Repealed**

**Historical Note**
Former rule 10. Section repealed by final rulemaking at 10 A.A.R. 5190, effective February 5, 2005 (Supp. 04-4).

**R13-2-11. Repealed**

**Historical Note**
Former rule 11. Section repealed by final rulemaking at 10 A.A.R. 5190, effective February 5, 2005 (Supp. 04-4).

**R13-2-12. Repealed**

**Historical Note**
Former rule 12. Section repealed by final rulemaking at 10 A.A.R. 5190, effective February 5, 2005 (Supp. 04-4).

**R13-2-101. Definitions**
In addition to the definitions in A.R.S. § 32-2401, the following definitions apply to this Chapter:

1. "Branch office certificate" means a document issued by the Department to the qualifying party, authorizing the qualifying party to conduct the business of private investigations in this state at a location other than the principal place of business shown on the agency license.
2. "Classifiable fingerprints" means fingerprint impressions that meet the criteria of the Federal Bureau of Investigation (FBI) as contained in Form FD-258 (5-15-17): U.S. Government Printing Office: 1110-0046, incorporated by reference, available from the Department and the FBI (Attn: Logistical Support Unit (LSU), CJIS Division, 1000 Custer Hollow Road, Clarksburg, WV 26306). This incorporation contains no future editions or amendments.
3. "Corporation" or "domestic corporation" has the same meaning as in A.R.S. § 10-140.
4. "Delinquent" means an application is submitted after the license expiration date but before the expiration grace period as described in A.R.S. § 32-2407(B).
5. "Foreign corporation" means a corporation for profit that is incorporated under a law other than the law of Arizona.
6. "Limited liability corporation" has the same meaning as corporation.
7. "Partnership" is an association of two or more persons who are co-owners of a business for profit organized in accordance with A.R.S. Title 29, Partnerships.
8. "Probation" means a period during which an agency or individual that has violated A.R.S. Title 32 Chapter 24 is allowed to demonstrate the ability to meet licensure requirements before the Department takes another administrative action, such as suspension or revocation.
9. "Sole proprietor" means the only owner of a business operated for profit.

**Historical Note**
New Section made by final rulemaking at 10 A.A.R. 5190, effective February 5, 2005 (Supp. 04-4). Amended by final expedited rulemaking at 28 A.A.R. 1976 (August 5, 2022), with an immediate effective date of July 15, 2022 (Supp. 22-3).

**R13-2-102. Application and Processing Fees**

**A.** The application and processing fees are:
1. Original agency license application, $250;
2. Agency license, $400;
3. Application for renewal of an agency license, $250;
4. Agency restructure, $100;
5. Agency delinquent renewal application, $100;
6. Reinstatement of agency license, $250;
7. Associate or employee registration certificate application, $50;
8. Associate or employee registration certificate renewal, $50;
9. Associate or employee registration delinquency, $10;
10. Associate or employee registration reinstatement, $25;
11. Replacement identification card, $10;
12. Additional employer form, $10; and
13. Fingerprint and digital photo fee (optional), $15.

**B.** In addition to any fees in subsections (A)(1), (A)(3), (A)(7), (A)(8), and (A)(12) the Department shall collect a fee in an amount necessary to cover the cost of noncriminal justice fingerprint processing for criminal history record checks under A.R.S. § 41-1750(J).

**C.** A person shall pay a fee by cash, cashier's check, certified check, credit card or money order made payable to the Arizona

Department of Public Safety. All fees are non-refundable except if A.R.S. § 41-1077 applies.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 5190, effective February 5, 2005 (Supp. 04-4). Amended by final expedited rulemaking at 28 A.A.R. 1976 (August 5, 2022), with an immediate effective date of July 15, 2022 (Supp. 22-3).

**R13-2-103. Application Forms**

**A.** The Department shall provide and an applicant shall use application forms for:
1. Agency license application;
2. Agency license renewal;
3. Employee registration certificate application; and
4. Employee or associate registration renewal application.

**B.** Application forms may be obtained in person at the Phoenix Licensing Unit office, 2222 W. Encanto Blvd., Phoenix, AZ 85009, by mail request to Arizona DPS Licensing Unit POB 6638, Mail Drop 3140, Phoenix, AZ 85005-6638, the Department's website www.azdps.gov, or by telephone (602) 223-2361. An applicant may duplicate application forms.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 5190, effective February 5, 2005 (Supp. 04-4). Amended by final expedited rulemaking at 28 A.A.R. 1976 (August 5, 2022), with an immediate effective date of July 15, 2022 (Supp. 22-3).

**R13-2-104. Identification Cards**

**A.** The Department shall include on the identification card the applicant's:
1. Date of birth, and
2. Employer's agency name and license number.

**B.** A licensee or certificate holder shall not assign or transfer an identification card. An identification card is valid only during the effective dates of the license or certificate under which the card has been issued, and for only as long as the card holder is employed by or associated with the agency licensee.

**C.** A licensee or certificate holder shall not display a badge or shield in conjunction with performing the duties of a private investigator.

**D.** An employee employed by more than one licensee shall obtain an identification card for each license under which the employee is employed.

**E.** If an identification card is lost or stolen, the holder of the card shall notify the Department immediately in writing by mail request to Arizona DPS Licensing Unit, POB 6638, Mail Drop 3140, Phoenix, AZ 85005-6638 or the Department's website www.azdps.gov. The Department shall issue a duplicate identification card upon submission of the required fee.

**F.** The Department shall not approve a fictitious name for use on an identification card.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 5190, effective February 5, 2005 (Supp. 04-4). Amended by final expedited rulemaking at 28 A.A.R. 1976 (August 5, 2022), with an immediate effective date of July 15, 2022 (Supp. 22-3).

**R13-2-105. Time-frames for Making Licensing and Registration Determinations**

**A.** The Department shall make a determination on the issuance, renewal, reinstatement, or restructure of an agency license, associate or employee registration certificate, or branch office certificate within 15 business days of the submission of an application, as follows:
1. Five days for administrative completeness review, and
2. Ten days for substantive review.

**B.** The administrative completeness review time-frame, as described in A.R.S. § 41-1072(1) and listed in subsection (A)(1), 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 45 days from the 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 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, and the Department considers the application suspended. The Department shall not take further action until the required documentation or information and, if applicable, reinstatement fees are received.

**C.** The substantive review time-frame, as described in A.R.S. § 41-1072(3) and listed in subsection (A)(2), begins on the date the Department determines an application is administratively complete.
1. During the substantive review time-frame, the Department may make one comprehensive written request for additional information. The Department and applicant may mutually agree in writing to allow the Department to submit supplemental requests for additional information.
2. The applicant shall submit to the Department the additional information to complete the application within 45 days from the date of the Department's request. The time-frame for the Department to complete the substantive review of the application is suspended from the date of the request for additional information until the Department receives the additional information.
3. Unless the Department and applicant by mutual written agreement extend the 45-day period, the Department shall close the file of an applicant who fails to submit the additional information within 45 days. An applicant whose file is closed and who wants to be licensed or certified shall apply again under R13-2-202 or R13-2-302.
4. When the substantive review is complete, the Department shall inform the applicant in writing of its decision whether to license or register the applicant.
   a. The Department shall deny a license or registration if it determines that the applicant does not meet all substantive criteria 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.
   b. The Department shall grant a license or registration if it determines that the applicant meets all substantive criteria for licensure or certification required by statute and rule.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 5190, effective February 5, 2005 (Supp. 04-4). Amended by final expedited rulemaking at 28 A.A.R. 1976 (August 5, 2022), with an immediate effective date of July 15, 2022 (Supp. 22-3).

## ARTICLE 2. AGENCY LICENSES

**R13-2-201. Repealed**

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 5190, effective February 5, 2005 (Supp. 04-4). Repealed by final expedited rulemaking at 28 A.A.R. 1976 (August 5, 2022), with an immediate effective date of July 15, 2022 (Supp. 22-3).

**R13-2-202. Submission of Application for an Agency License**

**A.** Applications for an agency license may be presented in person at the Arizona Department of Public Safety Licensing office at 2222 W. Encanto Blvd., Phoenix, AZ 85009, by mail to Arizona DPS Licensing Unit POB 6638, MD3140, Phoenix, AZ 85005-6638 or the Department's website www.azdps.gov. A qualifying party submitting an application shall ensure that the application consists of:

1. A complete application form with the information required under A.R.S. §§ 32-2422 and 32-2423;
2. Properly completed fingerprint card with classifiable fingerprints of the qualifying party;
3. Fees prescribed in R13-2-102;
4. Legible copy of a government-issued photo identification document for the qualifying party, such as a state identification card or motor vehicle driver license;
5. Two color photographs of the qualifying party suitable for use in making an identification card, such as passport photos or 1" x 1 1/4" facial photos;
6. If other than a sole proprietorship:
   a. Partnership agreement, articles of organization, or articles of incorporation;
   b. Applications for associate registration certificates under R13-2-302 completed by all officers, members, managers, and directors of the agency;
7. If a foreign corporation, evidence of Arizona Corporation Commission approval to transact business in Arizona;
8. The name under which the agency will do business. The Department shall not issue a license to a corporation or limited liability corporation using a DBA unless registered with the Arizona Secretary of State's Office for approval of the trade name and the agency submits a copy of the registration to the Department.

**B.** Sole proprietorships and partnerships may, but are not required to, register trade names.

**C.** If applicable equipment and personnel are available, and if the applicant makes a request, the Department personnel shall take an applicant's photographs and fingerprints upon submission of the application and payment of appropriate fees as listed in R13-2-102.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 5190, effective February 5, 2005 (Supp. 04-4). Amended by final expedited rulemaking at 28 A.A.R. 1976 (August 5, 2022), with an immediate effective date of July 15, 2022 (Supp. 22-3).

**R13-2-203. Issuance of Agency License**

**A.** The application is considered complete when the applicant satisfies the following:

1. Pay applicable license fees;
2. Provide a complete and accurate two-year surety bond; and
3. For those agencies that will have employees, provide a certificate of worker's compensation insurance.

**B.** An applicant for an agency license or renewal may request to pick up the license at the Department's office in Phoenix. If no request is made, the Department shall send the license to the mailing address of the applicant. The issue date on the license is the date the two-year surety bond starts, which is not to be earlier than the Department's date of notification.

**C.** The licensee shall post the license in a conspicuous place in the principal business office.

**D.** If a licensee wishes to surrender the license before the expiration date, the Department shall not refund the license fee or any part of the license fee.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 5190, effective February 5, 2005 (Supp. 04-4). Amended by final expedited rulemaking at 28 A.A.R. 1976 (August 5, 2022), with an immediate effective date of July 15, 2022 (Supp. 22-3).

**R13-2-204. Agency License Renewal**

**A.** A qualifying party may submit a renewal application to the Department up to 60 days before the expiration date on the agency license.

**B.** The qualifying party shall provide, with the renewal application, the information required under R13-2-202 for the renewal of registration certificates for all associates or employees of the agency.

**C.** If an agency license is not renewed before the expiration date, the qualifying party shall ensure that all identification cards with the elapsed agency license number are returned to the Department within five business days of the date the license expires.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 5190, effective February 5, 2005 (Supp. 04-4). Amended by final expedited rulemaking at 28 A.A.R. 1976 (August 5, 2022), with an immediate effective date of July 15, 2022 (Supp. 22-3).

**R13-2-205. Branch Office Certificate**

**A.** The branch office certificate contains the name, agency license number, license expiration date, and address of the branch office.

**B.** A branch office certificate expires on the date the agency license expires and is renewed when the agency license is renewed.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 5190, effective February 5, 2005 (Supp. 04-4). Amended by final expedited rulemaking at 28 A.A.R. 1976 (August 5, 2022), with an immediate effective date of July 15, 2022 (Supp. 22-3).

**R13-2-206. Change of Qualifying Party**

**A.** If a qualifying party leaves an agency, the agency shall cease operations.

**B.** If the agency desires to resume operations, a qualifying party shall submit an application for a new agency.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 5190, effective February 5, 2005 (Supp. 04-4). Amended by final expedited rulemaking at 28 A.A.R. 1976 (August 5, 2022), with an immediate effective date of July 15, 2022 (Supp. 22-3).

**R13-2-207. Restructure of an Agency**

**A.** If the restructure occurs at the time of renewal, the Department shall waive the restructure fee.

**B.** If the restructure occurs at any time other than time of renewal, the agency shall pay the restructure fee. An application for restructure shall be submitted for the qualifying party and any new associates.

**C.** To change a sole proprietorship to a partnership, the applicant shall provide a partnership agreement with notarized signatures of the partners.

**D.** To change a corporation to a partnership, the applicant shall provide documentation of the dissolving of the corporation and a partnership agreement with notarized signatures of the partners.

**E.** To change a sole proprietorship or partnership to a corporation the applicant shall provide the Articles of Incorporation bearing the approval stamp of the Arizona Corporation Commission. If the change is to a foreign corporation, the applicant shall submit documentation of Arizona Corporation Commission approval for the foreign corporation to transact business in Arizona.

**F.** To change a partnership to a sole proprietorship, the applicant shall provide documentation of the dissolving of the partnership.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 5190, effective February 5, 2005 (Supp. 04-4). Amended by final expedited rulemaking at 28 A.A.R. 1976 (August 5, 2022), with an immediate effective date of July 15, 2022 (Supp. 22-3).

**R13-2-208. Business and Employee Names**

**A.** The Department shall not grant a license to an agency with a name that includes "United States," "U.S.," "Federal," or "State of Arizona," or a name that associates the business with any governmental or law enforcement agency. The Department shall not grant a license to an individual or partnership that has a name with the word "corporation," "corp.," "incorporated," "Inc.," or "L.L.C." unless corporate or limited liability corporation papers have been filed with the Corporation Commission. The Department shall not approve a new business name that is similar to a business name of a currently licensed firm.

**B.** An agency licensee shall do all business under the name and address that is on file with the Department and noted on the license. The licensee shall include its name and license number on all letterhead and business cards, advertising, contracts entered into with clients, and agency correspondence.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 5190, effective February 5, 2005 (Supp. 04-4). Amended by final expedited rulemaking at 28 A.A.R. 1976 (August 5, 2022), with an immediate effective date of July 15, 2022 (Supp. 22-3).

## ARTICLE 3. REGISTRATION CERTIFICATES

**R13-2-301. Repealed**

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 5190, effective February 5, 2005 (Supp. 04-4). Repealed by final expedited rulemaking at 28 A.A.R. 1976 (August 5, 2022), with an immediate effective date of July 15, 2022 (Supp. 22-3).

**R13-2-302. Application for Registration Certificate**

**A.** Applications for associate and employee registration certificates may be presented in person at the Department's licensing office, 2222 W. Encanto Blvd., Phoenix, AZ 85009, by mail to the Phoenix office POB 6638, MD3140, Phoenix, AZ 85005-6638 or the Department's website www.azdps.gov.

**B.** The applicant's employer shall verify all information provided by the applicant and verify proof of U.S citizenship or legal resident status with authorization to seek employment. After verification, the employer or the applicant may submit an application.

**C.** In addition to providing documentation of the requirements of A.R.S. § 32-2442, the employer shall ensure that each application includes:

1. A properly completed application form,
2. Two color photographs suitable for use in making an identification card such as passport photos or 1" x 1 1/4" facial photos, and
3. One properly completed fingerprint card with classifiable fingerprints.

**D.** If applicable equipment and personnel are available, and if the applicant makes a request, the Department personnel shall take an applicant's photographs and fingerprints upon submission of the application and payment of appropriate fees.

**E.** An associate or employee registrant shall conduct business and be identified under the name used on the application and the registration certificate. The Department shall not approve a fictitious name for use on an associate or employer registration certificate.

**F.** If an applicant is employed by more than one agency, the applicant shall submit an application with the words "Additional Employer" written across the top of the application, submit the fee, and meet the requirements of this Section. If the applicant has submitted a fingerprint card to the Department within less than 365 days, no fingerprint card is required for the Additional Employer application. If the applicant has not submitted a fingerprint card within less than 365 days, the applicant shall submit a new fingerprint card with the application. A licensee or registrant shall provide a new fingerprint card at least every two years.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 5190, effective February 5, 2005 (Supp. 04-4). Amended by final expedited rulemaking at 28 A.A.R. 1976 (August 5, 2022), with an immediate effective date of July 15, 2022 (Supp. 22-3).

**R13-2-303. Renewal of Registration Certificate**

**A.** An associate or employee registration certificate expires on the date specified on the registration certificate. The agency licensee shall submit an associate or employee registration renewal application to the Department licensing unit up to 60 days before the expiration date.

**B.** The Department shall not renew a certificate unless the application is complete and contains the information required under R13-2-302.

**C.** When applicable equipment and personnel are available, the applicant's photographs and fingerprints may be taken at the Department of Public Safety upon submission of the application and payment of appropriate fees.

**D.** The Department shall not renew an associate or employee registration unless it is part of an agency license renewal application.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 5190, effective February 5, 2005 (Supp. 04-4).

**R13-2-304. Lost or Stolen Registration Certificate or Identification Card**

If a registration certificate or identification card is lost or stolen, the registrant shall notify the Department immediately by mail to the Arizona DPS Licensing Unit, POB 6638, MD3140, Phoenix, AZ 85005-6638, the Department's website www.azdps.gov or by telephone (602) 223-2361 and request a new registration certificate or identification card, provide a photo for the identification card as specified in R13-2-202(A)(5) and pay the fee for a replacement card.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 5190, effective February 5, 2005 (Supp. 04-4). Amended by final expedited rulemaking at 28 A.A.R. 1976 (August 5, 2022), with an immediate effective date of July 15, 2022 (Supp. 22-3).

**R13-2-305. Change of Address**

A registrant who changes address shall notify the Department in writing within 30 days of the change of address.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 5190, effective February 5, 2005 (Supp. 04-4).

**R13-2-306. Change in Name of Registrant**

A registrant whose name has changed shall notify the Department in writing within 30 days of the name change and may request a new identification card. The registrant may mail the notification to the Arizona DPS Licensing Unit, POB 6638, MD3140, Phoenix, AZ 85005-6638 or submit the notification through the Department's website www.azdps.gov. If the registrant comes to the Department in person at 2222 W. Encanto Blvd., Phoenix, AZ 85009, the registrant shall present to the Department a government-issued photo identification card with the new name or court documents recording the name change and the fees. If the registrant sends a request by mail or Internet, the registrant shall provide the Department certified, notarized copies of any court documents with a photo for the identification card as specified in R13-2-202(A)(5) and the applicable fee.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 5190, effective February 5, 2005 (Supp. 04-4). Amended by final expedited rulemaking at 28 A.A.R. 1976 (August 5, 2022), with an immediate effective date of July 15, 2022 (Supp. 22-3).

## ARTICLE 4. REGULATION

**R13-2-401. Denial of Agency License or Registration Certificate**

**A.** The Department shall notify the applicant of the reason for the denial by mail to the address listed on file at the Department. The Department shall include in the notification a statement advising the applicant that if the applicant contests denial, the applicant may do so by requesting a hearing with the Private Investigator and Security Guard Hearing Board.

**B.** The applicant may request an informal settlement conference under A.R.S. § 41-1092.06.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 5190, effective February 5, 2005 (Supp. 04-4). Amended by final expedited rulemaking at 28 A.A.R. 1976 (August 5, 2022), with an immediate effective date of July 15, 2022 (Supp. 22-3).

**R13-2-402. Repealed**

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 5190, effective February 5, 2005 (Supp. 04-4). Repealed by final expedited rulemaking at 28 A.A.R. 1976 (August 5, 2022), with an immediate effective date of July 15, 2022 (Supp. 22-3).

**R13-2-403. Employee and Business Records**

Each licensee shall maintain, at the licensee's principal place of business, a file or record of the name, physical address, title, employment date, and date of termination of each partner, director, business associate, officer, manager, member, and employee for at least five years from the date of termination. The licensee shall make these files and records available for inspection by any peace officer, licensing personnel of the Department's licensing section, or other designated representative of the Department. The licensee shall submit copies of these records and any information pertaining to the records to the Department's licensing section upon request of the Department.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 5190, effective February 5, 2005 (Supp. 04-4).

**R13-2-404. Complaints**

**A.** A person may make a written complaint against an entity or person regulated under this Chapter by filing the complaint with the Department. The Department may forward a copy of the complaint to the entity or person against whom the complaint has been lodged.

**B.** At the conclusion of the investigation, the Department shall forward a copy of the complaint, upon request, to the entity or person against whom the complaint has been lodged.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 5190, effective February 5, 2005 (Supp. 04-4). Amended by final expedited rulemaking at 28 A.A.R. 1976 (August 5, 2022), with an immediate effective date of July 15, 2022 (Supp. 22-3).

# 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.

# 32-2401. Definitions

In this chapter, unless the context otherwise requires:

1. "Advertising" means the submission of bids, contracting or making known by any public notice, publication or solicitation of business, directly or indirectly, that services regulated under this chapter are available for consideration.

2. "Agency license" means a certificate that is authenticated by the department and that attests that a qualifying party is authorized to conduct the business of private investigations in this state.

3. "Applicant" means a person who has submitted a completed application and all required application and fingerprint processing fees.

4. "Associate" means a person who is a partner or corporate officer in a private investigation agency.

5. "Board" means the private investigator and security guard hearing board established by section 32-2404.

6. "Conviction" means an adjudication of guilt by a federal, state or local court resulting from trial or plea, including a plea of no contest, regardless of whether the adjudication of guilt was set aside or vacated.

7. "Department" means the department of public safety.

8. "Director" means the director of the department of public safety.

9. "Emergency action" means a summary suspension of a license pending revocation, suspension or probation in order to protect the public health, safety or welfare.

10. "Employee" means an individual who works for an employer, is listed on the employer's payroll records and is under the employer's direction and control.

11. "Employer" means a person who is licensed pursuant to this chapter, who employs an individual for wages or salary, who lists the individual on the employer's payroll records and who withholds all legally required deductions and contributions.

12. "Identification card" means a card issued by the department to a qualified applicant for an agency license, an associate or a registrant.

13. "Insurance adjuster" means a person other than a private investigator who, for any consideration, engages in any of the activities prescribed in the definition of private investigator in this section in the course of adjusting or otherwise participating in the disposal of any claim under or in connection with a policy of insurance.

14. "Letter of concern" means an advisory letter to notify a private investigator that while there is insufficient evidence to support probation or suspension or revocation of a license the department believes the private investigator should modify or eliminate certain practices and that continuation of the activities that led to the information being submitted to the department may result in further disciplinary action against the private investigator's license.

15. "Licensee" means a person to whom an agency license is granted pursuant to this chapter.

16. "Private investigator" means a person other than an insurance adjuster or an on-duty peace officer as defined in section 1-215 who, for any consideration, engages in business or accepts employment to:

(a) Furnish, agree to make or make any investigation for the purpose of obtaining information with reference to:

(i) Crime or wrongs done or threatened against the United States or any state or territory of the United States.

(ii) The identity, habits, conduct, movements, whereabouts, affiliations, associations, transactions, reputation or character of any person or group of persons.

(iii) The credibility of witnesses or other persons.

(iv) The whereabouts of missing persons, owners of abandoned property or escheated property or heirs to estates.

(v) The location or recovery of lost or stolen property.

(vi) The causes and origin of, or responsibility for, a fire, libel, slander, a loss, an accident, damage or an injury to real or personal property.

(b) Secure evidence to be used before investigating committees or boards of award or arbitration or in the trial of civil or criminal cases and the preparation therefor.

(c) Investigate threats of violence and provide the service of protection of individuals from serious bodily harm or death.

17. "Qualifying party" means the individual meeting the qualifications under this chapter for an agency license.

18. "Registrant" means an employee of a licensed agency qualified to perform the services of the agency.

19. "Registration certificate" means a certificate that is authenticated by the department and that attests that an employee of a business holding an agency license has satisfactorily complied with article 3 of this chapter.

20. "Restructuring" means any change in a business' legal status.

21. "Unprofessional conduct" means any of the following:

(a) Engaging or offering to engage by fraud or misrepresentation in activities regulated by this chapter.

(b) Aiding or abetting a person who is not licensed pursuant to this chapter in representing that person as a private investigator in this state.

(c) Gross negligence in the practice of a private investigator.

(d) Failing or refusing to maintain adequate records and investigative findings on a client. For purposes of this subdivision, "adequate records" means records containing, at a minimum, sufficient information to identify the client, the dates of service, the fee for service, the payments for service, the type of service given and copies of any reports that may have been made.

(e) Committing a felony or a misdemeanor involving any crime that is grounds for denial, suspension or revocation of a private investigator license or employee identification card. In all cases, conviction by a court of competent jurisdiction or a plea of no contest is conclusive evidence of the commission.

(f) Making a fraudulent or untrue statement to the department, the board or its investigators, staff or consultants.

# 32-2402. Administration by director; duty to keep records; rules; criminal history records checks

A. The director of the department of public safety shall administer this chapter.

B. The department shall keep a record of:

1. All applications for licenses or registrations under this chapter.

2. All bonds and proof of workers' compensation required to be filed.

3. Whether a license, registration certificate, renewal license or renewal registration certificate has been issued under each application and bond.

4. If a license or registration certificate is revoked, suspended, cancelled or denied or if a licensee or registrant is placed on probation, the date of filing the order for revocation, suspension, cancellation, denial or probation.

5. All individuals, firms, partnerships, associations or corporations that have had a license or registration revoked, suspended or cancelled or that have been placed on probation and a written record of complaints filed against licensees and registrants.

C. The department shall maintain all records kept pursuant to subsection B of this section for at least five years. The records, except the financial statement of licensees, are open to inspection as public records.

D. The director shall adopt and enforce rules that are not in conflict with the laws of this state and that are necessary to enforce this chapter.

E. The director may conduct periodic criminal history records checks pursuant to section 41-1750 for the purpose of updating the licensing and registration status of current license and registration holders.

# 32-2407. Fees; renewal of license or registration certificate

A. The department shall charge and collect reasonable fees as determined by the director to cover the operational and equipment costs of regulating the private investigator industry.

B. Except as provided in section 32-4301, the director may renew a license or registration certificate granted under this chapter after receiving an application on such forms as the department prescribes and receipt of the fees prescribed pursuant to subsection A of this section. The renewal of an agency license requires the filing of a surety bond as prescribed in section 32-2423, subsections B and C. Renewal of a license or registration shall not be granted more than ninety days after expiration. No licensee or registrant may engage in any activity subject to this chapter during any period between the date of expiration of the license or registration and the renewal of the license or registration.

C. The department shall renew a suspended license or registration certificate as provided in this article. Renewal of the license or registration does not entitle the licensee or registrant, while the license or registration remains suspended and until it is reinstated, to engage in any activity regulated by this chapter, or in any other activity or conduct in violation of the order or judgment by which the license or registration was suspended.

D. The director shall not reinstate a revoked license or registration. The director shall not accept an application for a license or registration from a person whose license or registration has been revoked until at least one year after the date of revocation.

## 32-2421. Qualifying party

A. An applicant for an agency license must have a qualifying party.

B. For a sole proprietorship, the qualifying party shall be the agency licensee.

C. For a partnership, corporation or limited liability company, the qualifying party shall be the individual who is responsible for managing the agency. All other partners or corporate officers shall register as associates pursuant to article 3 of this chapter.

D. If required, the qualifying party shall maintain workers' compensation insurance in effect.

# 32-2422. Qualification of applicant for agency license; substantiation of work experience

A. An applicant as a qualifying party for an agency license under this chapter shall:

1. Be at least twenty-one years of age.

2. Be a citizen or legal resident of the United States who is authorized to seek employment in the United States.

3. Not have been convicted of any felony or currently be under indictment for a felony.

4. Within the five years immediately preceding the application for an agency license, not have been convicted of any misdemeanor act involving:

(a) Personal violence or force against another person or threatening to commit any act of personal violence or force against another person.

(b) Misconduct involving a deadly weapon as provided in section 13-3102.

(c) Dishonesty or fraud.

(d) Arson.

(e) Theft.

(f) Domestic violence.

(g) A violation of title 13, chapter 34 or 34.1 or an offense that has the same elements as an offense listed in title 13, chapter 34 or 34.1.

(h) Sexual misconduct.

5. Not be on parole, on community supervision, on work furlough, on home arrest, on release on any other basis or named in an outstanding arrest warrant.

6. Not be serving a term of probation pursuant to a conviction for any act of personal violence or domestic violence, as defined in section 13-3601, or an offense that has the same elements as an offense listed in section 13-3601.

7. Not be either of the following:

(a) Adjudicated mentally incompetent.

(b) Found to constitute a danger to self or others pursuant to section 36-540.

8. Not have a disability as defined in section 41-1461, unless that person is a qualified individual as defined in section 41-1461.

9. Not have been convicted of acting or attempting to act as a private investigation agency or a private investigator without a license if a license was required.

10. Have had a minimum of three years of full-time investigative experience or the equivalent of three years of full-time investigative experience that consists of actual work performed as an investigator for a private concern, for the federal government or for a state, county or municipal government.

11. Not be a registered sex offender.

B. If the applicant for an agency license is a firm, partnership, association or corporation, the qualifications required by subsection A of this section are required of the individual in active management who shall be the qualifying party of the firm, partnership, association or corporation.

C. Applicants for an agency license shall substantiate investigative work experience claimed as years of qualifying experience and provide the exact details as to the character and nature of the experience on a form prescribed by the department and certified by the employers. On written request, an employer shall submit to the employee a written certification of prior work experience within thirty days. The written certification is subject to independent verification by the director. If an employer goes out of business, the employer shall provide all employees with a complete and accurate record of their work history. If applicants are unable to supply written certification from an employer in whole or in part, applicants may offer written certification from persons other than an employer covering the same subject matter for consideration by the department. The burden of proving the minimum years of experience is on the applicant.

D. The department may deny an agency license if the department determines that the applicant does not meet the requirements of this section.

# 32-2423. Application for agency license; financial responsibility; notice and opportunity to supply additional information

A. Every application for an original or renewal agency license to engage in the private investigator business shall set forth verified information to assist the department in determining the applicant's ability to meet the requirements prescribed in this chapter and shall contain the following:

1. The full name and business address of the applicant.

2. The name under which the applicant intends to do business.

3. A statement as to the general nature of the business in which the applicant intends to engage.

4. If the applicant is other than an individual, the full name and residence address of each of its associates.

5. A verified statement of the applicant's experience and qualifications.

6. Photographs of the applicant of a number and type prescribed by the department.

7. Fingerprints of the applicant of a quality and number prescribed by the department for the purpose of obtaining state and federal criminal records checks pursuant to section 41-1750 and Public Law 92-544. The department may exchange this fingerprint data with the federal bureau of investigation. The department may conduct periodic state criminal history checks to ensure continued qualification under this chapter.

8. Such other information, evidence, statements or documents as the director may reasonably require.

9. The fee prescribed pursuant to section 32-2407.

B. Before the issuance of an original or renewal agency license the applicant shall provide to the department:

1. A surety bond in the amount of two thousand five hundred dollars.

2. A certificate of workers' compensation insurance, if applicable.

C. The bond shall be executed and acknowledged by the applicant as principal and by a corporation licensed to transact fidelity and surety business in this state as surety. The bond shall be continuous in form and shall run concurrently with the license period. The bond required by this section shall be in favor of the state for the benefit of any person injured by any acts of a private investigator or the private investigator’s agency or employees and is subject to claims by any person who is injured by these acts.

D. The department shall cancel the agency license of any licensed agency on the cancellation of the surety bond. The qualifying party may reinstate the license on filing:

1. A surety bond that is concurrent with the remainder of the license period.

2. Payment of the reinstatement fee prescribed pursuant to section 32-2407.

E. If an application is incomplete, the department shall notify the applicant pursuant to section 41-1074. If the department requires additional information to make a decision on licensure, the department shall notify the applicant pursuant to section 41-1075. The department shall send notices under this subsection to the applicant’s last known residential address and shall include sufficient information to assist the applicant in completing the application process. The applicant has forty-five calendar days from the date of notification to provide the additional documentation. If the applicant fails to respond within forty-five calendar days, the application and any certificates issued are automatically suspended until the department receives the necessary documentation to approve or deny the application.

# 32-2425. Issuance of license and identification card; deadline for completing application; transfer of license prohibited

A. The department shall issue an agency license to any applicant who complies with this chapter. Each license shall contain the name and address of the licensee and the number of the license and shall be issued for a period of two years.

B. On the issuance of a license, an identification card described in section 32-2461 shall be issued without charge to the licensee if an individual, or if the licensee is other than an individual, to its qualifying party, and to each of its associates and directors. The identification card is evidence that the licensee is duly licensed pursuant to this chapter. If a person to whom the card of a licensee other than an individual is issued terminates the person's position, office or association with the licensee, the person shall surrender the card to the licensee and within five business days the licensee shall mail or deliver the card to the director for cancellation. If the person fails or refuses to surrender the card to the licensee, the licensee shall notify the director within five business days of the termination of the person's position, office or association with the licensee.

C. On notification by the department to an applicant that the agency license is ready for issuance, the applicant shall complete the application process within ninety calendar days. Failure to complete the process shall result in the application being cancelled and all fees shall be forfeited by the applicant. Subsequent application by the same applicant requires the payment of all application and license fees prescribed pursuant to section 32-2407.

D. A licensee shall notify the director in writing within thirty calendar days of any change in the name or address of the licensee’s business and of any change of associates.

E. All new associates shall submit applications on forms prescribed by the director.

F. No license issued under this chapter is transferable or assignable.

# 32-2426. Branch office certificate

A. No licensee may establish a branch office of a licensed agency unless the department has issued a branch office certificate.

B. A branch office certificate authorizes the qualifying party of an agency licensee to conduct the business of private investigations in this state at a location other than the principal place of business shown on the agency license.

C. An application for a branch office certificate shall be on such form as the director prescribes.

D. The branch office certificate shall be issued in the name of the licensed agency only.

# 32-2442. Application for employee registration certificate; registration period cancellation

A. Every application for an employee registration certificate shall provide verified information to assist the department in determining the applicant's ability to meet the requirements prescribed in this chapter, as follows:

1. The full name and address of the applicant.

2. The name of the agency for which the applicant will be an employee.

3. Authorization of the qualifying party or the qualifying party's designee to issue an employee registration.

4. Fingerprints of the applicant of a quality and number prescribed by the department for the purpose of obtaining state and federal criminal records checks pursuant to section 41-1750 and Public Law 92-544. The department may exchange this fingerprint data with the federal bureau of investigation. The department may conduct periodic state criminal history checks to ensure continued qualification under this chapter.

5. Photographs of the applicant of a number and type prescribed by the department.

6. Such other information, evidence, statements or documents as the department may reasonably require.

B. An application for an employee registration or renewal shall be accompanied by the fee prescribed pursuant to section 32-2407.

C. An original employee registration is valid from the date of issuance to the date of expiration of the agency license under which the employee is employed. The renewal period of an employee registration runs concurrently with the agency license. An employee registration may be denied as prescribed in section 32-2459 and shall be canceled on the cancellation, termination or revocation of the agency license under which the employee registration is issued.

D. An employee registration or renewal shall not be issued to an applicant unless the employer has on file with the department evidence of current workers' compensation coverage. An employee registration is cancelled on cancellation of the employer's workers' compensation coverage and may be reinstated only on verification of the reinstatement of workers' compensation coverage and payment of the reinstatement fee prescribed pursuant to section 32-2407.

E. If an application is incomplete, the department shall notify the applicant pursuant to section 41-1074. If the department requires additional information to make a decision on registration, the department shall notify the applicant pursuant to section 41-1075. The department shall send notices issued under this subsection to the applicant's last known residential address and shall include sufficient information to assist the applicant to complete the application process. The applicant has forty-five calendar days from the date of notification to provide the additional documentation. If the applicant fails to respond within forty-five calendar days, the application and any certificates issued are automatically suspended until the department receives the necessary documentation to approve or deny the application.

# 32-2443. Employee identification card required; denial

A. Each employee of an agency licensed under this chapter shall obtain an identification card, except those employees engaged exclusively in clerical and office work.

B. The department may issue an identification card to an applicant who, on initial application for a registration certificate, complies with the application requirements of section 32-2442, subsection D and who on the face of the application appears to meet the requirements of section 32-2441. On completion of the investigation of the applicant's qualifications, the department may deny the applicant's registration as prescribed in section 32-2459.

C. On termination of a registered employee from a licensed agency, the employee shall immediately surrender the identification card to the agency's qualifying party or designee. The qualifying party or designee shall forward the registrant's identification card to the department within five business days of receipt. If the employee fails or refuses to surrender the card to the qualifying party or designee, the qualifying party or designee shall notify the director within five business days of the termination of the employment with the licensee.

## 32-2452. Authority required to operate under fictitious name

A licensee may conduct an investigative business under a name other than the licensee's by first obtaining written authorization from the director. The director shall not authorize the use of an agency name that is so similar to that of a public officer or agency or of that used by another licensee that the public may be confused or misled by the use.

# 32-2453. Business address; posting of license

A. Each licensed agency shall have at least one physical location from which the normal business of the agency is conducted. The address of this location shall be on file with the department at all times as required by section 32-2423, subsection A and section 32-2425, subsection D.

B. The agency license certificate issued by the department shall be posted in a conspicuous place in the principal office of the private investigation agency. The branch office certificate shall be conspicuously posted in the branch office of the agency for which it is issued.

## 32-2454. Advertising

All display or broadcast media advertising by a licensee soliciting business shall contain the licensee's name and license number as they appear in the records of the department. The licensee shall not use any advertising that is false, deceptive or misleading.

# 32-2456. Authority to investigate complaint; filing; response; retention of records

A. The department may investigate any licensee, registrant, associate, employee or person if that licensee, registrant, associate, employee or person is advertising as providing or is engaged in performing services that require licensure or registration under this chapter.

B. The department shall investigate if a licensee or registrant is engaged in activities that do not comply with or are prohibited by this chapter.

C. The department shall enforce this chapter without regard to the place or location in which a violation may have occurred.

D. On the complaint of any person or on its own initiative, the department may investigate any suspected violation of this chapter or the business and business methods of any licensee, registrant or employee of a licensee or applicant for licensure or registration under this chapter.

E. Complaints filed against any licensee, associate, registrant or employee of a licensee shall be in writing on such forms as the department prescribes and shall be filed with the department.

F. In any investigation undertaken by the department, each licensee, associate, registrant, applicant, agency or employee, on request of the department, shall provide records and shall truthfully respond to questions concerning activities regulated under this chapter. These records shall be maintained for five years at the principal place of business of the licensee, or at another location for a person whose license has been terminated, cancelled or revoked. On request by the department during normal business hours or at another time acceptable to the parties, the records shall be made available immediately to the department unless the department determines that an extension may be granted. The licensee shall provide copies of any records requested by the department.

# 32-2457. Grounds for disciplinary action; emergency summary suspension; judicial review

A. The following constitute grounds for which disciplinary action specified in subsection B of this section may be taken against a licensee or registrant or, if the licensee is other than an individual, against the licensee's qualifying party or any of its associates, directors or managers:

1. Fraud or wilful misrepresentation in applying for an original license or registration or the renewal of an existing license or registration.

2. Using any letterhead, advertisement or other printed matter in any manner or representing that the licensee, associate, registrant or employee of the licensee is an instrumentality of the federal government, a state or any political subdivision of a state.

3. Using a name that is different from that under which the licensee, associate, registrant or employee of the licensee is currently licensed for any advertisement, solicitation or contract to secure business unless the name is an authorized fictitious name.

4. Impersonating, permitting or aiding and abetting an employee to impersonate a law enforcement officer or employee of the United States, any state or a political subdivision of a state.

5. Knowingly violating, or advising, encouraging or assisting the violation of, any statute, court order, warrant or injunction in the course of a business regulated under this chapter.

6. Falsifying fingerprints, photographs or other documents while operating under this chapter.

7. Conviction of a felony.

8. Conviction of any act involving a weapon pursuant to section 13-3102.

9. Conviction of any act of personal violence or force against any person or conviction of threatening to commit any act of personal violence or force against any person.

10. Soliciting business for an attorney in return for compensation.

11. Conviction of any act constituting dishonesty or fraud.

12. Being on parole, on community supervision, on work furlough, on home arrest, on release on any other basis or named in an outstanding arrest warrant.

13. Serving a term of probation pursuant to a conviction for any act of personal violence or domestic violence as defined in section 13-3601 or an offense that has the same elements as a domestic violence offense listed in section 13-3601, subsection A.

14. Committing or knowingly permitting any employee to commit any violation of this chapter or rules adopted pursuant to this chapter.

15. Wilfully failing or refusing to render to a client services or a report as agreed between the parties and for which compensation has been paid or tendered in accordance with the agreement of the parties.

16. The unauthorized release of information acquired on behalf of a client by a licensee, associate or registrant as a result of activities regulated under this chapter.

17. Failing or refusing to cooperate with or refusing access to an authorized representative of the department engaged in an official investigation pursuant to this chapter.

18. Employing or contracting with any unregistered or improperly registered person or unlicensed or improperly licensed person or agency to conduct activities regulated under this chapter if the licensure or registration status was known or could have been ascertained by reasonable inquiry.

19. Permitting, authorizing, aiding or in any way assisting a registered employee to conduct services as described in this chapter on an independent contractor basis and not under the authority of the licensed agency.

20. Failing to maintain in full force and effect workers' compensation insurance, if applicable.

21. Conducting private investigation services regulated by this chapter on an expired, revoked or suspended license or registration.

22. Accepting employment, contracting or in any way engaging in employment that has an adverse impact on investigations being conducted on behalf of clients.

23. Advertising in a false, deceptive or misleading manner.

24. Failing to display on request the identification card issued by the department as required under section 32-2451, subsection B.

25. Committing any act of unprofessional conduct.

26. Being arrested for any offense that is listed in this chapter and that would disqualify the licensee, registrant or qualifying party or any of its associates, directors or managers from obtaining a license or registration.

27. Failing to maintain all qualifications as prescribed by sections 32-2422 and 32-2441, as applicable.

B. On completion of an investigation, the director:

1. May dismiss the case.

2. May take emergency action.

3. May issue a letter of concern, if applicable.

4. May forward the findings to the board for review and possible disciplinary action.

5. Shall place all records, evidence, findings and conclusions and any other information pertinent to the investigation in the public records section of the file maintained at the department.

6. May suspend the license or registration of a person who is arrested for an offense that is listed in this chapter and that would disqualify the person from obtaining a license or registration.

C. A letter of concern is a public document and may be used in future disciplinary actions against a licensee.

D. If the department finds, based on its investigation, that the public health, safety or welfare requires emergency action, the director may order a summary suspension of a license or registration pending proceedings for revocation or other action. If the director issues this order, the department shall serve the licensee or registrant with a written notice of complaint and formal hearing, setting forth the charges made against the licensee or registrant and the licensee's or registrant's right to a formal hearing before the board pursuant to title 41, chapter 6, article 10.

E. If the department finds, based on its investigation, that a violation of subsection A of this section occurred, a hearing by the board may be scheduled pursuant to title 41, chapter 6, article 10. The department shall send notice of the hearing by certified mail, return receipt requested, to the licensee's or registrant's last known address in the department's records.

F. Based on information the board receives during a hearing pursuant to title 41, chapter 6, article 10, it may recommend to the director that the director:

1. Dismiss the complaint if the board believes it is without merit.

2. Fix a period and terms of probation best adapted to protect the public health and safety and to rehabilitate or educate the licensee or registrant.

3. Suspend the license or registration for a period of not more than twelve months.

4. Revoke the license or registration.

G. On a finding by the board and review and concurrence by the director that a licensee or registrant committed a violation of subsection A of this section, the probation, suspension or revocation applies to all licenses or registrations held by a licensee or registrant under this chapter and chapter 26 of this title.

H. Except as provided in section 41-1092.08, subsection H, a person may appeal a final administrative decision made pursuant to this section to the superior court pursuant to title 12, chapter 7, article 6.

# 32-2459. Grounds for refusal to issue agency license; associate and employee registration and identification; judicial review; good cause exceptions

A. Except as provided in subsection F of this section, the department may deny an agency license or the renewal of an agency license if the applicant:

1. Committed any act that, if committed by a licensee, would be grounds for the probation of a licensee or the suspension or revocation of a license under this chapter.

2. Does not meet the requirements prescribed in section 32-2422.

3. While not licensed under this chapter, committed, or aided and abetted the commission of, any act for which a license is required by this chapter or has acted or attempted to act as a private investigator service or private investigator.

4. Knowingly made a false statement in the application.

5. Has been denied an agency license under this chapter.

6. Has been an associate of an agency that has had a license revoked.

7. Failed to provide adequate verification of required investigative experience.

B. The department may deny the issuance of an identification card to an applicant for an associate or employee registration if the applicant:

1. Fails to meet the qualifications under section 32-2441.

2. Has committed any act that would be grounds for suspension or revocation of registration pursuant to this chapter.

3. Has knowingly made any false statement on the application.

C. The denial of the issuance of an identification card or license under this article shall be in writing and shall describe the basis for the denial. A hearing to contest a denial shall be held in accordance with title 41, chapter 6, article 10.

D. Except as provided in section 41-1092.08, subsection H, final decisions of the director are subject to judicial review pursuant to title 12, chapter 7, article 6.

E. An applicant may petition a denial to the board for a good cause exception.

F. If the board granted a licensee or a registrant a good cause exception pursuant to section 32-2412, the department may not deny the licensee's or the registrant's renewal application based on factors already reviewed by the board when granting the good cause exception.

# 32-2460. Authority to employ unlicensed persons; duty to maintain records

A. Except as provided in this chapter, a licensee may employ as many unlicensed or unregistered persons as may be necessary to assist the licensee in business and the licensee is at all times legally responsible for the good conduct in the business of each person employed. This section does not authorize any unlicensed or unregistered person to perform any service of a type for which a license or registration is required under this chapter unless the person performs the service as a properly registered employee of a licensee.

B. Every licensed agency shall keep an accurate and current record of pertinent information on all employees that is available to the department on request.

## 32-2461. Identification card; form

The department shall issue a standard identification card to each holder of a license or registration certificate. The department shall determine the size and design of the identification card, and the card shall contain the following information:

1. Name of employee.

2. Photograph of employee.

3. Physical description of employee.

4. Employer's registration certificate number.

5. Expiration date.

6. Any other information that the department determines to be necessary.

# 41-1073. Time frames; exception

A. No later than December 31, 1998, an agency that issues licenses shall have in place final rules establishing an overall time frame during which the agency will either grant or deny each type of license that it issues. Agencies shall submit their overall time frame rules to the governor's regulatory review council pursuant to the schedule developed by the council. The council shall schedule each agency's rules so that final overall time frame rules are in place no later than December 31, 1998. The rule regarding the overall time frame for each type of license shall state separately the administrative completeness review time frame and the substantive review time frame.

B. If a statutory licensing time frame already exists for an agency but the statutory time frame does not specify separate time frames for the administrative completeness review and the substantive review, by rule the agency shall establish separate time frames for the administrative completeness review and the substantive review, which together shall not exceed the statutory overall time frame. An agency may establish different time frames for initial licenses, renewal licenses and revisions to existing licenses.

C. The submission by the department of environmental quality of a revised permit to the United States environmental protection agency in response to an objection by that agency shall be given the same effect as a notice granting or denying a permit application for licensing time frame purposes. For the purposes of this subsection, "permit" means a permit required by title 49, chapter 2, article 3.1 or section 49-426.

D. In establishing time frames, agencies shall consider all of the following:

1. The complexity of the licensing subject matter.

2. The resources of the agency granting or denying the license.

3. The economic impact of delay on the regulated community.

4. The impact of the licensing decision on public health and safety.

5. The possible use of volunteers with expertise in the subject matter area.

6. The possible increased use of general licenses for similar types of licensed businesses or facilities.

7. The possible increased cooperation between the agency and the regulated community.

8. Increased agency flexibility in structuring the licensing process and personnel.

E. This article does not apply to licenses issued either:

1. Pursuant to tribal state gaming compacts.

2. Within seven days after receipt of initial application.

3. By a lottery method.

**F.**

CONSIDERATION, DISCUSSION, AND POSSIBLE ACTION ON INFORMATION ALLEGING DEPARTMENT OF PUBLIC SAFETY SUBSTANTIVE POLICY STATEMENT CVETFD-1 CONSTITUTES A RULE PURSUANT TO A.R.S. § 41-1033(H)

# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - PETITION

**MEETING DATE: April 1, 2025**

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

**FROM:** Council Staff

**DATE:** March 13, 2025

**SUBJECT:** **A.R.S. 41-1033(H) Information - Department of Public Safety**

### Background

As described in Council staff's memorandum dated November 13, 2024, on September 16, 2024, Council staff received a correspondence from Amy Carlyle, Executive Director of Career Development, Inc. dba Northern Arizona Academy, requesting review of Department of Public Safety (Department) substantive policy statement CVETFD-1, which was published in Volume 28, Issue 38 of the Arizona Administrative Register on September 23, 2022. Specifically, Ms. Carlyle alleges, while Senate Bill (SB) 1630 and A.R.S. § 15-925 authorized the Department to adopt rules regulating the use of 11- to 15-person passenger vehicles; the Department has not done so. Instead, the Department issued the above-referenced substantive policy statement which sets forth applicable requirements. Ms. Carlyle alleges, "[s]ubstantive [p]olicy [s]tatements cannot create rules or 'impose additional requirements or penalties on regulated parties.'" *See* Carlyle correspondence dated September 16, 2024.

On January 16, 2025, the Department submitted a preliminary response to the issues raised by Ms. Carlyle. Therein, the Department stated it is required to inspect and certify vehicles under A.R.S. § 15-925. The Department also stated it 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), to implement rules. However, the STAC currently has no appointed members and cannot meet. As such, the Department has been unable to make rules for the regulation of 11- to 15- person passenger vehicles. Furthermore, the Department acknowledged that it has had to consider the policy statement as an interim intent to implement the statute until rulemaking could occur.

This matter was first considered at the January 28, 2025 Study Session. Thereafter, the Department submitted a rebuttal statement to comments made by Ms. Carlyle at that meeting. Subsequently, at the February 4, 2025 Council Meeting, pursuant to A.R.S. § 41-1033(H), at least three (3) Council Members voted to hear this matter at a future meeting. On February 4, 2025, Council staff sent a correspondence to the Department pursuant to A.R.S. § 41-1033(H)(2) advising them of the Council's vote. Council staff also requested the Board provide a formal response to Ms. Carlyle's correspondence pursuant to A.R.S. § 41-1033(H)(3) no later than March 6, 2025. Council staff received the Department's formal response on March 6, 2025. Copies of the Ms. Carlyle initial correspondence, the Department's preliminary response, rebuttal statement, and formal response pursuant to A.R.S. § 41-1033(H)(3) are included in the final materials for the Council's consideration.

## Relevant Statutes

A.R.S. § 41-1033(H) allows a person to submit information to the Council "that alleges an existing agency practice or substantive policy statement may constitute a rule." Pursuant to A.R.S. § 41-1001(24) a "substantive policy statement" is defined as "a written expression which informs the general public of an agency's current approach to, or opinion of, the requirements of the federal or state constitution, federal or state statute, administrative rule or regulation, or final judgment of a court of competent jurisdiction, including, where appropriate, the agency's current practice, procedure or method of action based upon that approach or opinion. *A substantive policy statement is advisory only.* A substantive policy statement does not include internal procedural documents which only affect the internal procedures of the agency and *does not impose additional requirements or penalties on regulated parties,* confidential information or rules made in accordance with this chapter." (Emphasis added). Alternatively, a "rule" is defined as "an agency statement of general applicability that implements, interprets or prescribes law or policy, or describes the procedure or practice requirements of an agency." *See* A.R.S. § 41-1001(21).

## Procedure

After considering Ms. Carlyle's correspondence, the Department's response, and the supporting materials submitted, the Council must decide whether an existing agency practice or substantive policy statement constitutes a rule. *See* A.R.S. § 41-1033(H)(1)(a). Pursuant to A.R.S. § 41-1033(H)(1), the Council must make its decision within 90 days after receipt of the third Council Member's request to hear this petition at a hearing, which occurred at the February 4, 2025 Council Meeting. As such, the Council has until **May 5, 2025** to make a decision. Any decision by the Council must be made by a majority of the council members who are present and voting on the issue. *See* A.R.S. § 41-1033(L).

Pursuant to A.R.S. § 41-1033(K), if the Council determines that the substantive policy statement constitutes a rule the policy statement shall be void.

## Analysis

It appears the Department's substantive policy statement CVETFD-1 constitutes rules related to regulation of 11- to 15-person passenger vehicles in lieu of rules enacted through the rulemaking process. Section A of CVETFD-1 explicitly states, "[u]ntil such time as the Department can consult with the [STAC] and implement final rules in relation to the provisions in Senate Bill (SB) 1630 and A.R.S. § 15-925…, 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." Sections B through M of CVETFD-1 go on to outline the requirements for regulated parties with Section N indicating the CVETFD-1 will expire "upon the filing of final rules." As such, CVETFD-1 appears to impose additional requirements or penalties on regulated parties and is not merely advisory, falling outside the definition of a substantive policy statement. Instead, CVETFD-1 likely meets the definition of a rule as it sets forth the Department's current approach to, or opinion of, the requirements of federal or state statute and administrative rule or regulation.

## Conclusion

Council staff believes the Department's substantive policy statement CVETFD-1 constitutes a rule and recommends it should be declared void pursuant to A.R.S. § 41-1033(K).

Amy Carlyle
PO BOX 125
Taylor, AZ 85939
928.536.9320
acarlyle@naacahrter.org

The Substantive Policy issued by the Arizona Department of Public Safety in the Arizona Administrative Register Volume 28 Issue 38 page 2499 is being used as a rule to impose additional requirements on regulated parties without following the requirements established by law to impose restrictions or guidelines on the use of 15 passenger motor vehicles. In short, because DPS has not assembled the Student Transportation Advisory Council, they are attempting to short-cut the process and impose rules on Charter schools and Districts using a Substantive Policy instead of following the protocol required by law to create rules.

State Bill 1630 passed in July 2020 states the following (highlighting and emphasis added):

15-925. School transportation; allowable vehicles

NOT WITHSTANDING 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.

Sec. 6. Section 28-900, Arizona Revised Statutes, is amended to read:

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 7 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.

The Substantive policy statement issued in the Arizona Administrative Register Volume 28 Issue 38 page 2499 states requirements for motor vehicle usage that undermines and restricts the usage of motor vehicles as intended by the law. Furthermore, the requirements listed are not "substantially different than the minimum standards for school busses" nor were they created "in consultation with the Student Transportation Advisory Council."

Additionally, "The Administrative Procedure Act requires the publication of substantive policy statements issued by agencies (A.R.S. § 41-1013(B)(14)). Substantive policy statements are written expressions which inform the general public of an agency's current approach to rule or regulation practice. **Substantive policy statements are 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"**

However, I was told by Sergeant Will Lunt of DPS, "DPS is charged with writing rules to govern the use of 11-15 passenger vehicles for school bus use. The rules cannot be finalized until the Student Transportation Advisory Council, which is addressed in SB1630, is appointed and functioning. Until the Council is up and running, **the Substantive Policy Statement is the rule**

**that must be followed**." It is my understanding that Substantive Policies are not rules, but internal guidelines.

Gmail

Simon Larscheidt <simon.larscheidt@azdoa.gov>

# Fwd: Petition for the Review of Substantive Policy Statement

**Simon Larscheidt** <simon.larscheidt@azdoa.gov> Wed, Nov 6, 2024 at 9:57 AM
To: Simon Larscheidt <simon.larscheidt@azdoa.gov>

---------- Forwarded message ---------
From: Amy Carlyle <ACarlyle@naacharter.org>
Date: Tuesday, September 17, 2024 at 9:43:20 AM UTC-7
Subject: RE: Petition for the Review of Substantive Policy Statement
To: grrccomments@azdoa.gov <grrccomments@azdoa.gov>

I would like to add some additional information that I have obtained.

Specifically, the section of SB 1630 that DPS is ignoring is the following:

28-900 Authorizes DPS school transportation rules to include minimum standards for the:

a) design and equipment of 11-15 passenger vehicles that are **substantially different from the minimum standards for school buses**;

b) periodic inspection and maintenance of 11-15 passenger vehicles;

c) establishment of procedures for the operation of 11-15 passenger vehicles; and

d) to allow for a variety of vehicles to be used to meet the needs of students and systems of varying sizes and locations.

The statute clearly differentiates between Schol Busses that are designed for 16 or more passengers and Motor Vehicles described in section 15-925

The Substantive Policy Statement ignores this and instead says the motor vehicles described in section 15-925 must meet the same standards as school busses that are designed for 16 or more passengers. This is clearly the establishment of a rule that ignores the law enacted by SB1630.

Thank you,

**Amy Carlyle**

Executive Director

Career Development Inc dba Northern Arizona Academy

928.536.3920

**From:** Amy Carlyle
**Sent:** Monday, September 16, 2024 3:02 PM
**To:** grrccomments@azdoa.gov
**Subject:** Petition for the Review of Substantive Policy Statement

Hello,

[Quoted text hidden]

**Arizona Department of Public Safety**
**Response to Petition on Substantive Policy Statement**
**A.R.S. § 15-925, 11 to 15 Student Transportation Passenger Vehicles**
**13 A.A.C. 13, School Buses**
**January 2025**

"In an apparent effort to reduce transportation costs, some school districts and other school operators across the nation have purchased or leased full-sized passenger vans with capacities of 10 passengers or more (11 or more persons including the driver) in lieu of school buses; refer to Figure 1 *Van Descriptions* on Page 5. Since drivers of these vehicles are not required to possess a CDL, schools may be able to bypass a number of federal and state requirements. In addition to the lack of a CDL, drivers of vans may not receive specialized driver training, a criminal background check, a periodic medical fitness examination, drug and alcohol testing or ongoing checks for driving violations."[1] "Under federal law, any motor vehicle designed to carry 10 passengers (11 or more persons including the driver) is classified as a *bus*. A *bus* is classified as a *school bus* if it is used, or intended for use, in transporting students to and from school or school related activities."[1] Congress specified in 2005 that "…schools or school systems may not purchase or lease a new van designed to transport 10 to 14 passengers (11 to 15 persons including the driver) and not built to school bus or multifunction school activity bus standards, if the vehicle will be used by, or on behalf of, the school or school system to transport preprimary, primary, or secondary school students to or from school or an event related to school."[1] Federal law prohibits dealers from selling or leasing these vehicles if Federal Motor Vehicle Safety Standards for school buses or multifunction school activity-buses are not met. For some of these vehicles, the dealers/manufacturers apply a certification label stating *Not A School Bus*. The Department has encountered these *Not A School Bus* labels in viewing some of these vans. A.R.S. § 15-925 intends to regulate these vans and drivers to ensure the intended use of the van, the skill of the driver and conformance with safety standards.

[1] National Association of State Directors of Pupil Transportation Services, Position Paper: Non-conforming Vans Used for School Transportation, December 4, 2017.

The Department has two groups of stakeholders; One: the schools who operate the vehicles and Two: the children (and their parents) and other adults (e.g. teachers and teacher aides) who ride on those vehicles. The Department is required to inspect and certify the vehicles under A.R.S. § 15-925. The Department is also required under statute (A.R.S. §§ 28-900 and 28-3228) to consult with the Student Transportation Advisory Council (STAC) on *all matters* related to rulemaking.

As the Department indicated in its five-year review report to the Council earlier in 2024, the STAC currently has no appointed members and did not have enough members to form a quorum over the last several years to conduct any form of rulemaking. The Department stated in the report it sought legal advice on whether it could proceed with rulemaking without consulting the STAC. The legal opinion was the Department could not proceed. Without other alternatives, the Department then had to consider the policy statement as an interim intent to implement the statute until rulemaking could occur. Had the Department had the ability to bypass the STAC, it would likely have engaged in an Emergency Rulemaking to implement A.R.S. § 15-925 and then conduct a regular rulemaking right behind it; but that was not possible.

In response to Member Thorwald's comments during the five-year review meetings earlier this year, the Department has been proactive on the STAC over the last several years. Each year, the Department has reminded the Governor's Office of the need for a STAC and has multiple times provided a list of names totaling approximately 60 candidates from the schools who were interested in being appointed to the STAC. However, at the time of this statement there remains no members on the STAC.

When A.R.S. § 15-925 went into effect, the Department was contacted by schools to receive an inspection certification and other guidance as they wanted to purchase and put these vehicles and drivers into service as quickly as possible but did not want to purchase vehicles that may conflict with future administrative code. The Department cannot, in good faith, issue an inspection approval sticker to a vehicle or certify a driver without basing the decision on some set of criteria. The Department created the policy statement that set forth a

series of minimum, least intrusive criteria to certify these vehicles and drivers in a good and reasonable faith effort so the schools would not be delayed in purchasing and using those vehicles.

Regarding A.R.S. § 28-900(B)(4), the Department's interpretation is the statute creates a permissive statement for the Department to create standards for these vehicles that may be substantially different than other school buses. The Department did not interpret this passage to mean it is limited to only creating standards that are substantially different than other school buses. The Department believes there are elements in design, equipment and operation from other school buses that are appropriate, but it also recognizes these vehicles may be of a different design, requiring a different approach where appropriate. For example, the Department believes it is appropriate to paint these vehicles the traditional school-bus yellow as opposed to setting a substantially different paint color standard as the motoring public is accustomed to school-bus yellow. The Department further argues that setting rules that are only substantially different makes no logical sense; for example, tires must still meet tread depth and inflation standards, brakes still need to work, and rotors and pads still need to meet a minimum thickness, horns must still work, lights/lamps/turn signals must still work and so forth. If the Department could only write new rules that were substantially different, then that would mean tires, brakes, lights and the like could not be regulated as they would be duplicative in concept to other school buses. The Department does not believe the legislative intent was to allow the A.R.S. § 15-925 vehicles to travel on the roadway with bad tires, bad brakes and other non-functioning equipment and untrained drivers. As mentioned, the Department does believe there are differences that don't make sense to regulate equally and accounts for such in its policy; for example, these vehicles do not come equipped with roof and window emergency exits and therefore are logically not subject to that inspection.

The Department believes the drivers should meet a minimum standard. As with other school buses, the driver is responsible for the children and is often the only adult onboard with the children. Should an emergency

occur, the driver should still have the training to handle the situation and the physical ability to remove children, including special-needs children from harm.

Since the policy statement went into effect in 2022, the Department has not received any negative criticism until recently leading to the petition to the Council. Additionally, the Department has held open, in-person Question & Answer sessions with stakeholders at the 2023 and 2024 School Transportation Administrators of Arizona annual conference (https://taa-online.org). This conference includes school transportation administrators, school bus drivers and school bus mechanics. At both conferences, the Department did not receive any negative questions or concerns about the policy statement.

Collisions in school vehicles are not uncommon. In 2024 the Department investigated 500 collisions/incidents involving school buses. In 2020 there was a single vehicle fatality collision where an 11 to 15 passenger van with an unregulated driver overcorrected, rolling the van, ejecting and killing three students (one each from Duncan, Pima and Thatcher high schools). In 2023, the Gila River Leading Edge Academy with their 11 to 15 passenger van was involved in a head-on collision with multiple occupants receiving serious injuries.

Additionally, it is not uncommon for Department school bus inspectors to find school buses that do not meet safety standards; where the school was either unaware of the problem or were deficient in maintenance to correct a known problem. In 2024 the Department placed 1,323 school buses out-of-service for a total of 2,045 major safety violations.

If the Department cannot enforce a set of interim minimum standards until a STAC is appointed and formal rules promulgated, the Department would have no choice but to cease all inspection and certification of these vehicles and drivers and permit unregulated drivers and unregulated vehicles to transport Arizona's children to and from school. "The National Association of State Directors of Pupil Transportation Services believes that it is appropriate to require higher levels of safety in vehicles that transport children to and from

school and school-related activities….[and] supports the position that school children should be transported in school buses that provide the highest level of safety…[and] endorses the safety recommendation (H-99-22) of the National Transportation Safety Board…which states that the 50 states…should *Require that all vehicles carrying more than 10 passengers (buses) and transporting children to and from school and school-related activities…meet the school bus structural standards or equivalent as set forth in 49 CFR 571.*"[2]

The Department errors on the side of safety first and cost secondarily asking itself the question: What are parents' expectations for the vehicles their children ride in and the drivers that transport them, and what is the price of a child's life?

**Figure 1: *Van Descriptions***

An **Allowable Alternate Vehicle** meets all federal school bus crashworthiness standards, but does not meet conspicuity regulations or traffic control standards, i.e. flashing red lights, school bus yellow paint, and left side stop arm.



**AAV**

---



**School Van**

A **school van** is a regular van converted to full school bus specifications. Major alterations are made to the vehicle including cutting the roof off and welding in a full roll cage, along with dozens of other major alterations. When complete, the vehicle rides like a regular van, but meets the Federal Motor Vehicle Safety Standards for school buses.

---

**A non-conforming van** is a vehicle which does not conform to the applicable Federal Motor Vehicle Safety Standards for school buses. Most 15-passenger vans are little more than cargo vehicles converted to passenger application. Most do not even have the basic safety features of traditional passenger vehicles.



**Non-conforming Van**

[2] National Association of State Directors of Pupil Transportation Services, Position Paper: Non-conforming Vans Used for School Transportation, December 4, 2017.

**AZDPS Rebuttal to Carlyle's Comments during January 28, 2025 Study Session**

As the Department indicated in its five-year review report to the Council earlier in 2024, as well as the recent Response to Petition on Substantive Policy Statement, Senate Bill 1630, 11-15 Student Transportation Passenger Vehicles in November 2024, the Department pursuant to A.R.S. § 28-900 and 28-3228 are vested with the significant responsibility of ensuring compliance with the Minimum Standards outlined in 13 A.A.C. 13, School Buses, including those vehicles and drivers identified in A.R.S. § 15-925. The Department's State Regulated Vehicle Squad and Student Transportation Unit personnel, responsible for the vital and required task of inspecting, certifying, and investigating incidents involving these vehicles and drivers, take on this assignment with urgency and significant importance. Their commitment to ensuring the safety of the children and other adults who ride in those vehicles is unwavering, providing reassurance to all stakeholders.

In response to Ms. Amy Carlyle's, Executive Director of the Career Development Inc. dba North Arizona Academy, comments during the most recent Governor's Regulatory Review Council on January 28, 2025, Ms. Carlyle stated her rationale for filing the petition was predominately due to the Department's actions of threatening her to "impound vehicles and pull driver's licenses." These statements were never provided in any other correspondence or communication, nor the submitted petition, and were astonishing, as they would be inaccurate of any previous or imposed actions regarding these vehicles and/or drivers. As such, if identified, violations of the Minimum Standards by school bus drivers and instructors may result in suspensions or cancellations of school bus driver certifications, not the loss or pulling of their driver's license, and the vehicle would only be impounded if considered significant evidence in a criminal investigation.

In regard to the Department's interaction with Ms. Carlyle, on September 16, 2024, while inspecting another full-sized school bus, the Department school bus trooper/inspector learned from a North Arizona Academy driver that they were being instructed to drive a non-conforming passenger van to transport students to and from school or school-related activities. The driver also told the Department inspector that her school bus

driver certification was no longer valid, which would include all the mandatory requirements required to obtain it. The Department inspector, recognizing both of these issues as contrary to 13 A.A.C. 13, School Buses and A.R.S. § 15-925, explained to the driver that both were not allowed and unsafe for the students and her. The driver stated that Ms. Carlyle indicated that she had run it through her sources, that it was allowable, and instructed her to drive the passenger van with the students. The Department's inspector immediately walked over to meet with and spoke to Ms. Carlyle, attempting to explain the many nuances of the 13 A.A.C. 13, School Buses, A.R.S. § 15-925, and the Substantive Policy Statement, Policy No. CVETFD-1, regarding the 11 to 15 Student Transportation Passenger Vehicles. It was evident by the Department inspector that Ms. Carlyle was becoming increasingly agitated by the topic, and the inspector, attempting to diffuse the situation, provided her with the inspector's supervisor's phone number. The supervisor spoke to Ms. Carlyle and again attempted to explain what was allowable. She indicated she would comply but would run it through her "board" and attempt to obtain alternative transportation. The Department's supervisor's commander overheard this conversation. Later in the same afternoon, the department supervisor exchanged emails (see Exhibit 1) with Ms. Carlyle regarding Senate Bill 1630 and other related laws. At no time was there any mention of any threats by the initial inspector, nor supervisor, in any of these conversations and/or correspondences. In all these interactions documented above, and other related functions, the Department and those inspectors and other personnel entrusted with the significant responsibility of student transportation pursuant to A.R.S. § 28-900 and 28-3228 will always err on the side of student and passenger safety first and the expectations that parents expect the safest vehicle and drivers to be transporting their precious cargo to and from schools. Safety is our utmost priority, and we are committed to ensuring it in all our actions.

The Department never intended for the policy statement to be in effect as long as it has. There were hopes for a Student Transportation Advisory Council (STAC) to be appointed in 2023 and then again in 2024 (as stated in the Department's previous statement to the council) but that never occurred creating an exigent

situation. Therefore, under exigent circumstances the Department worked to create an exigent regulatory environment that was in the best interest of the stakeholders to deploy vehicles and drivers under A.R.S. § 15-925 to operate defined, daily routes to pick up children from home and deliver them to school and then return them to home in lieu of using a traditional full-size school bus.

Pursuant to A.R.S. §§ 15-925 and 28-900(B)(7), the Department's interpretation is the vehicles and drivers may only be used in accordance with the safety rules prescribed by the Department, and without those rules to make the statute whole, the Department believes the schools cannot comply with the statute to operate those vehicles or use those drivers. If the vehicles and drivers are used in that situation, they would be used in an unregulated and uncertified manner; a position the Department prefers to not have for the transportation of children. The Department will not accept the liability to implement the statute and issue certifications without standardized policy due to safety concerns. As the Department previously stated, in the last year it has investigated more than 500 collisions/incidents (see Figure 1), placed more than 1,300 school buses out of service for major safety violations and has cancelled the certifications of 89 drivers and suspended an additional 15 drivers for safety violations. Allowing non-conforming vehicles and drivers who are untrained, ill-prepared for emergencies, with unknown driving history and who have not been vetted with an identity-verified fingerprint-based background check clearance card is not considered by the Department to be a safe situation for children. Therefore, in the interim without a STAC, the Department was/is willing to work with schools to find a common-ground, common-sense solution to the problem in the best interest of the different stakeholders.

Currently, under the policy statement, the Department has certified and created employment for approximately 80 drivers with a Class D driver license for 11 to 15 passenger school vans.

The alternative enforcement position is more burdensome. The Department had opted to refrain from its implementation to follow the common-sense policy statement to maintain a positive, collaborative compliance relationship with the schools for everyone's best-interest and benefit. Under the Supremacy Clause, federal

motor vehicle safety standards (FMVSS) in 49 CFR 571.3 defines a *school bus* as any *motor vehicle* with a capacity of 11 or more people that is used to transport students to and from school and the federal act sets standards for the design and operation of school buses. A.R.S. § 28-101(69) states "*School bus* means a *motor vehicle* that is designed for carrying more than ten passengers and that is either: (a) owned by any public or governmental agency or other institution and operated for the transportation of children to or from home or school on a regularly scheduled basis. (b) privately-owned and operated for compensation for the transportation of children to or from home or school on a regularly scheduled basis." A.R.S. § 15-925 uses the term *motor vehicle.* Therefore these 11 to 15 passenger vans are still classified by federal law, state law and existing Arizona Administrative Code Title 13, Chapter 13 as a school bus to meet design, structural and systems safety standards where the non-conforming vans and alternative vans without the conspicuity features would not pass inspection and where the drivers will need to possess a CDL instead of a Class D driver license among other minimum mandatory requirements (essentially placing the currently approximately 80 certified Class D drivers out of work). It is clear, taking this more burdensome regulatory approach is not in anyone's best interest.

While the Department is statutorily required to consult with the STAC, it is not required to adopt any of the STAC's recommendations. Additionally, A.R.S. § 28-900(C) permits the Department to be more stringent than federal law for school bus safety standards. However, the Department recognizes that with exigent circumstances in place, it needed to fill the role of the STAC for stakeholder involvement resulting in the Department's attendance at the annual student transportation conferences in 2023 and 2024 as mentioned in the Department's earlier response to the council.

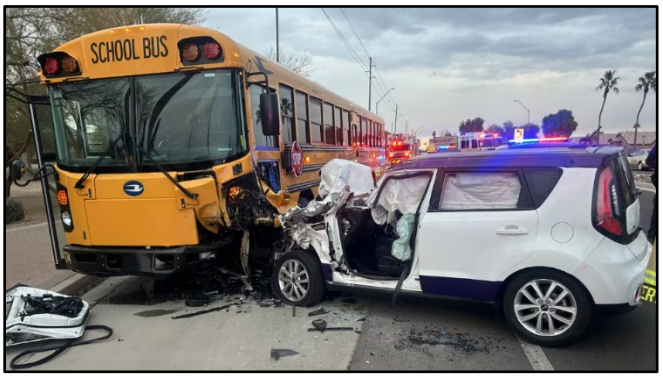
Again, the Department had worked to create a sensible interim and exigent policy that was:

- In the best interest of the stakeholders to prevent the more burdensome regulatory situation.
- To help educate schools to prevent the purchasing of expensive vehicles that may not conform to federal and state law and future rules.

- To help quickly relieve the school bus driver staffing deficiencies schools are experiencing by quickly certifying Class D drivers to a set of decades-long recognized and relevant safety standards generally similar in use for other school bus drivers.

Figure 1: School Bus Crash, January 29, 2025, Goodyear, AZ.[1]

The driver of the white vehicle was transported to the hospital with serious but non-life threating injuries. The school bus driver was checked medically at the scene and released not needing to be hospitalized. The recent picture demonstrates the need and success of the structural safety standards for school bus occupant protection.




[1] KTVK 3TV https://www.azfamily.com/2025/01/29/teen-girl-hospitalized-after-crash-involving-school-bus-goodyear/

**Exhibit 1**
**Communication between Carlyle and DPS**

**From:** Amy Carlyle <ACarlyle@NAACharter.org>
**Sent:** Tuesday, September 17, 2024 11:54 AM
**To:** William Lunt <WLUNT@AZDPS.GOV>
**Cc:** Vernon Havens <VHAVENS@AZDPS.GOV>; Paul Swietek <PSwietek@AZDPS.GOV>
**Subject:** RE: Terminating Use of 15 passenger vans for school bus use

Hello,

I have passed on the information you have provided to both the board and our attorney. I have been advised that all further communication regarding van use should be directed to council. Her contact information is below.

**Renee Osipov**
Attorney

UDALL | SHUMWAY
COUNSELORS AT LAW SINCE 1965

**480.461.5387** Direct | 480.461.5300 Main | 480.833.9392 Fax
1138 North Alma School Road, Suite 101 | Mesa, Arizona 85201
**rmo@udallshumway.com** | www.udallshumway.com

Thanks again and have a great day,

Amy Carlyle
Executive Director
Career Development Inc dba Northern Arizona Academy
928.536.3920

**From:** William Lunt <WLUNT@AZDPS.GOV>
**Sent:** Tuesday, September 17, 2024 11:23 AM
**To:** Amy Carlyle <ACarlyle@NAACharter.org>
**Cc:** Vernon Havens <VHAVENS@AZDPS.GOV>; Paul Swietek <PSwietek@AZDPS.GOV>
**Subject:** Re: Terminating Use of 15 passenger vans for school bus use

Good morning,

Thanks again for complying. This email is in response to both of your previous emails.

-ARS 28-101 defines a school bus as:

69. "School bus" means a motor vehicle that is designed for carrying more than ten passengers and that is either:
(a) Owned by any public or governmental agency or other institution and operated for the transportation of children to or from home or school on a regularly scheduled basis.
(b) Privately owned and operated for compensation for the transportation of children to or from home or school on a regularly scheduled basis.

-Arizona Administrative Code 13-13-101 states:
"School bus" has the same meaning as at A.R.S. § 28-101.

Your 11-15 passenger vans carry more than ten passengers and are being used to transport children to or from home or school on a regular bases. This makes them a school bus in Arizona by definition. School buses are required by ARS 28-900 to be inspected annually to ensure safety and comply with Arizona Administrative Code 13-13-105-108.

R13-13-108. Inspection, Maintenance, and Alterations states:
A. A school bus shall be inspected by the Department before the school bus is introduced into Arizona to transport passengers.

None of your vans have been inspected or stickered by DPS. Under the current rules in minimum standards found in AAC 13-13, the vans do not meet the passenger protection requirements and will not pass inspection. Inspections are not an **additional requirement or penalty.**

The Substantive Policy Statement gives more freedoms to the schools by allowing them to operate proper 925 vehicles with non-CDL drivers that have complied with the AZ DPS certification process.

In answer to your last two questions, I believe sections D and E of the Substantive Policy Statement give some good examples. There are numerous marking differences listed in Section D for 925 vehicles that differ from what a standard school bus must comply with. Instead of an 8 way lighting system, the 925 vehicle uses a single top mounted flashing amber light.

Section E:
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.

Other than standard buses, vehicles do not have service doors or center aisles, the substantive policy does not require a 925 vehicle to have a stop arm installed, rub rails are not required, and steps will probably not be present in a 925 vehicle. Please remember that the Substantive Policy Statement was never meant to be all inclusive of the rules. We at DPS actually requested the language that you bolded because otherwise it would be impossible for any vehicle other than a standard type A, B, C, or D school bus to pass inspection due to the substantial differences between traditional buses and other styles of vehicles.
Please let me know if you have further questions.
Take care,

Sergeant Will Lunt, #6389
State Regulated Vehicles Unit
cell 602-206-5093

---

**From:** Amy Carlyle <ACarlyle@NAACharter.org>
**Sent:** Monday, September 16, 2024 3:01 PM
**To:** William Lunt <WLUNT@AZDPS.GOV>
**Subject:** RE: Terminating Use of 15 passenger vans for school bus use

HI!

Thank you for the information. I appreciate your prompt reply and I will pass the information you provided on to my board. Meanwhile, we will obtain alternate transportation to use until the Board makes their decision.

However, I would like to point out what the Administrative Policy Act says about Substantive Policies.

The Administrative Procedure Act requires the publication of substantive policy statements issued by agencies (A.R.S. § 41-1013(B)(14)). Substantive policy statements are written expressions which inform the general public of an agency's current approach to rule or regulation practice. **Substantive policy statements are 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**

So, if prior to the publication of the Substantive Policy Statement (10/2022) but after the passage of 16-130 (6/16/2022), passenger vans could be used, it is my understanding that a substantive policy statement cannot impose requirements or penalties on us regarding the use of 11-15 passenger vans, the regulated party. Therefore, it is my understanding that you cannot penalize us for the use of the vans because it is the substantive policy that is putting in place the rules, which it cannot do. Only finalized rules can impose restrictions and penalties on the regulated party. Due to this, I will be appealing the substantive policy statement under ARS 41-1033

https://www.azleg.gov/viewdocument/?docName=https://www.azleg.gov/ars/41/01033.htm

This seems to be a grey area that was formed when the Student Transportation Advisory Council could not meet or create the rules. I may be incorrect in my understanding but would like a third party to provide me with guidance on this.

To summarize, we will comply but will also appeal to the Governors Regulatory Review Council regarding your agency's right to impose rules and penalties via a Substantive Policy Statement when those rules have not yet been written. I am willing to temporarily comply to what you have written and advise the Board to do so until the Council provides a ruling on our appeal. Long-term wise, I will abide by what the Council rules on the Substantive Policy Statement. If you know of a ruling already made on this by the Council and would like to direct me to it, I will happily abide by the former ruling.

Thank you for your understanding,

Amy Carlyle
Executive Director
Career Development Inc dba Northern Arizona Academy
928.536.3920

**From:** William Lunt <WLUNT@AZDPS.GOV>
**Sent:** Monday, September 16, 2024 1:09 PM
**To:** Amy Carlyle <ACarlyle@NAACharter.org>
**Subject:** Terminating Use of 15 passenger vans for school bus use

Good afternoon,

Attached you will find Senate Bill 1630 which was passed in July 2022. It outlines the allowable uses of alternative transportation of students in its entirety. Also attached is the Substantive Policy Statement which went into effect in October 2022 (pertinent information starts on page 2499). DPS is charged with writing rules to govern the use of 11-15 passenger vehicles for school bus use. The rules cannot be finalized until the Student Transportation Advisory Council, which is addressed in SB1630, is appointed and functioning. Until the Council is up and running, the Substantive Policy Statement is the rule that must be followed. Normal 15 passenger vans do not provide the necessary passenger protections that are found in CFR 571.222 and therefore **shall not be used**.

Schools shall not use 15 passenger vans for home to school or school to home transportation of students. Any harm which occurs with unlawful use of unauthorized vehicles opens up schools to severe civil and criminal liabilities.

Arizona Revised Statute 28-900, gives AZ DPS the charge and authority to write and enforce rules for student transportation.

Arizona Revised Statute 28-3228, gives AZ DPS the charge and authority to write and enforce rules governing the certification of school bus drivers.

Please contact me with any questions you may have in regards to this.

Take care,

Sergeant Will Lunt, #6389
State Regulated Vehicles Uni
cell 602-206-5093

**Arizona Department of Public Safety**
**Response to Petition on Substantive Policy Statement**
**Senate Bill 1630, 11 to 15 Student Transportation Passenger Vehicles**
**13 A.A.C. 13, School Buses**
**March 2025**

First, the Department respectfully refers the Governor's Regulatory Review Council to the following position papers previously filed with the Council, which contain more in-depth information on this topic:

- *Arizona Department of Public Safety Response to Petition on Substantive Policy Statement A.R.S. § 15-925, 11 to 15 Student Transportation Passenger Vehicles 13 A.A.C. 13, School Buses January 2025.*
- *AZDPS Rebuttal to Carlyle's Comments during the January 28, 2025 Study Session.*

Secondly, the Department also emphasizes the following passages from the listed two papers.

The Department's State Regulated Vehicle Squad and Student Transportation Unit are responsible for inspecting, certifying, and investigating collisions and incidents involving school buses and bus drivers. The personnel take on these responsibilities with urgency and significant importance. Their commitment to ensuring the safety of the children and other adults who ride in those vehicles is unwavering, reassuring all stakeholders. Department personnel will always err on the side of student and passenger safety first, and the expectation that parents expect the safest vehicles and drivers to be transporting their precious cargo to and from school. Safety is the Department's utmost priority, and the Department is committed to ensuring it in all our actions.

The Department only suspends or cancels school bus driver certifications. It does not cancel, suspend, or revoke an individual's driver's license for school bus minimum standards violations. Additionally, the Department does not seize or impound school buses for violations of school bus minimum standards unless the vehicle is considered to have significant evidentiary value in a criminal investigation. The Department places a school bus out-of-service until the deficiency is corrected and the bus remains with the school.

The Department is acting under exigent circumstances. The Student Transportation Advisory Council (STAC) for several years has had no seated members. The Department has been proactive with the Governor's Office to obtain a STAC, including sourcing and submitting approximately 60 names from the schools. To maintain transparency and communicate with stakeholders, the Department has attended two annual Arizona school bus transportation conferences with in-person question-and-answer sessions in 2023 and 2024. The Department was contacted by schools to enact the statute as quickly

as possible but responsibly. Until the challenge was filed with the Council, the Department had received no negative feedback from the schools.

In the last year, the Department has investigated more than 500 school bus collisions/incidents, placed more than 1,623 school buses out-of-service for major defects with more than 2,000 individual violations issued, canceled the certifications of 90 drivers, and suspended the certifications of 15 drivers. The Department has certified approximately 80 drivers with a Class D driver's license to operate an 11 to 15-passenger school bus. In 2020 in Pima, AZ, an unregulated 11 to 15-passenger van with an unregulated driver lost control, overcorrected, rolled the van, ejected and killed three high school students[1]. In 2023, another 11 to 15-passenger van from the Gila River Leading Edge Academy was involved in a head-on collision (See Image 2). KTVK TV3 Phoenix covered school bus crashes in its September 12, 2024, article *Crashes involving Arizona school buses are on the rise; here's why.* https://www.azfamily.com/2024/09/12/crashes-involving-arizona-school-buses-are-rise-heres-why/ . R13-13-101 and R13-13-102(A)(2) sets the standard for school bus drivers to have an identity-verified fingerprint-based background check clearance card. In January 2025, the Department canceled the certification of a school bus driver who was arrested on 15 counts of sexual exploitation of a minor, triggering a flag in the Department's electronic clearance card system. If a Class D driver is not held to the same standards under the Department's exigent circumstances interim policy, a Class D driver with nefarious intentions/motives would have unchecked access to children. The Department considers this to be a clear and present danger to children.

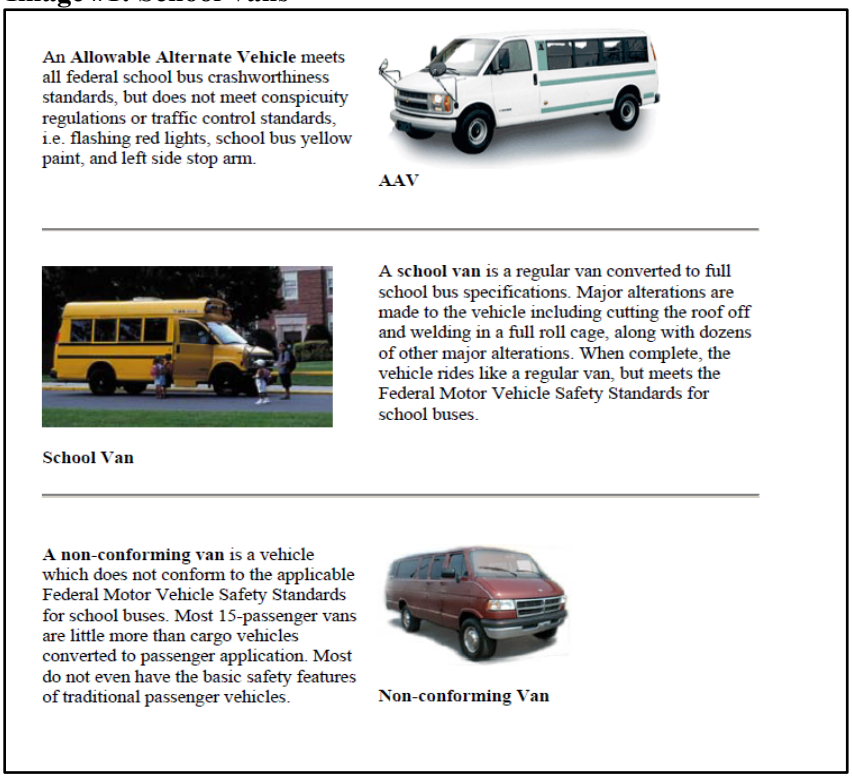
Image #1 depicts an acceptable school van, an alternate van requiring conspicuity upgrades and a non-conforming van. Federal Motor Vehicle Safety Standards (FMVSS) 49 CFR 571.3 defines a school bus as any motor vehicle with a capacity of 11 or more people that is used to transport students to and from school. A.R.S. § 28-101(69) defines a school bus as a motor vehicle that is designed for carrying more than 10 passengers that is government or privately-owned and is used to transport children from home to school and back on a regular, scheduled route. R13-13-101 refers to the definition of a school bus in A.R.S. § 28-101(69). Therefore, school vans are still classified and enforceable as a school bus. The van manufacturers include a certification label on certain vans stating *Not A School Bus* to conform with federal standards. The Department has already encountered these *Not A School Bus* certification labels when viewing some of the vans in use by Arizona schools. Additionally, A.R.S. § 28-900(C) provides specific authority for the Department to set school bus safety

[1] https://www.usatoday.com/story/news/nation/2020/02/22/eastern-arizona-college-van-rolls-over-killing-3-students/4846765002/

standards more stringent than federal law indicating the Governor's and Legislature's priority intent to make school transportation as safe as possible.

Regarding A.R.S. § 28-900(B)(4), the Department's interpretation is that the Department is permitted to set minimum safety standards for 11 to 15-passenger school buses, which are of a substantially different design than a traditional school bus. The Department does not agree with the complainant's interpretation of the statute stating that the Department can only create substantially different standards. The Department believes it is appropriate to paint these vehicles the traditional school bus yellow as the motoring public is accustomed to that color. Additionally, it would make no logical sense to have substantially different standards as brakes must still work, tires must still meet tread depth and inflation standards, lights/lamps must still work, etc. The Department does not believe the legislative intent was for 11 to 15-passenger school buses to transport children in various states of disrepair with major defects. The Department has accounted for the differences in these vehicles; for example, they do not come with window emergency exits and are not subject to that inspection. However, the interim policy standards being applied are not egregiously dissimilar to structural systems and conspicuity standards for other types of school buses.

**Image #1: School Vans**




The Department believes drivers should meet a minimum standard. As with other school buses, the driver is responsible for the children and is often the only adult onboard with the children. Should an emergency occur, the driver

should still have the training to handle the situation and the physical ability to remove children, including special-needs children, from harm. The standards the Department has placed on the Class D drivers are similar and familiar to decades-old standards for all other school bus drivers and provide no additional requirements beyond what other school bus drivers must comply with. One major difference is that these drivers are not required to possess a commercial driver's license (CDL). Allowing untrained drivers who are ill-prepared for emergencies, with unknown driving history and who have not been vetted with an identity-verified fingerprint-based clearance card is not considered by the Department to be a safe situation for children.

The National Association of State Directors of Pupil Transportation Services issued a position paper supporting the National Transportation Safety Board (NTSB) findings and recommendations on how non-conforming vans pose a safety risk for student transportation. *Non-conforming Vans Used for School Transportation*, December 4, 2017.

The Department has attempted to create an environment where schools can employ new transportation methods without applying the more burdensome full school bus regulations. The Department worked to create a sensible interim and exigent policy that was:

- In the best interest of all stakeholders (schools, children, parents, other school bus riders) to maintain safety while preventing a more burdensome regulatory situation.
- A recognition of the funding challenges schools face and has worked to help educate schools to prevent the purchasing of expensive vehicles that may not conform to federal and state school bus laws.
- A recognition of the driver employment challenges schools face by helping to relieve school bus driver staffing deficiencies by quickly certifying Class D drivers to a set of decades-long recognized and relevant safety standards generally similar in use for other school bus drivers. This alleviates the burden as the schools do not have to hire and train to a new program standard.

The Department stresses it has worked to place a minimal burden on schools and has been transparent in its efforts to operate in everyone’s best interest towards common-sense solutions and a common safety goal under these exigent circumstances. The Department never intended for the policy statement to be in effect for as long as it has been and considered an Emergency Rulemaking; however, a STAC was not appointed in 2023 or 2024, leaving the Department without alternatives to take any other course of action.

If the Department cannot continue to execute its interim policy under exigent circumstances, it will need to enforce the school vans and Class D drivers as regular school buses requiring a CDL. This change has the potential to eliminate the approximately 80 certified Class D drivers currently employed.

The Department will not accept liability for implementing the statute and issuing certifications without a policy due to safety concerns. The Department will always err on the side of safety first and cost secondarily, asking itself the question: What are parents' expectations for the vehicles their children ride in and the drivers that transport them, and what is the price of a child's life? The following snippets are examples of school bus collisions in Arizona.

**Image 2: Gila River, school van head-on crash[2]**

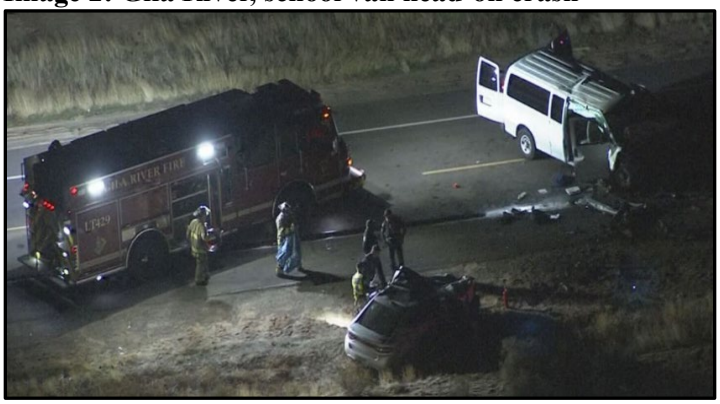


**Image 3: Wickenburg, rolled over 4 times[3]**




**Image 4: Phoenix, head-on crash[4]**




**Image 5: Avondale, rollover[5]**




**Image 6: Tempe, rear-end crash[6]**



[2] https://www.azfamily.com/2023/12/07/1-dead-several-hurt-crash-involving-school-van-near-chandler/
[3] https://www.youtube.com/watch?v=uOk9scO-0S0
[4] https://www.abc15.com/traffic/driver-in-extremely-critical-condition-after-crash-with-school-bus-in-phoenix
[5] https://www.abc15.com/news/region-west-valley/avondale/injuries-reported-after-school-bus-rollover-in-west-valley
[6] https://www.azcentral.com/story/news/local/tempe/2019/12/11/tempe-city-council-candidate-marc-norman-hurt-car-accident/4403532002/

Gmail

**GRRC - ADOA <grrc@azdoa.gov>**

# Fwd: Follow Up to March 25, 2025 Council Hearing

**Simon Larscheidt** <simon.larscheidt@azdoa.gov> Thu, Mar 27, 2025 at 9:37 AM
To: GRRC - ADOA <grrc@azdoa.gov>

---------- Forwarded message ---------
From: Paul Swietek <PSwietek@azdps.gov>
Date: Wednesday, March 26, 2025 at 9:21:57 AM UTC-7
Subject: Follow Up to March 25, 2025 Council Hearing
To: GRRC Comments (grrccomments@azdoa.gov) <grrccomments@azdoa.gov>
Cc: Vernon Havens <VHAVENS@azdps.gov>

To: Chairperson Klein,

At the Council's substantive policy statement hearing on March 25, 2025, the Department afterwards recognized a secondary key component of the petitioner's complaint was not addressed in questioning as the focus centered around enforcement of the policy statement. The Department would like to verify and requests the council provide a ruling on this issue as it will substantially affect any future proposed rulemakings the Department brings before the Council for the A.R.S. 15-925 11-to-15 passenger school vans.

The petitioner alleged A.R.S. 28-900(B)(4) allows the Department to only create rules for 11 to 15 passenger school vans that are *substantially different* than the traditional forms of school buses (and their systems and functions) currently in rule. The petitioner believes the department cannot regulate the same items/categories; for example, brakes, tires, color, stop signals and so forth.

The Department covered this topic in its January 2025 position paper (Page 3) to the Council. In summary, the Department's position is the statute allows a permissive situation for the Department to create rules that are substantially different than a traditional school bus because the vehicle is of a different design. For example, the vans may not be manufactured with emergency window or roof hatch exits and therefore should not be regulated in the same manner as a traditional school bus which are manufactured with those features. But the Department may regulate a category such as color as the motoring public is accustomed to school bus yellow; as one example. The Department does not interpret this statutory passage to mean it can only create rules that are fundamentally different than existing regulatory categories. For example, if the Department can only create rules that are fundamentally different in category, it would mean it could not regulate, brakes, tires, lights, stop signals, school-bus yellow body color and so forth on a 11-to-15 passenger vans. The Department believes the legislative intent was to regulate the vans based on their unique design but also to regulate the normally recognized vehicle systems and functions categories the vans may be equipped with. The Department believes the legislative intent was not for these vans to go down the road with bad brakes, bad tires, busted windows, inoperable doors, unique paint schemes and so forth.

Thank you for your consideration.

**Paul Swietek**, #5862, Police Planner, CPM

Executive Officer Bureau | [Strategic plan, Scorecard, Administrative Rulemaking]

Office of the Director

Arizona Department of Public Safety – State Troopers

POB 6638 | MD1000 | Phoenix, AZ 85005-6638

pswietek@azdps.gov | 602-223-2049

3.1 A.A.C. Sections R18-9-A312(C)(2) and A.A.C. R18-9-A312(G) allow OWTF applicants to request a reduced setback for both conventional and alternative systems, either separately or in combination, when submitting an NOI for OWTFs.

3.2 According to Section R18-9-A312(G)(3), the Department reviews the request for a reduced setback and determines whether either of the following criteria have been demonstrated in the request:

3.2.1 The requested change achieves equal or better performance compared with the general permit requirement, or

3.2.2 The requested change addresses site or system conditions more satisfactorily than the requirements of this Article.

3.3 According to A.A.C. R18-9-A312(G)(4), approval of the request is left to the discretion of the Department.

3.4 According to A.A.C. R18-9-A312(G)(5) and (6), the Department must deny the requested change if any of the following are determined:

3.4.1 The requested change will adversely affect other permittees or cause or contribute to a violation of an Aquifer Water Quality Standard.

3.4.2 The requested change fails to achieve equal or better performance compared to the general permit requirement.

3.4.3 The requested change fails to address site or system conditions more satisfactorily than the general permit requirement.

3.4.4 The requested change is insufficiently justified based on the information provided in the submittal.

3.4.5 The requested change requires excessive review time, research, or specialized expertise by the Department to act on the request.

3.4.6 The Department has justifiable cause to deny.

3.5 The Department must additionally consider the criteria in A.A.C. Section R18-9-A312(G)(7) if the requested reduced setback is for an OWTF or OWTFs described in one or more of the general permits in Section R18-9-E303 through R18-9-E322 (i.e., an alternative system), either separately or in combination with a conventional septic tank system described in A.A.C. Section R18-9-E302.

3.6 The criteria in A.A.C R18-9-A312(G)(7) are not applicable for a reduced setback for a conventional septic tank system described in A.A.C. R18-9-E302.

3.7 The Department may approve a request for a reduced setback for a conventional septic tank system described in A.A.C. Section R18-9-E302 using the criteria in Section R18-9-A312(G)(1) through (6).

**4. Federal or state constitutional provision; federal or state statute, administrative rule, or regulation; or final court judgment that underlies the substantive policy statement:**

Arizona Revised Statutes § 49-104(a)(1) provides authority for ADEQ to formulate policies, plans and programs to implement Title 49 to protect the environment. A.R.S. § 49-245 provides authority for ADEQ to promulgate rules for general APP.

**5. A statement as to whether the substantive policy statement is a new statement or a revision:**

This is a new substantive policy statement.

**6. The agency contact person who can answer questions about the substantive policy statement:**

| | |
|---|---|
| Name: | Jon Rezabek |
| Address: | 1110 W. Washington St.<br>Phoenix, AZ 85007 |
| Telephone: | (602) 771- 8219 |
| Email: | rezabek.jon@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: http://www.azdeq.gov. Hard copies may be obtained by contacting http://www.azdeq.gov/records-center the ADEQ Records Center, 8:30 a.m. to 4:30 p.m., 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 PUBLIC SAFETY

[M22-59]

**1. Title of the Substantive Policy Statement and the number by which the substantive policy statement is referenced:**

Title: Senate Bill 1630, 11 to 15 Student Transportation Passenger Vehicles

Policy No.: CVETFD-1

**2. Date the substantive policy statement was issued and the effective date of the policy statement, if different from the issuance date:**

Effective October 1, 2022

**3. Summary of the contents of the substantive 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.

N. This substantive policy statement expires upon the filing of final rules.

**4. Federal or state constitutional provision; federal or state statute, administrative rule, or regulation; or final court judgment 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.

**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: William Lunt, Sergeant, for bus inspections 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 or Mail Drop 3150 for driver certification.
Telephone: (602) 206-5093 for bus inspections or (602) 271-7389 for driver certification.
Email: wlunt@azdps.gov for bus inspections or kthomas@azdps.gov for driver certification.

**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 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.

Senate Engrossed

school buses; student transportation; vehicles

State of Arizona
Senate
Fifty-fifth Legislature
Second Regular Session
2022

# SENATE BILL 1630

AN ACT

AMENDING SECTIONS 15-383, 15-746 AND 15-922, ARIZONA REVISED STATUTES; AMENDING TITLE 15, CHAPTER 9, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTION 15-925; AMENDING SECTIONS 15-945, 28-900, 28-3053 AND 28-3228, ARIZONA REVISED STATUTES; RELATING TO TRANSPORTATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 15-383, Arizona Revised Statutes, is amended to read:

15-383. Insurance on school bus and other vehicle operators; authority of the governing board to purchase

A. The governing board may purchase public liability and property damage insurance covering school bus drivers while driving school buses AND OPERATORS OF VEHICLES DESCRIBED IN SECTION 15-925 WHILE DRIVING THOSE VEHICLES.

B. The governing board of any school district may require the operator of a school bus OR VEHICLE DESCRIBED IN SECTION 15-925 used for transportation of pupils attending schools in the district to carry public liability insurance in amounts not to exceed ~~twenty thousand dollars~~ $20,000 for personal injury to any one person, and ~~one hundred thousand dollars~~ $100,000 for personal injuries arising out of any one accident, covering any liability to which the operator may be subject on account of personal injuries to a passenger or other person caused or contributed to by an act of the operator while operating a school bus OR A VEHICLE DESCRIBED IN SECTION 15-925. If the policy of insurance is filed with and approved by the governing board of the school district, the governing board may increase the compensation otherwise payable to the operator by an amount equal to the cost to the operator of the insurance.

Sec. 2. Section 15-746, Arizona Revised Statutes, is amended to read:

15-746. School report cards

A. Each school shall distribute an annual report card that contains at least the following information:

1. A description of the school's regular, magnet and special instructional programs.

2. A description of the school's current academic goals.

3. A summary of each of the following:

(a) The results achieved by pupils enrolled at the school during the prior three school years as measured by the statewide assessment and the nationally standardized norm-referenced achievement test as designated by the state board and as reported in the annual report prescribed by section 15-743.

(b) Pupil progress on an ongoing and annual basis, showing the trends in gain or loss in pupil achievement over time in reading, language arts and mathematics for all years in which pupils are enrolled in the school district for an entire school year and for which this information is available.

(c) Pupil progress for pupils who are not enrolled in a district for an entire school year.

4. The attendance rate of pupils enrolled at the school as reflected in the school's average daily membership as defined in section 15-901.

5. The total number of incidents that occurred on the school grounds, at school bus stops, AT STOPS FOR VEHICLES DESCRIBED IN SECTION 15-925, on school buses, ON VEHICLES DESCRIBED IN SECTION 15-925 and at school-sponsored events and that required the contact of a local, county, tribal, state or federal law enforcement officer pursuant to section 13-3411, subsection F, section 13-3620, section 15-341, subsection A, paragraph 30 or section 15-515. The total number of incidents reported shall only include reports that law enforcement officers report to the school AND that are supported by probable cause. For the purposes of this paragraph, a certified peace officer who serves as a school resource officer is a law enforcement officer. A school may provide clarifying information if the school has a school resource officer on campus.

6. The percentage of pupils who have either graduated to the next grade level or graduated from high school.

7. A description of the social services available at the school site.

8. The school calendar, including the length of the school day and hours of operations.

9. The total number of pupils enrolled at the school during the previous school year.

10. The transportation services available.

11. A description of the responsibilities of parents of children enrolled at the school.

12. A description of the responsibilities of the school to the parents of the children enrolled at the school, including dates the report cards are delivered to the home.

13. A description of the composition and duties of the school council as prescribed in section 15-351 if such a school council exists.

14. For the most recent year available, the average current expenditure per pupil for administrative functions compared to the predicted average current expenditure per pupil for administrative functions according to an analysis of administrative cost data by the joint legislative budget committee staff.

15. If the school provides instruction to pupils in kindergarten programs and grades one through three, the ratio of pupils to teachers in each classroom where instruction is provided in kindergarten programs and grades one through three.

16. The average class size per grade level for all grade levels, kindergarten programs and grades one through eight. For the purposes of this paragraph, "average class size" means the weighted average of each class.

B. The department of education shall develop a standardized report card format that meets the requirements of subsection A of this section. The department shall modify the standardized report card as necessary on an annual basis. The department shall distribute to each school in this state a copy of the standardized report card that includes the required test scores for each school. Additional copies of the standardized report card shall be available on request.

C. After each school has completed the report card distributed to it by the department of education, the school, in addition to distributing the report card as prescribed in subsection A of this section, shall send a copy of the report card to the department. The department shall prepare an annual report that contains the report card from each school in this state.

D. The school shall distribute report cards to parents of pupils enrolled at the school, not later than the last day of school of each fiscal year, and shall present a summary of the contents of the report cards at an annual public meeting held at the school. The school shall give notice at least two weeks before the public meeting that clearly states the purposes, time and place of the meeting.

E. Beginning in fiscal year 2021-2022, the school report card prescribed by this section shall include a link to access the information required by section 15-747.

Sec. 3. Section 15-922, Arizona Revised Statutes, is amended to read:

15-922. Reporting duties of the school district; definition

A. Each school district, ~~shall~~ within twelve days after the first one hundred days or two hundred days in session, as applicable, SHALL certify to the superintendent of public instruction, in an electronic format as prescribed by the department of education, the following:

1. The daily route mileage of the school district in the current year. The route mileage shall not include more than ~~twenty~~ THIRTY miles each way to and from the school of attendance or to and from a pickup point on a regular transportation route to transport eligible students who reside in nonadjacent school districts.

2. The route mileage of the school district in the current year transporting eligible students for extended school year services in accordance with section 15-881.

3. The number of eligible students transported during the current year.

B. A school district shall meet the requirements of this section to receive state aid. The superintendent of public instruction may withhold a school district's apportionment of state aid if ~~it is determined by~~ the superintendent of public instruction DETERMINES that the school district is not complying with the requirements of this section. A school district may include in the calculation of daily route mileage any vehicle that

meets the definition of a school bus prescribed in this section OR ANY MOTOR VEHICLE DESCRIBED IN SECTION 15-925. The department of education shall not deny transportation funding or state aid for a school district that transports pupils in any vehicle that meets the definition of a school bus prescribed in this section OR ANY MOTOR VEHICLE DESCRIBED IN SECTION 15-925.

C. For the purposes of this article and section 15-901, "school bus" or "bus" means a school bus as defined in section 28-101, except that the passenger capacity standards prescribed in that section do not apply.

Sec. 4. Title 15, chapter 9, article 2, Arizona Revised Statutes, is amended by adding section 15-925, to read:

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 TO TRANSPORT STUDENTS TO OR FROM HOME OR SCHOOL ON A REGULARLY SCHEDULED BASIS IN ACCORDANCE WITH THE SAFETY RULES AND REGULATIONS ADOPTED BY THE DEPARTMENT OF PUBLIC SAFETY PURSUANT TO SECTIONS 28-900 AND 28-3228.

Sec. 5. Section 15-945, Arizona Revised Statutes, is amended to read:

15-945. Transportation support level

A. The support level for to and from school for each school district for the current year shall be computed as follows:

1. Determine the approved daily route mileage of the school district for the fiscal year prior to the current year.

2. Multiply the figure obtained in paragraph 1 of this subsection by one hundred eighty, or for a school district that elects to provide two hundred days of instruction pursuant to section 15-902.04, multiply the figure obtained in paragraph 1 of this subsection by two hundred.

3. Determine the number of eligible students transported in the fiscal year prior to the current year.

4. Divide the amount determined in paragraph 1 of this subsection by the amount determined in paragraph 3 of this subsection to determine the approved daily route mileage per eligible student transported.

5. Determine the classification in column 1 of this paragraph for the quotient determined in paragraph 4 of this subsection. Multiply the product obtained in paragraph 2 of this subsection by the corresponding state support level for each route mile as provided in column 2 of this paragraph.

| Column 1<br>Approved Daily Route Mileage per Eligible Student Transported | Column 2<br>State Support Level per Route Mile for Fiscal Year 2021-2022 |
|---|---|
| 0.5 or less | 2.77 |
| More than 0.5 through 1.0 | 2.27 |
| More than 1.0 | 2.77 |

6. Add the amount spent during the prior fiscal year for bus tokens and bus passes for students who qualify as eligible students as defined in section 15-901.

B. The support level for academic education, career and technical education, vocational education and athletic trips for each school district for the current year is computed as follows:

1. Determine the classification in column 1 of paragraph 2 of this subsection for the quotient determined in subsection A, paragraph 4 of this section.

2. Multiply the product obtained in subsection A, paragraph 5 of this section by the corresponding state support level for academic education, career and technical education, vocational education and athletic trips as provided in column 2, 3 or 4 of this paragraph, whichever is appropriate for the type of district.

| Column 1<br>Approved Daily Route Mileage per Eligible Student Transported | Column 2<br>District Type 02 or 03 | Column 3<br>District Type 04 | Column 4<br>District Type 05 |
|---|---|---|---|
| 0.5 or less | 0.15 | 0.10 | 0.25 |
| More than 0.5 through 1.0 | 0.15 | 0.10 | 0.25 |
| More than 1.0 | 0.18 | 0.12 | 0.30 |

For the purposes of this paragraph, "district type 02" means a unified school district or an accommodation school that offers instruction in grades nine through twelve, "district type 03" means a common school district not within a high school district, "district type 04" means a common school district within a high school district or an accommodation school that does not offer instruction in grades nine through twelve and "district type 05" means a high school district.

C. The support level for extended school year services for pupils with disabilities is computed as follows:

1. Determine the sum of the following:

(a) The total number of miles driven by all buses of a school district while transporting eligible pupils with disabilities on scheduled routes from their residence to the school of attendance and from the school of attendance to their residence on routes for extended school year services in accordance with section 15-881.

(b) The total number of miles driven on routes approved by the superintendent of public instruction for which a private party, a political subdivision or a common or a contract carrier is reimbursed for bringing an eligible pupil with a disability from the place of the pupil's residence to a school transportation pickup point or to the school facility of attendance and from the school transportation scheduled return point or from the school facility to the pupil's residence for extended school year services in accordance with section 15-881.

2. Multiply the sum determined in paragraph 1 of this subsection by the state support level for the district determined as provided in subsection A, paragraph 5 of this section.

D. The transportation support level for each school district for the current year is the sum of the support level for to and from school as determined in subsection A of this section, the support level for academic education, career and technical education, vocational education and athletic trips as determined in subsection B of this section and the support level for extended school year services for pupils with disabilities as determined in subsection C of this section.

E. The state support level for each approved route mile, as provided in subsection A, paragraph 5 of this section, shall be adjusted by the growth rate prescribed by law, subject to appropriation.

F. School districts must provide the odometer reading for each bus as of the end of the current year and the total bus mileage during the current year.

G. A SCHOOL DISTRICT MAY INCLUDE ROUTE MILEAGE AND THE NUMBER OF RIDERS TO CALCULATE FUNDING PURSUANT TO THIS SECTION FOR TRANSPORTING ELIGIBLE STUDENTS USING MOTOR VEHICLES DESCRIBED IN SECTION 15-925.

Sec. 6. Section 28-900, Arizona Revised Statutes, is amended to read:

28-900. School transportation rules

A. The department of public safety in consultation with the ~~school bus~~ STUDENT TRANSPORTATION advisory council established by section 28-3053 shall adopt rules as necessary to improve the safety and welfare of ~~school bus~~ STUDENT passengers by minimizing the probability of accidents involving school buses and ~~school bus~~ STUDENT passengers and by minimizing the risk of serious bodily injury to ~~school bus~~ 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 THAT ARE 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 THAT ARE DESCRIBED IN SECTION 15-925.

6. PROCEDURES FOR THE OPERATION OF MOTOR VEHICLES DESCRIBED IN SECTION 15-925.

~~4.~~ 7. Other criteria as deemed by the department of public safety and the ~~school bus~~ 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 ~~a~~ 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.

Sec. 7. Section 28-3053, Arizona Revised Statutes, is amended to read:

28-3053. Student transportation advisory council

A. The ~~school bus~~ STUDENT TRANSPORTATION advisory council is established consisting of ~~nine~~ THIRTEEN members appointed by the governor. The governor shall appoint the members as follows:

1. One member representing the department of public safety.

2. One member representing the state board of education.

3. ONE MEMBER REPRESENTING THE STATE BOARD FOR CHARTER SCHOOLS.

~~3.~~ 4. One member from a school district with a student count of less than six hundred IN A COUNTY WITH A POPULATION OF LESS THAN THREE HUNDRED THOUSAND PERSONS.

~~4.~~ 5. One member from a school district with a student count of six hundred or more but less than three thousand.

~~5.~~ 6. One member from a school district with a student count of MORE THAN three thousand ~~or more but less than ten thousand~~.

~~6. One member from a school district with a student count of ten thousand or more.~~

7. One member representing transportation administrators.

8. One member who is a certified school bus driver or school bus driver instructor.

9. One member representing a private sector school bus service provider OR A PRIVATE SECTOR STUDENT TRANSPORTATION SERVICE PROVIDER.

10. ONE MEMBER FROM A CHARTER SCHOOL WITH A STUDENT COUNT OF LESS THAN SIX HUNDRED.

11. ONE MEMBER FROM A CHARTER SCHOOL WITH A STUDENT COUNT OF MORE THAN SIX HUNDRED.

12. ONE MEMBER WITH EXPERTISE IN ELECTRIC VEHICLE FLEETS, ELECTRIC VEHICLE CHARGING INFRASTRUCTURE OR CHARGING MANAGEMENT SERVICES.

13. TWO PUBLIC MEMBERS.

B. The members shall serve staggered three-year terms unless a member vacates the position. Appointment to fill a vacancy resulting other than from expiration of a term is for the unexpired portion of the term only.

C. The ~~school bus~~ STUDENT TRANSPORTATION advisory council shall:

1. Meet at least TWICE annually.

2. Select a chairperson from its members.

3. Advise and assist the department of public safety in developing the rules required by sections 28-900 and 28-3228.

4. Recommend curricula for school bus driver safety and training courses required by section 28-3228.

5. Advise and consult with the department of public safety concerning matters related to the certification of school bus drivers and the safety of school buses AND VEHICLES DESCRIBED IN SECTION 15-925.

6. ADVISE AND CONSULT WITH THE DEPARTMENT OF PUBLIC SAFETY CONCERNING MATTERS RELATED TO MODERNIZING AND INNOVATING K-12 STUDENT TRANSPORTATION TO REDUCE TRANSPORTATION BARRIERS FOR STUDENTS, INCREASE ACCESS TO PUBLIC SCHOOL OPTIONS AND PROVIDE MORE TRANSPORTATION OPTIONS FOR SCHOOL DISTRICTS AND CHARTER SCHOOLS, INCLUDING ELECTRIC TRANSPORTATION.

7. ADVISE AND CONSULT WITH THE DEPARTMENT OF ADMINISTRATION CONCERNING PURCHASING STRATEGIES TO MAXIMIZE TRANSPORTATION RESOURCES AND FIND EFFICIENCIES TO MODERNIZE AND PROPERLY SIZE TRANSPORTATION VEHICLES AND SYSTEMS.

~~6.~~ 8. Establish a mailing list that includes any party expressing an interest in the council's activities. The council shall provide written notice to each person on the list at least fifteen days before the date on which the meeting is to be held. The notice shall be sent by mail or electronic means to the party's last address of record with the council or by any other method reasonably calculated to effect actual notice to any party expressing interest in the council's activities. Written notice by electronic means is effective when transmitted. For other methods written notice is effective on receipt or five days after the date shown on the postmark stamped on the envelope, whichever is earlier.

D. Members of the ~~school bus~~ STUDENT TRANSPORTATION advisory council are not eligible to receive compensation or reimbursement for expenses.

Sec. 8. Section 28-3228, Arizona Revised Statutes, is amended to read:

28-3228. School bus drivers; student transportation requirements; rules; cancellation of certificate

A. A person shall not operate a school bus ~~transporting~~ 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 AUTHORIZED PURSUANT TO SECTION 15-925 TO TRANSPORT SCHOOL CHILDREN UNLESS THE PERSON POSSESSES THE APPROPRIATE LICENSE CLASS FOR THE SIZE OF THE VEHICLE BEING OPERATED, A SCHOOL BUS CERTIFICATE THAT IS ISSUED BY THE DEPARTMENT OF PUBLIC SAFETY AND A VALID FINGERPRINT CLEARANCE CARD PURSUANT TO 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 ~~school bus~~ 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 ~~school bus~~ 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 ~~bus driver~~

TRANSPORTATION safety and training courses. The standards established shall:

1. Include requirements concerning moral character, knowledge of ~~school bus operation~~ 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 ~~school bus~~ 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 ~~school bus~~ 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.

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.

# 41-1033. Petition for a rule or review of an agency practice, substantive policy statement, final rule or unduly burdensome licensing requirement; notice

A. Any person may petition an agency to do either of the following:

1. Make, amend or repeal a final rule.

2. Review an existing agency practice or substantive policy statement that the petitioner alleges to constitute a rule.

B. An agency shall prescribe the form of the petition and the procedures for the petition's submission, consideration and disposition. The person shall state on the petition the rulemaking to review or the agency practice or substantive policy statement to consider revising, repealing or making into a rule.

C. Not later than sixty days after submission of the petition, the agency shall either:

1. Reject the petition and state its reasons in writing for rejection to the petitioner.

2. Initiate rulemaking proceedings in accordance with this chapter.

3. If otherwise lawful, make a rule.

D. The agency's response to the petition is open to public inspection.

E. If an agency rejects a petition pursuant to subsection C of this section, the petitioner has thirty days to appeal to the council to review whether the existing agency practice or substantive policy statement constitutes a rule. The petitioner's appeal may not be more than five double-spaced pages.

F. A person may petition the council to request a review of a final rule based on the person's belief that the final rule does not meet the requirements prescribed in section 41-1030. A petition submitted under this subsection may not be more than five double-spaced pages.

G. A person may petition the council to request a review of an existing agency practice, substantive policy statement, final rule or regulatory licensing requirement that the petitioner alleges is not specifically authorized by statute, exceeds the agency's statutory authority, is unduly burdensome or is not demonstrated to be necessary to specifically fulfill a public health, safety or welfare concern. On receipt of a properly submitted petition pursuant to this section, the council shall review the existing agency practice, substantive policy statement, final rule or regulatory licensing requirement as prescribed by this section. A petition submitted under this subsection may not be more than five double-spaced pages. This subsection does not apply to an individual or institution that is subject to title 36, chapter 4, article 10 or chapter 20.

H. If the council receives information that alleges an existing agency practice or substantive policy statement may constitute a rule, that a final rule does not meet the requirements prescribed in section 41-1030 or that an existing agency practice, substantive policy statement, final rule or regulatory licensing requirement exceeds the agency's statutory authority, is not specifically authorized by statute or does not meet the guidelines prescribed in subsection G of this section, or if the council receives an appeal under subsection E of this section, and at least three council members request of the chairperson that the matter be heard in a public meeting:

1. Within ninety days after receiving the third council member's request, the council shall determine whether any of the following applies:

(a) The agency practice or substantive policy statement constitutes a rule.

(b) The final rule meets the requirements prescribed in section 41-1030.

(c) An existing agency practice, substantive policy statement, final rule or regulatory licensing requirement exceeds the agency's statutory authority, is not specifically authorized by statute or meets the guidelines prescribed in subsection G of this section.

2. Within ten days after receiving the third council member's request, the council shall notify the agency that the matter has been or will be placed on the council's agenda for consideration on the merits.

3. Not later than thirty days after receiving notice from the council, the agency shall submit a statement of not more than five double-spaced pages to the council that addresses whether any of the following applies:

(a) The existing agency practice or substantive policy statement constitutes a rule.

(b) The final rule meets the requirements prescribed in section 41-1030.

(c) An existing agency practice, substantive policy statement, final rule or regulatory licensing requirement exceeds the agency's statutory authority, is not specifically authorized by statute or meets the guidelines prescribed in subsection G of this section.

I. At the hearing, the council shall allocate the petitioner and the agency an equal amount of time for oral comments not including any time spent answering questions raised by council members. The council may also allocate time for members of the public who have an interest in the issue to provide oral comments.

J. For the purposes of subsection H of this section, the council meeting shall not be scheduled until the expiration of the agency response period prescribed in subsection H, paragraph 3 of this section.

K. An agency practice, substantive policy statement, final rule or regulatory licensing requirement considered by the council pursuant to this section shall remain in effect while under consideration of the council. If the council determines that the agency practice, substantive policy statement or regulatory licensing requirement exceeds the agency's statutory authority, is not authorized by statute or constitutes a rule or that the final rule does not meet the requirements prescribed in section 41-1030, the practice, policy statement, rule or regulatory licensing requirement shall be void. If the council determines that the existing agency practice, substantive policy statement, final rule or regulatory licensing requirement is unduly burdensome or is not demonstrated to be necessary to specifically fulfill a public health, safety or welfare concern, the council shall modify, revise or declare void any such existing agency practice, substantive policy statement, final rule or regulatory licensing requirement. If an agency decides to further pursue a practice, substantive policy statement or regulatory licensing requirement that has been declared void or has been modified or revised by the council, the agency may do so only pursuant to a new rulemaking.

L. A council decision pursuant to this section shall be made by a majority of the council members who are present and voting on the issue. Notwithstanding any other law, the council may not base any decision concerning an agency's compliance with the requirements of section 41-1030 in issuing a final rule or substantive policy statement on whether any party or person commented on the rulemaking or substantive policy statement.

M. A decision by the council pursuant to this section is not subject to judicial review, except that, in addition to the procedure prescribed in this section or in lieu of the procedure prescribed in this section, a person may seek declaratory relief pursuant to section 41-1034.

N. Each agency and the secretary of state shall post prominently on their websites notice of an individual's right to petition the council for review pursuant to this section.

# 41-1001. Definitions

In this chapter, unless the context otherwise requires:

1. "Agency" means any board, commission, department, officer or other administrative unit of this state, including the agency head and one or more members of the agency head or agency employees or other persons directly or indirectly purporting to act on behalf or under the authority of the agency head, whether created under the Constitution of Arizona or by enactment of the legislature. Agency does not include the legislature, the courts or the governor. Agency does not include a political subdivision of this state or any of the administrative units of a political subdivision, but does include any board, commission, department, officer or other administrative unit created or appointed by joint or concerted action of an agency and one or more political subdivisions of this state or any of their units. To the extent an administrative unit purports to exercise authority subject to this chapter, an administrative unit otherwise qualifying as an agency must be treated as a separate agency even if the administrative unit is located within or subordinate to another agency.

2. "Appealable agency action" has the same meaning prescribed in section 41-1092.

3. "Audit" means an audit, investigation or inspection pursuant to title 23, chapter 2 or 4.

4. "Code" means the Arizona administrative code, which is published pursuant to section 41-1011.

5. "Committee" means the administrative rules oversight committee.

6. "Contested case" means any proceeding, including rate making, except rate making pursuant to article XV, Constitution of Arizona, price fixing and licensing, in which the legal rights, duties or privileges of a party are required or permitted by law, other than this chapter, to be determined by an agency after an opportunity for an administrative hearing.

7. "Council" means the governor's regulatory review council.

8. "Delegation agreement" means an agreement between an agency and a political subdivision that authorizes the political subdivision to exercise functions, powers or duties conferred on the delegating agency by a provision of law. Delegation agreement does not include intergovernmental agreements entered into pursuant to title 11, chapter 7, article 3.

9. "Emergency rule" means a rule that is made pursuant to section 41-1026.

10. "Fee" means a charge prescribed by an agency for an inspection or for obtaining a license.

11. "Final rule" means any rule filed with the secretary of state and made pursuant to an exemption from this chapter in section 41-1005, made pursuant to section 41-1026, approved by the council pursuant to section 41-1052 or 41-1053 or approved by the attorney general pursuant to section 41-1044. For purposes of judicial review, final rule includes expedited rules pursuant to section 41-1027.

12. "General permit" means 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.

13. "License" includes the whole or part of any agency permit, certificate, approval, registration, charter or similar form of permission required by law, but does not include a license required solely for revenue purposes.

14. "Licensing" includes the agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal, change, reduction, modification or amendment of a license, including an existing permit,

certificate, approval, registration, charter or similar form of permission, approval or authorization obtained from an agency by the holder of a license.

15. "Licensing decision" means any action by an agency to grant or deny any request for permission, approval or authorization issued in response to any request from an applicant for a license or to the holder of a license to exercise authority within the scope of the license.

16. "Party" means each person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party.

17. "Person" means an individual, partnership, corporation, association, governmental subdivision or unit of a governmental subdivision, a public or private organization of any character or another agency.

18. "Preamble" means:

(a) For any rulemaking subject to this chapter, a statement accompanying the rule that includes:

(i) Reference to the specific statutory authority for the rule.

(ii) The name and address of agency personnel with whom persons may communicate regarding the rule.

(iii) An explanation of the rule, including the agency's reasons for initiating the rulemaking.

(iv) A reference to any study relevant to the rule that the agency reviewed and either proposes to rely on in its evaluation of or justification for the rule or proposes 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.

(v) The economic, small business and consumer impact summary, or in the case of a proposed rule, a preliminary summary and a solicitation of input on the accuracy of the summary.

(vi) A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state.

(vii) Such other matters as are prescribed by statute and that are applicable to the specific agency or to any specific rule or class of rules.

(b) In addition to the information set forth in subdivision (a) of this paragraph, for a proposed rule, the preamble also shall include a list of all previous notices appearing in the register addressing the proposed rule, a statement of the time, place and nature of the proceedings for the making, amendment or repeal of the rule and where, when and how persons may request an oral proceeding on the proposed rule if the notice does not provide for one.

(c) In addition to the information set forth in subdivision (a) of this paragraph, for an expedited rule, the preamble also shall include a statement of the time, place and nature of the proceedings for the making, amendment or repeal of the rule and an explanation of why expedited proceedings are justified.

(d) For a final rule, except an emergency rule, the preamble also shall include, in addition to the information set forth in subdivision (a), the following information:

(i) A list of all previous notices appearing in the register addressing the final rule.

(ii) A description of the changes between the proposed rules, including supplemental notices and final rules.

(iii) A summary of the comments made regarding the rule and the agency response to them.

(iv) A summary of the council's action on the rule.

(v) A statement of the rule's effective date.

(e) In addition to the information set forth in subdivision (a) of this paragraph, for an emergency rule, the preamble also shall include an explanation of the situation justifying the rule being made as an emergency rule, the date of the attorney general's approval of the rule and a statement of the emergency rule's effective date.

19. "Provision of law" means the whole or a part of the federal or state constitution, or of any federal or state statute, rule of court, executive order or rule of an administrative agency.

20. "Register" means the Arizona administrative register, which is:

(a) This state's official publication of rulemaking notices that are filed with the office of secretary of state.

(b) Published pursuant to section 41-1011.

21. "Rule" means an agency statement of general applicability that implements, interprets or prescribes law or policy, or describes the procedure or practice requirements of an agency. Rule includes prescribing fees or the amendment or repeal of a prior rule but does not include intraagency memoranda that are not delegation agreements.

22. "Rulemaking" means the process to make a new rule or amend, repeal or renumber a rule.

23. "Small business" means a concern, including its affiliates, which is independently owned and operated, which is not dominant in its field and which employs fewer than one hundred full-time employees or which had gross annual receipts of less than four million dollars in its last fiscal year. For purposes of a specific rule, an agency may define small business to include more persons if it finds that such a definition is necessary to adapt the rule to the needs and problems of small businesses and organizations.

24. "Substantive policy statement" means a written expression which informs the general public of an agency's current approach to, or opinion of, the requirements of the federal or state constitution, federal or state statute, administrative rule or regulation, or final judgment of a court of competent jurisdiction, including, where appropriate, the agency's current practice, procedure or method of action based upon that approach or opinion. A substantive policy statement is advisory only. A substantive policy statement does not include internal procedural documents which only affect the internal procedures of the agency and does not impose additional requirements or penalties on regulated parties, confidential information or rules made in accordance with this chapter.

# 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.

# 28-3053. Student transportation advisory council

A. The student transportation advisory council is established consisting of the following members appointed by the governor:

1. One member representing the department of public safety.

2. One member representing the state board of education.

3. One member representing the state board for charter schools.

4. One member from a school district with a student count of less than six hundred in a county with a population of less than three hundred thousand persons.

5. One member from a school district with a student count of six hundred or more but less than three thousand.

6. One member from a school district with a student count of more than three thousand.

7. One member representing transportation administrators.

8. One member who is a certified school bus driver or school bus driver instructor.

9. One member representing a private sector school bus service provider or a private sector student transportation service provider.

10. One member from a charter school with a student count of less than six hundred.

11. One member from a charter school with a student count of more than six hundred.

12. One member with expertise in electric vehicle fleets, electric vehicle charging infrastructure or charging management services.

13. Two public members.

B. The members shall serve staggered three-year terms unless a member vacates the position. Appointment to fill a vacancy resulting other than from expiration of a term is for the unexpired portion of the term only.

C. The student transportation advisory council shall:

1. Meet at least twice annually.

2. Select a chairperson from its members.

3. Advise and assist the department of public safety in developing the rules required by sections 28-900 and 28-3228.

4. Recommend curricula for school bus driver safety and training courses required by section 28-3228.

5. Advise and consult with the department of public safety concerning matters related to the certification of school bus drivers and the safety of school buses and vehicles described in section 15-925.

6. Advise and consult with the department of public safety concerning matters related to modernizing and innovating K-12 student transportation to reduce transportation barriers for students, increase access to public school options and provide more transportation options for school districts and charter schools, including electric transportation.

7. Advise and consult with the department of administration concerning purchasing strategies to maximize transportation resources and find efficiencies to modernize and properly size transportation vehicles and systems.

8. Establish a mailing list that includes any party expressing an interest in the council's activities. The council shall provide written notice to each person on the list at least fifteen days before the date on which the meeting is to be held. The notice shall be sent by mail or electronic means to the party's last address of record with the council or by any other method reasonably calculated to effect actual notice to any party expressing interest in the council's activities. Written notice by electronic means is effective when transmitted. For other methods written notice is effective on receipt or five days after the date shown on the postmark stamped on the envelope, whichever is earlier.

9. Preapprove contract carriers and private parties as prescribed in section 15-923, subsection B.

D. Members of the student transportation advisory council are not eligible to receive compensation or reimbursement for expenses.

# 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.

Greater Phoenix Educational Management Council (GPEMC)
AZ Educational Management Council (AZEMC)

Howard C. Carlson, Ed. D., Executive Director

1481 N. Eliseo Felix Jr. Way Avondale, AZ 85323
Office: 623-932-7055 Dr. Carlson's Cell: 520-664-4074 www.GPEMC.org

March 21, 2025

Governor's Regulatory Review Council

100 N 15th Ave, Ste. 302

Phoenix, AZ 85007

RE: Department of Public Safety Substantive Policy Statement CVETFD-1 (Senate Bill 1630)

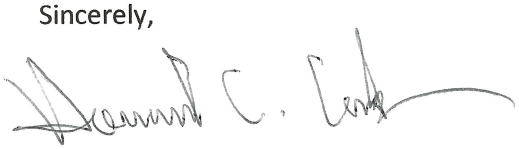
Dear Members of the Governor's Regulatory Review Council,

On behalf of the Greater Phoenix Educational Management Council/Arizona Educational Management Council (GPEMC/AZEMC), we respectfully request your support to continue the Arizona Department of Public Safety (AZDPS) Substantive Policy Statement CVETFD-1 related to regulation of 11- to 15-person passenger vehicles. While we understand the need to differentiate substantive policies versus rules, we believe that the substantive policy was developed as advisory policy to schools in response to Laws 2022, Chapter 290 (Senate Bill 1630). Despite the fact that the members of the Student Transportation Advisory Council (STAC) have not been named, the legislation enabled schools to utilize 11- to 15-person passenger vehicles in the best interest of students, schools and taxpayer resources. As AZDPS awaits the naming of the STAC, they developed this substantive policy to support/advise schools on the implementation of this legislation from 2022, which we greatly appreciated. GPEMC/AZEMC supports 63 school districts across Arizona, and many of our members have benefited from the guidance provided in AZDPS' Substantive Policy Statement CVETFD-1. Simply repealing or upending this advisory policy abruptly would negatively impact schools and students across Arizona.

Should the Governor's Regulatory Review Council (GRRC) ultimately decide that the Substantive Policy Statement CVETFD-1 constitutes rulemaking, it is vitally important that the rulemaking results in minimal to no impact on school districts that have already implemented Laws 2022, Chapter 290 based on the sound advice of DPS. For example, in Alhambra Elementary School District, a total of 9 drivers and trainees would have their DPS School Bus Driver Certificates immediately revoked should this policy be abruptly terminated, and 176 students that are transported in this way would have to be outsourced, costing taxpayers millions. We would request, in this situation that rulemaking needs to be opened, that the GRRC retain the policy in place now while they work to codify the DPS Substantive Policy Statement CVETFD-1 into rulemaking, because this advisory policy is working and this new form of transportation is safe for students, effective for schools, and resulting in the best use of taxpayer resources.

The GPEMC/AZEMC mission statement, "a collaborative effort focused on enhancing student academic achievement for all," is what drives the work of the organization on behalf of our 63 school district members. Student achievement is rooted in positive learning and experiences throughout a student's day, including transportation. We stand ready to partner with AZDPS, GRRC and others who share this mission for positive student experience, including their transportation to and from school. AZDPS Substantive Policy Statement CVETFD-1 is an advisory policy that is working for Arizona students, schools and taxpayers. Thank you for your consideration of this important matter.

Sincerely,



Howard C. Carlson, Ed. D.
Executive Director
Greater Phoenix Educational Management Council/Arizona Educational Management Council

ALHAMBRA
ELEMENTARY SCHOOL DISTRICT

March 25, 2025

Governor's Regulatory Review Council
100 North 15th Avenue, Suite 305
Phoenix, Arizona 85007

**RE: Support for Maintaining Substantive Policy for 925 Drivers**

Dear Members of the Governor's Regulatory Review Council,

I am writing to emphasize the importance of retaining the Substantive Policy for 925 drivers (CVETFD-1) in the state of Arizona. As the Director of Transportation for Alhambra Elementary School District, I have firsthand experience with the positive impact this policy has had in providing safe, high-quality transportation services for our students.

Our district was the first district in Arizona to certify 925 drivers, and we currently employ six trained 925 drivers, with three more in training. These drivers transport 176 special education students across three tiers, ensuring they receive safe, reliable, and specialized transportation services.

To fully comply with safety regulations, our district has:

- Retrofitted all 10 of our white fleet microbuses for safety and efficiency.
- Painted 7 of the 10 units in accordance with safety regulations.
- Implemented a rigorous driver training program to ensure the highest safety standards.

The Substantive Policy has been essential in providing a structured framework for operating 925 vehicles, ensuring they meet critical safety regulations while allowing school districts the flexibility to better serve students.

Understanding the Need for this Policy to Stay

- **Safety First** – Our students' lives depend on structured safety standards. This policy ensures proper vehicle inspections and trained drivers, reducing risks on the road.
- **Lack of Alternative Regulations** – The Student Transportation Advisory Council (STAC), required by law to guide the rulemaking process, remains unappointed since Governor Hobbs took office in January of 2023. Without this policy, there would be no enforceable guidelines for 925 drivers.
- **Zero Tolerance for Risk** – When transporting students, the only acceptable loss is zero. The elimination of this policy would put students at unnecessary risk due to lack of regulatory clarity.
- **High-Quality Service for Families** – The families we serve deserve nothing less than excellent transportation services. Removing this policy will disrupt services and lower safety standards, negatively impacting students who rely on these vehicles.

I urge the Governor's Regulatory Review Council to retain the Substantive Policy for 925 drivers (CVETFD-1) until formal rulemaking is complete. Without it, districts risk losing desperately needed drivers due to the national school bus driver shortage, as well as a structured framework that has been proven to work and has directly benefited our most vulnerable population—our students.

I appreciate your time and consideration.

Sincerely,

Alhambra Elementary School District, Director of Transportation
4510 N. 37th Avenue, Phoenix, AZ 85019
(602) 336-2920
www.alhambraesd.org

**H.**

**CONSIDERATION, DISCUSSION, AND POSSIBLE ACTION ON APPEAL/PETITION OF CORPORATION COMMISSION SUBSTANTIVE POLICY STATEMENT 3 OF DECISION 79140 PURSUANT TO A.R.S. § 41-1033(E) & (G)**

# GOVERNOR'S REGULATORY REVIEW COUNCIL

**ATTORNEY MEMORANDUM**

---

**MEETING DATE: March 4, 2025; April 1, 2025**

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

**FROM:** Council Staff

**DATE:** February 18, 2025

**SUBJECT:** **A.R.S. 41-1033(G) Petition Related to Arizona Corporation Commision Agency Practice and Substantive Policy Statement**

---

## Summary

On November 8, 2024, Council staff received a petition ("Petition") from Underground Arizona Director Daniel Dempsey ("Petitioner") challenging the Arizona Corporation Commission ("Commission") substantive policy statement 3 of Decision 79140. The Petitioner is asking the Council to consider their petition under both A.R.S. § 41-1033(E) and A.R.S. § 41-1033(G).

For A.R.S. § 41-1033(E) the petitioner is alleging that a Commission Policy Statement concerning underground transmission lines is actually a rule.

For A.R.S. § 41-1033(G), the petitioner is alleging that the same Commission Policy Statement exceeds the agency's statutory authority, is unduly burdensome or is not demonstrated to be necessary to specifically fulfill a public health, safety or welfare concern. The related actions may constitute an agency practice that is not authorized by statute.

While the Council does not have authority to review Commission rulemaking per A.R.S. § 41-1057, which states that the corporation commission is exempt from Title 41, Chapter 6, Article 5. Article 5 only deals with rulemakings and agency reports, not with the Council's authority to hear a petition under A.R.S. §41-1033. This is further supported by the Commission advising the Petitioner of the ability to appeal to the Council.

## Background

On February 20, 2023 Tucson Electric Power and other utilities requested that the Commision issue a police statement concerning transmission lines because the Commision has previously stated that the costs of undergrounding transmission lines should not be passed on to the ratepayer.

On September 18, 2023, one of the commissioners filed the following amendment to the Commission's Proposed Order from September 1, 2023.

> 3. The Commission does not have jurisdiction over the undergrounding of electric transmission lines. A.R.S. § 40-360(10). Installing electric transmission lines underground is much more expensive than building them above ground. Underground transmission lines also can be more costly and challenging to maintain and repair. As a general matter, utilities under the Commission's jurisdiction should avoid incurring these higher costs unless underground installation of a transmission line is necessary for reliability or safety purposes, or to satisfy other prudent operational needs. Installing a transmission line underground for other reasons, such as stakeholders' preferences, would add unnecessarily to costs recovered through rates. Third parties, including cities, customers and neighborhood groups, seeking to fund the underground construction of a transmission line may do so, among other ways, by forming an improvement district for underground utilities as provided in A.R.S. § 48-620 et. seq."

On October 4, 2023 the Proposed Order with the above mentioned amendment was adopted by the Commision in a 4 to 1 vote. This amendment is the Policy Statement that has prompted the Petitioner to request Council review.

In May 2024, Tucson Electric filed a Certificate of Environmental Compatibility with the Line Sitting Committee. In this Certificate, Tucson Electric cited to the policy statement stating " Consistent with the Commission's Policy Statement…. requiring undergrounding would render the Project unreasonably restrictive and not feasible."

The Commision approved Tucson Electric's application for the Certificate in September 2024, and included the following finding of fact "However, given the Commission's Policy Statement found in Decision No. 79140 (October 4, 2023), the Committee finds pursuant to A.R.S. 40-360.06(D) that any local ordinance or plan that requires TEP to incur an incremental cost to construct the Project below ground 'is unreasonably restrictive and compliance therewith is not feasible in view of technology available."

A.R.S. § 40-360.06(D) says in part "Any certificate granted by the committee shall be conditioned on compliance by the applicant with all applicable ordinances, master plans and regulations of the state, a county or an incorporated city or town, except that the committee may grant a certificate notwithstanding any such ordinance, master plan or regulation, exclusive of franchises, if the committee finds as a fact that compliance with such ordinance, master plan or

regulation is unreasonably restrictive and compliance therewith is not feasible in view of technology available…."

On September 3, 2024 Petitioner filed a petition for Commission review under A.R.S. § 41-1033(A). The Petitioner stated that the Policy Statement identified above should be treated as a rule, along with not being specifically authorized by statute, exceeding statutory authority, and is unduly burdensome.

On October 31, 2024 the Commission provided a written rejection to the Petitioner with the Commission alerting the Petitioner of their ability to appeal to the council pursuant to A.R.S. § 41-1033(E).

## Petitioner's Arguments

As indicated above, the Petitioner alleges that the policy statements adopted by the Commision on October 4, 2024 exceeded their authority because the policy statement was being treated as a rule in practice. The Petitioner argues that the Commission provided the policy statement to the Line Siting Committee to guide the Line Siting Committee on ratepayer recovery and undergrounding of powerlines, both of which exceed the jurisdiction of the Line Siting Committee according to the Petitioner. The Petitioner specifically states that the Line Siting Committee is strictly focused on identifying routes for transmission lines and the sole authority for how a utility recovers cost from ratepayers is with the Commission itself. The Line Siting Committee cannot "preemptively determine the cost recovery outcomes of the ratemaking process."

The Petitioner states that the Commision knew this policy statement exceeded their authority because in June 2023 the Commission's legal counsel warned of jurisdictional issues and recommended formal rulemaking. This statement can be found in Docket No.ALS-00000A-22-0320. The Petitioner also states that a Commissioner acknowledged these jurisdiction hearings during a September 2023 hearing as well.

The Petitioner further contends that when Tucson Electric Company "TEP" applied for a "Certificate of Environment Compatibility "CEC", the Line Siting Committee relied on the policy statement to "preemptively determine that any incremental undergrounding cost would be unrecoverable from ratepayers and therefore was not feasible." The Petitioner also states that the Commission's argument that the policy statement only repeated what the Arizona Supreme Court held was misguided because a utility can be held responsible for costs related to undergrounding without that costs being passed on to the ratepayer. The Petitioner offered the following as support of his position that the Policy Statement was not merely a recognition of state law; "The fact that property owners may petition for the creation of an underground conversion district and be bound to pay for the undergrounding instead of the utility, does not prevent the Town from mandating the undergrounding at utility expense." *Arizona Pub. Serv. Co. v. Town of Paradise Valley*, 125 Ariz. 447, 451 (1980).

## Summary of Commission Review

As a result of the Petitioner initially filing a request of review of the substantive policy from the Commission in accordance with A.R.S. § 41-1033, the commission was required to either provide a detailed rejection of the petition, or if the substantive policy was actually a rule to engage in rulemaking. The Commision rejected the request by written response to the Petitioner on October 31, 2025. The Commission's full response can be found in the attached materials, a brief overview will be provided below.

The Commision does not consider the Policy Statement to be a rule because the policy statement was based on existing statutes and rules. The Commission specifically cited A.A.C R14-2-206(b)(2)(c) and A.R.S. §§40-341, et. and A.R.S. § 48-620.

For the argument that the Policy Statement constitutes a rule, the commision states that the Policy Statement is not a rule because the Policy Statement is merely restating state law. The Commision cites A.R.S. § A.R.S. § 40-364(F) and R14-2-206(b)(2)(c) as to where this authority lies.

For A.R.S. § 40-364(F), the Commission emphasizes that the statute "grants the Commission the authority to issue an order "establishing the underground conversion service" and the Commission "'shall set forth the underground conversion costs to be charged to each lot or parcel.'"" Commision 10/31/24 Response pg 12. The Commision states that the cost for undergrounding can only be passed on to those who directly benefit from the undergrounding and not to a generalized population.

The Commission believes that the existing rule and statutes specify that no unnecessary cost should be passed on to ratepayers, any costs should be absorbed by those who benefit. (*Id.* at. 3).

For the *Paradise Valley* case cited by the Petitioner, the Commision states the following "These decisions do not support Mr. Dempsey's position. Commission advisory does not preclude or limit a municipality's right to require undergrounding. The Commission advisory merely parrots state law and policy on the allocation of the costs of Undergrounding." (*Id.* at 13).

**Relevant Statutes and Regulations**

A.R.S. § 41-1033(E) allows a person to "to appeal to the council to review whether the existing agency practice or substantive policy statement constitutes a rule." The agency must have rejected the petitioner's request for the Council to hear. If rejected, the Petitioner has 30 days to submit a five page double spaced appeal to the Council.

A.R.S. § 41-1033(G) allows "A person may petition the council to request a review of an existing agency practice, substantive policy statement, final rule or regulatory licensing requirement that the petitioner alleges is not specifically authorized by statute, exceeds the agency's statutory authority, is unduly burdensome or is not demonstrated to be necessary to specifically fulfill a public health, safety or welfare concern."

If the Council receives information pursuant to A.R.S. § 41-1033(G), and at least three Council members request of the Chairperson that the matter be heard in a public meeting:

1. Within ninety days after receipt of the third council member's request, the council shall determine whether the agency practice or substantive policy statement constitutes a rule, whether the final rule meets the requirements prescribed in section 41-1030 or whether an existing agency practice, substantive policy statement, final rule or regulatory licensing requirement exceeds the agency's statutory authority, is not specifically authorized by statute or meets the guidelines prescribed in subsection G of this section.

2. Within ten days after receipt of the third council member's request, the council shall notify the agency that the matter has been or will be placed on an agenda.

3. Not later than thirty days after receiving notice from the council, the agency shall submit a statement not more than five double-spaced pages to the council that addresses whether the existing agency practice, substantive policy statement constitutes a rule or whether the final rule meets the requirements prescribed in section 41-1030 or whether an existing agency practice, substantive policy statement, final rule or regulatory licensing requirement exceeds the agency's statutory authority, is not specifically authorized by statute or meets the guidelines prescribed in subsection G of this section.

   *See* A.R.S. § 41-1033(H).

A.R.S. §41-1001(17) states: "'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."

A.R.S. § 41-1001(24) states ""Substantive policy statement" means a written expression which informs the general public of an agency's current approach to, or opinion of, the requirements of the federal or state constitution, federal or state statute, administrative rule or regulation, or final judgment of a court of competent jurisdiction, including, where appropriate, the agency's current practice, procedure or method of action based upon that approach or opinion. A substantive policy statement is advisory only. A substantive policy statement does not include internal procedural documents which only affect the internal procedures of the agency and does not impose additional requirements or penalties on regulated parties, confidential information or rules made in accordance with this chapter."

A.R.S. § 40-360.06(A) states that "The committee may approve or deny an application and may impose reasonable conditions on the issuance of a certificate of environmental compatibility and in so doing shall consider the following factors as a basis for its action with respect to the suitability of either plant or transmission line siting plans:...

(A)(8) . “The estimated cost of the facilities and site as proposed by the applicant and the estimated cost of the facilities and site as recommended by the committee, recognizing that any significant increase in costs represents a potential increase in the cost of electric energy to the customers or the applicant.”

(A)(9). Any additional factors that require consideration under applicable federal and state laws pertaining to any such site.

R14-2-206(b)(2)(c) states “"[a] customer requesting an underground service line in an area served by overhead facilities shall pay for the difference between an overhead service connection and the actual cost of the underground connection as a nonrefundable contribution."

## Analysis and Conclusion

A.R.S. § 41-1033 does not provide requirements or standards to guide the Council in determining whether this petition should be given a hearing. Therefore, Council members should make their own assessments as to what information is relevant in determining whether this petition may be heard.

The following is Council staff’s opinion as to whether the policy statement constitutes a rule or if it exceeds the Commission’s statutory authority.

The Policy Statement can be broken into two parts. Part 1 states, “As a general matter, utilities under the Commission's jurisdiction should avoid incurring these higher costs unless underground installation of a transmission line is necessary for reliability or safety purposes, or to satisfy other prudent operational needs. Installing a transmission line underground for other reasons, such as stakeholders' preferences, would add unnecessarily to costs recovered through rates.” Council Staff believes that the Commission is correct when the Commission states that this is just a restatement of the existing law and authority. Absent any other law and requirements, the Commission has an obligation to ratepayers to ensure the lowest possible costs.

Absent any other law or authority on undergrounding, a stakeholder who benefits would be responsible for paying for these benefits, and not the ratepayers as a whole. This is supported by R14-2-206(b)(2)(c), A.R.S. §§ 40-347 and 48-620.

Part 2 of the Policy Statement states, “Third parties, including cities, customers and neighborhood groups, seeking to fund the underground construction of a transmission line may do so, among other ways, by forming an improvement district for underground utilities as provided in A.R.S. § 48-620 et. seq.”

The language in Part 2 is ultimately where the dispute arises. The plain text of the Policy Statement states that those who wish to fund an underground transmission line may do so, ***among other ways,*** by forming an improvement district. The plain text does not prohibit a utility

to be responsible for undergrounding or for a municipality to require underground through zoning or an ordinance. The Policy Statement only states that one way to do this is through an improvement district as provided in A.R.S. § 48-620 *et. seq.* The Policy Statement is not saying that this is the only way, it is just among the ways. Council staff agrees with the Commission that the Policy Statement as written only restates what exists in law and does not add any additional requirements.

However, based on the Petitioner's allegations, a question emerges regarding whether the Commission is using this Policy Statement as an Agency Practice to exceed their statutory authority when it comes to interfering with a municipalities authority to require undergrounding and whether the beneficiary must always pay for the undergrounding. The Petitioner does seem to touch on this subject in their jurisdictional argument. Council staff recommends that the Council inquire further regarding this issue based on the analysis in the *Paradise Valley* case provided by the Petitioner and outlined in more detail below. A copy of the full case text has also been provided in the materials for the Council's consideration.

In *Paradise Valley,* the question was raised whether cities and towns had the authority to direct the undergrounding of public utility poles. *Arizona Pub. Serv. Co. v. Town of Paradise Valley*, 125 Ariz. 447, 448 (1980). In this case, the court said that while property owners may petition for the creation of an underground conversion district, ***this does not prevent the town from mandating at utility expense.*** *Id.* at 451. The court further determined that, because A.R.S. § 40-360.06(D) mentions ordinance, master plan or regulation, this language supports the notion that cities and towns have the power to require undergrounding. *Id.* The court ultimately held "We believe that, in the absence of a clear statewide preemptive policy not shown here, local governments can prescribe undergrounding within their boundaries." *Id.*

The Commission does not dispute that local governments have the ability to mandate undergrounding. *Commission 10/31/24 Response* Pg. 12. The Commission believes that mandating undergrounding is separate from allocation of costs of undergrounding. *Id.* It appears that the Commission believes that costs for undergrounding can only be passed on to property owners who benefit because the sole authority to allocate costs on undergrounding lies with the Commission. *Id.* at 12-13. The Commission states that *Paradise Valley* does not support the Petitioner's position "these decisions do not support Mr. Dempsey's position. The Commission advisory does not preclude or limit a municipality's right to require undergrounding." *Id.* In relation to *Paradise Valley,* the Commission also states " Thus, if a Municipality requests or mandates undergrounding, it must pay for it, not the ratepayers. This is consistent with the holding in A*rizona Pub. Serv. Co. v. Town of Paradise Valley*, 125 Ariz. 447 (Ariz. 1980), wherein the right of a municipality to require undergrounding was affirmed. However,that does not address who should pay."

However the Petitioner is quoting *Paradise Valley* because it states that a town can mandate undergrounding at the utilities expense. *Petition*, Pg. 4. The Commission does not address the possibility of a local government requiring a utility to cover these expenses. The *Paradise Valley* court rejected the notion that the legislature created underground conversion districts for the purpose of only property holders being responsible for the costs of undergrounding. *Paradise Valley,* at 451.

These improvement districts and service areas were in place at the time of the *Paradise Valley* decision and were cited by the court directly as being unpersuasive that the legislature intended to prevent local governments from mandating undergrounding at a utilities expense. In the CEC approval as referenced in Decision 79550 pg 15, the Committee relied on the Policy Statement and said that funding must come from someone other than TEP's utility rates or from TEP, absent an agreement between the parties.

In Docket No.ALS-00000A-22-0320 pg3, the Commission states "The facts of each case are unique. and there may be instances where a utility demonstrates that ratepayer recovery of undergrounding transmission lines is warranted." This sentiment does not appear in the Commission's response to Petitioner. This Docket is also where the Commission mentions that the line siting committee does not have jurisdiction over ratepayer recovery. *Id.*

Based upon the Commission's TEP undergrounding decision and what has been provided by Petitioner, staff believes that the Petitioner may have brought an agency practice that is not expressly authorized under the Commission's statutory authority.

If it is indeed the Commission's position that undergrounding costs can only be shared among those who are beneficiaries or those that have opted into a district, then staff believes that this raises the question; whether absent an improvement district, conversion service area, or commitment that the requesting customer would pay, then would the Commission always rule that an ordinance, master plan, or regulation to be considered as "unreasonably restrictive and compliance therewith is not feasible." It also raises the question if this is considered determining ratepayer responsibility and whether that is within the jurisdiction of the line siting committee, as found in A.R.S. § 40-360.06.

Essentially, while a town may pass a zoning ordinance requiring that all transmission lines be undergrounded, this ordinance would not be followed unless there is an improvement district, conversion service area, or commitment that the requesting customer pays for the cost. This would remove the possibility that the utility will pay for these costs, which according to *Paradise Valley* is a possibility. Council staff does not believe there is clear statutory authority for the Commission to declare that a utility should not be held financially responsible for undergrounding based upon the *Paradise Valley* decision.

In conclusion, the Commission stated in Decision 79550, that the Policy Statement provided guidance to find that TEP did not need to pay for the undergrounding. The Policy Statement is silent on whether a utility can be financially responsible for undergrounding. This silence does not mean the Policy Statement advises that a utility cannot be financially responsible for undergrounding because in *Paradise Valley*, the court mentioned that while a town can pay for these costs either through agreement or an improvement district, they are under no obligation to do so. However, in practice the Commision appears to be treating the absence of language as justification for not allowing the utility to pay.

As stated above there are requirements or standards to guide the Council in determining whether this petition should be given a hearing. If the Council believes that the only issue at hand is whether the Policy Statement is a rule or not and whether the Policy Statement is within the Commission's statutory authority. In this scenario, Council staff believes that the Policy Statement is not a rule because it merely restates the law (the policy statement does not have to mention every payment possibility), which is that costs associated with undergrounding cannot be passed on to the ratepayers.

Should the Council believe that the Petitioner may have brought an agency practice that exceeds the Commission's authority then Council Staff does recommend the Council ask the following of the Commission and Petitioner:

- Does the Commission allow for a utility to be financially responsible for the costs associated with undergrounding?
- For the Petitioner's line siting Committee jurisdictional argument over ratemaker recovery, can the Commission clarify as it relates to the TEP matter, if the Commission was consistent with pg. 3 of Docket No. ALS-00000A-22-0320?
- For the Commission, what is the extent, if any, for the Committee to ask about potential impacts on ratepayers, either under A.R.S. § 40-360.06, or other Committee statute.
- For the Petitioner, Council staff recommends the Council ask the Petitioner of the applicability of A.R.S. § 40.360.06(A)(8)? This relates to the jurisdictional question, under this statute why did the Committee overstep its jurisdiction in considering the potential costs that could be passed to customers?
    - This statute allows the committee to approve or deny an application and the Committee may consider the cost of the facilities and sites, and recognize that these costs may increase the costs to customers or the applicant.

Underground Arizona, Inc.
ATTN: Daniel Dempsey
PO Box 41745
Tucson, AZ 85717
daniel@undergroundarizona.org
(520) 360-0590

November 8, 2024

Governor's Regulatory Review Council
100 N Fifteenth Ave • Suite 302
Phoenix, AZ 85007
grrc@azdoa.gov

RE: Arizona Corporation Commission Decision 79140, Policy Statement 3

Dear Members of the Governor's Regulatory Review Council,

Underground Arizona hereby appeals to the Governor's Regulatory Review Council (the "Council"), pursuant to A.R.S. § 41-1033(E), for a determination that the Arizona Corporation Commission's (the "Commission") October 4, 2023 Policy Statement, as outlined herein, is a rule or is otherwise "not specifically authorized by statute, exceeds the agency's statutory authority, [and] is unduly burdensome."[1]

Underground Arizona submitted an A.R.S. § 41-1033 petition to the Commission on September 3, 2024.[2] The petition was rejected by written letter on October 31, 2024.[3] In the rejection letter, the Commission wrote: "The Petitioner is advised that he has 30 days to file an appeal if he so chooses.[3]" Footnote 3 cited A.R.S. § 41-1033(E), which is the Council's review process.

**BACKGROUND**

1. **On February 20, 2023**, Tucson Electric Power ("TEP") requested that the Commission issue a policy statement on undergrounding transmission lines (pg. 4):[4]

   *"The Commission has often acknowledged that ratepayers should not pay the extra cost of undergrounding a transmission line. Including language to that effect in a policy would be*

[1] See e.g. A.R.S. 41-1033(G).
[2] Docket ALS-00000A-22-0320: https://docket.images.azcc.gov/E000038251.pdf
[3] Docket ALS-00000A-22-0320: https://docket.images.azcc.gov/E000039777.pdf
[4] Docket ALS-00000A-22-0320: https://docket.images.azcc.gov/E000024350.pdf

*helpful to applicants who need to explain the issue to stakeholders in a CEC proceeding."*

2. **On June 30, 2023**, the Commission's Legal Division issued a memo stating the following regarding TEP's request (pg. 3):[5]

> *"If the Commission decides to move forward with this proposal, a rulemaking would be required because the Commission would be prescribing law or policy. It would not be appropriate to adopt a rule regarding ratepayer recovery as part of the line siting rules, however. The Line Siting Committee has no jurisdiction over rates and a line siting rule regarding ratepayer recovery would therefore be outside the scope of authority granted under the line siting statute. Additionally, the Line Siting Committee does not have jurisdiction over underground transmission lines."*

3. **On September 1, 2023**, the Commission's Legal Division filed a Proposed Order that did not include a policy statement on rate recovery or undergrounding.[6]
4. **On September 18, 2023**, Commissioner Myers filed Proposed Amendment No. 1, which proposed inserting the following policy statement on undergrounding into the Legal Division's Proposed Order:[7]

> "*3. The Commission does not have jurisdiction over the undergrounding of electric transmission lines. A.R.S. § 40-360(10). Installing electric transmission lines underground is much more expensive than building them above ground. Underground transmission lines also can be more costly and challenging to maintain and repair. As a general matter, utilities under the Commission's jurisdiction should avoid incurring these higher costs unless underground installation of a transmission line is necessary for reliability or safety purposes, or to satisfy other prudent operational needs. Installing a transmission line underground for other reasons, such as stakeholders' preferences, would add unnecessarily to costs recovered through rates. Third parties, including cities, customers and neighborhood groups, seeking to fund the underground construction of a transmission line may do so, among other ways, by forming an improvement district for underground utilities as provided in A.R.S. § 48-620 et. seq."*

5. **On September 21, 2023**, at the Commission's Open Meeting, in regard to Commissioner Myers' Proposed Amendment No. 1, the following statement was made:[8]

> ***Commissioner Myers:*** *"I think it is beneficial to clarify the Commission's stance on [rates and undergrounding] but at the same time make sure that it's clear that we don't have jurisdiction over [rates and undergrounding] when it comes to line siting stuff."*

[5] Docket ALS-00000A-22-0320: https://docket.images.azcc.gov/E000027753.pdf
[6] Docket ALS-00000A-22-0320: https://docket.images.azcc.gov/E000030426.pdf
[7] Docket ALS-00000A-22-0320: https://docket.images.azcc.gov/E000030810.pdf
[8] Item 33. https://azcc.granicus.com/player/clip/5766?view_id=3&redirect=true

6. **On October 4, 2023**, The Commission formally issued Decision No. 79140 by a vote of 4 to 1, with Commissioner Tovar dissenting, which adopted three policy statements, including Commissioner Myers Proposed Amendment No. 1 on undergrounding (the policy statement).[9] In Finding of Fact 1, the Commission wrote that the purpose of policy statements was to "guide" the Line Siting Committee (pg. 1).
7. **On May 24, 2024**, TEP filed a Certificate of Environmental Compatibility ("CEC") application with the Line Siting Committee ("the Committee"). In it, and based on the policy statement, TEP made the following request (pg. 30):[10]

   > *"Consistent with the Commission's Policy Statement, given the excessive cost of undergrounding, and the resulting impact on rates, requiring undergrounding would render the Project unreasonably restrictive and not feasible."*

8. **On September 13, 2024**, In Decision No. 79550, the Committee and Commission approved TEP's application for a CEC, which included the following findings of fact (pg. 15):

   > *"10. However, **given the Commission's Policy Statement found in Decision No. 79140 (October 4, 2023),** the Committee finds pursuant to A.R.S. 40-360.06(D) that any local ordinance or plan that requires TEP to incur an incremental cost to construct the Project below ground 'is unreasonably restrictive and compliance therewith is not feasible in view of technology available.'"* [Emphasis Added]

**ANALYSIS**

The *ex-ante* line siting process is administered by the Line Siting Committee and focused on identifying routes for transmission lines.[11] It is governed by A.R.S. § 40-360 et seq. The *ex-post* ratemaking process is administered by the Commission and is focused on how a utility recovers costs from ratepayers. It is governed by A.R.S. § 40-361 et seq. Each process has independent jurisdiction and operates according to its own rules and procedures. To put it another way, the line siting process is not an early stage of ratemaking; while costs may be considered in route selection, the process cannot preemptively determine the cost recovery outcomes of the ratemaking process—or vice versa.[12]

On February 20, 2023, Tucson Electric Power ("TEP") requested that the Commission issue a policy statement to guide the Line Siting Committee on ratepayer recovery and undergrounding (Background 1). On June 30, 2023, the Commission's legal counsel warned that such a policy statement would be outside the scope of the line siting statute and a formal rulemaking would be required

[9] Docket L-00000C-24-0118-00232: https://docket.images.azcc.gov/0000209995.pdf
[10] https://docs.tep.com/doc/projects/mrp/MRP-CEC-Application.pdf
[11] In this context, ex-ante means before a project is built and ex-post mean after a project is built.
[12] As evidence, SRP's rates are not regulated by the Commission but its transmission lines require approval by the Line Siting Committee.

(Background 2). On September 21, 2023, at a Commission hearing, Commissioner Myers further acknowledged these jurisdictional problems (Background 5). Despite this, on October 4, 2023, in Decision 79140, the Commission issued a line siting policy statement on ratepayer recovery and undergrounding without undergoing a formal rulemaking (Background 6).

On May 24, 2024, TEP applied for a Certificate of Environmental Compatibility ("CEC") from the Commission (Background 7). On September 13, 2024, in Decision 79550, the Commission granted the CEC. In the CEC, the Line Siting Committee relied on the Policy Statement to preemptively determine that any incremental undergrounding cost would be unrecoverable from ratepayers and therefore was not feasible (Background 8). Thus, the Policy Statement has been treated as a binding rule in practice.

By providing guidance to the Line Siting Committee through a Policy Statement on subjects for which the Line Siting Committee explicitly lacks jurisdiction, the Commission has deliberately confused process and acted in a manner that is "not specifically authorized by statute, exceeds the agency's statutory authority, [and] is unduly burdensome."[13,14] The bottom line is: why does the Line Siting Committee need to be guided by the Commission on items for which the Line Siting Committee lacks jurisdiction? If the point is not to exert extra jurisdictional authority, then what is it? Why doesn't the Commission simply make a non-line siting policy statement on undergrounding costs?

In its response to Underground Arizona's petition, the Commission said (pg. 5), "The jurisdiction of the Line Siting Committee is not at issue here." We disagree. It is the *only* thing at issue here. The Commission's arguments about its ratemaking or other jurisdiction are strawmen and not in dispute.

The Commission went on to say (pg. 5): "The Committee was appropriately recognizing state law limitations on cost recovery for undergrounding." Here, the Commission also errs. According to the Arizona Supreme Court, in APS v. Town of Paradise Valley (1980), state law does not limit cost recovery to non-utility parties (p 451):

> *"The fact that property owners may petition for the creation of an underground conversion district and be bound to pay for the undergrounding instead of the utility* [under state law]*, does not prevent the Town from mandating the undergrounding* ***at utility expense****."* [Emphasis added]

Therefore, the Commission's contention that the Policy Statement is simply a restatement of state law is fatally flawed.[15,16]

---

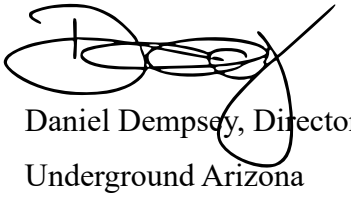
[13] See e.g. A.R.S. 41-1033(G).
[14] See e.g. A.R.S. 41-1091.
[15] Additionally, Underground Arizona has compiled dozens of examples on its website of the utility companies recovering the incremental cost of undergrounding from ratepayers without resistance from the Commission. Thus, its contention that it is disallowed by state law makes little sense.
[16] In TEP v. Board of Adjustment (2024), the Arizona Superior Court said: "*The State has also preempted the City's ability to determine where, but not how, transmission lines are constructed. The State clearly intended the Arizona Corporation Commission (ACC) to have exclusive authority over line siting for high-capacity transmission lines. A.R.S. § 40-360, et seq.*

Frankly, it seems that the Policy Statement's only purpose is for the Commission to improperly exert extra jurisdictional authority over the Line Siting Committee, which it succeeded at doing in practice.

**CONCLUSION**

For the foregoing reasons, pursuant to A.R.S. § 41-1033 et seq., and at the direction of the Commission, Underground Arizona respectfully requests that the Council hold a public meeting regarding the Commission's Policy Statement, which has been treated as a rule in practice, and determine it void as contrary to law.

Sincerely,



Daniel Dempsey, Director
Underground Arizona

*See also 1971 Session Laws Ch 67, § 1. The purpose of this is to simplify the process of expanding Arizona's electrical grid, which is necessarily a matter of statewide importance. However, the Court has been unable to locate any law which restricts the City's authority to regulate how transmission lines are constructed. TEP is correct that there is no law which explicitly grants the City the authority to require undergrounding, but neither is there a specific law which purports to exempt utilities from all zoning regulations. Therefore, the Court finds that, as a matter of law, the City has the authority to require undergrounding of transmission lines."* It is only reasonable to assume that an applicant pays the cost of complying with zoning regulations. The burden of proof that a municipality pays for the zoning compliance of any party is on TEP.

**COMMISSIONERS**
Jim O'Connor – Chairman
Lea Márquez Peterson
Anna Tovar
Kevin Thompson
Nick Myers

Douglas R Clark
Executive Director

Thomas Van Flein
General Counsel
Office of General Counsel

ARIZONA CORPORATION COMMISSION

Office of General Counsel

October 31, 2024

Mr. Daniel Dempsey
daniel@undergroundarizona.org

Re: *Petition to Invalidate Policy Statement 3 of Decision No. 79140*
Docket No. AIS-00000A-22-0320

Dear Mr. Dempsey:

This letter is the Arizona Corporation Commission's ("Commission") formal response to the September 10, 2024, Petition you filed in accord with A.R.S. § 41-1033(A).[1] A person may petition an agency to make, amend, or repeal a rule, or to review an existing agency practice or substantive policy statement that the petitioner alleges constitutes a rule. The petition must follow specific procedural requirements, including stating the reasons for the petition and providing supporting information. The Petition here meets the statutory requirements and thus the Commission is compelled to file this response.

For the reasons set forth below, the Commission denies your Petition as redundant, since your request to either invalidate an informal policy as an impermissible rule, or to have the policy enacted as a rule, is unnecessary. There exists already a formally adopted rule addressing the costs of undergrounding transmission wires, and two separate statutory regimes addressing undergrounding, thus the policy mentioned in Decision No. 79140 (October 4, 2023) is based on an existing, valid rule or statute. *See* A.A.C. R14-2-206(b)(2)(c). The Line Siting Committee's reliance on that rule and policy, in Line siting Docket No. L-00000C-24-0118-0232, Certificate of Environmental Compatibility (July 29, 2024) was therefore correct and legally warranted. *See*, Decision No. 79550 (September 13, 2024).

In addition to the rule, the policy is based on state law. Pursuant to A.R.S. §§ 40-341, et. seq., public service corporations can install underground transmission lines (1) *at their own*

[1] This statute provides, in relevant part:
A. Any person may petition an agency to do either of the following: 1. Make, amend or repeal a final rule. 2. Review an existing agency practice or substantive policy statement that the petitioner alleges to constitute a rule.

*expense* (i.e., that cannot be recovered in general rates) or (2) pursuant to a conversion service area. The legislature has created a statewide scheme for the creation of "underground conversion service areas" and each landowner within the "conversion area" must pay "the costs" for undergrounding to the public service corporation. The Decision advisory also cited A.R.S. § 48-620, which involves the creation of an improvement district established by a municipality via petitions from impacted property owners, for purposes of undergrounding. This statutory regime also requires the property owners to pay pro rata for the costs of undergrounding. Thus, under both the rule and the statutes, the costs of undergrounding cannot be recovered in the general utility rates.

The Commission policy in Decision No. 79140 fully complies with and is based upon these established laws. There are three lawful methods to pay for undergrounding:[2] (1) the utility can pay with no rate recovery; (2) an improvement district can be created, and the impacted property owners can pay; or (3) a conversion district can be created, and the impacted property owners can pay. No state law authorizes the costs of undergrounding to be spread among all ratepayers.

A complete analysis is provided below.

### A. The Petition Is Validly Filed

The Petition from Mr. Dempsey is brought pursuant to A.R.S. § 41-1030. This statute provides that agencies must not make informal policies or guidelines that have the effect of being a rule of general application, nor can agencies make rules that exceed their statutory or Constitutional rulemaking authority.

The Petition here properly follows Arizona law, and the Commission informed the public in Attachment A, page 1, Note 1, of Decision No. 79140, of the public's right to file such a petition. Accordingly, a response from the Commission is required. The Petitioner is advised that he has 30 days to file an appeal if he so chooses.[3]

---

[2] The Commission is aware that other sources, unrelated to ratepayers, could theoretically exist, such as legislative grants.

[3] A.R.S. § 41-1033(E) ("If an agency rejects a petition pursuant to subsection C of this section, the petitioner has thirty days to appeal to the council to review whether the existing agency practice or substantive policy statement constitutes a rule."

## B. The Advisory Statement and Contentions.

### 1. The Guidance in Decision No. 79140

At issue is the following statement in Decision No. 79140, which provides:

> 3. The Commission does not have express jurisdiction over the undergrounding of electric transmission lines. A.R.S. § 40-360(10). Installing electric transmission lines underground is much more expensive than building them above ground. Underground transmission lines also can be more costly and challenging to maintain and repair. As a general matter, utilities under the Commission's jurisdiction should avoid incurring these higher costs unless underground installation of a transmission line is necessary for reliability or safety purposes, or to satisfy other prudent operational needs. Installing a transmission line underground for other reasons, such as stakeholders' preferences, would add unnecessarily to costs recovered through rates. Third parties, including cities, customers, and neighborhood groups seeking to fund the underground construction of a transmission line may do so, among other ways, by forming an improvement district for underground utilities as provided in A.R.S. §§ 48-620 *et seq.*

Commission Decision No. 79140, ¶ 15. The above guidance statement was enacted on October 4, 2023. The guidance pertains to excluding the costs of undergrounding from recovery through rates. The guidance makes clear that those requesting and benefitting from undergrounding should pay for the costs of undergrounding, not ratepayers in general. As fully discussed below, this mirrors state law.

In a recent Line Siting Committee decision, the Committee referred to this guidance as a policy to which it will adhere. The Committee explained:

> [G]iven the Commission's Policy Statement found in Decision No. 79140 (October 4, 2023), the Committee finds pursuant to A.R.S. § 40-360.06(D) that any local ordinance or plan that requires TEP to incur an incremental cost to construct the Project below ground 'is unreasonably restrictive and compliance therewith is not feasible in view of technology available." This finding is conditioned on the City and TEP not finding a means to, within six (6) months of the date of the Commission's approval of this Certificate, either (a) fund the incremental cost to construct the Project below ground from a source other than through TEP's utility rates or from TEP, its affiliates, subsidiaries, or patent companies absent agreement between the parties; or (b) obtain the City's authorization to construct the Project above ground

> through the City's special exception or variance process, provided that TEP files a special exception or variance application for the route approved within ten (10) weeks of the Commission's approval of this Certificate.

Line Siting Committee, Certificate of Environmental Compatibility, p. 15 at ¶ 10, Docket No. L-00000C-24-0118-232 (July 29, 2024). Thus, the Committee logically deemed the guidance to be a policy it should follow, even without reference to the rule and passing reference to the improvement district statute.

In addition to the Committee's analysis and application of the guidance, the Commission's legal division provided guidance in a June 14, 2023, memorandum, in which it stated:

> It would not be appropriate to adopt a rule regarding ratepayer recovery as part of the line siting rules, however. The Line Siting Committee has no jurisdiction over rates, and a line siting rule regarding ratepayer recovery would therefore be outside the scope of authority granted under the line siting statutes. Additionally, the Line Siting Committee does not have jurisdiction over underground transmission lines.

Legal Division Memorandum, p. 16, Docket ALS-00000A-22-0320 (June 14, 2023). While the Line Siting Committee does not have express jurisdiction over undergrounding transmission lines,[4] and it does not have jurisdiction over ratepayer recovery of costs, the Commission does have jurisdiction over the rate allocations and underground conversion service areas.

The Committee's action to comport with Commission guidance is prudent and warranted. Moreover, both the Commission and the Committee are of aware of, and seek compliance with, state law regarding improvement districts and conversion districts. The Line Siting Committee has every reason, and obligation, to comport with state law, which plainly disallows undergrounding costs to be allocated among all ratepayers. Any decision by the Line Siting Committee would be reasonable to take those restrictions into account, and doing so does not assert jurisdiction over rates or over undergrounding.

---

[4] The Commission does, however, have jurisdiction in some circumstances to approve undergrounding in conversion service areas. ARS 40-344(J): "The corporation commission or the board of supervisors shall not establish any underground conversion service area without prior approval of such establishment by resolution of the local government"); and (K): "If the underground conversion service area contains overhead electric or communication facilities of a public service corporation and public agency, then neither the public service corporation nor the public agency shall be required to commence conversion until the corporation commission's order, the board of supervisors' order or the city or town council's order has become final." Query whether the Line Siting Committee should have the initial review of the creation of a conversion service area inasmuch as it has the technical and historic expertise on line siting issues.

### C. The Commission Has The Legal Authority To Create an Advisory Policy Consistent With and Based on State Law.

The Petitioner asserts that the Commission does not have the Constitutional or legislative authority to create and enforce the guidance or policy that was set forth in Decision No. 79140. This is not correct.

In the Petition, p. 1, it is alleged that:

> In Line Siting Case 232, in Finding of Fact 10 of the Certificate of Environment Compatibility filed on July 29, 2024, PS3 was used by the Line Siting Committee to determine that any incremental undergrounding cost borne by ratepayers, or the utility was unrecoverable and therefore local ordinances and plans creating such costs were "unreasonably restrictive and compliance therewith [was] not feasible in view of technology available" under A.R.S. § 40- 360.06(D). If the underground costs were determined recoverable from ratepayers or the utility, this A.R.S. § 40-360.06(D) determination could not be made.

The Petition also asserts that the Commission legal counsel "warned" that adopting a policy within the line siting rules would be "outside the scope of authority granted under the line siting statute" and that "the Line Siting Committee does not have jurisdiction over underground transmission lines." The jurisdiction of the Line Siting Committee is not at issue here. The Committee was appropriately recognizing state law limitations on cost recovery for undergrounding. At issue is the ability of the Commission to have rules and policies regarding rates and recovery of costs, and this is definitively within the core jurisdiction of the Commission. The Committee merely recognized the Commission's role over rates, but in no manner did the Committee attempt to exert its authority extra jurisdictionally.

The letter referred to in the Petition from the Legal Division, dated June 14, 2023, did not refer to the rule here, A.A.C. R14-2-206(b)(2)(c) (the costs for undergrounding single phase (residential mainly) service lines to be paid by the user), or the undergrounding statutes pertaining to conversion and improvement districts. The Commission adopted the recommendations from the Legal Division as far as it went, stating: "We adopt Legal Division's recommendation: however, the Commission's Policy Statement shall also include the following" and thereafter the Commission set forth the guidance based on A.A.C. R14-2-206(b)(2)(c)). In this manner, the Commission did not err.

The Commission rule to prevent the extra costs of undergrounding from being rolled into general ratepayer rates is a core rule based on the Commission's plenary authority to

govern reasonable and just rates. Decision No. 79140 expressly noted that "The Commission has jurisdiction over the subject matter..." (Commission Decision No. 79140 at p. 3). The Commission has made it clear to the Municipalities, and others, that undergrounding is not prohibited. The Petition's reference to state law allowing municipalities to order undergrounding is not at issue and not in conflict. The Commission is simply noting that the very high cost of undergrounding, and the reliability and maintenance problems associated with undergrounding, cannot be recovered in the general rates—a core jurisdictional issue for the Commission. Further, as noted above, state law mirrors this advisory.

The Commission even referred those who want undergrounding (including Municipalities) to a possible method, such as creating an improvement district under A.R.S. § 48-620. (Decision No. 79140 at p. 3). More directly however, are the underground conversion districts set forth in A.R.S. §§ 40-341 *et. seq*. State law mandates that the requesting party or parties, and the beneficiary property owners, pay for all undergrounding costs.

There are multiple sections of statute and rules that address undergrounding:

A.A.C. R14-2-207: This regulation outlines the requirements for utilities regarding distribution line extensions, including underground extensions in subdivision developments. It specifies that single-phase electric lines necessary to furnish permanent electric service to new residential buildings or mobile homes within a subdivision must be installed underground unless it is not feasible from an engineering, operational, or economic standpoint. Under R14-2-206(B)(2)(b), costs are not allowed to be allocated to general ratepayers and the "customer requesting an underground service line in an area served by overhead facilities shall pay" for the costs of undergrounding. These rules establish jurisdiction of the Commission to address special conditions, exceptions, and approval of line extensions and who should pay.

A.R.S. § 48-620: This statute states that the assessment for an underground electrical power line shall be assessed against only the property owners benefiting from the burial of the power line.

A.R.S. § 40-342, 40-344, 40-346 & 347: These statutes provide the petition procedure for establishing an underground conversion service area, including the requirement for a hearing by the corporation commission, to determine the feasibility and approval of the conversion service area. Under A.R.S. 40-347, the underground conversion costs are to be allocated to each lot or parcel of real property within the underground conversion service area—not to the general ratepayers. ARS 40-343(F) (requiring "the estimated costs to be assessed to each

> lot or parcel of real property for placing underground the facilities of the public service corporation.").[5]

Should the Commission want to adopt the advisory as a formal rule, it could do so, and it would be in harmony with state law and public policy. The Arizona Constitution, Article 15, Section 3, grants the Commission the power to "make reasonable rules, regulations, and orders, by which such corporations shall be governed in the transaction of business within the state." *State v. Tucson Gas, Elec. Light & Power Co.,* 15 Ariz. 294 (1914). This constitutional provision vests exclusive power in the Commission to govern public service corporations, except where the Constitution explicitly grants such power to the Legislature. *State v. Tucson Gas, Elec. Light & Power Co.*, 15 Ariz. at 300-301. The Commission authority includes judicial, executive, and legislative powers, allowing it to adopt rules and regulations, as well as to adjudicate issues, and set rates. *Miller v. Arizona Corp. Com'n*, 227 Ariz. 21, 24-25 (2011).[6]

The Commission's creation and powers stem from the framers' intent to protect the public from corporate abuses and overreaching, granting it extensive regulatory authority unique among state commissions. *Burns v. Arizona Public Service Company*, 254 Ariz. 24 (2022). This historical context underscores the Commission's role in ensuring effective regulation and consumer protection. *Miller v. Arizona Corp. Com'n*, 227 Ariz. at 28-29. The Commission is also obligated to protect and prevent unfairness to consumers and ratepayers. Thus, compelling non-beneficiaries to pay for the costs of undergrounding has been deemed unfair and unreasonable by the Commission in its advisory policy, a policy that mirrors the state legislature's undergrounding statutory plan. In short, the Legislature and the Commission concur that the costs of undergrounding cannot be shared among non-beneficiaries as defined by law.

### D. The Advisory Policy Mirrors Existing State Law.

As noted, the Petitioner is operating under the misimpression that the guidance and policy statement set forth in Decision No. 79140 is not based on an existing rule or state law and thus constitutes a new "rule" that was enacted without following the procedures of the Administrative Procedures Act (APA). The Petitioner errs.

---

[5] It is notable that the Commission has jurisdiction over petitions to underground "transmission lines" at "nominal voltages in excess of twenty-five thousand volts, or having a current capacity in excess of twelve thousand kva." ARS 40-342(E). This raises the question whether the Line Siting Committee should have the opportunity to address transmission line undergrounding petitions over 25Kv as it has expertise in this.

[6] Arizona statutory law, A.R.S. § 40-202, further confirms the Commission's authority to regulate public service corporations and to adopt rules necessary for this purpose. Specifically, the statute empowers the Commission to protect the public against deceptive practices, ensure confidentiality of customer information, and regulate contractors working with regulated entities. *Id.* The statute also mandates the Commission to encourage competition and growth in the telecommunications industry and to establish procedures for regulating competitive markets. *Id.*

The advisory policy in Decision No. 79140 is based on a previously enacted rule that complies with the APA as well as a state statutory scheme pertaining to undergrounding. The rule regarding undergrounding enacted in accordance with the APA, A.A.C. R14-2-206(b)(2)(c), provides:

> "[a] customer requesting an underground service line in an area served by overhead facilities shall pay for the difference between an overhead service connection and the actual cost of the underground connection as a nonrefundable contribution."

A.A.C. R14-2-206(b)(2)(c). Thus, this validly enacted rule establishes that the cost of undergrounding shall be borne by the "customer requesting underground service." The advisory policy reiterates this rule.

In addition to this rule, there is an extensive statutory scheme that also mandates that the customers who seek, and benefit from, undergrounding, shall pay for the costs of undergrounding, not the ratepayers in general. Specifically, A.R.S. § 40-342(F) provides:

> A summary of the estimate of the costs to be assessed against each lot or parcel of real property located within the proposed underground conversion service area for the conversion of facilities within public places and the estimated costs to be assessed to each lot or parcel of real property for placing underground the facilities of the public service corporation or public agency located within the boundaries of each parcel or lot then receiving service shall be mailed by the public service corporation or public agency to each owner of real property located within the proposed underground conversion service area to the address of such owner as set forth on the petition for the cost study.

A.R.S. § 40-342(F). The Commission advisory reflects this statutory payment scheme. The costs of undergrounding are to be paid for by the customers requesting and benefitting from the undergrounding. If the advisory is deficient, it is that it did not expressly refer to the rule and the statutes. But that is not required.

The Commission agrees that there is a rule already enacted, and the advisory statement in the decision is consistent with that rule.[7] Under the APA, a "rule" is defined as an agency

---

[7] "An entity's internal guidelines, however, are not rules." *Duke Energy Arlington Valley, LLC v. Ariz. Dep't of Rev.*, 219 Ariz. 76, 80, ¶ 18, 193 P.3d 330, 334 (App.2008). Whether the advisory constitutes an "internal guideline" need not be addressed inasmuch as there is an existing APA-enacted rule and a statutory regime that mirrors the advisory.

statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedure or practice requirements of an agency. *Phoenix Children's Hosp. v. Arizona Health Care Cost Containment System Admin.,* 195 Ariz. 277 (1999); A.R.S. § 41-1001(17).

In the present matter, there is existing state law and a state rule, all compelling the allocation of the undergrounding costs on those directly benefitting from the undergrounding. The advisory merely parrots those statutes, and the Commission need not formally adopt a potentially redundant rule.

The Commission, however, could adopt a formal rule on allocating the costs of undergrounding, if it so chose, as long as the formal rule was consistent with state law. The challenge to the undergrounding advisory pertains directly to rate making (i.e., can the costs of undergrounding be shared among all ratepayers), a core function of the Commission and one over which it has plenary authority. Thus, if the Commission so chose, it could enact the advisory as a stand-alone rule. Whether it should do so is a decision it can deliberate upon,[8] but the fact remains the advisory policy is itself consistent with an APA-enacted undergrounding cost rule and two statutory undergrounding cost statutes.

The Commission has the Constitutional authority to establish rules that pertain to public service corporation rates. The advisory statement at issue clearly pertains to the costs of undergrounding of utilities and the exclusion of those costs from being foisted upon classes of ratepayers who did not request, and do not benefit from, the undergrounding of utilities. This is within the Commission's Constitutional authority and is aligned with legislative policy.

---

[8] The rules pertaining to rate making can be created and enacted by the Commission without approval of the Attorney General or the APA. *See U S West Communications, Inc. v. Arizona Corp. Com'n*, 197 Ariz. 16 (1999) (appellate court invalidated some Commission rules that were not ratemaking rules and affirmed other rules that were rate making rules, none of which had APA or attorney general review). Courts in general grant deference to the agency's interpretation of statutes and its own regulations. *Arizona State University ex rel. Arizona Bd. of Regents v. Arizona State Retirement System*, 237 Ariz. 246 (2015).

The language in Decision No. 79140 stems from an existing rule and statutory scheme and is therefore valid. Under the rule, A.A.C. R14-2-206(b)(2)(c), whoever requests the undergrounding, and whoever benefits from it geographically (the adjoining properties) must pay for the undergrounding costs: "[a] customer requesting an underground service line in an area served by overhead facilities shall pay for the difference between an overhead service connection and the actual cost of the underground connection as a nonrefundable contribution." Thus, if a Municipality requests or mandates undergrounding, it must pay for it, not the ratepayers. This is consistent with the holding in *Arizona Pub. Serv. Co. v. Town of Paradise Valley*, 125 Ariz. 447 (Ariz. 1980), wherein the right of a municipality to require undergrounding was affirmed. However, that does not address who should pay. The Commission, through its advisory, and the Legislature, through statute, has made it clear that the customer mandating or requesting the undergrounding shall pay, and the costs cannot be shifted to all ratepayers.

### E. The Guidance Does Not Exceed the Commission's Authority.

Mr. Dempsey asserts that the guidance exceeds the Commission's constitutional and statutory authority. On that basis he seeks its invalidation. This is incorrect because the Commission has plenary constitutional authority to make rules impacting rate designs.

Inasmuch as the guidance in Decision No. 79140 directly pertains to a public service corporation's recovery of costs in undergrounding utilities, Mr. Dempsey errs. The Commission has the Constitutional authority to formulate rules that pertain to rates. The Constitutional power and authority for the Corporation Commission to enact rules for rates are derived from Article 15, Section 3 of the Arizona Constitution. This section provides:

> The Corporation Commission shall have full power to, and shall, prescribe just and reasonable classifications to be used, and just and reasonable rates and charges to be made and collected, by public service corporations within the state for service rendered therein, ***and make reasonable rules, regulations, and orders***, by which such corporations shall be governed in the transaction of business within the state.

Arizona Constitution, Art. 15, Sec. 3 (emphasis added). *See State v. Tucson Gas, Elec. Light & Power Co.*, 15 Ariz. 294, 301, 138 P. 781, 784 (1914).

The Arizona Supreme Court has "repeatedly held that the power to make reasonable rules and regulations and orders by which a corporation shall be governed refers to the power to prescribe just and reasonable classifications and just and reasonable rates and charges." *U.S. West Comms v. Arizona Corporation Commission*, 197 Ariz. 16, 23, 3 P.3d 936, 943 (Az. App. 1999) *citing Tonto Creek Homeowners v. Arizona Corporation* 177 Ariz. 49, 56,

864 P.2d 1082, 1088 (App. 1993) (*quoting Williams v. Pipe Trades Indus. Program of Ariz.*, 100 Ariz. 14, 17, 409 P.2d 720, 722 (1966)).

The Commission is directly vested with rule making authority under the Arizona Constitution, Art. 15, Sec. 3, which means that no legislative action is necessary for the Commission to exercise its ratemaking powers, and it has exclusive authority to set rates and charges. *Johnson Utilities, L.L.C. v. Arizona Corporation Commission*, 249 Ariz. 215, 221, 468 P.3d 1176, 1182 (2020). Additionally, the rules and regulations related to ratemaking issued by the Commission do not require attorney general certification to be effective. Ariz. Const. Art. 15, § 3; *Phelps Dodge Corp. v. Arizona Elec. Power Co-op., Inc.*, 207 Ariz. 95, 115, 83 P.3d 576, 593 (App. 2004). Where the Commission is implementing rules pursuant to its constitutional authority, the rules are not subject to review by the executive branch. *State ex rel. Corbin v. Arizona Corporation Commission*, 174 Ariz. 216, 219, 848 P.2d 301, 304 (App.1992).[9]

The Office of General Counsel concludes that the Commission has the constitutional authority to create a formal rule if it so chooses, as set forth as A.A.C. R14-2-206(b)(2)(c), which the guidance set forth in Commission Decision No. 79140, ¶ 15 reiterated.

**F. Is the Guidance a "rule" that should be formally adopted?**

Agency guidelines, policies, suggestions or practices may need to be adopted as a rule under the APA when certain criteria are met. The APA defines a "rule" as:

> an agency statement of general applicability that implements, interprets or prescribes law or policy, or describes the procedure or practice requirements of an agency. Rule includes prescribing fees or the amendment or repeal of a prior rule but does not include intraagency memoranda that are not delegation agreements.

A.R.S. § 41–1001(19). The question here is whether the undergrounding guidance in the Decision rises to the level of a "policy" or is simply a reminder of state law and existing rule. Since several state laws require payment by the requesting customer, and the APA enacted rule also mandates the requesting party to pay for undergrounding, the advisory merely reiterates the obvious—the Commission will follow the law and it will not allow costs for undergrounding to be included in general rates. There is not a requirement to

[9] However, submitting a proposed rule to the Attorney General for review under the APA for purposes of determining if the rule is clear, concise, and understandable, if not also within the Commission's authority, can be done voluntarily. If a reviewing court were to conclude, as was done in *U.S. West*, that the rule should have been reviewed under the APA, then there is no harm in submitting to review.

adopt the guidance as a formal rule. The Decision recites what is state law. Adopting a formal rule would be duplicative to some extent.

In addition, A.R.S. § 40-346(F) grants the Commission the authority to issue an order "establishing the underground conversion service" and the Commission "***shall set forth the underground conversion costs to be charged to each lot or parcel.***" Thus, the Commission policy mirrors state law and state law directs the Commission on allocating costs to the parcel owner of the adjoining property. The costs for undergrounding cannot be included in a generalized rate, but must be assessed against the property owners directly benefitting from undergrounding in the geographic adjacent area.

These regulations and statutes collectively govern the process of undergrounding electrical transmission lines in Arizona, ensuring that the projects are economically feasible, technically sound, and fairly assessed to benefiting property owners. The Decision advisory merely repeats existing law.[10]

State law requires the costs of undergrounding to be borne by the beneficiaries of undergrounding, which is precisely what the Commission guidance emphasized in Decision No. 79140. For example, local governments have the authority to require the undergrounding of utility lines within their boundaries, absent a clear statewide preemptive policy. *Arizona Public Service Co. v. Town of Paradise Valley*, 125 Ariz. 447 (1980). The legislature has given cities and towns the power to require the undergrounding of utility lines as part of their zoning powers. *Town of Paradise Valley*, 125 Ariz. at 450-452.

However, the decision to mandate undergrounding is separate from the allocation of costs of undergrounding. As explained, conversion areas and improvement areas are allowed, but the costs are assessed to property owners within the underground conversion service area who benefit from the conversion or undergrounding. A.R.S. § 40-342. As set forth in statute:

> F. A summary of the estimate of the costs to be assessed against each lot or parcel of real property located within the proposed underground conversion service area for the conversion of facilities within public places and the estimated costs to be assessed to each lot or parcel of real property for placing

[10] The Commission has jurisdiction over some undergrounding, as conveyed by the Legislature: The Commission has adopted rules that impact and regulate single-phase undergrounding. *See* A.C.C. R14-2-207(E) (regulating "Single phase underground extensions"); (E)(2) ("The utility shall construct or cause to be constructed and shall own, operate, and maintain all underground electric distribution and service lines along public streets"); (d) "Underground service lines from underground residential distribution systems shall be owned, operated and maintained by the utility, and shall be installed pursuant to its effective underground line extension and service connection tariffs on file with the Commission").

> underground the facilities of the public service corporation or public agency located within the boundaries of each parcel or lot then receiving service shall be mailed by the public service corporation or public agency to each owner of real property located within the proposed underground conversion service area to the address of such owner as set forth on the petition for the cost study.

A.R.S. § 40-342(F). The Commission policy comports with Commission rules and state law. The costs of undergrounding are to be paid for by the customers requesting and benefiting from the undergrounding.

The policy at issue in Decision No. 79140 is reflected in the Commission's rules. Specifically, A.A.C. R14-2-206(b)(2)(c) states that, regarding company provided facilities, "[a] customer requesting an underground service line in an area served by overhead facilities shall pay for the difference between an overhead service connection and the actual cost of the underground connection as a nonrefundable contribution." *Id.* This rule supports the Commission's position because it indicates both that the Commission retains the authority to allocate undergrounding costs, and that Commission previously adopted a rule like its policy at issue.

Mr. Dempsey cites *Arizona Pub. Serv. Co. v. Town of Paradise Valley*, 125 Ariz. 447 (1980) and *Tucson Electric Power, Co. v. City of Tucson*, Pima County Sup. Ct., Case No. C20235484 (2024), but these decisions do not support Mr. Dempsey's position. The Commission advisory does not preclude or limit a municipality's right to require undergrounding. The Commission advisory merely parrots state law and policy on the allocation of the costs of undergrounding.

\\\

\\\

\\\

The Petition is denied. The Commission advisory is a restatement of existing law and public policy. While the Commission could adopt another formal rule on allocation of undergrounding costs, it is not required to do so.

Sincerely,

Douglas Clark
Executive Director, Arizona Corporation Commission

Approved as to form and content:

Thomas Van Flein, General Counsel
Office of General Counsel
tvanflein@azcc.gov

cc: Commissioner O'Connor, Chairman
Adam Stafford, Chairman, Line Siting Committee
Mike Dailey, Deputy General Counsel
Maureen Scott, Associate General Counsel, Chief of Litigation and Appeals
Eli Golob, Associate General Counsel

Underground Arizona
daniel@undergroundarizona.org
(I consent to service by email.)

September 3, 2024

ATTN: Legal Division
Arizona Corporation Commission
1200 West Washington St.
Phoenix, AZ 85007

RE: A.R.S. 41-1033 Petition to Repeal Policy Statement 3 of Decision 79140

Dear Legal Division,

Pursuant to A.R.S. 41-1033, Underground Arizona is petitioning the Arizona Corporation Commission ("ACC") to repeal Policy Statement 3 of Decision 79140 ("PS3"), adopted on October 4, 2023, which is being treated as a rule.[1] Pursuant to A.R.S. 41-1033(G), PS3 "is not specifically authorized by statute, exceeds the agency's statutory authority, [and] is unduly burdensome."

In Line Siting Case 232, in Finding of Fact 10 of the Certificate of Environment Compatibility filed on July 29, 2024, PS3 was used by the Line Siting Committee to determine that any incremental undergrounding cost borne by ratepayers or the utility was unrecoverable and therefore local ordinances and plans creating such costs were "unreasonably restrictive and compliance therewith [was] not feasible in view of technology available" under A.R.S. 40-360.06(D).[2,3,4] Therefore, the ACC attempted to pre-empt local laws in the line-siting process via a ratepayer recovery pre-determination based on a mere policy statement that went through no formal, public rulemaking process and no ratemaking process.

As the record in Line Siting Case 232 shows, Arizona utilities regularly recover the cost of undergrounding transmission (and distribution) lines from ratepayers—even where that

[1] Docket ALS-00000A-22-0320.
[2] Docket L-00000C-24-0118-00232. Finding of Fact 10 and Conditions 3 and 4.
[3] To add insult to injury, in that very case, the utility's application included the incremental cost of undergrounding many miles of distribution lines at millions of dollars in ratepayer expense. The utility also testified that the ratio of distribution to transmission lines in a municipality was about 15:1. As such, if $15 million is spent undergrounding 15 miles of distribution lines, spending $15 million to underground 1 mile of transmission lines should be an equally prudent expense.
[4] And that's to say nothing of the fact that the depreciated cost to ratepayers would be insignificant by any reasonable definition of significance. Otherwise, all a utility's expenses are significant.

undergrounding is not required by law.[5] Indeed, the applicant could not produce a single example of a utility ever being denied the recovery of the incremental costs of undergrounding an electric line, whether that undergrounding was required by law or not.

To that point, the Arizona courts have repeatedly interpreted Arizona's laws as allowing municipalities to require transmission (and distribution) undergrounding at utility expense.[6] Expenses required by law cannot be reasonably determined imprudent and unrecoverable and such a determination would not make those laws unenforceable—it would merely create an undue burden on the utilities. Moreover, the ACC cannot change the law or extend and intermingle its powers through policy statements.[7]

While the ACC has the *ex-post* power to determine what expenses are recoverable from ratepayers in the ratemaking process, it does not have the *ex-ante* power or expertise to make such determinations in the line siting process. PS3 improperly attempts to confuse and transpose these independent statutory powers to *ex-ante* determine what expenses are recoverable from ratepayers. Therefore, PS3 is not authorized by statute, the ACC has exceeded its statutory authority, and it has created undue burdens on the parties.

The ACC's own legal counsel warned of this on June 14, 2023, months before PS3 was adopted: *"It would not be appropriate to adopt a rule regarding ratepayer recovery as part of the line siting rules, however. The Line Siting Committee has no jurisdiction over rates and a line siting rule regarding ratepayer recovery would therefore be outside the scope of authority granted under the line siting statute. Additionally, the Line Siting Committee does not have jurisdiction over underground transmission lines."*[8]

As such, we request that PS3 be repealed pursuant to A.R.S. 41-1033.

Sincerely,

~~Daniel~~ Dempsey
Underground Arizona

Also delivered by email to:
Legal Division: legaldiv@azcc.gov
Utility Division: utildivservicebyemail@azcc.gov
Doug Clark: dclark@azcc.gov
Thomas Van Flein: tvanflein@azcc.gov
Maureen Scott: mscott@azcc.gov

---

[5] e.g. Docket L-00000C-24-0118-00232. July 25, 2024 Exhibit Filing Part 3 of 3. UAZ Exhibit 62, Slides 5-9.
[6] e.g. APS v. Town of Paradise Valley (1980) and TEP v. City of Tucson (2024).
[7] e.g. A.R.S. 41-1091.
[8] Docket ALS-00000A-22-0320: https://docket.images.azcc.gov/0000209995.pdf?i=1724790821816, page 16

# 41-1033. Petition for a rule or review of an agency practice, substantive policy statement, final rule or unduly burdensome licensing requirement; notice

A. Any person may petition an agency to do either of the following:

1. Make, amend or repeal a final rule.

2. Review an existing agency practice or substantive policy statement that the petitioner alleges to constitute a rule.

B. An agency shall prescribe the form of the petition and the procedures for the petition's submission, consideration and disposition. The person shall state on the petition the rulemaking to review or the agency practice or substantive policy statement to consider revising, repealing or making into a rule.

C. Not later than sixty days after submission of the petition, the agency shall either:

1. Reject the petition and state its reasons in writing for rejection to the petitioner.

2. Initiate rulemaking proceedings in accordance with this chapter.

3. If otherwise lawful, make a rule.

D. The agency's response to the petition is open to public inspection.

E. If an agency rejects a petition pursuant to subsection C of this section, the petitioner has thirty days to appeal to the council to review whether the existing agency practice or substantive policy statement constitutes a rule. The petitioner's appeal may not be more than five double-spaced pages.

F. A person may petition the council to request a review of a final rule based on the person's belief that the final rule does not meet the requirements prescribed in section 41-1030. A petition submitted under this subsection may not be more than five double-spaced pages.

G. A person may petition the council to request a review of an existing agency practice, substantive policy statement, final rule or regulatory licensing requirement that the petitioner alleges is not specifically authorized by statute, exceeds the agency's statutory authority, is unduly burdensome or is not demonstrated to be necessary to specifically fulfill a public health, safety or welfare concern. On receipt of a properly submitted petition pursuant to this section, the council shall review the existing agency practice, substantive policy statement, final rule or regulatory licensing requirement as prescribed by this section. A petition submitted under this subsection may not be more than five double-spaced pages. This subsection does not apply to an individual or institution that is subject to title 36, chapter 4, article 10 or chapter 20.

H. If the council receives information that alleges an existing agency practice or substantive policy statement may constitute a rule, that a final rule does not meet the requirements prescribed in section 41-1030 or that an existing agency practice, substantive policy statement, final rule or regulatory licensing requirement exceeds the agency's statutory authority, is not specifically authorized by statute or does not meet the guidelines prescribed in subsection G of this section, or if the council receives an appeal under subsection E of this section, and at least three council members request of the chairperson that the matter be heard in a public meeting:

1. Within ninety days after receiving the third council member's request, the council shall determine whether any of the following applies:

(a) The agency practice or substantive policy statement constitutes a rule.

(b) The final rule meets the requirements prescribed in section 41-1030.

(c) An existing agency practice, substantive policy statement, final rule or regulatory licensing requirement exceeds the agency's statutory authority, is not specifically authorized by statute or meets the guidelines prescribed in subsection G of this section.

2. Within ten days after receiving the third council member's request, the council shall notify the agency that the matter has been or will be placed on the council's agenda for consideration on the merits.

3. Not later than thirty days after receiving notice from the council, the agency shall submit a statement of not more than five double-spaced pages to the council that addresses whether any of the following applies:

(a) The existing agency practice or substantive policy statement constitutes a rule.

(b) The final rule meets the requirements prescribed in section 41-1030.

(c) An existing agency practice, substantive policy statement, final rule or regulatory licensing requirement exceeds the agency's statutory authority, is not specifically authorized by statute or meets the guidelines prescribed in subsection G of this section.

I. At the hearing, the council shall allocate the petitioner and the agency an equal amount of time for oral comments not including any time spent answering questions raised by council members. The council may also allocate time for members of the public who have an interest in the issue to provide oral comments.

J. For the purposes of subsection H of this section, the council meeting shall not be scheduled until the expiration of the agency response period prescribed in subsection H, paragraph 3 of this section.

K. An agency practice, substantive policy statement, final rule or regulatory licensing requirement considered by the council pursuant to this section shall remain in effect while under consideration of the council. If the council determines that the agency practice, substantive policy statement or regulatory licensing requirement exceeds the agency's statutory authority, is not authorized by statute or constitutes a rule or that the final rule does not meet the requirements prescribed in section 41-1030, the practice, policy statement, rule or regulatory licensing requirement shall be void. If the council determines that the existing agency practice, substantive policy statement, final rule or regulatory licensing requirement is unduly burdensome or is not demonstrated to be necessary to specifically fulfill a public health, safety or welfare concern, the council shall modify, revise or declare void any such existing agency practice, substantive policy statement, final rule or regulatory licensing requirement. If an agency decides to further pursue a practice, substantive policy statement or regulatory licensing requirement that has been declared void or has been modified or revised by the council, the agency may do so only pursuant to a new rulemaking.

L. A council decision pursuant to this section shall be made by a majority of the council members who are present and voting on the issue. Notwithstanding any other law, the council may not base any decision concerning an agency's compliance with the requirements of section 41-1030 in issuing a final rule or substantive policy statement on whether any party or person commented on the rulemaking or substantive policy statement.

M. A decision by the council pursuant to this section is not subject to judicial review, except that, in addition to the procedure prescribed in this section or in lieu of the procedure prescribed in this section, a person may seek declaratory relief pursuant to section 41-1034.

N. Each agency and the secretary of state shall post prominently on their websites notice of an individual's right to petition the council for review pursuant to this section.

# 40-360.06. Factors to be considered in issuing a certificate of environmental compatibility

A. The committee may approve or deny an application and may impose reasonable conditions on the issuance of a certificate of environmental compatibility and in so doing shall consider the following factors as a basis for its action with respect to the suitability of either plant or transmission line siting plans:

1. Existing plans of this state, local government and private entities for other developments at or in the vicinity of the proposed site.

2. Fish, wildlife and plant life and associated forms of life on which they are dependent.

3. Noise emission levels and interference with communication signals.

4. The proposed availability of the site to the public for recreational purposes, consistent with safety considerations and regulations.

5. Existing scenic areas, historic sites and structures or archaeological sites at or in the vicinity of the proposed site.

6. The total environment of the area.

7. The technical practicability of achieving a proposed objective and the previous experience with equipment and methods available for achieving a proposed objective.

8. The estimated cost of the facilities and site as proposed by the applicant and the estimated cost of the facilities and site as recommended by the committee, recognizing that any significant increase in costs represents a potential increase in the cost of electric energy to the customers or the applicant.

9. Any additional factors that require consideration under applicable federal and state laws pertaining to any such site.

B. The committee shall give special consideration to the protection of areas unique because of biological wealth or because they are habitats for rare and endangered species.

C. Notwithstanding any other provision of this article, the committee shall require in all certificates for facilities that the applicant comply with all applicable nuclear radiation standards and air and water pollution control standards and regulations, but shall not require either of the following:

1. Compliance with performance standards other than those established by the agency having primary jurisdiction over a particular pollution source.

2. That a contractor, subcontractor, material supplier or other person engaged in the construction, maintenance, repair or improvement of any project subject to approval of the commission negotiate, execute or otherwise become a party to any project labor agreement, neutrality agreement as defined in section 34-321, apprenticeship program participation or contribution agreement or other agreement with employees, employees' representatives or any labor organization as a condition of or a factor in the commission's approval of the project. This paragraph does not:

(a) Prohibit private parties from entering into individual collective bargaining relationships.

(b) Regulate or interfere with activity protected by law, including the national labor relations act.

D. Any certificate granted by the committee shall be conditioned on compliance by the applicant with all applicable ordinances, master plans and regulations of the state, a county or an incorporated city or town, except that the committee may grant a certificate notwithstanding any such ordinance, master plan or regulation,

exclusive of franchises, if the committee finds as a fact that compliance with such ordinance, master plan or regulation is unreasonably restrictive and compliance therewith is not feasible in view of technology available. When it becomes apparent to the chairman of the committee or to the hearing officer that an issue exists with respect to whether such an ordinance, master plan or regulation is unreasonably restrictive and compliance therewith is not feasible in view of technology available, the chairman or hearing officer shall promptly serve notice of such fact by certified mail on the chief executive officer of the area of jurisdiction affected and, notwithstanding any provision of this article to the contrary, shall make such area of jurisdiction a party to the proceedings on its request and shall give it an opportunity to respond on such issue.

0000211872



**BEFORE THE ARIZONA CORPORATION COMMISSION**

**COMMISSIONERS**

JIM O'CONNOR – CHAIRMAN
LEA MÁRQUEZ PETERSON
ANNA TOVAR
KEVIN THOMPSON
NICK MYERS

Arizona Corporation Commission
DOCKETED
SEP 13 2024
DOCKETED BY

| | |
|---|---|
| IN THE MATTER OF THE APPLICATION OF TUCSON ELECTRIC POWER COMPANY, IN CONFORMANCE WITH THE REQUIREMENTS OF A.R.S. 40-360, ET SEQ., FOR A CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY AUTHORIZING THE MIDTOWN RELIABILITY PROJECT, WHICH INCLUDES THE CONSTRUCTION OF A NEW 138 KV TRANSMISSION LINE ORIGINATING AT THE EXISTING DEMOSS-PETRIE SUBSTATION (SECTION 35, TOWNSHIP 13 SOUTH, RANGE 13 EAST), WITH AN INTERCONNECTION AT THE PLANNED VINE SUBSTATION (SECTION 06, TOWNSHIP 14 SOUTH, RANGE 14 EAST), AND TERMINATING AT THE EXISTING KINO SUBSTATION (SECTION 30, TOWNSHIP 14 SOUTH, RANGE 14 EAST), EACH LOCATED WITHIN THE CITY OF TUCSON, PIMA COUNTY, ARIZONA. | **DOCKET NO. L-00000C-24-0118-00232**<br><br>**CASE NO. 232**<br><br>**DECISION NO.** 79550<br><br>**ORDER** |

September 5, 2024
Open Meeting

**BY THE COMMISSION:**

Pursuant to A.R.S. § 40-360 et seq., after due consideration of all relevant matters, the Arizona Corporation Commission ("Commission") finds and concludes that the Certificate of Environmental Compatibility ("CEC") issued by the Arizona Power Plant and Transmission Line Siting Committee ("Siting Committee") is hereby approved as granted by this Order.

The Commission, in reaching its decision, has balanced all relevant matters in the broad public interest, including the need for an adequate, economical, and reliable supply of electric power with the desire to minimize the effect thereof on the environment and ecology of this state, and finds that granting the Project a CEC is in the public interest.

The Commission further finds and concludes that in balancing the broad public interest in this matter:

1. The Project is in the public interest because it aids the state in meeting the need for an adequate, economical, and reliable supply of electric power.

2. In balancing the need for the Project with its effect on the environment and ecology of the state, the conditions placed on the CEC effectively minimize its impact on the environment and ecology of the state.

3. The conditions placed on the CEC resolve matters concerning the need for the Project and its impact on the environment and ecology of the state raised during the course of proceedings and, as such, serve as the findings on the matters raised.

4. In light of these conditions, the balancing in the broad public interest results in favor of granting the CEC.

...

...

...

...

...

...

...

...

...

...

**THE CEC ISSUED BY THE SITING COMMITTEE IS INCORPORATED HEREIN AND IS APPROVED BY ORDER OF THE ARIZONA CORPORATION COMMISSION**

CHAIRMAN O'CONNOR

COMMISSIONER MARQUEZ PETERSON

COMMISSIONER TOVAR

COMMISSIONER THOMPSON

COMMISSIONER MYERS

IN WITNESS WHEREOF, I, DOUGLAS R. CLARK, Executive Director of the Arizona Corporation Commission, have hereunto, set my hand and caused the official seal of this Commission to be affixed at the Capitol, in the City of Phoenix, this 13th day of September, 2024.

DOUGLAS R. CLARK
Executive Director

DISSENT: _____

DISSENT: _____

**BEFORE THE ARIZONA POWER PLANT AND TRANSMISSION LINE SITING COMMITTEE**

| | |
|---|---|
| IN THE MATTER OF THE APPLICATION OF TUCSON ELECTRIC POWER COMPANY, IN CONFORMANCE WITH THE REQUIREMENTS OF A.R.S. § 40-360, ET SEQ., FOR A CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY AUTHORIZING THE MIDTOWN RELIABILITY PROJECT, WHICH INCLUDES THE CONSTRUCTION OF A NEW 138 KV TRANSMISSION LINE ORIGINATING AT THE EXISTING DEMOSS-PETRIE SUBSTATION (SECTION 35, TOWNSHIP 13 SOUTH, RANGE 13 EAST), WITH AN INTERCONNECTION AT THE PLANNED VINE SUBSTATION (SECTION 06, TOWNSHIP 14 SOUTH, RANGE 14 EAST), AND TERMINATING AT THE EXISTING KINO SUBSTATION (SECTION 30, TOWNSHIP 14 SOUTH, RANGE 14 EAST), EACH LOCATED WITHIN THE CITY OF TUCSON, PIMA COUNTY, ARIZONA. | Docket No. L-00000C-24-0118-232<br><br>Case No. 232<br><br>**CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY** |

RECEIVED
AZ CORP COMMISSION
DOCKET CONTROL
2024 JUL 29 A 10:17

## A. INTRODUCTION

Pursuant to notice given as provided by law, the Arizona Power Plant and Transmission Line Siting Committee ("Committee") held public hearings in Tucson, Arizona, on July 8, 2024, through July 19, 2024, in conformance with the requirements of Arizona Revised Statutes ("A.R.S.") § 40-360 *et seq.* for the purpose of receiving evidence and deliberating on the May 24, 2024 Application of Tucson Electric Power Company ("TEP" or "Applicant") for a Certificate of Environmental Compatibility ("Certificate") authorizing construction of a 138 kilovolt ("kV") transmission line in Tucson, Arizona in Pima County (the "Midtown Reliability Project" or "Project").

The following members and designees of members of the Committee were

present at one or more of the hearing days for the evidentiary presentations, public comment and/or the deliberations:

| | |
|---|---|
| Adam Stafford | Chairman, Designee for Arizona Attorney General Kris Mayes |
| Gabby Mercer | Designee of the Chairman, Arizona Corporation Commission ("Commission") |
| Leonard Drago | Designee for Director, Arizona Department of Environmental Quality |
| David French[1] | Designee for Director, Arizona Department of Water Resources |
| Nicole Hill | Designee for Director, Governor's Energy Office |
| Scott Somers | Appointed Member, representing cities and towns |
| David Kryder | Appointed Member, representing agricultural interests |
| Margaret "Toby" Little | Appointed Member, representing the general public |
| Jon Gold | Appointed Member, representing the general public |
| David Richins | Appointed Member, representing the general public |

The Applicant was represented by Meghan H. Grabel and Elias J. Ancharski of Osborn Maledon, P.A. and in-house counsel for TEP, Megan C. Hill. The following parties were granted intervention pursuant to A.R.S. § 40-360.05: Banner—University Medical Center Tucson Campus, LLC and Banner Health represented by Michelle De Blasi of the Law Office of Michelle De Blasi; City of Tucson represented by Roi I. Lusk and Jennifer J. Stash; Pima County represented by Bobby Yu; and Underground Arizona represented by Daniel Dempsey.

At the conclusion of the hearing, the Committee, after considering the (i) Application, (ii) evidence, testimony, and exhibits presented by the parties, and (iii) comments of the public, and being advised of the legal requirements of A.R.S. §§ 40-360 through 40-360.13, upon motion duly made and seconded, voted 9 to 0 in

[1] Member French was excused from the second week of the hearing and did not participate in the vote.

favor of granting Applicant, its successors and assigns, this Certificate for the construction of the Project.

**B. Overview Project Description**

The Project will involve the construction of the new DeMoss Petrie-to-Vine-to-Kino 138 kV transmission line approximately 8.5 miles in length mounted on steel monopole structures. The Project will loop the existing TEP DeMoss Petrie ("DMP") 138 kV Substation to the existing TEP Kino 138 kV Substation with a connection at the planned Vine 138 kV Substation. TEP's preferred route is a combination of Alternative Routes B and 4.

*DeMoss Petrie-to-Vine Alternatives*

**Alternative Route B (Preferred Route)** – Preferred Route B leaves the existing DMP Substation to the southeast for a distance of 0.3 miles, turning east for approximately 2 miles on West Grant Road, which turns into East Grant Road at North Stone Avenue. Route B turns south on North Park Avenue for approximately 0.6 miles, then east onto East Adams Street for approximately 0.4 miles, then north on North Vine Avenue for approximately 0.16 miles, terminating at the planned Vine Substation. Alternative Route B is approximately 3.5 miles in length.

**Alternative Route D** – Alternative Route D leaves the existing DMP Substation to the southeast for a distance of 0.3 miles, turning east on West Grant Road for approximately 2.75 miles, which turns into East Grant Road at North Stone Avenue. Alternative Route D continues east along East Grant Road to North Campbell Avenue, where it turns south to an alignment centered between East Lester Street and North Ring Road for approximately 0.4 miles, turning west for approximately 0.35 miles, where it terminates at the planned Vine Substation. Alternative Route D is approximately 3.8 miles in length.

*Vine-to-Kino Alternatives*

**Alternative Route 4** (Preferred Route) – Preferred Route 4 leaves the planned Vine Substation to the south on North Vine Avenue for a distance of 0.16 miles, turns west on East Adams Street for approximately 0.4 miles, and south onto North Park Avenue for approximately 0.3 miles. At East Speedway Boulevard the route turns west for approximately 0.15 miles, then south on North Euclid Avenue for approximately 1.1 miles, continuing to East 12th Street where it turns west for approximately 0.05 miles and then south for approximately 0.11 miles to span East Aviation Parkway and the Union Pacific Railroad. At South Toole Avenue Route 4 turns south for approximately 0.55 miles, following South Toole Avenue until it turns into South Euclid Avenue at East 16th Street. At East 19th Street the route jogs east for approximately 0.03 miles to then turn south for approximately 1.3 miles to continue on South Euclid Avenue. Route 4 turns east onto East 36th Street for approximately 0.78 miles, which it follows to terminate at the existing Kino Substation. Alternative Route 4 is approximately 5.0 miles in length.

**Alternative Route 1** – Alternative Route 1 leaves the planned Vine Substation to the east on an alignment centered between East Lester Street and North Ring Road to North Campbell Avenue for a distance of 0.33 miles. At North Campbell Avenue the route turns south, continuing onto South Campbell Avenue at East Broadway Boulevard for approximately 2.8 miles. Route 1 crosses East Aviation Parkway and the Union Pacific Railroad, and continues on South Campbell Avenue where it intersects with East 22nd Street. At the intersection with East Fairland Stravenue, the route turns southwest onto East Willis Way for approximately 0.1 miles, then southeast on South Cherrybell

Stravenue for approximately 0.1 miles, and southwest onto East Silverlake Road for approximately 0.2 miles. Just east of South Warren Avenue, the route turns south onto an alley for approximately 0.03 miles, and then east for approximately 0.04 miles to the intersection of East Barleycorn Lane and South Martin Avenue, where it turns south onto South Martin Avenue, which it follows for approximately 0.5 miles to the intersection with East 36th Street. Route 1 turns west onto East 36th Street for approximately 0.05 miles, and then terminates at the existing Kino Substation.

**Alternative Route 1.2** – Alternative Route 1.2 leaves the planned Vine Substation to the south along Vine Road to Mabel Street for a distanced of 0.2 miles. At Mabel Street the route turns east for 0.1 miles to Cherry Avenue. Route 1.2 turns south for a distance of 0.2 miles to Speedway Boulevard. At Speedway Boulevard the route turns east to Campbell Avenue for a distance of 0.25 miles then south on Campbell Avenue continuing onto South Campbell Avenue at East Broadway Boulevard for approximately 1.9 miles. Route 1.2 crosses East Aviation Parkway and the Union Pacific Railroad, and continues on South Campbell Avenue where it intersects with East 22nd Street. At the intersection with East Fairland Stravenue, the route turns southwest onto East Willis Way for approximately 0.1 miles, then southeast on South Cherrybell Stravenue for approximately 0.1 miles, and southwest onto East Silverlake Road for approximately 0.2 miles. Just east of South Warren Avenue, the route turns south onto an alley for approximately 0.03 miles, and then east for approximately 0.04 miles to the intersection of East Barleycorn Lane and South Martin Avenue, where it turns south onto South Martin Avenue, which it follows for approximately 0.5 miles to the intersection with East 36th Street. Route 1.2 turns west onto East 36th Street for approximately 0.05 miles, and then terminates at the existing Kino Substation.

The Committee approves the preferred route, B4, and alternative routes D, 1, and 1.2 in their entirety, subject to the Findings of Fact and Conclusions of Law contained herein. A map of the Project, including all of the preferred and alternative routes proposed by the Applicant, is included as **Exhibit A**. Maps of the final approved routes and their respective corridor widths are attached as **Exhibit B**.

## CONDITIONS

This Certificate is granted upon the following conditions:

1. This authorization to construct the Project shall expire ten (10) years from the date this Certificate is approved by the Commission, with or without modification ("Time Period"). Construction of the Project shall be complete, defined as the Project being in-service, within this Time Period. However, prior to the expiration of the Time Period, the Applicant may request that the Commission extend the Time Period.

2. In the event that the Project requires an extension of the term(s) of this Certificate prior to completion of construction, the Applicant shall file such time extension request at least one hundred and eighty (180) days prior to the expiration of the Certificate. The Applicant shall use reasonable means to promptly notify the City of Tucson, the City of South Tucson, Pima County, Arizona Department of Transportation ("ADOT"), Arizona State Land Department ("ASLD"), and all landowners and residents within a one (1) mile radius of the centerline of the Project, all persons who made public comment at this proceeding who provided a mailing or email address, and all parties to this proceeding. The notification provided will include the request and the date, time, and place of the hearing or open meetings during which the Commission will consider the request for extension. Notification shall be no more than three (3) business days after the Applicant is made aware of the hearing date or the open meeting date.

3. Subject to this Committee's findings as set forth in the Findings of Fact and Conclusions of Law, during the development, construction, operation, maintenance and reclamation of the Project, the Applicant shall comply with all existing applicable air and water pollution control standards and regulations, and with all existing applicable statutes, ordinances, master plans and regulations of any governmental entity having jurisdiction including, but not limited to, the United States of America, the State of Arizona, Pima County, the City of Tucson, the City of South Tucson, and their agencies and subdivisions, including but not limited to the following:

(a) All applicable land use regulations;

(b) All applicable zoning stipulations and conditions including, but not limited to, landscaping and dust control requirements;

(c) All applicable water use, discharge and/or disposal requirements of the Arizona Department of Water Resources and the Arizona Department of Environmental Quality;

(d) All applicable noise control standards; and

(e) All applicable regulations governing storage and handling of hazardous chemicals and petroleum products.

4. Subject to this Committee's findings as set forth in the Findings of Fact and Conclusions of Law, the Applicant shall obtain all approvals and permits necessary to construct, operate and maintain the Project required by any governmental entity having jurisdiction including, but not limited to, the United States of America, the State of Arizona, Pima County, the City of Tucson, the City of South Tucson, and their agencies and subdivisions.

5. The Applicant shall comply with the Arizona Game and Fish Department ("AGFD") guidelines for handling protected animal species, should any be encountered during construction and operation of the Project, and shall consult

with AGFD or U.S. Fish and Wildlife Service, as appropriate, on other issues concerning wildlife.

6. The Applicant shall design the Project's facilities to incorporate reasonable measures to minimize electrocution of and impacts to avian species in accordance with the Applicant's avian protection program. Such measures will be accomplished through incorporation of Avian Power Line Interaction Committee guidelines set forth in the current versions of *Suggested Practices for Avian Protection on Power Lines* and *Reducing Avian Collisions with Power Lines manuals*.

7. The Applicant shall consult the State Historic Preservation Office ("SHPO") pursuant to A.R.S. § 41-861 through 41-864, the State Historic Preservation Act. Construction for the Project shall not occur without SHPO concurrence. Any project involving federal land is a federal undertaking and requires SHPO concurrence on the adequacy of the survey and area of potential effects. The Applicant shall coordinate with SHPO regarding the status of Section 106 consultation.

8. If any archaeological, paleontological, or historical site or a significant cultural object is discovered on private, state, county, or municipal land during the construction or operation of the Project, the Applicant or its representative in charge shall promptly report the discovery to the Director of the Arizona State Museum ("ASM"), and in consultation with the Director, shall immediately take all reasonable steps to secure and maintain the preservation of the discovery as required by A.R.S. § 41-844 or A.R.S. § 41-865, as appropriate.

9. The Applicant shall comply with the notice and salvage requirements of the Arizona Native Plant Law (A.R.S. § 3-901 *et seq.*) and shall, to the extent feasible, minimize the destruction of native plants during the construction and operation of the Project.

10. The Applicant shall make every reasonable effort to promptly investigate, identify, and correct, on a case-specific basis, all complaints of interference with radio or television signals from operation of the Project addressed in this Certificate and where such interference is caused by the Project take reasonable measures to mitigate such interference. The Applicant shall maintain written records for a period of five (5) years of all complaints of radio or television interference attributable to operations, together with the corrective action taken in response to each complaint. All complaints shall be recorded and shall include notation on the corrective action taken. Complaints not leading to a specific action or for which there was no resolution shall be noted and explained. Upon request, the written records shall be provided to the Staff of the Commission. The Applicant shall respond to complaints and implement appropriate mitigation measures. In addition, the Project shall be evaluated on a regular basis so that damaged insulators or other line materials that could cause interference are repaired or replaced in a timely manner.

11. If human remains and/or funerary objects are encountered during the course of any ground-disturbing activities related to the construction or maintenance of the Project, the Applicant shall cease work on the affected area of the Project and notify the Director of the ASM as required by A.R.S. § 41-865 for private land, or as required by A.R.S. § 41-844 for state, county, or municipal lands.

12. One hundred eighty (180) days prior to construction of the Project, the Applicant shall post signs in or near public rights-of-way, to the extent authorized by law, reasonably adjacent to the Project giving notice of the Project. Such signage shall be no smaller than a roadway sign. The signs shall:

(a) Advise the area is a future site of the Project;

(b) Provide a phone number and website for public information regarding the Project; and

(c) refer the public to the Docket.

Such signs shall be inspected at least once annually and, if necessary, be repaired or replaced, and removed at the completion of construction.

The Applicant shall make every reasonable effort to communicate the decision either approving or disapproving the Certificate in digital media.

The Applicant shall also communicate through its Project website the status and location of the route ultimately constructed and the removal and undergrounding of the existing utility infrastructure along that route.

13. At least ninety (90) days before construction commences on the Project, the Applicant shall provide the City of Tucson, the City of South Tucson, Pima County, ADOT, ASLD, Pascua Yaqui Tribe, and known builders and developers who are building upon or developing land within one (1) mile of the centerline of the Project with a written description, including the approximate height and width measurements of all structure types, of the Project. The written description shall identify the location of the Project and contain a pictorial depiction of the facilities being constructed. The Applicant shall also encourage the developers and builders to include this information in their disclosure statements. Upon approval of this Certificate by the Commission, the Applicant may commence construction of the Project.

14. The Applicant shall use non-specular conductor and non-reflective surfaces for the transmission line structures on the Project.

15. The Applicant shall remove all 46 kV substations and lines, including wires, poles, and other equipment, that are no longer required as a result of the upgraded 138 kV substation and transmission line. Removals are estimated to begin in 2027 and complete by 2037, based on an estimated in-service date of the Vine Substation and associated 138 kV transmission line in 2027.

16. The Applicant shall move all existing parallel overhead lower voltage distribution lines underground, currently located within the same road right-of-way as

the Project as constructed. The Applicant shall notify all joint use attachers within six (6) months of Certificate approval so they can begin design to relocate their facilities.

17. The Applicant shall collaborate with each neighborhood and/or neighborhood association that parallels the route in which the Project is ultimately constructed on residential roads to determine the preferred transmission pole finish for that neighborhood. Pole finishes may include weathering steel, galvanized, or painted in Mojave Sage. In the event the neighborhood cannot decide on a preference following a good faith effort, the Applicant will use the preferred weathering steel pole finish.

18. The Applicant will work with the City of Tucson, as part of the Project, to discuss the potential to incorporate any right-of-way enhancements into the approved route including, but not limited to, multi-use pathways, chicanes, artwork, and landscaping;

19. The Applicant shall be responsible for arranging that all field personnel involved in the Project receive training as to proper ingress, egress, and on-site working protocol for environmentally sensitive areas and activities. Contractors employing such field personnel shall maintain records documenting that the personnel have received such training.

20. The Applicant shall follow the most current Western Electricity Coordinating Council ("WECC") and North American Electric Reliability Corporation ("NERC") planning standards, as approved by the Federal Energy Regulatory Commission ("FERC"), National Electrical Safety Code ("NESC") standards, and Federal Aviation Administration ("FAA") regulations.

21. The Applicant shall participate in good faith in state and regional transmission study forums to coordinate transmission expansion plans related to the Project and to resolve transmission constraints in a timely manner.

22. When Project facilities are located parallel to and within one hundred (100) feet of any existing natural gas or hazardous pipeline, the Applicant shall:

(a) Ensure grounding and cathodic protection studies are performed to show that the Project's location parallel to and within one hundred (100) feet of such pipeline results in no material adverse impacts to the pipeline or to public safety when both the pipeline and the Project are in operation. The Applicant shall take appropriate steps to ensure that any material adverse impacts are mitigated. The Applicant shall provide to Staff of the Commission, and file with Docket Control, a copy of the studies performed and additional mitigation, if any, that was implemented as part of its annual compliance-certification letter; and

(b) Ensure that studies are performed simulating an outage of the Project that may be caused by the collocation of the Project parallel to and within one hundred (100) feet of the existing natural gas or hazardous liquid pipeline. The studies should either: (a) show that such simulated outage does not result in customer outages; or (b) include operating plans to minimize any resulting customer outages. The Applicant shall provide a copy of the study results to Staff of the Commission and file them with Docket Control as part of the Applicant's annual compliance certification letter.

23. The designation of the corridors in this Certificate, as shown in **Exhibit B**, authorizes a right-of-way no greater than 100 feet wide for the transmission line nor does it grant the applicant exclusive rights within the corridors outside of the final designated transmission right-of-way.

24. The Applicant shall submit a compliance certification letter annually, identifying progress made with respect to and current status of each condition

contained in this Certificate. The letter shall be submitted to Commission's Docket Control commencing on December 1, 2025. Attached to each certification letter shall be documentation explaining how compliance with each condition was achieved. Copies of each letter, along with the corresponding documentation, shall be submitted to the Arizona Attorney General's Office. With respect to the Project, the requirement for the compliance letter shall expire on the date the Project is placed into operation. Notification of such filing with Docket Control shall be made to the City of Tucson, the City of South Tucson, Pima County, ADOT, ASLD, the Pascua Yaqui Tribe, all parties to this Docket, and all parties who made a limited appearance in this Docket.

25. The Applicant shall provide a copy of this Certificate to the City of Tucson, the City of South Tucson, Pima County, ADOT, ASLD, and the Pascua Yaqui Tribe.

26. Any transfer or assignment of this Certificate shall require the assignee or successor to assume, in writing, all responsibilities of the Applicant listed in this Certificate and its conditions as required by A.R.S. § 40-360.08(A) and R14-3-213(F) of the Arizona Administrative Code.

27. In the event the Applicant, its assignee, or successor, seeks to modify the Certificate's terms at the Commission, it shall provide copies of such request to the City of Tucson, the City of South Tucson, Pima County, ADOT, ASLD, the Pascua Yaqui Tribe, all parties to this Docket, and all parties who made a limited appearance in this Docket.

28. The Certificate Conditions shall be binding on the Applicant, its successors, assignee(s) and transferees, and any affiliates, agents, or lessees of the Applicant who have a contractual relationship with the Applicant concerning the construction, operation, maintenance or reclamation of the Project. The Applicant shall provide in any agreement(s) or lease(s) pertaining to the Project that the contracting parties and/or lessee(s) shall be responsible for compliance with the

Conditions set forth herein, and the Applicant's responsibilities with respect to compliance with such Conditions shall not cease or be abated by reason of the fact that the Applicant is not in control of or responsible for operation and maintenance of the Project facilities.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Certificate incorporates the following Findings of Fact and Conclusions of Law:

1. The Midtown Reliability Project is required to ensure the continued provision of safe and reliable electric service to TEP customers.

2. While no party disputed the need for the Midtown Reliability Project, certain parties asserted that applicable local ordinances and plans required that portions of the routes be constructed below ground.

3. Constructing the Midtown Reliability Project below ground is not needed for safety, reliability, or other utility operational reasons.

4. Evidence in the record indicates that constructing portions of the Project below ground could be more expensive than constructing the route entirely above ground.

5. As part of the Project as conditioned by this Certificate, TEP will relocate existing overhead distribution lines below ground along the selected route. Additionally, the Project will enable the retirement of up to eight existing 46 kV substations and approximately 19 miles of existing 46 kV lines in the next ten years.

6. The evidence indicated that the Applicant needs the Project to be in service by 2027 to maintain safe and reliable service in order to avoid additional investment in the existing 46 kV system serving the area.

7. The Applicant determined the need for and proposed location of the Vine substation through the use of a saturation study. The actual site was selected based on available land and its immediate adjacent proximity to two (2) existing

substations, one of which is a 46 kV substation that will be retired and removed as part of this Project.

8. In light of the incremental cost of building the Project underground compared to overhead, the Applicant requested a finding from this Committee that any local ordinance or plan that would require underground construction of the Project was "unreasonably restrictive and [that] compliance therewith is not feasible in view of technology available" pursuant to A.R.S. § 40-360.06(D).

9. The City and Underground Arizona disagree that a finding of fact pursuant to A.R.S. § 40-360.06(D) is necessary and believe that it is feasible to construct the Project consistent with local ordinances and plans with the technology available and those local ordinances are not unreasonably restrictive. The Parties have reserved and asserted all rights to judicial relief on this issue.

10. However, given the Commission's Policy Statement found in Decision No. 79140 (October 4, 2023), the Committee finds pursuant to A.R.S. § 40-360.06(D) that any local ordinance or plan that requires TEP to incur an incremental cost to construct the Project below ground "is unreasonably restrictive and compliance therewith is not feasible in view of technology available." This finding is conditioned on the City and TEP not finding a means to, within six (6) months of the date of the Commission's approval of this Certificate, either (a) fund the incremental cost to construct the Project below ground from a source other than through TEP's utility rates or from TEP, its affiliates, subsidiaries, or parent companies absent agreement between the parties; or (b) obtain the City's authorization to construct the Project above ground through the City's special exception or variance process, provided that TEP files a special exception or variance application for the route approved within ten (10) weeks of the Commission's approval of this Certificate.

11. A.R.S. § 40-360.06(D) provides that "[w]hen it becomes apparent to the chairman of the committee or to the hearing officer that an issue exists with respect to

whether such an ordinance, master plan or regulation is unreasonably restrictive and compliance therewith is not feasible in view of technology available, the chairman or hearing officer shall promptly serve notice of such fact by certified mail on the chief executive officer of the area of jurisdiction affected and, notwithstanding any provision of this article to the contrary, shall make such area of jurisdiction a party to the proceedings on its request and shall give it an opportunity to respond on such issue." The City of Tucson was provided notice and made a party to the proceedings under this provision and was provided an opportunity to respond.

12. The Project aids TEP and the state in meeting the need for an adequate, economical, and reliable supply of electric power without negatively affecting the southwestern electric grid.

13. When constructed in compliance with the conditions imposed in this Certificate, the Project aids the state, preserving a safe and reliable electric transmission system.

14. During the course of the hearing, the Committee considered evidence on the environmental compatibility of the Project as required by A.R.S. § 40-360 *et seq*. In doing so, the Committee determined that it was in the public interest to adopt Preferred Routes B and 4, and Alternatives D, 1, and 1.2, which are the final approved routes shown in **Exhibit B**.

15. The Project and the conditions placed on the Project in this Certificate effectively minimize the impact of the Project on the environment and ecology of the state.

16. The conditions placed on the Project of this Certificate resolve matters concerning balancing the need for the Project with its impact on the environment and ecology of the state arising during the course of the proceedings, and, as such, serve as finding and conclusions on such matters.

17. The Project is in the public interest because the Project's contribution to meeting the need for an adequate, economical, and reliable supply of electric power outweighs the minimized impact of the Project on the environment and ecology of the state.

18. The Project substation is not jurisdictional because the definition of a "transmission line" under A.R.S. § 40-360(10) only includes "new switchyards to be used therewith," not substations.

DATED this 29th day of July, 2024.

THE ARIZONA POWER PLANT AND TRANSMISSION LINE SITING COMMITTEE

By: _____
Adam Stafford, Chairman

**CERTIFICATION OF MAILING**

Pursuant to A.A.C. R14-3-204, the **ORIGINAL** of the foregoing and 26 copies were filed this 29th day of July, 2024 with:

**Utilities Division – Docket Control**
ARIZONA CORPORATION COMMISSION
1200 W. Washington St.
Phoenix, AZ 85007

**COPIES** of the foregoing mailed this 29th day of July, 2024 to:

Tom Van Flein
Chief Counsel/Division Director
Arizona Corporation Commission
1200 W. Washington Street
Phoenix, Arizona 85007
lealdiv@azcc.gov
*Counsel for Legal Division Staff*

Ranelle Paladino – Co-Director
Briton Baxter – Co-Director
Utilities Division Arizona Corporation Commission
1200 W. Washington Street
Phoenix, Arizona 85007
rpaladino@azcc.gov
bbaxter@azcc.gov

Meghan H. Grabel
Elias Ancharski
Osborn Maledon
2929 N. Central Ave, 21st Floor
Phoenix, Arizona 85012
mgrabel@omlaw.com
eancharski@omlaw.com
*Counsel for Applicant*

Lisa L. Glennie
Glennie Reporting Services, LLC
1555 East Orangewood
Phoenix, Arizona 85020
admin@glennie-reporting.com
*Court Reporter*

Daniel Depmsey
Underground Arizona
737 East 9th Street
Tucson, Arizona 85719
Daniel@undergroundarizona.org
*Intervenor*

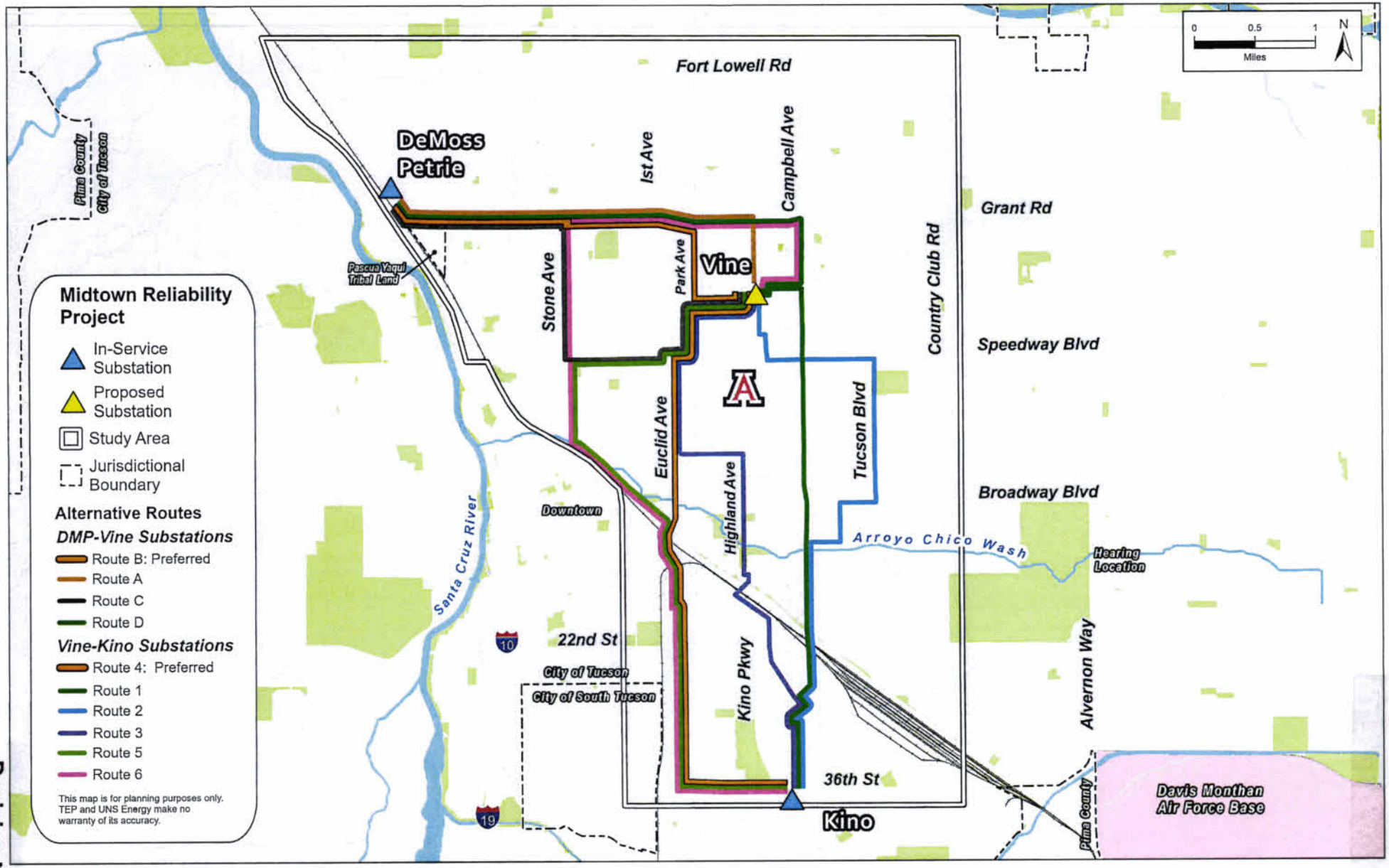
Michelle De Blasi
Law Office of Michelle De Blasi
7702 East Doubletree Ranch Road, Ste. 300
Scottsdale, Arizona 85258
mdeblasi@mdb-law.com
*Attorney for Banner University*

Roi Lusk
Jennifer J. Stash
City Attorney
P.O. Box 27210
Tucson, Arizona 85726-7210
Roi.lusk@tucsonaz.gov
Jennifer.Stash@tucsonaz.gov
*Attorneys for City of Tucson*

Bobby H. Yu
Pima County Attorney, Civil Division
32 North Stone Ave. Suite 2100
Tucson, Arizona 85701
Bobby.yu@pcao.pima.gov
*Attorney for Pima County*

CEC 232

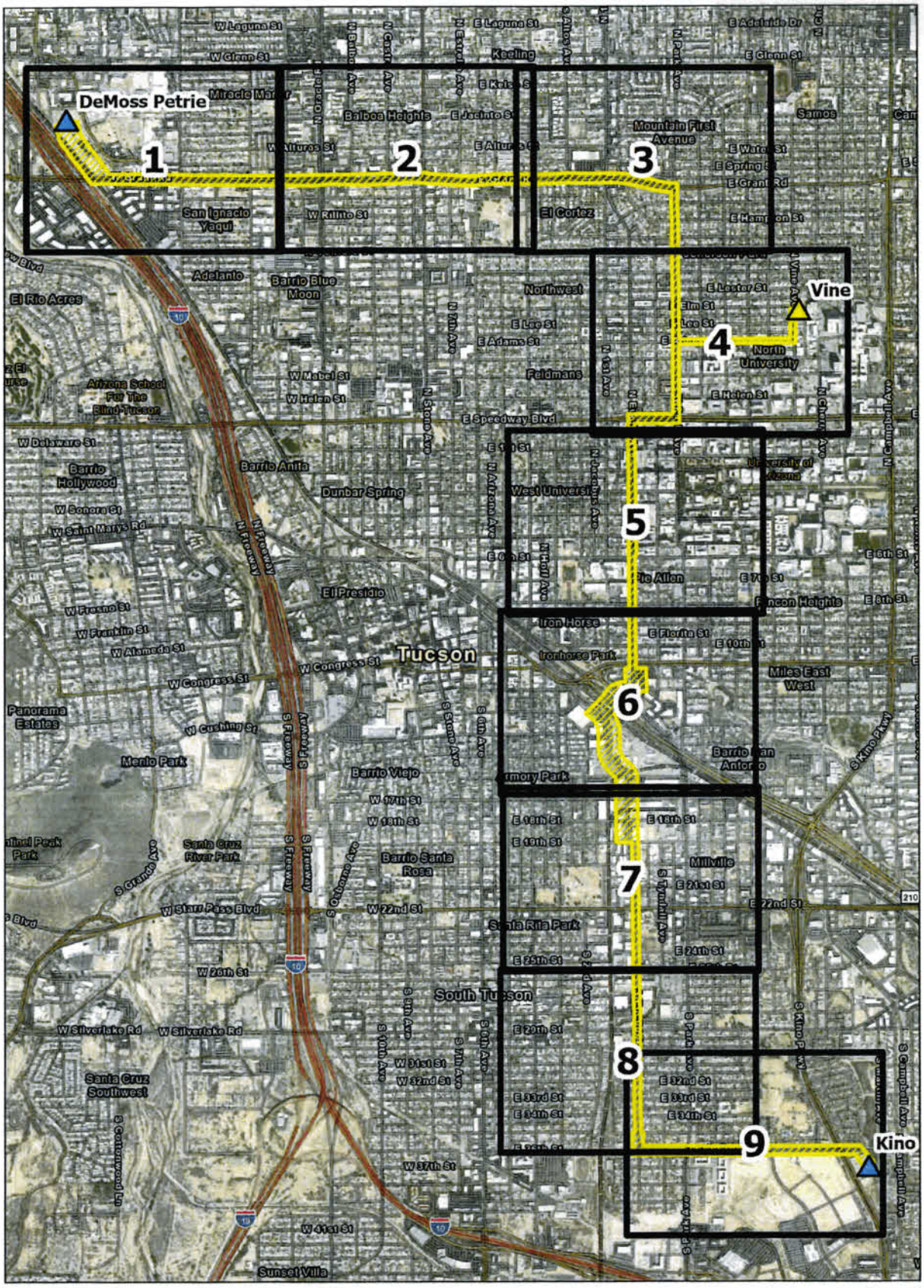
# Exhibit A




Decision No. 79550

L-00000C-24-0118-00232

# Exhibit B




## Midtown Reliability Project

### Route Alternative B4 Overview

In-Service 138kV Substation

Proposed 138kV Substation

Proposed Reduced Corridor

Map Index

0 950 1,900

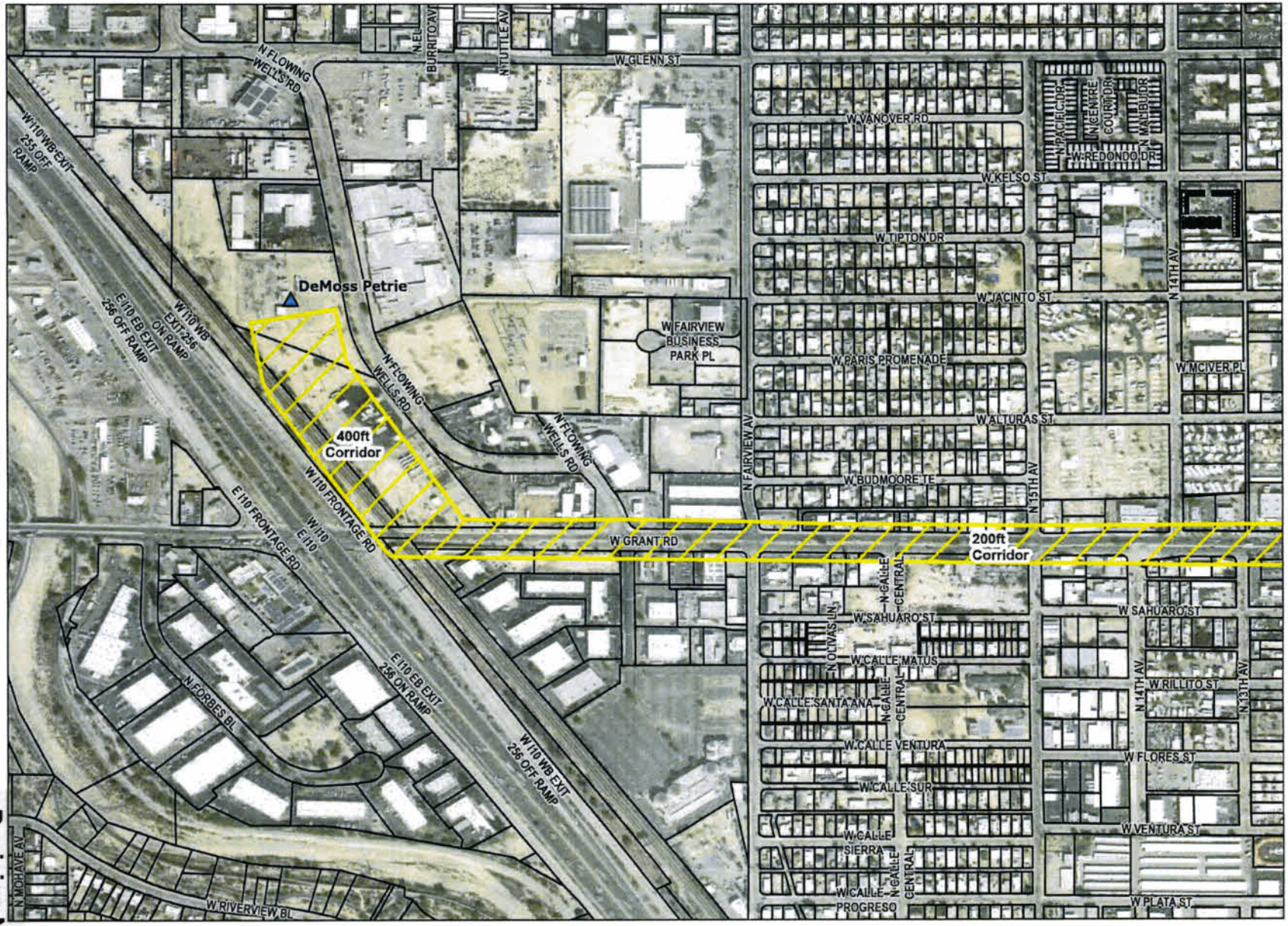
200 Feet = 1 Inch

TEP Tucson Electric Power
Land Resources

Sources: Esri, UNS, TEP, BLM, and Pima County GIS
Projection: NAD 1983 UTM Zone 12N
Basemap: Esri World Imagery

This map is for planning purposes only. TEP and UNS Energy make no warranty of its accuracy.

7/11/2024 Arizona




TEP
Tucson Electric Power
Land Resources

**Midtown Reliability Project**

**Route Alternative B4**

- In-Service 138kV Substation
- Proposed Reduced Corridor
- Pima Parcels

Page 1 of 9

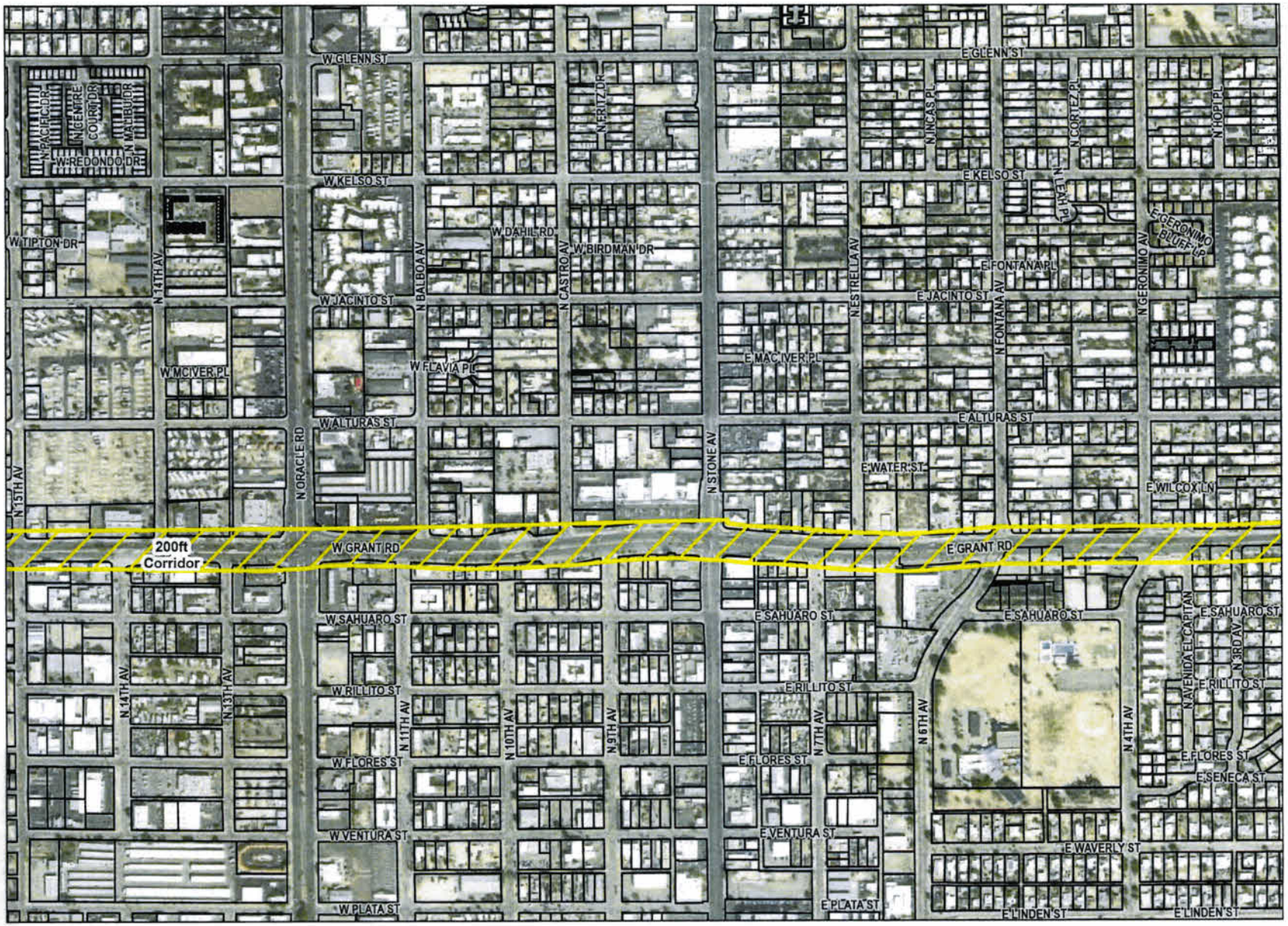
0 250 500
Feet

Sources: Esri, UNS, TEP, BLM, and Pima County GIS
Projection: NAD 1983 UTM Zone 12N
Basemap: Esri World Imagery

This map is for planning purposes only. TEP and UNS Energy make no warranty of its accuracy.

L-00000C-24-0118-00232

Decision No. 79550




TEP
Tucson Electric Power
Land Resources

**Midtown Reliability Project**

**Route Alternative B4**

Proposed Reduced Corridor

Pima Parcels

**Page 2 of 9**

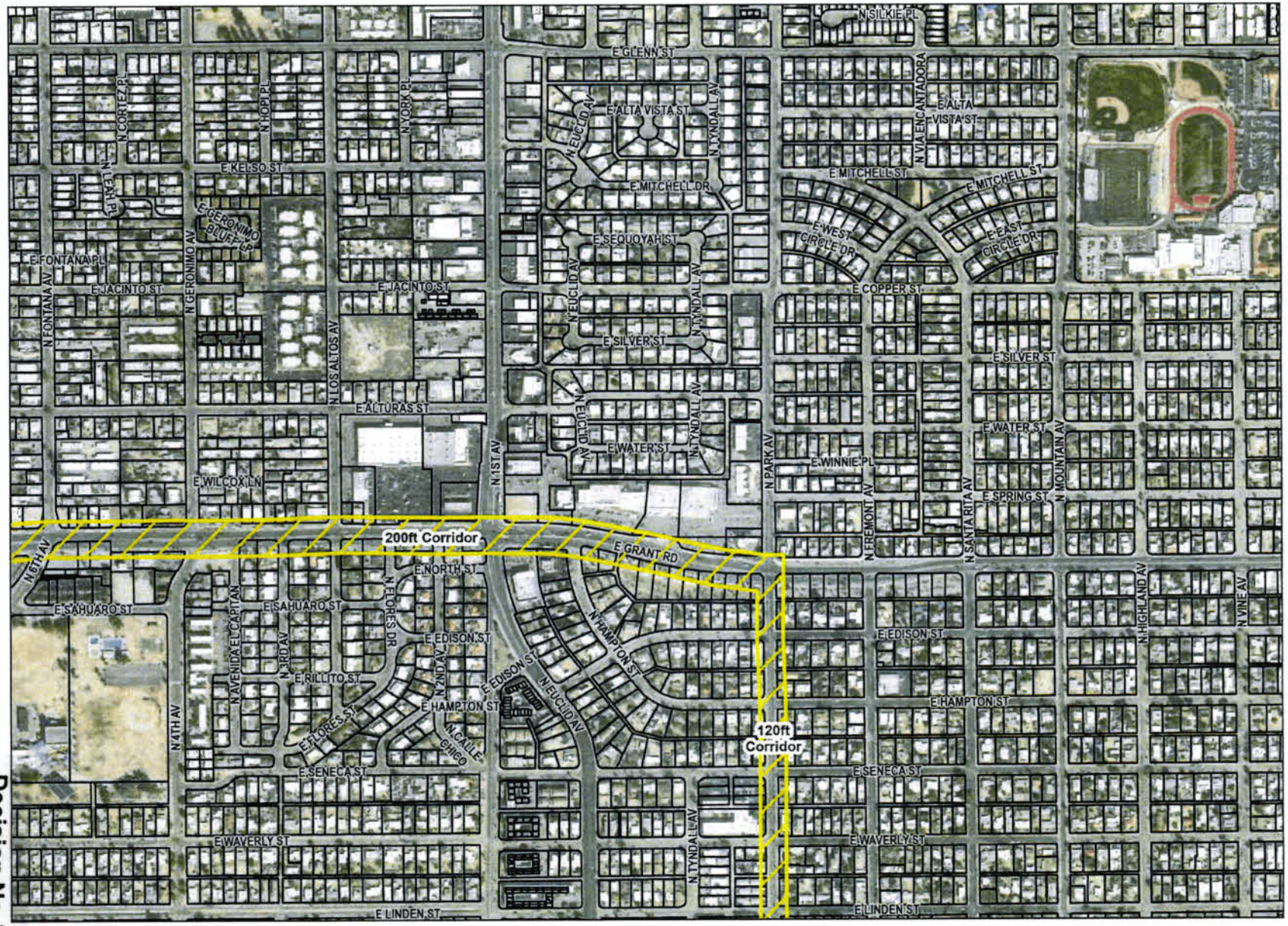
0 250 500
Feet

Sources: Esri, UNS, TEP, BLM, and Pima County GIS.
Projection: NAD 1983 UTM Zone 12N
Basemap: Esri World Imagery

This map is for planning purposes only. TEP and UNS Energy make no warranty of its accuracy.

Decision No. 79550

L-00000C-24-0118-00232




Tucson Electric Power
Land Resources

**Midtown Reliability Project**

**Route Alternative B4**

Proposed Reduced Corridor

Pima Parcels

**Page 3 of 9**

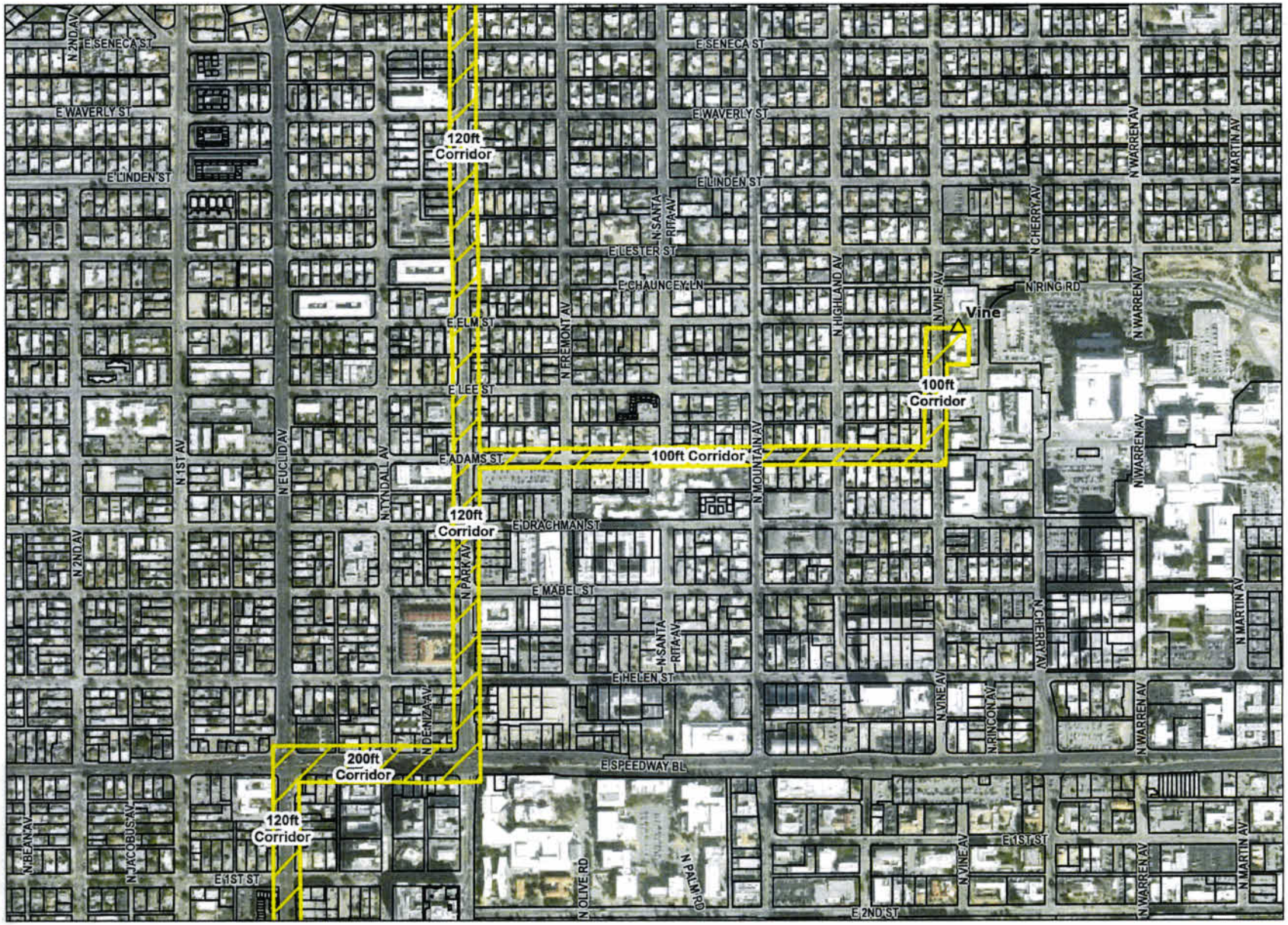
0 250 500
Feet

Sources: Esri, UNS, TEP, BLM, and Pima County GIS.
Projection: NAD 1983 UTM Zone 12N
Basemap: Esri World Imagery

This map is for planning purposes only. TEP and UNS Energy make no warranty of its accuracy.

Decision No. 79550

L-00000C-24-0118-00232




TEP
Tucson Electric Power
Land Resources

**Midtown Reliability Project**

**Route Alternative B4**

Proposed 138kV Substation

Proposed Reduced Corridor

Pima Parcels

**Page 4 of 9**

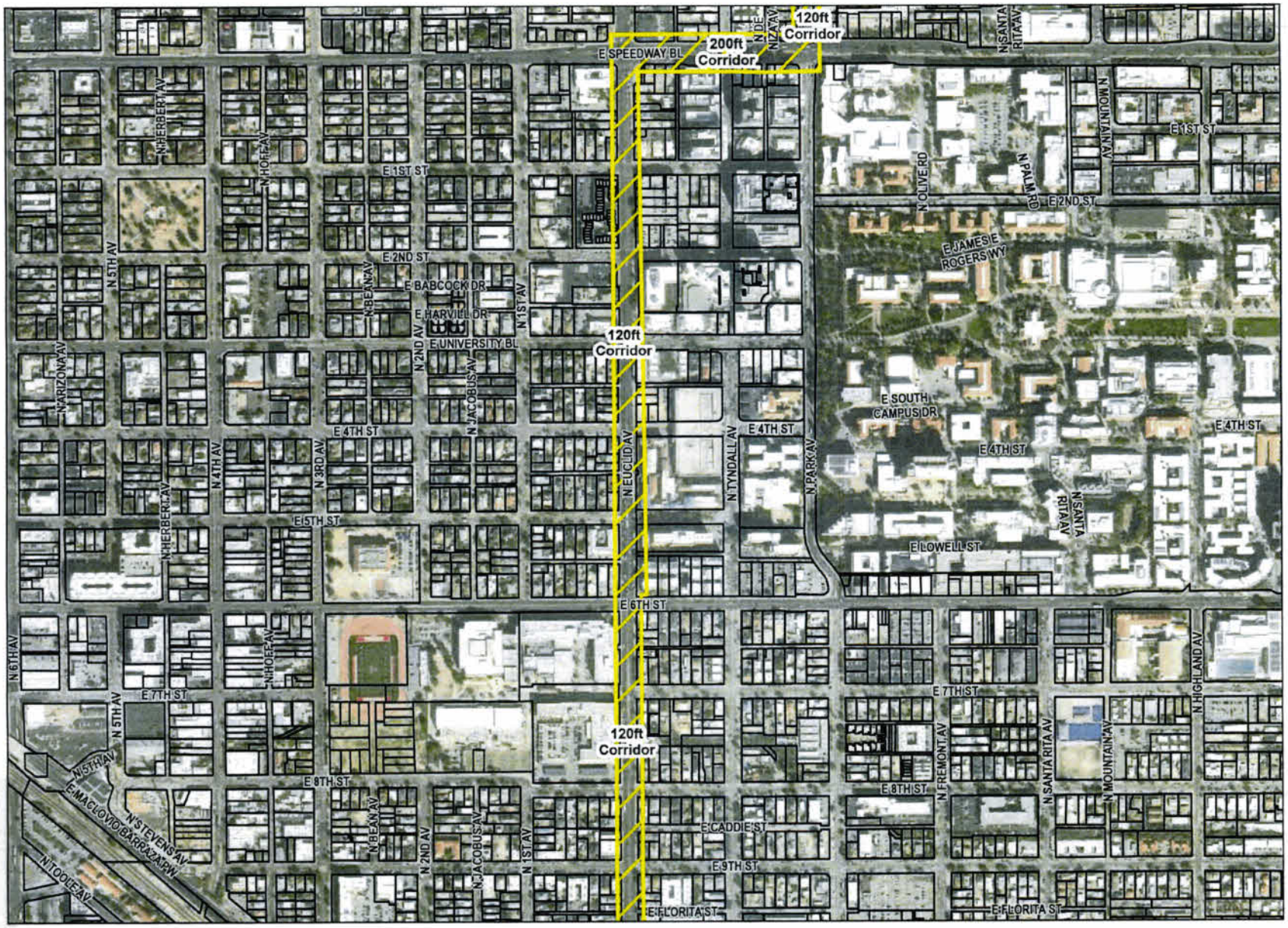
0 250 500
Feet

Sources: Esri, UNS, TEP, BLM, and Pima County GIS.
Projection: NAD 1983 UTM Zone 12N
Basemap: Esri World Imagery

This map is for planning purposes only. TEP and UNS Energy make no warranty of its accuracy.

L-00000C-24-0118-00232

Decision No. 79550




TEP
Tucson Electric Power
Land Resources

**Midtown Reliability Project**

**Route Alternative B4**

Proposed Reduced Corridor

Pima Parcels

**Page 5 of 9**

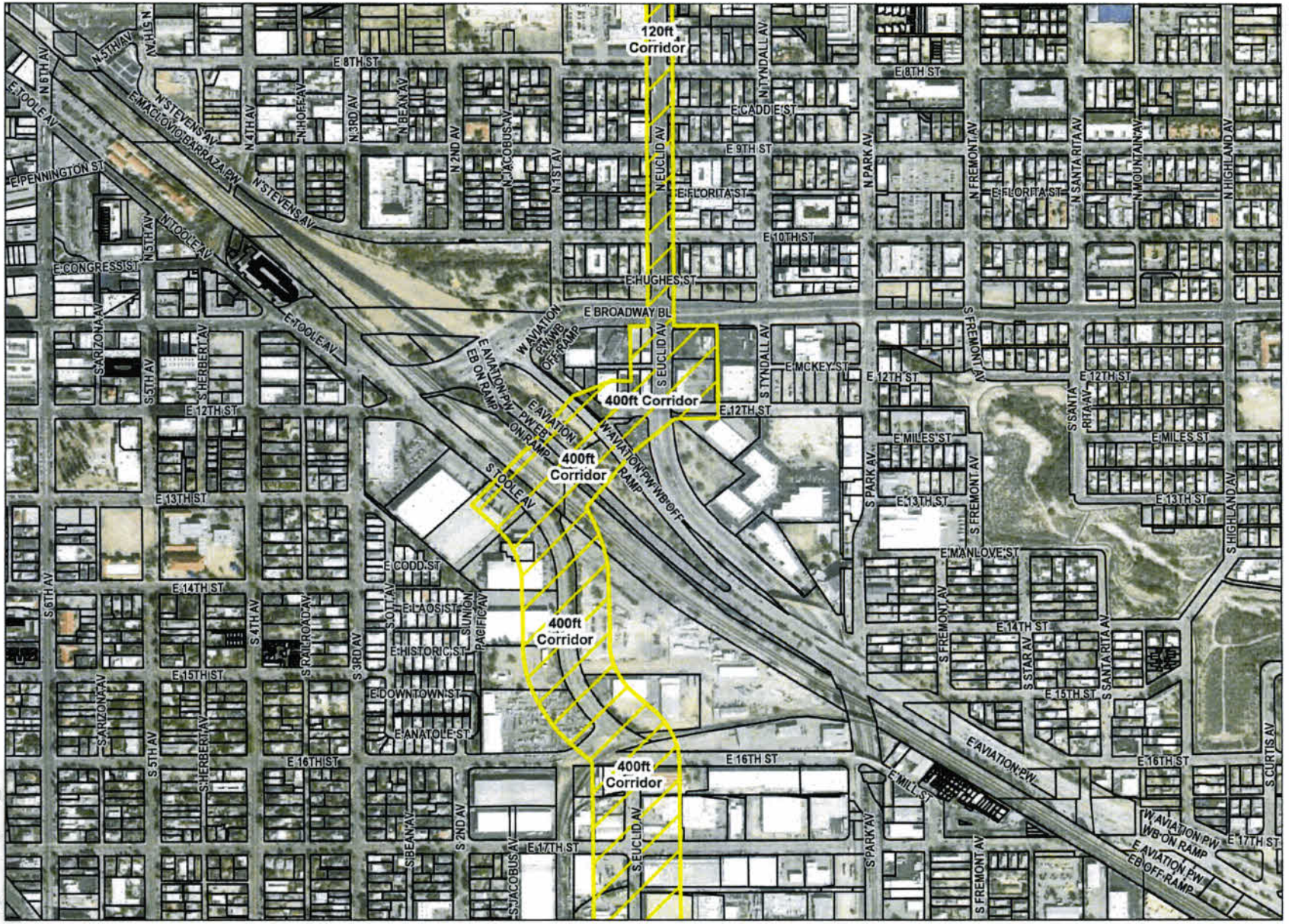
0 250 500
Feet

Sources: Esri, UNS, TEP, BLM, and Pima County GIS.
Projection: NAD 1983 UTM Zone 12N
Basemap: Esri World Imagery

This map is for planning purposes only. TEP and UNS Energy make no warranty of its accuracy.

L-00000C-24-0118-00232

Decision No. 79550




TEP
Tucson Electric Power
Land Resources

**Midtown Reliability Project**

**Route Alternative B4**

Proposed Reduced Corridor

Pima Parcels

**Page 6 of 9**

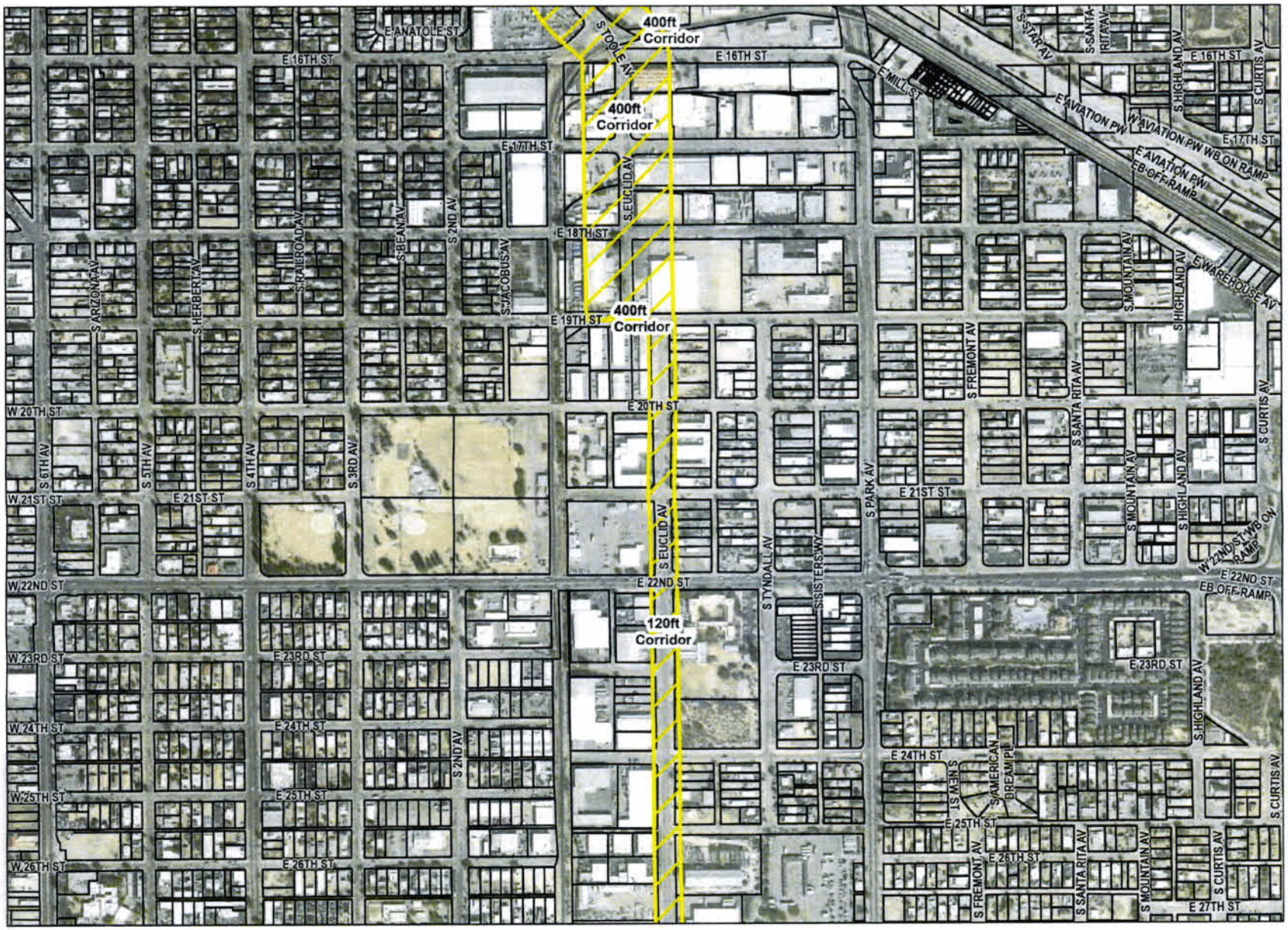
0 250 500
Feet

Sources: Esri, UNS, TEP, BLM, and Pima County GIS
Projection: NAD 1983 UTM Zone 12N
Basemap: Esri World Imagery

This map is for planning purposes only. TEP and UNS Energy make no warranty of its accuracy.

Decision No. 79550

L-00000C-24-0118-00232




TEP
Tucson Electric Power
Land Resources

**Midtown Reliability Project**

**Route Alternative B4**

Proposed Reduced Corridor

Pima Parcels

**Page 7 of 9**

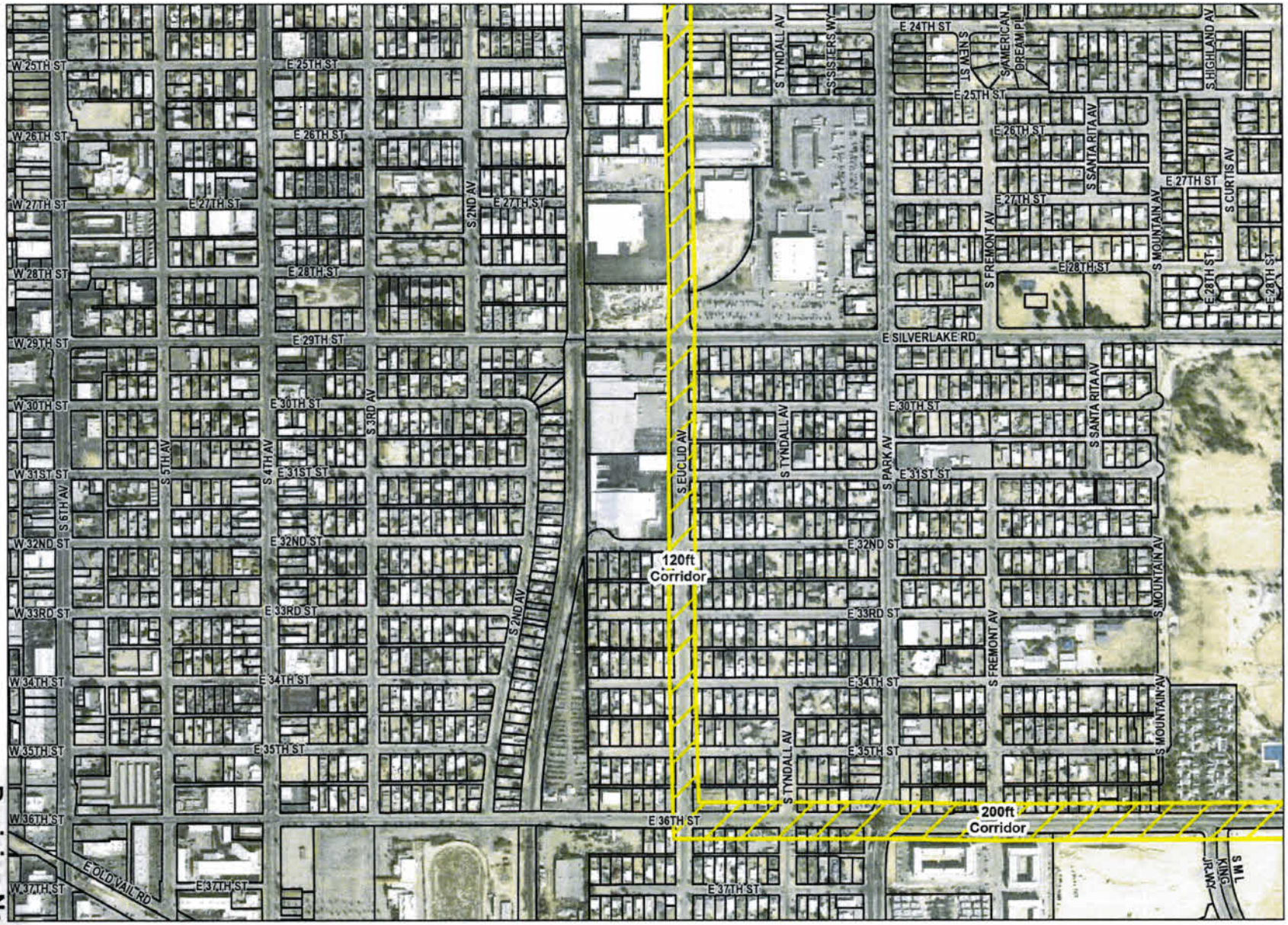
0 250 500
Feet

Sources: Esri, UNS, TEP, BLM, and Pima County GIS.
Projection: NAD 1983 UTM Zone 12N
Basemap: Esri World Imagery

This map is for planning purposes only. TEP and UNS Energy make no warranty of its accuracy.

L-00000C-24-0118-00232

Decision No. 79550




TEP Tucson Electric Power
Land Resources

**Midtown Reliability Project**

**Route Alternative B4**

Proposed Reduced Corridor

Pima Parcels

**Page 8 of 9**

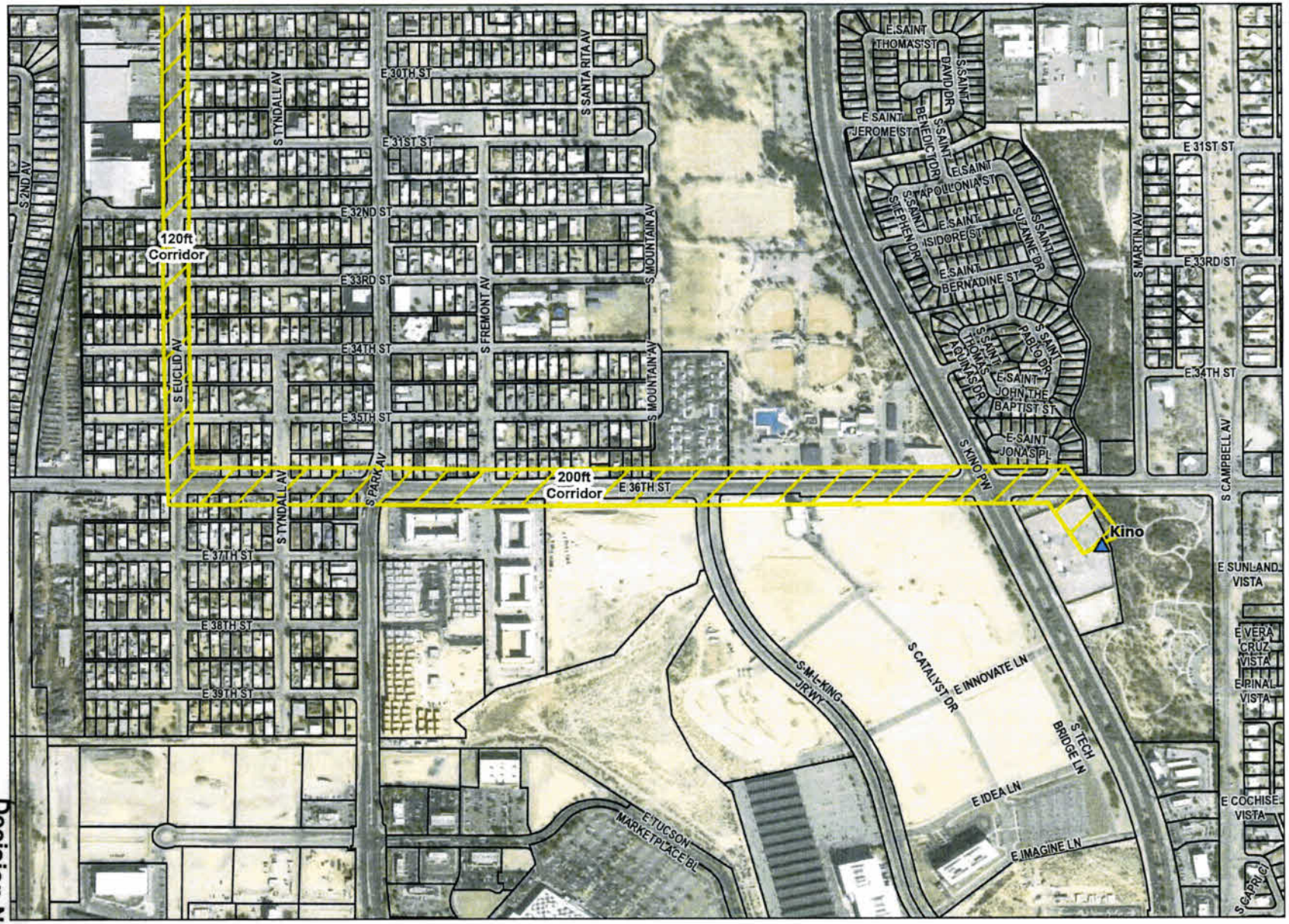
0 250 500
Feet

Sources: Esri, UNS, TEP, BLM, and Pima County GIS.
Projection: NAD 1983 UTM Zone 12N
Basemap: Esri World Imagery

This map is for planning purposes only. TEP and UNS Energy make no warranty of its accuracy.

L-00000C-24-0118-00232

Decision No. 79550




TEP
Tucson Electric Power
Land Resources

**Midtown Reliability Project**

**Route Alternative B4**

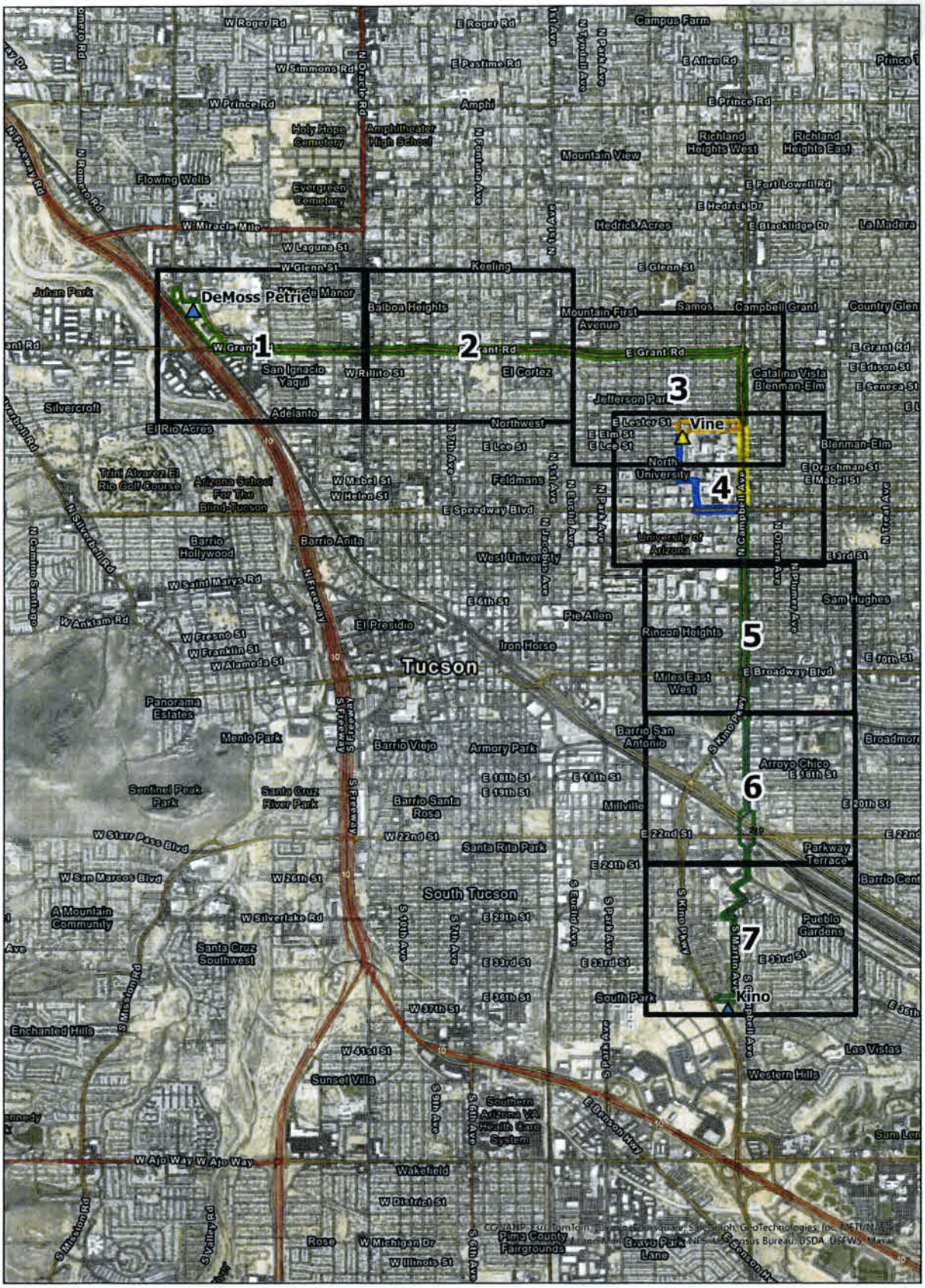
- In-Service 138kV Substation
- Proposed Reduced Corridor
- Pima Parcels



0 250 500
Feet

Sources: Esri, UNS, TEP, BLM, and Pima County GIS.
Projection: NAD 1983 UTM Zone 12N
Basemap: Esri World Imagery

This map is for planning purposes only. TEP and UNS Energy make no warranty of its accuracy.




**Midtown Reliability Project**

**Alternative Routes D, 1, 1.2**

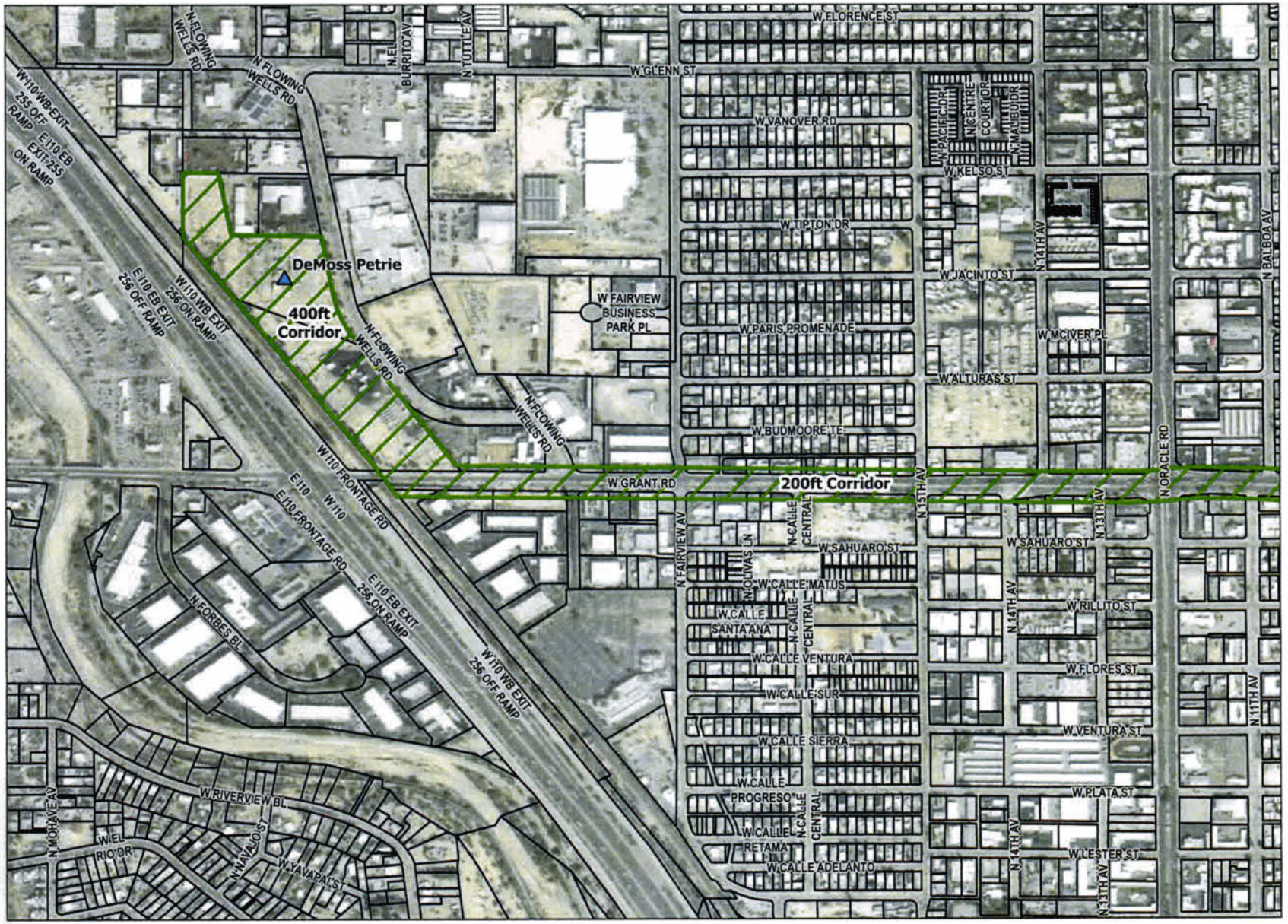
In-Service 138kV Substation
Proposed 138kV Substation
Map Index
Route 1
Route 1.2
Route D
Route D and 1
Route 1 and 1.2

0 2,000 4,000
Feet

TEP Tucson Electric Power
Land Resources

Sources: Esri, UNS, TEP, BLM, and Pima County GIS.
Projection: NAD 1983 UTM Zone 12N
Basemap: Esri World Imagery

This map is for planning purposes only. TEP and UNS Energy make no warranty of its accuracy.




TEP
Tucson Electric Power
Land Resources

# Midtown Reliability Project

## Alternative Routes D, 1, 1.2

In-Service 138kV Substation

Route D

Pima Parcels

Page 1 of 7

N

0 250 500

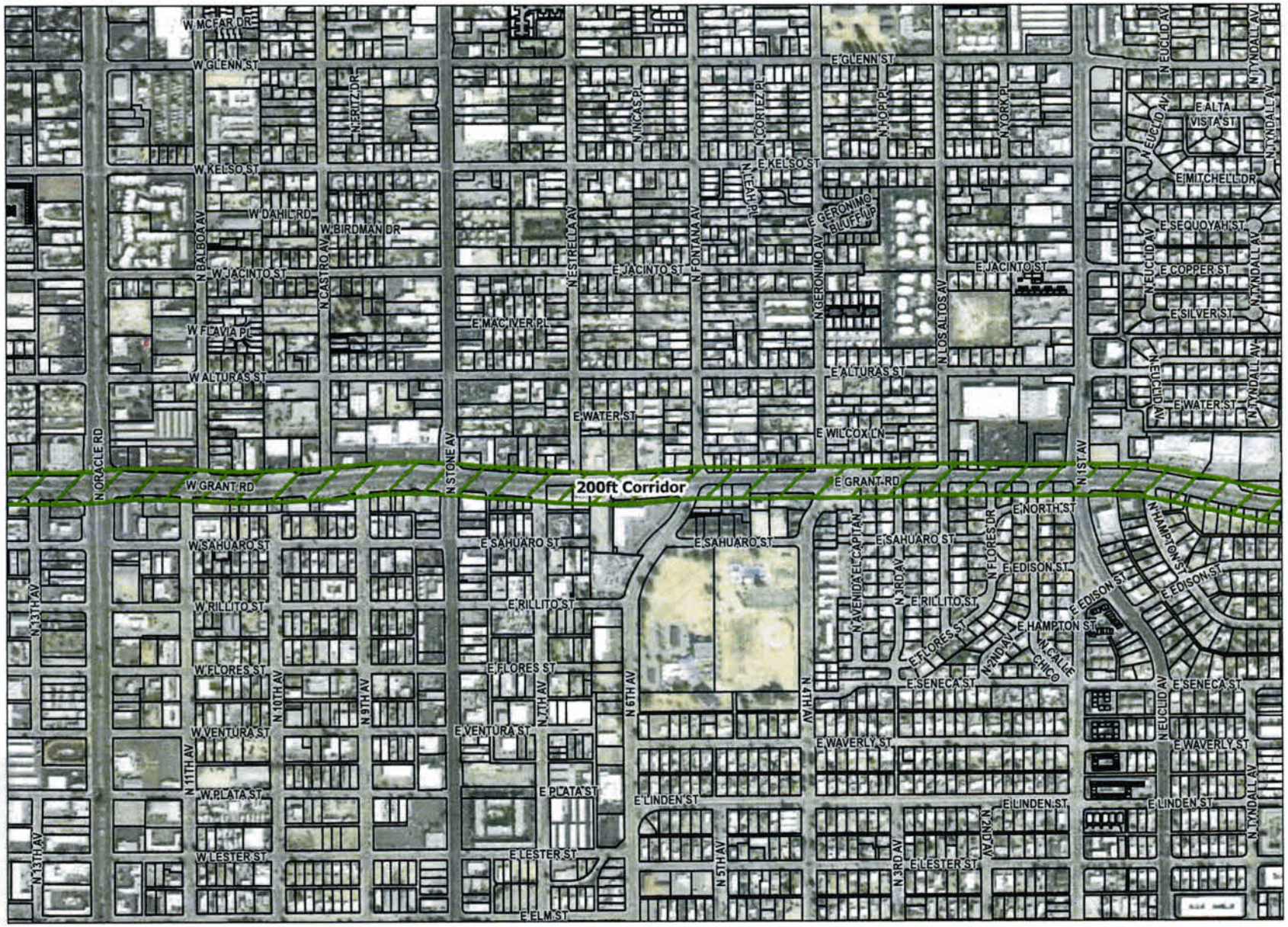
Feet

Sources: Esri, UNS, TEP, BLM, and Pima County GIS.
Projection: NAD 1983 UTM Zone 12N
Basemap: Esri World Imagery

This map is for planning purposes only. TEP and UNS Energy make no warranty of its accuracy.

Decision No. 79550

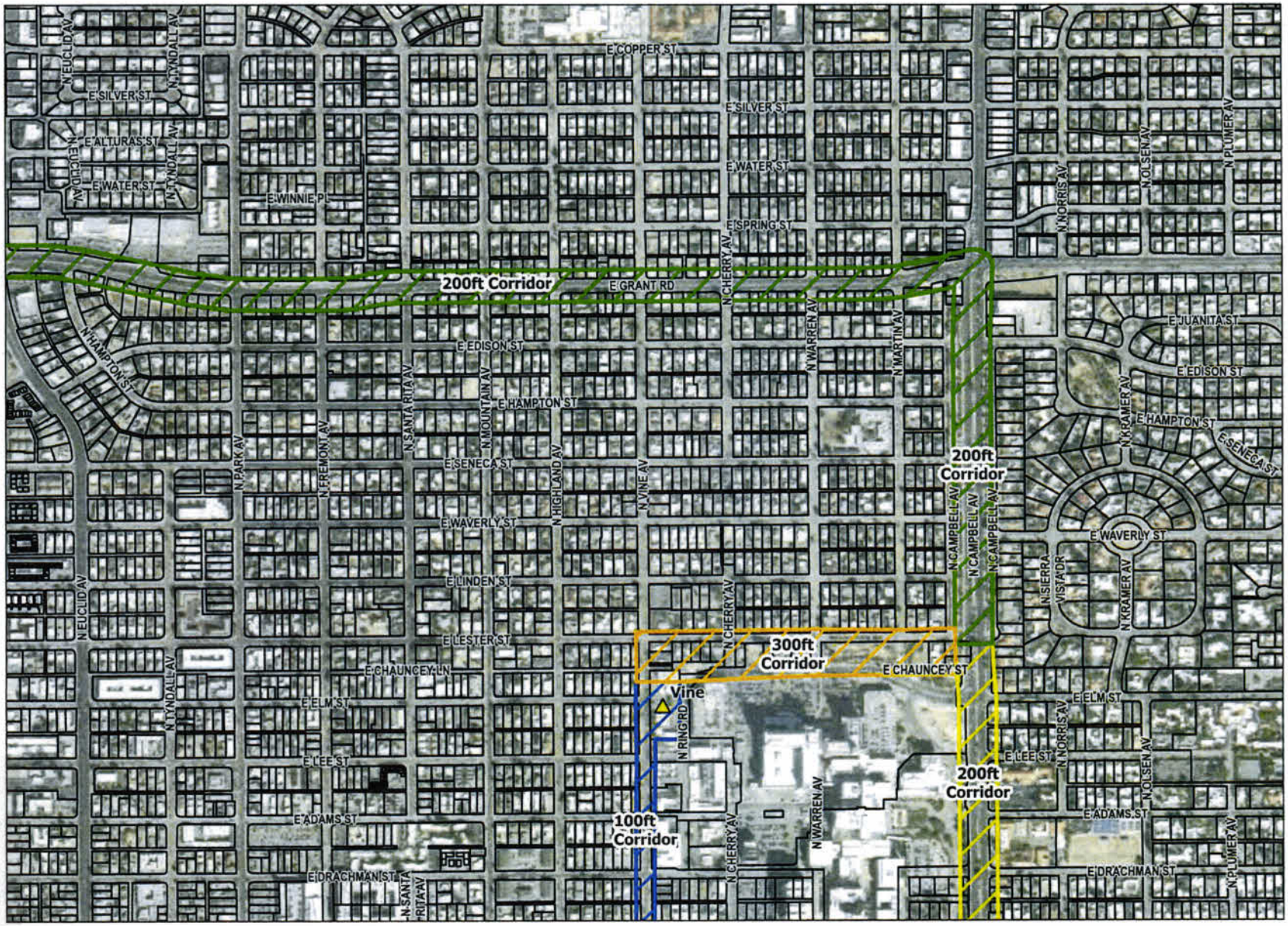
L-00000C-24-0118-00232




Tucson Electric Power
Land Resources

# Midtown Reliability Project

## Alternative Routes D, 1, 1.2




TEP
Tucson Electric Power
Land Resources

## Midtown Reliability Project

## Alternative Routes D, 1, 1.2

- Proposed 138kV Substation
- Route 1
- Route 1.2
- Route D
- Route D and 1
- Pima Parcels

Page 3 of 7

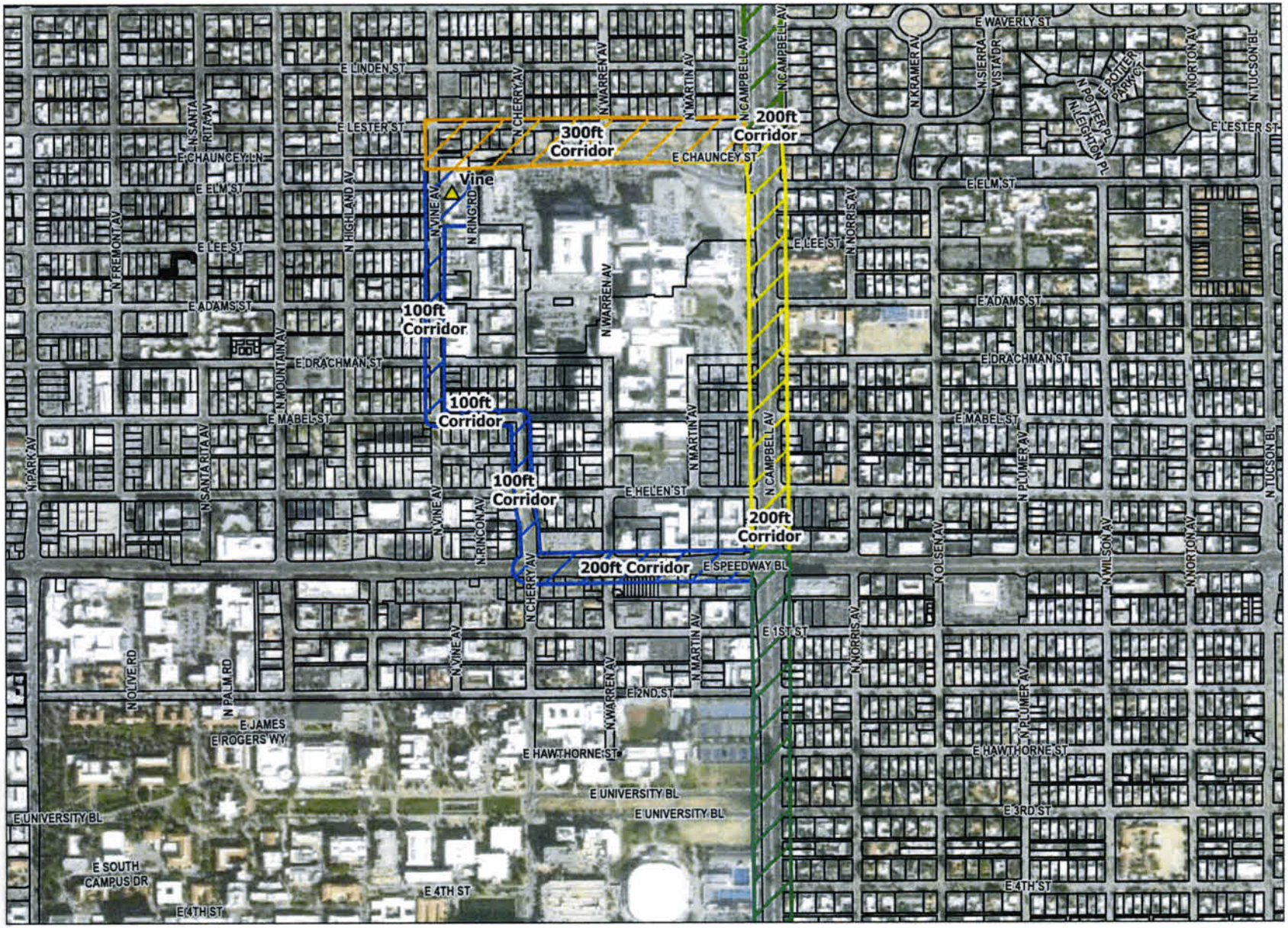
0 250 500
Feet

Sources: Esri, UNS, TEP, BLM, and Pima County GIS.
Projection: NAD 1983 UTM Zone 12N
Basemap: Esri World Imagery

This map is for planning purposes only. TEP and UNS Energy make no warranty of its accuracy.

L-00000C-24-0118-00232

Decision No. 79550




TEP
Tucson Electric Power
Land Resources

# Midtown Reliability Project

## Alternative Routes D, 1, 1.2

- Proposed 138kV Substation
- Route 1
- Route 1.2
- Route D
- Route D and 1
- Route 1 and 1.2
- Pima Parcels

**Page 4 of 7**

N

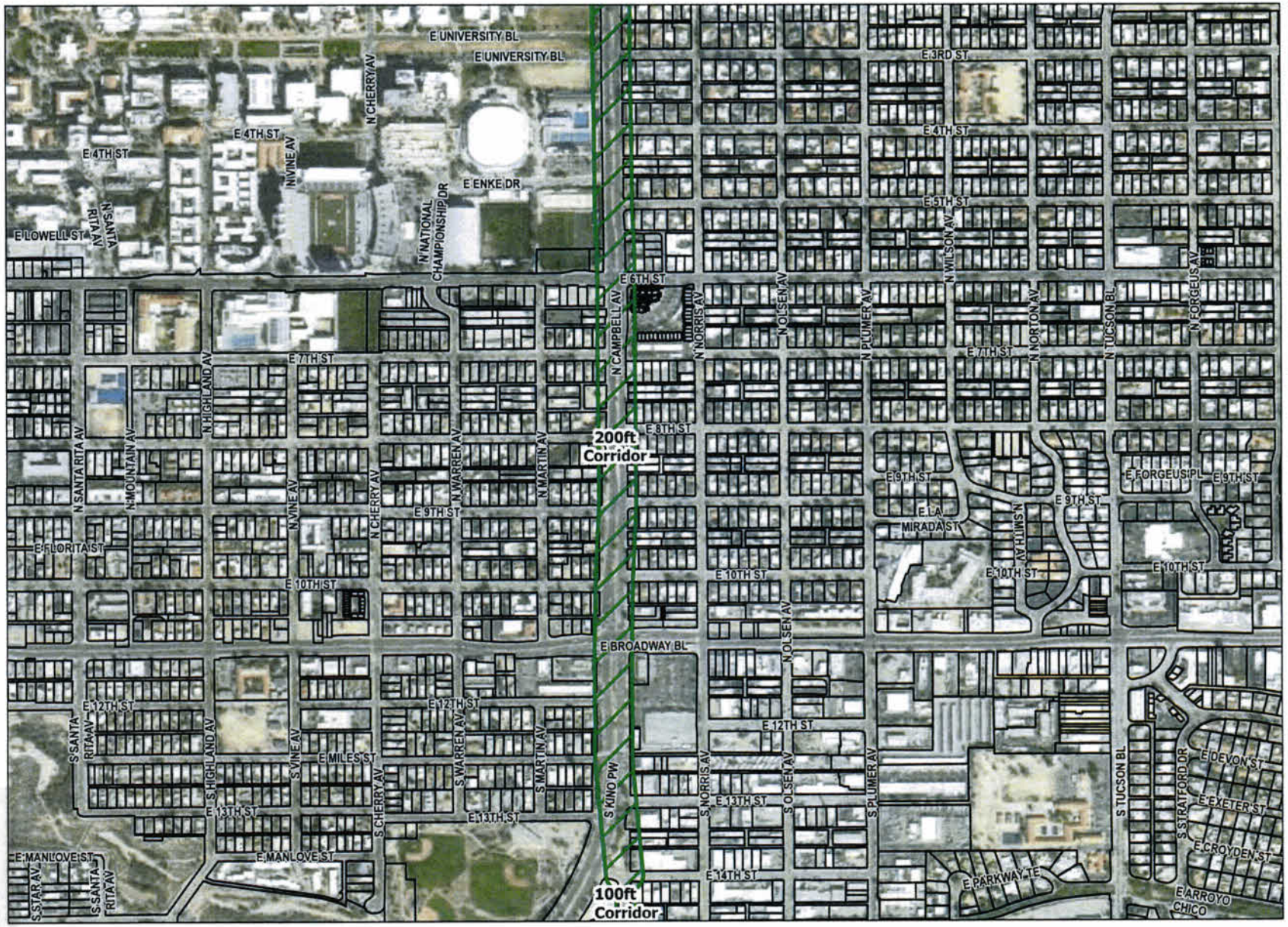
0 250 500
Feet

Sources: Esri, UNS, TEP, BLM, and Pima County GIS.
Projection: NAD 1983 UTM Zone 12N
Basemap: Esri World Imagery

This map is for planning purposes only. TEP and UNS Energy make no warranty of its accuracy.

Decision No. 79550

L-00000C-24-0118-00232




TEP
Tucson Electric Power
Land Resources

**Midtown Reliability Project**

**Alternative Routes D, 1, 1.2**

Route 1 and 1.2

Pima Parcels

**Page 5 of 7**

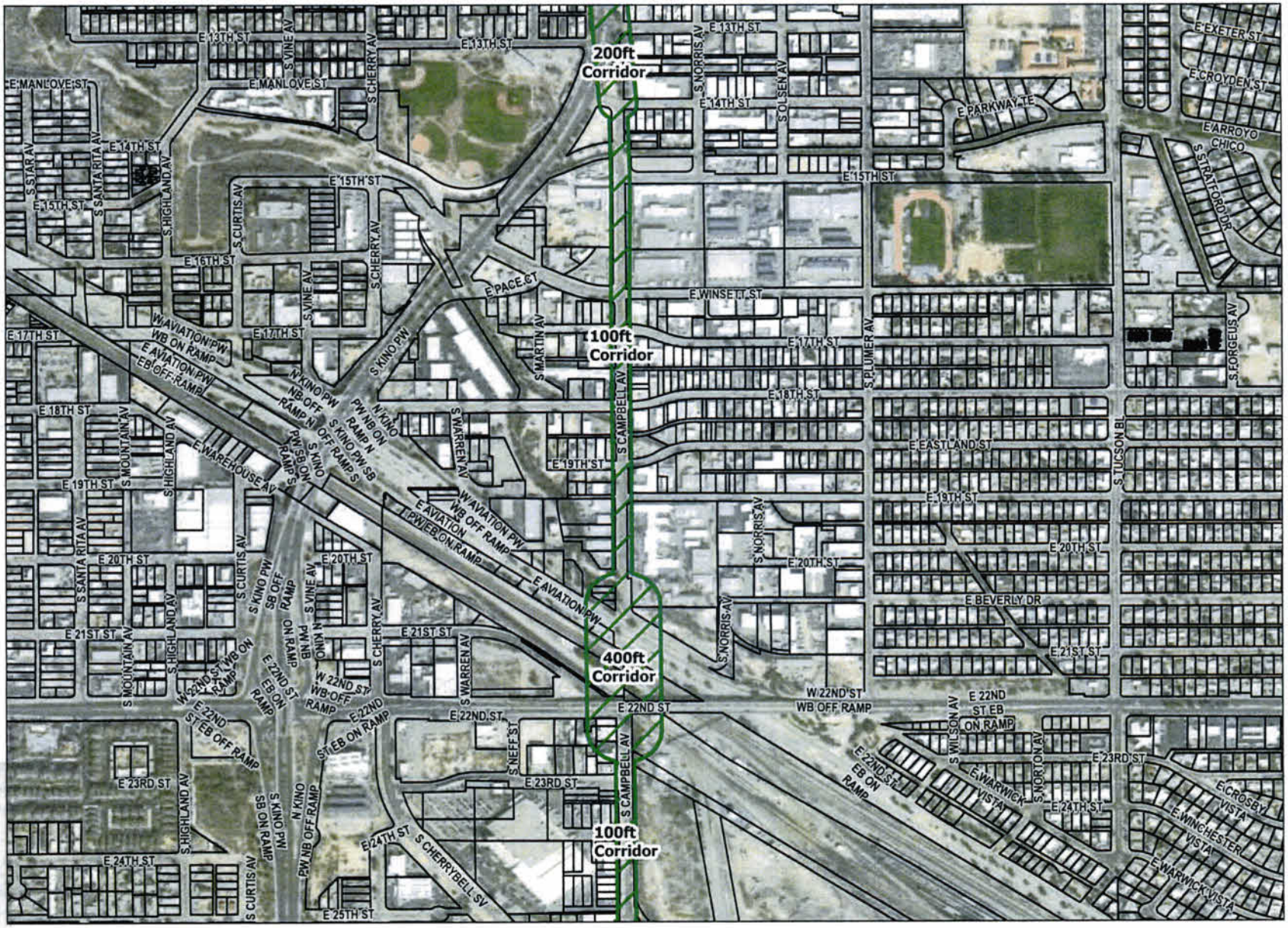
0 250 500
Feet

Sources: Esri, UNS, TEP, BLM, and Pima County GIS.
Projection: NAD 1983 UTM Zone 12N
Basemap: Esri World Imagery

This map is for planning purposes only. TEP and UNS Energy make no warranty of its accuracy.

L-00000C-24-0118-00232

Decision No. 79550




**Midtown Reliability Project**

**Alternative Routes D, 1, 1.2**

Route 1 and 1.2

Pima Parcels

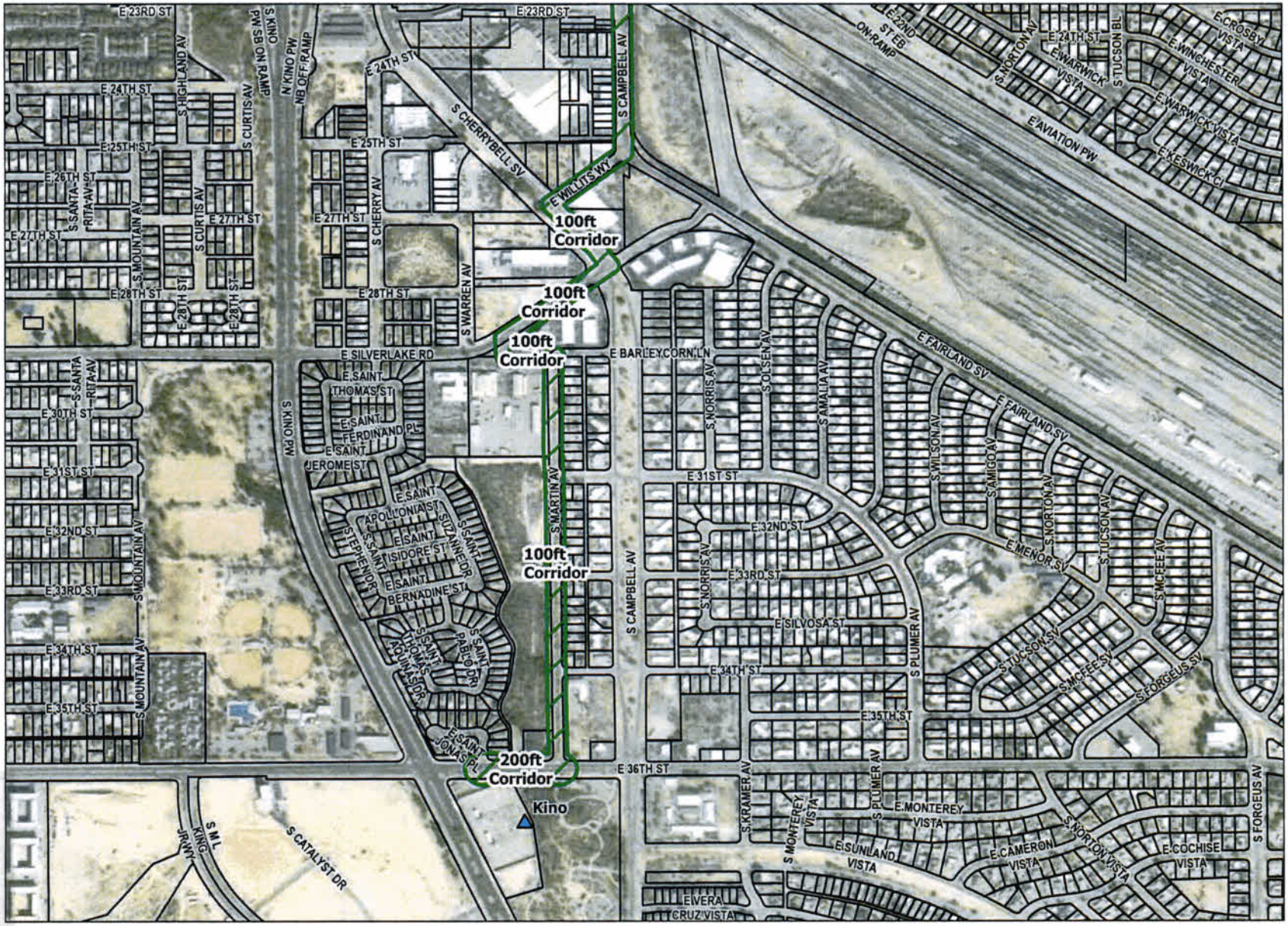


0 250 500

Feet

Sources: Esri, UNS, TEP, BLM, and Pima County GIS.
Projection: NAD 1983 UTM Zone 12N
Basemap: Esri World Imagery

This map is for planning purposes only. TEP and UNS Energy make no warranty of its accuracy.




TEP
Tucson Electric Power
Land Resources

# Midtown Reliability Project

## Alternative Routes D, 1, 1.2

In-Service 138kV Substation

Route 1 and 1.2

Pima Parcels

**Page 7 of 7**

0 250 500
Feet

Sources: Esri, UNS, TEP, BLM, and Pima County GIS.
Projection: NAD 1983 UTM Zone 12N
Basemap: Esri World Imagery

This map is for planning purposes only. TEP and UNS Energy make no warranty of its accuracy.

Decision No. 79550

L-00000C-24-0118-00232

0000209995

**BEFORE THE ARIZONA CORPORATION COMMISSION**

JIM O'CONNOR
Chairman
LEA MÁRQUEZ PETERSON
Commissioner
ANNA TOVAR
Commissioner
KEVIN THOMPSON
Commissioner
NICK MYERS
Commissioner

Arizona Corporation Commission
DOCKETED
OCT 4 2023
DOCKETED BY

| | |
|---|---|
| IN THE MATTER OF SUBSTANTIVE POLICY STATEMENTS TO GUIDE THE ARIZONA POWER PLANT AND TRANSMISSION LINE SITING COMMITTEE. | DOCKET NO. ALS-00000A-22-0320<br>DECISION NO. 79140<br>ORDER |

Open Meeting
September 21, 2023
Phoenix, Arizona

## FINDINGS OF FACT

1. On December 23, 2023, Arizona Corporation Commission ("Commission") Chairwoman Márquez Peterson opened this docket by memorandum to consider the adoption of a substantive policy statement to guide the Arizona Power Plant and Transmission Line Siting Committee ("Line Siting Committee" or "Committee").

2. On January 5, 2023, Chairwoman Márquez Peterson docketed a letter and notice of inquiry seeking feedback on a potential policy statement.

3. On February 8, 2023, Arizona Electric Power Cooperative, Inc., ("AEPCO") Salt River Project Agricultural Improvement and Power District ("SRP"), Tucson Electric Power Company ("TEP"), and UNS Electric, Inc. ("UNSE") (collectively, "Affected Utilities") filed joint Comments in this docket.

4. On February 16, 2023, Arizona Public Service Company filed a Response in this docket.

5. On February 20, 2023, the Affected Utilities filed joint Comments in this docket.

6. On March 14, 2023, Strata Clean Energy filed Comments in this docket.

7. On March 30, 2023, AEPCO, TEP, and UNSE filed joint Comments in this docket.

8. On May 5, 2023, Commissioner Myers docketed a letter requesting that Commission Utilities Division Staff ("Staff") and the Commission Legal Division ("Legal Division") respond to seven proposals for potential policy statements detailed in Commissioner Myers' letter.

9. On June 6, 2023, Southwestern Power Group filed a Response in this docket.

10. On June 14, 2023, Staff and the Legal Division filed their Response to Commissioner Myers' letter.

11. On June 19, 2023, SRP filed Comments in this docket.

12. On June 27, 2023, TEP and UNSE filed a joint Response in this docket.

13. On August 9, 2023, the proposals contained in Commissioner Myers' letter were discussed and considered at the Staff Open Meeting.

14. At the August 9, 2023, Staff Open Meeting, the Legal Division was directed to prepare a policy statement addressing proposals one and two in Commissioner Myers' letter concerning substations and hybrid hearings.

15. Attached to this Order as Attachment A is the Legal Division's recommendation for the Arizona Corporation Commission Policy Statement regarding Practice and Procedure Before the Power Plant and Transmission Line Siting Committee for Commission consideration. We adopt Legal Division's recommendation; however, the Commission's Policy Statement shall also include the following policy statement:

> 3. The Commission does not have jurisdiction over the undergrounding of electric transmission lines. A.R.S. § 40-360(10). Installing electric transmission lines

> underground is much more expensive than building them above ground. Underground transmission lines also can be more costly and challenging to maintain and repair. As a general matter, utilities under the Commission's jurisdiction should avoid incurring these higher costs unless underground installation of a transmission line is necessary for reliability or safety purposes, or to satisfy other prudent operational needs. Installing a transmission line underground for other reasons, such as stakeholders' preferences, would add unnecessarily to costs recovered through rates. Third parties, including cities, customers, and neighborhood groups, seeking to fund the underground construction of a transmission line may do so, among other ways, by forming an improvement district for underground utilities as provided in A.R.S. § 48-620 *et. seq.*

## CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter in this proceeding pursuant to Titles 40 and 41 of the Arizona Revised Statutes.

2. The Commission, having reviewed Attachment A and the record herein, concludes that it is just and reasonable and in the public interest to adopt the policy statement reflected in Attachment A, as modified herein.

...

...

...

...

...

...

...

...

...

...

ORDER

IT IS THEREFORE ORDERED that the policy statement reflected in Attachment A, Arizona Corporation Commission Policy Statement regarding Practice and Procedure Before the Power Plant and Transmission Line Siting Committee, is adopted as modified herein.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

**BY THE ORDER OF THE ARIZONA CORPORATION COMMISSION**

CHAIRMAN O'CONNOR COMMISSIONER MARQUEZ PETERSON

**DISSENT**

COMMISSIONER TOVAR COMMISSIONER THOMPSON COMMISSIONER MYERS

IN WITNESS WHEREOF, I, DOUGLAS R. CLARK, Executive Director of the Arizona Corporation Commission, have hereunto, set my hand and caused the official seal of this Commission to be affixed at the Capitol, in the City of Phoenix, this 4th day of October, 2023.

DOUGLAS R. CLARK
EXECUTIVE DIRECTOR

DISSENT: Anna Tovar

DISSENT: _____

ATTACHMENT A

# ARIZONA CORPORATION COMMISSION POLICY STATEMENT[1] REGARDING PRACTICE AND PROCEDURE BEFORE THE POWER PLANT AND TRANSMISSION LINE SITING COMMITTEE

## Background

Before constructing a plant or transmission line in this state, Arizona law requires that utilities receive a Certificate of Environmental Compatibility ("CEC") from the Arizona Power Plant and Transmission Line Siting Committee ("Line Siting Committee" or "Committee") and approved by the Arizona Corporation Commission ("Commission"). The process for obtaining a CEC is governed by the line siting statutes, Arizona Revised Statutes ("A.R.S.") § 40-360 *et seq.* Prior to this year, the line siting statutes had not been updated since their adoption in 1971.

The outdated nature of the statutes, coupled with the increased need for power in the Southwest and Arizona specifically, has dramatically increased the number of CEC applications that have come before the Line Siting Committee. The Committee, Commission, and Arizona Legislature have taken numerous steps to address the backlog of applications pending before the Committee.

On December 23, 2022, Chairwoman Márquez Peterson's Office opened this docket to consider the adoption of substantive policy statements to provide guidance to the Line Siting Committee and regulated entities regarding when a CEC is required. The docket has generated valuable discussion and proposals from Commissioners and regulated entities alike.

On April 5, 2023, House Bill 2496 was signed into law by the Governor. That bill amends the definition of "transmission line" to clarify that "transmission line" means:

> five or more new structures that span more than one mile in length as measured from the first structure outside of the substation, switchyard or generating site to which the line connects to the fifth structure and that are erected above ground and support one or more conductors designed for the transmission of electric energy at nominal voltages of one hundred fifteen thousand volts or more and all new switchyards to be used therewith and related thereto for which expenditures or financial commitments for land acquisition, materials, construction or engineering exceeding $50,000 have not been made before August 13, 1971. Transmission line does not include structures located on the substation, switchyard or generating site to which the line connects.

[1] 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 procedure 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 updated definition of "transmission line" addresses much of the ambiguity identified in the generic docket concerning when a CEC is required.

In addition, on March 6, 2023, the Commission's Legal Division opened Docket No. ALS-00000A-23-0063 for purposes of its 5-Year-Review of the Rules of Practice and Procedure before the Power Plant and Transmission Line Siting Committee, Arizona Administrative Code Title 14, Chapter 3, Article 2. On August 25, 2023, the Commission issued Decision No. 79083, directing the Legal Division to open a new rulemaking docket to update the line siting rules. Accordingly, revisions to the line siting rules will be addressed in that docket.

In order to provide additional guidance regarding the Commission's interpretation of the requirements under the line siting statutes, it is reasonable and appropriate to adopt the policy statements set forth herein. Policy Statement No. 1 addresses the Commission's interpretation of "transmission line," as updated in House Bill 2496. Policy Statement No. 2 provides the Commission's preferred approach to conducting hearings before the Line Siting Committee.

**Policy Statements**

1. The definition of "transmission line" provided in A.R.S. § 40-360, and as amended by House Bill 2496, includes "switchyards," but notably does not include "substations." The Commission presumes the Legislature intentionally excluded "substations" from the definition of "transmission line" and therefore interprets A.R.S. § 40-360 as imposing no requirement for a utility to obtain a CEC to construct a substation.

2. The line siting statutes require that a hearing be held on an application "in the general area within which the proposed plant or transmission line is to be located or at the state capitol at Phoenix," as determined by the Chairman of the Committee. A.R.S. § 40-360.04(A). Since the COVID-19 pandemic, the Committee has authorized virtual or hybrid virtual and in-person hearings. The Commission affirms the Committee's use of hybrid hearings and encourages the continued use of hybrid hearings to streamline the hearing process and allow for more robust public participation at Line Siting Committee hearings.

# Attachment 2

ORIGINAL

E000024350

OSBORN MALEDON
ATTORNEYS AT LAW

**Megnan H. Grabel**
Direct: 602-640-9399
Office: 602-640-9000
mgrabel@omlaw.com

2929 North Central Avenue
Suite 2000
Phoenix, Arizona 85012
omlaw.com

February 20, 2023

**Re: In the Matter of Substantive Policy Statements to Guide the Arizona Power Plant and Transmission Line Siting Committee (ALS-00000A-22-0320)**

Arizona Corporation Commissioners
Members of the Arizona Power Plant
and Transmission Line Siting Committee and
All Interested Stakeholders:

Arizona Electric Power Cooperative, Inc., Salt River Project Agricultural Improvement and Power District, Tucson Electric Power Company, and UNS Electric, Inc. (collectively "Affected Utilities") reiterate our thanks to Commissioner Marquez Peterson for opening this docket and raising important issues regarding the Arizona power plant and line siting process. As stated in the January 17, 2023 letter filed in this docket, the Affected Utilities support efforts to clarify and modernize the Arizona Power Plant and Transmission Line Siting Committee's ("Committee") rules and procedures. Among other things, the Affected Utilities are concerned with the current Committee backlog, which results primarily from the exceptionally large number of generation interconnection "tie-line" applications now being filed. At present, the backlog is such that applicants for a CEC cannot get a hearing scheduled until the end of 2024. That reality is highly concerning to our companies because it has the potential to hinder our respective abilities to get needed projects approved and on-line when required to serve our customers and members in Arizona.

Moreover, as Commissioner Marquez Peterson points out, the process for obtaining a certificate of environmental compatibility ("CEC") is complex and costly. Indeed, an applicant for a CEC typically must retain consultants to help prepare the environmental and other impact studies required by Arizona law to accompany a CEC Application, as well as attorneys to help facilitate the hearing process. In addition, the Committee is required by law to hold a hearing in the county in which the transmission line will be constructed, which is often in rural or remote areas of the State. The responsibility for securing and funding both a hearing venue of adequate size and hotel accommodations for Committee members, attorneys, witnesses, and other participants in the process falls on the applicant. The applicant must also fund an audio-visual team to provide internet and virtual hearing capabilities, as well as ensure that the room will be equipped with sufficient tables, chairs, and other amenities for all participants. Hearings are always scheduled to begin in the afternoon on the first day to give Committee members who reside far from the hearing location time to get there, which means that the hearing itself typically lasts a minimum of two days, even for the least controversial of applications. For this and other reasons, it is not unusual for the total cost of the CEC application process to exceed $250-300,000 for the most basic of applications, rising to in excess of $650,000 and much higher as the proceedings become increasingly complex. For the Affected Utilities, that amount ends up being recovered in rates paid by our customers and members.

ACC - Docket Control - Received 2/20/2023 10:05 AM
ACC - Docket Control - Docketed 2/21/2023 8:24 AM

The Affected Utilities understand the need for this process for most projects. Such an extensive evaluation is important for significant projects that must be fully vetted to ensure their compatibility with the environment and ecology of Arizona. But it should not be required for smaller projects that, by their nature, have little to no environmental footprint. We recognize that the Legislature may be taking steps to remedy this concern. However, we also agree with Commissioner Marquez Peterson that any legislative solution will take several months to implement if it passes at all, and that a more urgent, Commission-driven solution is needed.

The Affected Utilities therefore offer the following suggestions for the Commission's potential inclusion in a substantive policy statement:

**(1) Interpret "series of structures" to mean "three or more" poles, but exclude from the series any poles located on the site of existing energy infrastructure.**

An important first step, as suggested in the Draft Potential Substantive Policy Statement No. 1, is to clarify what projects constitute a "transmission line" within the meaning of A.R.S. § 40-360(10) – specifically, what constitutes "a series of new structures."[1] As a legal matter, no caselaw exists regarding how many poles constitute a "series" in the line siting context. However, the Arizona Court of Appeals has interpreted the meaning of the word "series" in the criminal context (examining the phrase "continuing series of violations") as meaning three or more.[2] In doing so, the Court relied on the definition of "series" contained in Webster's Third New International Dictionary (1966): "a group of *usually three or more* things or events standing or succeeding in order and having a like relationship to each other."[3] Notably, that version of Webster's dictionary was published close in time to the promulgation of the line siting statutes in 1971, thus indicating that the common and approved use of "series" at that time constituted "three or more."[4]

This interpretation is also consistent with how the phrase "series of structures" has historically been interpreted by the Commission and the Committee. For example, during a 2021 pre-filing meeting, former line siting Chairman Thomas Chenal expressed his observation that "the Corporation Commission . . . has, at least traditionally, customarily thought of a series as

---

[1] A.R.S. § 40-360.

[2] *State v. Tocco*, 156 Ariz. 110, 115 (App. 1986) (citing *United States v. Valenzuela*, 596 F.2d 1361, 1367 (9th Cir. 1979) ("[W]hile all dictionaries may not precisely specify the number of related, successive events which are necessary to constitute a series, we think the District Court's instruction that a series must consist of three or more federal narcotic law violations was squarely based on common usage.") (internal citations omitted)).

[3] *Id.* (emphasis added).

[4] *See* A.R.S. § 1-213 (requiring that statutory "[w]ords and phrases shall be construed according to the common and approved use of the language.")

being three or more."[5] The Commission has also opined that the construction of a substation and two transmission poles is **not** a "transmission" line that would trigger the need for a CEC.[6] This interpretation is also consistent with the Affected Utilities' historical understanding of the phrase.

However, absent from the definition of "transmission" line is any indication of what poles should be counted towards one of the series. Here, the Declaration of Policy underlying the siting statutes is instructive:

> The legislature hereby finds and declares that there is at present and will continue to be a growing need for electric service which will require the construction of **major new facilities**. It is recognized that such facilities cannot be built without in some way **affecting the physical environment where the facilities are located**. The legislature further finds that it is essential in the public interest **to minimize any adverse effect upon the environment and upon the quality of life of the people of the state which such new facilities might cause**.[7]

Clearly, the original drafters of the line siting statutes were focused on balancing the impact of "major new facilities" – large but necessary energy infrastructure – with the existing physical environment. However, if the environment is already impacted by energy infrastructure (be it a switchyard, substation, or generation site), the construction of the new facilities would have no incremental adverse effect on the environment or anyone's quality of life, and those facilities should thus not be considered part of the "series" of new structures for which the environmental impact should be analyzed. This reading of the statute makes it more likely that only "major new facilities" will be required to file for a CEC, not small projects to be constructed on land that, at least in part, has already been impacted by energy infrastructure.

For the same reason, reconductoring a line or replacing old structures with new ones within the location approved by the Commission in the underlying CEC should not trigger the CEC process, because doing so does not have any new adverse impact on the environment as contemplated by the line siting statutes.

The Commission's policy should also make clear that the "series of structures" contemplated is linear in nature and that a CEC would not be required for the construction of, for example, two sets of two poles that feed into a substation or switchyard in a parallel or another non-linear fashion. Such a construction conforms to the commonly understood meaning of "series" (things that are "succeeding in order"[8]) would be consistent with the legislature's intent that only "major new facilities" should be subject to the siting process (not a handful of minor new facilities).

---

[5] *See e.g.* Cielo Azul Prefiling Conference Transcript, June 17, 2021 (Chairman Chenal) at 25:16-19

[6] *See* Decision No. 77761 (October 2, 2020).

[7] *Declaration of Policy*, Laws of Arizona 1971, Chapter 67, p. 180 (emphasis added).

[8] *See State v. Tocco*, 156 Ariz. at 115.

Finally, the Commission should memorialize in policy its historical practice of not requiring a CEC for the construction of a substation. A.R.S. § 360(10) defines transmission line to mean, in relevant part, "a series of new structures erected above ground and supporting one or more conductors designed for the transmission of electric energy at nominal voltages of one hundred fifteen thousand volts or more **and all new switchyards** to be used therewith..." (emphasis added). While the statute requires a "switchyard" (which is part of the transmission system) to be sited as part of a transmission line, it makes no similar requirement for a substation. The Commission has acknowledged that substations do not need to go through the CEC process, *see* Decision No. 77761, and it makes sense to reflect that interpretation as part of any forthcoming policy.

**(2) Establish a priority system for CEC hearings.**

At present, the Committee Chair schedules hearings on a first-come, first-served basis. This practice worked fine when the Committee only handled a few CEC applications each year. However, the Committee is now scheduled to hear no fewer than 33 CEC applications in the next 18 months – and the pace of new applications is not slowing. To ensure that a project has a spot in the queue, the Affected Utilities must ask for hearings to be set years in advance. This process is unworkable, and there is no system in place to ensure that projects that need to be on-line sooner than the current scheduling process would allow will have a timely hearing. As a practical matter, the line siting statutes require the Committee to hold a hearing on an application within a specified timeframe after the application is filed.[9] A frustrated applicant, unable to work through the existing process, could just file an application with the Commission and the Committee will have to accommodate it, or the project could be built without any regulatory evaluation or approval.[10] Certainly, such an outcome is not in the public interest. The Commission should thus work with impacted stakeholders and the Committee Chair's office to develop a system for identifying and prioritizing more urgent projects.

**(3) Make changes and provide guidance that will improve the CEC process for non-exempt projects.**

Finally, the Commission should include in any policy the following recommendations that will improve the overall CEC process:

- The Affected Utilities are routinely asked by stakeholders to underground transmission facilities. As the Commission knows, undergrounding a transmission line can be ten to twenty times more expensive than building a line above ground. The Commission has often acknowledged that ratepayers should not pay the extra cost of undergrounding a transmission line. Including language to that effect in a policy would be helpful to applicants who need to explain the issue to stakeholders in a CEC proceeding.

---

[9] *See* A.R.S. § 40-360.04.
[10] *See* A.R.S. § 40-360.08(B).

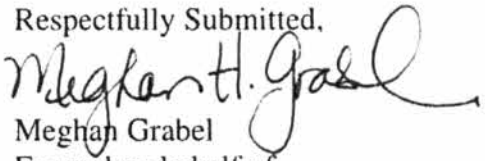
- A frequent issue in CEC proceedings is the efficacy of the applicant's public outreach process. The statutory outreach requirements are minimal, providing only for notice in a newspaper of general circulation and to certain affected jurisdictions. However, the Committee and the Commission often, and reasonably, expect more than that from applicants. Explaining what type of and how much public outreach the Commission expects of CEC applicants would be useful to ensure that all are on the same page as to what is required and that all reasonable expectations are met.

- Since the COVID-19 pandemic, CEC hearings have been conducted in a hybrid virtual/physical attendance platform. Given the remoteness of certain projects that require a CEC, the practice of allowing virtual participation has proven to be helpful to both the applicants and the Committee. The Commission should endorse the continuation of the hybrid platform for CEC hearings.

- CEC dockets are one of the two types of proceedings before the Commission that still require physical filings. Applicants are required to file 25 physical copies of a CEC application and all other documents that need to be filed during the course of the CEC proceeding (and then 13 hard copies for any documents to be filed after the CEC is awarded). Given the size of CEC applications, this requirement is both costly and environmentally unsound. The Commission should allow electronic filing in CEC dockets, with the understanding that if any Commissioner or Committee member wants a hard copy, they can reach out to the applicant through the Chairperson of the Committee and will receive one.

Again, we are grateful for Commissioner Marquez Peterson's attention to these matters and look forward to working with Chairman O'Connor and all of the Commissioners on the important issues raised in this docket.

Respectfully Submitted,



Meghan Grabel
For and on behalf of
Arizona Electric Power Cooperative, Inc.,
Salt River Project Agricultural Improvement and Power District,
Tucson Electric Power Company,
UNS Electric, Inc.

# Attachment 3

**ORIGINAL**

E000027753

# MEMORANDUM

TO: Docket Control

FROM: Douglas R. Clark
Interim Director
Utilities Division

Robin Mitchell
Director/Chief Counsel
Legal Division

DATE: June 14, 2023

RE: IN THE MATTER OF SUBSTANTIVE POLICY STATEMENTS TO GUIDE THE ARIZONA POWER PLANT AND TRANSMISSION LINE SITING COMMITTEE. (DOCKET NO. ALS-00000A-22-0320)

SUBJECT: RESPONSE TO COMMISSIONER NICK MYERS' MAY 5 LETTER

---

On May 5, 2023, Arizona Corporation Commission ("Commission") Commissioner Nick Myers docketed a letter requesting Commission Utilities Division Staff ("Staff") and the Commission Legal Division ("Legal Division") respond to seven proposals detailed in Commissioner Myers' letter. This memorandum represents Staff's and the Legal Division's joint response to the seven proposals. Staff and the Legal Division appreciate the opportunity to provide this response addressing recommendations regarding the backlog of Certificate of Environmental Compatibility ("CEC") applications with the Arizona Power Plant and Transmission Line Siting Committee ("Committee").

The responses below include a brief analysis from the Commission's Legal Division regarding whether the proposed changes can be adopted by Commission vote, substantive policy statement, rulemaking, or if a statutory change is required. Many of the proposals require revising existing rules, and therefore necessitate rulemaking.

Conveniently, the five-year review of the Rules of Practice and Procedure before the Power Plant and Transmission Line Siting Committee ("line siting rules") is taking place in Docket No. ALS-00000A-23-0063. Stakeholder comments regarding revisions to the line siting rules are due June 19, 2023. In that Docket, the Legal Division will prepare and submit to the Commission a Five-Year-Review Report, which will identify areas that could be improved in a subsequent rulemaking docket. While some of the recommendations in Commissioner Myers' letter may properly be adopted through a substantive policy statement, the Legal Division generally recommends adopting these changes through rulemaking rather than policy statements.

**ACC - Docket Control - Received 6/14/2023 2:29 PM**
**ACC - Docket Control - Docketed 6/14/2023 2:48 PM**

## 1. Substations

The first recommendation was to affirm that the construction of a substation does not require a CEC.

Arizona Revised Statutes ("A.R.S.") § 40-360(10) does not include "substation" as part of the definition of a "transmission line" but does include "switchyard."

For clarity, Staff suggests defining "switchyard" and "substation." A switchyard transmits high voltage power from generation plants to a utility's distribution system. On the other hand, a substation transforms high voltage power into lower voltages suitable for local distribution.[1]

Staff does not oppose clarifying that constructing a substation does not require a CEC; however, this clarification may not have any substantial impact to the number of applications coming before the Committee. Staff is not aware of any previous CEC applications only involving substations that would not have gone to a hearing due to the proposed clarification.[2]

It may be beneficial to seek input from the Line Siting Committee on the number of utilities that seek a CEC to construct only a substation and whether adopting a policy regarding substations would reduce the number of CEC applications that require a hearing.

Clarifying that constructing a substation does not require a CEC and/or that the definition of "transmission line" does *not* include substations would require the Commission to issue a substantive policy statement because the Commission would be informing the public of the agency's approach to or opinion of requirements under the line siting statutes.[3] The substantive policy statement could also include the Commission's approach to or opinion of what constitutes a "switchyard" and "substation," as recommended by Staff. However, these changes may be better addressed through rulemaking, which the Legal Division generally recommends.

## 2. Hybrid hearings

Staff understands why the Committee began conducting hybrid virtual/in-person hearings and has no issue with the Committee's decision to conduct hybrid virtual/in-person hearings.

---

[1] In Case No. 186, Tucson Electric Power witness Edmond Beck provided a helpful discussion of the difference between substation and switchyard, noting that the legislature's use of only "switchyard" in the statute was likely deliberate because "[s]witchyards are required to interconnect transmission lines whereas substations are typically used for load serving purposes." Direct Testimony of Edmond Beck at 6, https://docket.images.azcc.gov/0000200968.pdf.

[2] *See Id.* (stating that "TEP's long-standing position has been to include information regarding substations but not request approval of them.").

[3] A substantive policy statement informs the public of the agency's approach to or opinion of the requirements under statutes and regulations, including the agency's "current practice, procedure or method of action based upon that approach or opinion." A.R.S. 41-1001(24). A substantive policy is advisory only. *Id.* It can only affect the internal procedures of the agency and cannot impose additional requirements or penalties on regulated parties. *Id.*

A.A.C. R14-3-201(A) provides the Committee with discretion to hold sessions at the time and place that the Committee's business may require. Accordingly, any directive from the Commission that the Committee *must* conduct hybrid hearings would require a change to the rules.[4]

### 3. Undergrounding transmission lines

The Legal Division cautions against setting policies that may constrain the Commission in exercising its discretion when setting rates. The facts of each case are unique, and there may be instances where a utility demonstrates that ratepayer recovery of undergrounding transmission lines is warranted. Importantly, the Commission has discretion to disallow investments that were not prudently incurred. Thus, the Commission can ensure ratepayers do not bear the burden of undergrounding transmission lines where it is not warranted.

It is worth noting that stakeholders often cover the cost of undergrounding transmission lines so that costs are not passed on to ratepayers. For example, industrial customers, like data centers, have paid the cost to underground lines or have split costs with the municipality requesting the lines be undergrounded.

If the Commission decides to move forward with this proposal, a rulemaking would be required because the Commission would be prescribing law or policy. It would not be appropriate to adopt a rule regarding ratepayer recovery as part of the line siting rules, however. The Line Siting Committee has no jurisdiction over rates, and a line siting rule regarding ratepayer recovery would therefore be outside the scope of authority granted under the line siting statutes. Additionally, the Line Siting Committee does not have jurisdiction over underground transmission lines. A.R.S. § 40-360(10) defines "transmission lines" as "a series of new structures erected *above ground* . . ." (emphasis added).

### 4. Public outreach

Additional public outreach prior to filing a CEC application can be beneficial. Additional forms of public outreach could include posts or ads on social media and mailing fliers to a wider radius of homes and businesses in the project area.

Specifying the additional forms of public notice would require a rule change because an existing rule defines what is required for public notice. *See* A.A.C. R14-3-208(C). A policy statement would not be sufficient in this instance because the proposal would impose new requirements on regulated parties.

---

[4] A rule is a "statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedure or practice requirements of an agency." A.R.S. § 41-1001(21). Prescribing fees or the amendment or repeal of a prior rule requires rulemaking. *Id.* Rules must only be promulgated pursuant to existing constitutional or statutory authority. In other words, a rule cannot exceed the scope of authority granted in the constitution or statute.

**5. Electronic filing**

Similar to the filing of other documents, the electronic filing of line siting documents would be beneficial. Eliminating the paper filing requirement would require a rule change because an existing rule establishes the paper filing requirement. *See* A.A.C. R14-3-203.

**6. Reconductoring a line or replacing old structures**

Careful consideration should be given to whether or not replacing structures should require a CEC hearing, since there is a possibility that older structures may be replaced with different ones that were not originally approved or discussed during the hearing. One option may be to consider establishing that reconductoring a line or replacing old structures with new ones **that do not differ in size or appearance from the previously approved ones** does not require a hearing or CEC process.

The Commission could issue a substantive policy statement informing the public that it does not believe reconductoring a line requires a CEC. If the Commission includes language that a CEC is not needed to replace old structures with new structures **that do not differ in size or appearance from those previously approved**, as recommended by Staff, the Commission could likely adopt the change through a policy statement. A.A.C. R14-3-207(B) requires Committee approval of amendments that substantially deviate from the original project. Including the language suggested by Staff would be consistent with the rule, and therefore would not require a rule change. If the language is not included, however, a rule change may be necessary.

It is unclear whether this proposal would have a significant impact on reducing the number of hearings since the passage of HB 2496 changed the definition of "transmission line" to "five or more new structures that span more than one mile in length . . ." It is possible that the new definition of "transmission line" will exclude a large portion of repair projects identified in this proposal.

It may be beneficial to receive input from the Line Siting Committee as to whether adopting a policy statement would reduce the number of CEC applications that require a hearing after the new definition of "transmission line" takes effect.

**7. Establish a priority system for CEC hearings**

Making a determination on the urgency of projects without clear standards for prioritizing projects may be difficult and subjective. Staff therefore recommends that if the Commission decides to move forward with this proposal, the Commission should take steps to establish clear criteria for the prioritization of projects.

In addition, Staff analyzes System Impact Studies ("SIS") after a CEC application is filed to determine whether the proposed project improves the reliability and/or safety of the operation of the grid and the delivery of power in Arizona. When an applicant wishes to interconnect with one

of Arizona's load-serving entities, it submits a request for interconnection and the project is placed in an interconnection queue. It is Staff's understanding that the SIS must be completed in the order of the interconnection requests. Thus, having the Committee select projects it deems more urgent could lead to some applications being filed without the necessary studies being completed, which would make it difficult for Staff to evaluate the technical impacts of proposed projects.

Additionally, the line siting statutes **require** applicants to provide an SIS as part of a power flow and stability analysis. A.R.S. § 40-360.02(C)(7). Failure to provide this analysis "constitute[s] a ground for refusing to consider an application of such a person." A.R.S. § 40-360.02(E). Because processing an application without a power flow and stability analysis would violate the line siting statutes, regulated entities may be hesitant to proceed without one.

Replacing the first-come, first-served approach would require *both* a statutory change and a rule change. A.R.S. § 40-360.04 requires the Chairman of the Committee to provide public notice of the time and place for a hearing within 10 days of receiving an application. The statute requires a hearing be held not less than 30 nor more than 60 days after notice is given. *Id.* The line siting rules require the same timeline. A.A.C. R14-3-208(A)-(B). The statute and rules effectively establish the first-come, first-served approach utilized by the Line Siting Committee, and therefore both the statute and rules would need to be amended.

As discussed above, adopting a prioritization system would likely impact the requirement to submit a power flow and stability analysis under A.R.S. § 40-360.02(C)(7) and could require a change to that statute as well. However, Staff does not recommend removing that requirement, as it enables Staff to determine impacts from proposed projects to the grid.

Finally, if a prioritization system were to be adopted through statutory and rule change, the Legal Division agrees with Staff's recommendation that the Commission establish clear criteria for prioritizing projects. The criteria would need to be adopted by statute or rule.

DRC:LH:KMU:jn

Originators: Luke J. Hutchison and Kathryn M. Ust

# Arizona Pub. Serv. Co. v. Paradise Valley

Supreme Court of Arizona

April 22, 1980

No. 14605-PR

**Reporter**
125 Ariz. 447 *; 610 P.2d 449 **; 1980 Ariz. LEXIS 206 ***

ARIZONA PUBLIC SERVICE COMPANY, a public service corporation, Plaintiff-Appellee, v. TOWN OF PARADISE VALLEY, a municipal corporation, Defendant-Appellant, Bud Tims, Ernest Garfield and Jim Weeks as members of and constituting the Arizona Corporation Commission, Defendants-Appellees

**Prior History:** **[***1]** Appeal from the Superior Court of Maricopa County

Cause No. C-355464

The Honorable Kenneth C. Chatwin, Judge

Opinion of the Court of Appeals, Division One, Ariz. , P.2d (App. 1979) Vacated

**Disposition:** Reversed and remanded.

**Counsel:** Snell & Wilmer by H. William Fox, Phoenix, for plaintiff-appellee.

Roger A. McKee and Douglas A. Jorden, Paradise Valley, for defendant-appellant.

John A. LaSota, Jr., former Atty. Gen., Robert K. Corbin, Atty. Gen. by Charles S. Pierson, Asst. Atty. Gen., Phoenix, for defendants-appellees.

J. LaMar Shelley, Mesa, brief amicus curiae of League of Arizona Cities and Towns.

**Judges:** In Banc. Cameron, Justice. Struckmeyer, C. J., Holohan, V. C. J., and Hays and Gordon, JJ., concur.

**Opinion by:** CAMERON

## Opinion

**[*448]** **[**450]** We granted the petition for review of the appellant, Town of Paradise Valley, of a decision and opinion of the Court of Appeals affirming a summary judgment in favor of Arizona Public Service and the members of the Arizona Corporation Commission. A.R.S. § 12-120.24; Rule 23, Rules of Civil Appellate Procedure, 17A A.R.S.

There is only one question on appeal and that is whether the legislature may constitutionally **[***2]** delegate to cities and towns the authority to direct the undergrounding of public utility poles.

The facts necessary for a determination of this matter on appeal are as follows. In 1964, the Town of Paradise Valley passed Ordinance No. 30 requiring new and higher capacity utility lines to be placed underground. The ordinance stated:

> "* * * no person shall erect within the town boundaries and above the surface of the ground any new utility poles and wires except after securing a special permit therefor from the Town Council * * *."

Criminal penalties were provided for failure to comply with the ordinance.

Arizona Public Service replaced some of its existing utility poles without applying to the Town for a special use permit. As a result, Arizona Public Service was charged with a misdemeanor criminal complaint before the town magistrate. Arizona Public Service then instituted a special action in the Superior Court, joining the Arizona Corporation Commission and the Town. The Superior Court, in granting appellee's motion for summary judgment, declared the ordinance invalid. The Town appealed to the Court of Appeals which affirmed the decision of the trial court. **[***3]** We granted the Town's petition for review.

**[*449]** **[**451]** Because this is a review from the granting of a motion for summary judgment, we must look at the facts in a light most favorable to the party against whom the summary judgment has been taken, in this case, the Town. Rule 56, Arizona Rules of Civil Procedure, 16 A.R.S.; *Hall v. Motorists Ins. Corp.*, 109 Ariz. 334, 509 P.2d 604 (1973). For that reason, we accept the Town's allegations that although the initial cost of undergrounding may be more, the maintenance costs are less and the long term cost is the same or less

than the cost of above ground utility poles.

Our Constitution reads:

> "Art. 15
> "§ 3 Power of commission as to classifications, rates and charges, rules, contracts, and accounts; local regulation
>
> "Section 3. The Corporation Commission shall have full power to, and shall, prescribe just and reasonable classifications to be used and just and reasonable rates and charges to be made and collected, by public service corporations, within the State for service rendered therein, and make reasonable rules, regulations, and orders, by which such corporations shall be governed in the transaction **[***4]** of business within the State, and may prescribe the forms of contracts and the systems of keeping accounts to be used by such corporations in transacting such business, and make and enforce reasonable rules, regulations, and orders for the convenience, comfort, and safety, and the preservation of the health, of the employees and patrons of such corporations; *Provided, that incorporated cities and towns may be authorized by law to exercise supervision over public service corporations doing business therein, including the regulation of rates and charges to be made and collected by such corporations*; Provided further that classifications, rates, charges, rules, regulations, orders, and forms or systems prescribed or made by said Corporation Commission may from time to time be amended or repealed by such Commission." (Emphasis added)

Early in our history, we held that the Corporation Commission's power was paramount, *State v. Tucson Gas, Electric Light and Power Company*, 15 Ariz. 294, 138 P. 781 (1914), and that the legislature could not delegate powers possessed by the Corporation Commission to a local government unless the Corporation Commission was, at the same time, divested **[***5]** of such powers. *Phoenix Railway Co. v. Lount*, 21 Ariz. 289, 187 P. 933 (1920). In later cases, however, we held that the Corporation Commission's paramount power is limited to rates, charges or classifications and that, as to all other matters, the legislature has the power to take what action it deems appropriate. *Williams v. Pipe Trades Industry Program of Arizona*, 100 Ariz. 14, 409 P.2d 720 (1966); *Southern Pacific Co. v. Arizona Corporation Commission*, 98 Ariz. 339, 404 P.2d 692 (1965). We stated:

> "[T]he paramount power to make all rules and regulations governing public service corporations not specifically and expressly given to the commission by some provision of the Constitution, rests in the legislature, and it may, therefore, either exercise such powers directly or delegate them * * *." *Corporation Commission v. Pacific Greyhound Lines*, 54 Ariz. 159, 176-77, 94 P.2d 443, 450 (1939).

The question before the court, then, is not whether the legislature has the power to authorize the Town to pass an ordinance requiring undergrounding, but whether it has, in fact, done so. In the instant case, we believe that the legislature has given cities and **[***6]** towns the power to require the undergrounding of utility poles as part of the town's zoning powers. The statute reads as follows:

> "A. Pursuant to the provisions of this article, the legislative body of any municipality by ordinance may:
> * * *
> "3. Regulate location, height, bulk, number of stories and size of buildings and structures * * *." A.R.S. § 9-462.01(A)(3).

**[*450]** **[**452]** This statute is a legislative grant to the cities of the authority to regulate the use, location, height and size of utility poles as part of the towns' general planning and zoning power. The height and location of utility poles is a common subject of planning and zoning statutes and ordinances, *Kahl v. Consolidated Gas, Electric Light & Power Co.*, 60 A.2d 754, 191 Md. 249 (1948). We find nothing in the Arizona statutes which exempts utility poles from the grant of authority to the towns to enact zoning laws. We believe this statute gives the Town the power to require the undergrounding of utility poles in the Town pursuant to statute.

A second statute is cited by the Town and reads as follows:

> "A. In addition to the powers already vested in cities by their respective **[***7]** charters and by general law, cities and their governing bodies may:
> * * *
> "5. Regulate the erection of poles and wires, the laying of street railway tracks, and the operating of street railways in and upon its streets, alleys, public grounds and plazas." A.R.S. § 9-276(A)(5).

The Court of Appeals and the appellees contend that the doctrine of ejusdem generis obviously applies to this

statute, and that therefore the Town has the power to regulate "poles and wires" only in connection with the laying and operation of street railways. We do not agree.

Ejusdem generis is applicable to statutes in which there are listed specific categories followed by a general category:

> "Where, in a statute, general words follow a designation of particular subjects or classes of persons, the meaning of the general words will ordinarily be presumed to be restricted by the particular designation, and to include only things or persons of the same kind, class, or nature as those specifically enumerated, unless there is a clear manifestation of a contrary purpose. A statute enumerating things inferior cannot, by general words, be construed so as to extend to and embrace those which are **[***8]** superior. In accordance with the rule of ejusdem generis, such terms, as 'other,' 'other thing,' 'others,' or 'any other,' when preceded by a specific enumeration, are commonly given a restricted meaning, and limited to articles of the same nature as those previously described. * * *" 25 R.C.L. §§ 996, et seq., cited in 39 A.L.R. 1404.

In an early case of this court wherein the legislature enumerated nine particular businesses engaged primarily in the tourist industry, such as hotels, dude ranches, etc., followed by the term "or any other business or occupation charging * * * rents," we said:

> "The rule of ejusdem generis invoked by appellant removes any doubt that may exist as to its intention in this respect, if applicable, and it occurs to us that it is. According to it the Legislature, in following the enumeration of the nine particular businesses by the general term 'or any other business or occupation charging * * * rents,' intended to limit or restrict the meaning of this general language to businesses or occupations of the same kind, class or character as those specifically mentioned, that is, to those furnishing living accommodations to tourists or transients." **[***9]** *White v. Moore*, 46 Ariz. 48, 57, 46 P.2d 1077, 1081 (1935). See also *State Board of Barber Examiners v. Walker*, 67 Ariz. 156, 192 P.2d 723 (1948).

A.R.S. § 9-276(A)(5) is not a case of a general category following the enumeration of specific categories. Section 5 gives the Town the power to regulate three different items -- the erection of poles and wires, the laying of street railway tracks, and the operation of street railways on the streets, alleys, and public grounds and plazas of the towns. Each grant of authority stands equal and alone.

The doctrine of ejusdem generis, like other rules of statutory construction, is an aid in ascertaining the legislative intent. *United States v. Gilliland*, 312 U.S. 86, 61 S.Ct. 518, 85 L.Ed. 598 (1941); *Orr Ditch* ***[*451]*** **[**453]** *and Water Co. v. Justice Ct. of Reno*, 64 Nev. 138, 178 P.2d 558 (1947). Where the intent of the legislature is apparent, it may not be used to obscure and defeat the intent and purpose of the legislation. *United States v. Alpers*, 338 U.S. 680, 70 S.Ct. 352, 94 L.Ed. 457 (1950); *People v. McGuane*, 13 Ill.2d 520, 150 N.E.2d 168, 71 A.L.R.2d 580, cert. denied 358 U.S. 828, 79 **[***10]** S.Ct. 46, 3 L.Ed.2d 67 (1958). We do not believe that the doctrine applies here.

Appellees further rely on A.R.S. § 40-341, et seq., for the position that the legislature intended that cities and towns should not have the authority to require undergrounding at the expense of the utility. § 40-341, et seq., provide for the creation of underground conversion districts for the purpose of converting overhead electric lines to underground facilities to be paid for by the property holder in the district and not the utility. § 40-344(J) recognizes the role of the cities and towns by stating that:

> "J. The corporation commission or the board of supervisors shall not establish any underground conversion service area without prior approval of such establishment by resolution of the local government."

We do not believe this statute is evidence of a legislative intent that the cities and towns do not have power over utility poles in the town. The fact that property owners may petition for the creation of an underground conversion district and be bound to pay for the undergrounding instead of the utility, does not prevent the Town from mandating the undergrounding at utility expense.

**[***11]** Finally, reference is made to A.R.S. § 40-360, et seq., concerning the creation of a siting committee for transmission lines of 115 KV or greater. The lines in the Town of Paradise Valley are mostly 12 KV, with some 69 KV. The statute does not apply to lines in the Town. Even so, the statute states as to the high energy transmission lines:

> "Any certificate granted by the committee shall be conditioned on compliance by the applicant with all

> applicable ordinances, master plans and regulations of the state, a county or an incorporated city or town, except that the committee may grant a certificate notwithstanding any such ordinance, master plan or regulation, exclusive of franchises, if the committee finds as a fact that compliance with such ordinance, master plan or regulation is unreasonably restrictive and compliance therewith is not feasible in view of technology available." A.R.S. § 40-360.06(D).

These exceptions evidence a legislative recognition that the cities and towns have the power to act in this area.

We believe that, in the absence of a clear statewide preemptive policy not shown here, local governments can prescribe undergrounding within their boundaries. **[***12]** See *Kahl v. Consolidated Gas, Electric Light & Power Co.*, supra; *Benzinger v. Union Light, Heat & Power Co.*, 293 Ky. 747, 170 S.W.2d 38 (1943); *Central Me. Power Co. v. Waterville Urban Ren'l Auth.*, 281 A.2d 233 (Me.1971); *Sleepy Hollow Lake, Inc. v. Public Service Commission*, 352 N.Y.S.2d 274, 43 A.D.2d 439 (1974); 7 McQuillin, Municipal Corporations, § 24.588 (3d ed. 1968).

Reversed and remanded for proceedings not inconsistent with this opinion.

---

# 40-347. Establishment of conversion costs; apportionment of costs; method of payment

A. The order authorizing the establishment of the underground conversion service area shall authorize each public service corporation or public agency whose overhead electric or communication facilities are to be converted to charge the underground conversion costs to each lot or parcel of real property within the underground conversion service area. The underground conversion costs shall be in an amount sufficient to repay the public service corporation or public agency for the following:

1. The remaining undepreciated original costs of the existing overhead electric and communication facilities to be removed as determined in accordance with the uniform system of accounts applicable to the public service corporation or public agency.

2. The actual costs of removing such overhead electric and communication facilities, less the salvage value of the facilities removed.

3. The contribution in aid of construction which the public service corporation or public agency would require under its rules and regulations applicable to underground conversion service areas.

4. If not paid in full as provided in section 40-348, the actual cost of converting to underground the facilities from the public place to the point of delivery on the lot or parcel owned by each owner receiving service, in the case of an electric public service corporation or public agency, or to the connection point within the house or structures, in the case of a communication corporation, less any credit which may be given such owner under the line extension policy of the public service corporation or public agency then in existence.

5. If property belonging to the United States, this state, county, city, school district or any other political subdivision or institution of the state or county is included in the underground conversion service area, and they do not voluntarily assume such costs, the underground conversion cost applicable to such property shall be charged pro rata against the remaining property included within the underground conversion service area.

B. The cost incurred in placing underground the facilities in public places shall be apportioned among the owners of property within the area on the basis of relative size of each parcel by the corporation commission, the board of supervisors or the city or town council. The underground conversion cost, as determined by the method prescribed in subsection A shall not exceed the estimated costs indicated in the joint report prepared by the public service corporation or public agency pursuant to subsection D of section 40-342 and, may be paid in cash by the property owners within sixty days from the date the overhead facilities are removed from public places, or may be paid by a uniform plan applicable to all property owners not paying within the sixty-day period in equal periodic installments over a reasonable period of time, not exceeding fifteen years, as established by the corporation commission, the board of supervisors or the city or town council, together with interest at a rate to be determined by the corporation commission, the board of supervisors or the city or town council but not to exceed eight per cent per annum.

C. If funds become available from other public or private sources to pay all or any part of the underground conversion costs, any such funds shall be applied on a pro rata basis to reduce the underground conversion cost charged against each parcel or lot.

D. Notwithstanding the provisions of subsection B of this section, the public service corporation or public agency serving such area may by agreement with all the owners of the property in an underground conversion service area provide for reimbursement to it of the cost of such conversion on a different basis as to payment or security than that set out by the terms of this article.

# 48-620. Improvement districts for underground utility and cable television facilities in public rights-of-way and easements; procedures; costs; definitions

A. Subject to the limitations contained in this section, the powers and duties of the governing body of a municipality for establishing underground utility facilities are as provided in this article for other types of improvement districts.

B. Notwithstanding section 48-507, after the governing body passes a resolution or notice declaring its intention to order an improvement district for underground utility facilities, the governing body shall hold a hearing at least thirty days after the completion of the posting and publication of the notice of intention pursuant to section 48-506. At the hearing, the governing body shall consider the issue of ordering an election on the formation of the improvement district and shall receive public comment on the proposed district. Section 48-507, regarding written protests of the proposed improvement, does not apply to a district formed pursuant to this section. The governing body may only order the election on the issue of formation of the district if the owners of real property in the district have signed and submitted petitions to the clerk of the governing body in support of the formation of the district. The petitions shall comply with the following:

1. Clearly state that they are petitions in support of the formation of an underground utility improvement district and shall specifically describe in words or by use of a map the location of the proposed district's boundaries. The petitions shall require the signer's signature, name and address or description of the property that is owned in the district in a manner sufficient to determine ownership through the use of public records.

2. Be signed by owners of a majority of the real property within the boundaries of the proposed district as measured by square footage or acreage owned. Signatures are not required to be notarized and for property with more than one owner, the signature of one owner is binding on the remaining owners of the property. On submittal to the clerk of the governing body, the petitions are a public record. Ownership of property is as of the date of the hearing and is determined by records of the county assessor or other public records regarding property ownership. For purposes of this paragraph, "owner" means a person, association, corporation or other entity without regard to residency.

C. If the governing body finds that sufficient signatures are submitted pursuant to subsection B of this section, the governing body may proceed with a simplified ballot card election pursuant to subsection G of this section. If there are not sufficient signatures, the governing body shall not proceed with the formation of the district. If no registered voters reside within the area of the proposed district, an election is not required and the governing body may declare the formation of the district.

D. The requirement pursuant to section 48-577 that plans and specifications be filed prior to adoption of the resolution of intention may be satisfied by a general plan showing at least the general location and type of facilities to be constructed. Actual plans and specifications shall be filed following the adoption of the resolution ordering the election regarding the improvement but before the election and the recording of the assessment and warrant. A person interested and objecting to an improvement or to the extent of the assessment district for a district established pursuant to this section may file a written protest with the city or town clerk within thirty days after completion or posting of the notice, or within thirty days after the date of the last publication of the notice if that date is after the completion of the posting.

E. The requirement pursuant to section 48-584 for notice of the award of contract may be satisfied by the inclusion in the resolution of intention of the name of the coordinating utility. The fifteen-day period for filing notice of objections under section 48-584, subsection E shall begin on completion of publication and posting of the notice of proposed improvement stating the name of the coordinating utility.

F. The governing body shall determine the boundaries of the district and designate the transmission facilities and, if applicable, any independent parallel facilities, to be placed underground and shall obtain from the coordinating utility an accurate statement of the costs of the project, including an estimate of the average cost in assessments

on an average single family residence in the district. The amount shall be included in the engineer's estimate required by section 48-577. The costs shall include:

1. The amount by which the cost of placing facilities underground would exceed the cost of placing comparable facilities overhead.

2. The reconstruction cost and net depreciation costs of any existing facilities to be removed.

3. The actual costs of removing such existing facilities, less the salvage value of the facilities removed.

4. The charge to finance the costs prescribed in this subsection over a stated period of not to exceed fifteen years.

5. The tax reimbursement amount.

G. On receipt of an accurate estimate of the costs of the project, the governing body shall call a simplified ballot card election in the area affected by the proposed district. The simplified ballot card shall contain the words for a district formation election "district, yes" and "district, no" and for an assessment election "assessment, yes" and "assessment, no". A single simplified ballot card may be used for both the question of the formation of the district and the question of the assessment. The election may be conducted in a simplified format and administered by the governing body. The governing body shall mail to all registered voters and property owners within the proposed district simplified ballot cards with return postage prepaid. The simplified ballot card shall clearly state that to be valid a voted ballot card shall be returned to the governing body within thirty days after the governing body mails the ballot card and a ballot card that is not timely returned shall not be counted. A person who is qualified to vote in a municipal election for that municipality or a property owner who owns land within the proposed improvement district is qualified to vote in an election for a municipal improvement district formed pursuant to this section, except that only residents of or property owners in the area that is within the proposed district may vote. If a majority of the persons voting with the simplified ballot card approves the formation of the district and if a majority of the persons voting with the simplified ballot card approves the assessment, the governing body may form the district and make the assessment. If more than one governing body is affected by a proposed district, each governing body may form its own district for the portion of the work within its jurisdiction. Assessments for districts that are formed for a portion of the same project shall be distributed between districts in proportion to the benefits to be received. When the governing body acquires jurisdiction to order the work, it shall not call for construction bids but may enter into a contract or contracts with the utility, utilities or licensed cable television system whose facilities are to be placed underground. Prior to entering into a contract or contracts the coordinating utility shall submit a final report to the municipality. The amount stated in the final report may be based on detailed engineering studies. If the amount stated in the final report exceeds the amount stated in the preliminary report the governing body may either:

1. Terminate the project.

2. Call a new election on the improvement.

H. The contract shall provide for payment to the utility or licensed cable television system over a term of not to exceed fifteen years of the amount set forth in the final report, shall specify those facilities to be owned by the municipality and those to be owned by the utility, utilities or licensed cable television system and shall contain such provisions for the prepayment of any assessment at the option of any property owner, and such other terms, covenants and conditions as the governing body and the utility, utilities or licensed cable television system determine. The licensed cable television system shall not be entitled to reimbursement except where the cable television system's parallel facilities are installed to replace existing cable television facilities other than independent parallel facilities not included by the governing body in the work. The amount payable on the contract or contracts is payable solely from amounts collected on the assessment levied in the district. A payment or performance bond is not required of a utility or licensed cable television system entering into a contract with the governing body.

I. The municipality may retain an independent engineering consultant to review all reports, estimates and costs provided by the coordinating utility.

J. The coordinating utility shall advance or reimburse a governing body for the costs of forming the district and the cost of printing, advertising and posting incurred or to be incurred by a governing body and shall bear its own expenses for engineering and design, and preparing the reports, plans and specifications. On completion of the work, the coordinating utility shall reimburse a governing body for its reasonable expenses incurred with respect to the district. Unless otherwise provided for in a manner acceptable to the coordinating utility, the amounts advanced or reimbursed shall be included in the contract and in the amount assessed.

K. This section does not amend or modify any existing line extension policies of any utility involved. The costs to be reimbursed under the contract shall be reduced to the extent of amounts paid or to be paid by landowners or from other sources directly to the utility or cable television system for the installation of the facilities.

L. The assessment and warrant may be recorded at any time following approval of the project at an election. The hearing on the assessment may be held at any time not less than twenty days from the date of recording of the assessment and warrant. An additional hearing following notice from the superintendent of streets to the governing body of completion of the work shall be requested only if any member of the governing body or any owner of or any person claiming an interest in any lot that received an assessment, within one year of the date of the notice of completion, files a written notice with the clerk stating that the work has not been performed substantially in accordance with the resolution of intention, the plans and specifications and estimate. The notice shall state in particular the failure to perform and may also state, if applicable, any requested reduction in the assessment of any one or more parcels due solely to the failure of such performance. The notice shall state the name and address of the person filing the notice and shall describe such person's interest in land subject to assessment. The governing body may enforce the contract and may recess the hearing to permit the utility or licensed cable television system to complete the work. If the work cannot be completed, the assessment may be adjusted to take the failure to complete into consideration. The amount due under the agreement with the utility or licensed cable television system shall be adjusted accordingly. Repayment under the contract shall be conditioned on completion of the work and approval of the assessment as provided by law. Unless an objection has been filed, repayment shall begin within nine months of the notice of completion.

M. An improvement district formed pursuant to this section shall not issue bonds, and the assessment for district purposes against the property within the district shall not exceed the amount specified in the engineer's estimate. Notwithstanding any other statute, the assessment for an underground electrical power line shall not be assessed against the owners of the frontage of the right-of-way of the underground power line but shall be assessed against all property owners benefiting from the burial of the power line.

N. The governing body shall provide for the levy and collection of assessments on the real property in the district in the manner provided for in this article. However, the assessment may be paid in installments necessary to pay amounts due under the contract and to reimburse the municipality for expenses incurred as provided in the assessment.

O. A district formed under this section shall not engage in any activity other than contracting for or establishing underground transmission facilities together, where applicable, with parallel facilities.

P. The governing body by resolution may summarily determine that it will participate in the costs of the improvement. If the municipality is willing to assume the total outstanding assessment for the underground utility facilities, the governing body may summarily dissolve the district by resolution after payment of all liabilities including all amounts due under the contract.

Q. The formation of an improvement district for underground utility facilities under this section does not prevent the establishment of other improvement districts which may include all or part of the same property for any purposes authorized by law.

R. If a petition for the formation of an improvement district for underground utilities is presented to the governing body, and the petition purports to be signed by all of the real property owners in the proposed district exclusive of mortgagees and other lienholders, the governing body, after verifying such ownership and making a finding of such fact, may adopt a resolution of intention to order the proposed improvement pursuant to section 48-576 and has immediate jurisdiction to adopt the resolution ordering the improvement pursuant to section 48-581, without the necessity of publication and posting of the resolution of intention provided for in section 48-578.

S. If the governing body determines that a parcel of property is a single family residence and that payment of the assessment would cause a financial hardship on the owners which would be likely to cause a delinquency in payment of the assessment, the assessment for an improvement made under this section shall provide for an extension in the time to pay principal and interest on the assessment against that parcel for a period of time not to exceed ten years. If the governing body determines that the grounds for extension no longer exist, then the extension will be terminated and all payments that would have been due but for the extension shall become due. The assessment shall provide for adjustments in the assessments against the remaining parcels to provide for timely payment under the agreement.

T. Notice of the passage of a resolution of intention for an improvement under this section shall be given to the corporation commission and, where the improvement involves a utility regulated thereby, the rural electrification administration.

U. In this section, unless the context otherwise requires:

1. "Coordinating utility" means the utility whose proposed or existing transmission facilities are to be placed underground. The coordinating utility is responsible for assembling into one report cost estimates and other data provided by each utility or licensed cable television system whose facilities are to be placed underground.

2. "Cost" means all costs of design and construction of facilities.

3. "Facilities" means any works or improvements used or useful in providing electric, communications, licensed cable television service or video service, including poles, supports, tunnels, manholes, vaults, conduits, pipes, wires, conductors, guys, studs, platforms, crossarms, braces, transformers, insulators, cutouts, switches, capacitors, meters, communication circuits, appliances, attachments and appurtenances but excluding any works for transmission by microwave or radio. Facilities shall include only transmission facilities and parallel facilities.

4. "Governing body" means the council of a city or town or the board of supervisors of a county.

5. "Independent parallel facilities" means existing parallel facilities that do not rely for their support on poles or other structures to be removed as part of the work. If the utility or licensed cable television system elects to remove the independent parallel facilities but the removal and underground replacement thereof was not included by the governing body in the work, the reconstruction and removal costs of such independent parallel facilities shall not be included in a contract or be assessed.

6. "Parallel facilities" means facilities that run or are permitted to run in the easement in which the transmission facilities are to be placed underground and that may be included underground with the transmission facilities, and facilities appurtenant thereto. Any parallel facilities shall have a right to be included underground and have access to a trench on such reasonable terms and conditions as the coordinating utility and the owners of the parallel facility may determine provided they do not interfere with the installation or operation of the transmission facilities.

7. "Private parallel facilities" means parallel facilities other than those owned or operated by a public utility or licensed cable television system. Private parallel facilities have the rights of parallel facilities except that the costs thereof shall not be included in a contract or be assessed.

8. "Tax reimbursement" means an annual charge for reimbursement for property taxes, or voluntary contributions in lieu of property taxes as provided in chapter 1, article 8 of this title, by applying the tax rates in effect on the date of adoption of the resolution of intention to the amount by which the estimated average taxable value of underground facilities, excluding the value of trenches, backfill and compaction, on completion exceeds the estimated average taxable value of comparable overhead facilities. In this paragraph, "estimated average taxable value" means the average of the estimated taxable value for each year of reimbursement. The value of the trenches, backfill and compaction of the underground facilities shall be attributed to and shall inure to the benefit of the owners of property within the district and shall be owned by the city. Reimbursement shall not be for a period longer than fifteen years.

9. "Transmission facilities" means facilities that are, or are appurtenant to, electric transmission lines of more than twenty-five kilovolts but not more than two hundred thirty kilovolts in size.