

D-1

DEPARTMENT OF TRANSPORTATION (R-18-0106)

Title 17, Chapter 5, Article 8, Mandatory Insurance and Financial Responsibility

Amend: R17-5-801; R17-5-802; R17-5-803; R17-5-804; R17-5-805; R17-5-806;
R17-5-807; R17-5-808; R17-5-809; R17-5-810



GOVERNOR'S REGULATORY REVIEW COUNCIL

STAFF MEMORANDUM – EXPEDITED RULEMAKING

MEETING DATE: January 9, 2018

AGENDA ITEM: D-1

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

FROM: Council Staff

DATE: December 19, 2017

SUBJECT: DEPARTMENT OF TRANSPORTATION (R-18-0106)
Title 17, Chapter 5, Article 8, Mandatory Insurance and Financial Responsibility

Amend: R17-5-801; R17-5-802; R17-5-803; R17-5-804; R17-5-805;
R17-5-806; R17-5-807; R17-5-808; R17-5-809; R17-5-810

SUMMARY OF THE RULEMAKING

This expedited rulemaking, from the Arizona Department of Transportation (Department), seeks to amend ten rules in A.A.C. Title 17, Chapter 5, Article 8, related to mandatory insurance and financial responsibility. The Department states that the rules are being updated to align with current business practices and to clarify the electronic reporting process by which insurance companies report mandatory insurance information to the Department.

The Department indicates that the use of the expedited rulemaking process is justified by A.R.S. § 41-1027(A)(3), as the rulemaking clarifies rule language without changing the effect of the rules, and A.R.S. § 41-1027(A)(7), as the rulemaking implements the course of action proposed in a five-year review report approved by the Council on July 6, 2017. The Governor's Office provided an exemption from Executive Order 2017-02 on June 28, 2017.

Proposed Action

- Section 801 – *Definitions*: Definitions are modified to reflect changes to the other rules.
- Section 802 – *Insurance Company Electronic Reporting Requirement; Applicability*: The term “Division” is replaced with the term “Department.” References to R17-5-806 are replaced with references to “the Arizona Mandatory Insurance Reporting System Guide for Insurance Companies.”
- Section 803 – *Insurance Company Reportable Activity*: The reissuance of a commercial policy is added to the list of items constituting “reportable activity.”

- Section 804 – *Record Matching Criteria for a Vehicle-specific Policy*: The terms “Division” and “MVD” are replaced with the word “Department.”
- Section 805 – *Record Matching Criteria for a Non-vehicle-specific Commercial Policy*: Clarifying changes are made, such as allowing a non-operating identification license number to be used as a customer number if a policy covers all vehicles registered in the name of a private individual.
- Section 806 – *Department-authorized EDI Reporting Methods; Reporting Schedule*: The word “Division” is replaced with the word “Department.” References to R17-5-806 are replaced with references to “the Arizona Mandatory Insurance Reporting System Guide for Insurance Companies.”
- Section 807 – *X12 Data Format for Policy Receipt and Error Return*: Clarifying changes are made, including the addition of subsection (C), which requires the Department to “return to a company an acknowledgment that a transmission of reportable activity was received and processed using the format in the Arizona Mandatory Insurance Reporting System Guide for Insurance Companies.”
- Section 808 – *Insurance Company Reporting Errors; Resolution; Noncompliance*: Clarifying changes are made, including the addition of a requirement for the Department to return to a insurance company all reporting errors received after a transmission.
- Section 809 – *Insurance Company Failure to Submit Required Data; Request for Hearing*: Clarifying changes are made.
- Section 810 – *Self-Insurance as Alternate Proof of Financial Responsibility; Provisions; Applicability*: The term “Division” is replaced with the term “Department.”

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

Yes. The Department cites to a number of statutes as authority for the rules, including A.R.S. § 28-366(A)(3), under which the Department shall adopt rules “necessary for [e]nforcement of the provisions of the laws the director administers or enforces.”

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

No. The rules do not establish a new fee or contain a fee increase.

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

No. The Department indicates that it has not received any public comments on the rulemaking.

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

No. Only non-substantive technical changes have been made between the Notice of Proposed Expedited Rulemaking and the Notice of Final Expedited 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?

No. The Department states that there is no corresponding federal law related to the rules.

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

No. The rules do not require a permit or license.

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?

No. The Department indicates that it did not rely on any study in its evaluation of, or justification for, the rules.

8. Conclusion

If approved, this expedited rulemaking will become effective immediately upon filing with the Secretary of State. See A.R.S. § 41-1027(H). Council staff recommends approval of the expedited rulemaking.

November 14, 2017

Ms. Nicole Ong Colyer
Governor's Regulatory Review Council
100 North 15th Avenue, Suite 305
Phoenix, AZ 95007

Re: Final Expedited Rulemaking, 17 A.A.C. 5, Article 8 - Mandatory Insurance and Financial Responsibility

Dear Ms. Ong Colyer:

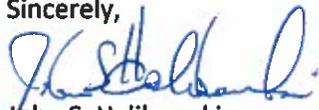
The Arizona Department of Transportation submits the accompanying final expedited rulemaking for consideration by the Governor's Regulatory Review Council. The following information is provided to comply with R1-6-202:

- a. The rulemaking record closed on November 1, 2017 and no public comments were received on these rules.
- b. This rulemaking meets the criteria in A.R.S. § 41-1027(A), which allows an agency to conduct expedited rulemaking if the rulemaking does not increase the cost of regulatory compliance, increase a fee, or reduce the procedural rights of persons regulated. In addition, the rules implement, without material change, a course of action proposed in a Five-Year Review approved by the Governor's Regulatory Review Council within the prescribed timeframe. The rules also make name changes and clarify rule language without changing the effect of the rules.
- c. This rulemaking relates to a five-year review report approved by the Governor's Regulatory Review Council on July 6, 2017.
- d. A certification that the preamble to the rulemaking stated that the Department did not review or rely on a study relevant to the rule.

Documents enclosed in this final expedited rulemaking are as follows:

- a. Signed cover letter;
- b. Notice of Final Expedited Rulemaking;
- c. General and specific statutes authorizing the rule and relevant definitions; and
- d. Text of the existing rule.

Sincerely,



John S. Halikowski
Director, ADOT

Enclosures

NOTICE OF FINAL EXPEDITED RULEMAKING
TITLE 17. TRANSPORTATION
CHAPTER 5. DEPARTMENT OF TRANSPORTATION - COMMERCIAL PROGRAMS
PREAMBLE

<u>1. Article, Part, or Section Affected (as applicable)</u>	<u>Rulemaking Action</u>
R17-5-801	Amend
R17-5-802	Amend
R17-5-802	Amend
R17-5-803	Amend
R17-5-804	Amend
R17-5-805	Amend
R17-5-806	Amend
R17-5-807	Amend
R17-5-808	Amend
R17-5-809	Amend
R17-5-810	Amend

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

Authorizing statutes: A.R.S. §§ 28-366, 28-4001, 28-4002, 28-4007, 28-4081, 28-4148

Implementing statutes: A.R.S. §§ 20-237, 28-4007, 28-4033, 28-4084, 28-4135, and 28-4148

3. The effective date of the rule:

This rulemaking becomes effective immediately on filing with the Secretary of State.

4. Citations to all related notices published in the Register that pertain to the record of the Notice of Final Expedited Rulemaking:

Notice of Docket Opening: 23 A.A.R. 2953, October 20, 2017

Notice of Proposed Expedited Rulemaking: 23 A.A.R. 2930, October 20, 2017

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

Name: Jane McVay
Address: Department of Transportation
206 S. 17th Ave., MD 140A
Phoenix, AZ 85007
Telephone: (602) 712-4279
E-mail: jmcvay@azdot.gov

6. An agency’s explanation why the proposed expedited rule should be made, repealed or renumbered, under A.R.S. § 41-1027(A) and why expedited proceedings were justified under A.R.S. § 41-1001(16)(c)

The Department received approval from Matt Clark in the Governor’s Office on June 28, 2017 for an

exemption from the rulemaking moratorium. This rulemaking complies with A.R.S. § 41-1027(A), which allows an agency to conduct expedited rulemaking if the rulemaking does not increase the cost of regulatory compliance, increase a fee, or reduce the procedural rights of persons regulated. In addition, the rules comply with A.R.S. § 41-1027(A)(3) by making name changes and clarifying language without changing the effect of the rules. In accordance with A.R.S. § 41-1027 (A)(7), the rules also implement, without material change, a course of action proposed in a Five-Year Rule Report approved by GRRC within 180 days of the date that the agency filed the proposed rules with the Secretary of State. The Department submitted a Five-Year Review Report to the Governor’s Regulatory Review Council (GRRC) that was approved on July 6, 2017. The Department filed proposed expedited rules with the Secretary of State on October 2, 2017. The Department complied with the requirements of the expedited rulemaking process and rulemaking procedures, including posting the rules on the Department’s website for 30 days prior to holding an oral proceeding on November 1, 2017.

The rulemaking updates the rules with current business practices and clarifies the electronic reporting process for insurance companies to report mandatory insurance information to the Department. This rulemaking makes technical and clarifying rule changes recommended in this Five-Year Review Report. These changes include defining and referencing the *Arizona Mandatory Insurance Reporting System Guide for Insurance Companies*, clarifying the definition of customer number, changing appropriate references to the Motor Vehicle Division to the Department, clarifying the definition of service provider, clarifying that reportable activity includes commercial policy reissuance, and removing outdated language.

7. A reference to any study relevant to the rules that the agency reviewed and proposes either to rely on, or not to rely on in its evaluation of, or justification of the rules, 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 rely on any studies.

8. A showing of good cause is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state.

Not applicable.

9. The agency is exempt from the requirements under A.R.S. § 41-1055(G) to prepare and file an economic, small business, and consumer impact statement under A.R.S. § 41-1055(D)(2).

The Department is exempt from filing an economic, small business, and consumer impact statement for the rules, and the rules do not impose any new costs or regulatory burdens on the public or insurance companies.

10. A description of any changes between the proposed expedited rulemaking and the final expedited rulemaking:

In R17-5-805(B), the Department struck “MVD Customer” and inserted “Department customer”.

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

The Department did not receive any comments or objections to the rulemaking.

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

No other matters are prescribed by statute that are specifically applicable to ADOT or this rulemaking.

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

The 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:

A specific federal law is not applicable to the rules.

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

A business competitive analysis has not been submitted to the Department.

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

The rules do not contain any incorporations by reference.

14. The full text of the rules follows:

TITLE 17. TRANSPORTATION
CHAPTER 5. DEPARTMENT OF TRANSPORTATION
COMMERCIAL PROGRAMS

ARTICLE 8. MANDATORY INSURANCE AND FINANCIAL RESPONSIBILITY

Section

- R17-5-801. Definitions
- R17-5-802. Insurance Company Electronic Reporting Requirement; Applicability
- R17-5-803. Insurance Company Reportable Activity
- R17-5-804. Record Matching Criteria for a Vehicle-specific Policy
- R17-5-805. Record Matching Criteria for a Non-vehicle-specific Commercial Policy
- R17-5-806. ~~Division-authorized~~ Department-authorized EDI Reporting Methods; Reporting Schedule
- R17-5-807. X12 Data Format for Policy Receipt and Error Return
- R17-5-808. Insurance Company Reporting Errors; Resolution; Noncompliance
- R17-5-809. Insurance Company Failure to Submit Required Data; Request for Hearing
- R17-5-810. Self-Insurance as Alternate Proof of Financial Responsibility; Provisions; Applicability

R17-5-801. Definitions

In addition to the definitions under A.R.S. §§ 28-101 and 28-4001, in this Chapter, unless otherwise specified:

“Arizona Mandatory Insurance Reporting System Guide for Insurance Companies” means the Department’s guide that is available on the agency’s website and provides technical information to a company about information transmission between the Department and the company.

“Company” means an insurance or indemnity company authorized to write motor vehicle liability coverage in Arizona.

“Customer number” means the system-generated, or other distinguishing number, assigned by the ~~Division~~ Department to each person conducting business with the ~~Division~~ Department, as prescribed in R17-5-805. ~~The customer number of a private individual is generally the person’s driver license or non-operating identification license number. The customer number of a business is generally its federal employer identification number.~~

~~“Division” means the Arizona Department of Transportation’s Motor Vehicle Division.~~

“EDI” means electronic data interchange, which is the transmission of data in a standardized format from one computer to another without the use of magnetic tape.

“EDI reporting” means the ~~weekly~~ computer-to-computer transmission of data from a company to the ~~Division~~ Department.

“Error return” means the ~~immediate~~ computer-to-computer transmission, from the ~~Division~~ Department to a company, of all data reporting errors received during EDI reporting.

“FEIN” means the federal employer identification number or federal tax identification number used to identify a business entity.

“FTP” means file transfer protocol, which is a common protocol used by the ~~Division~~ Department for exchanging files over any network that supports EDI reporting transmitted through the Internet or Intranet.

“Information exchange” means EDI reporting where a company or service provider transmits a report to the ~~Division~~ Department through a connection to a private information network.

~~“MVD”~~ “Motor Vehicle Division” means the Arizona Department of Transportation’s Motor Vehicle Division.

“NAIC” means the National Association of Insurance Commissioners.

“Private information network” means the value-added network used by a company or service provider to facilitate EDI transmissions to the ~~Division~~ Department and to provide other network services where fees are charged for the network connection based on the number of characters and messages transmitted.

“Reportable activity” means the information required to be transmitted to the ~~Division~~ Department under A.R.S. § 28-4148 and this Article.

“Self-insurer” means a person or entity that has met the qualifications, completed the application process, and received a certificate of self-insurance issued by the ~~Division~~ Department under ~~Section~~ R17-5-810.

“Service provider” means a person or entity that ~~provides the reports for an insurance company through a connection to a private information network~~ or an FTP for EDI reporting.

“SR22” means a certification filed, by a company duly authorized to transact business in this state, as proof of financial responsibility for the future, which guarantees that the insured owner or operator has in effect at least

the minimum motor vehicle liability insurance coverage required under A.R.S. Title 28, Chapter 9, Article 3.

“SR26” means a certification filed by a company duly authorized to transact business in this state, which notifies the ~~Division~~ Department that an insured owner or operator required to maintain proof of financial responsibility for the future, under A.R.S. Title 28, Chapter 9, Article 3, is no longer covered under a previously reported SR22.

“Value-added ~~Network~~ network” means a private network provider that is hired by a company to facilitate EDI or provide other network services.

“X12” means the American National Standards Institute, Accredited Standards Committee, uniform standards for the inter-industry electronic exchange of business transactions by EDI.

“X12 (TS811)” means X12 Transaction Set 811, Consolidated Service Invoice – Statement, version 3050, which is the specific set of EDI transactions developed for the insurance industry in the X12 standard format for automobile liability insurance reporting.

R17-5-802. Insurance Company Electronic Reporting Requirement; Applicability

- A. A company that provides motor vehicle liability insurance coverage for an Arizona vehicle shall electronically transmit to the ~~Division~~ Department all reportable activity under A.R.S. § 28-4148 and R17-5-803 using one of the authorized EDI reporting methods identified in ~~R17-5-806~~ the Arizona Mandatory Insurance Reporting System Guide for Insurance Companies. Each transmission shall include all of the applicable record matching criteria prescribed under R17-5-804 or R17-5-805.
- B. ~~Effective May 1, 2007, a~~ A company that issues 1,000 or more SR22 policies per calendar year shall electronically transmit to the ~~Division~~ Department all SR22 and SR26 activity using one of the ~~Division-authorized~~ Department-authorized EDI reporting methods identified in ~~R17-5-806~~ the Arizona Mandatory Insurance Reporting System Guide for Insurance Companies. Each transmission shall include all of the applicable record matching criteria prescribed under R17-5-804 or R17-5-805.
- C. The ~~Division~~ Department shall not accept or record an out-of-state motor vehicle liability insurance policy for a passenger vehicle, even if written by a company authorized to transact business in this state.

R17-5-803. Insurance Company Reportable Activity

- A. A company shall transmit to the ~~Division~~ Department:
 - 1. All reportable activity, not previously reported, that was processed by the company seven or fewer days before each reporting date; or
 - 2. A statement of inactivity, if no reportable activity occurred by the reporting date.
- B. For the purpose of this Article, reportable activity shall include:
 - 1. A policy cancellation;
 - 2. A policy non-renewal;
 - 3. A new policy issuance;
 - 4. A commercial policy reissuance;
 - 4.5. A vehicle added to a policy;
 - 5.6. A vehicle deleted from a policy;

~~6.7.~~ A policy reinstatement; and

~~7.8.~~ Effective May 1, 2007, all All SR22 and SR26 filings by insurance companies issuing 1,000 or more SR22 policies per calendar year.

C. Reportable activity does not include the addition or deletion of a vehicle to or from a non-vehicle-specific commercial policy.

R17-5-804. Record Matching Criteria for a Vehicle-specific Policy

For each vehicle-specific policy transmitted to the ~~Division~~ Department, a company shall include all of the following information to assist with the matching of policies to ~~MVD~~ Department customers:

1. The complete and valid vehicle identification number;
2. The policy number; and
3. The NAIC number of the reporting company.

R17-5-805. Record Matching Criteria for a Non-vehicle-specific Commercial Policy

A. For each non-vehicle-specific commercial policy transmitted to the ~~Division~~ Department, a company shall include all of the following information to assist with the matching of policies to ~~MVD~~ Department customers:

1. The ~~MVD-Customer~~ Department customer number of the insured:
 - a. If a policy covers all vehicles registered in the name of a business or organization, the ~~Customer~~ customer number is the FEIN of the business or organization, or a system-generated number; or
 - b. If a policy covers all vehicles registered in the name of a private individual, the ~~Customer~~ customer number is the Arizona Driver License number or the non-operating identification license number of the private individual;
2. The policy number; and
3. The NAIC number of the ~~reporting~~ responsible company.

B. If the ~~MVD-Customer~~ Department customer number required under subsection (A)(1) is not available to a company, the company may provide the complete and valid vehicle identification number of each vehicle covered under the policy in-lieu of the ~~MVD-Customer~~ Department customer number.

R17-5-806. ~~Division-authorized~~ Department-authorized EDI Reporting Methods; Reporting Schedule

A. A company shall transmit to the ~~Division~~ Department all reportable activity listed in R17-5-803 using ~~one of the following~~ Division-authorized a Department-authorized EDI reporting ~~methods~~ method specified in the Arizona Mandatory Insurance Reporting System Guide for Insurance Companies.

- ~~1. EDI reporting by information exchange; or~~
- ~~2. EDI reporting by encrypted FTP.~~

B. A company shall transmit all reportable activity to the ~~Division~~ Department at least once every seven days.

R17-5-807. X12 Data Format for Policy Receipt and Error Return

A. Reporting format. A company shall transmit to the ~~Division~~ Department all reportable activity using the format prescribed in the Arizona Mandatory Insurance Reporting System Guide for Insurance Companies provided by the ~~Division~~ Department.

B. Error return format. The ~~Division~~ Department shall return to a company all reporting errors received during a

transmission of reportable activity using the X12 error return format prescribed in the ~~Arizona Mandatory Insurance Reporting System Guide for Insurance Companies~~ Arizona Mandatory Insurance Reporting System Guide for Insurance Companies.

- C.** The Department shall return to a company an acknowledgment that a transmission of reportable activity was received and processed using the format in the Arizona Mandatory Insurance Reporting System Guide for Insurance Companies.

R17-5-808. Insurance Company Reporting Errors; Resolution; Noncompliance

A. ~~The Division~~ Department shall:

1. Return to a company, using the X12 ~~Error Return~~ error return format provided in R17-5-807(B), all reporting errors received during or after a transmission; and
2. Instruct the company to correct all reporting errors affecting the ~~Division's~~ Department's processing of the required data.

B. All companies reporting electronic policy information shall notify the ~~Division~~ Department prior to making changes to any reporting systems, or previously established policy reporting formats, that may affect the ~~Division's~~ Department's ability to match and process the information received.

R17-5-809. Insurance Company Failure to Submit Required Data; Request for Hearing

If a company fails to submit the data required under A.R.S. § 28-4148, and this Article, the ~~Division~~ Department shall:

1. Send to the company, a dated written notice, which:
 - a. Identifies the business week or reporting period in which the company did not submit the required information;
 - b. Instructs the company to submit the information for the identified business week or reporting period within seven days of the date of the notice;
 - c. Informs the company that a failure to respond to the ~~Division's~~ Department's request within the allotted time-frame, shall result in a referral of the matter to the Arizona Department of Insurance, under A.R.S. § 20-237, which may result in a civil penalty for each violation of up to \$250 per day for each day the insurer is in violation of A.R.S. § 28-4148; and
 - d. Provides notice of the company's right to request a hearing with the Arizona Department of Insurance under A.R.S. § 20-237; and
2. Advise the Arizona Department of Insurance if the company fails to comply with the ~~Division's~~ Department's written notice provided under this Section.

R17-5-810. Self-insurance as Alternate Proof of Financial Responsibility; Provisions; Applicability

A. Self-insurance applicant qualification. A person or entity may apply for self-insurance under this Section if the applicant:

1. Owns the minimum number of vehicles prescribed under A.R.S. § 28-4007(A) with current Arizona registration;
2. Demonstrates minimum assets of \$1 million on documentation required under subsections (C) and (D);

3. Meets any additional financial responsibility requirements under A.R.S. § 28-4033(A), according to the insured vehicle's weight and/or intended use; and
 4. Provides a business office contact for the company with a current phone number and mailing information.
- B.** A self-insurance applicant shall provide, on a self-insurance application form provided by the ~~Division~~ Department, the following information:
1. Applicant's name;
 2. Business name, if applicable;
 3. Mailing address, city, state, and ZIP code;
 4. A selection of coverage type:
 - a. Public liability only; or
 - b. Public liability and property damage;
 5. Number of vehicles in the applicant's fleet;
 6. A selection list that describes the nature of the applicant's business;
 7. A description of any hazardous materials transported by type, class, and weight;
 8. A report of all accidents in the prior 39-month period before the application date;
 9. The applicant's signature and official business title to certify that all information is true and correct; and
 10. Acknowledgment by a notary public or by the signature of an authorized ~~Motor Vehicle Division~~ Department agent.
- C.** Supplementary documentation. In addition to a completed self-insurance application form, the applicant shall submit a profit and loss statement certified by a Certified Public Accountant for the 12-month period before the application date. The profit and loss statement shall include one of the following:
1. A balance sheet; or
 2. An annual financial report.
- D.** On approval of an application, the ~~Division~~ Department shall issue a certificate of self-insurance that is continuously valid, but shall require the self-insurer to submit a 12-month update of supplementary documentation prescribed under subsection (C) on or before July 1 of each successive year.
- E.** An initial self-insurance applicant or a self-insurer making an annual update shall submit documentation required under subsections (B) through (D) to the following address:
- Motor Vehicle Division
 Financial Responsibility Unit
 P.O. Box 2100, Mail Drop 535M
 Phoenix, AZ 85001-2100
- F.** A self-insurer shall keep a copy of the self-insurance certificate in each covered vehicle at all times.
- G.** A self-insurer shall submit periodic, written notification updates to the ~~Division~~ Department of ~~each vehicle~~ vehicles to be added or removed from self-insurance coverage. The written notification shall include the vehicle identification number of each vehicle.
- H.** A self-insurer that terminates self-insurance shall provide new evidence of financial responsibility as required

under A.R.S. § 28-4135 for each vehicle previously covered under a self-insurance certificate.

- I.** In addition to the reasonable grounds prescribed under A.R.S. § 28-4007(C), the ~~Division~~ Department may cancel a self-insurance certificate under the following circumstances:
 - 1. A self-insurer fails to comply with provisions of the ~~Division's~~ Department's annual update requirement under subsection (D), or
 - 2. A self-insurer no longer owns the covered business or fleet.
- J.** For the purpose of A.R.S. § 28-4007(C) and this Section, the ~~Division~~ Department shall conduct a self-insurance cancellation hearing according to the provisions prescribed under 17 A.A.C. 1, Article 5.

R17-5-801. Definitions

In addition to the definitions under A.R.S. §§ 28-101 and 28-4001, in this Chapter, unless otherwise specified:

“Company” means an insurance or indemnity company authorized to write motor vehicle liability coverage in Arizona.

“Customer number” means the system-generated, or other distinguishing number, assigned by the Division to each person conducting business with the Division. The customer number of a private individual is generally the person’s driver license or non-operating identification license number. The customer number of a business is generally its federal employer identification number.

“Division” means the Arizona Department of Transportation’s Motor Vehicle Division.

“EDI” means electronic data interchange, which is the transmission of data in a standardized format from one computer to another without the use of magnetic tape.

“EDI reporting” means the weekly computer-to-computer transmission of data from a company to the Division.

“Error return” means the immediate computer-to-computer transmission, from the Division to a company, of all data reporting errors received during EDI reporting.

“FEIN” means the federal employer identification number or federal tax identification number used to identify a business entity.

“FTP” means file transfer protocol, which is a common protocol used by the Division for exchanging files over any network that supports EDI reporting transmitted through the Internet or Intranet.

“Information exchange” means EDI reporting where a company or service provider transmits a report to the Division through a connection to a private information network.

“MVD” means the Arizona Department of Transportation’s Motor Vehicle Division.

“NAIC” means the National Association of Insurance Commissioners.

“Private information network” means the value-added network used by a company or service provider to facilitate EDI transmissions to the Division and to provide other network services where fees are charged for the network connection based on the number of characters and messages transmitted.

“Reportable activity” means the information required to be transmitted to the Division under A.R.S. § 28-4148 and this Article.

“Self-insurer” means a person or entity that has met the qualifications, completed the application process, and received a certificate of self-insurance issued by the Division under Section R17-5-810.

“Service provider” means a person or entity that provides the connection to a private information network for EDI reporting.

“SR22” means a certification filed, by a company duly authorized to transact business in this state, as proof of financial responsibility for the future, which guarantees that the insured owner or operator has in effect at least the minimum motor vehicle liability insurance coverage required under A.R.S. Title 28, Chapter 9, Article 3.

“SR26” means a certification filed by a company duly authorized to transact business in this state, which notifies the Division that an insured owner or operator required to maintain proof of financial responsibility for the future, under A.R.S. Title 28, Chapter 9, Article 3, is no longer covered under a previously reported SR22.

“Value-added Network” means a private network provider that is hired by a company to facilitate EDI or provide other network services.

“X12” means the American National Standards Institute, Accredited Standards Committee, uniform standards for the inter-industry electronic exchange of business transactions by EDI.

“X12 (TS811)” means X12 Transaction Set 811, Consolidated Service Invoice – Statement, version 3050, which is the specific set of EDI transactions developed for the insurance industry in the X12 standard format for automobile liability insurance reporting.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 858, effective March 6, 2007 (Supp. 07-1).

R17-5-802. Insurance Company Electronic Reporting Requirement; Applicability

- A.** A company that provides motor vehicle liability insurance coverage for an Arizona vehicle shall electronically transmit to the Division all reportable activity under A.R.S. § 28-4148 and R17-5-803 using one of the authorized EDI reporting methods identified in R17-5-806. Each transmission shall include all of the applicable record matching criteria prescribed under R17-5-804 or R17-5-805.
- B.** Effective May 1, 2007, a company that issues 1,000 or more SR22 policies per calendar year shall electronically transmit to the Division all SR22 and SR26 activity using one of the Division-authorized EDI reporting methods identified in R17-5-806. Each transmission shall include all of the applicable record matching criteria prescribed under R17-5-804 or R17-5-805.

- C. The Division shall not accept or record an out-of-state motor vehicle liability insurance policy for a passenger vehicle, even if written by a company authorized to transact business in this state.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 858, effective March 6, 2007 (Supp. 07-1).

R17-5-803. Insurance Company Reportable Activity

- A. A company shall transmit to the Division:
 - 1. All reportable activity, not previously reported, that was processed by the company seven or fewer days before each reporting date; or
 - 2. A statement of inactivity, if no reportable activity occurred by the reporting date.
- B. For the purpose of this Article, reportable activity shall include:
 - 1. A policy cancellation;
 - 2. A policy non-renewal;
 - 3. A new policy issuance;
 - 4. A vehicle added to a policy;
 - 5. A vehicle deleted from a policy;
 - 6. A policy reinstatement; and
 - 7. Effective May 1, 2007, all SR22 and SR26 filings by insurance companies issuing 1,000 or more SR22 policies per calendar year.
- C. Reportable activity does not include the addition or deletion of a vehicle to or from a non-vehicle-specific commercial policy.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 858, effective March 6, 2007 (Supp. 07-1).

R17-5-804. Record Matching Criteria for a Vehicle-specific Policy

For each vehicle-specific policy transmitted to the Division, a company shall include all of the following information to assist with the matching of policies to MVD customers:

- 1. The complete and valid vehicle identification number;
- 2. The policy number; and
- 3. The NAIC number of the reporting company.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 858, effective March 6, 2007 (Supp. 07-1).

R17-5-805. Record Matching Criteria for a Non-vehicle-specific Commercial Policy

- A. For each non-vehicle-specific commercial policy transmitted to the Division, a company shall include all of the following information to assist with the matching of policies to MVD customers:
 - 1. The MVD Customer number of the insured:
 - a. If a policy covers all vehicles registered in the name of a business or organization, the Customer number is the FEIN of the business or organization; or
 - b. If a policy covers all vehicles registered in the name of a private individual, the Customer number is the Arizona Driver License number of the private individual;
 - 2. The policy number; and
 - 3. The NAIC number of the reporting company.
- B. If the MVD Customer number required under subsection (A)(1) is not available to a company, the company may provide the complete and valid vehicle identification number of each vehicle covered under the policy in-lieu of the MVD Customer number.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 858, effective March 6, 2007 (Supp. 07-1).

R17-5-806. Division-authorized EDI Reporting Methods; Reporting Schedule

- A. A company shall transmit to the Division all reportable activity listed in R17-5-803 using one of the following Division-authorized EDI reporting methods:

1. EDI reporting by information exchange; or
 2. EDI reporting by encrypted FTP.
- B.** A company shall transmit all reportable activity to the Division at least once every seven days.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 858, effective March 6, 2007 (Supp. 07-1).

R17-5-807. X12 Data Format for Policy Receipt and Error Return

- A.** Reporting format. A company shall transmit to the Division all reportable activity using the format prescribed in the Arizona Mandatory Insurance Reporting System Guide for Insurance Companies provided by the Division.
- B.** Error return format. The Division shall return to a company all reporting errors received during a transmission of reportable activity using the format prescribed in the Arizona Mandatory Insurance Reporting System Guide for Insurance Companies.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 858, effective March 6, 2007 (Supp. 07-1).

R17-5-808. Insurance Company Reporting Errors; Resolution; Noncompliance

- A.** The Division shall:
1. Return to a company, using the X12 Error Return format provided in R17-5-807(B), all reporting errors received during a transmission; and
 2. Instruct the company to correct all reporting errors affecting the Division's processing of the required data.
- B.** All companies reporting electronic policy information shall notify the Division prior to making changes to any reporting systems, or previously established policy reporting formats, that may affect the Division's ability to match and process the information received.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 858, effective March 6, 2007 (Supp. 07-1).

R17-5-809. Insurance Company Failure to Submit Required Data; Request for Hearing

If a company fails to submit the data required under A.R.S. § 28-4148, and this Article, the Division shall:

1. Send to the company, a dated written notice, which:
 - a. Identifies the business week or reporting period in which the company did not submit the required information;
 - b. Instructs the company to submit the information for the identified business week or reporting period within seven days of the date of the notice;
 - c. Informs the company that a failure to respond to the Division's request within the allotted time-frame, shall result in a referral of the matter to the Arizona Department of Insurance, under A.R.S. § 20-237, which may result in a civil penalty of up to \$250 per day for each day the insurer is in violation of A.R.S. § 28-4148; and
 - d. Provides notice of the company's right to request a hearing with the Arizona Department of Insurance under A.R.S. § 20-237; and
2. Advise the Arizona Department of Insurance if the company fails to comply with the Division's written notice provided under this Section.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 858, effective March 6, 2007 (Supp. 07-1).

R17-5-810. Self-insurance as Alternate Proof of Financial Responsibility; Provisions; Applicability

- A.** Self-insurance applicant qualification. A person or entity may apply for self-insurance under this Section if the applicant:
1. Owns the minimum number of vehicles prescribed under A.R.S. § 28-4007(A) with current Arizona registration;
 2. Demonstrates minimum assets of \$1 million on documentation required under subsections (C) and (D);
 3. Meets any additional financial responsibility requirements under A.R.S. § 28-4033(A), according to the insured vehicle's weight and/or intended use; and

4. Provides a business office contact for the company with a current phone number and mailing information.
- B.** A self-insurance applicant shall provide, on a self-insurance application form provided by the Division, the following information:
1. Applicant's name;
 2. Business name, if applicable;
 3. Mailing address, city, state, and ZIP code;
 4. A selection of coverage type:
 - a. Public liability only; or
 - b. Public liability and property damage;
 5. Number of vehicles in the applicant's fleet;
 6. A selection list that describes the nature of the applicant's business;
 7. A description of any hazardous materials transported by type, class, and weight;
 8. A report of all accidents in the prior 39-month period before the application date;
 9. The applicant's signature and official business title to certify that all information is true and correct; and
 10. Acknowledgment by a notary public or by the signature of an authorized Motor Vehicle Division agent.
- C.** Supplementary documentation. In addition to a completed self-insurance application form, the applicant shall submit a profit and loss statement certified by a Certified Public Accountant for the 12-month period before the application date. The profit and loss statement shall include one of the following:
1. A balance sheet; or
 2. An annual financial report.
- D.** On approval of an application, the Division shall issue a certificate of self-insurance that is continuously valid but shall require the self-insurer to submit a 12-month update of supplementary documentation prescribed under subsection (C) on or before July 1 of each successive year.
- E.** An initial self-insurance applicant or a self-insurer making an annual update shall submit documentation required under subsections (B) through (D) to the following address:
- Motor Vehicle Division
 Financial Responsibility Unit
 P.O. Box 2100, Mail Drop 535M
 Phoenix, AZ 85001-2100
- F.** A self-insurer shall keep a copy of the self-insurance certificate in each covered vehicle at all times.
- G.** A self-insurer shall submit written notification to the Division of each vehicle to be added or removed from self-insurance coverage. The written notification shall include the vehicle identification number of each vehicle.
- H.** A self-insurer that terminates self-insurance shall provide new evidence of financial responsibility as required under A.R.S. § 28-4135 for each vehicle previously covered under a self-insurance certificate.
- I.** In addition to the reasonable grounds prescribed under A.R.S. § 28-4007(C), the Division may cancel a self-insurance certificate under the following circumstances:
1. A self-insurer fails to comply with provisions of the Division's annual update requirement under subsection (D), or
 2. A self-insurer no longer owns the covered business or fleet.
- J.** For the purpose of A.R.S. § 28-4007(C) and this Section, the Division shall conduct a self-insurance cancellation hearing according to the provisions prescribed under 17 A.A.C. 1, Article 5.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 858, effective March 6, 2007 (Supp. 07-1).

R17-5-811. Certificate of Deposit as Alternate Proof of Financial Responsibility; Applicability

For the purpose of A.R.S. §§ 28-4076(2) and 28-4084, a person depositing a \$40,000 certificate of deposit with the state treasurer as alternate proof of financial responsibility may apply the certificate to a maximum of 25 non-commercial vehicles registered in the person's name.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 858, effective March 6, 2007 (Supp. 07-1).

STATUTORY AUTHORITY

20-237. Failure to provide information; penalty

If after a hearing and certification by the department of transportation the director of insurance finds that an insurer has failed to comply with the provisions of section 28-4148, the director of insurance shall impose a civil penalty for each violation of not more than two hundred fifty dollars per day for each day the insurer is in violation of section 28-4148. The director of insurance also may suspend the insurer's certificate of authority until the insurer complies with the provisions of section 28-4148. No penalty shall be imposed pursuant to this section if noncompliance is determined by the director of insurance to have been inadvertent or accidental. The burden of proving that the noncompliance was inadvertent or accidental shall be on the insurer.

28-101. Definitions

In this title, unless the context otherwise requires:

1. "Alcohol" means any substance containing any form of alcohol, including ethanol, methanol, propynol and isopropynol.
2. "Alcohol concentration" if expressed as a percentage means either:
 - (a) The number of grams of alcohol per one hundred milliliters of blood.
 - (b) The number of grams of alcohol per two hundred ten liters of breath.
3. "All-terrain vehicle" means either of the following:
 - (a) A motor vehicle that satisfies all of the following:
 - (i) Is designed primarily for recreational nonhighway all-terrain travel.
 - (ii) Is fifty or fewer inches in width.
 - (iii) Has an unladen weight of one thousand two hundred pounds or less.
 - (iv) Travels on three or more nonhighway tires.
 - (v) Is operated on a public highway.
 - (b) A recreational off-highway vehicle that satisfies all of the following:
 - (i) Is designed primarily for recreational nonhighway all-terrain travel.
 - (ii) Is sixty-five or fewer inches in width.
 - (iii) Has an unladen weight of one thousand eight hundred pounds or less.
 - (iv) Travels on four or more nonhighway tires.
4. "Authorized emergency vehicle" means any of the following:
 - (a) A fire department vehicle.
 - (b) A police vehicle.
 - (c) An ambulance or emergency vehicle of a municipal department or public service corporation that is designated or authorized by the department or a local authority.
 - (d) Any other ambulance, fire truck or rescue vehicle that is authorized by the department in its sole discretion and that meets liability insurance requirements prescribed by the department.
5. "Autocycle" means a three-wheeled motorcycle on which the driver and passengers ride in a fully or partially enclosed seating area that is equipped with a roll cage, safety belts for each occupant and antilock brakes and that is designed to be controlled with a steering wheel and pedals.
6. "Aviation fuel" means all flammable liquids composed of a mixture of selected hydrocarbons expressly manufactured and blended for the purpose of effectively and efficiently operating an internal combustion engine for use in an aircraft but does not include fuel for jet or turbine powered aircraft.
7. "Bicycle" means a device, including a racing wheelchair, that is propelled by human power and on which a person may ride and that has either:
 - (a) Two tandem wheels, either of which is more than sixteen inches in diameter.
 - (b) Three wheels in contact with the ground, any of which is more than sixteen inches in diameter.
8. "Board" means the transportation board.
9. "Bus" means a motor vehicle designed for carrying sixteen or more passengers, including the driver.

10. "Business district" means the territory contiguous to and including a highway if there are buildings in use for business or industrial purposes within any six hundred feet along the highway, including hotels, banks or office buildings, railroad stations and public buildings that occupy at least three hundred feet of frontage on one side or three hundred feet collectively on both sides of the highway.
11. "Certificate of ownership" means a paper or an electronic record that is issued in another state or a foreign jurisdiction and that indicates ownership of a vehicle.
12. "Certificate of title" means a paper document or an electronic record that is issued by the department and that indicates ownership of a vehicle.
13. "Combination of vehicles" means a truck or truck tractor and semitrailer and any trailer that it tows but does not include a forklift designed for the purpose of loading or unloading the truck, trailer or semitrailer.
14. "Controlled substance" means a substance so classified under section 102(6) of the controlled substances act (21 United States Code section 802(6)) and includes all substances listed in schedules I through V of 21 Code of Federal Regulations part 1308.
15. "Conviction" means:
 - (a) An unvacated adjudication of guilt or a determination that a person violated or failed to comply with the law in a court of original jurisdiction or by an authorized administrative tribunal.
 - (b) An unvacated forfeiture of bail or collateral deposited to secure the person's appearance in court.
 - (c) A plea of guilty or no contest accepted by the court.
 - (d) The payment of a fine or court costs.
16. "County highway" means a public road that is constructed and maintained by a county.
17. "Dealer" means a person who is engaged in the business of buying, selling or exchanging motor vehicles, trailers or semitrailers and who has an established place of business and has paid fees pursuant to section 28-4302.
18. "Department" means the department of transportation acting directly or through its duly authorized officers and agents.
19. "Digital network or software application" has the same meaning prescribed in section 28-9551.
20. "Director" means the director of the department of transportation.
21. "Drive" means to operate or be in actual physical control of a motor vehicle.
22. "Driver" means a person who drives or is in actual physical control of a vehicle.
23. "Driver license" means a license that is issued by a state to an individual and that authorizes the individual to drive a motor vehicle.
24. "Electric personal assistive mobility device" means a self-balancing device with one wheel or two nontandem wheels and an electric propulsion system that limits the maximum speed of the device to fifteen miles per hour or less and that is designed to transport only one person.
25. "Farm" means any lands primarily used for agriculture production.
26. "Farm tractor" means a motor vehicle designed and used primarily as a farm implement for drawing implements of husbandry.
27. "Foreign vehicle" means a motor vehicle, trailer or semitrailer that is brought into this state other than in the ordinary course of business by or through a manufacturer or dealer and that has not been registered in this state.
28. "Golf cart" means a motor vehicle that has not less than three wheels in contact with the ground, that has an unladen weight of less than one thousand eight hundred pounds, that is designed to be and is operated at not more than twenty-five miles per hour and that is designed to carry not more than four persons including the driver.
29. "Hazardous material" means a material, and its mixtures or solutions, that the United States department of transportation determines under 49 Code of Federal Regulations is, or any quantity of a material listed as a select agent or toxin under 42 Code of Federal Regulations part 73 that is, capable of posing an unreasonable risk to health, safety and property if transported in commerce and that is required to be placarded or marked as required by the department's safety rules prescribed pursuant to chapter 14 of this title.

30. "Implement of husbandry" means a vehicle that is designed primarily for agricultural purposes and that is used exclusively in the conduct of agricultural operations, including an implement or vehicle whether self-propelled or otherwise that meets both of the following conditions:

(a) Is used solely for agricultural purposes including the preparation or harvesting of cotton, alfalfa, grains and other farm crops.

(b) Is only incidentally operated or moved on a highway whether as a trailer or self-propelled unit. For the purposes of this subdivision, "incidentally operated or moved on a highway" means travel between a farm and another part of the same farm, from one farm to another farm or between a farm and a place of repair, supply or storage.

31. "Limousine" means a motor vehicle providing prearranged ground transportation service for an individual passenger, or a group of passengers, that is arranged in advance or is operated on a regular route or between specified points and includes ground transportation under a contract or agreement for services that includes a fixed rate or time and is provided in a motor vehicle with a seating capacity not exceeding fifteen passengers including the driver.

32. "Livery vehicle" means a motor vehicle that:

(a) Has a seating capacity not exceeding fifteen passengers including the driver.

(b) Provides passenger services for a fare determined by a flat rate or flat hourly rate between geographic zones or within a geographic area.

(c) Is available for hire on an exclusive or shared ride basis.

(d) May do any of the following:

(i) Operate on a regular route or between specified places.

(ii) Offer prearranged ground transportation service as defined in section 28-141.

(iii) Offer on demand ground transportation service pursuant to a contract with a public airport, licensed business entity or organization.

33. "Local authority" means any county, municipal or other local board or body exercising jurisdiction over highways under the constitution and laws of this state.

34. "Manufacturer" means a person engaged in the business of manufacturing motor vehicles, trailers or semitrailers.

35. "Moped" means a bicycle that is equipped with a helper motor if the vehicle has a maximum piston displacement of fifty cubic centimeters or less, a brake horsepower of one and one-half or less and a maximum speed of twenty-five miles per hour or less on a flat surface with less than a one percent grade.

36. "Motor driven cycle" means a motorcycle, including every motor scooter, with a motor that produces not more than five horsepower.

37. "Motor vehicle":

(a) Means either:

(i) A self-propelled vehicle.

(ii) For the purposes of the laws relating to the imposition of a tax on motor vehicle fuel, a vehicle that is operated on the highways of this state and that is propelled by the use of motor vehicle fuel.

(b) Does not include a motorized wheelchair, an electric personal assistive mobility device or a motorized skateboard. For the purposes of this subdivision:

(i) "Motorized skateboard" means a self-propelled device that has a motor, a deck on which a person may ride and at least two tandem wheels in contact with the ground.

(ii) "Motorized wheelchair" means a self-propelled wheelchair that is used by a person for mobility.

38. "Motor vehicle fuel" includes all products that are commonly or commercially known or sold as gasoline, including casinghead gasoline, natural gasoline and all flammable liquids, and that are composed of a mixture of selected hydrocarbons expressly manufactured and blended for the purpose of effectively and efficiently operating internal combustion engines. Motor vehicle fuel does not include inflammable liquids that are specifically manufactured for racing motor vehicles and that are distributed for and used by racing motor vehicles at a racetrack, use fuel as defined in section 28-5601, aviation fuel, fuel for jet or turbine powered aircraft or the mixture created at the interface of two different substances being transported through a pipeline, commonly known as transmix.

39. "Motorcycle" means a motor vehicle that has a seat or saddle for the use of the rider and that is designed to travel on not more than three wheels in contact with the ground but excludes a tractor and a moped.

40. "Motorized quadricycle" means a self-propelled motor vehicle to which all of the following apply:

(a) The vehicle is self-propelled by an emission-free electric motor and may include pedals operated by the passengers.

(b) The vehicle has at least four wheels in contact with the ground.

(c) The vehicle seats at least eight passengers, including the driver.

(d) The vehicle is operable on a flat surface using solely the electric motor without assistance from the pedals or passengers.

(e) The vehicle is a commercial motor vehicle as defined in section 28-5201.

(f) The vehicle is a limousine operating under a vehicle for hire company permit issued pursuant to section 28-9503.

(g) The vehicle is manufactured by a motor vehicle manufacturer that is licensed pursuant to chapter 10 of this title.

(h) The vehicle complies with the definition and standards for low-speed vehicles set forth in federal motor vehicle safety standard 500 and 49 Code of Federal Regulations sections 571.3(b) and 571.500, respectively.

41. "Neighborhood electric vehicle" means a self-propelled electrically powered motor vehicle to which all of the following apply:

(a) The vehicle is emission free.

(b) The vehicle has at least four wheels in contact with the ground.

(c) The vehicle complies with the definition and standards for low-speed vehicles set forth in federal motor vehicle safety standard 500 and 49 Code of Federal Regulations sections 571.3(b) and 571.500, respectively.

42. "Nonresident" means a person who is not a resident of this state as defined in section 28-2001.

43. "Off-road recreational motor vehicle" means a motor vehicle that is designed primarily for recreational nonhighway all-terrain travel and that is not operated on a public highway. Off-road recreational motor vehicle does not mean a motor vehicle used for construction, building trade, mining or agricultural purposes.

44. "Operator" means a person who drives a motor vehicle on a highway, who is in actual physical control of a motor vehicle on a highway or who is exercising control over or steering a vehicle being towed by a motor vehicle.

45. "Owner" means:

(a) A person who holds the legal title of a vehicle.

(b) If a vehicle is the subject of an agreement for the conditional sale or lease with the right of purchase on performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, the conditional vendee or lessee.

(c) If a mortgagor of a vehicle is entitled to possession of the vehicle, the mortgagor.

46. "Pedestrian" means any person afoot. A person who uses an electric personal assistive mobility device or a manual or motorized wheelchair is considered a pedestrian unless the manual wheelchair qualifies as a bicycle. For the purposes of this paragraph, "motorized wheelchair" means a self-propelled wheelchair that is used by a person for mobility.

47. "Power sweeper" means an implement, with or without motive power, that is only incidentally operated or moved on a street or highway and that is designed for the removal of debris, dirt, gravel, litter or sand whether by broom, vacuum or regenerative air system from asphaltic concrete or cement concrete surfaces, including parking lots, highways, streets and warehouses, and a vehicle on which the implement is permanently mounted.

48. "Public transit" means the transportation of passengers on scheduled routes by means of a conveyance on an individual passenger fare-paying basis excluding transportation by a sightseeing bus, school bus or taxi or a vehicle not operated on a scheduled route basis.

49. "Reconstructed vehicle" means a vehicle that has been assembled or constructed largely by means of essential parts, new or used, derived from vehicles or makes of vehicles of various names, models and types or that, if originally otherwise constructed, has been materially altered by the removal of essential parts or by the addition or substitution of essential parts, new or used, derived from other vehicles or makes of vehicles. For the purposes of this paragraph, "essential parts" means integral and body parts, the removal, alteration or substitution of which will tend to conceal the identity or substantially alter the appearance of the vehicle.

50. "Residence district" means the territory contiguous to and including a highway not comprising a business district if the property on the highway for a distance of three hundred feet or more is in the main improved with residences or residences and buildings in use for business.

51. "Right-of-way" when used within the context of the regulation of the movement of traffic on a highway means the privilege of the immediate use of the highway. Right-of-way when used within the context of the real property on which transportation facilities and appurtenances to the facilities are constructed or maintained means the lands or interest in lands within the right-of-way boundaries.

52. "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.

53. "Semitrailer" means a vehicle that is with or without motive power, other than a pole trailer, that is designed for carrying persons or property and for being drawn by a motor vehicle and that is constructed so that some part of its weight and that of its load rests on or is carried by another vehicle. For the purposes of this paragraph, "pole trailer" has the same meaning prescribed in section 28-601.

54. "State" means a state of the United States and the District of Columbia.

55. "State highway" means a state route or portion of a state route that is accepted and designated by the board as a state highway and that is maintained by the state.

56. "State route" means a right-of-way whether actually used as a highway or not that is designated by the board as a location for the construction of a state highway.

57. "Street" or "highway" means the entire width between the boundary lines of every way if a part of the way is open to the use of the public for purposes of vehicular travel.

58. "Taxi" means a motor vehicle that has a seating capacity not exceeding fifteen passengers, including the driver, that provides passenger services and that:

(a) Does not primarily operate on a regular route or between specified places.

(b) Offers local transportation for a fare determined on the basis of the distance traveled or prearranged ground transportation service as defined in section 28-141 for a predetermined fare.

59. "Title transfer form" means a paper or an electronic form that is prescribed by the department for the purpose of transferring a certificate of title from one owner to another owner.

60. "Traffic survival school" means a school that offers educational sessions to drivers who are required to attend and successfully complete educational sessions pursuant to this title that are designed to improve the safety and habits of drivers and that are approved by the department.

61. "Trailer" means a vehicle that is with or without motive power, other than a pole trailer, that is designed for carrying persons or property and for being drawn by a motor vehicle and that is constructed so that no part of its weight rests on the towing vehicle. A semitrailer equipped with an auxiliary front axle commonly known as a dolly is deemed to be a trailer. For the purposes of this paragraph, "pole trailer" has the same meaning prescribed in section 28-601.

62. "Transportation network company" has the same meaning prescribed in section 28-9551.

63. "Transportation network company vehicle" has the same meaning prescribed in section 28-9551.

64. "Transportation network service" has the same meaning prescribed in section 28-9551.

65. "Truck" means a motor vehicle designed or used primarily for the carrying of property other than the effects of the driver or passengers and includes a motor vehicle to which has been added a box, a platform or other equipment for such carrying.

66. "Truck tractor" means a motor vehicle that is designed and used primarily for drawing other vehicles and that is not constructed to carry a load other than a part of the weight of the vehicle and load drawn.

67. "Vehicle" means a device in, on or by which a person or property is or may be transported or drawn on a public highway, excluding devices moved by human power or used exclusively on stationary rails or tracks.

68. "Vehicle transporter" means either:

(a) A truck tractor capable of carrying a load and drawing a semitrailer.

(b) A truck tractor with a stinger-steered fifth wheel capable of carrying a load and drawing a semitrailer or a truck tractor with a dolly mounted fifth wheel that is securely fastened to the truck tractor at two or more points and that is capable of carrying a load and drawing a semitrailer.

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.

28-4001. Definitions

In this chapter, unless the context otherwise requires:

1. "Judgment" means a judgment that has become final by expiration without appeal of the time within which an appeal might have been perfected or by final affirmation on appeal and that is rendered by a court of competent jurisdiction of any state or of the United States on a cause of action either:

(a) Arising out of the ownership, maintenance or use of a motor vehicle for damages, including damages for care and loss of services, because of either bodily injury to or death of a person or injury to or destruction of property, including the loss of use of the property.

(b) On an agreement of settlement for damages described in subdivision (a) of this paragraph.

2. "License" means a license, temporary instruction permit or temporary license issued under the laws of this state pertaining to the licensing of persons to operate motor vehicles.

3. "Motor vehicle" means a self-propelled vehicle that is registered or required to be registered under the laws of this state.

4. "Motor vehicle liability policy" means an owner's or an operator's policy of liability insurance that is both:

(a) Certified as provided in section 28-4077 or 28-4078 as proof of financial responsibility.

(b) Issued by an insurance carrier duly authorized to transact business in this state, to or for the benefit of the person named as the insured, except as otherwise provided in section 28-4078.

5. "Nonresident operating privilege" means the privilege conferred on a nonresident by the laws of this state pertaining to the nonresident's operation of a motor vehicle or the use of a motor vehicle owned by the nonresident in this state.

6. "Operator" means a person who is in actual physical control of a motor vehicle, whether or not the person has a license.

7. "Proof of financial responsibility" means proof of ability to respond in damages for liability on account of accidents occurring after the effective date of the proof and arising out of the ownership, maintenance or use of a motor vehicle, in the amounts required by section 28-4009 or 28-4033.

8. "Registration" means the registration certificate or certificates and license plates issued under the laws of this state pertaining to the registration of motor vehicles.

9. "State" means a state, territory or possession of the United States, the District of Columbia or a province of the Dominion of Canada.

28-4002. Director; duties

The director shall:

1. Administer and enforce this chapter.
2. Print for distribution to the public rules adopted to administer this chapter and furnish the rules to a person on application and payment of the cost as prescribed by the director.

28-4007. Self-insurers

A. Except as provided in subsection E of this section, a person in whose name more than ten motor vehicles are registered or who is required to comply with the financial responsibility requirements prescribed in article 2 of this chapter may qualify as a self-insurer or partial self-insurer by obtaining a certificate of self-insurance or partial self-insurance issued by the director as provided in this section.

B. After determining that the person is financially able and will continue to be able to pay judgments obtained against the person, the director may issue a certificate of self-insurance or partial self-insurance.

C. On not less than five days' notice and after a hearing, the director may cancel a certificate of self-insurance or a certificate of partial self-insurance on reasonable grounds. For the purposes of this subsection, "reasonable grounds" includes any of the following circumstances:

1. Failure to pay a judgment within thirty days after the judgment becomes final.
2. Determination by the director that the person has not complied with the financial responsibility requirements of this chapter.
3. Determination by the director that the person knowingly submitted false information that is required by this chapter to this state, a political subdivision of this state, a court or a law enforcement agency.
4. Determination by the director that the person knowingly failed to respond within thirty days to a claim for damages for liability arising out of the ownership, maintenance or use of a motor vehicle.
5. Determination by the director that the person does not meet the bond requirements prescribed in section 28-4011.

D. A person who is required to comply with the financial responsibility requirements prescribed in article 2 of this chapter may file an application with the department for partial self-insurance to cover any portion of the financial responsibility requirements.

E. A person may also qualify as a self-insurer if the person is insured by a captive insurer that is domiciled and authorized by the department of insurance to transact business in this state and that provides coverage in an amount of at least that required by section 28-4033.

F. A person applying for self-insurance or partial self-insurance pursuant to this section shall comply with both of the following at the time of application:

1. The person shall submit evidence in a form prescribed by the director that the person is financially able and will continue to be able to pay the entire amount of self-insurance or partial self-insurance allowed by the director for judgments obtained against the person for liability arising out of the ownership, maintenance or use of a motor vehicle.
2. If applicable, the person shall submit evidence in a form prescribed by the director that the person has a valid insurance policy that meets the requirements prescribed in section 28-4033 and that is issued by an insurer that holds a valid certificate of authority or that is permitted to transact surplus lines insurance in this state.

G. The director may adopt rules to implement this section, including rules requiring additional evidence that the person meets the financial responsibility requirements of this chapter and rules providing for the periodic submission of evidence demonstrating that the person meets the standards required by the department to qualify as a self-insurer, a captive insurer or partial self-insurer.

H. The director of the department of transportation, in consultation with the director of the department of insurance, may establish procedures that allow a person to apply for and file a certificate of either partial self-insurance or self-insurance.

I. The director of the department of transportation, in consultation with the director of the department of insurance, shall establish procedures to exchange information regarding changes in the self-insurance status of persons who are subject to this section.

28-4033. Financial responsibility requirements

A. A person that is subject to the requirements of this article shall maintain motor vehicle combined single limit liability insurance as follows:

1. For the transportation of nonhazardous property:

(a) For a vehicle with a gross vehicle weight of more than twenty-six thousand pounds, minimum coverage in the amount of seven hundred fifty thousand dollars.

(b) For a vehicle with a gross vehicle weight of twenty thousand one pounds to twenty-six thousand pounds, minimum coverage in the amount of three hundred thousand dollars.

2. For the transportation of passengers:

(a) In a vehicle with a seating capacity of sixteen passengers or more, minimum coverage in the amount of five million dollars and uninsured motorist coverage in the amount of at least three hundred thousand dollars.

(b) In a vehicle with a seating capacity of less than sixteen passengers including the driver, but more than eight passengers including the driver, minimum coverage in the amount of seven hundred fifty thousand dollars and uninsured motorist coverage in the amount of at least three hundred thousand dollars.

(c) In a vehicle with a seating capacity of not more than eight passengers including the driver, a policy containing one of the following:

(i) Minimum coverage in the amount of two hundred fifty thousand dollars and uninsured motorist coverage in the amount of at least two hundred fifty thousand dollars issued by an insurer that holds a valid certificate of authority or that is permitted to transact surplus lines insurance in this state.

(ii) Minimum coverage as prescribed by section 28-4038 or 28-4039, as applicable.

3. For the transportation of hazardous materials, hazardous substances or hazardous wastes:

(a) Minimum coverage in the amount of five million dollars for the transportation of:

(i) Hazardous substances, as defined in 49 Code of Federal Regulations part 171, transported in a cargo tank, portable tank or hopper-type vehicle with capacities in excess of three thousand five hundred water gallons.

(ii) Any quantity of class A or B explosives.

(iii) Any quantity of poison gas (poison A).

(iv) Liquefied compressed gas or compressed gas transported in a cargo tank, portable tank or hopper-type vehicle with capacities in excess of three thousand five hundred water gallons.

(v) The quantity of radioactive materials that requires specialized handling and transportation controls as indicated in 49 Code of Federal Regulations part 173.

(b) Minimum coverage in the amount of one million dollars for the transportation of the following:

(i) Any quantity of oil listed in 49 Code of Federal Regulations part 172.

(ii) Any quantity of hazardous wastes, hazardous materials or hazardous substances as defined and listed in 49 Code of Federal Regulations part 171 and in 49 Code of Federal Regulations part 172 but not included in subdivision (a) of this paragraph.

B. If a motor vehicle is leased or rented, the lessor shall ensure that the lessee is covered under the lessor's liability insurance as provided by this section or the lessor shall require that the lessee meet the financial responsibility requirements of this section. In the case of taxis, livery vehicles or limousines, a person who is listed on the department's records as the owner shall comply with the financial responsibility requirements of this article and article 4 of this chapter.

C. If a lessee uses the motor vehicle for a purpose that is required under this section to have a higher amount of financial responsibility than was required of the lessor or renter, the lessee shall maintain the higher financial responsibility requirements of this section.

D. The uninsured motorist coverage required by this section is not required until June 1, 1987 and may be provided by a self-insurance program authorized under section 28-4007. A person who is under contract

with this state or a political subdivision of this state, who operates a motor vehicle owned by this state or a political subdivision of this state and who is included in the self-insurance program of this state or a political subdivision of this state is exempt from the uninsured motorist requirements of this section.

28-4076. Alternate methods of proof

If required by this chapter, a person may give proof of financial responsibility by filing one of the following:

1. A certificate of insurance pursuant to section 28-4077 or 28-4078.
2. Certificates of deposit or cash pursuant to section 28-4084.

28-4081. Notice; cancellation or termination of policy

If an insurance carrier has certified a motor vehicle liability policy under section 28-4077 or 28-4078, the insurance carrier shall not cancel or terminate the certified insurance until at least ten days after the insurance carrier files a notice of cancellation or termination of the insurance with the director, except that a policy subsequently procured and certified terminates, on the effective date of its certification, the insurance previously certified with respect to a motor vehicle designated in both certificates.

28-4084. Monies or certificates of deposit as proof; exception

- A. The state treasurer may issue a certificate that gives evidence of proof of financial responsibility that the person named in the certificate has deposited with the state treasurer forty thousand dollars in cash or certificates of deposit with a value of forty thousand dollars issued by a financial institution.
- B. The state treasurer shall not accept the deposit and issue a certificate for and the director shall not accept the certificate unless the depositor provides evidence that there are no unsatisfied judgments of any kind against the depositor in the county where the depositor resides.
- C. The state treasurer shall hold the deposit to satisfy, in accordance with this chapter, an execution on a judgment issued against the person making the deposit for damages, including damages for care and loss of services, because of bodily injury to or death of a person or for damages because of injury to or destruction of property, including the loss of use of the property, resulting from the ownership, maintenance, use or operation of a motor vehicle after the deposit is made.
- D. Monies or certificates of deposit deposited pursuant to this section are not subject to attachment or execution unless the attachment or execution arises out of a suit for damages described in subsection C.
- E. Deposits of cash or certificates of deposit under this section do not satisfy the financial responsibility requirements prescribed in article 2 of this chapter.

28-4135. Motor vehicle financial responsibility requirement; civil penalties; evidence at hearing

- A. A motor vehicle that is operated on a highway in this state shall be covered by one of the following:
 1. A motor vehicle or automobile liability policy that provides limits not less than those prescribed in section 28-4009.
 2. An alternate method of coverage as provided in section 28-4076.
 3. A certificate of self-insurance as prescribed in section 28-4007.
 4. A policy that satisfies the financial responsibility requirements prescribed in article 2 of this chapter.
- B. A person operating a motor vehicle on a highway in this state shall have evidence within the motor vehicle of current financial responsibility applicable to the motor vehicle. The evidence may be displayed on a wireless communication device that is in the motor vehicle. If a person displays the evidence on a wireless communication device pursuant to this subsection, the person is not consenting for law enforcement to access other contents of the wireless communication device.
- C. Failure to produce evidence of financial responsibility on the request of a law enforcement officer investigating a motor vehicle accident or an alleged violation of a motor vehicle law of this state or a traffic ordinance of a city or town is a civil traffic violation that is punishable as prescribed in this section.
- D. A citation issued for violating subsection B or C of this section shall be dismissed if the person to whom the citation was issued produces evidence to the appropriate court officer on or before the date and

time specified on the citation for court appearance and in a manner specified by the court, including the certification of evidence by mail, of either of the following:

1. The financial responsibility requirements prescribed in this section were met for the motor vehicle at the date and time the citation was issued.

2. A motor vehicle or automobile liability policy that meets the financial responsibility requirements of this state and that insured the person and the motor vehicle the person was operating at the time the person received the citation regardless of whether or not the motor vehicle was named in the policy.

E. Except as provided in section 28-4137, a person who violates this section is subject to a civil penalty as follows:

1. The court shall impose a minimum civil penalty of five hundred dollars for the first violation. On receipt of the abstract of the record of judgment, the department shall suspend the driver license of the person and the registration and license plates of the motor vehicle involved for three months.

2. If a person violates this section a second time within a period of thirty-six months, the court shall impose a minimum civil penalty of seven hundred fifty dollars. On receipt of the abstract of the record of judgment, the department shall suspend the driver license of the person and the registration and license plates of the motor vehicle involved for six months.

3. If a person violates this section three or more times within a period of thirty-six months, the court shall impose a minimum civil penalty of one thousand dollars. On receipt of the abstract of the record of judgment, the department shall suspend the driver license of the person and the registration and license plates of the motor vehicle involved for one year. The department shall require on reinstatement of the driver license, the registration and the license plates that the person file with the department proof of financial responsibility in accordance with article 3 of this chapter.

F. A court may require a person to produce an insurance identification card as evidence in a hearing for a violation of this section.

28-4148. Notice of insurance cancellation or nonrenewal

A. Effective from and after January 1, 1998 and through July 31, 1998, each insurer who cancels or becomes aware of the cancellation or nonrenewal of or failure to renew or issuance of a motor vehicle liability insurance policy issued on a vehicle in this state shall provide to the department all cancellations, nonrenewals or new issues for any reason after thirty or fewer days have elapsed from the time of processing the cancellation, nonrenewal or new issue of a policy.

B. Effective August 1, 1998, each insurer who cancels or becomes aware of the cancellation or nonrenewal of or failure to renew or issuance of a motor vehicle liability insurance policy issued on a vehicle in this state shall provide to the department all cancellations, nonrenewals or new issues for any reason after seven or fewer days have elapsed from the time of processing the cancellation, nonrenewal or new issue of a policy. Any insurer with less than ten thousand policies in place as of the effective date of this section, shall have until August 1, 1999 to comply with the requirements of this section.

C. The insurer shall provide the information by electronic data interchange in a format pursuant to a schedule specified by and in a manner prescribed by the director.

D. The department shall not require an insurer to specify the vehicle identification number of a vehicle covered under a commercial vehicle policy that provides automatic coverage for additional or newly acquired vehicles until the policy's expiration date.

E. The department shall provide the notice of cancellation or nonrenewal information to all law enforcement agencies on an on-line computerized call in basis from law enforcement vehicles.

F. On cancellation or nonrenewal of a policy, an insurer shall notify the insured that the department has been notified of the cancellation or nonrenewal and that the insured's motor vehicle registration may be suspended.

G. Except as provided in section 28-4143, subsection E, information provided by an insurer to the department pursuant to this section shall be made available only to law enforcement agencies for law enforcement purposes.

D-2

DEPARTMENT OF HEALTH SERVICES (R-18-0102)

Title 9, Chapter 6, Article 6, Reporting Post-Exposure Rabies Prophylaxis

Amend: R9-6-601



GOVERNOR'S REGULATORY REVIEW COUNCIL

STAFF MEMORANDUM – EXPEDITED RULEMAKING

MEETING DATE: January 9, 2018

AGENDA ITEM: D-2

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

FROM: Council Staff

DATE: December 19, 2017

SUBJECT: DEPARTMENT OF HEALTH SERVICES (R-18-0102)
Title 9, Chapter 6, Article 6, Reporting Post-Exposure Rabies Prophylaxis

Amend: R9-6-601

SUMMARY OF THE RULEMAKING

This expedited rulemaking, from the Arizona Department of Health Services (Department), seeks to amend one rule in A.A.C. Title 9, Chapter 6, Article 6, related to the reporting of post-exposure rabies prophylaxis.

The Department indicates that the use of the expedited rulemaking process is justified by A.R.S. § 41-1027(A)(7), as the rulemaking implements the course of action proposed in a five-year review report approved by the Council on September 6, 2017. The Governor's Office provided an exemption from Executive Order 2017-02 on August 4, 2017.

Proposed Action

The Department is amending Section 601 to use the term "individual exposed" throughout the rule, rather than using the term "patient" in the lead-in and "person exposed" in subsection (1). In addition, minor grammatical errors are corrected.

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

Yes. The Department cites to both general and specific statutory authority, including A.R.S. § 36-136(I)(1), which requires the Department to "[d]efine and prescribe reasonably necessary measures for detecting, reporting, preventing and controlling communicable and preventable diseases."

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

No. The rule does not establish a new fee or contain a fee increase.

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

No. The Department indicates that it has not received any public comments on the rulemaking.

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

No. No changes have been made between the Notice of Proposed Expedited Rulemaking and the Notice of Final Expedited 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?

No. The Department states that there is no corresponding federal law related to the rule.

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

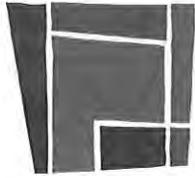
No. The rule does not require a permit or license.

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?

No. The Department indicates that it did not rely on any study in its evaluation of, or justification for, the rule.

8. Conclusion

If approved, this expedited rulemaking will become effective immediately upon filing with the Secretary of State. See A.R.S. § 41-1027(H). Council staff recommends approval of the expedited rulemaking.



ARIZONA DEPARTMENT OF HEALTH SERVICES

POLICY & INTERGOVERNMENTAL AFFAIRS

November 14, 2017

Nicole O. Colyer, Esq., Chair
Governor's Regulatory Review Council
Arizona Department of Administration
100 N. 15th Avenue, Suite 305
Phoenix, AZ 85007

RE: 9 A.A.C. 6, Article 6 Department of Health Services – Communicable Diseases and Infestations

Dear Ms. Colyer:

Enclosed is the administrative rule 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 41-1052.

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:

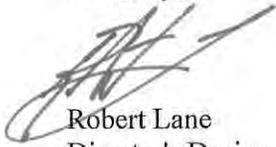
1. The close of record:
The close of record was October 31, 2017. Submission of the rule is within the 120 days allowed for Final Expedited Rulemaking.
2. Explanation of how the expedited rule meets the criteria in A.R.S. § 41-1027(A):
The rulemaking does not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of persons regulated. In addition, the rulemaking implements, without material change, a course of action that was proposed in a five-year review report approved by the Council pursuant to section A.R.S. § 41-1056.
3. Whether the rulemaking relates to a five-year-review report and, if applicable, the date the report was approved by the Council:
The rulemaking for 9 A.A.C. 6, Article 6 relates to a five-year-review report approved by the Council on September 6, 2017.
4. A list of all items enclosed:
 - a. Notice of Final Expedited Rulemaking, including the Preamble, Table of Contents, and text of the rule
 - b. Statutory authority
 - c. Current rule

Douglas A. Ducey | Governor Cara M. Christ, MD, MS | Director

The Department is requesting that the rules be heard at the Council meeting on January 3, 2018.

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.

Sincerely,

A handwritten signature in black ink, appearing to be 'Robert Lane', written over a horizontal line.

Robert Lane
Director's Designee

RL:rms

Enclosures

150 N. 18th Ave., Suite 200

Phoenix, AZ 85007

Telephone: (602) 542-1020

Fax: (602) 364-1150

E-mail: Robert.Lane@azdhs.gov

6. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, under A.R.S. § 41-1027, to include an explanation about the rulemaking:

As part of the five-year-review report for 9 A.A.C. 6, Article 6, the Arizona Department of Health Services (Department) identified that the rule could be clearer if the same term for the individual receiving post-exposure rabies prophylaxis were used in the rule, rather than “patient” in the lead-in and “person exposed” in subsection (1), and if minor grammatical errors were corrected. The rule is being amended to make these changes to reduce a regulatory burden while achieving the same regulatory objective, comply with statutory requirements, and help eliminate confusion on the part of the public. The Department believes the rulemaking meets the criteria for expedited rulemaking since the changes to be made will not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of persons regulated, but implement a course of action proposed in a five-year-review report approved by the Governor’s Regulatory Review Council on September 6, 2017.

7. A reference to any study relevant to the rule that the agency reviewed and proposes either to rely on or not to rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

The Department did not review or rely on any study for this rulemaking.

8. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state.

Not applicable

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

Under A.R.S. § 41-1055(D)(2), the Department is not required to provide an economic, small business, and consumer impact statement.

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

Between the proposed expedited rulemaking and the final expedited rulemaking, no changes were made to the rulemaking.

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

The Department did not receive public or stakeholder comments about the rulemaking.

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

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

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

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

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

Federal laws do not apply to the rule.

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

No such analysis was submitted.

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

None

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

The rule was not previously made as an emergency rule.

15. The full text of the rule follows:

TITLE 9. HEALTH SERVICES
CHAPTER 6. DEPARTMENT OF HEALTH SERVICES
COMMUNICABLE DISEASES AND INFESTATIONS
ARTICLE 6. REPORTING POST-EXPOSURE RABIES PROPHYLAXIS

Section

R9-6-601. Reporting Requirements

ARTICLE 6. REPORTING POST-EXPOSURE RABIES PROPHYLAXIS

R9-6-601. Reporting Requirements

A physician or an authorized designee, shall submit a written or electronic report to the Department of all patients for each individual exposed who receive post-exposure rabies prophylaxis. ~~The report shall include that includes:~~

1. Name, age, address, and telephone number of the ~~person~~ individual exposed;
2. Date of report;
3. Reporting institution or physician;
4. Date of exposure;
5. Body part exposed;
6. Type of exposure: Bite or saliva contact (non-bite);
7. Species of animal;
8. Animal disposition: quarantined, euthanized, died, unable to locate;
9. Animal rabies test results, if any: positive or negative;
10. Treatment regimen; and
11. Date treatment was initiated.

ARTICLE 6. REPORTING POST-EXPOSURE RABIES PROPHYLAXIS

R9-6-601. Reporting Requirements

A physician or an authorized designee, shall submit a written or electronic report to the Department of all patients who receive post-exposure rabies prophylaxis. The report shall include:

1. Name, age, address, and telephone number of the person exposed;
2. Date of report;
3. Reporting institution or physician;
4. Date of exposure;
5. Body part exposed;
6. Type of exposure: Bite or saliva contact (non-bite);
7. Species of animal;
8. Animal disposition: quarantined, euthanized, died, unable to locate;
9. Animal rabies test results if any: positive or negative;
10. Treatment regimen; and
11. Date treatment was initiated.

Statutory Authority

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

A. The director shall:

1. Be the executive officer of the department of health services and the state registrar of vital statistics but shall not receive compensation for services as registrar.
2. Perform all duties necessary to carry out the functions and responsibilities of the department.
3. Prescribe the organization of the department. The director shall appoint or remove personnel as necessary for the efficient work of the department and shall prescribe the duties of all personnel. The director may abolish any office or position in the department that the director believes is unnecessary.
4. Administer and enforce the laws relating to health and sanitation and the rules of the department.
5. Provide for the examination of any premises if the director has reasonable cause to believe that on the premises there exists a violation of any health law or rule of this state.
6. Exercise general supervision over all matters relating to sanitation and health throughout this state. When in the opinion of the director it is necessary or advisable, a sanitary survey of the whole or of any part of this state shall be made. The director may enter, examine and survey any source and means of water supply, sewage disposal plant, sewerage system, prison, public or private place of detention, asylum, hospital, school, public building, private institution, factory, workshop, tenement, public washroom, public restroom, public toilet and toilet facility, public eating room and restaurant, dairy, milk plant or food manufacturing or processing plant, and any premises in which the director has reason to believe there exists a violation of any health law or rule of this state that the director has the duty to administer.
7. Prepare sanitary and public health rules.
8. Perform other duties prescribed by law.

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

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

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

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

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

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

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

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

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

H. Notwithstanding subsection I, paragraph 1 of this section, the director may define and prescribe emergency measures for detecting, reporting, preventing and controlling communicable or infectious diseases or conditions if the director has reasonable cause to believe that a serious threat to public health and welfare exists. Emergency measures are effective for no longer than eighteen months.

I. The director, by rule, shall:

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

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

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

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

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

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

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

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

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

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

(g) Baked and confectionary goods that are not potentially hazardous and that are prepared in a kitchen of a private home for commercial purposes if packaged with a label that clearly states the address of the maker, includes contact information for the maker, lists all the ingredients in the product and discloses that the product was prepared in a home. The label must be given to the final consumer of the product. If the product was made in a facility for individuals with developmental disabilities, the label must also disclose that fact. The person preparing the food or supervising the food preparation must obtain a food handler's card or certificate if one is issued by the local county and must register with an online registry established by the department pursuant to paragraph 13 of

this subsection. For the purposes of this subdivision, "potentially hazardous" means baked and confectionary goods that meet the requirements of the food code published by the United States food and drug administration, as modified and incorporated by reference by the department by rule.

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

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

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

7. Define and prescribe reasonably necessary measures governing ice production, handling, storing and distribution to ensure that all ice sold or distributed for human consumption or for the preservation or storage of food for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions and the quality of ice that shall be maintained at any ice plant, storage and truck or vehicle in which ice is produced, stored, handled or transported and shall provide for inspection and licensing of the premises and vehicles, and for abatement as public nuisances of ice, premises, equipment, processes or vehicles that do not comply with the minimum standards.

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

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

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

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

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

13. Establish an online registry of food preparers that are authorized to prepare food for commercial purposes pursuant to paragraph 4 of this subsection.

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

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

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

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

M. After consultation with the state superintendent of public instruction, the director shall prescribe the criteria the department shall use in deciding whether or not to notify a local school district that a pupil in the district has tested positive for the human immunodeficiency virus antibody. The director shall prescribe the procedure by which the department shall notify a school district if, pursuant to these criteria, the department determines that notification is warranted in a particular situation. This

procedure shall include a requirement that before notification the department shall determine to its satisfaction that the district has an appropriate policy relating to nondiscrimination of the infected pupil and confidentiality of test results and that proper educational counseling has been or will be provided to staff and pupils.

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

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

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

Q. For the purposes of this section, "fetal demise" means a fetal death that occurs or is confirmed in a licensed hospital. Fetal demise does not include an abortion as defined in section 36-2151.

D-3

DEPARTMENT OF HEALTH SERVICES (R-18-0104)

Title 9, Chapter 8, Article 2, Bottled Water

Amend: R9-8-201; R9-8-203; R9-8-205; R9-8-206



GOVERNOR'S REGULATORY REVIEW COUNCIL

STAFF MEMORANDUM – EXPEDITED RULEMAKING

MEETING DATE: January 9, 2018

AGENDA ITEM: D-3

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

FROM: Council Staff

DATE: December 19, 2017

SUBJECT: DEPARTMENT OF HEALTH SERVICES (R-18-0104)
Title 9, Chapter 8, Article 2, Bottled Water

Amend: R9-8-201; R9-8-203; R9-8-205; R9-8-206

SUMMARY OF THE RULEMAKING

This expedited rulemaking, from the Arizona Department of Health Services (Department), seeks to amend four rules in A.A.C. Title 9, Chapter 8, Article 2, related to bottled water. The purpose of the rulemaking is to incorporate by reference the most recent versions of federal regulations cited in the rules.

The Department indicates that the use of the expedited rulemaking process is justified by A.R.S. § 41-1027(A)(6), as the rules being amended are outdated, and A.R.S. § 41-1027(A)(7), as the rulemaking implements the course of action proposed in a five-year review report approved by the Council on September 6, 2017. The Governor's Office provided an exemption from Executive Order 2017-02 on August 15, 2017.

Proposed Action

- Section 201 – *Definitions*: In addition to updating incorporations by reference, an outdated citation is being corrected in the definition of “public water system.”
- Section 203 – *Application for an Approval of a Source*: An incorporation by reference is being updated.
- Section 205 – *Quality Testing Requirements*: An incorporation by reference is being updated.
- Section 206 – *Labeling Requirements*: An incorporation by reference is being updated.

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

Yes. The Department cites to both general and specific statutory authority, including A.R.S. § 36-132(A)(13) which requires the Department to “[t]ake 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.”

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

No. The rules do not establish a new fee or contain a fee increase.

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

No. The Department indicates that it has not received any public comments on the rulemaking.

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

No. No changes have been made between the Notice of Proposed Expedited Rulemaking and the Notice of Final Expedited 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?

No. The Department states that there is no corresponding federal law related to the rules.

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

No. The rules do not require a permit or license.

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?

No. The Department indicates that it did not rely on any study in its evaluation of, or justification for, the rules.

8. Conclusion

If approved, this expedited rulemaking will become effective immediately upon filing with the Secretary of State. See A.R.S. § 41-1027(H). Council staff recommends approval of the expedited rulemaking.



ARIZONA DEPARTMENT OF HEALTH SERVICES

POLICY & INTERGOVERNMENTAL AFFAIRS

November 15, 2017

Nicole O. Colyer, Esq., Chair
Governor's Regulatory Review Council
Arizona Department of Administration
100 N. 15th Avenue, Suite 305
Phoenix, AZ 85007

RE: 9 A.A.C. 8, Article 2 Department of Health Services – Food, Recreation, and Institutional Sanitation

Dear Ms. Colyer:

Enclosed is the administrative rule 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 41-1052.

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:
The close of record was November 6, 2017. Submission of the rule is within the 120 days allowed for Final Expedited Rulemaking.
2. Explanation of how the expedited rule meets the criteria in A.R.S. § 41-1027(A):
The rulemaking does not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of persons regulated. In addition, the rulemaking implements, without material change, a course of action that was proposed in a five-year review report approved by the Council pursuant to section A.R.S. § 41-1056.
3. Whether the rulemaking relates to a five-year-review report and, if applicable, the date the report was approved by the Council:
The rulemaking for 9 A.A.C. 6, Article 6 relates to a five-year-review report approved by the Council on September 6, 2017.
4. A list of all items enclosed:
 - a. Notice of Final Expedited Rulemaking, including the Preamble, Table of Contents, and text of the rule
 - b. Statutory authority
 - c. Current rule

The Department is requesting that the rules be heard at the Council meeting on January 9, 2018.

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.

Sincerely,



Robert Lane
Director's Designee

RL:tk

Enclosures

Douglas A. Ducey | Governor Cara M. Christ, MD, MS | Director

NOTICE OF FINAL EXPEDITED RULEMAKING
TITLE 9. HEALTH SERVICES
CHAPTER 8. DEPARTMENT OF HEALTH SERVICES
FOOD, RECREATION, AND INSTITUTIONAL SANITATION
PREAMBLE

- 1. Article, Part, or Section Affected (as applicable) Rulemaking Action**

R9-8-201	Amend
R9-8-203	Amend
R9-8-205	Amend
R9-8-206	Amend
- 2. Citations to the agency’s statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):**

Authorizing statute: A.R.S. §§ 36-132(A)(1), 36-136(A)(7), and 36-136(G)
Implementing statute: A.R.S. §§ 36-132(A)(13) and 36-136(I)(6)
- 3. The effective date of the rules:**

The rules are effective the day the Notice of Final Expedited Rulemaking is filed with the Office of the Secretary of State.
- 4. Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the record of the proposed expedited rulemaking:**

Notice of Docket Opening: 23 A.A.R. 3059, October 27, 2017
Notice of Proposed Expedited Rulemaking: 23 A.A.R. 3053, October 27, 2017
- 5. The agency’s contact person who can answer questions about the expedited rulemaking:**

Name: Eric Thomas, Chief
Address: Arizona Department of Health Services
Division of Public Health Services, Public Health Preparedness,
Office of Environmental Health
150 N. 18th Ave., Suite 140
Phoenix, AZ 85007-3248
Telephone: (602) 364-0929
Fax: (602) 364-3146
E-mail: Eric.Thomas@azdhs.gov
or
Name: Robert Lane, 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: Robert.Lane@azdhs.gov

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

The five-year-review report (Report) for 9 A.A.C. 8, Article 2, was approved by the Governor's Regulatory Review Council on September 6, 2017. The Report identified that the rules' effectiveness could be improved by incorporating the most recent version of the federal regulations cited in the rules. Additionally, the Arizona Department of Health Services (Department) identified a citation to A.A.C. R18-4-101 in rule R9-8-201(14) that was not identified in the Report. A.A.C. R18-4-101 was repealed in a 2008 Notice of Final Rulemaking, 14 A.A.R. 2978. The changes proposed in this rulemaking meet the criteria for expedited rulemaking. The changes identified will not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of a regulated person. This rulemaking achieves the purpose prescribed in A.R.S. § 41-1027(A)(1) to amend a rule that is outdated and in (A)(7) to implement a course of action proposed in a five-year-review report. The Department believes that amending these rules will eliminate confusion and reduce regulatory burden.

7. A reference to any study relevant to the rule that the agency reviewed and proposes either to rely on or not to rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

The Department did not review or rely on any study for this expedited rulemaking.

8. A showing of good cause why the expedited rulemaking is necessary to promote a statewide interest if the expedited rulemaking will diminish a previous grant of authority of a political subdivision of this state.

This final expedited rulemaking does not diminish a previous grant of authority of a political subdivision of this state.

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

The agency is excluded from providing an economic, small business, and consumer impact statement under A.R.S. § 41-1055(D)(2).

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

Between the proposed expedited rulemaking and the final expedited rulemaking, no changes were made to the expedited rulemaking.

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

The Department did not receive public or stakeholder comments about the expedited rulemaking.

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

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

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

The rule does not require issuance of a general permit.

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

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

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

No such analysis was submitted.

13. Incorporations by reference and their location in the rules:

The following is incorporated by reference in R9-8-201(4):

21 CFR 165.110(a)(1) (2003), incorporated by reference, on file with the Department, and including no future editions or amendments, available at <http://www.gpoaccess.gov/cfr/index.html> and from U.S. Government Printing Office, 732 N. Capital Street, NW Washington, DC 20401.

The following is incorporated by reference in R9-8-201(13):

21 CFR 165.110(b) (2003), incorporated by reference and on file with the Department, and including no future editions or amendments, available at <http://www.gpoaccess.gov/cfr/index.html> and from U.S. Government Printing Office, 732 N. Capital Street, NW Washington, DC 20401.

The following is incorporated by reference in R9-8-201(17):

21 CFR 165.110(b)(i) (2003), incorporated by reference, on file with the Department, and including no future editions or amendments, available at <http://www.gpoaccess.gov/cfr/index.html> and from U.S. Government Printing Office, 732 N. Capital Street, NW Washington, DC 20401.

The following is incorporated by reference in R9-8-203(B):

21 CFR 165.110(b) (2003), incorporated by reference, on file with the Department, and including no future editions or amendments, available at <http://www.gpoaccess.gov/cfr/index.html> and from U.S. Government Printing Office, 732 N. Capital Street, NW Washington, DC 20401.

The following is incorporated by reference in R9-8-205(A):

21 CFR 129.80(g) (2003), incorporated by reference, on file with the Department, and including no future editions or amendments, available at <http://www.gpoaccess.gov/cfr/index.html> and from U.S. Government Printing Office, 732 N. Capital Street, NW Washington, DC 20401.

The following is incorporate by reference in R9-8-206:

21 CFR 129.80(e) (2003), incorporated by reference, on file with the Department, and including no future editions or amendments, available at <http://www.gpoaccess.gov/cfr/index.html> and from U.S. Government Printing Office, 732 N. Capital Street, NW Washington, DC 20401.

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

The rule was not previously made as an emergency rule.

15. The full text of the rule follows:

TITLE 9. HEALTH SERVICES
CHAPTER 8. DEPARTMENT OF HEALTH SERVICES
FOOD, RECREATION, AND INSTITUTIONAL SANITATION
ARTICLE 2. BOTTLED WATER

Section

- R9-8-201. Definitions
- R9-8-203. Application for an Approval of a Source
- R9-8-205. Quality Testing Requirements
- R9-8-206. Labeling Requirements

ARTICLE 2. BOTTLED WATER

R9-8-201. Definitions

In this Article, unless the context otherwise requires:

1. "Applicant" has the same meaning as in R9-8-101.
2. "Aquifer" means a layer of underground sand, gravel or porous rock where water collects.
3. "Artesian well" means a drilled well that accesses an aquifer with a water level that stands above the bottom of the confining bed of the aquifer.
4. "Bottled water" has the same meaning as in ~~21 CFR 165.110(a)(1) (2003)~~ 21 CFR 165.110(a)(1) (2016), incorporated by reference, on file with the Department, including no future editions or amendments, and available at ~~http://www.gpoaccess.gov/cfr/index.html~~ and from the U.S. Government Printing Office, 732 N. Capitol Street, N.W. Washington, D.C. ~~20401~~ 20401-001.
5. "Bottled water plant" means a food establishment that processes and sells bottled water.
6. "CFR" means the Code of Federal Regulations.
7. "Confining bed" means a layer of ground that resists water penetration.
8. "Department" means the Arizona Department of Health Services.
9. "Drilled well" means a hole bored into the ground to reach underground water.
10. "Food establishment" has the same meaning as in A.A.C. Title 9, Chapter 8, Article 1.
11. "Licensed laboratory" means a laboratory licensed by the Department under A.R.S. Title 36, Chapter 4.3, Article 1.
12. "Plant operator" means an individual designated by the applicant to operate a specific bottled water plant.
13. "Processes" means the steps taken to ensure source water meets the quality standards for bottled water in ~~21 CFR 165.110(b) (2003)~~ 21 CFR 165.110(b) (2016), incorporated by reference, on file with the Department, including no future editions or amendments, and available at ~~http://www.gpoaccess.gov/cfr/index.html~~ and from the U.S. Government Printing Office, 732 N. Capitol Street, N.W. Washington, D.C. ~~20401~~ 20401-001.
14. "Public water system" has the same meaning as in ~~A.A.C. R18-4-101~~ A.R.S. § 49-352(B)(1).
15. "Source" means an artesian well, drilled well, public water system, or spring.
16. "Source water" means water from an artesian well, drilled well, public water system, or spring.

17. "Spring" has the same meaning as "spring water" in ~~21 CFR 165.110(a)(2)(vi) (2003)~~ 21 CFR 165.110(a)(2)(vi) (2016), incorporated by reference, on file with the Department, including no future editions or amendments, and available at ~~http://www.gpoaccess.gov/cfr/index.html~~ and from the U.S. Government Printing Office, 732 N. Capitol Street, N.W. Washington, D.C. ~~20401~~ 20401-001.

R9-8-203. Application for an Approval of a Source

- A. An applicant shall complete and submit to the Department, an application for an approval of a source on a form provided by the Department that includes:
1. The name, mailing address, and telephone number of the applicant;
 2. The name, street address, and telephone number of the bottled water plant;
 3. The location of the source used at the bottled water plant;
 4. The applicant's signature; and
 5. The date the application is signed.
- B. With the completed application, an applicant shall include test results from a licensed laboratory that has tested the bottled water according to the quality requirements for bottled water in ~~21 CFR 165.110(b) (2003)~~ 21 CFR 165.110(b) (2016), incorporated by reference, on file with the Department, including no future editions or amendments, and available at ~~http://www.gpoaccess.gov/cfr/index.html~~ and from the U.S. Government Printing Office, 732 N. Capitol Street, N.W. Washington, D.C. ~~20401~~ 20401-001.
- C. An applicant shall comply with subsections (A) and (B) for each source used at the bottled water plant.

R9-8-205. Quality Testing Requirements

- A. To maintain approval of its source, a plant operator shall have a licensed laboratory test the quality of the bottled water at the times stated in ~~21 CFR 129.80(g) (2003)~~ 21 CFR 129.80(g) (2016), incorporated by reference, on file with the Department, including no future editions or amendments, and available at ~~http://www.gpoaccess.gov/cfr/index.html~~ and from the U.S. Government Printing Office, 732 N. Capitol Street, N.W. Washington, D.C. ~~20401~~ 20401-001.
- B. A plant operator shall maintain records of the quality testing of the bottled water on the bottled water plant premises for two years from the date the bottled water is tested and ensure that the records are readily available for inspection by the Department.

R9-8-206. Labeling Requirements

In addition to the labeling requirements in 9 A.A.C. 8, Article 1, a plant operator shall ensure the bottled water processed and sold is labeled according to ~~21 CFR 129.80(e) (2003)~~ 21 CFR 129.80(e) (2016), incorporated by reference, on file with the Department, including no future editions or amendments, and available at ~~http://www.gpoaccess.gov/cfr/index.html~~ and from the U.S. Government Printing Office, 732 N. Capitol Street, N.W. Washington, D.C. ~~20401~~ 20401-001.

ARTICLE 2. BOTTLED WATER

R9-8-201. Definitions

In this Article, unless the context otherwise requires:

- 1 "Applicant" has the same meaning as in R9-8-101.
- 2 "Aquifer" means a layer of underground sand, gravel or porous rock where water collects.
- 3 "Artesian well" means a drilled well that accesses an aquifer with a water level that stands above the bottom of the confining bed of the aquifer.
- 4 "Bottled water" has the same meaning as in 21 CFR 165 110(a)(1) (2003), incorporated by reference, on file with the Department, including no future editions or amendments, and available at <http://www.gpoaccess.gov/cfr/index.html> and from U.S. Government Printing Office, 732 N. Capitol Street, N.W. Washington, D C 20401.
- 5 "Bottled water plant" means a food establishment that processes and sells bottled water.
- 6 "CFR" means the Code of Federal Regulations.
- 7 "Confining bed" means a layer of ground that resists water penetration.
- 8 "Department" means the Arizona Department of Health Services.
- 9 "Drilled well" means a hole bored into the ground to reach underground water.
- 10 "Food establishment" has the same meaning as in A.A.C Title 9, Chapter 8, Article 1.
- 11 "Licensed laboratory" means a laboratory licensed by the Department under A.R.S. Title 36, Chapter 4.3, Article 1
- 12 "Plant operator" means an individual designated by the applicant to operate a specific bottled water plant.
- 13 "Processes" means the steps taken to ensure source water meets the quality standards for bottled water in 21 CFR 165 110(b) (2003), incorporated by reference, on file with the Department, including no future editions or amendments, and available at <http://www.gpoaccess.gov/cfr/index.html> and from U.S. Government Printing Office, 732 N. Capitol Street, N.W. Washington, D.C. 20401.
- 14 "Public water system" has the same meaning as in A.A.C R18-4-101.
- 15 "Source" means an artesian well, drilled well, public water system, or spring.
- 16 "Source water" means water from an artesian well, drilled well, public water system, or spring.
- 17 "Spring" has the same meaning as "spring water" in 21 CFR 165.110(a)(2)(vi) (2003), incorporated by reference, on file with the Department, including no future editions or amendments, and available at <http://www.gpoaccess.gov/cfr/index.html> and from U.S. Government Printing Office, 732 N. Capitol Street, N.W. Washington, D C. 20401.

R9-8-202. General Requirements

A food establishment that processes and sells bottled water in Arizona shall use a source approved by the Department.

R9-8-203. Application for an Approval of a Source

- A. An applicant shall complete and submit to the Department, an application for an approval of a source on a form provided by the Department that includes:
1. The name, mailing address, and telephone number of the applicant;
 2. The name, street address, and telephone number of the bottled water plant;
 3. The location of the source used at the bottled water plant;
 4. The applicant's signature; and
 5. The date the application is signed.
- B. With the completed application, an applicant shall include test results from a licensed laboratory that has tested the bottled water according to the quality requirements for bottled water in 21 CFR 165.110(b) (2003), incorporated by reference, on file with the Department, including no future editions or amendments, and available at <http://www.gpoaccess.gov/cfr/index.html> and from U.S. Government Printing Office, 732 N. Capitol Street, N.W. Washington, D.C. 20401.
- C. An applicant shall comply with subsections (A) and (B) for each source used at the bottled water plant

R9-8-204. Time-frames

- A. The overall time-frame described in A.R.S. § 41-1072 for the Department to act on an application for an approval of a source is 60 days. The applicant and the Department may agree in writing to extend the substantive review time-frame and the overall time-frame by no more than 25% of the overall time-frame.
- B. The administrative completeness review time-frame described in A.R.S. § 41-1072 for an application for an approval of a source is 30 days and begins on the date the application is received.
1. The Department shall mail notice of administrative completeness or deficiencies to the applicant within the administrative completeness review time-frame.
 - a. A notice of deficiencies shall list each deficiency and the information and documentation needed to complete the application.
 - b. If the Department issues a notice of deficiencies within the administrative completeness review time-frame, the administrative completeness review time-frame and the overall time-frame are suspended from the date that the notice is issued until the date the Department receives the missing information from the applicant.

- c. If the applicant fails to submit to the Department all the information and documents listed in the notice of deficiencies within 60 days of the date the Department mailed the notice of deficiencies, the Department deems the application for approval of a source withdrawn.
2. If the Department issues an approval of a source to the applicant during the administrative completeness review time-frame, the Department does not issue a separate written notice of administrative completeness.
- C. The substantive review time-frame described in A.R.S. § 41-1072 is 30 days and begins on the date the notice of administrative completeness is mailed to the applicant
 1. The Department shall mail an approval of a source or a written notification of denial of approval to the applicant within the substantive review time-frame
 2. If the Department issues a comprehensive written request or supplemental request for information, the substantive review time-frame and the overall time-frame are suspended from the date the Department issues the request until the date the Department receives all of the information
 3. If the Department denies approval of a source, the Department shall send the applicant a written notice of disapproval that lists the reasons for disapproval and all other information required in A.R.S. § 41-1076
- D. If a time-frame's last day is on a Saturday, Sunday, or legal holiday, the Department considers the next business day as the time-frame's last day.

R9-8-205. Quality Testing Requirements

- A. To maintain approval of its source, a plant operator shall have a licensed laboratory test the quality of the bottled water at the times stated in 21 CFR 129.80(g) (2003), incorporated by reference, on file with the Department, including no future editions or amendments, and available at <http://www.gpoaccess.gov/cfr/index.html> and from U.S. Government Printing Office, 732 N. Capitol Street, N.W. Washington, D.C. 20401.
- B. A plant operator shall maintain records of the quality testing of the bottled water on the bottled water plant premises for two years from the date the bottled water is tested and ensure that the records are readily available for inspection by the Department.

R9-8-206. Labeling Requirements

In addition to the labeling requirements in 9 A.A.C. 8, Article 1, a plant operator shall ensure the bottled water processed and sold is labeled according to 21 CFR 129.80(e) (2003), incorporated by reference, on file with the Department, including no future editions or amendments, and available at <http://www.gpoaccess.gov/cfr/index.html> and from U.S. Government Printing Office, 732 N. Capitol Street, N.W. Washington, D.C. 20401

36-132. Department of health services; functions; contracts

- A. The department shall, in addition to other powers and duties vested in it by law:
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 the state and the prevention of diseases as may be useful in the discharge of functions of the department not in conflict with the provisions of 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 school children, 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 the 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 H, 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 of 1938 (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 the developmentally disabled. The department shall issue a license to an accredited facility for a period of the accreditation, except that no licensing period shall be longer than three years. The department is authorized to conduct an inspection of an accredited facility to ensure that the facility meets health and safety licensure standards. The results of the accreditation survey shall be public information. A copy of the final accreditation report shall be filed with the department of health services. For the purposes of this paragraph, "accredited" means accredited by a nationally recognized accreditation organization.
- B. The department may accept from the state or federal government, or any agency of the state or federal government, and from private donors, trusts, foundations or eleemosynary corporations or organizations grants or donations for or in aid of the construction or maintenance of any program, project, research or facility authorized by this title, or in aid of the extension or enforcement of any program, project or facility authorized, regulated or prohibited by this title, and enter into contracts with the federal government, or an agency of the federal government, and with private donors, trusts, foundations or eleemosynary corporations or organizations, to carry out such purposes. All monies made available under this section are special project grants. The department may also expend these monies to further applicable scientific research within this state.
- C. The department, in establishing fees authorized by this section, shall comply with title 41, chapter 6. The department shall not set a fee at more than the department's cost of providing the service for which the fee is charged. State agencies are exempt from all fees imposed pursuant to this section.
- D. The department may enter into contracts with organizations that perform nonrenal organ transplant operations and organizations that primarily assist in the management of end stage renal disease and related problems to provide, as payors of last resort, prescription medications necessary to supplement treatment and transportation to and from treatment facilities. The contracts may provide for department payment of administrative costs it specifically authorizes.

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

- A. The director shall:
1. Be the executive officer of the department of health services and the state registrar of vital statistics but shall not receive compensation for services as registrar.
 2. Perform all duties necessary to carry out the functions and responsibilities of the department.
 3. Prescribe the organization of the department. The director shall appoint or remove personnel as necessary for the efficient work of the department and shall prescribe the duties of all personnel. The director may abolish any office or position in the department that the director believes is unnecessary.
 4. Administer and enforce the laws relating to health and sanitation and the rules of the department.
 5. Provide for the examination of any premises if the director has reasonable cause to believe that on the premises there exists a violation of any health law or rule of this state.
 6. Exercise general supervision over all matters relating to sanitation and health throughout this state. When in the opinion of the director it is necessary or advisable, a sanitary survey of the whole or of any part of this state shall be made. The director may enter, examine and survey any source and means of water supply, sewage disposal plant, sewerage system, prison, public or private place of detention, asylum, hospital, school, public building, private institution, factory, workshop, tenement, public washroom, public restroom, public toilet and toilet facility, public eating room and restaurant, dairy, milk plant or food manufacturing or processing plant, and any premises in which the director has reason to believe there exists a violation of any health law or rule of this state that the director has the duty to administer.
 7. Prepare sanitary and public health rules.
 8. Perform other duties prescribed by law.
- B. If the director has reasonable cause to believe that there exists a violation of any health law or rule of this state, the director may inspect any person or property in transportation through this state, and any car, boat, train, trailer, airplane or other vehicle in which that person or property is transported, and may enforce detention or disinfection as reasonably necessary for the public health if there exists a violation of any health law or rule.
- C. The director, after consultation with the department of administration, may take all necessary steps to enhance the highest and best use of the state hospital property, including contracting with third parties to provide services, entering into short-term lease agreements with third parties to occupy or renovate existing buildings and entering into long-term lease agreements to develop the land and buildings. The director shall deposit any monies collected from contracts and lease

agreements entered into pursuant to this subsection in the Arizona state hospital charitable trust fund established by section 36-218. At least thirty days before issuing a request for proposals pursuant to this subsection, the department of health services shall hold a public hearing to receive community and provider input regarding the highest and best use of the state hospital property related to the request for proposals. The department shall report to the joint committee on capital review on the terms, conditions and purpose of any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, and the fiscal impact on the department and any revenues generated by the agreement. Any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, must be reviewed by the joint committee on capital review.

- D. The director may deputize, in writing, any qualified officer or employee in the department to do or perform on the director's behalf any act the director is by law empowered to do or charged with the responsibility of doing.
- E. The director may delegate to a local health department, county environmental department or public health services district any functions, powers or duties that the director believes can be competently, efficiently and properly performed by the local health department, county environmental department or public health services district if:
 - 1. The director or superintendent of the local health agency, environmental agency or public health services district is willing to accept the delegation and agrees to perform or exercise the functions, powers and duties conferred in accordance with the standards of performance established by the director of the department of health services.
 - 2. Monies appropriated or otherwise made available to the department for distribution to or division among counties or public health services districts for local health work may be allocated or reallocated in a manner designed to ensure the accomplishment of recognized local public health activities and delegated functions, powers and duties in accordance with applicable standards of performance. Whenever in the director's opinion there is cause, the director may terminate all or a part of any delegation and may reallocate all or a part of any funds that may have been conditioned on the further performance of the functions, powers or duties conferred.
- F. The compensation of all personnel shall be as determined pursuant to section 38-611.
- G. The director may make and amend rules necessary for the proper administration and enforcement of the laws relating to the public health.

- H. Notwithstanding subsection I, paragraph 1 of this section, the director may define and prescribe emergency measures for detecting, reporting, preventing and controlling communicable or infectious diseases or conditions if the director has reasonable cause to believe that a serious threat to public health and welfare exists. Emergency measures are effective for no longer than eighteen months.
- I. The director, by rule, shall:
1. Define and prescribe reasonably necessary measures for detecting, reporting, preventing and controlling communicable and preventable diseases. The rules shall declare certain diseases reportable. The rules shall prescribe measures, including isolation or quarantine, that are reasonably required to prevent the occurrence of, or to seek early detection and alleviation of, disability, insofar as possible, from communicable or preventable diseases. The rules shall include reasonably necessary measures to control animal diseases transmittable to humans.
 2. Define and prescribe reasonably necessary measures, in addition to those prescribed by law, regarding the preparation, embalming, cremation, interment, disinterment and transportation of dead human bodies and the conduct of funerals, relating to and restricted to communicable diseases and regarding the removal, transportation, cremation, interment or disinterment of any dead human body.
 3. Define and prescribe reasonably necessary procedures that are not inconsistent with law in regard to the use and accessibility of vital records, delayed birth registration and the completion, change and amendment of vital records.
 4. Except as relating to the beneficial use of wildlife meat by public institutions and charitable organizations pursuant to title 17, prescribe reasonably necessary measures to ensure that all food or drink, including meat and meat products and milk and milk products sold at the retail level, provided for human consumption is free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe reasonably necessary measures governing the production, processing, labeling, storing, handling, serving and transportation of these products. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained in any warehouse, restaurant or other premises, except a meat packing plant, slaughterhouse, wholesale meat processing plant, dairy product manufacturing plant or trade product manufacturing plant. The rules shall prescribe minimum standards for any truck or other vehicle in which food or drink is produced, processed, stored, handled, served or transported. The rules shall provide for the inspection and licensing of premises and vehicles so used, and for abatement as public nuisances of any premises or vehicles

that do not comply with the rules and minimum standards. The rules shall provide an exemption relating to food or drink that is:

- (a) Served at a noncommercial social event such as a potluck.
 - (b) Prepared at a cooking school that is conducted in an owner-occupied home.
 - (c) Not potentially hazardous and prepared in a kitchen of a private home for occasional sale or distribution for noncommercial purposes.
 - (d) Prepared or served at an employee-conducted function that lasts less than four hours and is not regularly scheduled, such as an employee recognition, an employee fund-raising or an employee social event.
 - (e) Offered at a child care facility and limited to commercially prepackaged food that is not potentially hazardous and whole fruits and vegetables that are washed and cut on-site for immediate consumption.
 - (f) Offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous.
 - (g) Baked and confectionary goods that are not potentially hazardous and that are prepared in a kitchen of a private home for commercial purposes if packaged with a label that clearly states the address of the maker, includes contact information for the maker, lists all the ingredients in the product and discloses that the product was prepared in a home. The label must be given to the final consumer of the product. If the product was made in a facility for individuals with developmental disabilities, the label must also disclose that fact. The person preparing the food or supervising the food preparation must obtain a food handler's card or certificate if one is issued by the local county and must register with an online registry established by the department pursuant to paragraph 13 of this subsection. For the purposes of this subdivision, "potentially hazardous" means baked and confectionary goods that meet the requirements of the food code published by the United States food and drug administration, as modified and incorporated by reference by the department by rule.
 - (h) A whole fruit or vegetable grown in a public school garden that is washed and cut on-site for immediate consumption.
5. Prescribe reasonably necessary measures to ensure that all meat and meat products for human consumption handled at the retail level are delivered in a manner and from sources approved by the Arizona department of agriculture and are free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe standards for sanitary facilities to be used in identity, storage, handling and sale of all meat and meat products sold at the retail level.

6. Prescribe reasonably necessary measures regarding production, processing, labeling, handling, serving and transportation of bottled water to ensure that all bottled drinking water distributed for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained at any source of water, bottling plant and truck or vehicle in which bottled water is produced, processed, stored or transported and shall provide for inspection and certification of bottled drinking water sources, plants, processes and transportation and for abatement as a public nuisance of any water supply, label, premises, equipment, process or vehicle that does not comply with the minimum standards. The rules shall prescribe minimum standards for bacteriological, physical and chemical quality for bottled water and for the submission of samples at intervals prescribed in the standards.
7. Define and prescribe reasonably necessary measures governing ice production, handling, storing and distribution to ensure that all ice sold or distributed for human consumption or for the preservation or storage of food for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions and the quality of ice that shall be maintained at any ice plant, storage and truck or vehicle in which ice is produced, stored, handled or transported and shall provide for inspection and licensing of the premises and vehicles, and for abatement as public nuisances of ice, premises, equipment, processes or vehicles that do not comply with the minimum standards.
8. Define and prescribe reasonably necessary measures concerning sewage and excreta disposal, garbage and trash collection, storage and disposal, and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels. The rules shall prescribe minimum standards for preparation of food in community kitchens, adequacy of excreta disposal, garbage and trash collection, storage and disposal and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels and shall provide for inspection of these premises and for abatement as public nuisances of any premises or facilities that do not comply with the rules. Primitive camp and picnic grounds offered by this state or a political subdivision of this state are exempt from rules adopted pursuant to this paragraph but are subject to approval by a county health department under sanitary regulations adopted pursuant to section 36-183.02. Rules adopted pursuant to this paragraph do not apply to two or fewer recreational vehicles as defined in section 33-2102 that are not park models or park trailers, that are parked on owner-occupied residential property for less than sixty days and for which no rent or other compensation is paid. For the purposes of this paragraph, "primitive camp

and picnic grounds" means camp and picnic grounds that are remote in nature and without accessibility to public infrastructure such as water, electricity and sewer.

9. Define and prescribe reasonably necessary measures concerning the sewage and excreta disposal, garbage and trash collection, storage and disposal, water supply and food preparation of all public schools. The rules shall prescribe minimum standards for sanitary conditions that shall be maintained in any public school and shall provide for inspection of these premises and facilities and for abatement as public nuisances of any premises that do not comply with the minimum standards.
10. Prescribe reasonably necessary measures to prevent pollution of water used in public or semipublic swimming pools and bathing places and to prevent deleterious health conditions at these places. The rules shall prescribe minimum standards for sanitary conditions that shall be maintained at any public or semipublic swimming pool or bathing place and shall provide for inspection of these premises and for abatement as public nuisances of any premises and facilities that do not comply with the minimum standards. The rules shall be developed in cooperation with the director of the department of environmental quality and shall be consistent with the rules adopted by the director of the department of environmental quality pursuant to section 49-104, subsection B, paragraph 12.
11. Prescribe reasonably necessary measures to keep confidential information relating to diagnostic findings and treatment of patients, as well as information relating to contacts, suspects and associates of communicable disease patients. In no event shall confidential information be made available for political or commercial purposes.
12. Prescribe reasonably necessary measures regarding human immunodeficiency virus testing as a means to control the transmission of that virus, including the designation of anonymous test sites as dictated by current epidemiologic and scientific evidence.
13. Establish an online registry of food preparers that are authorized to prepare food for commercial purposes pursuant to paragraph 4 of this subsection.
14. Prescribe an exclusion for fetal demise cases from the standardized survey known as "the hospital consumer assessment of healthcare providers and systems".
- J. The rules adopted under the authority conferred by this section shall be observed throughout the state and shall be enforced by each local board of health or public health services district, but this section does not limit the right of any local board of health or county board of supervisors to adopt ordinances and rules as authorized by law within its jurisdiction, provided that the ordinances and rules do not conflict with state law and are equal to or more restrictive than the rules of the director.

- K. The powers and duties prescribed by this section do not apply in instances in which regulatory powers and duties relating to public health are vested by the legislature in any other state board, commission, agency or instrumentality, except that with regard to the regulation of meat and meat products, the department of health services and the Arizona department of agriculture within the area delegated to each shall adopt rules that are not in conflict.
- L. The director, in establishing fees authorized by this section, shall comply with title 41, chapter 6. The department shall not set a fee at more than the department's cost of providing the service for which the fee is charged. State agencies are exempt from all fees imposed pursuant to this section.
- M. After consultation with the state superintendent of public instruction, the director shall prescribe the criteria the department shall use in deciding whether or not to notify a local school district that a pupil in the district has tested positive for the human immunodeficiency virus antibody. The director shall prescribe the procedure by which the department shall notify a school district if, pursuant to these criteria, the department determines that notification is warranted in a particular situation. This procedure shall include a requirement that before notification the department shall determine to its satisfaction that the district has an appropriate policy relating to nondiscrimination of the infected pupil and confidentiality of test results and that proper educational counseling has been or will be provided to staff and pupils.
- N. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (f) of this section, food and drink are exempt from the rules prescribed in subsection I of this section if offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous, without a limitation on its display area.
- O. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (h) of this section, a whole fruit or vegetable grown in a public school garden that is washed and cut on-site for immediate consumption is exempt from the rules prescribed in subsection I of this section.
- P. Until the department adopts an exclusion by rule as required by subsection I, paragraph 14 of this section, the standardized survey known as "the hospital consumer assessment of healthcare providers and systems" may not include patients who experience a fetal demise.
- Q. For the purposes of this section, "fetal demise" means a fetal death that occurs or is confirmed in a licensed hospital. Fetal demise does not include an abortion as defined in section 36-2151.

D-4

DEPARTMENT OF HEALTH SERVICES (R-18-0105)

Title 9, Chapter 8, Article 4, Children's Camps

Amend: R9-8-401; R9-8-402



GOVERNOR'S REGULATORY REVIEW COUNCIL

STAFF MEMORANDUM – EXPEDITED RULEMAKING

MEETING DATE: January 9, 2018

AGENDA ITEM: D-4

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

FROM: Council Staff

DATE: December 19, 2017

SUBJECT: DEPARTMENT OF HEALTH SERVICES (R-18-0105)
Title 9, Chapter 8, Article 4, Children's Camps

Amend: R9-8-401; R9-8-402

SUMMARY OF THE RULEMAKING

This expedited rulemaking, from the Arizona Department of Health Services (Department), seeks to amend two rules in A.A.C. Title 9, Chapter 8, Article 4, related to children's camps. The Department states that the purpose of the rulemaking is to eliminate confusion and reduce regulatory burden by making the rules more consistent, clear, and understandable.

The Department indicates that the use of the expedited rulemaking process is justified by A.R.S. § 41-1027(A)(7), as the rulemaking implements the course of action proposed in a five-year review report approved by the Council on September 6, 2017. The Governor's Office provided an exemption from Executive Order 2017-02 on August 4, 2017.

Proposed Action

- Section 401 – *Definitions*: Outdated citations in the definitions of the terms “children's camp” and “county” are updated.
- Section 402 – *Initial and Renewal License Application Process*: Outdated citations in subsections (A)(1), (C)(1)(b), and (C)(2)(b) are updated.

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

Yes. The Department cites to both general and specific statutory authority, including A.R.S. § 36-136(A)(7) which requires the Department to “[p]repare sanitary and public health rules.”

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

No. The rules do not establish a new fee or contain a fee increase.

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

No. The Department indicates that it has not received any public comments on the rulemaking.

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

No. Only non-substantive technical changes have been made between the Notice of Proposed Expedited Rulemaking and the Notice of Final Expedited 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?

No. The Department states that there is no corresponding federal law related to the rules.

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

Yes. Section 402 sets forth the application process for initial approvals and renewals. In Council staff’s view, the Department is not required to issue general permits under the rule as it would not be technically feasible to do so. See A.R.S. § 41-1037(A)(3).

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?

No. The Department indicates that it did not rely on any study in its evaluation of, or justification for, the rules.

8. Conclusion

If approved, this expedited rulemaking will become effective immediately upon filing with the Secretary of State. See A.R.S. § 41-1027(H). Council staff recommends approval of the expedited rulemaking.



ARIZONA DEPARTMENT OF HEALTH SERVICES

POLICY & INTERGOVERNMENTAL AFFAIRS

November 15, 2017

Nicole O. Colyer, Esq., Chair
Governor's Regulatory Review Council
Arizona Department of Administration
100 N. 15th Avenue, Suite 305
Phoenix, AZ 85007

RE: 9 A.A.C. 8, Article 4 Department of Health Services – Food, Recreation, and Institutional Sanitation

Dear Ms. Colyer:

Enclosed is the administrative rule 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 41-1052.

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:
The close of record was November 6, 2017. Submission of the rule is within the 120 days allowed for Final Expedited Rulemaking.
2. Explanation of how the expedited rule meets the criteria in A.R.S. § 41-1027(A):
The rulemaking does not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of persons regulated. In addition, the rulemaking implements, without material change, a course of action that was proposed in a five-year review report approved by the Council pursuant to section A.R.S. § 41-1056.
3. Whether the rulemaking relates to a five-year-review report and, if applicable, the date the report was approved by the Council:
The rulemaking for 9 A.A.C. 6, Article 6 relates to a five-year-review report approved by the Council on September 6, 2017.
4. A list of all items enclosed:
 - a. Notice of Final Expedited Rulemaking, including the Preamble, Table of Contents, and text of the rule
 - b. Statutory authority
 - c. Current rule

The Department is requesting that the rules be heard at the Council meeting on January 9, 2018.

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.

Sincerely,



Robert Lane
Director's Designee

RL:tk

Enclosures

Douglas A. Ducey | Governor Cara M. Christ, MD, MS | Director

150 N. 18th Ave., Suite 200

Phoenix, AZ 85007

Telephone: (602) 542-1020

Fax: (602) 364-1150

E-mail: Robert.Lane@azdhs.gov

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

The five-year-review report (Report) for 9 A.A.C. 8, Article 4, was approved by the Governor's Regulatory Review Council on September 6, 2017. The Report identified that the rules are mostly consistent, but could be more consistent, clear, and understandable if the citations to A.R.S. §§ 8-551, 8-553, and 8-568, which were recodified under Laws 2014, 2nd S.S., Ch. 1, § 52, were updated respectively to A.R.S. §§ 36-3903, 36-3910, and 36-3915. The Report also stated that the Arizona Department of Health Services (Department) plans to amend the rules as identified. The changes identified will not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of a regulated person. Amending the rules as identified in the Report meets the criteria for expedited rulemaking and implements a course of action proposed in a five-year-review report. This expedited rulemaking achieves the purpose prescribed in A.R.S. § 41-1027(A)(7) to implement a course of action proposed in a five-year-review report. The Department believes amending these rules will eliminate confusion and reduce regulatory burden.

7. A reference to any study relevant to the rule that the agency reviewed and proposes either to rely on or not to rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

The Department did not review or rely on any study for this rulemaking.

8. A showing of good cause why the expedited rulemaking is necessary to promote a statewide interest if the expedited rulemaking will diminish a previous grant of authority of a political subdivision of this state.

This final expedited rulemaking does not diminish a previous grant of authority of a political subdivision of this state.

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

The agency is excluded from providing an economic, small business, and consumer impact statement under A.R.S. § 41-1055(D)(2).

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

Between the proposed expedited rulemaking and the final expedited rulemaking, the Department made the following changes: R9-8-401(4) amended citation A.R.S. § 8-551 to A.R.S. § 36-3903 and R9-8-402(C)(1)(b) and (C)(2)(b) amended citation A.R.S. § 8-553(B) to A.R.S. § 36-3910. The Department does not believe that the revised rules are substantially different from the rules contained in the Notice of Proposed Rulemaking and believes that the changes improve clarity and understandability.

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

The Department did not receive public or stakeholder comments about the rulemaking.

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

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

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

The rule does not require issuance of a general permit.

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

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

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

No such analysis was submitted.

13. Incorporations by reference and their location in the rules:

Not applicable.

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

The rule was not previously made as an emergency rule.

15. The full text of the rule follows:

TITLE 9. HEALTH SERVICES
CHAPTER 8. DEPARTMENT OF HEALTH SERVICES
FOOD, RECREATION, AND INSTITUTIONAL SANITATION
ARTICLE 2. CHILDREN'S CAMPS

Section

R9-8-401. Definitions

R9-8-402. Initial and Renewal License Application Process

ARTICLE 4. CHILDREN'S CAMPS

R9-8-401. Definitions

In this Article, unless otherwise requires:

1. "Applicant" means an individual requesting a license from the Department or a county to operate a children's camp.
2. "Bathing place" has the same meaning as in 9 A.A.C. 8, Article 8.
3. "Camp director" means an individual who runs, maintains, or otherwise controls or directs the functions of a children's camp.
4. "Children's camp" has the same meaning as in ~~A.R.S. § 8-551~~ A.R.S. § 36-3903.
5. "County" means a governmental entity that has a delegation agreement with the Department as prescribed in ~~A.R.S. § 8-568~~ A.R.S. § 36-3915.
6. "Delegation agreement" has the same meaning as in A.R.S. § 41-1001.
7. "Department" means the Arizona Department of Health Services.
8. "Food establishment" has the same meaning as in 9 A.A.C. 8, Article 1.

R9-8-402. Initial and Renewal License Application Process

- A. An applicant shall submit a completed license application form in subsection (B) to:
 1. The county in which the children's camp is located, if the county has a delegation agreement with the Department under ~~A.R.S. § 8-568~~ A.R.S. § 36-3915; or
 2. The Department, if there is no delegation agreement.
- B. An applicant shall submit a completed license application form provided by the Department or a county that contains:
 1. The name, mailing address, and telephone number of the children's camp;
 2. The county in which the children's camp is located;
 3. The name, telephone number, and mailing address of the applicant;
 4. The name, telephone number, and if applicable, e-mail address of the camp director;
 5. The dates of operation of the children's camp;
 6. The number of individuals the children's camp can accommodate;
 7. Whether there is a food establishment in the children's camp;
 8. Whether there is a bathing place in the children's camp;
 9. The potable water supply source at the children's camp;
 10. The type of sewage disposal system;
 11. Whether the application is for an initial or a renewal license; and
 12. The signature of the applicant.

- C. With the completed license application, an applicant shall include a map that specifies the location of the children's camp, and:
1. For an initial license:
 - a. If applying to the Department, a fee of \$100, or
 - b. If applying to a county, a fee established according to ~~A.R.S. § 8-553(B)~~ A.R.S. § 36-3910.
 2. For a renewal license:
 - a. If applying to the Department, a fee of \$25 or
 - b. If applying to a county, a fee established according to ~~A.R.S. § 8-553(B)~~ A.R.S. § 36-3910.
- D. The Department or a county begins reviewing applications on May 1 of each year.

ARTICLE 4. CHILDREN'S CAMPS

R9-8-401. Definitions

In this Article, unless otherwise requires:

1. "Applicant" means an individual requesting a license from the Department or a county to operate a children's camp.
2. "Bathing place" has the same meaning as in 9 A.A.C. 8, Article 8.
3. "Camp director" means an individual who runs, maintains, or otherwise controls or directs the functions of a children's camp.
4. "Children's camp" has the same meaning as in A.R.S. § 8-551.
5. "County" means a governmental entity that has a delegation agreement with the Department as prescribed in A.R.S. § 8-568.
6. "Delegation agreement" has the same meaning as in A.R.S. § 41-1001.
7. "Department" means the Arizona Department of Health Services.
8. "Food establishment" has the same meaning as in 9 A.A.C. 8, Article 1.

R9-8-402. Initial and Renewal License Application Process

A. An applicant shall submit a completed license application form in subsection (B) to:

1. The county in which the children's camp is located, if the county has a delegation agreement with the Department under A.R.S. § 8-568; or
2. The Department, if there is no delegation agreement.

B. An applicant shall submit a completed license application form provided by the Department or a county that contains:

1. The name, mailing address, and telephone number of the children's camp;
2. The county in which the children's camp is located;
3. The name, telephone number, and mailing address of the applicant;
4. The name, telephone number, and if applicable, e-mail address of the camp director;
5. The dates of operation of the children's camp;
6. The number of individuals the children's camp can accommodate;
7. Whether there is a food establishment in the children's camp;
8. Whether there is a bathing place in the children's camp;
9. The potable water supply source at the children's camp;
10. The type of sewage disposal system;
11. Whether the application is for an initial or a renewal license; and

12. The signature of the applicant.
- C. With the completed license application, an applicant shall include a map that specifies the location of the children's camp, and:
 1. For an initial license:
 - a. If applying to the Department, a fee of \$100, or
 - b. If applying to a county, a fee established according to A.R.S. § 8-553(B).
 2. For a renewal license:
 - a. If applying to the Department, a fee of \$25 or
 - b. If applying to a county, a fee established according to A.R.S. § 8-553(B).
- D. The Department or a county begins reviewing applications on May 1 of each year.

R9-8-403. Time-frames

- A. The overall time-frame described in A.R.S. § 41-1072 for an initial or a renewal license granted by the Department or county is 60 days. The applicant and the Department or a county may agree in writing to extend the substantive review time-frame and the overall time-frame. An extension of the substantive time-frame and the overall time-frame shall not exceed 25% of the overall time-frame.
- B. The administrative completeness review time-frame described in A.R.S. § 41-1072 for an initial or a renewal license granted by the Department or a county is 30 days and begins on May 1 of each year or on the date the application is received if after May 1.
 1. The Department or a county shall mail notice of administrative completeness or deficiencies to the applicant within the administrative completeness review time-frame.
 - a. A notice of deficiencies shall list each deficiency and the information and documentation needed to complete the license application.
 - b. If the Department or a county issues a notice of deficiencies within the administrative completeness review time-frame, the administrative completeness review time-frame and the overall time-frame are suspended from the date that the notice is issued until the date the Department or a county receives the missing information from the applicant.
 - c. If the applicant fails to submit to the Department or a county all the information and documents listed in the notice of deficiencies within 60 days of the date the Department or a county mailed the notice of deficiencies, the Department or county deems the license application withdrawn.
 2. If the Department or a county issues a license to the applicant during the administrative completeness review time-frame, the Department or a county does not issue a separate written notice of administrative completeness.

- C. The substantive review time-frame described in A.R.S. § 41-1072 is 30 days and begins on the date the notice of administrative completeness is mailed to the applicant.
1. The Department or a county shall mail a children's camp license or a written notification of denial of the license application to the applicant within the substantive review time-frame.
 2. As part of the substantive-review time-frame for a children's camp license, the Department or a county may conduct an inspection of the children's camp to determine whether the children's camp has complied with the applicable requirements in subsection (C)(4) or (C)(5).
 3. If the Department or a county issues a comprehensive written request or supplemental request for information, the substantive review time-frame and the overall time-frame are suspended from the date the Department or a county issues the request until the date the Department or a county receives all of the information.
 4. If an applicant applying to the Department meets all the requirements under A.R.S. Title 8, Chapter 6, Article 1, and these rules, the Department shall issue a license to the applicant.
 5. If an applicant applying to a county meets all the requirements under A.R.S. Title 8, Chapter 6, Article 1, these rules, and county requirements consistent with A.R.S. Title 8, Chapter 6, Article 1, a county shall issue a license to the applicant.
 6. If the Department or a county disapproves a license application, the Department or a county shall send the applicant a written notice of disapproval setting forth the reasons for disapproval and all other information required in A.R.S. § 41-1076.
- D. If a time-frame's last day is on a Saturday, Sunday, or legal holiday, the Department or a county considers the next business day as the time-frame's last day.

36-104. Powers and duties

This section is not to be construed as a statement of the department's organization. This section is intended to be a statement of powers and duties in addition to the powers and duties granted by section 36-103. The director shall:

1. Administer the following services:
 - (a) Administrative services, which shall include at a minimum the functions of accounting, personnel, standards certification, electronic data processing, vital statistics and the development, operation and maintenance of buildings and grounds utilized by the department.
 - (b) Public health support services, which shall include at a minimum:
 - (i) Consumer health protection programs that include at least the functions of community water supplies, general sanitation, vector control and food and drugs.
 - (ii) Epidemiology and disease control programs that include at least the functions of chronic disease, accident and injury control, communicable diseases, tuberculosis, venereal disease and others.
 - (iii) Laboratory services programs.
 - (iv) Health education and training programs.
 - (v) Disposition of human bodies programs.
 - (c) Community health services, which shall include at a minimum:
 - (i) Medical services programs that include at least the functions of maternal and child health, preschool health screening, family planning, public health nursing, premature and newborn program, immunizations, nutrition, dental care prevention and migrant health.
 - (ii) Dependency health care services programs that include at least the functions of need determination, availability of health resources to medically dependent individuals, quality control, utilization control and industry monitoring.
 - (iii) Children with physical disabilities services programs.
 - (iv) Programs for the prevention and early detection of an intellectual disability.
 - (d) Program planning, which shall include at least the following:
 - (i) An organizational unit for comprehensive health planning programs.
 - (ii) Program coordination, evaluation and development.
 - (iii) Need determination programs.
 - (iv) Health information programs.
2. Include and administer, within the office of the director, staff services, which shall include at a minimum budget preparation, public information, appeals, hearings, legislative and federal

- government liaison, grant development and management and departmental and interagency coordination.
3. Make rules and regulations for the organization and proper and efficient operation of the department.
 4. Determine when a health care emergency or medical emergency situation exists or occurs within the state that cannot be satisfactorily controlled, corrected or treated by the health care delivery systems and facilities available. When such a situation is determined to exist, the director shall immediately report that situation to the legislature and the governor. The report shall include information on the scope of the emergency, recommendations for solution of the emergency and estimates of costs involved.
 5. Provide a system of unified and coordinated health services and programs between the state and county governmental health units at all levels of government.
 6. Formulate policies, plans and programs to effectuate the missions and purposes of the department.
 7. Make contracts and incur obligations within the general scope of the department's activities and operations subject to the availability of funds.
 8. Be designated as the single state agency for the purposes of administering and in furtherance of each federally supported state plan.
 9. Provide information and advice on request by local, state and federal agencies and by private citizens, business enterprises and community organizations on matters within the scope of the department's duties subject to the departmental rules and regulations on the confidentiality of information.
 10. Establish and maintain separate financial accounts as required by federal law or regulations.
 11. Advise with and make recommendations to the governor and the legislature on all matters concerning the department's objectives.
 12. Take appropriate steps to reduce or contain costs in the field of health services.
 13. Encourage and assist in the adoption of practical methods of improving systems of comprehensive planning, of program planning, of priority setting and of allocating resources.
 14. Encourage an effective use of available federal resources in this state.
 15. Research, recommend, advise and assist in the establishment of community or area health facilities, both public and private, and encourage the integration of planning, services and programs for the development of the state's health delivery capability.
 16. Promote the effective utilization of health manpower and health facilities that provide health care for the citizens of this state.

17. Take appropriate steps to provide health care services to the medically dependent citizens of this state.
18. Certify training on the nature of sudden infant death syndrome, which shall include information on the investigation and handling of cases involving sudden and unexplained infant death for use by law enforcement officers as part of their basic training requirement.
19. Adopt protocols on the manner in which an autopsy shall be conducted under section 11-597, subsection D in cases of sudden and unexplained infant death.
20. Cooperate with the Arizona-Mexico commission in the governor's office and with researchers at universities in this state to collect data and conduct projects in the United States and Mexico on issues that are within the scope of the department's duties and that relate to quality of life, trade and economic development in this state in a manner that will help the Arizona-Mexico commission to assess and enhance the economic competitiveness of this state and of the Arizona-Mexico region.
21. Administer the federal family violence prevention and services act grants, and the department is designated as this state's recipient of federal family violence prevention and services act grants.
22. Accept and spend private grants of monies, gifts and devises for the purposes of methamphetamine education. The department shall disburse these monies to local prosecutorial or law enforcement agencies with existing programs, faith based organizations and nonprofit entities that are qualified under section 501(c)(3) of the United States internal revenue code, including nonprofit entities providing services to women with a history of dual diagnosis disorders, and that provide educational programs on the repercussions of methamphetamine use. State general fund monies shall not be spent for the purposes of this paragraph. If the director does not receive sufficient monies from private sources to carry out the purposes of this paragraph, the director shall not provide the educational programs prescribed in this paragraph. Grant monies received pursuant to this paragraph are no lapsing and do not revert to the state general fund at the close of the fiscal year.
23. Identify successful methamphetamine prevention programs in other states that may be implemented in this state.
24. Pursuant to chapter 13, article 8 of this title, coordinate all public health and risk assessment issues associated with a chemical or other toxic fire event if a request for the event is received from the incident commander, the emergency response commission or the department of public safety and if funding is available. Coordination of public health issues shall include general environmental health consultation and risk assessment services consistent with chapter 13, article 8 of this title and, in consultation with the Arizona poison control system, informing the public as

to potential public health risks from the environmental exposure. Pursuant to chapter 13, article 8 of this title, the department of health services shall also prepare a report, in consultation with appropriate state, federal and local governmental agencies, that evaluates the public health risks from the environmental exposure. The department of health services' report shall include any department of environmental quality report and map of smoke dispersion from the fire, the results of any environmental samples taken by the department of environmental quality and the toxicological implications and public health risks of the environmental exposure. The department of health services shall consult with the Arizona poison control system regarding toxicology issues and shall prepare and produce its report for the public as soon as practicable after the event. The department of health services shall not use any monies pursuant to section 49-282, subsection E to implement this paragraph.

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

- A. The director shall:
 - 1. Be the executive officer of the department of health services and the state registrar of vital statistics but shall not receive compensation for services as registrar.
 - 2. Perform all duties necessary to carry out the functions and responsibilities of the department.
 - 3. Prescribe the organization of the department. The director shall appoint or remove personnel as necessary for the efficient work of the department and shall prescribe the duties of all personnel. The director may abolish any office or position in the department that the director believes is unnecessary.
 - 4. Administer and enforce the laws relating to health and sanitation and the rules of the department.
 - 5. Provide for the examination of any premises if the director has reasonable cause to believe that on the premises there exists a violation of any health law or rule of this state.
 - 6. Exercise general supervision over all matters relating to sanitation and health throughout this state. When in the opinion of the director it is necessary or advisable, a sanitary survey of the whole or of any part of this state shall be made. The director may enter, examine and survey any source and means of water supply, sewage disposal plant, sewerage system, prison, public or private place of detention, asylum, hospital, school, public building, private institution, factory, workshop, tenement, public washroom, public restroom, public toilet and toilet facility, public eating room and restaurant, dairy, milk plant or food manufacturing or processing plant, and any premises in which the director has reason to believe there exists a violation of any health law or rule of this state that the director has the duty to administer.
 - 7. Prepare sanitary and public health rules.

8. Perform other duties prescribed by law.
- B. If the director has reasonable cause to believe that there exists a violation of any health law or rule of this state, the director may inspect any person or property in transportation through this state, and any car, boat, train, trailer, airplane or other vehicle in which that person or property is transported, and may enforce detention or disinfection as reasonably necessary for the public health if there exists a violation of any health law or rule.
- C. The director, after consultation with the department of administration, may take all necessary steps to enhance the highest and best use of the state hospital property, including contracting with third parties to provide services, entering into short-term lease agreements with third parties to occupy or renovate existing buildings and entering into long-term lease agreements to develop the land and buildings. The director shall deposit any monies collected from contracts and lease agreements entered into pursuant to this subsection in the Arizona state hospital charitable trust fund established by section 36-218. At least thirty days before issuing a request for proposals pursuant to this subsection, the department of health services shall hold a public hearing to receive community and provider input regarding the highest and best use of the state hospital property related to the request for proposals. The department shall report to the joint committee on capital review on the terms, conditions and purpose of any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, and the fiscal impact on the department and any revenues generated by the agreement. Any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, must be reviewed by the joint committee on capital review.
- D. The director may deputize, in writing, any qualified officer or employee in the department to do or perform on the director's behalf any act the director is by law empowered to do or charged with the responsibility of doing.
- E. The director may delegate to a local health department, county environmental department or public health services district any functions, powers or duties that the director believes can be competently, efficiently and properly performed by the local health department, county environmental department or public health services district if:
 1. The director or superintendent of the local health agency, environmental agency or public health services district is willing to accept the delegation and agrees to perform or exercise the functions, powers and duties conferred in accordance with the standards of performance established by the director of the department of health services.

2. Monies appropriated or otherwise made available to the department for distribution to or division among counties or public health services districts for local health work may be allocated or reallocated in a manner designed to ensure the accomplishment of recognized local public health activities and delegated functions, powers and duties in accordance with applicable standards of performance. Whenever in the director's opinion there is cause, the director may terminate all or a part of any delegation and may reallocate all or a part of any funds that may have been conditioned on the further performance of the functions, powers or duties conferred.
- F. The compensation of all personnel shall be as determined pursuant to section 38-611.
- G. The director may make and amend rules necessary for the proper administration and enforcement of the laws relating to the public health.
- H. Notwithstanding subsection I, paragraph 1 of this section, the director may define and prescribe emergency measures for detecting, reporting, preventing and controlling communicable or infectious diseases or conditions if the director has reasonable cause to believe that a serious threat to public health and welfare exists. Emergency measures are effective for no longer than eighteen months.
- I. The director, by rule, shall:
 1. Define and prescribe reasonably necessary measures for detecting, reporting, preventing and controlling communicable and preventable diseases. The rules shall declare certain diseases reportable. The rules shall prescribe measures, including isolation or quarantine, that are reasonably required to prevent the occurrence of, or to seek early detection and alleviation of, disability, insofar as possible, from communicable or preventable diseases. The rules shall include reasonably necessary measures to control animal diseases transmittable to humans.
 2. Define and prescribe reasonably necessary measures, in addition to those prescribed by law, regarding the preparation, embalming, cremation, interment, disinterment and transportation of dead human bodies and the conduct of funerals, relating to and restricted to communicable diseases and regarding the removal, transportation, cremation, interment or disinterment of any dead human body.
 3. Define and prescribe reasonably necessary procedures that are not inconsistent with law in regard to the use and accessibility of vital records, delayed birth registration and the completion, change and amendment of vital records.
 4. Except as relating to the beneficial use of wildlife meat by public institutions and charitable organizations pursuant to title 17, prescribe reasonably necessary measures to ensure that all food or drink, including meat and meat products and milk and milk products sold at the retail level, provided for human consumption is free from unwholesome, poisonous or other foreign

substances and filth, insects or disease-causing organisms. The rules shall prescribe reasonably necessary measures governing the production, processing, labeling, storing, handling, serving and transportation of these products. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained in any warehouse, restaurant or other premises, except a meat packing plant, slaughterhouse, wholesale meat processing plant, dairy product manufacturing plant or trade product manufacturing plant. The rules shall prescribe minimum standards for any truck or other vehicle in which food or drink is produced, processed, stored, handled, served or transported. The rules shall provide for the inspection and licensing of premises and vehicles so used, and for abatement as public nuisances of any premises or vehicles that do not comply with the rules and minimum standards. The rules shall provide an exemption relating to food or drink that is:

- (a) Served at a noncommercial social event such as a potluck.
- (b) Prepared at a cooking school that is conducted in an owner-occupied home.
- (c) Not potentially hazardous and prepared in a kitchen of a private home for occasional sale or distribution for noncommercial purposes.
- (d) Prepared or served at an employee-conducted function that lasts less than four hours and is not regularly scheduled, such as an employee recognition, an employee fund-raising or an employee social event.
- (e) Offered at a child care facility and limited to commercially prepackaged food that is not potentially hazardous and whole fruits and vegetables that are washed and cut on-site for immediate consumption.
- (f) Offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous.
- (g) Baked and confectionary goods that are not potentially hazardous and that are prepared in a kitchen of a private home for commercial purposes if packaged with a label that clearly states the address of the maker, includes contact information for the maker, lists all the ingredients in the product and discloses that the product was prepared in a home. The label must be given to the final consumer of the product. If the product was made in a facility for individuals with developmental disabilities, the label must also disclose that fact. The person preparing the food or supervising the food preparation must obtain a food handler's card or certificate if one is issued by the local county and must register with an online registry established by the department pursuant to paragraph 13 of this subsection. For the purposes of this subdivision, "potentially hazardous" means baked and confectionary goods that meet the requirements of the food code

published by the United States food and drug administration, as modified and incorporated by reference by the department by rule.

- (h) A whole fruit or vegetable grown in a public school garden that is washed and cut on-site for immediate consumption.
- 5. Prescribe reasonably necessary measures to ensure that all meat and meat products for human consumption handled at the retail level are delivered in a manner and from sources approved by the Arizona department of agriculture and are free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe standards for sanitary facilities to be used in identity, storage, handling and sale of all meat and meat products sold at the retail level.
- 6. Prescribe reasonably necessary measures regarding production, processing, labeling, handling, serving and transportation of bottled water to ensure that all bottled drinking water distributed for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained at any source of water, bottling plant and truck or vehicle in which bottled water is produced, processed, stored or transported and shall provide for inspection and certification of bottled drinking water sources, plants, processes and transportation and for abatement as a public nuisance of any water supply, label, premises, equipment, process or vehicle that does not comply with the minimum standards. The rules shall prescribe minimum standards for bacteriological, physical and chemical quality for bottled water and for the submission of samples at intervals prescribed in the standards.
- 7. Define and prescribe reasonably necessary measures governing ice production, handling, storing and distribution to ensure that all ice sold or distributed for human consumption or for the preservation or storage of food for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions and the quality of ice that shall be maintained at any ice plant, storage and truck or vehicle in which ice is produced, stored, handled or transported and shall provide for inspection and licensing of the premises and vehicles, and for abatement as public nuisances of ice, premises, equipment, processes or vehicles that do not comply with the minimum standards.
- 8. Define and prescribe reasonably necessary measures concerning sewage and excreta disposal, garbage and trash collection, storage and disposal, and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels. The rules shall prescribe minimum standards for preparation of food in community kitchens, adequacy of excreta

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

9. Define and prescribe reasonably necessary measures concerning the sewage and excreta disposal, garbage and trash collection, storage and disposal, water supply and food preparation of all public schools. The rules shall prescribe minimum standards for sanitary conditions that shall be maintained in any public school and shall provide for inspection of these premises and facilities and for abatement as public nuisances of any premises that do not comply with the minimum standards.
10. Prescribe reasonably necessary measures to prevent pollution of water used in public or semipublic swimming pools and bathing places and to prevent deleterious health conditions at these places. The rules shall prescribe minimum standards for sanitary conditions that shall be maintained at any public or semipublic swimming pool or bathing place and shall provide for inspection of these premises and for abatement as public nuisances of any premises and facilities that do not comply with the minimum standards. The rules shall be developed in cooperation with the director of the department of environmental quality and shall be consistent with the rules adopted by the director of the department of environmental quality pursuant to section 49-104, subsection B, paragraph 12.
11. Prescribe reasonably necessary measures to keep confidential information relating to diagnostic findings and treatment of patients, as well as information relating to contacts, suspects and associates of communicable disease patients. In no event shall confidential information be made available for political or commercial purposes.
12. Prescribe reasonably necessary measures regarding human immunodeficiency virus testing as a means to control the transmission of that virus, including the designation of anonymous test sites as dictated by current epidemiologic and scientific evidence.

13. Establish an online registry of food preparers that are authorized to prepare food for commercial purposes pursuant to paragraph 4 of this subsection.
14. Prescribe an exclusion for fetal demise cases from the standardized survey known as "the hospital consumer assessment of healthcare providers and systems".
- J. The rules adopted under the authority conferred by this section shall be observed throughout the state and shall be enforced by each local board of health or public health services district, but this section does not limit the right of any local board of health or county board of supervisors to adopt ordinances and rules as authorized by law within its jurisdiction, provided that the ordinances and rules do not conflict with state law and are equal to or more restrictive than the rules of the director.
- K. The powers and duties prescribed by this section do not apply in instances in which regulatory powers and duties relating to public health are vested by the legislature in any other state board, commission, agency or instrumentality, except that with regard to the regulation of meat and meat products, the department of health services and the Arizona department of agriculture within the area delegated to each shall adopt rules that are not in conflict.
- L. The director, in establishing fees authorized by this section, shall comply with title 41, chapter 6. The department shall not set a fee at more than the department's cost of providing the service for which the fee is charged. State agencies are exempt from all fees imposed pursuant to this section.
- M. After consultation with the state superintendent of public instruction, the director shall prescribe the criteria the department shall use in deciding whether or not to notify a local school district that a pupil in the district has tested positive for the human immunodeficiency virus antibody. The director shall prescribe the procedure by which the department shall notify a school district if, pursuant to these criteria, the department determines that notification is warranted in a particular situation. This procedure shall include a requirement that before notification the department shall determine to its satisfaction that the district has an appropriate policy relating to nondiscrimination of the infected pupil and confidentiality of test results and that proper educational counseling has been or will be provided to staff and pupils.
- N. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (f) of this section, food and drink are exempt from the rules prescribed in subsection I of this section if offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous, without a limitation on its display area.
- O. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (h) of this section, a whole fruit or vegetable grown in a public school garden that is

washed and cut on-site for immediate consumption is exempt from the rules prescribed in subsection I of this section.

- P. Until the department adopts an exclusion by rule as required by subsection I, paragraph 14 of this section, the standardized survey known as "the hospital consumer assessment of healthcare providers and systems" may not include patients who experience a fetal demise.
- Q. For the purposes of this section, "fetal demise" means a fetal death that occurs or is confirmed in a licensed hospital. Fetal demise does not include an abortion as defined in section 36-2151.

36-3902. Application for license; issuance; posting

- A. The department of health services is authorized and directed to issue licenses for the operation of children's camps: No children's camp shall be operated without first obtaining such a license.
- B. On or before May 1 annually, every person operating or seeking to operate a children's camp shall make application in writing to the department of health services for a license to conduct a children's camp. The application shall be in such form and shall contain such information as the department of health services finds necessary to determine that the children's camp will be operated and maintained in accordance with the standards prescribed by this chapter.
- C. Where a person operates or is seeking to operate more than one children's camp, a separate application shall be made, and license obtained, for each camp.
- D. The license shall be posted in a conspicuous place on the premises occupied by each camp.

36-3903. License fee

- A. The fee for a children's camp license issued by the department of health services shall be one hundred dollars for the first license and twenty-five dollars for each renewal of the license thereafter. All funds collected from this source shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.
- B. A county to which the department of health services has delegated powers and duties pursuant to section 36-3915 may charge and collect a license fee. A county shall not charge a fee in excess of the cost of providing the service for which the fee is charged. The county shall transmit fees collected pursuant to this subsection to the county treasurer.

36-3910. Inspection of camps; revocation of license

- A. The department of health services shall make an annual inspection of each children's camp and where upon inspection it is found that there is a failure to comply with any of the standards

prescribed by this chapter, the department shall give notice to the camp operator of such failure, which notice shall set forth the law violated.

- B. The camp operator shall have a reasonable time after receiving such notice in which to correct such failure and to comply with the standards prescribed by this chapter. In the event the camp operator fails to comply with the requirements of such notice within a reasonable time the department may suspend or revoke his license.

41-1072. Definitions

In this article, unless the context otherwise requires:

1. "Administrative completeness review time frame" means the number of days from agency receipt of an application for a license until an agency determines that the application contains all components required by statute or rule, including all information required to be submitted by other government agencies. The administrative completeness review time frame does not include the period of time during which an agency provides public notice of the license application or performs a substantive review of the application.
2. "Overall time frame" means the number of days after receipt of an application for a license during which an agency determines whether to grant or deny a license. The overall time frame consists of both the administrative completeness review time frame and the substantive review time frame.
3. "Substantive review time frame" means the number of days after the completion of the administrative completeness review time frame during which an agency determines whether an application or applicant for a license meets all substantive criteria required by statute or rule. Any public notice and hearings required by law shall fall within the substantive review time frame.

41-1073. Time frames; exception

- A. No later than December 31, 1998, an agency that issues licenses shall have in place final rules establishing an overall time frame during which the agency will either grant or deny each type of license that it issues. Agencies shall submit their overall time frame rules to the governor's regulatory review council pursuant to the schedule developed by the council. The council shall schedule each agency's rules so that final overall time frame rules are in place no later than December 31, 1998. The rule regarding the overall time frame for each type of license shall state separately the administrative completeness review time frame and the substantive review time frame.
- B. If a statutory licensing time frame already exists for an agency but the statutory time frame does not specify separate time frames for the administrative completeness review and the substantive

review, by rule the agency shall establish separate time frames for the administrative completeness review and the substantive review, which together shall not exceed the statutory overall time frame. An agency may establish different time frames for initial licenses, renewal licenses and revisions to existing licenses.

- C. The submission by the department of environmental quality of a revised permit to the United States environmental protection agency in response to an objection by that agency shall be given the same effect as a notice granting or denying a permit application for licensing time frame purposes. For the purposes of this subsection, "permit" means a permit required by title 49, chapter 2, article 3.1 or section 49-426.
- D. In establishing time frames, agencies shall consider all of the following:
 - 1. The complexity of the licensing subject matter.
 - 2. The resources of the agency granting or denying the license.
 - 3. The economic impact of delay on the regulated community.
 - 4. The impact of the licensing decision on public health and safety.
 - 5. The possible use of volunteers with expertise in the subject matter area.
 - 6. The possible increased use of general licenses for similar types of licensed businesses or facilities.
 - 7. The possible increased cooperation between the agency and the regulated community.
 - 8. Increased agency flexibility in structuring the licensing process and personnel.
- E. This article does not apply to licenses issued either:
 - 1. Pursuant to tribal state gaming compacts.
 - 2. Within seven days after receipt of initial application.
 - 3. By a lottery method.

41-1074. Compliance with administrative completeness review time frame

- A. An agency shall issue a written notice of administrative completeness or deficiencies to an applicant for a license within the administrative completeness review time frame.
- B. If an agency determines that an application for a license is not administratively complete, the agency shall include a comprehensive list of the specific deficiencies in the written notice provided pursuant to subsection A. If the agency issues a written notice of deficiencies within the administrative completeness time frame, the administrative completeness review time frame and the overall time frame are suspended from the date the notice is issued until the date that the agency receives the missing information from the applicant.

- C. If an agency does not issue a written notice of administrative completeness or deficiencies within the administrative completeness review time frame, the application is deemed administratively complete. If an agency issues a timely written notice of deficiencies, an application shall not be complete until all requested information has been received by the agency.

41-1075. Compliance with substantive review time frame

- A. During the substantive review time frame, an agency may make one comprehensive written request for additional information. The agency and applicant may mutually agree in writing to allow the agency to submit supplemental requests for additional information. If an agency issues a comprehensive written request or a supplemental request by mutual written agreement for additional information, the substantive review time frame and the overall time frame are suspended from the date the request is issued until the date that the agency receives the additional information from the applicant.
- B. By mutual written agreement, an agency and an applicant for a license may extend the substantive review time frame and the overall time frame. An extension of the substantive review time frame and the overall time frame may not exceed twenty-five per cent of the overall time frame.

41-1076. Compliance with overall time frame

Unless an agency and an applicant for a license mutually agree to extend the substantive review time frame and the overall time frame pursuant to section 41-1075, an agency shall issue a written notice granting or denying a license within the overall time frame to an applicant. If an agency denies an application for a license, the agency shall include in the written notice at least the following information:

1. Justification for the denial with references to the statutes or rules on which the denial is based.
2. An explanation of the applicant's right to appeal the denial. The explanation shall include the number of days in which the applicant must file a protest challenging the denial and the name and telephone number of an agency contact person who can answer questions regarding the appeals process.

41-1077. Consequence for agency failure to comply with overall time frame; refund; penalty

- A. If an agency does not issue to an applicant the written notice granting or denying a license within the overall time frame or within the time frame extension pursuant to section 41-1075, the agency shall refund to the applicant all fees charged for reviewing and acting on the application for the license and shall excuse payment of any such fees that have not yet been paid. The agency shall not require an applicant to submit an application for a refund pursuant to this subsection. The

refund shall be made within thirty days after the expiration of the overall time frame or the time frame extension. The agency shall continue to process the application subject to subsection B of this section. Notwithstanding any other statute, the agency shall make the refund from the fund in which the application fees were originally deposited. This section applies only to license applications that were subject to substantive review.

- B. Except for license applications that were not subject to substantive review, the agency shall pay a penalty to the state general fund for each month after the expiration of the overall time frame or the time frame extension until the agency issues written notice to the applicant granting or denying the license. The agency shall pay the penalty from the agency fund in which the application fees were originally deposited. The penalty shall be two and one-half per cent of the total fees received by the agency for reviewing and acting on the application for each license that the agency has not granted or denied on the last day of each month after the expiration of the overall time frame or time frame extension for that license.

41-1079. Information required to be provided

- A. An agency that issues licenses shall provide the following information to an applicant at the time the applicant obtains an application for a license:
 - 1. A list of all of the steps the applicant is required to take in order to obtain the license.
 - 2. The applicable licensing time frames.
 - 3. The name and telephone number of an agency contact person who can answer questions or provide assistance throughout the application process.
- B. This section does not apply to the Arizona peace officer standards and training board established by section 41-1821.

D-5

DEPARTMENT OF HEALTH SERVICES (R-18-0103)

Title 9, Chapter 25, Article 1, Definitions; Article 3, Training Programs; Article 4, EMCT Certification; Article 12, Time-Frames for Department Approvals

Amend: Article 1; R9-25-301; R9-25-305; R9-25-306; R9-25-401; R9-25-402; R9-25-403; R9-25-405; R9-25-406; R9-25-407; R9-25-408; R9-25-409; Table 12.1



GOVERNOR'S REGULATORY REVIEW COUNCIL

STAFF MEMORANDUM – EXPEDITED RULEMAKING

MEETING DATE: January 9, 2018

AGENDA ITEM: D-5

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

FROM: Council Staff

DATE: December 19, 2017

SUBJECT: DEPARTMENT OF HEALTH SERVICES (R-18-0103)

Title 9, Chapter 25, Article 1, Definitions; Article 3, Training Programs; Article 4, EMCT Certification; Article 12, Time-Frames for Department Approvals

Amend: Article 1; R9-25-301; R9-25-305; R9-25-306; R9-25-401;
R9-25-402; R9-25-403; R9-25-405; R9-25-406; R9-25-407;
R9-25-408; R9-25-409; Table 12.1

SUMMARY OF THE RULEMAKING

This expedited rulemaking, from the Arizona Department of Health Services (Department), seeks to amend eleven rules and one table in A.A.C. Title 9, Chapter 25. The Department states that the purpose of the rulemaking is to eliminate confusion and reduce regulatory burden by making the rules more clear and understandable.

The Department indicates that the use of the expedited rulemaking process is justified by A.R.S. § 41-1027(A)(7), as the rulemaking implements the course of action proposed in a five-year review report approved by the Council on September 6, 2017. The Governor's Office provided an exemption from Executive Order 2017-02 on September 11, 2017.

Proposed Action

- The title of Article 1 is changed from "Definitions" to "General" as the article now contains content above and beyond just definitions.
- Section 301 – *Application for Certification (Authorized by A.R.S. §§ 36-2202(A)(3) and (4) and 36-2204(1) and (3))*: The title of the rule is updated from "Definitions" to reflect its content, and language in subsection (D) is rearranged to improve clarity.
- Section 305 – *Supplemental Requirements for Specific Courses (Authorized by A.R.S. §§ 36-2202(A)(3) and (4) and 36-2204(1) and (3))*: Obsolete and/or redundant requirements are removed and cross-references are corrected.

- Section 306 – *Training Program Notification and Recordkeeping (Authorized by A.R.S. §§ 36-2202(A)(3) and (4) and 36-2204(1) and (3))*: A cross-reference is corrected in subsection (D)(1)(f). Clarifying language, related to the retention period for records, is added.
- Article 4 – *EMCT Certification*: Statutory references are corrected in multiple rules. In Section 407, clarifying language is added to subsection (B).
- Table 12.1 – *Time-frames for Department Approvals*: Statutory references are corrected.

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

Yes. The Department cites to both general and specific statutory authority, including A.R.S. § 36-136(A)(7) which requires the Department to “[p]repare sanitary and public health rules.”

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

No. The rules do not establish a new fee or contain a fee increase.

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

No. The Department indicates that it has not received any public comments on the rulemaking.

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

No. No changes have been made between the Notice of Proposed Expedited Rulemaking and the Notice of Final Expedited 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?

No. The Department states that there is no corresponding federal law related to the rules.

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

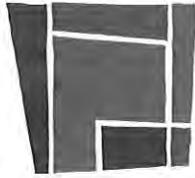
Yes. The rules in Articles 3 and 4 require the issuance of specific agency authorizations allowed under A.R.S. §§ 36-2202 and 36-2204, so the use of general permits is not applicable. In addition, the rules in Article 12 require the issuance of specific agency authorizations allowed under A.R.S. §§ 36-2202, 36-2204, 36-2213, and 36-2214, so the use of general permits is not applicable.

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?

No. The Department indicates that it did not rely on any study in its evaluation of, or justification for, the rules.

8. Conclusion

If approved, this expedited rulemaking will become effective immediately upon filing with the Secretary of State. See A.R.S. § 41-1027(H). Council staff recommends approval of the expedited rulemaking.



ARIZONA DEPARTMENT OF HEALTH SERVICES

POLICY & INTERGOVERNMENTAL AFFAIRS

November 14, 2017

Nicole O. Colyer, Esq., Chair
Governor's Regulatory Review Council
Arizona Department of Administration
100 N. 15th Avenue, Suite 305
Phoenix, AZ 85007

RE: 9 A.A.C. 25, Articles 1, 3, 4, and 12 Department of Health Services – Emergency Medical Services

Dear Ms. Colyer:

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 41-1052.

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:
The close of record was October 31, 2017. Submission of the rules is within the 120 days allowed for Final Expedited Rulemaking.
2. Explanation of how the expedited rule meets the criteria in A.R.S. § 41-1027(A):
The rulemaking does not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of persons regulated. In addition, the rulemaking implements, without material change, a course of action that was proposed in a five-year review report approved by the Council pursuant to section A.R.S. § 41-1056.
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 two five-year-review reports, a five-year-review report approved by the Council for 9 A.A.C. 25, Articles 1 and 12 on April 4, 2017, and a five-year-review report approved by the Council for 9 A.A.C. 25, Articles 3 and 4 on May 2, 2017.
4. A list of all items enclosed:
Notice of Final Expedited Rulemaking, including the Preamble, Table of Contents, and text of the rule

Douglas A. Ducey | Governor Cara M. Christ, MD, MS | Director

The Department is requesting that the rules be heard at the Council meeting on January 3, 2018.

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.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert Lane", written over a horizontal line.

Robert Lane
Director's Designee

RL:rms

Enclosures

NOTICE OF FINAL EXPEDITED RULEMAKING
TITLE 9. HEALTH SERVICES
CHAPTER 25. DEPARTMENT OF HEALTH SERVICES
EMERGENCY MEDICAL SERVICES
ARTICLE 1. DEFINITIONS
ARTICLE 3. TRAINING PROGRAMS
ARTICLE 4. EMCT CERTIFICATION
ARTICLE 12. TIME-FRAMES FOR DEPARTMENT APPROVALS

PREAMBLE

- | <u>1.</u> | <u>Article, Part, of Section Affected (as applicable)</u> | <u>Rulemaking Action</u> |
|------------------|--|---------------------------------|
| | Article 1 | Amend |
| | R9-25-301 | Amend |
| | R9-25-305 | Amend |
| | R9-25-306 | Amend |
| | R9-25-401 | Amend |
| | R9-25-402 | Amend |
| | R9-25-403 | Amend |
| | R9-25-405 | Amend |
| | R9-25-406 | Amend |
| | R9-25-407 | Amend |
| | R9-25-408 | Amend |
| | R9-25-409 | Amend |
| | Table 12.1 | Amend |
- 2.** **Citations to the agency’s statutory authority for the rulemaking to include the authorizing statute (general) and the implementing statute (specific):**
Authorizing Statutes: A.R.S. §§ 36-136(A)(7), 36-136(G), 36-2202, and 36-2209(A)(2)
Implementing Statutes: A.R.S. §§ 36-2202, 36-2204, and 41-1072 through 41-1079
- 3.** **The effective date of the rules:**
The rule is effective the day the Notice of Final Expedited Rulemaking is filed with the Office of the Secretary of State.
- 4.** **Citations to all related notices published in the *Register* as specified in R1-1-409(A) that pertain to the record of the final expedited rulemaking:**

Notice of Docket Opening: 23 A.A.R. 2951, October 20, 2017

Notice of Rulemaking Docket Opening: 23 A.A.R. 2919, October 20, 2017

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

Name: Terry Mullins, Bureau Chief
Address: Arizona Department of Health Services
Bureau of Emergency Medical Services and Trauma System
150 N. 18th Ave., Suite 540
Phoenix, AZ 85007-3248

Telephone: (602) 364-3150

Fax: (602) 364-3568

E-mail: Terry.Mullins@azdhs.gov

or

Name: Robert Lane, 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: Robert.Lane@azdhs.gov

6. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, under A.R.S. § 41-1027, to include an explanation about the rulemaking:

As part of the five-year-review reports for 9 A.A.C. 25, Articles 1, 3, 4, and 12, the Arizona Department of Health Services (Department) identified several minor factors that affect the clarity of the rules. The five-year-review report for 9 A.A.C. 25, Articles 1 and 12 was approved by the Governor's Regulatory Review Council (Council) on April 4, 2017, and the five-year-review report for 9 A.A.C. 25, Articles 3 and 4 was approved by the Council on May 2, 2017. The following changes are proposed in this rulemaking:

- The title of Article 1 should be changed from "Definitions" to "General" because the Article now contains more than a Section of definitions.
- Article 3:
 - R9-25-301 – correct the title to reflect its content and clarify a requirement in subsection (D)

- R9-25-305 – remove a redundant requirement, correct cross-references, and remove obsolete requirements
- R9-25-306 – correct a cross-reference and clarify the retention period for records
- Article 4:
 - R9-25-401 - correct a statutory reference
 - R9-25-402 - correct a statutory reference
 - R9-25-403 - correct a statutory reference
 - R9-25-405 - correct a statutory reference
 - R9-25-406 - correct a statutory reference
 - R9-25-407 – clarify a requirement
 - R9-25-408 - correct a statutory reference
 - R9-25-409 - correct a statutory reference
- Article 12 – correct statutory references in Table 12.1

The Department believes that these changes are consistent with the purpose for A.R.S. § 41-1027 in that this rulemaking does not increase the cost of regulatory compliance, does not increase a fee, or reduce a procedural right of regulated persons, and either implements changes identified in a five-year-review report, removes obsolete subsections, or clarifies language of a rule without changing its effect.

7. A reference to any study relevant to the rule that the agency reviewed and proposes either to rely on or not to rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

The Department did not review or rely on any study for this rulemaking.

8. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state.

Not applicable

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

Under A.R.S. § 41-1055(D)(2), the Department is not required to provide an economic, small business, and consumer impact statement.

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

Between the proposed expedited rulemaking and the final expedited rulemaking, no changes were made to the rulemaking.

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

The Department did not receive public or stakeholder comments about the rulemaking.

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

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

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

The rules in Article 1 do not require the issuance of a regulatory permit. The rules in Articles 3 and 4 require the issuance of a specific agency authorization, which is authorized by A.R.S. § 36-2204(3) for training programs and A.R.S. § 36-2202 (A)(2) and (H) for EMCT certification, so a general permit is not applicable. The rules in Article 12 explain the process and timeframes for the review of applications for certifications, licenses, registrations, and requests for approval, all of which require the issuance of a specific agency authorization, which is authorized by A.R.S. § 36-2204(5) for ALS base hospitals, A.R.S. § 36-2204(3) for training programs, A.R.S. § 36-2202 (A)(2) and (H) for EMCT certification, A.R.S. §§ 36-2213 and 36-2214 for air ambulances and air ambulance services, and A.R.S. Title 36, Chapter 21.1, Article 2 for ground ambulances and ambulance services. Therefore, a general permit is not applicable.

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

Federal laws do not apply to the rules in 9 A.A.C. 25.

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

No such analysis was submitted.

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

None

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

The rule was not previously made as an emergency rule.

15. The full text of the rule follows:

ARTICLE 1. DEFINITIONS GENERAL

ARTICLE 3. TRAINING PROGRAMS

Section

- R9-25-301. Definitions; Application for Certification (Authorized by A.R.S. §§ 36-2202(A)(3) and (4) and 36-2204(1) and (3))
- R9-25-305. Supplemental Requirements for Specific Courses (Authorized by A.R.S. §§ 36-2202(A)(3) and (4) and 36-2204(1) and (3))
- R9-25-306. Training Program Notification and Recordkeeping (Authorized by A.R.S. §§ 36-2202(A)(3) and (4) and 36-2204(1) and (3))

ARTICLE 4. EMCT CERTIFICATION

Section

- R9-25-401. EMCT General Requirements (Authorized by A.R.S. §§ 36-2202(A)(2), (A)(3), (A)(4), (A)(6), and ~~(G)~~ (H) and 36-2204(1), (6), and (7))
- R9-25-402. EMCT Certification and Recertification Requirements (Authorized by A.R.S. §§ 36-2202(A)(2), (A)(3), (A)(4), (A)(6), and ~~(G)~~ (H) and 36-2204(1), (6), and (7))
- R9-25-403. Application Requirements for EMCT Certification (Authorized by A.R.S. §§ 36-2202(A)(2), (A)(3), (A)(4), and ~~(G)~~ (H) and 36-2204(1) and (6))
- R9-25-405. Extension to File an Application for EMCT Recertification (Authorized by A.R.S. §§ 36-2202(A)(2), (A)(3), (A)(4), (A)(6), and ~~(G)~~ (H) and 36-2204(1), (4), (5), and (7))
- R9-25-406. Requirements for Downgrading of Certification (Authorized by A.R.S. §§ 36-2202(A)(2), (A)(3), (A)(4), and ~~(G)~~ (H) and 36-2204(1) and (6))
- R9-25-407. Notification Requirements (Authorized by A.R.S. §§ 36-2202(A)(2), (A)(3) and (A)(4), 36-2204(1) and (6), and 36-2211)
- R9-25-408. Unprofessional Conduct; Physical or Mental Incompetence; Gross Incompetence; Gross Negligence (Authorized by A.R.S. §§ 36-2202(A)(2), (A)(3), (A)(4), (A)(6), and ~~(G)~~ (H), 36-2204(1), (6), and (7), and 36-2211)
- R9-25-409. Enforcement Actions (Authorized by A.R.S. §§ 36-2202(A)(2), (A)(3), (A)(4), (A)(6), and ~~(G)~~ (H), 36-2204(1), (6), and (7), and 36-2211)

ARTICLE 12. TIME-FRAMES FOR DEPARTMENT APPROVALS

Section

- Table 12.1. Time-frames (in days)

ARTICLE 1. DEFINITIONS GENERAL

ARTICLE 3. TRAINING PROGRAMS

R9-25-301. Definitions; Application for Certification (Authorized by A.R.S. §§ 36-2202(A)(3) and (4) and 36-2204(1) and (3))

- A.** To apply for certification as a training program, an applicant shall submit an application to the Department, in a Department-provided format, including:
1. The applicant's name, address, and telephone number;
 2. The name, telephone number, and e-mail address of the applicant's chief administrative officer;
 3. The name of each course the applicant plans to provide;
 4. Attestation that the applicant has the equipment and facilities that meet the requirements established according to A.R.S. § 36-2204 and available through the Department at www.azdhs.gov for the courses specified in subsection (A)(3);
 5. The name, telephone number, and e-mail address of the training program medical director;
 6. The name, telephone number, and e-mail address of the training program director;
 7. Attestation that the applicant will comply with all requirements in A.R.S. Title 36, Chapter 21.1 and 9 A.A.C. 25;
 8. Attestation that all information required as part of the application has been submitted and is true and accurate; and
 9. The signature or electronic signature of the applicant's chief administrative officer or the chief administrative officer's designated representative and date of signature or electronic signature.
- B.** An applicant may submit to the Department a copy of an accreditation report if the applicant is currently accredited by a national accrediting organization.
- C.** The Department shall certify a training program if the applicant:
1. Has not operated a training program that has been decertified by the Department within five years before submitting the application,
 2. Submits an application that is complete and compliant with requirements in this Article, and
 3. Has not knowingly provided false information on or with an application required by this Article.
- D.** The Department, ~~according to A.R.S. § 41-1009:~~
1. Shall assess a training program at least once every 24 months after certification to determine ongoing compliance with the requirements of this Article; and

2. May inspect a training program according to A.R.S. § 41-1009:
 - a. As part of the substantive review time-frame required in A.R.S. §§ 41-1072 through 41-1079, or
 - b. As necessary to determine compliance with the requirements of this Article.
- E. The Department shall approve or deny an application under this Article according to Article 12 of this Chapter.
- F. A training program certificate is valid only for the name of the training program certificate holder and the courses listed by the Department on the certificate and may not be transferred to another person.

R9-25-305. Supplemental Requirements for Specific Courses (Authorized by A.R.S. §§ 36-2202(A)(3) and (4) and 36-2204(1) and (3))

- A. Except as specified in subsection (B), a training program certificate holder shall ensure that a certification course offered by the training program:
 1. Covers knowledge, skills, and competencies comparable to the national education standards established for a specific EMCT classification level;
 2. Prepares a student for:
 - a. A national certification organization examination for the specific EMCT classification level, or
 - b. A standardized certification test under the state certification process;
 3. Has no more than 24 students enrolled in each session of the course; and
 4. Has a minimum course length of:
 - a. For an EMT certification course, 130 hours;
 - b. For an AEMT certification course, 244 hours, including:
 - i. A minimum of 100 contact hours of didactic instruction and practical skills training, and
 - ii. A minimum of 144 contact hours of clinical training and field training; and
 - c. For a Paramedic certification course, 1000 hours, including:
 - i. A minimum of 500 contact hours of didactic instruction and practical skills training, and
 - ii. A minimum of 500 contact hours of clinical training and field training.
- B. A training program director shall ensure that, for an AEMT certification course or a Paramedic certification course, a student has one of the following:
 1. Current certification from the Department as an EMT or higher EMCT classification

- level,
 - 2. Documentation of completion of prior training in an EMT course or a course for a higher EMCT classification level provided by a training program certified by the Department or an equivalent training program, or
 - 3. Documentation of current registration in a national certification organization at the EMT classification level or higher EMCT classification level.
- C.** A training program director shall ensure that for a course to prepare an EMT-I(99) for Paramedic certification:
- 1. A student has current certification from the Department as an EMT-I(99);
 - 2. The course covers the knowledge, skills, and competencies established according to A.R.S. § 36-2204 and available through the Department at www.azdhs.gov;
 - ~~3. No more than 24 students are enrolled in each session of the course;~~
 - ~~4.3.~~ The minimum course length is 600 hours, including:
 - a. A minimum of 220 contact hours of didactic instruction and practical skills training, and
 - b. A minimum of 380 contact hours of clinical training and field training; and
 - ~~5.4.~~ A minimum of 60 contact hours of training in anatomy and physiology are completed by the student:
 - a. As a prerequisite to the course,
 - b. As preliminary instruction completed at the beginning of the course session before the didactic instruction required in subsection ~~(C)(4)(a)~~ (C)(3)(a) begins, or
 - c. Through integration of the anatomy and physiology material with the units of instruction required in subsection ~~(C)(4)~~ (C)(3).
- D.** A training program director shall ensure that for an EMT refresher course:
- 1. A student has one of the following:
 - a. Current certification from the Department as an EMT or higher EMCT classification level,
 - b. Documentation of completion of prior training in an EMT course or a course for a higher EMCT classification level provided by a training program certified by the Department or an equivalent training program,
 - c. Documentation of current registration in a national certification organization at the EMT classification level or higher EMCT classification level, or
 - d. Documentation from a national certification organization requiring the student to

- complete the EMT refresher course to be eligible to apply for registration in the national certification organization;
2. A student has documentation of current certification in adult, pediatric, and infant cardiopulmonary resuscitation through instruction consistent with American Heart Association recommendations for emergency cardiovascular care by EMCTs;
 3. The EMT refresher course covers:
 - a. ~~The~~ the knowledge, skills, and competencies in the national education standards established at the EMT classification level; ~~or~~
 - b. ~~Until the following dates, the knowledge, skills, and competencies established according to A.R.S. § 36-2204 and available through the Department at www.azdhs.gov:~~
 - i. ~~March 31, 2015, for a student who has documentation from a national certification organization of registration at the EMT classification level or higher EMCT classification level that expired on or before March 31, 2011;~~
 - ii. ~~March 31, 2016, for a student who has documentation from a national certification organization of registration at the EMT classification level or higher EMCT classification level that expired between April 1, 2011 and March 31, 2012; and~~
 - iii. ~~December 31, 2017, for a student who is not registered by a national certification organization;~~
 4. No more than 32 students are enrolled in each session of the course; and
 5. The minimum course length is 24 contact hours.
- E.** A training program authorized to provide an EMT refresher course may administer a refresher challenge examination covering materials included in the EMT refresher course to an individual eligible for admission into the EMT refresher course.
- F.** A training program director shall ensure that for an ALS refresher course:
1. A student has one of the following:
 - a. Current certification from the Department as an AEMT, EMT-I(99), or Paramedic;
 - b. Documentation of completion of a prior training course, at the AEMT classification level or higher, provided by a training program certified by the Department or an equivalent training program;
 - c. Documentation of current registration in a national certification organization at

- the AEMT or Paramedic classification level; or
- d. Documentation from a national certification organization requiring the student to complete the ALS refresher course to be eligible to apply for registration in the national certification organization;
2. A student has documentation of current certification in:
 - a. Adult, pediatric, and infant cardiopulmonary resuscitation through instruction consistent with American Heart Association recommendations for emergency cardiovascular care by EMCTs, and
 - b. For a student who has current certification as an EMT-I(99) or higher level of EMCT classification, advanced emergency cardiac life support;
 3. The ALS refresher course covers:
 - a. For a student who has current certification as an AEMT or documentation of completion of prior training at an AEMT classification level, the knowledge, skills, and competencies in the national education standards established for an AEMT;
 - b. For a student who has current certification as an EMT-I(99), the knowledge, skills, and competencies established according to A.R.S. § 36-2204 for an EMT-I(99) as of the effective date of this Section and available through the Department at www.azdhs.gov;
 - c. For a student who has current certification as a Paramedic or documentation of completion of prior training at a Paramedic classification level, the knowledge, skills, and competencies in the national education standards established for a Paramedic; and
 3. The ALS refresher course covers:
 - a. For a student who has current certification as an AEMT or documentation of completion of prior training at an AEMT classification level, the knowledge, skills, and competencies in the national education standards established for an AEMT;
 - b. For a student who has current certification as an EMT-I(99), the knowledge, skills, and competencies established according to A.R.S. § 36-2204 for an EMT-I(99) as of the effective date of this Section and available through the Department at www.azdhs.gov; and
 - c. For a student who has current certification as a Paramedic or documentation of completion of prior training at a Paramedic classification level, the knowledge,

skills, and competencies in the national education standards established for a Paramedic; and

d. ~~Until the following dates, the knowledge, skills, and competencies established according to A.R.S. § 36-2204 and available through the Department at www.azdhs.gov:~~

i. ~~March 31, 2015, for a student who has documentation of completion of prior training at a level between EMT-I(99) and Paramedic and registration from a national certification organization that expired on or before March 31, 2011;~~

ii. ~~March 31, 2016, for a student who has documentation of completion of prior training at a level between EMT-I(99) and Paramedic and registration from a national certification organization that expired between April 1, 2011 and March 31, 2012;~~

iii. ~~March 31, 2017, for a student who has documentation of completion of prior training at a level between EMT-I(99) and Paramedic and registration from a national certification organization that expired between April 1, 2012 and March 31, 2013; and~~

iv. ~~December 31, 2017, for a student who has documentation of completion of prior training at a level between EMT-I(99) and Paramedic and is not registered by a national certification organization;~~

4. No more than 32 students are enrolled in each session of the course; and

5. The minimum course length is 48 contact hours.

G. A training program authorized to provide an ALS refresher course may administer a refresher challenge examination covering materials included in the ALS refresher course to an individual eligible for admission into the ALS refresher course.

R9-25-306. Training Program Notification and Recordkeeping (Authorized by A.R.S. §§ 36-2202(A)(3) and (4) and 36-2204(1) and (3))

A. At least 10 days before the start date of a course session, a training program certificate holder shall submit to the Department the following information in a Department-provided format:

1. Identification of the training program;
2. Identification of the course;
3. The name of the training program medical director;
4. The name of the training program director;
5. The name of the course session's lead instructor;

6. The course session start date and end date;
 7. The physical location at which didactic training and practical skills training will be provided;
 8. The days of the week and times of each day during which didactic training and practical skills training will be provided;
 9. The number of clock hours of didactic training and practical skills training;
 10. If applicable, the number of hours of clinical training and field training included in the course session;
 11. The date, start time, and location of the final examination for the course;
 12. Attestation that the lead instructor is qualified under R9-25-304(A)(4)(a); and
 13. The name and signature of the chief administrative officer or program director and the date signed.
- B.** The Department shall review the information submitted according to subsection (A) and, within five days after receiving the information:
1. Approve a course session, issue an identifying number to the course session, and notify the training program certificate holder of the approval and identifying number; or
 2. Disapprove a course session that does not comply with requirements in this Article and notify the training program certificate holder of the disapproval.
- C.** A training program certificate holder shall ensure that:
1. No later than 10 days after the date a student completes all course requirements, the training program director submits to the Department the following information in a Department-provided format:
 - a. Identification of the training program;
 - b. The name of the training program director;
 - c. Identification of the course and the start date and end date of the course session completed by the student;
 - d. The name, date of birth, and mailing address of the student who completed the course;
 - e. The date the student completed all course requirements;
 - f. The score the student received on the final examination;
 - g. Attestation that the student has met all course requirements;
 - h. Attestation that all information submitted is true and accurate; and
 - i. The signature of the training program director and the date signed; and
 2. No later than 10 days after the date an individual passes a refresher challenge

examination administered by the training program, the training program director submits to the Department the following information in a Department-provided format;

- a. Identification of the training program;
- b. Identification of the:
 - i. Refresher challenge examination administered, and
 - ii. Course for which the refresher challenge examination substitutes;
- c. The name of the training program medical director;
- d. The name of the training program director;
- e. The name, date of birth, and mailing address of the individual who passed the refresher challenge examination;
- f. The date and location at which the refresher challenge examination was administered;
- g. The score the individual received on the refresher challenge examination;
- h. Attestation that the individual:
 - i. Met the requirements for taking the refresher challenge examination, and
 - ii. Passed the refresher challenge examination;
- i. Attestation that all information submitted is true and accurate; and
- j. The name and signature of the training program director and the date signed.

D. A training program certificate holder shall ensure that:

1. A record is established for each student enrolled in a course session, including:
 - a. The student's name and date of birth;
 - b. A copy of the student's enrollment agreement or contract;
 - c. Identification of the course in which the student is enrolled;
 - d. The start date and end date for the course session;
 - e. Documentation supporting the student's eligibility to enroll in the course;
 - f. Documentation that the student meets prerequisites for the course, established as specified in ~~R9-25-304(A)(2)(e)(i)~~ R9-25-304(A)(2)(d)(i);
 - g. The student's attendance records;
 - h. The student's clinical training records, if applicable;
 - i. The student's field training records, if applicable;
 - j. The student's grades;
 - k. Documentation of the final examination for the course, including:
 - i. A copy of each scored written test attempted or completed by the student, and

- ii. All forms used as part of the comprehensive practical skills test attempted or completed by the student; and
 1. A copy of the student's certificate of completion required in R9-25-304(F)(1);
2. A student record required in subsection (D)(1) is maintained for at least three years after the end date of a student's course session and provided to the Department at the Department's request;
3. A record is established for each individual to whom a refresher challenge examination is administered, including:
 - a. The individual's name and date of birth;
 - b. Identification of the refresher challenge examination administered to the individual;
 - c. Documentation supporting the individual's eligibility for a refresher challenge examination;
 - d. The date the refresher challenge examination was administered;
 - e. Documentation of the refresher challenge examination, including:
 - i. A copy of the scored written test attempted or completed by the individual, and
 - ii. All forms used as part of the comprehensive practical skills test attempted or completed by the individual; and
 - f. A copy of the individual's certificate of completion required in R9-25-304(F)(2); and
4. A record required in subsection (D)(3) is maintained for at least three years after the date the refresher challenge examination was administered and provided to the Department at the Department's request.

ARTICLE 4. EMCT CERTIFICATION

R9-25-401. EMCT General Requirements (Authorized by A.R.S. §§ 36-2202(A)(2), (A)(3), (A)(4), (A)(6), and ~~(G)~~ (H) and 36-2204(1), (6), and (7))

- A. Except as provided in R9-25-404(E) and R9-25-405, an individual shall not act as an EMCT unless the individual has current certification or recertification from the Department.
- B. An EMCT shall act as an EMCT only:
 - 1. As authorized under the EMCT's scope of practice as specified in Article 5 of this Chapter; and
 - 2. For an EMCT required to have medical direction according to A.R.S. Title 36, Chapter 21.1 and R9-25-502, as authorized by the EMCT's administrative medical director under:
 - a. Treatment protocols, triage protocols, and communication protocols approved by the EMCT's administrative medical director as specified in R9-25-201(E)(2); and
 - b. Medical recordkeeping, medical reporting, and prehospital incident history report requirements approved by the EMCT's administrative medical director as specified in R9-25-201(E)(3)(b).
- C. Except as provided in A.R.S. § 36-2211, the Department shall certify or re-certify an individual as an EMCT for a period of two years.
- D. An individual whose EMCT certificate is expired shall not apply for recertification, except as provided in R9-25-404(A).
- E. The Department shall comply with the confidentiality requirements in A.R.S. §§ 36-2220(E) and 36-2245(M).

R9-25-402. EMCT Certification and Recertification Requirements (Authorized by A.R.S. §§ 36-2202(A)(2), (A)(3), (A)(4), (A)(6), and ~~(G)~~ (H) and 36-2204(1), (6), and (7))

- A. The Department shall not certify an EMCT if the applicant:
 - 1. Is currently:
 - a. Incarcerated for a criminal conviction,
 - b. On parole for a criminal conviction,
 - c. On supervised release for a criminal conviction, or
 - d. On probation for a criminal conviction;
 - 2. Within 10 years before the date of filing an application for certification required by this Article, has been convicted of any of the following crimes, or any similarly defined crimes in this state or in any other state or jurisdiction, unless the conviction has been absolutely discharged, expunged, or vacated:

- a. 1st or 2nd degree murder;
 - b. Attempted 1st or 2nd degree murder;
 - c. Sexual assault;
 - d. Attempted sexual assault;
 - e. Sexual abuse of a minor;
 - f. Attempted sexual abuse of a minor;
 - g. Sexual exploitation of a minor;
 - h. Attempted sexual exploitation of a minor;
 - i. Commercial sexual exploitation of a minor;
 - j. Attempted commercial sexual exploitation of a minor;
 - k. Molestation of a child;
 - l. Attempted molestation of a child; or
 - m. A dangerous crime against children as defined in A.R.S. § 13-705;
3. Within five years before the date of filing an application for certification required by this Article, has been convicted of a misdemeanor involving moral turpitude or a felony in this state or any other state or jurisdiction, other than a misdemeanor involving moral turpitude or a felony listed in subsection (A)(2), unless the conviction has been absolutely discharged, expunged, or vacated;
 4. Within five years before the date of filing an application for certification required by this Article, has had EMCT certification or recertification revoked in this state or certification, recertification, or licensure at an EMCT classification level revoked in any other state or jurisdiction; or
 5. Knowingly provides false information in connection with an application required by this Article.

B. The Department shall not re-certify an EMCT, if:

1. While certified, the applicant has been convicted of a crime listed in subsection (A)(2), or any similarly defined crimes in this state or in any other state or jurisdiction, unless the conviction has been absolutely discharged, expunged, or vacated; or
2. The applicant knowingly provides false information in connection with an application required by this Article.

C. The Department shall make probation a condition of EMCT certification if, within two years before the date of filing an application under R9-25-403, an applicant has been convicted of a misdemeanor in this state or in any other state or jurisdiction, involving:

1. Possession, use, administration, acquisition, sale, manufacture, or transportation of an

- intoxicating liquor, dangerous drug, or narcotic drug, as defined in A.R.S. § 13-3401, unless the conviction has been absolutely discharged, expunged, or vacated; or
2. Driving or being in physical control of a vehicle while under the influence of an intoxicating liquor, a dangerous drug, or a narcotic drug, as defined in A.R.S. § 13-3401, unless the conviction has been absolutely discharged, expunged, or vacated.
- D.** Except as provided in subsection (E), the Department shall make probation a condition of EMCT recertification if an applicant:
1. Is currently:
 - a. Incarcerated for a criminal conviction,
 - b. On parole for a criminal conviction,
 - c. On supervised release for a criminal conviction, or
 - d. On probation for a criminal conviction; or
 2. Within five years before the date of filing an application under R9-25-404, has been convicted of a misdemeanor involving moral turpitude or a felony in this state or any other state or jurisdiction, other than those listed in subsection (A)(2), unless the conviction has been absolutely discharged, expunged, or vacated.
- E.** As specified in R9-25-409, the Department may make probation a condition of EMCT recertification if an applicant, within two years before the date of filing an application under R9-25-404, has been convicted of a misdemeanor in this state or in any other state or jurisdiction, involving:
1. Possession, use, administration, acquisition, sale, manufacture, or transportation of an intoxicating liquor, dangerous drug, or narcotic drug, as defined in A.R.S. § 13-3401, unless the conviction has been absolutely discharged, expunged, or vacated; or
 2. Driving or being in physical control of a vehicle while under the influence of an intoxicating liquor, a dangerous drug, or a narcotic drug, as defined in A.R.S. § 13-3401, unless the conviction has been absolutely discharged, expunged, or vacated.
- F.** If the Department makes probation a condition of EMCT certification or recertification, the Department shall fix the period and terms of probation that will:
1. Protect the public health and safety, and
 2. Rehabilitate and educate the applicant.
- R9-25-403. Application Requirements for EMCT Certification (Authorized by A.R.S. §§ 36-2202(A)(2), (A)(3), (A)(4), and ~~(G)~~ (H) and 36-2204(1) and (6))**
- A.** An individual may apply for initial EMCT certification if:
1. The individual is at least 18 years of age;

2. The individual complies with the requirements in A.R.S. § 41-1080;
3. The individual is not ineligible under R9-25-402; and
4. One of the following applies to the individual:
 - a. The individual has not previously applied for certification from the Department or has withdrawn an application for certification;
 - b. An application for certification submitted by the individual was denied by the Department two or more years before the present date;
 - c. Except as provided in R9-25-404(A)(2) or (3), the individual's certification as an EMCT is expired;
 - d. The individual's certification as an EMCT was revoked by the Department five or more years before the present date; or
 - e. The individual has current certification as an EMCT and is applying for certification at a different classification level of EMCT.

B. An applicant for initial EMCT certification shall submit to the Department an application in a Department-provided format, including:

1. A form containing:
 - a. The applicant's name, address, telephone number, email address, date of birth, gender, and Social Security number;
 - b. The level of EMCT certification being requested;
 - c. Responses to questions addressing the applicant's criminal history according to R9-25-402(A)(1) through (3) and (C);
 - d. Whether the applicant has within the five years before the date of the application had:
 - i. EMCT certification or recertification revoked in Arizona; or
 - ii. Certification, recertification, or licensure at an EMCT classification level revoked in another state or jurisdiction;
 - e. Attestation that all information required as part of the application has been submitted and is true and accurate; and
 - f. The applicant's signature or electronic signature and date of signature;
2. For each affirmative response to a question addressing the applicant's criminal history required in subsection (B)(1)(c), a detailed explanation on a Department-provided form and supporting documentation;
3. For each affirmative response to subsection (B)(1)(d), a detailed explanation on a Department-provided form and supporting documentation;

4. If applicable, a copy of certification, recertification, or licensure at an EMCT classification level issued to the applicant in another state or jurisdiction;
 5. A copy of one of the following for the applicant:
 - a. U.S. passport, current or expired;
 - b. Birth certificate;
 - c. Naturalization documents; or
 - d. Documentation of legal resident alien status; and
 6. One of the following:
 - a. Either:
 - i. A certificate of completion showing that within two years before the date of the application, the applicant completed statewide standardized training; and
 - ii. A statewide standardized certification test; or
 - b. Documentation of current registration in a national certification organization at the applicable or higher level of EMCT classification.
- B.** The Department shall approve or deny an application for initial EMCT certification according to Article 12 of this Chapter.
- C.** If the Department denies an application for initial EMCT certification, the applicant may request a hearing according to A.R.S. Title 41, Chapter 6, Article 10.
- R9-25-405. Extension to File an Application for EMCT Recertification (Authorized by A.R.S. §§ 36-2202(A)(2), (A)(3), (A)(4), (A)(6), and ~~(G)~~ (H) and 36-2204(1), (4), (5), and (7))**
- A.** Before the expiration of a current certificate, an EMCT who is unable to meet the recertification requirements in R9-25-404 because of personal or family illness, military service, or authorized federal or state emergency response deployment may apply to the Department in writing for an extension of time to file for recertification by submitting:
 1. The following information in a Department-provided format:
 - a. The EMCT's name, address, telephone number, and email address;
 - b. The EMCT's current certification number;
 - c. The reason for requesting the extension; and
 - d. The EMCT's signature or electronic signature and date of signature; and
 2. For an exemption based on military service or authorized federal or state emergency response deployment, a copy of the EMCT's military orders or documentation of authorized federal or state emergency response deployment.
 - B.** The Department may grant an extension of time to file for recertification:

1. For personal or family illness, for no more than 180 days; or
 2. For each military service or authorized federal or state emergency response deployment, for the term of service or deployment plus 180 days.
- C.** An individual applying for or granted an extension of time to file for recertification:
1. Remains certified according to A.R.S. § 41-1092.11 during the extension period, and
 2. Shall submit an application for recertification according to R9-25-404.
- D.** An individual who does not meet the recertification requirements in R9-25-404 within the extension period or has the application for recertification denied by the Department:
1. Is not an EMCT, and
 2. May submit an application to the Department for initial EMCT certification according to R9-25-403.
- E.** The Department shall approve or deny a request for an extension to file for EMCT recertification according to Article 12 of this Chapter.
- F.** If the Department denies a request for an extension to file for EMCT recertification, the applicant may request a hearing according to A.R.S. Title 41, Chapter 6, Article 10.

R9-25-406. Requirements for Downgrading of Certification (Authorized by A.R.S. §§ 36-2202(A)(2), (A)(3), (A)(4), and ~~(G)~~ (H) and 36-2204(1) and (6))

An individual who holds current EMCT certification at a classification level higher than EMT and who is not under investigation according to A.R.S. § 36-2211 may apply for:

1. Continued certification at a lower EMCT classification level for the remainder of the certification period by submitting to the Department:
 - a. A written request containing:
 - i. The EMCT's name, address, email address, telephone number, date of birth, and Social Security number;
 - ii. The lower EMCT classification level requested;
 - iii. Attestation that the applicant has not committed an act or engaged in conduct that would warrant revocation of a certificate under A.R.S. § 36-2211;
 - iv. Attestation that all information submitted is true and accurate; and
 - v. The applicant's signature or electronic signature and date of signature; and
 - b. Either:
 - i. A written statement from the EMCT's administrative medical director attesting that the EMCT is able to perform at the lower EMCT

classification level requested; or

- ii. If applying for continued certification as an EMT, an Arizona EMT refresher certificate of completion or an Arizona EMT refresher challenge examination certificate of completion signed by the training program director designated for the Arizona EMT refresher course; or

- 2. Recertification at a lower EMCT classification level according to R9-25-404.

R9-25-407. Notification Requirements (Authorized by A.R.S. §§ 36-2202(A)(2), (A)(3), and (A)(4), 36-2204(1) and (6), and 36-2211)

A. No later than 30 days after the date an EMCT's name legally changes, the EMCT shall submit to the Department:

- 1. A completed form provided by the Department containing:
 - a. The name under which the EMCT is currently certified by the Department;
 - b. The EMCT's address, telephone number, and Social Security number; and
 - c. The EMCT's new name; and
- 2. Documentation showing that the name has been legally changed.

B. No later than 30 days after the date an EMCT's address or email address changes, the EMCT shall submit to the Department a completed form provided by the Department containing:

- 1. The EMCT's name, telephone number, and Social Security number; and
- 2. The EMCT's new address or email address.

C. An EMCT shall notify the Department in writing no later than 10 days after the date the EMCT:

- 1. Is incarcerated or is placed on parole, supervised release, or probation for any criminal conviction;
- 2. Is convicted of:
 - a. A crime specified in R9-25-402(A)(2),
 - b. A misdemeanor involving moral turpitude,
 - c. A felony in this state or any other state or jurisdiction, or
 - d. A misdemeanor specified in R9-25-402(E);
- 3. Has registration revoked or suspended by a national certification organization; or
- 4. Has certification, recertification, or licensure at an EMCT classification level revoked or suspended in another state or jurisdiction.

R9-25-408. Unprofessional Conduct; Physical or Mental Incompetence; Gross Incompetence; Gross Negligence (Authorized by A.R.S. §§ 36-2202(A)(2), (A)(3), (A)(4), (A)(6), and ~~(G)~~ (H), 36-2204(1), (6), and (7), and 36-2211)

A. For purposes of A.R.S. § 36-2211(A)(1), unprofessional conduct is an act or omission made by an

EMCT that is contrary to the recognized standards or ethics of the Emergency Medical Technician profession or that may constitute a danger to the health, welfare, or safety of a patient or the public, including:

1. Impersonating an EMCT of a higher level of certification or impersonating a health professional as defined in A.R.S. § 32-3201;
2. Permitting or allowing another individual to use the EMCT's certification for any purpose;
3. Aiding or abetting an individual who is not certified according to this Chapter in acting as an EMCT or in representing that the individual is certified as an EMCT;
4. Engaging in or soliciting sexual relationships, whether consensual or non-consensual, with a patient while acting as an EMCT;
5. Physically or verbally harassing, abusing, threatening, or intimidating a patient or another individual while acting as an EMCT;
6. Making false or materially incorrect entries in a medical record or willful destruction of a medical record;
7. Failing or refusing to maintain adequate records on a patient;
8. Soliciting or obtaining monies or goods from a patient by fraud, deceit, or misrepresentation;
9. Aiding or abetting an individual in fraud, deceit, or misrepresentation in meeting or attempting to meet the application requirements for EMCT certification or EMCT recertification contained in this Article, including the requirements established for:
 - a. Completing and passing a course provided by a training program; and
 - b. The national certification organization examination process and national certification organization registration process;
10. Providing false information or making fraudulent or untrue statements to the Department or about the Department during an investigation conducted by the Department;
11. Being incarcerated or being placed on parole, supervised release, or probation for any criminal conviction;
12. Being convicted of a misdemeanor identified in R9-25-402(E), which has not been absolutely discharged, expunged, or vacated;
13. Having national certification organization registration revoked or suspended by the national certification organization for material noncompliance with national certification organization rules or standards; and
14. Having certification, recertification, or licensure at an EMCT classification level revoked

or suspended in another state or jurisdiction.

- B. Under A.R.S. § 36-2211, physical or mental incompetence of an EMCT is the EMCT's lack of physical or mental ability to provide emergency medical services as required under this Chapter.
- C. Under A.R.S. § 36-2211 gross incompetence or gross negligence is an EMCT's willful act or willful omission of an act that is made in disregard of an individual's life, health, or safety and that may cause death or injury.

R9-25-409. Enforcement Actions (Authorized by A.R.S. §§ 36-2202(A)(2), (A)(3), (A)(4), (A)(6), and ~~(G)~~ (H), 36-2204(1), (6), and (7), and 36-2211)

- A. If the Department determines that an applicant or EMCT is not in substantial compliance with applicable laws and rules, under A.R.S. §§ 36-2204 or 36-2211, the Department may:
 - 1. Take the following action against an applicant or EMCT:
 - a. After notice is provided according to A.R.S. § 36-2211 and, if applicable, A.R.S. Title 41, Chapter 6, Article 10, issue:
 - i. A decree of censure to the EMCT, or
 - ii. An order of probation to the EMCT; or
 - b. After notice and opportunity to be heard is provided according to A.R.S. Title 41, Chapter 6, Article 10:
 - i. Deny an application,
 - ii. Suspend the EMCT's certificate, or
 - iii. Revoke the EMCT's certificate; and
 - 2. Assess civil penalties against the EMCT.
- B. In determining which action in subsection (A) is appropriate, the Department shall consider:
 - 1. Prior disciplinary actions;
 - 2. The time interval since a prior disciplinary action, if applicable;
 - 3. The applicant's or EMCT's motive;
 - 4. The applicant's or EMCT's pattern of conduct;
 - 5. The number of offenses;
 - 6. Whether the applicant or EMCT failed to comply with instructions from the Department;
 - 7. Whether interim rehabilitation efforts were made by the applicant or EMCT;
 - 8. Whether the applicant or EMCT refused to acknowledge the wrongful nature of the misconduct;
 - 9. Whether the applicant or EMCT made timely and good-faith efforts to rectify the consequences of the misconduct;
 - 10. The submission of false evidence, false statements, or other deceptive practices during an

investigation or disciplinary process;

11. The vulnerability of a patient or other victim of the applicant's or EMCT's conduct, if applicable; and
12. How much control the applicant or EMCT had over the processes or situation leading to the misconduct.

ARTICLE 12. TIME-FRAMES FOR DEPARTMENT APPROVALS

Table 12.1. Time-frames (in days)

Type of Application	Statutory Authority	Overall Time-frame	Administrative Completeness Time-frame	Time to Respond to Written Notice	Substantive Review Time-frame	Time to Respond to Comprehensive Written Request
ALS Base Hospital Certification (R9-25-204)	A.R.S. §§ 36-2201, 36-2202(A)(3), and 36-2204(5)	45	15	60	30	60
Training Program Certification (R9-25-301)	A.R.S. §§ 36-2202(A)(3) and 36-2204(1) and (3)	120	30	60	90	60
Addition of a Course (R9-25-303)	A.R.S. §§ 36-2202(A)(3) and 36-2204(1) and (3)	90	30	60	60	60
EMCT Certification (R9-25-403)	A.R.S. §§ 36-2202(A)(2), (3), and (4), 36-2202(G) <u>36-2202(H)</u> , and 36-2204(1)	120	30	90	90	270
EMCT Recertification (R9-25-404)	A.R.S. §§ 36-2202(A)(2), (3), (4), and (6), 36-2202(G) <u>36-2202(H)</u> , and 36-2204(1) and (4)	120	30	60	90	60
Extension to File for EMCT Recertification (R9-25-405)	A.R.S. §§ 36-2202(A)(2), (3), (4), and (6), 36-2202(G) <u>36-2202(H)</u> , and 36-2204(1) and (7)	30	15	60	15	60
Downgrading of Certification (R9-25-406)	A.R.S. §§ 36-2202(A)(2), (3), and (4), 36-2202(G) <u>36-2202(H)</u> , and 36-2204(1) and (6)	30	15	60	15	60
Initial Air Ambulance Service License (R9-25-704)	A.R.S. §§ 36-2202(A)(3) and (4), 36-2209(A)(2), 36-2213, 36-2214, and 36-2215	150	30	60	120	60
Renewal of an Air Ambulance Service License (R9-25-705)	A.R.S. §§ 36-2202(A)(3) and (4), 36-2209(A)(2), 36-2213, 36-2214, and 36-2215	90	30	60	60	60
Initial Certificate of Registration for an Air Ambulance (R9-25-802)	A.R.S. §§ 36-2202(A)(4) and (5), 36-2209(A)(2), 36-2212, 36-2213, 36-2214, and 36-2240(4)	90	30	60	60	60
Renewal of a Certificate of Registration for an Air Ambulance (R9-25-802)	A.R.S. §§ 36-2202(A)(4) and (5), 36-2209(A)(2), 36-2212, 36-2213, 36-2214, and 36-2240(4)	90	30	60	60	60
Initial Certificate of Necessity (R9-25-902)	A.R.S. §§ 36-2204, 36-2232, 36-2233, 36-2240	450	30	60	420	60
Provision of ALS Services (R9-25-902)	A.R.S. §§ 36-2232, 36-2233, 36-2240	450	30	60	420	60

Transfer of a Certificate of Necessity (R9-25-902)	A.R.S. §§ 36-2236(A) and (B), 36-2240	450	30	60	420	60
Renewal of a Certificate of Necessity (R9-25-904)	A.R.S. §§ 36-2233, 36-2235, 36-2240	90	30	60	60	60
Amendment of a Certificate of Necessity (R9-25-905)	A.R.S. §§ 36-2232(A)(4), 36-2240	450	30	60	420	60
Initial Registration of a Ground Ambulance Vehicle (R9-25-1001)	A.R.S. §§ 36-2212, 36-2232, 36-2240	90	30	60	60	60
Renewal of a Ground Ambulance Vehicle Registration (R9-25-1001)	A.R.S. §§ 36-2212, 36-2232, 36-2240	90	30	60	60	60
Establishment of Initial General Public Rates (R9-25-1101)	A.R.S. §§ 36-2232, 36-2239	450	30	60	420	60
Adjustment of General Public Rates (R9-25-1102)	A.R.S. §§ 36-2234, 36-2239	450	30	60	420	60
Contract Rate or Range of Rates Less than General Public Rates (R9-25-1103)	A.R.S. §§ 36-2234, 36-2239	450	30	60	420	60
Ground Ambulance Service Contracts (R9-25-1104)	A.R.S. § 36-2232	450	30	60	420	60
Ground Ambulance Service Contracts with Political Subdivisions (R9-25-1104)	A.R.S. §§ 36-2232, 36-2234(K)	30	15	15	15	Not Applicable
Subscription Service Rate (R9-25-1105)	A.R.S. § 36-2232(A)(1)	450	30	60	420	60

ARTICLE 1. DEFINITIONS

R9-25-101. Definitions (Authorized by A.R.S. §§ 36-2201, 36-2202, 36-2204, and 36-2205)

In addition to the definitions in A.R.S. § 36-2201, the following definitions apply in this Chapter, unless otherwise specified:

1. “Administer” or “administration” means to directly apply or the direct application of an agent to the body of a patient by injection, inhalation, ingestion, or any other means and includes adjusting the administration rate of an agent.
2. “AEMT” has the same meaning as “advanced emergency medical technician” in A.R.S. § 36-2201.
3. “Agent” means a chemical or biological substance that is administered to a patient to treat or prevent a medical condition.
4. “ALS” has the same meaning as “advanced life support” in A.R.S. § 36-2201.
5. “ALS base hospital” has the same meaning as “advanced life support base hospital” in A.R.S. § 36-2201.
6. “Applicant” means a person requesting certification, licensure, approval, or designation from the Department under this Chapter.
7. “Chain of custody” means the transfer of physical control of and accountability for an item from one individual to another individual, documented to indicate the:
 - a. Date and time of the transfer,
 - b. Integrity of the item transferred, and
 - c. Signatures of the individual relinquishing and the individual accepting physical control of and accountability for the item.
8. “Chief administrative officer” means:
 - a. For a hospital, the same as in A.A.C. R9-10-101; and
 - b. For a training program, an individual assigned to act on behalf of the training program by the body organized to govern and manage the training program.
9. “Clinical training” means experience and instruction in providing direct patient care in a health care institution.
10. “Controlled substance” has the same meaning as in A.R.S. § 32-1901.
11. “Course” means didactic instruction and, if applicable, hands-on practical skills training, clinical training, or field training provided by a training program to prepare an individual to become or remain an EMCT.
12. “Course session” means an offering of a course, during a period of time designated by a training program certificate holder, for a specific group of students.
13. “Current” means up-to-date and extending to the present time.
14. “Day” means a calendar day.
15. “Document” or “documentation” means signed and dated information in written, photographic, electronic, or other permanent form.
16. “Drug” has the same meaning as in A.R.S. § 32-1901.
17. “Electronic signature” has the same meaning as in A.R.S. § 44-7002.
18. “EMCT” has the same meaning as “emergency medical care technician” in A.R.S. § 36-2201.
19. “EMT” has the same meaning as “emergency medical technician” in A.R.S. § 36-2201.
20. “EMT-I(99)” means an individual, other than a Paramedic, who:
 - a. Was certified as an EMCT by the Department before January 28, 2013 to perform ALS, and
 - b. Has continuously maintained the certification.
21. “EMS” has the same meaning as “emergency medical services” subsections (17)(a) through (d) in A.R.S. § 36-2201.
22. “Field training” means emergency medical services experience and training outside of a health care institution or a training program facility.

23. "General hospital" has the same meaning as in A.A.C. R9-10-101.
24. "Health care institution" has the same meaning as in A.R.S. § 36-401.
25. "Hospital" has the same meaning as in A.A.C. R9-10-101.
26. "In use" means in the immediate physical possession of an EMCT and readily accessible for potential imminent administration to a patient.
27. "Infusion pump" means a device approved by the U.S. Food and Drug Administration that, when operated mechanically, electrically, or osmotically, releases a measured amount of an agent into a patient's circulatory system in a specific period of time.
28. "Interfacility transport" means an ambulance transport of a patient from one health care institution to another health care institution.
29. "IV" means intravenous.
30. "Locked" means secured with a key, including a magnetic, electronic, or remote key, or combination so that opening is not possible except by using the key or entering the combination.
31. "Medical direction" means administrative medical direction or on-line medical direction.
32. "Medical record" has the same meaning as in A.R.S. § 36-2201.
33. "Minor" means an individual younger than 18 years of age who is not emancipated.
34. "Monitor" means to observe the administration rate of an agent and the patient's response to the agent and may include discontinuing administration of the agent.
35. "On-line medical direction" means emergency medical services guidance or information provided to an EMCT by a physician through two-way voice communication.
36. "Patient" means an individual who is sick, injured, or wounded and who requires medical monitoring, medical treatment, or transport.
37. "Pediatric" means pertaining to a child.
38. "Person" has the same meaning as in A.R.S. § 1-215 and includes governmental agencies.
39. "Physician assistant" has the same meaning as in A.R.S. § 32-2501.
40. "Practical nurse" has the same meaning as in A.R.S. § 32-1601.
41. "Practicing emergency medicine" means acting as an emergency medicine physician in a hospital emergency department.
42. "Prehospital incident history report" has the same meaning as in A.R.S. § 36-2220.
43. "Refresher challenge examination" means a test given to an individual to assess the individual's knowledge, skills, and competencies compared with the national education standards established for the applicable EMCT classification level.
44. "Refresher course" means a course intended to reinforce and update the knowledge, skills, and competencies of an individual who has previously met the national educational standards for a specific level of EMS personnel.
45. "Registered nurse" has the same meaning as in A.R.S. § 32-1601.
46. "Registered nurse practitioner" has the same meaning as in A.R.S. § 32-1601.
47. "Scene" means the location of the patient to be transported or the closest point to the patient at which an ambulance can arrive.
48. "Special hospital" has the same meaning as in A.A.C. R9-10-101.
49. "STR skill" means "Specialty Training Requirement skill," a medical treatment, procedure, or technique or administration of a medication for which an EMCT needs specific training beyond the training required in 9 A.A.C. 25, Article 4 in order to perform or administer.
50. "Transfer of care" means to relinquish to the control of another person the ongoing medical treatment of a patient.
51. "Transport agent" means an agent that an EMCT at a specified level of certification is authorized to administer only during interfacility transport of a patient for whom the agent's administration was started at the sending health care institution.

R9-25-102. Individuals to Act for a Person Regulated Under This Chapter (Authorized by A.R.S. § 36-2202)

When a person regulated under this Chapter is required by this Chapter to provide information on or sign an application form or other document, the following individual shall satisfy the requirement on behalf of the person regulated under this Chapter:

1. If the person regulated under this Chapter is an individual, the individual; or
2. If the person regulated under this Chapter is a business organization, political subdivision, government agency, or tribal government, the individual who the business organization, political subdivision, government agency, or tribal government has designated to act on behalf of the business organization, political subdivision, government agency, or tribal government and who:
 - a. Is a U.S. citizen or legal resident, and
 - b. Has an Arizona address.

ARTICLE 3. TRAINING PROGRAMS

R9-25-301. Definitions; Application for Certification (Authorized by A.R.S. §§ 36-2202(A)(3) and (4) and 36-2204(1) and (3))

- A.** To apply for certification as a training program, an applicant shall submit an application to the Department, in a Department-provided format, including:
1. The applicant's name, address, and telephone number;
 2. The name, telephone number, and e-mail address of the applicant's chief administrative officer;
 3. The name of each course the applicant plans to provide;
 4. Attestation that the applicant has the equipment and facilities that meet the requirements established according to A.R.S. § 36-2204 and available through the Department at www.azdhs.gov for the courses specified in subsection (A)(3);
 5. The name, telephone number, and e-mail address of the training program medical director;
 6. The name, telephone number, and e-mail address of the training program director;
 7. Attestation that the applicant will comply with all requirements in A.R.S. Title 36, Chapter 21.1 and 9 A.A.C. 25;
 8. Attestation that all information required as part of the application has been submitted and is true and accurate; and
 9. The signature or electronic signature of the applicant's chief administrative officer or the chief administrative officer's designated representative and date of signature or electronic signature.
- B.** An applicant may submit to the Department a copy of an accreditation report if the applicant is currently accredited by a national accrediting organization.
- C.** The Department shall certify a training program if the applicant:
1. Has not operated a training program that has been decertified by the Department within five years before submitting the application,
 2. Submits an application that is complete and compliant with requirements in this Article, and
 3. Has not knowingly provided false information on or with an application required by this Article.
- D.** The Department, according to A.R.S. § 41-1009:
1. Shall assess a training program at least once every 24 months after certification to determine ongoing compliance with the requirements of this Article; and
 2. May inspect a training program:
 - a. As part of the substantive review time-frame required in A.R.S. §§ 41-1072 through 41-1079, or
 - b. As necessary to determine compliance with the requirements of this Article.
- E.** The Department shall approve or deny an application under this Article according to Article 12 of this Chapter.
- F.** A training program certificate is valid only for the name of the training program certificate holder and the courses listed by the Department on the certificate and may not be transferred to another person.

R9-25-302. Administration (Authorized by A.R.S. §§ 36-2202(A)(3) and (4) and 36-2204(1) and (3))

- A.** A training program certificate holder shall ensure that a training program medical director:
1. Is a physician or exempt from physician licensing requirements under A.R.S. §§ 32-1421(A)(7) or 32-1821(3);
 2. Meets one of the following:
 - a. Has emergency medicine certification issued by a member board of the American Board of Medical Specialties,
 - b. Has emergency medical services certification issued by the American Board of Emergency Medicine,
 - c. Has completed an emergency medicine residency training program accredited by the Accreditation Council for Graduate Medical Education or approved by the American Osteopathic Association, or
 - d. Is an emergency medicine physician in an emergency department located in Arizona and has current certification that meets the requirements in R9-25-201(A)(1)(d)(i) through (iii); and
 3. Before the start date of a course session, reviews the course content outline and final examinations to ensure consistency with the national educational standards for the applicable EMCT classification level.
- B.** A training program certificate holder shall ensure that a training program director:
1. Is one of the following:
 - a. A physician with at least two years of experience providing emergency medical services as a physician;
 - b. A doctor of allopathic medicine or osteopathic medicine licensed in another state or jurisdiction with at least two years of experience providing emergency medical services as a doctor of allopathic medicine or osteopathic medicine;
 - c. An individual who meets the definition of registered nurse in A.R.S. § 32-1601 with at least two years of experience providing emergency medical services as a registered nurse;
 - d. A physician assistant with at least two years of experience providing emergency medical services as a physician assistant; or
 - e. An EMCT with at least two years of experience at that classification of EMCT, only for courses to prepare an individual for certification or recertification at the same or lower level of EMCT;
 2. Has completed 24 hours of training related to instructional methodology including:
 - a. Organizing and preparing materials for didactic instruction, clinical training, field training, and skills practice;
 - b. Preparing and administering tests and practical examinations;
 - c. Using equipment and supplies;
 - d. Measuring student performance;
 - e. Evaluating student performance;
 - f. Providing corrective feedback; and
 - g. Evaluating course effectiveness;
 3. Supervises the day-to-day operation of the courses offered by the training program;
 4. Supervises and evaluates the lead instructor for a course session;
 5. Monitors the training provided by all preceptors providing clinical training or field training; and
 6. Does not participate as a student in a course session, take a refresher challenge examination, or receive a certificate of completion for a course given by the training program.
- C.** A training program certificate holder shall:
1. Maintain with an insurance company authorized to transact business in this state:
 - a. A minimum single claim professional liability insurance coverage of \$500,000, and
 - b. A minimum single claim general liability insurance coverage of \$500,000 for the operation of the training program; or

2. Be self-insured for the amounts in subsection (C)(1).
- D.** A training program certificate holder shall ensure that policies and procedures are:
 1. Established, documented, and implemented covering:
 - a. Student enrollment, including verification that a student has proficiency in reading at the 9th grade level and meets all course admission requirements;
 - b. Maintenance of student records and medical records, including compliance with all applicable state and federal laws governing confidentiality, privacy, and security; and
 - c. For each course offered:
 - i. Student attendance requirements, including leave, absences, make-up work, tardiness, and causes for suspending or expelling a student for unsatisfactory attendance;
 - ii. Grading criteria, including the minimum grade average considered satisfactory for continued enrollment and standards for suspending or expelling a student for unsatisfactory grades;
 - iii. Administration of final examinations; and
 - iv. Student conduct, including causes for suspending or expelling a student for unsatisfactory conduct;
 2. Reviewed annually and updated as necessary; and
 3. Maintained on the premises and provided to the Department at the Department's request.

R9-25-303. Changes Affecting a Training Program Certificate (Authorized by A.R.S. §§ 36-2202(A)(3) and (4) and 36-2204(1) and (3))

- A.** No later than 10 days after a change in the name, address, or e-mail address of the training program certificate holder listed on a training program certificate, the training program certificate holder shall notify the Department of the change, in a Department-provided format, including:
 1. The current name, address, and e-mail address of the training program certificate holder;
 2. The certificate number for the training program;
 3. The new name, new address, or new e-mail address and the date of the name, address, or e-mail address change;
 4. If applicable, attestation that the training program certificate holder has insurance required in R9-25-302(C) that is valid for the new name or new address;
 5. Attestation that all information submitted to the Department is true and correct; and
 6. The signature or electronic signature of the applicant's chief administrative officer or the chief administrative officer's designated representative and date of signature or electronic signature.
- B.** No later than 10 days after a change in the training program medical director or training program director, a training program certificate holder shall notify the Department, in a Department-provided format, including:
 1. The name and address of the training program certificate holder;
 2. The certificate number for the training program;
 3. The name, telephone number, and e-mail address of the new training program medical director or training program director and the date of the change; and
 4. The signature or electronic signature of the applicant's chief administrative officer or the chief administrative officer's designated representative and date of signature or electronic signature.
- C.** A training program certificate holder that intends to add a course shall submit to the Department a request for approval, in a Department-provided format, including:
 1. The name and address of the training program certificate holder;
 2. The certificate number for the training program;
 3. The name, telephone number, and e-mail address of the applicant's chief administrative officer;
 4. The name of each course the training program certificate holder plans to add;

5. Attestation that the training program certificate holder has the equipment and facilities that meet the requirements established according to A.R.S. § 36-2204 and available through the Department at www.azdhs.gov for the courses specified in subsection (C)(4);
 6. Attestation that all information required as part of the request is true and accurate; and
 7. The signature or electronic signature of the applicant's chief administrative officer or the chief administrative officer's designated representative and date of signature or electronic signature.
- D.** For notification made under subsection (A) of a change in the name or address of a certificate holder, the Department shall issue an amended certificate to the training program certificate holder that incorporates the new name or address but retains the date on the current certificate.
- E.** The Department shall approve or deny a request for the addition of a course in subsection (C) according to Article 12 of this Chapter.
- F.** A training program certificate holder shall not conduct a course until an amended certificate is issued by the Department.

R9-25-304. Course and Examination Requirements (Authorized by A.R.S. §§ 36-2202(A)(3) and (4) and 36-2204(1), (2), and (3))

- A.** For each course provided, a training program director shall ensure that:
1. The required equipment and facilities established for the course are available for use;
 2. The following are prepared and provided to course applicants before the start date of a course session:
 - a. A description of requirements for admission, course content, course hours, course fees, and course completion, including whether the course prepares a student for:
 - i. A national certification organization examination for the specific EMCT classification level,
 - ii. A statewide standardized certification test under the state certification process, or
 - iii. Recertification at a specific EMCT classification level;
 - b. A list of books, equipment, and supplies that a student is required to purchase for the course;
 - c. Notification of eligibility for the course as specified in R9-25-305(B), (D)(1) and (2), or (F)(1) and (2), as applicable;
 - d. Notification of any specific requirements for a student to begin any component of the course, including, as applicable:
 - i. Prerequisite knowledge, skill, and abilities;
 - ii. Physical examinations;
 - iii. Immunizations;
 - iv. Documentation of freedom from infectious tuberculosis;
 - v. Drug screening; and
 - vi. The ability to perform certain physical activities; and
 - e. The policies for the course on student attendance, grading, student conduct, and administration of final examinations, required in R9-25-302(D)(1)(c)(i) through (iv);
 3. Information is provided to assist a student to:
 - a. Register for and take an applicable national certification organization examination;
 - b. Complete application forms for registration in a national certification organization; and
 - c. Complete application forms for certification under 9 A.A.C. 25, Article 4;
 4. A lead instructor is assigned to each course session who:
 - a. Is one of the following:
 - i. A physician with at least two years of experience providing emergency medical services;
 - ii. A doctor of allopathic medicine or osteopathic medicine licensed in another state or jurisdiction with at least two years of experience providing emergency medical services;
 - iii. An individual who meets the definition of registered nurse in A.R.S. § 32-1601 with at least two years of experience providing emergency medical services;

- iv. A physician assistant with at least two years of experience providing emergency medical services; or
 - v. An EMCT with at least two years of experience at that classification of EMCT, only for courses to prepare an individual for certification or recertification at the same or lower EMCT classification level;
 - b. Has completed training related to instructional methodology specified in R9-25-302(B)(2);
 - c. Except as provided in subsection (A)(4)(d), is available for student-instructor interaction during all course hours established for the course session; and
 - d. Designates an individual who meets the requirements in subsections (A)(4)(a) and (b) to be present and act as the lead instructor when the lead instructor is not present; and
5. Clinical training and field training are provided:
- a. Under the supervision of a preceptor who has at least two years of experience providing emergency medical services and is one of the following:
 - i. An individual licensed in this or another state or jurisdiction as a doctor of allopathic medicine or osteopathic medicine;
 - ii. An individual licensed in this or another state or jurisdiction as a registered nurse;
 - iii. An individual licensed in this or another state or jurisdiction as a physician assistant; or
 - iv. An EMCT, only for courses to prepare an individual for certification or recertification at the same or lower EMCT classification level;
 - b. Consistent with the clinical training and field training requirements established for the course; and
 - c. If clinical training or field training are provided by a person other than the training program certificate holder, under a written agreement with the person providing the clinical training or field training that includes a termination clause that provides sufficient time for a student to complete the training upon termination of the written agreement.
- B.** A training program director may combine the students from more than one course session for didactic instruction.
- C.** For a final examination or refresher challenge examination for each course offered, a training program director shall ensure that:
- 1. The final examination or refresher challenge examination for the course is completed onsite at the training program or at a facility used for course instruction;
 - 2. Except as provided in subsection (D), the final examination or refresher challenge examination for a course includes a:
 - a. Written test:
 - i. With one absolutely correct answer, two incorrect answers, and one distractor, none of which is “all of the above” or “none of the above”;
 - ii. With 150 multiple-choice questions for the:
 - (1) Final examination for a refresher course, or
 - (2) Refresher challenge examination for a course;
 - iii. That covers the learning objectives of the course with representation from all topics covered by the course; and
 - iv. That requires a passing score of 75% or higher in no more than three attempts for a final examination and no more than one attempt for a refresher challenge examination; and
 - b. Comprehensive practical skills test:
 - i. Evaluating the student’s technical proficiency in skills consistent with the national education standards for the applicable EMCT classification level, and
 - ii. Reflecting the skills necessary to pass a national certification organization examination at the applicable EMCT classification level;
 - 3. The identity of each student taking the final examination or refresher challenge examination is verified;

4. A student does not receive verbal or written assistance from any other individual or use notes, books, or documents of any kind as an aid in taking the examination;
 5. A student who violates subsection (C)(4) is not permitted to complete the examination or to receive a certificate of completion for the course or refresher challenge examination; and
 6. An instructor who allows a student to violate subsection (C)(4) or assists a student in violating subsection (C)(4) is no longer permitted to serve as an instructor.
- D.** A training program director shall ensure that a standardized certification test for a student under the state certification process includes:
1. A written test that meets the requirements in subsection (C)(2)(a); and
 2. Either:
 - a. A comprehensive practical skills test that meets the requirements in subsection (C)(2)(b), or
 - b. An attestation of practical skills proficiency on a Department-provided form.
- E.** A training program director shall ensure that:
1. A student is allowed no longer than six months after the date of the last day of classroom instruction for a course session to complete all course requirements,
 2. There is a maximum ratio of four students to one preceptor for the clinical training portion of a course, and
 3. There is a maximum ratio of one student to one preceptor for the field training portion of a course.
- F.** A training program director shall:
1. For a student who completes a course, issue a certificate of completion containing:
 - a. Identification of the training program,
 - b. Identification of the course completed,
 - c. The name of the student who completed the course,
 - d. The date the student completed all course requirements,
 - e. Attestation that the student has met all course requirements, and
 - f. The signature or electronic signature of the training program director and the date of signature or electronic signature; and
 2. For an individual who passes a refresher challenge examination, issue a certificate of completion containing:
 - a. Identification of the training program,
 - b. Identification of the refresher challenge examination administered,
 - c. The name of the individual who passed the refresher challenge examination,
 - d. The date or dates the individual took the refresher challenge examination,
 - e. Attestation that the individual has passed the refresher challenge examination, and
 - f. The signature or electronic signature of the training program director and the date of signature or electronic signature.

R9-25-305. Supplemental Requirements for Specific Courses (Authorized by A.R.S. §§ 36-2202(A)(3) and (4) and 36-2204(1) and (3))

- A.** Except as specified in subsection (B), a training program certificate holder shall ensure that a certification course offered by the training program:
1. Covers knowledge, skills, and competencies comparable to the national education standards established for a specific EMCT classification level;
 2. Prepares a student for:
 - a. A national certification organization examination for the specific EMCT classification level, or
 - b. A standardized certification test under the state certification process;
 3. Has no more than 24 students enrolled in each session of the course; and
 4. Has a minimum course length of:

- a. For an EMT certification course, 130 hours;
 - b. For an AEMT certification course, 244 hours, including:
 - i. A minimum of 100 contact hours of didactic instruction and practical skills training, and
 - ii. A minimum of 144 contact hours of clinical training and field training; and
 - c. For a Paramedic certification course, 1000 hours, including:
 - i. A minimum of 500 contact hours of didactic instruction and practical skills training, and
 - ii. A minimum of 500 contact hours of clinical training and field training.
- B.** A training program director shall ensure that, for an AEMT certification course or a Paramedic certification course, a student has one of the following:
- 1. Current certification from the Department as an EMT or higher EMCT classification level,
 - 2. Documentation of completion of prior training in an EMT course or a course for a higher EMCT classification level provided by a training program certified by the Department or an equivalent training program, or
 - 3. Documentation of current registration in a national certification organization at the EMT classification level or higher EMCT classification level.
- C.** A training program director shall ensure that for a course to prepare an EMT-I(99) for Paramedic certification:
- 1. A student has current certification from the Department as an EMT-I(99);
 - 2. The course covers the knowledge, skills, and competencies established according to A.R.S. § 36-2204 and available through the Department at www.azdhs.gov;
 - 3. No more than 24 students are enrolled in each session of the course;
 - 4. The minimum course length is 600 hours, including:
 - a. A minimum of 220 contact hours of didactic instruction and practical skills training, and
 - b. A minimum of 380 contact hours of clinical training and field training; and
 - 5. A minimum of 60 contact hours of training in anatomy and physiology are completed by the student:
 - a. As a prerequisite to the course,
 - b. As preliminary instruction completed at the beginning of the course session before the didactic instruction required in subsection (C)(4)(a) begins, or
 - c. Through integration of the anatomy and physiology material with the units of instruction required in subsection (C)(4).
- D.** A training program director shall ensure that for an EMT refresher course:
- 1. A student has one of the following:
 - a. Current certification from the Department as an EMT or higher EMCT classification level,
 - b. Documentation of completion of prior training in an EMT course or a course for a higher EMCT classification level provided by a training program certified by the Department or an equivalent training program,
 - c. Documentation of current registration in a national certification organization at the EMT classification level or higher EMCT classification level, or
 - d. Documentation from a national certification organization requiring the student to complete the EMT refresher course to be eligible to apply for registration in the national certification organization;
 - 2. A student has documentation of current certification in adult, pediatric, and infant cardiopulmonary resuscitation through instruction consistent with American Heart Association recommendations for emergency cardiovascular care by EMCTs;
 - 3. The EMT refresher course covers:
 - a. The knowledge, skills, and competencies in the national education standards established at the EMT classification level; or
 - b. Until the following dates, the knowledge, skills, and competencies established according to A.R.S. § 36-2204 and available through the Department at www.azdhs.gov:

- i. March 31, 2015, for a student who has documentation from a national certification organization of registration at the EMT classification level or higher EMCT classification level that expired on or before March 31, 2011;
 - ii. March 31, 2016, for a student who has documentation from a national certification organization of registration at the EMT classification level or higher EMCT classification level that expired between April 1, 2011 and March 31, 2012; and
 - iii. December 31, 2017, for a student who is not registered by a national certification organization;
 - 4. No more than 32 students are enrolled in each session of the course; and
 - 5. The minimum course length is 24 contact hours.
- E.** A training program authorized to provide an EMT refresher course may administer a refresher challenge examination covering materials included in the EMT refresher course to an individual eligible for admission into the EMT refresher course.
- F.** A training program director shall ensure that for an ALS refresher course:
 - 1. A student has one of the following:
 - a. Current certification from the Department as an AEMT, EMT-I(99), or Paramedic;
 - b. Documentation of completion of a prior training course, at the AEMT classification level or higher, provided by a training program certified by the Department or an equivalent training program;
 - c. Documentation of current registration in a national certification organization at the AEMT or Paramedic classification level; or
 - d. Documentation from a national certification organization requiring the student to complete the ALS refresher course to be eligible to apply for registration in the national certification organization;
 - 2. A student has documentation of current certification in:
 - a. Adult, pediatric, and infant cardiopulmonary resuscitation through instruction consistent with American Heart Association recommendations for emergency cardiovascular care by EMCTs, and
 - b. For a student who has current certification as an EMT-I(99) or higher level of EMCT classification, advanced emergency cardiac life support;
 - 3. The ALS refresher course covers:
 - a. For a student who has current certification as an AEMT or documentation of completion of prior training at an AEMT classification level, the knowledge, skills, and competencies in the national education standards established for an AEMT;
 - b. For a student who has current certification as an EMT-I(99), the knowledge, skills, and competencies established according to A.R.S. § 36-2204 for an EMT-I(99) as of the effective date of this Section and available through the Department at www.azdhs.gov;
 - c. For a student who has current certification as a Paramedic or documentation of completion of prior training at a Paramedic classification level, the knowledge, skills, and competencies in the national education standards established for a Paramedic; and
 - d. Until the following dates, the knowledge, skills, and competencies established according to A.R.S. § 36-2204 and available through the Department at www.azdhs.gov:
 - i. March 31, 2015, for a student who has documentation of completion of prior training at a level between EMT-I(99) and Paramedic and registration from a national certification organization that expired on or before March 31, 2011;
 - ii. March 31, 2016, for a student who has documentation of completion of prior training at a level between EMT-I(99) and Paramedic and registration from a national certification organization that expired between April 1, 2011 and March 31, 2012; iii. March 31, 2017, for a student who has documentation of completion of prior training at a level between EMT-I(99) and Paramedic and registration from a national certification organization that expired between April 1, 2012 and March 31, 2013; and

- iv. December 31, 2017, for a student who has documentation of completion of prior training at a level between EMT-I(99) and Paramedic and is not registered by a national certification organization;
 - 4. No more than 32 students are enrolled in each session of the course; and
 - 5. The minimum course length is 48 contact hours.
- G.** A training program authorized to provide an ALS refresher course may administer a refresher challenge examination covering materials included in the ALS refresher course to an individual eligible for admission into the ALS refresher course.

R9-25-306. Training Program Notification and Recordkeeping (Authorized by A.R.S. §§ 36-2202(A)(3) and (4) and 36-2204(1) and (3))

- A.** At least 10 days before the start date of a course session, a training program certificate holder shall submit to the Department the following information in a Department-provided format:
- 1. Identification of the training program;
 - 2. Identification of the course;
 - 3. The name of the training program medical director;
 - 4. The name of the training program director;
 - 5. The name of the course session's lead instructor;
 - 6. The course session start date and end date;
 - 7. The physical location at which didactic training and practical skills training will be provided;
 - 8. The days of the week and times of each day during which didactic training and practical skills training will be provided;
 - 9. The number of clock hours of didactic training and practical skills training;
 - 10. If applicable, the number of hours of clinical training and field training included in the course session;
 - 11. The date, start time, and location of the final examination for the course;
 - 12. Attestation that the lead instructor is qualified under R9-25-304(A)(4)(a); and
 - 13. The name and signature of the chief administrative officer or program director and the date signed.
- B.** The Department shall review the information submitted according to subsection (A) and, within five days after receiving the information:
- 1. Approve a course session, issue an identifying number to the course session, and notify the training program certificate holder of the approval and identifying number; or
 - 2. Disapprove a course session that does not comply with requirements in this Article and notify the training program certificate holder of the disapproval.
- C.** A training program certificate holder shall ensure that:
- 1. No later than 10 days after the date a student completes all course requirements, the training program director submits to the Department the following information in a Department-provided format:
 - a. Identification of the training program;
 - b. The name of the training program director;
 - c. Identification of the course and the start date and end date of the course session completed by the student;
 - d. The name, date of birth, and mailing address of the student who completed the course;
 - e. The date the student completed all course requirements;
 - f. The score the student received on the final examination;
 - g. Attestation that the student has met all course requirements;
 - h. Attestation that all information submitted is true and accurate; and
 - i. The signature of the training program director and the date signed; and

2. No later than 10 days after the date an individual passes a refresher challenge examination administered by the training program, the training program director submits to the Department the following information in a Department-provided format;
 - a. Identification of the training program;
 - b. Identification of the:
 - i. Refresher challenge examination administered, and
 - ii. Course for which the refresher challenge examination substitutes;
 - c. The name of the training program medical director;
 - d. The name of the training program director;
 - e. The name, date of birth, and mailing address of the individual who passed the refresher challenge examination;
 - f. The date and location at which the refresher challenge examination was administered;
 - g. The score the individual received on the refresher challenge examination;
 - h. Attestation that the individual:
 - i. Met the requirements for taking the refresher challenge examination, and
 - ii. Passed the refresher challenge examination;
 - i. Attestation that all information submitted is true and accurate; and
 - j. The name and signature of the training program director and the date signed.
- D.** A training program certificate holder shall ensure that:
1. A record is established for each student enrolled in a course session, including;
 - a. The student's name and date of birth;
 - b. A copy of the student's enrollment agreement or contract;
 - c. Identification of the course in which the student is enrolled;
 - d. The start date and end date for the course session;
 - e. Documentation supporting the student's eligibility to enroll in the course;
 - f. Documentation that the student meets prerequisites for the course, established as specified in R9-25-304(A)(2)(c)(i);
 - g. The student's attendance records;
 - h. The student's clinical training records, if applicable;
 - i. The student's field training records, if applicable;
 - j. The student's grades;
 - k. Documentation of the final examination for the course, including:
 - i. A copy of each scored written test attempted or completed by the student, and
 - ii. All forms used as part of the comprehensive practical skills test attempted or completed by the student; and
 - l. A copy of the student's certificate of completion required in R9-25-304(F)(1);
 2. A student record required in subsection (D)(1) is maintained for three years after the end date of a student's course session and provided to the Department at the Department's request;
 3. A record is established for each individual to whom a refresher challenge examination is administered, including:
 - a. The individual's name and date of birth;
 - b. Identification of the refresher challenge examination administered to the individual;
 - c. Documentation supporting the individual's eligibility for a refresher challenge examination;
 - d. The date the refresher challenge examination was administered;
 - e. Documentation of the refresher challenge examination, including:
 - i. A copy of the scored written test attempted or completed by the individual, and
 - ii. All forms used as part of the comprehensive practical skills test attempted or completed by the individual; and
 - f. A copy of the individual's certificate of completion required in R9-25-304(F)(2); and

4. A record required in subsection (D)(3) is maintained for three years after the date the refresher challenge examination was administered and provided to the Department at the Department's request.

R9-25-307. Training Program Enforcement Actions (Authorized by A.R.S. §§ 36-2202(A)(3) and (4) and 36-2204(1) and (3))

- A. The Department may take an action listed in subsection (B) against a training program certificate holder who:
 1. Violates the requirements in A.R.S. Title 36, Chapter 21.1 or 9 A.A.C. 25; or
 2. Knowingly or negligently provides false documentation or information to the Department.
- B. The Department may take the following action against a training program certificate holder:
 1. After notice is provided according to A.R.S. Title 41, Chapter 6, Article 10, issue:
 - a. A letter of censure, or
 - b. An order of probation; or
 2. After notice and opportunity to be heard is provided according to A.R.S. Title 41, Chapter 6, Article 10:
 - a. Suspend the training program certificate, or
 - b. Decertify the training program.

ARTICLE 4. EMCT CERTIFICATION

R9-25-401. EMCT General Requirements (Authorized by A.R.S. §§ 36-2202(A)(2), (A)(3), (A)(4), (A)(6), and (G) and 36-2204(1), (6), and (7))

- A. Except as provided in R9-25-404(E) and R9-25-405, an individual shall not act as an EMCT unless the individual has current certification or recertification from the Department.
- B. An EMCT shall act as an EMCT only:
 1. As authorized under the EMCT's scope of practice as specified in Article 5 of this Chapter; and
 2. For an EMCT required to have medical direction according to A.R.S. Title 36, Chapter 21.1 and R9-25-502, as authorized by the EMCT's administrative medical director under:
 - a. Treatment protocols, triage protocols, and communication protocols approved by the EMCT's administrative medical director as specified in R9-25-201(E)(2); and
 - b. Medical recordkeeping, medical reporting, and prehospital incident history report requirements approved by the EMCT's administrative medical director as specified in R9-25-201(E)(3)(b).
- C. Except as provided in A.R.S. § 36-2211, the Department shall certify or re-certify an individual as an EMCT for a period of two years.
- D. An individual whose EMCT certificate is expired shall not apply for recertification, except as provided in R9-25-404(A).
- E. The Department shall comply with the confidentiality requirements in A.R.S. §§ 36-2220(E) and 36-2245(M).

R9-25-402. EMCT Certification and Recertification Requirements (Authorized by A.R.S. §§ 36-2202(A)(2), (A)(3), (A)(4), (A)(6), and (G) and 36-2204(1), (6), and (7))

- A. The Department shall not certify an EMCT if the applicant:
 1. Is currently:
 - a. Incarcerated for a criminal conviction,
 - b. On parole for a criminal conviction,
 - c. On supervised release for a criminal conviction, or
 - d. On probation for a criminal conviction;

2. Within 10 years before the date of filing an application for certification required by this Article, has been convicted of any of the following crimes, or any similarly defined crimes in this state or in any other state or jurisdiction, unless the conviction has been absolutely discharged, expunged, or vacated:
 - a. 1st or 2nd degree murder;
 - b. Attempted 1st or 2nd degree murder;
 - c. Sexual assault;
 - d. Attempted sexual assault;
 - e. Sexual abuse of a minor;
 - f. Attempted sexual abuse of a minor;
 - g. Sexual exploitation of a minor;
 - h. Attempted sexual exploitation of a minor;
 - i. Commercial sexual exploitation of a minor;
 - j. Attempted commercial sexual exploitation of a minor;
 - k. Molestation of a child;
 - l. Attempted molestation of a child; or
 - m. A dangerous crime against children as defined in A.R.S. § 13-705;
 3. Within five years before the date of filing an application for certification required by this Article, has been convicted of a misdemeanor involving moral turpitude or a felony in this state or any other state or jurisdiction, other than a misdemeanor involving moral turpitude or a felony listed in subsection (A)(2), unless the conviction has been absolutely discharged, expunged, or vacated;
 4. Within five years before the date of filing an application for certification required by this Article, has had EMCT certification or recertification revoked in this state or certification, recertification, or licensure at an EMCT classification level revoked in any other state or jurisdiction; or
 5. Knowingly provides false information in connection with an application required by this Article.
- B.** The Department shall not re-certify an EMCT, if:
1. While certified, the applicant has been convicted of a crime listed in subsection (A)(2), or any similarly defined crimes in this state or in any other state or jurisdiction, unless the conviction has been absolutely discharged, expunged, or vacated; or
 2. The applicant knowingly provides false information in connection with an application required by this Article.
- C.** The Department shall make probation a condition of EMCT certification if, within two years before the date of filing an application under R9-25-403, an applicant has been convicted of a misdemeanor in this state or in any other state or jurisdiction, involving:
1. Possession, use, administration, acquisition, sale, manufacture, or transportation of an intoxicating liquor, dangerous drug, or narcotic drug, as defined in A.R.S. § 13-3401, unless the conviction has been absolutely discharged, expunged, or vacated; or
 2. Driving or being in physical control of a vehicle while under the influence of an intoxicating liquor, a dangerous drug, or a narcotic drug, as defined in A.R.S. § 13-3401, unless the conviction has been absolutely discharged, expunged, or vacated.
- D.** Except as provided in subsection (E), the Department shall make probation a condition of EMCT recertification if an applicant:
1. Is currently:
 - a. Incarcerated for a criminal conviction,
 - b. On parole for a criminal conviction,
 - c. On supervised release for a criminal conviction, or
 - d. On probation for a criminal conviction; or
 2. Within five years before the date of filing an application under R9-25-404, has been convicted of a misdemeanor involving moral turpitude or a felony in this state or any other state or jurisdiction, other than those listed in subsection (A)(2), unless the conviction has been absolutely discharged, expunged, or vacated.

- E. As specified in R9-25-409, the Department may make probation a condition of EMCT recertification if an applicant, within two years before the date of filing an application under R9-25-404, has been convicted of a misdemeanor in this state or in any other state or jurisdiction, involving:
 - 1. Possession, use, administration, acquisition, sale, manufacture, or transportation of an intoxicating liquor, dangerous drug, or narcotic drug, as defined in A.R.S. § 13-3401, unless the conviction has been absolutely discharged, expunged, or vacated; or
 - 2. Driving or being in physical control of a vehicle while under the influence of an intoxicating liquor, a dangerous drug, or a narcotic drug, as defined in A.R.S. § 13-3401, unless the conviction has been absolutely discharged, expunged, or vacated.
- F. If the Department makes probation a condition of EMCT certification or recertification, the Department shall fix the period and terms of probation that will:
 - 1. Protect the public health and safety, and
 - 2. Rehabilitate and educate the applicant.

R9-25-403. Application Requirements for EMCT Certification (Authorized by A.R.S. §§ 36-2202(A)(2), (A)(3), (A)(4), and (G) and 36-2204(1) and (6))

- A. An individual may apply for initial EMCT certification if:
 - 1. The individual is at least 18 years of age;
 - 2. The individual complies with the requirements in A.R.S. § 41-1080;
 - 3. The individual is not ineligible under R9-25-402; and
 - 4. One of the following applies to the individual:
 - a. The individual has not previously applied for certification from the Department or has withdrawn an application for certification;
 - b. An application for certification submitted by the individual was denied by the Department two or more years before the present date;
 - c. Except as provided in R9-25-404(A)(2) or (3), the individual's certification as an EMCT is expired;
 - d. The individual's certification as an EMCT was revoked by the Department five or more years before the present date; or
 - e. The individual has current certification as an EMCT and is applying for certification at a different classification level of EMCT.
- B. An applicant for initial EMCT certification shall submit to the Department an application in a Department-provided format, including:
 - 1. A form containing:
 - a. The applicant's name, address, telephone number, email address, date of birth, gender, and Social Security number;
 - b. The level of EMCT certification being requested;
 - c. Responses to questions addressing the applicant's criminal history according to R9-25-402(A)(1) through (3) and (C);
 - d. Whether the applicant has within the five years before the date of the application had:
 - i. EMCT certification or recertification revoked in Arizona; or
 - ii. Certification, recertification, or licensure at an EMCT classification level revoked in another state or jurisdiction;
 - e. Attestation that all information required as part of the application has been submitted and is true and accurate; and
 - f. The applicant's signature or electronic signature and date of signature;
 - 2. For each affirmative response to a question addressing the applicant's criminal history required in subsection (B)(1)(c), a detailed explanation on a Department-provided form and supporting documentation;

3. For each affirmative response to subsection (B)(1)(d), a detailed explanation on a Department-provided form and supporting documentation;
 4. If applicable, a copy of certification, recertification, or licensure at an EMCT classification level issued to the applicant in another state or jurisdiction;
 5. A copy of one of the following for the applicant:
 - a. U.S. passport, current or expired;
 - b. Birth certificate;
 - c. Naturalization documents; or
 - d. Documentation of legal resident alien status; and
 6. One of the following:
 - a. Either:
 - i. A certificate of completion showing that within two years before the date of the application, the applicant completed statewide standardized training; and
 - ii. A statewide standardized certification test; or
 - b. Documentation of current registration in a national certification organization at the applicable or higher level of EMCT classification.
- B.** The Department shall approve or deny an application for initial EMCT certification according to Article 12 of this Chapter.
- C.** If the Department denies an application for initial EMCT certification, the applicant may request a hearing according to A.R.S. Title 41, Chapter 6, Article 10.

R9-25-404. Application Requirements for EMCT Recertification (Authorized by A.R.S. §§ 36-2202(A)(2), (3), (4), and (6), (B), and (H) and 36-2204(1), (4), and (6))

- A.** An individual may apply for recertification at the same level of EMCT certification held or at a lower level of EMCT certification:
1. Within 90 days before the expiration date of the individual's current EMCT certification;
 2. Within the 30-day period after the expiration date of the individual's EMCT certification, as provided in subsection (E); or
 3. Within the extension time period granted under R9-25-405.
- B.** To apply for recertification, an applicant shall submit to the Department an application, in a Department-provided format, including:
1. A form containing:
 - a. The applicant's name, address, telephone number, email address, date of birth, and Social Security number;
 - b. The applicant's current certification number;
 - c. Responses to questions addressing the applicant's criminal history according to R9-25-402(B), (D), and (E);
 - d. Whether the applicant has within the five years before the date of the application had:
 - i. EMCT certification or recertification revoked in Arizona; or
 - ii. Certification, recertification, or licensure at an EMCT classification level revoked in another state or jurisdiction;
 - e. An indication of the level of EMCT certification held currently or within the past 30 days and of the level of EMCT certification for which recertification is requested;
 - f. Attestation that all information required as part of the application has been submitted and is true and accurate; and
 - g. The applicant's signature or electronic signature and date of signature;
 2. For each affirmative response to a question addressing the applicant's criminal history required in subsection (B)(1)(c), a detailed explanation on a Department-provided form and supporting documentation;

3. For an affirmative response to subsection (B)(1)(d), a detailed explanation on a Department-provided form; and
 4. For an application submitted within 30 days after the expiration date of EMCT certification, a nonrefundable certification extension fee of \$150.
- C.** In addition to the application in subsection (B), an applicant for EMCT recertification shall submit one of the following to the Department:
1. A certificate of course completion issued by the training program director under R9-25-304(F) showing that within two years before the date of the application, the applicant completed either the applicable refresher course or applicable refresher challenge examination;
 2. Documentation of current registration in a national certification organization at the applicable or higher level of EMCT classification; or
 3. Attestation on a Department-provided form that the applicant:
 - a. Has documentation of current certification in adult, pediatric, and infant cardiopulmonary resuscitation through instruction consistent with American Heart Association recommendations for emergency cardiovascular care by EMCTs;
 - b. For EMT-I(99) recertification or Paramedic recertification, has documentation of current certification in advanced emergency cardiac life support;
 - c. Has documentation of having completed within the previous two years the following number of hours of continuing education in topics that are consistent with the content of the applicable refresher course:
 - i. For EMT recertification, a minimum of 24 hours;
 - ii. For AEMT recertification, EMT-I(99) recertification, or Paramedic recertification, a minimum of 48 hours; and
 - iii. Included in the hours required in subsections (C)(3)(c)(i) or (ii), as applicable, a minimum of 5 hours in pediatric emergency care; and
 - d. For EMT recertification, has functioned in the capacity of an EMT for at least 240 hours during the previous two years.
- D.** An applicant who submits an attestation under subsection (C)(3) shall maintain the applicable documentation for at least three years after the date of the application.
- E.** If an individual submits an application for recertification, with a certification extension fee, within 30 days after the expiration date of the individual's EMCT certification, the individual:
1. Was authorized to act as an EMCT during the period between the expiration date of the individual's EMCT certification and the date the application was submitted, and
 2. Is authorized to act as an EMCT until the Department makes a final determination on the individual's application for recertification.
- F.** If an individual does not submit an application for recertification before the expiration date of the individual's EMCT certification or, with a certification extension fee, within 30 days after the expiration date of the individual's EMCT certification, the individual:
1. Is not an EMCT,
 2. Was not authorized to act as an EMCT during the 30-day period after the expiration date of the individual's EMCT certification, and
 3. May submit an application to the Department for initial EMCT certification according to R9-25-403.
- G.** The Department shall approve or deny an application for recertification according to Article 12 of this Chapter.
- H.** If the Department denies an application for recertification, the applicant may request a hearing according to A.R.S. Title 41, Chapter 6, Article 10.
- I.** The Department may deny, based on failure to meet the standards for recertification in A.R.S. Title 36, Chapter 21.1 and this Article, an application submitted with a certification extension fee.

R9-25-405. Extension to File an Application for EMCT Recertification (Authorized by A.R.S. §§ 36-2202(A)(2), (A)(3), (A)(4), (A)(6), and (G) and 36-2204(1), (4), (5), and (7))

- A. Before the expiration of a current certificate, an EMCT who is unable to meet the recertification requirements in R9-25-404 because of personal or family illness, military service, or authorized federal or state emergency response deployment may apply to the Department in writing for an extension of time to file for recertification by submitting:
1. The following information in a Department-provided format:
 - a. The EMCT's name, address, telephone number, and email address;
 - b. The EMCT's current certification number;
 - c. The reason for requesting the extension; and
 - d. The EMCT's signature or electronic signature and date of signature; and
 2. For an exemption based on military service or authorized federal or state emergency response deployment, a copy of the EMCT's military orders or documentation of authorized federal or state emergency response deployment.
- B. The Department may grant an extension of time to file for recertification:
1. For personal or family illness, for no more than 180 days; or
 2. For each military service or authorized federal or state emergency response deployment, for the term of service or deployment plus 180 days.
- C. An individual applying for or granted an extension of time to file for recertification:
1. Remains certified according to A.R.S. § 41-1092.11 during the extension period, and
 2. Shall submit an application for recertification according to R9-25-404.
- D. An individual who does not meet the recertification requirements in R9-25-404 within the extension period or has the application for recertification denied by the Department:
1. Is not an EMCT, and
 2. May submit an application to the Department for initial EMCT certification according to R9-25-403.
- E. The Department shall approve or deny a request for an extension to file for EMCT recertification according to Article 12 of this Chapter.
- F. If the Department denies a request for an extension to file for EMCT recertification, the applicant may request a hearing according to A.R.S. Title 41, Chapter 6, Article 10.

R9-25-406. Requirements for Downgrading of Certification (Authorized by A.R.S. §§ 36-2202(A)(2), (A)(3), (A)(4), and (G) and 36-2204(1) and (6))

An individual who holds current EMCT certification at a classification level higher than EMT and who is not under investigation according to A.R.S. § 36-2211 may apply for:

1. Continued certification at a lower EMCT classification level for the remainder of the certification period by submitting to the Department:
 - a. A written request containing:
 - i. The EMCT's name, address, email address, telephone number, date of birth, and Social Security number;
 - ii. The lower EMCT classification level requested;
 - iii. Attestation that the applicant has not committed an act or engaged in conduct that would warrant revocation of a certificate under A.R.S. § 36-2211;
 - iv. Attestation that all information submitted is true and accurate; and
 - v. The applicant's signature or electronic signature and date of signature; and
 - b. Either:
 - i. A written statement from the EMCT's administrative medical director attesting that the EMCT is able to perform at the lower EMCT classification level requested; or
 - ii. If applying for continued certification as an EMT, an Arizona EMT refresher certificate of completion or an Arizona EMT refresher challenge examination certificate of

completion signed by the training program director designated for the Arizona EMT refresher course; or

2. Recertification at a lower EMCT classification level according to R9-25-404.

R9-25-407. Notification Requirements (Authorized by A.R.S. §§ 36-2202(A)(2), (A)(3), and (A)(4), 36-2204(1) and (6), and 36-2211)

- A. No later than 30 days after the date an EMCT's name legally changes, the EMCT shall submit to the Department:
 1. A completed form provided by the Department containing:
 - a. The name under which the EMCT is currently certified by the Department;
 - b. The EMCT's address, telephone number, and Social Security number; and
 - c. The EMCT's new name; and
 2. Documentation showing that the name has been legally changed.
- B. No later than 30 days after the date an EMCT's address changes, the EMCT shall submit to the Department a completed form provided by the Department containing:
 1. The EMCT's name, telephone number, and Social Security number; and
 2. The EMCT's new address.
- C. An EMCT shall notify the Department in writing no later than 10 days after the date the EMCT:
 1. Is incarcerated or is placed on parole, supervised release, or probation for any criminal conviction;
 2. Is convicted of:
 - a. A crime specified in R9-25-402(A)(2),
 - b. A misdemeanor involving moral turpitude,
 - c. A felony in this state or any other state or jurisdiction, or
 - d. A misdemeanor specified in R9-25-402(E);
 3. Has registration revoked or suspended by a national certification organization; or
 4. Has certification, recertification, or licensure at an EMCT classification level revoked or suspended in another state or jurisdiction.

R9-25-408. Unprofessional Conduct; Physical or Mental Incompetence; Gross Incompetence; Gross Negligence (Authorized by A.R.S. §§ 36-2202(A)(2), (A)(3), (A)(4), (A)(6), and (G), 36-2204(1), (6), and (7), and 36-2211)

- A. For purposes of A.R.S. § 36-2211(A)(1), unprofessional conduct is an act or omission made by an EMCT that is contrary to the recognized standards or ethics of the Emergency Medical Technician profession or that may constitute a danger to the health, welfare, or safety of a patient or the public, including:
 1. Impersonating an EMCT of a higher level of certification or impersonating a health professional as defined in A.R.S. § 32-3201;
 2. Permitting or allowing another individual to use the EMCT's certification for any purpose;
 3. Aiding or abetting an individual who is not certified according to this Chapter in acting as an EMCT or in representing that the individual is certified as an EMCT;
 4. Engaging in or soliciting sexual relationships, whether consensual or non-consensual, with a patient while acting as an EMCT;
 5. Physically or verbally harassing, abusing, threatening, or intimidating a patient or another individual while acting as an EMCT;
 6. Making false or materially incorrect entries in a medical record or willful destruction of a medical record;
 7. Failing or refusing to maintain adequate records on a patient;
 8. Soliciting or obtaining monies or goods from a patient by fraud, deceit, or misrepresentation;

9. Aiding or abetting an individual in fraud, deceit, or misrepresentation in meeting or attempting to meet the application requirements for EMCT certification or EMCT recertification contained in this Article, including the requirements established for:
 - a. Completing and passing a course provided by a training program; and
 - b. The national certification organization examination process and national certification organization registration process;
 10. Providing false information or making fraudulent or untrue statements to the Department or about the Department during an investigation conducted by the Department;
 11. Being incarcerated or being placed on parole, supervised release, or probation for any criminal conviction;
 12. Being convicted of a misdemeanor identified in R9-25-402(E), which has not been absolutely discharged, expunged, or vacated;
 13. Having national certification organization registration revoked or suspended by the national certification organization for material noncompliance with national certification organization rules or standards; and
 14. Having certification, recertification, or licensure at an EMCT classification level revoked or suspended in another state or jurisdiction.
- B.** Under A.R.S. § 36-2211, physical or mental incompetence of an EMCT is the EMCT's lack of physical or mental ability to provide emergency medical services as required under this Chapter.
- C.** Under A.R.S. § 36-2211 gross incompetence or gross negligence is an EMCT's willful act or willful omission of an act that is made in disregard of an individual's life, health, or safety and that may cause death or injury.

R9-25-409. Enforcement Actions (Authorized by A.R.S. §§ 36-2202(A)(2), (A)(3), (A)(4), (A)(6), and (G), 36-2204(1), (6), and (7), and 36-2211)

- A.** If the Department determines that an applicant or EMCT is not in substantial compliance with applicable laws and rules, under A.R.S. §§ 36-2204 or 36-2211, the Department may:
1. Take the following action against an applicant or EMCT:
 - a. After notice is provided according to A.R.S. § 36-2211 and, if applicable, A.R.S. Title 41, Chapter 6, Article 10, issue:
 - i. A decree of censure to the EMCT, or
 - ii. An order of probation to the EMCT; or
 - b. After notice and opportunity to be heard is provided according to A.R.S. Title 41, Chapter 6, Article 10:
 - i. Deny an application,
 - ii. Suspend the EMCT's certificate, or
 - iii. Revoke the EMCT's certificate; and
 2. Assess civil penalties against the EMCT.
- B.** In determining which action in subsection (A) is appropriate, the Department shall consider:
1. Prior disciplinary actions;
 2. The time interval since a prior disciplinary action, if applicable;
 3. The applicant's or EMCT's motive;
 4. The applicant's or EMCT's pattern of conduct;
 5. The number of offenses;
 6. Whether the applicant or EMCT failed to comply with instructions from the Department;
 7. Whether interim rehabilitation efforts were made by the applicant or EMCT;
 8. Whether the applicant or EMCT refused to acknowledge the wrongful nature of the misconduct;
 9. Whether the applicant or EMCT made timely and good-faith efforts to rectify the consequences of the misconduct;
 10. The submission of false evidence, false statements, or other deceptive practices during an investigation or disciplinary process;

11. The vulnerability of a patient or other victim of the applicant's or EMCT's conduct, if applicable; and
12. How much control the applicant or EMCT had over the processes or situation leading to the misconduct.

ARTICLE 12. TIME-FRAMES FOR DEPARTMENT APPROVALS

R9-25-1201. Time-frames (Authorized by A.R.S. §§ 41-1072 through 41-1079)

- A.** The overall time-frame described in A.R.S. § 41-1072 for each type of approval granted by the Department is listed in Table 12.1. The applicant and the Director may agree in writing to extend the overall time-frame. The substantive review time-frame shall not be extended by more than 25% of the overall time-frame.
- B.** The administrative completeness review time-frame described in A.R.S. § 41-1072 for each type of approval granted by the Department is listed in Table 12.1. The administrative completeness review time-frame begins on the date that the Department receives an application form or an application packet.
 1. If the application packet is incomplete, the Department shall send to the applicant a written notice specifying the missing document or incomplete information. The administrative completeness review time-frame and the overall time-frame are suspended from the postmark date of the written request until the date the Department receives a complete application packet from the applicant.
 2. When an application packet is complete, the Department shall send a written notice of administrative completeness.
 3. If the Department grants an approval during the time provided to assess administrative completeness, the Department shall not issue a separate written notice of administrative completeness.
- C.** The substantive review time-frame described in A.R.S. § 41-1072 is listed in Table 12.1 and begins on the postmark date of the notice of administrative completeness.
 1. As part of the substantive review time-frame for an application for an approval other than renewal of an ambulance registration, the Department shall conduct inspections, conduct investigations, or hold hearings required by law.
 2. If required under R9-25-402, the Department shall fix the period and terms of probation as part of the substantive review.
 3. During the substantive review time-frame, the Department may make one comprehensive written request for additional documents or information and may make supplemental requests for additional information with the applicant's written consent.
 4. The substantive review time-frame and the overall time-frame are suspended from the postmark date of the written request for additional information or documents until the Department receives the additional information or documents.
 5. The Department shall send a written notice of approval to an applicant who meets the qualifications in A.R.S. Title 36, Chapter 21.1 and this Chapter for the type of application submitted.
 6. The Department shall send a written notice of denial to an applicant who fails to meet the qualifications in A.R.S. Title 36, Chapter 21.1, and this Chapter for the type of application submitted.
- D.** If an applicant fails to supply the documents or information under subsections (B)(1) and (C)(3) within the number of days specified in Table 12.1 from the postmark date of the written notice or comprehensive written request, the Department shall consider the application withdrawn.
- E.** An applicant that does not wish an application to be considered withdrawn may request a denial in writing within the number of days specified in Table 12.1 from the postmark date of the written

notice or comprehensive written request for documents or information under subsections (B)(1) and (C)(3).

- F. If a time-frame’s last day falls on a Saturday, Sunday, or an official state holiday, the Department shall consider the next business day as the time-frame’s last day.

Table 12.1. Time-frames (in days)

Type of Application	Statutory Authority	Overall Time-frame	Administrative Completeness Time-frame	Time to Respond to Written Notice	Substantive Review Time-frame	Time to Respond to Comprehensive Written Request
ALS Base Hospital Certification (R9-25-204)	A.R.S. §§ 36-2201, 36-2202(A)(3), and 36-2204(5)	45	15	60	30	60
Training Program Certification (R9-25-301)	A.R.S. §§ 36-2202(A)(3) and 36-2204(1) and (3)	120	30	60	90	60
Addition of a Course (R9-25-303)	A.R.S. §§ 36-2202(A)(3) and 36-2204(1) and (3)	90	30	60	60	60
EMCT Certification (R9-25-403)	A.R.S. §§ 36-2202(A)(2), (3), and (4), 36-2202(G), and 36-2204(1)	120	30	90	90	270
EMCT Recertification (R9-25-404)	A.R.S. §§ 36-2202(A)(2), (3), (4), and (6), 36-2202(G), and 36-2204(1) and (4)	120	30	60	90	60
Extension to File for EMCT Recertification (R9-25-405)	A.R.S. §§ 36-2202(A)(2), (3), (4), and (6), 36-2202(G), and 36-2204(1) and (7)	30	15	60	15	60
Downgrading of Certification (R9-25-406)	A.R.S. §§ 36-2202(A)(2), (3), and (4), 36-2202(G), and 36-2204(1) and (6)	30	15	60	15	60
Initial Air Ambulance Service License (R9-25-704)	A.R.S. §§ 36-2202(A)(3) and (4), 36-2209(A)(2), 36-2213, 36-2214, and 36-2215	150	30	60	120	60
Renewal of an Air Ambulance Service License (R9-25-705)	A.R.S. §§ 36-2202(A)(3) and (4), 36-2209(A)(2), 36-2213, 36-2214, and 36-2215	90	30	60	60	60
Initial Certificate of Registration for an Air Ambulance (R9-25-802)	A.R.S. §§ 36-2202(A)(4) and (5), 36-2209(A)(2), 36-2212, 36-2213, 36-2214, and 36-2240(4)	90	30	60	60	60
Renewal of a Certificate of Registration for an Air Ambulance (R9-25-802)	A.R.S. §§ 36-2202(A)(4) and (5), 36-2209(A)(2), 36-2212, 36-2213, 36-2214, and 36-2240(4)	90	30	60	60	60
Initial Certificate of Necessity (R9-25-902)	A.R.S. §§ 36-2204, 36-2232, 36-2233, 36-2240	450	30	60	420	60

Provision of ALS Services (R9-25-902)	A.R.S. §§ 36-2232, 36-2233, 36-2240	450	30	60	420	60
Transfer of a Certificate of Necessity (R9-25-902)	A.R.S. §§ 36-2236(A) and (B), 36-2240	450	30	60	420	60
Renewal of a Certificate of Necessity (R9-25-904)	A.R.S. §§ 36-2233, 36-2235, 36-2240	90	30	60	60	60
Amendment of a Certificate of Necessity (R9-25-905)	A.R.S. §§ 36-2232(A)(4), 36-2240	450	30	60	420	60
Initial Registration of a Ground Ambulance Vehicle (R9-25-1001)	A.R.S. §§ 36-2212, 36-2232, 36-2240	90	30	60	60	60
Renewal of a Ground Ambulance Vehicle Registration (R9-25-1001)	A.R.S. §§ 36-2212, 36-2232, 36-2240	90	30	60	60	60
Establishment of Initial General Public Rates (R9-25-1101)	A.R.S. §§ 36-2232, 36-2239	450	30	60	420	60
Adjustment of General Public Rates (R9-25-1102)	A.R.S. §§ 36-2234, 36-2239	450	30	60	420	60
Contract Rate or Range of Rates Less than General Public Rates (R9-25-1103)	A.R.S. §§ 36-2234, 36-2239	450	30	60	420	60
Ground Ambulance Service Contracts (R9-25-1104)	A.R.S. § 36-2232	450	30	60	420	60
Ground Ambulance Service Contracts with Political Subdivisions (R9-25-1104)	A.R.S. §§ 36-2232, 36-2234(K)	30	15	15	15	Not Applicable
Subscription Service Rate (R9-25-1105)	A.R.S. § 36-2232(A)(1)	450	30	60	420	60

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

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 the state.
6. Exercise general supervision over all matters relating to sanitation and health throughout the state. When in the opinion of the director it is necessary or advisable, a sanitary survey of the whole or of any part of the 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 the 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 the state, the director may inspect any person or property in transportation through the 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 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.

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

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

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

G. Notwithstanding subsection H, paragraph 1 of this section, the director may define and prescribe emergency measures for detecting, reporting, preventing and controlling communicable or infectious diseases or conditions if the director has reasonable cause to believe that a serious threat to public health and welfare exists. Emergency measures are effective for no longer than eighteen months.

H. The director, by rule, shall:

1. Define and prescribe reasonably necessary measures for detecting, reporting, preventing and controlling communicable and preventable diseases. The rules shall declare certain diseases reportable. The rules shall prescribe measures, including isolation or quarantine, that are reasonably required to prevent the occurrence of,

or to seek early detection and alleviation of, disability, insofar as possible, from communicable or preventable diseases. The rules shall include reasonably necessary measures to control animal diseases transmittable to humans.

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

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

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

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

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

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

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

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

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

(g) Baked and confectionary goods that are not potentially hazardous and that are prepared in a kitchen of a private home for commercial purposes if packaged with a label that clearly states the address of the maker, includes contact information for the maker, lists all the ingredients in the product and discloses that the product was prepared in a home. The label must be given to the final consumer of the product. If the product was made in a facility for individuals with developmental disabilities, the label must also disclose that fact. The person preparing the food or supervising the food preparation must obtain a food handler's card or certificate if one is issued by the local county and must register with an online registry established by the department pursuant to paragraph 13 of this subsection. For the purposes of this subdivision, "potentially hazardous" means baked and confectionary goods that meet the requirements of the food code published by the United States food and drug administration, as modified and incorporated by reference by the department by rule.

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

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

6. Prescribe reasonably necessary measures regarding production, processing, labeling, handling, serving and transportation of bottled water to ensure that all bottled drinking water distributed for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be

maintained at any source of water, bottling plant and truck or vehicle in which bottled water is produced, processed, stored or transported and shall provide for inspection and certification of bottled drinking water sources, plants, processes and transportation and for abatement as a public nuisance of any water supply, label, premises, equipment, process or vehicle that does not comply with the minimum standards. The rules shall prescribe minimum standards for bacteriological, physical and chemical quality for bottled water and for the submission of samples at intervals prescribed in the standards.

7. Define and prescribe reasonably necessary measures governing ice production, handling, storing and distribution to ensure that all ice sold or distributed for human consumption or for the preservation or storage of food for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions and the quality of ice that shall be maintained at any ice plant, storage and truck or vehicle in which ice is produced, stored, handled or transported and shall provide for inspection and licensing of the premises and vehicles, and for abatement as public nuisances of ice, premises, equipment, processes or vehicles that do not comply with the minimum standards.

8. Define and prescribe reasonably necessary measures concerning sewage and excreta disposal, garbage and trash collection, storage and disposal, and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels. The rules shall prescribe minimum standards for preparation of food in community kitchens, adequacy of excreta disposal, garbage and trash collection, storage and disposal and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels and shall provide for inspection of these premises and for abatement as public nuisances of any premises or facilities that do not comply with the rules. Primitive camp and picnic grounds offered by this state or a political subdivision of this state are exempt from rules adopted pursuant to this paragraph but are subject to approval by a county health department under sanitary regulations adopted pursuant to section 36-183.02. For the purposes of this paragraph, "primitive camp and picnic grounds" means camp and picnic grounds that are remote in nature and without accessibility to public infrastructure such as water, electricity and sewer.

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

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

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

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

13. Establish an online registry of food preparers that are authorized to prepare food for commercial purposes pursuant to paragraph 4 of this subsection.

I. 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.

J. 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.

K. 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.

L. 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.

M. Until the department adopts exemptions by rule as required by subsection H, paragraph 4, subdivision (f) of this section, food and drink are exempt from the rules prescribed in subsection H 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.

N. Until the department adopts exemptions by rule as required by subsection H, 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 H of this section.

36-2201. Definitions

In this chapter, unless the context otherwise requires:

1. "Administrative medical direction" means supervision of emergency medical care technicians by a base hospital medical director, administrative medical director or basic life support medical director. For the purposes of this paragraph, "administrative medical director" means a physician who is licensed pursuant to title 32, chapter 13 or 17 and who provides direction within the emergency medical services and trauma system.
2. "Advanced emergency medical technician" means a person who has been trained in an advanced emergency medical technician program certified by the director or in an equivalent training program and who is certified by the director to render services pursuant to section 36-2205.
3. "Advanced life support" means the level of assessment and care identified in the scope of practice approved by the director for the advanced emergency medical technician, emergency medical technician I-99 and paramedic.
4. "Advanced life support base hospital" means a health care institution that offers general medical and surgical services, that is certified by the director as an advanced life support base hospital and that is affiliated by written agreement with a licensed ambulance service, municipal rescue service, fire department, fire district or health services district for medical direction, evaluation and control of emergency medical care technicians.
5. "Ambulance" means any publicly or privately owned surface, water or air vehicle, including a helicopter, that contains a stretcher and necessary medical equipment and supplies pursuant to section 36-2202 and that is especially designed and constructed or modified and equipped to be used, maintained or operated primarily for the transportation of individuals who are sick, injured or wounded or who require medical monitoring or aid. Ambulance does not include a surface vehicle that is owned and operated by a private sole proprietor, partnership, private corporation or municipal corporation for the emergency transportation and in-transit care of its employees or a vehicle that is operated to accommodate an incapacitated person or person with a disability who does not require medical monitoring, care or treatment during transport and that is not advertised as having medical equipment and supplies or ambulance attendants.
6. "Ambulance attendant" means any of the following:

- (a) An emergency medical technician, an advanced emergency medical technician, an emergency medical technician I-99 or a paramedic whose primary responsibility is the care of patients in an ambulance and who meets the standards and criteria adopted pursuant to section 36-2204.
 - (b) An emergency medical responder who is employed by an ambulance service operating under section 36-2202 and whose primary responsibility is the driving of an ambulance.
 - (c) A physician who is licensed pursuant to title 32, chapter 13 or 17.
 - (d) A professional nurse who is licensed pursuant to title 32, chapter 15 and who meets the state board of nursing criteria to care for patients in the prehospital care system.
 - (e) A professional nurse who is licensed pursuant to title 32, chapter 15 and whose primary responsibility is the care of patients in an ambulance during an interfacility transport.
7. "Ambulance service" means a person who owns and operates one or more ambulances.
 8. "Basic life support" means the level of assessment and care identified in the scope of practice approved by the director for the emergency medical responder and emergency medical technician.
 9. "Bureau" means the bureau of emergency medical services and trauma system in the department.
 10. "Centralized medical direction communications center" means a facility that is housed within a hospital, medical center or trauma center or a freestanding communication center that meets the following criteria:
 - (a) Has the ability to communicate with ambulance services and emergency medical services providers rendering patient care outside of the hospital setting via radio and telephone.
 - (b) Is staffed twenty-four hours a day seven days a week by at least a physician licensed pursuant to title 32, chapter 13 or 17.
 11. "Certificate of necessity" means a certificate that is issued to an ambulance service by the department and that describes the following:
 - (a) Service area.
 - (b) Level of service.
 - (c) Type of service.
 - (d) Hours of operation.
 - (e) Effective date.
 - (f) Expiration date.
 - (g) Legal name and address of the ambulance service.
 - (h) Any limiting or special provisions the director prescribes.
 12. "Council" means the emergency medical services council.
 13. "Department" means the department of health services.
 14. "Director" means the director of the department of health services.
 15. "Emergency medical care technician" means an individual who has been certified by the department as an emergency medical technician, an advanced emergency medical technician, an emergency medical technician I-99 or a paramedic.
 16. "Emergency medical responder" as an ambulance attendant means a person who has been trained in an emergency medical responder program certified by the director or in an equivalent training program and who is certified by the director to render services pursuant to section 36-2205.
 17. "Emergency medical services" means those services required following an accident or an emergency medical situation:
 - (a) For on-site emergency medical care.
 - (b) For the transportation of the sick or injured by a licensed ground or air ambulance.
 - (c) In the use of emergency communications media.
 - (d) In the use of emergency receiving facilities.
 - (e) In administering initial care and preliminary treatment procedures by emergency medical care technicians.
 18. "Emergency medical services provider" means any governmental entity, quasi-governmental entity or corporation whether public or private that renders emergency medical services in this state.
 19. "Emergency medical technician" means a person who has been trained in an emergency medical technician program certified by the director or in an equivalent training program and who is certified by the director as qualified to render services pursuant to section 36-2205.
 20. "Emergency receiving facility" means a licensed health care institution that offers emergency medical services, is staffed twenty-four hours a day and has a physician on call.

21. "Fit and proper" means that the director determines that an applicant for a certificate of necessity or a certificate holder has the expertise, integrity, fiscal competence and resources to provide ambulance service in the service area.
22. "Medical record" means any patient record, including clinical records, prehospital care records, medical reports, laboratory reports and statements, any file, film, record or report or oral statements relating to diagnostic findings, treatment or outcome of patients, whether written, electronic or recorded, and any information from which a patient or the patient's family might be identified.
23. "National certification organization" means a national organization that tests and certifies the ability of an emergency medical care technician and whose tests are based on national education standards.
24. "National education standards" means the emergency medical services education standards of the United States department of transportation or other similar emergency medical services education standards developed by that department or its successor agency.
25. "Paramedic" means a person who has been trained in a paramedic program certified by the director or in an equivalent training program and who is certified by the director to render services pursuant to section 36-2205.
26. "Physician" means any person licensed pursuant to title 32, chapter 13 or 17.
27. "Stretcher van" means a vehicle that contains a stretcher and that is operated to accommodate an incapacitated person or person with a disability who does not require medical monitoring, aid, care or treatment during transport.
28. "Suboperation station" means a physical facility or location at which an ambulance service conducts operations for the dispatch of ambulances and personnel and that may be staffed twenty-four hours a day or less as determined by system use.
29. "Trauma center" means any acute care hospital that provides in-house twenty-four hour daily dedicated trauma surgical services that is designated pursuant to section 36-2225.
30. "Trauma registry" means data collected by the department on trauma patients and on the incidence, causes, severity, outcomes and operation of a trauma system and its components.
31. "Trauma system" means an integrated and organized arrangement of health care resources having the specific capability to perform triage, transport and provide care.
32. "Validated testing procedure" means a testing procedure that is inclusive of practical skills, or an attestation of practical skills proficiency on a form developed by the department by the educational training program, identified pursuant to section 36-2204, paragraph 2, that is certified as valid by an organization capable of determining testing procedure and testing content validity and that is recommended by the medical direction commission and the emergency medical services council before the director's approval.
33. "Wheelchair van" means a vehicle that contains or that is designed and constructed or modified to contain a wheelchair and that is operated to accommodate an incapacitated person or person with a disability who does not require medical monitoring, aid, care or treatment during transport.

36-2202. Duties of the director; qualifications of medical director

A. The director shall:

1. Appoint a medical director of the emergency medical services and trauma system.
2. Adopt standards and criteria for the denial or granting of certification and recertification of emergency medical care technicians. These standards shall allow the department to certify qualified emergency medical care technicians who have completed statewide standardized training required under section 36-2204, paragraph 1 and a standardized certification test required under section 36-2204, paragraph 2 or who hold valid certification with a national certification organization. Before the director may consider approving a statewide standardized training or a standardized certification test, or both, each of these must first be recommended by the medical direction commission and the emergency medical services council to ensure that the standardized training content is consistent with national education standards and that the standardized certification tests examines comparable material to that examined in the tests of a national certification organization.
3. Adopt standards and criteria that pertain to the quality of emergency care pursuant to section 36-2204.
4. Adopt rules necessary to carry out this chapter. Each rule shall identify all sections and subsections of this chapter under which the rule was formulated.
5. Adopt reasonable medical equipment, supply, staffing and safety standards, criteria and procedures for issuance of a certificate of registration to operate an ambulance.

6. Maintain a state system for recertifying emergency medical care technicians, except as otherwise provided by section 36-2202.01, that is independent from any national certification organization recertification process. This system shall allow emergency medical care technicians to choose to be recertified under the state or the national certification organization recertification system subject to subsection H of this section.

B. Emergency medical technicians who choose the state recertification process shall recertify in one of the following ways:

1. Successfully completing an emergency medical technician refresher course approved by the department.
2. Successfully completing an emergency medical technician challenge course approved by the department.
3. For emergency medical care technicians who are currently certified at the emergency medical technician level by the department, attesting on a form provided by the department that the applicant holds a valid and current cardiopulmonary resuscitation certification, has and will maintain documented proof of a minimum of twenty-four hours of continuing medical education within the last two years consistent with department rules and has functioned in the capacity of an emergency medical technician for at least two hundred forty hours during the last two years.

C. After consultation with the emergency medical services council the director may authorize pilot programs designed to improve the safety and efficiency of ambulance inspections for governmental or quasi-governmental entities that provide emergency medical services in this state.

D. The rules, standards and criteria adopted by the director pursuant to subsection A, paragraphs 2, 3, 4 and 5 of this section shall be adopted in accordance with title 41, chapter 6, except that the director may adopt on an emergency basis pursuant to section 41-1026 rules relating to the regulation of ambulance services in this state necessary to protect the public peace, health and safety in advance of adopting rules, standards and criteria as otherwise provided by this subsection.

E. The director may waive the requirement for compliance with a protocol adopted pursuant to section 36-2205 if the director determines that the techniques, drug formularies or training makes the protocol inconsistent with contemporary medical practices.

F. The director may suspend a protocol adopted pursuant to section 36-2205 if the director does all of the following:

1. Determines that the rule is not in the public's best interest.
2. Initiates procedures pursuant to title 41, chapter 6 to repeal the rule.
3. Notifies all interested parties in writing of the director's action and the reasons for that action. Parties interested in receiving notification shall submit a written request to the director.

G. To be eligible for appointment as the medical director of the emergency medical services and trauma system, the person shall be qualified in emergency medicine and shall be licensed as a physician in one of the states of the United States.

H. Applicants for certification shall apply to the director for certification. Emergency medical care technicians shall apply for recertification to the director every two years. The director may extend the expiration date of an emergency medical care technician's certificate for thirty days. The department shall establish a fee for this extension by rule. Emergency medical care technicians shall pass an examination administered by the department as a condition for recertification only if required to do so by the advanced life support base hospital's medical director or the emergency medical care technician's medical director.

I. The medical director of the emergency medical services and trauma system is exempt from title 41, chapter 4, articles 5 and 6 and is entitled to receive compensation pursuant to section 38-611, subsection A.

J. The standards, criteria and procedures adopted by the director pursuant to subsection A, paragraph 5 of this section shall require that ambulance services serving a rural or wilderness certificate of necessity area with a population of less than ten thousand persons according to the most recent United States decennial census have at least one ambulance attendant as defined in section 36-2201, paragraph 6, subdivision (a) and one ambulance attendant as defined in section 36-2201, paragraph 6, subdivision (b) staffing an ambulance while transporting a patient and that ambulance services serving a population of ten thousand persons or more according to the most recent United States decennial census have at least one ambulance attendant as defined in section 36-2201, paragraph 6, subdivision (a) and one ambulance attendant as defined in section 36-2201, paragraph 6, subdivision (a), (c), (d) or (e) staffing an ambulance while transporting a patient.

K. If the department determines there is not a qualified administrative medical director, the department shall ensure the provision of administrative medical direction for an emergency medical technician if the emergency medical technician meets all of the following criteria:

1. Is employed by a nonprofit or governmental provider employing less than twelve full-time emergency medical technicians.
2. Stipulates to the inability to secure a physician who is willing to provide administrative medical direction.
3. Stipulates that the provider agency does not provide administrative medical direction for its employees.

36-2204. Medical control

The medical director of the statewide emergency medical services and trauma system, the emergency medical services council and the medical direction commission shall recommend to the director the following standards and criteria that pertain to the quality of emergency patient care:

1. Statewide standardized training, certification and recertification standards for all classifications of emergency medical care technicians.
2. A standardized and validated testing procedure for all classifications of emergency medical care technicians.
3. Medical standards for certification and recertification of training programs for all classifications of emergency medical care technicians.
4. Standardized continuing education criteria for all classifications of emergency medical care technicians.
5. Medical standards for certification and recertification of certified emergency receiving facilities and advanced life support base hospitals and approval of physicians providing medical control or medical direction for any classification of emergency medical care technicians who are required to be under medical control or medical direction.
6. Standards and mechanisms for monitoring and ongoing evaluation of performance levels of all classifications of emergency medical care technicians, emergency receiving facilities and advanced life support base hospitals and approval of physicians providing medical control or medical direction for any classification of emergency medical care technicians who are required to be under medical control or medical direction.
7. Objective criteria and mechanisms for decertification of all classifications of emergency medical care technicians, emergency receiving facilities and advanced life support base hospitals and for disapproval of physicians providing medical control or medical direction for any classification of emergency care technicians who are required to be under medical control or medical direction.
8. Medical standards for nonphysician prehospital treatment and prehospital triage of patients requiring emergency medical services.
9. Standards for emergency medical dispatcher training, including prearrival instructions. For the purposes of this paragraph, "emergency medical dispatch" means the receipt of calls requesting emergency medical services and the response of appropriate resources to the appropriate location.
10. Standards for a quality assurance process for components of the statewide emergency medical services and trauma system, including standards for maintaining the confidentiality of the information considered in the course of quality assurance and the records of the quality assurance activities pursuant to section 36-2403.
11. Standards for ambulance service and medical transportation that give consideration to the differences between urban, rural and wilderness areas.
12. Standards to allow an ambulance to transport a patient to a health care institution that is licensed as a special hospital and that is physically connected to an emergency receiving facility.

36-2205. Permitted treatment and medication; certification requirement; protocols

A. The director, in consultation with the medical director of the emergency medical services and trauma system, the emergency medical services council and the medical direction commission, shall establish protocols, which may include training criteria, governing the medical treatments, procedures, medications and techniques that may be administered or performed by each classification of emergency medical care technician. These protocols shall consider the differences in treatments and procedures for regional, urban, rural and wilderness areas and shall require that emergency medical care technicians authorized to perform advanced life support procedures render these treatments, procedures, medications or techniques only under the direction of a physician.

B. The protocols adopted by the director pursuant to this section are exempt from title 41, chapter 6.

C. Notwithstanding subsection B of this section, a person may petition the director, pursuant to section 41-1033, to amend a protocol adopted by the director.

D. In consultation with the medical director of the emergency medical services and trauma system, the emergency medical services council and the medical direction commission, the director shall establish protocols for emergency medical providers to refer and advise a patient or transport a patient by the most appropriate means to the most appropriate provider of medical services based on the patient's condition. The protocols shall consider the differences in treatments and procedures for regional, urban, rural and wilderness areas and shall require that emergency medical care technicians authorized to perform advanced life support procedures render these treatments, procedures, medications or techniques only under the direction of a physician.

E. The protocols established pursuant to subsection D of this section shall include triage and treatment protocols that allow all classifications of emergency medical care technicians responding to a person who has accessed 911, or a similar public dispatch number, for a condition that does not pose an immediate threat to life or limb to refer and advise a patient or transport a patient to the most appropriate health care institution, as defined in section 36-401, based on the patient's condition, taking into consideration factors including patient choice, the patient's health care provider, specialized health care facilities and local protocols.

36-2209. Powers and duties of the director

A. The director shall:

1. Appoint and define the duties and prescribe the terms of employment of all employees of the bureau.
2. Adopt rules necessary for the operation of the bureau and for carrying out the purposes of this chapter.
3. Cooperate with and assist the personnel of emergency receiving facilities and other health care institutions in preparing a plan to be followed by these facilities and institutions in the event of a major disaster.
4. Cooperate with the state director of emergency management when a state of emergency or a state of war emergency has been declared by the governor.

B. The director may:

1. Request the cooperation of utilities, communications media and public and private agencies to aid and assist in the implementation and maintenance of a statewide emergency medical services system.
2. Enter into contracts and agreements with any local governmental entity, agency, facility or group that provides a similar program of emergency medical services in a contiguous state.
3. Enter into contracts and agreements for the acquisition and purchase of any equipment, tools, supplies, materials and services necessary in the administration of this chapter.
4. Enter into contracts with emergency receiving facilities, governmental entities, emergency rescue services and ambulance services, and the director may establish emergency medical services, including emergency receiving facilities, if necessary to assure the availability and quality of these services.
5. Accept and expend federal funds and private grants, gifts, contributions and devises to assist in carrying out the purposes of this chapter. These funds do not revert to the state general fund at the close of a fiscal year.
6. Establish an emergency medical services notification system that uses existing telephone communications networks.
7. Contract with private telephone companies for the establishment of a statewide emergency reporting telephone number.
8. Authorize the testing entity to collect fees determined by the director. In determining fees for testing entities the director shall consider the fees required by national certification organizations.

36-2211. Grounds for censure, probation, suspension or revocation of emergency medical care technician certificate; proceedings; civil penalty; judicial review

A. The medical director of the emergency medical services and trauma system, on behalf of the director, may censure or place on probation an emergency medical care technician or suspend or revoke the certification issued to any emergency medical care technician pursuant to this article for any of the following causes:

1. Unprofessional conduct.
2. Conviction of, a plea of guilty or no contest to or admission in a court proceeding to the elements of a felony or of a misdemeanor involving moral turpitude during the time that a person is certified as an emergency

medical care technician. The record of conviction or a copy of the record certified by the clerk of the court or by the judge by whom the person was sentenced is conclusive evidence of conviction.

3. Physical or mental incompetence to provide emergency medical services as an emergency medical care technician.

4. Gross incompetence or gross negligence in the provision of emergency medical services as an emergency medical care technician.

5. Wilful fraud or misrepresentation in the provision of emergency medical services as an emergency medical care technician or in the admission to that practice.

6. Use of any narcotic or dangerous drug or intoxicating beverage to an extent that the use impairs the ability to safely conduct the provision of emergency medical services as an emergency medical care technician.

7. The wilful violation of this chapter or the rules adopted pursuant to this chapter.

B. The medical director of the emergency medical services and trauma system on the medical director's own motion may investigate any evidence that appears to show the existence of any of the causes set forth in subsection A of this section. The medical director shall investigate the report under oath of any person that appears to show the existence of any of the causes set forth in subsection A of this section. Any person reporting pursuant to this section who provides the information in good faith is not subject to liability for civil damages as a result.

C. If, in the opinion of the medical director of the emergency medical services and trauma system, it appears the information is or may be true, the medical director shall request an informal interview with the emergency medical care technician. The interview shall be requested by the medical director in writing, stating the reasons for the interview and setting a date not less than ten days from the date of the notice for conducting the interview. The written request for an interview shall also state that if the medical director finds that cause exists for censure or probation or the suspension or revocation of the certificate the medical director may impose a civil penalty of not more than three hundred fifty dollars for each occurrence of cause as provided in subsection A of this section. The request for an interview shall also state that each day a cause for discipline exists constitutes a separate offense.

D. Following the investigation, including an informal interview if requested, and together with any mental, physical or professional competence examination as the medical director of the emergency medical services and trauma system deems necessary, the medical director may proceed in the following manner:

1. If the medical director finds that the evidence obtained pursuant to subsections B and C of this section does not warrant censure or probation of the emergency medical care technician or suspension or revocation of a certificate, the medical director shall notify the emergency medical care technician and terminate the investigation.

2. If the medical director finds that the evidence obtained pursuant to subsections B and C of this section does not warrant suspension or revocation of a certificate but does warrant censure or probation, the medical director may do either of the following:

(a) Issue a decree of censure.

(b) Fix a period and terms of probation best adapted to protect the public health and safety and rehabilitate and educate the emergency medical care technician. Failure to comply with any probation is cause for filing a complaint and holding a formal hearing as provided in paragraph 3 of this subsection.

3. If the medical director finds that the evidence obtained pursuant to subsections B and C of this section warrants suspension or revocation of a certificate issued under this article, or if the emergency medical care technician under investigation refuses to attend the informal interview authorized in subsection C of this section, a complaint shall be issued and formal proceedings shall be initiated. All proceedings pursuant to this paragraph shall be conducted pursuant to title 41, chapter 6, article 10.

E. If after a hearing as provided in this section any cause for censure, probation, suspension or revocation is found to exist, the emergency medical care technician is subject to censure or probation or suspension or revocation of the certificate or any combination of these for a period of time or permanently and under conditions as the medical director of the emergency medical services and trauma system deems appropriate.

F. In addition to other disciplinary action provided pursuant to this section, the medical director of the emergency medical services and trauma system may impose a civil penalty of not more than three hundred fifty dollars for each occurrence of cause as provided in subsection A of this section not to exceed twenty-five hundred dollars. Each day that cause for discipline exists constitutes a separate offense. All monies collected

pursuant to this subsection shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

G. Except as provided in section 41-1092.08, subsection H, final decisions of the medical director of the emergency medical services and trauma system are subject to judicial review pursuant to title 12, chapter 7, article 6.

41-1072. Definitions

In this article, unless the context otherwise requires:

1. "Administrative completeness review time frame" means the number of days from agency receipt of an application for a license until an agency determines that the application contains all components required by statute or rule, including all information required to be submitted by other government agencies. The administrative completeness review time frame does not include the period of time during which an agency provides public notice of the license application or performs a substantive review of the application.
2. "Overall time frame" means the number of days after receipt of an application for a license during which an agency determines whether to grant or deny a license. The overall time frame consists of both the administrative completeness review time frame and the substantive review time frame.
3. "Substantive review time frame" means the number of days after the completion of the administrative completeness review time frame during which an agency determines whether an application or applicant for a license meets all substantive criteria required by statute or rule. Any public notice and hearings required by law shall fall within the substantive review time frame.

41-1073. Time frames; exception

A. No later than December 31, 1998, an agency that issues licenses shall have in place final rules establishing an overall time frame during which the agency will either grant or deny each type of license that it issues. Agencies shall submit their overall time frame rules to the governor's regulatory review council pursuant to the schedule developed by the council. The council shall schedule each agency's rules so that final overall time frame rules are in place no later than December 31, 1998. The rule regarding the overall time frame for each type of license shall state separately the administrative completeness review time frame and the substantive review time frame.

B. If a statutory licensing time frame already exists for an agency but the statutory time frame does not specify separate time frames for the administrative completeness review and the substantive review, by rule the agency shall establish separate time frames for the administrative completeness review and the substantive review, which together shall not exceed the statutory overall time frame. An agency may establish different time frames for initial licenses, renewal licenses and revisions to existing licenses.

C. The submission by the department of environmental quality of a revised permit to the United States environmental protection agency in response to an objection by that agency shall be given the same effect as a notice granting or denying a permit application for licensing time frame purposes. For the purposes of this subsection, "permit" means a permit required by title 49, chapter 2, article 3.1 or section 49-426.

D. In establishing time frames, agencies shall consider all of the following:

1. The complexity of the licensing subject matter.
2. The resources of the agency granting or denying the license.
3. The economic impact of delay on the regulated community.
4. The impact of the licensing decision on public health and safety.
5. The possible use of volunteers with expertise in the subject matter area.
6. The possible increased use of general licenses for similar types of licensed businesses or facilities.
7. The possible increased cooperation between the agency and the regulated community.
8. Increased agency flexibility in structuring the licensing process and personnel.

E. This article does not apply to licenses issued either:

1. Pursuant to tribal state gaming compacts.
2. Within seven days after receipt of initial application.
3. By a lottery method.

41-1074. Compliance with administrative completeness review time frame

- A. An agency shall issue a written notice of administrative completeness or deficiencies to an applicant for a license within the administrative completeness review time frame.
- B. If an agency determines that an application for a license is not administratively complete, the agency shall include a comprehensive list of the specific deficiencies in the written notice provided pursuant to subsection A. If the agency issues a written notice of deficiencies within the administrative completeness time frame, the administrative completeness review time frame and the overall time frame are suspended from the date the notice is issued until the date that the agency receives the missing information from the applicant.
- C. If an agency does not issue a written notice of administrative completeness or deficiencies within the administrative completeness review time frame, the application is deemed administratively complete. If an agency issues a timely written notice of deficiencies, an application shall not be complete until all requested information has been received by the agency.

41-1075. Compliance with substantive review time frame

- A. During the substantive review time frame, an agency may make one comprehensive written request for additional information. The agency and applicant may mutually agree in writing to allow the agency to submit supplemental requests for additional information. If an agency issues a comprehensive written request or a supplemental request by mutual written agreement for additional information, the substantive review time frame and the overall time frame are suspended from the date the request is issued until the date that the agency receives the additional information from the applicant.
- B. By mutual written agreement, an agency and an applicant for a license may extend the substantive review time frame and the overall time frame. An extension of the substantive review time frame and the overall time frame may not exceed twenty-five per cent of the overall time frame.

41-1076. Compliance with overall time frame

Unless an agency and an applicant for a license mutually agree to extend the substantive review time frame and the overall time frame pursuant to section 41-1075, an agency shall issue a written notice granting or denying a license within the overall time frame to an applicant. If an agency denies an application for a license, the agency shall include in the written notice at least the following information:

1. Justification for the denial with references to the statutes or rules on which the denial is based.
2. An explanation of the applicant's right to appeal the denial. The explanation shall include the number of days in which the applicant must file a protest challenging the denial and the name and telephone number of an agency contact person who can answer questions regarding the appeals process.

41-1077. Consequence for agency failure to comply with overall time frame; refund; penalty

- A. If an agency does not issue to an applicant the written notice granting or denying a license within the overall time frame or within the time frame extension pursuant to section 41-1075, the agency shall refund to the applicant all fees charged for reviewing and acting on the application for the license and shall excuse payment of any such fees that have not yet been paid. The agency shall not require an applicant to submit an application for a refund pursuant to this subsection. The refund shall be made within thirty days after the expiration of the overall time frame or the time frame extension. The agency shall continue to process the application subject to subsection B of this section. Notwithstanding any other statute, the agency shall make the refund from the fund in which the application fees were originally deposited. This section applies only to license applications that were subject to substantive review.
- B. Except for license applications that were not subject to substantive review, the agency shall pay a penalty to the state general fund for each month after the expiration of the overall time frame or the time frame extension until the agency issues written notice to the applicant granting or denying the license. The agency shall pay the penalty from the agency fund in which the application fees were originally deposited. The penalty shall be two and one-half per cent of the total fees received by the agency for reviewing and acting on the application for each license that the agency has not granted or denied on the last day of each month after the expiration of the overall time frame or time frame extension for that license.

41-1079. Information required to be provided

A. An agency that issues licenses shall provide the following information to an applicant at the time the applicant obtains an application for a license:

1. A list of all of the steps the applicant is required to take in order to obtain the license.
2. The applicable licensing time frames.
3. The name and telephone number of an agency contact person who can answer questions or provide assistance throughout the application process.

B. This section does not apply to the Arizona peace officer standards and training board established by section 41-1821.

D-6

MEDICAL BOARD (R-18-0101)

Title 4, Chapter 16, Article 1, General Provisions; Article 2, Licensure

Amend: R4-16-102; R4-16-201.1; R4-16-205



GOVERNOR'S REGULATORY REVIEW COUNCIL

STAFF MEMORANDUM – REGULAR RULEMAKING

MEETING DATE: January 9, 2018

AGENDA ITEM: D-6

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

FROM: Council Staff

DATE: December 19, 2017

SUBJECT: MEDICAL BOARD (R-18-0101)

Title 4, Chapter 16, Article 1, General Provisions; Article 2, Licensure

Amend: R4-16-102; R4-16-201.1; R4-16-205

SUMMARY OF THE RULEMAKING

The purpose of the Arizona Medical Board (Board) is to “promote the safe and professional practice of allopathic medicine.” Laws 2012, Ch. 10, § 3. The primary duty of the Board is to “protect the public from unlawful, incompetent, unqualified, impaired or unprofessional practitioners of allopathic medicine through licensure, regulation and rehabilitation of the profession in this state.” A.R.S. § 32-1403(A).

This rulemaking seeks to amend three rules in A.A.C. Title 4, Chapter 16, Articles 1 and 2, related to continuing medical education requirements and licensing fees. The Board is engaging in this rulemaking at Governor Ducey's request¹ to require all physicians in Arizona to fulfill continuing medical education requirements in drug addiction and opioid prescribing. The Board is also making permanent a fee that was previously made via the exempt rulemaking process.

Governor Ducey's concerns arise from the fact that Arizona has the ninth highest rate of opioid related deaths in the nation. Moreover, statistics show that on average more than two Arizonans died every day in 2016 from overdoses of heroin or opioid prescription medications. The 790 deaths in 2016 was a 74 percent increase over the past four years.² In this rulemaking, the Board is proposing an opioid CME requirement for physicians.

¹ The letter from Governor Ducey to Arizona Medical Board is attached to the Notice of Final Rulemaking.

² <http://www.azdhs.gov/prevention/womens-childrens-health/injury-prevention/opioid-prevention/index.php>

In an exempt rulemaking, effective August 9, 2017, the Board established a fee for a temporary license to practice medicine in Arizona. Under A.R.S. § 41-1008(E), unless the Board's fees are established through the regular rulemaking process, the Board may only charge its fees for two years. This rulemaking sets forth the same fees established in the exempt rulemaking and does not increase any fees.

The rules were last amended at various times between 2005 and 2016. The Board received an exception from the moratorium in regards to the opioid CME requirement on March 10, 2017 and an exemption for the temporary license fee on June 28, 2017.

Proposed Action

- **R4-16-102** – *Continuing Medical Education*: In addition to clarifying changes, subsection (A)(1) is added to require physicians to complete at least one hour of CME related to opioid prescriptions.
- **R4-16-201.1** – *Application for Renewal of License*: Subsection (B)(5) is amended to reference the one hour of new CME requirement.
- **R4-16-205** – *Fees and Charges*: The temporary license fee is being established via regular rulemaking.

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

Yes. The Board cites to A.R.S. § 32-1403(A)(8) as general authority for the rules, under which the Board has the authority to adopt rules regarding “the regulation and qualifications of doctors of medicine.” As for specific authority, the Board cites to A.R.S. §§ 32-1434 (continuing medical education), 32-1436 (fees), and 32-1438 (fee for temporary licensure).

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

No. The fees set forth in the rules are already charged by the Board.

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

The Board is continuing the process of collecting fees for a temporary licensure program that was originally enacted through the exempt rulemaking process. This rulemaking also requires physicians to complete one hour of CME in drug addiction and opioid prescribing every two years. This rulemaking does not increase the CME required, it only regulates the content of 2.5 percent of each licensed physician's CME.

There are currently 23,743 licensed physicians in Arizona. To renew their licenses, physicians must complete 40 hours of CME every two years. After this rulemaking, one of these hours must address drug addiction and opioid prescribing.

4. 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 concludes that this rulemaking will benefit licensed physicians by increasing training related to opioid prescribing and drug addiction. Licensed physicians will bear minimal costs because the content of 2.5 percent of their CME will be mandated by the Board. The Board indicates that due to the pervasiveness of opioid abuse, requiring all licensed physicians to complete this CME will benefit licensed physicians more than it will burden them. The Board believes that the benefits outweigh the costs.

5. What are the economic impacts on stakeholders?

Key stakeholders are the Board and licensed physicians. The Board will benefit by continuing to collect temporary licensure fees. The Board does not anticipate that it will incur additional costs or benefits due to adding opioid prescribing and drug addiction requirements to CME. Licensed physicians will benefit from this rulemaking because it will increase training and awareness of current medical issues related to opioid prescribing and drug abuse. Licensed physicians will incur the costs associated with the CME, but these are expected to be minimal. Licensed physicians are already required to complete 40 hours of CME biennially, so replacing one of these hours with opioid training should be minimally intrusive.

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

Yes. The Board indicates that no written comments have been received on this rulemaking and no one attended the oral proceeding held on November 3, 2017.

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

No. The Board indicates that one minor technical change was made between the proposed and the final rules on Council staff's request.

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

No. The Board indicates that the rules do not directly correspond to any federal laws.

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

Yes. The Board indicates that the licenses for which a fee is established in Section 205 are general permits consistent with A.R.S. § 41-1037 because they are issued to qualified individuals or entities to conduct activities that are substantially similar in nature.

10. 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?

Yes. The Board did not review or rely on any study relevant to the rules.

11. Conclusion

The Board requests the usual 60-day delayed effective date for the rules. Council staff recommends approval of the rulemaking.



Arizona Medical Board

9545 E. Doubletree Ranch Road, Scottsdale AZ 85258 • website: www.azmd.gov
Phone (480) 551-2700 • Toll Free (877) 255-2212 • Fax (480) 551-2707

Governor

Douglas A. Ducey

Members

James Gillard, M.D., M.S.
Chair
Physician Member

R. Screven Farmer, M.D.
Vice-Chair
Physician Member

Jodi Bain, Esq.
Secretary
Public Member

Bruce A. Bethancourt, MD
Physician Member

Teresa Connolly, D.N.P.
Public Member

Gary R. Figge, M.D.
Physician Member

Pamela E. Jones
Public Member

Lois E. Krahn, M.D.
Physician Member

Edward G. Paul, M.D.
Physician Member

Wanda Salter, R.N.
Public Member/R.N.

Executive Director

Patricia E. McSorley

November 13, 2017

Ms. Nicole O. Colyer, Chair
The Governor's Regulatory Review Council
100 North 15th Avenue, Ste. 305
Phoenix, AZ 85007

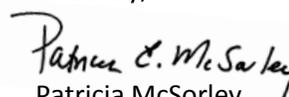
**Re: A.A.C. Title 4. Professions and Occupations
Chapter 16. Arizona Medical Board**

Dear Ms. Colyer:

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 November 3, 2017, 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 five-year-review report.
- 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 or rely on a study in its evaluation of or justification for any 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 none of the rules in this rulemaking will require a state agency to employ a new full-time employee. No notification was provided to JLBC.
- H. List of documents enclosed:
 1. Cover letter signed by the Executive Director;
 2. Notice of Final Rulemaking including the preamble, table of contents, and rule text;
 3. Economic, Small Business, and Consumer Impact Statement

Sincerely,


Patricia McSorley
Executive Director

NOTICE OF FINAL RULEMAKING
TITLE 4. PROFESSIONS AND OCCUPATIONS
CHAPTER 16. ARIZONA MEDICAL BOARD

PREAMBLE

1. Articles, Parts, and Sections Affected

Rulemaking Action

R4-16-102	Amend
R4-16-201.1	Amend
R4-16-205	Amend

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

Authorizing statute: A.R.S. § 32-1403(A)(8)

Implementing statute: A.R.S. §§ 32-1434, 32-1436, and 32-1438(F)

3. The effective date for the rules:

As specified under A.R.S. § 41-1032(A), the rule will be effective 60 days after the rule package is filed with the Office of the Secretary of State.

a. If the agency selected a date earlier than the 60-day effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):

Not applicable

b. If the agency selected a date later than the 60-day effective date as specified in A.R.S. § 41-1032(A), include the later date and state the reason or reasons the agency selected the later effective date as provided in A.R.S. § 41-1032(B):

Not applicable

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

Notice of Rulemaking Docket Opening: 23 A.A.R. 2490, September 15, 2017

Notice of Proposed Rulemaking: 23 A.A.R. 2461, September 15, 2017

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

Name: Patricia McSorley, Executive Director

Address: Arizona Medical Board

9545 E Doubletree Ranch Road

Scottsdale, AZ 85258

Telephone: (480) 551-2700

Fax: (480) 551-2704

E-mail: patricia.mcsorley@azmd.gov

Web site: www.azmd.gov

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

On January 9, 2017, Governor Ducey sent a letter to the Board requesting the Board require all physicians in Arizona to complete continuing medical education (CME) in drug addiction and opioid prescribing. The Governor's concern arises from the fact Arizona has the ninth highest rate of opioid-related deaths in the nation. More than two Arizonans died every day in 2016 from overdoses of opioid prescription medications or heroin. The 790 deaths was a 74 percent increase from 2012. In this rulemaking, the Board places an opioid CME requirement into rule.

In an exempt rulemaking that went into effect on August 9, 2017, the Board established a fee for a temporary license to practice medicine in Arizona. Because the effect of this fee is time limited under A.R.S. § 41-1008(E), the Board is now making the fee using the regular rulemaking process.

An exemption from Executive Order 2017-02 was provided for the opioid CME rulemaking by Mara Mellstrom, Policy Advisor in the Governor's Office, in an e-mail dated March 10, 2017. Ms. Mellstrom provided an exemption for the temporary-license fee in an e-mail dated June 28, 2017.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

The Board did not review or rely on a study in its evaluation of or justification for any rule in this rulemaking.

8. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

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

The Board estimates the rulemaking will have minimal economic impact on licensees and applicants. Licensees are not being required to obtain an additional hour of CME. Rather, they are being required simply to ensure one of the 40 statutorily required CME hours addresses drug addiction and opioid

prescribing. Because the fee for a temporary license to practice medicine in Arizona already exists, making the fee using the regular rulemaking process does not affect applicants.

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

No changes were made between the proposed and final rules.

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

The Board received no comments regarding the rulemaking. No one commented at an oral proceeding on November 3, 2017.

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

None

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

The licenses for which a fee is established in R4-16-205 are general permits consistent with A.R.S. § 41-1037 because they are issued to qualified individuals or entities to conduct activities that are substantially similar in nature.

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:

None of the rules is more stringent than federal law. There are numerous federal laws relating to the provision of health care but none is directly applicable to this rulemaking.

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

No analysis was submitted.

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

None

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

No rule in this rulemaking was previously made, amended, or repealed as an emergency rule.

15. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS
CHAPTER 16. ARIZONA MEDICAL BOARD
ARTICLE 1. GENERAL PROVISIONS

Section

R4-16-102. Continuing Medical Education

ARTICLE 2. LICENSURE

Section

R4-16-201.1. Application for Renewal of License

R4-16-205. Fees and Charges

ARTICLE 1. GENERAL PROVISIONS

R4-16-102. Continuing Medical Education

A. A physician holding an active license to practice medicine in this state shall complete 40 credit hours of the continuing medical education required by A.R.S. § 32-1434 during the two calendar years preceding biennial registration.

1. The physician shall ensure at least one of the credit hours of continuing medical education is certified as Category 1, as described in subsection (B)(4), and addresses the effective and safe prescribing of opioids;
2. ~~A physician may not carry excess hours over to another two-year cycle.~~ One hour of credit is allowed for each clock hour of participation in continuing medical education activities, unless otherwise designated in subsection (B); and
3. The physician may not carry excess hours of continuing medical education over to another two-year cycle.

B. No change

1. No change
2. No change
3. No change
4. No change
5. No change
6. No change
7. No change
 - a. No change
 - b. No change
8. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change

C. No change

D. No change

ARTICLE 2. LICENSURE

R4-16-201.1. Application for Renewal of License

A. No change

B. 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

4. No change

5. A statement of whether the licensee has completed at least 40 hours of CME as required under A.R.S. § 32-1434 and ~~R4-6-102~~ R4-16-102, including the hour of CME required under R4-16-102(A)(1);

6. No change

7. No change

C. No change

1. No change

2. No change

a. No change

b. No change

3. No change

D. No change

1. No change

2. No change

3. No change

R4-16-205. Fees and Charges

A. ~~As specifically authorized under A.R.S. § 32-1436(A), the Board establishes and shall collect the following fees, which are nonrefundable unless A.R.S. § 41-1077 applies:~~ As specifically authorized under A.R.S. § 32-1436(A) and A.R.S. § 32-1438, the Board establishes and shall collect the following fees, which are nonrefundable unless A.R.S. § 41-1077 applies:

1. ~~Application for a license through endorsement, USMLE Step 3, or Endorsement with SPX Examination, \$500;~~ Application for a license through endorsement, USMLE Step 3, or Endorsement with SPX Examination, \$500;
2. ~~Issuance of an initial license, \$500, prorated from date of issuance to date of license renewal;~~ Issuance of an initial license, \$500, prorated from date of issuance to date of license renewal;
3. ~~Renewal of license for two years, \$500;~~ Renewal of license for two years, \$500;
4. ~~Application to reactivate an inactive license, \$500;~~ Application to reactivate an inactive license, \$500;
5. ~~Locum tenens registration, \$350;~~ Locum tenens registration, \$350;
6. ~~Annual registration of an approved internship, residency, clinical fellowship program, or short-term residency program, \$50;~~ Annual registration of an approved internship, residency, clinical fellowship program, or short-term residency program, \$50;
7. ~~Annual teaching license at an approved school of medicine or at an approved hospital internship, residency, or clinical fellowship program, \$250;~~ Annual teaching license at an approved school of medicine or at an approved hospital internship, residency, or clinical fellowship program, \$250;
8. ~~Five-day teaching permit at an approved school of medicine or at an approved hospital internship, residency, or clinical fellowship program, \$100;~~ Five-day teaching permit at an approved school of medicine or at an approved hospital internship, residency, or clinical fellowship program, \$100;
9. ~~Initial registration to dispense drugs and devices, \$200;~~ Initial registration to dispense drugs and devices, \$200;
10. ~~Annual renewal to dispense drugs and devices, \$150;~~ Annual renewal to dispense drugs and devices, \$150;
11. ~~Penalty fee for late renewal of an active license, \$350; and~~ Penalty fee for late renewal of an active license, \$350; and
12. ~~Application for temporary license, \$250.~~ Application for temporary license, \$250.

B. ~~As specifically authorized under A.R.S. § 32-1436(B), the Board establishes the following charges for the services listed:~~ As specifically authorized under A.R.S. § 32-1436(B), the Board establishes the following charges for the services listed:

1. ~~Processing fingerprints to conduct a criminal background check, \$50;~~ Processing fingerprints to conduct a criminal background check, \$50;
2. ~~Providing a duplicate license, \$50;~~ Providing a duplicate license, \$50;
3. ~~Verifying a license, \$10 per request;~~ Verifying a license, \$10 per request;
4. ~~Providing a copy of records, documents, letters, minutes, applications, and files, \$1 for the first three pages and 25¢ for each additional page;~~ Providing a copy of records, documents, letters, minutes, applications, and files, \$1 for the first three pages and 25¢ for each additional page;
5. ~~Providing a copy of annual allopathic medical directory, \$30; and~~ Providing a copy of annual allopathic medical directory, \$30; and
6. ~~Providing an electronic medium containing public information about licensed physicians, \$100.~~ Providing an electronic medium containing public information about licensed physicians, \$100.



STATE OF ARIZONA
OFFICE OF THE GOVERNOR

DOUGLAS A. DUCEY
GOVERNOR

EXECUTIVE OFFICE

January 9, 2017

Ms. Patricia McSorley
Executive Director
Arizona Medical Board
9545 E. Doubletree Ranch Rd.
Scottsdale, AZ 85258

Dear Ms. McSorley:

I write to request the Arizona Medical Board's engagement in the fight against opioid use in our state. Arizona has the ninth highest rate of opioid deaths in the country. In 2015, 401 Arizonans died from an overdose of prescription opioids.

In response, last year Arizona enacted legislation to deter the practice of "doctor shopping," and to allow pharmacists to dispense Naloxone without a prescription to an individual at risk of experiencing an opioid-related overdose or to a family member or community member in a position to assist that individual.

Last October, I signed an Executive Order limiting the initial fill of prescription opioids to an initial fill of no more than seven days for those on the state employee health insurance plans and AHCCCS.

A national survey of physicians and patients conducted by the National Center on Addiction and Substance Abuse at Columbia University found that less than 20 percent of primary care physicians considered themselves "very prepared to identify alcohol or drug dependence," compared with more than 80 percent who feel "very comfortable diagnosing hypertension and diabetes." The survey also found that more than 40 percent of patients stated that their physician missed the diagnosis of a substance use disorder.

Therefore, I am calling on the Board to require that one of the forty Continuing Medical Education hours that are biennially required to renew an Arizona medical license be in the area of addiction or SAMHSA-supported opioid prescribing. A critical component to fighting this opioid epidemic is ensuring our state's doctors have the training and expertise necessary to identify and treat addiction.

Sincerely,

Douglas A. Ducey
Governor
State of Arizona

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT¹

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 16. ARIZONA MEDICAL BOARD

1. Identification of the rulemaking:

On January 9, 2017, Governor Ducey sent a letter to the Board requesting the Board require all physicians in Arizona to complete continuing medical education(CME) in drug addiction and opioid prescribing. The Governor's concern arises from the fact Arizona has the ninth highest rate of opioid-related deaths in the nation. More than two Arizonans died every day in 2016 from overdoses of opioid prescription medications or heroin. The 790 deaths was a 74 percent increase from 2012. In this rulemaking, the Board places an opioid CME requirement into rule.

In an exempt rulemaking that went into effect on August 9, 2017, the Board established a fee for a temporary license to practice medicine in Arizona. Because the effect of this fee is time limited under A.R.S. § 41-1008(E), the Board is now making the fee using the regular rulemaking process.

An exemption from Executive Order 2017-02 was provided for the opioid CME rulemaking by Mara Mellstrom, Policy Advisor in the Governor's Office, in an e-mail dated March 10, 2017. Ms. Mellstrom provided an exemption for the temporary-license fee in an e-mail dated June 28, 2017.

- a. The conduct and its frequency of occurrence that the rule is designed to change:
Until the rulemaking is completed, Arizona physicians will not be required to complete CME in drug addiction and opioid prescribing and the Board will remain at risk of the consequences of the time limit imposed under A.R.S. § 41-1008(E).
- 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:
Without the rulemaking, Arizona physicians may not obtain CME helpful to alleviating or avoiding some of the opioid-related overdose deaths occurring in the state and the Board will eventually find it is not able to collect a fee for a temporary license to practice medicine in Arizona.

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.

- c. The estimated change in frequency of the targeted conduct expected from the rule change:

When the rulemaking is in effect, all Arizona physicians will be required to obtain one hour of CME biennially regarding drug addiction and opioid prescribing and the Board will be able to continue collecting a fee for issuance of a temporary license to practice medicine.

2. A brief summary of the information included in the economic, small business, and consumer impact statement:

The Board estimates the rulemaking will have minimal economic impact on licensees and applicants. Licensees are not being required to obtain an additional hour of CME. Rather, they are being required simply to ensure one of the 40 statutorily required CME hours addresses drug addiction and opioid prescribing. Because the fee for a temporary license to practice medicine in Arizona already exists, making the fee using the regular rulemaking process does not affect applicants.

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: Patricia McSorley, Executive Director

Address: Arizona Medical Board
9545 E Doubletree Ranch Road
Scottsdale, AZ 85258

Telephone: (480) 551-2700

Fax: (480) 551-2704

E-mail: patricia.mcsorley@azmd.gov

Web site: www.azmd.gov

4. Persons who will be directly affected by, bear the costs of, or directly benefit from the rulemaking:

Arizona licensed physicians and the Board will be directly affected by, bear the costs of, and directly benefit from the rulemaking. There are currently 23,743 licensed physicians in Arizona. Each of them is required to obtain 40 hours of CME biennially. The only change resulting from this rulemaking is that one of the hours of CME must address drug addiction and opioid prescribing. The rulemaking does not require additional hours of CME so the only potential cost is for the effort to find a CME addressing drug addiction and opioid prescribing. This effort will be minimal because the American Medical Association currently

offers a free series of online courses that meets the requirements in this rulemaking. (See <http://www.vlh.com/AZPrescribing/>) Licensed physicians will benefit from being part of the solution to this nationwide crisis.

The Board incurred the cost of this rulemaking for a fee for a temporary license to practice medicine. The Board will benefit from avoiding having its authority to collect the fee expire under the time limit imposed under A.R.S. § 41-1008(E). Since August 9, 2017, when the exempt rule establishing a fee for a temporary license went into effect, the Board has received 421 applications for licensure as a physician. Of those, 23(5.5 percent) applied for a temporary license. These initial data suggest the Board may have over-estimated both the number of applicants who would request a temporary license and the amount of fees collected (See 23 A.A.R. 2056, July 28, 2017).

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 described in item 4.

- b. Costs and benefits to political subdivisions directly affected by the rulemaking:

No political subdivisions are directly affected by the rulemaking.

- c. Costs and benefits to businesses directly affected by the rulemaking:

Licensed physicians are the only businesses directly affected by the rulemaking. Their costs and benefits are described in item 4.

6. Impact on private and public employment:

The Board believes the rulemaking will have no impact on private or public employment.

7. Impact on small businesses²:

- a. Identification of the small business subject to the rulemaking:

Licensed physicians are the only small businesses subject to the rulemaking.

- b. Administrative and other costs required for compliance with the rulemaking:

Under the Board's current rules, a licensed physician is required to certify at the time of license renewal that the licensed physician is in compliance with the CME requirement. This rulemaking does not change that requirement but the certification

² Small business has the meaning specified in A.R.S. § 41-1001(21).

will now include the CME requirement regarding drug addiction and opioid prescribing.

c. Description of methods that may be used to reduce the impact on small businesses:

Because the impact on small businesses is so minimal, it is not possible to reduce the impact and achieve the regulatory goal of requiring one hour of CME biennially regarding drug addiction and opioid prescribing.

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. There may be some indirect affects if the state succeeds in reducing the number of opioid-related overdose deaths.

9. Probable effects on state revenues:

The rulemaking will have no effect on state revenues. Without the rulemaking, the Board's authorization to collect a fee for a temporary license would expire in two years. This would negatively affect state revenues.

10. Less intrusive or less costly alternative methods considered:

Because the rulemaking is minimally intrusive and costly, no alternative methods were considered.

Arizona Medical Board
TITLE 4. PROFESSIONS AND OCCUPATIONS
CHAPTER 16. ARIZONA MEDICAL BOARD

(Authority: A.R.S. § 32-1401 et seq.)

Editor’s Note: Supp. 16-1 has rules amended as final exempt rules. The proposed exempt rules were published on the Board’s website for 30 days and the end which no additional public comments were received (Supp. 16-1).

Editor’s Note: Supp. 15-4 has rules that were submitted as final exempt rules. Pursuant to Laws 2015, Chapter 251, Section 3, the Board was required to provide public notice and an opportunity for the public to comment on its proposed exempt rules. Three public meetings were conducted. Even though the proposed exempt rules were not published in the Register, the Office of the Secretary of State makes a distinction between exempt rulemakings and final exempt rulemakings. Exempt rulemakings are those that are submitted to the Office of the Secretary of State without receiving public comment (Supp. 15-4).

Editor’s Note: The name of the Allopathic Board of Medical Examiners was changed to the Arizona Medical Board by Laws 2002, Ch. 254, § 9, effective August 22, 2002 (Supp. 03-2).

ARTICLE 1. GENERAL PROVISIONS

Article 1, consisting of Sections R4-16-101 through R4-16-106, adopted effective June 1, 1984.

Former Article 1, consisting of Sections R4-16-01 through R4-16-16, repealed effective June 1, 1984 (Supp. 84-3).

Section		
R4-16-101.	Definitions	3
R4-16-102.	Continuing Medical Education	4
R4-16-103.	Rehearing or Review of Board Decision	4
R4-16-104.	Recodified	5
R4-16-105.	Recodified	5
R4-16-106.	Recodified	5
R4-16-107.	Recodified	5
R4-16-108.	Recodified	5
Table 1.	Recodified	5
R4-16-109.	Recodified	5

ARTICLE 2. LICENSURE

Article 2 heading, recodified to Article 3 heading, at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).

Article 2, consisting of Sections R4-16-201 through R4-16-205, adopted effective September 22, 1995 (Supp. 95-3).

Section		
R4-16-201.	Application for Licensure by Examination or Endorsement	5
R4-16-201.1.	Application for Renewal of License	7
R4-16-202.	Application and Reapplication for Pro Bono Registration	8
R4-16-203.	Application for Locum Tenens Registration	8
R4-16-204.	Repealed	9
R4-16-205.	Fees and Charges	9
R4-16-205.1.	Mandatory Reporting Requirement	9
R4-16-206.	Time Frames for Licenses, Permits, and Registrations	9
R4-16-207.	Repealed	10
Table 1.	Time Frames (in calendar days)	10

ARTICLE 3. DISPENSING OF DRUGS

Article 3 heading, recodified from Article 2 heading, at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).

Article 3, consisting of Sections R4-16-301 through R4-16-303, adopted effective February 2, 2000 (Supp. 00-1).

Section		
R4-16-301.	Registration and Renewal	11
R4-16-302.	Packaging and Inventory; Exception	11
R4-16-303.	Prescribing and Dispensing Requirements	11
R4-16-304.	Recordkeeping and Reporting Shortages	12
R4-16-305.	Inspections; Denial and Revocation	12

Arizona Medical Board
ARTICLE 4. MEDICAL ASSISTANTS

Section		
R4-16-401.	Medical Assistant Training Requirements	12
R4-16-402.	Authorized Procedures for Medical Assistants	12
R4-16-403.	Renumbered	13
R4-16-404.	Recodified	13
R4-16-405.	Recodified	13
R4-16-406.	Recodified	13
R4-16-407.	Recodified	13
R4-16-408.	Recodified	13
R4-16-409.	Recodified	13
R4-16-410.	Recodified	13

ARTICLE 5. EXECUTIVE DIRECTOR DUTIES

Article 5, consisting of Sections R4-16-501 through R4-16-505, renumbered by exempt rulemaking at 11 A.A.R. 1056, effective February 18, 2005 (Supp. 05-1).

Article 5, consisting of Sections R4-16-501 through R4-16-505, made by exempt rulemaking at 9 A.A.R. 2274, effective August 12, 2003 (Supp. 03-2).

Section		
R4-16-501.	Interim Evaluation and Investigational Interview .	13
R4-16-502.	Direct Referral to Formal Interview	13
R4-16-503.	Request for Inactive Status and License Cancellation	14
R4-16-504.	Interim Consent Agreement	14
R4-16-505.	Mediated Case	14
R4-16-506.	Referral to Formal Hearing	14
R4-16-507.	Dismissal of Complaint	14
R4-16-508.	Denial of License	14
R4-16-509.	Non-disciplinary Consent Agreement	14
R4-16-510.	Appealing Executive Director Actions	14

ARTICLE 6. DISCIPLINARY ACTIONS

R4-16-601.	Expired	15
R4-16-602.	Expired	15
R4-16-603.	Expired	15
R4-16-604.	Aggravating Factors Considered in Disciplinary Actions	15
R4-16-605.	Mitigating Factors Considered in Disciplinary Actions	15

ARTICLE 7. OFFICE-BASED SURGERY USING SEDATION

Article 7, consisting of Sections R4-16-701 through R4-16-707, made by final rulemaking at 14 A.A.R. 380, effective January 8, 2008 (Supp. 08-1).

Section		
R4-16-701.	Health Care Institution License	15
R4-16-702.	Administrative Provisions	15
R4-16-703.	Procedure and Patient Selection	16
R4-16-704.	Sedation Monitoring Standards	16
R4-16-705.	Perioperative Period; Patient Discharge	16
R4-16-706.	Emergency Drugs; Equipment and Space Used for Office-Based Surgery Using Sedation	16
R4-16-707.	Emergency and Transfer Provisions	17

Arizona Medical Board

ARTICLE 1. GENERAL PROVISIONS

R4-16-101. Definitions

Unless the context otherwise requires, definitions prescribed under A.R.S. § 32-1401 and the following apply to this Chapter:

1. "ACLS" means advanced cardiac life support performed according to certification standards of the American Heart Association.
2. "Agent" means an item or element that causes an effect.
3. "Approved medical assistant training program" means a program accredited by any of the following:
 - a. The Commission on Accreditation of Allied Health Education Programs;
 - b. The Accrediting Bureau of Health Education Schools;
 - c. A medical assisting program accredited by any accrediting agency recognized by the United States Department of Education; or
 - d. A training program:
 - i. Designed and offered by a licensed allopathic physician;
 - ii. That meets or exceeds any of the prescribed accrediting programs in subsection (a), (b), or (c); and
 - iii. That verifies the entry-level competencies of a medical assistant prescribed under R4-16-402(A).
4. "Auscultation" means the act of listening to sounds within the human body either directly or through use of a stethoscope or other means.
5. "BLS" means basic life support performed according to certification standards of the American Heart Association.
6. "Capnography" means monitoring the concentration of exhaled carbon dioxide of a sedated patient to determine the adequacy of the patient's ventilatory function.
7. "Deep sedation" means a drug-induced depression of consciousness during which a patient:
 - a. Cannot be easily aroused, but
 - b. Responds purposefully following repeated or painful stimulation, and
 - c. May partially lose the ability to maintain ventilatory function.
8. "Discharge" means a written or electronic documented termination of office-based surgery to a patient.
9. "Drug" means the same as in A.R.S. § 32-1901.
10. "Emergency" means an immediate threat to the life or health of a patient.
11. "Emergency drug" means a drug that is administered to a patient in an emergency.
12. "General Anesthesia" means a drug-induced loss of consciousness during which a patient:
 - a. Is unarousable even with painful stimulus; and
 - b. May partially or completely lose the ability to maintain ventilatory, neuromuscular, or cardiovascular function or airway.
13. "Health care professional" means a registered nurse defined in A.R.S. § 32-1601, registered nurse practitioner defined in A.R.S. § 32-1601, physician assistant defined in A.R.S. § 32-2501, and any individual authorized to perform surgery according to A.R.S. Title 32 who participates in office-based surgery using sedation at a physician's office.
14. "Informed consent" means advising a patient of the:
 - a. Purpose for and alternatives to the office-based surgery using sedation,
 - b. Associated risks of office-based surgery using sedation, and
 - c. Possible benefits and complications from the office-based surgery using sedation.
15. "Inpatient" has the same meaning as in A.A.C. R9-10-201.
16. "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.
17. "Minimal Sedation" means a drug-induced state during which:
 - a. A patient responds to verbal commands,
 - b. Cognitive function and coordination may be impaired, and
 - c. A patient's ventilatory and cardiovascular functions are unaffected.
18. "Moderate Sedation" means a drug-induced depression of consciousness during which:
 - a. A patient responds to verbal commands or light tactile stimulation, and
 - b. No interventions are required to maintain ventilatory or cardiovascular function.
19. "Monitor" means to assess the condition of a patient.
20. "Office-based surgery" means a medical procedure conducted in a physician's office or other outpatient setting that is not part of a licensed hospital or licensed ambulatory surgical center. (A.R.S. § 32-1401(20)).
21. "PALS" means pediatric life support performed according to certification standards of the American Academy of Pediatrics or the American Heart Association.
22. "Patient" means an individual receiving office-based surgery using sedation.
23. "Physician" has the same meaning as doctor of medicine as defined in A.R.S. § 32-1401.
24. "Rescue" means to correct adverse physiologic consequences of deeper than intended level of sedation and return the patient to the intended level of sedation.
25. "Sedation" means minimum sedation, moderate sedation, or deep sedation.
26. "Staff member" means an individual who:
 - a. Is not a health care professional, and
 - b. Assists with office-based surgery using sedation under the supervision of the physician performing the office-based surgery using sedation.

Arizona Medical Board

27. "Transfer" means a physical relocation of a patient from a physician's office to a licensed health care institution.

Historical Note

Former Rule 12. Former Section R4-16-01 repealed, new Section R4-16-101 adopted effective June 1, 1984 (Supp. 84-3). Section repealed, new Section renumbered from R4-16-103 effective September 22, 1995 (Supp. 95-3). Amended by final rulemaking at 8 A.A.R. 830, February 7, 2002 (Supp. 02-1). Amended by final rulemaking at 8 A.A.R. 4270, effective November 18, 2002 (Supp. 02-3). Former Section R4-16-101 recodified to R4-16-102 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1). New Section made by final rulemaking at 12 A.A.R. 823, effective February 23, 2006 (Supp. 06-1). Amended by final rulemaking at 14 A.A.R. 380, effective January 8, 2008 (Supp. 08-1).

R4-16-102. Continuing Medical Education

- A.** A physician holding an active license to practice medicine in this state shall complete 40 credit hours of the continuing medical education required by A.R.S. § 32-1434 during the two calendar years preceding biennial registration. A physician may not carry excess hours over to another two-year cycle. One hour of credit is allowed for each clock hour of participation in continuing medical education activities, unless otherwise designated in subsection (B).
- B.** A physician may claim continuing medical education for the following:
1. Participating in an internship, residency, or fellowship at a teaching institution approved by the American Medical Association, the Association of American Medical Colleges, or the American Osteopathic Association. A physician may claim one credit hour of continuing medical education for each one day of training in a full-time approved program, or for a less than full-time training on a pro rata basis. In this subsection teaching institutions define "full-time."
 2. Participating in an education program for an advanced degree in a medical or medically-related field in a teaching institution approved by the American Medical Association, the Association of American Medical Colleges, or the American Osteopathic Association. A physician may claim one credit hour of continuing medical education for each one day of full-time study or less than a full-time study on a pro rata basis. In this subsection teaching institutions define "full-time".
 3. Participating in full-time research in a teaching institution approved by the American Medical Association, the Association of American Medical Colleges, or the American Osteopathic Association. A physician may claim one credit hour of continuing medical education for each one day of full-time research, or less than full-time research on a pro rata basis. In this subsection teaching institutions define "full-time".
 4. Participating in an education program certified as Category 1 by an organization accredited by the Accreditation Council for Continuing Medical Education, 515 North State Street, Suite 2150, Chicago, Illinois 60610.
 5. Participating in a medical education program designed to provide understanding of current developments, skills, procedures, or treatments related to the practice of medicine, that is provided by an organization or institution accredited by the Accreditation Council for Continuing Medical Education.
 6. Serving as an instructor of medical students, house staff, other physicians, or allied health professionals from a hospital or other health care institution with a formal training program, if the instructional activities provide the instructor with understanding of current developments, skills, procedures, or treatments related to the practice of allopathic medicine.
 7. Publishing or presenting a paper, report, or book that deals with current developments, skills, procedures, or treatments related to the practice of allopathic medicine. The physician may claim one credit hour for each hour preparing, writing, and presenting materials:
 - a. Actually published or presented; and
 - b. After the date of publication or presentation.
 8. A credit hour may be earned for any of the following activities that provide an understanding of current developments, skills, procedures, or treatments related to the practice of allopathic medicine:
 - a. Completing a medical education program based on self-instruction that uses videotapes, audiotapes, films, filmstrips, slides, radio broadcasts, or computers;
 - b. Reading scientific journals and books;
 - c. Preparing for specialty board certification or recertification examinations;
 - d. Participating on a staff or quality of care committee, or utilization review committee in a hospital, health care institution, or government agency.
- C.** If a physician holding an active license to practice medicine in this state fails to meet the continuing medical education requirements under subsection (A) because of illness, military service, medical or religious missionary activity, or residence in a foreign country, upon written application, shall grant an extension of time to complete the continuing medical education.
- D.** The Board shall mail to each physician a license renewal form that includes a section regarding continuing medical education compliance. The physician shall sign and return the form certified under penalty of perjury that the continuing medical education requirements under subsection (A) are satisfied for the two-calendar-year period preceding biennial renewal. Failure to receive the license renewal form under subsection (A) shall not relieve the physician of the requirements of subsection (A). The Board may randomly audit a physician to verify compliance with the continuing medical education requirements under subsection (A).

Historical Note

Former Rule 16. Former Section R4-16-02 repealed, new Section R4-16-102 adopted effective June 1, 1984 (Supp. 84-3). Section repealed, new Section renumbered from R4-16-106 effective September 22, 1995 (Supp. 95-3). Amended by final rulemaking at 6 A.A.R. 1881, effective May 3, 2000 (Supp. 00-2). Former Section R4-16-102 recodified to R4-16-103; New Section R4-16-102 recodified from R4-16-101 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).

Arizona Medical Board

R4-16-103. Rehearing or Review of Board Decision

- A. A motion for rehearing or review shall be filed as follows:
1. Except as provided in subsection (B), any party in a contested case may file a written motion for rehearing or review of the Board's decision, specifying generally the grounds upon which the motion is based.
 2. A motion for rehearing or review shall be filed with the Board and served no later than 30 days after the decision of the Board.
 3. For purposes of this Section, "service" has the same meaning as in A.R.S. § 41-1092.09.
 4. For purposes of this Section, a document is deemed filed when the Board receives the document.
 5. For purposes of the Section, the terms "contested case" and "party" shall have the same meaning as in A.R.S. § 41-1001.
- B. If the Board makes a specific finding that it is necessary for a particular decision to take immediate effect to protect the public health and safety, or that a rehearing or review of the Board's decision is impracticable or contrary to the public interest, the decision shall be issued as a final decision without opportunity for rehearing or review and shall be a final administrative decision for purposes of judicial review.
- C. A written response to a motion for rehearing or review may be filed and served within 15 days after service of the motion for rehearing or review. The Board may require the filing of written briefs upon any issues raised in the motion and may provide for oral argument.
- D. A rehearing or review of a decision may be granted for any of the following reasons materially affecting a party's rights:
1. Irregularity in the administrative proceedings by the Board, its hearing officer, or the prevailing party, or any ruling or abuse of discretion, that deprives the moving party of a fair hearing;
 2. Misconduct of the Board, its hearing officer, or the prevailing party;
 3. Accident or surprise that could have not been prevented by ordinary prudence;
 4. Material evidence, newly discovered, which with reasonable diligence could not have been discovered and produced at the original hearing;
 5. Excessive or insufficient penalties;
 6. Error in the admission or rejection of evidence, or other errors of law that occurred at the hearing;
 7. The decision is the result of a passion or prejudice; or
 8. The decision of findings of fact or decision is not justified by the evidence or is contrary to law.
- E. A rehearing or review may be granted to all or any of the parties and on all or part of the issues for any of the reasons in subsection (D). The Board may take additional testimony, amend findings of fact and conclusions of law, or make new findings and conclusions, and affirm, modify, or reverse the original decision.
- F. A rehearing or review, if granted, shall be a rehearing or review only of the question upon which the decision is found erroneous. An order granting a rehearing or review shall specify with particularity the grounds for the order.
- G. Not later than 15 days after a decision is issued, the Board of its own initiative may order a rehearing or review for any reason that it might have granted a rehearing or review on motion of a party. After giving the parties notice and an opportunity to be heard on the matter, the Board may grant a timely-served motion for a rehearing or review, for a reason not stated in the motion. In either case, the Board shall specify in the order the grounds for the rehearing or review.
- H. If a motion for rehearing or review is based upon affidavits, they shall be served with the motion. The opposing party may, within 15 days after service, serve opposing affidavits. The Board may extend this period for a maximum of 20 days either by the Board for good cause, or by the parties by written stipulation. The Board may permit reply affidavits.

Historical Note

Former Rule 17; Amended effective August 19, 1977 (Supp. 77-4). Former Section R4-16-03 repealed, new Section R4-16-103 adopted effective June 1, 1984 (Supp. 84-3). Section R4-16-103 renumbered to R4-16-101 effective September 22, 1995 (Supp. 95-3). New Section adopted effective May 20, 1997 (Supp. 97-2). Amended by final rulemaking at 8 A.A.R. 830, February 7, 2002 (Supp. 02-1). Amended by final rulemaking at 8 A.A.R. 4270, effective November 18, 2002 (Supp. 02-3). Former Section R4-16-103 recodified to R4-16-204; new Section R4-16-103 recodified from R4-16-102 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).

R4-16-104. Recodified

Historical Note

Former Rule 18. Former Section R4-16-04 repealed, new Section R4-16-104 adopted effective June 1, 1984 (Supp. 84-3). Section repealed effective September 22, 1995 (Supp. 95-3). New Section adopted effective January 20, 1998 (Supp. 98-1). Section recodified to R4-16-206 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).

R4-16-105. Recodified

Historical Note

Former Rule 19. Former Section R4-16-05 repealed, new Section R4-16-105 adopted effective June 1, 1984 (Supp. 84-3). Section repealed effective September 22, 1995 (Supp. 95-3). New Section adopted effective January 20, 1998 (Supp. 98-1). Section recodified to R4-16-207 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).

R4-16-106. Recodified

Historical Note

Former Rule 21. Former Section R4-16-06 repealed, new Section R4-16-106 adopted effective June 1, 1984 (Supp. 84-3). Section R4-16-106 renumbered to R4-16-102 effective September 22, 1995 (Supp. 95-3). New Section adopted by final rulemaking at 6

Arizona Medical Board

A.A.R. 1881, effective May 3, 2000 (Supp. 00-2). Section recodified to R4-16-201 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).

R4-16-107. Recodified

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 1881, effective May 3, 2000 (Supp. 00-2). Section recodified to R4-16-202 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).

R4-16-108. Recodified

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 1881, effective May 3, 2000 (Supp. 00-2). Section recodified to R4-16-203 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).

Table 1. Recodified

Historical Note

Table 1 adopted effective January 20, 1998 (Supp. 98-1). Table 1 recodified to the end of Article 2 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).

R4-16-109. Recodified

Historical Note

New Section made by final rulemaking at 8 A.A.R. 830, February 7, 2002 (Supp. 02-1). Amended by final rulemaking at 8 A.A.R. 4270, effective November 18, 2002 (Supp. 02-3). Section recodified to R4-16-205 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).

ARTICLE 2. LICENSURE

R4-16-201. Application for Licensure by Examination or Endorsement

- A.** For purposes of this Article, unless otherwise specified:
1. "ABMS" means American Board of Medical Specialties.
 2. "ECFMG" means Educational Commission for Foreign Medical Graduates.
 3. "FCVS" means Federation Credentials Verification Service.
 4. "FLEX" means Federation Licensing Examination.
 5. "LMCC" means Licentiate of the Medical Council of Canada.
 6. "NBME" means National Board of Medical Examiners.
 7. "Primary source" means the original source or an approved agent of the original source of a specific credential that can verify the accuracy of a qualification reported by an applicant.
 8. "SPEX" means Special Purposes Examination.
 9. "USMLE" means United States Medical Licensing Examination.
- B.** An applicant for licensure to practice medicine by Step 3 of the USMLE or endorsement shall submit the following information on an application form available on request from the Board and on the Board's web site:
1. Applicant's full name, Social Security number, business and home addresses, primary e-mail address, business and home telephone numbers, and date and place of birth;
 2. Name of the school of medicine from which the applicant graduated and date of graduation;
 3. A complete list of the applicant's internship, residency, and fellowship training;
 4. List of all licensing examinations taken;
 5. Names of the states, U.S. territories, or provinces in which the applicant has applied for or been granted a license or registration to practice medicine, including license number, date issued, and current status of the license;
 6. A statement of whether the applicant:
 - a. Has had an application for medical licensure denied or rejected by another state or province licensing board, and if so, an explanation;
 - b. Has ever had any disciplinary or rehabilitative action taken against the applicant by another licensing board, including other health professions, and if so, an explanation;
 - c. Has had any disciplinary actions, restrictions, or limitations taken against the applicant while participating in any type of training program or by any health care provider, and if so, an explanation;
 - d. Has been found in violation of a statute, rule, or regulation of any domestic or foreign governmental agency, and if so, an explanation;
 - e. Is currently under investigation by any medical board or peer review body, and if so, an explanation;
 - f. Has been subject to discipline resulting in a medical license being revoked, suspended, limited, cancelled during investigation, restricted, or voluntarily surrendered, or resulting in probation or entry into a consent agreement or stipulation and if so, an explanation;
 - g. Has had hospital privileges revoked, denied, suspended, or restricted, and if so, an explanation;
 - h. Has been named as a defendant in a malpractice matter currently pending or that resulted in a settlement or judgment against the applicant, and if so, an explanation;

Arizona Medical Board

- i. Has been subjected to any regulatory disciplinary action, including censure, practice restriction, suspension, sanction, or removal from practice, imposed by any agency of the federal or state government, and if so, an explanation;
 - j. Has had the authority to prescribe, dispense, or administer medications limited, restricted, modified, denied, surrendered, or revoked by a federal or state agency as a result of disciplinary or other adverse action, and if so, an explanation;
 - k. Has been found guilty or entered into a plea of no contest to a felony, a misdemeanor involving moral turpitude in any state, and if so, an explanation;
7. Whether the applicant is currently certified by any of the American Board of Medical Specialties;
 8. The applicant's intended specialty;
 9. Consistent with the Board's authority at A.R.S. § 32-1422(B), other information the Board may deem necessary to evaluate the applicant fully;
 10. Whether the applicant completed a training unit prescribed by the Board regarding the requirements of A.R.S. Title 32, Chapter 13 and this Chapter;
 11. In addition to the answers provided under subsections (B)(1) through (B)(10), the applicant shall answer the following confidential question:
 - a. Whether the applicant has received treatment within the last five years for use of alcohol or a controlled substance, prescription-only drug, or dangerous drug or narcotic or a physical, mental, emotional, or nervous disorder or condition that currently affects the applicant's ability to exercise the judgment and skills of a medical professional;
 - b. If the answer to subsection (B)(11)(a) is yes:
 - i. A detailed description of the use, disorder, or condition; and
 - ii. An explanation of whether the use, disorder, or condition is reduced or ameliorated because the applicant receives ongoing treatment and if so, the name and contact information for all current treatment providers and for all monitoring or support programs in which the applicant is currently participating; and
 - c. A copy of any public or confidential agreement or order relating to the use, disorder, or condition, issued by a licensing agency or health care institution within the last five years, if applicable; and
 12. A notarized statement, signed by the applicant, verifying the truthfulness of the information provided, and that the applicant has not engaged in any acts prohibited by Arizona law or Board rules, and authorizing release of any required records or documents to complete application review.
- C.** In addition to the application form required under subsection (B), an applicant for licensure to practice medicine by Step 3 of the USMLE or endorsement shall submit the following:
1. A notarized copy of the applicant's birth certificate or passport;
 2. Evidence of legal name change if the applicant's legal name is different from that shown on the document submitted under subsection (C)(1);
 3. Documentation listed under A.R.S. § 41-1080(A) showing that the applicant's presence in the U.S. is authorized under federal law;
 4. Complete list of all hospital affiliations and medical employment for the five years before the date of application;
 5. Verification of any medical malpractice matter currently pending or resulting in a settlement or judgment against the applicant, including a copy of the complaint and either the agreed terms of settlement or the judgment and a narrative statement specifying the nature of the occurrence resulting in the medical malpractice action. An applicant who is unable to obtain a document required under this subsection may apply under subsection (E) a waiver of the requirement;
 6. A full set of fingerprints and the processing charge specified in R4-16-205;
 7. A paper or digital headshot photograph of the applicant taken no more than 60 days before the date of application; and
 8. The fee authorized under A.R.S. § 32-1436 and specified in R4-16-205.
- D.** In addition to the requirements of subsections (B) and (C), an applicant for licensure to practice medicine by Step 3 of the USMLE or endorsement shall have the following submitted to the Board, electronically or in hard copy, by the primary source, ECFMG, Veridoc, or FCVS:
1. Official transcript or other authentication of graduation from a school of medicine;
 2. Verification of completion of postgraduate training;
 3. Verification of ECFMG certification if the applicant graduated from an unapproved school of medicine;
 4. Examination and Board history report scores for USMLE, FLEX, NBME, and SPEX;
 5. Verification of LMCC exam score or state written exam score;
 6. Verification of licensure from every state in which the applicant has ever held a medical license;
 7. Verification of all hospital affiliations during the five years before the date of application. Under A.R.S. § 32-1422(A)(11)(b), this verification is required to be on the hospital's official letterhead or the electronic equivalent; and
 8. Verification of all medical employment during the five years before the date of application. Under A.R.S. § 32-1422(A)(11)(b), this verification may be submitted by the employer.
- E.** As provided under A.R.S. § 32-1422(F), the Board may waive a documentation requirement specified under subsections (C)(5) and (D).
1. To obtain a waiver under this subsection, an applicant shall submit a written request that includes the following information:
 - a. Applicant's name;
 - b. Date of request;
 - c. Document required under subsection (C)(5) or (D) for which waiver is requested;
 - d. Detailed description of efforts made by the applicant to provide the document as required under subsection (C)(5) or (D);

Arizona Medical Board

- e. Reason the applicant's inability to provide the document as required under subsection (C)(5) or (D) is due to no fault of the applicant; and
- f. If applicable, documents that support the request for waiver.
2. The Board shall consider the request for waiver at its next regularly scheduled meeting.
3. In determining whether to grant the request for waiver, the Board shall consider whether the applicant:
 - a. Made appropriate and sufficient effort to satisfy the requirement under subsection (C)(5) or (D); and
 - b. Demonstrated that compliance with the requirement under subsection (C)(5) or (D) is not possible because:
 - i. The entity responsible for issuing the required document no longer exists;
 - ii. The original of the required document was destroyed by accident or natural disaster;
 - iii. The entity responsible for issuing the required document is unable to provide verification because of armed conflict or political strife; or
 - iv. Another valid reason beyond the applicant's control prevents compliance with the requirement under subsection (C)(5) or (D).
4. In determining whether to grant the request for waiver, the Board shall:
 - a. Consider whether it is possible for the Board to obtain the required document from other source; and
 - b. Request the applicant to obtain and provide additional information the Board believes will facilitate the Board's decision.
5. If the Board determines the applicant is unable to comply with a requirement under subsection (C)(5) or (D) in spite of the applicant's best effort and for a reason beyond the applicant's control, the Board may grant the request for waiver and include the decision in the Board's official record for the applicant.
6. The Board shall provide the applicant with written notice of its decision regarding the request for waiver. The Board's decision is not subject to review or appeal.
- F. As provided under A.R.S. § 32-1426(B), the Board may require an applicant for licensure by endorsement who passed an examination specified in A.R.S. § 32-1426(A) more than ten years before the date of application to provide evidence the applicant is able to engage safely in the practice of medicine. The Board may consider one or more of the following to determine whether the applicant is able to engage safely in the practice of medicine:
 1. If an applicant is board certified by one of the specialties recognized by the ABMS, this criteria is considered met.
 2. If an applicant obtains a passing score on a SPEX examination, this criteria is considered met.
 3. The Board may also consider any combination of the following:
 - a. The applicant's records,
 - b. The applicant's practice history
 - c. A physical or psychological assessment of the applicant.

Historical Note

Adopted effective September 22, 1995 (Supp. 95-3). Amended by final rulemaking at 8 A.A.R. 2319, effective May 9, 2002 (Supp. 02-2). Former Section R4-16-201 recodified to R4-16-301; New Section R4-16-201 recodified from R4-16-106 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1). Amended by exempt rulemaking at 20 A.A.R. 1995, effective July 11, 2014 (Supp. 14-3). Amended by final exempt rulemaking at 21 A.A.R. 2678, effective October 15, 2015 (Supp. 15-4). Amended by final exempt rulemaking at 22 A.A.R. 778, effective January 14, 2016 (Supp. 16-1).

R4-16-201.1. Application for Renewal of License

- A. Under A.R.S. § 32-1430(A), an individual licensed under A.R.S. Title 32, Chapter 13, shall renew the license every other year on or before the licensee's birthday.
- B. To renew a license, a licensee shall submit the following information on an application form available on request from the Board and on the Board's web site:
 1. The licensee's full name, license number, business and home addresses, primary e-mail address, and business and home telephone numbers;
 2. Identification of changes to medical specialties and fields of practice;
 3. A statement of whether, since the time of last license issuance, the licensee:
 - a. Has had an application for medical licensure denied or rejected by another state or province licensing board and if so, an explanation;
 - b. Has had any disciplinary or rehabilitative action taken against the licensee by another licensing board, including other health professions and if so, an explanation;
 - c. Has had any disciplinary action, restriction, or limitation taken against the licensee by any program or health care provider and if so, an explanation;
 - d. Has been subject to discipline resulting in a medical license being revoked, suspended, limited, cancelled during an investigation, restricted, or voluntarily surrendered, or resulting in probation or entry into a consent agreement or stipulation and if so, an explanation;
 - e. Has had hospital privileges revoked, denied, suspended, or restricted and if so, an explanation (do not report if the licensee's hospital privileges were suspended due to failure to complete hospital records and reinstated after no more than 90 days);
 - f. Has been subjected to disciplinary action including censure, practice restriction, suspension, sanction, or removal from practice by an agency of the state or federal government and if so, an explanation;

Arizona Medical Board

- g. Has had the authority to prescribe, dispense, or administer medications limited, restricted, modified, denied, surrendered, or revoked by a federal or state agency as a result of disciplinary or other adverse action and if so, an explanation;
 - h. Has been found guilty or entered into a plea of no contest to a felony, a misdemeanor involving moral turpitude, or an alcohol or drug-related offense in any state and if so, an explanation; and
 - i. Has failed the SPEX;
- 4. A statement of whether the licensee understands and complies with the medical records and recordkeeping requirements in A.R.S. §§ 32-3211 and 12-2297;
 - 5. A statement of whether the licensee has completed at least 40 hours of CME as required under A.R.S. § 32-1434 and R4-6-102;
 - 6. A statement of whether the licensee requests that the license be inactivated or cancelled; and
 - 7. A statement of whether the licensee completed a training unit prescribed by the Board regarding the requirements of A.R.S. Title 32, Chapter 13 and this Chapter.
- C. Additionally, the licensee shall answer the following confidential question:
- 1. Whether the applicant has received treatment since the last renewal for use of alcohol or a controlled substance, prescription-only drug, or dangerous drug or narcotic or a physical, mental, emotional, or nervous disorder or condition that currently affects the applicant's ability to exercise the judgment and skills of a medical professional;
 - 2. If the answer to subsection (C)(1) is yes:
 - a. A detailed description of the use, disorder, or condition; and
 - b. An explanation of whether the use, disorder, or condition is reduced or ameliorated because the applicant receives ongoing treatment and if so, the name and contact information for all current treatment providers and for all monitoring or support programs in which the applicant is currently participating; and
 - 3. A copy of any public or confidential agreement or order relating to the use, disorder, or condition, issued by a licensing agency or health care institution since the last renewal, if applicable.
- D. To renew a license, a licensee shall submit the following with the required application form:
- 1. If the document submitted under R4-16-201(C)(3) was a limited form of work authorization issued by the federal government, evidence that the licensee's presence in the U.S. continues to be authorized under federal law;
 - 2. The renewal fee specified under R4-16-205 and, if applicable, the penalty fee for late renewal; and
 - 3. An attestation that all information submitted is correct.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2678, effective October 15, 2015 (Supp. 15-4).

R4-16-202. Application and Reapplication for Pro Bono Registration

- A. An applicant for a pro bono registration to practice medicine for a maximum of 60 days in a calendar year in Arizona shall submit the following information on an application form available on request from the Board and on the Board's web site:
- 1. Applicant's full name, Social Security number, business and home addresses, primary e-mail address, and business and home telephone numbers;
 - 2. List of all states, U.S. territories, and provinces in which the applicant is or has been licensed to practice medicine;
 - 3. A statement verifying that the applicant:
 - a. Agrees to render all medical services without accepting a fee or salary; or
 - b. Agrees to perform only initial or follow-up examinations at no cost to the patient or the patient's family through a charitable organization,
- B. In addition to the application form required under subsection (A), an applicant for a pro bono registration to practice medicine shall submit documentation listed under A.R.S. § 41-1080(A) showing that the applicant's presence in the U.S. is authorized under federal law.
- C. An applicant may make application for a pro bono registration annually. A previously registered applicant may apply for a pro bono registration by submitting the following information on an application form available on request from the Board and on the Board's web site:
- 1. Applicant's full name, home address and telephone number, and primary e-mail address;
 - 2. Number of previous pro bono registration;
 - 3. Name of each state, U.S. territory, and province in which the applicant holds an active medical license;
 - 4. A statement whether since issuance of the last pro bono registration:
 - a. Any disciplinary action has been taken against the applicant, and
 - b. Any unresolved complaints are currently pending against the applicant with any state board; and
 - 5. If the document submitted under R4-16-202(B) was a limited form of work authorization issued by the federal government, evidence that the applicant's presence in the U.S. continues to be authorized under federal law.

Historical Note

Adopted effective September 22, 1995 (Supp. 95-3). Amended by final rulemaking at 8 A.A.R. 2319, effective May 9, 2002 (Supp. 02-2). Former Section R4-16-202 recodified to R4-16-302; New Section R4-16-202 recodified from R4-16-107 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1). Amended by final exempt rulemaking at 21 A.A.R. 2678, effective October 15, 2015 (Supp. 15-4).

Arizona Medical Board

R4-16-203. Application for Locum Tenens Registration

- A.** An applicant for a locum tenens registration to practice medicine for a maximum of 180 consecutive days in Arizona shall submit an application form available on request from the Board and on the Board's web site that provides the information required under R4-16-201(B).
- B.** In addition to the application form required under subsection (A), an applicant for a locum tenens registration to practice medicine shall have the following submitted directly to the Board, electronically or in hard copy, by the primary source, ECFMG, Veridoc, or FCVS:
1. Official transcript or other authentication of graduation from a school of medicine;
 2. Verification of completion of postgraduate training;
 3. A statement completed by the sponsoring Arizona-licensed physician giving the reason for the request for issuance of the registration;
 4. Verification of ECFMG certification if the applicant graduated from an unapproved school of medicine; and
 5. Verification of licensure from every state in which the applicant has ever held a medical license.
- C.** In addition to the application form required under subsection (A), an applicant for a locum tenens registration to practice medicine shall submit the following:
1. Documentation listed under A.R.S. § 41-1080(A) showing that the applicant's presence in the U.S. is authorized under federal law;
 2. A full set of fingerprints and the charge specified in R4-16-205;
 3. A copy of a government-issued photo identification; and
 4. The fee specified under R4-16-205.

Historical Note

Adopted effective September 22, 1995 (Supp. 95-3). Amended by final rulemaking at 8 A.A.R. 2319, effective May 9, 2002 (Supp. 02-2). Former Section R4-16-203 recodified to R4-16-303; New Section R4-16-203 recodified from R4-16-108 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1). Amended by final exempt rulemaking at 21 A.A.R. 2678, effective October 15, 2015 (Supp. 15-4).

R4-16-204. Repealed**Historical Note**

Adopted effective September 22, 1995 (Supp. 95-3). Amended by final rulemaking at 8 A.A.R. 2319, effective May 9, 2002 (Supp. 02-2). Former Section R4-16-204 recodified to R4-16-304; New Section R4-16-204 recodified from R4-16-103 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1). Repealed by final exempt rulemaking at 21 A.A.R. 2678, effective October 15, 2015 (Supp. 15-4).

R4-16-205. Fees and Charges

- A.** As specifically authorized under A.R.S. § 32-1436(A), the Board establishes and shall collect the following fees, which are nonrefundable unless A.R.S. § 41-1077 applies:
1. Application for a license through endorsement, USMLE Step 3, or Endorsement with SPX Examination, \$500;
 2. Issuance of an initial license, \$500, prorated from date of issuance to date of license renewal;
 3. Renewal of license for two years, \$500;
 4. Application to reactivate an inactive license, \$500;
 5. Locum tenens registration, \$350;
 6. Annual registration of an approved internship, residency, clinical fellowship program, or short-term residency program, \$50;
 7. Annual teaching license at an approved school of medicine or at an approved hospital internship, residency, or clinical fellowship program, \$250;
 8. Five-day teaching permit at an approved school of medicine or at an approved hospital internship, residency, or clinical fellowship program, \$100;
 9. Initial registration to dispense drugs and devices, \$200;
 10. Annual renewal to dispense drugs and devices, \$150; and
 11. Penalty fee for late renewal of an active license, \$350.
- B.** As specifically authorized under A.R.S. § 32-1436(B), the Board establishes the following charges for the services listed:
1. Processing fingerprints to conduct a criminal background check, \$50;
 2. Providing a duplicate license, \$50;
 3. Verifying a license, \$10 per request;
 4. Providing a copy of records, documents, letters, minutes, applications, and files, \$1 for the first three pages and 25¢ for each additional page;
 5. Providing a copy of annual allopathic medical directory, \$30; and
 6. Providing an electronic medium containing public information about licensed physicians, \$100.

Historical Note

Adopted effective September 22, 1995 (Supp. 95-3). Amended by final rulemaking at 8 A.A.R. 2319, effective May 9, 2002 (Supp. 02-2). Former Section R4-16-205 recodified to R4-16-305; New Section R4-16-205 recodified from R4-16-109 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1). Amended by final rulemaking 19 A.A.R. 1300, effective July 6, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 2569, effective September 2, 2014 (Supp. 14-3). Amended by final exempt rule-

Arizona Medical Board
making at 21 A.A.R. 2678, effective October 15, 2015 (Supp. 15-4). Amended by final exempt rulemaking at 22 A.A.R. 778, effective January 14, 2016 (Supp. 16-1).

R4-16-205.1. Mandatory Reporting Requirement

- A. As required under A.R.S. § 32-3208, an applicant, licensee, permit holder, or registrant 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, permit holder, or registrant may obtain a list of reportable misdemeanors on request from the Board and on the Board's web site.
- C. Failure to comply with A.R.S. § 32-3208 and this Section is unprofessional conduct.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2678, effective October 15, 2015 (Supp. 15-4).

R4-16-206. Time Frames for Licenses, Permits, and Registrations

- A. For each type of license, permit, or registration issued by the Board, the overall time frame under A.R.S. § 41-1072(2) is shown on Table 1.
- B. For each type of license, permit, or registration issued by the Board, the administrative completeness review time frame under A.R.S. § 41-1072(1) is shown on Table 1 and begins on the date the Board receives an application and all required documentation and information.
 - 1. If the required application is not administratively complete, the Board shall send a written deficiency notice to the applicant.
 - a. In the deficiency notice, the Board shall state each deficiency and the information required to complete the application or supporting documentation required to complete the application. In the deficiency notice, the Board shall include a written notice that the application is withdrawn if the applicant does not submit the additional required information or documentation within the time provided for response.
 - b. Within the time provided in Table 1 for response to a deficiency notice, the applicant shall submit to the Board the documentation or information specified in the notice. The time frame for the Board to finish the administrative completeness review is suspended from the date of the notice until the date the Board receives the documentation or information from the applicant.
 - 2. Within 30 days after receipt of a deficiency notice, an applicant who disagrees with the deficiency notice may submit to the Board a written request for a hearing regarding the deficiency notice.
 - 3. The Board shall schedule and conduct the applicant's deficiency hearing according to provisions prescribed under A.R.S. § 32-1427(E).
 - 4. In addition to hearing provisions prescribed under subsection (B)(3), the Board shall send the following to the applicant in writing:
 - a. A notice of the scheduled hearing at least 21 days before the hearing date; and
 - b. The Board's decision within 30 days after the hearing and notice of any applicable right of appeal.
- C. For each type of license, permit, or registration issued by the Board, the substantive review time frame under A.R.S. § 41-1072(3) is shown on Table 1.
 - 1. The Board may request make a comprehensive written request for additional information from an applicant according to provisions prescribed under A.R.S. § 41-1075 during the substantive review time frame. In any request for additional information, the Board shall include a written notice that the application is withdrawn if the applicant does not submit the additional information within the time provided for response.
 - 2. In response to a single comprehensive written request from the Board under A.R.S. § 41-1075(A), the applicant shall submit the information identified to the Board within the time to respond specified in Table 1. The time frame for the Board to finish the substantive review is suspended from the date the Board sends the comprehensive written request for additional information until the date the Board receives the additional information from the applicant.
 - 3. If the Board determines the applicant does not meet all substantive criteria for a license, permit, or registration as required under A.R.S. Title 32, Chapter 13 or this Chapter, the Board shall send written notice of denial to the applicant. The Board shall include notice of any applicable right of appeal in the denial notice.
 - 4. If the applicant meets all substantive criteria for a license, permit, or registration required under A.R.S. Title 32, Chapter 13 and this Chapter, the Board shall issue the applicable license, permit, or registration to the applicant.
- D. An applicant may receive a 30-day extension of the time provided under subsection (B)(1) or (C)(2) by providing written notice to the Board's Executive Director before the time expires.
- E. If a licensee does not apply for license renewal according to the biennial renewal requirement, the licensee's license expires according to provisions prescribed under A.R.S. § 32-1430(A) unless the licensee is under investigation according to provisions under A.R.S. § 32-3202. If a licensee makes timely application according to the biennial renewal requirement but fails to respond timely to a deficiency notice under subsection (B)(1) or a request for additional information under subsection (C)(2) and fails to request from the Executive Director an extension of time to respond, the licensee's license expires according to provisions prescribed under A.R.S. § 32-1430(A).

Arizona Medical Board

Historical Note

New Section recodified from R4-16-104 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1). Amended by final rulemaking at 11 A.A.R. 2944, effective September 10, 2005 (Supp. 05-3). Amended by final exempt rulemaking at 21 A.A.R. 2678, effective October 15, 2015 (Supp. 15-4).

R4-16-207. Repealed

Historical Note

New Section recodified from R4-16-105 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1). Amended by final rulemaking at 11 A.A.R. 2944, effective September 10, 2005 (Supp. 05-3). Repealed by final exempt rulemaking at 21 A.A.R. 2678, effective October 15, 2015 (Supp. 15-4).

Table 1. Time Frames

Time Frames (in calendar days)

Type of License	Overall Time Frame	Administrative Review Time Frame	Time to Respond to Deficiency Notice	Substantive Review Time Frame	Time to Respond to Request for Additional Information
Initial License by Examination or Endorsement	240	120	365	120	90
Biennial License Renewal	90	45	60	45	60
Locum Tenens or Pro Bono Registration	120	60	90	60	30
Teaching License	40	20	30	20	30
Educational Teaching Permit	20	10	30	10	10
Training Permit	40	20	30	20	30
Short-term Training Permit	40	20	30	20	30
One-year Training Permit	40	20	30	20	30
Annual Registration to Dispense Drugs and Devices	150	45	30	105	30

Historical Note

Table 1 recodified from Article 1 to end of Article 2 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1). Amended by final rulemaking at 11 A.A.R. 2944, effective September 10, 2005 (Supp. 05-3). Amended by final exempt rulemaking at 21 A.A.R. 2678, effective October 15, 2015 (Supp. 15-4).

ARTICLE 3. DISPENSING OF DRUGS

R4-16-301. Registration and Renewal

- A.** A physician who wishes to dispense a controlled substance as defined in A.R.S. § 32-1901(12), a prescription-only drug as defined in A.R.S. § 32-1901(65), or a prescription-only device as defined in A.R.S. § 32-1901(64) shall be currently licensed to practice medicine in Arizona and shall provide to the Board the following:
 - 1. A completed registration form that includes the following information:
 - a. The physician’s name, license number, and field of practice;
 - b. A list of the types of drugs and devices the physician will dispense; and
 - c. The location or locations where the physician will dispense a controlled substance, a prescription-only drug, or a prescription-only device.
 - 2. A copy of the physician’s current Drug Enforcement Administration Certificate of Registration for each dispensing location from which the physician will dispense a controlled substance.
 - 3. The fees required in A.R.S. § 32-1436.
- B.** A physician shall renew a registration to dispense a controlled substance, a prescription-only drug, or a prescription-only device by complying with the requirements in subsection (A) on or before June 30 of each year. If a physician has made timely and complete application for the renewal of a registration, the physician may continue to dispense until the Board approves or denies the renewal application.

Arizona Medical Board

- C. If the completed annual renewal form, all required documentation, and the fee are not received in the Board's office on or before June 30, the physician shall not dispense any controlled substances, prescription-only drugs, or prescription-only devices until re-registered. The physician shall re-register by filing for initial registration under subsection (A) and shall not dispense a controlled substance, a prescription-only drug, or a prescription-only device until receipt of the re-registration.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 751, effective February 2, 2000 (Supp. 00-1). Former Section R4-16-301 recodified to R4-16-401; New Section R4-16-301 recodified from R4-16-201 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).

R4-16-302. Packaging and Inventory; Exception

- A. A physician shall dispense all controlled substances and prescription-only drugs in prepackaged containers or in light-resistant containers with consumer safety caps, that comply with standards specified in the official compendium as defined in A.R.S. § 32-1901(49) and state and federal law, unless a patient or a patient's representative requests a non-safety cap.
- B. All controlled substances and prescription-only drugs dispensed shall be labeled with the following information:
1. The physician's name, address, and telephone number;
 2. The date the controlled substance and prescription-only drug is dispensed;
 3. The patient's name;
 4. The controlled substance and prescription-only drug name, strength, and dosage, form, name of manufacturer, the quantity dispensed, directions for use, and any cautionary statement necessary for the safe and effective use of the controlled substance and 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. A physician shall secure all controlled substances in a locked cabinet or room and shall control access to the cabinet or room by a written procedure that includes, at a minimum, designation of the persons who have access to the cabinet or room and procedures for recording requests for access to the cabinet or room. This written procedure shall be made available on demand to the Board or its authorized representatives for inspection or copying. Prescription-only drugs shall be stored so as not to be accessible to patients.
- D. Controlled substances and prescription-only drugs not requiring refrigeration shall be maintained in an area where the temperature does not exceed 85° F.
- E. A physician shall maintain an ongoing dispensing log for all controlled substances and the prescription-only drug nalbuphine hydrochloride (Nubain) dispensed by the physician. The dispensing log shall include the following:
1. A separate inventory sheet for each controlled substance and prescription-only drug;
 2. The date the drug is dispensed;
 3. The patient's name;
 4. The dosage, controlled substance and prescription-only drug name, strength, dosage, form, and name of the manufacturer;
 5. The number of dosage units dispensed;
 6. A running total of each controlled substance and prescription-only drug dispensed; and
 7. The signature of the physician written next to each entry.
- F. A physician may use a computer to maintain the dispensing log required in subsection (E) if the log is quickly accessible through either on-screen viewing or printing of a copy.
- G. This Section does not apply to a prepackaged manufacturer sample of a controlled substance and prescription-only drug, unless otherwise provided by federal law.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 751, effective February 2, 2000 (Supp. 00-1). Former Section R4-16-302 recodified to R4-16-402; New Section R4-16-302 recodified from R4-16-202 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).

R4-16-303. Prescribing and Dispensing Requirements

- A. A physician shall record on the patient's medical record the name, strength, dosage, and form, of the controlled substance, prescription-only drug, or prescription-only device dispensed, the quantity or volume dispensed, the date the controlled substance, prescription-only drug, or prescription-only device is dispensed, the medical reasons for dispensing the controlled substance, prescription-only drug, or prescription-only device, and the number of refills authorized.
- B. Before dispensing a controlled substance, prescription-only drug, or prescription-only device to a patient, a 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. A physician shall purchase all dispensed controlled substances, prescription-only drugs, or prescription-only devices from a manufacturer or distributor approved by the United States Food and Drug Administration, or a pharmacy holding a current permit from the Arizona Board of Pharmacy.
- D. The person who prepares a controlled substance, prescription-only drug, or prescription-only device for dispensing shall countersign and date the original prescription form for the controlled substance, prescription-only drug, or prescription-only device.
- E. For purposes of this Article, "dispensing" means the delivery of a controlled substance, a prescription-only drug, or a prescription-only device to a patient for use outside the physician's office.

Arizona Medical Board

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 751, effective February 2, 2000 (Supp. 00-1). Amended by final rulemaking at 6 A.A.R. 4585, effective November 14, 2000 (Supp. 00-4). Former Section R4-16-303 recodified to R4-16-403; New Section R4-16-303 recodified from R4-16-203 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).

R4-16-304. Recordkeeping and Reporting Shortages

- A.** A physician who dispenses a controlled substance or prescription-only drug shall ensure that an original prescription dispensed from the physician's office is dated, consecutively numbered in the order in which it is originally dispensed, and filed separately from patient medical records. A physician shall ensure that an original prescription be maintained in three separate files, as follows:
1. Schedule II controlled substances;
 2. Schedule III, IV, and V controlled substances; and
 3. Prescription-only drugs.
- B.** A physician shall ensure that purchase orders and invoices are maintained for all controlled substances and prescription-only drugs dispensed for profit and not for profit for three years from the date of the purchase order or invoice. Purchase orders and invoices shall be maintained in three separate files as follows:
1. Schedule II controlled substances only;
 2. Schedule III, IV, and V controlled substances and nalbuphine; and
 3. All other prescription-only drugs.
- C.** A physician who discovers a theft or loss of a controlled substance or a dangerous drug, as defined in A.R.S. § 13-3401, from the physician's office shall:
1. Immediately notify the local law enforcement agency,
 2. Provide that agency with a written report, and
 3. Send a copy to the Drug Enforcement Administration and the Board within seven days of the discovery.
- D.** For purposes of this Section, controlled substances are identified, defined, or listed in A.R.S. Title 36, Chapter 27.

Historical Note

New Section recodified from R4-16-204 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).

R4-16-305. Inspections; Denial and Revocation

- A.** A physician shall cooperate with and allow access to the physician's office and records for periodic inspection of dispensing practices by the Board or its authorized representative. Failure to cooperate or allow access shall be grounds for revocation of a physician's registration to dispense a controlled substance, prescription-only drug, or prescription-only device or denial of renewal of the physician's dispensing registration.
- B.** Failure to comply with A.R.S. § 32-1491 or this Article constitutes grounds for denial or revocation of dispensing registration.
- C.** The Board shall revoke a physician's registration to dispense a controlled substance, prescription-only drug, or prescription-only device upon occurrence of the following:
1. Suspending, revoking, surrendering, or canceling the physician's license;
 2. Placing the physician's license on inactive status;
 3. Failing to timely renew the physician's license; or
 4. 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 physician's dispensing registration, the physician may appeal the decision by filing a request, in writing, with the Board, no later than 30 days after receipt of the notice denying the registration.

Historical Note

New Section recodified from R4-16-205 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).

ARTICLE 4. MEDICAL ASSISTANTS**R4-16-401. Medical Assistant Training Requirements**

- A.** A supervising physician or physician assistant shall ensure that a medical assistant satisfies one of the following training requirements before employing the medical assistant:
1. Completion of an approved medical assistant training program; or
 2. Completion of an unapproved medical assistant training program and passage of the medical assistant examination administered by either the American Association of Medical Assistants or the American Medical Technologists.
- B.** This Section does not apply to any person who:
1. Before February 2, 2000:
 - a. Completed an unapproved medical assistant training program and was employed as a medical assistant after program completion; or
 - b. Was directly supervised by the same physician, physician group, or physician assistant for a minimum of 2000 hours; or
 2. Completes a United States Armed Forces medical services training program.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 830, February 7, 2002 (Supp. 02-1). Former Section R4-16-401 recodified to R4-16-501; New Section R4-16-401 recodified from R4-16-301 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1). For-

Arizona Medical Board

mer Section R4-16-401 repealed; New Section R4-16-401 renumbered from R4-16-402 and amended by final rulemaking at 12 A.A.R. 823, effective February 23, 2006 (Supp. 06-1).

R4-16-402. Authorized Procedures for Medical Assistants

- A. A medical assistant may perform, under the direct supervision of a physician or a physician assistant, the medical procedures listed in the 2003 revised edition, Commission on Accreditation of Allied Health Education Program's, "Standards and Guidelines for an Accredited Educational Program for the Medical Assistant, Section (III)(C)(3)(a) through (III)(C)(3)(c)." This material is incorporated by reference, does not include any later amendments or editions of the incorporated matter, and may be obtained from the publisher at 35 East Wacker Drive, Suite 1970, Chicago, Illinois 60601, www.caahep.org, or the Arizona Medical Board at 9545 E. Doubletree Ranch Road, Scottsdale, AZ 85258, www.azmd.gov.
- B. In addition to the medical procedures in subsection (A), a medical assistant may administer the following under the direct supervision of a physician or physician assistant:
1. Whirlpool treatments,
 2. Diathermy treatments,
 3. Electronic galvation stimulation treatments,
 4. Ultrasound therapy,
 5. Massage therapy,
 6. Traction treatments,
 7. Transcutaneous Nerve Stimulation unit treatments,
 8. Hot and cold pack treatments, and
 9. Small volume nebulizer treatments.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 830, February 7, 2002 (Supp. 02-1). Amended by final rulemaking at 8 A.A.R. 4270, effective November 18, 2002 (Supp. 02-3). Former Section R4-16-402 recodified to R4-16-502; New Section R4-16-402 recodified from R4-16-302 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1). Former Section R4-16-402 renumbered to R4-16-401; New Section R4-16-402 renumbered from R4-16-403 and amended by final rulemaking at 12 A.A.R. 823, effective February 23, 2006 (Supp. 06-1).

R4-16-403. Renumbered

Historical Note

New Section made by final rulemaking at 8 A.A.R. 830, February 7, 2002 (Supp. 02-1). Amended by final rulemaking at 8 A.A.R. 4270, effective November 18, 2002 (Supp. 02-3). Former Section R4-16-403 recodified to R4-16-503; New Section R4-16-403 recodified from R4-16-303 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1). Former Section R4-16-403 renumbered to R4-16-402 by final rulemaking at 12 A.A.R. 823, effective February 23, 2006 (Supp. 06-1).

R4-16-404. Recodified

Historical Note

New Section made by final rulemaking at 8 A.A.R. 830, February 7, 2002 (Supp. 02-1). Section recodified to R4-16-504 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).

R4-16-405. Recodified

Historical Note

New Section made by final rulemaking at 8 A.A.R. 830, February 7, 2002 (Supp. 02-1). Section recodified to R4-16-505 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).

R4-16-406. Recodified

Historical Note

New Section made by final rulemaking at 8 A.A.R. 830, February 7, 2002 (Supp. 02-1). Section recodified to R4-16-506 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).

R4-16-407. Recodified

Historical Note

New Section made by final rulemaking at 8 A.A.R. 830, February 7, 2002 (Supp. 02-1). Section recodified to R4-16-507 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).

R4-16-408. Recodified

Historical Note

New Section made by final rulemaking at 8 A.A.R. 830, February 7, 2002 (Supp. 02-1). Section recodified to R4-16-508 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).

Arizona Medical Board

R4-16-409. Recodified

Historical Note

New Section made by final rulemaking at 8 A.A.R. 830, February 7, 2002 (Supp. 02-1). Amended by final rulemaking at 8 A.A.R. 4270, effective November 18, 2002 (Supp. 02-3). Section recodified to R4-16-509 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).

R4-16-410. Recodified

Historical Note

New Section made by final rulemaking at 8 A.A.R. 830, February 7, 2002 (Supp. 02-1). Amended by final rulemaking at 8 A.A.R. 4270, effective November 18, 2002 (Supp. 02-3). Section recodified to R4-16-510 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).

ARTICLE 5. EXECUTIVE DIRECTOR DUTIES

R4-16-501. Interim Evaluation and Investigational Interview

- A. The executive director may require a physician, who is under investigation by the Board, to submit to a mental, physical, oral, or written medical competency examination after the following:
1. Reviewing the allegations and investigator's summary of findings; and
 2. Consulting with and receiving the agreement of the Board's supervising medical consultant or designee that an examination is necessary.
- B. The executive director may request a physician to attend an investigational interview to answer questions regarding a complaint against the physician. Before issuing a request for an investigational interview, the executive director shall review the allegations and facts to determine whether an interview is necessary to provide information the Board needs to adjudicate the case. The executive director shall consult with and receive the agreement of either the investigation supervisor or supervising medical consultant that an investigational interview is necessary before requesting one.
- C. The executive director shall report to the Board at each regularly scheduled Board meeting, a summary of the number and type of evaluations ordered and completed since the preceding Board meeting.

Historical Note

New Section made by exempt rulemaking at 9 A.A.R. 2274, effective August 12, 2003 (Supp. 03-2). Former Section R4-16-501 recodified to R4-16-601; New Section R4-16-501 recodified from R4-16-401 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).

R4-16-502. Direct Referral to Formal Interview

The executive director shall refer a case to a formal interview on a future Board meeting agenda, if the medical consultant in cases involving quality of care, the investigative staff, and the lead Board member concur after review of the case that a formal interview is appropriate.

Historical Note

New Section made by exempt rulemaking at 9 A.A.R. 2274, effective August 12, 2003 (Supp. 03-2). Former Section R4-16-502 recodified to R4-16-602; New Section R4-16-502 recodified from R4-16-402 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).

Editor's Note: At the time of publication, A.R.S. § 32-1401(26) (referenced in R4-16-503) was A.R.S. § 32-1401(24). Laws 2003, Ch. 59, § 1, effective 90 days after the close of the First Regular Session of the Forty-sixth Legislature, will change the subparagraph citation to A.R.S. § 32-1401(26) (Supp. 03-2). This Section was subsequently recodified to a different Section in this Chapter. Refer to the historical notes for more information (05-1).

R4-16-503. Request for Inactive Status and License Cancellation

- A. If a physician requests inactive status or license cancellation and meets the requirements of A.R.S. §§ 32-1431 and 32-1433, and is not participating in the program defined under A.R.S. § 32-1452, the executive director shall grant the request.
- B. The executive director shall provide to the Board at each regularly scheduled Board meeting a list of the individuals granted inactive or cancelled license status since the preceding Board meeting.

Historical Note

New Section made by exempt rulemaking at 9 A.A.R. 2274, effective August 12, 2003 (Supp. 03-2). Former Section R4-16-503 recodified to R4-16-603; New Section R4-16-503 recodified from R4-16-403 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).

R4-16-504. Interim Consent Agreement

The executive director may enter into an interim consent agreement with a physician if there is evidence that a restriction is needed to mitigate imminent danger to the public health and safety and the investigative staff, the medical consultant, and the lead Board member concur after review of the case that a consent agreement is appropriate.

Historical Note

New Section made by exempt rulemaking at 9 A.A.R. 2274, effective August 12, 2003 (Supp. 03-2). Former Section R4-16-504 recodified to R4-16-605; New Section R4-16-504 recodified from R4-16-404 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).

Arizona Medical Board

R4-16-505. Mediated Case

- A. The executive director shall close a case resolved through mediation.
- B. The executive director shall provide to the Board at each regularly scheduled Board meeting a list of the physicians whose cases are resolved through mediation since the preceding Board meeting.

Historical Note

New Section made by exempt rulemaking at 9 A.A.R. 2274, effective August 12, 2003 (Supp. 03-2). Former Section R4-16-505 recodified to R4-16-606; New Section R4-16-505 recodified from R4-16-405 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).

R4-16-506. Referral to Formal Hearing

- A. The executive director may directly refer a case to a formal hearing if the investigative staff, the medical consultant, and the lead Board member concur after review of the physician's case that a formal hearing is appropriate.
- B. The executive director shall provide to the Board at each regularly scheduled Board meeting a list of the physicians whose cases were referred to formal hearing since the preceding Board meeting and whether the referral is for revocation, suspension or is a result of an out-of-state disciplinary action, or is due to complexity of the case.

Historical Note

New Section R4-16-506 recodified from R4-16-406 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).

R4-16-507. Dismissal of Complaint

- A. The executive director, with the concurrence of the investigative staff, shall dismiss a complaint if the review shows the complaint is without merit and dismissal is appropriate.
- B. The executive director shall provide to the Board at each regularly scheduled Board meeting a list of the physicians about whom complaints were dismissed since the preceding Board meeting.

Historical Note

New Section R4-16-507 recodified from R4-16-407 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).

R4-16-508. Denial of License

- A. The executive director shall deny a license to an applicant who does not meet statutory requirements for licensure if the executive director, in consultation with the investigative staff and the medical consultant concur after reviewing the application, that the applicant does not meet the statutory requirements.
- B. The executive director shall provide to the Board at each regularly scheduled Board meeting a list of the physicians whose applications were denied since the preceding Board meeting.

Historical Note

New Section R4-16-508 recodified from R4-16-408 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).

R4-16-509. Non-disciplinary Consent Agreement

The executive director may enter into a consent agreement under A.R.S. § 32-1451(F) with a physician to limit the physician's practice or rehabilitate the physician if there is evidence that a licensee is mentally or physically unable to safely engage in the practice of medicine and the investigative staff, the medical consultant, and the lead Board member concur after review of the case that a consent agreement is appropriate.

Historical Note

New Section R4-16-509 recodified from R4-16-409 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).

R4-16-510. Appealing Executive Director Actions

- A. Any person aggrieved by an action taken by the executive director may appeal that action to the Board. The aggrieved person shall file a written request to the Board:
 - 1. Thirty days after notification of the action, if personally served; or
 - 2. Thirty-five days after the date on the notification, if mailed.
- B. The aggrieved person shall provide, in the written request, evidence showing:
 - 1. An irregularity in the investigative process or the executive director's review deprived the party of a fair decision; or
 - 2. Misconduct by Board staff, a Board consultant, or the executive director that deprived the party of a fair decision; or
 - 3. Material evidence newly discovered that could have a bearing on the decision and that, with reasonable diligence, could not have been discovered and produced earlier.
- C. The fact that the aggrieved party does not agree with the final decision is not grounds for a review by the Board.
- D. If an aggrieved person fails to submit a written request within the time specified in subsection (A), the Board is relieved of the requirement to review actions taken by the executive director. The executive director may, however, evaluate newly provided information that is material or substantial in content to determine whether the Board should review the case.
- E. If a written request is submitted that meets the requirements of subsection (B):
 - 1. The Board shall consider the written request at its next regularly scheduled meeting.
 - 2. If the written request provides new material or substantial evidence that requires additional investigation, the investigation shall be conducted as expeditiously as possible and the case shall be forwarded to the Board at the first possible regularly scheduled meeting.

Arizona Medical Board
Historical Note

New Section R4-16-510 recodified from R4-16-410 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).

ARTICLE 6. DISCIPLINARY ACTIONS

R4-16-601. Expired

Historical Note

New Section R4-16-601 recodified from R4-16-501 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 2062, effective September 14, 2010 (Supp. 10-3).

R4-16-602. Expired

Historical Note

New Section R4-16-602 recodified from R4-16-502 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 2062, effective September 14, 2010 (Supp. 10-3).

Editor's Note: To conform with the renumbering in A.R.S., the Arizona Medical Board requested (under A.R.S. § 41-1011 et seq.) a subsection reference update in R4-16-603 [R05-85]. Please refer to the historical notes for more details (Supp. 05-1).

R4-16-603. Expired

Historical Note

New Section R4-16-603 recodified from R4-16-503 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1). A.R.S. § 32-1401(26) subsection corrected to A.R.S. § 32-1401(27) under a formal written request from the Board, March 22, 2005 (Supp. 05-1). Amended by final rulemaking at 14 A.A.R. 380, effective January 8, 2008 (Supp. 08-1). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 2062, effective September 14, 2010 (Supp. 10-3).

R4-16-604. Aggravating Factors Considered in Disciplinary Actions

When determining the degree of discipline, the Board may consider certain factors including, but not limited to, the following:

1. Prior disciplinary offenses;
2. Dishonest or selfish motive;
3. Pattern of misconduct; multiple offenses;
4. Bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the Board;
5. Submission of false evidence, false statements, or other deceptive practices during the investigative or disciplinary process;
6. Refusal to acknowledge wrongful nature of conduct; and
7. Vulnerability of the victim.

Historical Note

New Section R4-16-604 recodified from R4-16-504 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).

R4-16-605. Mitigating Factors Considered in Disciplinary Actions

When determining the degree of discipline, the Board may consider certain factors including, but not limited to, the following:

1. Absence of prior disciplinary record;
2. Absence of dishonest or selfish motive;
3. Timely good faith effort to rectify consequences of misconduct;
4. Interim rehabilitation;
5. Remoteness of prior offenses; and
6. How much control the physician has of processes in the specific practice setting.

Historical Note

New Section R4-16-605 recodified from R4-16-504 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).

ARTICLE 7. OFFICE-BASED SURGERY USING SEDATION

R4-16-701. Health Care Institution License

A physician who uses general anesthesia in the physician's office or other outpatient setting that is not part of a licensed hospital or licensed ambulatory surgical center when performing office-based surgery using sedation 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 14 A.A.R. 380, effective January 8, 2008 (Supp. 08-1).

R4-16-702. Administrative Provisions

A. A physician who performs office-based surgery using sedation in the physician's office or other outpatient setting that is not part of a licensed hospital or licensed ambulatory surgical center shall:

1. Establish, document, and implement written policies and procedures that cover:
 - a. Patient's rights,
 - b. Informed consent,
 - c. Care of patients in an emergency, and

Arizona Medical Board

- d. The transfer of patients;
 2. Ensure that a staff member who assists with or a healthcare professional who participates in office-based surgery using sedation:
 - a. Has sufficient education, training, and experience to perform duties assigned;
 - b. If applicable, has a current license or certification to perform duties assigned; 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 where the office-based surgery using sedation is performed has all equipment necessary:
 - a. For the physician to safely perform the office-based surgery using sedation,
 - b. For the physician or health care professional to safely administer the sedation,
 - c. For the physician or health care professional to monitor the use of sedation, and
 - d. For the physician and health care professional administering the sedation to rescue a patient after the sedation is administered to the patient and the patient enters into a deeper state of sedation than what was intended by the physician.
 4. Ensure that a copy of the patient's rights policy is provided to each patient before performing office-based surgery using sedation;
 5. Obtain informed consent from the patient before performing an office-based surgery using sedation that:
 - a. Authorizes the office-based surgery, and
 - b. Authorizes the office-based surgery to be performed in the physician's office; and
 6. Review all policies and procedures every 12 months and update as needed.
- B.** A physician who performs office-based surgery using sedation shall comply with:
1. The local jurisdiction's fire code;
 2. The local jurisdiction's building codes for construction and occupancy;
 3. The biohazardous waste and hazardous waste standards in 18 A.A.C. 13, Article 14; and
 4. The controlled drug administration, supply, and storage standards in 4 A.A.C. 23.

Historical Note

New Section made by final rulemaking at 14 A.A.R. 380, effective January 8, 2008 (Supp. 08-1).

R4-16-703. Procedure and Patient Selection

- A.** A physician shall ensure that each office-based surgery using sedation performed:
1. Can be safely performed 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.** A physician shall not perform office-based surgery using sedation 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 14 A.A.R. 380, effective January 8, 2008 (Supp. 08-1).

R4-16-704. Sedation Monitoring Standards

A physician who performs office-based surgery using sedation shall ensure from the time sedation is administered until post-sedation monitoring begins:

1. A quantitative method of assessing a patient's oxygenation, such as pulse oximetry, is used when minimal sedation is administered to the patient, and
2. When moderate or deep sedation is administered to a patient:
 - a. A quantitative method of assessing the patient's oxygenation, such as pulse oximetry, is used;
 - b. The patient's ventilatory function is monitored by any of the following:
 - i. Direct observation,
 - ii. Auscultation, or
 - iii. Capnography;
 - c. The patient's circulatory function is monitored during the surgery by:
 - i. Having a continuously displayed electrocardiogram,
 - ii. Documenting arterial blood pressure and heart rate at least every five minutes, and
 - iii. Evaluating the patient's cardiovascular function by pulse plethysmography,
 - d. The patient's temperature is monitored if the physician expects the patient's temperature to fluctuate; and
 - e. That a licensed and qualified healthcare professional, other than the physician performing the office-based surgery, whose sole responsibility is attending to the patient, is present throughout the office-based surgery.

Historical Note

New Section made by final rulemaking at 14 A.A.R. 380, effective January 8, 2008 (Supp. 08-1).

R4-16-705. Perioperative Period; Patient Discharge

A physician performing office-based surgery using sedation shall ensure all of the following:

Arizona Medical Board

1. During office-based surgery using sedation, the physician is physically present in the room where office-based surgery is performed;
2. After the office-based surgery using sedation is performed, a physician is at the physician's office and sufficiently free of other duties to respond to an emergency until the patient's post-sedation monitoring is discontinued;
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 deep or moderate 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 time and date of the patient's discharge, and
 - b. A description of the patient's medical condition at the time of discharge; and
6. A patient receives discharge instructions and documents in the patient's medical record that the patient received the discharge instructions.

Historical Note

New Section made by final rulemaking at 14 A.A.R. 380, effective January 8, 2008 (Supp. 08-1).

R4-16-706. Emergency Drugs; Equipment and Space Used for Office-Based Surgery Using Sedation

- A.** In addition to the requirements in R4-16-702(A)(3) and R4-16-703(A)(1), a physician who performs office-based surgery using sedation 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 R4-16-704;
 3. Space large enough to:
 - a. Allow for access to the patient during office-based surgery using sedation, recovery, and any emergency;
 - b. Accommodate all equipment necessary to perform the office-based surgery using sedation; and
 - c. Accommodate all equipment necessary for sedation monitoring;
 4. A source of auxiliary electrical power available in the event of a power failure; and
 5. Equipment, emergency drugs, and resuscitative capabilities required under this Section for patients less than 18 years of age, if office-based surgery using sedation is performed on these patients; and
 6. Procedures to minimize the spread of infection.
- B.** A physician who performs office-based surgery using sedation shall:
1. Ensure that all equipment used for office-based surgery using sedation 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 using sedation.

Historical Note

New Section made by final rulemaking at 14 A.A.R. 380, effective January 8, 2008 (Supp. 08-1).

R4-16-707. Emergency and Transfer Provisions

- A.** A physician who performs office-based surgery using sedation shall ensure that before a health care professional participates in or staff member assists with office-based surgery using sedation, the health care professional and staff member receive 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 using sedation, a physician shall not use any drug or agent that trigger malignant hyperthermia.

Historical Note

New Section made by final rulemaking at 14 A.A.R. 380, effective January 8, 2008 (Supp. 08-1).

32-1401. Definitions

In this chapter, unless the context otherwise requires:

1. "Active license" means a valid and existing license to practice medicine.
2. "Adequate records" means legible medical records, produced by hand or electronically, containing, at a minimum, sufficient information to identify the patient, support the diagnosis, justify the treatment, accurately document the results, indicate advice and cautionary warnings provided to the patient and provide sufficient information for another practitioner to assume continuity of the patient's care at any point in the course of treatment.
3. "Advisory letter" means a nondisciplinary letter to notify a licensee that either:
 - (a) While there is insufficient evidence to support disciplinary action, the board believes that continuation of the activities that led to the investigation may result in further board action against the licensee.
 - (b) The violation is a minor or technical violation that is not of sufficient merit to warrant disciplinary action.
 - (c) While the licensee has demonstrated substantial compliance through rehabilitation or remediation that has mitigated the need for disciplinary action, the board believes that repetition of the activities that led to the investigation may result in further board action against the licensee.
4. "Approved hospital internship, residency or clinical fellowship program" means a program at a hospital that at the time the training occurred was legally incorporated and that had a program that was approved for internship, fellowship or residency training by the accreditation council for graduate medical education, the association of American medical colleges, the royal college of physicians and surgeons of Canada or any similar body in the United States or Canada approved by the board whose function is that of approving hospitals for internship, fellowship or residency training.
5. "Approved school of medicine" means any school or college offering a course of study that, on successful completion, results in the degree of doctor of medicine and whose course of study has been approved or accredited by an educational or professional association, recognized by the board, including the association of American medical colleges, the association of Canadian medical colleges or the American medical association.
6. "Board" means the Arizona medical board.
7. "Completed application" means that the applicant has supplied all required fees, information and correspondence requested by the board on forms and in a manner acceptable to the board.

8. "Direct supervision" means that a physician, physician assistant licensed pursuant to chapter 25 of this title or nurse practitioner certified pursuant to chapter 15 of this title is within the same room or office suite as the medical assistant in order to be available for consultation regarding those tasks the medical assistant performs pursuant to section 32-1456.

9. "Dispense" means the delivery by a doctor of medicine of a prescription drug or device to a patient, except for samples packaged for individual use by licensed manufacturers or repackagers of drugs, and includes the prescribing, administering, packaging, labeling and security necessary to prepare and safeguard the drug or device for delivery.

10. "Doctor of medicine" means a natural person holding a license, registration or permit to practice medicine pursuant to this chapter.

11. "Full-time faculty member" means a physician who is employed full time as a faculty member while holding the academic position of assistant professor or a higher position at an approved school of medicine.

12. "Health care institution" means any facility as defined in section 36-401, any person authorized to transact disability insurance, as defined in title 20, chapter 6, article 4 or 5, any person who is issued a certificate of authority pursuant to title 20, chapter 4, article 9 or any other partnership, association or corporation that provides health care to consumers.

13. "Immediate family" means the spouse, natural or adopted children, father, mother, brothers and sisters of the doctor and the natural or adopted children, father, mother, brothers and sisters of the doctor's spouse.

14. "Letter of reprimand" means a disciplinary letter that is issued by the board and that informs the physician that the physician's conduct violates state or federal law and may require the board to monitor the physician.

15. "Limit" means taking a nondisciplinary action that alters the physician's practice or professional activities if the board determines that there is evidence that the physician is or may be mentally or physically unable to safely engage in the practice of medicine.

16. "Medical assistant" means an unlicensed person who meets the requirements of section 32-1456, has completed an education program approved by the board, assists in a medical practice under the supervision of a doctor of medicine, physician assistant or nurse practitioner and performs delegated procedures commensurate with the assistant's education and training but does not diagnose, interpret, design or modify established treatment programs or perform any functions that would violate any statute applicable to the practice of medicine.

17. "Medical peer review" means:

(a) The participation by a doctor of medicine in the review and evaluation of the medical management of a patient and the use of resources for patient care.

(b) Activities relating to a health care institution's decision to grant or continue privileges to practice at that institution.

18. "Medically incompetent" means a person who the board determines is incompetent based on a variety of factors, including:

(a) A lack of sufficient medical knowledge or skills, or both, to a degree likely to endanger the health of patients.

(b) When considered with other indications of medical incompetence, failing to obtain a scaled score of at least seventy-five percent on the written special purpose licensing examination.

19. "Medicine" means allopathic medicine as practiced by the recipient of a degree of doctor of medicine.

20. "Office based surgery" means a medical procedure conducted in a physician's office or other outpatient setting that is not part of a licensed hospital or licensed ambulatory surgical center.

21. "Physician" means a doctor of medicine who is licensed pursuant to this chapter.

22. "Practice of medicine" means the diagnosis, the treatment or the correction of or the attempt or the claim to be able to diagnose, treat or correct any and all human diseases, injuries, ailments, infirmities or deformities, physical or mental, real or imaginary, by any means, methods, devices or instrumentalities, except as the same may be among the acts or persons not affected by this chapter. The practice of medicine includes the practice of medicine alone or the practice of surgery alone, or both.

23. "Restrict" means taking a disciplinary action that alters the physician's practice or professional activities if the board determines that there is evidence that the physician is or may be medically incompetent or guilty of unprofessional conduct.

24. "Special purpose licensing examination" means an examination that is developed by the national board of medical examiners on behalf of the federation of state medical boards for use by state licensing boards to test the basic medical competence of physicians who are applying for licensure and who have been in practice for a considerable period of time in another jurisdiction and to determine the competence of a physician who is under investigation by a state licensing board.

25. "Teaching hospital's accredited graduate medical education program" means that the hospital is incorporated and has an internship, fellowship or residency training program that is accredited by the accreditation council for graduate medical education, the American medical association, the association of American medical colleges, the royal college of physicians and surgeons of Canada or a similar body in the United States or Canada that is approved by the board and whose function is that of approving hospitals for internship, fellowship or residency training.

26. "Teaching license" means a valid license to practice medicine as a full-time faculty member of an approved school of medicine or a teaching hospital's accredited graduate medical education program.

27. "Unprofessional conduct" includes the following, whether occurring in this state or elsewhere:

(a) Violating any federal or state laws, rules or regulations applicable to the practice of medicine.

(b) Intentionally disclosing a professional secret or intentionally disclosing a privileged communication except as either act may otherwise be required by law.

(c) False, fraudulent, deceptive or misleading advertising by a doctor of medicine or the doctor's staff, employer or representative.

(d) Committing a felony, whether or not involving moral turpitude, or a misdemeanor involving moral turpitude. In either case, conviction by any court of competent jurisdiction or a plea of no contest is conclusive evidence of the commission.

(e) Failing or refusing to maintain adequate records on a patient.

(f) A pattern of using or being under the influence of alcohol or drugs or a similar substance while practicing medicine or to the extent that judgment may be impaired and the practice of medicine detrimentally affected.

(g) Using controlled substances except if prescribed by another physician for use during a prescribed course of treatment.

(h) Prescribing or dispensing controlled substances to members of the physician's immediate family.

(i) Prescribing, dispensing or administering schedule II controlled substances as defined in section 36-2513 including amphetamines and similar schedule II sympathomimetic drugs in the treatment of exogenous obesity for a period in excess of thirty days in any one year, or the nontherapeutic use of injectable amphetamines.

(j) Prescribing, dispensing or administering any controlled substance or prescription-only drug for other than accepted therapeutic purposes.

(k) Signing a blank, undated or predated prescription form.

(l) Conduct that the board determines is gross malpractice, repeated malpractice or any malpractice resulting in the death of a patient.

(m) Representing that a manifestly incurable disease or infirmity can be permanently cured, or that any disease, ailment or infirmity can be cured by a secret method, procedure, treatment, medicine or device, if this is not true.

(n) Refusing to divulge to the board on demand the means, method, procedure, modality of treatment or medicine used in the treatment of a disease, injury, ailment or infirmity.

(o) Action that is taken against a doctor of medicine by another licensing or regulatory jurisdiction due to that doctor's mental or physical inability to engage safely in the practice of medicine or the doctor's medical incompetence or for unprofessional conduct as defined by that jurisdiction and that corresponds directly or indirectly to an act of unprofessional conduct prescribed by this paragraph. The action taken may include refusing, denying, revoking or suspending a license by that jurisdiction or a surrendering of a license to that jurisdiction, otherwise limiting, restricting or monitoring a licensee by that jurisdiction or placing a licensee on probation by that jurisdiction.

(p) Sanctions imposed by an agency of the federal government, including restricting, suspending, limiting or removing a person from the practice of medicine or restricting that person's ability to obtain financial remuneration.

(q) Any conduct or practice that is or might be harmful or dangerous to the health of the patient or the public.

(r) Violating a formal order, probation, consent agreement or stipulation issued or entered into by the board or its executive director under this chapter.

(s) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any provision of this chapter.

(t) Knowingly making any false or fraudulent statement, written or oral, in connection with the practice of medicine or if applying for privileges or renewing an application for privileges at a health care institution.

(u) Charging a fee for services not rendered or dividing a professional fee for patient referrals among health care providers or health care institutions or between these providers and institutions or a contractual arrangement that has the same effect. This subdivision does not apply to payments from a medical researcher to a physician in connection with identifying and monitoring patients for a clinical trial regulated by the United States food and drug administration.

(v) Obtaining a fee by fraud, deceit or misrepresentation.

(w) Charging or collecting a clearly excessive fee. In determining whether a fee is clearly excessive, the board shall consider the fee or range of fees customarily charged in this state for similar services in light of modifying factors such as the time required, the complexity of the service and the skill requisite to perform the service properly. This subdivision does not apply if

there is a clear written contract for a fixed fee between the physician and the patient that has been entered into before the provision of the service.

(x) Conduct that is in violation of section 36-2302.

(y) The use of experimental forms of diagnosis and treatment without adequate informed patient consent, and without conforming to generally accepted experimental criteria, including protocols, detailed records, periodic analysis of results and periodic review by a medical peer review committee as approved by the United States food and drug administration or its successor agency.

(z) Engaging in sexual conduct with a current patient or with a former patient within six months after the last medical consultation unless the patient was the licensee's spouse at the time of the contact or, immediately preceding the physician-patient relationship, was in a dating or engagement relationship with the licensee. For the purposes of this subdivision, "sexual conduct" includes:

(i) Engaging in or soliciting sexual relationships, whether consensual or nonconsensual.

(ii) Making sexual advances, requesting sexual favors or engaging in any other verbal conduct or physical contact of a sexual nature.

(iii) Intentionally viewing a completely or partially disrobed patient in the course of treatment if the viewing is not related to patient diagnosis or treatment under current practice standards.

(aa) Procuring or attempting to procure a license to practice medicine or a license renewal by fraud, by misrepresentation or by knowingly taking advantage of the mistake of another person or an agency.

(bb) Representing or claiming to be a medical specialist if this is not true.

(cc) Maintaining a professional connection with or lending one's name to enhance or continue the activities of an illegal practitioner of medicine.

(dd) Failing to furnish information in a timely manner to the board or the board's investigators or representatives if legally requested by the board.

(ee) Failing to allow properly authorized board personnel on demand to examine and have access to documents, reports and records maintained by the physician that relate to the physician's medical practice or medically related activities.

(ff) Knowingly failing to disclose to a patient on a form that is prescribed by the board and that is dated and signed by the patient or guardian acknowledging that the patient or guardian has read and understands that the doctor has a direct financial interest in a separate diagnostic or treatment agency or in nonroutine goods or services that the patient is being prescribed if the prescribed treatment, goods or services are available on a competitive basis. This subdivision does not

apply to a referral by one doctor of medicine to another doctor of medicine within a group of doctors of medicine practicing together.

(gg) Using chelation therapy in the treatment of arteriosclerosis or as any other form of therapy, with the exception of treatment of heavy metal poisoning, without:

(i) Adequate informed patient consent.

(ii) Conforming to generally accepted experimental criteria, including protocols, detailed records, periodic analysis of results and periodic review by a medical peer review committee.

(iii) Approval by the United States food and drug administration or its successor agency.

(hh) Prescribing, dispensing or administering anabolic-androgenic steroids to a person for other than therapeutic purposes.

(ii) Lack of or inappropriate direction, collaboration or direct supervision of a medical assistant or a licensed, certified or registered health care provider employed by, supervised by or assigned to the physician.

(jj) Knowingly making a false or misleading statement to the board or on a form required by the board or in a written correspondence, including attachments, with the board.

(kk) Failing to dispense drugs and devices in compliance with article 6 of this chapter.

(ll) Conduct that the board determines is gross negligence, repeated negligence or negligence resulting in harm to or the death of a patient.

(mm) The representation by a doctor of medicine or the doctor's staff, employer or representative that the doctor is boarded or board certified if this is not true or the standing is not current or without supplying the full name of the specific agency, organization or entity granting this standing.

(nn) Refusing to submit to a body fluid examination or any other examination known to detect the presence of alcohol or other drugs as required by the board pursuant to section 32-1452 or pursuant to a board investigation into a doctor of medicine's alleged substance abuse.

(oo) Failing to report in writing to the Arizona medical board or the Arizona regulatory board of physician assistants any evidence that a doctor of medicine or a physician assistant is or may be medically incompetent, guilty of unprofessional conduct or mentally or physically unable to safely practice medicine or to perform as a physician assistant.

(pp) The failure of a physician who is the chief executive officer, the medical director or the medical chief of staff of a health care institution to report in writing to the board that the hospital privileges of a doctor of medicine have been denied, revoked, suspended, supervised or limited because of actions by the doctor that appear to show that the doctor is or may be medically

incompetent, is or may be guilty of unprofessional conduct or is or may be unable to engage safely in the practice of medicine.

(qq) Claiming to be a current member of the board or its staff or a board medical consultant if this is not true.

(rr) Failing to make patient medical records in the physician's possession promptly available to a physician assistant, a nurse practitioner, a person licensed pursuant to this chapter or a podiatrist, chiropractor, naturopathic physician, osteopathic physician or homeopathic physician licensed under chapter 7, 8, 14, 17 or 29 of this title on receipt of proper authorization to do so from the patient, a minor patient's parent, the patient's legal guardian or the patient's authorized representative or failing to comply with title 12, chapter 13, article 7.1.

(ss) Prescribing, dispensing or furnishing a prescription medication or a prescription-only device as defined in section 32-1901 to a person unless the licensee first conducts a physical or mental health status examination of that person or has previously established a doctor-patient relationship. The physical or mental health status examination may be conducted during a real-time telemedicine encounter with audio and video capability, unless the examination is for the purpose of obtaining a written certification from the physician for the purposes of title 36, chapter 28.1. This subdivision does not apply to:

(i) A physician who provides temporary patient supervision on behalf of the patient's regular treating licensed health care professional or provides a consultation requested by the patient's regular treating licensed health care professional.

(ii) Emergency medical situations as defined in section 41-1831.

(iii) Prescriptions written to prepare a patient for a medical examination.

(iv) Prescriptions written or prescription medications issued for use by a county or tribal public health department for immunization programs or emergency treatment or in response to an infectious disease investigation, public health emergency, infectious disease outbreak or act of bioterrorism. For the purposes of this item, "bioterrorism" has the same meaning prescribed in section 36-781.

(v) Prescriptions written or antimicrobials dispensed to a contact as defined in section 36-661 who is believed to have had significant exposure risk as defined in section 36-661 with another person who has been diagnosed with a communicable disease as defined in section 36-661 by the prescribing or dispensing physician.

(vi) Prescriptions written or prescription medications issued for administration of immunizations or vaccines listed in the United States centers for disease control and prevention's recommended immunization schedule to a household member of a patient.

(vii) Prescriptions for epinephrine auto-injectors written or dispensed for a school district or charter school to be stocked for emergency use pursuant to section 15-157 or for an authorized entity to be stocked pursuant to section 36-2226.01.

(viii) Prescriptions written by a licensee through a telemedicine program that is covered by the policies and procedures adopted by the administrator of a hospital or outpatient treatment center.

(ix) Prescriptions for naloxone hydrochloride or any other opioid antagonist approved by the United States food and drug administration that are written or dispensed for use pursuant to section 36-2228 or 36-2266.

(tt) Performing office based surgery using sedation in violation of board rules.

(uu) Practicing medicine under a false or assumed name in this state.

32-1402. Board; appointment; qualifications; term; removal; compensation; immunity; report

A. The Arizona medical board is established. The board consists of twelve members, four of whom shall represent the public and eight of whom shall be actively practicing medicine. One of the four public members shall be a licensed practical nurse or a professional nurse, as defined in chapter 15 of this title, with at least five years' experience. The eight physicians must be from at least three different counties of the state. Not more than five of the board members may be from any one county. Members of the board are appointed by the governor. All appointments shall be made promptly. The governor shall make all appointments pursuant to section 38-211.

B. Each doctor of medicine who is appointed to the board shall have been a resident of this state and actively engaged in the practice of medicine as a licensed physician in this state for at least the five years before appointment.

C. The term of office of a member of the board is five years, commencing on July 1 and terminating on July 1 of the fifth year. Each member is eligible for reappointment for not more than one additional term. However, the term of office for a member of the board appointed to fill a vacancy occasioned other than by expiration of a full term is for the unexpired portion of that term. Each member may be appointed only once to fill a vacancy caused other than by expiration of a term. The governor may reappoint that member to not more than two additional full terms. Each member of the board shall continue to hold office until the appointment and qualification of that member's successor, subject to the following exceptions:

1. A member of the board, after notice and a hearing before the governor, may be removed on a finding by the governor of continued neglect of duty, incompetence, or unprofessional or dishonorable conduct, in which event that member's term shall end when the governor makes this finding.

2. The term of any member automatically ends:

(a) On death.

(b) On written resignation submitted to the board chairman or to the governor.

(c) On absence from the state for a period of more than six months.

(d) For failure to attend three consecutive meetings of the board.

(e) Five years after retirement from the active practice of medicine.

D. The board shall annually elect, from among its membership, a chairman, a vice-chairman and a secretary, who shall hold their respective offices at the pleasure of the board.

E. Board members are eligible to receive compensation in the amount of up to two hundred fifty dollars per day for each day of actual service in the business of the board, including time spent in preparation for and attendance at board meetings, and all expenses necessarily and properly incurred in attending meetings of the board.

F. Members of the board are personally immune from suit with respect to all acts done and actions taken in good faith and in furtherance of the purposes of this chapter.

G. The board shall submit a written report to the governor, the Arizona regulatory board of physician assistants and the members of the health and human services committee of the senate and the health committee of the house of representatives, or their successor committees, no later than August 31 of each year on the board's licensing and disciplinary activities for the previous fiscal year. The report must include both of the following:

1. Information regarding staff turnover that indicates whether the person was temporary, part-time or full-time and in which department or division the person worked.

2. The number of investigators who have been hired and how many of them have completed the investigator training program required by section 32-1405.

H. Public members appointed to the board may submit a separate written report to the governor by August 31 of each year setting forth their comments relative to the board's licensing and disciplinary activities for the previous fiscal year.

32-1403. Powers and duties of the board; compensation; immunity; committee on executive director selection and retention

A. The primary duty of the board is to protect the public from unlawful, incompetent, unqualified, impaired or unprofessional practitioners of allopathic medicine through licensure, regulation and rehabilitation of the profession in this state. The powers and duties of the board include:

1. Ordering and evaluating physical, psychological, psychiatric and competency testing of licensed physicians and candidates for licensure as may be determined necessary by the board.

2. Initiating investigations and determining on its own motion if a doctor of medicine has engaged in unprofessional conduct or provided incompetent medical care or is mentally or physically unable to engage in the practice of medicine.
 3. Developing and recommending standards governing the profession.
 4. Reviewing the credentials and the abilities of applicants whose professional records or physical or mental capabilities may not meet the requirements for licensure or registration as prescribed in article 2 of this chapter in order for the board to make a final determination as to whether the applicant meets the requirements for licensure pursuant to this chapter.
 5. Disciplining and rehabilitating physicians.
 6. Engaging in a full exchange of information with the licensing and disciplinary boards and medical associations of other states and jurisdictions of the United States and foreign countries and the Arizona medical association and its components.
 7. Directing the preparation and circulation of educational material the board determines is helpful and proper for licensees.
 8. Adopting rules regarding the regulation and the qualifications of doctors of medicine.
 9. Establishing fees and penalties as provided pursuant to section 32-1436.
 10. Delegating to the executive director the board's authority pursuant to section 32-1405 or 32-1451. The board shall adopt substantive policy statements pursuant to section 41-1091 for each specific licensing and regulatory authority the board delegates to the executive director.
- B. The board may appoint one of its members to the jurisdiction arbitration panel pursuant to section 32-2907, subsection B.
- C. There shall be no monetary liability on the part of and no cause of action shall arise against the executive director or such other permanent or temporary personnel or professional medical investigators for any act done or proceeding undertaken or performed in good faith and in furtherance of the purposes of this chapter.
- D. In conducting its investigations pursuant to subsection A, paragraph 2 of this section, the board may receive and review staff reports relating to complaints and malpractice claims.
- E. The board shall establish a program that is reasonable and necessary to educate doctors of medicine regarding the uses and advantages of autologous blood transfusions.
- F. The board may make statistical information on doctors of medicine and applicants for licensure under this article available to academic and research organizations.

G. The committee on executive director selection and retention is established consisting of the Arizona medical board and the chairperson and vice-chairperson of the Arizona regulatory board of physician assistants. The committee is a public body and is subject to the requirements of title 38, chapter 3, article 3.1. The committee is responsible for the appointment of the executive director pursuant to section 32-1405. All members of the committee are voting members of the committee. The committee shall elect a chairperson and a vice-chairperson when the committee meets but no more frequently than once a year. The chairperson shall call meetings of the committee as necessary, and the vice-chairperson may call meetings of the committee that are necessary if the chairperson is not available. The presence of eight members of the committee at a meeting constitutes a quorum. The committee meetings may be held using communications equipment that allows all members who are participating in the meeting to hear each other. If any discussions occur in an executive session of the committee, notwithstanding the requirement that discussions made at an executive session be kept confidential as specified in section 38-431.03, the chairperson and vice-chairperson of the Arizona regulatory board of physician assistants may discuss this information with the Arizona regulatory board of physician assistants in executive session. This disclosure of executive session information to the Arizona regulatory board of physician assistants does not constitute a waiver of confidentiality or any privilege, including the attorney-client privilege.

H. The officers of the Arizona medical board and the Arizona regulatory board of physician assistants shall meet twice a year to discuss matters of mutual concern and interest.

I. The board may accept and expend grants, gifts, devises and other contributions from any public or private source, including the federal government. Monies received under this subsection do not revert to the state general fund at the end of a fiscal year.

[32-1403.01. Licensees; profiles; required information; updates; civil penalty](#)

A. The board shall make available to the public a profile of each licensee. The board shall make this information available through an internet website and, if requested, in writing. The profile available to the public may not contain any information received from the federal bureau of investigation relating to a federal criminal records check. The profile shall contain the following information:

1. A description of any conviction of a felony. For purposes of this paragraph, a licensee is deemed to be convicted if the licensee pled guilty, pled no contest or was found guilty by a court of competent jurisdiction.
2. A description of any conviction of a misdemeanor involving moral turpitude that results in disciplinary action. For purposes of this paragraph, a licensee is deemed to be convicted if the licensee pled guilty, pled no contest or was found guilty by a court of competent jurisdiction.
3. All final board disciplinary actions.
4. Any medical malpractice court judgments and any medical malpractice awards or settlements in which a payment is made to a complaining party that results in disciplinary action.

5. The name and location of the licensee's medical school and the date of graduation.
6. The name and location of the institution from which the licensee received graduate medical education and the date that education was completed.
7. The licensee's primary practice location.

B. Each licensee shall submit the information required pursuant to subsection A of this section each year as directed by the board. An applicant for licensure shall submit this information at the time of application. The applicant and licensee shall submit the information on a form prescribed by the board. A licensee shall submit immediately any changes in information required pursuant to subsection A, paragraphs 1, 2 and 4 of this section. The board shall update immediately its internet website to reflect changes in information relating to subsection A, paragraphs 1 through 4 of this section. The board shall update the internet website information at least annually.

C. The board shall provide each licensee with the licensee's profile on request and shall make valid and verifiable corrections to the profile on notification at any time by the licensee. A change made by a licensee to an address or telephone number is subject to the requirements of section 32-1435.

D. It is an act of unprofessional conduct for a licensee to provide erroneous information pursuant to this section. In addition to other disciplinary action, the board may impose a civil penalty of not more than one thousand dollars for each erroneous statement.

E. If the board issues a nondisciplinary order or action against a licensee, the record of the nondisciplinary order or action is available to the public but may not appear on the board's website, except that a practice limitation or restriction, and documentation relating to that action, may appear on the board's website. On request, the board shall send within five business days, either electronically or by mail, information relating to any nondisciplinary order or action against a licensee to a person requesting the information.

32-1404. [Meetings; quorum; committees; rules; posting](#)

A. The board shall hold regular quarterly meetings on a date and at the time and place designated by the chairman. The board shall hold special meetings, including meetings using communications equipment that allows all members participating in the meeting to hear each other, as the chairman determines are necessary to carry out the functions of the board. The board shall hold special meetings on any day that the chairman determines are necessary to carry out the functions of the board. The vice-chairman may call meetings and special meetings if the chairman is not available.

B. The presence of seven board members at a meeting constitutes a quorum. A majority vote of the quorum is necessary for the board to take any action.

C. The chairman may establish committees from the membership of the board and define committee duties necessary to carry out the functions of the board.

D. The board may adopt rules pursuant to title 41, chapter 6 that are necessary and proper to carry out the purposes of this chapter.

E. Meetings held pursuant to subsection A of this section shall be audio and video recorded. Beginning September 2, 2014, the board shall post the video recording on the board's website within five business days after the meeting.

32-1405. Executive director; compensation; duties; appeal to the board

A. Subject to title 41, chapter 4, article 4, the committee on executive director selection and retention established by section 32-1403 shall appoint an executive director of the board who shall serve at the pleasure of the committee. The executive director shall not be a board member, except that the board may authorize the executive director to represent the board and to vote on behalf of the board at meetings of the federation of state medical boards of the United States.

B. The executive director is eligible to receive compensation set by the board within the range determined under section 38-611.

C. The executive director or the executive director's designee shall:

1. Subject to title 41, chapter 4, article 4 and, as applicable, articles 5 and 6, employ, evaluate, dismiss, discipline and direct professional, clerical, technical, investigative and administrative personnel necessary to carry on the work of the board. An investigator shall complete a nationally recognized investigator training program within one year of date of hire. Until an investigator completes a training program, the investigator shall work under the supervision of an investigator who has completed a training program.
2. Set compensation for board employees within the range determined under section 38-611.
3. As directed by the board, prepare and submit recommendations for amendments to the medical practice act for consideration by the legislature.
4. Subject to title 41, chapter 4, article 4, employ medical consultants and agents necessary to conduct investigations, gather information and perform those duties the executive director determines are necessary and appropriate to enforce this chapter.
5. Issue licenses, registrations and permits to applicants who meet the requirements of this chapter.
6. Manage the board's offices.
7. Prepare minutes, records, reports, registries, directories, books and newsletters and record all board transactions and orders.
8. Collect all monies due and payable to the board.

9. Pay all bills for authorized expenditures of the board and its staff.
10. Prepare an annual budget.
11. Submit a copy of the budget each year to the governor, the speaker of the house of representatives and the president of the senate.
12. Initiate an investigation if evidence appears to demonstrate that a physician may be engaged in unprofessional conduct or may be medically incompetent or mentally or physically unable to safely practice medicine.
13. Issue subpoenas if necessary to compel the attendance and testimony of witnesses and the production of books, records, documents and other evidence.
14. Provide assistance to the attorney general in preparing and sign and execute disciplinary orders, rehabilitative orders and notices of hearings as directed by the board.
15. Enter into contracts for goods and services pursuant to title 41, chapter 23 that are necessary to carry out board policies and directives.
16. Execute board directives.
17. Manage and supervise the operation of the Arizona regulatory board of physician assistants.
18. Issue licenses to physician assistant applicants who meet the requirements of chapter 25 of this title.
19. Represent the board with the federal government, other states or jurisdictions of the United States, this state, political subdivisions of this state, the news media and the public.
20. On behalf of the Arizona medical board, enter into stipulated agreements with persons under the jurisdiction of either the Arizona medical board or the Arizona regulatory board of physician assistants for the treatment, rehabilitation and monitoring of chemical substance abuse or misuse.
21. Review all complaints filed pursuant to section 32-1451. The executive director shall submit all medical complaints alleging harm as a result of patient care to a medical consultant for review. The executive director shall submit to the medical consultant only those medical complaints that involve a standard of care issue and that require medical training and expertise to determine whether a violation has occurred. If delegated by the board, the executive director may also dismiss a complaint if the complaint is without merit. The executive director shall not dismiss a complaint if a court has entered a medical malpractice judgment against a physician. The executive director shall submit a report of the cases dismissed with the complaint number, the name of the physician and the investigation timeline to the board for review at its regular board meetings.
22. If delegated by the board, directly refer cases to a formal hearing.

23. If delegated by the board, close cases resolved through mediation.

24. If delegated by the board, issue advisory letters.

25. If delegated by the board, enter into a consent agreement if there is evidence of danger to the public health and safety.

26. If delegated by the board, grant uncontested requests for inactive status and cancellation of a license pursuant to sections 32-1431 and 32-1433.

27. If delegated by the board, refer cases to the board for a formal interview.

28. Perform all other administrative, licensing or regulatory duties required by the board.

29. Disseminate any information received from the office of ombudsman-citizens aide to the board at its regular board meetings.

D. Medical consultants and agents appointed pursuant to subsection C, paragraph 4 of this section are eligible to receive compensation determined by the executive director in an amount not to exceed two hundred dollars for each day of service.

E. A person who is aggrieved by an action taken by the executive director pursuant to subsection C, paragraphs 21 through 27 of this section or section 32-1422, subsection E may request the board to review that action by filing with the board a written request within thirty days after that person is notified of the executive director's action by personal delivery or, if the notification is mailed to that person's last known residence or place of business, within thirty-five days after the date on the notification. At the next regular board meeting, the board shall review the executive director's action. On review, the board shall approve, modify or reject the executive director's action.

32-1406. Arizona medical board fund

A. The Arizona medical board fund is established. Pursuant to sections 35-146 and 35-147, the board shall deposit ten per cent of all monies collected under the provisions of this chapter in the state general fund and deposit the remaining ninety per cent in the Arizona medical board fund.

B. Monies deposited in the fund are subject to section 35-143.01.

32-1407. Jurisdiction arbitration panel

A. When the board receives a complaint concerning a physician who is also licensed pursuant to chapter 29 of this title, the board shall immediately notify the board of homeopathic and integrated medicine examiners. If the boards disagree and if both boards continue to claim jurisdiction over the dual licensee, an arbitration panel shall decide jurisdiction pursuant to section 32-2907, subsections B, C, D and E.

B. If the licensing boards decide without resorting to arbitration which board or boards shall conduct the investigation, the board or boards conducting the investigation shall transmit all investigation materials, findings and conclusions to the other board with which the physician is licensed. The board or boards shall review this information to determine if disciplinary action shall be taken against the physician.

32-1421. Exemptions from licensing requirements

A. This article does not apply to any person while engaged in:

1. The provision of medical assistance in case of an emergency.
2. The administration of family remedies including the sale of vitamins, health foods or health food supplements or any other natural remedies, except drugs or medicines for which an authorized prescription is required by law.
3. The practice of religion, treatment by prayer or the laying on of hands as a religious rite or ordinance.
4. The practice of any of the healing arts of and by Indian tribes in this state.
5. The lawful practice of any of the healing arts to the extent authorized by a license issued by this state.
6. Activities or functions that do not require the exercise of a doctor of medicine's judgment for their performance, are not in violation of the laws of this state and are usually or customarily delegated by a doctor of medicine under the doctor's direction or supervision or are performed in accordance with the approval of a committee of physicians in a licensed health care institution.
7. The official duties of a medical officer in the armed forces of the United States, the United States department of veterans affairs or the United States public health service or their successor agencies, if the duties are restricted to federal lands.
8. Any act, task or function competently performed by a physician assistant in the proper performance of the physician assistant's duties.
9. The emergency harvesting of donor organs by a doctor of medicine or team of doctors of medicine licensed to practice medicine in another state or country for use in another state or country.

B. This article does not apply to:

1. A doctor of medicine residing in another jurisdiction who is authorized to practice medicine in that jurisdiction, if the doctor engages in actual single or infrequent consultation with a doctor of medicine licensed in this state and if the consultation regards a specific patient or patients.

2. A doctor of medicine who is licensed to practice in another jurisdiction if the doctor engages in the practice of medicine that is limited to patients with whom the doctor has an already established doctor-patient relationship and who reside outside this jurisdiction when both the doctor and the patient are physically in this state for not more than sixty consecutive days. For the purposes of this paragraph, "patient" means a person who is not a resident of this state and who is an athlete or a professional entertainer.

32-1422. Basic requirements for granting a license to practice medicine; credentials verification

A. An applicant for a license to practice medicine in this state pursuant to this article shall meet each of the following basic requirements:

1. Graduate from an approved school of medicine or receive a medical education that the board deems to be of equivalent quality.
2. Successfully complete an approved twelve-month hospital internship, residency or clinical fellowship program.
3. Have the physical and mental capability to safely engage in the practice of medicine.
4. Have a professional record that indicates that the applicant has not committed any act or engaged in any conduct that would constitute grounds for disciplinary action against a licensee under this chapter.
5. Not have had a license to practice medicine revoked by a medical regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction that constitutes unprofessional conduct pursuant to this chapter.
6. Not be currently under investigation, suspension or restriction by a medical regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter. If the applicant is under investigation by a medical regulatory board in another jurisdiction, the board shall suspend the application process and may not issue or deny a license to the applicant until the investigation is resolved.
7. Not have surrendered a license to practice medicine in lieu of disciplinary action by a medical regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.
8. Pay all fees required by the board.
9. Complete the application as required by the board.
10. Complete a training unit as prescribed by the board relating to the requirements of this chapter and board rules. The applicant shall submit proof with the application form of having completed the training unit.

11. Have submitted directly to the board, electronically or by hard copy, verification of the following:

- (a) Licensure from every state in which the applicant has ever held a medical license.
- (b) All medical employment for the five years preceding application. If the applicant is employed by a hospital or medical group or organization, the board shall accept the confirmation required under this subdivision from the applicant's employer. For the purposes of this subdivision, medical employment includes all medical professional activities.

12. Have 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. The board may require the submission of credentials or other evidence, written and oral, and make any investigation it deems necessary to adequately inform itself with respect to an applicant's ability to meet the requirements prescribed by this section, including a requirement that the applicant for licensure undergo a physical examination, a mental evaluation and an oral competence examination and interview, or any combination thereof, as the board deems proper.

C. In determining if the requirements of subsection A, paragraph 4 of this section have been met, if the board finds that the applicant committed an act or engaged in conduct that would constitute grounds for disciplinary action, the board shall determine to its satisfaction that the conduct has been corrected, monitored and resolved. If the matter has not been resolved, the board shall determine to its satisfaction that mitigating circumstances exist that prevent its resolution.

D. In determining if the requirements of subsection A, paragraph 6 of this section have been met, if another jurisdiction has taken disciplinary action against an applicant, the board shall determine to its satisfaction that the cause for the action was corrected and the matter resolved. If the matter has not been resolved by that jurisdiction, the board shall determine to its satisfaction that mitigating circumstances exist that prevent its resolution.

E. The board may delegate authority to the executive director to deny licenses if applicants do not meet the requirements of this section.

F. Any credential information required to be submitted to the board pursuant to this article must be submitted, electronically or by hard copy, from the primary source where the document or information originated, except that the board may accept primary-source verified credentials from a credentials verification service approved by the board. The board is not required to verify any documentation or information received by the board from a credentials verification service that has been approved by the board. If an applicant is unable to provide a document or information from the primary source due to no fault of the applicant, the executive director shall forward the issue to the full board for review and determination. The board shall adopt rules establishing the criteria that must be met in order to waive a documentation requirement of this article.

32-1422.01. Expedited licensure; medical licensure compact; fingerprinting

Beginning September 1, 2017, applicants for expedited licensure pursuant to section 32-3241 shall submit 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. Communication between the board and the interstate medical licensure compact commission regarding verification of physician eligibility for licensure under the medical licensure compact may not include any information received from the federal bureau of investigation relating to a state and federal criminal records check performed for the purposes of section 32-3241, section 5, subsection B, paragraph 2.

32-1423. Additional requirements for students graduating from an unapproved allopathic school of medicine

In addition to the basic requirements for licensure prescribed in section 32-1422, any applicant who has graduated from an unapproved school of medicine shall meet each of the following requirements:

1. Be able to read, write, speak, understand and be understood in the English language.
2. Hold a standard certificate issued by the educational council for foreign medical graduates, complete a fifth pathway program as provided in section 32-1424, subsection A, or complete thirty-six months as a full-time assistant professor or in a higher position in an approved school of medicine.
3. Successfully complete an approved twenty-four month hospital internship, residency or clinical fellowship program, in addition to the twelve months required in section 32-1422, subsection A, paragraph 2, for a total of thirty-six months of training unless the applicant successfully completed a fifth pathway program as provided by section 32-1424 or has served as a full-time assistant professor or in a higher position in an approved school of medicine for a total of thirty-six months.

32-1424. Fifth pathway program; licensure

A. In addition to the requirements for licensure prescribed in sections 32-1422 and 32-1423, an applicant for licensure under this article who attended a foreign school of medicine and successfully completed all the formal requirements to receive the degree of doctor of medicine except internship or social service, and is accordingly not eligible for certification by the educational council for foreign medical graduates, may be considered for licensure under this chapter if the applicant meets the following conditions:

1. Satisfactorily completes an approved fifth pathway program of one academic year of supervised clinical training under the direction of an approved school of medicine in the United States.

2. Successfully completes an approved twenty-four month internship, residency or clinical fellowship program upon completion of the fifth pathway program.

B. A document granted by a foreign school of medicine signifying completion of all the formal requirements for graduation from such foreign medical school except internship or social service training, or both, along with certification by the approved school of medicine in the United States of successful completion of the fifth pathway program is deemed the equivalent of a degree of doctor of medicine for purposes of licensure and practice as a physician in this state.

32-1425. Initial licensure

A. An applicant who meets the applicable requirements provided in section 32-1422, 32-1423 or 32-1424, has passed steps one and two of the United States medical licensing examination or one of the examination combinations prescribed in section 32-1426, subsection A, paragraph 6, subdivision (c), items (i) and (ii), has paid the fees required by this chapter and has filed a completed application found by the board to be true and correct is eligible for licensure as a doctor of medicine upon successful passage of step three of the United States medical licensing examination with a scaled score of at least seventy-five if the applicant has passed all three steps within a seven year period.

B. An applicant for licensure applying pursuant to section 32-1422, 32-1423 or 32-1424 may take the examination only after successfully completing six months of a board approved hospital internship, residency or clinical fellowship or fifth pathway program or serving as a full-time assistant professor or in a higher position in a board approved school of medicine in this state.

C. The board shall not grant a license until the applicant meets the requirements for licensure pursuant to this chapter.

32-1426. Licensure by endorsement

A. An applicant who is licensed in another jurisdiction or whose license under this chapter has been revoked or surrendered or has expired and who meets the applicable requirements prescribed in section 32-1422, 32-1423 or 32-1424, has paid the fees required by this chapter and has filed a completed application found by the board to be true and correct is eligible to be licensed to engage in the practice of medicine in this state through endorsement under any one of the following conditions:

1. The applicant is certified by the national board of medical examiners or its successor entity as having successfully passed all three parts of the United States medical licensing examination or its successor examination.

2. The applicant has successfully passed a written examination that the board determines is equivalent to the United States medical licensing examination and that is administered by any

state, territory or district of the United States, a province of Canada or the medical council of Canada.

3. The applicant successfully completed the three-part written federation of state medical boards licensing examination administered by any jurisdiction before January 1, 1985 and obtained a weighted grade average of at least seventy-five on the complete examination. Successful completion of the examination shall be achieved in one sitting.

4. The applicant successfully completed the two component federation licensing examination administered after December 1, 1984 and obtained a scaled score of at least seventy-five on each component within a five-year period.

5. The applicant's score on the United States medical licensing examination was equal to the score required by this state for licensure pursuant to section 32-1425.

6. The applicant successfully completed one of the following combinations of examinations:

(a) Parts one and two of the national board of medical examiners examination, administered either by the national board of medical examiners or the educational commission for foreign medical graduates, with a successful score determined by the national board of medical examiners and passed either step three of the United States medical licensing examination or component two of the federation licensing examination with a scaled score of at least seventy-five.

(b) The federation licensing examination component one examination and the United States medical licensing step three examination with scaled scores of at least seventy-five.

(c) Each of the following:

(i) Part one of the national board of medical examiners licensing examination with a passing grade as determined by the national board of medical examiners or step one of the United States medical licensing examination with a scaled score of at least seventy-five.

(ii) Part two of the national board of medical examiners licensing examination with a passing grade as determined by the national board of medical examiners or step two of the United States medical licensing examination with a scaled score of at least seventy-five.

(iii) Part three of the national board of medical examiners licensing examination with a passing grade as determined by the national board of medical examiners or step three of the United States medical licensing examination with a scaled score of at least seventy-five or component two of the federation licensing examination with a scaled score of at least seventy-five.

B. The board may require an applicant seeking licensure by endorsement based on successful passage of a written examination or combination of examinations, the most recent of which precedes by more than ten years the application for licensure by endorsement in this state, to take and pass a special purpose licensing examination to assist the board in determining the

applicant's ability to safely engage in the practice of medicine. The board may also conduct a records review and physical and psychological assessments, if appropriate, and may review practice history to determine the applicant's ability to safely engage in the practice of medicine.

32-1427. Application; hearing on deficiencies in application; interview; probationary license

A. Each applicant for licensure shall submit a completed application as prescribed by the board together with the fee prescribed in this article. The board may require the submission of any evidence, credentials and other proof necessary for it to verify and determine if the applicant meets the requirements for licensure.

B. Each application submitted pursuant to this section shall contain the oath of the applicant that:

1. All of the information contained in the application and accompanying evidence or other credentials submitted are true.

2. The credentials submitted with the application were procured without fraud or misrepresentation or any mistake of which the applicant is aware and that the applicant is the lawful holder of the credentials.

3. The applicant authorizes the release of any information from any source requested by the board necessary for initial and continued licensure in this state.

C. All applications, completed or otherwise, together with all attendant evidence, credentials and other proof submitted with the applications are the property of the board.

D. The board, promptly and in writing, shall inform an applicant of any deficiency in the application that prevents the application from being processed.

E. On request the board shall grant an applicant who disagrees with the statement of deficiency a hearing before the board at its next regular meeting if there is time at that meeting to hear the matter. The board shall not delay this hearing beyond one regularly scheduled meeting. At any hearing granted pursuant to this subsection, the burden of proof is on the applicant to demonstrate that the alleged deficiencies do not exist.

F. Applications are considered withdrawn:

1. On the applicant's written request.

2. Except for good cause shown, if the applicant does not appear for an interview with the board.

3. If the applicant does not submit within one year of notification the necessary evidence, credentials or other proof identified by the board as being deficient pursuant to subsection D of this section.

G. The board may deny a license to an applicant who does not meet the requirements of this article.

H. If an applicant does not meet the requirements of section 32-1422, subsection A, paragraph 3 the board may issue a license subject to any of the following probationary conditions:

1. Require the licensee's practice to be supervised by another physician.
2. Restrict the licensee's practice.
3. Require the licensee to continue medical or psychiatric treatment.
4. Require the licensee to participate in a specified rehabilitation program.
5. Require the licensee to abstain from alcohol and other drugs.

I. If the board offers a probationary license to an applicant pursuant to subsection H of this section, it shall notify the applicant in writing of the following:

1. The applicant's specific deficiencies.
2. The probationary period.
3. The applicant's right to reject the terms of probation.
4. If the applicant rejects the terms of probation, the applicant's right to a hearing on the board's denial of the application.

32-1428. Pro bono registration

A. The board may issue a pro bono registration to allow a doctor who is not a licensee to practice in this state for a total of up to sixty days each calendar year if the doctor:

1. Holds an active and unrestricted license to practice medicine in a state, territory or possession of the United States or an inactive license pursuant to section 32-1431.
2. Has never had the license revoked or suspended.
3. Is not the subject of an unresolved complaint.
4. Applies for registration on a yearly basis as prescribed by the board.
5. Agrees to render all medical services without accepting a fee or salary or performs only initial or follow-up examinations at no cost to the patient and the patient's family through a charitable organization.

B. The sixty days of practice prescribed pursuant to subsection A of this section may be performed consecutively or cumulatively during each calendar year.

C. For the purpose of meeting the requirements of subsection A of this section, an applicant shall provide the board the name of each state in which the person is licensed or has held a license and the board shall verify with the applicable regulatory board of each state that the applicant is licensed or has held a license, has never had a license revoked or suspended and is not the subject of an unresolved complaint. The board may accept the verification of the information required by subsection A, paragraphs 1, 2 and 3 of this section from each of the other state's regulatory board either electronically or by hard copy.

32-1429. Locum tenens registration

A. The board may issue a registration to allow a doctor of medicine who is not a licensee to provide locum tenens medical services to substitute for or temporarily assist a doctor of medicine who holds an active license pursuant to this chapter or a doctor of osteopathy who holds an active license pursuant to chapter 17 of this title under the following conditions:

1. The applicant holds an active license to practice medicine issued by a state, district, territory or possession of the United States.

2. The applicant provides on forms and in a manner prescribed by the board proof that the applicant meets the applicable requirements of section 32-1422, 32-1423 or 32-1424.

3. The license of the applicant from the jurisdiction in which the applicant regularly practices medicine is current and unrestricted and has not been revoked or suspended for any reason and there are no unresolved complaints or formal charges filed against the applicant with any licensing board.

4. The doctor of medicine or doctor of osteopathy for whom the applicant for registration under this section is substituting or assisting provides to the board a written request for locum tenens registration of the applicant.

5. The applicant pays the fee prescribed under section 32-1436.

B. Locum tenens registration granted pursuant to this section is valid for a period of one hundred eighty consecutive days. A doctor of medicine is eligible to apply for and be granted locum tenens registration once every three years.

32-1430. License renewal; expiration

A. Except as provided in section 32-4301, each person holding an active license to practice medicine in this state shall renew the license every other year on or before the licensee's birthday and shall pay the fee required by this article, accompanied by a completed renewal form. The board shall provide the renewal form online and, on request, shall mail the form to the licensee. A licensee who does not renew an active license as required by this subsection on or

before thirty days after the licensee's birthday must also pay a penalty fee as required by this article for late renewal. A licensee's license automatically expires if the licensee does not renew an active license within four months after the licensee's birthday. A person who practices medicine in this state after that person's active license has expired is in violation of this chapter.

B. A person renewing an active license to practice medicine in this state shall provide to the board as part of the renewal process a report of disciplinary actions, restrictions or any other action placed on or against that person's license or practice by another state licensing or disciplinary board or an agency of the federal government. This action may include denying a license or failing the special purpose licensing examination. The report shall include the name and address of the sanctioning agency or health care institution, the nature of the action taken and a general statement of the charges leading to the action taken.

C. The licensee shall submit proof with the renewal form of having completed a training unit as prescribed by the board relating to the requirements of this chapter and board rules.

D. A person whose license has expired may reapply for a license to practice medicine as provided in this chapter.

32-1431. Inactive license; application; practice prohibitions

A. A person holding a current active license to practice medicine in this state may request an inactive license from the board if both of the following are true:

1. The licensee is not presently under investigation by the board.
2. The board has not commenced any disciplinary proceeding against the licensee.

B. The board may grant an inactive license and waive the renewal fees and requirements for continuing medical education specified by section 32-1434 if the licensee provides evidence to the board's satisfaction that the licensee has totally retired from the practice of medicine in this state and any state, territory and district of the United States or any foreign country and has paid all of the fees required by this chapter before the request. The board may grant pro bono registration pursuant to section 32-1428 to a physician who holds an inactive license under this section.

C. During any period in which a medical doctor holds an inactive license, that person shall not engage in the practice of medicine or continue to hold or maintain a drug enforcement administration controlled substances registration certificate, except as permitted by a pro bono registration pursuant to section 32-1428. Any person who engages in the practice of medicine while on inactive license status is considered to be a person who practices medicine without a license or without being exempt from licensure as provided in this chapter.

D. The board may convert an inactive license to an active license if the applicant pays the renewal fee and presents evidence satisfactory to the board that the applicant possesses the medical knowledge and is physically and mentally able to safely engage in the practice of

medicine. The board may require any combination of physical examination, psychiatric or psychological evaluation or successful passage of the special purpose licensing examination or interview it finds necessary to assist it in determining the ability of a physician holding an inactive license to return to the active practice of medicine.

32-1432. Teaching license

A. A board approved school of medicine in this state or a teaching hospital's accredited graduate medical education program in this state may invite a doctor of medicine to provide and promote professional education through lectures, clinics or demonstrations. The doctor of medicine is prohibited from opening an office or designating a place to meet patients or receive calls relating to the practice of medicine in this state outside of the facilities and programs of the approved school or teaching hospital.

B. To receive a teaching license, the doctor of medicine shall:

1. Complete an application as prescribed by the board.
2. Pay all required fees.
3. Meet the basic requirements of section 32-1422 except for those relating to completing an approved hospital internship, residency or clinical fellowship program.

C. A teaching license is limited to a one year period. The doctor of medicine may reapply annually for no more than a total of four years. With each reapplication the doctor of medicine must submit all required fees and a petition from the school or teaching hospital asking the board for continuation of the teaching license.

D. The holder of a teaching license is not exempt from the requirements of this chapter with the exception of the training and examination requirements of this article.

E. A doctor of medicine holding a current teaching license at an approved school of medicine may convert that license into an active license by filing an application and meeting all applicable requirements of this article.

32-1432.01. Education teaching permit

A. The dean of a board approved school of medicine or the chairman of a teaching hospital's accredited graduate medical education program may invite a doctor of medicine who is not licensed in this state to demonstrate and perform medical procedures and surgical techniques for the sole purpose of promoting professional education for students, interns, residents, fellows and doctors of medicine in this state.

B. The chairman or dean of the inviting institution shall provide to the board evidence that an applicant for an educational permit has malpractice insurance in an amount that meets the requirements of the institution and that the applicant accepts all responsibility and liability for the

procedures he performs within the scope of his permit. In a letter to the board, the chairman or the dean of the inviting institution shall outline the procedures and techniques that the doctor of medicine shall perform or demonstrate and the dates that this activity will occur. The letter shall also include a summary of the doctor's of medicine educational and professional background and be accompanied by the fee required pursuant to section 32-1436.

C. The inviting institution shall submit the fees and documents required pursuant to subsection B of this section no later than two weeks before the scheduled activity.

D. The board or its staff shall issue an educational teaching permit for no more than five days for each approved activity.

32-1432.02. Training permit; short-term permits; discipline

A. The board shall grant a one year renewable training permit to a person participating in a teaching hospital's accredited internship, residency or clinical fellowship training program to allow that person to function only in the supervised setting of that program. Before the board issues the permit, the person shall comply with the applicable registration requirements of this article and pay the fee prescribed in section 32-1436.

B. If a person who is participating in a teaching hospital's accredited internship, residency or clinical fellowship program must repeat or make up time in the program due to resident progression or other issues, the board may grant that person a training permit if requested to do so by the program's director of medical education or a person who holds an equivalent position. The permit limits the permittee to practicing only in the supervised setting of that program.

C. The board shall 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 conducted in an approved school of medicine or a hospital that has an accredited hospital internship, residency or clinical fellowship program in this state for the purpose of continuing medical education. Before the board issues the permit, the person shall comply with the applicable registration requirements of this article and pay the fee prescribed in section 32-1436.

D. A permittee is subject to the disciplinary regulation of article 3 of this chapter.

32-1432.03. 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 program if the purpose of the program is to exchange technical and educational information.

2. Pays the prescribed fee.

3. Submits a written statement from the dean of the approved school of 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 will provide liability coverage.
- (c) Provides the name of a doctor of medicine who 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.

32-1433. Cancellation of active license

On request of an active licensee, the board may cancel that person's license if both of the following are true:

- 1. The licensee is not presently under investigation by the board.
- 2. The board has not commenced any disciplinary proceeding against the licensee.

32-1434. Continuing medical education; audit

A. A person who holds an active license to practice medicine in this state shall satisfy a continuing medical education requirement that is designed to provide the necessary understanding of current developments, skills, procedures or treatment related to the practice of medicine in such amount and during such period as the board establishes by rule.

B. Compliance with subsection A of this section shall be documented at such times and in such manner as the board shall establish.

C. Failure of a person holding an active license to practice medicine to comply with this section without adequate cause being shown is grounds for probation, suspension or revocation of such person's license.

D. The board shall randomly audit, once every two years, at least ten per cent of physicians to verify continuing medical education compliance.

32-1435. Change of address; costs; penalties

A. Each active licensee shall promptly and in writing inform the board of the licensee's current residence address, office address and telephone number and of each change in residence address, office address or telephone number that may later occur.

B. The board may assess the costs incurred by the board in locating a licensee and in addition a penalty of not to exceed one hundred dollars against a licensee who fails to comply with subsection A within thirty days from the date of change. Notwithstanding any law to the contrary, monies collected pursuant to this subsection shall be deposited in the Arizona medical board fund.

32-1436. Fees and penalty

A. The board shall by a formal vote, at its annual fall meeting, establish nonrefundable fees and penalties that do not exceed the following:

1. For processing an application for an active license, seven hundred dollars.
2. For issuance of an active license, seven hundred dollars.
3. For an application to reactivate an inactive status license, five hundred dollars.
4. For issuance of a duplicate license, fifty dollars.
5. For renewal of an active license, seven hundred dollars.
6. For late renewal of an active license, an eight hundred dollar penalty.
7. For annual registration of an approved internship, residency, clinical fellowship program or short-term residency program, fifty dollars.
8. For an annual teaching license at an approved school of medicine or at an approved teaching hospital's accredited graduate medical education program, four hundred dollars.
9. 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, one hundred dollars.
10. For locum tenens registration, five hundred dollars.
11. For the sale of those copies of the annual medical directory that are not distributed free of charge, thirty dollars.
12. For the sale of the annual medical directory on CD-ROM, one hundred dollars.
13. For the sale of computerized tapes or diskettes not requiring programming, one hundred dollars.
14. For verification of a license, ten dollars.

15. For a copy of the minutes to board meetings during the current calendar year, twenty-five dollars for each set of minutes.

16. For copying records, documents, letters, minutes, applications and files, one dollar for the first three pages and twenty-five cents for each additional page.

17. For initial and annual registration to dispense drugs and devices, two hundred dollars.

18. For renewal applications that the board returns to the licensee for proper completion, a fee that does not exceed the cost of processing the incomplete application.

B. The board shall charge additional fees for services that are not required to be provided by this chapter but that the board deems necessary and appropriate to carry out its intent and purpose, except that these fees shall not exceed the actual cost of providing those services.

C. Notwithstanding subsection A of this section, the board may return the license renewal fee on special request.

D. The board shall provide computerized tapes or diskettes free to the management information systems office of the Arizona health care cost containment system.

E. The fee for minutes provided pursuant to this section includes postage. Annual subscription requests and fees for minutes shall be paid before February 1 of each year. Subscriptions for minutes of board meetings are not available for past years.

F. The fee for copying provided in this section includes postage. Copying fees for subpoenaed records shall be as prescribed in section 12-351.

G. The board may collect from the drawer of a dishonored check, draft order or note an amount allowed pursuant to section 44-6852.

32-1437. Training permits; qualified military health professionals

A. The board shall issue a training permit to a qualified military health professional who is practicing allopathic medicine in the United States armed forces and who is discharging the health professional's official duties by participating in a clinical training program based at a civilian hospital affiliated with the United States department of defense.

B. Before the board issues the training permit, the qualified military health professional must submit a written statement from the United States department of defense that the applicant:

1. Is a member of the United States armed forces who is performing duties for and at the direction of the United States department of defense at a location in this state approved by the United States department of defense.

2. Has a current license or is credentialed to practice allopathic medicine in a jurisdiction of the United States.

3. Meets all required qualification standards prescribed pursuant to 10 United States Code section 1094(d) relating to the licensure requirements for health professionals.

4. Has not had a license to practice revoked by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction that constitutes unprofessional conduct pursuant to this chapter.

5. Is not currently under investigation, suspension or restriction by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction that constitutes unprofessional conduct pursuant to this chapter.

6. Has not surrendered, relinquished or given up a license in lieu of disciplinary action by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction that constitutes unprofessional conduct pursuant to this chapter. This paragraph does not prevent the board from considering the request for a training permit of a qualified military health professional who surrendered, relinquished or gave up a license in lieu of disciplinary action by a regulatory board in another jurisdiction if that regulatory board subsequently reinstated the qualified military health professional's license.

C. The qualified military health professional may not open an office or designate a place to meet patients or receive calls relating to the practice of allopathic medicine in this state outside of the facilities and programs of the approved civilian hospital.

D. The qualified military health professional may not practice outside of the professional's scope of practice.

E. A training permit issued pursuant to this section is valid for one year. The qualified military health professional may apply annually to the board to renew the permit. With each application to renew the qualified military health professional must submit a written statement from the United States department of defense asking the board for continuation of the training permit.

F. The board may not impose a fee to issue or renew a training permit to a qualified military health professional pursuant to this section.

[32-1438. Temporary licensure; requirements; fee](#)

A. Beginning July 1, 2017, the board may issue a temporary license, which may not be renewed or extended, to allow a physician who is not a licensee to practice in this state for a total of up to two hundred fifty consecutive days if the physician meets all of the following requirements:

1. Holds an active and unrestricted license to practice medicine in a state, territory or possession of the United States.

2. Has applied for a license pursuant to section 32-1422 and meets the requirements specified in section 32-1422, subsection A, paragraphs 1 through 7.

3. Has paid any applicable fees.

B. The physician shall submit to the board a notarized affidavit attesting that the physician meets the requirements of subsection A, paragraphs 1 and 2 of this section. The physician shall notify the board immediately if any circumstance specified in subsection A, paragraphs 1 and 2 of this section changes during the application period for a temporary license or while holding a temporary license, at which time the board may suspend, deny or revoke the temporary license. The board may suspend, deny or revoke a temporary license and withdraw the application for initial licensure if the applicant has made a misrepresentation in the attestation required by this section or any other portion of the application pursuant to this chapter.

C. The board shall approve or deny an application under this section within thirty days after an applicant files a complete application. The approval of a temporary license pursuant to this section allows the physician to practice in this state without restriction.

D. If granted, the physician's temporary license expires the earlier of two hundred fifty days after the date the temporary license is granted or on approval or denial of the physician's license application submitted pursuant to section 32-1422.

E. For the purpose of meeting the requirements of subsection A of this section, an applicant shall provide the board the name of each state, territory or possession of the United States in which the person is licensed or has held a license and the board shall verify with the applicable regulatory board that the applicant holds an active and unrestricted license to practice medicine and has never had a license revoked or suspended or surrendered a license for disciplinary reasons. An applicant shall also provide the board with all medical employment as required by section 32-1422, subsection A. The board may accept the confirmation of this information from each other regulatory board verbally, in writing or through the use of the other regulatory board's website, which shall be followed by either an electronic or hard copy of the verification required by section 32-1422, subsection F before the physician's permanent license is granted. If the board is unable to verify the information within the initial thirty days as required by subsection C of this section, the board may extend the time frame by an additional thirty days to receive the necessary verification.

F. The board may establish a fee in rule for temporary licensure under this section.

32-1439. Specialty certification; prohibited requirement for licensure; definition

A. The board may not require an applicant for licensure pursuant to this article to hold or maintain a specialty certification as a condition of licensure in this state. This subsection does not prohibit the board from considering an applicant's specialty certification as a factor in whether to grant a license to the applicant.

B. For the purposes of this section, "specialty certification" means certification by a board that specializes in one particular area of medicine and that may require examinations in addition to those required by this state to be licensed to practice medicine.

32-1451. Grounds for disciplinary action; duty to report; immunity; proceedings; board action; notice requirements

A. The board on its own motion may investigate any evidence that appears to show that a doctor of medicine is or may be medically incompetent, is or may be guilty of unprofessional conduct or is or may be mentally or physically unable safely to engage in the practice of medicine. On written request of a complainant, the board shall review a complaint that has been administratively closed by the executive director and take any action it deems appropriate. Any person may, and a doctor of medicine, the Arizona medical association, a component county society of that association and any health care institution shall, report to the board any information that appears to show that a doctor of medicine is or may be medically incompetent, is or may be guilty of unprofessional conduct or is or may be mentally or physically unable safely to engage in the practice of medicine. The board or the executive director shall notify the doctor as to the content of the complaint as soon as reasonable. Any person or entity that reports or provides information to the board in good faith is not subject to an action for civil damages. If requested, the board shall not disclose the name of a person who supplies information regarding a licensee's drug or alcohol impairment. It is an act of unprofessional conduct for any doctor of medicine to fail to report as required by this section. The board shall report any health care institution that fails to report as required by this section to that institution's licensing agency.

B. The chief executive officer, the medical director or the medical chief of staff of a health care institution shall inform the board if the privileges of a doctor to practice in that health care institution are denied, revoked, suspended or limited because of actions by the doctor that appear to show that the doctor is or may be medically incompetent, is or may be guilty of unprofessional conduct or is or may be mentally or physically unable to safely engage in the practice of medicine, along with a general statement of the reasons, including patient chart numbers, that led the health care institution to take the action. The chief executive officer, the medical director or the medical chief of staff of a health care institution shall inform the board if a doctor under investigation resigns or if a doctor resigns in lieu of disciplinary action by the health care institution. Notification shall include a general statement of the reasons for the resignation, including patient chart numbers. The board shall inform all appropriate health care institutions in this state as defined in section 36-401 and the Arizona health care cost containment system administration of a resignation, denial, revocation, suspension or limitation, and the general reason for that action, without divulging the name of the reporting health care institution. A person who reports information in good faith pursuant to this subsection is not subject to civil liability.

C. The board or, if delegated by the board, the executive director shall require, at the doctor's expense, any combination of mental, physical or oral or written medical competency examinations and conduct necessary investigations, including investigational interviews between representatives of the board and the doctor to fully inform itself with respect to any information filed with the board under subsection A of this section. These examinations may include

biological fluid testing and other examinations known to detect the presence of alcohol or other drugs. The board or, if delegated by the board, the executive director may require the doctor, at the doctor's expense, to undergo assessment by a board approved rehabilitative, retraining or assessment program. This subsection does not establish a cause of action against any person, facility or program that conducts an assessment, examination or investigation in good faith pursuant to this subsection.

D. If the board finds, based on the information it receives under subsections A and B of this section, that the public health, safety or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, the board may restrict a license or order a summary suspension of a license pending proceedings for revocation or other action. If the board takes action pursuant to this subsection, it shall also serve the licensee with a written notice that states the charges and that the licensee is entitled to a formal hearing before the board or an administrative law judge within sixty days.

E. If, after completing its investigation, the board finds that the information provided pursuant to subsection A of this section is not of sufficient seriousness to merit disciplinary action against the license of the doctor, the board or a board committee may take any of the following actions:

1. Dismiss if, in the opinion of the board, the information is without merit.
2. Require the licensee to complete designated continuing medical education courses.
3. File an advisory letter. The licensee may file a written response with the board within thirty days after receiving the advisory letter.

F. If the board finds that it can take rehabilitative or disciplinary action without the presence of the doctor at a formal interview, it may enter into a consent agreement with the doctor to limit or restrict the doctor's practice or to rehabilitate the doctor in order to protect the public and ensure the doctor's ability to safely engage in the practice of medicine. The board may also require the doctor to successfully complete a board approved rehabilitative, retraining or assessment program at the doctor's own expense.

G. The board shall not disclose the name of the person who provided information regarding a licensee's drug or alcohol impairment or the name of the person who files a complaint if that person requests anonymity.

H. If after completing its investigation the board believes that the information is or may be true, it may request a formal interview with the doctor. If the doctor refuses the invitation for a formal interview or accepts and the results indicate that grounds may exist for revocation or suspension of the doctor's license for more than twelve months, the board shall issue a formal complaint and order that a hearing be held pursuant to title 41, chapter 6, article 10. If after completing a formal interview the board finds that the protection of the public requires emergency action, it may order a summary suspension of the license pending formal revocation proceedings or other action authorized by this section.

I. If after completing the formal interview the board finds the information provided under subsection A of this section is not of sufficient seriousness to merit suspension for more than twelve months or revocation of the license, it may take the following actions:

1. Dismiss if, in the opinion of the board, the complaint is without merit.
2. Require the licensee to complete designated continuing medical education courses.
3. File an advisory letter. The licensee may file a written response with the board within thirty days after the licensee receives the advisory letter.
4. Enter into an agreement with the doctor to restrict or limit the doctor's practice or professional activities or to rehabilitate, retrain or assess the doctor in order to protect the public and ensure the doctor's ability to safely engage in the practice of medicine. The board may also require the doctor to successfully complete a board approved rehabilitative, retraining or assessment program at the doctor's own expense pursuant to subsection F of this section.
5. File a letter of reprimand.
6. Issue a decree of censure. A decree of censure is an official action against the doctor's license and may include a requirement for restitution of fees to a patient resulting from violations of this chapter or rules adopted under this chapter.
7. Fix a period and terms of probation best adapted to protect the public health and safety and rehabilitate or educate the doctor concerned. Probation may include temporary suspension for not to exceed twelve months, restriction of the doctor's license to practice medicine, a requirement for restitution of fees to a patient or education or rehabilitation at the licensee's own expense. If a licensee fails to comply with the terms of probation, the board shall serve the licensee with a written notice that states that the licensee is subject to a formal hearing based on the information considered by the board at the formal interview and any other acts or conduct alleged to be in violation of this chapter or rules adopted by the board pursuant to this chapter, including noncompliance with the term of probation, a consent agreement or a stipulated agreement. A licensee shall pay the costs associated with probation monitoring each year during which the licensee is on probation. The board may adjust this amount on an annual basis. The board may allow a licensee to make payments on an installment plan if a financial hardship occurs. A licensee who does not pay these costs within thirty days after the due date prescribed by the board violates the terms of probation.

J. If the board finds that the information provided in subsection A of this section warrants suspension or revocation of a license issued under this chapter, it shall initiate formal proceedings pursuant to title 41, chapter 6, article 10.

K. In a formal interview pursuant to subsection H of this section or in a hearing pursuant to subsection J of this section, the board in addition to any other action may impose a civil penalty in the amount of not less than one thousand dollars nor more than ten thousand dollars for each violation of this chapter or a rule adopted under this chapter.

L. An advisory letter is a public document.

M. Any doctor of medicine who after a formal hearing is found by the board to be guilty of unprofessional conduct, to be mentally or physically unable safely to engage in the practice of medicine or to be medically incompetent is subject to censure, probation as provided in this section, suspension of license or revocation of license or any combination of these, including a stay of action, and for a period of time or permanently and under conditions as the board deems appropriate for the protection of the public health and safety and just in the circumstance. The board may charge the costs of formal hearings to the licensee who it finds to be in violation of this chapter.

N. If the board acts to modify any doctor of medicine's prescription writing privileges, the board shall immediately notify the state board of pharmacy of the modification.

O. If the board, during the course of any investigation, determines that a criminal violation may have occurred involving the delivery of health care, it shall make the evidence of violations available to the appropriate criminal justice agency for its consideration.

P. The board may divide into review committees of not less than three members, including a public member. The committees shall review complaints not dismissed by the executive director and may take the following actions:

1. Dismiss the complaint if a committee determines that the complaint is without merit.
2. Issue an advisory letter. The licensee may file a written response with the board within thirty days after the licensee receives the advisory letter.
3. Conduct a formal interview pursuant to subsection H of this section. This includes initiating formal proceedings pursuant to subsection J of this section and imposing civil penalties pursuant to subsection K of this section.
4. Refer the matter for further review by the full board.

Q. Pursuant to sections 35-146 and 35-147, the board shall deposit all monies collected from civil penalties paid pursuant to this chapter in the state general fund.

R. Notice of a complaint and hearing is effective by a true copy of it being sent by certified mail to the doctor's last known address of record in the board's files. Notice of the complaint and hearing is complete on the date of its deposit in the mail. The board shall begin a formal hearing within one hundred twenty days of that date.

S. A physician who submits an independent medical examination pursuant to an order by a court or pursuant to section 23-1026 is not subject to a complaint for unprofessional conduct unless, in the case of a court-ordered examination, the complaint is made or referred by a court to the board, or in the case of an examination conducted pursuant to section 23-1026, the complaint alleges unprofessional conduct based on some act other than a disagreement with the findings

and opinions expressed by the physician as a result of the examination. For the purposes of this subsection, "independent medical examination" means a professional analysis of medical status that is based on a person's past and present physical, medical and psychiatric history and conducted by a licensee or group of licensees on a contract basis for a court or for a workers' compensation carrier, self-insured employer or claims processing representative if the examination was conducted pursuant to section 23-1026.

T. The board may accept the surrender of an active license from a person who admits in writing to any of the following:

1. Being unable to safely engage in the practice of medicine.
2. Having committed an act of unprofessional conduct.
3. Having violated this chapter or a board rule.

U. In determining the appropriate disciplinary action under this section, the board shall consider all previous nondisciplinary and disciplinary actions against a licensee.

V. In determining the appropriate action under this section, the board may consider a direct or indirect competitive relationship between the complainant and the respondent as a mitigating factor.

32-1451.01. Right to examine and copy evidence; witnesses; documents; testimony; representation

A. In connection with the investigation by the board on its own motion, or as the result of information received pursuant to section 32-1451, subsection A, the board or its duly authorized agents or employees at all reasonable times may examine and copy any documents, reports, records or other physical evidence of the person it is investigating or that is in possession of any hospital, clinic, physician's office, laboratory, pharmacy, public or private agency, health care institution as defined in section 36-401 and health care provider and that relates to medical competence, unprofessional conduct or the mental or physical ability of a licensee to safely practice medicine.

B. For the purpose of all investigations and proceedings conducted by the board:

1. The board on its own initiative or on application of any person involved in the investigation may issue subpoenas to require the attendance and testimony of witnesses or to demand the production for examination or copying of documents or any other physical evidence that relates to medical competence, unprofessional conduct or the mental or physical ability of a licensee to safely practice medicine. Within five days after a person is served with a subpoena that person may petition the board to revoke, limit or modify the subpoena. The board shall do so if in its opinion the evidence required does not relate to unlawful practices covered by this chapter, is not relevant to the charge that is the subject matter of the hearing or investigation or does not describe with sufficient particularity the physical evidence whose production is required. Any

member of the board or any agent designated by the board may administer oaths or affirmations, examine witnesses and receive evidence.

2. Any person appearing before the board may be represented by counsel.

3. On application by the board or by the person subpoenaed, the superior court may issue an order to either:

(a) Require the subpoenaed person to appear before the board or the duly authorized agent to produce evidence relating to the matter under investigation.

(b) Revoke, limit or modify the subpoena if in the court's opinion the evidence demanded does not relate to unlawful practices covered by this chapter, is not relevant to the charge which is the subject matter of the hearing or investigation or does not describe with sufficient particularity the evidence whose production is required.

C. Patient records, including clinical records, medical reports, laboratory statements and reports, any file, film, other report or oral statement relating to diagnostic findings or treatment of patients, any information from which a patient or the patient's family might be identified or any information received and records or reports kept by the board as a result of the investigation procedure outlined in this chapter are not available to the public.

D. This section and any other law making communications between a physician and a physician's patient privileged does not apply to investigations or proceedings conducted pursuant to this chapter. The board and its employees, agents and representatives shall keep in confidence the names of any patients whose records are reviewed during the course of investigations and proceedings pursuant to this chapter.

E. Hospital records, medical staff records, medical staff review committee records and testimony concerning these records and proceedings related to the creation of these records are not available to the public, shall be kept confidential by the board and are subject to the same provisions concerning discovery and use in legal actions as are the original records in the possession and control of hospitals, their medical staffs and their medical staff review committees. The board shall use such records and testimony during the course of investigations and proceedings pursuant to this chapter.

F. The court may find a person who does not comply with a subpoena issued pursuant to this section in contempt of court.

32-1451.02. Disciplinary action; reciprocity

A. The board shall initiate an investigation pursuant to section 32-1451 if a medical regulatory board in another jurisdiction in the United States has taken disciplinary action against a licensee for an act that occurred in that jurisdiction that constitutes unprofessional conduct pursuant to this chapter.

B. The board shall order the summary suspension of a license pending proceedings for revocation or other action if a medical regulatory board in another jurisdiction in the United States has taken the same action because of its belief that the public health, safety or welfare imperatively required emergency action.

32-1451.03. Complaints; requirements; confidentiality; exception

A. The board shall not act on its own motion or on any complaint received by the board in which an allegation of unprofessional conduct or any other violation of this chapter against a professional who holds an Arizona license occurred more than four years before the complaint is received by the board. The time limitation does not apply to:

1. Medical malpractice settlements or judgments or allegations of sexual misconduct or if an incident or occurrence involved a felony, diversion of a controlled substance or impairment while practicing by the licensee.

2. A board's consideration of the specific unprofessional conduct related to a licensee's failure to disclose conduct or a violation as required by law.

B. If a complainant wishes to have the complainant's identifying information withheld from the physician against whom the allegation of unprofessional conduct is being made, the board shall enter into a written agreement with the complainant stating that the complainant's identifying information will not be provided to the physician against whom the allegation of unprofessional conduct is being made to the extent consistent with the administrative appeals process. The board shall post this policy on the board's website where a person would submit a complaint online.

C. The board shall not open an investigation if identifying information regarding the complainant is not provided.

32-1451.04. Burden of proof

Except for disciplinary matters brought pursuant to section 32-1401, paragraph 27, subdivision (z), the board has the burden of proof by clear and convincing evidence for disciplinary matters brought pursuant to this chapter.

32-1452. Substance abuse treatment and rehabilitation; confidential program; private contract; funding; license restrictions; immunity

A. The board may establish a confidential program for the treatment and rehabilitation of doctors of medicine who are licensed pursuant to this chapter and physician assistants who are licensed pursuant to chapter 25 of this title and who are impaired by alcohol or drug abuse. This program shall 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. Immediate reporting to the board of the name of an impaired doctor or physician assistant whom the treating organization believes to be misusing chemical substances.
4. Reports to the board, as soon as possible, of the name of a doctor or physician assistant who refuses to submit to treatment or whose impairment is not substantially alleviated through treatment.

C. The board may allocate an amount of not to exceed forty dollars from each fee it collects from the biennial renewal of active licenses pursuant to section 32-1436 for the operation of the program established by this section.

D. A doctor of medicine or physician assistant who commits unprofessional conduct as defined in section 32-1401, paragraph 27, subdivision (f) shall agree to enter into a consent agreement with the board or the doctor or physician assistant shall be placed on probation or shall be subject to other action as provided by law.

E. In order to determine that a doctor of medicine or physician assistant who has been placed on probationary order or who has entered into a consent agreement pursuant to this section has not committed unprofessional conduct as defined in section 32-1401, paragraph 27, subdivision (f) after that order is no longer in effect, the board or its designee may require the doctor of medicine or physician assistant to submit to body fluid examinations and other examinations known to detect the presence of alcohol or other drugs at any time within five consecutive years following termination of the probationary order or consent agreement.

F. A doctor of medicine or physician assistant who is or was under a consent agreement or probationary order that is no longer in effect and who commits unprofessional conduct as defined in section 32-1401, paragraph 27, subdivision (f) shall request the board to place the license on inactive status with cause. If the doctor or physician assistant fails to do this, the board shall summarily suspend the license pursuant to section 32-1451, subsection D. In order to reactivate the license, the doctor or physician assistant shall successfully complete a long-term care residential program, an inpatient hospital treatment program, an intensive outpatient treatment program or any combination of these programs and shall meet the applicable requirements of section 32-1431, subsection D. After the doctor or physician assistant completes treatment, the board shall determine whether it should refer the matter for a formal hearing for the purpose of suspending or revoking the license or to place the licensee on probation for a minimum of five years with restrictions necessary to ensure the public's safety.

G. The board shall revoke the license of a doctor of medicine or physician assistant if that licensee commits unprofessional conduct as defined in section 32-1401, paragraph 27, subdivision (f) and was previously placed on probation pursuant to subsection D of this section and the probation is no longer in effect. The board may accept the surrender of the license if the licensee admits in writing to being impaired by alcohol or drug abuse.

H. An evaluator, teacher, supervisor or volunteer in the board's substance abuse treatment and rehabilitation program who acts in good faith within the scope of that program is not subject to civil liability, including malpractice liability, for the actions of a doctor or physician assistant who is attending the program pursuant to board action.

32-1452.01. Mental, behavioral and physical health evaluation and treatment; confidential program; private contract; immunity

A. The board may establish a confidential program for the evaluation, treatment and monitoring of persons who are licensed pursuant to this chapter and chapter 25 of this title and who have medical, psychiatric, psychological or behavioral health disorders that may impact their ability to safely practice medicine or perform health care tasks. The program shall include education, intervention, therapeutic treatment and posttreatment monitoring and support.

B. A licensee who has a medical, psychiatric, psychological or behavioral health disorder described in subsection A of this section may agree to enter into a consent agreement for participation in a program established pursuant to this section.

C. The board may contract with other organizations to operate a program established pursuant to this section. A contract with a private organization must 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. Immediate reporting to the Arizona medical board of the name of a licensee who the treating organization believes is incapable of safely practicing medicine or performing health care tasks. If the licensee is a physician assistant, the Arizona medical board shall immediately report this information to the Arizona regulatory board of physician assistants.

D. An evaluator, teacher, supervisor or volunteer in a program established pursuant to this section who acts in good faith within the scope of that program is not subject to civil liability, including malpractice liability, for the actions of a licensee who is attending the program pursuant to board action.

32-1453. Judicial review

Except as provided in section 41-1092.08, subsection H, an appeal to the superior court in Maricopa county may be taken from final decisions of the board pursuant to title 12, chapter 7, article 6.

32-1454. Injunction

A. An injunction shall issue forthwith to enjoin the practice of medicine by either of the following:

1. One not licensed to practice medicine or exempt from the requirement therefor pursuant to this chapter.

2. A doctor of medicine whose continued practice will or well might cause irreparable damage to the public health and safety prior to the time proceedings under section 32-1451 could be instituted and completed.

B. In a petition for injunction pursuant to the paragraph numbered 1 of subsection A of this section it shall be sufficient to charge that the respondent on a day certain in a named county engaged in the practice of medicine without a license and without being exempt from the requirements therefor pursuant to this chapter. No showing of damage or injury as the result thereof shall be required.

C. In a petition for injunction pursuant to the paragraph numbered 2 of subsection A of this section there shall be set forth with particularity the facts which make it appear that irreparable damage to the public health and safety will or well might occur prior to the time proceedings under section 32-1451 could be instituted and completed.

D. An injunction shall issue forthwith to enjoin any act specified in section 32-1455, subsection B.

E. Such petition shall be filed by the board in the superior court of Maricopa county or in the county where the defendant resides or is found.

F. Issuance of injunction shall not relieve the respondent from being subject to any other proceedings under law provided for in this chapter or otherwise, and violation of an injunction shall be punished as for contempt of court.

G. In all other respects injunction proceedings under this section shall be governed as near as may be by the law otherwise applicable to injunctions.

32-1455. Violation; classification

A. The following acts are class 5 felonies:

1. The practice of medicine by a person not licensed or exempt from licensure pursuant to this chapter.

2. Securing a license to practice medicine pursuant to this chapter by fraud or deceit.

3. Impersonating a member of the board in issuing a license to practice medicine to another.

B. The following acts if committed by a person not licensed under this chapter or exempt from licensure pursuant to section 32-1421 are class 2 misdemeanors:

1. The use of the designation "M.D." in a way that would lead the public to believe that a person was licensed to practice medicine in this state.
2. The use of the designation "doctor of medicine", "physician", "surgeon", "physician and surgeon" or any combination thereof unless such designation additionally contains the description of another branch of the healing arts.
3. The use of the designation "doctor" by a member of another branch of healing arts unless there is set forth with each such designation the other branch of the healing arts concerned.
4. The use of any other words, initials, symbols or combination thereof which would lead the public to believe such person is licensed to practice medicine in this state.

32-1456. Medical assistants; use of title; violation; classification

A. A medical assistant may perform the following medical procedures under the direct supervision of a doctor of medicine, physician assistant or nurse practitioner:

1. Take body fluid specimens.
2. Administer injections.

B. The board by rule may prescribe other medical procedures which a medical assistant may perform under the direct supervision of a doctor of medicine, physician assistant or nurse practitioner on a determination by the board that the procedures may be competently performed by a medical assistant.

C. Without the direct supervision of a doctor of medicine, physician assistant or nurse practitioner, a medical assistant may perform the following tasks:

1. Billing and coding.
2. Verifying insurance.
3. Making patient appointments.
4. Scheduling.
5. Recording a doctor's findings in patient charts and transcribing materials in patient charts and records.
6. Performing visual acuity screening as part of a routine physical.

7. Taking and recording patient vital signs and medical history on medical records.

D. The board by rule shall prescribe medical assistant training requirements.

E. A person who uses the title medical assistant or a related abbreviation is guilty of a class 3 misdemeanor unless that person is working as a medical assistant under the direct supervision of a doctor of medicine, physician assistant or nurse practitioner.

32-1457. [Acquired immune deficiency syndrome; disclosure of patient information; immunity; definition](#)

A. Notwithstanding section 32-1401, it is not an act of unprofessional conduct for a doctor of medicine to report to the department of health services the name of a patient's spouse or sex partner or a person with whom the patient has shared hypodermic needles or syringes if the doctor of medicine knows that the patient has contracted or tests positive for the human immunodeficiency virus and that the patient has not or will not notify these people and refer them to testing. Before making the report to the department of health services, the doctor of medicine shall first consult with the patient and ask the patient to release this information voluntarily.

B. It is not an act of unprofessional conduct for a doctor of medicine who knows or has reason to believe that a significant exposure has occurred between a patient who has contracted or tests positive for the human immunodeficiency virus and a health care or public safety employee to inform the employee of the exposure. Before informing the employee, the doctor of medicine shall consult with the patient and ask the patient to release this information voluntarily. If the patient does not release this information the doctor of medicine may do so in a manner that does not identify the patient.

C. This section does not impose a duty to disclose information. A doctor of medicine is not civilly or criminally liable for either disclosing or not disclosing information.

D. If a doctor of medicine decides to make a disclosure pursuant to this section, he may request that the department of health services make the disclosure on his behalf.

E. For the purposes of this section, "significant exposure" means contact of a person's ruptured or broken skin or mucous membranes with another person's blood or body fluids, other than tears, saliva or perspiration, of a magnitude that the centers for disease control of the United States public health service have epidemiologically demonstrated can result in transmission of the human immunodeficiency virus.

32-1458. [Reinstatement of revoked or surrendered license](#)

A. On written application, the board may issue a new license to a physician whose license was previously revoked by the board or surrendered by the applicant if the applicant demonstrates to the board's satisfaction that the applicant is completely rehabilitated with respect to the conduct

that was the basis for the revocation or the surrender. In making its decision, the board shall determine:

1. That the applicant has not engaged in any conduct during the revocation or surrender period that would have constituted a basis for revocation pursuant to section 32-1451.
2. If a criminal conviction was a basis of the revocation or surrender, that the applicant's civil rights have been fully restored pursuant to statute or any other applicable recognized judicial or gubernatorial order.
3. That the applicant has made restitution to any aggrieved person as ordered by a court of competent jurisdiction.
4. That the applicant demonstrates any other standard of rehabilitation the board determines is appropriate.

B. Except as provided in subsection C of this section, a person shall not submit an application for reinstatement less than five years after the date of revocation or surrender.

C. The board shall vacate its previous order to revoke a license if that revocation was based on a conviction of a felony or an offense involving moral turpitude and that conviction has been reversed on appeal. The physician may submit an application for reinstatement as soon as the court enters the reversal.

D. An applicant for reinstatement shall comply with all licensing requirements prescribed by this chapter.

32-1471. Health care provider and any other person; emergency aid; nonliability

Any health care provider licensed or certified to practice as such in this state or elsewhere, or a licensed ambulance attendant, driver or pilot as defined in section 41-1831, or any other person who renders emergency care at a public gathering or at the scene of an emergency occurrence gratuitously and in good faith shall not be liable for any civil or other damages as the result of any act or omission by such person rendering the emergency care, or as the result of any act or failure to act to provide or arrange for further medical treatment or care for the injured persons, unless such person, while rendering such emergency care, is guilty of gross negligence.

32-1472. Limited liability for emergency health care at amateur athletic events

A health care provider licensed or certified pursuant to title 32 who agrees with any person or school to voluntarily attend an amateur athletic practice, contest or other event to be available to render emergency health care within the provider's authorized scope of practice and without compensation to an athlete injured during such event is not liable for any civil or other damages as the result of any act or omission by the provider rendering the emergency care, or as the result of any act or failure to act to provide or arrange for further medical treatment or care for the injured athlete, if the provider acts in good faith without gross negligence.

32-1481. Limitation of liability

A. No physician, surgeon, hospital or person who assists a physician, surgeon or hospital in obtaining, preparing, injecting or transfusing blood or its components from one or more human beings to another human being shall be liable on the basis of implied warranty or strict tort liability for any such activity but such person or entity shall be liable for his or its negligent or wilful misconduct.

B. No nonprofit blood bank, tissue bank, donor or entity who donates, obtains, processes or preserves blood or its components from one or more human beings for the purpose of transfusing or transferring blood or its components to another human being shall be liable on the basis of implied warranty or strict tort liability for any such activity but such person or entity shall be liable for his or its negligent or wilful misconduct.

32-1482. Reporting of hepatitis cases

The director of the department of health services for the purposes of reducing the transmission of hepatitis by injection or transfusion of blood and its components shall adopt rules and regulations for reporting of cases of hepatitis and provide for the dissemination of information about such hepatitis cases to all federally licensed blood banks in the state and health care institutions which request such information.

32-1483. Notification to donors

Pursuant to rules promulgated by the director of the department of health services, all federally registered blood banks, blood centers and plasma centers in this state shall notify blood donors of any test results with significant evidence suggestive of syphilis, HIV or hepatitis B.

32-1491. Dispensing of drugs and devices; civil penalty; conditions; definition

A. A doctor of medicine may dispense drugs and devices kept by the doctor if:

1. All drugs are dispensed in packages labeled with the following information:

(a) The dispensing doctor'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 doctor 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 doctor 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 doctor registers with the board to dispense drugs and devices and pays the registration fee prescribed by section 32-1436.

B. Except in an emergency situation, a doctor who dispenses drugs without being registered by the board to do so is subject to a civil penalty by the board of not less than three hundred dollars and not more than one thousand dollars for each transaction and is prohibited from further dispensing for a period of time as prescribed by the board.

C. Before a physician dispenses a drug pursuant to this section the physician shall give the patient a prescription and inform the patient that the prescription may be filled by the prescribing physician or by a pharmacy of the patient's choice.

D. A doctor shall dispense only to the doctor's own patient and only for conditions being treated by that doctor. The doctor shall provide direct supervision of a medical assistant, nurse or attendant involved in the dispensing process. In this subsection, "direct supervision" means that a doctor is present and makes the determination as to the legitimacy or the advisability of the drugs or devices to be dispensed.

E. This section shall be enforced by the board, which shall establish rules regarding labeling, record keeping, storage and packaging of drugs that are consistent with the requirements of chapter 18 of this title. The board may conduct periodic reviews of dispensing practices to assure compliance with this section and applicable rules.

F. For the purposes of this section, "dispense" means the delivery by a doctor of medicine of a prescription drug or device to a patient, except for samples packaged for individual use by licensed manufacturers or repackagers of drugs, and includes the prescribing, administering, packaging, labeling and security necessary to prepare and safeguard the drug or device for delivery.

AHCCCS (R-18-0108)

Title 9, Chapter 22, Article 7, Standards for Payments

Amend: R9-22-712.05



GOVERNOR'S REGULATORY REVIEW COUNCIL

STAFF MEMORANDUM – REGULAR RULEMAKING

MEETING DATE: January 9, 2018

AGENDA ITEM: D-7

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

FROM: Council Staff

DATE: December 19, 2017

SUBJECT: **AHCCCS (R-18-0108)**
Title 9, Chapter 22, Article 7, Standards for Payments

Amend: R9-22-712.05

SUMMARY OF THE RULEMAKING

This rulemaking, from the Arizona Health Care Cost Containment System Administration (AHCCCS or Administration), seeks to amend one rule in A.A.C. Title 9, Chapter 22, Article 7, related to standards for payments. The rulemaking modifies the method of allocating funds for indirect Graduate Medical Education (GME) costs. The Governor's Office provided an exemption from Executive Order 2017-02 on August 7, 2017.

Proposed Action

Under A.R.S. § 36-2903.01(G)(9), certain public entities are permitted to transfer funds to AHCCCS to support the distribution of GME funds. The Centers for Medicare and Medicaid Services (CMS) require AHCCCS to annually update the amount allocated to each hospital in the State Plan, and submit a State Plan Amendment (SPA) for approval by CMS. For approval of this SPA, AHCCCS is required to change the method of allocating funds for indirect GME costs. AHCCCS states that the current methodology excludes Medicare managed care organization (MCO) data when calculating the Medicare share of indirect GME costs. To more accurately reflect Medicare indirect GME costs, AHCCCS indicates that the proposed rule uses hospital discharges instead of inpatient days to calculate the Medicare share of a hospital's utilization.

AHCCCS also proposes to change the methodology for calculating the Medicare indirect GME costs by no longer relying on the amount specified on the Medicare Cost Report (MCR). Both AHCCCS and CMS believe that the proposed methodology more accurately reflects the Medicare share of the indirect cost of medical education.

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

Yes. AHCCCS cites to A.R.S. § 36-2903.01(G)(9)(d), under which the Administration is required to “develop, by rule, the formula by which the [GME] monies are distributed.”

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

No. The rule does not establish a new fee or contain a fee increase.

3. Summary of the agency’s economic impact analysis:

The Administration is modifying the methodology that is used to allocate GME funds, which are distributed to hospitals from the CMS so that the costs associated with educating medical residents are shared. Both the Administration and CMS agree that the proposed methodology is a more accurate method of calculating GME. The Administration notes that failure to promulgate this rule will make the Administration ineligible for federal GME payments. GME payments are estimated to reach \$290 million in 2017.

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

The Administration notes that this rulemaking is required in order to receive State Plan approval from CMS. The costs of this rulemaking are minimal and only associated with a transition to a new methodology. The benefits of this rulemaking include \$290 million per year in GME payments from CMS. The benefits outweigh the costs.

5. What are the economic impacts on stakeholders?

Key stakeholders are the Administration, CMS, and hospitals. The Administration anticipates that the new rule’s impacts on the Administration, CMS, and hospitals will be minimal. Both agencies already administer GME payments, and hospitals already receive GME payments. This rulemaking only alters the methodology used to allocate payments, so there will be minimal short-term costs associated with a transition to the new methodology. All of these stakeholders will benefit by continuing the GME payments.

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

Yes. AHCCCS indicates that it received one public comment in support of the rulemaking, from Ms. Jennifer Carusetta of the Health System Alliance of Arizona.

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

No. No changes have been made between the Notice of Proposed Rulemaking and the Notice of Final Rulemaking.

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

No. AHCCCS states that there are no corresponding federal Medicaid or Medicare laws related to the rule.

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

No. The rule does not require a permit or license.

10. 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?

No. AHCCCS indicates that it did not rely on any study in its evaluation of, or justification for, the rule.

11. Conclusion

If approved, this rulemaking will become effective immediately upon filing with the Secretary of State. AHCCCS requests this immediate effective date under A.R.S. § 41-1032(A)(4) to provide a benefit to the public and because no penalty is associated with a violation of the rule. Council staff recommends approval of the rulemaking.

November 21, 2017

Ms. Nicole Ong, Chair
Governor's Regulatory Review Council
100 N. 15th Ave, Suite 402
Phoenix, AZ 85007

Dear Ms. Ong:

The Arizona Health Care Cost Containment System (AHCCCS) Administration is submitting the attached regular rule package for your consideration:

- 9 A.A.C. 22, Article 7, Standards for Payments

AHCCCS is providing the following information as required in A.A.C. R1-6-104:

- a. The close of record date was 5 p.m., November 9, 2017.
- b. Definitions of terms contained in statute or other rules and used in the rule are either cross-referenced or attached.
- c. The rulemaking does not relate to a 5-year-review.
- d. The rulemaking contains no new fees.
- e. The rulemaking contains no fee increase.
- f. Documents enclosed:
 - Notice of Final Rulemaking, including the preamble, table of contents for the rule, and text of the rule;
 - Economic, small business, and consumer impact statement;
 - If applicable, copy of definitions of terms, contained in statutes or other rules, used in the rule.
- g. All written comments submitted by the public concerning the proposed rule,
- h. The adopted rules contain no materials incorporated by reference,
- i. The adopted rules do not require a permit,
- j. The rule is not more stringent than federal law and the citation to the statutory authority does not exceed the requirements of federal law.
- k. A person has not submitted an analysis to the agency that compares the rule's impact of the competitiveness of businesses in this state to the impact on businesses in other states, and

- l. The AHCCCS Administration has not notified the Joint Legislative Budget Committee (JLBC) of a number of new full-time employees (FTE's) since none were required as a result of this rulemaking as required by A.R.S. § 41-1055.
- m. The AHCCCS Administration has requested and received approval to proceed with this rulemaking from the Governor's Office in reference to the rulemaking moratorium described under Executive Order 2017-02.

I certify that the information provided in number 7 of the Preamble is accurate. An immediate effective date is not requested. I respectfully request that the Council consider and approve the adopted rules.

Sincerely,

A handwritten signature in black ink, appearing to read "Matt Devlin", written in a cursive style.

Matthew Devlin
Assistant Director - Office of Legal Assistance
Attachments

transfer funds to the AHCCCS Administration to support these distributions. The Centers for Medicare and Medicaid Services (CMS) require the AHCCCS Administration to annually update the amount allocated to each hospital in the State Plan. Before AHCCCS may make GME payments, a State Plan Amendment (SPA) must be submitted and approved by CMS. For approval of this SPA, CMS requires that AHCCCS change the method of allocating funds for indirect GME costs. The current methodology excludes Medicare managed care organization (MCO) data when calculating the Medicare share of indirect GME costs. To more accurately reflect Medicare indirect GME costs, the proposed rule uses hospital discharges instead of inpatient days to calculate the Medicare share of a hospital's utilization.

In addition, under the proposed rule the Administration intends to calculate the Medicare indirect GME costs instead of relying on the amount specified on the Medicare Cost Report (MCR). Currently the Administration uses the indirect medical education cost for a hospital calculated by Medicare to extrapolate the Medicaid indirect medical education cost. The current methodology results in some hospitals receiving less GME payments than they would if the Medicare costs were calculated directly from information on the MCR. Both the Administration and CMS agree that the methodology set forth in the proposed rule more accurately reflects the Medicare share of the indirect cost of medical education.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

A study was not referenced or relied upon when revising these regulations.

8. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:

Not applicable.

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

CMS requires the AHCCCS Administration to annually update the amount allocated to each hospital in the State Plan. Before AHCCCS may make Graduate Medical Education payments, a SPA must be submitted to, and approved by, CMS. CMS has notified AHCCCS that revision of the method of allocating funds for indirect GME costs is necessary for CMS approval of the SPA. Absent promulgation of this rule, CMS will not approve the SPA, and AHCCCS will lack federal approval and corresponding federal funds for GME payments to qualifying hospitals. Total 2017 GME payments under this methodology are expected to be approximately \$290 million.

Under the proposed rule, the 2017 indirect GME allocation is estimated to be \$37.7 million less than the allocation would have been had CMS continued to approve the current methodology. GME payments are funded through intergovernmental transfers from or certified public expenditures by political subdivision of the

state. Therefore, the proposed rule does not impact the State General Fund. In addition, none of the hospitals impacted by the change are small businesses.

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

No changes were made.

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

Item #	Comment From and Date rec’d.	Comment	Analysis/ Recommendation
1.	Jennifer A. Carusetta 11/09/17 Executive Director of the Health System Alliance of Arizona	On behalf of the Health System Alliance of Arizona, it is with great pleasure that we submit this letter in support of the proposed rule on Graduate Medical Education. To begin, we would like to extend our appreciation to both you and Governor Ducey for your continued support for Graduate Medical Education, together with your recognition of the critical nature of this funding stream for Arizona’s physician training program. Workforce recruitment and retention are one of the greatest challenges facing our industry and we appreciate your continued partnership as we work to find solutions to address this issue. We understand that approval of the State Plan Amendment to authorize the federal share of Graduate Medical Education is contingent on the promulgation of this rule. We also understand that the proposed rule implements changes necessary in the methodology to ensure a more accurate calculation of the Medicare share of Indirect Graduate Medical Education costs. For these reasons, we believe that the promulgation of the revised methodology prescribed in this rule is critical to ensure that hospitals receive the maximum amount of dollars available to fund critical residency positions in their facilities. Arizona has been recognized as a top destination for individuals seeking to relocate in their retirement. Continued growth in the aging and larger population will mean a greater demand for healthcare services in this state in the coming decades. As a healthcare industry, we must leverage every resource to ensure that we are prepared to meet this demand with a workforce prepared to serve the needs of our communities and residents. Once again, we appreciate the opportunity to provide comment and look forward to partnering with the Administration on these efforts going forward.	AHCCCS thanks Ms. Carusetta for the support.

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

No other matters have been prescribed.

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:

There are no federal Medicaid or Medicare laws that apply to this rulemaking.

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

No analysis was submitted.

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

None

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

Not applicable.

15. The full text of the rules follows:

TITLE 9. HEALTH SERVICES
CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM
ADMINISTRATION
ARTICLE 7. STANDARDS FOR PAYMENTS

Section

R9-22-712.05. Graduate Medical Education Fund Allocation

ARTICLE 7. STANDARDS FOR PAYMENTS

R9-22-712.05. Graduate Medical Education Fund Allocation

- A.** Graduate medical education (GME) reimbursement as of September 30, 1997. Subject to legislative appropriation, the Administration shall make a distribution based on direct graduate medical education costs as described in A.R.S. § 36-2903.01(G)(9)(a).
- B.** Subject to available funds and approval by CMS, the Administration shall annually distribute monies appropriated for the expansions of GME programs approved by the Administration to hospitals for direct program costs eligible for funding under A.R.S. § 36-2903.01(G)(9)(b). A GME program is deemed to be established as of the date of its original accreditation. All determinations that are necessary to make distributions described by this subsection shall be made using information possessed by the Administration as of the date of reporting under subsection (B)(3).
1. Eligible health care facilities. A health care facility is eligible for distributions under subsection (B) if all of the following apply:
 - a. It is a hospital in Arizona that is the sponsoring institution of, or a participating institution in, one or more of the GME programs in Arizona;
 - b. It incurs direct costs for the training of residents in the GME programs, which costs are or will be reported on the hospital's Medicare Cost Report;
 - c. It is not administered by or does not receive its primary funding from an agency of the federal government.
 2. Eligible resident positions. For purposes of determining program allocation amounts under subsection (B)(4) the following resident positions are eligible for consideration to the extent that the resident training takes place in Arizona and not at a health care facility made ineligible under subsection (B)(1)(c):
 - a. Filled resident positions in approved programs established as of October 1, 1999 at hospitals that receive funding as described in A.R.S. § 36-2903.01(G)(9)(a) that are additional to the number of resident positions that were filled as of October 1, 1999; and
 - b. All filled resident positions in approved programs other than GME programs described in A.R.S. § 36-2903.01(G)(9)(a) that were established before July 1, 2006.
 3. Annual reporting. By April 1st of each year, each GME program and each hospital seeking a distribution under subsection (B) shall provide the applicable information listed in this subsection to the Administration:
 - a. A GME program shall provide all of the following:
 - i. The program name and number assigned by the accrediting organization;
 - ii. The original date of accreditation;
 - iii. The names of the sponsoring institution and all participating institutions current as of the date of reporting;
 - iv. The number of approved resident positions and the number of filled resident positions current as of the date of reporting;

- v. For programs established as of October 1, 1999, the number of resident positions that were filled as of October 1, 1999, if the program has not already provided this information to the Administration;
- b. A hospital seeking a distribution under subsection (B) shall provide all of the following that apply:
 - i. If the hospital uses the Intern and Resident Information System (IRIS) for tracking and reporting its resident activity to the fiscal intermediary, copies of the IRIS master and assignment files for the hospital's two most recently completed Medicare cost reporting years as filed with the fiscal intermediary;
 - ii. If the hospital does not use the IRIS or has less than two cost reporting years available in the form of the IRIS master and assignment files, the information normally contained in the IRIS master and assignment files in an alternative format for the hospital's two most recently completed Medicare cost reporting years;
 - iii. At the request of the Administration, a copy of the hospital's Medicare Cost Report or any part of the report for the most recently completed cost reporting year.
- 4. Allocation of expansion funds. Annually the Administration shall allocate available funds to each approved GME program in the following manner:
 - a. Information provided by hospitals under subsection (B)(3)(b) shall be used to determine the program in which each eligible resident is enrolled and the number of days that each eligible resident worked in any area of the hospital complex or in a non-hospital setting under agreement with the reporting hospital during the period of assignment to that hospital. For this purpose, the Administration shall use data relating to the most recent 12-month period that is common to all information provided under subsections (B)(3)(b)(i) and (ii).
 - b. The number of eligible residents allocated to each participating institution within each approved GME program shall be determined as follows:
 - i. Total the number of days determined for each participating institution under subsection (B)(4)(a) and divide each total by 365.
 - ii. Proportionally adjust the result of subsection (B)(4)(b)(i) for each participating institution within each program according to the number of residents determined to be eligible under subsection (B)(2).
 - c. The number of allocated eligible residents determined under subsection (B)(4)(b)(ii) shall be adjusted for Arizona Medicaid utilization using the most recent Medicare Cost Report information on file with the Administration as of the date of reporting under subsection (B)(3) and the Administration's inpatient hospital claims and encounter data for the time period corresponding to the Medicare Cost Report information for each hospital. The Administration shall use only those inpatient hospital claims paid by the Administration and encounters that were adjudicated by the Administration as of the date of reporting under subsection (B)(3). The Medicaid-adjusted eligible residents shall be determined as follows:

- i. For each hospital, the total AHCCCS inpatient hospital days of care shall be divided by the total Medicare Cost Report inpatient hospital days, multiplied by 100 and rounded up to the nearest multiple of 5 percent.
- ii. The number of allocated eligible residents determined for each participating hospital under subsection (B)(4)(b)(ii) shall be multiplied by the percentage derived under subsection (B)(4)(c)(i) for that hospital. The number of allocated eligible residents determined under subsection (B)(4)(b)(ii) for a participating institution that is not a hospital and not a health care facility made ineligible under subsection (B)(1)(c) shall be multiplied by the percentage derived under subsection (B)(4)(c)(i) for the program's sponsoring institution or, if the sponsoring institution is not a hospital, the sponsoring institution's affiliated hospital. The number of allocated eligible residents determined under subsection (B)(4)(b)(ii) for a participating institution that is made ineligible under subsection (B)(1)(c) shall be multiplied by zero percent.
- d. The total allocation for each approved program shall be determined by multiplying the Medicaid-adjusted eligible residents determined under subsection (B)(4)(c)(ii) by the per-resident conversion factor determined below and totaling the resulting dollar amounts for all participating institutions in the program. The per-resident conversion factor shall be determined as follows:
 - i. Calculate the total direct GME costs from the most recent Medicare Cost Reports on file with the Administration for all hospitals that have reported such costs.
 - ii. Calculate the total allocated residents determined under subsection (B)(4)(b)(i) for those hospitals described under subsection (B)(4)(d)(i).
 - iii. Divide the total GME costs calculated under subsection (B)(4)(d)(i) by the total allocated residents calculated under subsection (B)(4)(d)(ii).
5. Distribution of expansion funds. On an annual basis subject to available funds, the Administration shall distribute the allocated amounts determined under subsection (B)(4) in the following manner:
 - a. The allocated amounts shall be distributed in the following order of priority:
 - i. To eligible hospitals that do not receive funding in accordance with A.R.S. § 36-2903.01(G)(9)(a) for the direct costs of programs established before July 1, 2006;
 - ii. To eligible hospitals that receive funding in accordance with A.R.S. § 36-2903.01(G)(9)(a) for the direct costs of programs established before July 1, 2006;
 - b. The allocated amounts shall be distributed to the eligible hospitals in each approved program in proportion to the number of Medicaid-adjusted eligible residents allocated to each hospital within that program under subsection (B)(4)(c)(ii).
 - c. If funds are insufficient to cover all distributions within any priority group described under subsection (B)(5)(a), the Administration shall adjust the distributions proportionally within that priority group.
- C. Subject to available funds and approval by CMS, the Administration shall annually distribute monies appropriated for the expansions of GME programs approved by the Administration to hospitals for direct program costs eligible for funding under A.R.S. § 36-2903.01(G)(9)(c)(i). A GME program is deemed to be

established as of the date of its original accreditation. All determinations that are necessary to make distributions described by this subsection shall be made using information possessed by the Administration as of the date of reporting under subsection (C)(3).

1. Eligible health care facilities. A health care facility is eligible for distributions under subsection (C) if it meets all the conditions of subsections (B)(1)(a) through (c).
2. Eligible resident positions. For purposes of determining program allocation amounts under subsection (C)(4), the following resident positions are eligible for consideration to the extent that the resident training takes place in Arizona and not at a health care facility made ineligible under subsection (B)(1)(c):
 - a. All filled resident positions in approved programs established on or after July 1, 2006; and
 - b. For approved programs established on or after July 1, 2006 that have been established for less than one year as of the date of reporting under subsection (C)(3) and have not yet filled their first-year resident positions, all prospective residents reasonably expected by the program to be enrolled as a result of the most recently completed annual resident match.
3. Annual reporting. By April 1st of each year, each GME program and each hospital seeking a distribution under subsection (C) shall provide to the Administration:
 - a. A GME program shall provide all of the following:
 - i. The requirements of subsections (B)(3)(a)(i) through (iv);
 - ii. The academic year rotation schedule on file with the program current as of the date of reporting; and
 - iii. For programs described under subsection (C)(2)(b), the number of residents expected to be enrolled as a result of the most recently completed annual resident match.
 - b. A hospital seeking a distribution under subsection (C) shall provide the requirements of subsection (B)(3)(b).
4. Allocation of expansion funds. Annually the Administration shall allocate available funds to approved GME programs in the following manner:
 - a. Information provided by hospitals in accordance with subsection (B)(3)(b) shall be used to determine the program in which each eligible resident is enrolled and the number of days that each eligible resident worked in any area of the hospital complex or in a non-hospital setting under agreement with the reporting hospital during the period of assignment to that hospital. For this purpose, the Administration shall use data relating to the most recent 12-month period that is common to all information provided in accordance with subsections (B)(3)(b)(i) and (ii).
 - b. For approved programs whose resident activity is not represented in the information provided in accordance with subsection (B)(3)(b), information provided by GME programs under subsection (C)(3)(a) shall be used to determine the number of days that each eligible resident is expected to work at each participating institution.

- c. The number of eligible residents allocated to each participating institution for each approved GME program shall be determined by totaling the number of days determined under subsections (C)(4)(a) and (b) and dividing the totals by 365.
 - d. The number of allocated residents determined under subsection (C)(4)(c) shall be adjusted for Arizona Medicaid utilization in accordance with subsection (B)(4)(c).
 - e. The total allocation for each approved program shall be determined in accordance with subsection (B)(4)(d).
5. Distribution of expansion funds. On an annual basis subject to available funds, the Administration shall distribute the allocated amounts determined under subsection (C)(4) to the eligible hospitals in each approved program in proportion to the number of Medicaid-adjusted eligible residents allocated to each within that program under subsection (C)(4)(d).
- D.** Subject to available funds and approval by CMS, the Administration shall annually distribute monies appropriated for GME programs approved by the Administration to hospitals for indirect program costs eligible for funding under A.R.S. § 36-2903.01(G)(9)(c)(ii). A GME program is deemed to be established as of the date of its original accreditation. All determinations that are necessary to make distributions described by this subsection shall be made using information possessed by the Administration as of the date of reporting under subsection (D)(3).
1. Eligible health care facilities. A health care facility is eligible for distributions under subsection (D) if all of the following apply:
 - a. It is a hospital in Arizona that is the sponsoring institution of, or a participating institution in, one or more of the GME programs in Arizona or is the base hospital for one or more of the GME programs in Arizona whose sponsoring institutions are not hospitals;
 - b. It incurs indirect program costs for the training of residents in the GME programs, which are or will be calculated on the hospital's Medicare Cost Report or are reimbursable under the Children's Hospitals Graduate Medical Education Payment Program administered by HRSA;
 - c. It is not administered by or does not receive its primary funding from an agency of the federal government.
 2. Eligible resident positions. For purposes of determining program allocation amounts under subsection (D)(4) the following resident positions are eligible for consideration to the extent that the resident training takes place in Arizona and not at a health care facility made ineligible under subsection (D)(1)(c):
 - a. Any filled resident position in an approved program that includes a rotation of at least one month per year in a county other than Maricopa or Pima whose population was less than 500,000 persons at the time the residency rotation was added to the academic year rotation schedule;
 - b. For approved programs that have been established for less than one year as of the date of reporting under subsection (D)(3) and have not yet filled their first-year resident positions, all prospective residents reasonably expected by the program to be enrolled as a result of the most recently completed annual resident match who will perform rotations of at least one month per year in a county other than

Maricopa or Pima whose population was less than 500,000 persons at the time the residency rotation was added to the academic year rotation schedule.

3. Annual reporting. By April 1st of each year, each GME program and each hospital seeking a distribution under subsection (D) shall provide to the Administration:
 - a. A GME program shall provide all of the following:
 - i. The requirements of subsections (B)(3)(a)(i) through (iv);
 - ii. The academic year rotation schedule on file with the program current as of the date of reporting;
 - iii. For programs described under subsection (D)(2)(c), the number of residents expected to be enrolled as a result of the most recently completed annual resident match.
 - b. A hospital seeking a distribution under subsection (D) shall provide the requirements of subsection (B)(3)(b)(iii).
4. Allocation of funds for indirect program costs. Annually the Administration shall allocate available funds to approved GME programs in the following manner:
 - a. Using the information provided by programs under subsection (D)(3), the Administration shall determine for each program the number of residents in the program who are eligible under subsection (D)(2) and the number of months per year that each eligible resident will perform rotations in counties described by subsection (D)(2), multiply the number of eligible residents by the number of months and multiply the result by the per resident per month conversion factor determined under subsection (D)(4)(b).
 - b. Using the most recent Medicare Cost Reports on file with the Administration for all hospitals that have calculated a Medicare indirect medical education payment, the Administration shall determine a per resident per month conversion factor as follows:
 - i. ~~Calculate each hospital's Medicaid share by dividing the AHCCCS inpatient hospital days of care by the total inpatient hospital days from the Medicare Cost Report. For this purpose, the Administration shall use the information described by subsection (B)(4)(c) for adjusting allocated residents for Arizona Medicaid utilization.~~ Calculate each hospital's Medicare share by dividing the Medicare inpatient discharges on the Medicare Cost Report by the total inpatient hospital discharges on the Medicare Cost Report.
 - ii. ~~Calculate each hospital's Medicare share by dividing the Medicare inpatient days on the Medicare Cost Report by the total inpatient hospital days on the Medicare Cost Report. Calculate the ratio of residents to beds by dividing the total allocated residents described in subsection (B)(4)(d)(ii) by the number of bed days available from the Medicare Cost Report and dividing the result by the number of days in the cost reporting period.~~
 - iii. ~~Divide the Medicaid share by the Medicare share and multiply the resulting ratio by the indirect medical education payment calculated on the Medicare Cost Report. Calculate the indirect medical education adjustment factor by adding 1 to the value calculated in (D)(4)(b)(ii), multiplying the~~

result by the exponential value 0.405, subtracting 1 from the result, and multiplying that result by 1.35.

- iv. Total the results for all hospitals, divide the result by the total allocated residents determined under subsection (B)(4)(b)(ii) for these hospitals, and divide that result by 12. Calculate each hospital's total indirect medical education cost by adding the DRG amounts other than outlier payments from the Medicare cost report and the managed care simulated payments from the Medicare Cost Report, multiplying the total by the indirect medical education adjustment factor determined in (D)(4)(b)(iii) and dividing the result by the Medicare share determined in (D)(4)(b)(i).
 - v. Calculate each hospital's Medicaid indirect medical education cost by multiplying the amount determined in (D)(4)(b)(iv) by the value determined in subsection (B)(4)(c)(i).
 - vi. Total the amounts determined in (D)(4)(b)(v) for all hospitals, divide the result by the total allocated residents described in subsection (B)(4)(d)(ii) for all hospitals, and divide that result by 12.
5. Distribution of funds for indirect program costs. On an annual basis subject to available funds, the Administration shall distribute to each eligible hospital the amount calculated for the hospital at subsection (D)(4)(a).
- E.** Reallocation of funds. If funds appropriated for subsection (B) are not allocated by the Administration and funds appropriated for subsections (C) and (D) are insufficient to cover all distributions under subsections (C)(5) and (D)(5), the funds not allocated under subsection (B) shall be allocated under subsections (C) and (D) to the extent of the calculated distributions. If funds are insufficient to cover all distributions under subsections (C)(5) and (D)(5), the Administration shall adjust the distributions proportionally. If funds appropriated for subsections (C) and (D) are not allocated by the Administration and funds appropriated for subsection (B) are insufficient to cover all distributions under subsection (B)(5), the funds not allocated under subsections (C) and (D) shall be allocated under subsection (B) to the extent of the calculated distributions.
- F.** The Administration may enter into intergovernmental agreements with local, county, and tribal governments wherein local, county and tribal governments may transfer funds or certify public expenditures to the Administration. Such funds or certification, subject to approval by CMS, will be used to qualify for additional federal funds. Those funds will be used for the purposes of reimbursing hospitals that are eligible under subsection (D)(1) and specified by the local, county, or tribal government for indirect program costs other than those reimbursed under subsection (D). The Administration shall allocate available funds in accordance with subsection (D) except that reimbursement with such funds is not limited to resident positions or rotations in counties with populations of less than 500,000 persons. On an annual basis subject to available funds, the Administration shall distribute to each eligible hospital the greatest among the following amounts, less any amounts distributed under subsection (D)(5):
1. The amount that results from multiplying the total number of eligible residents allocated to the hospital under subsection (B)(4)(~~b~~)(d)(ii) by 12 by the per resident per month conversion factor determined under subsection (D)(4)(b);

2. The amount calculated for the hospital at subsection (D)(4)(b)(iii)(v); or
3. The median of all amounts calculated at subsection (D)(4)(b)(iii)(v) if the hospital does not have an indirect medical education payment calculated on the Medicare Cost Report.

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT
TITLE 9. HEALTH SERVICES
CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM
ADMINISTRATION
ARTICLE 7. STANDARDS FOR PAYMENTS (R9-22-712.05)

Introduction:

In 2006, the 47th Legislature approved additional funds for distribution to training hospitals for Graduate Medical Education (GME) programs. The funds, which were in addition to the funds allocated yearly to teaching hospitals, are designated to support programs that have expanded and will expand their educational efforts. Prior to September 30, 1997, hospitals were reimbursed for GME costs under the tiered per diem methodology. Beginning September 30, 1997, the Administration was required to establish a separate GME program to reimburse hospitals with approved GME programs, currently funded by Intergovernmental Agreements (IGA's).

Purpose of Rule:

The proposed rule describes how GME appropriated funds are distributed to hospitals for direct costs of the GME programs and currently funded by IGA's. In addition, the rule describes how indirect GME costs for programs located in a county with a population of less than 500,000 are calculated and distributed and how funds and certified public expenditures apply to other indirect program costs. The intention of this rulemaking is to modify the method of allocating funds for indirect GME costs to permit payments that will cover a greater portion of the costs reported by the GME programs. Pursuant to A.R.S. § 36-2903.01(G)(9), certain public entities are permitted to transfer funds to the AHCCCS Administration to support these payments. AHCCCS will also make clarifying changes to the rule.

1. Identification of rulemaking.

This rule describes the GME fund allocation requirements. Each qualified hospital annually receives a payment equal to its calculated Medicaid GME costs, conditional on the availability of funding. The allocation process is described at A.R.S. § 36-2903.01(G)(9). The GME allocation is adjusted annually based on updated GME cost information.

CMS requires the AHCCCS Administration to annually update the amount allocated to each hospital in the State Plan. Before AHCCCS may make Graduate Medical Education payments, a SPA must be submitted to, and approved by, CMS. CMS has notified AHCCCS that revision of the method of allocating funds for indirect GME costs is necessary for CMS approval of the SPA. Absent promulgation of this rule, CMS will not approve the SPA, and AHCCCS will lack federal approval and corresponding federal funds for GME payments to qualifying hospitals. Total 2017 GME payments under this methodology are expected to be approximately \$290 million.

Under the proposed rule, the 2017 indirect GME allocation is estimated to be \$37.7 million less than the allocation would have been had CMS continued to approve the current methodology. GME payments are funded through intergovernmental transfers from or certified public expenditures by political subdivision of the state. Therefore, the proposed rule does not impact the State General Fund. In addition, none of the hospitals impacted by the change are small businesses.

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

The changes to this rule revise the method of calculating allowable indirect costs. This calculation is performed annually.

b. The harm resulting from the conduct the rule is designed to change and the likelihood it will continue to occur if the rule is not changed:

The Administration does not anticipate a change in conduct with the rulemaking.

c. The estimated change in frequency of the targeted conduct expected from the rule change:

The Administration does not anticipate a change in frequency in conduct with the clarification of the indirect cost calculation. It is anticipated that participants who receive the graduate medical education reimbursements will continue regular participation going forward.

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

The hospitals, private persons which receive medical services and the Administration are the parties that will either bear the costs or directly benefit from the rulemaking.

3. Cost benefit analysis.

a. Probable costs and benefits to the implementing agency and other agencies directly affected by the implementation and enforcement of the proposed rulemaking including the number of new full-time employees necessary to implement and enforce the proposed rule:

i. Cost:

The Administration anticipates no increase in cost to the implementing agency.

ii. Benefit:

The Administration anticipates no specific benefit to the implementing agencies.

iii. Need for additional Full-time Employees:

The Administration does not anticipate the need to hire full-time employees as a result of this rulemaking.

b. Probable costs and benefits to political subdivision of this state directly affected by the implementation and enforcement of the proposed rulemaking.

This rulemaking does not directly affect political subdivisions.

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

The Administration anticipates that public and private employment will not be impacted by the changes.

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

a. Identification of the small businesses subject to the proposed rulemaking.

The Administration does not anticipate a fiscal impact on small businesses because the proposed rule language changes are anticipated to only affect hospitals and the Administration.

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

The Administration anticipates no impact on the administrative expenses of these small businesses because the proposed rule does not require a change in claim submission coding or procedure.

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

i. Establishing less stringent compliance or reporting requirements in the rule for small businesses;

This rule does not impose compliance or reporting requirements on small businesses beyond those already necessary to comply with federal law and state statute.

ii. Establishing less stringent schedules deadlines in the rule for compliance or reporting requirements for small businesses;

This rule does not impose compliance or reporting requirements on small businesses beyond those requirements that are necessary to comply with federal law and state statute.

iii. Consolidate or simplify the rule's compliance or reporting requirements for small businesses;

This rule does not impose compliance or reporting requirements on small businesses beyond those requirements that are necessary to comply with federal law and state statute.

iv. Establish performance standards for small businesses to replace design or operational standards in the rule; and

This rule does not establish performance standards for small businesses beyond those requirements that are necessary to comply with federal law and state statute.

v. Exempting small businesses from any or all requirements of the rule.

Exempting small businesses is not applicable to this rule.

d. The probable cost and benefit to private persons and consumers who are directly affected by the proposed rulemaking.

The rule will not affect private persons and consumers.

6. Statement of the probable effect on state revenues.

It is anticipated that the rule will not affect state revenues.

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

The Administration did not consider other alternatives because the revisions to the rule are the most cost effective and efficient method of complying with federal law and state law as well as the State's fiduciary responsibility to Arizona taxpayers.

8. A description of any data on which a rule is based with a detailed explanation of how the data was obtained and why the data is acceptable data.

The Administration did not consider any specific data to base the rule upon.

Arizona Health Care Cost Containment System - Administration

R9-22-712.05. Graduate Medical Education Fund Allocation

- A. Graduate medical education (GME) reimbursement as of September 30, 1997. Subject to legislative appropriation, the Administration shall make a distribution based on direct graduate medical education costs as described in A.R.S. § 36-2903.01(G)(9)(a).
- B. Subject to available funds and approval by CMS, the Administration shall annually distribute monies appropriated for the expansions of GME programs approved by the Administration to hospitals for direct program costs eligible for funding under A.R.S. § 36-2903.01(G)(9)(b). A GME program is deemed to be established as of the date of its original accreditation. All determinations that are necessary to make distributions described by this subsection shall be made using information possessed by the Administration as of the date of reporting under subsection (B)(3).
1. Eligible health care facilities. A health care facility is eligible for distributions under subsection (B) if all of the following apply:
 - a. It is a hospital in Arizona that is the sponsoring institution of, or a participating institution in, one or more of the GME programs in Arizona;
 - b. It incurs direct costs for the training of residents in the GME programs, which costs are or will be reported on the hospital's Medicare Cost Report;
 - c. It is not administered by or does not receive its primary funding from an agency of the federal government.
 2. Eligible resident positions. For purposes of determining program allocation amounts under subsection (B)(4) the following resident positions are eligible for consideration to the extent that the resident training takes place in Arizona and not at a health care facility made ineligible under subsection (B)(1)(c):
 - a. Filled resident positions in approved programs established as of October 1, 1999 at hospitals that receive funding as described in A.R.S. § 36-2903.01(G)(9)(a) that are additional to the number of resident positions that were filled as of October 1, 1999; and
 - b. All filled resident positions in approved programs other than GME programs described in A.R.S. § 36-2903.01(G)(9)(a) that were established before July 1, 2006.
 3. Annual reporting. By April 1st of each year, each GME program and each hospital seeking a distribution under subsection (B) shall provide the applicable information listed in this subsection to the Administration:
 - a. A GME program shall provide all of the following:
 - i. The program name and number assigned by the accrediting organization;
 - ii. The original date of accreditation;
 - iii. The names of the sponsoring institution and all participating institutions current as of the date of reporting;
 - iv. The number of approved resident positions and the number of filled resident positions current as of the date of reporting;
 - v. For programs established as of October 1, 1999, the number of resident positions that were filled as of October 1, 1999, if the program has not already provided this information to the Administration;
 - b. A hospital seeking a distribution under subsection (B) shall provide all of the following that apply:
 - i. If the hospital uses the Intern and Resident Information System (IRIS) for tracking and reporting its resident activity to the fiscal intermediary, copies of the IRIS master and assignment files for the hospital's two most recently completed Medicare cost reporting years as filed with the fiscal intermediary;
 - ii. If the hospital does not use the IRIS or has less than two cost reporting years available in the form of the IRIS master and assignment files, the information normally contained in the IRIS master and assignment files in an alternative format for the hospital's two most recently completed Medicare cost reporting years;
 - iii. At the request of the Administration, a copy of the hospital's Medicare Cost Report or any part of the report for the most recently completed cost reporting year.
 4. Allocation of expansion funds. Annually the Administration shall allocate available funds to each approved GME program in the following manner:
 - a. Information provided by hospitals under subsection (B)(3)(b) shall be used to determine the program in which each eligible resident is enrolled and the number of days that each eligible resident worked in any area of the hospital complex or in a non-hospital setting under agreement with the reporting hospital during the period of assignment to that hospital. For this purpose, the Administration shall use data relating to the most recent 12-month period that is common to all information provided under subsections (B)(3)(b)(i) and (ii).
 - b. The number of eligible residents allocated to each participating institution within each approved GME program shall be determined as follows:
 - i. Total the number of days determined for each participating institution under subsection (B)(4)(a) and divide each total by 365.
 - ii. Proportionally adjust the result of subsection (B)(4)(b)(i) for each participating institution within each program according to the number of residents determined to be eligible under subsection (B)(2).
 - c. The number of allocated eligible residents determined under subsection (B)(4)(b)(ii) shall be adjusted for Arizona Medicaid utilization using the most recent Medicare Cost Report information on file with the Administration as of the date of reporting under subsection (B)(3) and the Administration's inpatient hospital claims and encounter data for the time period corresponding to the Medicare Cost Report information for each hospital. The Administration shall use only those inpatient hospital claims paid by the Administration and encounters that were adjudicated by the Administration as of the date of reporting under subsection (B)(3). The Medicaid-adjusted eligible residents shall be determined as follows:
 - i. For each hospital, the total AHCCCS inpatient hospital days of care shall be divided by the total Medicare Cost Report inpatient hospital days, multiplied by 100 and rounded up to the nearest multiple of 5 percent.

Arizona Health Care Cost Containment System - Administration

- ii. The number of allocated eligible residents determined for each participating hospital under subsection (B)(4)(b)(ii) shall be multiplied by the percentage derived under subsection (B)(4)(c)(i) for that hospital. The number of allocated eligible residents determined under subsection (B)(4)(b)(ii) for a participating institution that is not a hospital and not a health care facility made ineligible under subsection (B)(1)(c) shall be multiplied by the percentage derived under subsection (B)(4)(c)(i) for the program's sponsoring institution or, if the sponsoring institution is not a hospital, the sponsoring institution's affiliated hospital. The number of allocated eligible residents determined under subsection (B)(4)(b)(ii) for a participating institution that is made ineligible under subsection (B)(1)(c) shall be multiplied by zero percent.
 - d. The total allocation for each approved program shall be determined by multiplying the Medicaid-adjusted eligible residents determined under subsection (B)(4)(c)(ii) by the per resident conversion factor determined below and totaling the resulting dollar amounts for all participating institutions in the program. The per resident conversion factor shall be determined as follows:
 - i. Calculate the total direct GME costs from the most recent Medicare Cost Reports on file with the Administration for all hospitals that have reported such costs.
 - ii. Calculate the total allocated residents determined under subsection (B)(4)(b)(i) for those hospitals described under subsection (B)(4)(d)(i).
 - iii. Divide the total GME costs calculated under subsection (B)(4)(d)(i) by the total allocated residents calculated under subsection (B)(4)(d)(ii).
5. Distribution of expansion funds. On an annual basis subject to available funds, the Administration shall distribute the allocated amounts determined under subsection (B)(4) in the following manner:
 - a. The allocated amounts shall be distributed in the following order of priority:
 - i. To eligible hospitals that do not receive funding in accordance with A.R.S. § 36-2903.01(G)(9)(a) for the direct costs of programs established before July 1, 2006;
 - ii. To eligible hospitals that receive funding in accordance with A.R.S. § 36-2903.01(G)(9)(a) for the direct costs of programs established before July 1, 2006;
 - b. The allocated amounts shall be distributed to the eligible hospitals in each approved program in proportion to the number of Medicaid-adjusted eligible residents allocated to each hospital within that program under subsection (B)(4)(c)(ii).
 - c. If funds are insufficient to cover all distributions within any priority group described under subsection (B)(5)(a), the Administration shall adjust the distributions proportionally within that priority group.
- C. Subject to available funds and approval by CMS, the Administration shall annually distribute monies appropriated for the expansions of GME programs approved by the Administration to hospitals for direct program costs eligible for funding under A.R.S. § 36-2903.01(G)(9)(c)(i). A GME program is deemed to be established as of the date of its original accreditation. All determinations that are necessary to make distributions described by this subsection shall be made using information possessed by the Administration as of the date of reporting under subsection (C)(3).
 1. Eligible health care facilities. A health care facility is eligible for distributions under subsection (C) if it meets all the conditions of subsections (B)(1)(a) through (c).
 2. Eligible resident positions. For purposes of determining program allocation amounts under subsection (C)(4), the following resident positions are eligible for consideration to the extent that the resident training takes place in Arizona and not at a health care facility made ineligible under subsection (B)(1)(c):
 - a. All filled resident positions in approved programs established on or after July 1, 2006; and
 - b. For approved programs established on or after July 1, 2006 that have been established for less than one year as of the date of reporting under subsection (C)(3) and have not yet filled their first-year resident positions, all prospective residents reasonably expected by the program to be enrolled as a result of the most recently completed annual resident match.
 3. Annual reporting. By April 1st of each year, each GME program and each hospital seeking a distribution under subsection (C) shall provide to the Administration:
 - a. A GME program shall provide all of the following:
 - i. The requirements of subsections (B)(3)(a)(i) through (iv);
 - ii. The academic year rotation schedule on file with the program current as of the date of reporting; and
 - iii. For programs described under subsection (C)(2)(b), the number of residents expected to be enrolled as a result of the most recently completed annual resident match.
 - b. A hospital seeking a distribution under subsection (C) shall provide the requirements of subsection (B)(3)(b).
 4. Allocation of expansion funds. Annually the Administration shall allocate available funds to approved GME programs in the following manner:
 - a. Information provided by hospitals in accordance with subsection (B)(3)(b) shall be used to determine the program in which each eligible resident is enrolled and the number of days that each eligible resident worked in any area of the hospital complex or in a non-hospital setting under agreement with the reporting hospital during the period of assignment to that hospital. For this purpose, the Administration shall use data relating to the most recent 12-month period that is common to all information provided in accordance with subsections (B)(3)(b)(i) and (ii).
 - b. For approved programs whose resident activity is not represented in the information provided in accordance with subsection (B)(3)(b), information provided by GME programs under subsection (C)(3)(a) shall be used to determine the number of days that each eligible resident is expected to work at each participating institution.

Arizona Health Care Cost Containment System - Administration

- c. The number of eligible residents allocated to each participating institution for each approved GME program shall be determined by totaling the number of days determined under subsections (C)(4)(a) and (b) and dividing the totals by 365.
- d. The number of allocated residents determined under subsection (C)(4)(c) shall be adjusted for Arizona Medicaid utilization in accordance with subsection (B)(4)(c).
- e. The total allocation for each approved program shall be determined in accordance with subsection (B)(4)(d).
5. Distribution of expansion funds. On an annual basis subject to available funds, the Administration shall distribute the allocated amounts determined under subsection (C)(4) to the eligible hospitals in each approved program in proportion to the number of Medicaid-adjusted eligible residents allocated to each within that program under subsection (C)(4)(d).
- D.** Subject to available funds and approval by CMS, the Administration shall annually distribute monies appropriated for GME programs approved by the Administration to hospitals for indirect program costs eligible for funding under A.R.S. § 36-2903.01(G)(9)(c)(ii). A GME program is deemed to be established as of the date of its original accreditation. All determinations that are necessary to make distributions described by this subsection shall be made using information possessed by the Administration as of the date of reporting under subsection (D)(3).
 1. Eligible health care facilities. A health care facility is eligible for distributions under subsection (D) if all of the following apply:
 - a. It is a hospital in Arizona that is the sponsoring institution of, or a participating institution in, one or more of the GME programs in Arizona or is the base hospital for one or more of the GME programs in Arizona whose sponsoring institutions are not hospitals;
 - b. It incurs indirect program costs for the training of residents in the GME programs, which are or will be calculated on the hospital's Medicare Cost Report or are reimbursable under the Children's Hospitals Graduate Medical Education Payment Program administered by HRSA;
 - c. It is not administered by or does not receive its primary funding from an agency of the federal government.
 2. Eligible resident positions. For purposes of determining program allocation amounts under subsection (D)(4) the following resident positions are eligible for consideration to the extent that the resident training takes place in Arizona and not at a health care facility made ineligible under subsection (D)(1)(c):
 - a. Any filled resident position in an approved program that includes a rotation of at least one month per year in a county other than Maricopa or Pima whose population was less than 500,000 persons at the time the residency rotation was added to the academic year rotation schedule;
 - b. For approved programs that have been established for less than one year as of the date of reporting under subsection (D)(3) and have not yet filled their first-year resident positions, all prospective residents reasonably expected by the program to be enrolled as a result of the most recently completed annual resident match who will perform rotations of at least one month per year in a county other than Maricopa or Pima whose population was less than 500,000 persons at the time the residency rotation was added to the academic year rotation schedule.
 3. Annual reporting. By April 1st of each year, each GME program and each hospital seeking a distribution under subsection (D) shall provide to the Administration:
 - a. A GME program shall provide all of the following:
 - i. The requirements of subsections (B)(3)(a)(i) through (iv);
 - ii. The academic year rotation schedule on file with the program current as of the date of reporting;
 - iii. For programs described under subsection (D)(2)(c), the number of residents expected to be enrolled as a result of the most recently completed annual resident match.
 - b. A hospital seeking a distribution under subsection (D) shall provide the requirements of subsection (B)(3)(b)(iii).
 4. Allocation of funds for indirect program costs. Annually the Administration shall allocate available funds to approved GME programs in the following manner:
 - a. Using the information provided by programs under subsection (D)(3), the Administration shall determine for each program the number of residents in the program who are eligible under subsection (D)(2) and the number of months per year that each eligible resident will perform rotations in counties described by subsection (D)(2), multiply the number of eligible residents by the number of months and multiply the result by the per resident per month conversion factor determined under subsection (D)(4)(b).
 - b. Using the most recent Medicare Cost Reports on file with the Administration for all hospitals that have calculated a Medicare indirect medical education payment, the Administration shall determine a per resident per month conversion factor as follows:
 - i. Calculate each hospital's Medicaid share by dividing the AHCCCS inpatient hospital days of care by the total inpatient hospital days from the Medicare Cost Report. For this purpose, the Administration shall use the information described by subsection (B)(4)(c) for adjusting allocated residents for Arizona Medicaid utilization.
 - ii. Calculate each hospital's Medicare share by dividing the Medicare inpatient days on the Medicare Cost Report by the total inpatient hospital days on the Medicare Cost Report.
 - iii. Divide the Medicaid share by the Medicare share and multiply the resulting ratio by the indirect medical education payment calculated on the Medicare Cost Report.
 - iv. Total the results for all hospitals, divide the result by the total allocated residents determined under subsection (B)(4)(b)(ii) for these hospitals, and divide that result by 12.
 5. Distribution of funds for indirect program costs. On an annual basis subject to available funds, the Administration shall distribute to each eligible hospital the amount calculated for the hospital at subsection (D)(4)(a).

Arizona Health Care Cost Containment System - Administration

- E. Reallocation of funds. If funds appropriated for subsection (B) are not allocated by the Administration and funds appropriated for subsections (C) and (D) are insufficient to cover all distributions under subsections (C)(5) and (D)(5), the funds not allocated under subsection (B) shall be allocated under subsections (C) and (D) to the extent of the calculated distributions. If funds are insufficient to cover all distributions under subsections (C)(5) and (D)(5), the Administration shall adjust the distributions proportionally. If funds appropriated for subsections (C) and (D) are not allocated by the Administration and funds appropriated for subsection (B) are insufficient to cover all distributions under subsection (B)(5), the funds not allocated under subsections (C) and (D) shall be allocated under subsection (B) to the extent of the calculated distributions.
- F. The Administration may enter into intergovernmental agreements with local, county, and tribal governments wherein local, county and tribal governments may transfer funds or certify public expenditures to the Administration. Such funds or certification, subject to approval by CMS, will be used to qualify for additional federal funds. Those funds will be used for the purposes of reimbursing hospitals that are eligible under subsection (D)(1) and specified by the local, county, or tribal government for indirect program costs other than those reimbursed under subsection (D). The Administration shall allocate available funds in accordance with subsection (D) except that reimbursement with such funds is not limited to resident positions or rotations in counties with populations of less than 500,000 persons. On an annual basis subject to available funds, the Administration shall distribute to each eligible hospital the greatest among the following amounts, less any amounts distributed under subsection (D)(5):
1. The amount that results from multiplying the total number of eligible residents allocated to the hospital under subsection (B)(4)(b)(ii) by 12 by the per resident per month conversion factor determined under subsection (D)(4)(b);
 2. The amount calculated for the hospital at subsection (D)(4)(b)(iii); or
 3. The median of all amounts calculated at subsection (D)(4)(b)(iii) if the hospital does not have an indirect medical education payment calculated on the Medicare Cost Report.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 1782, effective June 30, 2007 (Supp. 07-2). Amended by exempt rulemaking at 13 A.A.R. 4032, effective November 1, 2007 (Supp. 07-4). Amended by final rulemaking at 21 A.A.R. 3469, effective January 30, 2016 (Supp. 15-4).

36-2903.01. Additional powers and duties; report; definition

A. The director of the Arizona health care cost containment system administration may adopt rules that provide that the system may withhold or forfeit payments to be made to a noncontracting provider by the system if the noncontracting provider fails to comply with this article, the provider agreement or rules that are adopted pursuant to this article and that relate to the specific services rendered for which a claim for payment is made.

B. The director shall:

1. Prescribe uniform forms to be used by all contractors. The rules shall require a written and signed application by the applicant or an applicant's authorized representative, or, if the person is incompetent or incapacitated, a family member or a person acting responsibly for the applicant may obtain a signature or a reasonable facsimile and file the application as prescribed by the administration.

2. Enter into an interagency agreement with the department to establish a streamlined eligibility process to determine the eligibility of all persons defined pursuant to section 36-2901, paragraph 6, subdivision (a). At the administration's option, the interagency agreement may allow the administration to determine the eligibility of certain persons, including those defined pursuant to section 36-2901, paragraph 6, subdivision (a).

3. Enter into an intergovernmental agreement with the department to:

(a) Establish an expedited eligibility and enrollment process for all persons who are hospitalized at the time of application.

(b) Establish performance measures and incentives for the department.

(c) Establish the process for management evaluation reviews that the administration shall perform to evaluate the eligibility determination functions performed by the department.

(d) Establish eligibility quality control reviews by the administration.

(e) Require the department to adopt rules, consistent with the rules adopted by the administration for a hearing process, that applicants or members may use for appeals of eligibility determinations or redeterminations.

(f) Establish the department's responsibility to place sufficient eligibility workers at federally qualified health centers to screen for eligibility and at hospital sites and level one trauma centers to ensure that persons seeking hospital services are screened on a timely basis for eligibility for the system, including a process to ensure that applications for the system can be accepted on a twenty-four hour basis, seven days a week.

(g) Withhold payments based on the allowable sanctions for errors in eligibility determinations or redeterminations or failure to meet performance measures required by the intergovernmental agreement.

(h) Recoup from the department all federal fiscal sanctions that result from the department's inaccurate eligibility determinations. The director may offset all or part of a sanction if the department submits a corrective action plan and a strategy to remedy the error.

4. By rule establish a procedure and time frames for the intake of grievances and requests for hearings, for the continuation of benefits and services during the appeal process and for a grievance process at the contractor level. Notwithstanding sections 41-1092.02, 41-1092.03 and 41-1092.05, the administration shall develop rules to establish the procedure and time frame for the informal resolution of grievances and appeals. A grievance that is not related to a claim for payment of system covered services shall be filed in writing with and received by the administration or the prepaid capitated provider or program contractor not later than sixty days after the date of the adverse action, decision or policy implementation being grieved. A grievance that is related to a claim for payment of system covered services must be filed in writing and received by the administration or the prepaid capitated provider or program contractor within twelve months after the date of service, within twelve months

after the date that eligibility is posted or within sixty days after the date of the denial of a timely claim submission, whichever is later. A grievance for the denial of a claim for reimbursement of services may contest the validity of any adverse action, decision, policy implementation or rule that related to or resulted in the full or partial denial of the claim. A policy implementation may be subject to a grievance procedure, but it may not be appealed for a hearing. The administration is not required to participate in a mandatory settlement conference if it is not a real party in interest. In any proceeding before the administration, including a grievance or hearing, persons may represent themselves or be represented by a duly authorized agent who is not charging a fee. A legal entity may be represented by an officer, partner or employee who is specifically authorized by the legal entity to represent it in the particular proceeding.

5. Apply for and accept federal funds available under title XIX of the social security act (P.L. 89-97; 79 Stat. 344; 42 United States Code section 1396 (1980)) in support of the system. The application made by the director pursuant to this paragraph shall be designed to qualify for federal funding primarily on a prepaid capitated basis. Such funds may be used only for the support of persons defined as eligible pursuant to title XIX of the social security act or the approved section 1115 waiver.

6. At least thirty days before the implementation of a policy or a change to an existing policy relating to reimbursement, provide notice to interested parties. Parties interested in receiving notification of policy changes shall submit a written request for notification to the administration.

7. In addition to the cost sharing requirements specified in subsection D, paragraph 4 of this section:

(a) Charge monthly premiums up to the maximum amount allowed by federal law to all populations of eligible persons who may be charged.

(b) Implement this paragraph to the extent permitted under the federal deficit reduction act of 2005 and other federal laws, subject to the approval of federal waiver authority and to the extent that any changes in the cost sharing requirements under this paragraph would permit this state to receive any enhanced federal matching rate.

C. The director is authorized to apply for any federal funds available for the support of programs to investigate and prosecute violations arising from the administration and operation of the system. Available state funds appropriated for the administration and operation of the system may be used as matching funds to secure federal funds pursuant to this subsection.

D. The director may adopt rules or procedures to do the following:

1. Authorize advance payments based on estimated liability to a contractor or a noncontracting provider after the contractor or noncontracting provider has submitted a claim for services and before the claim is ultimately resolved. The rules shall specify that any advance payment shall be conditioned on the execution before payment of a contract with the contractor or noncontracting provider that requires the administration to retain a specified percentage, which shall be at least twenty percent, of the claimed amount as security and that requires repayment to the administration if the administration makes any overpayment.

2. Defer liability, in whole or in part, of contractors for care provided to members who are hospitalized on the date of enrollment or under other circumstances. Payment shall be on a capped fee-for-service basis for services other than hospital services and at the rate established pursuant to subsection G of this section for hospital services or at the rate paid by the health plan, whichever is less.

3. Deputize, in writing, any qualified officer or employee in the administration to perform any act that the director by law is empowered to do or charged with the responsibility of doing, including the authority to issue final administrative decisions pursuant to section 41-1092.08.

4. Notwithstanding any other law, require persons eligible pursuant to section 36-2901, paragraph 6, subdivision (a), section 36-2931 and section 36-2981, paragraph 6 to be financially responsible for any cost sharing requirements established in a state plan or a section 1115 waiver and approved by the centers for medicare and

medicaid services. Cost sharing requirements may include copayments, coinsurance, deductibles, enrollment fees and monthly premiums for enrolled members, including households with children enrolled in the Arizona long-term care system.

E. The director shall adopt rules that further specify the medical care and hospital services that are covered by the system pursuant to section 36-2907.

F. In addition to the rules otherwise specified in this article, the director may adopt necessary rules pursuant to title 41, chapter 6 to carry out this article. Rules adopted by the director pursuant to this subsection shall consider the differences between rural and urban conditions on the delivery of hospitalization and medical care.

G. For inpatient hospital admissions and outpatient hospital services on and after March 1, 1993, the administration shall adopt rules for the reimbursement of hospitals according to the following procedures:

1. For inpatient hospital stays from March 1, 1993 through September 30, 2014, the administration shall use a prospective tiered per diem methodology, using hospital peer groups if analysis shows that cost differences can be attributed to independently definable features that hospitals within a peer group share. In peer grouping the administration may consider such factors as length of stay differences and labor market variations. If there are no cost differences, the administration shall implement a stop loss-stop gain or similar mechanism. Any stop loss-stop gain or similar mechanism shall ensure that the tiered per diem rates assigned to a hospital do not represent less than ninety percent of its 1990 base year costs or more than one hundred ten percent of its 1990 base year costs, adjusted by an audit factor, during the period of March 1, 1993 through September 30, 1994. The tiered per diem rates set for hospitals shall represent no less than eighty-seven and one-half percent or more than one hundred twelve and one-half percent of its 1990 base year costs, adjusted by an audit factor, from October 1, 1994 through September 30, 1995 and no less than eighty-five percent or more than one hundred fifteen percent of its 1990 base year costs, adjusted by an audit factor, from October 1, 1995 through September 30, 1996. For the periods after September 30, 1996 no stop loss-stop gain or similar mechanisms shall be in effect. An adjustment in the stop loss-stop gain percentage may be made to ensure that total payments do not increase as a result of this provision. If peer groups are used, the administration shall establish initial peer group designations for each hospital before implementation of the per diem system. The administration may also use a negotiated rate methodology. The tiered per diem methodology may include separate consideration for specialty hospitals that limit their provision of services to specific patient populations, such as rehabilitative patients or children. The initial per diem rates shall be based on hospital claims and encounter data for dates of service November 1, 1990 through October 31, 1991 and processed through May of 1992. The administration may also establish a separate reimbursement methodology for claims with extraordinarily high costs per day that exceed thresholds established by the administration.

2. For rates effective on October 1, 1994, and annually through September 30, 2011, the administration shall adjust tiered per diem payments for inpatient hospital care by the data resources incorporated market basket index for prospective payment system hospitals. For rates effective beginning on October 1, 1999, the administration shall adjust payments to reflect changes in length of stay for the maternity and nursery tiers.

3. Through June 30, 2004, for outpatient hospital services, the administration shall reimburse a hospital by applying a hospital specific outpatient cost-to-charge ratio to the covered charges. Beginning on July 1, 2004 through June 30, 2005, the administration shall reimburse a hospital by applying a hospital specific outpatient cost-to-charge ratio to covered charges. If the hospital increases its charges for outpatient services filed with the Arizona department of health services pursuant to chapter 4, article 3 of this title, by more than 4.7 percent for dates of service effective on or after July 1, 2004, the hospital specific cost-to-charge ratio will be reduced by the amount that it exceeds 4.7 percent. If charges exceed 4.7 percent, the effective date of the increased charges will be the effective date of the adjusted Arizona health care cost containment system cost-to-charge ratio. The administration shall develop the methodology for a capped fee-for-service schedule and a statewide cost-to-charge ratio. Any covered outpatient service not included in the capped fee-for-service schedule shall be reimbursed by applying the statewide cost-to-charge ratio that is based on the services not included in the capped fee-for-service schedule. Beginning on July 1, 2005, the administration shall reimburse clean claims with dates of service on or after July 1, 2005, based on the capped fee-for-service schedule or the statewide cost-to-charge

ratio established pursuant to this paragraph. The administration may make additional adjustments to the outpatient hospital rates established pursuant to this section based on other factors, including the number of beds in the hospital, specialty services available to patients and the geographic location of the hospital.

4. Except if submitted under an electronic claims submission system, a hospital bill is considered received for purposes of this paragraph on initial receipt of the legible, error-free claim form by the administration if the claim includes the following error-free documentation in legible form:

- (a) An admission face sheet.
- (b) An itemized statement.
- (c) An admission history and physical.
- (d) A discharge summary or an interim summary if the claim is split.
- (e) An emergency record, if admission was through the emergency room.
- (f) Operative reports, if applicable.
- (g) A labor and delivery room report, if applicable.

Payment received by a hospital from the administration pursuant to this subsection or from a contractor either by contract or pursuant to section 36-2904, subsection I is considered payment by the administration or the contractor of the administration's or contractor's liability for the hospital bill. A hospital may collect any unpaid portion of its bill from other third-party payors or in situations covered by title 33, chapter 7, article 3.

5. For services rendered on and after October 1, 1997, the administration shall pay a hospital's rate established according to this section subject to the following:

- (a) If the hospital's bill is paid within thirty days of the date the bill was received, the administration shall pay ninety-nine percent of the rate.
- (b) If the hospital's bill is paid after thirty days but within sixty days of the date the bill was received, the administration shall pay one hundred percent of the rate.
- (c) If the hospital's bill is paid any time after sixty days of the date the bill was received, the administration shall pay one hundred percent of the rate plus a fee of one percent per month for each month or portion of a month following the sixtieth day of receipt of the bill until the date of payment.

6. In developing the reimbursement methodology, if a review of the reports filed by a hospital pursuant to section 36-125.04 indicates that further investigation is considered necessary to verify the accuracy of the information in the reports, the administration may examine the hospital's records and accounts related to the reporting requirements of section 36-125.04. The administration shall bear the cost incurred in connection with this examination unless the administration finds that the records examined are significantly deficient or incorrect, in which case the administration may charge the cost of the investigation to the hospital examined.

7. Except for privileged medical information, the administration shall make available for public inspection the cost and charge data and the calculations used by the administration to determine payments under the tiered per diem system, provided that individual hospitals are not identified by name. The administration shall make the data and calculations available for public inspection during regular business hours and shall provide copies of the data and calculations to individuals requesting such copies within thirty days of receipt of a written request. The administration may charge a reasonable fee for the provision of the data or information.

8. The prospective tiered per diem payment methodology for inpatient hospital services shall include a mechanism for the prospective payment of inpatient hospital capital related costs. The capital payment shall

include hospital specific and statewide average amounts. For tiered per diem rates beginning on October 1, 1999, the capital related cost component is frozen at the blended rate of forty percent of the hospital specific capital cost and sixty percent of the statewide average capital cost in effect as of January 1, 1999 and as further adjusted by the calculation of tier rates for maternity and nursery as prescribed by law. Through September 30, 2011, the administration shall adjust the capital related cost component by the data resources incorporated market basket index for prospective payment system hospitals.

9. For graduate medical education programs:

(a) Beginning September 30, 1997, the administration shall establish a separate graduate medical education program to reimburse hospitals that had graduate medical education programs that were approved by the administration as of October 1, 1999. The administration shall separately account for monies for the graduate medical education program based on the total reimbursement for graduate medical education reimbursed to hospitals by the system in federal fiscal year 1995-1996 pursuant to the tiered per diem methodology specified in this section. The graduate medical education program reimbursement shall be adjusted annually by the increase or decrease in the index published by the global insight hospital market basket index for prospective hospital reimbursement. Subject to legislative appropriation, on an annual basis, each qualified hospital shall receive a single payment from the graduate medical education program that is equal to the same percentage of graduate medical education reimbursement that was paid by the system in federal fiscal year 1995-1996. Any reimbursement for graduate medical education made by the administration shall not be subject to future settlements or appeals by the hospitals to the administration. The monies available under this subdivision shall not exceed the fiscal year 2005-2006 appropriation adjusted annually by the increase or decrease in the index published by the global insight hospital market basket index for prospective hospital reimbursement, except for monies distributed for expansions pursuant to subdivision (b) of this paragraph.

(b) The monies available for graduate medical education programs pursuant to this subdivision shall not exceed the fiscal year 2006-2007 appropriation adjusted annually by the increase or decrease in the index published by the global insight hospital market basket index for prospective hospital reimbursement. Graduate medical education programs eligible for such reimbursement are not precluded from receiving reimbursement for funding under subdivision (c) of this paragraph. Beginning July 1, 2006, the administration shall distribute any monies appropriated for graduate medical education above the amount prescribed in subdivision (a) of this paragraph in the following order or priority:

(i) For the direct costs to support the expansion of graduate medical education programs established before July 1, 2006 at hospitals that do not receive payments pursuant to subdivision (a) of this paragraph. These programs must be approved by the administration.

(ii) For the direct costs to support the expansion of graduate medical education programs established on or before October 1, 1999. These programs must be approved by the administration.

(c) The administration shall distribute to hospitals any monies appropriated for graduate medical education above the amount prescribed in subdivisions (a) and (b) of this paragraph for the following purposes:

(i) For the direct costs of graduate medical education programs established or expanded on or after July 1, 2006. These programs must be approved by the administration.

(ii) For a portion of additional indirect graduate medical education costs for programs that are located in a county with a population of less than five hundred thousand persons at the time the residency position was created or for a residency position that includes a rotation in a county with a population of less than five hundred thousand persons at the time the residency position was established. These programs must be approved by the administration.

(d) The administration shall develop, by rule, the formula by which the monies are distributed.

(e) Each graduate medical education program that receives funding pursuant to subdivision (b) or (c) of this paragraph shall identify and report to the administration the number of new residency positions created by the funding provided in this paragraph, including positions in rural areas. The program shall also report information related to the number of funded residency positions that resulted in physicians locating their practices in this state. The administration shall report to the joint legislative budget committee by February 1 of each year on the number of new residency positions as reported by the graduate medical education programs.

(f) Local, county and tribal governments and any university under the jurisdiction of the Arizona board of regents may provide monies in addition to any state general fund monies appropriated for graduate medical education in order to qualify for additional matching federal monies for providers, programs or positions in a specific locality and costs incurred pursuant to a specific contract between the administration and providers or other entities to provide graduate medical education services as an administrative activity. Payments by the administration pursuant to this subdivision may be limited to those providers designated by the funding entity and may be based on any methodology deemed appropriate by the administration, including replacing any payments that might otherwise have been paid pursuant to subdivision (a), (b) or (c) of this paragraph had sufficient state general fund monies or other monies been appropriated to fully fund those payments. These programs, positions, payment methodologies and administrative graduate medical education services must be approved by the administration and the centers for medicare and medicaid services. The administration shall report to the president of the senate, the speaker of the house of representatives and the director of the joint legislative budget committee on or before July 1 of each year on the amount of money contributed and number of residency positions funded by local, county and tribal governments, including the amount of federal matching monies used.

(g) Any funds appropriated but not allocated by the administration for subdivision (b) or (c) of this paragraph may be reallocated if funding for either subdivision is insufficient to cover appropriate graduate medical education costs.

10. Notwithstanding section 41-1005, subsection A, paragraph 9, the administration shall adopt rules pursuant to title 41, chapter 6 establishing the methodology for determining the prospective tiered per diem payments that are in effect through September 30, 2014.

11. For inpatient hospital services rendered on or after October 1, 2011, the prospective tiered per diem payment rates are permanently reset to the amounts payable for those services as of October 1, 2011 pursuant to this subsection.

12. The administration shall adopt a diagnosis-related group based hospital reimbursement methodology consistent with title XIX of the social security act for inpatient dates of service on and after October 1, 2014. The administration may make additional adjustments to the inpatient hospital rates established pursuant to this section for hospitals that are publicly operated or based on other factors, including the number of beds in the hospital, the specialty services available to patients, the geographic location and diagnosis-related group codes that are made publicly available by the hospital pursuant to section 36-437. The administration may also provide additional reimbursement for extraordinarily high cost cases that exceed a threshold above the standard payment. The administration may also establish a separate payment methodology for specific services or hospitals serving unique populations.

H. The director may adopt rules that specify enrollment procedures, including notice to contractors of enrollment. The rules may provide for varying time limits for enrollment in different situations. The administration shall specify in contract when a person who has been determined eligible will be enrolled with that contractor and the date on which the contractor will be financially responsible for health and medical services to the person.

I. The administration may make direct payments to hospitals for hospitalization and medical care provided to a member in accordance with this article and rules. The director may adopt rules to establish the procedures by which the administration shall pay hospitals pursuant to this subsection if a contractor fails to make timely payment to a hospital. Such payment shall be at a level determined pursuant to section 36-2904, subsection H

or I. The director may withhold payment due to a contractor in the amount of any payment made directly to a hospital by the administration on behalf of a contractor pursuant to this subsection.

J. The director shall establish a special unit within the administration for the purpose of monitoring the third-party payment collections required by contractors and noncontracting providers pursuant to section 36-2903, subsection B, paragraph 10 and subsection F and section 36-2915, subsection E. The director shall determine by rule:

1. The type of third-party payments to be monitored pursuant to this subsection.
2. The percentage of third-party payments that is collected by a contractor or noncontracting provider and that the contractor or noncontracting provider may keep and the percentage of such payments that the contractor or noncontracting provider may be required to pay to the administration. Contractors and noncontracting providers must pay to the administration one hundred percent of all third-party payments that are collected and that duplicate administration fee-for-service payments. A contractor that contracts with the administration pursuant to section 36-2904, subsection A may be entitled to retain a percentage of third-party payments if the payments collected and retained by a contractor are reflected in reduced capitation rates. A contractor may be required to pay the administration a percentage of third-party payments that are collected by a contractor and that are not reflected in reduced capitation rates.

K. The administration shall establish procedures to apply to the following if a provider that has a contract with a contractor or noncontracting provider seeks to collect from an individual or financially responsible relative or representative a claim that exceeds the amount that is reimbursed or should be reimbursed by the system:

1. On written notice from the administration or oral or written notice from a member that a claim for covered services may be in violation of this section, the provider that has a contract with a contractor or noncontracting provider shall investigate the inquiry and verify whether the person was eligible for services at the time that covered services were provided. If the claim was paid or should have been paid by the system, the provider that has a contract with a contractor or noncontracting provider shall not continue billing the member.

2. If the claim was paid or should have been paid by the system and the disputed claim has been referred for collection to a collection agency or referred to a credit reporting bureau, the provider that has a contract with a contractor or noncontracting provider shall:

- (a) Notify the collection agency and request that all attempts to collect this specific charge be terminated immediately.

- (b) Advise all credit reporting bureaus that the reported delinquency was in error and request that the affected credit report be corrected to remove any notation about this specific delinquency.

- (c) Notify the administration and the member that the request for payment was in error and that the collection agency and credit reporting bureaus have been notified.

3. If the administration determines that a provider that has a contract with a contractor or noncontracting provider has billed a member for charges that were paid or should have been paid by the administration, the administration shall send written notification by certified mail or other service with proof of delivery to the provider that has a contract with a contractor or noncontracting provider stating that this billing is in violation of federal and state law. If, twenty-one days or more after receiving the notification, a provider that has a contract with a contractor or noncontracting provider knowingly continues billing a member for charges that were paid or should have been paid by the system, the administration may assess a civil penalty in an amount equal to three times the amount of the billing and reduce payment to the provider that has a contract with a contractor or noncontracting provider accordingly. Receipt of delivery signed by the addressee or the addressee's employee is prima facie evidence of knowledge. Civil penalties collected pursuant to this subsection shall be deposited in the state general fund. Section 36-2918, subsections C, D and F, relating to the imposition, collection and enforcement of civil penalties, apply to civil penalties imposed pursuant to this paragraph.

L. The administration may conduct postpayment review of all claims paid by the administration and may recoup any monies erroneously paid. The director may adopt rules that specify procedures for conducting postpayment review. A contractor may conduct a postpayment review of all claims paid by the contractor and may recoup monies that are erroneously paid.

M. Subject to title 41, chapter 4, article 4, the director or the director's designee may employ and supervise personnel necessary to assist the director in performing the functions of the administration.

N. The administration may contract with contractors for obstetrical care who are eligible to provide services under title XIX of the social security act.

O. Notwithstanding any other law, on federal approval the administration may make disproportionate share payments to private hospitals, county operated hospitals, including hospitals owned or leased by a special health care district, and state operated institutions for mental disease beginning October 1, 1991 in accordance with federal law and subject to legislative appropriation. If at any time the administration receives written notification from federal authorities of any change or difference in the actual or estimated amount of federal funds available for disproportionate share payments from the amount reflected in the legislative appropriation for such purposes, the administration shall provide written notification of such change or difference to the president and the minority leader of the senate, the speaker and the minority leader of the house of representatives, the director of the joint legislative budget committee, the legislative committee of reference and any hospital trade association within this state, within three working days not including weekends after receipt of the notice of the change or difference. In calculating disproportionate share payments as prescribed in this section, the administration may use either a methodology based on claims and encounter data that is submitted to the administration from contractors or a methodology based on data that is reported to the administration by private hospitals and state operated institutions for mental disease. The selected methodology applies to all private hospitals and state operated institutions for mental disease qualifying for disproportionate share payments.

P. Disproportionate share payments made pursuant to subsection O of this section include amounts for disproportionate share hospitals designated by political subdivisions of this state, tribal governments and universities under the jurisdiction of the Arizona board of regents. Subject to the approval of the centers for medicare and medicaid services, any amount of federal funding allotted to this state pursuant to section 1923(f) of the social security act and not otherwise spent under subsection O of this section shall be made available for distribution pursuant to this subsection. Political subdivisions of this state, tribal governments and universities under the jurisdiction of the Arizona board of regents may designate hospitals eligible to receive disproportionate share payments in an amount up to the limit prescribed in section 1923(g) of the social security act if those political subdivisions, tribal governments or universities provide sufficient monies to qualify for the matching federal monies for the disproportionate share payments.

Q. Notwithstanding any law to the contrary, the administration may receive confidential adoption information to determine whether an adopted child should be terminated from the system.

R. The adoption agency or the adoption attorney shall notify the administration within thirty days after an eligible person receiving services has placed that person's child for adoption.

S. If the administration implements an electronic claims submission system, it may adopt procedures pursuant to subsection G of this section requiring documentation different than prescribed under subsection G, paragraph 4 of this section.

T. In addition to any requirements adopted pursuant to subsection D, paragraph 4 of this section, notwithstanding any other law, subject to approval by the centers for medicare and medicaid services, beginning July 1, 2011, members eligible pursuant to section 36-2901, paragraph 6, subdivision (a), section 36-2931 and section 36-2981, paragraph 6 shall pay the following:

1. A monthly premium of fifteen dollars, except that the total monthly premium for an entire household shall not exceed sixty dollars.

2. A copayment of five dollars for each physician office visit.
3. A copayment of ten dollars for each urgent care visit.
4. A copayment of thirty dollars for each emergency department visit.

U. Subject to the approval of the centers for medicare and medicaid services, political subdivisions of this state, tribal governments and any university under the jurisdiction of the Arizona board of regents may provide to the Arizona health care cost containment system administration monies in addition to any state general fund monies appropriated for critical access hospitals in order to qualify for additional federal monies. Any amount of federal monies received by this state pursuant to this subsection shall be distributed as supplemental payments to critical access hospitals.

V. For the purposes of this section, "disproportionate share payment" means a payment to a hospital that serves a disproportionate share of low-income patients as described by 42 United States Code section 1396r-4.

AHCCCS (R-18-0109)

Title 9, Chapter 28, Article 7, Standards for Payments

Amend: R9-28-703



GOVERNOR'S REGULATORY REVIEW COUNCIL

STAFF MEMORANDUM – REGULAR RULEMAKING

MEETING DATE: January 9, 2018

AGENDA ITEM: D-8

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

FROM: Council Staff

DATE: December 19, 2017

SUBJECT: AHCCCS (R-18-0109)
Title 9, Chapter 28, Article 7, Standards for Payments

Amend: R9-28-703

SUMMARY OF THE RULEMAKING

This rulemaking, from the Arizona Health Care Cost Containment System (AHCCCS) Administration, seeks to amend one rule in A.A.C. Title 9, Chapter 28, Article 7, related to nursing facility supplemental payments. The Governor's Office provided an exemption from Executive Order 2017-02 on July 20, 2017.

Proposed Action

AHCCCS is entirely rewriting the existing rule, consistent with federal law, in order to authorize two separate funding allocations for purposes of calculating nursing facility supplemental payments to be paid to providers by spring 2018. Technical and clarifying changes are also proposed to improve the clarity and understandability of the rule.

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

Yes. AHCCCS cites to both general and specific authority for the rule, including A.R.S. § 36-2999.53(B) which requires the Administration to administer the nursing facility assessment fund.

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

No. The rule does not establish a new fee or contain a fee increase.

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

The rulemaking has minimal economic impact, as the Administration is simply aligning the rule with federal regulations while maintaining the availability of supplemental payments to nursing facilities.

4. 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 costs of this rulemaking are minimal and related to the costs associated with creating the rulemaking. The benefits of this rulemaking are significant because it will keep AHCCCS compliant with federal regulations while also allowing supplemental payments to nursing facilities. The benefits outweigh the costs.

5. What are the economic impacts on stakeholders?

Key stakeholders are the Administration and nursing facilities. The Administration will not directly bear any costs associated with this rule other than the costs of promulgation. The Administration will greatly benefit from rules that comply with relevant federal regulations. Rules that do not align with relevant federal regulations could impose significant burdens on the residents of Arizona. Nursing facilities will not directly bear any costs associated with this rule. Nursing facilities will benefit from clear rules that do not conflict with federal regulations. Nursing facilities will also benefit from increased supplemental payments from AHCCCS.

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

Yes. AHCCCS indicates that it received one public comment in support of the rulemaking, from Ms. Kathleen Collins-Pagels of the Arizona Health Care Association.

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

No. No changes have been made between the Notice of Proposed Rulemaking and the Notice of Final Rulemaking.

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

No. AHCCCS states that the proposed rule aligns with the new Managed Care Regulations in 42 CFR 438.6.

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

No. The rule does not require a permit or license.

10. 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?

No. AHCCCS indicates that it did not rely on any study in its evaluation of, or justification for, the rule.

11. Conclusion

If approved, this rulemaking will become effective immediately upon filing with the Secretary of State. AHCCCS requests this immediate effective date under A.R.S. § 41-1032(A)(2) to avoid a violation of federal regulations, specifically 42 CFR 438.6. Council staff recommends approval of the rulemaking.

November 21, 2017

Ms. Nicole Ong, Chair
Governor's Regulatory Review Council
100 N. 15th Ave, Suite 402
Phoenix, AZ 85007

Dear Ms. Ong:

The Arizona Health Care Cost Containment System (AHCCCS) Administration is submitting the attached regular rule package for your consideration:

- 9 A.A.C. 28, Article 7, Standards for Payments

AHCCCS is providing the following information as required in A.A.C. R1-6-104:

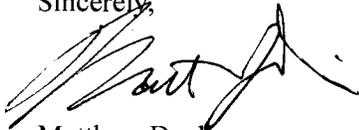
- a. The close of record date was 5 p.m., November 9, 2017.
- b. Definitions of terms contained in statute or other rules and used in the rule are either cross-referenced or attached.
- c. The rulemaking does not relate to a 5-year-review.
- d. The rulemaking contains no new fees.
- e. The rulemaking contains no fee increase.
- f. Documents enclosed:
 - Notice of Final Rulemaking, including the preamble, table of contents for the rule, and text of the rule;
 - Economic, small business, and consumer impact statement;
 - If applicable, copy of definitions of terms, contained in statutes or other rules, used in the rule.
- g. All comments submitted by the public concerning the proposed rule,
- h. The adopted rules contain no materials incorporated by reference,
- i. The adopted rules do not require a permit,
- j. The rule is not more stringent than federal law and the citation to the statutory authority does not exceed the requirements of federal law.
- k. A person has not submitted an analysis to the agency that compares the rule's impact of the competitiveness of businesses in this state to the impact on businesses in other states, and

- l. The AHCCCS Administration has not notified the Joint Legislative Budget Committee (JLBC) of a number of new full-time employees (FTE's) since none were required as a result of this rulemaking as required by A.R.S. § 41-1055.

- m. The AHCCCS Administration has requested and received approval to proceed with this rulemaking from the Governor's Office in reference to the rulemaking moratorium described under Executive Order 2017-02.

I certify that the information provided in number 7 of the Preamble is accurate. An immediate effective date is requested. I respectfully request that the Council consider and approve the adopted rules.

Sincerely,



Matthew Devlin
Assistant Director - Office of Legal Assistance
Attachments

The proposed rulemaking is imperative to ensure that the pass-through payments made to AHCCCS managed care contractors comport with recent changes to federal law which limits the aggregate amount of permissible pass-through payment made by the State. Failure to proceed with the proposed rulemaking to align with federal law could result in a federal compliance action and the potential loss of federal funding. Additionally, calculation of nursing facility supplemental payments using the current rule could result in the termination of reduction of supplemental payments, depriving nursing facility providers of critical revenues.

The proposed rulemaking will amend the current rule to authorize two separate funding allocations for purposes of calculating nursing facility supplemental payments to be paid to providers by spring 2018 consistent with federal law. Technical and clarifying changes to rules may also be proposed for greater clarity and understandability.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

A study was not referenced or relied upon when revising these regulations.

8. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:

Not applicable.

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

The rule will support economic development in Arizona, and it will promote the fiscal health of nursing facility providers by funding a larger portion of the costs related to care delivery. By continuing to make available increased supplemental payments to nursing facilities, the proposed rulemaking will also enhance the ability of nursing facilities to provide higher quality yet cost-effective care to AHCCCS members who receive nursing facility services. The supplemental payments to nursing facilities foster economic growth within the State. The proposed rulemaking will promote health care delivery, innovation, and economic development in Arizona. The proposed rulemaking will reduce the regulatory burden upon stakeholders by continuing the availability of increased payments to nursing facilities.

In addition, even though the distribution of supplemental payments will be done differently, the rulemaking will have no impact on small businesses since the amount they will receive in supplemental payments will not change.

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

There were no changes made between the proposed and final rulemaking.

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

Only one member of the public came to the oral proceeding in person and provided further positive comments.

Item #	Comment From and Date rec’d.	Comment	Analysis/ Recommendation
1.	Kathleen Collins-Pagels 11/07/17 Executive Director of the AZHCA	<p>I would like to go on record to express my support for the rule revision for the skilled nursing facility (SNF) provider assessment. The Arizona Health Care Association, representing the vast majority of skilled nursing facilities state wide, is pleased to collaborate with AHCCCS on this rule revision. We believe this revision is a critical step in complying with the new CMS managed care rules. We understand that the proposed rulemaking will amend the current rule to authorize two separate funding allocations for purposes of calculating nursing facility supplemental payments to be paid to providers by the spring of 2018 consistent with federal law.</p> <p>We pledge our continued support as we receive further guidance from CMS in the revision of the SNF provider assessment.</p> <p>Thank you for this opportunity to offer public comment.</p>	AHCCCS thanks Ms. Collins-Pagels for the support.

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

No other matters have been prescribed.

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

Not applicable.

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

The rules need to align with the new Managed Care Regulations in 42 CFR 438.6.

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

No analysis was submitted.

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

Not applicable.

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

Not applicable.

15. The full text of the rules follows:

TITLE 9. HEALTH SERVICES
CHAPTER 28. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM
ADMINISTRATION – ARIZONA LONG TERM CARE SYSTEM
ARTICLE 7. STANDARDS FOR PAYMENTS

Section

R9-28-703. Nursing Facility Supplemental Payments

ARTICLE 7. STANDARDS FOR PAYMENTS

R9-28-703. Nursing Facility Supplemental Payments

A. ~~Nursing Facility Supplemental Payments~~

- ~~1. Using Medicaid resident bed day information from the most recent and complete twelve months of adjudicated claims and encounter data, for every combination of contractor and every facility eligible for a supplemental payment, the Administration shall determine annually a ratio equal to the number of bed days for the facility paid by each contractor divided by the total number of bed days paid to all facilities by all contractors and the Administration.~~
- ~~2. Using the same information as used in (A)(1), for every facility eligible for a supplemental payment, the Administration shall determine annually a ratio equal to the number of bed days for the facility paid by the Administration divided by the total number of bed days paid to all facilities by all contractors and the Administration.~~
- ~~3. Quarterly, each contractor shall make payments to each facility in an amount equal to 98% of the amounts identified as Nursing Facility Enhanced Payments in the 820 transaction sent from AHCCCS to the contractor for the quarter multiplied by the percentage determined in subsection (A)(1) applicable to the contractor and to each facility.~~
- ~~4. Quarterly, the Administration shall make payments to each facility in an amount equal to 99% of the amounts collected during the preceding quarter under R9 28 702, less amounts collected and used to fund the Nursing Facility Enhanced Payments included in the capitation paid to contractors and the corresponding federal financial participation, multiplied by the percentage determined in subsection (A)(2) applicable to the Administration and to each facility. The Administration shall make the supplemental payments to the nursing facilities within 20 calendar days of the determination of the quarterly supplemental payment.~~
- ~~5. Neither the Administration nor its contractors shall be required to make quarterly payments to facilities otherwise required by subsections (A)(3) or (A)(4) until the amount available in the nursing facility assessment fund established by A.R.S. § 36 2999.53, plus the corresponding federal financial participation, is equal to or greater than 101% of the amount necessary to make such payments in full.~~
- ~~6. Contractors shall not be required to make quarterly payments to a facility otherwise required by subsection (A)(3) until the Administration has made a retroactive adjustment to the capitation rates paid to contractors to correct the Nursing Facility Enhanced Payments based on actual member months for the specified quarter.~~

~~B. Each contractor must pay each facility the amount computed within 20 calendar days of receiving the Nursing Facility Enhanced Payment from the Administration. The contractors must confirm each payment and payment date to the Administration within 20 calendar days from receipt of the funds.~~

~~C. After each assessment year, the Administration shall reconcile the payments made by contractors under subsections (A)(3) and (B) to the portion of the annual collections under R9 28 702 attributable to Medicaid resident bed days paid for by contractors for the same year, less one percent, plus available federal financial~~

~~participation. The proportion of each nursing facility's Medicaid resident bed days as described in subsection (A)(1) shall be used to calculate the reconciliation amounts. Contractors shall make additional payments to or recoup payments from nursing facilities based on the reconciliation in compliance with the requirements of subsection (B).~~

~~D. General requirements for all payments.~~

- ~~1. A facility must be open on the date the supplemental payment is made in order to receive a payment. In the event a nursing facility closes during the assessment year, the nursing facility shall cease to be eligible for supplemental payments.~~
- ~~2. In the event a nursing facility begins operation during the assessment year, that facility shall not receive a supplemental payment until such time as the facility has claims and encounter data that falls within the collection period for the payment calculation.~~
- ~~3. In the event a nursing facility has a change of ownership, payments shall be made to the owner of the facility as of the date of the supplemental payment.~~
- ~~4. Subsection (E)(3) shall not be interpreted to prohibit the current and prior owner from agreeing to a transfer of the payment from the current owner to the prior owner.~~

~~E. The Arizona Veterans' Homes are not eligible for supplemental payments.~~

A. Determination of amounts available for payment.

1. Using Medicaid resident bed day information from the most recent and complete twelve months of paid claim and adjudicated encounter data, for every facility eligible for a supplemental payment, the Administration shall determine annually:
 - a. A ratio equal to the number of bed days paid by the Administration's contractors divided by the total number of bed days paid, and
 - b. A ratio equal to the number of bed days paid by the Administration divided by the total number of bed days paid.
2. The Administration shall determine quarterly the amount available in the nursing facility assessment fund established by A.R.S. § 36-2999.53 plus the corresponding federal financial participation and divide the total amount as follows:
 - a. The total amount multiplied by the ratio determined in subsection (A)(1)(a) shall be distributed according to subsection B.
 - b. The total amount multiplied by the ratio determined in subsection (A)(1)(b) shall be distributed according to subsection C.

B. Payments to facilities by contractors.

1. The Administration shall distribute quarterly to its contractors an amount equal to the total amount of Nursing Facility Enhanced Payments made by the Administration's contractors for the period of October 1, 2015 through September 30, 2016 divided by 4, which shall be paid to eligible facilities as follows:

- a. Using the adjudicated encounter data described in subsection (A)(1), the Administration shall determine annually for each facility a ratio equal to the number of bed days for the facility paid by each contractor divided by the total number of bed days paid to all facilities by all contractors.
 - b. Each contractor shall make payments quarterly to each facility in an amount equal to 98% of the amounts identified as Nursing Facility Enhanced Payments in the 820 transaction sent by the Administration to the contractor for the quarter multiplied by the ratio determined in subsection (B)(1)(a) applicable to the contractor and to each facility. In the event the Administration does not produce an 820 transaction, each contractor shall distribute quarterly an amount equal to 98% of the payment received from AHCCCS for Nursing Facility Enhanced Payments.
 - c. Contractors shall not be required to make quarterly payments to a facility until the Administration has made a retroactive adjustment to the capitation rates paid to contractors to correct the Nursing Facility Enhanced Payments based on actual member months for the specified quarter.
 - d. Beginning October 1, 2018, any amounts that would otherwise have been distributed under subsection (B)(1) shall be distributed under subsection (B)(2).
2. Subject to annual approval by CMS in accordance with 42 CFR § 438.6(c), the Administration shall distribute quarterly to its contractors an amount equal to the amount determined in subsection (A)(2)(a) minus the amount distributed under subsection (B)(1), which shall be paid to eligible facilities as follows:
 - a. Using the Medicaid resident bed day information described by subsection (A)(1), the Administration shall determine quarterly a per bed day enhanced support uniform increase by dividing the quarterly distribution amount by one fourth of the total resident bed days paid by the Administration's contractors. Using the same Medicaid resident bed day information, the Administration shall determine the quarterly bed days paid to each facility by each contractor by summing the total bed days paid to each facility by each contractor and dividing by 4.
 - b. The Administration shall communicate to the contractors quarterly the per bed day enhanced support uniform increase and the quarterly bed days paid to each facility by the contractor.
 - c. Each contractor shall distribute quarterly an amount equal to 98% of the payment received from AHCCCS, to be paid to each facility in an amount equal to the per bed day enhanced support uniform increase multiplied by the number of bed days paid by the contractor to the facility.
 3. Each contractor must pay each eligible facility the amounts required under subsections (B)(1) and (B)(2) within 20 calendar days of receiving the Nursing Facility Enhanced Payment from the Administration. The contractors must confirm each payment and payment date to the Administration within 20 calendar days from receipt of the funds.
- C. Payments to facilities by the Administration.
1. Using the paid claim data described in subsection (A)(1), the Administration shall determine annually for each facility a ratio equal to the number of bed days for the facility paid by the Administration divided by the total number of bed days paid to all facilities by the Administration.

2. The Administration shall make payments quarterly to each eligible facility in an amount equal to 99% of the amount determined in subsection (A)(2)(b) multiplied by the ratio determined in subsection (C)(1) applicable to the facility.
 3. The Administration shall make the supplemental payments to the eligible facilities within 20 calendar days of determining the amounts required under subsection (C)(2).
- D. Assurance of sufficient funds for payments. Neither the Administration nor its contractors shall be required to make quarterly payments to facilities otherwise required by subsections (B) and (C) until the amount available in the nursing facility assessment fund established by A.R.S. § 36-2999.53, plus the corresponding federal financial participation, is equal to or greater than 101% of the amount necessary to make such payments in full.
- E. General requirements for all payments.
1. A facility must be open on the date the supplemental payment is made in order to receive a payment. In the event a nursing facility closes during the assessment year, the nursing facility shall cease to be eligible for supplemental payments.
 2. In the event a nursing facility begins operation during the assessment year, that facility shall not receive a supplemental payment until such time as the facility has claim and encounter data that falls within the collection period for the payment calculation.
 3. In the event a nursing facility has a change of ownership, payments shall be made to the owner of the facility as of the date of the supplemental payment.
 4. Subsection (E)(3) shall not be interpreted to prohibit the current and prior owner from agreeing to a transfer of the payment from the current owner to the prior owner.
 5. The Arizona State Veterans' Homes are not eligible for supplemental payments.

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT
TITLE 9. HEALTH SERVICES
CHAPTER 28. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM
ADMINISTRATION – ARIZONA LONG TERM CARE SYSTEM

Introduction:

The rule will support economic development in Arizona, and it will promote the fiscal health of nursing facility providers by funding a larger portion of the costs related to care delivery. By continuing to make available increased supplemental payments to nursing facilities, the proposed rulemaking will also enhance the ability of nursing facilities to provide higher quality yet cost-effective care to AHCCCS members who receive nursing facility services. The supplemental payments to nursing facilities foster economic growth within the State. The proposed rulemaking will promote health care delivery, innovation, and economic development in Arizona. The proposed rulemaking will reduce the regulatory burden upon stakeholders by continuing the availability of increased payments to nursing facilities. In addition, even though the distribution of supplemental payments will be done differently, the rulemaking will have no impact on small businesses since the amount they will receive in supplemental payments will not change.

Purpose of Rule:

This final rulemaking will amend the current rule to modify the method of distributing supplemental funding to nursing facilities in order to comply with current federal regulations for such distributions. The statutory scheme requires the AHCCCS Administration to administer a provider assessment (also referred to as a quality assessment) on health care items and services provided by nursing facilities and to make supplemental payments to nursing facilities for covered Medicaid expenditures. As a result of the final rulemaking, supplemental funding will continue to be available to nursing facilities for covered Medicaid expenditures, thus supporting accessibility of critical health care services to vulnerable populations and enhancing the ability of nursing facilities to provide higher quality yet cost effective care to frail Arizona residents.

1. Identification of rulemaking.

The proposed rulemaking will amend the current rule to authorize two separate funding allocations for purposes of calculating nursing facility supplemental payments to be paid to providers by spring 2018 consistent with federal law. Technical and clarifying changes to rules may also be proposed for greater clarity and understandability.

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

The changes to this rule revise the method of calculating allowable indirect costs. This calculation is performed annually.

b. The harm resulting from the conduct the rule is designed to change and the likelihood it will continue to occur if the rule is not changed:

The Administration does not anticipate a change in conduct with the rulemaking.

c. The estimated change in frequency of the targeted conduct expected from the rule change:

The Administration does not anticipate a change in frequency in conduct with the clarification of the indirect cost calculation. It is anticipated that participants who receive the nursing facility supplemental payments will continue regular participation going forward.

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

The nursing facilities, private persons which receive medical services and the Administration are the parties that will either bear the costs or directly benefit from the rulemaking.

3. Cost benefit analysis.

a. Probable costs and benefits to the implementing agency and other agencies directly affected by the implementation and enforcement of the proposed rulemaking including the number of new full-time employees necessary to implement and enforce the proposed rule:

i. Cost:

The Administration anticipates no increase in cost to the implementing agency.

ii. Benefit:

The Administration anticipates no specific benefit to the implementing agencies.

iii. Need for additional Full-time Employees:

The Administration does not anticipate the need to hire full-time employees as a result of this rulemaking.

b. Probable costs and benefits to political subdivision of this state directly affected by the implementation and enforcement of the proposed rulemaking.

This rulemaking does not directly affect political subdivisions.

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

The Administration anticipates that public and private employment will not be impacted by the changes.

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

a. Identification of the small businesses subject to the proposed rulemaking.

The Administration does not anticipate a fiscal impact on small businesses because the proposed rule language changes are anticipated to only affect nursing facilities and the Administration.

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

The Administration anticipates no impact on the administrative expenses of these small businesses because the proposed rule does not require a change in claim submission coding or procedure.

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

i. Establishing less stringent compliance or reporting requirements in the rule for small businesses;

This rule does not impose compliance or reporting requirements on small businesses beyond those already necessary to comply with federal law and state statute.

ii. Establishing less stringent schedules deadlines in the rule for compliance or reporting requirements for small businesses;

This rule does not impose compliance or reporting requirements on small businesses beyond those requirements that are necessary to comply with federal law and state statute.

iii. Consolidate or simplify the rule's compliance or reporting requirements for small businesses;

This rule does not impose compliance or reporting requirements on small businesses beyond those requirements that are necessary to comply with federal law and state statute.

iv. Establish performance standards for small businesses to replace design or operational standards in the rule; and

This rule does not establish performance standards for small businesses beyond those requirements that are necessary to comply with federal law and state statute.

v. Exempting small businesses from any or all requirements of the rule.

Exempting small businesses is not applicable to this rule.

d. The probable cost and benefit to private persons and consumers who are directly affected by the proposed rulemaking.

The rule will not affect private persons and consumers.

6. Statement of the probable effect on state revenues.

It is anticipated that the rule will not affect state revenues.

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

The Administration did not consider other alternatives because the revisions to the rule are the most cost effective and efficient method of complying with federal law and state law as well as the State's fiduciary responsibility to Arizona taxpayers.

8. A description of any data on which a rule is based with a detailed explanation of how the data was obtained and why the data is acceptable data.

The Administration did not consider any specific data to base the rule upon.

ARTICLE 7. STANDARDS FOR PAYMENTS

R9-28-703. Nursing Facility Supplemental Payments

A. Nursing Facility Supplemental Payments

1. Using Medicaid resident bed day information from the most recent and complete twelve months of adjudicated claims and encounter data, for every combination of contractor and every facility eligible for a supplemental payment, the Administration shall determine annually a ratio equal to the number of bed days for the facility paid by each contractor divided by the total number of bed days paid to all facilities by all contractors and the Administration.
 2. Using the same information as used in (A)(1), for every facility eligible for a supplemental payment, the Administration shall determine annually a ratio equal to the number of bed days for the facility paid by the Administration divided by the total number of bed days paid to all facilities by all contractors and the Administration.
 3. Quarterly, each contractor shall make payments to each facility in an amount equal to 98% of the amounts identified as Nursing Facility Enhanced Payments in the 820 transaction sent from AHCCCS to the contractor for the quarter multiplied by the percentage determined in subsection (A)(1) applicable to the contractor and to each facility.
 4. Quarterly, the Administration shall make payments to each facility in an amount equal to 99% of the amounts collected during the preceding quarter under R9-28-702, less amounts collected and used to fund the Nursing Facility Enhanced Payments included in the capitation paid to contractors and the corresponding federal financial participation, multiplied by the percentage determined in subsection (A)(2) applicable to the Administration and to each facility. The Administration shall make the supplemental payments to the nursing facilities within 20 calendar days of the determination of the quarterly supplemental payment.
 5. Neither the Administration nor its contractors shall be required to make quarterly payments to facilities otherwise required by subsections (A)(3) or (A)(4) until the amount available in the nursing facility assessment fund established by A.R.S. § 36-2999.53, plus the corresponding federal financial participation, is equal to or greater than 101% of the amount necessary to make such payments in full.
 6. Contractors shall not be required to make quarterly payments to a facility otherwise required by subsection (A)(3) until the Administration has made a retroactive adjustment to the capitation rates paid to contractors to correct the Nursing Facility Enhanced Payments based on actual member months for the specified quarter.
- B. Each contractor must pay each facility the amount computed within 20 calendar days of receiving the Nursing Facility Enhanced Payment from the Administration. The contractors must confirm each payment and payment date to the Administration within 20 calendar days from receipt of the funds.
- C. After each assessment year, the Administration shall reconcile the payments made by contractors under subsections (A)(3) and (B) to the portion of the annual collections under R9-28-702 attributable to Medicaid resident bed days paid for by contractors for the same year, less one percent, plus available federal financial participation. The proportion of each nursing facility's

Medicaid resident bed days as described in subsection (A)(1) shall be used to calculate the reconciliation amounts. Contractors shall make additional payments to or recoup payments from nursing facilities based on the reconciliation in compliance with the requirements of subsection (B).

D. General requirements for all payments.

1. A facility must be open on the date the supplemental payment is made in order to receive a payment. In the event a nursing facility closes during the assessment year, the nursing facility shall cease to be eligible for supplemental payments.
2. In the event a nursing facility begins operation during the assessment year, that facility shall not receive a supplemental payment until such time as the facility has claims and encounter data that falls within the collection period for the payment calculation.
3. In the event a nursing facility has a change of ownership, payments shall be made to the owner of the facility as of the date of the supplemental payment.
4. Subsection (E)(3) shall not be interpreted to prohibit the current and prior owner from agreeing to a transfer of the payment from the current owner to the prior owner.

E. The Arizona Veterans' Homes are not eligible for supplemental payments.

36-2903. Arizona health care cost containment system; administrator; powers and duties of director and administrator; exemption from attorney general representation; definition

A. The Arizona health care cost containment system is established consisting of contracts with contractors for the provision of hospitalization and medical care coverage to members. Except as specifically required by federal law and by section 36-2909, the system is only responsible for providing care on or after the date that the person has been determined eligible for the system, and is only responsible for reimbursing the cost of care rendered on or after the date that the person was determined eligible for the system.

B. An agreement may be entered into with an independent contractor, subject to title 41, chapter 23, to serve as the statewide administrator of the system. The administrator has full operational responsibility, subject to supervision by the director, for the system, which may include any or all of the following:

1. Development of county-by-county implementation and operation plans for the system that include reasonable access to hospitalization and medical care services for members.
2. Contract administration and oversight of contractors, including certification instead of licensure for title XVIII and title XIX purposes.
3. Provision of technical assistance services to contractors and potential contractors.
4. Development of a complete system of accounts and controls for the system including provisions designed to ensure that covered health and medical services provided through the system are not used unnecessarily or unreasonably including but not limited to inpatient behavioral health services provided in a hospital. Periodically the administrator shall compare the scope, utilization rates, utilization control methods and unit prices of major health and medical services provided in this state in comparison with other states' health care services to identify any unnecessary or unreasonable utilization within the system. The administrator shall periodically assess the cost effectiveness and health implications of alternate approaches to the provision of covered health and medical services through the system in order to reduce unnecessary or unreasonable utilization.
5. Establishment of peer review and utilization review functions for all contractors.
6. Assistance in the formation of medical care consortiums to provide covered health and medical services under the system for a county.
7. Development and management of a contractor payment system.
8. Establishment and management of a comprehensive system for assuring the quality of care delivered by the system.
9. Establishment and management of a system to prevent fraud by members, subcontracted providers of care, contractors and noncontracting providers.
10. Coordination of benefits provided under this article to any member. The administrator may require that contractors and noncontracting providers are responsible for the coordination of benefits for services provided under this article. Requirements for coordination of benefits by noncontracting providers under this section are limited to coordination with standard health insurance and disability insurance policies and similar programs for health coverage.
11. Development of a health education and information program.
12. Development and management of an enrollment system.
13. Establishment and maintenance of a claims resolution procedure to ensure that ninety per cent of the clean claims shall be paid within thirty days of receipt and ninety-nine per cent of the remaining clean claims shall be

paid within ninety days of receipt. For the purposes of this paragraph, "clean claims" has the same meaning prescribed in section 36-2904, subsection G.

14. Establishment of standards for the coordination of medical care and patient transfers pursuant to section 36-2909, subsection B.

15. Establishment of a system to implement medical child support requirements, as required by federal law. The administration may enter into an intergovernmental agreement with the department of economic security to implement this paragraph.

16. Establishment of an employee recognition fund.

17. Establishment of an eligibility process to determine whether a medicare low income subsidy is available to persons who want to apply for a subsidy as authorized by title XVIII.

C. If an agreement is not entered into with an independent contractor to serve as statewide administrator of the system pursuant to subsection B of this section, the director shall ensure that the operational responsibilities set forth in subsection B of this section are fulfilled by the administration and other contractors as necessary.

D. If the director determines that the administrator will fulfill some but not all of the responsibilities set forth in subsection B of this section, the director shall ensure that the remaining responsibilities are fulfilled by the administration and other contractors as necessary.

E. The administrator or any direct or indirect subsidiary of the administrator is not eligible to serve as a contractor.

F. Except for reinsurance obtained by contractors, the administrator shall coordinate benefits provided under this article to any eligible person who is covered by workers' compensation, disability insurance, a hospital and medical service corporation, a health care services organization, an accountable health plan or any other health or medical or disability insurance plan including coverage made available to persons defined as eligible by section 36-2901, paragraph 6, subdivisions (b), (c), (d) and (e), or who receives payments for accident-related injuries, so that any costs for hospitalization and medical care paid by the system are recovered from any other available third party payors. The administrator may require that contractors and noncontracting providers are responsible for the coordination of benefits for services provided under this article. Requirements for coordination of benefits by noncontracting providers under this section are limited to coordination with standard health insurance and disability insurance policies and similar programs for health coverage. The system shall act as payor of last resort for persons eligible pursuant to section 36-2901, paragraph 6, subdivision (a), section 36-2974 or section 36-2981, paragraph 6 unless specifically prohibited by federal law. By operation of law, eligible persons assign to the system and a county rights to all types of medical benefits to which the person is entitled, including first party medical benefits under automobile insurance policies based on the order of priorities established pursuant to section 36-2915. The state has a right to subrogation against any other person or firm to enforce the assignment of medical benefits. The provisions of this subsection are controlling over the provisions of any insurance policy that provides benefits to an eligible person if the policy is inconsistent with the provisions of this subsection.

G. Notwithstanding subsection E of this section, the administrator may subcontract distinct administrative functions to one or more persons who may be contractors within the system.

H. The director shall require as a condition of a contract with any contractor that all records relating to contract compliance are available for inspection by the administrator and the director subject to subsection I of this section and that such records be maintained by the contractor for five years. The director shall also require that these records be made available by a contractor on request of the secretary of the United States department of health and human services, or its successor agency.

I. Subject to existing law relating to privilege and protection, the director shall prescribe by rule the types of information that are confidential and circumstances under which such information may be used or released, including requirements for physician-patient confidentiality. Notwithstanding any other provision of law, such rules shall be designed to provide for the exchange of necessary information among the counties, the administration and the department of economic security for the purposes of eligibility determination under this article. Notwithstanding any law to the contrary, a member's medical record shall be released without the member's consent in situations or suspected cases of fraud or abuse relating to the system to an officer of the state's certified Arizona health care cost containment system fraud control unit who has submitted a written request for the medical record.

J. The director shall prescribe rules that specify methods for:

1. The transition of members between system contractors and noncontracting providers.
2. The transfer of members and persons who have been determined eligible from hospitals that do not have contracts to care for such persons.

K. The director shall adopt rules that set forth procedures and standards for use by the system in requesting county long-term care for members or persons determined eligible.

L. To the extent that services are furnished pursuant to this article, and unless otherwise required pursuant to this chapter, a contractor is not subject to title 20.

M. As a condition of the contract with any contractor, the director shall require contract terms as necessary in the judgment of the director to ensure adequate performance and compliance with all applicable federal laws by the contractor of the provisions of each contract executed pursuant to this chapter. Contract provisions required by the director shall include at a minimum the maintenance of deposits, performance bonds, financial reserves or other financial security. The director may waive requirements for the posting of bonds or security for contractors that have posted other security, equal to or greater than that required by the system, with a state agency for the performance of health service contracts if funds would be available from such security for the system on default by the contractor. The director may also adopt rules for the withholding or forfeiture of payments to be made to a contractor by the system for the failure of the contractor to comply with a provision of the contractor's contract with the system or with the adopted rules. The director may also require contract terms allowing the administration to operate a contractor directly under circumstances specified in the contract. The administration shall operate the contractor only as long as it is necessary to assure delivery of uninterrupted care to members enrolled with the contractor and accomplish the orderly transition of those members to other system contractors, or until the contractor reorganizes or otherwise corrects the contract performance failure. The administration shall not operate a contractor unless, before that action, the administration delivers notice to the contractor and provides an opportunity for a hearing in accordance with procedures established by the director. Notwithstanding the provisions of a contract, if the administration finds that the public health, safety or welfare requires emergency action, it may operate as the contractor on notice to the contractor and pending an administrative hearing, which it shall promptly institute.

N. The administration for the sole purpose of matters concerning and directly related to the Arizona health care cost containment system and the Arizona long-term care system is exempt from section 41-192.

O. Notwithstanding subsection F of this section, if the administration determines that according to federal guidelines it is more cost-effective for a person defined as eligible under section 36-2901, paragraph 6, subdivision (a) to be enrolled in a group health insurance plan in which the person is entitled to be enrolled, the administration may pay all of that person's premiums, deductibles, coinsurance and other cost sharing obligations for services covered under section 36-2907. The person shall apply for enrollment in the group health insurance plan as a condition of eligibility under section 36-2901, paragraph 6, subdivision (a).

P. The total amount of state monies that may be spent in any fiscal year by the administration for health care shall not exceed the amount appropriated or authorized by section 35-173 for all health care purposes. This

article does not impose a duty on an officer, agent or employee of this state to discharge a responsibility or to create any right in a person or group if the discharge or right would require an expenditure of state monies in excess of the expenditure authorized by legislative appropriation for that specific purpose.

Q. Notwithstanding section 36-470, a contractor or program contractor may receive laboratory tests from a laboratory or hospital-based laboratory for a system member enrolled with the contractor or program contractor subject to all of the following requirements:

1. The contractor or program contractor shall provide a written request to the laboratory in a format mutually agreed to by the laboratory and the requesting health plan or program contractor. The request shall include the member's name, the member's plan identification number, the specific test results that are being requested and the time periods and the quality improvement activity that prompted the request.
2. The laboratory data may be provided in written or electronic format based on the agreement between the laboratory and the contractor or program contractor. If there is no contract between the laboratory and the contractor or program contractor, the laboratory shall provide the requested data in a format agreed to by the noncontracted laboratory.
3. The laboratory test results provided to the member's contractor or program contractor shall only be used for quality improvement activities authorized by the administration and health care outcome studies required by the administration. The contractors and program contractors shall maintain strict confidentiality about the test results and identity of the member as specified in contractual arrangements with the administration and pursuant to state and federal law.
4. The administration, after collaboration with the department of health services regarding quality improvement activities, may prohibit the contractors and program contractors from receiving certain test results if the administration determines that a serious potential exists that the results may be used for purposes other than those intended for the quality improvement activities. The department of health services shall consult with the clinical laboratory licensure advisory committee established by section 36-465 before providing recommendations to the administration on certain test results and quality improvement activities.
5. The administration shall provide contracted laboratories and the department of health services with an annual report listing the quality improvement activities that will require laboratory data. The report shall be updated and distributed to the contracting laboratories and the department of health services when laboratory data is needed for new quality improvement activities.
6. A laboratory that complies with a request from the contractor or program contractor for laboratory results pursuant to this section is not subject to civil liability for providing the data to the contractor or program contractor. The administration, the contractor or a program contractor that uses data for reasons other than quality improvement activities is subject to civil liability for this improper use.

R. For the purposes of this section, "quality improvement activities" means those requirements, including health care outcome studies specified in federal law or required by the centers for medicare and medicaid services or the administration, to improve health care outcomes.

36-2999.51. Definitions

(Rpld. 10/1/23)

In this article, unless the context otherwise requires:

1. "Continuing care retirement community" means an entity that provides nursing facility services and assisted living or independent living services on a contiguous campus that is either registered as a life care facility with the department of insurance or has assisted living and independent living beds in the aggregate that equal at least twice the number of nursing facility beds. For the purposes of this paragraph, "contiguous" means land that adjoins or touches the other property held by the same or a related organization and land divided by a public road.
2. "Fiscal year" means the period beginning on October 1 and ending on September 30.
3. "Medicare resident days" means resident days that are funded by the medicare program, a medicare advantage or special needs plan or the medicare hospice program.
4. "Net patient service revenue" means gross inpatient revenues from services that are provided to nursing facility patients minus reductions from gross inpatient revenue. For the purposes of this paragraph, inpatient revenues from services do not include nonpatient care revenues such as beauty and barber income, vending income, interest and contributions, revenues from the sale of meals and all outpatient revenues.
5. "Nursing facility" means a health care institution that provides inpatient beds or resident beds and nursing services to persons who need nursing services on a continuing basis but who do not require hospital care or direct daily care from a physician. Nursing facility does not include the Arizona veterans' homes.
6. "Reductions from gross inpatient revenue" includes bad debts, contractual adjustments, uncompensated care, administrative, courtesy and policy discounts, adjustments and other similar revenue deductions.
7. "Resident day" means a calendar day of care provided to a nursing facility resident, including the day of admission and excluding the day of discharge. Resident day includes a day on which a bed is held for a patient and for which the facility receives compensation for holding the bed.
8. "Upper payment limit" means the limitation established pursuant to 42 Code of Federal Regulations section 447.272 that disallows federal matching funds if a state medicaid agency pays certain classes of nursing facilities an aggregate amount for services that would exceed the amount that would be paid for the same services furnished by that class of nursing facilities under medicare payment principles.

36-2999.52. Nursing facility quality assessments; calculation; limitation; exceptions

(Rpld. 10/1/23)

A. Beginning October 1, 2012, the administration shall charge a quality assessment on health care items and services provided by nursing facilities in order to obtain federal financial participation in the services provided pursuant to this chapter. The administration shall use these monies for supplemental payments to nursing facilities for covered medicaid expenditures, not to exceed the medicare upper payment limit program requirements.

B. Each nursing facility shall pay the assessment prescribed pursuant to this section to the department of revenue for deposit on a quarterly basis in the nursing facility assessment fund established by section 36-2999.53.

C. Unless otherwise required by law, title 42, chapter 5, article 1 governs the administration of the assessment prescribed pursuant to this section except that:

1. A separate license is not required for the assessment.
2. If a nursing facility does not have a transaction privilege tax license, it shall obtain one pursuant to section 42-5005.
3. Each facility shall report and pay the assessment on forms prescribed by the department of revenue.
4. A separate bond is not required of employees of the department of revenue who administer the assessment.
5. The assessment may be included without segregation in any notice and lien filed for unpaid transaction privilege taxes.

D. The administration shall calculate the quality assessment on the net patient service revenue of all nursing facilities that are subject to the quality assessment. The quality assessment may not exceed three and one-half per cent of net patient service revenue and shall be calculated and paid on a per resident day basis exclusive of medicare resident days. Except as prescribed in this section, the per resident day assessment is the same amount for each affected facility.

E. Pursuant to 42 Code of Federal Regulations section 433.68(e)(1) and (2), the administration shall request a waiver of the broad-based and uniform provider assessment requirements of federal law to exclude certain nursing facilities from the quality assessment and to permit certain high volume medicaid nursing facilities or facilities with a high number of total annual patient days to pay the quality assessment at a lesser amount per nonmedicare resident day.

F. Subject to federal approval pursuant to 42 Code of Federal Regulations section 433.68(e)(2), the following nursing facility providers are exempt from the quality assessment:

1. Continuing care retirement communities.
2. Nursing facilities with fifty-eight or fewer beds.

G. The administration shall lower the quality assessment for either certain high volume medicaid nursing facilities or certain facilities with high patient volumes to meet the redistributive test of 42 Code of Federal Regulations section 433.68(e)(2).

36-2999.53. Nursing facility assessment fund

(Rpld. 10/1/23)

A. The nursing facility assessment fund is established consisting of the following:

1. Monies received by the administration from nursing facility assessments pursuant to this article.
2. Federal monies and federal matching monies received by the administration as a result of expenditures made by the administration that are attributable to monies deposited in the fund.
3. Interest or penalties collected pursuant to this article.
4. Legislative appropriations.
5. Private grants, gifts, contributions and devises from any source received to assist in carrying out the purposes of this article.

B. The administration shall administer the fund. Monies in the fund are continuously appropriated.

C. The administration shall use fund monies only for the following:

1. To qualify for federal matching funds for supplemental payments for nursing facility services within medicare upper payment limit program requirements.
2. To pay administrative expenses incurred by the administration or its agents in performing the activities authorized by this chapter, provided that these expenses may not exceed one per cent of the aggregate assessment funds collected for the fiscal year.
3. To reimburse the medicaid sharer of the quality assessment.
4. To provide medicaid supplemental payments to fund covered services to nursing facility medicaid beneficiaries within medicare upper payment limits.

D. On notice from the administration, the state treasurer shall invest and divest monies in the fund as provided by section 35-313, and monies earned from investment shall be credited to the fund.

36-2999.54. Assessments; failure to pay; suspension or revocation

(Rpld. 10/1/23)

- A. Each nursing facility shall pay a quality assessment as prescribed pursuant to this article. The administration shall determine the assessment rate prospectively for the applicable fiscal year on a per resident day basis, exclusive of medicare resident days. The administration shall adopt rules for facility reporting of nonmedicare resident days and for payment of the assessment.
- B. A nursing facility may increase its charges to other payors to incorporate the assessment but may not establish a separate line-item charge on the bill reflecting the assessment.
- C. If an entity conducts, operates or maintains more than one nursing facility, the entity must pay a quality assessment for each nursing facility separately.
- D. If a nursing facility does not pay the full amount of the assessment when due, the director of the Arizona health care cost containment system administration may suspend or revoke the nursing facility's Arizona health care cost containment system provider agreement registration. If the nursing facility does not comply within one hundred eighty days after the director of the Arizona health care cost containment system administration suspends or revokes the nursing facility's provider agreement, the director of the Arizona health care cost containment system administration shall notify the director of the department of health services, who shall suspend or revoke the nursing facility's license pursuant to section 36-427.

36-2999.55. Adjustment of payments; definition

(Rpld. 10/1/23)

- A. A nursing facility is eligible for quarterly nursing facility adjustments based on nursing facility days from the most recent cost report before the start of the fiscal year. If cost report data is unavailable for a nursing facility, the administration may use other data sources or request patient day information from the facility to estimate nursing facility days.
- B. The administration shall make adjustment payments on a quarterly basis to reimburse the medicaid portion of the assessment and other covered medicaid expenditures in the aggregate within the upper payment limit. Each quarterly payment shall be made not later than thirty days after the end of the calendar quarter with the initial adjustment payment due within thirty days after approval by the centers for medicare and medicaid services of the quality assessment waiver and state plan reflecting the nursing facility adjusted payments.
- C. Subject to approval by the centers for medicare and medicaid services, a nursing facility that is located outside of this state may not receive payments pursuant to this article.
- D. For the purposes of this section, "nursing facility days" means the days of nursing facility services, including bed hold days, paid for by the Arizona medical assistance program for the applicable state fiscal year.

36-2999.56. Modifications

(Rpld. 10/1/23)

The administration may modify the categories of facilities exempt from the quality assessment and the rate adjustment provisions of this article if this is necessary to obtain and maintain approval by the centers for medicare and medicaid services and if the modification is consistent with purposes of this article.

36-2999.57. Discontinuance of assessments

(Rpld. 10/1/23)

A. The department of revenue shall discontinue collection of all assessments if any of the following applies:

1. The quality assessment waiver or the state plan amendment reflecting the quarterly nursing facility adjustment payments is not approved by the centers for medicare and medicaid services.
2. The administration reduces funding for nursing facility services below the state appropriation in effect on the effective date of this article.
3. The administration or any other state agency attempts to use monies in the nursing facility assessment fund established pursuant to section 36-2999.53 for any use other than those permitted pursuant to this article.
4. Federal financial participation to match the quality assessments made pursuant to this article becomes unavailable under federal law, in which case the administration must terminate the imposition of the assessments beginning on the date the federal statutory, regulatory or interpretive changes take effect.

B. If the department of revenue discontinues collection of the assessment pursuant to this section, it shall return all monies in the nursing facility assessment fund established by section 36-2999.53 to the nursing facilities from which the assessment was collected on the same basis as the assessments were assessed.

D-9

WATER INFRASTRUCTURE FINANCE AUTHORITY (R-18-0107)

Title 18, Chapter 15, Article 1, General Provisions; Article 2, Clean Water Revolving Fund; Article 3, Drinking Water Revolving Fund; Article 4, Water Supply Development Revolving Fund; Article 5, Technical Assistance; Article 6, Hardship Grant Fund Program; Article 7, Interest Rate Setting and Forgivable Principal

- Amend:** R18-15-101; R18-15-102; R18-15-103; R18-15-104; R18-15-105; R18-15-106;
R18-15-107; R18-15-201; R18-15-203; R18-15-204; R18-15-205; R18-15-206;
R18-15-207; R18-15-303; R18-15-304; R18-15-305; R18-15-306; R18-15-307;
R18-15-401; R18-15-402; R18-15-403; R18-15-404; R18-15-405; R18-15-406;
R18-15-501; R18-15-502; R18-15-503; R18-15-504; R18-15-505; R18-15-602;
R18-15-701
- Renumber:** R18-15-402; R18-15-403; R18-15-404; R18-15-405; R18-15-406; R18-15-407;
R18-15-408
- Repeal:** R18-15-402; R18-15-405



GOVERNOR'S REGULATORY REVIEW COUNCIL

STAFF MEMORANDUM – REGULAR RULEMAKING

MEETING DATE: January 9, 2018

AGENDA ITEM: D-9

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

FROM: Council Staff

DATE: December 19, 2017

SUBJECT: WATER INFRASTRUCTURE FINANCE AUTHORITY (R-18-0107)
Title 18, Chapter 15, Article 1, General Provisions; Article 2, Clean Water Revolving Fund; Article 3, Drinking Water Revolving Fund; Article 4, Water Supply Development Revolving Fund; Article 5, Technical Assistance; Article 6, Hardship Grant Fund Program; Article 7, Interest Rate Setting and Forgivable Principal

Amend: R18-15-101; R18-15-102; R18-15-103; R18-15-104; R18-15-105;
R18-15-106; R18-15-107; R18-15-201; R18-15-203; R18-15-204;
R18-15-205; R18-15-206; R18-15-207; R18-15-303; R18-15-304;
R18-15-305; R18-15-306; R18-15-307; R18-15-401; R18-15-402;
R18-15-403; R18-15-404; R18-15-405; R18-15-406; R18-15-501;
R18-15-502; R18-15-503; R18-15-504; R18-15-505; R18-15-602;
R18-15-701

ReNUMBER: R18-15-402; R18-15-403; R18-15-404; R18-15-405; R18-15-406;
R18-15-407; R18-15-408

Repeal: R18-15-402; R18-15-405

SUMMARY OF THE RULEMAKING

This rulemaking, from the Water Infrastructure Finance Authority (Authority or WIFA), seeks to update A.A.C. Title 18, Chapter 15, Articles 1-7 by amending 31 rules, renumbering seven rules, and repealing two rules. In 2016, the Authority was transferred to the newly established Arizona Finance Authority (AFA) which is governed by a newly created AFA Board of Directors.

The Authority proposes to modify its rules to implement 2016 amendments to A.R.S. Title 49, Chapter 8 and the 2016 addition of A.R.S. Title 41, Chapter 53. The Governor's Office provided an exemption from Executive Order 2017-02 on February 20, 2017.

Proposed Action

Council staff recommends reading the Authority's overview of its proposed actions that has been included on pages 3-9 of the Notice of Final Rulemaking. In summary, proposed actions include:

- Section 101 – *Definitions*: Definitions are modified to reflect changes in the other rules.
- Section 102 – *Types of Assistance Available*: Outdated language is removed.
- Section 103 – *Application Process*: A clarifying change is made to subsection (A).
- Section 104 – *General Financial Assistance Application Requirements*: Wording is changed to reflect the Authority's current practices.
- Section 105 – *General Financial Assistance Conditions*: Outdated language is removed.
- Section 106 – *Environmental Review*: Subsections (A)(1) and (A)(2) are added to improve clarity.
- Section 107 – *Disputes*: The words “or Committee” are deleted from subsection (B).
- Section 201 – *Clean Water Revolving Fund Financial Assistance Eligibility Criteria*: Clarifying changes are made.
- Section 203 – *Clean Water Revolving Fund Project Priority List*: Wording is changed to reflect the Authority's current practices.
- Section 204 – *Clean Water Revolving Fund Project Priority List Ranking*: Wording is changed to reflect the Authority's current practices.
- Section 205 – *Clean Water Revolving Fund Fundable Range for Financial Assistance*: Outdated language is deleted from subsection (B).
- Section 206 – *Clean Water Revolving Fund Application for Financial Assistance*: Wording is changed to reflect the Authority's current practices.
- Section 207 – *Clean Water Revolving Fund Application Review for Financial Assistance*: Clarifying language is added.
- Section 303 – *Drinking Water Revolving Fund Project Priority List*: Wording is changed to reflect the Authority's current practices.
- Section 304 – *Drinking Water Revolving Fund Project Priority List Ranking*: Wording is changed to reflect the Authority's current practices.
- Section 305 – *Drinking Water Revolving Fund Fundable Range for Financial Assistance*: Outdated language is deleted from subsection (B).
- Section 306 – *Drinking Water Revolving Fund Application for Financial Assistance*: Wording is changed to reflect the Authority's current practices.
- Section 307 – *Drinking Water Revolving Fund Application Review for Financial Assistance*: Clarifying language is added.
- Section 401 – *Water Supply Development Revolving Fund Financial Assistance Eligibility Criteria*: Clarifying changes are made.
- Former Section 402 – *Water Supply Development Revolving Fund Intended Use Plan*: The rule is repealed.
- New Section 402 (renumbered from 403) – *Water Supply Development Revolving Fund Project List*: Wording is changed to reflect the Authority's current practices.
- New Section 403 (renumbered from 404) – *Water Supply Development Revolving Fund Project List Ranking*: Wording is changed to reflect the Authority's current practices.

- New Section 404 (renumbered from 406) – *Water Supply Development Revolving Fund Application for Financial Assistance*: Wording is changed to reflect the Authority’s current practices.
- Former Section 405 – *Water Supply Development Revolving Fund Fundable Range for Financial Assistance*: The rule is repealed.
- New Section 405 (renumbered from 407) – *Water Supply Development Revolving Fund Application Review for Financial Assistance*: Clarifying language is added.
- New Section 406 (renumbered from 408) – *Water Supply Development Revolving Fund Requirements*: No changes are made to the rule’s language.
- Section 501 – *Technical Assistance*: Outdated language is deleted.
- Section 502 – *Technical Assistance Intended Use Plan*: Outdated language is deleted.
- Section 503 – *Clean Water Planning and Design Assistance*: Wording is changed to reflect the Authority’s current practices.
- Section 504 – *Drinking Water Planning and Design Assistance*: Outdated language is deleted.
- Section 505 – *Water Supply Development Planning and Design Assistance Grants*: Outdated language is deleted.
- Section 602 – *Hardship Grant Fund Financial Assistance*: Subsection (A) is amended to reflect the Authority’s current practices.
- Section 701 – *Interest Rate Setting and Forgivable Principal*: Subsection (B) is amended to reflect the Authority’s current practices.

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

Yes. The Authority cites to both general and specific statutory authority for the rules.

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

No. The rules do not establish a new fee or contain a fee increase.

3. Summary of the agency’s economic impact analysis:

In this rulemaking, the Authority is implementing changes that will correctly align the rules with statutory changes. In 2016, new statutes significantly impacted the Authority’s governance structure. This rulemaking updates the rules so that they are clear, understandable, and adequately aligned with their implementing statutes.

4. 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 Authority concludes that this rulemaking is required due to changes in state statute, and this rulemaking corrects the deficiencies that have been identified. This rulemaking benefits stakeholders by increasing clarity. This rulemaking does not negatively impact stakeholders. The benefits outweigh the costs.

5. What are the economic impacts on stakeholders?

Key stakeholders include the Authority, Arizona Corporation Commission (ACC), Arizona Department of Environmental Quality (ADEQ), Arizona Department of Water Resources (ADWR), political subdivisions, and private water companies eligible to borrow from the Drinking Water Revolving Fund.

The Authority anticipates that it will benefit from this rulemaking. The new rules will reduce redundancy and increase effectiveness.

ACC is minimally impacted by this rulemaking. Before privately-owned drinking water facilities can request financial assistance from the Authority, the ACC must approve any long-term debt and associated rate increases. ADEQ is minimally impacted by this rulemaking. Wastewater and drinking water facilities receiving WIFA assistance will be permitted to mitigate outstanding environmental compliance issues with ADEQ. ADWR is minimally impacted by this rulemaking. The Water Supply Development Revolving Fund (WSDRF) Committee was abolished by statute, and the Director of ADWR served as a chairperson of the WSDRF Committee. The functions of the WSDRF Committee have been transferred to the Arizona Finance Authority (AFA) Board of Directors. Due to the lack of funding of the WSDRF program, ADWR will be minimally impacted by this rulemaking.

Political subdivisions will benefit from the increased clarity and effectiveness of these rules. The rulemaking will make it easier for political subdivisions to request financial and technical assistance from the Authority for activities related to water infrastructure.

Private water companies eligible to borrow from Drinking Water Revolving Fund will benefit from the rulemaking in the same manner as political subdivisions listed above.

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

No. The Authority indicates that it has not received any public comments on the rulemaking.

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

No. Only non-substantive technical changes have been made between the Notice of Proposed Rulemaking and the Notice of Final Rulemaking.

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

No. The Authority states that the rules are consistent with, and not more stringent than, the Clean Water Act and the Safe Drinking Water Act.

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

No. The rules do not require a permit or license.

10. 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?

No. The Authority indicates that it did not rely on any study in its evaluation of, or justification for, the rules.

11. Conclusion

If approved, this rulemaking will become effective 60 days after it is filed with the Secretary of State. Council staff recommends approval of the rulemaking.

DOUGLAS A. DUCEY
Governor



TRISH INCOGNITO
Executive Director

Water Infrastructure Finance Authority of Arizona
Arizona's water and wastewater funding source
100 North 15th Avenue, Suite 103, Phoenix, Arizona 85007 | azwifa.gov | (602) 364-1310

November 21, 2017

Nicole Ong Colyer
Governor's Regulatory Review Council
100 N. 15th Avenue, Suite 402
Phoenix, Arizona 85007

Dear Ms. Ong Colyer,

The Water Infrastructure Finance Authority of Arizona (WIFA) is pleased to submit this Notice of Final Rulemaking package to the Governor's Regulatory Review Council for inclusion on the January 3, 2018 Council Study Session and January 9, 2018 Council agenda.

An oral proceeding on the Notice of Proposed Rulemaking was held on November 6, 2017, and the close of record date was November 7, 2017. No written comments were received.

The rulemaking is not related to a five-year review report. The rules do not contain a new fee or a fee increase. WIFA does not request an immediate effective date for the rule under A.R.S. § 41-1032. WIFA certifies that the rulemaking was not based on any study. No new full-time employees are necessary to implement and enforce the rule.

Enclosed are two rule packages consisting of the Notice of Final Rulemaking required by A.A.C. R1-1-602, including the preamble, table of contents for the rulemaking, and the text of each rule; the economic, small business, and consumer impact statement; a copy of the statutes authorizing the rule; a copy of the existing rule; and a copy of definitions of terms defined in statute or another rule.

Sincerely,

A handwritten signature in blue ink, appearing to read "Trish Incognito". The signature is fluid and cursive, written over a white rectangular area.

Trish Incognito
Executive Director

NOTICE OF FINAL RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 15. WATER INFRASTRUCTURE FINANCE AUTHORITY OF ARIZONA

PREAMBLE

<u>1.</u>	<u>Sections Affected</u>	<u>Rulemaking Action</u>
	R18-15-101	Amend
	R18-15-102	Amend
	R18-15-103	Amend
	R18-15-104	Amend
	R18-15-105	Amend
	R18-15-106	Amend
	R18-15-107	Amend
	R18-15-201	Amend
	R18-15-203	Amend
	R18-15-204	Amend
	R18-15-205	Amend
	R18-15-206	Amend
	R18-15-207	Amend
	R18-15-303	Amend
	R18-15-304	Amend
	R18-15-305	Amend
	R18-15-306	Amend
	R18-15-307	Amend
	R18-15-401	Amend
	R18-15-402	Repeal
	R18-15-402	Renumber
	R18-15-402	Amend
	R18-15-403	Renumber

R18-15-403	Amend
R18-15-404	Renumber
R18-15-404	Amend
R18-15-405	Repeal
R18-15-405	Renumber
R18-15-405	Amend
R18-15-406	Renumber
R18-15-406	Amend
R18-15-407	Renumber
R18-15-408	Renumber
R18-15-501	Amend
R18-15-502	Amend
R18-15-503	Amend
R18-15-504	Amend
R18-15-505	Amend
R18-15-602	Amend
R18-15-701	Amend

2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing Statutes: A.R.S. §§ 49-1203 and 49-1274

Implementing Statutes: A.R.S. §§ 41-5356, 49-1202, 49-1203, 49-1222, 49-1224, 49-1242, 49-1244, 49-1267, 49-1268, 49-1269, 49-1275

3. The effective date of the rules:

The rules will become effective 60 days after they are filed with the Secretary of State

4. A list of all previous notices appearing in the Register addressing the proposed rule:

Notice of Rulemaking Docket Opening: 23 A.A.R. 615, March 17, 2017

Notice of Proposed Rulemaking: 23 A.A.R. 2464, September 15, 2017

5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Trish Incognito, Executive Director
Address: Water Infrastructure Finance Authority of Arizona
100 North 15th Avenue, Suite 103
Phoenix, AZ 85007
Telephone: (602) 364-1310
Fax: (602) 364-1327
E-mail: pincognito@azwifa.gov

6. An explanation of the rule, including the agency's reasons for initiating the rulemaking:

A. Reasons for Initiating the Rulemaking

The Water Infrastructure Finance Authority of Arizona (WIFA) is initiating this rulemaking to reflect recent changes to its governing statutes. The Authority proposes to modify the existing rule so the rule supports and complements state statutory changes to A.R.S. Title 49, Chapter 8 and the addition of A.R.S. Title 41, Chapter 53.

On August 6, 2016, Arizona House Bill 2666 (Fifty-second Legislature, Second Regular Session, 2016) became effective, transferring the Water Infrastructure Finance Authority (WIFA) to the newly established Arizona Finance Authority (AFA) which is governed by a newly created AFA Board of Directors.

Major changes addressed in the rule making include:

1. The WIFA Board of Directors was dissolved by HB 2666. Governance of the Authority is now under the AFA Board of Directors. The addition of A.R.S. § 41-5356 established a WIFA Advisory Board which provides recommendations to the AFA Board. References to the now-defunct WIFA Board are found throughout WIFA's current rules. The rule making reflects the new governance of the Clean Water and Drinking Water Revolving Fund programs.
2. The Water Supply Development Revolving Fund (WSDRF) Committee was struck from statute by HB 2666. References to the now-defunct Water Supply Development Revolving Fund Committee are found throughout WIFA's current rules, particularly in Article 4 Water Supply Development Revolving Fund. This rule making updates the rules to reflect the new governance of the Water

Supply Development Revolving Fund. References to the Committee have been removed and replaced with the Board, as appropriate.

3. In its 2007 session, the Legislature established the WSDRF to be administered by WIFA in A.R.S. § 49-1271. Rules for the WSDRF were promulgated as part of WIFA's 2010 rulemaking, paralleling the rules for the Drinking Water Revolving Fund program. This program is federally funded, and its rules are based on federal requirements which do not apply to the WSDRF, a state program. This rule making improves the rule by reducing the regulatory burden associated with the non-applicable federal requirements currently applied to a state program.
4. Recent changes to the Clean Water Act (Water Resources Reform and Development Act of 2014) have affected the Clean Water Revolving Fund Program. These changes expanded the eligibilities of the types of recipients and the types of projects for the Clean Water Revolving Fund and allow for forgivable principal to be awarded. WIFA has evaluated these changes and revised its rules to provide flexibility so that WIFA may provide assistance to these expanded eligibilities, once WIFA's statutes are similarly revised.
5. Other clarifying edits have been made throughout A.A.C. Title 18, Chapter 15 to improve the comprehension and legal certainty of the rules.

B. Article-by-Article Explanation of the Rule

ARTICLE 1

The definitions that apply to all of Chapter 15 are located in R18-15-101. This Section is revised by amending or adding those definitions necessary to interpret the requirements of this rule and by eliminating definitions that are no longer necessary or applicable to this rule.

This rulemaking amends the following definitions: "applicant," "application," "Board," "Certified Water Quality Management Plan," "drinking water facility," "grant applicant," "grant application," "Intended Use Plan," "planning and design assistance grant," "planning and design assistance grant agreement," "planning and design loan repayment agreement," "project priority list," "recipient," "technical assistance," "wastewater treatment facility," "water provider," and "water supply development."

The following is a new term which has been added to this Section: "Advisory Board."

The following terms are no longer applicable and have been eliminated from this rule: "Committee," and "Priority Value." Throughout the rules, references to the Water Supply Development Revolving Fund Committee were removed, and as applicable, were replaced with references to the Board. In Articles 2, 3 and 4, the term "Priority Value" was replaced with the words "total score" and "priority" to increase clarity. The current Section R18-15-102(B)(2) does not provide any further clarification than the statute A.R.S. §§ 49-1203 (16) and (17), and the content of this Section is included within the financial assistance loan repayment agreements described in Section R18-15-102(B)(1). Therefore, to remove redundancy with statute and to make the rules more concise and clear, this Section was removed from the new rule.

R18-15-104 was amended to clarify the application process, including replacing the term "fiscal year" with "financial operating year (fiscal or calendar)" to clarify the timeframes to non-governmental borrowers who may not follow a "fiscal year." This revision was also made in Articles 2, 3 and 4. Section R18-15-104(B)(5) was revised because the terms and conditions of the loan for which the beneficiaries are consenting to are not known at the time of application.

Additionally, this rulemaking revises Section R18-15-104 to clarify the differing requirements of the resolutions approved by governing bodies which are submitted at two separate times in the process to receive financial assistance. (An applicant to WIFA frequently chooses to submit two separate resolutions, one to authorize the application for financial assistance, and another to execute the loan. If its governing body allows, an applicant may choose to prepare one resolution addressing both sets of requirements.) Most of the content in the previous Section R18-15-105(A) was incorporated into Section R18-15-106(A) as it applies to the environmental review process. The language was also expanded to include technical assistance projects.

In Section R18-15-105 and in three locations in Article 5, revisions were made to reflect current WIFA practice that canceled checks are not acceptable documentation of incurred cost.

ARTICLES 2 AND 3

The eligibility criteria in Section 18-15-201 were amended to accommodate recent changes to federal law which expanded borrower eligibility for the Clean Water Revolving Fund to include private and non-profit entities for certain types of projects. This revision to WIFA's rules is being made in anticipation of an eventual amendment to state statute to allow these new types of borrowers.

No changes were made to R18-15-301, R18-15-202 or R18-15-302.

Sections R18-15-203 and R18-15-303 were amended in the same manner to clarify the requirements and processes of the Project Priority Lists (PPLs). A few minor terminology edits (“priority value” and “subsidy rate index”) were made. Because an application must be submitted for inclusion on the Project Priority List, the references to projects requested by regulatory authorities and all plans prepared according to the Clean Water Act (R18-15-203(C)) or the Safe Drinking Water Act (R18-15-303(C)) were removed. These projects and plans are considered by WIFA staff in the consideration of possible projects, however, placing a project on the PPL without the potential borrower’s involvement is not appropriate. Sections R18-15-203(E) and R18-15-303(E) were revised to clarify that projects may be removed from PPL because the project was financed by another source, not necessarily long-term indebtedness, and to clarify that projects may not be transitioned to a new funding cycle’s Project Priority List without resubmittal.

The public comment process for the Project Priority Lists was revised in Sections R18-15-203 and R18-15-303. The current rules require the Authority to hold public meetings to receive comments on the Project Priority Lists. However, current practice, as required by rule in Sections R18-15-202(B) and R18-15-302(B), is that the Authority annually publicly notices the Intended Use Plans which include the Project Priority Lists for 14 days. Updates to the Project Priority Lists occur on consent agenda at the Arizona Finance Authority Board meetings. Therefore, the rules were amended to only include a public notice for the Project Priority Lists, while keeping the requirement in R18-15-202 and R18-15-302 for a public comment period and a public meeting for the Intended Use Plans.

The procedures for ranking projects with tied scores were amended in R18-15-204(B) and R18-15-304(B) to clarify that two or more projects may receive the same total points, and that the tie breaking procedures will only be utilized when there is insufficient funding.

Sections R18-15-205 and R18-15-305 were revised to clarify the requirements to be included on the fundable range. A project only needs evidence of debt authorization according to R18-15-104 to move forward with applying for WIFA funding. This is because WIFA may fund projects which include the planning and design phases of an infrastructure project, and for these projects, the applicant cannot yet obtain applicable permits, receive approval by the project plans and specifications or initiate the bid process. For the same reason, R18-15-206 and R18-15-306 were revised to remove the requirement that the

applicant has obtained or is in the process of obtaining all permits and approvals before presenting the application to the Board. These revisions reflect current WIFA practice and improve the comprehension and legal certainty of the rules.

In addition to the using the clearer term “financial operating years” in place of “fiscal year”, Sections R18-15-207 and R18-15-307 were revised to include an opportunity for public comment before the Board makes a determination on an applicant’s request for financial assistance.

ARTICLE 4

In its 2007 session, the Legislature established the WSDRF to be administered by WIFA in A.R.S. § 49-1271. Rules for the WSDRF were promulgated as part of WIFA’s 2010 rulemaking, paralleling the rules in Article 3 for the Drinking Water Revolving Fund program. The Drinking Water Revolving Fund program is federally funded, and its rules are based on federal requirements which do not apply to the WSDRF, a state program. This rulemaking eliminates the current rules R18-15-402 and R18-15-405 which mandated the federal requirement of an Intended Use Plan and Fundable Range for the WSDRF. These eliminations reduce the regulatory burden associated with a state program. The term “Project Priority List” in the renumbered Section R18-15-403, a condition of the Drinking Water Revolving Fund, has been replaced with the generic term, “project list.”

The WSDRF Committee was struck from statute by House Bill 2666 (Fifty-second Legislature, Second Regular Session, 2016). The rules have been updated to reflect the new governance of the Fund by removing references to the Committee and replacing them with the Board as applicable.

Other minor edits were made to remove the connection to the Drinking Water Revolving Fund and to return to consistency with the statute, including removing the reference to “subsidy rate index”, and replacing “rank” and “priority value” with “order and priority”, and “value” with “score.”

The renumbered Section R18-15-402(F) was revised to clarify that projects may not be transitioned to the new funding cycle’s project list without resubmittal.

The procedures for ranking projects with tied scores were amended in the renumbered Section R18-15-403(B) to clarify that two or more projects may receive the same total points, and that the tie breaking procedures will only be utilized when there is insufficient funding.

The renumbered Section R18-15-404 was revised to remove the requirement that the applicant has obtained or is in the process of obtaining all permits and approvals before presenting the application to the Board. This is because WIFA may fund projects which include the planning and design phases of an infrastructure project, and for these projects, the applicant cannot yet obtain applicable permits and approvals. This revision improves the comprehension and legal certainty of the rules.

ARTICLE 5

Article 5 is amended to provide a clearer understanding of the technical assistance available and the required actions and process for applying for, evaluating and receiving planning and design assistance. Throughout the rules, the Clean Water and Drinking Water State Revolving Fund planning and design technical assistance grant programs have been renamed to remove the word “grant.” This revision was made to clarify terminology between federal recipients and state subrecipients (recipients of WIFA’s planning and design technical assistance). Federal grant recipients are subject to additional federal requirements which do not apply to recipients of WIFA funds (subrecipients of federal funds). Funds available through WIFA’s technical assistance program are not loan funds or “financial assistance.” This change of terminology reduces the regulatory burden associated with a state program. The terminology for the Water Supply Development Revolving Fund grant program is unchanged as this program is not federally funded.

Consistent with the amendments proposed in Article 4, this rule making amends Sections R18-15-501, R18-15-502 and R18-15-505 to remove all references to Intended Use Plan for Water Supply Development Revolving Fund Technical Assistance and to remove all references to Water Supply Development Revolving Fund Committee and replace them with the Arizona Finance Authority Board, as appropriate. Section R18-15-503 has been revised to reflect the expanded eligibilities of applicants and project types as a result of recent changes to federal law.

Sections R18-15-503(J), R18-15-504(J) and R18-15-505(J) have been eliminated to allow WIFA to consider special circumstances in which project costs incurred prior to execution of a planning and design assistance agreement may be eligible for reimbursement.

Consistent with Section R18-15-105, Sections R18-15-503(K), R18-15-504(K) and R18-15-505(K) have been revised to remove the reference to “canceled checks.”

ARTICLE 6

Initial funding for the Hardship Grant Fund was provided as a one-time grant by U.S. Environmental Protection Agency, and these grant funds have been allocated or committed to projects. WIFA does not anticipate receiving additional funds for the Hardship Grant Fund; however, this Article remains in the new rulemaking to preserve WIFA's authority if additional future funds are received for the Hardship Grant Fund Program. Specific criteria for award in Section R18-15-602 have been eliminated as any future funding for the Hardship Grant would likely have new specific criteria, which would be different from those currently in rule.

ARTICLE 7

This rule making amends Section R18-15-701 to clarify differences in interest rate setting between projects funded by the Clean Water and Drinking Water State Revolving Funds and projects funded by the Water Supply Development Revolving Fund. The rule is being revised to clarify that within the Clean Water and Drinking Water State Revolving Funds, an applicant's local fiscal capacity score is the primary factor in determining the interest rate, while in the Water Supply Development Revolving Fund, an applicant's financial need is the primary factor.

The current rule does not allow forgivable principal to be awarded to Clean Water State Revolving Fund loans. The Water Resources Reform and Development Act of 2014 amended the Clean Water Act to allow for forgivable principal for Clean Water loans. The amount of forgivable principal required to be awarded is a condition of the annual federal capitalization grant. This rule making gives the Authority the flexibility to adhere to the federal requirements which may change from year to year. The rule making also clarifies that forgivable principal is only available for projects funded through either the Clean Water and Drinking Water State Revolving Funds, not the Water Supply Development Revolving Fund. The criteria for which applicants and projects are eligible for forgivable principal were revised to broadly match the criteria in the annual federal capitalization grants.

- 7. A reference to any study relevant to the rule that the agency reviewed and either relied on or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

None

8. 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:

Not applicable

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

A. Proposed rule making

The rulemaking will ensure that WIFA is in conformance with recent statutory changes, thereby reducing confusion among the AFA Board, WIFA Advisory Board, WIFA staff, applicants to the programs, and other stakeholders. Leaving the rules unchanged will result in statutory inconsistencies and misalignment with the current processes used by WIFA staff. WIFA believes that the information in the new rules will help reduce misunderstanding.

B. Information contained in this report

WIFA is a public financing agency; it does not regulate any consumer or business. WIFA's primary purpose is to provide financial and technical assistance through the Clean Water Revolving Fund for publicly held wastewater treatment projects and the Drinking Water Revolving Fund for both publicly and privately held drinking water systems. Both funds were established by the U.S. Environmental Protection Agency and are funded by federal capitalization grants, state matching funds (provided in recent years by WIFA) and WIFA bond proceeds. In the state of Arizona, there are hundreds of community water systems and publicly-owned wastewater systems who are eligible to apply for funding from WIFA. In fiscal year 2017, WIFA provided financial assistance to five drinking water systems and three wastewater systems. Through the Drinking Water Revolving Fund, \$63 million was lent in the form of financial assistance to drinking water systems around the state, while \$4.6 million was lent through the Clean Water Revolving Fund. Technical assistance was provided to five drinking water systems and four wastewater systems in fiscal year 2017, totaling \$121,631 and \$134,324 respectively. WIFA believes that the proposed rule will result in minimal costs to the Authority and other state agencies, including the Arizona Corporation Commission, Arizona Department of Environmental Quality and Arizona Department of Water Resources. The proposed rule has a beneficial impact

and is expected to have no cost or minimal cost impact to the regulated industries, including wastewater treatment facilities, drinking water facilities, and water providers; as well as small businesses and small communities. WIFA provides significant savings to wastewater and drinking water systems through below-market interest rates, forgivable principal and reduced transaction costs. Without the financial and technical assistance available through WIFA, many wastewater and drinking water systems would otherwise find it difficult, if not impossible, to obtain funding to achieve compliance or correct problems associated with water quality standards. Customers of the wastewater facility, drinking water facility, or water provider receive the ultimate benefit from improved water quality and having an adequate water supply. Furthermore, the proposed rule amendments will not have an impact on state revenues.

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

It was discovered that the title and acronym of the Water Supply Development Revolving Fund was not consistent throughout the preamble and the rule. The word “Revolving”, and the corresponding “R” in the acronym was added throughout the preamble and in one location in the rule.

Following the advice of a staff rule writer at the Arizona Department of Environmental Quality, a sentence was added in the preamble to clarify that funds available through WIFA’s technical assistance program are not loan funds.

11. A summary of the comments made regarding the rulemaking and the agency response to them:

An oral proceeding on the Notice of Proposed Rulemaking was held on November 6, 2017. Erika Coombs representing Stifel Financial Corp attended the hearing. Ms. Coombs did not provide any comments. No other verbal or written comment was received.

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

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

The amended rules do not require issuance of a regulatory permit or license.

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

This rulemaking is consistent with federal law. The state revolving funds are regulated at the federal level under the Clean Water Act and the Safe Drinking Water Act.

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

No analysis has been submitted.

13. A list of any incorporated by reference material and its location in the rules:

None

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

The rule was not previously made, amended or repealed as an emergency rule.

15. The full text of the rules follows:

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 15. WATER INFRASTRUCTURE FINANCE AUTHORITY OF ARIZONA

ARTICLE 1. GENERAL PROVISIONS

Section

R18-15-101. Definitions

R18-15-102. Types of Assistance Available

R18-15-103. Application Process

R18-15-104. General Financial Assistance Application Requirements

R18-15-105. General Financial Assistance Conditions

~~R15-15-106.~~ R18-15-106. Environmental Review

R18-15-107. Disputes

ARTICLE 2. CLEAN WATER REVOLVING FUND

Section

R18-15-201. Clean Water Revolving Fund Financial Assistance Eligibility Criteria

R18-15-203. Clean Water Revolving Fund Project Priority List

R18-15-204. Clean Water Revolving Fund Project Priority List Ranking

R18-15-205. Clean Water Revolving Fund Fundable Range for Financial Assistance

R18-15-206. Clean Water Revolving Fund Application for Financial Assistance

R18-15-207. Clean Water Revolving Fund Application Review for Financial Assistance

ARTICLE 3. DRINKING WATER REVOLVING FUND

Section

R18-15-303. Drinking Water Revolving Fund Project Priority List

R18-15-304. Drinking Water Revolving Fund Project Priority List Ranking

R18-15-305. Drinking Water Revolving Fund Fundable Range for Financial Assistance

R18-15-306. Drinking Water Revolving Fund Application for Financial Assistance

R18-15-307. Drinking Water Revolving Fund Application Review for Financial Assistance

ARTICLE 4. WATER SUPPLY DEVELOPMENT REVOLVING FUND

Section

R18-15-401. Water Supply Development Revolving Fund Financial Assistance Eligibility Criteria

~~R18-15-402. Water Supply Development Revolving Fund Intended Use Plan~~

~~R18-15-403.~~ R18-15-402. Water Supply Development Revolving Fund Project ~~Priority~~ List

~~R18-15-404.~~ R18-15-403. Water Supply Development Revolving Fund Project ~~Priority~~ List Ranking

~~R18-15-405. Water Supply Development Revolving Fund Fundable Range for Financial Assistance~~

~~R18-15-406.~~ R18-15-404. Water Supply Development Revolving Fund Application for Financial Assistance

~~R18-15-407.~~ R18-15-405. Water Supply Development Revolving Fund Application Review for Financial Assistance

~~R18-15-408.~~ R18-15-406. Water Supply Development Revolving Fund Requirements

ARTICLE 5. TECHNICAL ASSISTANCE

Article 5, consisting of Sections R18-15-501 through R18-15-507, adopted by final rulemaking at 6 A.A.R. 2116, effective May 16, 2000 (Supp. 00-2).

Section

R18-15-501. Technical Assistance

R18-15-502. Technical Assistance Intended Use Plan

R18-15-503. Clean Water Planning and Design Assistance ~~Grants~~

R18-15-504. Drinking Water Planning and Design Assistance ~~Grants~~

R18-15-505. Water Supply Development Planning and Design Assistance Grants

ARTICLE 6. HARDSHIP GRANT FUND PROGRAM

Article 6, consisting of Sections R18-15-601 through R18-15-603, adopted by final rulemaking at 6 A.A.R. 2116, effective May 16, 2000 (Supp. 00-2).

Section

R18-15-602. Hardship Grant Fund Financial Assistance

ARTICLE 7. INTEREST RATE SETTING AND FORGIVABLE PRINCIPAL

Article 7, consisting of Section R18-15-701, adopted by final rulemaking at 6 A.A.R. 2116, effective May 16, 2000 (Supp. 00-2).

Section

R18-15-701. Interest Rate Setting and Forgivable Principal

ARTICLE 1. GENERAL PROVISIONS

R18-15-101. Definitions

In addition to the definitions prescribed in A.R.S. § 49-1201, the terms of this Chapter, unless otherwise specified, have the following meanings:

“Advisory Board” has same meaning as prescribed in A.R.S. § 41-5356(A)(5).

“Applicant” means a governmental unit, a non-point source project sponsor, a drinking water facility, or a water provider that is seeking financial or technical assistance from the Authority under the provisions of this Chapter.

“Application” means a request for financial or technical assistance submitted to the Board ~~or Committee~~ by an applicant.

“Authority” means the Water Infrastructure Finance Authority of Arizona pursuant to A.R.S. § 49-1201(1).

~~“Board” means the Board of Directors of the Authority pursuant to A.R.S. § 49-1201(2).~~ means the board of directors of the Arizona finance authority established by A.R.S. Title 41, Chapter 53, Article 2.

~~“Certified Water Quality Management Plan” means a plan prepared by a single representative organization designated by the Governor according to Section 208 of the Clean Water Act, 33 U.S.C. 1288.~~ means a plan prepared by a designated Water Quality Management Planning Agency under Section 208 of the Federal Water Pollution Control Act (P.L. 92-500) as amended by the Water Quality Act of 1987 (P.L. 100-4), certified by the Governor or the Governor’s designee, and approved by the United States Environmental Protection Agency.

“Clean Water Revolving Fund” means the fund established by A.R.S. § 49-1221.

~~“Committee” means the Water Supply Development Fund Committee as defined in A.R.S. § 49-1201(5).~~

“DBE” means EPA’s Disadvantaged Business Enterprise Program.

“Dedicated revenue source for repayment” means a source of revenue pledged by a borrower to repay the financial assistance.

“Department” means the Arizona Department of Environmental Quality.

“Disbursement” means the transfer of cash from a fund to a recipient.

“Discharge” has same meaning as prescribed in A.R.S. § 49-201(12).

“Drinking water facility” has same meaning as prescribed in A.R.S. ~~§ 49-1201(6)~~ § 49-1201(5).

“Drinking Water Revolving Fund” means the fund established by A.R.S. § 49-1241.

“EA” means an environmental assessment.

“EID” means an environmental information document.

“EIS” means an environmental impact statement.

“EPA” means the United States Environmental Protection Agency.

“Executive director” means the executive director of the Water Infrastructure Finance Authority of Arizona.

“Federal capitalization grant” means the assistance agreement by which the EPA obligates and awards funds allotted to the Authority for purposes of capitalizing the Clean Water Revolving Fund and the Drinking Water Revolving Fund.

“Financial assistance” means the use of monies for any of the purposes identified in R18-15-102(B).

“Financial assistance agreement” means any agreement that defines the terms for financial assistance provided according to this Chapter.

“FONSI” means a finding of no significant impact.

“Fundable range” means a subset of the project priority list that demarcates the ranked projects which have been determined to be ready to proceed and will be provided with a project finance application.

“Governmental unit” means a political subdivision or Indian tribe that may receive technical or financial assistance from the Authority pursuant to A.R.S. § 49-1203.

“Impaired water” means a navigable water for which credible scientific data exists that satisfies the requirements of A.R.S. § 49-232 and that demonstrates that the water should be identified pursuant to 33 U.S.C. 1313(d) and the regulations implementing that statute.

“Intended Use Plan” means the document prepared by the Authority identifying the intended uses of Clean Water Revolving Fund and Drinking Water Revolving Fund federal capitalization grants according to R18-15-202 and R18-15-302, ~~the intended uses of the Water Supply Development Revolving Fund according to R18-15-402,~~ and the intended uses of funds for technical assistance according to R18-15-502.

“Master priority list” means the master priority list for Capacity Development developed by the Arizona Department of Environmental Quality under A.A.C. R18-4-803, which ranks public water systems according to their need for technical assistance.

“Onsite system” means a conventional septic tank system or alternative system that is installed at a site to treat and dispose of wastewater of predominantly human origin that is generated at that site.

“Planning and design assistance ~~grant~~” means a technical assistance ~~grant~~ that provides for the use of monies for a specific water facility, wastewater treatment facility, or water supply delivery system for planning or design to facilitate the design, construction, acquisition, improvement, or consolidation of a drinking water project, wastewater project, or water supply development project.

“Planning and design assistance ~~grant~~ agreement” means any agreement that defines the terms for a technical assistance ~~grant~~ provided according to Article 5 of this Chapter.

“~~Grant~~ Planning and design technical assistance applicant” means a governmental unit, a nonpoint source project sponsor, a drinking water facility, or a water provider that is seeking a planning and design assistance ~~grant~~ from the Authority under the provisions of this Chapter.

“~~Grant~~ Planning and design technical assistance application” means a request for a planning and design assistance ~~grant~~ submitted to the Board ~~or Committee~~ by a an grant applicant in a format prescribed by the Authority.

“Planning and design loan repayment agreement” means the same as technical assistance loan repayment agreement and has the meaning at A.R.S. ~~§ 49-1201(12)~~ § 49-1201(11).

~~“Priority value” means the total points a project received during the evaluation of its project priority list application.~~

“Professional assistance” means the use of monies by or on behalf of the Authority to conduct research, conduct studies, conduct surveys, develop guidance, and perform related activities that benefit more than one water or wastewater treatment facility.

“Project” means any distinguishable segment or segments of a wastewater treatment facility, drinking water facility, water supply delivery system, or nonpoint source pollution control that can be bid separately and for which financial or technical assistance is being requested or provided.

“Project priority list” means the document developed by the Board ~~or Committee~~ according to R18-15-203, or R18-15-303, ~~or R18-15-403~~ that ranks projects according to R18-15-204, or R18-15-304, ~~or R18-15-404~~.

“Recipient” means an applicant who has entered into a financial assistance agreement or planning and design assistance ~~grant~~ agreement with the Authority.

“ROD” means a record of decision.

“Staff assistance” means the use of monies for a specific water or wastewater treatment facility to assist that system to improve its operations or assist a specific water provider with a water supply delivery system. For water providers, staff assistance is limited to planning and design of water supply development projects according to A.R.S. § 49-1203(B)(17).

“Technical assistance” means assistance provided by the Authority in the form of staff assistance, professional assistance and planning and design assistance ~~grants~~.

“Wastewater treatment facility” has the same meaning as prescribed in A.R.S. ~~§ 49-1201(13)~~ § 49-1201(12).

“Water provider” has the same meaning as prescribed in A.R.S. ~~§ 49-1201(14)~~ § 49-1201(13).

“Water supply development” has the same meaning as prescribed in A.R.S. ~~§ 49-1201(15)~~ § 49-1201(14).

“Water Supply Development Revolving Fund” means the fund established by A.R.S. § 49-1271.

R18-15-102. Types of Assistance Available

A. The Authority may provide financial and technical assistance under the following programs if the Board ~~or Committee, as applicable,~~ determines funding is available:

1. Clean Water Revolving Fund Program and Clean Water Technical Assistance Program,
2. Drinking Water Revolving Fund Program and Drinking Water Technical Assistance Program,
3. Water Supply Development Revolving Fund Program and Water Supply Development Technical Assistance Program, and
4. Hardship Grant Fund Program.

B. Financial assistance available from the Authority includes any of the following:

1. Financial assistance loan repayment agreements;
- ~~2. Planning and design loan repayment agreements in accordance with A.R.S. § 49-1203(16) and (17);~~
- ~~3.~~ 2. The purchase or refinance of local debt obligations;
- ~~4.~~ 3. The guarantee or purchase of insurance for local obligations to improve credit market access or reduce interest rates;
- ~~5.~~ 4. Short-term emergency loan agreements in accordance with A.R.S. § 49-1269; and
- ~~6.~~ 5. Providing linked deposit guarantees through third-party lenders as authorized by A.R.S. §§ 49-1223(A)(6), 49-1243(A)(6), and 49-1273(A)(6).

C. Technical assistance available from the Authority includes planning and design assistance ~~grants,~~ staff assistance, and professional assistance. Technical assistance may be offered at the Board’s ~~or Committee’s~~ discretion ~~and shall be identified in the annual Technical Assistance Intended Use Plan as described in R18-15-502.~~

R18-15-103. Application Process

A. An applicant requesting assistance shall apply to the Authority for ~~each type of the~~ the financial or technical assistance described in R18-15-102 on forms provided by the Authority.

B. An applicant seeking financial assistance through the Clean Water Revolving Fund Program shall apply for financial assistance according to Articles 1 and 2 of this Chapter.

- C. An applicant seeking financial assistance through the Drinking Water Revolving Fund Program shall apply for financial assistance according to Articles 1 and 3 of this Chapter.
- D. An applicant seeking financial assistance through the Water Supply Development Revolving Fund Program shall apply for financial assistance according to Articles 1 and 4 of this Chapter.
- E. An applicant seeking technical assistance available through the technical assistance programs shall apply for technical assistance according to Articles 1 and 5 of this Chapter.
- F. An applicant shall mark any confidential information with the words “confidential information” on each page of the material containing such information. A claim of confidential information may be asserted for a trade secret or information that, upon disclosure, would harm a person’s competitive advantage. The Authority shall not disclose any information determined confidential. Upon receipt of a claim of confidential information, the Authority shall make one of the following written determinations:
 - 1. The designated information is confidential and the Authority shall not disclose the information except to those individuals deemed by the Authority to have a legitimate interest.
 - 2. The designated information is not confidential.
 - 3. Additional information is required before a final confidentiality determination can be made.

R18-15-104. General Financial Assistance Application Requirements

- A. The applicant shall provide in the financial assistance application the information in subsections (B), (C), (D), and (E).
- B. The applicant shall demonstrate the applicant is legally authorized to ~~enter into~~ apply for long-term indebtedness, and is legally authorized to ~~pledge~~ declare its intent to obligate a dedicated revenue source for repayment under subsection (C).
 - 1. If the applicant is a political subdivision and the long-term indebtedness is authorized through an election, the applicant shall provide all of the following:
 - a. One copy of the sample election ballot and election pamphlet, if applicable,
 - b. One copy of the governing body resolution calling for the election, and
 - c. Official evidence of the election results following the election.

2. If the applicant is a political subdivision and the long-term indebtedness is not required by law to be authorized through an election, the applicant shall provide one copy of the approved governing body resolution authorizing the application for long-term indebtedness and an identification of the dedicated revenue source.
 3. If the applicant is a political subdivision and the long-term indebtedness is authorized through a special taxing district creation process, the applicant shall provide one copy of ~~all~~ the final documentation, notices, petitions, and related information authorizing the long-term indebtedness.
 4. If the applicant is regulated by the Arizona Corporation Commission, the applicant shall provide evidence that the financial assistance from the Authority to the applicant is authorized by the Arizona Corporation Commission.
 5. All other applicants shall demonstrate that a majority of the beneficiaries consent to ~~the terms and conditions of the~~ apply to the Authority for financial assistance. The Authority shall assist each applicant to devise a process by which this consent is documented.
- C. The applicant shall identify a dedicated revenue source for repayment of the financial assistance and demonstrate that the dedicated revenue source is sufficient to repay the financial assistance.
1. The applicant shall provide the following information:
 - a. Amount of the financial assistance requested;
 - b. One copy of each financial statement, audit, or comprehensive financial statement from at least the previous three ~~fiscal years~~ financial operating years (fiscal or calendar);
 - c. One copy of each budget, business plan, management plan, or financial plan from the ~~previous and current fiscal years~~ financial operating years (fiscal or calendar);
 - d. One copy of the proposed budget, business plan, management plan, or financial plan for the next ~~fiscal year~~ financial operating year (fiscal or calendar);
 - e. ~~A projection of revenue anticipated to be collected over the next five fiscal years from the dedicated revenue source for repayment;~~
 - f. ~~A summary~~ Documentation of current rates and fees for drinking or wastewater services including, as applicable, any resolutions related to rates and fees passed by the governing body of a political subdivision; and

1. The applicant shall provide the following information:
 - a. Years of experience and related information regarding the owners, managers, chief elected officials, and governing body members of the applicant; and
 - b. A list of professional and outside services retained by the applicant ~~and the proposed project.~~
2. If any of the required information listed in subsection (E)(1) is not available, the Authority may assist the applicant in determining alternative documentation to support the applicant's managerial capability.
3. The Authority may ask for additional information as necessary to evaluate the applicant's managerial capability.

R18-15-105. General Financial Assistance Conditions

- A. The Authority shall not execute a financial assistance agreement with an applicant until the applicant provides all documentation specified by the Authority ~~and the requirements of R18-15-106 are met.~~ ~~Projects under the Water Supply Development Revolving Fund Program are not subject to the requirements of R18-15-106. For planning and design loans that include an environmental information document or an environmental impact statement, the Authority may execute a financial assistance agreement with an applicant prior to the completion of the conditions of R18-15-106, provided that the applicant meets the requirements of R18-15-106 before proceeding with the design of the selected alternative.~~
- B. The documentation required prior to execution of the financial assistance agreement shall at a minimum include:
 1. ~~One~~ If there is a governing body, one copy of the governing body resolution approving the execution of the financial assistance agreement,
 2. A project budget, and
 3. An estimated disbursement schedule.
- C. The financial assistance agreement between the recipient and the Authority shall at a minimum specify:
 1. Rates of interest, fees, and any costs as determined by the Authority;
 2. Project details;

3. The maximum amount of principal and interest due on any payment date;
 4. Debt service coverage requirements;
 5. Reporting requirements;
 6. Debt service reserve fund and repair and replacement reserve fund requirements;
 7. The dedicated source for repayment and pledge;
 8. The requirement that the recipient comply with applicable federal, state and local laws;
 9. A schedule for repayment; and
 10. Any other agreed-upon conditions.
- D.** The Authority may require a recipient to pay a proportionate share of the expenses of the Authority's operating costs.
- E.** The recipient shall maintain the project account in accordance with generally accepted government accounting standards. After reasonable notice by the Authority, the recipient shall make available any project records reasonably required to determine compliance with the provisions of this Chapter and the financial assistance agreement.
- F.** The Authority shall release loan proceeds subject to a disbursement request if the request is consistent with the financial assistance agreement and the disbursement schedule.
1. The applicant shall submit each disbursement request on the forms provided by the Authority. Each disbursement request shall include a certification and signature document, a cost-incurred report, and a DBE report. The Authority shall not process a disbursement until the applicant provides a completed disbursement form.
 2. The applicant shall include copies of invoices, ~~anceled checks~~, or other documents that show proof of eligible costs incurred with each disbursement request.
- G.** The recipient shall make repayments according to an agreed-upon schedule in the financial assistance agreement. The Authority may charge a late fee for any loan repayment not paid when due. The Authority may refer any loan repayment past due to the Office of the Attorney General for appropriate action.

R18-15-106. Environmental Review

A. The Authority shall conduct an environmental review according to this Section for impacts of the design or construction of water infrastructure. ~~Projects under the Water Supply Development Revolving Fund Program are not subject to the requirements of R18-15-106.~~ As part of the application process, the Authority shall request information from the applicant to conduct an environmental review consistent with 40 CFR 35.3140 and 40 CFR 35.3580. The Authority shall determine whether the project meets the criteria for categorical exclusion under subsections (B) and (C), or whether the project requires the preparation of an environmental assessment (EA) or an environmental impact statement (EIS) to identify and evaluate its environmental impacts.

1. The Authority shall not execute a technical or financial assistance agreement with an applicant until the requirements of this section are met. For projects that include an environmental information document or an environmental impact statement, the Authority may execute a technical or financial assistance agreement with an applicant prior to the completion of the conditions of this section, provided that the applicant meets the requirements of this section before proceeding with the design of the selected alternative.

2. Projects under the Water Supply Development Revolving Fund Program are not subject to the requirements of this section.

B. A project may be categorically excluded from environmental review if the project fits within a category that is eligible for exclusion and the project does not involve any of the extraordinary circumstances listed in subsection (C). If, based on the application and other information submitted by the applicant, the Authority determines that a categorical exclusion from an environmental review is warranted, the project is exempt from the requirements of this Section, except for the public notice and participation requirements in subsection (J). The Authority may issue a categorical exclusion if information and documents demonstrate that the project qualifies under one or more of the following categories:

1. Any project relating to existing infrastructure systems that involves minor upgrading, minor expansion of system capacity, rehabilitation (including functional replacement) of the existing system and system components, or construction of new minor ancillary facilities adjacent to or on the same property as existing facilities. This category does not include projects that:

- a. Involve new or relocated discharges to surface water or groundwater,
 - b. Will likely result in the substantial increase in the volume or the loading of pollutant to the receiving water,
 - c. Will provide capacity to serve a population 30% greater than the existing population,
 - d. Are not supported by the state or other regional growth plan or strategy, or
 - e. Directly or indirectly involve or relate to upgrading or extending infrastructure systems primarily for the purposes of future development.
2. Any clean water project in unsewered communities involving the replacement of existing onsite systems, providing the new onsite systems do not result in substantial increases in the volume of discharge or the loadings of pollutants from existing sources, or relocate an existing discharge.
- C. The Authority shall deny a categorical exclusion if any of the following extraordinary circumstances apply to the project:
1. The project is known or expected to have potentially significant adverse environmental impacts on the quality of the human environment either individually or cumulatively over time.
 2. The project is known or expected to have disproportionately high and adverse human health or environmental effects on any community, including minority communities, low-income communities, or federally-recognized Indian tribal communities.
 3. The project is known or expected to significantly affect federally listed threatened or endangered species or their critical habitat.
 4. The project is known or expected to significantly affect national natural landmarks or any property with nationally significant historic, architectural, prehistoric, archeological, or cultural value, including but not limited to, property listed on or eligible for the Arizona or National Registers of Historic Places.
 5. The project is known or expected to significantly affect environmentally important natural resource areas such as wetlands, floodplains, significant agricultural lands, aquifer recharge zones, wild and scenic rivers, and significant fish or wildlife habitat.
 6. The project is known or expected to cause significant adverse air quality effects.

7. The project is known or expected to have a significant effect on the pattern and type of land use or growth and distribution of population, including altering the character of existing residential areas, or may not be consistent with state or local government, or federally-recognized Indian tribe approved land use or federal land management plans.
 8. The project is known or expected to cause significant public controversy about a potential environmental impact of the proposed action.
 9. The project is known or expected to be associated with providing financial assistance to a federal agency through an interagency agreement for a project that is known or expected to have potentially significant environmental impacts.
 10. The project is known or expected to conflict with federal, state, or local government, or federally-recognized Indian tribe environmental, resource-protection, or land-use laws or regulations.
- D.** If the Authority denies the categorical exclusion under subsection (C), the Authority shall conduct an EA according to subsection (E), unless the Authority decides to prepare an EIS according to subsections (F) and (G) without first undertaking an EA. If the Authority conducts an EA, the applicant shall:
1. Prepare an environmental information document (EID) in a format prescribed by the Authority. The EID shall be of sufficient scope to undertake an environmental review and to allow development of an EA under subsection (E); or
 2. Provide documentation, upon Authority approval, in another format if the documentation is of sufficient scope to allow the development of an EA under subsection (E).
- E.** The Authority shall conduct the EA that includes:
1. A brief discussion of:
 - a. The need for the project;
 - b. The alternatives, including a no action alternative;
 - c. The affected environment, including baseline conditions that may be impacted by the project and alternatives;
 - d. The environmental impacts of the project and alternatives, including any unresolved conflicts concerning alternative uses of available resources; and

- e. Other applicable environmental laws.
 - 2. A listing or summary of any coordination or consultation undertaken with any federal agency, state or local government, or federally-recognized Indian tribe regarding compliance with applicable laws and executive orders;
 - 3. Identification and description of any mitigation measures considered, including any mitigation measures that must be adopted to ensure the project will not have significant impacts; and
 - 4. Incorporation of documents by reference, if appropriate, including the EID.
- F.** Upon completion of the EA required by subsection (E), the Authority shall determine whether an environmental impact statement (EIS) is necessary.
- 1. The Authority shall prepare or direct the applicant to prepare an EIS in the manner prescribed in subsection (G) if any of the following conditions exist.
 - a. The project would result in a discharge of treated effluent from a new or modified existing facility into a body of water and the discharge is likely to have a significant effect on the quality of the receiving water.
 - b. The project is likely to directly, or through induced development, have significant adverse effect upon local ambient air quality or local ambient noise levels.
 - c. The project is likely to have significant adverse effects on surface water reservoirs or navigation projects.
 - d. The project would be inconsistent with state or local government, or federally-recognized Indian tribe approved land use plans or regulations, or federal land management plans.
 - e. The project would be inconsistent with state or local government, or federally-recognized Indian tribe environmental, resource-protection, or land-use laws and regulations for the protection of the environment.
 - f. The project is likely to significantly affect the environment through the release of radioactive, hazardous, or toxic substances, or biota.
 - g. The project involves uncertain environmental effects or highly unique environmental risks that are likely to be significant.

other interested parties. The Authority shall issue the notice of intent for public comment in accordance with subsection (J)(3).

2. As soon as possible after the distribution and publication of the notice of intent required by subsection (G)(1), the Authority shall convene a meeting of affected federal, state, and local agencies, affected Indian tribes, the applicant, and other interested parties. At the meeting, the parties attending the meeting shall determine the scope of the EIS by considering a number of factors, including all of the following:
 - a. The significant issues to be analyzed in depth in the EIS,
 - b. The preliminary range of alternatives to be considered,
 - c. The potential cooperating agencies and information or analyses that may be needed from cooperating agencies or other parties, and
 - d. The method for EIS preparation and the public participation strategy.
3. Upon completion of the process described in subsection (G)(2), the Authority shall identify and evaluate all potentially viable alternatives to adequately address the range of issues identified. Additional issues also may be addressed, or others eliminated, and the reasons documented as part of the EIS.
4. After the analysis of issues is conducted according to subsection (G)(3), the Authority shall issue a draft EIS for public comment according to subsection (J)(4).
5. Following public comment according to subsection (J), the Authority shall prepare a final EIS, consisting of all of the following:
 - a. The draft EIS.
 - b. An analysis of all reasonable alternatives and the no action alternative;
 - c. A summary of any coordination or consultation undertaken with any federal, state, or local government, or federally-recognized Indian tribe;
 - d. A summary of the public participation process;
 - e. Comments received on the draft EIS;
 - f. A list of persons commenting on the draft EIS;
 - g. The Authority's responses to significant comments received;

provide that comments on the FONSI may be submitted to the Authority for a period of 30 days from the date of publication of the notice. If no comments are received, the FONSI shall immediately become effective. The Authority may proceed with the project subject to any mitigation measures described in the FONSI after responding to any substantive comments received on the FONSI during the 30-day comment period, or 30 days after issuance of the FONSI if no substantive comments are received.

3. If a notice of intent is prepared and distributed under subsection (G)(1), the Authority shall publish it as a legal notice at least once, in one or more newspapers of general circulation in the county or counties concerned.
4. If a draft EIS is issued under subsection (G)(4), the Authority shall provide public notice by publishing the notice as a legal notice at least once, in one or more newspapers of general circulation in the county or counties concerned, that the draft EIS is available for public review. The notice shall provide that comments on the draft EIS may be submitted to the Authority for a period of 45 days from the date of publication of the notice. When the Authority determines that a project may be controversial, the notice shall provide for a general public hearing to receive public comments.
5. If the Authority reaffirms or revises a decision according to subsection (I), the Authority shall provide public notice of that fact by publishing the notice as a legal notice at least once, in one or more newspapers of general circulation in the county or counties concerned.

R18-15-107. Disputes

- A. Any interested party having a substantial financial interest in or suffering a substantial adverse financial impact from an action taken under this Chapter, excluding actions taken under R18-15-503, R18-15-504, and R18-15-505, may file a formal letter of dispute with the executive director according to subsections (B), (C), (D), and (E). Any interested party having a substantial financial interest in or suffering a substantial adverse financial impact from an action taken under R18-15-503, R18-15-504 or R18-15-505 shall proceed under R18-15-503(H), R18-15-504(H) or R18-15-505(H), as applicable.

- B.** The interested party shall file the formal letter of dispute with the executive director within 30 days of the action and provide a copy to each member of the Board ~~or Committee~~. The formal letter of dispute shall include the following information:
1. The name, address, and telephone number of the interested party;
 2. The signature of the interested party or the interested party's representative;
 3. A detailed statement of the legal and factual grounds of the dispute including:
 - a. Copies of relevant documents, and
 - b. The nature of the substantial financial interest or the nature of the substantial adverse financial impact of the interested party; and
 4. The form of relief requested.
- C.** Within 30 days of receipt of a dispute letter, the Authority shall issue a preliminary decision in writing, to be forwarded by certified mail to the party.
- D.** Any party filing a dispute under subsection (B) that disagrees with a preliminary decision of the Authority may file a formal letter of appeal, explaining why the party disagrees with the preliminary decision, with the Board, provided the letter is received by the executive director not more than 15 days after the receipt by the party of the preliminary decision.
- E.** The Board shall issue a final decision on issues appealed under subsection (D) not more than 60 days after receipt of the formal letter of appeal.

ARTICLE 2. CLEAN WATER REVOLVING FUND

R18-15-201. Clean Water Revolving Fund Financial Assistance Eligibility Criteria

To ~~be eligible to~~ receive financial assistance from the Clean Water Revolving Fund, the applicant shall demonstrate the applicant is ~~a governmental unit requesting~~ eligible under A.R.S. § 49-1224(A) to request financial assistance for a purpose as defined in A.R.S. § 49-1223(A); the proposed project is to design, construct, acquire, improve, or refinance a publicly owned wastewater treatment facility, or for any other purpose permitted by the Clean Water Act including nonpoint source projects; and the proposed project appears on the Clean Water Revolving Fund Project Priority List developed under R18-15-203.

R18-15-203. Clean Water Revolving Fund Project Priority List

- A.** The Authority annually shall prepare a Clean Water Revolving Fund Project Priority List as part of the Intended Use Plan described in R18-15-202. The Board may waive the requirement to develop a Clean Water Revolving Fund Project Priority List if funds are not adequate to assist any projects or if the Board determines that no financial assistance will be offered for the annual funding cycle.
- B.** An applicant pursuing financial assistance from the Authority for a project shall request to have the project included on the Clean Water Revolving Fund Project Priority List. The applicant may request that multiple projects be placed on the Clean Water Revolving Fund Project Priority List. An applicant shall make a request for placement of a project on the Clean Water Revolving Fund Project Priority List on or before a date specified by the Authority and in an application format specified by the Authority. The Authority shall include with the project priority list application form the criteria under each ranking category in R18-15-204(A), by which the project will be evaluated and the relative importance of each of the criterion.
- C.** In preparing the Clean Water Revolving Fund Project Priority List, the Authority shall consider all project priority list applications submitted under subsection (B), ~~all projects requested by regulatory authorities, and all plans prepared according to the Clean Water Act, 33 U.S.C. 1251 to 1387.~~ The Authority shall evaluate the merits of each project with respect to water quality issues and determine the ~~priority value~~ total points of each project according to R18-15-204. At a minimum, the Clean Water Revolving Fund Project Priority List shall identify:
1. The applicant,
 2. Project title,
 3. Type of project,
 4. The amount requested for financial assistance,
 5. The subsidy ~~rate index~~ according to R18-15-204(C),
 6. Whether the project is within the fundable range according to R18-15-205, and
 7. The rank of each project by ~~the priority value~~ its total points, determined according to R18-15-204.
- D.** After adoption of the annual Intended Use Plan and project priority list according to R18-15-202, the Board may allow:

1. Updates and corrections to the adopted Clean Water Revolving Fund Project Priority List, if the updates and corrections are adopted by the Board after ~~an opportunity for public comment at a public meeting~~ public notice; or
 2. Additions to the Clean Water Revolving Fund Project Priority List, if the additions are adopted by the Board after ~~an opportunity for public comment at a public meeting~~ public notice.
- E.** After ~~an opportunity for public comment at a public meeting~~ public notice, the Board may remove a project from the Clean Water Revolving Fund Project Priority List under one or more of the following circumstances:
1. The recipient has received all financial assistance identified in the executed financial assistance agreement with the Authority;
 2. The project was financed ~~with long-term indebtedness~~ from another source;
 3. The project is no longer an eligible project;
 4. The applicant requests removal;
 5. The applicant is no longer an eligible applicant; or
 6. The applicant did not update, modify, correct or resubmit a project ~~that remained on~~ from the project priority list ~~for more than 365 days~~ developed for the previous funding cycle.

R18-15-204. Clean Water Revolving Fund Project Priority List Ranking

- A.** The Authority shall rank each project on the Clean Water Revolving Fund Project Priority List based on the ~~priority value~~ total points of each project. The Authority shall consider the following categories to determine the ~~priority value~~ total points of each project:
1. The Authority shall evaluate the current conditions of the project, including existing environmental, structural, and regulatory integrity and the degree to which the project is consistent with the Clean Water Act, 33 U.S.C. 1251 to 1387.
 2. The Authority shall evaluate the degree to which the project improves or protects water quality.
 3. The Authority shall evaluate the degree to which the project addresses water or energy efficiency or environmentally innovative approaches.
 4. The Authority shall evaluate the degree to which the project promotes any of the following:
 - a. Consolidation of facilities, operations, and ownership;

- b. Extending service to existing areas currently served by another facility; or
 - c. A regional approach to operations, management, or new facilities.
5. The Authority shall determine whether the project received assistance from the Authority in a previous funding cycle.
 6. The Authority shall evaluate the applicant's local fiscal capacity.
- B.** ~~If two or more projects have the same rank according to subsection (A);~~ Two or more projects may receive the same total points. If sufficient clean water revolving loan funds are not available to fund the projects, the Authority shall give priority to the project with the highest current condition ~~value~~ score under subsection (A)(1). If projects remain tied, priority will be given to the project with the highest water quality improvement ~~value~~ score under subsection (A)(2). If projects remain tied, this process shall continue through the categories under subsections (A)(3) through (6), sequentially. If projects continue to have the same ~~priority value~~ total points, the Board shall determine the priority of the tied projects.
- C.** The Authority shall determine the subsidy ~~rate index~~ for each project on the Clean Water Revolving Fund Project Priority List based on the applicant's local fiscal capacity ~~value~~ score under subsection (A)(6) and the ~~overall priority value~~ total points of the project. The Authority shall incorporate the subsidy ~~rate index~~ in the financial assistance agreement.

R18-15-205. Clean Water Revolving Fund Fundable Range for Financial Assistance

- A.** Prior to adoption by the Board of the Clean Water Revolving Fund Project Priority List, the Authority shall determine which projects are within the fundable range.
- B.** In determining the fundable range, the Authority shall evaluate each project for evidence ~~that the project is ready to proceed~~ of debt authorization according to R18-15-104(B). ~~The Authority shall consider the following indicators when evaluating whether the project is within the fundable range:~~
- ~~1. Evidence of debt authorization according to R18-15-104(B);~~
 - ~~2. Evidence that the applicant has obtained applicable local, state, or federal project permits, as applicable;~~
 - ~~3. Evidence of approval by the appropriate authority of project plans and specifications; and~~
 - ~~4. Evidence that the applicant has initiated the bid or solicitation process.~~

R18-15-206. Clean Water Revolving Fund Application for Financial Assistance

- A. The Authority shall accept an application for financial assistance from an eligible applicant for a project that appears on the Clean Water Revolving Fund Project Priority List and is determined to be in the fundable range. At the Authority's discretion, the Authority may accept an application for financial assistance prior to the project appearing on a Board-adopted Clean Water Revolving Fund Project Priority List and in the fundable range.
- B. The Authority shall not ~~forward~~ present an application to the Board for consideration until all the following conditions are met:
1. The project is on the Clean Water Revolving Fund Project Priority List, including the Project Priority List to be adopted at the Board meeting;
 2. The applicant has provided supporting documentation according to R18-15-205(B);
 3. The applicant has demonstrated legal capability, financial capability, technical capability, and managerial capability as described in R18-15-104;
 4. For nonpoint source projects, the applicant has provided evidence that the project is consistent with Section 319 and Title VI of the Clean Water Act, 33 U.S.C. 1329, 1381 to 1387; and
 5. ~~The applicant has obtained or is in the process of obtaining all permits and approvals required by federal, state, and local authorities; and~~
 6. The proposed project is consistent with the Certified Water Quality Management Plan.
- C. The application criteria required under subsections (A) and (B) shall not apply to financial assistance requests for short-term emergency loans under A.R.S. § 49-1269.

R18-15-207. Clean Water Revolving Fund Application Review for Financial Assistance

- A. The Authority shall evaluate and summarize each application received and develop an analysis that provides recommendations to the Board. The analysis shall at a minimum include:
1. The scope, size, and budget of the proposed project, including as much cost detail as possible;
 2. A summary of the applicant's legal capability including authorization to enter into long-term indebtedness and to pledge the specified dedicated revenue source for repayment;
 3. A summary of the applicant's technical capability including its ability to construct, operate, and maintain the proposed project;

4. A summary of the applicant's managerial capability, including the experience of elected officials and management team in managing similar organizations and similar projects;
 5. A summary of the applicant's financial capability, including:
 - a. The amount of money collected through the dedicated revenue source for repayment for each of the previous three ~~fiscal years~~ financial operating years (fiscal or calendar),
 - b. An estimate of the amount of money that will be collected through the dedicated revenue source for repayment for the current ~~fiscal year~~ financial operating year (fiscal or calendar), and
 - c. A projection of the amount of money that will be collected through the dedicated revenue source for repayment for each of the next five ~~fiscal years~~ financial operating years (fiscal or calendar);
 6. The applicant's history of compliance with, as applicable, the Clean Water Act, 33 U.S.C. 1251 to 1387, related Arizona statutes, and related rules, regulations, and policies; and
 7. A summary of any previous assistance provided by the Authority to the applicant.
- B.** After an opportunity for public comment, the ~~The~~ Board shall make a determination regarding the applicant's request for financial assistance at a public meeting. The Board shall base this determination on the information provided in the application, the analysis prepared by the Authority, and any other information provided at the public meeting. The Authority shall inform the applicant of the Board's determination, which may include recommended modifications to any of the following:
1. The proposed project,
 2. The applicant's legal structure and organization,
 3. The dedicated revenue source for repayment, or
 4. The structure of the financial assistance request.
- C.** If the Board determines at any time during a funding cycle that funds are limited or are not available to provide financial assistance, the Authority shall notify applicants on the current Clean Water Revolving Fund Project Priority List that the Authority is no longer accepting applications. The Board shall determine the amount of funding available, if any, to provide financial assistance for the applications already accepted by the Authority. The Board shall consider each application in the order

the project appears within the fundable range on the current Clean Water Revolving Fund Project Priority List. The Board shall make a determination as described in subsection (B) on each application until the available funds are committed.

- D. Upon Board approval of the applicant's request for financial assistance, the Authority shall prepare a financial assistance agreement for execution by the applicant and the Authority.

ARTICLE 3. DRINKING WATER REVOLVING FUND

R18-15-303. Drinking Water Revolving Fund Project Priority List

- A. The Authority annually shall prepare a Drinking Water Revolving Fund Project Priority List as part of the Intended Use Plan described in R18-15-302. The Board may waive the requirement to develop an annual Drinking Water Revolving Fund Project Priority List if funds are not adequate to assist any projects or if the Board determines that no financial assistance will be offered for the annual funding cycle.
- B. An applicant pursuing financial assistance from the Authority for a project shall request to have the project included on the Drinking Water Revolving Fund Project Priority List. The applicant may request that multiple projects be placed on the Drinking Water Revolving Fund Project Priority List. An applicant shall make a request for placement of a project on the Drinking Water Revolving Fund Project Priority List on or before a date specified by the Authority and in an application format specified by the Authority. The Authority shall include with the project priority list application form the criteria under each ranking category in R18-15-304(A) by which the project will be evaluated and the relative importance of each of the criterion.
- C. In preparing the Drinking Water Revolving Fund Project Priority List, the Authority shall consider all project priority list applications submitted under subsection (B); ~~all projects requested by regulatory authorities, and all plans prepared under the Safe Drinking Water Act, 42 U.S.C. 300f to 300j-26.~~ The Authority shall evaluate the merits of each project with respect to water quality issues and determine the ~~priority value~~ total points of each project according to R18-15-304. At a minimum, the Drinking Water Revolving Fund Project Priority List shall identify:
 - 1. The applicant;
 - 2. Project title;

3. Type of project;
4. Population of service area;
5. The amount requested for financial assistance;
6. The subsidy ~~rate index~~ according to R18-15-304(C);
7. Whether the project is within the fundable range according to R18-15-305; and
8. The rank of each project by ~~the priority value~~ its total points, determined according to R18-15-304.

D. After adoption of the annual Intended Use Plan and project priority list according to R18-15-302, the Board may allow:

1. Updates and corrections to the adopted Drinking Water Revolving Fund Project Priority List, if the updates and corrections are adopted by the Board after ~~an opportunity for public comment at a public meeting~~ public notice; or
2. Additions to the Drinking Water Revolving Fund Project Priority List, if the additions are adopted by the Board after ~~an opportunity for public comment at a public meeting~~ public notice.

E. After ~~an opportunity for public comment at a public meeting~~ public notice, the Board may remove a project from the Drinking Water Revolving Fund Project Priority List under one or more of the following circumstances:

1. The recipient has received all financial assistance identified in the executed financial assistance agreement with the Authority;
2. The project was financed ~~with long term indebtedness~~ from another source;
3. The project is no longer an eligible project;
4. The applicant requests removal;
5. The applicant is no longer an eligible applicant; or
6. The applicant did not update, modify, correct or resubmit a project ~~that remained on~~ from the project priority list for more than 365 days developed for the previous funding cycle.

R18-15-304. Drinking Water Revolving Fund Project Priority List Ranking

- A.** The Authority shall rank each project listed on the Drinking Water Revolving Fund Project Priority List based on the ~~priority value~~ total points of each project. The Authority shall consider the following categories to determine the ~~priority value~~ total points of each project:
1. The Authority shall evaluate the current conditions of the system through the system's ~~rank scores~~ on the Department's master priority list.
 2. The Authority shall evaluate the degree to which the project will result in improvement to the water system.
 3. The Authority shall evaluate the degree to which the project addresses water or energy efficiency or environmentally innovative approaches.
 4. The Authority shall evaluate the degree to which the project promotes any of the following:
 - a. Consolidation of facilities, operations, and ownership;
 - b. Extending service to existing areas currently served by another facility; or
 - c. A regional approach to operations, management, or new facilities.
 5. The Authority shall determine whether the project received assistance from the Authority in a previous funding cycle.
 6. The Authority shall evaluate the applicant's local fiscal capacity.
- B.** ~~If two or more projects have the same rank according to subsection (A),~~ Two or more projects may receive the same total points. If sufficient clean water revolving loan funds are not available to fund the projects, the Authority shall give priority to the project with the highest current condition ~~value score~~ value score under subsection (A)(1). If projects remain tied, priority will be given to the project with the highest water system improvement ~~value score~~ value score under subsection (A)(2). If projects remain tied, this process shall continue through the categories under subsections (A)(3) through (6), sequentially. If projects continue to have the same ~~priority value~~ total points, the Board shall determine the priority of the tied projects.
- C.** The Authority shall determine the subsidy ~~rate index~~ for each project on the Drinking Water Revolving Fund Project Priority List based on the applicant's local fiscal capacity ~~value score~~ value score and the ~~overall priority value~~ total points of the project. The Authority shall incorporate the subsidy ~~rate index~~ in the financial assistance agreement.

R18-15-305. Drinking Water Revolving Fund Fundable Range for Financial Assistance

- A. Prior to adoption by the Board of the Drinking Water Revolving Fund Project Priority List, the Authority shall determine which projects are within the fundable range.
- B. In determining the fundable range the Authority shall evaluate each project for evidence ~~that the project is ready to proceed. The Authority shall consider the following indicators when evaluating whether the project is within the fundable range:~~
- ~~1. Evidence of debt authorization according to R18-15-104(B);~~
 - ~~2. Evidence that the applicant has obtained applicable local, state, or federal project permits, as applicable;~~
 - ~~3. Evidence of approval by the appropriate authority of project plans and specifications; and~~
 - ~~4. Evidence that the applicant has initiated the bid or solicitation process.~~

R18-15-306. Drinking Water Revolving Fund Application for Financial Assistance

- A. The Authority shall accept an application for financial assistance from an eligible applicant for a project that appears on the Drinking Water Revolving Fund Project Priority List and is determined to be within the fundable range. At the Authority's discretion, the Authority may accept an application for financial assistance prior to the project appearing on a Board-adopted Drinking Water Revolving Fund Project Priority List.
- B. The Authority shall not ~~forward~~ present an application to the Board for consideration until all the following conditions are met:
1. The project is on the Drinking Water Revolving Fund Project Priority List, including the Project Priority List to be adopted at the Board meeting;
 2. The applicant has provided supporting documentation according to R18-15-305(B); and
 3. The applicant has demonstrated legal capability, financial capability, technical capability and managerial capability as described in R18-15-104; and,
 - ~~4. The applicant has obtained or is in the process of obtaining all permits and approvals required by federal, state, and local authorities.~~
- C. The application criteria required under subsections (A) and (B) shall not apply to financial assistance requests for short-term emergency loans under A.R.S. § 49-1269.

R18-15-307. Drinking Water Revolving Fund Application Review for Financial Assistance

- A.** The Authority shall evaluate and summarize each application received and develop an analysis that provides recommendations to the Board. At a minimum, the analysis shall include:
1. The scope, size, and budget of the proposed project, including as much cost detail as possible;
 2. A summary of the applicant's legal capability, including authorization to enter into long-term indebtedness and to pledge the specified dedicated revenue source for repayment;
 3. A summary of the applicant's technical capability, including its ability to construct, operate, and maintain the proposed project;
 4. A summary of the applicant's managerial capability, including the experience of elected officials and management team in managing similar organizations and similar projects;
 5. A summary of the applicant's financial capability, including:
 - a. The amount of money collected through the dedicated revenue source for repayment for each of the previous three ~~fiscal years~~ financial operating years (fiscal or calendar),
 - b. An estimate of the amount of money that will be collected through the dedicated revenue source for repayment for the current ~~fiscal year~~ financial operating year (fiscal or calendar), and
 - c. A projection of the amount of money that will be collected through the dedicated revenue source for repayment for each of the next five ~~fiscal years~~ financial operating years (fiscal or calendar);
 6. The applicant's history of compliance with, as applicable, the Safe Drinking Water Act, 42 U.S.C. 300f to 300j-26, related Arizona statutes, and related rules, regulations and policies; and
 7. A summary of any previous assistance provided by the Authority to the applicant.
- B.** After an opportunity for public comment, the ~~The~~ Board shall make a determination regarding the applicant's request for financial assistance at a public meeting. The Board shall base this determination on the information provided in the application, the analysis prepared by the Authority, and any other information provided at the public meeting. The Authority shall inform the applicant of the Board's determination, which may include recommended modifications to any of the following:
1. The proposed project,

2. The applicant's legal structure and organization,
 3. The dedicated revenue source for repayment, or
 4. The structure of the financial assistance request.
- C. If the Board determines at any time during a funding cycle that funds are limited or are not available to provide financial assistance, the Authority shall notify applicants on the current Drinking Water Revolving Fund Project Priority List that the Authority is no longer accepting applications. The Board shall determine the amount of funding available, if any, to provide financial assistance for the applications already accepted by the Authority. The Board shall consider each application in the order the project appears within the fundable range on the current Drinking Water Revolving Fund Project Priority List. The Board shall make a determination as described in subsection (B) on each application until the available funds are committed.
- D. Upon Board approval of the applicant's request for financial assistance, the Authority shall prepare a financial assistance agreement for execution by the applicant and the Authority.

ARTICLE 4. WATER SUPPLY DEVELOPMENT REVOLVING FUND

R18-15-401. Water Supply Development Revolving Fund Financial Assistance Eligibility Criteria

To be eligible to receive financial assistance from the Water Supply Development Revolving Fund, the applicant shall demonstrate the applicant is a water provider as defined by A.R.S. § ~~49-1201(14)~~ § 49-1201(13) requesting financial assistance for a purpose as defined in A.R.S. § 49-1273(A); the water provider meets the requirements of A.R.S. § 49-1273(C); and the proposed project appears on the Water Supply Development Revolving Fund ~~Project Priority List~~ project list developed under ~~R18-15-403~~ R18-15-402.

~~**R18-15-402. Water Supply Development Revolving Fund Intended Use Plan**~~

~~A. The Authority annually shall develop and publish a Water Supply Development Revolving Fund Intended Use Plan that identifies the intended uses of funds available in the Water Supply Development Revolving Fund Program. The Intended Use Plan shall include the project priority list according to R18-15-403 and specify whether funds are available to subsidize the projects. The Authority is not required to prepare a Water Supply Development Revolving Fund Intended Use Plan~~

~~if funds are not adequate to assist any projects or if the Committee determines that no financial assistance will be offered for the annual funding cycle.~~

~~B. The Authority shall provide for a public review and written comment period of the draft Water Supply Development Revolving Fund Intended Use Plan for a minimum of 14 calendar days. The Authority shall summarize all written comments submitted and prepare responses for Committee review. After review of the summary, the Committee shall make any appropriate changes to the Plan and then adopt the Water Supply Development Revolving Fund Intended Use Plan at a public meeting.~~

~~R18-15-403. R18-15-402. Water Supply Development Revolving Fund Project Priority List~~

A. The Authority annually shall prepare a Water Supply Development Revolving Fund ~~Project Priority List~~ project list as part of the Intended Use Plan described in ~~R18-15-402~~. The Authority is not required to prepare a Water Supply Development Revolving Fund ~~Project Priority List~~ project list if funds are not adequate to assist any projects or if the ~~Committee~~ Board determines that no financial assistance will be offered for the annual funding cycle.

B. An applicant pursuing financial assistance from the Authority for a water supply development project shall request to have the project included on the Water Supply Development Revolving Fund ~~Project Priority List~~ project list. The applicant may request that multiple projects be placed on the Water Supply Development Revolving Fund ~~Project Priority List~~ project list. An applicant shall make a request for placement of a project on the Water Supply Development Revolving Fund ~~Project Priority List~~ project list on or before a date specified by the Authority and in an application format specified by the Authority. The Authority shall include with the project ~~priority~~ list application form the criteria under each ranking category in ~~R18-15-404(A)~~ R18-15-403(A) by which the project will be evaluated and the relative importance of each of the criterion.

C. In preparing the Water Supply Development Revolving Fund ~~Project Priority List~~ project list, the Authority shall consider all project ~~priority~~ list applications submitted under subsection (B). The Authority shall evaluate the merits of each project with respect to water supply development issues and determine the order and priority value of each project according to ~~R18-15-404~~ R18-15-403. At a minimum, the Water Supply Development Revolving Fund ~~Project Priority List~~ project list shall identify:

1. The applicant;
2. Project title;
- ~~3. Type of project;~~
- ~~4.3.~~ Population of water provider's service area;
- ~~5.4.~~ The amount requested for financial assistance; and
- ~~6. The subsidy rate index according to R18-15-404(C);~~
- ~~7. Whether the project is within the fundable range according to R18-15-405; and~~
- ~~8.5.~~ The rank order and priority of each project by the priority value, determined according to ~~R18-15-404~~ R18-15-403.

D. The Authority shall provide for a public comment period of the draft Water Supply Development Revolving Fund project list for a minimum of 14 calendar days. The Authority shall summarize all written comments submitted and prepare responses for Board review. After review of the summary, the Board shall make any appropriate changes to the project list and then adopt the Water Supply Development Revolving Fund project list at a public meeting.

~~DE.~~ After adoption of the annual ~~Intended Use Plan and Water Supply Development Revolving Fund Project Priority List~~ project list according to ~~R18-15-402~~, the Committee Board may allow:

1. Updates and corrections to the adopted Water Supply Development Revolving Fund ~~Project Priority List~~ project list, if the updates and corrections are adopted by the Committee Board after an opportunity for ~~public comment at a public meeting~~ public notice; or
2. Additions to the Water Supply Development Revolving Fund ~~Project Priority List~~ project list, if the additions are adopted by the Committee Board after an opportunity for ~~public comment at a public meeting~~ public notice.

~~EF.~~ After an opportunity for ~~public comment at a public meeting~~ public notice, the Committee Board may remove a project from the Water Supply Development Revolving Fund ~~Project Priority List~~ project list under one or more of the following circumstances:

1. The recipient has received all financial assistance identified in the executed financial assistance agreement with the Authority;
2. The project was financed ~~with long-term indebtedness~~ from another source;

3. The project is no longer an eligible project;
4. The applicant requests removal;
5. The applicant is no longer an eligible applicant; or
6. The applicant did not update, modify, correct or resubmit a project ~~that remained on~~ from the project priority list for more than 365 days developed for the previous funding cycle.

~~R18-15-404~~ R18-15-403. Water Supply Development Revolving Fund Project ~~Priority~~ List Ranking

A. ~~The Authority shall rank each project listed on the Water Supply Development Revolving Fund Project Priority List based on the priority value of each project. The Authority shall consider the following categories to determine the order and priority value of each project on the Water Supply Development Revolving Fund project list.~~

1. The Authority shall evaluate the existing, near-term, and long-term water demands of the water provider as compared to the existing water supplies of the water provider.
2. The Authority shall evaluate the existing and planned conservation and water management programs of the water provider.
3. The Authority shall evaluate the current conditions of the water provider's facilities and the water provider's water supply needs, and evaluate how effectively the project will benefit the infrastructure or water supply needs.
4. The Authority shall evaluate the sustainability of the water supply to be developed through the project.
5. The Authority shall evaluate the applicant's ~~local fiscal capacity~~ need for financial assistance.

B. ~~If two or more projects have the same rank according to subsection (A),~~ Two or more projects may receive the same total points. If sufficient water supply development revolving loan funds are not available to fund the projects, the Authority shall give priority to the project with the highest water demand ~~value~~ score under subsection (A)(1). If projects remain tied, priority will be given to the project with the highest conservation and water management ~~value~~ score under subsection (A)(2). If projects remain tied, this process shall continue through the categories under subsections (A)(3) through (5), sequentially. If projects continue to ~~have the same priority value~~ remain tied, the ~~Committee~~ Board shall determine the priority of the tied projects.

~~C. If monies are available to provide a subsidy to the project, the Authority shall determine the subsidy rate index for each project on the Water Supply Development Revolving Fund Project Priority List based on the applicant's local fiscal capacity value and the overall priority value of the project. The Authority shall incorporate the subsidy rate index in the financial assistance agreement.~~

~~**R18-15-405. Water Supply Development Revolving Fund Fundable Range for Financial Assistance**~~

- ~~A. Prior to adoption by the Committee of the Water Supply Development Revolving Fund Project Priority List, the Authority shall determine which projects are within the fundable range.~~
- ~~B. In determining the fundable range the Authority shall evaluate each project for evidence that the project is ready to proceed. The Authority shall consider any of the following indicators when evaluating whether the project is within the fundable range:~~
- ~~1. Evidence of debt authorization according to R18-15-104(B);~~
 - ~~2. Evidence that the applicant has obtained applicable local, state, or federal project permits, as applicable;~~
 - ~~3. Evidence of approval by the appropriate authority of project plans and specifications; and~~
 - ~~4. Evidence that the applicant has initiated the bid or solicitation process.~~

~~**R18-15-406, R18-15-404. Water Supply Development Revolving Fund Application for Financial Assistance**~~

- ~~A. The Authority shall accept an application for financial assistance from an eligible applicant for a project that appears on the Water Supply Development Revolving Fund ~~Project Priority List~~ project list and is ~~determined to be within the fundable range~~. At the Authority's discretion, the Authority may accept an application for financial assistance prior to the project appearing on a ~~Committee Board-~~ adopted Water Supply Development Revolving Fund ~~Project Priority List~~ project list.~~
- ~~B. The Authority shall not forward an application for financial assistance to the ~~Committee Board~~ for consideration until all the following conditions are met:~~
- ~~1. The water supply development project has been prioritized;~~
 - ~~2. The applicant has provided supporting documentation according to ~~R18-15-405(B)~~ R18-15-104;~~

3. The applicant has demonstrated legal capability, financial capability, technical capability, and managerial capability under R18-15-104; and
- ~~4. The applicant has obtained or is in the process of obtaining all permits and approvals required by federal, state, and local authorities; and~~
- ~~5~~4. The applicant has demonstrated the ability to meet any applicable environmental requirements imposed by federal, state, or local agencies.

~~R18-15-407, R18-15-405. Water Supply Development Revolving Fund Application Review for Financial Assistance~~

- A. The Authority shall evaluate and summarize each application for financial assistance received and develop an analysis that provides recommendations to the ~~Committee~~ Board. The analysis shall at a minimum include:
 1. The scope, size, and budget of the proposed project, including as much cost detail as possible;
 2. A summary of the applicant's legal capability including authorization to enter into long-term indebtedness and to pledge the specified dedicated revenue source for repayment;
 3. A summary of the applicant's technical capability, including its ability to construct, operate and maintain the proposed project;
 4. A summary of the applicant's managerial capability, including the experience of elected officials and management team in managing similar organizations and similar projects;
 5. A summary of the applicant's financial capability, including:
 - a. The amount of money collected through the dedicated revenue source for repayment for each of the previous three ~~fiscal years~~ financial operating years (fiscal or calendar),
 - b. An estimate of the amount of money that will be collected through the dedicated revenue source for repayment for the current ~~fiscal year~~ financial operating year (fiscal or calendar), and
 - c. A projection of the amount of money that will be collected through the dedicated revenue source for repayment for each of the next five ~~fiscal years~~ financial operating years (fiscal or calendar);
 6. A summary of any previous assistance provided by the Authority to the applicant; and

7. A summary of the applicant's ability to meet any applicable permitting and environmental requirements imposed by federal, state, or local agencies.

B. The ~~Committee~~ Board shall make a determination regarding the applicant's request for financial assistance at a public meeting. The ~~Committee~~ Board shall base this determination on the information provided in the application, the analysis prepared by the Authority, and any other information provided at the public meeting. The Authority shall inform the applicant of the ~~Committee's~~ Board's determination, which may include recommended modifications to any of the following:

1. The proposed project,
2. The applicant's legal structure and organization,
3. The dedicated revenue source for repayment, or
4. The structure of the financial assistance request.

C. If the ~~Committee~~ Board determines at any time during a funding cycle that funds are limited or are not available to provide financial assistance, the Authority shall notify applicants on the current Water Supply Development Revolving Fund ~~Project Priority List~~ project list that the Authority is no longer accepting applications. The ~~Committee~~ Board shall determine the amount of funding available, if any, to provide financial assistance for the applications by the Authority. The ~~Committee~~ Board shall consider each application in the order the project appears ~~within the fundable range~~ on the current Water Supply Development Revolving Fund ~~Project Priority List~~ project list. The ~~Committee~~ Board shall make a determination as described in subsection (B) on each application until the available funds are committed.

D. Upon ~~Committee~~ Board approval of the applicant's request for financial assistance, the Authority shall prepare a financial assistance agreement for execution by the applicant and the Authority.

~~R18-15-408, R18-15-406. Water Supply Development Revolving Fund Requirements~~

The duly authorized agent, principal or officer of the applicant shall certify the applicant has not violated any federal, state, or local law pertaining to fraud, bribery, graft, kickbacks, collusion, conflict of interest, or other unlawful or corrupt practices relating to or in connection with facilities planning, design, or construction work on a project.

ARTICLE 5. TECHNICAL ASSISTANCE

R18-15-501. Technical Assistance

The Authority may provide Clean Water technical assistance, Drinking Water technical assistance, and Water Supply Development technical assistance ~~if funding is approved in the Technical Assistance Intended Use Plan according to R18-15-502.~~ The Authority shall provide technical assistance in compliance with A.R.S. § 49-1203(B)(16) and (17).

R18-15-502. Technical Assistance Intended Use Plan

- A.** The Authority annually shall develop and publish one or more Technical Assistance Intended Use Plans that identify intended uses of funds available for Clean Water technical assistance and Drinking Water technical assistance. ~~The Authority shall develop a Water Supply Development Technical Assistance Intended Use Plan if funds are available or if the Committee determines that Water Supply Development technical assistance will be offered.~~ The Intended Use Plan shall identify whether funds are available and the amount of funds available for planning and design assistance ~~grants~~, staff assistance, and professional assistance for Clean Water; and Drinking Water; ~~and Water Supply Development.~~ The Authority may develop Technical Assistance Intended Use Plans separately for Clean Water; and Drinking Water; ~~and Water Supply Development~~ or as parts of the Intended Use Plans required under R18-15-202; and R18-15-302; ~~and R18-15-402.~~ If the Technical Assistance Intended Use Plan is to be submitted as a document required to obtain a federal capitalization grant, the Technical Assistance Intended Use Plan shall include any additional information required by federal law. ~~The Authority is not required to prepare a Water Supply Development Technical Assistance Intended Use Plan if funds are not adequate to assist any projects or if the Committee determines that no Water Supply Development technical assistance will be offered for the annual funding cycle.~~
- B.** The Authority shall provide for a public review and written comment period of any draft Technical Assistance Intended Use Plan for a minimum of 14 calendar days. The Authority shall summarize all written comments received and prepare responses. The Authority shall provide a summary of the written comments and the Authority's responses regarding the Clean Water and Drinking Water Technical Assistance Intended Use Plans to the Board ~~and provide a summary of the written comments and the Authority's responses regarding any Water Supply Development Technical Assistance Intended Use Plan to the Committee.~~ After review of the comments and the Authority's responses to

comments received during the public review and written comment period, the Board ~~or the Committee~~, as applicable, shall adopt the applicable Technical Assistance Intended Use Plan or Plans at a public meeting with any changes made in response to public comments or comments by members of the Board ~~or Committee~~.

R18-15-503. Clean Water Planning and Design Assistance Grants

- A. Planning and design assistance ~~grants~~ to a specific wastewater treatment facility shall assist that system to achieve or enhance its legal, financial, technical, or managerial capability to facilitate the design, construction, acquisition, improvement, or consolidation of the wastewater treatment facility. Projects for any other purpose permitted by the Clean Water Act including nonpoint source projects are also eligible. The Board shall approve funds available for planning and design assistance ~~grants~~ in the annual Clean Water Technical Assistance Intended Use Plan. The Board may determine that no assistance will be offered for the annual funding cycle.
- B. To be eligible to receive a planning and design assistance ~~grant~~ under the Clean Water Technical Assistance Program, the ~~grant~~ applicant shall demonstrate the applicant is eligible under R18-15-201 a governmental unit that owns a wastewater treatment facility, or a non governmental unit requesting technical assistance specifically for the purpose of forming a political subdivision. An eligible ~~grant~~ applicant shall apply for a planning and design assistance ~~grant~~ on or before a date specified by the Authority and on a an ~~grant~~ application form specified by the Authority.
- C. A An ~~grant~~ applicant shall commit to a matching contribution toward the total project cost as specified in the Request for ~~Grant~~ Applications. The matching contribution may include cash contributions or in-kind contributions. The Board may waive or modify the ~~grant~~ applicant's match requirement according to criteria established in the Request for ~~Grant~~ Applications.
- D. The Authority shall solicit, evaluate, and award planning and design assistance ~~grants~~ in accordance with A.R.S. § 41-2702.
- E. The Authority shall evaluate the ~~grant~~ applications received to determine which projects are eligible under the Clean Water Act, 33 U.S.C. 1381 to 1387. Eligible ~~grant~~ applications shall specify a demonstrated need of the ~~grant~~ applicant for assistance in securing financial assistance for

development and implementation of a wastewater capital improvement project or stormwater or nonpoint source project.

- F. The Authority shall determine planning and design assistance ~~grant~~ awards based on the amount of funding available. If funding is limited, all eligible projects may not be funded. The Authority shall provide the planning and design assistance ~~grant~~ award recommendations to the Board for review and approval at a public meeting. The Board may adopt, modify, or reject the Authority's recommendations in whole or in part.
- G. Within 30 days after the adoption of the planning and design assistance ~~grant~~ awards at a public meeting, the Authority shall notify all ~~grant~~ applicants whether or not they received an award.
- H. An unsuccessful ~~grant~~ applicant may submit an appeal in writing in accordance with A.R.S. § 41-2704.
- I. The Authority and the ~~grant~~ applicant shall enter into a planning and design assistance ~~grant~~ agreement that shall include at a minimum:
 - 1. A scope of work,
 - 2. The amount ~~of the grant~~ awarded,
 - 3. The amount of the local match required,
 - 4. A final project budget and timeline, and
 - 5. Reporting requirements.
- ~~J. Project costs incurred prior to execution of a planning and design assistance grant agreement shall not be eligible for grant funding.~~
- J.K.** The Authority shall release ~~grant~~ proceeds subject to a disbursement request if the request is consistent with the planning and design assistance ~~grant~~ agreement and the disbursement schedule.
 - 1. The ~~grant~~ recipient shall request each disbursement on the forms provided by the Authority. Each disbursement request shall include a certification and signature document, a cost-incurred report, and a DBE report. The Authority shall not process a disbursement until the ~~applicant~~ recipient provides a completed disbursement form.
 - 2. The ~~grant~~ recipient shall include copies of invoices, ~~anceled checks~~, or other documents that show proof of eligible costs incurred with each disbursement request.

R18-15-504. Drinking Water Planning and Design Assistance Grants

- A. Planning and design assistance ~~grants~~ to a specific drinking water facility, excluding a nonprofit noncommunity water system, shall assist that facility to achieve or enhance its legal, financial, technical, or managerial capability to facilitate the design, construction, acquisition, improvement, or consolidation of a community water system. The Board shall approve funds available for planning and design assistance ~~grants~~ in the annual Drinking Water Technical Assistance Intended Use Plan. The Board may determine that no assistance will be offered for the annual funding cycle.
- B. To be eligible to receive a planning and design assistance ~~grant~~ under the Drinking Water Technical Assistance Program, the ~~grant~~ applicant shall demonstrate the applicant owns a drinking water facility, excluding a nonprofit noncommunity water system. An eligible ~~grant~~ applicant shall apply for a planning and design assistance ~~grant~~ on or before a date specified by the Authority and on a an grant application form specified by the Authority.
- C. ~~A~~ An grant applicant shall commit to a matching contribution toward the total project cost as specified in the Request for ~~Grant~~ Applications. The matching contribution may include cash contributions or in-kind contributions. The Board may waive or modify the ~~grant~~ applicant's match requirement according to criteria established in the Request for ~~Grant~~ Applications.
- D. The Authority shall solicit, evaluate, and award planning and design assistance ~~grants~~ in accordance with A.R.S. § 41-2702.
- E. The Authority shall evaluate the ~~grant~~ applications received to determine which projects are eligible under the Safe Drinking Water Act, 42 U.S.C. 300f to 300j-26. Eligible ~~grant~~ applications shall specify a demonstrated need of the ~~grant~~ applicant for assistance in securing financial assistance for development and implementation of a drinking water capital improvement project.
- F. The Authority shall determine planning and design assistance ~~grant~~ awards based on the amount of funding available. If funding is limited, all eligible projects may not be funded. The Authority shall provide the planning and design assistance ~~grant~~ award recommendations to the Board for review and approval at a public meeting. The Board may adopt, modify, or reject the Authority's recommendations in whole or in part.
- G. Within 30 days after the adoption of the planning and design assistance ~~grant~~ awards at a public meeting, the Authority shall notify all ~~grant~~ applicants whether or not they received an award.

- H. An unsuccessful ~~grant~~ applicant may submit an appeal in writing according to A.R.S. § 41-2704.
- I. The Authority and the ~~grant~~ applicant shall enter into a planning and design assistance ~~grant~~ agreement that shall include at a minimum:
 1. A scope of work,
 2. The amount ~~of the grant~~ awarded,
 3. The amount of the local match required,
 4. A final project budget and timeline, and
 5. Reporting requirements.

~~J. Project costs incurred prior to execution of a planning and design assistance grant agreement shall not be eligible for grant funding.~~

~~J.K.~~The Authority shall release ~~grant~~ proceeds subject to a disbursement request if the request is consistent with the planning and design assistance ~~grant~~ agreement and the disbursement schedule.

1. The ~~grant~~ recipient shall request each disbursement on the forms provided by the Authority. Each disbursement request shall include a certification and signature document, a cost-incurred report, and a DBE report. The Authority shall not process a disbursement until the ~~applicant~~ recipient provides a completed disbursement form.
2. The ~~grant~~ recipient shall include copies of invoices, ~~canceled checks~~, or other documents that show proof of eligible costs incurred with each disbursement request.

R18-15-505. Water Supply Development Planning and Design Assistance Grants

- A. Planning and design assistance grant funding to a water provider shall assist the water provider in the planning or design of a water supply development project. A single planning and design assistance grant award shall not exceed \$100,000. ~~The Committee shall approve funds available for planning and design assistance grants in the annual Water Supply Development Technical Assistance Intended Use Plan.~~ The ~~Committee~~ Board may determine that no assistance will be offered for the annual funding cycle.
- B. To be eligible to receive a planning and design assistance grant under the Water Supply Development Technical Assistance Program, the grant applicant shall demonstrate the applicant is a water provider as defined in A.R.S. § 49-1201 and meet the requirements of A.R.S. § 49-1273(C). An eligible grant

applicant shall apply for a planning and design assistance grant on or before a date specified by the Authority and on a grant application form specified by the Authority.

- C. A grant applicant shall commit to a matching contribution toward the total project cost as specified in the Request for Grant Applications. The matching contribution may include cash contributions or in-kind contributions. The Board may waive or modify the grant applicant's match requirement according to criteria established in the Request for Grant Applications.
- D. The Authority shall solicit, evaluate, and award planning and design assistance grants in accordance with A.R.S. § 41-2702.
- E. The Authority shall evaluate the grant applications received to determine which projects are eligible. Eligible ~~grant~~ applications shall specify a demonstrated need of the grant applicant for assistance in securing financial assistance for planning and design of a water supply capital improvement project.
- F. The Authority shall determine planning and design assistance grant awards based on the amount of funding available. If funding is limited, all eligible projects may not be funded. The Authority shall provide the planning and design assistance grant award recommendations to the ~~Committee~~ Board for review and approval at a public meeting. The ~~Committee~~ Board may adopt, modify, or reject the Authority's recommendations in whole or in part.
- G. Within 30 days after the adoption of the planning and design assistance grant awards at a public meeting, the Authority shall notify all grant applicants whether or not they received an award.
- H. An unsuccessful grant applicant may submit an appeal in writing according to A.R.S. § 41-2704.
- I. The Authority and the grant applicant shall enter into a planning and design assistance grant agreement that shall include at a minimum:
 - 1. A scope of work,
 - 2. The amount of the grant awarded,
 - 3. The amount of the local match required,
 - 4. A final project budget and timeline, and
 - 5. Reporting requirements.
- ~~J. Project costs incurred prior to execution of a planning and design assistance grant agreement shall not be eligible for grant funding.~~

~~J.K.~~The Authority shall release grant proceeds subject to a disbursement request if the request is consistent with the planning and design assistance grant agreement and the disbursement schedule.

1. The grant recipient shall request each disbursement on the forms provided by the Authority. Each disbursement request shall include a certification and signature document, and a cost-incurred report. The Authority shall not process a disbursement until the ~~applicant~~ recipient provides a completed disbursement form.
2. The grant recipient shall include copies of invoices, ~~anceled checks~~, or other documents that show proof of eligible costs incurred with each disbursement request.

ARTICLE 6. HARDSHIP GRANT FUND PROGRAM

R18-15-602. Hardship Grant Fund Financial Assistance

- A. If funding is available in the Hardship Grant Fund Program, the Authority shall determine if any of the applicants requesting placement on the Clean Water Revolving Fund Project Priority List meet the requirements according to A.R.S. § 49-1268(A)(2). Criteria by which assistance will be awarded shall be based on criteria established in the capitalization grant providing the funding. In addition to meeting the requirements of A.R.S. § 49-1268(A)(2), the applicant shall meet the following:
 1. ~~On the date the applicant applies for financial assistance, the per capita annual income of the community's residents does not exceed 80% of national per capita income as reported by the U.S. Census Bureau.~~
 2. ~~On the date the applicant applies for financial assistance, the community's local unemployment rate exceeds by one percentage point or more the most recently reported average yearly national unemployment rate as reported by the U.S. Department of Labor's Bureau of Labor Statistics.~~
- B. The Authority shall make the determination of applicant's eligibility for the Hardship Grant Fund Program during the ranking of the project under R18-15-204. Of the applicants eligible to receive financial assistance from the Hardship Grant Fund Program, the Authority shall award the hardship grant monies based on an applicant's financial capability and ability to generate sufficient revenues to pay for debt service.
- C. The Authority shall proceed according to Article 2 of this Chapter for any applicant meeting the eligibility requirements for the Hardship Grant Fund Program. In addition to proceeding under R18-15-

207, the Authority shall identify any applicant that qualifies for Hardship Grant Fund Program financial assistance and shall make a recommendation to the Board regarding the amount of funding to provide the applicant from the Hardship Grant Fund Program.

ARTICLE 7. INTEREST RATE SETTING AND FORGIVABLE PRINCIPAL

R18-15-701. Interest Rate Setting and Forgivable Principal

- A.** The Authority shall prescribe the rate of interest, including interest rates as low as 0% on Authority loans, bond purchase agreements, and linked deposit guarantees based on the applicant's local fiscal capacity under R18-15-204(A)(6), or R18-15-304(A)(6), or financial need under R18-15-404(A)(5), and an applicant's ability to generate sufficient revenues to pay debt service.
- B.** The Authority may forgive principal on ~~Authority~~ Clean Water and Drinking Water loans, bond purchase agreements, and linked deposit guarantees ~~made to local units of government to plan, acquire, construct, or improve drinking water facilities~~ based on:
1. ~~An~~ The applicant's local fiscal capacity under R18-15-204(A)(6) and R18-15-304(A)(6), and
 2. ~~An applicant's ability to generate sufficient revenues to pay debt service~~ Whether the applicant cannot otherwise afford the project,
 3. Whether the project qualifies for the Green Project Reserve as defined by EPA, and
 4. Whether the project mitigates stormwater runoff.

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT
TITLE 18. ENVIRONMENTAL QUALITY
CHAPTER 15. WATER INFRASTRUCTURE FINANCE AUTHORITY OF ARIZONA

1. Identification of the Proposed Rule Making

The Water Infrastructure Finance Authority (WIFA) of Arizona is initiating a rule making to reflect its current governing statutes. The Authority proposes to modify the existing rule (A.A.C. Title 18, Chapter 15) so the rule supports and complements recent state statutory changes to A.R.S. Title 49, Chapter 8 and the addition of A.R.S. Title 41, Chapter 53.

On August 6, 2016, Arizona House Bill 2666 (Fifty-second Legislature, Second Regular Session, 2016) became effective, transferring WIFA to the newly established Arizona Finance Authority (AFA). House Bill 2666 (HB 2666) dissolved the WIFA Board of Directors, and WIFA is now governed by the newly created AFA Board of Directors with a new WIFA Advisory Board. The rule making reflects the new governance of the Clean Water State Revolving Fund (CWSRF) and the Drinking Water State Revolving Fund (DWSRF).

The Water Supply Development Revolving Fund (WSDRF) was established during the 2007 legislative session but is, to date, unfunded. Its Committee was struck from statute by HB 2666. References to the now-defunct WSDRF Committee are found throughout WIFA's current rules. The rule making reflects the new governance of the WSDRF. Rules for the WSDRF were promulgated as part of WIFA's 2010 rulemaking, paralleling the rules for the Clean Water and Drinking Water Revolving Fund programs. These programs are federally funded, and their rules are based on federal requirements which do not apply to the WSDRF, a state program. This rule making removes these requirements, thereby reducing the regulatory burden of the rule.

This rule making proposes other minor clarifying edits to improve the comprehension and legal certainty of the rules.

The rule making does not propose new or higher standards or new costs or fees that make it more difficult for communities to apply for and receive financial or technical assistance from WIFA.

2. Identification of the Persons Who Will be Directly Affected by, Bear the Costs of or Directly Benefit from the Proposed Rule Making.

WIFA is a public financing authority; it does not regulate any consumer or business. WIFA manages the CWSRF and DWSRF whose purposes are to provide financial and technical assistance to political subdivisions and Indian tribes for their wastewater, stormwater and nonpoint source projects, and to political subdivisions, Indian tribes, and private water companies for their drinking water projects. A political subdivision is defined by A.R.S. § 49-1201(9) as a county, city, town or special taxing district authorized by law to construct wastewater treatment facilities, drinking water facilities or nonpoint source projects. Private water companies must be regulated by the Arizona Corporation Commission to be eligible for DWSRF funding. Customers of a wastewater system, drinking water system, or water provider receive the ultimate benefit from improved water quality and having an adequate water supply.

In fiscal year 2017, WIFA provided financial assistance to five drinking water systems and three wastewater systems. Through the Drinking Water Revolving Fund, \$63 million was lent to communities around the state, while \$4.6 million was lent through the Clean Water Revolving Fund.

The average number of loans per year from fiscal year 2013 to fiscal year 2017 was nine drinking water loans and three wastewater loans. In fiscal year 2017, technical assistance was provided to five drinking water systems and four wastewater systems, totaling \$121,631 and \$134,324 respectively.

In addition to providing assistance under the CWSRF and DWSRF, WIFA is authorized to provide financial and technical assistance to water providers for water supply development projects under the WSDRF. A water provider is defined in A.R.S. § 49-1201(13) as a municipal water delivery system, a county water augmentation authority, a county water authority, an Indian tribe or a community facilities district. At this time, there is no current funding for the WSDRF program, and no applications for assistance will be solicited until funding becomes available.

3. Cost Benefit Analysis

A. The Probable Costs and Benefits to the Implementing Agency and Other Agencies Directly Affected

This rule making primarily impacts WIFA but also impacts the Arizona Corporation Commission (ACC), Arizona Department of Environmental Quality (ADEQ), and Arizona Department of Water Resources (ADWR).

- a. WIFA is impacted favorably by this rule making as the amendments restructure the content, reduce redundancy, and provide for a direct presentation of the required actions of applying for, evaluating, and awarding financial and technical assistance. Rule amendments are not expected to increase WIFA's administrative costs of providing financial or technical assistance. No new full-time employees will be necessary to implement and enforce the proposed rule.
- b. ACC is minimally affected by this rule making. Privately-owned drinking water facilities must request approval of long-term debt and any associated rate increase from the ACC prior to applying for financial assistance from WIFA. There are no additional costs to the ACC due to the rule amendments.
- c. ADEQ is minimally impacted by this rule making. Wastewater and drinking water facilities provided with assistance from WIFA can mitigate outstanding compliance issues with ADEQ. There are no additional costs to ADEQ due to the rule amendments.
- d. ADWR is impacted by this rule making. Before HB 2666 became effective, the Director of Water Resources served as Chairperson of the WSDRF Committee. The Committee no longer exists, and the Arizona Finance Authority Board of Directors now oversees the WSDRF. This rulemaking simplifies the process for applying for, evaluating and awarding financial and technical assistance from the WSDRF, by removing the non-applicable federal requirements. At this time, the impact on ADWR is minimal since there is no current funding for the WSDRF program.

B. The Probable Costs and Benefits to Political Subdivisions Directly Affected

This rule making has a beneficial impact to political subdivisions as defined by A.R.S. § 49-1201 by clarifying the rules. No increased costs are associated with this rule making.

Political subdivisions are positively impacted by WIFA's programs in that they can solve infrastructure problems, improve water quality, and ensure public health protection through financial and technical assistance obtained from WIFA. Without the financial and technical assistance available through WIFA, many wastewater and drinking water facilities would otherwise find it difficult, if not impossible, to obtain funding to achieve compliance or correct problems associated with water quality standards. Through the Clean Water and Drinking Water

federal capitalization grants and WIFA's 'AAA' bond rating, WIFA provides subsidization on the interest rates for wastewater and drinking water infrastructure projects. Communities designated as disadvantaged receive additional discounts, and in some cases, forgivable principal. Overall, the net impact upon the political subdivisions is a cost-savings benefit.

WIFA anticipates that when water supply development revolving funds become available, water providers will initiate requests for financial and technical assistance through the WSDF to address water supply needs. As with wastewater and drinking water facilities, water providers may find it difficult, if not impossible, to obtain funding to address their needs without the assistance available from WIFA.

C. The Probable Costs and Benefits to Businesses Directly Affected

This rule making has a beneficial impact to the private water companies eligible to borrow from the Drinking Water State Revolving Fund. The impact for private water companies is the same as for political subdivisions and is described above. This rule making has no anticipated effect on the revenues or payroll expenditures of employers who are subject to the proposed rule making.

4. Probable Impact on Private and Public Employment in Businesses, Agencies and Political Subdivisions Directly Affected

There is no probable impact on private and public employment in businesses, agencies and political subdivisions of this state directly affected by the proposed rule making.

5. Probable Impact on Small Businesses.

For the purposes of the CWSRF and DWSRF, WIFA utilizes the Environmental Protection Agency's (EPA) definition of small systems as those serving 10,000 persons or less. In Arizona, many of these small water systems are privately-owned and are, therefore, regulated by the Arizona Corporation Commission. (Privately-owned wastewater companies are not eligible for WIFA funding.)

There is a no impact upon small businesses from this rule making beyond the beneficial impacts described in Section 3. There are no administrative or other costs required for compliance with the proposed rule making. This rule making corrects or clarifies existing rule provisions and definitions to reduce confusion and improve understanding and readability. Additionally, there are no competitive disadvantages to small businesses expected as a result of this rule making.

The methods prescribed in A.R.S. § 41-1035 which an agency may use to reduce the impact on small businesses are listed below. WIFA does not regulate any consumer or business; nor does the rule making establish any reporting requirements, schedules, or deadlines, nor any design or operational standards. Therefore, the methods do not apply to this rule making.

i. Establish less stringent compliance or reporting requirements in the rule for small businesses.

The proposed rule making does not establish any compliance or reporting requirements.

ii. Establish less stringent schedules or deadlines in the rule for compliance or reporting requirements for small businesses.

The proposed rule making does not establish any compliance or reporting schedules or deadlines.

iii. Consolidate or simplify the rule's compliance and reporting requirements for small businesses.

The proposed rule making does not prescribe compliance or reporting requirements.

iv. Establish performance standards for small businesses to replace design and operational standards.

The proposed rule making does not establish design or operational standards.

- v. *Exempt small businesses from any or all requirements of the rule.*

WIFA does not regulate any consumer or business; thus exemptions are not applicable.

Customers of a wastewater system, drinking water system, or water provider receive the ultimate benefit from improved water quality and having an adequate water supply. Although acceptance of financial assistance from WIFA may trigger an increase in user rates for the consumer, WIFA makes significant efforts to maintain the affordability of its financial assistance, including below-market interest rates, and in some cases, forgivable principal. WIFA offers technical assistance to communities to help with the initial phases of an infrastructure project. In the end, the residents of Arizona benefit from the financial and technical assistance provided by WIFA.

6. Probable Effect on State Revenues.

The rule making will not have an impact on state revenues.

The Clean Water and Drinking Water State Revolving Funds are self-supporting programs which receive monies from federal capitalization grants authorized under the Clean Water Act and Safe Drinking Water Act; the issuance and sale of water quality revenue bonds; and loan repayments, interest and penalties. WIFA pays administrative costs from income received from fees (as collected through the subsidized combined interest and fee rate) on loan repayments or from four percent of each of the Clean Water and Drinking Water federal capitalization grants as authorized by law.

Funds for administering the Water Supply Development Revolving Fund program and providing assistance are authorized to be received from the issuance and sale of water supply development bonds; appropriation approved by the legislature; funds received from the United States government; loan repayments, interest and penalties; interest and other income received from investing monies in the fund; and gifts, grants and donations received from any public or private source. This program is unfunded.

7. Description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rule making,

The proposed rule making does not impose any intrusive or costly requirements. It does not propose new or higher standards or new costs or fees. The Authority proposes to modify the existing rule so the rule supports and complements recent state statutory changes to A.R.S. Title 49, Chapter 8 and the addition of A.R.S. Title 41, Chapter 53, as well as minor clarifying edits to improve the comprehension and legal certainty of the rules. Because of this, no alternative methods were considered.

8. Description of Data on Which Rule is Based

This rule making was undertaken to reflect the current governing statutes, as a result of HB 2666. The rule making makes the rules consistent with recent statutory changes, and is not based on data.

TITLE 18. ENVIRONMENTAL QUALITY**CHAPTER 15. WATER INFRASTRUCTURE FINANCE AUTHORITY OF ARIZONA****ARTICLE 1. GENERAL PROVISIONS**

Section

- R18-15-101. Definitions
- R18-15-102. Types of Assistance Available
- R18-15-103. Application Process
- R18-15-104. General Financial Assistance Application Requirements
- R18-15-105. General Financial Assistance Conditions
- R18-15-106. Environmental Review
- R18-15-107. Disputes
- R18-15-108. Repealed
- R18-15-109. Repealed
- R18-15-110. Repealed
- R18-15-111. Repealed
- R18-15-112. Renumbered
- R18-15-113. Renumbered

ARTICLE 2. CLEAN WATER REVOLVING FUND

Section

- R18-15-201. Clean Water Revolving Fund Financial Assistance Eligibility Criteria
- R18-15-202. Clean Water Revolving Fund Intended Use Plan
- R18-15-203. Clean Water Revolving Fund Project Priority List
- R18-15-204. Clean Water Revolving Fund Project Priority List Ranking
- R18-15-205. Clean Water Revolving Fund Fundable Range for Financial Assistance
- R18-15-206. Clean Water Revolving Fund Application for Financial Assistance
- R18-15-207. Clean Water Revolving Fund Application Review for Financial Assistance
- R18-15-208. Clean Water Revolving Fund Requirements

ARTICLE 3. DRINKING WATER REVOLVING FUND

Section

- R18-15-301. Drinking Water Revolving Fund Financial Assistance Eligibility Criteria
- R18-15-302. Drinking Water Revolving Fund Intended Use Plan
- R18-15-303. Drinking Water Revolving Fund Project Priority List
- R18-15-304. Drinking Water Revolving Fund Project Priority List Ranking
- R18-15-305. Drinking Water Revolving Fund Fundable Range for Financial Assistance
- R18-15-306. Drinking Water Revolving Fund Application for Financial Assistance
- R18-15-307. Drinking Water Revolving Fund Application Review for Financial Assistance
- R18-15-308. Drinking Water Revolving Fund Requirements

ARTICLE 4. WATER SUPPLY DEVELOPMENT REVOLVING FUND

Section

- R18-15-401. Water Supply Development Revolving Fund Financial Assistance Eligibility Criteria
- R18-15-402. Water Supply Development Revolving Fund Intended Use Plan
- R18-15-403. Water Supply Development Revolving Fund Project Priority List
- R18-15-404. Water Supply Development Revolving Fund Project Priority List Ranking

- R18-15-405. Water Supply Development Revolving Fund Fundable Range for Financial Assistance
- R18-15-406. Water Supply Development Revolving Fund Application for Financial Assistance
- R18-15-407. Water Supply Development Revolving Fund Application Review for Financial Assistance
- R18-15-408. Water Supply Development Revolving Fund Requirements

ARTICLE 5. TECHNICAL ASSISTANCE

Article 5, consisting of Sections R18-15-501 through R18-15-507, adopted by final rulemaking at 6 A.A.R. 2116, effective May 16, 2000 (Supp. 00-2).

Section

- R18-15-501. Technical Assistance
- R18-15-502. Technical Assistance Intended Use Plan
- R18-15-503. Clean Water Planning and Design Assistance Grants
- R18-15-504. Drinking Water Planning and Design Assistance Grants
- R18-15-505. Water Supply Development Planning and Design Assistance Grants
- R18-15-506. Repealed
- R18-15-507. Repealed
- R18-15-508. Repealed
- R18-15-509. Repealed
- R18-15-510. Repealed
- R18-15-511. Repealed

ARTICLE 6. HARDSHIP GRANT FUND PROGRAM

Article 6, consisting of Sections R18-15-601 through R18-15-603, adopted by final rulemaking at 6 A.A.R. 2116, effective May 16, 2000 (Supp. 00-2).

Section

- R18-15-601. Hardship Grant Fund Administration
- R18-15-602. Hardship Grant Fund Financial Assistance
- R18-15-603. Hardship Grant Fund Technical Assistance

ARTICLE 7. INTEREST RATE SETTING AND FORGIVABLE PRINCIPAL

Article 7, consisting of Section R18-15-701, adopted by final rulemaking at 6 A.A.R. 2116, effective May 16, 2000 (Supp. 00-2).

Section

- R18-15-701. Interest Rate Setting and Forgivable Principal

ARTICLE 1. GENERAL PROVISIONS**R18-15-101. Definitions**

In addition to the definitions prescribed in A.R.S. § 49-1201, the terms of this Chapter, unless otherwise specified, have the following meanings:

“Applicant” means a governmental unit, a non-point source project sponsor, a drinking water facility, or a water provider that is seeking financial assistance from the Authority under the provisions of this Chapter.

“Application” means a request for financial assistance submitted to the Board or Committee by an applicant.

“Authority” means the Water Infrastructure Finance Authority of Arizona pursuant to A.R.S. § 49-1201(1).

“Board” means the Board of Directors of the Authority pursuant to A.R.S. § 49-1201(2).

“Certified Water Quality Management Plan” means a plan prepared by a single representative organization designated by the Governor according to Section 208 of the Clean Water Act, 33 U.S.C. 1288.

“Clean Water Revolving Fund” means the fund established by A.R.S. § 49-1221.

“Committee” means the Water Supply Development Fund Committee as defined in A.R.S. § 49-1201(5).

“DBE” means EPA’s Disadvantaged Business Enterprise Program.

“Dedicated revenue source for repayment” means a source of revenue pledged by a borrower to repay the financial assistance.

“Department” means the Arizona Department of Environmental Quality.

“Disbursement” means the transfer of cash from a fund to a recipient.

“Discharge” has same meaning as prescribed in A.R.S. § 49-201(12).

“Drinking water facility” has same meaning as prescribed in A.R.S. § 49-1201(6).

“Drinking Water Revolving Fund” means the fund established by A.R.S. § 49-1241.

“EA” means an environmental assessment.

“EID” means an environmental information document.

“EIS” means an environmental impact statement.

“EPA” means the United States Environmental Protection Agency.

“Executive director” means the executive director of the Water Infrastructure Finance Authority of Arizona.

“Federal capitalization grant” means the assistance agreement by which the EPA obligates and awards funds allotted to the Authority for purposes of capitalizing the Clean Water Revolving Fund and the Drinking Water Revolving Fund.

“Financial assistance” means the use of monies for any of the purposes identified in R18-15-102(B).

“Financial assistance agreement” means any agreement that defines the terms for financial assistance provided according to this Chapter.

“FONSI” means a finding of no significant impact.

“Fundable range” means a subset of the project priority list that demarcates the ranked projects which have been determined to be ready to proceed and will be provided with a project finance application.

“Governmental unit” means a political subdivision or Indian tribe that may receive technical or financial assistance from the Authority pursuant to A.R.S. § 49-1203.

“Grant applicant” means a governmental unit, a nonpoint source project sponsor, a drinking water facility, or a water provider that is seeking a planning and design assistance grant from the Authority under the provisions of this Chapter.

“Grant application” means a request for a planning and design assistance grant submitted to the Board or Committee by a grant applicant in a format prescribed by the Authority.

“Impaired water” means a navigable water for which credible scientific data exists that satisfies the require-

ments of A.R.S. § 49-232 and that demonstrates that the water should be identified pursuant to 33 U.S.C. 1313(d) and the regulations implementing that statute.

“Intended Use Plan” means the document prepared by the Authority identifying the intended uses of Clean Water Revolving Fund and Drinking Water Revolving Fund federal capitalization grants according to R18-15-202 and R18-15-302, the intended uses of the Water Supply Development Revolving Fund according to R18-15-402, and the intended uses of funds for technical assistance according to R18-15-502.

“Master priority list” means the master priority list for Capacity Development developed by the Arizona Department of Environmental Quality under A.A.C. R18-4-803, which ranks public water systems according to their need for technical assistance.

“Onsite system” means a conventional septic tank system or alternative system that is installed at a site to treat and dispose of wastewater of predominantly human origin that is generated at that site.

“Planning and design assistance grant” means a technical assistance grant that provides for the use of monies for a specific water, wastewater treatment facility, or water supply delivery system for planning or design to facilitate the design, construction, acquisition, improvement, or consolidation of a drinking water project, wastewater project, or water supply development project.

“Planning and design assistance grant agreement” means any agreement that defines the terms for a technical assistance grant provided according to Article 5 of this Chapter.

“Planning and design loan repayment agreement” means the same as technical assistance loan repayment agreement and has the meaning at A.R.S. § 49-1201(12).

“Priority value” means the total points a project received during the evaluation of its project priority list application.

“Professional assistance” means the use of monies by or on behalf of the Authority to conduct research, conduct studies, conduct surveys, develop guidance, and perform related activities that benefit more than one water or wastewater treatment facility.

“Project” means any distinguishable segment or segments of a wastewater treatment facility, drinking water facility, water supply delivery system, or nonpoint source pollution control that can be bid separately and for which financial or technical assistance is being requested or provided.

“Project priority list” means the document developed by the Board or Committee according to R18-15-203, R18-15-303, or R18-15-403 that ranks projects according to R18-15-204, R18-15-304, or R18-15-404.

“Recipient” means an applicant who has entered into a financial assistance agreement or planning and design assistance grant agreement with the Authority.

“ROD” means a record of decision.

“Staff assistance” means the use of monies for a specific water or wastewater treatment facility to assist that system to improve its operations or assist a specific water provider with a water supply delivery system. For water providers, staff assistance is limited to planning and

Water Infrastructure Finance Authority of Arizona

design of water supply development projects according to A.R.S. § 49-1203(B)(17).

“Technical assistance” means assistance provided by the Authority in the form of staff assistance, professional assistance and planning and design assistance grants.

“Wastewater treatment facility” has the same meaning as prescribed in A.R.S. § 49-1201(13).

“Water provider” has the same meaning as prescribed in A.R.S. § 49-1201(14).

“Water supply development” has the same meaning as prescribed in A.R.S. § 49-1201(15).

“Water Supply Development Revolving Fund” means the fund established by A.R.S. § 49-1271.

Historical Note

Adopted effective September 18, 1997 (Supp. 97-3). Amended effective June 4, 1998 (Supp. 98-2). Amended by final rulemaking at 6 A.A.R. 2116, effective May 16, 2000 (Supp. 00-2). Amended by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Amended by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

R18-15-102. Types of Assistance Available

- A.** The Authority may provide financial and technical assistance under the following programs if the Board or Committee, as applicable, determines funding is available:
1. Clean Water Revolving Fund Program and Clean Water Technical Assistance Program,
 2. Drinking Water Revolving Fund Program and Drinking Water Technical Assistance Program,
 3. Water Supply Development Revolving Fund Program and Water Supply Development Technical Assistance Program, and
 4. Hardship Grant Fund Program.
- B.** Financial assistance available from the Authority includes any of the following:
1. Financial assistance loan repayment agreements;
 2. Planning and design loan repayment agreements in accordance with A.R.S. § 49-1203(16) and (17);
 3. The purchase or refinancing of local debt obligations;
 4. The guarantee or purchase of insurance for local obligations to improve credit market access or reduce interest rates;
 5. Short-term emergency loan agreements in accordance with A.R.S. § 49-1269; and
 6. Providing linked deposit guarantees through third-party lenders as authorized by A.R.S. §§ 49-1223(A)(6), 49-1243(A)(6), and 49-1273(A)(6).
- C.** Technical assistance available from the Authority includes planning and design assistance grants, staff assistance, and professional assistance. Technical assistance may be offered at the Board’s or Committee’s discretion and shall be identified in the annual Technical Assistance Intended Use Plan as described in R18-15-502.

Historical Note

Adopted effective September 18, 1997 (Supp. 97-3). Former R18-15-102 renumbered to R18-15-103; new Section made by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

R18-15-103. Application Process

- A.** An applicant requesting assistance shall apply to the Authority for each type of financial or technical assistance described in R18-15-102 on forms provided by the Authority.

- B.** An applicant seeking financial assistance through the Clean Water Revolving Fund Program shall apply for financial assistance according to Articles 1 and 2 of this Chapter.
- C.** An applicant seeking financial assistance through the Drinking Water Revolving Fund Program shall apply for financial assistance according to Articles 1 and 3 of this Chapter.
- D.** An applicant seeking financial assistance through the Water Supply Development Revolving Fund Program shall apply for financial assistance according to Articles 1 and 4 of this Chapter.
- E.** An applicant seeking technical assistance available through the technical assistance programs shall apply for technical assistance according to Articles 1 and 5 of this Chapter.
- F.** An applicant shall mark any confidential information with the words “confidential information” on each page of the material containing such information. A claim of confidential information may be asserted for a trade secret or information that, upon disclosure, would harm a person’s competitive advantage. The Authority shall not disclose any information determined confidential. Upon receipt of a claim of confidential information, the Authority shall make one of the following written determinations:

1. The designated information is confidential and the Authority shall not disclose the information except to those individuals deemed by the Authority to have a legitimate interest.
2. The designated information is not confidential.
3. Additional information is required before a final confidentiality determination can be made.

Historical Note

Adopted effective September 18, 1997 (Supp. 97-3). Amended by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Section repealed; new R18-15-103 renumbered from R18-15-102 and amended by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

R18-15-104. General Financial Assistance Application Requirements

- A.** The applicant shall provide in the financial assistance application the information in subsections (B), (C), (D), and (E).
- B.** The applicant shall demonstrate the applicant is legally authorized to enter into long-term indebtedness, and is legally authorized to pledge a dedicated revenue source for repayment under subsection (C).
1. If the applicant is a political subdivision and the long-term indebtedness is authorized through an election, the applicant shall provide all of the following:
 - a. One copy of the sample election ballot and election pamphlet,
 - b. One copy of the governing body resolution calling for the election, and
 - c. Official evidence of the election results following the election.
 2. If the applicant is a political subdivision and the long-term indebtedness is not required by law to be authorized through an election, the applicant shall provide one copy of the approved governing body resolution authorizing the long-term indebtedness.
 3. If the applicant is a political subdivision and the long-term indebtedness is authorized through a special taxing district creation process, the applicant shall provide one copy of all final documentation, notices, petitions, and related information authorizing the long-term indebtedness.

4. If the applicant is regulated by the Arizona Corporation Commission, the applicant shall provide evidence that the financial assistance from the Authority to the applicant is authorized by the Arizona Corporation Commission.
 5. All other applicants shall demonstrate that a majority of the beneficiaries consent to the terms and conditions of the financial assistance. The Authority shall assist each applicant to devise a process by which this consent is documented.
- C.** The applicant shall identify a dedicated revenue source for repayment of the financial assistance and demonstrate that the dedicated revenue source is sufficient to repay the financial assistance.
1. The applicant shall provide the following information:
 - a. Amount of the financial assistance requested;
 - b. One copy of each financial statement, audit, or comprehensive financial statement from at least the previous three fiscal years;
 - c. One copy of each budget, business plan, management plan, or financial plan from the previous and current fiscal years;
 - d. One copy of the proposed budget, business plan, management plan, or financial plan for the next fiscal year;
 - e. A projection of revenue anticipated to be collected over the next five fiscal years from the dedicated revenue source for repayment;
 - f. A summary of current fees for drinking or wastewater services including, as applicable, any resolutions passed by the governing body of a political subdivision; and
 - g. Copies of documentation relating to outstanding indebtedness pledged to the dedicated source for repayment, including official statements, financial assistance agreements, and amortization schedules.
 2. If any of the required information listed in subsection (C)(1) is not available, the Authority may assist the applicant in determining alternative documentation to support the applicant's financial capability.
 3. The Authority may ask for additional financial information as necessary to evaluate the applicant's financial capability.
- D.** The applicant shall demonstrate the applicant is technically capable to construct, operate, and maintain the proposed project.
1. The applicant shall provide the following information:
 - a. An estimate of the project costs in as much detail as possible, including an estimate of applicable planning, design, construction, and material costs;
 - b. The number of connections to be served by the proposed project;
 - c. The most recent version of the applicant's capital improvement plan or other plan explaining proposed infrastructure investments;
 - d. One copy of each feasibility study, engineering report, design memorandum, set of plans and specifications, and other technical documentation related to the proposed project and determined applicable by the Authority for the stage of project completion;
 - e. Copies of resumés, biographies, or related information of the certified operators, system employees, or contractors employed by the applicant to operate and maintain the existing facilities and the proposed project;
 - f. A description of the service area, including maps; and
 - g. A description of the existing physical facilities.
 2. The Authority may ask for additional information as necessary to evaluate the applicant's technical capability.
- E.** The applicant shall demonstrate the applicant is capable to manage the proposed project.
1. The applicant shall provide the following information:
 - a. Years of experience and related information regarding the owners, managers, chief elected officials, and governing body members of the applicant; and
 - b. A list of professional and outside services retained by the applicant and the proposed project.
 2. If any of the required information listed in subsection (E)(1) is not available, the Authority may assist the applicant in determining alternative documentation to support the applicant's managerial capability.
 3. The Authority may ask for additional information as necessary to evaluate the applicant's managerial capability.

Historical Note

Adopted effective September 18, 1997 (Supp. 97-3).
Amended by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Amended by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

R18-15-105. General Financial Assistance Conditions

- A.** The Authority shall not execute a financial assistance agreement with an applicant until the applicant provides all documentation specified by the Authority and the requirements of R18-15-106 are met. Projects under the Water Supply Development Revolving Fund Program are not subject to the requirements of R18-15-106. For planning and design loans that include an environmental information document or an environmental impact statement, the Authority may execute a financial assistance agreement with an applicant prior to the completion of the conditions of R18-15-106, provided that the applicant meets the requirements of R18-15-106 before proceeding with the design of the selected alternative.
- B.** The documentation required prior to execution of the financial assistance agreement shall at a minimum include:
1. One copy of the governing body resolution approving the execution of the financial assistance agreement,
 2. A project budget, and
 3. An estimated disbursement schedule.
- C.** The financial assistance agreement between the recipient and the Authority shall at a minimum specify:
1. Rates of interest, fees, and any costs as determined by the Authority;
 2. Project details;
 3. The maximum amount of principal and interest due on any payment date;
 4. Debt service coverage requirements;
 5. Reporting requirements;
 6. Debt service reserve fund and repair and replacement reserve fund requirements;
 7. The dedicated source for repayment and pledge;
 8. The requirement that the recipient comply with applicable federal, state and local laws;
 9. A schedule for repayment; and
 10. Any other agreed-upon conditions.
- D.** The Authority may require a recipient to pay a proportionate share of the expenses of the Authority's operating costs.
- E.** The recipient shall maintain the project account in accordance with generally accepted government accounting standards. After reasonable notice by the Authority, the recipient shall make available any project records reasonably required to

Water Infrastructure Finance Authority of Arizona

determine compliance with the provisions of this Chapter and the financial assistance agreement.

- F.** The Authority shall release loan proceeds subject to a disbursement request if the request is consistent with the financial assistance agreement and the disbursement schedule.
1. The applicant shall submit each disbursement request on the forms provided by the Authority. Each disbursement request shall include a certification and signature document, a cost-incurred report, and a DBE report. The Authority shall not process a disbursement until the applicant provides a completed disbursement form.
 2. The applicant shall include copies of invoices, canceled checks, or other documents that show proof of eligible costs incurred with each disbursement request.
- G.** The recipient shall make repayments according to an agreed-upon schedule in the financial assistance agreement. The Authority may charge a late fee for any loan repayment not paid when due. The Authority may refer any loan repayment past due to the Office of the Attorney General for appropriate action.

Historical Note

Adopted effective September 18, 1997 (Supp. 97-3).
Amended by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Section repealed; new Section made by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

R18-15-106. Environmental Review

- A.** The Authority shall conduct an environmental review according to this Section for impacts of the design or construction of water infrastructure. Projects under the Water Supply Development Revolving Fund Program are not subject to the requirements of R18-15-106. As part of the application process, the Authority shall request information from the applicant to conduct an environmental review consistent with 40 CFR 35.3140 and 40 CFR 35.3580. The Authority shall determine whether the project meets the criteria for categorical exclusion under subsections (B) and (C), or whether the project requires the preparation of an environmental assessment (EA) or an environmental impact statement (EIS) to identify and evaluate its environmental impacts.
- B.** A project may be categorically excluded from environmental review if the project fits within a category that is eligible for exclusion and the project does not involve any of the extraordinary circumstances listed in subsection (C). If, based on the application and other information submitted by the applicant, the Authority determines that a categorical exclusion from an environmental review is warranted, the project is exempt from the requirements of this Section, except for the public notice and participation requirements in subsection (J). The Authority may issue a categorical exclusion if information and documents demonstrate that the project qualifies under one or more of the following categories:
1. Any project relating to existing infrastructure systems that involves minor upgrading, minor expansion of system capacity, rehabilitation (including functional replacement) of the existing system and system components, or construction of new minor ancillary facilities adjacent to or on the same property as existing facilities. This category does not include projects that:
 - a. Involve new or relocated discharges to surface water or groundwater,
 - b. Will likely result in the substantial increase in the volume or the loading of pollutant to the receiving water,
 - c. Will provide capacity to serve a population 30% greater than the existing population,
 - d. Are not supported by the state or other regional growth plan or strategy, or
 - e. Directly or indirectly involve or relate to upgrading or extending infrastructure systems primarily for the purposes of future development.
 2. Any clean water project in unsewered communities involving the replacement of existing onsite systems, providing the new onsite systems do not result in substantial increases in the volume of discharge or the loadings of pollutants from existing sources, or relocate an existing discharge.
- C.** The Authority shall deny a categorical exclusion if any of the following extraordinary circumstances apply to the project:
1. The project is known or expected to have potentially significant adverse environmental impacts on the quality of the human environment either individually or cumulatively over time.
 2. The project is known or expected to have disproportionately high and adverse human health or environmental effects on any community, including minority communities, low-income communities, or federally-recognized Indian tribal communities.
 3. The project is known or expected to significantly affect federally listed threatened or endangered species or their critical habitat.
 4. The project is known or expected to significantly affect national natural landmarks or any property with nationally significant historic, architectural, prehistoric, archeological, or cultural value, including but not limited to, property listed on or eligible for the Arizona or National Registers of Historic Places.
 5. The project is known or expected to significantly affect environmentally important natural resource areas such as wetlands, floodplains, significant agricultural lands, aquifer recharge zones, wild and scenic rivers, and significant fish or wildlife habitat.
 6. The project is known or expected to cause significant adverse air quality effects.
 7. The project is known or expected to have a significant effect on the pattern and type of land use or growth and distribution of population, including altering the character of existing residential areas, or may not be consistent with state or local government, or federally-recognized Indian tribe approved land use or federal land management plans.
 8. The project is known or expected to cause significant public controversy about a potential environmental impact of the proposed action.
 9. The project is known or expected to be associated with providing financial assistance to a federal agency through an interagency agreement for a project that is known or expected to have potentially significant environmental impacts.
 10. The project is known or expected to conflict with federal, state, or local government, or federally-recognized Indian tribe environmental, resource-protection, or land-use laws or regulations.
- D.** If the Authority denies the categorical exclusion under subsection (C), the Authority shall conduct an EA according to subsection (E), unless the Authority decides to prepare an EIS according to subsections (F) and (G) without first undertaking an EA. If the Authority conducts an EA, the applicant shall:
1. Prepare an environmental information document (EID) in a format prescribed by the Authority. The EID shall be of

- sufficient scope to undertake an environmental review and to allow development of an EA under subsection (E); or
2. Provide documentation, upon Authority approval, in another format if the documentation is of sufficient scope to allow the development of an EA under subsection (E).
- E.** The Authority shall conduct the EA that includes:
1. A brief discussion of:
 - a. The need for the project;
 - b. The alternatives, including a no action alternative;
 - c. The affected environment, including baseline conditions that may be impacted by the project and alternatives;
 - d. The environmental impacts of the project and alternatives, including any unresolved conflicts concerning alternative uses of available resources; and
 - e. Other applicable environmental laws.
 2. A listing or summary of any coordination or consultation undertaken with any federal agency, state or local government, or federally-recognized Indian tribe regarding compliance with applicable laws and executive orders;
 3. Identification and description of any mitigation measures considered, including any mitigation measures that must be adopted to ensure the project will not have significant impacts; and
 4. Incorporation of documents by reference, if appropriate, including the EID.
- F.** Upon completion of the EA required by subsection (E), the Authority shall determine whether an environmental impact statement (EIS) is necessary.
1. The Authority shall prepare or direct the applicant to prepare an EIS in the manner prescribed in subsection (G) if any of the following conditions exist.
 - a. The project would result in a discharge of treated effluent from a new or modified existing facility into a body of water and the discharge is likely to have a significant effect on the quality of the receiving water.
 - b. The project is likely to directly, or through induced development, have significant adverse effect upon local ambient air quality or local ambient noise levels.
 - c. The project is likely to have significant adverse effects on surface water reservoirs or navigation projects.
 - d. The project would be inconsistent with state or local government, or federally-recognized Indian tribe approved land use plans or regulations, or federal land management plans.
 - e. The project would be inconsistent with state or local government, or federally-recognized Indian tribe environmental, resource-protection, or land-use laws and regulations for the protection of the environment.
 - f. The project is likely to significantly affect the environment through the release of radioactive, hazardous, or toxic substances, or biota.
 - g. The project involves uncertain environmental effects or highly unique environmental risks that are likely to be significant.
 - h. The project is likely to significantly affect national natural landmarks or any property on or eligible for the Arizona or National Registers of Historic Places.
 - i. The project is likely to significantly affect environmentally important natural resources such as wetlands, significant agricultural lands, aquifer recharge zones, wild and scenic rivers, and significant fish or wildlife habitat.
 - j. The project in conjunction with related federal, state, or local government, or federally-recognized Indian tribe projects is likely to produce significant cumulative impacts.
 - k. The project is likely to significantly affect the pattern and type of land use or growth and distribution of population, including altering the character of existing residential areas.
 - l. The project is a new regional wastewater treatment facility or water supply system for a community with a population greater than 100,000.
 - m. The project is an expansion of an existing wastewater treatment facility that will increase existing discharge to an impaired water by more than 10 million gallons per day (mgd).
 2. The Authority may issue a finding of no significant impact (FONSI) if the EA supports the finding that the project will not have a significant impact on the environment. The FONSI shall include the submitted EA and a brief description of the project, alternatives considered, and project impacts. The FONSI must also include any commitments to mitigation that are essential to render the impacts of the project not significant. The Authority shall issue the FONSI for public comment in accordance with subsection (J).
- G.** The Authority shall prepare or direct the applicant to prepare an EIS required by subsection (F)(1) when the project will significantly impact the environment, including any project for which the EA analysis demonstrates that significant impacts will occur and not be reduced or eliminated by changes to, or mitigation of, the project. The Authority shall perform the following actions:
1. As soon as practicable after its decision to prepare an EIS and before the scoping process, the Authority shall prepare a notice of intent. The notice of intent shall briefly describe the project and possible alternatives and the proposed scoping process. The Authority shall distribute the notice of intent to affected federal, state, and local agencies, any affected Indian tribe, the applicant, and other interested parties. The Authority shall issue the notice of intent for public comment in accordance with subsection (J)(3).
 2. As soon as possible after the distribution and publication of the notice of intent required by subsection (G)(1), the Authority shall convene a meeting of affected federal, state, and local agencies, affected Indian tribes, the applicant, and other interested parties. At the meeting, the parties attending the meeting shall determine the scope of the EIS by considering a number of factors, including all of the following:
 - a. The significant issues to be analyzed in depth in the EIS,
 - b. The preliminary range of alternatives to be considered,
 - c. The potential cooperating agencies and information or analyses that may be needed from cooperating agencies or other parties, and
 - d. The method for EIS preparation and the public participation strategy.
 3. Upon completion of the process described in subsection (G)(2), the Authority shall identify and evaluate all potentially viable alternatives to adequately address the range of issues identified. Additional issues also may be

Water Infrastructure Finance Authority of Arizona

addressed, or others eliminated, and the reasons documented as part of the EIS.

4. After the analysis of issues is conducted according to subsection (G)(3), the Authority shall issue a draft EIS for public comment according to subsection (J)(4).
 5. Following public comment according to subsection (J), the Authority shall prepare a final EIS, consisting of all of the following:
 - a. The draft EIS.
 - b. An analysis of all reasonable alternatives and the no action alternative;
 - c. A summary of any coordination or consultation undertaken with any federal, state, or local government, or federally-recognized Indian tribe;
 - d. A summary of the public participation process;
 - e. Comments received on the draft EIS;
 - f. A list of persons commenting on the draft EIS;
 - g. The Authority's responses to significant comments received;
 - h. A determination of consistency with the Certified Water Quality Management Plan, if applicable;
 - i. The names and qualifications of the persons primarily responsible for preparing the EIS; and
 - j. Any other information added by the Authority.
 6. The Authority shall prepare or direct the applicant to prepare a supplemental EIS when appropriate, including when substantial changes are made to the project that are relevant to environmental concerns, or when there are significant new circumstances or information relevant to environmental concerns bearing on the project.
- H.** After issuance of a final EIS under subsection (G)(5), the Authority shall prepare and issue a record of decision (ROD) containing the Authority's decision whether to proceed or not proceed with a project. A ROD issued with a decision to proceed shall include a brief description of the project, alternatives considered, and project impacts. In addition, the ROD must include any commitments to mitigation, an explanation if the environmental preferred alternative was not selected, and any responses to substantive comments on the final EIS. A ROD issued with a decision not to proceed shall preclude the project from receiving financial assistance under this Article.
- I.** For all determinations (categorical exclusions, FONSI, or RODs) that are five years old or older and for which the project has not been implemented, the Authority shall re-evaluate the project, environmental conditions, and public views to determine whether to conduct a supplemental environmental review of the project and complete an appropriate environmental review document or reaffirm the Authority's original determination. The Authority shall provide public notice of the re-evaluation according to subsection (J)(5).
- J.** The Authority shall conduct public notice and participation under this Section as follows:
1. If a categorical exclusion is granted under subsection (B), the Authority shall provide public notice of that fact by publishing the notice as a legal notice at least once, in one or more newspapers of general circulation in the county or counties concerned.
 2. If a FONSI is issued under subsection (F)(2), the Authority shall provide public notice that the FONSI is available for public review by publishing the notice as a legal notice at least once in one or more newspapers of general circulation in the county or counties concerned. The notice shall provide that comments on the FONSI may be submitted to the Authority for a period of 30 days from the date of publication of the notice. If no comments are received, the FONSI shall immediately become effective.

The Authority may proceed with the project subject to any mitigation measures described in the FONSI after responding to any substantive comments received on the FONSI during the 30-day comment period, or 30 days after issuance of the FONSI if no substantive comments are received.

3. If a notice of intent is prepared and distributed under subsection (G)(1), the Authority shall publish it as a legal notice at least once, in one or more newspapers of general circulation in the county or counties concerned.
4. If a draft EIS is issued under subsection (G)(4), the Authority shall provide public notice by publishing the notice as a legal notice at least once, in one or more newspapers of general circulation in the county or counties concerned, that the draft EIS is available for public review. The notice shall provide that comments on the draft EIS may be submitted to the Authority for a period of 45 days from the date of publication of the notice. When the Authority determines that a project may be controversial, the notice shall provide for a general public hearing to receive public comments.
5. If the Authority reaffirms or revises a decision according to subsection (I), the Authority shall provide public notice of that fact by publishing the notice as a legal notice at least once, in one or more newspapers of general circulation in the county or counties concerned.

Historical Note

Adopted effective September 18, 1997 (Supp. 97-3).
Amended by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Section repealed; new Section made by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3). Section repealed; new R18-15-106 renumbered from R18-15-107 and amended at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

R18-15-107. Disputes

- A.** Any interested party having a substantial financial interest in or suffering a substantial adverse financial impact from an action taken under this Chapter, excluding actions taken under R18-15-503, R18-15-504, and R18-15-505, may file a formal letter of dispute with the executive director according to subsections (B), (C), (D), and (E). Any interested party having a substantial financial interest in or suffering a substantial adverse financial impact from an action taken under R18-15-503, R18-15-504 or R18-15-505 shall proceed under R18-15-503(H), R18-15-504(H) or R18-15-505(H), as applicable.
- B.** The interested party shall file the formal letter of dispute with the executive director within 30 days of the action and provide a copy to each member of the Board or Committee. The formal letter of dispute shall include the following information:
1. The name, address, and telephone number of the interested party;
 2. The signature of the interested party or the interested party's representative;
 3. A detailed statement of the legal and factual grounds of the dispute including:
 - a. Copies of relevant documents, and
 - b. The nature of the substantial financial interest or the nature of the substantial adverse financial impact of the interested party; and
 4. The form of relief requested.
- C.** Within 30 days of receipt of a dispute letter, the Authority shall issue a preliminary decision in writing, to be forwarded by certified mail to the party.

- D. Any party filing a dispute under subsection (B) that disagrees with a preliminary decision of the Authority may file a formal letter of appeal, explaining why the party disagrees with the preliminary decision, with the Board, provided the letter is received by the executive director not more than 15 days after the receipt by the party of the preliminary decision.
- E. The Board shall issue a final decision on issues appealed under subsection (D) not more than 60 days after receipt of the formal letter of appeal.

Historical Note

Adopted effective September 18, 1997 (Supp. 97-3). Amended effective June 4, 1998 (Supp. 98-2). Former R18-15-107 renumbered to R18-15-106; new R18-15-107 renumbered from R18-15-112 and amended by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

R18-15-108. Repealed**Historical Note**

Adopted effective September 18, 1997 (Supp. 97-3). Amended effective June 4, 1998 (Supp. 98-2). Section repealed; new Section R18-15-108 renumbered from R18-15-109 by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Section repealed by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

R18-15-109. Repealed**Historical Note**

Adopted effective September 18, 1997 (Supp. 97-3). Former Section R18-15-109 renumbered to R18-15-108; new Section R18-15-109 renumbered from R18-15-110 by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Section repealed by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

R18-15-110. Repealed**Historical Note**

Adopted effective September 18, 1997 (Supp. 97-3). Former Section R18-15-110 renumbered to R18-15-111; new Section adopted effective June 4, 1998 (Supp. 98-2). Former Section R18-15-110 renumbered to R18-15-109; new Section R18-15-110 renumbered from R18-15-111 and amended by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Section repealed by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

R18-15-111. Repealed**Historical Note**

Adopted effective September 18, 1997 (Supp. 97-3). Former Section R18-15-111 renumbered to R18-15-112; new Section R18-15-111 renumbered from R18-15-110 and amended effective June 4, 1998 (Supp. 98-2). Former Section R18-15-111 renumbered to R18-15-110; new Section R18-15-111 renumbered from R18-15-112 and amended by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Section repealed by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

R18-15-112. Renumbered**Historical Note**

Adopted effective September 18, 1997 (Supp. 97-3). Former Section R18-15-112 renumbered to R18-15-113;

new Section R18-15-112 renumbered from R18-15-111 (Supp. 98-2). Former Section R18-15-112 renumbered to R18-15-111; new Section R18-15-112 renumbered from R18-15-113 and amended by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Former R18-15-112 renumbered to R18-15-107 by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

R18-15-113. Renumbered**Historical Note**

Section R18-15-113 renumbered from R18-15-112 (Supp. 98-2). Section R18-15-113 renumbered to R18-15-112 by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4).

ARTICLE 2. CLEAN WATER REVOLVING FUND**R18-15-201. Clean Water Revolving Fund Financial Assistance Eligibility Criteria**

To be eligible to receive financial assistance from the Clean Water Revolving Fund, the applicant shall demonstrate the applicant is a governmental unit requesting financial assistance for a purpose as defined in A.R.S. § 49-1223(A); the proposed project is to design, construct, acquire, improve, or refinance a publicly owned wastewater treatment facility, or for any other purpose permitted by the Clean Water Act including nonpoint source projects; and the proposed project appears on the Clean Water Revolving Fund Project Priority List developed under R18-15-203.

Historical Note

Adopted effective September 18, 1997 (Supp. 97-3). Amended effective June 4, 1998 (Supp. 98-2). Amended by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Amended by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

R18-15-202. Clean Water Revolving Fund Intended Use Plan

- A. The Authority annually shall develop and publish a Clean Water Revolving Fund Intended Use Plan that identifies the intended uses of funds available in the Clean Water Revolving Fund Program. The Intended Use Plan shall include the project priority list according to R18-15-203. If the Intended Use Plan is to be submitted as one of the documents required to obtain a federal capitalization grant under Title VI of the Clean Water Act, 33 U.S.C. 1381 to 1387, the Intended Use Plan shall include any additional information required by federal law.
- B. The Authority shall provide for a public review and written comment period of the draft Clean Water Revolving Fund Intended Use Plan for a minimum of 14 calendar days. The Authority shall summarize all written comments submitted and prepare responses for Board review. After review of the summary, the Board shall make any appropriate changes to the Plan and then adopt the Clean Water Revolving Fund Intended Use Plan at a public meeting.

Historical Note

Adopted effective September 18, 1997 (Supp. 97-3). Amended by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Section repealed; new R18-15-202 renumbered from R18-15-203 and amended by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

R18-15-203. Clean Water Revolving Fund Project Priority List

- A. The Authority annually shall prepare a Clean Water Revolving Fund Project Priority List as part of the Intended Use Plan described in R18-15-202. The Board may waive the require-

ment to develop a Clean Water Revolving Fund Project Priority List if funds are not adequate to assist any projects or if the Board determines that no financial assistance will be offered for the annual funding cycle.

- B.** An applicant pursuing financial assistance from the Authority for a project shall request to have the project included on the Clean Water Revolving Fund Project Priority List. The applicant may request that multiple projects be placed on the Clean Water Revolving Fund Project Priority List. An applicant shall make a request for placement of a project on the Clean Water Revolving Fund Project Priority List on or before a date specified by the Authority and in an application format specified by the Authority. The Authority shall include with the project priority list application form the criteria under each ranking category in R18-15-204(A), by which the project will be evaluated and the relative importance of each of the criterion.
- C.** In preparing the Clean Water Revolving Fund Project Priority List, the Authority shall consider all project priority list applications submitted under subsection (B), all projects requested by regulatory authorities, and all plans prepared according to the Clean Water Act, 33 U.S.C. 1251 to 1387. The Authority shall evaluate the merits of each project with respect to water quality issues and determine the priority value of each project according to R18-15-204. At a minimum, the Clean Water Revolving Fund Project Priority List shall identify:
1. The applicant,
 2. Project title,
 3. Type of project,
 4. The amount requested for financial assistance,
 5. The subsidy rate index according to R18-15-204(C),
 6. Whether the project is within the fundable range according to R18-15-205, and
 7. The rank of each project by the priority value determined according to R18-15-204.
- D.** After adoption of the annual Intended Use Plan and project priority list according to R18-15-202, the Board may allow:
1. Updates and corrections to the adopted Clean Water Revolving Fund Project Priority List, if the updates and corrections are adopted by the Board after an opportunity for public comment at a public meeting; or
 2. Additions to the Clean Water Revolving Fund Project Priority List, if the additions are adopted by the Board after an opportunity for public comment at a public meeting.
- E.** After an opportunity for public comment at a public meeting, the Board may remove a project from the Clean Water Revolving Fund Project Priority List under one or more of the following circumstances:
1. The recipient has received all financial assistance identified in the executed financial assistance agreement with the Authority;
 2. The project was financed with long-term indebtedness from another source;
 3. The project is no longer an eligible project;
 4. The applicant requests removal;
 5. The applicant is no longer an eligible applicant; or
 6. The applicant did not update, modify, correct or resubmit a project that remained on the project priority list for more than 365 days.

Historical Note

Adopted effective September 18, 1997 (Supp. 97-3). Amended by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Former R18-15-203 renumbered to R18-15-202; new Section made by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

R18-15-204. Clean Water Revolving Fund Project Priority List Ranking

- A.** The Authority shall rank each project on the Clean Water Revolving Fund Project Priority List based on the priority value of each project. The Authority shall consider the following categories to determine the priority value of each project:
1. The Authority shall evaluate the current conditions of the project, including existing environmental, structural, and regulatory integrity and the degree to which the project is consistent with the Clean Water Act, 33 U.S.C. 1251 to 1387.
 2. The Authority shall evaluate the degree to which the project improves or protects water quality.
 3. The Authority shall evaluate the degree to which the project addresses water or energy efficiency or environmentally innovative approaches.
 4. The Authority shall evaluate the degree to which the project promotes any of the following:
 - a. Consolidation of facilities, operations, and ownership;
 - b. Extending service to existing areas currently served by another facility; or
 - c. A regional approach to operations, management, or new facilities.
 5. The Authority shall determine whether the project received assistance from the Authority in a previous funding cycle.
 6. The Authority shall evaluate the applicant's local fiscal capacity.
- B.** If two or more projects have the same rank according to subsection (A), the Authority shall give priority to the project with the highest current condition value under subsection (A)(1). If projects remain tied, priority will be given to the project with the highest water quality improvement value under subsection (A)(2). If projects remain tied, this process shall continue through the categories under subsections (A)(3) through (6), sequentially. If projects continue to have the same priority value, the Board shall determine the priority of the tied projects.
- C.** The Authority shall determine the subsidy rate index for each project on the Clean Water Revolving Fund Project Priority List based on the applicant's local fiscal capacity value under subsection (A)(6) and the overall priority value of the project. The Authority shall incorporate the subsidy rate index in the financial assistance agreement.

Historical Note

Adopted effective September 18, 1997 (Supp. 97-3). Amended effective June 4, 1998 (Supp. 98-2). Amended by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Amended by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

R18-15-205. Clean Water Revolving Fund Fundable Range for Financial Assistance

- A.** Prior to adoption by the Board of the Clean Water Revolving Fund Project Priority List, the Authority shall determine which projects are within the fundable range.
- B.** In determining the fundable range, the Authority shall evaluate each project for evidence that the project is ready to proceed. The Authority shall consider the following indicators when evaluating whether the project is within the fundable range:
1. Evidence of debt authorization according to R18-15-104(B);
 2. Evidence that the applicant has obtained applicable local, state, or federal project permits, as applicable;

3. Evidence of approval by the appropriate authority of project plans and specifications; and
4. Evidence that the applicant has initiated the bid or solicitation process.

Historical Note

Adopted effective September 18, 1997 (Supp. 97-3). Section repealed; new Section R18-15-205 renumbered from R18-15-206 and amended by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Amended by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

R18-15-206. Clean Water Revolving Fund Application for Financial Assistance

- A. The Authority shall accept an application for financial assistance from an eligible applicant for a project that appears on the Clean Water Revolving Fund Project Priority List and is determined to be in the fundable range. At the Authority's discretion, the Authority may accept an application for financial assistance prior to the project appearing on a Board-adopted Clean Water Revolving Fund Project Priority List.
- B. The Authority shall not forward an application to the Board for consideration until all the following conditions are met:
 1. The project is on the Clean Water Revolving Fund Project Priority List;
 2. The applicant has provided supporting documentation according to R18-15-205(B);
 3. The applicant has demonstrated legal capability, financial capability, technical capability, and managerial capability as described in R18-15-104;
 4. For nonpoint source projects, the applicant has provided evidence that the project is consistent with Section 319 and Title VI of the Clean Water Act, 33 U.S.C. 1329, 1381 to 1387;
 5. The applicant has obtained or is in the process of obtaining all permits and approvals required by federal, state, and local authorities; and
 6. The proposed project is consistent with the Certified Water Quality Management Plan.
- C. The application criteria required under subsections (A) and (B) shall not apply to financial assistance requests for short-term emergency loans under A.R.S. § 49-1269.

Historical Note

Adopted effective September 18, 1997 (Supp. 97-3). Amended effective June 4, 1998 (Supp. 98-2). Former Section R18-15-206 renumbered to R18-15-205; new Section R18-15-206 made by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Amended by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

R18-15-207. Clean Water Revolving Fund Application Review for Financial Assistance

- A. The Authority shall evaluate and summarize each application received and develop an analysis that provides recommendations to the Board. The analysis shall at a minimum include:
 1. The scope, size, and budget of the proposed project, including as much cost detail as possible;
 2. A summary of the applicant's legal capability including authorization to enter into long-term indebtedness and to pledge the specified dedicated revenue source for repayment;
 3. A summary of the applicant's technical capability including its ability to construct, operate, and maintain the proposed project;

4. A summary of the applicant's managerial capability, including the experience of elected officials and management team in managing similar organizations and similar projects;
5. A summary of the applicant's financial capability, including:
 - a. The amount of money collected through the dedicated revenue source for repayment for each of the previous three fiscal years,
 - b. An estimate of the amount of money that will be collected through the dedicated revenue source for repayment for the current fiscal year, and
 - c. A projection of the amount of money that will be collected through the dedicated revenue source for repayment for each of the next five fiscal years;
6. The applicant's history of compliance with, as applicable, the Clean Water Act, 33 U.S.C. 1251 to 1387, related Arizona statutes, and related rules, regulations, and policies; and
7. A summary of any previous assistance provided by the Authority to the applicant.

- B. The Board shall make a determination regarding the applicant's request for financial assistance at a public meeting. The Board shall base this determination on the information provided in the application, the analysis prepared by the Authority, and any other information provided at the public meeting. The Authority shall inform the applicant of the Board's determination, which may include recommended modifications to any of the following:
 1. The proposed project,
 2. The applicant's legal structure and organization,
 3. The dedicated revenue source for repayment, or
 4. The structure of the financial assistance request.
- C. If the Board determines at any time during a funding cycle that funds are limited or are not available to provide financial assistance, the Authority shall notify applicants on the current Clean Water Revolving Fund Project Priority List that the Authority is no longer accepting applications. The Board shall determine the amount of funding available, if any, to provide financial assistance for the applications already accepted by the Authority. The Board shall consider each application in the order the project appears within the fundable range on the current Clean Water Revolving Fund Project Priority List. The Board shall make a determination as described in subsection (B) on each application until the available funds are committed.
- D. Upon Board approval of the applicant's request for financial assistance, the Authority shall prepare a financial assistance agreement for execution by the applicant and the Authority.

Historical Note

Adopted effective September 18, 1997 (Supp. 97-3). Amended effective June 4, 1998 (Supp. 98-2). Section repealed; new Section made by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Amended by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

R18-15-208. Clean Water Revolving Fund Requirements

- A. The duly authorized agent, principal or officer of the applicant shall certify that the applicant has not violated any federal, state, or local law pertaining to fraud, bribery, graft, kickbacks, collusion, conflict of interest, or other unlawful or corrupt practices relating to or in connection with facilities planning, design, or construction work on a wastewater treatment facility project.

- B. All projects shall comply with the provisions of the Civil Rights Act of 1964, P.L. 88-352, 42 U.S.C. 2000d et seq., and all other applicable federal laws.

Historical Note

Adopted effective September 18, 1997 (Supp. 97-3). Amended by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Amended by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

ARTICLE 3. DRINKING WATER REVOLVING FUND

R18-15-301. Drinking Water Revolving Fund Financial Assistance Eligibility Criteria

To be eligible to receive financial assistance from the Drinking Water Revolving Fund, the applicant shall demonstrate that the applicant is a drinking water facility as defined by A.R.S. § 49-1201 requesting financial assistance for a purpose as defined in A.R.S. § 49-1243(A); the proposed project is to plan, design, construct, acquire, or improve a drinking water facility or refinance an eligible drinking water facility; and the proposed project appears on the Drinking Water Revolving Fund Project Priority List developed under R18-15-303.

Historical Note

Adopted effective September 18, 1997 (Supp. 97-3). Amended by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Amended by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

R18-15-302. Drinking Water Revolving Fund Intended Use Plan

- A. The Authority annually shall develop and publish a Drinking Water Revolving Fund Intended Use Plan that identifies the intended uses of funds available in the Drinking Water Revolving Fund Program. The Intended Use Plan shall include the project priority list according to R18-15-303. If an Intended Use Plan is to be submitted as one of the documents required to obtain a federal capitalization grant under the Safe Drinking Water Act, 42 U.S.C. 300f to 300j-26, the Intended Use Plan shall include any additional information required by federal law.
- B. The Authority shall provide for a public review and written comment period of the draft Drinking Water Revolving Fund Intended Use Plan for a minimum of 14 calendar days. The Authority shall summarize all written comments submitted and prepare responses for Board review. After review of the summary, the Board shall make any appropriate changes to the Plan and then adopt the Drinking Water Revolving Fund Intended Use Plan at a public meeting.

Historical Note

Adopted effective September 18, 1997 (Supp. 97-3). Amended by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Section repealed; new R18-15-302 renumbered from R18-15-303 and amended by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

R18-15-303. Drinking Water Revolving Fund Project Priority List

- A. The Authority annually shall prepare a Drinking Water Revolving Fund Project Priority List as part of the Intended Use Plan described in R18-15-302. The Board may waive the requirement to develop an annual Drinking Water Revolving Fund Project Priority List if funds are not adequate to assist any projects or if the Board determines that no financial assistance will be offered for the annual funding cycle.

- B. An applicant pursuing financial assistance from the Authority for a project shall request to have the project included on the Drinking Water Revolving Fund Project Priority List. The applicant may request that multiple projects be placed on the Drinking Water Revolving Fund Project Priority List. An applicant shall make a request for placement of a project on the Drinking Water Revolving Fund Project Priority List on or before a date specified by the Authority and in an application format specified by the Authority. The Authority shall include with the project priority list application form the criteria under each ranking category in R18-15-304(A) by which the project will be evaluated and the relative importance of each of the criterion.
- C. In preparing the Drinking Water Revolving Fund Project Priority List, the Authority shall consider all project priority list applications submitted under subsection (B), all projects requested by regulatory authorities, and all plans prepared under the Safe Drinking Water Act, 42 U.S.C. 300f to 300j-26. The Authority shall evaluate the merits of each project with respect to water quality issues and determine the priority value of each project according to R18-15-304. At a minimum, the Drinking Water Revolving Fund Project Priority List shall identify:
1. The applicant;
 2. Project title;
 3. Type of project;
 4. Population of service area;
 5. The amount requested for financial assistance;
 6. The subsidy rate index according to R18-15-304(C);
 7. Whether the project is within the fundable range according to R18-15-305; and
 8. The rank of each project by the priority value, determined according to R18-15-304.
- D. After adoption of the annual Intended Use Plan and project priority list according to R18-15-302, the Board may allow:
1. Updates and corrections to the adopted Drinking Water Revolving Fund Project Priority List, if the updates and corrections are adopted by the Board after an opportunity for public comment at a public meeting; or
 2. Additions to the Drinking Water Revolving Fund Project Priority List, if the additions are adopted by the Board after an opportunity for public comment at a public meeting.
- E. After an opportunity for public comment at a public meeting, the Board may remove a project from the Drinking Water Revolving Fund Project Priority List under one or more of the following circumstances:
1. The recipient has received all financial assistance identified in the executed financial assistance agreement with the Authority;
 2. The project was financed with long-term indebtedness from another source;
 3. The project is no longer an eligible project;
 4. The applicant requests removal;
 5. The applicant is no longer an eligible applicant; or
 6. The applicant did not update, modify, correct or resubmit a project that remained on the project priority list for more than 365 days.

Historical Note

Adopted effective September 18, 1997 (Supp. 97-3). Amended by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Former R18-15-303 renumbered to R18-15-302; new Section made by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

R18-15-304. Drinking Water Revolving Fund Project Priority List Ranking

A. The Authority shall rank each project listed on the Drinking Water Revolving Fund Project Priority List based on the priority value of each project. The Authority shall consider the following categories to determine the priority value of each project:

1. The Authority shall evaluate the current conditions of the system through the system's rank on the Department's master priority list.
2. The Authority shall evaluate the degree to which the project will result in improvement to the water system.
3. The Authority shall evaluate the degree to which the project addresses water or energy efficiency or environmentally innovative approaches.
4. The Authority shall evaluate the degree to which the project promotes any of the following:
 - a. Consolidation of facilities, operations, and ownership;
 - b. Extending service to existing areas currently served by another facility; or
 - c. A regional approach to operations, management, or new facilities.
5. The Authority shall determine whether the project received assistance from the Authority in a previous funding cycle.
6. The Authority shall evaluate the applicant's local fiscal capacity.

B. If two or more projects have the same rank according to subsection (A), the Authority shall give priority to the project with the highest current condition value under subsection (A)(1). If projects remain tied, priority will be given to the project with the highest water system improvement value under subsection (A)(2). If projects remain tied, this process shall continue through the categories under subsections (A)(3) through (6), sequentially. If projects continue to have the same priority value, the Board shall determine the priority of the tied projects.

C. The Authority shall determine the subsidy rate index for each project on the Drinking Water Revolving Fund Project Priority List based on the applicant's local fiscal capacity value and the overall priority value of the project. The Authority shall incorporate the subsidy rate index in the financial assistance agreement.

Historical Note

Adopted effective September 18, 1997 (Supp. 97-3). Amended effective June 4, 1998 (Supp. 98-2). Amended by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Amended by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

R18-15-305. Drinking Water Revolving Fund Fundable Range for Financial Assistance

A. Prior to adoption by the Board of the Drinking Water Revolving Fund Project Priority List, the Authority shall determine which projects are within the fundable range.

B. In determining the fundable range the Authority shall evaluate each project for evidence that the project is ready to proceed. The Authority shall consider the following indicators when evaluating whether the project is within the fundable range:

1. Evidence of debt authorization according to R18-15-104(B);
2. Evidence that the applicant has obtained applicable local, state, or federal project permits, as applicable;
3. Evidence of approval by the appropriate authority of project plans and specifications; and

4. Evidence that the applicant has initiated the bid or solicitation process.

Historical Note

Adopted effective September 18, 1997 (Supp. 97-3). Amended effective June 4, 1998 (Supp. 98-2). Former Section R18-15-305 repealed; new Section R18-15-305 renumbered from R18-15-306 and amended by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Amended by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

R18-15-306. Drinking Water Revolving Fund Application for Financial Assistance

A. The Authority shall accept an application for financial assistance from an eligible applicant for a project that appears on the Drinking Water Revolving Fund Project Priority List and is determined to be within the fundable range. At the Authority's discretion, the Authority may accept an application for financial assistance prior to the project appearing on a Board-adopted Drinking Water Revolving Fund Project Priority List.

B. The Authority shall not forward an application to the Board for consideration until all the following conditions are met:

1. The project is on the Drinking Water Revolving Fund Project Priority List;
2. The applicant has provided supporting documentation according to R18-15-305(B);
3. The applicant has demonstrated legal capability, financial capability, technical capability and managerial capability as described in R18-15-104; and
4. The applicant has obtained or is in the process of obtaining all permits and approvals required by federal, state, and local authorities.

C. The application criteria required under subsections (A) and (B) shall not apply to financial assistance requests for short-term emergency loans under A.R.S. § 49-1269.

Historical Note

Adopted effective September 18, 1997 (Supp. 97-3). Amended effective June 4, 1998 (Supp. 98-2). Former Section R18-15-306 renumbered to R18-15-305; new Section R18-15-306 made by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Amended by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

R18-15-307. Drinking Water Revolving Fund Application Review for Financial Assistance

A. The Authority shall evaluate and summarize each application received and develop an analysis that provides recommendations to the Board. At a minimum, the analysis shall include:

1. The scope, size, and budget of the proposed project, including as much cost detail as possible;
2. A summary of the applicant's legal capability, including authorization to enter into long-term indebtedness and to pledge the specified dedicated revenue source for repayment;
3. A summary of the applicant's technical capability, including its ability to construct, operate, and maintain the proposed project;
4. A summary of the applicant's managerial capability, including the experience of elected officials and management team in managing similar organizations and similar projects;
5. A summary of the applicant's financial capability, including:

Water Infrastructure Finance Authority of Arizona

- a. The amount of money collected through the dedicated revenue source for repayment for each of the previous three fiscal years,
 - b. An estimate of the amount of money that will be collected through the dedicated revenue source for repayment for the current fiscal year, and
 - c. A projection of the amount of money that will be collected through the dedicated revenue source for repayment for each of the next five fiscal years;
6. The applicant's history of compliance with, as applicable, the Safe Drinking Water Act, 42 U.S.C. 300f to 300j-26, related Arizona statutes, and related rules, regulations and policies; and
 7. A summary of any previous assistance provided by the Authority to the applicant.

B. The Board shall make a determination regarding the applicant's request for financial assistance at a public meeting. The Board shall base this determination on the information provided in the application, the analysis prepared by the Authority, and any other information provided at the public meeting. The Authority shall inform the applicant of the Board's determination, which may include recommended modifications to any of the following:

1. The proposed project,
2. The applicant's legal structure and organization,
3. The dedicated revenue source for repayment, or
4. The structure of the financial assistance request.

C. If the Board determines at any time during a funding cycle that funds are limited or are not available to provide financial assistance, the Authority shall notify applicants on the current Drinking Water Revolving Fund Project Priority List that the Authority is no longer accepting applications. The Board shall determine the amount of funding available, if any, to provide financial assistance for the applications already accepted by the Authority. The Board shall consider each application in the order the project appears within the fundable range on the current Drinking Water Revolving Fund Project Priority List. The Board shall make a determination as described in subsection (B) on each application until the available funds are committed.

D. Upon Board approval of the applicant's request for financial assistance, the Authority shall prepare a financial assistance agreement for execution by the applicant and the Authority.

Historical Note

Adopted effective September 18, 1997 (Supp. 97-3). Amended effective June 4, 1998 (Supp. 98-2). Section repealed; new Section made by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Amended by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

R18-15-308. Drinking Water Revolving Fund Requirements

- A.** The duly authorized agent, principal or officer of the applicant shall certify the applicant has not violated any federal, state, or local law pertaining to fraud, bribery, graft, kickbacks, collusion, conflict of interest, or other unlawful or corrupt practices relating to or in connection with facilities planning, design, or construction work on a project.
- B.** All projects shall comply with the provisions of the Civil Rights Act of 1964, P.L. 88-352, 42 U.S.C. 2000d et seq., and all other applicable federal laws.

Historical Note

Adopted effective September 18, 1997 (Supp. 97-3). Amended by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Amended by final rule-

making at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

ARTICLE 4. WATER SUPPLY DEVELOPMENT REVOLVING FUND**R18-15-401. Water Supply Development Revolving Fund Financial Assistance Eligibility Criteria**

To be eligible to receive financial assistance from the Water Supply Development Revolving Fund, the applicant shall demonstrate the applicant is a water provider as defined by A.R.S. § 49-1201(14) requesting financial assistance for a purpose as defined in A.R.S. § 49-1273(A); the water provider meets the requirements of A.R.S. § 49-1273(C); and the proposed project appears on the Water Supply Development Revolving Fund Project Priority List developed under R18-15-403.

Historical Note

Adopted effective September 18, 1997 (Supp. 97-3). Amended by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

R18-15-402. Water Supply Development Revolving Fund Intended Use Plan

A. The Authority annually shall develop and publish a Water Supply Development Revolving Fund Intended Use Plan that identifies the intended uses of funds available in the Water Supply Development Revolving Fund Program. The Intended Use Plan shall include the project priority list according to R18-15-403 and specify whether funds are available to subsidize the projects. The Authority is not required to prepare a Water Supply Development Revolving Fund Intended Use Plan if funds are not adequate to assist any projects or if the Committee determines that no financial assistance will be offered for the annual funding cycle.

B. The Authority shall provide for a public review and written comment period of the draft Water Supply Development Revolving Fund Intended Use Plan for a minimum of 14 calendar days. The Authority shall summarize all written comments submitted and prepare responses for Committee review. After review of the summary, the Committee shall make any appropriate changes to the Plan and then adopt the Water Supply Development Revolving Fund Intended Use Plan at a public meeting.

Historical Note

Adopted effective September 18, 1997 (Supp. 97-3). Section repealed; new Section made by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

R18-15-403. Water Supply Development Revolving Fund Project Priority List

A. The Authority annually shall prepare a Water Supply Development Revolving Fund Project Priority List as part of the Intended Use Plan described in R18-15-402. The Authority is not required to prepare a Water Supply Development Revolving Fund Project Priority List if funds are not adequate to assist any projects or if the Committee determines that no financial assistance will be offered for the annual funding cycle.

B. An applicant pursuing financial assistance from the Authority for a water supply development project shall request to have the project included on the Water Supply Development Revolving Fund Project Priority List. The applicant may request that multiple projects be placed on the Water Supply Development Revolving Fund Project Priority List. An applicant shall make a request for placement of a project on the Water Supply Development Revolving Fund Project Priority List on or before a date specified by the Authority and in an

application format specified by the Authority. The Authority shall include with the project priority list application form the criteria under each ranking category in R18-15-404(A) by which the project will be evaluated and the relative importance of each of the criterion.

- C. In preparing the Water Supply Development Revolving Fund Project Priority List, the Authority shall consider all project priority list applications submitted under subsection (B). The Authority shall evaluate the merits of each project with respect to water supply development issues and determine the priority value of each project according to R18-15-404. At a minimum, the Water Supply Development Revolving Fund Project Priority List shall identify:
1. The applicant;
 2. Project title;
 3. Type of project;
 4. Population of water provider's service area;
 5. The amount requested for financial assistance;
 6. The subsidy rate index according to R18-15-404(C);
 7. Whether the project is within the fundable range according to R18-15-405; and
 8. The rank of each project by the priority value, determined according to R18-15-404.
- D. After adoption of the annual Intended Use Plan and Water Supply Development Revolving Fund Project Priority List according to R18-15-402, the Committee may allow:
1. Updates and corrections to the adopted Water Supply Development Revolving Fund Project Priority List, if the updates and corrections are adopted by the Committee after an opportunity for public comment at a public meeting; or
 2. Additions to the Water Supply Development Revolving Fund Project Priority List, if the additions are adopted by the Committee after an opportunity for public comment at a public meeting.
- E. After an opportunity for public comment at a public meeting, the Committee may remove a project from the Water Supply Development Revolving Fund Project Priority List under one or more of the following circumstances:
1. The recipient has received all financial assistance identified in the executed financial assistance agreement with the Authority;
 2. The project was financed with long-term indebtedness from another source;
 3. The project is no longer an eligible project;
 4. The applicant requests removal;
 5. The applicant is no longer an eligible applicant; or
 6. The applicant did not update, modify, correct or resubmit a project that remained on the project priority list for more than 365 days.

Historical Note

Adopted effective September 18, 1997 (Supp. 97-3).
Amended effective June 4, 1998 (Supp. 98-2). Section repealed by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). New Section made by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

R18-15-404. Water Supply Development Revolving Fund Project Priority List Ranking

- A. The Authority shall rank each project listed on the Water Supply Development Revolving Fund Project Priority List based on the priority value of each project. The Authority shall consider the following categories to determine the priority value of each project.

1. The Authority shall evaluate the existing, near-term, and long-term water demands of the water provider as compared to the existing water supplies of the water provider.
 2. The Authority shall evaluate the existing and planned conservation and water management programs of the water provider.
 3. The Authority shall evaluate the current conditions of the water provider's facilities and the water provider's water supply needs, and evaluate how effectively the project will benefit the infrastructure or water supply needs.
 4. The Authority shall evaluate the sustainability of the water supply to be developed through the project.
 5. The Authority shall evaluate the applicant's local fiscal capacity.
- B. If two or more projects have the same rank according to subsection (A), the Authority shall give priority to the project with the highest water demand value under subsection (A)(1). If projects remain tied, priority will be given to the project with the highest conservation and water management value under subsection (A)(2). If projects remain tied, this process shall continue through the categories under subsections (A)(3) through (5), sequentially. If projects continue to have the same priority value, the Committee shall determine the priority of the tied projects.
- C. If monies are available to provide a subsidy to the project, the Authority shall determine the subsidy rate index for each project on the Water Supply Development Revolving Fund Project Priority List based on the applicant's local fiscal capacity value and the overall priority value of the project. The Authority shall incorporate the subsidy rate index in the financial assistance agreement.

Historical Note

New Section made by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

R18-15-405. Water Supply Development Revolving Fund Fundable Range for Financial Assistance

- A. Prior to adoption by the Committee of the Water Supply Development Revolving Fund Project Priority List, the Authority shall determine which projects are within the fundable range.
- B. In determining the fundable range the Authority shall evaluate each project for evidence that the project is ready to proceed. The Authority shall consider any of the following indicators when evaluating whether the project is within the fundable range:
1. Evidence of debt authorization according to R18-15-104(B);
 2. Evidence that the applicant has obtained applicable local, state, or federal project permits, as applicable;
 3. Evidence of approval by the appropriate authority of project plans and specifications; and
 4. Evidence that the applicant has initiated the bid or solicitation process.

Historical Note

New Section made by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

R18-15-406. Water Supply Development Revolving Fund Application for Financial Assistance

- A. The Authority shall accept an application for financial assistance from an eligible applicant for a project that appears on the Water Supply Development Revolving Fund Project Priority List and is determined to be within the fundable range. At the Authority's discretion, the Authority may accept an application for financial assistance prior to the project appearing on

Water Infrastructure Finance Authority of Arizona

- a Committee-adopted Water Supply Development Fund Project Priority List.
- B.** The Authority shall not forward an application for financial assistance to the Committee for consideration until all the following conditions are met:
1. The water supply development project has been prioritized;
 2. The applicant has provided supporting documentation according to R18-15-405(B);
 3. The applicant has demonstrated legal capability, financial capability, technical capability, and managerial capability under R18-15-104;
 4. The applicant has obtained or is in the process of obtaining all permits and approvals required by federal, state, and local authorities; and
 5. The applicant has demonstrated the ability to meet any applicable environmental requirements imposed by federal, state, or local agencies.
2. The applicant's legal structure and organization,
3. The dedicated revenue source for repayment, or
4. The structure of the financial assistance request.
- C.** If the Committee determines at any time during a funding cycle that funds are limited or are not available to provide financial assistance, the Authority shall notify applicants on the current Water Supply Development Revolving Fund Project Priority List that the Authority is no longer accepting applications. The Committee shall determine the amount of funding available, if any, to provide financial assistance for the applications by the Authority. The Committee shall consider each application in the order the project appears within the fundable range on the current Water Supply Development Revolving Fund Project Priority List. The Committee shall make a determination as described in subsection (B) on each application until the available funds are committed.
- D.** Upon Committee approval of the applicant's request for financial assistance, the Authority shall prepare a financial assistance agreement for execution by the applicant and the Authority.

Historical Note

New Section made by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

R18-15-407. Water Supply Development Revolving Fund Application Review for Financial Assistance

- A.** The Authority shall evaluate and summarize each application for financial assistance received and develop an analysis that provides recommendations to the Committee. The analysis shall at a minimum include:
1. The scope, size, and budget of the proposed project, including as much cost detail as possible;
 2. A summary of the applicant's legal capability including authorization to enter into long-term indebtedness and to pledge the specified dedicated revenue source for repayment;
 3. A summary of the applicant's technical capability, including its ability to construct, operate and maintain the proposed project;
 4. A summary of the applicant's managerial capability, including the experience of elected officials and management team in managing similar organizations and similar projects;
 5. A summary of the applicant's financial capability, including:
 - a. The amount of money collected through the dedicated revenue source for repayment for each of the previous three fiscal years,
 - b. An estimate of the amount of money that will be collected through the dedicated revenue source for repayment for the current fiscal year, and
 - c. A projection of the amount of money that will be collected through the dedicated revenue source for repayment for each of the next five fiscal years;
 6. A summary of any previous assistance provided by the Authority to the applicant; and
 7. A summary of the applicant's ability to meet any applicable permitting and environmental requirements imposed by federal, state, or local agencies.
- B.** The Committee shall make a determination regarding the applicant's request for financial assistance at a public meeting. The Committee shall base this determination on the information provided in the application, the analysis prepared by the Authority, and any other information provided at the public meeting. The Authority shall inform the applicant of the Committee's determination, which may include recommended modifications to any of the following:
1. The proposed project,

Historical Note

New Section made by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

R18-15-408. Water Supply Development Revolving Fund Requirements

The duly authorized agent, principal or officer of the applicant shall certify the applicant has not violated any federal, state, or local law pertaining to fraud, bribery, graft, kickbacks, collusion, conflict of interest, or other unlawful or corrupt practices relating to or in connection with facilities planning, design, or construction work on a project.

Historical Note

New Section made by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

ARTICLE 5. TECHNICAL ASSISTANCE**R18-15-501. Technical Assistance**

The Authority may provide Clean Water technical assistance, Drinking Water technical assistance, and Water Supply Development technical assistance if funding is approved in the Technical Assistance Intended Use Plan according to R18-15-502. The Authority shall provide technical assistance in compliance with A.R.S. § 49-1203(B)(16) and (17).

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2116, effective May 16, 2000 (Supp. 00-2). Amended by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Former R18-15-501 renumbered to R18-15-502; new Section made by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

R18-15-502. Technical Assistance Intended Use Plan

- A.** The Authority annually shall develop and publish one or more Technical Assistance Intended Use Plans that identify intended uses of funds available for Clean Water technical assistance and Drinking Water technical assistance. The Authority shall develop a Water Supply Development Technical Assistance Intended Use Plan if funds are available or if the Committee determines that Water Supply Development technical assistance will be offered. The Intended Use Plan shall identify whether funds are available and the amount of funds available for planning and design assistance grants, staff assistance, and professional assistance for Clean Water, Drinking Water, and Water Supply Development. The Authority may develop Technical Assistance Intended Use Plans separately for Clean

Water, Drinking Water, and Water Supply Development or as parts of the Intended Use Plans required under R18-15-202, R18-15-302, and R18-15-402. If the Technical Assistance Intended Use Plan is to be submitted as a document required to obtain a federal capitalization grant, the Technical Assistance Intended Use Plan shall include any additional information required by federal law. The Authority is not required to prepare a Water Supply Development Technical Assistance Intended Use Plan if funds are not adequate to assist any projects or if the Committee determines that no Water Supply Development technical assistance will be offered for the annual funding cycle.

- B.** The Authority shall provide for a public review and written comment period of any draft Technical Assistance Intended Use Plan for a minimum of 14 calendar days. The Authority shall summarize all written comments received and prepare responses. The Authority shall provide a summary of the written comments and the Authority's responses regarding the Clean Water and Drinking Water Technical Assistance Intended Use Plans to the Board and provide a summary of the written comments and the Authority's responses regarding any Water Supply Development Technical Assistance Intended Use Plan to the Committee. After review of the comments and the Authority's responses to comments received during the public review and written comment period, the Board or the Committee, as applicable, shall adopt the applicable Technical Assistance Intended Use Plan or Plans at a public meeting with any changes made in response to public comments or comments by members of the Board or Committee.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2116, effective May 16, 2000 (Supp. 00-2). Amended by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Section repealed; new R18-15-502 renumbered from R18-15-501 and amended by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

R18-15-503. Clean Water Planning and Design Assistance Grants

- A.** Planning and design assistance grants to a specific wastewater treatment facility shall assist that system to achieve or enhance its legal, financial, technical, or managerial capability to facilitate the design, construction, acquisition, improvement, or consolidation of the wastewater treatment facility. The Board shall approve funds available for planning and design assistance grants in the annual Clean Water Technical Assistance Intended Use Plan. The Board may determine that no assistance will be offered for the annual funding cycle.
- B.** To be eligible to receive a planning and design assistance grant under the Clean Water Technical Assistance Program, the grant applicant shall demonstrate the applicant is a governmental unit that owns a wastewater treatment facility, or a non-governmental unit requesting technical assistance specifically for the purpose of forming a political subdivision. An eligible grant applicant shall apply for a planning and design assistance grant on or before a date specified by the Authority and on a grant application form specified by the Authority.
- C.** A grant applicant shall commit to a matching contribution toward the total project cost as specified in the Request for Grant Applications. The matching contribution may include cash contributions or in-kind contributions. The Board may waive or modify the grant applicant's match requirement according to criteria established in the Request for Grant Applications.

- D.** The Authority shall solicit, evaluate, and award planning and design assistance grants in accordance with A.R.S. § 41-2702.
- E.** The Authority shall evaluate the grant applications received to determine which projects are eligible under the Clean Water Act, 33 U.S.C. 1381 to 1387. Eligible grant applications shall specify a demonstrated need of the grant applicant for assistance in securing financial assistance for development and implementation of a wastewater capital improvement project.
- F.** The Authority shall determine planning and design assistance grant awards based on the amount of funding available. If funding is limited, all eligible projects may not be funded. The Authority shall provide the planning and design assistance grant award recommendations to the Board for review and approval at a public meeting. The Board may adopt, modify, or reject the Authority's recommendations in whole or in part.
- G.** Within 30 days after the adoption of the planning and design assistance grant awards at a public meeting, the Authority shall notify all grant applicants whether or not they received an award.
- H.** An unsuccessful grant applicant may submit an appeal in writing in accordance with A.R.S. § 41-2704.
- I.** The Authority and the grant applicant shall enter into a planning and design assistance grant agreement that shall include at a minimum:
1. A scope of work,
 2. The amount of the grant awarded,
 3. The amount of the local match required,
 4. A final project budget and timeline, and
 5. Reporting requirements.
- J.** Project costs incurred prior to execution of a planning and design assistance grant agreement shall not be eligible for grant funding.
- K.** The Authority shall release grant proceeds subject to a disbursement request if the request is consistent with the planning and design assistance grant agreement and the disbursement schedule.
1. The grant recipient shall request each disbursement on the forms provided by the Authority. Each disbursement request shall include a certification and signature document, a cost-incurred report, and a DBE report. The Authority shall not process a disbursement until the applicant provides a completed disbursement form.
 2. The grant recipient shall include copies of invoices, canceled checks, or other documents that show proof of eligible costs incurred with each disbursement request.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2116, effective May 16, 2000 (Supp. 00-2). Amended by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Amended by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

R18-15-504. Drinking Water Planning and Design Assistance Grants

- A.** Planning and design assistance grants to a specific drinking water facility, excluding a nonprofit noncommunity water system, shall assist that facility to achieve or enhance its legal, financial, technical, or managerial capability to facilitate the design, construction, acquisition, improvement, or consolidation of a community water system. The Board shall approve funds available for planning and design assistance grants in the annual Drinking Water Technical Assistance Intended Use Plan. The Board may determine that no assistance will be offered for the annual funding cycle.
- B.** To be eligible to receive a planning and design assistance grant under the Drinking Water Technical Assistance Program, the

grant applicant shall demonstrate the applicant owns a drinking water facility, excluding a nonprofit noncommunity water system. An eligible grant applicant shall apply for a planning and design assistance grant on or before a date specified by the Authority and on a grant application form specified by the Authority.

- C. A grant applicant shall commit to a matching contribution toward the total project cost as specified in the Request for Grant Applications. The matching contribution may include cash contributions or in-kind contributions. The Board may waive or modify the grant applicant's match requirement according to criteria established in the Request for Grant Applications.
- D. The Authority shall solicit, evaluate, and award planning and design assistance grants in accordance with A.R.S. § 41-2702.
- E. The Authority shall evaluate the grant applications received to determine which projects are eligible under the Safe Drinking Water Act, 42 U.S.C. 300f to 300j-26. Eligible grant applications shall specify a demonstrated need of the grant applicant for assistance in securing financial assistance for development and implementation of a drinking water capital improvement project.
- F. The Authority shall determine planning and design assistance grant awards based on the amount of funding available. If funding is limited, all eligible projects may not be funded. The Authority shall provide the planning and design assistance grant award recommendations to the Board for review and approval at a public meeting. The Board may adopt, modify, or reject the Authority's recommendations in whole or in part.
- G. Within 30 days after the adoption of the planning and design assistance grant awards at a public meeting, the Authority shall notify all grant applicants whether or not they received an award.
- H. An unsuccessful grant applicant may submit an appeal in writing according to A.R.S. § 41-2704.
- I. The Authority and the grant applicant shall enter into a planning and design assistance grant agreement that shall include at a minimum:
 1. A scope of work,
 2. The amount of the grant awarded,
 3. The amount of the local match required,
 4. A final project budget and timeline, and
 5. Reporting requirements.
- J. Project costs incurred prior to execution of a planning and design assistance grant agreement shall not be eligible for grant funding.
- K. The Authority shall release grant proceeds subject to a disbursement request if the request is consistent with the planning and design assistance grant agreement and the disbursement schedule.
 1. The grant recipient shall request each disbursement on the forms provided by the Authority. Each disbursement request shall include a certification and signature document, a cost-incurred report, and a DBE report. The Authority shall not process a disbursement until the applicant provides a completed disbursement form.
 2. The grant recipient shall include copies of invoices, canceled checks, or other documents that show proof of eligible costs incurred with each disbursement request.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2116, effective May 16, 2000 (Supp. 00-2). Former Section R18-15-504 repealed; new Section R18-15-504 renumbered from R18-15-505 and amended by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001

(Supp. 01-4). Amended by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

R18-15-505. Water Supply Development Planning and Design Assistance Grants

- A. Planning and design assistance grant funding to a water provider shall assist the water provider in the planning or design of a water supply development project. A single planning and design assistance grant award shall not exceed \$100,000. The Committee shall approve funds available for planning and design assistance grants in the annual Water Supply Development Technical Assistance Intended Use Plan. The Committee may determine that no assistance will be offered for the annual funding cycle.
- B. To be eligible to receive a planning and design assistance grant under the Water Supply Development Technical Assistance Program, the grant applicant shall demonstrate the applicant is a water provider as defined in A.R.S. § 49-1201 and meet the requirements of A.R.S. § 49-1273(C). An eligible grant applicant shall apply for a planning and design assistance grant on or before a date specified by the Authority and on a grant application form specified by the Authority.
- C. A grant applicant shall commit to a matching contribution toward the total project cost as specified in the Request for Grant Applications. The matching contribution may include cash contributions or in-kind contributions. The Board may waive or modify the grant applicant's match requirement according to criteria established in the Request for Grant Applications.
- D. The Authority shall solicit, evaluate, and award planning and design assistance grants in accordance with A.R.S. § 41-2702.
- E. The Authority shall evaluate the grant applications received to determine which projects are eligible. Eligible grant applications shall specify a demonstrated need of the grant applicant for assistance in securing financial assistance for planning and design of a water supply capital improvement project.
- F. The Authority shall determine planning and design assistance grant awards based on the amount of funding available. If funding is limited, all eligible projects may not be funded. The Authority shall provide the planning and design assistance grant award recommendations to the Committee for review and approval at a public meeting. The Committee may adopt, modify, or reject the Authority's recommendations in whole or in part.
- G. Within 30 days after the adoption of the planning and design assistance grant awards at a public meeting, the Authority shall notify all grant applicants whether or not they received an award.
- H. An unsuccessful grant applicant may submit an appeal in writing according to A.R.S. § 41-2704.
- I. The Authority and the grant applicant shall enter into a planning and design assistance grant agreement that shall include at a minimum:
 1. A scope of work,
 2. The amount of the grant awarded,
 3. The amount of the local match required,
 4. A final project budget and timeline, and
 5. Reporting requirements.
- J. Project costs incurred prior to execution of a planning and design assistance grant agreement shall not be eligible for grant funding.
- K. The Authority shall release grant proceeds subject to a disbursement request if the request is consistent with the planning and design assistance grant agreement and the disbursement schedule.
 1. The grant recipient shall request each disbursement on the forms provided by the Authority. Each disbursement

request shall include a certification and signature document, and a cost-incurred report. The Authority shall not process a disbursement until the applicant provides a completed disbursement form.

2. The grant recipient shall include copies of invoices, canceled checks, or other documents that show proof of eligible costs incurred with each disbursement request.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2116, effective May 16, 2000 (Supp. 00-2). Former Section R18-15-505 renumbered to R18-15-504; new Section R18-15-505 made by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Amended by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

R18-5-506. Repealed

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2116, effective May 16, 2000 (Supp. 00-2). Section repealed; new Section made by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Section repealed by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

R18-15-507. Repealed

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2116, effective May 16, 2000 (Supp. 00-2). Section repealed; new Section made by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Section repealed by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

R18-15-508. Repealed

Historical Note

New Section made by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Section repealed by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

R18-15-509. Repealed

Historical Note

New Section made by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Section repealed by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

R18-15-510. Repealed

Historical Note

New Section made by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Section repealed by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

R18-15-511. Repealed

Historical Note

New Section made by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Section repealed by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

ARTICLE 6. HARDSHIP GRANT FUND PROGRAM

R18-15-601. Hardship Grant Fund Administration

- A. The Authority shall establish a separate account or accounts for the Hardship Grant Fund Program from any monies

received according to A.R.S. § 49-1267(A). The Authority shall only use the monies from the Hardship Grant Fund Program for:

1. Providing hardship grants to political subdivisions or Indian tribes to plan, design, acquire, construct or improve wastewater collection and treatment facilities; and
 2. Providing training and technical assistance related to operation and maintenance of wastewater treatment facilities.
- B. The Authority shall identify any funding available for financial assistance under the Hardship Grant Fund Program in the annual Clean Water Revolving Fund Intended Use Plan described in R18-15-202 and any funding available for technical assistance in the Clean Water Technical Assistance Intended Use Plan described in R18-15-502. If the Board determines no funding is available for the Hardship Grant Fund Program, the Authority shall not evaluate any applications for financial assistance or grant applications for technical assistance for funding from the Hardship Grant Fund Program.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2116, effective May 16, 2000 (Supp. 00-2). Amended by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Section repealed; new Section made by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

R18-15-602. Hardship Grant Fund Financial Assistance

- A. If funding is available in the Hardship Grant Fund Program, the Authority shall determine if any of the applicants requesting placement on the Clean Water Revolving Fund Project Priority List meet the requirements according to A.R.S. § 49-1268(A)(2). In addition to meeting the requirements of A.R.S. § 49-1268(A)(2), the applicant shall meet the following:
 1. On the date the applicant applies for financial assistance, the per capita annual income of the community's residents does not exceed 80% of national per capita income as reported by the U.S. Census Bureau.
 2. On the date the applicant applies for financial assistance, the community's local unemployment rate exceeds by one percentage point or more the most recently reported average yearly national unemployment rate as reported by the U.S. Department of Labor's Bureau of Labor Statistics.
- B. The Authority shall make the determination of applicant's eligibility for the Hardship Grant Fund Program during the ranking of the project under R18-15-204. Of the applicants eligible to receive financial assistance from the Hardship Grant Fund Program, the Authority shall award the hardship grant monies based on an applicant's financial capability and ability to generate sufficient revenues to pay for debt service.
- C. The Authority shall proceed according to Article 2 of this Chapter for any applicant meeting the eligibility requirements for the Hardship Grant Fund Program. In addition to proceeding under R18-15-207, the Authority shall identify any applicant that qualifies for Hardship Grant Fund Program financial assistance and shall make a recommendation to the Board regarding the amount of funding to provide the applicant from the Hardship Grant Fund Program.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2116, effective May 16, 2000 (Supp. 00-2). Amended by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Amended by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

R18-15-603. Hardship Grant Fund Technical Assistance

- A. If funding is available in the Hardship Grant Fund Program, the Authority shall identify in the Request for Grant Applications prepared according to A.R.S. § 41-2702(B) the amount of funding for technical assistance available from the Hardship Grant Fund Program.
- B. The Authority shall make the determination of grant applicant's eligibility for the Hardship Grant Fund Program during the ranking of the project under R18-15-503. Of the grant applicants eligible to receive technical assistance from the Hardship Grant Fund Program, the Authority shall award the hardship grant monies based on the financial capability of a grant applicant.
- C. The Authority shall proceed according to R18-15-503 for any grant applicant requesting assistance for operation and maintenance for a wastewater treatment facility. In addition to proceeding under R18-15-503(F), the Authority shall identify any grant applicant that qualifies for Hardship Grant Fund Program technical assistance and shall make a recommendation to the Board regarding the amount of funding to provide the grant applicant from the Hardship Grant Fund Program.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2116, effective May 16, 2000 (Supp. 00-2). Amended by final rulemaking at 7 A.A.R. 5956, effective December 4,

2001 (Supp. 01-4). Amended by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

ARTICLE 7. INTEREST RATE SETTING AND FORGIVABLE PRINCIPAL**R18-15-701. Interest Rate Setting and Forgivable Principal**

- A. The Authority shall prescribe the rate of interest, including interest rates as low as 0% on Authority loans, bond purchase agreements, and linked deposit guarantees based on the applicant's local fiscal capacity under R18-15-204(A)(6), R18-15-304(A)(6), or R18-15-404(A)(5), and an applicant's ability to generate sufficient revenues to pay debt service.
- B. The Authority may forgive principal on Authority loans, bond purchase agreements, and linked deposit guarantees made to local units of government to plan, acquire, construct, or improve drinking water facilities based on:
 1. An applicant's local fiscal capacity under R18-15-304(A)(6), and
 2. An applicant's ability to generate sufficient revenues to pay debt service.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2116, effective May 16, 2000 (Supp. 00-2). Amended by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Amended by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

Title 41 Chapter 24 Solicitation and Award of Grants

ARTICLE 1. GENERAL PROVISIONS

41-2701. Definitions

In this chapter, unless the context otherwise requires:

1. "Grant" means the furnishing of financial or other assistance, including state funds or federal grant funds, by any state governmental unit to any person for the purpose of supporting or stimulating educational, cultural, social or economic quality of life.
2. "Person" means any corporation, business, individual, committee, club or other organization or group of individuals.
3. "State governmental unit" means any department, commission, council, board, bureau, committee, institution, agency, government corporation or other establishment or official of the executive branch or corporation commission of this state.

41-2702. Solicitation and award of grant applications

A. State governmental units shall award any grant in accordance with the competitive grant solicitation requirements of this chapter.

B. A state governmental unit shall prepare and issue a request for grant applications that includes at least the following information:

1. A description of the nature of the grant project, including the scope of the work to be performed by an awardee.
2. An identification of the funding source and the total amount of available funds.
3. Whether a single award or multiple awards may be made.
4. Encouragement of collaboration by entities for community partnerships, if appropriate.
5. Any additional information required by the applications.
6. The criteria or factors under which applications will be evaluated for award and the relative importance of each criteria or factor.
7. The due date for submittal of applications and the anticipated time the awards may be made.

C. Adequate public notice of the request for grant applications shall be given at least six weeks before the due date for the submittal of applications. Adequate notification of the request for grant applications shall also be provided to the central state permitting program pursuant to section 41-1505.08.

D. A preapplication conference may be conducted before the due date for the submittal of applications to explain the grant application requirements. If a preapplication conference is held, it shall be held at least twenty-one days before the due date. Statements made at a preapplication conference are not amendments to the request for grant applications unless a written amendment is issued.

E. Grant applications shall be publicly received at the time and place designated in the request for grant applications. The name of each applicant shall be publicly read and recorded. All other information in the grant application is confidential during the process of evaluation. All applications shall be open for public inspection after grants are awarded. To the extent the applicant designates and the state concurs,

trade secrets and other proprietary information contained in the application shall remain confidential.

F. Applications shall be evaluated by at least three evaluators who are peers or other qualified individuals. The evaluators may allow applicants to make oral or written presentations regarding the scope of work, terms and conditions of the grant, budget and other relevant matters set forth in the request for grant applications. Applicants shall be accorded fair treatment with respect to any opportunity for oral or written presentations. The evaluators may require an applicant to revise its application to reflect information provided in an oral or written presentation. Any person who has information contained in the application of competing applications shall not disclose that information.

G. The evaluators shall review each application based solely on the evaluation criteria or factors set forth in the request for grant applications. The evaluators shall maintain a written record of the assessment of each application, which shall include comments regarding compliance with each evaluation criteria or factor, the citation of a specific criteria or factor as the basis of each stated strength or weakness and a clear differentiation between comments based on facts presented in the application and comments based on professional judgment. Evaluator assessments shall be made available for public inspection no later than thirty days after a formal award is made.

H. The evaluators shall make award recommendations to the head of the state governmental unit based on the evaluators' reviews of each application. The evaluators' recommendations may include the adjustment of the budgets of the applicants individually or collectively.

I. The head of the state governmental unit may affirm, modify or reject the evaluators' recommendations in whole or in part. Modification of the evaluators' recommendations may include the adjustment of the budget on any proposed award individually or on all awards by an amount or percentage. If the head of the state governmental unit does not affirm the recommendations, the head of the state governmental unit shall document in writing the specific justifications for the action taken. The specific justifications shall be made available for public inspection no later than thirty days after the action is taken.

J. The head of a state governmental unit may enter into agreements with other state governmental units to furnish assistance in conducting the solicitation of grant applications.

41-2703. Waiver of solicitation and award procedures

A. Notwithstanding any other provision of this chapter, the director of the department of administration or the director's designee may waive the solicitation and award procedures if a situation exists that makes compliance with section 41-2702 impracticable, unnecessary or contrary to the public interest, except that the grant solicitation and award shall be made with competition that is practicable under the circumstances.

B. A state governmental unit seeking a waiver of solicitation and award procedures shall prepare a written request documenting and explaining the situation justifying the waiver. The request shall be submitted to the director of the department of administration or the director's designee, who shall determine in writing whether to grant the request. If the request is granted, the determination shall state the

manner in which the grant is to be solicited and awarded and the limits of the determination.

C. A copy of each request and determination shall be kept on file in the office of the state governmental unit requesting the waiver and the office of the director of the department of administration or the office of the director's designee.

41-2704. Remedies

The head of the state governmental unit may resolve protests of the award or proposed award of a grant. An appeal from a decision of the head of a state governmental unit may be made to the director of the department of administration. A protest of an award or proposed award of a grant and any appeal shall be resolved in accordance with the rules of procedure adopted by the director pursuant to section 41-2611.

41-2705. Violation; classification; liability; enforcement authority

A. A person who violates this chapter is personally liable for the recovery of all public monies paid plus twenty per cent of the amount and legal interest from the date of payment and all costs and damages arising out of the violation.

B. A person who intentionally or knowingly participates in the award of a grant pursuant to a scheme or artifice to avoid the requirements of this chapter is guilty of a class 4 felony.

C. A person who serves as an evaluator of grant applications pursuant to this chapter shall sign a statement before reviewing applications that the person has no interest in any application other than that disclosed and shall not have contact with any representative of an applicant during the evaluation of applications, except those contacts specifically authorized by this chapter. The person shall disclose on the statement any contact unrelated to the review of the grant applications that the person may need to have with a representative of an applicant and any contact with a representative of an applicant during evaluation of applications except those specifically authorized by this chapter. A person who serves as an evaluator and who fails to disclose contact with a representative of an applicant or who fails to provide accurate information on the statement is subject to a civil penalty of at least one thousand dollars but no more than ten thousand dollars.

D. The attorney general on behalf of this state shall enforce the provisions of this chapter.

41-2706. Applicability of chapter

A. This chapter applies to the solicitation of grants initiated after August 6, 1999.

B. This chapter does not apply to:

1. Any grant program that was exempt from chapter 23, article 3 of this title and for which administrative rules establishing grant solicitation procedures were adopted pursuant to chapter 6 of this title before August 6, 1999.

2. The Arizona board of regents and schools, colleges, institutions and universities under its control if the Arizona board of regents adopts rules or policies governing the award of grants that encourage as much competition as practicable.

3. Grants made by the cotton research and protection council for research programs related to cotton production or protection.

4. Grants made by the Arizona iceberg lettuce research council for research programs under section 3-526.02, subsection C, paragraph 3 or 5.
5. Grants made by the Arizona citrus research council for research programs under section 3-468.02, subsection C, paragraph 3 or 5.
6. Grants made by the Arizona grain research and promotion council for research projects and programs under section 3-584, subsection C, paragraph 5.
7. Grants made under section 3-268, subsection C.
8. Grants made by the Arizona commerce authority from the Arizona competes fund pursuant to chapter 10, article 5 of this title. With respect to other grants, the authority shall adopt policies, procedures and practices, in consultation with the department of administration, that are similar to and based on the policies and procedures prescribed by this chapter for the purpose of increased public confidence, fair and equitable treatment of all persons engaged in the process and fostering broad competition while accomplishing flexibility to achieve the authority's statutory requirements. The authority shall make its policies, procedures and practices available to the public.
9. Grants of less than five thousand dollars from the veterans' donations fund if the department of veterans' services adopts rules or policies governing these grants that encourage as much competition as practicable.

Title 41 Chapter 53 Office of Economic Opportunity

Article 2 ARIZONA FINANCE AUTHORITY

41-5351. Definitions

In this article, unless the context otherwise requires:

1. "Agreement" means any loan or other agreement, contract, note, mortgage, deed of trust, trust indenture, lease, sublease or instrument entered into by the authority.
2. "Authority" means the Arizona finance authority.
3. "Board" means the board of directors of the authority.
4. "Bonds" means any bonds issued by the authority.
5. "Costs":
 - (a) Means all costs incurred in the issuance of bonds, including insurance policy, credit enhancement, legal, accounting, consulting, printing, advertising and travel expenses, plus any authority administrative fees.
 - (b) May include interest on bonds issued by the authority for a reasonable time before and during the time the proceeds are used.
6. "Director" means the director of the authority.
7. "Federal agency" means the United States or any agency or agencies of the United States.

41-5352. Arizona finance authority; fund

- A. The Arizona finance authority is established in the office of economic opportunity.
- B. The governor shall appoint the director of the authority to serve at the pleasure of the governor.
- C. The Arizona finance authority operations fund is established consisting of monies deposited pursuant to section 41-5355. The authority shall administer the fund. Monies in the fund are continuously appropriated.
- D. At the end of the fiscal year, the authority shall transfer all unencumbered monies in the fund in excess of the authority's operating costs to the economic development fund established by section 41-5302.

41-5353. Board; members; terms; meetings; compensation; prohibition

- A. The authority shall be governed by a board of directors, consisting of five members to be appointed by the governor, giving due consideration to a diverse geographical representation on the board, and to serve at the pleasure of the governor.
- B. Before appointment by the governor, a prospective member of the board of directors shall submit a full set of fingerprints to the governor for the purpose of obtaining a state and federal criminal records check pursuant to section 41-1750 and Public Law 92-544. The department of public safety may exchange this fingerprint data with the federal bureau of investigation.
- C. Each member shall serve for a term of three years. Vacancies occurring other than by expiration of term shall be filled in the same manner for the remainder of the unexpired term.

D. The board shall annually elect from among its members a chairperson, a secretary and a treasurer.

E. The board rules shall provide for regular annual meetings of the board. The chairperson may call a special meeting at any time. The board rules shall provide for a method of giving notice of a special meeting.

F. The board may meet by audioconference or videoconference. The requirements of title 38, chapter 3, article 3.1 apply to an audioconference or videoconference, except that all votes of members must be by roll call, and the board may not meet in executive session by audioconference or videoconference.

G. Members of the board are not eligible to receive compensation but are eligible to receive reimbursement for necessary expenses pursuant to title 38, chapter 4, article 2 while engaged in the performance of the members' duties.

H. Members of the board may not have any direct or indirect personal financial interest in any project financed under this article.

41-5354. Powers of board

The board may:

1. Adopt an official seal and alter the seal at its pleasure.
2. Apply for, accept and administer grants of monies or materials or property of any kind from a federal agency or others on such terms and conditions as may be imposed.
3. Make and enter into agreements, including intergovernmental agreements pursuant to title 11, chapter 7, article 3, execute all instruments, perform all acts and do all things necessary or convenient to carry out the powers granted.
4. Employ or contract with experts, engineers, architects, attorneys, accountants, construction and financial experts and such other persons as may be necessary in the board's judgment and fix their compensation.
5. Pay compensation and employee-related expenses.
6. Fix the compensation of the director.
7. Sue and be sued.
8. Acquire and maintain office space, equipment, supplies, services and insurance necessary to administer this article.
9. Contract with, act as guarantor for or coinsure with any federal, state or local governmental agency and other organizations or corporations in connection with its activities under this article and receive monies relating to those contracts and services.
10. Adopt bylaws and administrative rules consistent with this article.
11. Protect and enforce the interests of the authority in any project financed through the authority's resources.
12. Enter into and inspect any facility financed through the authority's resources to investigate its physical condition, construction, rehabilitation, operation, management and maintenance and to examine all of the records relating to its capitalization, income and other related matters.
13. Acquire title to real property or other assets by gift, grant or operation of law, or by purchase.
14. Establish advisory boards that have all rights and powers granted by the board, including the right to review, evaluate and recommend to the board for approval proposed financings.

41-5355. Assets; cost of operation and administration; taxation

A. Any monies, pledges or property issued or given to the Arizona finance authority, whether by appropriation, loan, gift or otherwise, constitute the assets of the Arizona finance authority.

B. This state is not responsible for any obligation incurred by the authority.

C. All costs and expenses of the authority shall be paid from bond proceeds of bonds issued by any industrial development authority established by the Arizona finance authority or other monies of the authority, and to the extent not prohibited by state or federal law or by contract, the monies of the greater Arizona development authority and the water infrastructure finance authority of Arizona that are available to pay the Arizona finance authority's costs and expenses.

D. The authority and its income are exempt from taxation in this state.

41-5356. Duties of board; advisory board; board termination

A. The board shall:

1. Establish an industrial development authority under title 35, chapter 5 and, notwithstanding the requirements of section 35-705, serve as the board of the industrial development authority.

2. Serve as the board of the greater Arizona development authority and have all powers and authority to take action on behalf of the greater Arizona development authority pursuant to chapter 18 of this title.

3. Serve as the board of the water infrastructure finance authority of Arizona and have all powers and authority to take action pursuant to title 49, chapter 8 regarding water infrastructure financing.

4. Approve the authority's budget.

5. Establish a water and infrastructure finance authority advisory board to advise the board of directors of the authority consisting of relevant state agency representatives and the following additional members:

(a) One member who represents a public water system that serves five hundred or more connections.

(b) One member who represents a public water system that serves less than five hundred connections.

(c) One member who represents a sanitary district in a county with a population of less than five hundred thousand persons.

(d) One member who represents a sanitary district in a county with a population of five hundred thousand or more persons.

(e) One member who represents a city or town with a population of less than fifty thousand persons.

(f) One member who represents a city or town with a population of fifty thousand or more persons.

(g) One member who represents a county with a population of five hundred thousand or more persons.

B. The board established pursuant to subsection A, paragraph 5 of this section ends on July 1, 2024 pursuant to section 41-3103.

41-5355. Assets; cost of operation and administration; taxation

- A. Any monies, pledges or property issued or given to the Arizona finance authority, whether by appropriation, loan, gift or otherwise, constitute the assets of the Arizona finance authority.
- B. This state is not responsible for any obligation incurred by the authority.
- C. All costs and expenses of the authority shall be paid from bond proceeds of bonds issued by any industrial development authority established by the Arizona finance authority or other monies of the authority, and to the extent not prohibited by state or federal law or by contract, the monies of the greater Arizona development authority and the water infrastructure finance authority of Arizona that are available to pay the Arizona finance authority's costs and expenses.
- D. The authority and its income are exempt from taxation in this state.

A.R.S. Title 49. Chapter 8. Water Infrastructure Finance Program

Article 1. General Provisions

49-1201. Definitions

In this chapter, unless the context otherwise requires:

1. "Authority" means the water infrastructure authority of Arizona.
2. "Board" means the board of directors of the Arizona finance authority established by title 41, chapter 53, article 2.
3. "Bonds of a political subdivision" means bonds issued by a political subdivision as authorized by law.
4. "Clean water act" means the federal water pollution control act amendments of 1972 (P.L. 92-500; 86 Stat. 816), as amended by the water quality act of 1987 (P.L. 100-4; 101 Stat. 7).
5. "Drinking water facility" means a community water system or a nonprofit noncommunity water system as defined in the safe drinking water act of 1974 (P.L. 93-523; 88 Stat. 1661; P.L. 95-190; 91 Stat. 1393; P.L. 104-182; 110 Stat. 1613) that is located in this state. For purposes of this chapter, drinking water facility does not include water systems owned by federal agencies.
6. "Financial assistance loan repayment agreement" means an agreement to repay a loan provided to design, construct, acquire, rehabilitate or improve water or wastewater infrastructure, related property and appurtenances or a loan provided to finance a water supply development project.
7. "Indian tribe" means any Indian tribe, band, group or community that is recognized by the United States secretary of the interior and that exercises governmental authority within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent and including rights-of-way running through the reservation.
8. "Nonpoint source project" means a project designed to implement a certified water quality management plan.
9. "Political subdivision" means a county, city, town or special taxing district authorized by law to construct wastewater treatment facilities, drinking water facilities or nonpoint source projects.
10. "Safe drinking water act" means the federal safe drinking water act of 1974 (P.L. 93-523; 88 Stat. 1661; P.L. 95-190; 91 Stat. 1393; P.L. 104-182; 110 Stat. 1613), as amended in 1996.
11. "Technical assistance loan repayment agreement" means either of the following:

(a) An agreement to repay a loan provided to develop, plan and design water or wastewater infrastructure, related property and appurtenances. The agreement shall be for a term of not more than three years and the maximum amount that may be borrowed is limited to not more than five hundred thousand dollars.

(b) An agreement to repay a loan provided to develop, plan or design a water supply development project.

12. "Wastewater treatment facility" means a treatment works, as defined in section 212 of the clean water act, that is located in this state and that is designed to hold, cleanse or purify or to prevent the discharge of untreated or inadequately treated sewage or other polluted waters for purposes of complying with the clean water act.

13. "Water provider" means any of the following:

(a) A municipal water delivery system as defined in section 42-5301, paragraphs 1 and 3.

(b) A municipal water delivery system as defined in section 42-5301, paragraph 2, which has entered into a partnership with a city, town or county for a water supply augmentation plan.

(c) A county water augmentation authority established under title 45, chapter 11.

(d) A county water authority established under title 45, chapter 13.

(e) An Indian tribe.

(f) A community facilities district as established by title 48, chapter 4.

(g) For purposes of funding from the water supply development revolving fund pursuant to article 3 of this chapter only, a county that enters into an intergovernmental agreement or other formal written agreement with a city, town or other water provider regarding a water supply development project.

14. "Water supply development" means either of the following:

(a) The acquisition of water or rights to or contracts for water to augment the water supply of a water provider, including any environmental or other reviews, permits or plans reasonably necessary for that acquisition.

(b) The development of facilities, including any environmental or other reviews, permits or plans reasonably necessary for those facilities, for any of the following purposes:

(i) Conveyance, storage or recovery of water.

(ii) Reclamation and reuse of water.

(iii) Replenishment of groundwater.

49-1202. Water infrastructure finance authority of Arizona

The water infrastructure finance authority of Arizona is established in the Arizona finance authority. The Arizona finance authority board of directors shall govern the water infrastructure finance authority of Arizona.

49-1203. Powers and duties of authority; definition

A. The authority is a corporate and politic body and shall have an official seal that shall be judicially noticed. The authority may sue and be sued, contract and acquire, hold, operate and dispose of property.

B. The authority, through its board, may:

1. Issue negotiable water quality bonds pursuant to section 49-1261 for the following purposes:

(a) To generate the state match required by the clean water act for the clean water revolving fund and to generate the match required by the safe drinking water act for the drinking water revolving fund.

(b) To provide financial assistance to political subdivisions, Indian tribes and eligible drinking water facilities for constructing, acquiring or improving wastewater treatment facilities, drinking water facilities, nonpoint source projects and other related water quality facilities and projects.

2. Issue water supply development bonds for the purpose of providing financial assistance to water providers for water supply development purposes pursuant to sections 49-1274 and 49-1275.

3. Provide financial assistance to political subdivisions and Indian tribes from monies in the clean water revolving fund to finance wastewater treatment projects.

4. Provide financial assistance to drinking water facilities from monies in the drinking water revolving fund to finance these facilities.

5. Provide financial assistance to water providers from monies in the water supply development revolving fund to finance water supply development.

6. Guarantee debt obligations of, and provide linked deposit guarantees through third party lenders to:

(a) Political subdivisions that are issued to finance wastewater treatment projects.

(b) Drinking water facilities that are issued to finance these facilities.

(c) Water providers that are issued to finance water supply development projects.

7. Provide linked deposit guarantees through third party lenders to political subdivisions, drinking water facilities and water providers.

8. Apply for, accept and administer grants and other financial assistance from the United States government and from other public and private sources.

9. Enter into capitalization grant agreements with the United States environmental protection agency.

10. Adopt rules pursuant to title 41, chapter 6 governing the application for and awarding of wastewater treatment facility, drinking water facility and nonpoint source project financial assistance under this chapter, the administration of the clean water revolving fund and the drinking water revolving fund and the issuance of water quality bonds.

11. Subject to title 41, chapter 4, article 4, hire a director and staff for the authority.

12. Contract for the services of outside advisors, attorneys, consultants and aides reasonably necessary or desirable to allow the authority to adequately perform its duties.

13. Contract and incur obligations as reasonably necessary or desirable within the general scope of authority activities and operations to allow the authority to adequately perform its duties.

14. Assess financial assistance origination fees and annual fees to cover the reasonable costs of administering the authority and the monies administered by the authority. Any fees collected pursuant to this paragraph constitute governmental revenue and may be used for any purpose consistent with the mission and objectives of the authority.

15. Perform any function of a fund manager under the CERCLA Brownfields cleanup revolving loan fund program as requested by the department. The board shall perform any action authorized under this article on behalf of the Brownfields cleanup revolving loan fund program established pursuant to chapter 2, article 1.1 of this title at the request of the department. In order to perform these functions, the board shall enter into a written agreement with the department.

16. Provide grants, staff assistance or technical assistance in the form of loan repayment agreements and other professional assistance to political subdivisions, any county with a population of less than five hundred thousand persons, Indian tribes and community water systems in connection with the development or financing of wastewater, drinking water, water reclamation or related water infrastructure. Assistance provided under a technical assistance loan repayment agreement shall be in a form and under terms determined by the authority and shall be repaid not more than three years after the date that the monies are advanced to the applicant. The provision of technical assistance by the authority does not create any liability for the authority or this state regarding the design, construction or operation of any infrastructure project.

17. Provide grants, staff assistance or technical assistance in the form of loan repayment agreements and other professional assistance to water providers in connection with the planning or design of water supply development projects. A single grant shall not exceed one hundred thousand dollars. Assistance provided under a technical assistance loan repayment agreement shall be repaid not more than three years after the date that the monies are advanced to the applicant. The provision of technical assistance by the authority does not create any liability for the authority or this state regarding the design, construction or operation of any water supply development project.

C. The authority may adopt rules pursuant to title 41, chapter 6 governing the application for and awarding of water supply development fund project financial assistance under this chapter and the administration of the water supply development revolving fund.

D. The board shall deposit, pursuant to sections 35-146 and 35-147, any monies received pursuant to subsection B, paragraph 8 of this section in the appropriate fund as prescribed by the grant or other financial assistance agreement.

E. Disbursements of monies by the water infrastructure finance authority pursuant to a financial assistance agreement are not subject to title 41, chapter 23.

F. For the purposes of the safe drinking water act and the clean water act, the department of environmental quality is the state agency with primary responsibility for administration of this state's public water system supervision program and water pollution control program and, in consultation with other appropriate state agencies as appropriate, is the lead agency in establishing assistance priorities as prescribed by section 49-1224, subsection B, paragraph 3, section 49-1243, subsection A, paragraph 6 and section 49-1244, subsection B, paragraph 3.

G. For the purposes of this section, "CERCLA" has the same meaning prescribed in section 49-201.

49-1204. Annual audit and report

A. The board shall cause an audit to be made of the funds administered by the authority. The audit shall be conducted by a certified public accountant within one hundred twenty days after the end of the fiscal year. The board shall immediately file a certified copy of the audit with the auditor general.

B. The auditor general may make any further audits and examinations as deemed necessary and may take appropriate action relating to the audit or examination pursuant to title 41, chapter 7, article 10.1. If the auditor general takes no official action within twenty days after the audit is filed, the audit is deemed sufficient.

C. The board shall pay any fees and costs of the certified public accountant and auditor general under this section from the funds administered by the board.

D. Not later than January 1 of each year the board shall make an annual report of its activities, including a copy of the annual audit, to the governor, the president of the senate and the speaker of the house of representatives.

Article 2. Clean Water Revolving Fund, Drinking Water Revolving Fund and Hardship Grant Fund Financial Provisions

49-1221. Clean water revolving fund

A. The clean water revolving fund is established to be maintained in perpetuity consisting of:

1. Monies appropriated by the legislature for the clean water revolving fund.
2. Monies received for that purpose from the United States government, including capitalization grants.
3. Monies received from the issuance and sale of bonds under section 49-1261.
4. Monies received from political subdivisions or Indian tribes as loan repayments, interest and penalties.
5. Interest and other income received from investing monies in the fund.
6. Gifts, grants and donations received for that purpose from any public or private source.

B. Monies in the fund are continuously appropriated and are exempt from the provisions of section 35-190 relating to lapsing of appropriations.

49-1222. Clean water revolving fund; administration

A. The clean water revolving fund is established. The board shall administer the fund pursuant to rule and in compliance with the requirements of this article and the clean water act.

B. On notice from the board, the state treasurer shall invest and divest monies in the fund as provided by section 35-313, and monies earned from investment shall be credited to the fund.

C. The board shall use the monies and other assets in the fund solely for the purposes authorized by this article.

D. The board shall establish a capitalization grant transfer account and as many other accounts and subaccounts as required to administer the clean water revolving fund and any other fund that is administered by the board.

49-1223. Clean water revolving fund; purposes; capitalization grants

A. Monies in the clean water revolving fund may be used for the following purposes:

1. Making wastewater treatment facility and nonpoint source project loans to political subdivisions and Indian tribes under section 49-1225.
 2. Purchasing or refinancing debt obligations of political subdivisions or refinancing debt obligations of Indian tribes at or below market rates, provided that the debt obligation was issued after March 7, 1985 for the purpose of constructing, acquiring or improving wastewater treatment facilities or nonpoint source projects.
 3. Providing financial assistance to political subdivisions to purchase insurance for local wastewater treatment facility or nonpoint source project bond obligations.
 4. Paying the costs to administer the fund, but no more than four per cent of the aggregate of federal capitalization grants may be used to pay these costs. Monies from other sources may be used without limit to pay these costs.
 5. Funding other programs that are authorized for federal monies deposited in the fund including programs relating to nonpoint source discharges.
 6. Providing linked deposit guarantees through third party lenders by depositing monies with the lender on the condition that the lender make a loan on terms approved by the board, at a rate of return on the deposit approved by the board and the state treasurer and by giving the lender recourse against the deposit of loan repayments that are not made when due.
- B. If the monies pledged to secure water quality bonds become insufficient to pay the principal and interest on the water quality bonds that are guaranteed by the clean water revolving fund, the board shall direct the state treasurer to liquidate securities in the fund as may be necessary and apply those proceeds to make current all payments then due on the bonds. The state treasurer shall immediately notify the attorney general and auditor general of the insufficiency. The auditor general shall audit the circumstances surrounding the depletion of the fund and report the findings to the attorney general. The attorney general shall conduct an investigation and report those findings to the governor and the legislature.
- C. All proceeds of capitalization grants received from the United States pursuant to the clean water act shall be deposited in the capitalization grant transfer account and shall be used solely to provide financial assistance to political subdivisions and Indian tribes to construct, acquire, restore or rebuild wastewater treatment facilities, to purchase bond insurance or for any other purpose permitted by the clean water act including nonpoint source projects. All principal received on loan repayments made by borrowers pursuant to this section shall be deposited in the clean water revolving fund and shall be invested and used to provide additional financial assistance or shall be used to support the administration of the fund subject to the limits prescribed by the clean water act.

49-1224. Clean water revolving fund financial assistance; procedures; rules

- A. In compliance with any applicable requirements, a political subdivision may apply to the authority for, accept and incur indebtedness as a result of a loan, or other financial assistance under section 49-1223, subsection A, paragraphs 1, 2 and 3, from the clean water revolving fund

to support a wastewater treatment facility or nonpoint source project owned by the political subdivision. An Indian tribe may apply to the authority for, accept and incur indebtedness as a result of a loan or refinancing under section 49-1223, subsection A, paragraphs 1 and 2 from the clean water revolving fund to support a wastewater treatment facility or nonpoint source project owned by the Indian tribe. To qualify for financial assistance under this section the wastewater treatment facility or nonpoint source project must appear on this state's priority list pursuant to section 212 of the clean water act.

B. In compliance with any applicable requirements, the board shall:

1. Prescribe a simplified form and procedure to apply for and approve assistance.
2. Establish by rule criteria by which assistance will be awarded, including requirements for local participation in project costs, if deemed advisable. The criteria shall include a determination of the ability of the applicant to repay a loan according to the terms and conditions established by this section. At the option of the board, the existence of a current investment grade rating on existing debt of the applicant that is secured by the same revenues to be pledged to secure repayment under the loan repayment agreement constitutes evidence regarding ability to repay a loan.
3. Determine the order and priority of projects assisted under this section based on the merits of the application with respect to water quality issues.

C. The authority shall review on its merits each application received and shall inform the applicant of the board's determination within ninety days after receipt of a complete and correct application. If the application is not approved, the board shall notify the applicant, stating the reasons. If the application is approved, the board may condition the approval on assurances the board deems necessary to ensure that the financial assistance will be used according to law and the terms of the application.

49-1225. Clean water revolving fund financial assistance; terms

A. Financial assistance from the clean water revolving fund shall be evidenced by a financial assistance agreement or bonds of a political subdivision, delivered to and held by the authority.

B. A loan under this section:

1. Shall be repaid in not to exceed thirty years from the date incurred for wastewater treatment facility and nonpoint source loans.
2. Shall require that interest payments begin not later than the next date that either principal or interest must be paid by the authority to the holders of any of the authority's bonds that provided funding for the loan. The authority may provide that loan interest accruing during construction and one year beyond completion of the construction be capitalized in the loan.
3. Shall be conditioned on the establishment of a dedicated revenue source for repaying the loan.

4. To an Indian tribe shall either be conditioned on the establishment of a dedicated revenue source under the control of a tribally chartered corporation, or any other tribal entity that is subject to suit by the attorney general to enforce the loan contract, or be secured by assets that, in the event of default of the loan contract, are subject to execution by the attorney general without the waiver of any claim of sovereign immunity by the tribe.

C. The authority shall prescribe the rate of interest on loans made under this section, but the rate shall not exceed the prevailing market rate for similar types of loans. The authority may also provide for flexible interest rates and interest free loans under rules adopted by the authority. All financial assistance agreements or bonds of a political subdivision shall clearly specify the amount of principal and interest and any redemption premium that is due on any payment date. The authority shall not unilaterally amend a financial assistance agreement, loan or bond after its execution or implement any policy that modifies terms and conditions or affects a previously executed financial agreement, loan or bond. The authority shall not impose a redemption premium or interest payment beyond the date the principal is paid as a condition of refinancing or receiving prepayment on a financial assistance agreement, loan or bond if the financial assistance agreement, loan or bond did not originally contain a redemption premium or interest payment beyond the date the principal is paid.

D. The approval of a loan is conditioned on a written commitment by the political subdivision or Indian tribe to complete all applicable reviews and approvals and to secure all required permits in a timely manner.

E. All monies received from political subdivisions or Indian tribes as loan repayments, interest and penalties shall be deposited in the appropriate accounts of the clean water revolving fund.

F. A loan made to a political subdivision under this section after June 30, 2001 may be secured additionally by an irrevocable pledge of the shared state revenues due to the political subdivision for the duration of the loan as prescribed by a resolution of the authority's board. If the authority's board requires an irrevocable pledge of the shared state revenues for financial assistance loan repayment agreements after June 30, 2001, the authority's board shall enter into an intercreditor agreement with the greater Arizona development authority to define the allocation of shared state revenues in relation to individual borrowers. If a pledge is required and a political subdivision fails to make any payment due to the authority under its loan repayment agreement or bonds, the authority shall certify to the state treasurer and notify the governing body of the defaulting political subdivision that the political subdivision has failed to make the required payment and shall direct a withholding of state shared revenues as prescribed in subsection G of this section. The certificate of default shall be in the form determined by the authority, except that the certificate shall specify the amount required to satisfy the unpaid payment obligation of the political subdivision.

G. On receipt of a certificate of default from the authority, the state treasurer to the extent not expressly prohibited by law shall withhold the monies due to the defaulting political subdivision from the next succeeding distribution of monies pursuant to section 42-5029. In the case of a city or town, the state treasurer shall also withhold from the monies due to the defaulting city or town from the next succeeding distribution of monies pursuant to section 43-206 the amount specified

in the certificate of default and shall immediately deposit the monies in the fund. The state treasurer shall continue to withhold and deposit monies until the authority certifies to the state treasurer that the default has been cured. The state treasurer shall not withhold any amount that is necessary to make any required deposits then due for the payment of principal and interest on bonds of the political subdivision if so certified by the defaulting political subdivision to the state treasurer and the authority. The political subdivision shall not certify deposits as necessary for payment for bonds unless the bonds were issued before the date of the loan repayment agreement and the bonds were secured by a pledge of distribution made pursuant to sections 42-5029 and 43-206.

49-1226. Enforcement; attorney general

The attorney general may take actions necessary to enforce the loan contract and achieve repayment of loans provided by the authority pursuant to sections 49-1224 and 49-1225.

49-1241. Drinking water revolving fund

A. The drinking water revolving fund is established to be maintained in perpetuity consisting of:

1. Monies appropriated by the legislature for the drinking water revolving fund.
2. Monies received for that purpose from the United States government, including capitalization grants.
3. Monies received from the issuance and sale of bonds under section 49-1261.
4. Monies received from drinking water facilities as loan repayment, interest and penalties.
5. Interest and other income received from investing monies in the fund.
6. Gifts, grants and donations received for that purpose from any public or private source.

B. Monies in the fund are continuously appropriated and are exempt from the provisions of section 35-190 relating to lapsing of appropriations.

49-1242. Drinking water revolving fund; administration; capitalization grant transfer account

A. The drinking water revolving fund is established. The board shall administer the fund pursuant to rule and in compliance with this article and the safe drinking water act.

B. On notice from the board, the state treasurer shall invest and divest monies in the fund as provided by section 35-313, and monies earned from investment shall be credited to the fund.

C. The board shall use the monies and other assets in the fund solely for the purposes authorized by this article.

D. The board shall establish a capitalization grant transfer account and as many other accounts and subaccounts as required to administer the drinking water revolving fund and any other fund administered by the board.

49-1243. Drinking water revolving fund; purposes; capitalization grants

A. Monies in the drinking water revolving fund may be used for the following purposes:

1. Making drinking water facility loans including forgivable principal to political subdivisions of this state, Indian tribes under section 49-1245 and other eligible entities as determined by the board pursuant to the safe drinking water act.

2. Making drinking water facility loans under section 49-1244.

3. Purchasing or refinancing debt obligations of drinking water facilities at or below market rate if the debt obligation was issued after July 1, 1993 for the purpose of constructing, acquiring or improving drinking water facilities.

4. Providing financial assistance to drinking water facilities to purchase insurance for local drinking water facility bond obligations.

5. Paying the costs to administer the fund but not more than four per cent of the aggregate of federal capitalization grants may be used to pay these costs. Monies from other sources may be used without limit to pay these costs.

6. Funding other programs that are authorized pursuant to the safe drinking water act.

7. Providing linked deposit guarantees through third party lenders by depositing monies with the lender on the condition that the lender make a loan on terms approved by the board, at a rate of return on the deposit approved by the board and the state treasurer and by giving the lender recourse against the deposit of loan repayments that are not made when due.

B. If the monies pledged to secure water quality bonds become insufficient to pay the principal and interest on the water quality bonds guaranteed by the drinking water revolving fund, the board shall direct the state treasurer to liquidate securities in the fund as may be necessary and shall apply those proceeds to make current all payments then due on the bonds. The state treasurer shall immediately notify the attorney general and auditor general of the insufficiency. The auditor general shall audit the circumstances surrounding the depletion of the fund and report the findings to the attorney general. The attorney general shall conduct an investigation and report those findings to the governor and the legislature.

C. All proceeds of capitalization grants received from the United States pursuant to the safe drinking water act shall be deposited in the capitalization grant transfer account and shall be used solely to make loans to drinking water facilities to construct, acquire, restore or rebuild these facilities, to purchase bond insurance or for any other purpose permitted by the safe drinking water act. All principal received on loan repayments made by borrowers under this section shall be deposited in the drinking water revolving fund and shall be invested, used to provide financial

assistance or used to support the administration of the fund subject to the limits defined in the safe drinking water act.

49-1244. Drinking water revolving fund financial assistance; procedures

A. In compliance with any applicable requirements, a drinking water facility may apply to the authority for and accept and incur indebtedness as a result of a loan or any other financial assistance pursuant to section 49-1243, subsection A, paragraphs 2, 3 and 4 from the drinking water revolving fund to construct, acquire or improve a drinking water facility. To qualify for financial assistance pursuant to this section, the drinking water facility must appear on this state's priority list pursuant to the safe drinking water act.

B. In compliance with any applicable requirements, the board shall:

1. Prescribe a simplified form and procedure to apply for and approve assistance.
2. Establish by rule criteria by which assistance will be awarded, including requirements for local participation in project costs, if deemed advisable. The criteria shall include a determination of the ability of the applicant to repay a loan according to the terms and conditions established by this section. At the option of the board, the existence of a current investment grade rating on existing debt of the applicant that is secured by the same revenues to be pledged to secure repayment under the loan repayment agreement constitutes evidence regarding ability to repay a loan.
3. Determine the order and priority of projects assisted under this section based on the merits of the application with respect to water quality issues.

C. The authority shall review on its merits each application received and shall inform the applicant of the board's determination within ninety days after receipt of a complete and correct application. If the application is not approved, the board shall notify the applicant, stating the reasons. If the application is approved, the board may condition the approval on assurances the board deems necessary to ensure that the financial assistance will be used according to law and the terms of the application.

49-1245. Drinking water revolving fund financial assistance; terms

A. A loan from the drinking water revolving fund shall be evidenced by a loan repayment agreement or bonds of a political subdivision, delivered to and held by the authority.

B. A loan under this section:

1. Shall be repaid in not to exceed thirty years from the date incurred for drinking water facility loans.
2. Shall require that interest payments begin not later than the next date that either principal or interest must be paid by the authority to the holders of any of the authority's bonds that provided

funding for the loan. The authority may provide that loan interest accruing during construction and one year beyond completion of the construction be capitalized in the loan.

3. Shall be conditioned on the establishment of a dedicated revenue source for repaying the loan.

4. To an Indian tribe shall either be conditioned on the establishment of a dedicated revenue source under the control of a tribally chartered corporation, or any other tribal entity that is subject to suit by the attorney general to enforce the loan contract, or be secured by assets that, in the event of default of the loan contract, are subject to execution by the attorney general without the waiver of any claim of sovereign immunity by the tribe.

C. The authority shall prescribe the rate of interest on loans made under this section, but the rate shall not exceed the prevailing market rate for similar types of loans. The authority may also provide for flexible interest rates, interest free loans and forgivable principal under rules adopted by the authority. All financial assistance agreements or bonds of a political subdivision shall clearly specify the amount of principal and interest and any redemption premium that is due on any payment date. The authority shall not unilaterally amend the financial assistance agreement, loan or bond after its execution. The authority shall not impose a redemption premium as a condition of refinancing or receiving prepayment on a financial assistance agreement, loan or bond if the financial assistance agreement, loan or bond did not contain a redemption premium.

D. The approval of a loan is conditioned on a written commitment by the political subdivision or Indian tribe to complete all applicable reviews and approvals and to secure all required permits in a timely manner.

E. All monies received from political subdivisions or Indian tribes as loan repayments, interest and penalties shall be deposited in the appropriate accounts of the drinking water revolving fund.

F. A loan made to a political subdivision under this section after June 30, 2001 may be secured additionally by an irrevocable pledge of the shared state revenues due to the political subdivision for the duration of the loan as prescribed by a resolution of the authority's board. If the authority's board requires an irrevocable pledge of the shared state revenues for financial assistance loan repayment agreements after June 30, 2001, the authority's board shall enter into an intercreditor agreement with the greater Arizona development authority to define the allocation of shared state revenues in relation to individual borrowers. If a pledge is required and a political subdivision fails to make any payment due to the authority under its loan repayment agreement or bonds, the authority shall certify to the state treasurer and notify the governing body of the defaulting political subdivision that the political subdivision has failed to make the required payment and shall direct a withholding of state shared revenues as prescribed in subsection G of this section. The certificate of default shall be in the form determined by the authority, except that the certificate shall specify the amount required to satisfy the unpaid payment obligation of the political subdivision.

G. On receipt of a certificate of default from the authority, the state treasurer to the extent not expressly prohibited by law shall withhold the monies due to the defaulting political subdivision from the next succeeding distribution of monies pursuant to section 42-5029. In the case of a city

or town, the state treasurer shall also withhold from the monies due to the defaulting city or town from the next succeeding distribution of monies pursuant to section 43-206 the amount specified in the certificate of default and shall immediately deposit the monies in the fund. The state treasurer shall continue to withhold and deposit monies until the authority certifies to the state treasurer that the default has been cured. The state treasurer shall not withhold any amount that is necessary to make any required deposits then due for the payment of principal and interest on bonds of the political subdivision if so certified by the defaulting political subdivision to the state treasurer and the authority. The political subdivision shall not certify deposits as necessary for payment for bonds unless the bonds were issued before the date of the loan repayment agreement and the bonds were secured by a pledge of distribution made pursuant to sections 42-5029 and 43-206.

49-1246. Enforcement; attorney general

The attorney general may take actions necessary to enforce the loan contract and achieve repayment of loans provided by the authority pursuant to sections 49-1244 and 49-1245.

49-1261. Water quality bonds

A. The authority, through the board of directors, may issue negotiable water quality bonds in a principal amount that in its opinion is necessary to provide sufficient monies for financial assistance under this article, maintaining sufficient reserves to secure the bonds, to pay the necessary costs of issuing, selling and redeeming the bonds and to pay other expenditures of the authority incidental to and necessary and convenient to carry out the purposes of this article.

B. The board must authorize the bonds by resolution. The resolution shall prescribe:

1. The rate or rates of interest and the denominations of the bonds.
2. The date or dates of the bonds and maturity.
3. The coupon or registered form of the bonds.
4. The manner of executing the bonds.
5. The medium and place of payment.
6. The terms of redemption.

C. The bonds shall be sold at public or private sale at the price and on the terms determined by the board. All proceeds from the issuance of bonds shall be deposited in the appropriate accounts of the funds administered by the board.

D. The board shall publish a notice of its intention to issue bonds under this article for at least five consecutive days in a newspaper published in this state. The last day of publication must be at least ten days before issuing the bonds. The notice shall state the amount of the bonds to be sold and the intended date of issuance. A copy of the notice shall be hand delivered or sent, by

certified mail, return receipt requested, to the director of the department of administration on or before the last day of publication.

E. To secure any bonds authorized by this section, the board by resolution may:

1. Provide that bonds issued under this section may be secured by a first lien on all or part of the monies paid into the appropriate account or subaccount of the funds administered by the authority.
2. Pledge or assign to or in trust for the benefit of the holder or holders of the bonds any part or appropriate account or subaccount of the monies in the funds as is necessary to pay the principal and interest of the bonds as they come due.
3. Set aside, regulate and dispose of reserves and sinking funds.
4. Provide that sufficient amounts of the proceeds from the sale of the bonds may be used to fully or partly fund any reserves or sinking funds set up by the bond resolution.
5. Prescribe the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent to and the manner in which consent may be given.
6. Provide for payment from the proceeds of the sale of the bonds of all legal and financial expenses incurred by the board in issuing, selling, delivering and paying the bonds.
7. Do any other matters that in any way may affect the security and protection of the bonds.

F. The members of the board or any person executing the bonds are not personally liable for the payment of the bonds. The bonds are valid and binding obligations notwithstanding that before the delivery of the bonds any of the persons whose signatures appear on the bonds cease to be members of the board. From and after the sale and delivery of the bonds, they are incontestable by the board.

G. The board, out of any available monies, may purchase bonds, which may be canceled, at a price not exceeding either of the following:

1. If the bonds are then redeemable, the redemption price then applicable plus accrued interest to the next interest payment date.
2. If the bonds are not then redeemable, the redemption price applicable on the first date after purchase on which the bonds become subject to redemption plus accrued interest to that date.

49-1262. Water quality bonds; purpose

A. Water quality bonds may be issued to provide financial assistance, to provide matching state monies for the clean water revolving fund and the drinking water revolving fund, to increase the

capitalization of the clean water revolving fund and to increase the capitalization of the drinking water revolving fund to accomplish the purposes stated in sections 49-1223 and 49-1243. These bonds may be secured by any monies received or to be received in the clean water revolving fund and the drinking water revolving fund. Amounts in the clean water revolving fund may be used to cure defaults on loans made from the drinking water revolving fund and amounts in the drinking water revolving fund may be used to cure defaults on loans made from the clean water revolving fund to the extent permitted by applicable federal law.

B. Any pledge made under this article is valid and binding from the time when the pledge is made. The monies pledged and received to be placed in the appropriate fund are immediately subject to the lien of the pledge without any future physical delivery or further act, and any such lien of any pledge is valid or binding against all parties having claims of any kind in tort, contract or otherwise against the board regardless of whether the parties have notice of the lien. The official resolution or trust indenture or any instrument by which this pledge is created, when placed in the board's records, is notice to all concerned of the creation of the pledge, and those instruments need not be recorded in any other place.

C. The bonds issued under this section, their transfer and the income they produce are exempt from taxation by this state or by any political subdivision of this state.

49-1263. Bond obligations of the authority

Bonds issued under this article are obligations of the water infrastructure finance authority of Arizona, are payable only according to their terms and are not obligations general, special or otherwise of this state. The bonds do not constitute a legal debt of this state and are not enforceable against this state. Payment of the bonds is not enforceable out of any state monies other than the income and revenue pledged and assigned to, or in trust for the benefit of, the holder or holders of the bonds.

49-1264. Certification of bonds by attorney general

The board may submit any water quality bonds issued under this article to the attorney general after all proceedings for their authorization have been completed. On submission the attorney general shall examine and pass on the validity of the bonds and the regularity of the proceedings. If the proceedings comply with this article, and if the attorney general determines that, when delivered and paid for, the bonds will constitute binding and legal obligations of the board, the attorney general shall certify on the back of each bond, in substance, that it is issued according to the constitution and laws of this state.

49-1265. Water quality bonds as legal investments

Water quality bonds issued under this article are securities in which public officers and bodies of this state and of municipalities and political subdivisions of this state, all companies, associations and other persons carrying on an insurance business, all financial institutions, investment companies and other persons carrying on a banking business, all fiduciaries and all other persons who are authorized to invest in obligations of this state may properly and legally invest. The bonds are also securities that may be deposited with public officers or bodies of this state and

municipalities and political subdivisions of this state for purposes that require the deposit of state bonds or obligations.

49-1266. Agreement of state

This state pledges to and agrees with the holders of the bonds that this state will not limit or alter the rights vested in the water infrastructure finance authority of Arizona or any successor agency to collect the monies necessary to produce sufficient revenue to fulfill the terms of any agreements made with the holders of the bonds, or in any way impair the rights and remedies of the bondholders, until all bonds issued under this article, together with interest, including interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceedings by or on behalf of the bondholders, are fully met and discharged. The board as agent for this state may include this pledge and undertaking in its resolutions and indentures securing its bonds.

49-1267. Hardship grant fund

A. The hardship grant fund is established to be administered by the authority consisting of:

1. Monies received for that purpose from the United States government, including monies that are awarded to this state pursuant to title II of the clean water act and that are no longer obligated to the construction grants program.
2. Gifts, grants and other donations received for that purpose from public or private sources.
3. Monies appropriated by the legislature for the hardship grant program.

B. Monies in the fund are continuously appropriated and are exempt from the provisions of section 35-190 relating to lapsing of appropriations.

C. The board shall administer the fund pursuant to rule and in compliance with this section and guidance from the United States government.

D. Monies in the fund may be used for the following purposes:

1. Providing hardship grants to political subdivisions or Indian tribes to plan, design, acquire, construct or improve wastewater collection and treatment facilities.
2. Providing training and technical assistance related to the operation and maintenance of wastewater systems.

E. The board shall use the monies and other assets in the fund only for the purposes authorized by this article.

F. The board shall establish a hardship grant program account and as many other accounts and subaccounts as required to administer the hardship grant fund.

G. All proceeds of hardship grant program monies that are received from the United States shall be deposited in the hardship grant fund and shall be used only to provide grants and technical assistance to political subdivisions or Indian tribes to plan, design, acquire, construct or improve wastewater collection and treatment facilities.

49-1268. Hardship grant financial assistance

A. In compliance with any applicable requirements:

1. A political subdivision or Indian tribe may apply to the authority for and accept financial and technical assistance pursuant to section 49-1267, subsection C. To qualify for financial assistance pursuant to this section, the political subdivision's or Indian tribe's project must appear on this state's clean water revolving fund priority list.

2. The applicant must be a community in a rural area that complies with both of the following:

(a) The community has a population of three thousand persons or less as determined by the most recent United States decennial census.

(b) The community lacks centralized wastewater treatment or collection systems or needs improvements to its treatment systems.

B. In compliance with any applicable requirement, the board shall:

1. Prescribe a simplified form and procedure to apply for and approve assistance.

2. Establish by rule criteria by which assistance will be awarded including requirements for local participation in project cost, if deemed advisable.

3. Determine the order and priority of projects assisted pursuant to this section based on the merits of the application with respect to water quality issues.

C. The authority shall review on its merits each application received and shall inform the applicant of the board's determination within sixty days after receipt of a complete and correct application. If the application is not approved, the board shall notify the applicant, stating the reasons. If the application is approved, the board may condition the approval on those assurances that the board deems necessary to ensure that the financial assistance will be used according to law and the terms of the application.

D. The approval of financial assistance shall be conditioned on a written commitment by the political subdivision or Indian tribe to complete all applicable reviews and approvals and to secure all required permits in a timely manner.

49-1269. Short-term emergency loan agreements; conditions

A. The authority, through its board, may enter into short-term emergency loan agreements with political subdivisions or Indian tribes under the following conditions:

1. The term of the loan does not exceed one year.
2. The dollar amount of the loan does not exceed two hundred fifty thousand dollars for each borrower for each emergency event.
3. The purpose of the loan is to provide assistance for designing, redesigning, engineering, reengineering, constructing or reconstructing water or wastewater systems that have failed as the result of a disaster, a natural disaster or a catastrophic event.
4. The disaster, natural disaster or catastrophic event is memorialized in a declaration of emergency by the governor or the federal emergency management agency.

B. Subject to board approval, for any loan made pursuant to this section, the authority shall execute appropriate and binding legal agreements with the borrower that require repayment of monies from eligible sources of repayment. Notwithstanding any other statute, a loan may be made and an obligation to repay may be incurred pursuant to this section without a vote of the electors of the political subdivision or Indian tribe.

Article 3. Water Supply Development Revolving Fund Financial Provisions

49-1271. Water supply development revolving fund; legislative intent

A. The water supply development revolving fund is established to be maintained in perpetuity consisting of:

1. Monies received from the issuance and sale of water supply development bonds under section 49-1278.
2. Monies appropriated by the legislature to the water supply development revolving fund.
3. Monies received for water supply development purposes from the United States government.
4. Monies received from water providers as loan repayments, interest and penalties.
5. Interest and other income received from investing monies in the fund.
6. Gifts, grants and donations received for water supply development purposes from any public or private source.

B. Monies in the fund are continuously appropriated and are exempt from the provisions of section 35-190 relating to lapsing of appropriations.

C. The legislature finds that many water providers in this state, particularly in rural areas, lack access to sufficient water supplies to meet their long-term water demands and need financial assistance to construct water supply projects and obtain additional water supplies. It is the intent of the legislature that the water supply development revolving fund established by this section be used to provide financial assistance to these water providers under the terms set forth in this article.

49-1272. Water supply development revolving fund; administration

A. The board shall administer the water supply development revolving fund.

B. On notice from the board, the state treasurer shall invest and divest monies in the fund as provided by section 35-313, and monies earned from investment shall be credited to the fund.

C. Monies and other assets in the fund shall be used solely for the purposes authorized by this article.

49-1273. Water supply development revolving fund; purposes; limitation

A. Monies in the water supply development revolving fund may be used for the following purposes:

1. Making water supply development loans to water providers in this state under section 49-1274 for water supply development purposes.

2. Making loans or grants to water providers for the planning or design of water supply development projects. A single grant shall not exceed one hundred thousand dollars.

3. Purchasing or refinancing debt obligations of water providers at or below market rate if the debt obligation was issued for a water supply development purpose.

4. Providing financial assistance to water providers with bonding authority to purchase insurance for local bond obligations incurred by them for water supply development purposes.

5. Paying the costs to administer the fund.

6. Providing linked deposit guarantees through third party lenders by depositing monies with the lender on the condition that the lender make a loan on terms approved by the committee, at a rate of return on the deposit approved by the committee and the state treasurer and by giving the lender recourse against the deposit of loan repayments that are not made when due.

B. If the monies pledged to secure water supply development bonds issued pursuant to section 49-1278 become insufficient to pay the principal and interest on the water supply development bonds guaranteed by the water supply development revolving fund, the authority shall direct the state treasurer to liquidate securities in the fund as may be necessary and shall apply those proceeds to make current all payments then due on the bonds. The state treasurer shall immediately notify the attorney general and auditor general of the insufficiency. The auditor

general shall audit the circumstances surrounding the depletion of the fund and report the findings to the attorney general. The attorney general shall conduct an investigation and report those findings to the governor and the legislature.

C. Monies in the water supply development revolving fund shall not be used to provide financial assistance to a water provider, other than an Indian tribe, unless one of the following applies:

1. The board of supervisors of the county in which the water provider is located has adopted the provision authorized by section 11-823, subsection A.
2. The water provider is located in a city or town and the legislative body of the city or town has enacted the ordinance authorized by section 9-463.01, subsection O.
3. The water provider is located in an active management area established pursuant to title 45, chapter 2, article 2.
4. The water provider is located outside of an active management area and either of the following applies:
 - (a) The director of water resources has designated the water provider as having an adequate water supply pursuant to section 45-108.
 - (b) The water provider will use the financial assistance for a water supply development project and the director of water resources has determined pursuant to section 45-108 that there is an adequate water supply for all subdivided land that will be served by the project and for which a public report was issued after the effective date of this amendment to this section.

49-1274. Water supply development revolving fund financial assistance; procedures

A. In compliance with any applicable requirements, a water provider may apply to the authority for and accept and incur indebtedness as a result of a loan or any other financial assistance pursuant to section 49-1273 from the water supply development revolving fund for water supply development purposes. In compliance with any applicable requirements, a water provider may also apply to the authority for and accept grants, staff assistance or technical assistance for the planning or design of a water supply development project. A water provider that applies for and accepts a loan or other financial assistance under this article is not precluded from applying for and accepting a loan or other financial assistance under article 2 of this chapter or under any other law.

B. The authority, in consultation with the committee, shall:

1. Prescribe a simplified form and procedure to apply for and approve assistance.
2. Establish by rule criteria by which assistance will be awarded, including requirements for local participation in project costs, if deemed advisable. The criteria shall include:

(a) A determination of the ability of the applicant to repay a loan according to the terms and conditions established by this section. At the option of the committee, the existence of a current investment grade rating on existing debt of the applicant that is secured by the same revenues to be pledged to secure repayment under the loan repayment agreement constitutes evidence regarding ability to repay a loan.

(b) A determination of the applicant's legal capability to enter into a loan repayment agreement.

(c) A determination of the applicant's financial ability to construct, operate and maintain the project if it receives the financial assistance.

(d) A determination of the applicant's ability to manage the project.

(e) A determination of the applicant's ability to meet any applicable environmental requirements imposed by federal or state agencies.

(f) A determination of the applicant's ability to acquire any necessary regulatory permits.

3. Determine the order and priority of projects assisted under this section based on the merits of the application with respect to water supply development issues, including the following:

(a) Existing, near-term and long-term water demands of the water provider compared to the existing water supplies of the water provider.

(b) Existing and planned conservation and water management programs of the water provider, including watershed management or protection.

(c) Benefits of the project.

(d) The sustainability of the water supply to be developed through the project.

(e) The water provider's need for financial assistance.

(f) The cost-effectiveness of the project.

C. The committee shall review on its merits each application received and shall inform the applicant of the committee's determination within ninety days after receipt of a complete and correct application. If the application is not approved, the committee shall notify the applicant, stating the reasons. If the application is approved, the committee may condition the approval on assurances the committee deems necessary to ensure that the financial assistance will be used according to law and the terms of the application.

D. On approval of an application under this section by the committee, the authority shall use monies in the water supply development revolving fund to finance the project.

49-1275. Water supply development revolving fund financial assistance; terms

A. A loan from the water supply development revolving fund shall be evidenced by bonds, if the water provider has bonding authority, or by a financial assistance agreement, delivered to and held by the authority.

B. A loan under this section shall:

1. Be repaid not more than forty years after the date incurred.
2. Require that interest payments begin not later than the next date that either principal or interest must be paid by the authority to the holders of any of the authority's bonds that provided funding for the loan. If the loan is for construction of water supply development facilities, the authority may provide that loan interest accruing during construction and one year after completion of the construction be capitalized in the loan.
3. Be conditioned on the establishment of a dedicated revenue source for repaying the loan.

C. The authority, in consultation with the committee, shall prescribe the rate of interest on loans made under this section, but the rate shall not exceed the prevailing market rate for similar types of loans. The authority, on recommendations from the committee, may adopt rules that provide for flexible interest rates and interest free loans. All financial assistance agreements or bonds of a water provider shall clearly specify the amount of principal and interest and any redemption premium that is due on any payment date.

D. The approval of a loan is conditioned on a written commitment by the water provider to complete all applicable reviews and approvals and to secure all required permits in a timely manner.

E. A loan made to a water provider under this section may be secured additionally by an irrevocable pledge of any shared state revenues due to the water provider for the duration of the loan as prescribed by a resolution of the committee. If the committee requires an irrevocable pledge of the shared state revenues for financial assistance loan repayment agreements, the authority shall enter into an intercreditor agreement with the greater Arizona development authority to define the allocation of shared state revenues in relation to individual borrowers. If a pledge is required and a water provider fails to make any payment due to the authority under its loan repayment agreement or bonds, the authority shall certify to the state treasurer and notify the governing body of the defaulting water provider that the water provider has failed to make the required payment and shall direct a withholding of state shared revenues as prescribed in subsection F of this section. The certificate of default shall be in the form determined by the authority, except that the certificate shall specify the amount required to satisfy the unpaid payment obligation of the water provider.

F. On receipt of a certificate of default from the authority, the state treasurer, to the extent not expressly prohibited by law, shall withhold any monies due to the defaulting water provider from the next succeeding distribution of monies pursuant to section 42-5029. In the case of a city or town, the state treasurer shall also withhold from the monies due to the defaulting city or town from the next succeeding distribution of monies pursuant to section 43-206 the amount specified

in the certificate of default and shall immediately deposit the monies in the water supply development revolving fund. The state treasurer shall continue to withhold and deposit monies until the authority certifies to the state treasurer that the default has been cured. The state treasurer shall not withhold any amount that is necessary to make any required deposits then due for the payment of principal and interest on bonds of the water provider if so certified by the defaulting water provider to the state treasurer and the authority. The water provider shall not certify deposits as necessary for payment for bonds unless the bonds were issued before the date of the loan repayment agreement and the bonds were secured by a pledge of distribution made pursuant to sections 42-5029 and 43-206.

49-1276. Enforcement; attorney general

The attorney general may take actions necessary to enforce the loan contract and achieve repayment of loans provided by the authority pursuant to sections 49-1274 and 49-1275.

49-1277. Water supply development bonds

A. The authority may issue negotiable water supply development bonds in a principal amount necessary to provide sufficient monies for those projects approved under this article and including such items as maintaining sufficient reserves to secure the bonds, to pay the necessary costs of issuing, selling and redeeming the bonds and to pay other expenditures of the authority incidental to and necessary and convenient to carry out the purposes of this article. The board shall issue the bonds pursuant to subsections C and D.

B. The board shall authorize the bonds by resolution. The resolution shall prescribe:

1. The rate or rates of interest and the denominations of the bonds.
2. The date or dates of the bonds and maturity.
3. The coupon or registered form of the bonds.
4. The manner of executing the bonds.
5. The medium and place of payment.
6. The terms of redemption.

C. The bonds shall be sold at public or private sale at the price and on the terms determined by the board. All proceeds from the issuance of bonds shall be deposited in the appropriate accounts of the funds administered by the authority.

D. The board shall publish a notice of its intention to issue bonds under this article for at least five consecutive days in a newspaper published in this state. The last day of publication must be at least ten days before issuing the bonds. The notice shall state the amount of the bonds to be sold and the intended date of issuance. A copy of the notice shall be hand delivered or sent, by

certified mail, return receipt requested, to the director of the department of administration on or before the last day of publication.

E. To secure any bonds authorized by this section, the board by resolution may:

1. Provide that bonds issued under this section may be secured by a first lien on all or part of the monies paid into the appropriate account or subaccount of the funds administered by the authority.
2. Pledge or assign to or in trust for the benefit of the holder or holders of the bonds any part or appropriate account or subaccount of the monies in the funds as is necessary to pay the principal and interest of the bonds as they come due.
3. Set aside, regulate and dispose of reserves and sinking funds.
4. Provide that sufficient amounts of the proceeds from the sale of the bonds may be used to fully or partly fund any reserves or sinking funds set up by the bond resolution.
5. Prescribe the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent to and the manner in which consent may be given.
6. Provide for payment from the proceeds of the sale of the bonds of all legal and financial expenses incurred by the board in issuing, selling, delivering and paying the bonds.
7. Do any other matters that in any way may affect the security and protection of the bonds.

F. Any member of the board, any member of the committee or any person executing the bonds is not personally liable for the payment of the bonds. The bonds are valid and binding obligations notwithstanding that before the delivery of the bonds any of the persons whose signatures appear on the bonds cease to be members of the board. From and after the sale and delivery of the bonds, they are incontestable by the board and the committee.

G. The board, out of any available monies, may purchase bonds, which may be canceled, at a price not exceeding either of the following:

1. If the bonds are then redeemable, the redemption price then applicable plus accrued interest to the next interest payment date.
2. If the bonds are not then redeemable, the redemption price applicable on the first date after purchase on which the bonds become subject to redemption plus accrued interest to that date.

49-1278. Water supply development bonds; purpose

A. Water supply development bonds may be issued to provide financial assistance under this article and to increase the capitalization of the water supply development revolving fund to

accomplish the purposes stated in section 49-1273. These bonds may be secured by any monies received or to be received in the water supply development revolving fund. Amounts in the water supply development revolving fund may be used to cure defaults on loans made from the water supply development revolving fund to the extent otherwise permitted by law.

B. Any pledge made under this article is valid and binding from the time when the pledge is made. The monies pledged and received to be placed in the appropriate fund are immediately subject to the lien of the pledge without any future physical delivery or further act, and any such lien of any pledge is valid or binding against all parties having claims of any kind in tort, contract or otherwise against the board regardless of whether the parties have notice of the lien. The official resolution or trust indenture or any instrument by which this pledge is created, when placed in the board's records, is notice to all concerned of the creation of the pledge, and those instruments need not be recorded in any other place.

C. The bonds issued under this section, their transfer and the income they produce are exempt from taxation by this state or by any political subdivision of this state.

49-1279. Bond obligations of the authority

Bonds issued under this article are obligations of the water infrastructure finance authority of Arizona, are payable only according to their terms and are not general obligations, special obligations or otherwise of this state. The bonds do not constitute a legal debt of this state and are not enforceable against this state. Payment of the bonds is not enforceable out of any state monies other than the income and revenue pledged and assigned to, or in trust for the benefit of, the holder or holders of the bonds.

49-1280. Certification of bonds by attorney general

The board may submit any water supply development bonds issued under this article to the attorney general after all proceedings for their authorization have been completed. On submission, the attorney general shall examine and pass on the validity of the bonds and the regularity of the proceedings. If the proceedings comply with this article, and if the attorney general determines that, when delivered and paid for, the bonds will constitute binding and legal obligations of the board, the attorney general shall certify on the back of each bond, in substance, that it is issued according to the constitution and laws of this state.

49-1281. Water supply development bonds as legal investments

Water supply development bonds issued under this article are securities in which public officers and bodies of this state and of municipalities and political subdivisions of this state, all companies, associations and other persons carrying on an insurance business, all financial institutions, investment companies and other persons carrying on a banking business, all fiduciaries and all other persons who are authorized to invest in obligations of this state may properly and legally invest. The bonds are also securities that may be deposited with public officers or bodies of this state and municipalities and political subdivisions of this state for purposes that require the deposit of state bonds or obligations.

49-1282. Agreement of state

This state pledges to and agrees with the holders of the bonds that this state will not limit or alter the rights vested in the water infrastructure finance authority of Arizona or any successor agency to collect the monies necessary to produce sufficient revenue to fulfill the terms of any agreements made with the holders of the bonds, or in any way impair the rights and remedies of the bondholders, until all bonds issued under this article, together with interest, including interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceedings by or on behalf of the bondholders, are fully met and discharged. The board as agent for this state may include this pledge and undertaking in its resolutions and indentures securing its bonds.

WATER INFRASTRUCTURE FINANCE AUTHORITY (F-18-0107)

Title 18, Chapter 15, Article 1, General Provisions; Article 2, Clean Water Revolving Fund; Article 3, Drinking Water Revolving Fund; Article 4, Water Supply Development Revolving Fund; Article 5, Technical Assistance; Article 6, Hardship Grant Fund Program; Article 7, Interest Rate Setting and Forgivable Principal



GOVERNOR'S REGULATORY REVIEW COUNCIL

STAFF MEMORANDUM – FIVE-YEAR REVIEW REPORT

MEETING DATE: January 9, 2017

AGENDA ITEM: E-1

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

FROM: Council Staff

DATE : December 19, 2017

SUBJECT: WATER INFRASTRUCTURE FINANCE AUTHORITY (F-18-0107)
Title 18, Chapter 15, Article 1, General Provisions; Article 2, Clean Water Revolving Fund; Article 3, Drinking Water Revolving Fund; Article 4, Water Supply Development Revolving Fund; Article 5, Technical Assistance; Article 6, Hardship Grant Fund Program; Article 7, Interest Rate Setting and Forgivable Principal

COMMENTS ON THE FIVE-YEAR-REVIEW REPORT

Purpose of the Agency and Number of Rules in the Report

This five-year review report from the Water Infrastructure Finance Authority (Authority or WIFA) covers 40 rules in A.A.C. Title 18, Chapter 15. According to the Authority's website¹, "WIFA is authorized to finance the construction, rehabilitation and/or improvement of drinking water, wastewater, wastewater reclamation, and other water quality facilities/projects."

Article 1, related to general provisions, contains seven rules. Article 2, related to the Clean Water Revolving Fund, contains eight rules. Article 3, related to the Drinking Water Revolving Fund, contains eight rules. Article 4, related to the Water Supply Development Revolving Fund, contains eight rules. Article 5, related to technical assistance, contains five rules. Article 6, related to the Hardship Grant Fund Program, contains three rules. Article 7, related to interest rate setting and forgivable principal, contains one rule.

Proposed Action

The Authority intends to update many of its rules in the rulemaking being considered by the Council this month.

¹ See www.azwifa.gov

1. **Has the agency analyzed whether the rules are authorized by statute?**

Yes. The Authority cites to both general and specific authority for the rules.

2. **Summary of the agency's economic impact comparison and identification of stakeholders:**

The Authority provides financing for the construction, rehabilitation, and improvement of water facilities, including potable water, wastewater, and wastewater reclamation. The Authority primarily assists clients through low interest financial assistance such as the Clean Water Revolving Fund and the Drinking Water Revolving Fund. Due to state statutory changes and federal regulation changes, WIFA has identified several rules that require updating to address these deficiencies.

Key stakeholders include the Authority, Arizona Corporation Commission (ACC), Arizona Department of Environmental Quality (ADEQ), Arizona Department of Water Resources (ADWR), political subdivisions, and private water companies eligible to borrow from the Drinking Water Revolving Fund.

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

The Authority has determined that after a comprehensive rulemaking that it anticipates will take effect in March 2018, the rules will impose the least burden and costs to those who are regulated.

4. **Has the agency received any written criticisms of the rules over the last five years?**

No. The Authority indicates that it has not received any written criticisms of the rules over the last five years.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability, consistency with other rules and statutes, and effectiveness?**

Yes. The Authority indicates that, after amendment, the rules will be clear, concise, and understandable, will be consistent with other rules and statutes, and effective in achieving their objectives.

6. **Has the agency analyzed the current enforcement status of the rules?**

Yes. The Authority indicates that the rules are enforced as written.

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

No. The Authority indicates that the rules are not more stringent than corresponding federal law.

8. **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?**

No. The Authority indicates that the rules do not require a permit or license.

9. **Conclusion**

The Authority intends to update many of its rules in the rulemaking being considered by the Council this month. The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. Council staff recommends that the report be approved.

DOUGLAS A. DUCEY
Governor



TRISH INCOGNITO
Executive Director

Water Infrastructure Finance Authority of Arizona
Arizona's water and wastewater funding source
100 North 15th Avenue, Suite 103, Phoenix, Arizona 85007 | azwifa.gov | (602) 364-1310

November 21, 2017

Nicole Ong Colyer
Governor's Regulatory Review Council
100 N. 15th Avenue, Suite 402
Phoenix, Arizona 85007

Dear Ms. Ong Colver,

Attached is the Five-Year Review Report prepared by the Water Infrastructure Finance Authority (WIFA) of Arizona for A.A.C. Title 18, Chapter 15. The Report was initially due to be submitted to the Governor's Regulatory Review Council by August 31, 2017. On August 28, 2017, WIFA requested an extension of 120 days because WIFA is currently in the process of a rulemaking which affects all of its articles. Delaying the submittal of the Five-Year Review Report has allowed WIFA to prepare this report after the public comment period has closed and significant advancement has occurred on the ongoing rulemaking.

All rules have been reviewed as part of this five-year review. WIFA does not intend to let any rule expire. No rule review was rescheduled by the Council. WIFA is in compliance with A.R.S. § 41-1091.

The contact for this report is:

Trish Incognito, Executive Director
Water Infrastructure Finance Authority of Arizona
100 N. 15th Avenue, Suite 103
Phoenix, Arizona 85007
Telephone: (602) 364-1235
Fax: (602) 364-1327
E-mail: pincognito@azwifa.gov

Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink that reads "Trish Incognito".

Trish Incognito
Executive Director



**Water Infrastructure Finance Authority of Arizona
Five-Year Review Report**

A.A.C. Title 18, Chapter 15

Submitted to the

Governor's Regulatory Review Council

November 2017

Five-Year Review Report
A.A.C. Title 18, Chapter 15

Introduction

The Five-Year Review Report by the Water Infrastructure Finance Authority (WIFA) of Arizona for A.A.C. Title 18, Chapter 15 was initially due to be submitted to the Governor's Regulatory Review Council by August 31, 2017. On August 28, 2017, under A.R.S. § 41-1056(I), WIFA requested an extension of 120 days because WIFA is currently in the process of a rulemaking which affects all of its articles. Delaying the submittal of the Five-Year Review Report has allowed WIFA to prepare this report after the public comment period has closed and significant advancement has occurred on the ongoing rulemaking.

The Authority proposes to modify the existing rule so it supports and complements state statutory changes to A.R.S. Title 49, Chapter 8 and the addition of A.R.S. Title 41, Chapter 53. On August 6, 2016, Arizona House Bill 2666 (Fifty-second Legislature, Second Regular Session, 2016) became effective, transferring WIFA to the newly established Arizona Finance Authority (AFA) which is governed by a newly created AFA Board of Directors.

On December 14, 2016, WIFA requested an exemption from Executive Order 2017-02 to initiate a rulemaking. Approval to proceed with the rulemaking was received on February 20, 2017, and a Notice of Docket Opening was published on March 17, 2017. The Notice of Proposed Rulemaking was published on September 15, 2017. A public hearing was held on November 6, 2017, and the public comment period closed at 5 pm on November 7, 2017. No comments were received. WIFA will request that the rulemaking be considered by the Governor's Regulatory Review Council at its January 2018 meeting.

Major changes addressed in the rulemaking include:

1. The WIFA Board of Directors was dissolved by HB 2666. Governance of the Authority is now under the AFA Board of Directors. The addition of A.R.S. § 41-5356 established a WIFA Advisory Board which provides recommendations to the AFA Board. References to the now-defunct WIFA Board are found throughout WIFA's current rules. The rulemaking reflects the new governance of the Clean Water and Drinking Water Revolving Fund programs.
2. The Water Supply Development Revolving Fund (WSDRF) Committee was struck from statute by HB 2666. References to the now-defunct Water Supply Development Revolving Fund Committee are found throughout WIFA's current rules, particularly in Article 4 Water Supply Development Revolving Fund. This rulemaking updates the rules to reflect the new governance of the Water Supply Development Revolving Fund. References to the Committee have been removed and replaced with the AFA Board, as appropriate.
3. In its 2007 session, the Legislature established the WSDRF to be administered by WIFA in A.R.S. § 49-1271. Rules for the WSDRF were promulgated as part of WIFA's 2010 rulemaking, paralleling the rules for the Drinking Water Revolving

Fund program. This program is federally funded, and its rules are based on federal requirements which do not apply to the WSDRF, a state program. This rulemaking improves the rule by reducing the regulatory burden associated with non-applicable federal requirements currently applied to a state program.

4. Recent changes to the Clean Water Act (Water Resources Reform and Development Act of 2014) have affected the Clean Water Revolving Fund Program. These changes expanded the eligibilities of the types of recipients and the types of projects for the Clean Water Revolving Fund and allow for forgivable principal to be awarded. WIFA has evaluated these changes and revised its rules to provide flexibility so that WIFA may provide assistance to these expanded eligibilities, once WIFA's statutes are similarly revised.
5. Other clarifying edits have been made throughout A.A.C. Title 18. Chapter 15 to improve the comprehension and legal certainty of the rules.

A copy of the rules being reviewed in this report, i.e. the existing rules which became effective in 2010, is included in Attachment A.

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. §§ 49-1203(B)(10) and 49-1203(C)

Specific Statutory Authority: A.R.S. §§ 49-1224(B)(2), 49-1225(C), 49-1244(B)(2), 49-1245(C), 49-1268(B)(2), 49-1274(B)(2), 49-1275(C)

2. The objective of each rule:

ARTICLE 1. GENERAL PROVISIONS

R18-15-101. 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. The definitions are designed to facilitate understanding by those who use the rules.

R18-15-102. Types of Assistance Available: The objective of the rule is to describe the types of financial and technical assistance available from WIFA.

R18-15-103. Application Process: The objective of the rule is to specify how to apply for financial and technical assistance. It directs applicants to the appropriate rule for each type of assistance.

R18-15-104. General Financial Assistance Application Requirements: The objective of the rule is to establish the common application requirements for each of the revolving funds, and to inform applicants of the material required to be submitted with financial assistance applications.

R18-15-105. General Financial Assistance Conditions: The objective of the rule is to inform applicants of the general conditions of WIFA's financial assistance.

R15-15-106. Environmental Review: The objective of the rule is to describe the environmental review process for projects funded through the Clean Water and Drinking

Water State Revolving Funds. This review is a condition of the federal capitalization grants. The rule enables an applicant to anticipate steps in the evaluation process.

R18-15-107. Disputes: The objective of the rule is to advise parties of the process to file a letter of dispute and the actions taken thereafter.

ARTICLE 2. CLEAN WATER REVOLVING FUND

R18-15-201. Clean Water Revolving Fund Financial Assistance Eligibility Criteria: The objective of the rule is to specify who may apply for funding from the Clean Water Revolving Fund and the kinds of projects eligible for funding. This is to maximize efficient operation of the program by ensuring only eligible applicants submit applications and only eligible projects are submitted.

R18-15-202. Clean Water Revolving Fund Intended Use Plan: The objective of the rule is to describe the process used by the Authority to prepare the Intended Use Plan for the Fund, as required by federal regulations. The rule also specifies the public comment process for the Intended Use Plan.

R18-15-203. Clean Water Revolving Fund Project Priority List: The objective of the rule is to describe the process used by the Authority to prepare the Project Priority List, as required by federal regulations, as well as the process to update the list. This rule informs the applicant of the format to submit an application and the timing requirements, and enables an applicant to anticipate steps in the evaluation process.

R18-15-204. Clean Water Revolving Fund Project Priority List Ranking: The objective of the rule is to describe the process by which the Authority ranks applications, including the criteria used to score applications, and describes the process to break tied scores. This rule also describes how the Authority determines the subsidy on the interest rate for each application. This is to enable an applicant to submit an application with the correct information required to receive an appropriate score and ranking, resulting in the appropriate subsidy for the project.

R18-15-205. Clean Water Revolving Fund Fundable Range for Financial Assistance: The objective of the rule is to describe the how the Authority determines a project is ready to proceed for placement on the Fundable Range, a list of projects that are ready to proceed. This rule enables an applicant to anticipate steps in the evaluation process.

R18-15-206. Clean Water Revolving Fund Application for Financial Assistance: The objective of the rule is to establish procedures for presentation of a project to the Board of Directors for consideration.

R18-15-207. Clean Water Revolving Fund Application Review for Financial Assistance: The objective of the rule is to describe the evaluation of each application and the preparation of the due diligence analysis for financial assistance approval by the Board of Directors.

R18-15-208. Clean Water Revolving Fund Requirements: The objective of the rule is to inform applicants of the requirement to certify that no laws have been violated related to the funded projects.

ARTICLE 3. DRINKING WATER REVOLVING FUND

R18-15-301. Drinking Water Revolving Fund Financial Assistance Eligibility Criteria: The objective of the rule is to specify who may apply for funding from the Drinking Water Revolving Fund and the kinds of projects eligible for funding. This is to maximize efficient operation of the program by ensuring only eligible applicants submit applications and only eligible projects are submitted.

R18-15-302. Drinking Water Revolving Fund Intended Use Plan: The objective of the rule is to describe the process used by the Authority to prepare the Intended Use Plan for the Fund, as required by federal regulations. The rule also specifies the public comment process for the Intended Use Plan.

R18-15-303. Drinking Water Revolving Fund Project Priority List: The objective of the rule is to describe the process used by the Authority to prepare the Project Priority List, as required by federal regulations, as well as the process to update the list. This informs the applicant of the format to submit an application and the timing requirements, and enables an applicant to anticipate steps in the evaluation process.

R18-15-304. Drinking Water Revolving Fund Project Priority List Ranking: The objective of the rule is to describe the process by which the Authority ranks applications, including the criteria used to score applications, and describes the process to break tied scores. This rule also describes how the Authority determines the subsidy on the interest rate for each application. This is to enable an applicant to submit an application with the correct information required to receive an appropriate score and ranking, resulting in the appropriate subsidy for the project.

R18-15-305. Drinking Water Revolving Fund Fundable Range for Financial Assistance: The objective of the rule is to describe how the Authority determines a project is ready to proceed for placement on the Fundable Range, a list of projects that are ready to proceed. This rule enables an applicant to anticipate steps in the evaluation process.

R18-15-306. Drinking Water Revolving Fund Application for Financial Assistance: The objective of the rule is to establish procedures for presentation of a project to the Board of Directors for consideration.

R18-15-307. Drinking Water Revolving Fund Application Review for Financial Assistance: The objective of the rule is to describe the evaluation of each application and the preparation of the due diligence analysis for financial assistance approval by the Board of Directors.

R18-15-308. Drinking Water Revolving Fund Requirements: The objective of the rule is to inform applicants of the requirement to certify that no laws have been violated related to the funded projects.

ARTICLE 4. WATER SUPPLY DEVELOPMENT REVOLVING FUND

Note: Rules for the Water Supply Development Revolving Fund (WSDRF) were promulgated as part of WIFA's 2010 rulemaking, paralleling the rules in Article 3 for the Drinking Water Revolving Fund program. The Drinking Water Revolving Fund program is federally funded, and its rules are based on federal requirements which do not apply to the WSDRF, a state program. The proposed rulemaking eliminates the current rules R18-15-402 and R18-15-405 which mandated the federal requirement of an Intended Use Plan and Fundable Range for the WSDRF. The term "Project Priority List" in the renumbered Section R18-15-403, a condition of the Drinking Water Revolving Fund, has been replaced with the generic term, "project list" in the proposed rulemaking.

R18-15-401. Water Supply Development Revolving Fund Financial Assistance Eligibility Criteria: The objective of the rule is to specify who may apply for funding from the Water Supply Development Revolving Fund and the kinds of projects eligible for funding. This is to maximize efficient operation of the program by ensuring only eligible applicants submit applications and only eligible projects are submitted.

R18-15-402. Water Supply Development Revolving Fund Intended Use Plan: The objective of the rule is to describe the process used by the Authority to prepare the Intended Use Plan for the Fund. The rule also specifies the public comment process for the Intended Use Plan.

R18-15-403. Water Supply Development Revolving Fund Project Priority List: The objective of the rule is to describe the process used by the Authority to prepare the Project Priority List, as well as the process to update the list. This informs the applicant of the format to submit an application and the timing requirements, and enables an applicant to anticipate steps in the evaluation process.

R18-15-404. Water Supply Development Revolving Fund Project Priority List Ranking: The objective of the rule is to describe the process by which the Authority ranks applications, including the criteria used to score applications, and describes the process to break tied scores. This rule also describes how the Authority determines the subsidy on the interest rate for each application. This is to enable an applicant to submit an application with the correct information required to receive an appropriate score and ranking, resulting in the appropriate subsidy for the project.

R18-15-405. Water Supply Development Revolving Fund Fundable Range for Financial Assistance: The objective of the rule is to describe how the Authority determines a project is ready to proceed for placement on the Fundable Range, a list of projects that are ready to proceed. This rule enables an applicant to anticipate steps in the evaluation process.

R18-15-406. Water Supply Development Revolving Fund Application for Financial Assistance: The objective of the rule is to establish procedures for presentation of a project to the Board of Directors for consideration.

R18-15-407. Water Supply Development Revolving Fund Application Review for Financial Assistance: The objective of the rule is to describe the evaluation of each application and the preparation of the due diligence analysis for financial assistance approval by the Board of Directors.

R18-15-408. Water Supply Development Revolving Fund Requirements: The objective of the rule is to inform applicants of the requirement to certify that no laws have been violated related to the funded projects.

ARTICLE 5. TECHNICAL ASSISTANCE

The rules within Article 5 describe the technical assistance available and the required actions and process for applying for, evaluating applications for and receiving planning and design assistance from the CWRF, DWRF and WSDRF.

R18-15-501. Technical Assistance: The objective of the rule is to describe the types of technical assistance available from the Authority.

R18-15-502. Technical Assistance Intended Use Plan: The objective of the rule is to describe the process used by the Authority to prepare the Intended Use Plan(s) for technical assistance. The rule also specifies the public comment process for the Intended Use Plan.

R18-15-503. Clean Water Planning and Design Assistance Grants: The objective of the rule is to describe the technical assistance available and the required actions and process for applying for, evaluating applications, and receiving planning and design assistance from the CWRF.

R18-15-504. Drinking Water Planning and Design Assistance Grants: The objective of the rule is to describe the technical assistance available and the required actions and process for applying for, evaluating applications, and receiving planning and design assistance from the DWRF.

R18-15-505. Water Supply Development Planning and Design Assistance Grants: The objective of the rule is to describe the technical assistance available and the required actions and process for applying for, evaluating applications, and receiving planning and design assistance from the WSDRF.

ARTICLE 6. HARDSHIP GRANT FUND PROGRAM

Note: The rules within Article 6 describe Arizona's Hardship Grant Fund. Initial funding for the Hardship Grant Fund was provided as a one-time grant by EPA, and these grant funds have been allocated or committed to projects. WIFA does not anticipate receiving additional funds for the Hardship Grant Fund; however, this Article remains in the new

rulemaking to preserve WIFA's authority if additional future funds are received for the Hardship Grant Fund Program.

R18-15-601. Hardship Grant Fund Administration: The objective of the rule is to describe how the Authority will administer the Hardship Grant Fund.

R18-15-602. Hardship Grant Fund Financial Assistance: The objective of the rule is to specify who may apply for financial assistance from the Hardship Grant Fund and the process for awarding funding, when funds are available. This is to maximize efficient operation of the program by ensuring only eligible applicants submit applications and only eligible projects are submitted.

R18-15-603. Hardship Grant Fund Technical Assistance: The objective of the rule is to specify who may apply for technical assistance from the Hardship Grant Fund and the process for awarding funding, when funds are available. This is to maximize efficient operation of the program by ensuring only eligible applicants submit applications and only eligible projects are submitted.

ARTICLE 7. INTEREST RATE SETTING AND FORGIVABLE PRINCIPAL

R18-15-701. Interest Rate Setting and Forgivable Principal: The objective of the rule is to inform applicants how the Authority sets interest rates for the various funds and which applicants and projects may be eligible for forgivable principal.

3. Are the rules effective in achieving their objectives? Yes X No

In accordance with A.A.C. R1-6-301(B), WIFA reports that the following information is identical for all WIFA rules:

WIFA believes the rules are effective in achieving their objectives. WIFA bases this conclusion on the fact it is able to fulfill its statutory responsibilities.

4. Are the rules consistent with other rules and statutes? Yes X No

In accordance with A.A.C. R1-6-301(B), WIFA reports that the following information is identical for all WIFA rules:

These rules are consistent with the following federal statutes and rules: Title II and Title VI of the Clean Water Act (33 U.S.C. § 1292 and 33 U.S.C. §§ 1381-1387) (40 CFR Part 35 Subpart K); Section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j-12) (40 CFR Part 35 Subpart L).

The rules in 18 A.A.C. 15 are consistent with A.R.S. Title 49, Chapter 8; Title 41, Chapter 53, Article 2; and Title 41, Chapter 24, Article 1. These statutes are included in Attachment B.

5. Are the rules enforced as written? Yes X No

In accordance with A.A.C. R1-6-301(B), WIFA reports that the following information is identical for all WIFA rules:

All of the rules are being enforced, and there are no issues with enforcement.

6. **Are the rules clear, concise, and understandable?** Yes No

In accordance with A.A.C. R1-6-301(B), WIFA reports that the following information is identical for all WIFA rules:

As part of the comprehensive rulemaking which is expected to take effect in March 2018, WIFA has analyzed the clarity, conciseness and understandability of its rules and revised the rules where necessary. WIFA has determined, once the rulemaking takes effect, its rules will be clear, concise and understandable.

7. **Has the agency received written criticisms of the rules within the last five years?** Yes No

In accordance with A.A.C. R1-6-301(B), WIFA reports that the following information is identical for all WIFA rules:

WIFA has not received any written criticisms or analyses of the rule within the five years immediately preceding this five-year review report.

8. **Economic, small business, and consumer impact comparison:**

In accordance with A.A.C. R1-6-301(B), WIFA reports that the following information is identical for all WIFA rules:

As described in the Introduction, WIFA has initiated a rulemaking, expected to be effective in early 2018. As part of the rulemaking, WIFA has prepared a new Economic, Small Business and Consumer Impact Statement. The impacts associated with this new rulemaking are consistent with what was predicted in the last Economic, Small Business and Consumer Impact Statement. The rulemaking does not propose new or higher standards or new costs or fees that make it more difficult for communities to apply for and receive financial or technical assistance from WIFA. The Economic, Small Business and Consumer Impact Statement prepared for WIFA's 2010 rulemaking is included in Attachment C.

9. **Has the agency received any business competitiveness analyses of the rules?**

Yes No

In accordance with A.A.C. R1-6-301(B), WIFA reports that the following information is identical for all WIFA rules:

WIFA has not received any business competitiveness analyses of the rules.

10. **Has the agency completed the course of action indicated in the agency's previous five-year-review report?**

In accordance with A.A.C. R1-6-301(B), WIFA reports that the following information is identical for all WIFA rules:

In February 2010, WIFA initiated a rulemaking process to satisfy commitments stated in the 2007 five-year review report. The rulemaking, which significantly revised the entire Chapter, became effective on October 10, 2010. As a result, WIFA's 2012 five-year review report identified no necessary updates to rules.

11. **A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:**

In accordance with A.A.C. R1-6-301(B), WIFA reports that the following information is identical for all WIFA rules:

WIFA determined the probable benefits of the rules outweigh their probable costs and the rules impose the least burden and costs to regulated persons necessary to achieve the underlying regulatory objective.

12. **Are the rules more stringent than corresponding federal laws?**

Yes ___ No X

In accordance with A.A.C. R1-6-301(B), WIFA reports that the following information is identical for all WIFA rules:

These rules are no more stringent than corresponding federal law [Title II and Title VI of the Clean Water Act (33 U.S.C. § 1292 and 33 U.S.C. §§ 1381-1387) (40 CFR Part 35 Subpart K); Section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j-12) (40 CFR Part 35 Subpart L)].

Recent changes to the Clean Water Act (Water Resources Reform and Development Act of 2014) have affected the Clean Water Revolving Fund Program. These changes expanded the eligibilities of the types of recipients and the types of projects for the Clean Water Revolving Fund and allows for forgivable principal to be awarded. WIFA has evaluated these changes and revised its rules so that WIFA may provide assistance to these expanded eligibilities, once WIFA's statutes are similarly revised.

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

In accordance with A.A.C. R1-6-301(B), WIFA reports that the following information is identical for all WIFA rules:

These rules do not require the issuance of a regulatory permit, license or other agency authorization.

14. **Proposed course of action**

In accordance with A.A.C. R1-6-301(B), WIFA reports that the following information is identical for all WIFA rules:

As part of the comprehensive rulemaking which is expected to take effect in March 2018, all rules have been reviewed and are being amended as needed. WIFA has determined, once the rulemaking takes effect, its rules will be satisfactory. WIFA does not intend to amend the rules in 18 A.A.C. 15 in the foreseeable future.

Attachment A

A.A.C. Title 18, Chapter 15

Attachment B

A.R.S. Title 49, Chapter 8

A.R.S. Title 41, Chapter 53, Article 2

A.R.S. Title 41, Chapter 24, Article 1 (state grant code)

Attachment C

Economic, Small Business and Consumer Impact Statement (2010)

Attachment A

A.A.C. Title 18, Chapter 15

TITLE 18. ENVIRONMENTAL QUALITY**CHAPTER 15. WATER INFRASTRUCTURE FINANCE AUTHORITY OF ARIZONA****ARTICLE 1. GENERAL PROVISIONS**

Section

- R18-15-101. Definitions
- R18-15-102. Types of Assistance Available
- R18-15-103. Application Process
- R18-15-104. General Financial Assistance Application Requirements
- R18-15-105. General Financial Assistance Conditions
- R18-15-106. Environmental Review
- R18-15-107. Disputes
- R18-15-108. Repealed
- R18-15-109. Repealed
- R18-15-110. Repealed
- R18-15-111. Repealed
- R18-15-112. Renumbered
- R18-15-113. Renumbered

ARTICLE 2. CLEAN WATER REVOLVING FUND

Section

- R18-15-201. Clean Water Revolving Fund Financial Assistance Eligibility Criteria
- R18-15-202. Clean Water Revolving Fund Intended Use Plan
- R18-15-203. Clean Water Revolving Fund Project Priority List
- R18-15-204. Clean Water Revolving Fund Project Priority List Ranking
- R18-15-205. Clean Water Revolving Fund Fundable Range for Financial Assistance
- R18-15-206. Clean Water Revolving Fund Application for Financial Assistance
- R18-15-207. Clean Water Revolving Fund Application Review for Financial Assistance
- R18-15-208. Clean Water Revolving Fund Requirements

ARTICLE 3. DRINKING WATER REVOLVING FUND

Section

- R18-15-301. Drinking Water Revolving Fund Financial Assistance Eligibility Criteria
- R18-15-302. Drinking Water Revolving Fund Intended Use Plan
- R18-15-303. Drinking Water Revolving Fund Project Priority List
- R18-15-304. Drinking Water Revolving Fund Project Priority List Ranking
- R18-15-305. Drinking Water Revolving Fund Fundable Range for Financial Assistance
- R18-15-306. Drinking Water Revolving Fund Application for Financial Assistance
- R18-15-307. Drinking Water Revolving Fund Application Review for Financial Assistance
- R18-15-308. Drinking Water Revolving Fund Requirements

ARTICLE 4. WATER SUPPLY DEVELOPMENT REVOLVING FUND

Section

- R18-15-401. Water Supply Development Revolving Fund Financial Assistance Eligibility Criteria
- R18-15-402. Water Supply Development Revolving Fund Intended Use Plan
- R18-15-403. Water Supply Development Revolving Fund Project Priority List
- R18-15-404. Water Supply Development Revolving Fund Project Priority List Ranking

- R18-15-405. Water Supply Development Revolving Fund Fundable Range for Financial Assistance
- R18-15-406. Water Supply Development Revolving Fund Application for Financial Assistance
- R18-15-407. Water Supply Development Revolving Fund Application Review for Financial Assistance
- R18-15-408. Water Supply Development Revolving Fund Requirements

ARTICLE 5. TECHNICAL ASSISTANCE

Article 5, consisting of Sections R18-15-501 through R18-15-507, adopted by final rulemaking at 6 A.A.R. 2116, effective May 16, 2000 (Supp. 00-2).

Section

- R18-15-501. Technical Assistance
- R18-15-502. Technical Assistance Intended Use Plan
- R18-15-503. Clean Water Planning and Design Assistance Grants
- R18-15-504. Drinking Water Planning and Design Assistance Grants
- R18-15-505. Water Supply Development Planning and Design Assistance Grants
- R18-15-506. Repealed
- R18-15-507. Repealed
- R18-15-508. Repealed
- R18-15-509. Repealed
- R18-15-510. Repealed
- R18-15-511. Repealed

ARTICLE 6. HARDSHIP GRANT FUND PROGRAM

Article 6, consisting of Sections R18-15-601 through R18-15-603, adopted by final rulemaking at 6 A.A.R. 2116, effective May 16, 2000 (Supp. 00-2).

Section

- R18-15-601. Hardship Grant Fund Administration
- R18-15-602. Hardship Grant Fund Financial Assistance
- R18-15-603. Hardship Grant Fund Technical Assistance

ARTICLE 7. INTEREST RATE SETTING AND FORGIVABLE PRINCIPAL

Article 7, consisting of Section R18-15-701, adopted by final rulemaking at 6 A.A.R. 2116, effective May 16, 2000 (Supp. 00-2).

Section

- R18-15-701. Interest Rate Setting and Forgivable Principal

ARTICLE 1. GENERAL PROVISIONS**R18-15-101. Definitions**

In addition to the definitions prescribed in A.R.S. § 49-1201, the terms of this Chapter, unless otherwise specified, have the following meanings:

“Applicant” means a governmental unit, a non-point source project sponsor, a drinking water facility, or a water provider that is seeking financial assistance from the Authority under the provisions of this Chapter.

“Application” means a request for financial assistance submitted to the Board or Committee by an applicant.

“Authority” means the Water Infrastructure Finance Authority of Arizona pursuant to A.R.S. § 49-1201(1).

“Board” means the Board of Directors of the Authority pursuant to A.R.S. § 49-1201(2).

“Certified Water Quality Management Plan” means a plan prepared by a single representative organization designated by the Governor according to Section 208 of the Clean Water Act, 33 U.S.C. 1288.

“Clean Water Revolving Fund” means the fund established by A.R.S. § 49-1221.

“Committee” means the Water Supply Development Fund Committee as defined in A.R.S. § 49-1201(5).

“DBE” means EPA’s Disadvantaged Business Enterprise Program.

“Dedicated revenue source for repayment” means a source of revenue pledged by a borrower to repay the financial assistance.

“Department” means the Arizona Department of Environmental Quality.

“Disbursement” means the transfer of cash from a fund to a recipient.

“Discharge” has same meaning as prescribed in A.R.S. § 49-201(12).

“Drinking water facility” has same meaning as prescribed in A.R.S. § 49-1201(6).

“Drinking Water Revolving Fund” means the fund established by A.R.S. § 49-1241.

“EA” means an environmental assessment.

“EID” means an environmental information document.

“EIS” means an environmental impact statement.

“EPA” means the United States Environmental Protection Agency.

“Executive director” means the executive director of the Water Infrastructure Finance Authority of Arizona.

“Federal capitalization grant” means the assistance agreement by which the EPA obligates and awards funds allotted to the Authority for purposes of capitalizing the Clean Water Revolving Fund and the Drinking Water Revolving Fund.

“Financial assistance” means the use of monies for any of the purposes identified in R18-15-102(B).

“Financial assistance agreement” means any agreement that defines the terms for financial assistance provided according to this Chapter.

“FONSI” means a finding of no significant impact.

“Fundable range” means a subset of the project priority list that demarcates the ranked projects which have been determined to be ready to proceed and will be provided with a project finance application.

“Governmental unit” means a political subdivision or Indian tribe that may receive technical or financial assistance from the Authority pursuant to A.R.S. § 49-1203.

“Grant applicant” means a governmental unit, a nonpoint source project sponsor, a drinking water facility, or a water provider that is seeking a planning and design assistance grant from the Authority under the provisions of this Chapter.

“Grant application” means a request for a planning and design assistance grant submitted to the Board or Committee by a grant applicant in a format prescribed by the Authority.

“Impaired water” means a navigable water for which credible scientific data exists that satisfies the require-

ments of A.R.S. § 49-232 and that demonstrates that the water should be identified pursuant to 33 U.S.C. 1313(d) and the regulations implementing that statute.

“Intended Use Plan” means the document prepared by the Authority identifying the intended uses of Clean Water Revolving Fund and Drinking Water Revolving Fund federal capitalization grants according to R18-15-202 and R18-15-302, the intended uses of the Water Supply Development Revolving Fund according to R18-15-402, and the intended uses of funds for technical assistance according to R18-15-502.

“Master priority list” means the master priority list for Capacity Development developed by the Arizona Department of Environmental Quality under A.A.C. R18-4-803, which ranks public water systems according to their need for technical assistance.

“Onsite system” means a conventional septic tank system or alternative system that is installed at a site to treat and dispose of wastewater of predominantly human origin that is generated at that site.

“Planning and design assistance grant” means a technical assistance grant that provides for the use of monies for a specific water, wastewater treatment facility, or water supply delivery system for planning or design to facilitate the design, construction, acquisition, improvement, or consolidation of a drinking water project, wastewater project, or water supply development project.

“Planning and design assistance grant agreement” means any agreement that defines the terms for a technical assistance grant provided according to Article 5 of this Chapter.

“Planning and design loan repayment agreement” means the same as technical assistance loan repayment agreement and has the meaning at A.R.S. § 49-1201(12).

“Priority value” means the total points a project received during the evaluation of its project priority list application.

“Professional assistance” means the use of monies by or on behalf of the Authority to conduct research, conduct studies, conduct surveys, develop guidance, and perform related activities that benefit more than one water or wastewater treatment facility.

“Project” means any distinguishable segment or segments of a wastewater treatment facility, drinking water facility, water supply delivery system, or nonpoint source pollution control that can be bid separately and for which financial or technical assistance is being requested or provided.

“Project priority list” means the document developed by the Board or Committee according to R18-15-203, R18-15-303, or R18-15-403 that ranks projects according to R18-15-204, R18-15-304, or R18-15-404.

“Recipient” means an applicant who has entered into a financial assistance agreement or planning and design assistance grant agreement with the Authority.

“ROD” means a record of decision.

“Staff assistance” means the use of monies for a specific water or wastewater treatment facility to assist that system to improve its operations or assist a specific water provider with a water supply delivery system. For water providers, staff assistance is limited to planning and

Water Infrastructure Finance Authority of Arizona

design of water supply development projects according to A.R.S. § 49-1203(B)(17).

“Technical assistance” means assistance provided by the Authority in the form of staff assistance, professional assistance and planning and design assistance grants.

“Wastewater treatment facility” has the same meaning as prescribed in A.R.S. § 49-1201(13).

“Water provider” has the same meaning as prescribed in A.R.S. § 49-1201(14).

“Water supply development” has the same meaning as prescribed in A.R.S. § 49-1201(15).

“Water Supply Development Revolving Fund” means the fund established by A.R.S. § 49-1271.

Historical Note

Adopted effective September 18, 1997 (Supp. 97-3). Amended effective June 4, 1998 (Supp. 98-2). Amended by final rulemaking at 6 A.A.R. 2116, effective May 16, 2000 (Supp. 00-2). Amended by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Amended by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

R18-15-102. Types of Assistance Available

- A.** The Authority may provide financial and technical assistance under the following programs if the Board or Committee, as applicable, determines funding is available:
1. Clean Water Revolving Fund Program and Clean Water Technical Assistance Program,
 2. Drinking Water Revolving Fund Program and Drinking Water Technical Assistance Program,
 3. Water Supply Development Revolving Fund Program and Water Supply Development Technical Assistance Program, and
 4. Hardship Grant Fund Program.
- B.** Financial assistance available from the Authority includes any of the following:
1. Financial assistance loan repayment agreements;
 2. Planning and design loan repayment agreements in accordance with A.R.S. § 49-1203(16) and (17);
 3. The purchase or refinancing of local debt obligations;
 4. The guarantee or purchase of insurance for local obligations to improve credit market access or reduce interest rates;
 5. Short-term emergency loan agreements in accordance with A.R.S. § 49-1269; and
 6. Providing linked deposit guarantees through third-party lenders as authorized by A.R.S. §§ 49-1223(A)(6), 49-1243(A)(6), and 49-1273(A)(6).
- C.** Technical assistance available from the Authority includes planning and design assistance grants, staff assistance, and professional assistance. Technical assistance may be offered at the Board’s or Committee’s discretion and shall be identified in the annual Technical Assistance Intended Use Plan as described in R18-15-502.

Historical Note

Adopted effective September 18, 1997 (Supp. 97-3). Former R18-15-102 renumbered to R18-15-103; new Section made by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

R18-15-103. Application Process

- A.** An applicant requesting assistance shall apply to the Authority for each type of financial or technical assistance described in R18-15-102 on forms provided by the Authority.

- B.** An applicant seeking financial assistance through the Clean Water Revolving Fund Program shall apply for financial assistance according to Articles 1 and 2 of this Chapter.
- C.** An applicant seeking financial assistance through the Drinking Water Revolving Fund Program shall apply for financial assistance according to Articles 1 and 3 of this Chapter.
- D.** An applicant seeking financial assistance through the Water Supply Development Revolving Fund Program shall apply for financial assistance according to Articles 1 and 4 of this Chapter.
- E.** An applicant seeking technical assistance available through the technical assistance programs shall apply for technical assistance according to Articles 1 and 5 of this Chapter.
- F.** An applicant shall mark any confidential information with the words “confidential information” on each page of the material containing such information. A claim of confidential information may be asserted for a trade secret or information that, upon disclosure, would harm a person’s competitive advantage. The Authority shall not disclose any information determined confidential. Upon receipt of a claim of confidential information, the Authority shall make one of the following written determinations:

1. The designated information is confidential and the Authority shall not disclose the information except to those individuals deemed by the Authority to have a legitimate interest.
2. The designated information is not confidential.
3. Additional information is required before a final confidentiality determination can be made.

Historical Note

Adopted effective September 18, 1997 (Supp. 97-3). Amended by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Section repealed; new R18-15-103 renumbered from R18-15-102 and amended by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

R18-15-104. General Financial Assistance Application Requirements

- A.** The applicant shall provide in the financial assistance application the information in subsections (B), (C), (D), and (E).
- B.** The applicant shall demonstrate the applicant is legally authorized to enter into long-term indebtedness, and is legally authorized to pledge a dedicated revenue source for repayment under subsection (C).
1. If the applicant is a political subdivision and the long-term indebtedness is authorized through an election, the applicant shall provide all of the following:
 - a. One copy of the sample election ballot and election pamphlet,
 - b. One copy of the governing body resolution calling for the election, and
 - c. Official evidence of the election results following the election.
 2. If the applicant is a political subdivision and the long-term indebtedness is not required by law to be authorized through an election, the applicant shall provide one copy of the approved governing body resolution authorizing the long-term indebtedness.
 3. If the applicant is a political subdivision and the long-term indebtedness is authorized through a special taxing district creation process, the applicant shall provide one copy of all final documentation, notices, petitions, and related information authorizing the long-term indebtedness.

4. If the applicant is regulated by the Arizona Corporation Commission, the applicant shall provide evidence that the financial assistance from the Authority to the applicant is authorized by the Arizona Corporation Commission.
 5. All other applicants shall demonstrate that a majority of the beneficiaries consent to the terms and conditions of the financial assistance. The Authority shall assist each applicant to devise a process by which this consent is documented.
- C.** The applicant shall identify a dedicated revenue source for repayment of the financial assistance and demonstrate that the dedicated revenue source is sufficient to repay the financial assistance.
1. The applicant shall provide the following information:
 - a. Amount of the financial assistance requested;
 - b. One copy of each financial statement, audit, or comprehensive financial statement from at least the previous three fiscal years;
 - c. One copy of each budget, business plan, management plan, or financial plan from the previous and current fiscal years;
 - d. One copy of the proposed budget, business plan, management plan, or financial plan for the next fiscal year;
 - e. A projection of revenue anticipated to be collected over the next five fiscal years from the dedicated revenue source for repayment;
 - f. A summary of current fees for drinking or wastewater services including, as applicable, any resolutions passed by the governing body of a political subdivision; and
 - g. Copies of documentation relating to outstanding indebtedness pledged to the dedicated source for repayment, including official statements, financial assistance agreements, and amortization schedules.
 2. If any of the required information listed in subsection (C)(1) is not available, the Authority may assist the applicant in determining alternative documentation to support the applicant's financial capability.
 3. The Authority may ask for additional financial information as necessary to evaluate the applicant's financial capability.
- D.** The applicant shall demonstrate the applicant is technically capable to construct, operate, and maintain the proposed project.
1. The applicant shall provide the following information:
 - a. An estimate of the project costs in as much detail as possible, including an estimate of applicable planning, design, construction, and material costs;
 - b. The number of connections to be served by the proposed project;
 - c. The most recent version of the applicant's capital improvement plan or other plan explaining proposed infrastructure investments;
 - d. One copy of each feasibility study, engineering report, design memorandum, set of plans and specifications, and other technical documentation related to the proposed project and determined applicable by the Authority for the stage of project completion;
 - e. Copies of resumés, biographies, or related information of the certified operators, system employees, or contractors employed by the applicant to operate and maintain the existing facilities and the proposed project;
 - f. A description of the service area, including maps; and
 - g. A description of the existing physical facilities.
 2. The Authority may ask for additional information as necessary to evaluate the applicant's technical capability.
- E.** The applicant shall demonstrate the applicant is capable to manage the proposed project.
1. The applicant shall provide the following information:
 - a. Years of experience and related information regarding the owners, managers, chief elected officials, and governing body members of the applicant; and
 - b. A list of professional and outside services retained by the applicant and the proposed project.
 2. If any of the required information listed in subsection (E)(1) is not available, the Authority may assist the applicant in determining alternative documentation to support the applicant's managerial capability.
 3. The Authority may ask for additional information as necessary to evaluate the applicant's managerial capability.

Historical Note

Adopted effective September 18, 1997 (Supp. 97-3).
Amended by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Amended by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

R18-15-105. General Financial Assistance Conditions

- A.** The Authority shall not execute a financial assistance agreement with an applicant until the applicant provides all documentation specified by the Authority and the requirements of R18-15-106 are met. Projects under the Water Supply Development Revolving Fund Program are not subject to the requirements of R18-15-106. For planning and design loans that include an environmental information document or an environmental impact statement, the Authority may execute a financial assistance agreement with an applicant prior to the completion of the conditions of R18-15-106, provided that the applicant meets the requirements of R18-15-106 before proceeding with the design of the selected alternative.
- B.** The documentation required prior to execution of the financial assistance agreement shall at a minimum include:
1. One copy of the governing body resolution approving the execution of the financial assistance agreement,
 2. A project budget, and
 3. An estimated disbursement schedule.
- C.** The financial assistance agreement between the recipient and the Authority shall at a minimum specify:
1. Rates of interest, fees, and any costs as determined by the Authority;
 2. Project details;
 3. The maximum amount of principal and interest due on any payment date;
 4. Debt service coverage requirements;
 5. Reporting requirements;
 6. Debt service reserve fund and repair and replacement reserve fund requirements;
 7. The dedicated source for repayment and pledge;
 8. The requirement that the recipient comply with applicable federal, state and local laws;
 9. A schedule for repayment; and
 10. Any other agreed-upon conditions.
- D.** The Authority may require a recipient to pay a proportionate share of the expenses of the Authority's operating costs.
- E.** The recipient shall maintain the project account in accordance with generally accepted government accounting standards. After reasonable notice by the Authority, the recipient shall make available any project records reasonably required to

Water Infrastructure Finance Authority of Arizona

determine compliance with the provisions of this Chapter and the financial assistance agreement.

- F.** The Authority shall release loan proceeds subject to a disbursement request if the request is consistent with the financial assistance agreement and the disbursement schedule.
1. The applicant shall submit each disbursement request on the forms provided by the Authority. Each disbursement request shall include a certification and signature document, a cost-incurred report, and a DBE report. The Authority shall not process a disbursement until the applicant provides a completed disbursement form.
 2. The applicant shall include copies of invoices, canceled checks, or other documents that show proof of eligible costs incurred with each disbursement request.
- G.** The recipient shall make repayments according to an agreed-upon schedule in the financial assistance agreement. The Authority may charge a late fee for any loan repayment not paid when due. The Authority may refer any loan repayment past due to the Office of the Attorney General for appropriate action.

Historical Note

Adopted effective September 18, 1997 (Supp. 97-3).
Amended by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Section repealed; new Section made by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

R18-15-106. Environmental Review

- A.** The Authority shall conduct an environmental review according to this Section for impacts of the design or construction of water infrastructure. Projects under the Water Supply Development Revolving Fund Program are not subject to the requirements of R18-15-106. As part of the application process, the Authority shall request information from the applicant to conduct an environmental review consistent with 40 CFR 35.3140 and 40 CFR 35.3580. The Authority shall determine whether the project meets the criteria for categorical exclusion under subsections (B) and (C), or whether the project requires the preparation of an environmental assessment (EA) or an environmental impact statement (EIS) to identify and evaluate its environmental impacts.
- B.** A project may be categorically excluded from environmental review if the project fits within a category that is eligible for exclusion and the project does not involve any of the extraordinary circumstances listed in subsection (C). If, based on the application and other information submitted by the applicant, the Authority determines that a categorical exclusion from an environmental review is warranted, the project is exempt from the requirements of this Section, except for the public notice and participation requirements in subsection (J). The Authority may issue a categorical exclusion if information and documents demonstrate that the project qualifies under one or more of the following categories:
1. Any project relating to existing infrastructure systems that involves minor upgrading, minor expansion of system capacity, rehabilitation (including functional replacement) of the existing system and system components, or construction of new minor ancillary facilities adjacent to or on the same property as existing facilities. This category does not include projects that:
 - a. Involve new or relocated discharges to surface water or groundwater,
 - b. Will likely result in the substantial increase in the volume or the loading of pollutant to the receiving water,
 - c. Will provide capacity to serve a population 30% greater than the existing population,
 - d. Are not supported by the state or other regional growth plan or strategy, or
 - e. Directly or indirectly involve or relate to upgrading or extending infrastructure systems primarily for the purposes of future development.
 2. Any clean water project in unsewered communities involving the replacement of existing onsite systems, providing the new onsite systems do not result in substantial increases in the volume of discharge or the loadings of pollutants from existing sources, or relocate an existing discharge.
- C.** The Authority shall deny a categorical exclusion if any of the following extraordinary circumstances apply to the project:
1. The project is known or expected to have potentially significant adverse environmental impacts on the quality of the human environment either individually or cumulatively over time.
 2. The project is known or expected to have disproportionately high and adverse human health or environmental effects on any community, including minority communities, low-income communities, or federally-recognized Indian tribal communities.
 3. The project is known or expected to significantly affect federally listed threatened or endangered species or their critical habitat.
 4. The project is known or expected to significantly affect national natural landmarks or any property with nationally significant historic, architectural, prehistoric, archeological, or cultural value, including but not limited to, property listed on or eligible for the Arizona or National Registers of Historic Places.
 5. The project is known or expected to significantly affect environmentally important natural resource areas such as wetlands, floodplains, significant agricultural lands, aquifer recharge zones, wild and scenic rivers, and significant fish or wildlife habitat.
 6. The project is known or expected to cause significant adverse air quality effects.
 7. The project is known or expected to have a significant effect on the pattern and type of land use or growth and distribution of population, including altering the character of existing residential areas, or may not be consistent with state or local government, or federally-recognized Indian tribe approved land use or federal land management plans.
 8. The project is known or expected to cause significant public controversy about a potential environmental impact of the proposed action.
 9. The project is known or expected to be associated with providing financial assistance to a federal agency through an interagency agreement for a project that is known or expected to have potentially significant environmental impacts.
 10. The project is known or expected to conflict with federal, state, or local government, or federally-recognized Indian tribe environmental, resource-protection, or land-use laws or regulations.
- D.** If the Authority denies the categorical exclusion under subsection (C), the Authority shall conduct an EA according to subsection (E), unless the Authority decides to prepare an EIS according to subsections (F) and (G) without first undertaking an EA. If the Authority conducts an EA, the applicant shall:
1. Prepare an environmental information document (EID) in a format prescribed by the Authority. The EID shall be of

- sufficient scope to undertake an environmental review and to allow development of an EA under subsection (E); or
2. Provide documentation, upon Authority approval, in another format if the documentation is of sufficient scope to allow the development of an EA under subsection (E).
- E.** The Authority shall conduct the EA that includes:
1. A brief discussion of:
 - a. The need for the project;
 - b. The alternatives, including a no action alternative;
 - c. The affected environment, including baseline conditions that may be impacted by the project and alternatives;
 - d. The environmental impacts of the project and alternatives, including any unresolved conflicts concerning alternative uses of available resources; and
 - e. Other applicable environmental laws.
 2. A listing or summary of any coordination or consultation undertaken with any federal agency, state or local government, or federally-recognized Indian tribe regarding compliance with applicable laws and executive orders;
 3. Identification and description of any mitigation measures considered, including any mitigation measures that must be adopted to ensure the project will not have significant impacts; and
 4. Incorporation of documents by reference, if appropriate, including the EID.
- F.** Upon completion of the EA required by subsection (E), the Authority shall determine whether an environmental impact statement (EIS) is necessary.
1. The Authority shall prepare or direct the applicant to prepare an EIS in the manner prescribed in subsection (G) if any of the following conditions exist.
 - a. The project would result in a discharge of treated effluent from a new or modified existing facility into a body of water and the discharge is likely to have a significant effect on the quality of the receiving water.
 - b. The project is likely to directly, or through induced development, have significant adverse effect upon local ambient air quality or local ambient noise levels.
 - c. The project is likely to have significant adverse effects on surface water reservoirs or navigation projects.
 - d. The project would be inconsistent with state or local government, or federally-recognized Indian tribe approved land use plans or regulations, or federal land management plans.
 - e. The project would be inconsistent with state or local government, or federally-recognized Indian tribe environmental, resource-protection, or land-use laws and regulations for the protection of the environment.
 - f. The project is likely to significantly affect the environment through the release of radioactive, hazardous, or toxic substances, or biota.
 - g. The project involves uncertain environmental effects or highly unique environmental risks that are likely to be significant.
 - h. The project is likely to significantly affect national natural landmarks or any property on or eligible for the Arizona or National Registers of Historic Places.
 - i. The project is likely to significantly affect environmentally important natural resources such as wetlands, significant agricultural lands, aquifer recharge zones, wild and scenic rivers, and significant fish or wildlife habitat.
 - j. The project in conjunction with related federal, state, or local government, or federally-recognized Indian tribe projects is likely to produce significant cumulative impacts.
 - k. The project is likely to significantly affect the pattern and type of land use or growth and distribution of population, including altering the character of existing residential areas.
 - l. The project is a new regional wastewater treatment facility or water supply system for a community with a population greater than 100,000.
 - m. The project is an expansion of an existing wastewater treatment facility that will increase existing discharge to an impaired water by more than 10 million gallons per day (mgd).
 2. The Authority may issue a finding of no significant impact (FONSI) if the EA supports the finding that the project will not have a significant impact on the environment. The FONSI shall include the submitted EA and a brief description of the project, alternatives considered, and project impacts. The FONSI must also include any commitments to mitigation that are essential to render the impacts of the project not significant. The Authority shall issue the FONSI for public comment in accordance with subsection (J).
- G.** The Authority shall prepare or direct the applicant to prepare an EIS required by subsection (F)(1) when the project will significantly impact the environment, including any project for which the EA analysis demonstrates that significant impacts will occur and not be reduced or eliminated by changes to, or mitigation of, the project. The Authority shall perform the following actions:
1. As soon as practicable after its decision to prepare an EIS and before the scoping process, the Authority shall prepare a notice of intent. The notice of intent shall briefly describe the project and possible alternatives and the proposed scoping process. The Authority shall distribute the notice of intent to affected federal, state, and local agencies, any affected Indian tribe, the applicant, and other interested parties. The Authority shall issue the notice of intent for public comment in accordance with subsection (J)(3).
 2. As soon as possible after the distribution and publication of the notice of intent required by subsection (G)(1), the Authority shall convene a meeting of affected federal, state, and local agencies, affected Indian tribes, the applicant, and other interested parties. At the meeting, the parties attending the meeting shall determine the scope of the EIS by considering a number of factors, including all of the following:
 - a. The significant issues to be analyzed in depth in the EIS,
 - b. The preliminary range of alternatives to be considered,
 - c. The potential cooperating agencies and information or analyses that may be needed from cooperating agencies or other parties, and
 - d. The method for EIS preparation and the public participation strategy.
 3. Upon completion of the process described in subsection (G)(2), the Authority shall identify and evaluate all potentially viable alternatives to adequately address the range of issues identified. Additional issues also may be

Water Infrastructure Finance Authority of Arizona

addressed, or others eliminated, and the reasons documented as part of the EIS.

4. After the analysis of issues is conducted according to subsection (G)(3), the Authority shall issue a draft EIS for public comment according to subsection (J)(4).
 5. Following public comment according to subsection (J), the Authority shall prepare a final EIS, consisting of all of the following:
 - a. The draft EIS.
 - b. An analysis of all reasonable alternatives and the no action alternative;
 - c. A summary of any coordination or consultation undertaken with any federal, state, or local government, or federally-recognized Indian tribe;
 - d. A summary of the public participation process;
 - e. Comments received on the draft EIS;
 - f. A list of persons commenting on the draft EIS;
 - g. The Authority's responses to significant comments received;
 - h. A determination of consistency with the Certified Water Quality Management Plan, if applicable;
 - i. The names and qualifications of the persons primarily responsible for preparing the EIS; and
 - j. Any other information added by the Authority.
 6. The Authority shall prepare or direct the applicant to prepare a supplemental EIS when appropriate, including when substantial changes are made to the project that are relevant to environmental concerns, or when there are significant new circumstances or information relevant to environmental concerns bearing on the project.
- H.** After issuance of a final EIS under subsection (G)(5), the Authority shall prepare and issue a record of decision (ROD) containing the Authority's decision whether to proceed or not proceed with a project. A ROD issued with a decision to proceed shall include a brief description of the project, alternatives considered, and project impacts. In addition, the ROD must include any commitments to mitigation, an explanation if the environmental preferred alternative was not selected, and any responses to substantive comments on the final EIS. A ROD issued with a decision not to proceed shall preclude the project from receiving financial assistance under this Article.
- I.** For all determinations (categorical exclusions, FONSI, or RODs) that are five years old or older and for which the project has not been implemented, the Authority shall re-evaluate the project, environmental conditions, and public views to determine whether to conduct a supplemental environmental review of the project and complete an appropriate environmental review document or reaffirm the Authority's original determination. The Authority shall provide public notice of the re-evaluation according to subsection (J)(5).
- J.** The Authority shall conduct public notice and participation under this Section as follows:
1. If a categorical exclusion is granted under subsection (B), the Authority shall provide public notice of that fact by publishing the notice as a legal notice at least once, in one or more newspapers of general circulation in the county or counties concerned.
 2. If a FONSI is issued under subsection (F)(2), the Authority shall provide public notice that the FONSI is available for public review by publishing the notice as a legal notice at least once in one or more newspapers of general circulation in the county or counties concerned. The notice shall provide that comments on the FONSI may be submitted to the Authority for a period of 30 days from the date of publication of the notice. If no comments are received, the FONSI shall immediately become effective.

The Authority may proceed with the project subject to any mitigation measures described in the FONSI after responding to any substantive comments received on the FONSI during the 30-day comment period, or 30 days after issuance of the FONSI if no substantive comments are received.

3. If a notice of intent is prepared and distributed under subsection (G)(1), the Authority shall publish it as a legal notice at least once, in one or more newspapers of general circulation in the county or counties concerned.
4. If a draft EIS is issued under subsection (G)(4), the Authority shall provide public notice by publishing the notice as a legal notice at least once, in one or more newspapers of general circulation in the county or counties concerned, that the draft EIS is available for public review. The notice shall provide that comments on the draft EIS may be submitted to the Authority for a period of 45 days from the date of publication of the notice. When the Authority determines that a project may be controversial, the notice shall provide for a general public hearing to receive public comments.
5. If the Authority reaffirms or revises a decision according to subsection (I), the Authority shall provide public notice of that fact by publishing the notice as a legal notice at least once, in one or more newspapers of general circulation in the county or counties concerned.

Historical Note

Adopted effective September 18, 1997 (Supp. 97-3).
Amended by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Section repealed; new Section made by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3). Section repealed; new R18-15-106 renumbered from R18-15-107 and amended at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

R18-15-107. Disputes

- A.** Any interested party having a substantial financial interest in or suffering a substantial adverse financial impact from an action taken under this Chapter, excluding actions taken under R18-15-503, R18-15-504, and R18-15-505, may file a formal letter of dispute with the executive director according to subsections (B), (C), (D), and (E). Any interested party having a substantial financial interest in or suffering a substantial adverse financial impact from an action taken under R18-15-503, R18-15-504 or R18-15-505 shall proceed under R18-15-503(H), R18-15-504(H) or R18-15-505(H), as applicable.
- B.** The interested party shall file the formal letter of dispute with the executive director within 30 days of the action and provide a copy to each member of the Board or Committee. The formal letter of dispute shall include the following information:
1. The name, address, and telephone number of the interested party;
 2. The signature of the interested party or the interested party's representative;
 3. A detailed statement of the legal and factual grounds of the dispute including:
 - a. Copies of relevant documents, and
 - b. The nature of the substantial financial interest or the nature of the substantial adverse financial impact of the interested party; and
 4. The form of relief requested.
- C.** Within 30 days of receipt of a dispute letter, the Authority shall issue a preliminary decision in writing, to be forwarded by certified mail to the party.

- D. Any party filing a dispute under subsection (B) that disagrees with a preliminary decision of the Authority may file a formal letter of appeal, explaining why the party disagrees with the preliminary decision, with the Board, provided the letter is received by the executive director not more than 15 days after the receipt by the party of the preliminary decision.
- E. The Board shall issue a final decision on issues appealed under subsection (D) not more than 60 days after receipt of the formal letter of appeal.

Historical Note

Adopted effective September 18, 1997 (Supp. 97-3). Amended effective June 4, 1998 (Supp. 98-2). Former R18-15-107 renumbered to R18-15-106; new R18-15-107 renumbered from R18-15-112 and amended by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

R18-15-108. Repealed**Historical Note**

Adopted effective September 18, 1997 (Supp. 97-3). Amended effective June 4, 1998 (Supp. 98-2). Section repealed; new Section R18-15-108 renumbered from R18-15-109 by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Section repealed by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

R18-15-109. Repealed**Historical Note**

Adopted effective September 18, 1997 (Supp. 97-3). Former Section R18-15-109 renumbered to R18-15-108; new Section R18-15-109 renumbered from R18-15-110 by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Section repealed by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

R18-15-110. Repealed**Historical Note**

Adopted effective September 18, 1997 (Supp. 97-3). Former Section R18-15-110 renumbered to R18-15-111; new Section adopted effective June 4, 1998 (Supp. 98-2). Former Section R18-15-110 renumbered to R18-15-109; new Section R18-15-110 renumbered from R18-15-111 and amended by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Section repealed by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

R18-15-111. Repealed**Historical Note**

Adopted effective September 18, 1997 (Supp. 97-3). Former Section R18-15-111 renumbered to R18-15-112; new Section R18-15-111 renumbered from R18-15-110 and amended effective June 4, 1998 (Supp. 98-2). Former Section R18-15-111 renumbered to R18-15-110; new Section R18-15-111 renumbered from R18-15-112 and amended by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Section repealed by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

R18-15-112. Renumbered**Historical Note**

Adopted effective September 18, 1997 (Supp. 97-3). Former Section R18-15-112 renumbered to R18-15-113;

new Section R18-15-112 renumbered from R18-15-111 (Supp. 98-2). Former Section R18-15-112 renumbered to R18-15-111; new Section R18-15-112 renumbered from R18-15-113 and amended by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Former R18-15-112 renumbered to R18-15-107 by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

R18-15-113. Renumbered**Historical Note**

Section R18-15-113 renumbered from R18-15-112 (Supp. 98-2). Section R18-15-113 renumbered to R18-15-112 by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4).

ARTICLE 2. CLEAN WATER REVOLVING FUND**R18-15-201. Clean Water Revolving Fund Financial Assistance Eligibility Criteria**

To be eligible to receive financial assistance from the Clean Water Revolving Fund, the applicant shall demonstrate the applicant is a governmental unit requesting financial assistance for a purpose as defined in A.R.S. § 49-1223(A); the proposed project is to design, construct, acquire, improve, or refinance a publicly owned wastewater treatment facility, or for any other purpose permitted by the Clean Water Act including nonpoint source projects; and the proposed project appears on the Clean Water Revolving Fund Project Priority List developed under R18-15-203.

Historical Note

Adopted effective September 18, 1997 (Supp. 97-3). Amended effective June 4, 1998 (Supp. 98-2). Amended by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Amended by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

R18-15-202. Clean Water Revolving Fund Intended Use Plan

- A. The Authority annually shall develop and publish a Clean Water Revolving Fund Intended Use Plan that identifies the intended uses of funds available in the Clean Water Revolving Fund Program. The Intended Use Plan shall include the project priority list according to R18-15-203. If the Intended Use Plan is to be submitted as one of the documents required to obtain a federal capitalization grant under Title VI of the Clean Water Act, 33 U.S.C. 1381 to 1387, the Intended Use Plan shall include any additional information required by federal law.
- B. The Authority shall provide for a public review and written comment period of the draft Clean Water Revolving Fund Intended Use Plan for a minimum of 14 calendar days. The Authority shall summarize all written comments submitted and prepare responses for Board review. After review of the summary, the Board shall make any appropriate changes to the Plan and then adopt the Clean Water Revolving Fund Intended Use Plan at a public meeting.

Historical Note

Adopted effective September 18, 1997 (Supp. 97-3). Amended by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Section repealed; new R18-15-202 renumbered from R18-15-203 and amended by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

R18-15-203. Clean Water Revolving Fund Project Priority List

- A. The Authority annually shall prepare a Clean Water Revolving Fund Project Priority List as part of the Intended Use Plan described in R18-15-202. The Board may waive the require-

ment to develop a Clean Water Revolving Fund Project Priority List if funds are not adequate to assist any projects or if the Board determines that no financial assistance will be offered for the annual funding cycle.

- B.** An applicant pursuing financial assistance from the Authority for a project shall request to have the project included on the Clean Water Revolving Fund Project Priority List. The applicant may request that multiple projects be placed on the Clean Water Revolving Fund Project Priority List. An applicant shall make a request for placement of a project on the Clean Water Revolving Fund Project Priority List on or before a date specified by the Authority and in an application format specified by the Authority. The Authority shall include with the project priority list application form the criteria under each ranking category in R18-15-204(A), by which the project will be evaluated and the relative importance of each of the criterion.
- C.** In preparing the Clean Water Revolving Fund Project Priority List, the Authority shall consider all project priority list applications submitted under subsection (B), all projects requested by regulatory authorities, and all plans prepared according to the Clean Water Act, 33 U.S.C. 1251 to 1387. The Authority shall evaluate the merits of each project with respect to water quality issues and determine the priority value of each project according to R18-15-204. At a minimum, the Clean Water Revolving Fund Project Priority List shall identify:
1. The applicant,
 2. Project title,
 3. Type of project,
 4. The amount requested for financial assistance,
 5. The subsidy rate index according to R18-15-204(C),
 6. Whether the project is within the fundable range according to R18-15-205, and
 7. The rank of each project by the priority value determined according to R18-15-204.
- D.** After adoption of the annual Intended Use Plan and project priority list according to R18-15-202, the Board may allow:
1. Updates and corrections to the adopted Clean Water Revolving Fund Project Priority List, if the updates and corrections are adopted by the Board after an opportunity for public comment at a public meeting; or
 2. Additions to the Clean Water Revolving Fund Project Priority List, if the additions are adopted by the Board after an opportunity for public comment at a public meeting.
- E.** After an opportunity for public comment at a public meeting, the Board may remove a project from the Clean Water Revolving Fund Project Priority List under one or more of the following circumstances:
1. The recipient has received all financial assistance identified in the executed financial assistance agreement with the Authority;
 2. The project was financed with long-term indebtedness from another source;
 3. The project is no longer an eligible project;
 4. The applicant requests removal;
 5. The applicant is no longer an eligible applicant; or
 6. The applicant did not update, modify, correct or resubmit a project that remained on the project priority list for more than 365 days.

Historical Note

Adopted effective September 18, 1997 (Supp. 97-3). Amended by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Former R18-15-203 renumbered to R18-15-202; new Section made by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

R18-15-204. Clean Water Revolving Fund Project Priority List Ranking

- A.** The Authority shall rank each project on the Clean Water Revolving Fund Project Priority List based on the priority value of each project. The Authority shall consider the following categories to determine the priority value of each project:
1. The Authority shall evaluate the current conditions of the project, including existing environmental, structural, and regulatory integrity and the degree to which the project is consistent with the Clean Water Act, 33 U.S.C. 1251 to 1387.
 2. The Authority shall evaluate the degree to which the project improves or protects water quality.
 3. The Authority shall evaluate the degree to which the project addresses water or energy efficiency or environmentally innovative approaches.
 4. The Authority shall evaluate the degree to which the project promotes any of the following:
 - a. Consolidation of facilities, operations, and ownership;
 - b. Extending service to existing areas currently served by another facility; or
 - c. A regional approach to operations, management, or new facilities.
 5. The Authority shall determine whether the project received assistance from the Authority in a previous funding cycle.
 6. The Authority shall evaluate the applicant's local fiscal capacity.
- B.** If two or more projects have the same rank according to subsection (A), the Authority shall give priority to the project with the highest current condition value under subsection (A)(1). If projects remain tied, priority will be given to the project with the highest water quality improvement value under subsection (A)(2). If projects remain tied, this process shall continue through the categories under subsections (A)(3) through (6), sequentially. If projects continue to have the same priority value, the Board shall determine the priority of the tied projects.
- C.** The Authority shall determine the subsidy rate index for each project on the Clean Water Revolving Fund Project Priority List based on the applicant's local fiscal capacity value under subsection (A)(6) and the overall priority value of the project. The Authority shall incorporate the subsidy rate index in the financial assistance agreement.

Historical Note

Adopted effective September 18, 1997 (Supp. 97-3). Amended effective June 4, 1998 (Supp. 98-2). Amended by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Amended by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

R18-15-205. Clean Water Revolving Fund Fundable Range for Financial Assistance

- A.** Prior to adoption by the Board of the Clean Water Revolving Fund Project Priority List, the Authority shall determine which projects are within the fundable range.
- B.** In determining the fundable range, the Authority shall evaluate each project for evidence that the project is ready to proceed. The Authority shall consider the following indicators when evaluating whether the project is within the fundable range:
1. Evidence of debt authorization according to R18-15-104(B);
 2. Evidence that the applicant has obtained applicable local, state, or federal project permits, as applicable;

3. Evidence of approval by the appropriate authority of project plans and specifications; and
4. Evidence that the applicant has initiated the bid or solicitation process.

Historical Note

Adopted effective September 18, 1997 (Supp. 97-3). Section repealed; new Section R18-15-205 renumbered from R18-15-206 and amended by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Amended by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

R18-15-206. Clean Water Revolving Fund Application for Financial Assistance

- A. The Authority shall accept an application for financial assistance from an eligible applicant for a project that appears on the Clean Water Revolving Fund Project Priority List and is determined to be in the fundable range. At the Authority's discretion, the Authority may accept an application for financial assistance prior to the project appearing on a Board-adopted Clean Water Revolving Fund Project Priority List.
- B. The Authority shall not forward an application to the Board for consideration until all the following conditions are met:
 1. The project is on the Clean Water Revolving Fund Project Priority List;
 2. The applicant has provided supporting documentation according to R18-15-205(B);
 3. The applicant has demonstrated legal capability, financial capability, technical capability, and managerial capability as described in R18-15-104;
 4. For nonpoint source projects, the applicant has provided evidence that the project is consistent with Section 319 and Title VI of the Clean Water Act, 33 U.S.C. 1329, 1381 to 1387;
 5. The applicant has obtained or is in the process of obtaining all permits and approvals required by federal, state, and local authorities; and
 6. The proposed project is consistent with the Certified Water Quality Management Plan.
- C. The application criteria required under subsections (A) and (B) shall not apply to financial assistance requests for short-term emergency loans under A.R.S. § 49-1269.

Historical Note

Adopted effective September 18, 1997 (Supp. 97-3). Amended effective June 4, 1998 (Supp. 98-2). Former Section R18-15-206 renumbered to R18-15-205; new Section R18-15-206 made by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Amended by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

R18-15-207. Clean Water Revolving Fund Application Review for Financial Assistance

- A. The Authority shall evaluate and summarize each application received and develop an analysis that provides recommendations to the Board. The analysis shall at a minimum include:
 1. The scope, size, and budget of the proposed project, including as much cost detail as possible;
 2. A summary of the applicant's legal capability including authorization to enter into long-term indebtedness and to pledge the specified dedicated revenue source for repayment;
 3. A summary of the applicant's technical capability including its ability to construct, operate, and maintain the proposed project;

4. A summary of the applicant's managerial capability, including the experience of elected officials and management team in managing similar organizations and similar projects;
5. A summary of the applicant's financial capability, including:
 - a. The amount of money collected through the dedicated revenue source for repayment for each of the previous three fiscal years,
 - b. An estimate of the amount of money that will be collected through the dedicated revenue source for repayment for the current fiscal year, and
 - c. A projection of the amount of money that will be collected through the dedicated revenue source for repayment for each of the next five fiscal years;
6. The applicant's history of compliance with, as applicable, the Clean Water Act, 33 U.S.C. 1251 to 1387, related Arizona statutes, and related rules, regulations, and policies; and
7. A summary of any previous assistance provided by the Authority to the applicant.

- B. The Board shall make a determination regarding the applicant's request for financial assistance at a public meeting. The Board shall base this determination on the information provided in the application, the analysis prepared by the Authority, and any other information provided at the public meeting. The Authority shall inform the applicant of the Board's determination, which may include recommended modifications to any of the following:
 1. The proposed project,
 2. The applicant's legal structure and organization,
 3. The dedicated revenue source for repayment, or
 4. The structure of the financial assistance request.
- C. If the Board determines at any time during a funding cycle that funds are limited or are not available to provide financial assistance, the Authority shall notify applicants on the current Clean Water Revolving Fund Project Priority List that the Authority is no longer accepting applications. The Board shall determine the amount of funding available, if any, to provide financial assistance for the applications already accepted by the Authority. The Board shall consider each application in the order the project appears within the fundable range on the current Clean Water Revolving Fund Project Priority List. The Board shall make a determination as described in subsection (B) on each application until the available funds are committed.
- D. Upon Board approval of the applicant's request for financial assistance, the Authority shall prepare a financial assistance agreement for execution by the applicant and the Authority.

Historical Note

Adopted effective September 18, 1997 (Supp. 97-3). Amended effective June 4, 1998 (Supp. 98-2). Section repealed; new Section made by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Amended by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

R18-15-208. Clean Water Revolving Fund Requirements

- A. The duly authorized agent, principal or officer of the applicant shall certify that the applicant has not violated any federal, state, or local law pertaining to fraud, bribery, graft, kickbacks, collusion, conflict of interest, or other unlawful or corrupt practices relating to or in connection with facilities planning, design, or construction work on a wastewater treatment facility project.

- B. All projects shall comply with the provisions of the Civil Rights Act of 1964, P.L. 88-352, 42 U.S.C. 2000d et seq., and all other applicable federal laws.

Historical Note

Adopted effective September 18, 1997 (Supp. 97-3).
Amended by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Amended by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

ARTICLE 3. DRINKING WATER REVOLVING FUND

R18-15-301. Drinking Water Revolving Fund Financial Assistance Eligibility Criteria

To be eligible to receive financial assistance from the Drinking Water Revolving Fund, the applicant shall demonstrate that the applicant is a drinking water facility as defined by A.R.S. § 49-1201 requesting financial assistance for a purpose as defined in A.R.S. § 49-1243(A); the proposed project is to plan, design, construct, acquire, or improve a drinking water facility or refinance an eligible drinking water facility; and the proposed project appears on the Drinking Water Revolving Fund Project Priority List developed under R18-15-303.

Historical Note

Adopted effective September 18, 1997 (Supp. 97-3).
Amended by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Amended by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

R18-15-302. Drinking Water Revolving Fund Intended Use Plan

- A. The Authority annually shall develop and publish a Drinking Water Revolving Fund Intended Use Plan that identifies the intended uses of funds available in the Drinking Water Revolving Fund Program. The Intended Use Plan shall include the project priority list according to R18-15-303. If an Intended Use Plan is to be submitted as one of the documents required to obtain a federal capitalization grant under the Safe Drinking Water Act, 42 U.S.C. 300f to 300j-26, the Intended Use Plan shall include any additional information required by federal law.
- B. The Authority shall provide for a public review and written comment period of the draft Drinking Water Revolving Fund Intended Use Plan for a minimum of 14 calendar days. The Authority shall summarize all written comments submitted and prepare responses for Board review. After review of the summary, the Board shall make any appropriate changes to the Plan and then adopt the Drinking Water Revolving Fund Intended Use Plan at a public meeting.

Historical Note

Adopted effective September 18, 1997 (Supp. 97-3).
Amended by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Section repealed; new R18-15-302 renumbered from R18-15-303 and amended by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

R18-15-303. Drinking Water Revolving Fund Project Priority List

- A. The Authority annually shall prepare a Drinking Water Revolving Fund Project Priority List as part of the Intended Use Plan described in R18-15-302. The Board may waive the requirement to develop an annual Drinking Water Revolving Fund Project Priority List if funds are not adequate to assist any projects or if the Board determines that no financial assistance will be offered for the annual funding cycle.

- B. An applicant pursuing financial assistance from the Authority for a project shall request to have the project included on the Drinking Water Revolving Fund Project Priority List. The applicant may request that multiple projects be placed on the Drinking Water Revolving Fund Project Priority List. An applicant shall make a request for placement of a project on the Drinking Water Revolving Fund Project Priority List on or before a date specified by the Authority and in an application format specified by the Authority. The Authority shall include with the project priority list application form the criteria under each ranking category in R18-15-304(A) by which the project will be evaluated and the relative importance of each of the criterion.

- C. In preparing the Drinking Water Revolving Fund Project Priority List, the Authority shall consider all project priority list applications submitted under subsection (B), all projects requested by regulatory authorities, and all plans prepared under the Safe Drinking Water Act, 42 U.S.C. 300f to 300j-26. The Authority shall evaluate the merits of each project with respect to water quality issues and determine the priority value of each project according to R18-15-304. At a minimum, the Drinking Water Revolving Fund Project Priority List shall identify:

1. The applicant;
2. Project title;
3. Type of project;
4. Population of service area;
5. The amount requested for financial assistance;
6. The subsidy rate index according to R18-15-304(C);
7. Whether the project is within the fundable range according to R18-15-305; and
8. The rank of each project by the priority value, determined according to R18-15-304.

- D. After adoption of the annual Intended Use Plan and project priority list according to R18-15-302, the Board may allow:

1. Updates and corrections to the adopted Drinking Water Revolving Fund Project Priority List, if the updates and corrections are adopted by the Board after an opportunity for public comment at a public meeting; or
2. Additions to the Drinking Water Revolving Fund Project Priority List, if the additions are adopted by the Board after an opportunity for public comment at a public meeting.

- E. After an opportunity for public comment at a public meeting, the Board may remove a project from the Drinking Water Revolving Fund Project Priority List under one or more of the following circumstances:

1. The recipient has received all financial assistance identified in the executed financial assistance agreement with the Authority;
2. The project was financed with long-term indebtedness from another source;
3. The project is no longer an eligible project;
4. The applicant requests removal;
5. The applicant is no longer an eligible applicant; or
6. The applicant did not update, modify, correct or resubmit a project that remained on the project priority list for more than 365 days.

Historical Note

Adopted effective September 18, 1997 (Supp. 97-3).
Amended by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Former R18-15-303 renumbered to R18-15-302; new Section made by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

R18-15-304. Drinking Water Revolving Fund Project Priority List Ranking

A. The Authority shall rank each project listed on the Drinking Water Revolving Fund Project Priority List based on the priority value of each project. The Authority shall consider the following categories to determine the priority value of each project:

1. The Authority shall evaluate the current conditions of the system through the system's rank on the Department's master priority list.
2. The Authority shall evaluate the degree to which the project will result in improvement to the water system.
3. The Authority shall evaluate the degree to which the project addresses water or energy efficiency or environmentally innovative approaches.
4. The Authority shall evaluate the degree to which the project promotes any of the following:
 - a. Consolidation of facilities, operations, and ownership;
 - b. Extending service to existing areas currently served by another facility; or
 - c. A regional approach to operations, management, or new facilities.
5. The Authority shall determine whether the project received assistance from the Authority in a previous funding cycle.
6. The Authority shall evaluate the applicant's local fiscal capacity.

B. If two or more projects have the same rank according to subsection (A), the Authority shall give priority to the project with the highest current condition value under subsection (A)(1). If projects remain tied, priority will be given to the project with the highest water system improvement value under subsection (A)(2). If projects remain tied, this process shall continue through the categories under subsections (A)(3) through (6), sequentially. If projects continue to have the same priority value, the Board shall determine the priority of the tied projects.

C. The Authority shall determine the subsidy rate index for each project on the Drinking Water Revolving Fund Project Priority List based on the applicant's local fiscal capacity value and the overall priority value of the project. The Authority shall incorporate the subsidy rate index in the financial assistance agreement.

Historical Note

Adopted effective September 18, 1997 (Supp. 97-3). Amended effective June 4, 1998 (Supp. 98-2). Amended by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Amended by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

R18-15-305. Drinking Water Revolving Fund Fundable Range for Financial Assistance

A. Prior to adoption by the Board of the Drinking Water Revolving Fund Project Priority List, the Authority shall determine which projects are within the fundable range.

B. In determining the fundable range the Authority shall evaluate each project for evidence that the project is ready to proceed. The Authority shall consider the following indicators when evaluating whether the project is within the fundable range:

1. Evidence of debt authorization according to R18-15-104(B);
2. Evidence that the applicant has obtained applicable local, state, or federal project permits, as applicable;
3. Evidence of approval by the appropriate authority of project plans and specifications; and

4. Evidence that the applicant has initiated the bid or solicitation process.

Historical Note

Adopted effective September 18, 1997 (Supp. 97-3). Amended effective June 4, 1998 (Supp. 98-2). Former Section R18-15-305 repealed; new Section R18-15-305 renumbered from R18-15-306 and amended by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Amended by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

R18-15-306. Drinking Water Revolving Fund Application for Financial Assistance

A. The Authority shall accept an application for financial assistance from an eligible applicant for a project that appears on the Drinking Water Revolving Fund Project Priority List and is determined to be within the fundable range. At the Authority's discretion, the Authority may accept an application for financial assistance prior to the project appearing on a Board-adopted Drinking Water Revolving Fund Project Priority List.

B. The Authority shall not forward an application to the Board for consideration until all the following conditions are met:

1. The project is on the Drinking Water Revolving Fund Project Priority List;
2. The applicant has provided supporting documentation according to R18-15-305(B);
3. The applicant has demonstrated legal capability, financial capability, technical capability and managerial capability as described in R18-15-104; and
4. The applicant has obtained or is in the process of obtaining all permits and approvals required by federal, state, and local authorities.

C. The application criteria required under subsections (A) and (B) shall not apply to financial assistance requests for short-term emergency loans under A.R.S. § 49-1269.

Historical Note

Adopted effective September 18, 1997 (Supp. 97-3). Amended effective June 4, 1998 (Supp. 98-2). Former Section R18-15-306 renumbered to R18-15-305; new Section R18-15-306 made by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Amended by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

R18-15-307. Drinking Water Revolving Fund Application Review for Financial Assistance

A. The Authority shall evaluate and summarize each application received and develop an analysis that provides recommendations to the Board. At a minimum, the analysis shall include:

1. The scope, size, and budget of the proposed project, including as much cost detail as possible;
2. A summary of the applicant's legal capability, including authorization to enter into long-term indebtedness and to pledge the specified dedicated revenue source for repayment;
3. A summary of the applicant's technical capability, including its ability to construct, operate, and maintain the proposed project;
4. A summary of the applicant's managerial capability, including the experience of elected officials and management team in managing similar organizations and similar projects;
5. A summary of the applicant's financial capability, including:

Water Infrastructure Finance Authority of Arizona

- a. The amount of money collected through the dedicated revenue source for repayment for each of the previous three fiscal years,
 - b. An estimate of the amount of money that will be collected through the dedicated revenue source for repayment for the current fiscal year, and
 - c. A projection of the amount of money that will be collected through the dedicated revenue source for repayment for each of the next five fiscal years;
6. The applicant's history of compliance with, as applicable, the Safe Drinking Water Act, 42 U.S.C. 300f to 300j-26, related Arizona statutes, and related rules, regulations and policies; and
 7. A summary of any previous assistance provided by the Authority to the applicant.
- B.** The Board shall make a determination regarding the applicant's request for financial assistance at a public meeting. The Board shall base this determination on the information provided in the application, the analysis prepared by the Authority, and any other information provided at the public meeting. The Authority shall inform the applicant of the Board's determination, which may include recommended modifications to any of the following:
1. The proposed project,
 2. The applicant's legal structure and organization,
 3. The dedicated revenue source for repayment, or
 4. The structure of the financial assistance request.
- C.** If the Board determines at any time during a funding cycle that funds are limited or are not available to provide financial assistance, the Authority shall notify applicants on the current Drinking Water Revolving Fund Project Priority List that the Authority is no longer accepting applications. The Board shall determine the amount of funding available, if any, to provide financial assistance for the applications already accepted by the Authority. The Board shall consider each application in the order the project appears within the fundable range on the current Drinking Water Revolving Fund Project Priority List. The Board shall make a determination as described in subsection (B) on each application until the available funds are committed.
- D.** Upon Board approval of the applicant's request for financial assistance, the Authority shall prepare a financial assistance agreement for execution by the applicant and the Authority.

Historical Note

Adopted effective September 18, 1997 (Supp. 97-3). Amended effective June 4, 1998 (Supp. 98-2). Section repealed; new Section made by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Amended by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

R18-15-308. Drinking Water Revolving Fund Requirements

- A.** The duly authorized agent, principal or officer of the applicant shall certify the applicant has not violated any federal, state, or local law pertaining to fraud, bribery, graft, kickbacks, collusion, conflict of interest, or other unlawful or corrupt practices relating to or in connection with facilities planning, design, or construction work on a project.
- B.** All projects shall comply with the provisions of the Civil Rights Act of 1964, P.L. 88-352, 42 U.S.C. 2000d et seq., and all other applicable federal laws.

Historical Note

Adopted effective September 18, 1997 (Supp. 97-3). Amended by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Amended by final rule-

making at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

ARTICLE 4. WATER SUPPLY DEVELOPMENT REVOLVING FUND**R18-15-401. Water Supply Development Revolving Fund Financial Assistance Eligibility Criteria**

To be eligible to receive financial assistance from the Water Supply Development Revolving Fund, the applicant shall demonstrate the applicant is a water provider as defined by A.R.S. § 49-1201(14) requesting financial assistance for a purpose as defined in A.R.S. § 49-1273(A); the water provider meets the requirements of A.R.S. § 49-1273(C); and the proposed project appears on the Water Supply Development Revolving Fund Project Priority List developed under R18-15-403.

Historical Note

Adopted effective September 18, 1997 (Supp. 97-3). Amended by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

R18-15-402. Water Supply Development Revolving Fund Intended Use Plan

- A.** The Authority annually shall develop and publish a Water Supply Development Revolving Fund Intended Use Plan that identifies the intended uses of funds available in the Water Supply Development Revolving Fund Program. The Intended Use Plan shall include the project priority list according to R18-15-403 and specify whether funds are available to subsidize the projects. The Authority is not required to prepare a Water Supply Development Revolving Fund Intended Use Plan if funds are not adequate to assist any projects or if the Committee determines that no financial assistance will be offered for the annual funding cycle.
- B.** The Authority shall provide for a public review and written comment period of the draft Water Supply Development Revolving Fund Intended Use Plan for a minimum of 14 calendar days. The Authority shall summarize all written comments submitted and prepare responses for Committee review. After review of the summary, the Committee shall make any appropriate changes to the Plan and then adopt the Water Supply Development Revolving Fund Intended Use Plan at a public meeting.

Historical Note

Adopted effective September 18, 1997 (Supp. 97-3). Section repealed; new Section made by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

R18-15-403. Water Supply Development Revolving Fund Project Priority List

- A.** The Authority annually shall prepare a Water Supply Development Revolving Fund Project Priority List as part of the Intended Use Plan described in R18-15-402. The Authority is not required to prepare a Water Supply Development Revolving Fund Project Priority List if funds are not adequate to assist any projects or if the Committee determines that no financial assistance will be offered for the annual funding cycle.
- B.** An applicant pursuing financial assistance from the Authority for a water supply development project shall request to have the project included on the Water Supply Development Revolving Fund Project Priority List. The applicant may request that multiple projects be placed on the Water Supply Development Revolving Fund Project Priority List. An applicant shall make a request for placement of a project on the Water Supply Development Revolving Fund Project Priority List on or before a date specified by the Authority and in an

application format specified by the Authority. The Authority shall include with the project priority list application form the criteria under each ranking category in R18-15-404(A) by which the project will be evaluated and the relative importance of each of the criterion.

- C. In preparing the Water Supply Development Revolving Fund Project Priority List, the Authority shall consider all project priority list applications submitted under subsection (B). The Authority shall evaluate the merits of each project with respect to water supply development issues and determine the priority value of each project according to R18-15-404. At a minimum, the Water Supply Development Revolving Fund Project Priority List shall identify:
1. The applicant;
 2. Project title;
 3. Type of project;
 4. Population of water provider's service area;
 5. The amount requested for financial assistance;
 6. The subsidy rate index according to R18-15-404(C);
 7. Whether the project is within the fundable range according to R18-15-405; and
 8. The rank of each project by the priority value, determined according to R18-15-404.
- D. After adoption of the annual Intended Use Plan and Water Supply Development Revolving Fund Project Priority List according to R18-15-402, the Committee may allow:
1. Updates and corrections to the adopted Water Supply Development Revolving Fund Project Priority List, if the updates and corrections are adopted by the Committee after an opportunity for public comment at a public meeting; or
 2. Additions to the Water Supply Development Revolving Fund Project Priority List, if the additions are adopted by the Committee after an opportunity for public comment at a public meeting.
- E. After an opportunity for public comment at a public meeting, the Committee may remove a project from the Water Supply Development Revolving Fund Project Priority List under one or more of the following circumstances:
1. The recipient has received all financial assistance identified in the executed financial assistance agreement with the Authority;
 2. The project was financed with long-term indebtedness from another source;
 3. The project is no longer an eligible project;
 4. The applicant requests removal;
 5. The applicant is no longer an eligible applicant; or
 6. The applicant did not update, modify, correct or resubmit a project that remained on the project priority list for more than 365 days.

Historical Note

Adopted effective September 18, 1997 (Supp. 97-3).
Amended effective June 4, 1998 (Supp. 98-2). Section repealed by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). New Section made by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

R18-15-404. Water Supply Development Revolving Fund Project Priority List Ranking

- A. The Authority shall rank each project listed on the Water Supply Development Revolving Fund Project Priority List based on the priority value of each project. The Authority shall consider the following categories to determine the priority value of each project.

1. The Authority shall evaluate the existing, near-term, and long-term water demands of the water provider as compared to the existing water supplies of the water provider.
 2. The Authority shall evaluate the existing and planned conservation and water management programs of the water provider.
 3. The Authority shall evaluate the current conditions of the water provider's facilities and the water provider's water supply needs, and evaluate how effectively the project will benefit the infrastructure or water supply needs.
 4. The Authority shall evaluate the sustainability of the water supply to be developed through the project.
 5. The Authority shall evaluate the applicant's local fiscal capacity.
- B. If two or more projects have the same rank according to subsection (A), the Authority shall give priority to the project with the highest water demand value under subsection (A)(1). If projects remain tied, priority will be given to the project with the highest conservation and water management value under subsection (A)(2). If projects remain tied, this process shall continue through the categories under subsections (A)(3) through (5), sequentially. If projects continue to have the same priority value, the Committee shall determine the priority of the tied projects.
- C. If monies are available to provide a subsidy to the project, the Authority shall determine the subsidy rate index for each project on the Water Supply Development Revolving Fund Project Priority List based on the applicant's local fiscal capacity value and the overall priority value of the project. The Authority shall incorporate the subsidy rate index in the financial assistance agreement.

Historical Note

New Section made by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

R18-15-405. Water Supply Development Revolving Fund Fundable Range for Financial Assistance

- A. Prior to adoption by the Committee of the Water Supply Development Revolving Fund Project Priority List, the Authority shall determine which projects are within the fundable range.
- B. In determining the fundable range the Authority shall evaluate each project for evidence that the project is ready to proceed. The Authority shall consider any of the following indicators when evaluating whether the project is within the fundable range:
1. Evidence of debt authorization according to R18-15-104(B);
 2. Evidence that the applicant has obtained applicable local, state, or federal project permits, as applicable;
 3. Evidence of approval by the appropriate authority of project plans and specifications; and
 4. Evidence that the applicant has initiated the bid or solicitation process.

Historical Note

New Section made by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

R18-15-406. Water Supply Development Revolving Fund Application for Financial Assistance

- A. The Authority shall accept an application for financial assistance from an eligible applicant for a project that appears on the Water Supply Development Revolving Fund Project Priority List and is determined to be within the fundable range. At the Authority's discretion, the Authority may accept an application for financial assistance prior to the project appearing on

Water Infrastructure Finance Authority of Arizona

- a Committee-adopted Water Supply Development Fund Project Priority List.
- B.** The Authority shall not forward an application for financial assistance to the Committee for consideration until all the following conditions are met:
1. The water supply development project has been prioritized;
 2. The applicant has provided supporting documentation according to R18-15-405(B);
 3. The applicant has demonstrated legal capability, financial capability, technical capability, and managerial capability under R18-15-104;
 4. The applicant has obtained or is in the process of obtaining all permits and approvals required by federal, state, and local authorities; and
 5. The applicant has demonstrated the ability to meet any applicable environmental requirements imposed by federal, state, or local agencies.
2. The applicant's legal structure and organization,
3. The dedicated revenue source for repayment, or
4. The structure of the financial assistance request.
- C.** If the Committee determines at any time during a funding cycle that funds are limited or are not available to provide financial assistance, the Authority shall notify applicants on the current Water Supply Development Revolving Fund Project Priority List that the Authority is no longer accepting applications. The Committee shall determine the amount of funding available, if any, to provide financial assistance for the applications by the Authority. The Committee shall consider each application in the order the project appears within the fundable range on the current Water Supply Development Revolving Fund Project Priority List. The Committee shall make a determination as described in subsection (B) on each application until the available funds are committed.
- D.** Upon Committee approval of the applicant's request for financial assistance, the Authority shall prepare a financial assistance agreement for execution by the applicant and the Authority.

Historical Note

New Section made by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

R18-15-407. Water Supply Development Revolving Fund Application Review for Financial Assistance

- A.** The Authority shall evaluate and summarize each application for financial assistance received and develop an analysis that provides recommendations to the Committee. The analysis shall at a minimum include:
1. The scope, size, and budget of the proposed project, including as much cost detail as possible;
 2. A summary of the applicant's legal capability including authorization to enter into long-term indebtedness and to pledge the specified dedicated revenue source for repayment;
 3. A summary of the applicant's technical capability, including its ability to construct, operate and maintain the proposed project;
 4. A summary of the applicant's managerial capability, including the experience of elected officials and management team in managing similar organizations and similar projects;
 5. A summary of the applicant's financial capability, including:
 - a. The amount of money collected through the dedicated revenue source for repayment for each of the previous three fiscal years,
 - b. An estimate of the amount of money that will be collected through the dedicated revenue source for repayment for the current fiscal year, and
 - c. A projection of the amount of money that will be collected through the dedicated revenue source for repayment for each of the next five fiscal years;
 6. A summary of any previous assistance provided by the Authority to the applicant; and
 7. A summary of the applicant's ability to meet any applicable permitting and environmental requirements imposed by federal, state, or local agencies.
- B.** The Committee shall make a determination regarding the applicant's request for financial assistance at a public meeting. The Committee shall base this determination on the information provided in the application, the analysis prepared by the Authority, and any other information provided at the public meeting. The Authority shall inform the applicant of the Committee's determination, which may include recommended modifications to any of the following:
1. The proposed project,

Historical Note

New Section made by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

R18-15-408. Water Supply Development Revolving Fund Requirements

The duly authorized agent, principal or officer of the applicant shall certify the applicant has not violated any federal, state, or local law pertaining to fraud, bribery, graft, kickbacks, collusion, conflict of interest, or other unlawful or corrupt practices relating to or in connection with facilities planning, design, or construction work on a project.

Historical Note

New Section made by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

ARTICLE 5. TECHNICAL ASSISTANCE**R18-15-501. Technical Assistance**

The Authority may provide Clean Water technical assistance, Drinking Water technical assistance, and Water Supply Development technical assistance if funding is approved in the Technical Assistance Intended Use Plan according to R18-15-502. The Authority shall provide technical assistance in compliance with A.R.S. § 49-1203(B)(16) and (17).

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2116, effective May 16, 2000 (Supp. 00-2). Amended by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Former R18-15-501 renumbered to R18-15-502; new Section made by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

R18-15-502. Technical Assistance Intended Use Plan

- A.** The Authority annually shall develop and publish one or more Technical Assistance Intended Use Plans that identify intended uses of funds available for Clean Water technical assistance and Drinking Water technical assistance. The Authority shall develop a Water Supply Development Technical Assistance Intended Use Plan if funds are available or if the Committee determines that Water Supply Development technical assistance will be offered. The Intended Use Plan shall identify whether funds are available and the amount of funds available for planning and design assistance grants, staff assistance, and professional assistance for Clean Water, Drinking Water, and Water Supply Development. The Authority may develop Technical Assistance Intended Use Plans separately for Clean

Water, Drinking Water, and Water Supply Development or as parts of the Intended Use Plans required under R18-15-202, R18-15-302, and R18-15-402. If the Technical Assistance Intended Use Plan is to be submitted as a document required to obtain a federal capitalization grant, the Technical Assistance Intended Use Plan shall include any additional information required by federal law. The Authority is not required to prepare a Water Supply Development Technical Assistance Intended Use Plan if funds are not adequate to assist any projects or if the Committee determines that no Water Supply Development technical assistance will be offered for the annual funding cycle.

- B.** The Authority shall provide for a public review and written comment period of any draft Technical Assistance Intended Use Plan for a minimum of 14 calendar days. The Authority shall summarize all written comments received and prepare responses. The Authority shall provide a summary of the written comments and the Authority's responses regarding the Clean Water and Drinking Water Technical Assistance Intended Use Plans to the Board and provide a summary of the written comments and the Authority's responses regarding any Water Supply Development Technical Assistance Intended Use Plan to the Committee. After review of the comments and the Authority's responses to comments received during the public review and written comment period, the Board or the Committee, as applicable, shall adopt the applicable Technical Assistance Intended Use Plan or Plans at a public meeting with any changes made in response to public comments or comments by members of the Board or Committee.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2116, effective May 16, 2000 (Supp. 00-2). Amended by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Section repealed; new R18-15-502 renumbered from R18-15-501 and amended by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

R18-15-503. Clean Water Planning and Design Assistance Grants

- A.** Planning and design assistance grants to a specific wastewater treatment facility shall assist that system to achieve or enhance its legal, financial, technical, or managerial capability to facilitate the design, construction, acquisition, improvement, or consolidation of the wastewater treatment facility. The Board shall approve funds available for planning and design assistance grants in the annual Clean Water Technical Assistance Intended Use Plan. The Board may determine that no assistance will be offered for the annual funding cycle.
- B.** To be eligible to receive a planning and design assistance grant under the Clean Water Technical Assistance Program, the grant applicant shall demonstrate the applicant is a governmental unit that owns a wastewater treatment facility, or a non-governmental unit requesting technical assistance specifically for the purpose of forming a political subdivision. An eligible grant applicant shall apply for a planning and design assistance grant on or before a date specified by the Authority and on a grant application form specified by the Authority.
- C.** A grant applicant shall commit to a matching contribution toward the total project cost as specified in the Request for Grant Applications. The matching contribution may include cash contributions or in-kind contributions. The Board may waive or modify the grant applicant's match requirement according to criteria established in the Request for Grant Applications.

- D.** The Authority shall solicit, evaluate, and award planning and design assistance grants in accordance with A.R.S. § 41-2702.
- E.** The Authority shall evaluate the grant applications received to determine which projects are eligible under the Clean Water Act, 33 U.S.C. 1381 to 1387. Eligible grant applications shall specify a demonstrated need of the grant applicant for assistance in securing financial assistance for development and implementation of a wastewater capital improvement project.
- F.** The Authority shall determine planning and design assistance grant awards based on the amount of funding available. If funding is limited, all eligible projects may not be funded. The Authority shall provide the planning and design assistance grant award recommendations to the Board for review and approval at a public meeting. The Board may adopt, modify, or reject the Authority's recommendations in whole or in part.
- G.** Within 30 days after the adoption of the planning and design assistance grant awards at a public meeting, the Authority shall notify all grant applicants whether or not they received an award.
- H.** An unsuccessful grant applicant may submit an appeal in writing in accordance with A.R.S. § 41-2704.
- I.** The Authority and the grant applicant shall enter into a planning and design assistance grant agreement that shall include at a minimum:
1. A scope of work,
 2. The amount of the grant awarded,
 3. The amount of the local match required,
 4. A final project budget and timeline, and
 5. Reporting requirements.
- J.** Project costs incurred prior to execution of a planning and design assistance grant agreement shall not be eligible for grant funding.
- K.** The Authority shall release grant proceeds subject to a disbursement request if the request is consistent with the planning and design assistance grant agreement and the disbursement schedule.
1. The grant recipient shall request each disbursement on the forms provided by the Authority. Each disbursement request shall include a certification and signature document, a cost-incurred report, and a DBE report. The Authority shall not process a disbursement until the applicant provides a completed disbursement form.
 2. The grant recipient shall include copies of invoices, canceled checks, or other documents that show proof of eligible costs incurred with each disbursement request.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2116, effective May 16, 2000 (Supp. 00-2). Amended by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Amended by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

R18-15-504. Drinking Water Planning and Design Assistance Grants

- A.** Planning and design assistance grants to a specific drinking water facility, excluding a nonprofit noncommunity water system, shall assist that facility to achieve or enhance its legal, financial, technical, or managerial capability to facilitate the design, construction, acquisition, improvement, or consolidation of a community water system. The Board shall approve funds available for planning and design assistance grants in the annual Drinking Water Technical Assistance Intended Use Plan. The Board may determine that no assistance will be offered for the annual funding cycle.
- B.** To be eligible to receive a planning and design assistance grant under the Drinking Water Technical Assistance Program, the

grant applicant shall demonstrate the applicant owns a drinking water facility, excluding a nonprofit noncommunity water system. An eligible grant applicant shall apply for a planning and design assistance grant on or before a date specified by the Authority and on a grant application form specified by the Authority.

- C. A grant applicant shall commit to a matching contribution toward the total project cost as specified in the Request for Grant Applications. The matching contribution may include cash contributions or in-kind contributions. The Board may waive or modify the grant applicant's match requirement according to criteria established in the Request for Grant Applications.
- D. The Authority shall solicit, evaluate, and award planning and design assistance grants in accordance with A.R.S. § 41-2702.
- E. The Authority shall evaluate the grant applications received to determine which projects are eligible under the Safe Drinking Water Act, 42 U.S.C. 300f to 300j-26. Eligible grant applications shall specify a demonstrated need of the grant applicant for assistance in securing financial assistance for development and implementation of a drinking water capital improvement project.
- F. The Authority shall determine planning and design assistance grant awards based on the amount of funding available. If funding is limited, all eligible projects may not be funded. The Authority shall provide the planning and design assistance grant award recommendations to the Board for review and approval at a public meeting. The Board may adopt, modify, or reject the Authority's recommendations in whole or in part.
- G. Within 30 days after the adoption of the planning and design assistance grant awards at a public meeting, the Authority shall notify all grant applicants whether or not they received an award.
- H. An unsuccessful grant applicant may submit an appeal in writing according to A.R.S. § 41-2704.
- I. The Authority and the grant applicant shall enter into a planning and design assistance grant agreement that shall include at a minimum:
 1. A scope of work,
 2. The amount of the grant awarded,
 3. The amount of the local match required,
 4. A final project budget and timeline, and
 5. Reporting requirements.
- J. Project costs incurred prior to execution of a planning and design assistance grant agreement shall not be eligible for grant funding.
- K. The Authority shall release grant proceeds subject to a disbursement request if the request is consistent with the planning and design assistance grant agreement and the disbursement schedule.
 1. The grant recipient shall request each disbursement on the forms provided by the Authority. Each disbursement request shall include a certification and signature document, a cost-incurred report, and a DBE report. The Authority shall not process a disbursement until the applicant provides a completed disbursement form.
 2. The grant recipient shall include copies of invoices, canceled checks, or other documents that show proof of eligible costs incurred with each disbursement request.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2116, effective May 16, 2000 (Supp. 00-2). Former Section R18-15-504 repealed; new Section R18-15-504 renumbered from R18-15-505 and amended by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001

(Supp. 01-4). Amended by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

R18-15-505. Water Supply Development Planning and Design Assistance Grants

- A. Planning and design assistance grant funding to a water provider shall assist the water provider in the planning or design of a water supply development project. A single planning and design assistance grant award shall not exceed \$100,000. The Committee shall approve funds available for planning and design assistance grants in the annual Water Supply Development Technical Assistance Intended Use Plan. The Committee may determine that no assistance will be offered for the annual funding cycle.
- B. To be eligible to receive a planning and design assistance grant under the Water Supply Development Technical Assistance Program, the grant applicant shall demonstrate the applicant is a water provider as defined in A.R.S. § 49-1201 and meet the requirements of A.R.S. § 49-1273(C). An eligible grant applicant shall apply for a planning and design assistance grant on or before a date specified by the Authority and on a grant application form specified by the Authority.
- C. A grant applicant shall commit to a matching contribution toward the total project cost as specified in the Request for Grant Applications. The matching contribution may include cash contributions or in-kind contributions. The Board may waive or modify the grant applicant's match requirement according to criteria established in the Request for Grant Applications.
- D. The Authority shall solicit, evaluate, and award planning and design assistance grants in accordance with A.R.S. § 41-2702.
- E. The Authority shall evaluate the grant applications received to determine which projects are eligible. Eligible grant applications shall specify a demonstrated need of the grant applicant for assistance in securing financial assistance for planning and design of a water supply capital improvement project.
- F. The Authority shall determine planning and design assistance grant awards based on the amount of funding available. If funding is limited, all eligible projects may not be funded. The Authority shall provide the planning and design assistance grant award recommendations to the Committee for review and approval at a public meeting. The Committee may adopt, modify, or reject the Authority's recommendations in whole or in part.
- G. Within 30 days after the adoption of the planning and design assistance grant awards at a public meeting, the Authority shall notify all grant applicants whether or not they received an award.
- H. An unsuccessful grant applicant may submit an appeal in writing according to A.R.S. § 41-2704.
- I. The Authority and the grant applicant shall enter into a planning and design assistance grant agreement that shall include at a minimum:
 1. A scope of work,
 2. The amount of the grant awarded,
 3. The amount of the local match required,
 4. A final project budget and timeline, and
 5. Reporting requirements.
- J. Project costs incurred prior to execution of a planning and design assistance grant agreement shall not be eligible for grant funding.
- K. The Authority shall release grant proceeds subject to a disbursement request if the request is consistent with the planning and design assistance grant agreement and the disbursement schedule.
 1. The grant recipient shall request each disbursement on the forms provided by the Authority. Each disbursement

request shall include a certification and signature document, and a cost-incurred report. The Authority shall not process a disbursement until the applicant provides a completed disbursement form.

2. The grant recipient shall include copies of invoices, canceled checks, or other documents that show proof of eligible costs incurred with each disbursement request.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2116, effective May 16, 2000 (Supp. 00-2). Former Section R18-15-505 renumbered to R18-15-504; new Section R18-15-505 made by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Amended by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

R18-5-506. Repealed

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2116, effective May 16, 2000 (Supp. 00-2). Section repealed; new Section made by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Section repealed by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

R18-15-507. Repealed

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2116, effective May 16, 2000 (Supp. 00-2). Section repealed; new Section made by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Section repealed by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

R18-15-508. Repealed

Historical Note

New Section made by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Section repealed by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

R18-15-509. Repealed

Historical Note

New Section made by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Section repealed by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

R18-15-510. Repealed

Historical Note

New Section made by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Section repealed by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

R18-15-511. Repealed

Historical Note

New Section made by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Section repealed by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

ARTICLE 6. HARDSHIP GRANT FUND PROGRAM

R18-15-601. Hardship Grant Fund Administration

- A. The Authority shall establish a separate account or accounts for the Hardship Grant Fund Program from any monies

received according to A.R.S. § 49-1267(A). The Authority shall only use the monies from the Hardship Grant Fund Program for:

1. Providing hardship grants to political subdivisions or Indian tribes to plan, design, acquire, construct or improve wastewater collection and treatment facilities; and
 2. Providing training and technical assistance related to operation and maintenance of wastewater treatment facilities.
- B. The Authority shall identify any funding available for financial assistance under the Hardship Grant Fund Program in the annual Clean Water Revolving Fund Intended Use Plan described in R18-15-202 and any funding available for technical assistance in the Clean Water Technical Assistance Intended Use Plan described in R18-15-502. If the Board determines no funding is available for the Hardship Grant Fund Program, the Authority shall not evaluate any applications for financial assistance or grant applications for technical assistance for funding from the Hardship Grant Fund Program.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2116, effective May 16, 2000 (Supp. 00-2). Amended by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Section repealed; new Section made by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

R18-15-602. Hardship Grant Fund Financial Assistance

- A. If funding is available in the Hardship Grant Fund Program, the Authority shall determine if any of the applicants requesting placement on the Clean Water Revolving Fund Project Priority List meet the requirements according to A.R.S. § 49-1268(A)(2). In addition to meeting the requirements of A.R.S. § 49-1268(A)(2), the applicant shall meet the following:
 1. On the date the applicant applies for financial assistance, the per capita annual income of the community's residents does not exceed 80% of national per capita income as reported by the U.S. Census Bureau.
 2. On the date the applicant applies for financial assistance, the community's local unemployment rate exceeds by one percentage point or more the most recently reported average yearly national unemployment rate as reported by the U.S. Department of Labor's Bureau of Labor Statistics.
- B. The Authority shall make the determination of applicant's eligibility for the Hardship Grant Fund Program during the ranking of the project under R18-15-204. Of the applicants eligible to receive financial assistance from the Hardship Grant Fund Program, the Authority shall award the hardship grant monies based on an applicant's financial capability and ability to generate sufficient revenues to pay for debt service.
- C. The Authority shall proceed according to Article 2 of this Chapter for any applicant meeting the eligibility requirements for the Hardship Grant Fund Program. In addition to proceeding under R18-15-207, the Authority shall identify any applicant that qualifies for Hardship Grant Fund Program financial assistance and shall make a recommendation to the Board regarding the amount of funding to provide the applicant from the Hardship Grant Fund Program.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2116, effective May 16, 2000 (Supp. 00-2). Amended by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Amended by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

R18-15-603. Hardship Grant Fund Technical Assistance

- A. If funding is available in the Hardship Grant Fund Program, the Authority shall identify in the Request for Grant Applications prepared according to A.R.S. § 41-2702(B) the amount of funding for technical assistance available from the Hardship Grant Fund Program.
- B. The Authority shall make the determination of grant applicant's eligibility for the Hardship Grant Fund Program during the ranking of the project under R18-15-503. Of the grant applicants eligible to receive technical assistance from the Hardship Grant Fund Program, the Authority shall award the hardship grant monies based on the financial capability of a grant applicant.
- C. The Authority shall proceed according to R18-15-503 for any grant applicant requesting assistance for operation and maintenance for a wastewater treatment facility. In addition to proceeding under R18-15-503(F), the Authority shall identify any grant applicant that qualifies for Hardship Grant Fund Program technical assistance and shall make a recommendation to the Board regarding the amount of funding to provide the grant applicant from the Hardship Grant Fund Program.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2116, effective May 16, 2000 (Supp. 00-2). Amended by final rulemaking at 7 A.A.R. 5956, effective December 4,

2001 (Supp. 01-4). Amended by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

ARTICLE 7. INTEREST RATE SETTING AND FORGIVABLE PRINCIPAL**R18-15-701. Interest Rate Setting and Forgivable Principal**

- A. The Authority shall prescribe the rate of interest, including interest rates as low as 0% on Authority loans, bond purchase agreements, and linked deposit guarantees based on the applicant's local fiscal capacity under R18-15-204(A)(6), R18-15-304(A)(6), or R18-15-404(A)(5), and an applicant's ability to generate sufficient revenues to pay debt service.
- B. The Authority may forgive principal on Authority loans, bond purchase agreements, and linked deposit guarantees made to local units of government to plan, acquire, construct, or improve drinking water facilities based on:
 1. An applicant's local fiscal capacity under R18-15-304(A)(6), and
 2. An applicant's ability to generate sufficient revenues to pay debt service.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2116, effective May 16, 2000 (Supp. 00-2). Amended by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Amended by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

Attachment B

A.R.S. Title 49, Chapter 8

A.R.S. Title 41, Chapter 53, Article 2

A.R.S. Title 41, Chapter 24, Article 1 (state grant code)

A.R.S. Title 49. Chapter 8. Water Infrastructure Finance Program

Article 1. General Provisions

49-1201. Definitions

In this chapter, unless the context otherwise requires:

1. "Authority" means the water infrastructure authority of Arizona.
2. "Board" means the board of directors of the Arizona finance authority established by title 41, chapter 53, article 2.
3. "Bonds of a political subdivision" means bonds issued by a political subdivision as authorized by law.
4. "Clean water act" means the federal water pollution control act amendments of 1972 (P.L. 92-500; 86 Stat. 816), as amended by the water quality act of 1987 (P.L. 100-4; 101 Stat. 7).
5. "Drinking water facility" means a community water system or a nonprofit noncommunity water system as defined in the safe drinking water act of 1974 (P.L. 93-523; 88 Stat. 1661; P.L. 95-190; 91 Stat. 1393; P.L. 104-182; 110 Stat. 1613) that is located in this state. For purposes of this chapter, drinking water facility does not include water systems owned by federal agencies.
6. "Financial assistance loan repayment agreement" means an agreement to repay a loan provided to design, construct, acquire, rehabilitate or improve water or wastewater infrastructure, related property and appurtenances or a loan provided to finance a water supply development project.
7. "Indian tribe" means any Indian tribe, band, group or community that is recognized by the United States secretary of the interior and that exercises governmental authority within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent and including rights-of-way running through the reservation.
8. "Nonpoint source project" means a project designed to implement a certified water quality management plan.
9. "Political subdivision" means a county, city, town or special taxing district authorized by law to construct wastewater treatment facilities, drinking water facilities or nonpoint source projects.
10. "Safe drinking water act" means the federal safe drinking water act of 1974 (P.L. 93-523; 88 Stat. 1661; P.L. 95-190; 91 Stat. 1393; P.L. 104-182; 110 Stat. 1613), as amended in 1996.
11. "Technical assistance loan repayment agreement" means either of the following:

(a) An agreement to repay a loan provided to develop, plan and design water or wastewater infrastructure, related property and appurtenances. The agreement shall be for a term of not more than three years and the maximum amount that may be borrowed is limited to not more than five hundred thousand dollars.

(b) An agreement to repay a loan provided to develop, plan or design a water supply development project.

12. "Wastewater treatment facility" means a treatment works, as defined in section 212 of the clean water act, that is located in this state and that is designed to hold, cleanse or purify or to prevent the discharge of untreated or inadequately treated sewage or other polluted waters for purposes of complying with the clean water act.

13. "Water provider" means any of the following:

(a) A municipal water delivery system as defined in section 42-5301, paragraphs 1 and 3.

(b) A municipal water delivery system as defined in section 42-5301, paragraph 2, which has entered into a partnership with a city, town or county for a water supply augmentation plan.

(c) A county water augmentation authority established under title 45, chapter 11.

(d) A county water authority established under title 45, chapter 13.

(e) An Indian tribe.

(f) A community facilities district as established by title 48, chapter 4.

(g) For purposes of funding from the water supply development revolving fund pursuant to article 3 of this chapter only, a county that enters into an intergovernmental agreement or other formal written agreement with a city, town or other water provider regarding a water supply development project.

14. "Water supply development" means either of the following:

(a) The acquisition of water or rights to or contracts for water to augment the water supply of a water provider, including any environmental or other reviews, permits or plans reasonably necessary for that acquisition.

(b) The development of facilities, including any environmental or other reviews, permits or plans reasonably necessary for those facilities, for any of the following purposes:

(i) Conveyance, storage or recovery of water.

(ii) Reclamation and reuse of water.

(iii) Replenishment of groundwater.

49-1202. Water infrastructure finance authority of Arizona

The water infrastructure finance authority of Arizona is established in the Arizona finance authority. The Arizona finance authority board of directors shall govern the water infrastructure finance authority of Arizona.

49-1203. Powers and duties of authority; definition

A. The authority is a corporate and politic body and shall have an official seal that shall be judicially noticed. The authority may sue and be sued, contract and acquire, hold, operate and dispose of property.

B. The authority, through its board, may:

1. Issue negotiable water quality bonds pursuant to section 49-1261 for the following purposes:

(a) To generate the state match required by the clean water act for the clean water revolving fund and to generate the match required by the safe drinking water act for the drinking water revolving fund.

(b) To provide financial assistance to political subdivisions, Indian tribes and eligible drinking water facilities for constructing, acquiring or improving wastewater treatment facilities, drinking water facilities, nonpoint source projects and other related water quality facilities and projects.

2. Issue water supply development bonds for the purpose of providing financial assistance to water providers for water supply development purposes pursuant to sections 49-1274 and 49-1275.

3. Provide financial assistance to political subdivisions and Indian tribes from monies in the clean water revolving fund to finance wastewater treatment projects.

4. Provide financial assistance to drinking water facilities from monies in the drinking water revolving fund to finance these facilities.

5. Provide financial assistance to water providers from monies in the water supply development revolving fund to finance water supply development.

6. Guarantee debt obligations of, and provide linked deposit guarantees through third party lenders to:

(a) Political subdivisions that are issued to finance wastewater treatment projects.

(b) Drinking water facilities that are issued to finance these facilities.

(c) Water providers that are issued to finance water supply development projects.

7. Provide linked deposit guarantees through third party lenders to political subdivisions, drinking water facilities and water providers.

8. Apply for, accept and administer grants and other financial assistance from the United States government and from other public and private sources.

9. Enter into capitalization grant agreements with the United States environmental protection agency.

10. Adopt rules pursuant to title 41, chapter 6 governing the application for and awarding of wastewater treatment facility, drinking water facility and nonpoint source project financial assistance under this chapter, the administration of the clean water revolving fund and the drinking water revolving fund and the issuance of water quality bonds.

11. Subject to title 41, chapter 4, article 4, hire a director and staff for the authority.

12. Contract for the services of outside advisors, attorneys, consultants and aides reasonably necessary or desirable to allow the authority to adequately perform its duties.

13. Contract and incur obligations as reasonably necessary or desirable within the general scope of authority activities and operations to allow the authority to adequately perform its duties.

14. Assess financial assistance origination fees and annual fees to cover the reasonable costs of administering the authority and the monies administered by the authority. Any fees collected pursuant to this paragraph constitute governmental revenue and may be used for any purpose consistent with the mission and objectives of the authority.

15. Perform any function of a fund manager under the CERCLA Brownfields cleanup revolving loan fund program as requested by the department. The board shall perform any action authorized under this article on behalf of the Brownfields cleanup revolving loan fund program established pursuant to chapter 2, article 1.1 of this title at the request of the department. In order to perform these functions, the board shall enter into a written agreement with the department.

16. Provide grants, staff assistance or technical assistance in the form of loan repayment agreements and other professional assistance to political subdivisions, any county with a population of less than five hundred thousand persons, Indian tribes and community water systems in connection with the development or financing of wastewater, drinking water, water reclamation or related water infrastructure. Assistance provided under a technical assistance loan repayment agreement shall be in a form and under terms determined by the authority and shall be repaid not more than three years after the date that the monies are advanced to the applicant. The provision of technical assistance by the authority does not create any liability for the authority or this state regarding the design, construction or operation of any infrastructure project.

17. Provide grants, staff assistance or technical assistance in the form of loan repayment agreements and other professional assistance to water providers in connection with the planning or design of water supply development projects. A single grant shall not exceed one hundred thousand dollars. Assistance provided under a technical assistance loan repayment agreement shall be repaid not more than three years after the date that the monies are advanced to the applicant. The provision of technical assistance by the authority does not create any liability for the authority or this state regarding the design, construction or operation of any water supply development project.

C. The authority may adopt rules pursuant to title 41, chapter 6 governing the application for and awarding of water supply development fund project financial assistance under this chapter and the administration of the water supply development revolving fund.

D. The board shall deposit, pursuant to sections 35-146 and 35-147, any monies received pursuant to subsection B, paragraph 8 of this section in the appropriate fund as prescribed by the grant or other financial assistance agreement.

E. Disbursements of monies by the water infrastructure finance authority pursuant to a financial assistance agreement are not subject to title 41, chapter 23.

F. For the purposes of the safe drinking water act and the clean water act, the department of environmental quality is the state agency with primary responsibility for administration of this state's public water system supervision program and water pollution control program and, in consultation with other appropriate state agencies as appropriate, is the lead agency in establishing assistance priorities as prescribed by section 49-1224, subsection B, paragraph 3, section 49-1243, subsection A, paragraph 6 and section 49-1244, subsection B, paragraph 3.

G. For the purposes of this section, "CERCLA" has the same meaning prescribed in section 49-201.

49-1204. Annual audit and report

A. The board shall cause an audit to be made of the funds administered by the authority. The audit shall be conducted by a certified public accountant within one hundred twenty days after the end of the fiscal year. The board shall immediately file a certified copy of the audit with the auditor general.

B. The auditor general may make any further audits and examinations as deemed necessary and may take appropriate action relating to the audit or examination pursuant to title 41, chapter 7, article 10.1. If the auditor general takes no official action within twenty days after the audit is filed, the audit is deemed sufficient.

C. The board shall pay any fees and costs of the certified public accountant and auditor general under this section from the funds administered by the board.

D. Not later than January 1 of each year the board shall make an annual report of its activities, including a copy of the annual audit, to the governor, the president of the senate and the speaker of the house of representatives.

Article 2. Clean Water Revolving Fund, Drinking Water Revolving Fund and Hardship Grant Fund Financial Provisions

49-1221. Clean water revolving fund

A. The clean water revolving fund is established to be maintained in perpetuity consisting of:

1. Monies appropriated by the legislature for the clean water revolving fund.
2. Monies received for that purpose from the United States government, including capitalization grants.
3. Monies received from the issuance and sale of bonds under section 49-1261.
4. Monies received from political subdivisions or Indian tribes as loan repayments, interest and penalties.
5. Interest and other income received from investing monies in the fund.
6. Gifts, grants and donations received for that purpose from any public or private source.

B. Monies in the fund are continuously appropriated and are exempt from the provisions of section 35-190 relating to lapsing of appropriations.

49-1222. Clean water revolving fund; administration

A. The clean water revolving fund is established. The board shall administer the fund pursuant to rule and in compliance with the requirements of this article and the clean water act.

B. On notice from the board, the state treasurer shall invest and divest monies in the fund as provided by section 35-313, and monies earned from investment shall be credited to the fund.

C. The board shall use the monies and other assets in the fund solely for the purposes authorized by this article.

D. The board shall establish a capitalization grant transfer account and as many other accounts and subaccounts as required to administer the clean water revolving fund and any other fund that is administered by the board.

49-1223. Clean water revolving fund; purposes; capitalization grants

A. Monies in the clean water revolving fund may be used for the following purposes:

1. Making wastewater treatment facility and nonpoint source project loans to political subdivisions and Indian tribes under section 49-1225.
 2. Purchasing or refinancing debt obligations of political subdivisions or refinancing debt obligations of Indian tribes at or below market rates, provided that the debt obligation was issued after March 7, 1985 for the purpose of constructing, acquiring or improving wastewater treatment facilities or nonpoint source projects.
 3. Providing financial assistance to political subdivisions to purchase insurance for local wastewater treatment facility or nonpoint source project bond obligations.
 4. Paying the costs to administer the fund, but no more than four per cent of the aggregate of federal capitalization grants may be used to pay these costs. Monies from other sources may be used without limit to pay these costs.
 5. Funding other programs that are authorized for federal monies deposited in the fund including programs relating to nonpoint source discharges.
 6. Providing linked deposit guarantees through third party lenders by depositing monies with the lender on the condition that the lender make a loan on terms approved by the board, at a rate of return on the deposit approved by the board and the state treasurer and by giving the lender recourse against the deposit of loan repayments that are not made when due.
- B. If the monies pledged to secure water quality bonds become insufficient to pay the principal and interest on the water quality bonds that are guaranteed by the clean water revolving fund, the board shall direct the state treasurer to liquidate securities in the fund as may be necessary and apply those proceeds to make current all payments then due on the bonds. The state treasurer shall immediately notify the attorney general and auditor general of the insufficiency. The auditor general shall audit the circumstances surrounding the depletion of the fund and report the findings to the attorney general. The attorney general shall conduct an investigation and report those findings to the governor and the legislature.
- C. All proceeds of capitalization grants received from the United States pursuant to the clean water act shall be deposited in the capitalization grant transfer account and shall be used solely to provide financial assistance to political subdivisions and Indian tribes to construct, acquire, restore or rebuild wastewater treatment facilities, to purchase bond insurance or for any other purpose permitted by the clean water act including nonpoint source projects. All principal received on loan repayments made by borrowers pursuant to this section shall be deposited in the clean water revolving fund and shall be invested and used to provide additional financial assistance or shall be used to support the administration of the fund subject to the limits prescribed by the clean water act.

49-1224. Clean water revolving fund financial assistance; procedures; rules

- A. In compliance with any applicable requirements, a political subdivision may apply to the authority for, accept and incur indebtedness as a result of a loan, or other financial assistance under section 49-1223, subsection A, paragraphs 1, 2 and 3, from the clean water revolving fund

to support a wastewater treatment facility or nonpoint source project owned by the political subdivision. An Indian tribe may apply to the authority for, accept and incur indebtedness as a result of a loan or refinancing under section 49-1223, subsection A, paragraphs 1 and 2 from the clean water revolving fund to support a wastewater treatment facility or nonpoint source project owned by the Indian tribe. To qualify for financial assistance under this section the wastewater treatment facility or nonpoint source project must appear on this state's priority list pursuant to section 212 of the clean water act.

B. In compliance with any applicable requirements, the board shall:

1. Prescribe a simplified form and procedure to apply for and approve assistance.
2. Establish by rule criteria by which assistance will be awarded, including requirements for local participation in project costs, if deemed advisable. The criteria shall include a determination of the ability of the applicant to repay a loan according to the terms and conditions established by this section. At the option of the board, the existence of a current investment grade rating on existing debt of the applicant that is secured by the same revenues to be pledged to secure repayment under the loan repayment agreement constitutes evidence regarding ability to repay a loan.
3. Determine the order and priority of projects assisted under this section based on the merits of the application with respect to water quality issues.

C. The authority shall review on its merits each application received and shall inform the applicant of the board's determination within ninety days after receipt of a complete and correct application. If the application is not approved, the board shall notify the applicant, stating the reasons. If the application is approved, the board may condition the approval on assurances the board deems necessary to ensure that the financial assistance will be used according to law and the terms of the application.

49-1225. Clean water revolving fund financial assistance; terms

A. Financial assistance from the clean water revolving fund shall be evidenced by a financial assistance agreement or bonds of a political subdivision, delivered to and held by the authority.

B. A loan under this section:

1. Shall be repaid in not to exceed thirty years from the date incurred for wastewater treatment facility and nonpoint source loans.
2. Shall require that interest payments begin not later than the next date that either principal or interest must be paid by the authority to the holders of any of the authority's bonds that provided funding for the loan. The authority may provide that loan interest accruing during construction and one year beyond completion of the construction be capitalized in the loan.
3. Shall be conditioned on the establishment of a dedicated revenue source for repaying the loan.

4. To an Indian tribe shall either be conditioned on the establishment of a dedicated revenue source under the control of a tribally chartered corporation, or any other tribal entity that is subject to suit by the attorney general to enforce the loan contract, or be secured by assets that, in the event of default of the loan contract, are subject to execution by the attorney general without the waiver of any claim of sovereign immunity by the tribe.

C. The authority shall prescribe the rate of interest on loans made under this section, but the rate shall not exceed the prevailing market rate for similar types of loans. The authority may also provide for flexible interest rates and interest free loans under rules adopted by the authority. All financial assistance agreements or bonds of a political subdivision shall clearly specify the amount of principal and interest and any redemption premium that is due on any payment date. The authority shall not unilaterally amend a financial assistance agreement, loan or bond after its execution or implement any policy that modifies terms and conditions or affects a previously executed financial agreement, loan or bond. The authority shall not impose a redemption premium or interest payment beyond the date the principal is paid as a condition of refinancing or receiving prepayment on a financial assistance agreement, loan or bond if the financial assistance agreement, loan or bond did not originally contain a redemption premium or interest payment beyond the date the principal is paid.

D. The approval of a loan is conditioned on a written commitment by the political subdivision or Indian tribe to complete all applicable reviews and approvals and to secure all required permits in a timely manner.

E. All monies received from political subdivisions or Indian tribes as loan repayments, interest and penalties shall be deposited in the appropriate accounts of the clean water revolving fund.

F. A loan made to a political subdivision under this section after June 30, 2001 may be secured additionally by an irrevocable pledge of the shared state revenues due to the political subdivision for the duration of the loan as prescribed by a resolution of the authority's board. If the authority's board requires an irrevocable pledge of the shared state revenues for financial assistance loan repayment agreements after June 30, 2001, the authority's board shall enter into an intercreditor agreement with the greater Arizona development authority to define the allocation of shared state revenues in relation to individual borrowers. If a pledge is required and a political subdivision fails to make any payment due to the authority under its loan repayment agreement or bonds, the authority shall certify to the state treasurer and notify the governing body of the defaulting political subdivision that the political subdivision has failed to make the required payment and shall direct a withholding of state shared revenues as prescribed in subsection G of this section. The certificate of default shall be in the form determined by the authority, except that the certificate shall specify the amount required to satisfy the unpaid payment obligation of the political subdivision.

G. On receipt of a certificate of default from the authority, the state treasurer to the extent not expressly prohibited by law shall withhold the monies due to the defaulting political subdivision from the next succeeding distribution of monies pursuant to section 42-5029. In the case of a city or town, the state treasurer shall also withhold from the monies due to the defaulting city or town from the next succeeding distribution of monies pursuant to section 43-206 the amount specified

in the certificate of default and shall immediately deposit the monies in the fund. The state treasurer shall continue to withhold and deposit monies until the authority certifies to the state treasurer that the default has been cured. The state treasurer shall not withhold any amount that is necessary to make any required deposits then due for the payment of principal and interest on bonds of the political subdivision if so certified by the defaulting political subdivision to the state treasurer and the authority. The political subdivision shall not certify deposits as necessary for payment for bonds unless the bonds were issued before the date of the loan repayment agreement and the bonds were secured by a pledge of distribution made pursuant to sections 42-5029 and 43-206.

49-1226. Enforcement; attorney general

The attorney general may take actions necessary to enforce the loan contract and achieve repayment of loans provided by the authority pursuant to sections 49-1224 and 49-1225.

49-1241. Drinking water revolving fund

A. The drinking water revolving fund is established to be maintained in perpetuity consisting of:

1. Monies appropriated by the legislature for the drinking water revolving fund.
2. Monies received for that purpose from the United States government, including capitalization grants.
3. Monies received from the issuance and sale of bonds under section 49-1261.
4. Monies received from drinking water facilities as loan repayment, interest and penalties.
5. Interest and other income received from investing monies in the fund.
6. Gifts, grants and donations received for that purpose from any public or private source.

B. Monies in the fund are continuously appropriated and are exempt from the provisions of section 35-190 relating to lapsing of appropriations.

49-1242. Drinking water revolving fund; administration; capitalization grant transfer account

A. The drinking water revolving fund is established. The board shall administer the fund pursuant to rule and in compliance with this article and the safe drinking water act.

B. On notice from the board, the state treasurer shall invest and divest monies in the fund as provided by section 35-313, and monies earned from investment shall be credited to the fund.

C. The board shall use the monies and other assets in the fund solely for the purposes authorized by this article.

D. The board shall establish a capitalization grant transfer account and as many other accounts and subaccounts as required to administer the drinking water revolving fund and any other fund administered by the board.

49-1243. Drinking water revolving fund; purposes; capitalization grants

A. Monies in the drinking water revolving fund may be used for the following purposes:

1. Making drinking water facility loans including forgivable principal to political subdivisions of this state, Indian tribes under section 49-1245 and other eligible entities as determined by the board pursuant to the safe drinking water act.

2. Making drinking water facility loans under section 49-1244.

3. Purchasing or refinancing debt obligations of drinking water facilities at or below market rate if the debt obligation was issued after July 1, 1993 for the purpose of constructing, acquiring or improving drinking water facilities.

4. Providing financial assistance to drinking water facilities to purchase insurance for local drinking water facility bond obligations.

5. Paying the costs to administer the fund but not more than four per cent of the aggregate of federal capitalization grants may be used to pay these costs. Monies from other sources may be used without limit to pay these costs.

6. Funding other programs that are authorized pursuant to the safe drinking water act.

7. Providing linked deposit guarantees through third party lenders by depositing monies with the lender on the condition that the lender make a loan on terms approved by the board, at a rate of return on the deposit approved by the board and the state treasurer and by giving the lender recourse against the deposit of loan repayments that are not made when due.

B. If the monies pledged to secure water quality bonds become insufficient to pay the principal and interest on the water quality bonds guaranteed by the drinking water revolving fund, the board shall direct the state treasurer to liquidate securities in the fund as may be necessary and shall apply those proceeds to make current all payments then due on the bonds. The state treasurer shall immediately notify the attorney general and auditor general of the insufficiency. The auditor general shall audit the circumstances surrounding the depletion of the fund and report the findings to the attorney general. The attorney general shall conduct an investigation and report those findings to the governor and the legislature.

C. All proceeds of capitalization grants received from the United States pursuant to the safe drinking water act shall be deposited in the capitalization grant transfer account and shall be used solely to make loans to drinking water facilities to construct, acquire, restore or rebuild these facilities, to purchase bond insurance or for any other purpose permitted by the safe drinking water act. All principal received on loan repayments made by borrowers under this section shall be deposited in the drinking water revolving fund and shall be invested, used to provide financial

assistance or used to support the administration of the fund subject to the limits defined in the safe drinking water act.

49-1244. Drinking water revolving fund financial assistance; procedures

A. In compliance with any applicable requirements, a drinking water facility may apply to the authority for and accept and incur indebtedness as a result of a loan or any other financial assistance pursuant to section 49-1243, subsection A, paragraphs 2, 3 and 4 from the drinking water revolving fund to construct, acquire or improve a drinking water facility. To qualify for financial assistance pursuant to this section, the drinking water facility must appear on this state's priority list pursuant to the safe drinking water act.

B. In compliance with any applicable requirements, the board shall:

1. Prescribe a simplified form and procedure to apply for and approve assistance.
2. Establish by rule criteria by which assistance will be awarded, including requirements for local participation in project costs, if deemed advisable. The criteria shall include a determination of the ability of the applicant to repay a loan according to the terms and conditions established by this section. At the option of the board, the existence of a current investment grade rating on existing debt of the applicant that is secured by the same revenues to be pledged to secure repayment under the loan repayment agreement constitutes evidence regarding ability to repay a loan.
3. Determine the order and priority of projects assisted under this section based on the merits of the application with respect to water quality issues.

C. The authority shall review on its merits each application received and shall inform the applicant of the board's determination within ninety days after receipt of a complete and correct application. If the application is not approved, the board shall notify the applicant, stating the reasons. If the application is approved, the board may condition the approval on assurances the board deems necessary to ensure that the financial assistance will be used according to law and the terms of the application.

49-1245. Drinking water revolving fund financial assistance; terms

A. A loan from the drinking water revolving fund shall be evidenced by a loan repayment agreement or bonds of a political subdivision, delivered to and held by the authority.

B. A loan under this section:

1. Shall be repaid in not to exceed thirty years from the date incurred for drinking water facility loans.
2. Shall require that interest payments begin not later than the next date that either principal or interest must be paid by the authority to the holders of any of the authority's bonds that provided

funding for the loan. The authority may provide that loan interest accruing during construction and one year beyond completion of the construction be capitalized in the loan.

3. Shall be conditioned on the establishment of a dedicated revenue source for repaying the loan.

4. To an Indian tribe shall either be conditioned on the establishment of a dedicated revenue source under the control of a tribally chartered corporation, or any other tribal entity that is subject to suit by the attorney general to enforce the loan contract, or be secured by assets that, in the event of default of the loan contract, are subject to execution by the attorney general without the waiver of any claim of sovereign immunity by the tribe.

C. The authority shall prescribe the rate of interest on loans made under this section, but the rate shall not exceed the prevailing market rate for similar types of loans. The authority may also provide for flexible interest rates, interest free loans and forgivable principal under rules adopted by the authority. All financial assistance agreements or bonds of a political subdivision shall clearly specify the amount of principal and interest and any redemption premium that is due on any payment date. The authority shall not unilaterally amend the financial assistance agreement, loan or bond after its execution. The authority shall not impose a redemption premium as a condition of refinancing or receiving prepayment on a financial assistance agreement, loan or bond if the financial assistance agreement, loan or bond did not contain a redemption premium.

D. The approval of a loan is conditioned on a written commitment by the political subdivision or Indian tribe to complete all applicable reviews and approvals and to secure all required permits in a timely manner.

E. All monies received from political subdivisions or Indian tribes as loan repayments, interest and penalties shall be deposited in the appropriate accounts of the drinking water revolving fund.

F. A loan made to a political subdivision under this section after June 30, 2001 may be secured additionally by an irrevocable pledge of the shared state revenues due to the political subdivision for the duration of the loan as prescribed by a resolution of the authority's board. If the authority's board requires an irrevocable pledge of the shared state revenues for financial assistance loan repayment agreements after June 30, 2001, the authority's board shall enter into an intercreditor agreement with the greater Arizona development authority to define the allocation of shared state revenues in relation to individual borrowers. If a pledge is required and a political subdivision fails to make any payment due to the authority under its loan repayment agreement or bonds, the authority shall certify to the state treasurer and notify the governing body of the defaulting political subdivision that the political subdivision has failed to make the required payment and shall direct a withholding of state shared revenues as prescribed in subsection G of this section. The certificate of default shall be in the form determined by the authority, except that the certificate shall specify the amount required to satisfy the unpaid payment obligation of the political subdivision.

G. On receipt of a certificate of default from the authority, the state treasurer to the extent not expressly prohibited by law shall withhold the monies due to the defaulting political subdivision from the next succeeding distribution of monies pursuant to section 42-5029. In the case of a city

or town, the state treasurer shall also withhold from the monies due to the defaulting city or town from the next succeeding distribution of monies pursuant to section 43-206 the amount specified in the certificate of default and shall immediately deposit the monies in the fund. The state treasurer shall continue to withhold and deposit monies until the authority certifies to the state treasurer that the default has been cured. The state treasurer shall not withhold any amount that is necessary to make any required deposits then due for the payment of principal and interest on bonds of the political subdivision if so certified by the defaulting political subdivision to the state treasurer and the authority. The political subdivision shall not certify deposits as necessary for payment for bonds unless the bonds were issued before the date of the loan repayment agreement and the bonds were secured by a pledge of distribution made pursuant to sections 42-5029 and 43-206.

49-1246. Enforcement; attorney general

The attorney general may take actions necessary to enforce the loan contract and achieve repayment of loans provided by the authority pursuant to sections 49-1244 and 49-1245.

49-1261. Water quality bonds

A. The authority, through the board of directors, may issue negotiable water quality bonds in a principal amount that in its opinion is necessary to provide sufficient monies for financial assistance under this article, maintaining sufficient reserves to secure the bonds, to pay the necessary costs of issuing, selling and redeeming the bonds and to pay other expenditures of the authority incidental to and necessary and convenient to carry out the purposes of this article.

B. The board must authorize the bonds by resolution. The resolution shall prescribe:

1. The rate or rates of interest and the denominations of the bonds.
2. The date or dates of the bonds and maturity.
3. The coupon or registered form of the bonds.
4. The manner of executing the bonds.
5. The medium and place of payment.
6. The terms of redemption.

C. The bonds shall be sold at public or private sale at the price and on the terms determined by the board. All proceeds from the issuance of bonds shall be deposited in the appropriate accounts of the funds administered by the board.

D. The board shall publish a notice of its intention to issue bonds under this article for at least five consecutive days in a newspaper published in this state. The last day of publication must be at least ten days before issuing the bonds. The notice shall state the amount of the bonds to be sold and the intended date of issuance. A copy of the notice shall be hand delivered or sent, by

certified mail, return receipt requested, to the director of the department of administration on or before the last day of publication.

E. To secure any bonds authorized by this section, the board by resolution may:

1. Provide that bonds issued under this section may be secured by a first lien on all or part of the monies paid into the appropriate account or subaccount of the funds administered by the authority.
2. Pledge or assign to or in trust for the benefit of the holder or holders of the bonds any part or appropriate account or subaccount of the monies in the funds as is necessary to pay the principal and interest of the bonds as they come due.
3. Set aside, regulate and dispose of reserves and sinking funds.
4. Provide that sufficient amounts of the proceeds from the sale of the bonds may be used to fully or partly fund any reserves or sinking funds set up by the bond resolution.
5. Prescribe the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent to and the manner in which consent may be given.
6. Provide for payment from the proceeds of the sale of the bonds of all legal and financial expenses incurred by the board in issuing, selling, delivering and paying the bonds.
7. Do any other matters that in any way may affect the security and protection of the bonds.

F. The members of the board or any person executing the bonds are not personally liable for the payment of the bonds. The bonds are valid and binding obligations notwithstanding that before the delivery of the bonds any of the persons whose signatures appear on the bonds cease to be members of the board. From and after the sale and delivery of the bonds, they are incontestable by the board.

G. The board, out of any available monies, may purchase bonds, which may be canceled, at a price not exceeding either of the following:

1. If the bonds are then redeemable, the redemption price then applicable plus accrued interest to the next interest payment date.
2. If the bonds are not then redeemable, the redemption price applicable on the first date after purchase on which the bonds become subject to redemption plus accrued interest to that date.

49-1262. Water quality bonds; purpose

A. Water quality bonds may be issued to provide financial assistance, to provide matching state monies for the clean water revolving fund and the drinking water revolving fund, to increase the

capitalization of the clean water revolving fund and to increase the capitalization of the drinking water revolving fund to accomplish the purposes stated in sections 49-1223 and 49-1243. These bonds may be secured by any monies received or to be received in the clean water revolving fund and the drinking water revolving fund. Amounts in the clean water revolving fund may be used to cure defaults on loans made from the drinking water revolving fund and amounts in the drinking water revolving fund may be used to cure defaults on loans made from the clean water revolving fund to the extent permitted by applicable federal law.

B. Any pledge made under this article is valid and binding from the time when the pledge is made. The monies pledged and received to be placed in the appropriate fund are immediately subject to the lien of the pledge without any future physical delivery or further act, and any such lien of any pledge is valid or binding against all parties having claims of any kind in tort, contract or otherwise against the board regardless of whether the parties have notice of the lien. The official resolution or trust indenture or any instrument by which this pledge is created, when placed in the board's records, is notice to all concerned of the creation of the pledge, and those instruments need not be recorded in any other place.

C. The bonds issued under this section, their transfer and the income they produce are exempt from taxation by this state or by any political subdivision of this state.

49-1263. Bond obligations of the authority

Bonds issued under this article are obligations of the water infrastructure finance authority of Arizona, are payable only according to their terms and are not obligations general, special or otherwise of this state. The bonds do not constitute a legal debt of this state and are not enforceable against this state. Payment of the bonds is not enforceable out of any state monies other than the income and revenue pledged and assigned to, or in trust for the benefit of, the holder or holders of the bonds.

49-1264. Certification of bonds by attorney general

The board may submit any water quality bonds issued under this article to the attorney general after all proceedings for their authorization have been completed. On submission the attorney general shall examine and pass on the validity of the bonds and the regularity of the proceedings. If the proceedings comply with this article, and if the attorney general determines that, when delivered and paid for, the bonds will constitute binding and legal obligations of the board, the attorney general shall certify on the back of each bond, in substance, that it is issued according to the constitution and laws of this state.

49-1265. Water quality bonds as legal investments

Water quality bonds issued under this article are securities in which public officers and bodies of this state and of municipalities and political subdivisions of this state, all companies, associations and other persons carrying on an insurance business, all financial institutions, investment companies and other persons carrying on a banking business, all fiduciaries and all other persons who are authorized to invest in obligations of this state may properly and legally invest. The bonds are also securities that may be deposited with public officers or bodies of this state and

municipalities and political subdivisions of this state for purposes that require the deposit of state bonds or obligations.

49-1266. Agreement of state

This state pledges to and agrees with the holders of the bonds that this state will not limit or alter the rights vested in the water infrastructure finance authority of Arizona or any successor agency to collect the monies necessary to produce sufficient revenue to fulfill the terms of any agreements made with the holders of the bonds, or in any way impair the rights and remedies of the bondholders, until all bonds issued under this article, together with interest, including interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceedings by or on behalf of the bondholders, are fully met and discharged. The board as agent for this state may include this pledge and undertaking in its resolutions and indentures securing its bonds.

49-1267. Hardship grant fund

A. The hardship grant fund is established to be administered by the authority consisting of:

1. Monies received for that purpose from the United States government, including monies that are awarded to this state pursuant to title II of the clean water act and that are no longer obligated to the construction grants program.
2. Gifts, grants and other donations received for that purpose from public or private sources.
3. Monies appropriated by the legislature for the hardship grant program.

B. Monies in the fund are continuously appropriated and are exempt from the provisions of section 35-190 relating to lapsing of appropriations.

C. The board shall administer the fund pursuant to rule and in compliance with this section and guidance from the United States government.

D. Monies in the fund may be used for the following purposes:

1. Providing hardship grants to political subdivisions or Indian tribes to plan, design, acquire, construct or improve wastewater collection and treatment facilities.
2. Providing training and technical assistance related to the operation and maintenance of wastewater systems.

E. The board shall use the monies and other assets in the fund only for the purposes authorized by this article.

F. The board shall establish a hardship grant program account and as many other accounts and subaccounts as required to administer the hardship grant fund.

G. All proceeds of hardship grant program monies that are received from the United States shall be deposited in the hardship grant fund and shall be used only to provide grants and technical assistance to political subdivisions or Indian tribes to plan, design, acquire, construct or improve wastewater collection and treatment facilities.

49-1268. Hardship grant financial assistance

A. In compliance with any applicable requirements:

1. A political subdivision or Indian tribe may apply to the authority for and accept financial and technical assistance pursuant to section 49-1267, subsection C. To qualify for financial assistance pursuant to this section, the political subdivision's or Indian tribe's project must appear on this state's clean water revolving fund priority list.

2. The applicant must be a community in a rural area that complies with both of the following:

(a) The community has a population of three thousand persons or less as determined by the most recent United States decennial census.

(b) The community lacks centralized wastewater treatment or collection systems or needs improvements to its treatment systems.

B. In compliance with any applicable requirement, the board shall:

1. Prescribe a simplified form and procedure to apply for and approve assistance.

2. Establish by rule criteria by which assistance will be awarded including requirements for local participation in project cost, if deemed advisable.

3. Determine the order and priority of projects assisted pursuant to this section based on the merits of the application with respect to water quality issues.

C. The authority shall review on its merits each application received and shall inform the applicant of the board's determination within sixty days after receipt of a complete and correct application. If the application is not approved, the board shall notify the applicant, stating the reasons. If the application is approved, the board may condition the approval on those assurances that the board deems necessary to ensure that the financial assistance will be used according to law and the terms of the application.

D. The approval of financial assistance shall be conditioned on a written commitment by the political subdivision or Indian tribe to complete all applicable reviews and approvals and to secure all required permits in a timely manner.

49-1269. Short-term emergency loan agreements; conditions

A. The authority, through its board, may enter into short-term emergency loan agreements with political subdivisions or Indian tribes under the following conditions:

1. The term of the loan does not exceed one year.
2. The dollar amount of the loan does not exceed two hundred fifty thousand dollars for each borrower for each emergency event.
3. The purpose of the loan is to provide assistance for designing, redesigning, engineering, reengineering, constructing or reconstructing water or wastewater systems that have failed as the result of a disaster, a natural disaster or a catastrophic event.
4. The disaster, natural disaster or catastrophic event is memorialized in a declaration of emergency by the governor or the federal emergency management agency.

B. Subject to board approval, for any loan made pursuant to this section, the authority shall execute appropriate and binding legal agreements with the borrower that require repayment of monies from eligible sources of repayment. Notwithstanding any other statute, a loan may be made and an obligation to repay may be incurred pursuant to this section without a vote of the electors of the political subdivision or Indian tribe.

Article 3. Water Supply Development Revolving Fund Financial Provisions

49-1271. Water supply development revolving fund; legislative intent

A. The water supply development revolving fund is established to be maintained in perpetuity consisting of:

1. Monies received from the issuance and sale of water supply development bonds under section 49-1278.
2. Monies appropriated by the legislature to the water supply development revolving fund.
3. Monies received for water supply development purposes from the United States government.
4. Monies received from water providers as loan repayments, interest and penalties.
5. Interest and other income received from investing monies in the fund.
6. Gifts, grants and donations received for water supply development purposes from any public or private source.

B. Monies in the fund are continuously appropriated and are exempt from the provisions of section 35-190 relating to lapsing of appropriations.

C. The legislature finds that many water providers in this state, particularly in rural areas, lack access to sufficient water supplies to meet their long-term water demands and need financial assistance to construct water supply projects and obtain additional water supplies. It is the intent of the legislature that the water supply development revolving fund established by this section be used to provide financial assistance to these water providers under the terms set forth in this article.

49-1272. Water supply development revolving fund; administration

A. The board shall administer the water supply development revolving fund.

B. On notice from the board, the state treasurer shall invest and divest monies in the fund as provided by section 35-313, and monies earned from investment shall be credited to the fund.

C. Monies and other assets in the fund shall be used solely for the purposes authorized by this article.

49-1273. Water supply development revolving fund; purposes; limitation

A. Monies in the water supply development revolving fund may be used for the following purposes:

1. Making water supply development loans to water providers in this state under section 49-1274 for water supply development purposes.

2. Making loans or grants to water providers for the planning or design of water supply development projects. A single grant shall not exceed one hundred thousand dollars.

3. Purchasing or refinancing debt obligations of water providers at or below market rate if the debt obligation was issued for a water supply development purpose.

4. Providing financial assistance to water providers with bonding authority to purchase insurance for local bond obligations incurred by them for water supply development purposes.

5. Paying the costs to administer the fund.

6. Providing linked deposit guarantees through third party lenders by depositing monies with the lender on the condition that the lender make a loan on terms approved by the committee, at a rate of return on the deposit approved by the committee and the state treasurer and by giving the lender recourse against the deposit of loan repayments that are not made when due.

B. If the monies pledged to secure water supply development bonds issued pursuant to section 49-1278 become insufficient to pay the principal and interest on the water supply development bonds guaranteed by the water supply development revolving fund, the authority shall direct the state treasurer to liquidate securities in the fund as may be necessary and shall apply those proceeds to make current all payments then due on the bonds. The state treasurer shall immediately notify the attorney general and auditor general of the insufficiency. The auditor

general shall audit the circumstances surrounding the depletion of the fund and report the findings to the attorney general. The attorney general shall conduct an investigation and report those findings to the governor and the legislature.

C. Monies in the water supply development revolving fund shall not be used to provide financial assistance to a water provider, other than an Indian tribe, unless one of the following applies:

1. The board of supervisors of the county in which the water provider is located has adopted the provision authorized by section 11-823, subsection A.
2. The water provider is located in a city or town and the legislative body of the city or town has enacted the ordinance authorized by section 9-463.01, subsection O.
3. The water provider is located in an active management area established pursuant to title 45, chapter 2, article 2.
4. The water provider is located outside of an active management area and either of the following applies:
 - (a) The director of water resources has designated the water provider as having an adequate water supply pursuant to section 45-108.
 - (b) The water provider will use the financial assistance for a water supply development project and the director of water resources has determined pursuant to section 45-108 that there is an adequate water supply for all subdivided land that will be served by the project and for which a public report was issued after the effective date of this amendment to this section.

49-1274. Water supply development revolving fund financial assistance; procedures

A. In compliance with any applicable requirements, a water provider may apply to the authority for and accept and incur indebtedness as a result of a loan or any other financial assistance pursuant to section 49-1273 from the water supply development revolving fund for water supply development purposes. In compliance with any applicable requirements, a water provider may also apply to the authority for and accept grants, staff assistance or technical assistance for the planning or design of a water supply development project. A water provider that applies for and accepts a loan or other financial assistance under this article is not precluded from applying for and accepting a loan or other financial assistance under article 2 of this chapter or under any other law.

B. The authority, in consultation with the committee, shall:

1. Prescribe a simplified form and procedure to apply for and approve assistance.
2. Establish by rule criteria by which assistance will be awarded, including requirements for local participation in project costs, if deemed advisable. The criteria shall include:

(a) A determination of the ability of the applicant to repay a loan according to the terms and conditions established by this section. At the option of the committee, the existence of a current investment grade rating on existing debt of the applicant that is secured by the same revenues to be pledged to secure repayment under the loan repayment agreement constitutes evidence regarding ability to repay a loan.

(b) A determination of the applicant's legal capability to enter into a loan repayment agreement.

(c) A determination of the applicant's financial ability to construct, operate and maintain the project if it receives the financial assistance.

(d) A determination of the applicant's ability to manage the project.

(e) A determination of the applicant's ability to meet any applicable environmental requirements imposed by federal or state agencies.

(f) A determination of the applicant's ability to acquire any necessary regulatory permits.

3. Determine the order and priority of projects assisted under this section based on the merits of the application with respect to water supply development issues, including the following:

(a) Existing, near-term and long-term water demands of the water provider compared to the existing water supplies of the water provider.

(b) Existing and planned conservation and water management programs of the water provider, including watershed management or protection.

(c) Benefits of the project.

(d) The sustainability of the water supply to be developed through the project.

(e) The water provider's need for financial assistance.

(f) The cost-effectiveness of the project.

C. The committee shall review on its merits each application received and shall inform the applicant of the committee's determination within ninety days after receipt of a complete and correct application. If the application is not approved, the committee shall notify the applicant, stating the reasons. If the application is approved, the committee may condition the approval on assurances the committee deems necessary to ensure that the financial assistance will be used according to law and the terms of the application.

D. On approval of an application under this section by the committee, the authority shall use monies in the water supply development revolving fund to finance the project.

49-1275. Water supply development revolving fund financial assistance; terms

A. A loan from the water supply development revolving fund shall be evidenced by bonds, if the water provider has bonding authority, or by a financial assistance agreement, delivered to and held by the authority.

B. A loan under this section shall:

1. Be repaid not more than forty years after the date incurred.
2. Require that interest payments begin not later than the next date that either principal or interest must be paid by the authority to the holders of any of the authority's bonds that provided funding for the loan. If the loan is for construction of water supply development facilities, the authority may provide that loan interest accruing during construction and one year after completion of the construction be capitalized in the loan.
3. Be conditioned on the establishment of a dedicated revenue source for repaying the loan.

C. The authority, in consultation with the committee, shall prescribe the rate of interest on loans made under this section, but the rate shall not exceed the prevailing market rate for similar types of loans. The authority, on recommendations from the committee, may adopt rules that provide for flexible interest rates and interest free loans. All financial assistance agreements or bonds of a water provider shall clearly specify the amount of principal and interest and any redemption premium that is due on any payment date.

D. The approval of a loan is conditioned on a written commitment by the water provider to complete all applicable reviews and approvals and to secure all required permits in a timely manner.

E. A loan made to a water provider under this section may be secured additionally by an irrevocable pledge of any shared state revenues due to the water provider for the duration of the loan as prescribed by a resolution of the committee. If the committee requires an irrevocable pledge of the shared state revenues for financial assistance loan repayment agreements, the authority shall enter into an intercreditor agreement with the greater Arizona development authority to define the allocation of shared state revenues in relation to individual borrowers. If a pledge is required and a water provider fails to make any payment due to the authority under its loan repayment agreement or bonds, the authority shall certify to the state treasurer and notify the governing body of the defaulting water provider that the water provider has failed to make the required payment and shall direct a withholding of state shared revenues as prescribed in subsection F of this section. The certificate of default shall be in the form determined by the authority, except that the certificate shall specify the amount required to satisfy the unpaid payment obligation of the water provider.

F. On receipt of a certificate of default from the authority, the state treasurer, to the extent not expressly prohibited by law, shall withhold any monies due to the defaulting water provider from the next succeeding distribution of monies pursuant to section 42-5029. In the case of a city or town, the state treasurer shall also withhold from the monies due to the defaulting city or town from the next succeeding distribution of monies pursuant to section 43-206 the amount specified

in the certificate of default and shall immediately deposit the monies in the water supply development revolving fund. The state treasurer shall continue to withhold and deposit monies until the authority certifies to the state treasurer that the default has been cured. The state treasurer shall not withhold any amount that is necessary to make any required deposits then due for the payment of principal and interest on bonds of the water provider if so certified by the defaulting water provider to the state treasurer and the authority. The water provider shall not certify deposits as necessary for payment for bonds unless the bonds were issued before the date of the loan repayment agreement and the bonds were secured by a pledge of distribution made pursuant to sections 42-5029 and 43-206.

49-1276. Enforcement; attorney general

The attorney general may take actions necessary to enforce the loan contract and achieve repayment of loans provided by the authority pursuant to sections 49-1274 and 49-1275.

49-1277. Water supply development bonds

A. The authority may issue negotiable water supply development bonds in a principal amount necessary to provide sufficient monies for those projects approved under this article and including such items as maintaining sufficient reserves to secure the bonds, to pay the necessary costs of issuing, selling and redeeming the bonds and to pay other expenditures of the authority incidental to and necessary and convenient to carry out the purposes of this article. The board shall issue the bonds pursuant to subsections C and D.

B. The board shall authorize the bonds by resolution. The resolution shall prescribe:

1. The rate or rates of interest and the denominations of the bonds.
2. The date or dates of the bonds and maturity.
3. The coupon or registered form of the bonds.
4. The manner of executing the bonds.
5. The medium and place of payment.
6. The terms of redemption.

C. The bonds shall be sold at public or private sale at the price and on the terms determined by the board. All proceeds from the issuance of bonds shall be deposited in the appropriate accounts of the funds administered by the authority.

D. The board shall publish a notice of its intention to issue bonds under this article for at least five consecutive days in a newspaper published in this state. The last day of publication must be at least ten days before issuing the bonds. The notice shall state the amount of the bonds to be sold and the intended date of issuance. A copy of the notice shall be hand delivered or sent, by

certified mail, return receipt requested, to the director of the department of administration on or before the last day of publication.

E. To secure any bonds authorized by this section, the board by resolution may:

1. Provide that bonds issued under this section may be secured by a first lien on all or part of the monies paid into the appropriate account or subaccount of the funds administered by the authority.
2. Pledge or assign to or in trust for the benefit of the holder or holders of the bonds any part or appropriate account or subaccount of the monies in the funds as is necessary to pay the principal and interest of the bonds as they come due.
3. Set aside, regulate and dispose of reserves and sinking funds.
4. Provide that sufficient amounts of the proceeds from the sale of the bonds may be used to fully or partly fund any reserves or sinking funds set up by the bond resolution.
5. Prescribe the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent to and the manner in which consent may be given.
6. Provide for payment from the proceeds of the sale of the bonds of all legal and financial expenses incurred by the board in issuing, selling, delivering and paying the bonds.
7. Do any other matters that in any way may affect the security and protection of the bonds.

F. Any member of the board, any member of the committee or any person executing the bonds is not personally liable for the payment of the bonds. The bonds are valid and binding obligations notwithstanding that before the delivery of the bonds any of the persons whose signatures appear on the bonds cease to be members of the board. From and after the sale and delivery of the bonds, they are incontestable by the board and the committee.

G. The board, out of any available monies, may purchase bonds, which may be canceled, at a price not exceeding either of the following:

1. If the bonds are then redeemable, the redemption price then applicable plus accrued interest to the next interest payment date.
2. If the bonds are not then redeemable, the redemption price applicable on the first date after purchase on which the bonds become subject to redemption plus accrued interest to that date.

49-1278. Water supply development bonds; purpose

A. Water supply development bonds may be issued to provide financial assistance under this article and to increase the capitalization of the water supply development revolving fund to

accomplish the purposes stated in section 49-1273. These bonds may be secured by any monies received or to be received in the water supply development revolving fund. Amounts in the water supply development revolving fund may be used to cure defaults on loans made from the water supply development revolving fund to the extent otherwise permitted by law.

B. Any pledge made under this article is valid and binding from the time when the pledge is made. The monies pledged and received to be placed in the appropriate fund are immediately subject to the lien of the pledge without any future physical delivery or further act, and any such lien of any pledge is valid or binding against all parties having claims of any kind in tort, contract or otherwise against the board regardless of whether the parties have notice of the lien. The official resolution or trust indenture or any instrument by which this pledge is created, when placed in the board's records, is notice to all concerned of the creation of the pledge, and those instruments need not be recorded in any other place.

C. The bonds issued under this section, their transfer and the income they produce are exempt from taxation by this state or by any political subdivision of this state.

49-1279. Bond obligations of the authority

Bonds issued under this article are obligations of the water infrastructure finance authority of Arizona, are payable only according to their terms and are not general obligations, special obligations or otherwise of this state. The bonds do not constitute a legal debt of this state and are not enforceable against this state. Payment of the bonds is not enforceable out of any state monies other than the income and revenue pledged and assigned to, or in trust for the benefit of, the holder or holders of the bonds.

49-1280. Certification of bonds by attorney general

The board may submit any water supply development bonds issued under this article to the attorney general after all proceedings for their authorization have been completed. On submission, the attorney general shall examine and pass on the validity of the bonds and the regularity of the proceedings. If the proceedings comply with this article, and if the attorney general determines that, when delivered and paid for, the bonds will constitute binding and legal obligations of the board, the attorney general shall certify on the back of each bond, in substance, that it is issued according to the constitution and laws of this state.

49-1281. Water supply development bonds as legal investments

Water supply development bonds issued under this article are securities in which public officers and bodies of this state and of municipalities and political subdivisions of this state, all companies, associations and other persons carrying on an insurance business, all financial institutions, investment companies and other persons carrying on a banking business, all fiduciaries and all other persons who are authorized to invest in obligations of this state may properly and legally invest. The bonds are also securities that may be deposited with public officers or bodies of this state and municipalities and political subdivisions of this state for purposes that require the deposit of state bonds or obligations.

49-1282. Agreement of state

This state pledges to and agrees with the holders of the bonds that this state will not limit or alter the rights vested in the water infrastructure finance authority of Arizona or any successor agency to collect the monies necessary to produce sufficient revenue to fulfill the terms of any agreements made with the holders of the bonds, or in any way impair the rights and remedies of the bondholders, until all bonds issued under this article, together with interest, including interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceedings by or on behalf of the bondholders, are fully met and discharged. The board as agent for this state may include this pledge and undertaking in its resolutions and indentures securing its bonds.

Title 41 Chapter 53 Office of Economic Opportunity

Article 2 ARIZONA FINANCE AUTHORITY

41-5351. Definitions

In this article, unless the context otherwise requires:

1. "Agreement" means any loan or other agreement, contract, note, mortgage, deed of trust, trust indenture, lease, sublease or instrument entered into by the authority.
2. "Authority" means the Arizona finance authority.
3. "Board" means the board of directors of the authority.
4. "Bonds" means any bonds issued by the authority.
5. "Costs":
 - (a) Means all costs incurred in the issuance of bonds, including insurance policy, credit enhancement, legal, accounting, consulting, printing, advertising and travel expenses, plus any authority administrative fees.
 - (b) May include interest on bonds issued by the authority for a reasonable time before and during the time the proceeds are used.
6. "Director" means the director of the authority.
7. "Federal agency" means the United States or any agency or agencies of the United States.

41-5352. Arizona finance authority; fund

- A. The Arizona finance authority is established in the office of economic opportunity.
- B. The governor shall appoint the director of the authority to serve at the pleasure of the governor.
- C. The Arizona finance authority operations fund is established consisting of monies deposited pursuant to section 41-5355. The authority shall administer the fund. Monies in the fund are continuously appropriated.
- D. At the end of the fiscal year, the authority shall transfer all unencumbered monies in the fund in excess of the authority's operating costs to the economic development fund established by section 41-5302.

41-5353. Board; members; terms; meetings; compensation; prohibition

- A. The authority shall be governed by a board of directors, consisting of five members to be appointed by the governor, giving due consideration to a diverse geographical representation on the board, and to serve at the pleasure of the governor.
- B. Before appointment by the governor, a prospective member of the board of directors shall submit a full set of fingerprints to the governor for the purpose of obtaining a state and federal criminal records check pursuant to section 41-1750 and Public Law 92-544. The department of public safety may exchange this fingerprint data with the federal bureau of investigation.
- C. Each member shall serve for a term of three years. Vacancies occurring other than by expiration of term shall be filled in the same manner for the remainder of the unexpired term.

D. The board shall annually elect from among its members a chairperson, a secretary and a treasurer.

E. The board rules shall provide for regular annual meetings of the board. The chairperson may call a special meeting at any time. The board rules shall provide for a method of giving notice of a special meeting.

F. The board may meet by audioconference or videoconference. The requirements of title 38, chapter 3, article 3.1 apply to an audioconference or videoconference, except that all votes of members must be by roll call, and the board may not meet in executive session by audioconference or videoconference.

G. Members of the board are not eligible to receive compensation but are eligible to receive reimbursement for necessary expenses pursuant to title 38, chapter 4, article 2 while engaged in the performance of the members' duties.

H. Members of the board may not have any direct or indirect personal financial interest in any project financed under this article.

41-5354. Powers of board

The board may:

1. Adopt an official seal and alter the seal at its pleasure.
2. Apply for, accept and administer grants of monies or materials or property of any kind from a federal agency or others on such terms and conditions as may be imposed.
3. Make and enter into agreements, including intergovernmental agreements pursuant to title 11, chapter 7, article 3, execute all instruments, perform all acts and do all things necessary or convenient to carry out the powers granted.
4. Employ or contract with experts, engineers, architects, attorneys, accountants, construction and financial experts and such other persons as may be necessary in the board's judgment and fix their compensation.
5. Pay compensation and employee-related expenses.
6. Fix the compensation of the director.
7. Sue and be sued.
8. Acquire and maintain office space, equipment, supplies, services and insurance necessary to administer this article.
9. Contract with, act as guarantor for or coinsure with any federal, state or local governmental agency and other organizations or corporations in connection with its activities under this article and receive monies relating to those contracts and services.
10. Adopt bylaws and administrative rules consistent with this article.
11. Protect and enforce the interests of the authority in any project financed through the authority's resources.
12. Enter into and inspect any facility financed through the authority's resources to investigate its physical condition, construction, rehabilitation, operation, management and maintenance and to examine all of the records relating to its capitalization, income and other related matters.
13. Acquire title to real property or other assets by gift, grant or operation of law, or by purchase.
14. Establish advisory boards that have all rights and powers granted by the board, including the right to review, evaluate and recommend to the board for approval proposed financings.

41-5355. Assets; cost of operation and administration; taxation

A. Any monies, pledges or property issued or given to the Arizona finance authority, whether by appropriation, loan, gift or otherwise, constitute the assets of the Arizona finance authority.

B. This state is not responsible for any obligation incurred by the authority.

C. All costs and expenses of the authority shall be paid from bond proceeds of bonds issued by any industrial development authority established by the Arizona finance authority or other monies of the authority, and to the extent not prohibited by state or federal law or by contract, the monies of the greater Arizona development authority and the water infrastructure finance authority of Arizona that are available to pay the Arizona finance authority's costs and expenses.

D. The authority and its income are exempt from taxation in this state.

41-5356. Duties of board; advisory board; board termination

A. The board shall:

1. Establish an industrial development authority under title 35, chapter 5 and, notwithstanding the requirements of section 35-705, serve as the board of the industrial development authority.

2. Serve as the board of the greater Arizona development authority and have all powers and authority to take action on behalf of the greater Arizona development authority pursuant to chapter 18 of this title.

3. Serve as the board of the water infrastructure finance authority of Arizona and have all powers and authority to take action pursuant to title 49, chapter 8 regarding water infrastructure financing.

4. Approve the authority's budget.

5. Establish a water and infrastructure finance authority advisory board to advise the board of directors of the authority consisting of relevant state agency representatives and the following additional members:

(a) One member who represents a public water system that serves five hundred or more connections.

(b) One member who represents a public water system that serves less than five hundred connections.

(c) One member who represents a sanitary district in a county with a population of less than five hundred thousand persons.

(d) One member who represents a sanitary district in a county with a population of five hundred thousand or more persons.

(e) One member who represents a city or town with a population of less than fifty thousand persons.

(f) One member who represents a city or town with a population of fifty thousand or more persons.

(g) One member who represents a county with a population of five hundred thousand or more persons.

B. The board established pursuant to subsection A, paragraph 5 of this section ends on July 1, 2024 pursuant to section 41-3103.

41-5355. Assets; cost of operation and administration; taxation

- A. Any monies, pledges or property issued or given to the Arizona finance authority, whether by appropriation, loan, gift or otherwise, constitute the assets of the Arizona finance authority.
- B. This state is not responsible for any obligation incurred by the authority.
- C. All costs and expenses of the authority shall be paid from bond proceeds of bonds issued by any industrial development authority established by the Arizona finance authority or other monies of the authority, and to the extent not prohibited by state or federal law or by contract, the monies of the greater Arizona development authority and the water infrastructure finance authority of Arizona that are available to pay the Arizona finance authority's costs and expenses.
- D. The authority and its income are exempt from taxation in this state.

Title 41 Chapter 24 Solicitation and Award of Grants

ARTICLE 1. GENERAL PROVISIONS

41-2701. Definitions

In this chapter, unless the context otherwise requires:

1. "Grant" means the furnishing of financial or other assistance, including state funds or federal grant funds, by any state governmental unit to any person for the purpose of supporting or stimulating educational, cultural, social or economic quality of life.
2. "Person" means any corporation, business, individual, committee, club or other organization or group of individuals.
3. "State governmental unit" means any department, commission, council, board, bureau, committee, institution, agency, government corporation or other establishment or official of the executive branch or corporation commission of this state.

41-2702. Solicitation and award of grant applications

A. State governmental units shall award any grant in accordance with the competitive grant solicitation requirements of this chapter.

B. A state governmental unit shall prepare and issue a request for grant applications that includes at least the following information:

1. A description of the nature of the grant project, including the scope of the work to be performed by an awardee.
2. An identification of the funding source and the total amount of available funds.
3. Whether a single award or multiple awards may be made.
4. Encouragement of collaboration by entities for community partnerships, if appropriate.
5. Any additional information required by the applications.
6. The criteria or factors under which applications will be evaluated for award and the relative importance of each criteria or factor.
7. The due date for submittal of applications and the anticipated time the awards may be made.

C. Adequate public notice of the request for grant applications shall be given at least six weeks before the due date for the submittal of applications. Adequate notification of the request for grant applications shall also be provided to the central state permitting program pursuant to section 41-1505.08.

D. A preapplication conference may be conducted before the due date for the submittal of applications to explain the grant application requirements. If a preapplication conference is held, it shall be held at least twenty-one days before the due date. Statements made at a preapplication conference are not amendments to the request for grant applications unless a written amendment is issued.

E. Grant applications shall be publicly received at the time and place designated in the request for grant applications. The name of each applicant shall be publicly read and recorded. All other information in the grant application is confidential during the process of evaluation. All applications shall be open for public inspection after grants are awarded. To the extent the applicant designates and the state concurs,

trade secrets and other proprietary information contained in the application shall remain confidential.

F. Applications shall be evaluated by at least three evaluators who are peers or other qualified individuals. The evaluators may allow applicants to make oral or written presentations regarding the scope of work, terms and conditions of the grant, budget and other relevant matters set forth in the request for grant applications. Applicants shall be accorded fair treatment with respect to any opportunity for oral or written presentations. The evaluators may require an applicant to revise its application to reflect information provided in an oral or written presentation. Any person who has information contained in the application of competing applications shall not disclose that information.

G. The evaluators shall review each application based solely on the evaluation criteria or factors set forth in the request for grant applications. The evaluators shall maintain a written record of the assessment of each application, which shall include comments regarding compliance with each evaluation criteria or factor, the citation of a specific criteria or factor as the basis of each stated strength or weakness and a clear differentiation between comments based on facts presented in the application and comments based on professional judgment. Evaluator assessments shall be made available for public inspection no later than thirty days after a formal award is made.

H. The evaluators shall make award recommendations to the head of the state governmental unit based on the evaluators' reviews of each application. The evaluators' recommendations may include the adjustment of the budgets of the applicants individually or collectively.

I. The head of the state governmental unit may affirm, modify or reject the evaluators' recommendations in whole or in part. Modification of the evaluators' recommendations may include the adjustment of the budget on any proposed award individually or on all awards by an amount or percentage. If the head of the state governmental unit does not affirm the recommendations, the head of the state governmental unit shall document in writing the specific justifications for the action taken. The specific justifications shall be made available for public inspection no later than thirty days after the action is taken.

J. The head of a state governmental unit may enter into agreements with other state governmental units to furnish assistance in conducting the solicitation of grant applications.

41-2703. Waiver of solicitation and award procedures

A. Notwithstanding any other provision of this chapter, the director of the department of administration or the director's designee may waive the solicitation and award procedures if a situation exists that makes compliance with section 41-2702 impracticable, unnecessary or contrary to the public interest, except that the grant solicitation and award shall be made with competition that is practicable under the circumstances.

B. A state governmental unit seeking a waiver of solicitation and award procedures shall prepare a written request documenting and explaining the situation justifying the waiver. The request shall be submitted to the director of the department of administration or the director's designee, who shall determine in writing whether to grant the request. If the request is granted, the determination shall state the

manner in which the grant is to be solicited and awarded and the limits of the determination.

C. A copy of each request and determination shall be kept on file in the office of the state governmental unit requesting the waiver and the office of the director of the department of administration or the office of the director's designee.

41-2704. Remedies

The head of the state governmental unit may resolve protests of the award or proposed award of a grant. An appeal from a decision of the head of a state governmental unit may be made to the director of the department of administration. A protest of an award or proposed award of a grant and any appeal shall be resolved in accordance with the rules of procedure adopted by the director pursuant to section 41-2611.

41-2705. Violation; classification; liability; enforcement authority

A. A person who violates this chapter is personally liable for the recovery of all public monies paid plus twenty per cent of the amount and legal interest from the date of payment and all costs and damages arising out of the violation.

B. A person who intentionally or knowingly participates in the award of a grant pursuant to a scheme or artifice to avoid the requirements of this chapter is guilty of a class 4 felony.

C. A person who serves as an evaluator of grant applications pursuant to this chapter shall sign a statement before reviewing applications that the person has no interest in any application other than that disclosed and shall not have contact with any representative of an applicant during the evaluation of applications, except those contacts specifically authorized by this chapter. The person shall disclose on the statement any contact unrelated to the review of the grant applications that the person may need to have with a representative of an applicant and any contact with a representative of an applicant during evaluation of applications except those specifically authorized by this chapter. A person who serves as an evaluator and who fails to disclose contact with a representative of an applicant or who fails to provide accurate information on the statement is subject to a civil penalty of at least one thousand dollars but no more than ten thousand dollars.

D. The attorney general on behalf of this state shall enforce the provisions of this chapter.

41-2706. Applicability of chapter

A. This chapter applies to the solicitation of grants initiated after August 6, 1999.

B. This chapter does not apply to:

1. Any grant program that was exempt from chapter 23, article 3 of this title and for which administrative rules establishing grant solicitation procedures were adopted pursuant to chapter 6 of this title before August 6, 1999.

2. The Arizona board of regents and schools, colleges, institutions and universities under its control if the Arizona board of regents adopts rules or policies governing the award of grants that encourage as much competition as practicable.

3. Grants made by the cotton research and protection council for research programs related to cotton production or protection.

4. Grants made by the Arizona iceberg lettuce research council for research programs under section 3-526.02, subsection C, paragraph 3 or 5.
5. Grants made by the Arizona citrus research council for research programs under section 3-468.02, subsection C, paragraph 3 or 5.
6. Grants made by the Arizona grain research and promotion council for research projects and programs under section 3-584, subsection C, paragraph 5.
7. Grants made under section 3-268, subsection C.
8. Grants made by the Arizona commerce authority from the Arizona competes fund pursuant to chapter 10, article 5 of this title. With respect to other grants, the authority shall adopt policies, procedures and practices, in consultation with the department of administration, that are similar to and based on the policies and procedures prescribed by this chapter for the purpose of increased public confidence, fair and equitable treatment of all persons engaged in the process and fostering broad competition while accomplishing flexibility to achieve the authority's statutory requirements. The authority shall make its policies, procedures and practices available to the public.
9. Grants of less than five thousand dollars from the veterans' donations fund if the department of veterans' services adopts rules or policies governing these grants that encourage as much competition as practicable.

LAND DEPARTMENT (F-17-1010)

Title 12, Chapter 5, Article 7, Special Licensing Provisions; Article 8, Right-of-way; Article 9, Exchanges; Article 11, Special Use Permits



**GOVERNOR'S REGULATORY REVIEW COUNCIL
ANALYSIS OF FIVE-YEAR REVIEW REPORT**

MEETING DATE: December 5, 2017

AGENDA ITEM: E-2

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

FROM: Council Staff

DATE : November 21, 2017

SUBJECT: LAND DEPARTMENT (F-17-1010)
Title 12, Chapter 5, Article 7, Special Leasing Provisions; Article 8, Right-of-way; Article 9, Exchanges; Article 11, Special Use Permits

COMMENTS ON THE FIVE-YEAR REVIEW REPORT

Purpose of the Agency and Number of Rules in the Report

This five-year review report from the Land Department (Department) covers 11 rules in A.A.C. Title 12, Chapter 5, Articles 7, 8, 9, and 11 that relate to special leasing provisions, rights-of-way, exchanges, and special use permits. The Department did not review Section 921, related to exchange of road rights-of-way over state land, and that rule has now expired.

Article 7, related to Special Leasing Provisions, contains three rules pertaining to agricultural leases, grazing leases, and commercial leases. The Article 7 rules date back to at least 1993. Article 8, related to rights-of-way, contains two rules pertaining to rights-of-way generally and rights-of-way for reservoir, dams, and other sites. The Department indicates that the Article 8 rules date back to 1976.

Article 9, related to exchanges, contains five rules pertaining to scope, definitions, applications, maps and photographs, and controversies as to title or leasehold rights. The Department indicates that the Article 9 rules have not created an impact in recent decades since the Arizona Supreme Court declared state trust land exchanges unconstitutional in *Fain Land and Cattle Co. v. Hassell* (See 163 Ariz. 587 (1990)). In 2012, Proposition 119 was passed, amending the State Constitution to allow for exchanges of Trust Land if specific requirements are met. The Department indicates that no exchanges have been applied for or considered since the passage of Proposition 119.

Article 11, related to special use permits, contains one rule pertaining to policies for the use of lands. The rule dates back to at least 1993.

No actions have been taken on the rules in the past five years, as the Department did not complete the actions proposed in its last five-year review report.

Proposed Action

The Department states that it recognizes the flaws within the rules and plans to amend some of the rules to strike language that is inconsistent with statute, agency operations, or the Arizona Constitution. Language should also be added and modified to improve clarity and conciseness. Specific descriptions of the problems that the Department has identified with the rules are provided in section 5 of this memorandum.

The Department indicates that they will begin the rulemaking process by March 2019 if the Department can acquire the requisite authorization from the Governor's Office, stakeholder engagement is effective, and internal resources allow for a rulemaking.

Substantive or Procedural Concerns

Throughout the report, the Department identifies areas in which the rules are "inconsistent with agency operations." To avoid violations of state law, namely the Administrative Procedure Act (APA), state agencies must operate in a manner that is consistent with the rules on the books wherever practicable. And, in instances where it is no longer practicable for an agency to enforce the rules they have promulgated, Council staff believes that an agency has a responsibility under the APA to timely begin the rulemaking process and correct deficiencies.

On page 7 of the report, the Department states that it "desires to eventually amend" the rules and expects to begin to implement this goal by March 2019. Council staff is concerned that, given the litany of problems with the rules that the Department has identified, the proposed course of action on the rules is insufficiently timely.

1. Has the agency analyzed whether the rules are authorized by statute?

Yes. The Department cites to both general and specific authority for the rules. Of particular significance is A.R.S. § 37-132(A)(1), which requires the State Land Commissioner to "[e]xercise and perform all powers and duties vested in or imposed upon the [D]epartment, and prescribe such rules as are necessary to discharge those duties."

2. Summary of the agency's economic impact comparison and identification of stakeholders:

The rules outlined in Articles 7, 8, 9, and 11 detail the application process and requirements for agricultural leases, grazing leases, rights-of-way, and special land use permits. Key stakeholders are the Department and the general public.

FY16 special leases and revenues generated:

Lease Type	# of Leases	# of Acres	Revenues
Agricultural Leases	342	153,779.31	\$4,402,721.57
Grazing Leases	1,191	8,329,280.41	\$3,404,424.84
Commercial Leases	295	69,397.43	\$26,199,557.42

In FY16, the Department had 7,673 rights-of-way covering 198,487.24 acres of Trust Land which generated \$4,212,499.30 in revenues. In FY16, the Department had 655 special use permits in effect covering 462,859.39 acres of Trust Land, generating \$5,762,327.03 in revenues.

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

The Department determines the rules as written do not impose the least burden and costs when meeting their objectives.

4. Has the agency received any written criticisms of the rules over the last five years?

Yes. The Department indicates that it has received written criticisms on three of the reviewed rules during the last five years.¹ Criticisms of Section 702 (Agricultural Leases) are summarized on Pages 9 and 10 of the report. A criticism of Section 705 (Grazing Leases) is summarized on Page 15 of the report. Criticisms of Section 801 (Right-of-way) are summarized on Pages 18-20 of the report.

5. Has the agency analyzed the rules' clarity, conciseness, and understandability, consistency with other rules and statutes, and effectiveness?

Yes. The Department indicates that the following rules are not clear, concise, and understandable:

- Section 702 – *Agricultural Leases*: The rule is generally not clear, concise, and understandable because of drafting style, redundancies, and inconsistencies with statutes, other rules, and agency operations.
- Section 703 – *Commercial Leases*:
 - Subsection (A) is an unnecessary iteration of statutory interpretation;
 - Subsection (B) needs amendment as a large part of it is simply iteration of policy;
 - Subsection (C) is not concise because it is redundant of the Enabling Act;
 - Subsection (E) needs to be amended as it is unnecessary to say that certain commercial leases shall be subject to the provisions and restrictions of the lease;
 - Subsection (F) is not clear and should be redrafted to improve clarity and efficiency;
 - Subsection (G) is not concise and should be relocated to Section (C);
 - Subsections (J) and (K) contains unnecessary agency operational minutiae; and
 - Subsection (M) should have language combined into subsection (F) for efficiency.

¹ Copies of the criticisms have been included as attachments to the report.

- Section 705 – *Grazing Leases*:
 - Subsection (A)(1) is redundant of A.R.S. § 37-101;
 - Subsection (A)(3) is unnecessary;
 - Subsection (A)(4) is redundant of A.R.S. § 37-285(F);
 - Subsection (A)(5) references the Bureau of Agricultural Economics which has since been renamed;
 - Subsection (B) is redundant of requirements outlined in A.R.S. § 37-240(B);
 - Subsection (C) requires renewal application fees to be paid in the same manner as the original application, but another rule, R12-5-1201, prescribes Department fees;
 - Subsection (F) is redundant of A.R.S. § 37-285(B) and (F);
 - Subsection (J) includes unnecessary procedural minutiae; and
 - Subsection (M) is unnecessary as it is included within the lease contracts.
- Section 801 – *Right-of-way*:
 - Subsection (A) includes definitions that are redundant of statute;
 - Subsection (A)(3) is not entirely clear in its meaning;
 - Subsection (B) is not concise;
 - Subsection (C)(1)(a) is not concise in that some of the language is overly restrictive;
 - Subsection (C)(1)(b) is redundant of subsection (C)(3)(a);
 - Subsection (C)(3)(a) contains restrictive language regarding business entities (entities from which the agency would take an application include more than partnerships and corporations, even though only those two types of entities are mentioned);
 - Subsection (C)(5)(a) should refer to the rule that contains Department-wide fees; and
 - Subsections (C)(5)(c)(i), (ii), and (iii)(1) are redundant of A.R.S. § 37-132.
- Section 802 – *Reservoir Dams and Other Sites*:
 - Subsection (D) could be combined with subsection (C) to address initial and renewal applications at the same time;
 - Subsections (E) and (I) are not clear and should be rewritten.
- Section 902 – *Definitions*: Two definitions, “Commissioner” and “Department,” are redundant of statute.
- Section 904 – *Application*: The rule should be amended to conform to A.R.S. § 37-604.
- Section 910 – *Maps and Photographs*: The rule could be combined with Section 904 to make the rules more concise.
- Section 1101 – *Policy; Use of Lands*:
 - The preamble publishes policy, which is improper, and contains redundant language;
 - Subsections (1) and (2) should be rewritten to improve clarity;
 - Subsection (3) is not clear nor concise and should be rewritten;
 - Subsection (4) contains statements related to policy that should be struck;
 - Subsection (7) should be rewritten to improve clarity and efficiency;
 - Subsection (8) should be rewritten to improve clarity and conciseness and to eliminate redundant language;
 - Subsections (9) and (10) should be rewritten to improve clarity and conciseness;
 - Subsection (11) reiterates language found in subsection (3);
 - Subsection (12) contains language that is not concise or understandable;
 - Subsection (13) is redundant of subsections (3) and (4);
 - Subsection (14) is unnecessary; and
 - Subsection (15) should be rewritten to improve clarity and conciseness.

In addition, the Department indicates that the following rules are not consistent with statutes, other rules, or agency operations:

- Section 702 – *Agricultural Leases*:
 - Subsection (A)(1) is consistent with the ten-year maximum limitation included within § 28 of the Enabling Act;
 - Subsection (B) is inconsistent with A.R.S. § 37-212 as the rule requires applicants to submit an application to have lands reclassified, but no such application is needed or taken if lands are to be reclassified as agricultural lands;
 - Subsection (C)(1)(a) is inconsistent with agency operations, as an applicant may currently apply to lease multiple sections of land using one application despite the restriction within the subsection;
 - Subsection (D) is inconsistent with A.R.S. § 37-132(A)(5), which authorizes the Commissioner to appraise state lands for leasing, and A.R.S. § 37-285(A), which requires agricultural leases to have annual rents not less than the appraised rental value subject to adjustment each year, with a minimum cap of \$0.05 per acre per year;
 - Subsection (E) is inconsistent with agency operations, as all agricultural leases commence on a common date and hardships are not accepted as exemptions to this common due date practice;
 - Subsection (H)(1)(a) is inconsistent with agency operations, as the rule requires a separate renewal application to be submitted for each section, or portion thereof, of land, while the Department currently requires only one application form; and
 - Subsection (H)(1)(b) is inconsistent with the filing fees delineated in R12-5-1201.
- Section 703 – *Commercial Leases*:
 - Subsection (H) is inconsistent with itself and with agency operations as the minimum rental rate for commercial leases is greater than the amount articulated in the rule; and
 - Subsection (M) is inconsistent with agency operations in that a commercial lease is not merely a license to use land but is, rather, an interest in the land.
- Section 705 – *Grazing Leases*:
 - Subsection (B) is inconsistent with agency operations in that the Department does not impose age- or citizen-based restrictions on its applicants;
 - Subsection (C) is inconsistent in that:
 - § It specifies only one section may be applied for per application for an initial lease whereas the Department currently allows new and renewal applications to include an entire ranch unit covering multiple sections, while a fee is charged for each section covered in the application pursuant to R12-5-1201;
 - § It requires the use of forms, i.e. Land Division forms, that no longer exist; and
 - § It indicates that if a renewal applicant has an up-to-date and current statement of his holdings within the ranch unit on file with the Department, then completion of detailed questions concerning holdings on the application form are not required to be filled out. In reality, an applicant must provide a map of the leased land including any controlling interests in conjunction with the lease at the time of the renewal of the lease;

- Subsection (E) is inconsistent with A.R.S. § 37-212 in that it requires applicants to apply to have lands reclassified as Grazing Lands but no such application is needed or taken if lands are to be reclassified as Grazing Lands;
 - Subsection (F) is inconsistent with agency operations because it provides for minimum rental amounts (\$0.02 per acre annually or a minimum of \$2.50 per lease annually) which are not utilized. In addition, the rule is inconsistent with A.R.S. § 37-285 which requires an annual rate per animal unit month (AUM) to be determined by the Commissioner based on the recommendation of the grazing land valuation commission.
 - Subsection (G) is inconsistent with agency operations because it permits the splitting of a Grazing Lease into many leases to dissect due dates and payments of a large Grazing Lease into more palatable portions, which amounts to a hardship exception to the common anniversary date practice which the Department follows without exception (i.e. all Grazing Lease rents are due in March);
 - Subsection (H) is inconsistent with agency operations as the Land Division and its corresponding forms no longer exist;
 - Subsection (K) is inconsistent with A.R.S. § 37-283(A);
 - Subsection (L) is inconsistent with agency operations, as crops may not be grown on Grazing Lands under a Grazing Lease;
 - Subsection (N) is inconsistent with agency operations as to the forms prescribed in the statute which no longer exist; and
 - Subsection (O) is inconsistent with agency operations, as Grazing Leases are limited to grazing purposes.
- Section 801 – *Right-of-way*:
- Subsection (C)(1)(a) is inconsistent with agency operations as the Department does not citizen-test its individual applicants;
 - Subsection (C)(2) is inconsistent with agency operations as the Department does not require an application for each county crossed;
 - Subsection (C)(3)(a)(5) is inconsistent with agency operations as the Department does not age-test its applicants;
 - Subsection (C)(3)(a)(xi) is inconsistent with agency operations as the Department does not require an applicant to furnish evidence of agreement from surface- and rights-holders as a pre-requisite for submission of an application;
 - Subsection (C)(5)(c)(iii)(2) is inconsistent with agency operations because the Department does not use valuation methods for condemnation proceedings, as articulated in A.R.S. § 12-1122, for appraisal of its lands for rights-of-way;
 - Subsection (C)(7)(c) is inconsistent with agency operations in that the Department issues an order of cancellation rather than an order of abandonment in the given scenario;
 - Subsection (C)(8)(c) is inconsistent with agency operations as the commencement date is not the date that the instrument is mailed to the applicant, as stated, but is the date of in-house review, or, if required, the day after the review by the Board of Land Appeals or of the auction;
 - Subsection (D)(7)(a) is inconsistent with agency operations in that the Department does not require security by bond of all monies owed under the contract; and

- Subsection (E)(1)(a) is inconsistent with agency operations as the Department does not require applications to place improvements for Right-of-Way grantees as it does for Commercial Lessees.
- Section 802 – *Reservoir Dams and Other Sites*:
 - Subsection (B) is inconsistent with A.R.S. § 37-461(C) in that site leases in excess of ten years are not, in fact, required to be advertised and sold at public auction;
 - Subsection (C) is inconsistent with agency operations as it would be overly burdensome to require an applicant to submit at the application stage a statement from a surface lessee or subsurface lessee;
 - Subsection (D) is inconsistent with agency operations, as non-use is not addressed in the way iterated;
 - Subsection (F) is inconsistent with agency operations, as the application of the rule could amount to two separate findings; and
 - Subsection (H) is inconsistent with agency operations, as Department requires an amendment application to be filed if a different use is contemplated other than that which is included in the right-of-way grant.
- Section 902 – *Definitions*: A.R.S. § 37-202, which creates the Selection Board referenced within the rule, appoints the Governor, the State Treasurer, and the Attorney General to the Selection Board. The rule has the Land Commissioner in place of the State Treasurer.
- Section 904 – *Application*: The rule references age and residence requirements that have been removed from § 37-604(B)(1)(a).
- Section 1101 – *Policy; Use of Lands*:
 - Subsection (1) is inconsistent with agency operations, as the Department does not age test or citizen-test its applicants;
 - Subsection (2) is inconsistent with agency operations, as the Department no longer has a Land Division and its corresponding forms;
 - Subsection (5) is inconsistent with the minimum fee charged by the Department;
 - Subsection (10)(f) is inconsistent with agency operations, as the Department does not exempt the delineated signs;
 - Subsection (12)(a) is inconsistent with R12-5-1201 governing fees;
 - Subsection (12)(b) is inconsistent with A.R.S. § 37-132; and
 - Subsection (16) is inconsistent with agency operations, as the Department does not legalize signage installed or maintained in trespass.

The Department indicates that the following rules are not entirely effective:

- Section 702 – *Agricultural Leases*: Parts of the rule are ineffective where inconsistent with statute or agency operations.
- Section 703 – *Commercial Leases*: Parts of the rule are ineffective where inconsistent with statute or agency operations.
- Section 705 – *Grazing Leases*: Parts of the rule are ineffective where inconsistent with statute or agency operations.
- Section 801 – *Right-of-way*: Parts of the rule are ineffective where inconsistent with statute or agency operations. Further, subsection (C)(5)(c)(iii) and (D)(8) articulates an overly burdensome payment method for municipalities and other government entities.

- Section 802 – *Reservoir Dams and Other Sites*: The rule is inconsistent and needs stylistic improvements.
- Section 902 – *Definitions*: The rule is generally unnecessary.
- Section 1101 – *Policy; Use of Lands*: The rule is inconsistent and lacks clarity.

6. Has the agency analyzed the current enforcement status of the rules?

Yes. The Department indicates that the rules are not enforced as written when they are inconsistent with statutes or with “substantial” agency operations.

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

No. The Department indicates that no federal laws correspond to the rules.

8. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?

Not applicable, as the rules were adopted prior to July 29, 2010.

9. Conclusion

As noted above, the Department intends to begin the rulemaking process by March 2019. While Council staff is concerned about the timeliness of the Department’s proposed course of action, staff recommends that the report be approved as it generally meets the requirements of A.R.S. § 41-1056 and R1-6-301.

Douglas A. Ducey
Governor



Lisa A. Atkins
Commissioner

Arizona State Land Department

1616 West Adams, Phoenix, Arizona 85007
(602) 542-4631

November 13, 2017

Arizona Department of Administration
Governor's Regulatory Review Council
100 North 15th Avenue, Suite 402
Phoenix, AZ 85007

Attn: Nicole Ong Colyer, Chairperson

RE: Arizona State Land Department's 5 Year Rule Review; A.A.C. Title 12, Chapter 5, Articles 7, 8, 9, & 11

Dear Chairperson Ong:

The Arizona State Land Department ("Department") submits for Council approval the accompanying Five-Year Review Report for A.A.C. Title 12, Chapter 5, Articles 7, 8, 9, and 11. This document complies with the requirements under A.R.S. § 41-1056. The Department certifies that it is in compliance with the requirements of A.R.S. § 41-1091. Pursuant to A.A.C. R1-6-301(C)(2), the Department hereby notifies the Council of its intention to expire R12-5-921 under A.R.S. § 41-1056 (J).

Should you have any questions, please do not hesitate to contact Angela Calabresi, Administrative Counsel, at (602) 542-2632 or acalabresi@azland.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Wesley P. Mehl'.

Wesley P. Mehl
Deputy Land Commissioner

Enclosures

c: Angela Calabresi, Administrative Counsel
Jill Pernice, Administration Division Director
Theresa Craig, Attorney General's Office, Natural Resource Section

FIVE-YEAR RULE REVIEW REPORT

Submitted to

THE GOVERNOR'S REGULATORY REVIEW COUNCIL



ARIZONA STATE LAND DEPARTMENT

"Serving Arizona's Schools and Public Institutions Since 1915"

**TITLE 12 – Natural Resources
CHAPTER 5 – State Land Department**

Article 7 – Special Leasing Provisions

Article 8 – Right-of-way

Article 9 – Exchanges

Article 11 – Special Use Permits

Originally Submitted July 31, 2017

As Revised November 13, 2017

FIVE YEAR RULE REVIEW REPORT

TITLE 12. NATURAL RESOURCES CHAPTER 5. STATE LAND DEPARTMENT

Article 7 – Special Leasing Provisions

Article 8 – Right-of-way

Article 9 – Exchanges

Article 11 – Special Use Permits

Table of Contents

1. Abstract of Rules Analyses.....	3
2. A.A.C. R1-6-301(A) Factors Used in Analysis.....	5
3. Identical Information for Rules reviewed.....	6
4. Analyses of Individual Rules.....	8
5. Economic, Small Business, and Consumer Impact.....	30
6. Rules reviewed in this Report.....	Appendix A
7. Related Statutes.....	Appendix B
8. Written Criticisms received by the Department	Appendix C

Abstract of Rules Analyses

The Administrative Procedures Act (“APA”) mandates a periodic review of agency rules. A.R.S. § 41-1056 provides criteria by which an agency must examine each rule, compile the examination into a report, and submit the report to the Governor’s Regulatory Review Council (the “Council”) for review. The Arizona State Land Department (the “Department”) is scheduled to file a review of its rules under Title 12, Chapter 5, Articles 7, 8, 9 and 11 with the Council by the end of July 2017. The Department’s rules are published in the Arizona Administrative Code (“A.A.C.”) Title 12, Chapter 5, Articles 1 through 25 and can be found on the Arizona Secretary of State’s website (www.azsos.gov).

The Department is not a regulatory agency. It functions as the trustee of the State’s 9.2 million acres of land and associated natural resources held in trust (“Trust Land”) for enumerated beneficiaries, the largest of which is K-12 public schools. The trust status of the lands granted to the State imposes obligations and constraints, specifically fiduciary duties to the beneficiaries, that would not apply if the State held the land outright. The Department’s management of the Trust is governed by the New Mexico-Arizona Enabling Act (Sections 24-30), the Arizona Constitution (Article X), and state statutes (Arizona Revised Statutes Titles 27 and 37). In addition, case law governs the Department’s procedures and management in that it interprets the Department’s governing legislation.

Within this report, the Department evaluated 11 separate rules relating to Articles 7, 8, 9 and 11. The Department desires to apply to amend some of the rules reviewed in this report by March 2019 if the Department can acquire the requisite authorization from the Governor’s Office, stakeholder engagement is effective, and internal resources allow for a rulemaking.

Article 7 Special Leasing Provisions

Article 7 governing Special Leasing Provisions contains three rules, one each pertaining to agricultural leases (R12-5-702), grazing leases (R12-5-703), and commercial leases (R12-5-705). Generally, all three rules have inconsistent, redundant, or outdated subsections that could be misleading or confusing to the public, and all three rules should be amended to conform with governing laws and agency operations.

Article 8 Right-of-way

Article 8 governing Right-of-way contains two rules, one pertaining to rights-of-way generally (R12-5-801) and one specifically for Reservoir, Dams, and Other Sites (R12-5-802). Originally adopted in 1976, these rules do not accurately reflect current Department practices and could benefit from amendments to their substance, style and language.

Article 9 Exchanges

In 1990, the Arizona Supreme Court decided *Fain Land and Cattle Co. v. Hassell* (163 Ariz. 587 (1990)) which declared State trust land exchanges unconstitutional on the basis that they constitute a sale without public auction. The Court found the exchange statutes A.R.S. §§ 37-604 to 37-607 unconstitutional as they apply to Trust Land. Because the Department also manages some sovereign land, the statutory scheme regulating exchanges of State sovereign land remained valid. Since the *Fain* decision, the State attempted, without success, several referenda to amend the State's Constitution to allow for exchanges of Trust Land for other lands.

In 2012, the Legislature referred a measure to the November ballot, Proposition 119, which was passed by voters, amending the State Constitution to allow for exchanges of Trust Land if specific requirements are met, including but not limited to the requirement that the qualified electors of the State must approve each exchange via referendum. In addition, S.B. 1001, signed by the Governor on April 17, 2012 with a conditional enactment, became effective December 3, 2012 after the passage of Prop 119. S.B. 1001 revised A.R.S. § 37-604, outlining specific limitations and requirements regarding exchanges of Trust Land. Section 37-604 required the Department to adopt rules governing the application and procedure for exchanges to be executed.

The rules within Article 9 are from the 1970s, though they have not created an impact on the Department or its exchange applicants in recent decades since the Arizona Supreme Court declared exchanges unconstitutional in 1990, and there have been no exchanges applied for or considered to date since Prop 119 was passed in 2012.

Article 11 Special Use Permits

Article 11 governing Special Use Permits (also known as Special Land Use Permits) contains one rule, R12-5-1101 Policy; Use of Lands. Much of the rule addresses signage allowed on Trust Land under a Special Land Use Permit. The rule is partially inconsistent with agency operations in minor ways.

Legend of Factors Used in Analysis pursuant to A.A.C. R1-6-301(A)

Each rule required to be reviewed in this report has been analyzed according to the following factors:

1. General and specific authority, including any statute that authorizes the agency to make rules;
2. Objective of the rule, including the purpose for the existence of the rule;
3. Effectiveness of the rule in achieving the objective, including a summary of any available data supporting the conclusion reached;
4. Consistency of the rule with state and federal statutes and other rules made by the agency;
5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement;
6. Clarity, conciseness, and understandability of the rule;
7. Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the five-year review report;
8. A comparison of the estimated economic, small business and consumer impact with prior economic impact statement or assessment;
9. Any analysis submitted to the agency by another person regarding the rule's impact on this State's business competitiveness;
10. If applicable, how the agency completed the course of action indicated in the agency's previous five- year review report;
11. A determination that the rule's probable benefits outweigh the probable costs and that rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective;
12. A determination after analysis that the rule is not more stringent than a corresponding federal law unless there is statutory authority to exceed the requirements of that federal law;
13. For a rule adopted after July 29, 2010, that requires issuance of a regulatory permit, license or agency authorization, whether the rule complies with A.R.S. § 41-1037; and
14. Course of action the agency proposes to take regarding each rule.

Identical Information for All the Rules

Pursuant to A.A.C. R1-6-301(B), rules reviewed within the same report that render identical answers for any factor or factors delineated above shall have those identical answers provided only once. The rules contained in this report are identical in the following ways:

8. Economic impact comparison:

There is no current EIS to compare with a previous EIS. However, economic impacts of activities that are governed by these rules are included in this EIS following the analyses of rules.

9. External Analysis of impact of State's business competitiveness:

The Department has not received any external analysis of the rules' impact on Arizona's business competitive position.

10. Previous 5yRR Report Course of Action:

The Department previously submitted a review of the rules in Articles 7, 8, 9, & 11 in 2012 and stated, at that time, that many of the rules should be amended. The Department intended to open the Rulemaking Docket for Article 9 in the Arizona Administrative Register by October 2013 and submit a Notice of Final Rulemaking to the Governor's Regulatory Review Council by March 2014, and subsequently to open a Rulemaking Docket for Articles 7, 8 and 11 by the end of 2014, once Article 9 was completed. The Department sought an exemption from the prior Governor's moratorium on rulemaking (Executive Order 2012-03) on January 9, 2013, which was approved on November 27, 2013. After receiving an exemption, no rules were amended. The Department deems this exemption to have expired due to a change in administration and subsequent Executive Orders issued, including the most recent, Executive Order 2017-02.

11. Cost v. Benefit and Least Burden Analysis:

Once appropriate changes are made to conform the rules to other laws and current agency operations, the Department believes the rules will impose the least regulatory burden and costs to persons regulated by them.

12. Comparison with Federal Law:

There are no federal laws that apply to these rules.

13. A.R.S. § 41-1037 Compliance:

The rules were adopted prior to July 29, 2010, so this factor was not analyzed for § 41-1037 Compliance.

14. Proposed Course of Action:

The Department recognizes the flaws within the rules analyzed herein and desires to eventually amend some of the rules to strike language which is inconsistent with statute, agency operations, or the Arizona Constitution; amend language for clarity and conciseness; and add, amend, and remove definitions which are redundant or inaccurate. However, as this applies to many of the rules governing the Department, the Department's preference would be to submit for rulemaking a significant number of such rules rather than piecemeal conditioned upon receiving an exemption from Governor's Executive Order 2017-02 establishing a moratorium on rulemaking, achieving critical mass of rule amendments that would substantiate a rulemaking action, engaging with stakeholders, and allocable Department resources to achieve a rulemaking. The Department expects to begin to implement this goal by March 2019.

ANALYSES OF RULES

Article 7. Special Leasing Provisions

A.A.C. Rule 12-5-702 Agricultural Leases

1. Statutory Authority:

Enabling Act, § 28; A.R.S. §§ 37-101, 37-211, 37-281, & 37-285

2. Objective:

The objectives of the rule are to clarify and direct the application process for agricultural leasing and agricultural leasing requirements, including development and improvement requirements.

3. Effectiveness:

The rule is mostly effective in helping to articulate agricultural lease requirements. However, some subsections of the rule are ineffective where inconsistent with statute or agency operations, as noted below.

4. Consistency:

The rule's subsections are analyzed for consistency as follows:

Subsection (A)(1) is consistent with the ten-year maximum limitation included within the Enabling Act § 28;

Subsection (B) is inconsistent with statute as the rule requires applicants to submit an application to have lands reclassified, but no such application is needed or taken if lands are to be reclassified as agricultural lands (*see* A.R.S. § 37-212 which authorizes the Commissioner to reclassify lands in the best interest of the Trust and of the State);

Subsection (C)(1)(a) is inconsistent with agency operations, as an applicant may currently apply to lease multiple sections of land using one application despite the restriction within the subsection (N.B. Fees are charged on a per section basis in accordance with A.A.C. R12-5-1201 despite the use of one application form.);

Subsection D is inconsistent with itself and with statute: Sub-subsections (1) and (2) may conflict with each other, as (D)(1) applies a minimum of \$1.00 per acre per year while (D)(2) applies a minimum rental of \$10.00 a year to each section or portion of a section. So, for example, under (D)(1), leasing 639 acres within a single section equals \$639.00 (\$1

x 639 acres, while under (D)(2), it amounts to \$10.00 (\$10.00 per section). Further, A.R.S. § 37-132(A)(5) authorizes the Commissioner to appraise state lands for leasing, and A.R.S. § 37-285(A) requires agricultural leases to have annual rents not less than the appraised rental value subject to adjustment each year, with a minimum cap of \$0.05 per acre per year;

Subsection (E) is inconsistent with agency operations, as all agricultural leases commence on a common date and hardships are not accepted as exemptions to this common due date practice;

Subsection (H)(1)(a) is inconsistent with agency operations, as it requires a separate renewal application to be submitted for each section, or portion thereof, of land, whereas currently only one application form; and

Subsection (H)(1)(b) is inconsistent with the filing fees delineated in A.A.C. R 12-5-1201.

5. Enforcement policy:

The rule is enforced when it is not inconsistent with statute or substantial agency operations. If inconsistent with statute, statutes are followed. If inconsistent with substantial agency operations, such as with the common anniversary date of agricultural leases (a practice followed without exception despite a subsection in the rule allowing a hardship exception), the rule is not followed.

6. Clear, concise, and understandable:

The rule is generally not clear, concise, and understandable because of inconsistencies with other laws and agency operations, redundancies, and drafting style. Specifically:

Subsection (C)(1) is not concise as it is redundant of A.R.S. § 37-281(B); and

Subsection (H)(1) is not concise as it is also redundant of statute.

7. Written Criticisms:

Resulting from the outreach to stakeholders conducted in accordance with Executive Order 2017-02 Paragraph 3, the following written criticisms that cite or pertain to this rule are as follows:

On August 25, 2017, Chelsea McGuire, Director of Government Relations for the Arizona Farm Bureau Federation, commented on the current policy of denying new agricultural leases and improvements applications for existing agricultural leases.

The Department's response is as follows: The Department does not blanket deny all new applications for agricultural leases and lease improvements but rather assesses the economic viability of each new agricultural lease in light of the revenue generated as offset by the cost of improvements to the land to generate that revenue.

On August 25, 2017, Suzanne Kinney, Interim Manager for the Arizona Mining Association, commented that Subsection (A)(1) be amended as follows "All state lands classified as agricultural land are subject to agricultural leasing for ~~such term as may be established by the Commissioner but in no event for a term of more than ten years~~ A TERM DETERMINED BY THE APPLICANT UP TO 10 YEARS." Further, she noted that subsection (C)(1)(a) should be deleted.

The Department's response is as follows: The Department understands that applicants may desire to define their own lease terms, but the Department maintains a fiduciary duty to the beneficiaries of the land trust, and A.R.S. § 37-132(A)(6) grants the authority to lease state lands for grazing to the Commissioner. The Department agrees that subsection (C)(1)(a) should be deleted, as it is inconsistent with agency operations, as noted above.

A.A.C. Rule 12-5-703 Commercial Leases

1. Statutory Authority:

A.R.S. § 37-132

2. Objective:

The objectives of the rule are to direct the application process for commercial leases and to clarify commercial lease requirements and restrictions.

3. Effectiveness:

The rule is mostly effective in articulating commercial lease requirements. However, some subsections of the rule are ineffective where inconsistent with statute or agency operations, as noted below.

4. Consistency:

The rule is consistent mostly, yet inconsistent in the following ways:

Subsection (H) is inconsistent with itself and with agency operations in that the minimum rental rate for commercial leases is greater than the amount articulated in the rule; and

Subsection (M) is, in part, inconsistent with agency operations in that a commercial lease is not merely a license to use the land but rather an interest in the land.

5. Enforcement policy:

The rule is enforced when it is not inconsistent with statute or substantial agency operations. If inconsistent with statute, statutes are followed. If inconsistent with substantial agency operations, the rule is not imposed.

6. Clear, concise, and understandable:

The rule is not clear, concise, or understandable in the following ways:

Subsection (A) is not concise because it is an unnecessary iteration of statutory interpretation;

Subsection (B) is not entirely concise because a large part of it is unnecessary where there is iteration of policy;

Subsection (C) is not concise because it is redundant of the Enabling Act;

Subsection (E) is not clear, in part, where it should be redrafted to improve clarity and is not concise, in part, because it is unnecessary to say that certain commercial leases shall be subject to the provisions and restrictions of the lease;

Subsection (F) is not clear and should be redrafted to improve clarity and efficiency;

Subsection (G) is not concise and should be relocated to Section (C);

Subsection (J) contains unnecessary agency operational minutiae, so it is not concise;

Subsection (K) contains unnecessary agency operational minutiae, so it is not concise; and

Subsection (M) is, in part, not concise and should have language combined into subsection (F) for efficiency.

7. Written Criticisms:

Resulting from the outreach to stakeholders conducted in accordance with Executive Order 2017-02 Paragraph 3, the following written criticisms that cite or pertain to this rule are as follows:

On August 22, 2017 Mr. Richard Searle, Cochise County Director for the Arizona Cattlemen's Association and holder of Permit No. 23-117829, commented on the burden of five-year term caps on Commercial Leases. Mr. Searle requested making a change to allow for 10-year terms.

The Department's response is as follows: While referencing Commercial Leases in his comment, Mr. Searle's permit and comment actually pertained to Grazing Leases and Permits, so this written criticism is also included below.

Substantively, there is no rule pertaining to this cap, however ASLD Policy Memo P80-1 iterates such a cap in certain instances. His suggestion is already allowable, but in limited circumstances according to Department Policy.

A.A.C. Rule 12-5-705 Grazing Leases

1. Statutory Authority:

A.R.S. §§ 37-132, 37-283, & 37-285

2. Objective:

The objectives of the rule are to clarify and direct the application process for grazing leases and to clarify grazing lease requirements and restrictions.

3. Effectiveness:

The rule is mostly effective in articulating grazing lease requirements. However, some subsections of the rule are ineffective where inconsistent with statute or agency operations, as noted below.

4. Consistency:

The rule is inconsistent in the following ways:

Subsection (A) is mostly consistent with statute, albeit redundant at times;

Subsection (B) is inconsistent with agency operations in that the Department does not impose age- or citizen-based restrictions on its applicants;

Subsection (C) is inconsistent in that: 1) it specifies only one section may be applied for per application for an initial lease whereas the Department currently allows new and renewal applications to include an entire ranch unit covering multiple sections, while a fee is charged for each section covered in the application pursuant to R12-5-1201; 2) it requires the use of forms, i.e. Land Division forms, that no longer exist; and 3) it indicates that if a renewal applicant has an up-to-date and current statement of his holdings within the ranch unit on file with the Department then completion of detailed questions concerning holdings on the application form are not required to be filled out, when in actuality, the applicant must provide a map of the leased land including any controlling interests in conjunction with the lease at the time of the renewal of the lease;

Subsection (E) is inconsistent with statute and agency operations in that it requires applicants to apply to have lands reclassified as Grazing Lands but no such application is needed or taken if lands are to be reclassified as Grazing Lands (*see* A.R.S. § 37-212 which authorizes the Commissioner to reclassify lands in the best interest of the trust and of the state);

Subsection (F) is partly inconsistent with agency operations because it provides for minimum rental amounts (\$0.02 per acre annually or a minimum of \$2.50 per lease annually) which are not utilized, and it indicates an annual rate per AUM based on beef prices which is contrary to statute which requires it to be determined by the

Commissioner based on the recommendation of the grazing land valuation commission (See A.R.S. § 37-285);

Subsection (G) is inconsistent with agency operations because it permits the splitting of a Grazing Lease into many leases to dissect due dates and payments of a large Grazing Lease into more palatable portions, which amounts to a hardship exception to the common anniversary date practice which the Department follows without exception (i.e. all Grazing Lease rents are due in March);

Subsection (H) is inconsistent with agency operations because the Land Division and its corresponding forms no longer exist;

Subsections (I) is consistent;

Subsection (K) is inconsistent with A.R.S. § 37-283(A) and the provisions of Department Grazing Leases;

Subsection (L) is inconsistent with agency operations, as crops may not be grown on Grazing Lands under a Grazing Lease;

Subsection (M) is consistent with Grazing Lease provisions, but unnecessary;

Subsection (N) is inconsistent with agency operations as to the forms prescribed in the statute which no longer exist, but the intent is consistent;

Subsection (O) is partially inconsistent with agency operations, as Grazing Leases are limited to grazing purposes; and

Subsection (P) is consistent.

5. Enforcement policy:

The rule is enforced when it is not inconsistent with statute or substantial agency operations. If inconsistent with statute, statutes are followed. If inconsistent with substantial agency operations, the rule is not followed.

6. Clear, concise, and understandable:

The rule is not clear, concise, and understandable in the following ways:

Subsection (A)(1) is redundant of A.R.S. § 37-101;

Subsection (A)(3) is not concise as it is unnecessary;

Subsection (A)(4) is not concise as it redundant of A.R.S. § 37-285(F);

Subsection (A)(5) is not clear as it notes the Bureau of Agricultural Economics which has since been renamed;

Subsection (B) is not concise as it is redundant of requirements outlined in A.R.S. § 37-240(B);

Subsection (C) is not clear as it requires renewal application fees to be paid in the same manner as the original application, but instead another rule, R12-5-1201, prescribes Department fees;

Subsection (F) is not concise, in part, where it is redundant of A.R.S. § 37-285(B) and (F);

Subsection (J) is not clear as it includes unnecessary procedural minutiae; and

Subsection (M) is unnecessary because it is included within the provisions of the lease contracts;

7. Written Criticisms:

Resulting from the outreach to stakeholders conducted in accordance with Executive Order 2017-02 Paragraph 3, the following written criticisms that cite or pertain to this rule are as follows:

On August 22, 2017 Mr. Richard Searle, Cochise County Director for the Arizona Cattlemen's Association and holder of Permit No. 23-117829, commented on the burden of five-year term caps on Commercial Leases. Mr. Searle requested making a change to allow for 10-year terms.

The Department's response is as follows: While referencing Commercial Leases in his comment, Mr. Searle's permit and comment actually pertained to Grazing Leases and Permits, so this written criticism is included here as well as above, under R12-5-703 Commercial Leases. Substantively, there is no rule pertaining to this cap, however ASLD Policy Memo P80-1 iterates such a cap in certain instances. His suggestion is already allowable, but in limited circumstances according to Department Policy.

Article 8. Right-of-way

A.A.C. Rule 12-5-801 Right-of-way

1. Statutory Authority:

A.R.S. §§ 37-107, 37-132, 37-287 & 37-461

2. Objective:

The objective of this rule is to inform Right-of-way applicants of the application process and Right-of-way grantees of the uses and restrictions pertaining to Right-of-way instruments on State Land.

3. Effectiveness:

The rule is mostly effective in articulating its objective, although some subsections of it are ineffective where inconsistent with statute or agency operations, as noted below. Further, subsection (C)(5)(c)(iii) and (D)(8) articulates an overly burdensome payment method for municipalities and other government entities.

4. Consistency:

The rule is mostly consistent, yet inconsistent in the following minor ways:

Subsection (C)(1)(a) is inconsistent with agency operations, in part, as the agency does not citizen-test its individual applicants;

Subsection (C)(2) is inconsistent with agency operations as the agency does not require an application for each county crossed because it would be overly burdensome to implement;

Subsection (C)(3)(a)(5) is inconsistent with agency operations as the agency does not age-test its applicants;

Subsection (C)(3)(a)(xi) is inconsistent with agency operations as the agency does not require an applicant to furnish evidence of agreement from surface- and rights-holders as a pre-requisite for submission of an application as this would be too premature in the process and very difficult for applicants to comply with as well as contrary to subsection (C)(4) within the rule allowing the Department to grant a Right-of-way without the consent of a surface or subsurface rights-holder;

Subsection (C)(5)(c)(iii)(2) is inconsistent with agency operations because the Department does not use valuation methods for condemnation proceedings, as articulated in A.R.S. 12-1122, for appraisal of its lands for Rights-of-Way;

Subsection (C)(7)(c) is inconsistent with agency operations in that the Department issues an order of cancellation rather than an order of abandonment in the given scenario;

Subsection (C)(8)(c) is inconsistent with agency operations because the commencement date is not the date that the instrument is mailed to the applicant, as stated, but rather it is the date of in-house review, or, if required, the day after the review by the Board of Land Appeals or of the auction

Subsection (D)(7)(a) is inconsistent with agency operations in that the Department does not require security by bond of all monies owed under the contract; and

Subsection (E)(1)(a) is inconsistent with agency operations because the Department does not require applications to place improvements for Right-of-Way grantees as it does for Commercial Lessees.

5. Enforcement policy:

The rule is partially enforced where consistent with statute and agency operations and partially not enforced where inconsistent with statute or with agency operations.

6. Clear, concise, and understandable:

The rule is not clear, concise, nor understandable in the following ways:

Subsection (A) is not concise in that it includes definitions that are redundant of statute and (A)(3) is not entirely clear in its meaning in that a Patent is not merely a document but rather a land grant, as evidenced by a document;

Subsection (B) is not concise in that sub-subsection (1) is an unnecessary iteration of the rule's implementing, i.e. specific, authority and subsubsection (2) is accurate but would best be served by being relocated to subsection (C) governing Applications for Rights-of-Way;

Subsection (C)(1)(a) is not concise in that some of the language is overly restrictive;

Subsection (C)(1)(b) is not concise in that it is redundant of another subsection ((C)(3)(a));

Parts of Subsection (C)(3)(a) is not clear, mostly due to restrictive language regarding business entities (e.g. entities from which the agency would take an application include more than partnerships and corporations, even though only those two types of entities are mentioned);

Subsection (C)(5)(a) is not clear in that it does not refer to the regulation that promulgates Department-wide fees;

Subsection (C)(5)(c)(i), (ii), and (iii)(1) are not concise in that they are redundant of statute (A.R.S. § 37-132);

Subsections not mentioned above may benefit from style or language changes to aid clarity and conciseness.

7. Written Criticisms:

Resulting from the outreach to stakeholders conducted in accordance with Executive Order 2017-02 Paragraph 3, the following written criticisms that cite or pertain to this rule are as follows:

On August 25, 2017, Mr. Frank Blanco, Water District Director for the Apache Junction Water Utilities Community Facilities District, commented on the lengthy nature of Right-of-Way renewal applications (i.e. 16 pages) and suggested these forms be reduced to one page for renewal applications. He also expressed that the length of his application resulted in “Scoring Team” review time. A copy of this criticism has been attached to this report under Appendix C.

The Department’s response is as follows: Mr. Blanco cited R12-5-801(C)(1)(b), although this subsection only requires that applications be made on forms prescribed by the Department and does not restrict or require an application of any particular length. Further, R12-5-801(C)(3) requires an applicant furnish certain information to the Department. Therefore, the Department complies with the rule. Further, he notes that the application is unusually lengthy for a renewal application. However, grants for Rights-of-Way confer no holdover status, so each “renewal” application is actually an entirely new application even though the resulting grant may be for a use already conferred in a previous grant. Further, the application did not go through the scoring team review process reserved for new applications for Rights-of-Way, so this assertion was incorrect.

On August 25, 2017, Greg Stanley, County Manager of Pinal County, commented that, generally, our rules are repetitive, especially where additional definitions are included. He also notes that new rules should be adopted to recognize certain ROWs, specifically those established through a 1922 Declaration of Roads. He criticized ASLD’s use of R12-5-801(C)(3)(b), which he says should not be used to dictate engineering standards. He also notes that R12-5-801(C)(5)(c)(iii), which he refers to A.R.S. § 12-1122 which pertains to valuation of improvements in eminent domain actions. He also notes the same subsection R12-5-801(C)(5)(c)(iii) should establish a process to reimburse municipalities for increased value to land derived from infrastructure installment.

The Department’s response is as follows: The Department agrees that our rules are repetitive in part, as noted throughout our report. The 1922 Declaration of Roads by the Federal Government mandated requirements that the County has not fully met, and the Department cannot recognize a Right-of-Way not perfected through the federal legislation without requiring compensation to the Trust under Title 37. Also, the Department does not use R12-5-801(C)(3)(b) to *dictate* engineering standards but rather to *acquire* engineering information to assess the feasibility and standards of the

Right-of-Way applied for. The Department agrees with Mr. Stanley in that A.R.S. § 12-1122 is not the proper statute for determining right-of-way appraisal methods, and this is noted above under the rule's "Consistency" analysis. Finally, in the Department's discretion, it may accomplish a reimbursement to a political subdivision through a payback agreement and does not need to promulgate a rule to allow for this.

On August 23, 2017, Ed Grant, Manager of Land Acquisitions for SRP, commented that ASLD should: adopt rules to effectuate A.R.S. § 37-461 pertaining to issuance of ROWs for up to 50 years without auction and for a perpetual term with auction; allow for a single rental payment without reappraisal for fifty-year term ROWs; allow for the conversion of non-perpetual ROWs into perpetual ROWs upon the disposition of the underlying fee to avoid burden to SRP; and include communication facilities in the ROW grant language.

The Department's response is as follows: In regard to the request to promulgate a rule which would allow utilities to obtain a perpetual right-of-way at auction, the Department understands that the utility wants to secure its infrastructure, but the Department must make decisions which are in the best interests of the Trust and sometimes those goals are not aligned. When land is not ripe for development, it has not attained its highest value, and issuing a perpetual right at this premature time when land values are low would prevent the Department from participating in the revenues stemming from the increase in the value of the land thereby benefiting the beneficiaries, to which the Department has a fiduciary duty. The same answer applies to the criticism regarding additional reappraisals of the land under rights-of-way issued for fifty year terms. In regard to the comment pertaining to the conversion of non-perpetual ROWs to perpetual ROWs upon disposition of the underlying fee title, the Department cannot convert a non-perpetual ROW to a perpetual ROW without a new application and without taking the application for a perpetual ROW to auction. Finally, the Department may and does include communication facilities as an approved purpose if the purpose is articulated in the application and the Right-of-Way instrument; if not, the instrument may be amended to include these uses as long as the instrument was not previously auctioned.

On August 25, 2017, Craig McMullen, Assistant Director, Field Operations Division, Arizona Game and Fish Department, commented that R12-5-801(D) to require the Commissioner to issue perpetual ROWs at appraised value to state and political subdivisions. He also suggested adopting mandatory timeframes for the processing of applications.

The Department's response is as follows: The Department disagrees because a rule requiring the Department to issue perpetual Rights-of-Way could detrimentally encumber lands not ripe for development thereby disallowing the Department to plan for the future development and disposition of the land in a manner consistent with sound stewardship practices returning the highest yield on the land to the Trust. The Department heeds the request to lessen its application processing timeframes and has done so through the implementation of the Arizona Management Systems and an online electronic application processing system adopted by the Department in September 2017.

On August 25, 2017, Jennifer Cannon, Manager of Construction Services and Land, Arizona Public Service, commented on specific rules, suggesting the Department: allow one application that includes multiple counties under R12-5-801(C)(2); allow high voltage electric transmission, generation and permanent substations to be considered permanent infrastructure under subsection (C)(5)(c)(iii) to enable acquisition of land in fee or as a perpetual right-of-way with a one-time payment option; allow ROW fees to be paid by credit card under subsection (D)(5)(a); allow renewals and payments to be made at any time prior to the expiration date under subsection (D)(6); allow a utility the option of purchasing land when ASLD executes a fee disposition under R12-5-524, and amending our application process to allow for one ROW application to cover multiple counties.

The Department's response is as follows: The Department does allow for one application to include multiple counties, despite the language of subsection (C)(2). Subsection (C)(5)(c)(iii) does not limit utilities in acquiring land in fee or as a perpetual right-of-way with a one-time payment option, but rather the Department prohibits this as a matter of policy as explained in the above criticisms. The Department is moving toward an electronic application processing system that will hopefully allow for credit card payment of application fees in the future. Lastly, the Department partly agrees that the time for renewal and payment should be extended from "not less than 30 days, nor more than 60 days prior to the expiration" to "not less than 30 days, nor more than one year prior to the expiration" to allow for more flexibility.

C.H. Huckelberry, County Administrator for Pima County, commented that R12-5-801(C)(4) should be amended to require consent from surface or subsurface lessees when ROWs are granted.

The Department's response is as follows: R12-5-801(C)(4)(a) does not prohibit the Department from requiring consent from a surface or subsurface lessee, and does, in fact, require such consent when there are conflicting uses (e.g. a stock tank exists where a road right-of-way is applied for), but the rule merely allows the Department to also grant Rights-of-way without requiring consent in the cases on non-conflicting uses, which the Department assesses at the time of each application.

Diane Fitch, Staff Superintendent, Right-of-Way, Southwest Gas Corporation, commented that utilities should automatically be able to serve agricultural, grazing, and commercial leases without additional application to ASLD; within the context of appraisal land values, there is not consideration given to current land use or overlap of existing ROWs issued to others users; and lease options should be available with minimal documentation or longer terms should be issued due to lengthy application processes.

The Department's response is as follows: The Department requires application for utilities within the boundaries of certain leases so that the utilities do not encumber the land in a manner that could devalue the land.

A.A.C. Rule 12-5-802 Reservoir Dams and Other Sites

1. Statutory Authority:

A.R.S. §§ 37-132 & 37-461

2. Objective:

The objective of this rule is to notify reservoir, dam, and other site lease applicants and lessees, as well as the public, of the Department's requirements for a reservoir, dam, and site lease application and lease, as well as the rights and obligations of such lessees.

3. Effectiveness:

The rule is, for the most part, effective.

4. Consistency:

The rule is consistent in part, yet inconsistent in the following ways:

Subsection (B) is partially inconsistent with A.R.S. § 37-461(C) in that site leases in excess of ten years are not, in fact, required to be advertised and sold at public auction;

Subsection (C) is inconsistent with agency operations, and overly burdensome to the applicant, to require of an applicant to submit at the application stage a statement from a surface lessee or subsurface lessee;

Subsection (D) is partially inconsistent with agency operations, as non-use is not addressed in the way iterated;

Subsection (F) is not consistent with agency operations and within itself, as the application of it could amount to two separate findings; and

Subsection (H) is inconsistent with agency operations in that the Department requires an amendment application to be filed if a different use is contemplated other than that which is included in the ROW grant.

5. Enforcement policy:

The rule is partially enforced where consistent with statute and agency operations and partially not enforced where inconsistent with statute or with agency operations.

6. Clear, concise, and understandable:

Overall, the rule could benefit from general style improvements. Specifically:

Subsection (D) is partially not concise, as it could be combined with subsection (C) to address initial and renewal applications at the same time;

Subsection (E) is not clear and could benefit from a redrafting; and

Subsection (I) is not clear nor concise and could benefit from redrafting.

7. Written Criticisms:

No written criticisms of this rule have been received by the Department.

Article 9. Exchanges

A.A.C. Rule 12-5-901 Scope of Rules

1. **Statutory Authority:**
A.R.S. § 37-604
2. **Objective:**
The objective of the rule is to inform exchange applicants of the scope of this rule and succeeding rules, i.e. R12-5-902 et seq.
3. **Effectiveness:**
The rule is effective in that it articulates the scope of subsequent rules.
4. **Consistency:**
The rule is consistent.
5. **Enforcement policy:**
The rule would be enforced as a statement of scope of purpose for subsequent rules if and when the Department executes an exchange.
6. **Clear, concise, and understandable:**
The rule is clear, concise, and understandable.
7. **Written Criticisms:**
No written criticisms of this rule have been received by the Department.

A.A.C. Rule 12-5-902 Definitions

- 1. Statutory Authority:**
A.R.S. § 37-604
- 2. Objective:**
The purpose of this rule is to define terms used within Article 9, Chapter 5, Title 12 of the A.A.C.
- 3. Effectiveness:**
The rule is not effective.
- 4. Consistency:**
The rule is inconsistent with statute. The statute creating the Selection Board and referenced within this rule, A.R.S. 37-202, appoints the Governor, the State Treasurer, and the Attorney General to the Selection Board. This rule, however, has the Land Commissioner in place of the State Treasurer.
- 5. Enforcement policy:**
The rule is not enforced as written as to the Selection Board, in which case statute is followed.
- 6. Clear, concise, and understandable:**
The rule is clear and understandable, but it is not concise as two definitions, Commissioner and Department, are redundant of statute. Generally, the rule is unnecessary.
- 7. Written Criticisms:**
No written criticisms of this rule have been received by the Department.

A.A.C. Rule 12-5-904 Application

1. Statutory Authority:

A.R.S. § 37-604

2. Objective:

The purpose of this rule is to inform exchange applicants of the exchange application requirements.

3. Effectiveness:

The rule is effective.

4. Consistency:

The rule is mostly consistent with statute, except for the age and residence requirements mentioned, which was removed from § 37-604(B)(1)(a).

5. Enforcement policy:

The Department would enforce the rule if presented with an exchange applicant.

6. Clear, concise, and understandable:

The rule is mostly clear, concise, and understandable, though could better conform to § 37-604 if amended.

7. Written Criticisms:

No written criticisms of this rule have been received by the Department.

A.A.C. Rule 12-5-910 Maps and Photographs

- 1. Statutory Authority:**
A.R.S. § 37-604
- 2. Objective:**
The purpose of this rule is to inform exchange applicants of map and photograph requirements.
- 3. Effectiveness:**
The rule is effective.
- 4. Consistency:**
The rule is consistent with statute.
- 5. Enforcement policy:**
The rule is enforced as written.
- 6. Clear, concise, and understandable:**
The rule is clear and understandable, but this rule could be combined with R12-5-904 (Application) to be more concise.
- 7. Written Criticisms:**
No written criticisms of this rule have been received by the Department.

A.A.C. Rule 12-5-918 Controversy as to Title or Leasehold Rights

1. Statutory Authority:

A.R.S. § 37-604

2. Objective:

The purpose of this rule is to give the Department the right to hold in suspension or reject an application for exchange of State Lands when there are title defects or conflicting interests.

3. Effectiveness:

The rule is effective.

4. Consistency:

The rule is consistent.

5. Enforcement policy:

The rule is enforced.

6. Clear, concise, and understandable:

The rule is clear, concise, and understandable.

7. Written Criticisms:

No written criticisms of this rule have been received by the Department.

Article 11. Special Use Provisions

A.A.C. Rule 12-5-1101 Policy; Use of Lands

1. Statutory Authority:

A.R.S. § 37-132

2. Objective:

The objective of this rule is to demarcate the role and use of Special Land Use Permits and to provide guidance to Special Land Use Permit applicants.

3. Effectiveness:

Though the rule attempts to achieve its stated objective and has done so successfully in the past, it is inconsistent and lacks clarity.

4. Consistency:

The rule itself is generally consistent, although the following subsections could be improved:

Subsection (1) is not consistent with agency operations as the Department does not age-test or citizen-test its applicants;

Subsection (2) is inconsistent with agency operations as the Department no longer has a Land Division and its corresponding forms;

Subsection (5) is inconsistent with the minimum fee charged by the Department;

Subsection (10)(f) is inconsistent with agency operations because the Department does not exempt the delineated signs;

Subsection (12)(a) is inconsistent with A.A.C. R12-5-1201 governing fees which the Department adheres to;

Subsection (12)(b) is inconsistent with A.R.S. § 37-132; and

Subsection (16) is inconsistent with agency operations as the Department does not legalize signage installed or maintained in trespass.

5. Enforcement policy:

The rule is partially enforced where consistent with statute and agency operations and partially not enforced where inconsistent with statute or with agency operations.

6. Clear, concise, and understandable:

The rule is generally not clear, concise, and understandable in the following ways:
The preamble publishes policy, which is improper;

The preamble is not concise as it contains language which is redundant of language elsewhere within the rule;

Subsection (1) should be redrafted for clarity;

Subsection (2) should be partially redrafted for clarity and style, while partially struck due to unnecessary language;

Subsection (3) is not clear nor concise and should be redrafted;

Part of subsection (4) pertaining to policy should be struck as improper within rule;

Part of subsection (7) are not clear nor concise and should be relocated to the beginning of the rule as a defined term, while other parts should be redrafted for clarity and efficiency;

Subsection (8) should be partially redrafted for clarity and conciseness and partially stricken as redundant of other language within the rule;

Subsection (9) is not clear not concise and should be redrafted;

Subsection (10) is partially not concise where “advertising display” is defined, and should be stricken, while the remainder of the subsection can be transferred to within subsection (9), except for (10)(f);

Subsection (11) is not concise at it reiterates language within subsection (3);

Subsections (12)(c)&(d) are not concise and understandable;

Subsection (13) is not concise as it redundant of subsections 3 & 4 above;

Subsection (14) is not concise as it is unnecessary; and

Subsection (15) is not clear nor concise and should be redrafted.

7. Written Criticisms:

No written criticisms of this rule have been received by the Department.

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT

As of Fiscal Year 2017, the Department held: 343 Agricultural Leases covering 153,515 acres of Trust Land which generated \$4,674,434 in income; 1,191 Grazing Leases and Permits covering 8,349,806 acres which generated \$3,087,894 in income; 307 Commercial Leases covering 70,270 acres which generated \$25,654,774 in income; and 7,715 Right-of-Way Grants and Permits covering 194,557 acres which generated \$8,821,910 in income.

As a matter of comparison, in Fiscal Year 2016 the Department held: 342 Agricultural Leases covering 153,779 acres of Trust Land which generated \$4,402,721 in income; 1,191 Grazing Leases and Permits covering 8,329,280 acres which generated \$3,404,424 in income; 295 Commercial Leases covering 69,397 acres which generated \$26,199,522 in income; and 7,673 Right-of-Way Grants and Permits covering 198,487 acres which generated \$4,212,499 in income.

The rental payments from all of the above leases are deposited into the Trust's expendable fund to be invested by the Treasurer and distributed directly to the beneficiaries on a monthly basis. In addition to the direct impacts to the 13 beneficiaries of Trust Land, activities on Trust Lands provides opportunities for the labor force and businesses that supply services and supplies directly, as well as support for local businesses that sell services, consumer goods, groceries, and other personal and family needs. Economic development is increased by rights-of-way that provide for the development of roads and utilities, and taxes are paid by the companies and individuals who engage in activities on Trust Land. The taxes are then utilized by the State, county, and local governments to support schools, create infrastructure, and provide government and community services.

ARTICLE 7. SPECIAL LEASING PROVISIONS

R12-5-701. Repealed

Historical Note

Adopted effective May 28, 1981 (Supp. 81-3). Emergency amendment filed September 26, 1990, adopted effective September 27, 1990, pursuant to A.R.S. 41-1026, valid for only 90 days (Supp. 90-3). Emergency expired. Section R12-5-701 renumbered from Section R12-5-150 (Supp. 93-3). Section repealed by summary action with an interim effective date of February 4, 2000; filed in the Office of the Secretary of State January 11, 2000 (Supp. 00-1). Interim effective date of February 4, 2000 now the permanent effective date; filed in the Office of the Secretary of State August 1, 2000 (Supp. 00-3).

R12-5-702. Agricultural Leases

- A.** Land subject to agricultural lease; term of lease
 - 1. All state lands classified as agricultural land are subject to agricultural leasing for such term as may be established by the Commissioner but in no event for a term of more than ten years.
 - a. The term of an agricultural lease of undeveloped agricultural land shall not exceed two years.
- B.** Application for lease of lands not classified as agricultural. An application for an agricultural lease of lands not classified as agricultural shall be accompanied by an application for reclassification as provided by the general rules and regulations governing leasing of state lands.
- C.** Application for agricultural lease
 - 1. Application for an agricultural lease shall be made upon the appropriate form as provided by the Department and in accordance with the general rules and regulations governing the leasing of state lands.
 - a. Each application shall be limited to the lands in one section or part thereof.
- D.** Rental rates; appraisal
 - 1. No agricultural lease shall provide for a rental less than the appraised rental value of the leased land, and in no event a rental less than \$1.00 per acre per annum.
 - 2. Minimum rental for each agricultural lease shall be \$10.00 per annum; provided, however, that the minimum rental of \$10.00 per annum shall apply to each section or portion thereof covered by the lease.
- E.** Number of leases issued on farm unit
 - 1. Ordinarily, leases issued by the Department will combine into one lease, all contiguous and adjoining state agricultural lands within the lessee's farm unit.
 - a. It is recognized that such consolidation may work hardship on the lessee because of the resultant common due date of rentals.
 - i. A lessee thus affected and desirous of dividing his lease may make application to the Department to do so. Such application shall be in writing, setting forth the reasons therefor in such detail as to enable the Department to act with full knowledge of the circumstances.
 - ii. If such application is approved by the Department, division of the lease will be made in as reasonable a manner as possible, compatible with the best interests of the state.
- F.** Agricultural lease form; provisions. Agricultural leases shall be made on the appropriate form provided by the Department, and shall contain such provisions and supplemental conditions as may be prescribed by the Commissioner in accordance with the provisions of the law and Department rules and regulations.
- G.** Sequence of development and improvement of lands under agricultural development lease
 - 1. The first allowable acts of development on the leased premises under an agricultural development lease shall include only those necessary and incident to the acquisition of a water supply adequate for the development of the leased acreage.
 - 2. The placing of any improvement not necessary to the accomplishment of subsection (A) above shall not be approved until after the acquisition of such water supply has been accomplished or assured and in all cases only after proper application made and approval had in accordance with the provisions of the Department's rules and regulations in regard to permits to place improvements.
 - 3. When rules and regulations promulgated by state or federal regulatory agencies would affect state lands or crops grown thereon, and when, in his opinion, the best interests of the state would be so served, the State Land Commissioner may require the lessee to conform with these regulatory practices to prevent the deterioration of the soil or crops grown thereon. If the lessee fails to comply with the requirements of the Commissioner, the Commissioner may have the required remedial work accomplished and bill the lessee the amount due the Department. Failure by the lessee to pay for such remedial work will, after the proper notice, subject the lease to forfeiture for nonpayment and noncompliance.
- H.** Application for renewal; right of renewal; developmental lease
 - 1. Application for renewal of an agricultural lease shall be made on the appropriate form provided by the Department and in accordance with the general rules and regulations governing leasing of state lands.
 - a. A separate application form shall be submitted for each section of land or portion thereof within the lease.
 - b. The filing fee for each application shall be the same as for an initial application.
 - 2. A preferred right of renewal of an agricultural development lease shall not extend to a lessee who has not acquired a water supply deemed by the Commissioner to be adequate.

State Land Department

3. Proper diligence on the part of the lessee toward complete agricultural subjugation and development of the land under lease shall be the measure for the Commissioner's determination as to whether renewal of an agricultural development lease is in the best interests of the State.
- I. Application to assign lease**
1. Application to assign and application for assumption of lease shall be made on the appropriate form provided by the Department and in accordance with the general rules and regulations governing leasing of state lands.
 - a. Upon approval of the application, the assignment will be noted on the lease and made of record in the Department.

Historical Note

Original rule, Art. III, Subchapter B, Ch. II (Supp. 76-4). Amended by emergency action effective June 20, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-2). Emergency expired. Section R12-5-702 renumbered from Section R12-5-151 (Supp. 93-3).

R12-5-703. Commercial Leases

- A.** Scope of commercial leasing rules. An applicant for a commercial lease shall be subject to the general leasing rules enumerated, *supra*. Such applicant shall also be subject to the commercial leasing rules set out, *infra*. In a commercial leasing situation where the general leasing rules and the commercial leasing rules conflict, the latter rules shall be controlling.
- B.** Lands subject to commercial lease. All state lands classified as suitable for commercial purposes are subject to a commercial lease. Unless it is deemed to be for the best interests of the state, it is not the policy of the State Land Department to allow and issue commercial leases which will seriously interfere with, damage, or break up operations of an established ranch or farm unit. There is no limit to the amount of commercial land that may be leased to any one individual, corporation, partnership or association.
- C.** Term of commercial lease. State lands suitable for commercial purposes may be leased for a period of not more than ten years without advertising, or subject to such lesser term as may be established by the Commissioner if he deems such lesser term to be in the best interests of the state.
- D.** Applications to lease state lands not classified as commercial. Applications to lease lands not classified as commercial shall be accompanied by a petition for reclassification as provided by the general leasing rules.
- E.** Application for commercial lease; application for commercial lease renewal. All applications for commercial leases and all applications for renewal of commercial leases shall be made on such form or forms as may from time to time be prescribed by the Commissioner and provided by the Commissioner. A commercial lease before the time of execution or renewal will be subject to the provisions and supplemental conditions and restrictions as may be added thereto and the provisions of law and these rules.
- F.** Additional conditions for commercial leases.
1. Unless otherwise directed by the Commissioner in writing, the lessee shall:
 - a. Notify the Commissioner in writing as to the number of any license issued by the state Tax Commission of Arizona to the lessee, any sublessee, any concessionaire or any assignee; such notice shall also include the exact name in which license is issued.
 - b. Keep and maintain an accounting system satisfactory to the Commissioner.
 - c. Allow access to accounting records during business hours where the same are kept for the purpose of inspecting and auditing the same.
 - d. File with the Commissioner, if requested by the Commissioner, a statement of the total gross sales made for the period specified. Unless otherwise directed by the Commissioner, this report may be made by filing with the Commissioner the requested information on the form used by the state Tax Commission.
 - e. Acquire consent in writing from the Commissioner for any improvements made on the site.
 - f. Acquire consent in writing for moving buildings from other premises onto the leased premises. All buildings and structures shall be of acceptable construction.
 - g. Keep any gas, electric, power, telephone, water, sewer, cable television and other utility or service lines under ground unless prohibited by law.
 - h. File with the Commissioner, prior to the approval of any application to place improvements, plans and specifications showing the nature, location, cost, quality of proposed material, size, area, height, color, shape and design of the proposed improvements. The Commissioner may also require a perimeter survey of the leased premises upon which shall be shown the location of the completed improvements. The lessee shall also submit grading plans.
 2. The above conditions shall apply to any assignee, sublessee or concessionaire of the original lessee.
- G.** Maps required as part of application for commercial lease. The applicant shall furnish such information map of the lands to be leased as the Commissioner may require and deem necessary to evaluate the application and assist in making an appraisal; and, in addition, the Commissioner may require an aerial photograph or photographs of such lands as he may specify in a request therefor.
- H.** Minimum rental rates for commercial leases. No commercial lease shall provide for an annual rental of less than the appraised rental value of the land and in no event shall the rent be less than 5¢ per acre per annum or less than \$10.00 per annum per lease.
- I.** Division of leases. The State Land Commissioner may at any time divide a commercial lease into two or more separate leases when such division would, in the opinion of the Commissioner, facilitate administration and management of the subject lands or would result in separating one commercial use from another. The rent for the lease year in which such division is made shall be allocated to the separate leases.
- J.** Sublease of commercial lease by lessee. No commercial lessee shall sublet his lease without the written permission of the Commissioner. Approval of a sublease may be granted at the discretion of the Commissioner and shall be obtained by the lessee submitting for approval of the Commissioner the sublease executed in triplicate. Upon the approval by the Commissioner, two copies of the sublease,

State Land Department

with the Commissioner's approval and any limitation to such approval endorsed by the Commissioner thereon will be returned to the lessee, one copy thereof being retained in the files of the Department.

- K. Application to assign lease. Application to assign and application for assumption of lease and transfer shall be made upon such forms as may from time to time be prescribed by the Commissioner; upon the approval of the application, the action taken by the Commissioner will be noted upon the lease and made of record in the Department.
- L. Use of state lands; failure to use. No lessee or permittee shall use lands under permit or lease except for the uses and purposes specifically set forth in the lease or other such uses or purposes as may be subsequently authorized by the Commissioner in writing.
- M. Rights of commercial lessee or permittee. All leases or permits granted by the Commissioner are only a license or permit to use the land described in the lease or permit for commercial purposes in a manner compatible with the terms of said lease or permit. The state of Arizona reserves the right to grant other leases or permits for the use of said lands or the removal of natural products therefrom. No lessee or permittee has the authority or right to issue any person any right to the use of said land or the removal of any products therefrom, but such right to use vests solely in the Commissioner and must be granted by the Commissioner in writing.

Historical Note

Original rule, Art. V, Subchapter B, Ch. II (Supp. 76-4). Amended by adding subsection (N) as an emergency effective January 9, 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 June 16, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-2). Emergency expired. Section R12-5-703 renumbered from Section R12-5-152 (Supp. 93-3).

R12-5-704. Expired

Historical Note

No original number assigned (Supp. 76-4). Section R12-5-704 renumbered from Section R12-5-153 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 4240, effective September 6, 2002 (Supp. 02-3).

R12-5-705. Grazing Leases

- A. Definitions. Unless the context otherwise requires, the words hereinafter defined shall have the following meaning when found in these rules, to wit:
 - 1. "Grazing lands" means lands which can be used only for the ranging of animals.
 - 2. "Carrying capacity" or "average annual carrying capacity" means the average number of animal units which can be supported by a section of grazing land with due consideration for sustained production of the forage consistent with conservative range management.
 - 3. "A section of land" for appraisal of carrying capacity purposes means an area of land consisting of 640 acres.
 - 4. "Animal unit" means one weaned beef animal over six months of age, or one horse, five goats, or five sheep, or the equivalent thereof.
 - 5. "Average market price of cattle" means the average price by the hundredweight received during the calendar year under consideration by producers of cattle, exclusive of calves, in the states of Arizona, New Mexico, California, Utah, Nevada, Colorado, Wyoming, Montana, Idaho, Washington and Oregon, as determined by the Bureau of Agricultural Economics, United States Department of Agriculture, and, if that service is not available, from such sources as the Commissioner determines best to establish said price.
- B. Qualifications to leasing grazing lands. Any person of the age of 21 years or over, a citizen of the United States, or who has declared an intention to become a citizen of the United States, or any firm, association or corporation which has complied with the laws of the state, shall be qualified to lease state land for grazing purposes.
- C. Applications for grazing lease and renewals. Application for a grazing lease shall be made upon Land Division form and an application for renewal thereof shall be made upon Land Division form in accordance with the general rules and regulations relating to the leasing of state lands. Only one section or subdivision thereof may be applied for on one application for an initial lease. Application for renewal of an existing lease may include an entire ranch unit or any part thereof; provided, however, the filing fees must be paid in the same manner as in the original application.

An applicant for an initial lease shall fill out the form in complete detail. An applicant for a renewal of an existing lease, if he has an up-to-date and current statement of his holdings within the ranch unit used in connection with the lands sought to be leased, will not be required to fill out in detail answers to questions concerning his holdings appearing on the applicant form.
- D. Land subject to grazing lease and term of lease. All state lands classified as grazing lands, not under lease, are subject to grazing lease for a period of not more than ten years without advertising, or for such lesser term as may be established by the Commissioner if he deems such lesser term to be to the best interests of the state. It is the policy of the Department not to offer open land for lease within an established ranch unit without first offering said lands to the owner or the person having control of the lands in such ranch unit. There is no limit to the amount of grazing land that may be leased to any one individual, corporation, partnership or association.
- E. Application to lease lands not classified as grazing. Applications to lease lands not classified as grazing shall be accompanied by a petition for reclassification as provided by the general rules and regulations relating to the leasing of state lands.
- F. Rental rates of grazing land; appraisal. No grazing lease shall provide for a rental of less than the appraised rate of the land, and in no event less than 2¢ per acre per annum, or a minimum of \$2.50 per annum per lease, said minimum of \$2.50 per annum per lease applying to one section or portion thereof.

The Commissioner shall appraise all grazing land on the basis of its annual carrying capacity. The annual rental rate for grazing land shall be the amount found by multiplying the carrying capacity of the lands by the annual rental rate per animal unit. The annual rental

State Land Department

rate per animal unit shall be 22% of the average market price of beef for the preceding year. The annual carrying capacity is determined by a field appraisal by the Department, and the basis for said appraisal is the average carrying capacity of the land over a ten-year period. Notice of the appraised rental of the land will be contained in the annual billing statement which will be sent to the lessee by registered mail unless he has previously signified his acceptance of said carrying capacity together with the Commissioner's final decision regarding the appraised rental. Prevailing annual rental schedules will be published annually and furnished each lessee at the time of mailing the notice of appraised rental.

An appeal from any final decision of the Commissioner relating to the appraisal of lands may be taken to the Board of Appeals as provided in the general rules and regulations relating to state lands.

- G. Number of leases issued on ranch unit. Leases issued by the Department will include all state grazing lands within the ranch unit in one lease unless a hardship results therefrom to the lessee, in which case the lessee may at his election divide the state lands in his ranch unit in not more than four separate leases in such a manner that lease rentals will not become due and payable at the same time but will be payable on an approximate quarterly or semi-annual basis. To divide a ranch unit it is necessary for the lessee to apply in writing or in person to the Department, supplying sufficient information in order that a division of the state lands in his ranch unit can be separated topographically or by an exact line. In such cases, instead of one lease covering all the state lands in a ranch unit being issued, additional leases may be issued with different dates of payment of rentals.
- H. Form of grazing lease and provisions thereof. The form of grazing lease offered by the Department to an applicant will be on Land Division form No. A-11 and will be subject to the provisions and supplemental conditions therein contained and such other conditions as may be added thereto and the provisions of law and these rules and regulations.
- I. Rights of grazing lessee. All grazing leases granted by the Commissioner are only a license to graze livestock and to use the land described in the lease in a manner compatible with the terms of the lease. The state of Arizona reserves the right to grant other forms of leases or permits for the use of said lands or the removal of natural products therefrom. No grazing lessee has the authority or right to issue to any person any rights to the use of said lands or the removal of any products therefrom, but such right of use vests solely in the Commissioner and must be granted by the Commissioner in writing.
- J. Sublease or pasturage agreement. No grazing lessee shall sublet his lease, sell or lease pasturage of lands embraced in his lease without the written permission of the Commissioner. Approval of a sublease or pasturage agreement may be granted at the discretion of the Commissioner and shall be obtained by the lessee submitting for approval of the Commissioner the sublease or pasturage agreement executed in triplicate. Upon the approval by the Commissioner, two copies of the sublease or pasturage agreement, with the Commissioner's approval and any limitations to such approval endorsed by the Commissioner thereon, will be returned to the lessee, one copy thereof being retained in the files of the Department.
- K. Carrying capacity and application to exceed the same. No grazing lessee, sublessee or users under a pasturage agreement shall graze, without permission of the Commissioner, in excess of 110% of the carrying capacity as previously determined by the Commissioner upon state lands under lease within the exterior boundaries of any one ranch unit or units in the same general locality jointly operated. Approval to exceed the carrying capacity may be obtained by submitting a written request therefor. The request should contain the number of head of animals the lessee, sublessee or user desires to place upon the leased lands in excess of 110% of the carrying capacity, together with a statement as to how long the additional animals will remain upon the leased lands. If the Commissioner approves said request, the lessee, sublessee or user will be notified of such approval of increase in the carrying capacity and the period granted therefor. In the event of the approval of any such excess the Commissioner shall assess and collect the rental for such excess as provided by law and these rules and regulations.
- L. Cultivation and growing of crops on grazing land. State land under grazing lease is limited to the ranging of animals only and may be cultivated and crops grown thereon only with the approval of the Commissioner. Upon approval of the Commissioner the land may be cultivated and crops grown thereon provided such crops are forage crops in nature that are pastured by animals or, if severed from the land, are fed to animals upon the ranch unit. Under no circumstances may the lessee grow crops commercially under the provisions of a grazing lease. In the event any crops are grown with the approval of the Commissioner which will be pastured or removed from the land for use at other times of the year upon the ranch unit, the carrying capacity will be adjusted in accordance with the forage crops grown.
- M. Cutting of timber, standing trees or posts. The lessee shall not cut or waste, nor allow to be cut or wasted, any timber or standing trees growing on the leased land without the written consent of the Commissioner, except for fuel for domestic uses or for the necessary improvements upon the land; provided, however, that nothing herein contained shall be construed to permit the cutting of saw timber for any purpose except with the written consent of the Commissioner.
 Posts cut primarily from cedar, mesquite and juniper trees may be used for the erection and use of improvements by the lessee upon state lands without cost, provided the written consent of the Commissioner is first obtained. Such posts may not be used on other than state lands without payment therefor. The lessee is required to file an affidavit with the Department indicating the number of posts cut, the number used for improvement of state land and the number used on other than state lands or stockpiled for future use. At the time approval to cut posts is granted by the Commissioner, the price will be determined by him, which will be comparable to the price of posts from the United States Forest Service, and the price will be payable at the time the affidavit indicating the number of posts cut is filed with the Department. The Commissioner, or his representative, upon the granting of approval to cut posts, will from time to time visit the lessee to determine the number of posts cut. The Commissioner recognizes that the removal of cedars, mesquite and juniper trees from grazing lands is a conservation measure that will maintain or increase the range carrying capacity and that the removal of these trees in most cases would benefit state lands.
 In the event the lessee does not desire to purchase the trees as above provided, the Commissioner, if he deems it for the best interest of the state, may sell the same under such terms and conditions that he may require.

State Land Department

A purchaser other than a lessee shall not injure the lessee's surface rights and improvements or interfere with the lessee's use of the land under lease to him and may be required to file a surety bond with the Commissioner in such amount and under such conditions as to indemnify the lessee for any damage which may result due to his removal of the trees.

- N. Application to assign lease. Applications to assign and application for assumption of lease and transfer shall be made upon Land Division form No. A-13-1 and in accordance with the general rules and regulations relating to the leasing of state lands. Upon approval of the application, the assignment of the lease will be made by the Commissioner upon the lease where indicated and made of record in the Department.
- O. Use of state lands; failure to use. No lessee or permittee shall use lands under lease or permit to him except for grazing purposes unless authorized by the Commissioner in writing.
Applications for a special use of lands under permit or lease to a lessee or permittee for purposes other than grazing shall be made in writing in triplicate, and shall state in detail the reasons for such use. The application shall be signed and verified as provided for in applications to lease. Upon approval of the application by the Commissioner, two copies of the application with the Commissioner's approval and any limitations to such approval endorsed by the Commissioner thereon will be returned by the Commissioner to the lessee, one copy thereof being retained in the files of the Department.
Failure of any lessee or permittee to use the land for the purposes for which he holds a lease or permit, without having been authorized so to do by the Commissioner in writing, may, in the discretion of the Commissioner, subject said lease or permit to forfeiture or to cancellation as provided by law and these rules and regulations.
- P. Posting to prohibit hunting and fishing on state land. State land under lease or permit may not be posted to prohibit hunting and fishing without the consent of the Arizona Game and Fish Commission.

Historical Note

Original rule, Art. II, Subchapter B, Ch. II (Supp. 76-4). Amended effective September 26, 1978 (Supp. 78-5). Section R12-5-705 renumbered from Section R12-5-154 (Supp. 93-3).

R12-5-706. Expired

Historical Note

Original rule, Art. IV, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-706 renumbered from Section R12-5-155 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 4240, effective September 6, 2002 (Supp. 02-3).

ARTICLE 8. RIGHTS-OF-WAY

R12-5-801. Rights-of-way

- A. Definitions
 1. "Commissioner" means State Land Commissioner.
 2. "Department" means State Land Department.
 3. "Right-of-way" for the purpose of these rules means a right of use and passage over or through state land for such purpose as the Commissioner may deem necessary.
 4. "Lease" means any lease on state land in existence at the time applicant applies for right-of-way, or granted thereafter for either surface or subsurface use.
 5. "Patent" means a document used by the State Land Department to convey title to land.
 6. "Site" means a reservoir for storage of water; a location for a dam, a power plant or an irrigation plant, and for other purposes for public uses. (Not to include workings for the removal of sand, gravel and other road materials.)
- B. Miscellaneous rules
 1. Scope. These rules and regulations are general rules implementing Article 10, Title 37-461, Arizona Revised Statutes, providing for grants of rights-of-way and sites for public purposes, and shall prevail over and supersede any existing policy or procedure of the Department to the extent that they are in conflict therewith.
 2. State land subject to application. Any state-owned land shall be subject to application, provided that the proposed use does not unalterably conflict with other existing rights.
- C. Application for right-of-way
 1. Qualifications of applicant
 - a. Any citizen of the United States, partnership or association of citizens, or a corporation organized under the laws of the United States or any state or territory thereof, and who are authorized to transact business in the state, and any governmental agency of the state or political subdivision and municipal corporations thereof, may apply to the Department for a right-of-way on, over or through state land.
 - b. Application for right-of-way shall be made upon forms provided by the State Land Department.
 2. Area covered by application and right-of-way. Separate application shall be made for each county crossed. Data for each section will be shown separately.
 3. Information to be furnished by the applicant
 - a. The application for a right-of-way shall be in such form as the Commissioner may prescribe, shall be filed with the Department by the applicant or by an authorized agent for the applicant, and shall be required to furnish the Department the following information as the Commissioner may prescribe.
 - i. Name and address of applicant.

- ii. Statement whether applicant is an individual, partnership or corporation, or governmental agency of the state or political subdivision and municipal corporation thereof.
 - iii. Statement of citizenship, when applicable.
 - iv. If a corporation:
 - (1) Name.
 - (2) State of incorporation.
 - (3) Arizona business address.
 - (4) Affirmation of authority to do business in Arizona.
 - v. Age and marital status, when applicable.
 - vi. Description, according to the public land survey of the land for which application is being made.
 - vii. Width of the right-of-way.
 - viii. The nature of the right-of-way (the right-of-way is temporary or permanent; the right-of-way requires exclusive use or to what extent; a right-of-way through a given area).
 - ix. A survey of the land for which application is being made showing distance and direction from a known cadastral survey point in each section.
 - x. Location of improvements or crops on land under application over which proposed routes of right-of-way will pass (information required in (ix) and (x) shall be conveyed by means of accurate plat or drawing accompanying the application form).
 - xi. The applicant shall furnish evidence from surface lessee and all other right holders in the land applied for giving consent to the new right-of-way or objection thereto.
- b. This rule shall not be taken or construed to limit or restrict the authority of the Commissioner to require the applicant to furnish such additional information as the Commissioner may deem necessary.
4. Rights of surface and subsurface lessees or permittees
- a. The Commissioner has the right to grant rights-of-way without the consent of the surface or subsurface lessee.
 - b. When the applicant for a right-of-way and any existing right holder do not agree on the appraised value of damages to the right holder, the applicant for right-of-way may apply to the Commissioner to appraise the value of any improvements that may be injured or damaged. The cost of any such appraisal shall be paid by the applicant for right-of-way.
 - c. In cases where to utilize the right-of-way applied for, it is necessary to cut a fence belonging to the surface lessee or otherwise enter through a fence, the installation of a standard cattle guard or other facilities in accordance with such specifications as the Commissioner may prescribe, may be required by the Commissioner as a condition to the granting of the right-of-way.
5. Filing application for right-of-way; fees; rejection; withdrawal
- a. Each application filed with the Department shall be accompanied by a filing fee.
 - b. Each application filed shall first be checked for its completeness and when it meets the requirements shall be made of record in the Department.
 - c. Rental or other payment for each right-of-way shall be determined by the Commissioner after appraisal.
 - i. Rental for rights-of-way granted without public auction sale shall be determined by the Commissioner after appraisal.
 - ii. Rights-of-way for exclusive use or perpetual in nature (except rights-of-way granted to governmental agencies of the state or political subdivisions and municipal corporations thereof) shall be sold at public auction as provided under the laws for sale of state land after appraisal.
 - iii. Rights-of-way for governmental agencies of the state or political subdivisions and municipal corporations thereof may be granted by the Department for an indefinite period for so long as used for the purpose granted after full payment of the appraised value of the right-of-way has been made to the State Land Department.
 - (1) All appraisals of rights-of-way shall be established by the State Land Commissioner.
 - (2) The appraised value of the right-of-way shall be determined in accordance with the principles established in A.R.S. §§ 12- 1122 and 37-132.
6. Right of applicant to use of land
- a. The filing of an application for a right-of-way shall not confer upon the applicant any right to use the area applied for.
 - b. A right of entry to map and survey or for any other purpose in the area to be applied for may be obtained from the Commissioner on forms provided by the Department.
7. Termination of use; abandonment
- a. When a right-of-way holder has no further use of the area, he may surrender the contract to the Commissioner.
 - b. The Commissioner may determine that a right-of-way is abandoned when the proper showing is made that the area under right-of-way is no longer needed or used for the purpose applied for.
 - c. The Commissioner shall give right-of-way holder 30 days to show cause why a right-of-way should not be cancelled. If within 30 days the right-of-way holder fails to correct the defect, the Commissioner may issue an order of abandonment.
8. Issuance of a right-of-way
- a. Upon the compliance by the applicant with the requirements set forth by the Commissioner, the right-of-way contract shall be issued.
 - b. The failure of the applicant to execute and return the right-of-way contract with all monies required within 60 days from the date of mailing by the Department, the Commissioner may issue a cancellation order for non-completion of the contract.

State Land Department

- c. The date of the right-of-way contract shall commence on the date the contract is mailed by the Department to the applicant.
- D. Right-of-way
 1. Term of right-of-way. The term of the right-of-way shall be determined by the Department and shall be set forth on the right-of-way contract.
 2. Right-of-way rentals or other payments. The rental or any other payments required for rights-of-way shall be determined by the Commissioner after appraisal.
 3. Possession and right of use of right-of-way area. The right is granted for the use of the area described in the right-of-way contract subject to any existing prior rights and subject to any rights the Department shall grant hereafter.
 4. Provisions of the right-of-way
 - a. Every right-of-way contract shall provide for:
 - i. Payment to the Department of the amount established by the Commissioner after determination of the true appraised value.
 - ii. The installation and construction of necessary machinery, equipment and facilities with the right of removal within 90 days after expiration or termination of the right-of-way.
 - iii. Fencing and other protective requirements deemed necessary by the Commissioner.
 - iv. That the grantee shall restore the surface of the land within the right-of-way to a reasonable condition as required by the Commissioner.
 - v. That the grantee will indemnify, hold and save grantor harmless against all loss, damage, liability, expenses, costs and charges incident to or resulting in any way from the use, condition or occupation of the land.
 - vi. A statement of the purpose for which the right-of-way was granted.
 - vii. The right of the grantee to assign the right-of-way, provided that such an assignment shall not become effective until approved in writing by the Commissioner as being in the best interests of the state and until a copy thereof is filed with the Department.
 - viii. The right of termination of the right-of-way by the grantee at any time during its term by giving the Commissioner 30 days notice of termination in writing, provided that the grantee is not delinquent in any payments and has complied with all conditions on the date of termination.
 5. Assignment of right-of-way; sublease prohibited
 - a. Grantee of each right-of-way contract, if not in default of rental or other payments, and who has kept and performed all the conditions of his lease, may, with written approval of the Commissioner, assign the right-of-way.
 - i. Application for assignment, the assignment and the assumption of the right-of-way will be on such forms as the Commissioner may prescribe.
 - ii. An assignment shall not become effective unless and until it is approved by the Commissioner.
 - iii. The assignee shall succeed to all the rights and shall be subject to the obligations of the assignor.
 - iv. A sub-grant of the right-of-way contract is prohibited.
 6. Right-of-way renewal. Upon application to the Commissioner, not less than 30 days, nor more than 60 days prior to the expiration of the right-of-way contract, the grantee of a right-of-way contract, if he is not delinquent in the payment of rental or of monies due the State Land Department on the date of expiration of the contract, shall have a preferred right to renew the right-of-way contract bearing even date with the expiration of the old contract.
 7. Bonds
 - a. The Commissioner may require the grantee to post a cash deposit or surety bond to guarantee the payment of all monies due under the contract.
 - b. The Commissioner may require the grantee to furnish bond, in a reasonable amount, to be fixed by the Commissioner, conditioned that the grantee will guarantee restoration of the surface of the land described in the contract to a reasonable condition, upon the termination of the right-of-way contract.
 - c. The Commissioner may require the lessee to file with the Department a surety bond in the form, amount, and with surety approved by the Commissioner, conditioned upon prompt payment to the lessee of the surface, subsurface or otherwise of the state land covered by the right-of-way, for any loss to such owner or lessee from damage or destruction caused by the construction or use of the right-of-way, his or its agents, or employees, to grasses, forage, crops and improvements upon such land.
 - d. Assignment of any or all of the right-of-way contract will not relieve the assignor of his obligation as principal under the bond. Release of the assignor's obligation under bond may be effected through the posting of a replacement bond by the assignee, but then only after approval by the Commissioner and subsequent notification of the release by the Commissioner in writing to the principal and surety.
 - e. The Commissioner, in his discretion, may reduce or increase the principal amount of the bond.
 - f. Immediately after determination by the Commissioner that full discharge of the conditions of the obligations under any bond has been effected, he will, in writing, notify the principal and surety held by the bond so that it may be formally terminated.
 - g. Surety on the bond shall have the right to cancel the bond and be relieved of further liability after the period of notice, by giving 30 days' notice to the Department of its desire to so cancel.
 - i. Upon receipt of such notification, the Department will immediately notify the grantee by certified mail of the impending action by surety.
 - ii. Failure by the grantee to post a replacement bond before the expiration of the 30 days mentioned next above, shall constitute a default by the grantee and cause for cancellation of the right-of-way.

8. Principal payments. Each right-of-way granted to governmental agencies of the state or political subdivisions and municipal corporations thereof for exclusive use or perpetual use shall provide for payment of principal in the full amount of the appraised value as provided by the Commissioner after appraisal.

E. Reports

1. Report of improvements
 - a. Applications for and reports of improvements placed shall be presented to the Commissioner on forms provided by the Department.
 - b. Grantee of every right-of-way shall submit to the Department an application to place any improvement to be placed on the right-of-way and shall secure written approval from the Commissioner to place the improvement before any work is commenced toward the improvement.
 - c. The grantee shall report any completed improvements to the Commissioner and secure approval from the Commissioner.

Historical Note

Original rule, Art. VIII, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-801 renumbered from Section R12-5-165 (Supp. 93-3).

R12-5-802. Reservoir, Dam, and Other Sites

A. Definitions

1. "Site lease" shall mean a lease issued upon state lands by the Department for reservoir or dam sites primarily used for purposes other than stock watering on lands leased for grazing purposes, and power or irrigation plant sites requiring more width than general rights-of-way leases for transmission lines or canals, or for such other purposes not classified as commercial.
2. "Surface lessee" means the holder of a lease on the surface of any state land for grazing, agricultural, commercial, homesite or natural products.
3. "Subsurface lessee" means the holder of a lease on the subsurface of any state land for oil and gas, mineral or natural products.

B. Land subject to site lease and term of lease. All state lands are subject to site lease for a term of not more than ten years without advertising, or for such lesser term as may be established by the Commissioner if he deems such lesser term to be to the best interests of the state. Site leases in excess of ten years are required by law to be advertised and sold at public auction to the highest bidder.

No lease for a site will be granted where damage or injury to improvements owned by a surface or subsurface leaseholder would result from the granting of the site by the Department without giving rise to a cause of action by the owner of said improvements, unless compensation for the value or damage or injury to said improvements has first been determined and a settlement made.

C. Application for site lease. An application for a site lease shall be made upon Land Division form No. A-82, and in accordance with the general rules and regulations relating to the leasing of state lands.

The application shall be accompanied by a map showing in detail the survey of the site applied for, or, if not surveyed, a map of reasonable accuracy so that the site may be located upon the land itself by either a survey or protraction. The Commissioner reserves the right to require a survey to be made by a regularly licensed registered engineer or land surveyor at any time. The map need be of no particular scale but should be of sufficiently large enough scale that improvements upon the surface of the land applied for may be shown. The map is considered a part of the application to lease as a line of definite location which will bind the applicant in the same manner as the lease application itself to the statements made therein.

An application for a site lease over or across state lands, the surface or subsurface of which is leased and in use, should be accompanied by a statement from such surface or subsurface lessee that he has no objection to the granting of the site lease, or, if such consent cannot be obtained, a statement from the applicant stating the reasons why such consent has not been obtained.

D. Renewal application for site lease. Application for renewal of a site lease shall be made upon Land Division form No. A-13-3 and in accordance with the general rules and regulations relating to state lands.

If the applicant has not used the land for the purpose for which the initial lease was granted to him, he must state in detail reasons therefor unless he has obtained from the Commissioner authorization in writing for such non-use as required by law and the rules and regulations of the Department.

E. Rights of surface and subsurface lessees. Under the law the Commissioner has the right to grant sites without the consent of the surface or subsurface lessee. However, in many instances the surface or subsurface lessee owns improvements upon the lands desired for a site lease and these improvements are protected by law. In the event the site applicant and the surface or subsurface lessee are unable to arrive at the value of any improvements which may be injured or damaged by the grant of a site lease and the consent of the surface or subsurface lessee cannot be secured, the Commissioner may, if it is to the best interest of the state, appraise the improvements as provided by law and grant the lease upon evidence of tender to the owner of improvements of the appraised value of the same. The owner of the improvements may appeal from the appraisal of the improvements to the Appeal Board of the Department as authorized by law and these rules and regulations.

F. Rental. No site lease shall provide for an annual rental of less than the appraised rental value of the land and in no event for less than 5¢ per acre per annum or a minimum of \$10.00 per annum per lease.

G. Form of site lease and provisions thereof. The form of site lease offered by the Department to an applicant will be on Land Division form No. A-83 and will be subject to the provisions and supplemental conditions therein contained, and such other conditions as may be added thereto, and the provisions of law and these rules and regulations.

H. Effect of a site lease. No lessee shall use lands under lease to him except for site purposes unless authorized by the Commissioner in writing.

Applications for a special use of lands under lease to a lessee for purposes other than which the lease was issued shall be made in writing in triplicate and shall state in detail the reasons for such use. The application shall be signed and verified as provided for in applications to lease. Upon approval of the application by the Commissioner, two copies of the application with the Commissioner's ap-

State Land Department

approval and any limitations to such approval endorsed by the Commissioner thereon will be returned by the Commissioner to the lessee, one copy thereof being retained in the files of the Department.

Failure of any lessee to use the land for the purposes for which he holds a lease, without having been authorized so to do by the Commissioner in writing, may, in the discretion of the Commissioner, subject said lease to forfeiture or to cancellation as provided by law and these rules and regulations.

- I. Rights of site lessee. All leases granted by the Commissioner are only a license to use the land described in the lease for site purposes in a manner compatible with the terms of said lease. The state reserves the right to grant other leases for the use of said lands or the renewal of natural products therefrom. No site lessee has the authority or right to issue to any person any right to the use of said land or the removal of any products therefrom, but such right of use vests solely in the Commissioner and must be granted by the Commissioner in writing.

Historical Note

Original rule, Art. X, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-802 renumbered from Section R12-5-166 (Supp. 93-3).

R12-5-803. Expired

Historical Note

Adopted under an exemption from the provisions of the Administrative Procedure Act, effective July 8, 1993 (Supp. 93-3). Section R12-5-803 renumbered from Section R12-5-167 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 4240, effective September 6, 2002 (Supp. 02-3).

ARTICLE 9. EXCHANGES

R12-5-901. Scope of Rules

These rules apply only to exchange of state land under the provisions of A.R.S. §§ 37-604 to 37-608, inclusive, and shall prevail over and supersede any existing policy or procedure to the extent that they are in conflict therewith.

Historical Note

No original number assigned (Supp. 76-4). Section R12-5-901 renumbered from Section R12-5-179 (Supp. 93-3). R12-5-901 repealed by summary action with an interim effective date of July 19, 1996; filed in the Office of the Secretary of State June 27, 1996 (Supp. 96-2). The proposed summary action repealing R12-5-901 was remanded by the Governor's Regulatory Review Council (September 10, 1996) which revoked the interim effectiveness of the summary rule. The Section in effect before the proposed summary action has been restored (Supp. 98-3).

R12-5-902. Definitions

Unless the context otherwise requires:

1. "Commissioner" means the State Land Commissioner.
2. "Selection board" means that board composed of the Governor, the State Land Commissioner and the Attorney General, as authorized by A.R.S. § 37-202.
3. "Private owner" means any individual person, firm, corporation, association, partnership, receiver, trustee, guardian, executor, administrator, fiduciary representative, or any group acting as a unit, but does not include the government of the state, the government of the United States, and any subdivision, agency or instrumentality, corporate or otherwise, of either of them.
4. "Department" means the State Land Department.

Historical Note

No original number assigned (Supp. 76-4). Section R12-5-902 renumbered from Section R12-5-180 (Supp. 93-3). R12-5-902 repealed by summary action with an interim effective date of July 19, 1996; filed in the Office of the Secretary of State June 27, 1996 (Supp. 96-2). The proposed summary action repealing R12-5-902 was remanded by the Governor's Regulatory Review Council (September 10, 1996) which revoked the interim effectiveness of the summary rule. The Section in effect before the proposed summary action has been restored (Supp. 98-3).

R12-5-903. Expired

Historical Note

No original number assigned (Supp. 76-4). Section R12-5-903 renumbered from Section R12-5-181 (Supp. 93-3). R12-5-903 repealed by summary action with an interim effective date of July 19, 1996; filed in the Office of the Secretary of State June 27, 1996 (Supp. 96-2). The proposed summary action repealing R12-5-903 was remanded by the Governor's Regulatory Review Council (September 10, 1996) which revoked the interim effectiveness of the summary rule. The Section in effect before the proposed summary action has been restored (Supp. 98-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 4240, effective September 6, 2002 (Supp. 02-3).

R12-5-904. Application

The application shall be prepared and filed on such forms as the Department may from time to time prescribe. The application shall set forth such information as is required by law and these rules, including but not limited to the following: the name, age, and residence of the applicant; a description of all lands sought to be exchanged, which description shall be technically competent, definite, susceptible of only

State Land Department

one interpretation, and furnish sufficient information for the identification of the land on the ground; the number of acres contained in the lands of applicant offered in exchange, and applicant's estimated value thereof; the number of acres contained in the state lands applied for in exchange, and applicant's estimated value thereof; a list of permanent improvements on the lands to be exchanged, applicant's estimated value thereof and the description of the location thereof in such manner as to facilitate the location thereof on the ground; a description of any leasehold interest in the land to be exchanged or ownership of any improvements thereon, together with the name and address of any such claimant; accompanying agreements, if any, with the leaseholder or owner of improvements on the lands to be exchanged shall be attached to the application and filed therewith.

Historical Note

No original number assigned (Supp. 76-4). Section R12-5-904 renumbered from Section R12-5-182 (Supp. 93-3). R12-5-904 repealed by summary action with an interim effective date of July 19, 1996; filed in the Office of the Secretary of State June 27, 1996 (Supp. 96-2). The proposed summary action repealing R12-5-904 was remanded by the Governor's Regulatory Review Council (September 10, 1996) which revoked the interim effectiveness of the summary rule. The Section in effect before the proposed summary action has been restored (Supp. 98-3).

R12-5-905. Expired**Historical Note**

No original number assigned (Supp. 76-4). Emergency repeal filed September 26, 1990, effective September 27, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-3). Emergency expired, text of original rule placed back into effect December 27, 1990. Section R12-5-905 renumbered from Section R12-5-183 (Supp. 93-3). R12-5-905 repealed by summary action with an interim effective date of July 19, 1996; filed in the Office of the Secretary of State June 27, 1996 (Supp. 96-2). The proposed summary action repealing R12-5-905 was remanded by the Governor's Regulatory Review Council (September 10, 1996) which revoked the interim effectiveness of the summary rule. The Section in effect before the proposed summary action has been restored (Supp. 98-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 4240, effective September 6, 2002 (Supp. 02-3).

R12-5-906. Expired**Historical Note**

No original number assigned (Supp. 76-4). Emergency repeal filed September 26, 1990, effective September 27, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-3). Emergency expired, text of original rule placed back into effect December 27, 1990. Section R12-5-906 renumbered from Section R12-5-184 (Supp. 93-3). R12-5-906 repealed by summary action with an interim effective date of July 19, 1996; filed in the Office of the Secretary of State June 27, 1996 (Supp. 96-2). The proposed summary action repealing R12-5-906 was remanded by the Governor's Regulatory Review Council (September 10, 1996) which revoked the interim effectiveness of the summary rule. The Section in effect before the proposed summary action has been restored (Supp. 98-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 4240, effective September 6, 2002 (Supp. 02-3).

R12-5-907. Expired**Historical Note**

No original number assigned (Supp. 76-4). Section R12-5-907 renumbered from Section R12-5-185 (Supp. 93-3). R12-5-907 repealed by summary action with an interim effective date of July 19, 1996; filed in the Office of the Secretary of State June 27, 1996 (Supp. 96-2). The proposed summary action repealing R12-5-907 was remanded by the Governor's Regulatory Review Council (September 10, 1996) which revoked the interim effectiveness of the summary rule. The Section in effect before the proposed summary action has been restored (Supp. 98-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 4240, effective September 6, 2002 (Supp. 02-3).

R12-5-908. Expired**Historical Note**

No original number assigned (Supp. 76-4). Section R12-5-908 renumbered from Section R12-5-186 (Supp. 93-3). R12-5-908 repealed by summary action with an interim effective date of July 19, 1996; filed in the Office of the Secretary of State June 27, 1996 (Supp. 96-2). The proposed summary action repealing R12-5-908 was remanded by the Governor's Regulatory Review Council (September 10, 1996) which revoked the interim effectiveness of the summary rule. The Section in effect before the proposed summary action has been restored (Supp. 98-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 4240, effective September 6, 2002 (Supp. 02-3).

R12-5-909. Expired**Historical Note**

No original number assigned (Supp. 76-4). Section R12-5-909 renumbered from Section R12-5-187 (Supp. 93-3). R12-5-909 repealed by summary action with an interim effective date of July 19, 1996; filed in the Office of the Secretary of State June 27, 1996 (Supp. 96-2). The proposed summary action repealing R12-5-909 was remanded by the Governor's Regulatory Review Council (September 10, 1996) which revoked the interim effectiveness of the summary rule. The Section in effect before the proposed

State Land Department

summary action has been restored (Supp. 98-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 4240, effective September 6, 2002 (Supp. 02-3).

R12-5-910. Maps and Photographs

The applicant shall furnish such map or maps of the lands to be exchanged, coded as to ownership in a suitable manner, as the Department may require and deem necessary to evaluate the application and assist in making an appraisal; and, in addition the Department may require an aerial photograph or photographs of such lands as it may specify in a request therefor.

Historical Note

No original number assigned (Supp. 76-4). Section R12-5-910 renumbered from Section R12-5-188 (Supp. 93-3). R12-5-910 repealed by summary action with an interim effective date of July 19, 1996; filed in the Office of the Secretary of State June 27, 1996 (Supp. 96-2). The proposed summary action repealing R12-5-910 was remanded by the Governor's Regulatory Review Council (September 10, 1996) which revoked the interim effectiveness of the summary rule. The Section in effect before the proposed summary action has been restored (Supp. 98-3).

R12-5-911. Expired

Historical Note

No original number assigned (Supp. 76-4). Section R12-5-911 renumbered from Section R12-5-189 (Supp. 93-3). R12-5-911 repealed by summary action with an interim effective date of July 19, 1996; filed in the Office of the Secretary of State June 27, 1996 (Supp. 96-2). The proposed summary action repealing R12-5-911 was remanded by the Governor's Regulatory Review Council (September 10, 1996) which revoked the interim effectiveness of the summary rule. The Section in effect before the proposed summary action has been restored (Supp. 98-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 4240, effective September 6, 2002 (Supp. 02-3).

R12-5-912. Expired

Historical Note

No original number assigned (Supp. 76-4). Section R12-5-912 renumbered from Section R12-5-190 (Supp. 93-3). R12-5-912 repealed by summary action with an interim effective date of July 19, 1996; filed in the Office of the Secretary of State June 27, 1996 (Supp. 96-2). The proposed summary action repealing R12-5-912 was remanded by the Governor's Regulatory Review Council (September 10, 1996) which revoked the interim effectiveness of the summary rule. The Section in effect before the proposed summary action has been restored (Supp. 98-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 4240, effective September 6, 2002 (Supp. 02-3).

R12-5-913. Expired

Historical Note

No original number assigned (Supp. 76-4). Section R12-5-913 renumbered from Section R12-5-191 (Supp. 93-3). R12-5-913 repealed by summary action with an interim effective date of July 19, 1996; filed in the Office of the Secretary of State June 27, 1996 (Supp. 96-2). The proposed summary action repealing R12-5-913 was remanded by the Governor's Regulatory Review Council (September 10, 1996) which revoked the interim effectiveness of the summary rule. The Section in effect before the proposed summary action has been restored (Supp. 98-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 4240, effective September 6, 2002 (Supp. 02-3).

R12-5-914. Expired

Historical Note

No original number assigned (Supp. 76-4). Section R12-5-914 renumbered from Section R12-5-192 (Supp. 93-3). R12-5-914 repealed by summary action with an interim effective date of July 19, 1996; filed in the Office of the Secretary of State June 27, 1996 (Supp. 96-2). The proposed summary action repealing R12-5-914 was remanded by the Governor's Regulatory Review Council (September 10, 1996) which revoked the interim effectiveness of the summary rule. The Section in effect before the proposed summary action has been restored (Supp. 98-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 4240, effective September 6, 2002 (Supp. 02-3).

R12-5-915. Expired

Historical Note

No original number assigned (Supp. 76-4). Section R12-5-915 renumbered from Section R12-5-193 (Supp. 93-3). R12-5-915 repealed by summary action with an interim effective date of July 19, 1996; filed in the Office of the Secretary of State June 27, 1996 (Supp. 96-2). The proposed summary action repealing R12-5-915 was remanded by the Governor's Regulatory Review Council (September 10, 1996) which revoked the interim effectiveness of the summary rule. The Section in effect before the proposed summary action has been restored (Supp. 98-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 4240, effective September 6, 2002 (Supp. 02-3).

R12-5-916. Expired

Historical Note

No original number assigned (Supp. 76-4). Section R12-5-916 renumbered from Section R12-5-194 (Supp. 93-3). R12-5-916 repealed by summary action with an interim effective date of July 19, 1996; filed in the Office of the Secretary of State June 27, 1996 (Supp. 96-2). The proposed summary action repealing R12-5-916 was remanded by the Governor's Regulatory Review Council (September 10, 1996) which revoked the interim effectiveness of the summary rule. The Section in effect before the proposed summary action has been restored (Supp. 98-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 4240, effective September 6, 2002 (Supp. 02-3).

R12-5-917. Expired

Historical Note

No original number assigned (Supp. 76-4). Section R12-5-917 renumbered from Section R12-5-195 (Supp. 93-3). R12-5-917 repealed by summary action with an interim effective date of July 19, 1996; filed in the Office of the Secretary of State June 27, 1996 (Supp. 96-2). The proposed summary action repealing R12-5-917 was remanded by the Governor's Regulatory Review Council (September 10, 1996) which revoked the interim effectiveness of the summary rule. The Section in effect before the proposed summary action has been restored (Supp. 98-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 4240, effective September 6, 2002 (Supp. 02-3).

R12-5-918. Controversy as to Title or Leasehold Rights

The Commissioner may in his discretion hold in suspension or reject any application to exchange where it is found that title or leasehold rights in any of the land conveyed thereby are in controversy. The Department will not become a party to any controversy between different claimants to any of the land sought to be exchanged.

Historical Note

No original number assigned (Supp. 76-4). Section R12-5-918 renumbered from Section R12-5-196 (Supp. 93-3) R12-5-918 repealed by summary action with an interim effective date of July 19, 1996; filed in the Office of the Secretary of State June 27, 1996 (Supp. 96-2). The proposed summary action repealing R12-5-918 was remanded by the Governor's Regulatory Review Council (September 10, 1996) which revoked the interim effectiveness of the summary rule. The Section in effect before the proposed summary action has been restored (Supp. 98-3).

R12-5-919. Expired

Historical Note

No original number assigned (Supp. 76-4). Section R12-5-919 renumbered from Section R12-5-197 (Supp. 93-3). R12-5-919 repealed by summary action with an interim effective date of July 19, 1996; filed in the Office of the Secretary of State June 27, 1996 (Supp. 96-2). The proposed summary action repealing R12-5-919 was remanded by the Governor's Regulatory Review Council (September 10, 1996) which revoked the interim effectiveness of the summary rule. The Section in effect before the proposed summary action has been restored (Supp. 98-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 4240, effective September 6, 2002 (Supp. 02-3).

R12-5-920. Expired

Historical Note

No original number assigned (Supp. 76-4). Section R12-5-920 renumbered from Section R12-5-198 (Supp. 93-3). R12-5-920 repealed by summary action with an interim effective date of July 19, 1996; filed in the Office of the Secretary of State June 27, 1996 (Supp. 96-2). The proposed summary action repealing R12-5-920 was remanded by the Governor's Regulatory Review Council (September 10, 1996) which revoked the interim effectiveness of the summary rule. The Section in effect before the proposed summary action has been restored (Supp. 98-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 4240, effective September 6, 2002 (Supp. 02-3).

R12-5-921. Exchange of Road Rights-of-way over State Land

- A. Scope of rules. These rules apply only to exchange of road rights-of-way over state land under the provisions of A.R.S. §§ 37-615 to 37-617, inclusive and shall prevail over the supersede any existing policy or procedure to the extent that they are in conflict therewith. Such additional requirements may be imposed as the State Land Department from time to time determines to be necessary.
- B. Definitions. Unless the context otherwise requires:
 - 1. "Commissioner" means the State Land Commissioner.
 - 2. "Selection board" means that board composed of the Governor, the State Land Commissioner and the Attorney General, as authorized by A.R.S. § 37-202.
 - 3. "Private owner" means any individual person, firm, corporation, association, partnership, receiver, trustee, guardian, executor, administrator, fiduciary representative, or any group acting as a unit, but does not include the government of the state, the government of the United States, and any subdivision, agency or instrumentality, corporate or otherwise, of either of them.
 - 4. "Department" means the State Land Department.

State Land Department

- C. Application. The application shall be prepared and filed on such forms as the Department may from time to time prescribe. The application shall set forth such information as is required by law and these rules, including but not limited to the following:
1. The name, age and residence of the applicant;
 2. A description of all road rights-of-way sought to be exchanged, which description shall be technically competent, definite, susceptible of only one interpretation, and furnish sufficient information for the identification of the road rights-of-way on the ground;
 3. The number of acres contained in the road rights-of-way of the applicant offered in exchange and applicant's estimated value thereof;
 4. The number of acres contained in the state road rights-of-way applied for in exchange and applicant's estimated value thereof;
 5. A list of permanent improvements on the road rights-of-way to be exchanged, applicant's estimated value thereof and the description of the location thereof in such manner as to facilitate the location thereof on the ground;
 6. A description of any leasehold interest in the road rights-of-way to be exchanged or ownership of any improvements thereon together with the name and address of any such claimant;
 7. Accompanying agreements, if any, with the leaseholder or owner of improvements on the road rights-of-way to be exchanged shall be attached to the application and filed therewith.
- D. Appraisal fee. The cost of appraising the value of the privately owned road rights-of-way to be exchanged shall be paid solely by such applicant in such manner and at such time as the Department may direct. The applicant shall pay to the Department the sum of \$150.00 as an initial deposit toward such cost of appraisal; from time to time thereafter, upon the determination by the Department that such cost will exceed the amount of the initial deposit the Department will mail to applicant a written statement of the additional amount due and payment shall be made by applicant to the Department within 20 days from the date the notice is received.
- E. Valuation of land. All road rights-of-way exchanged shall be of substantially equal value. The Department shall appraise the values of all road rights-of-way described in the application to establish the full cash value thereof, giving due regard to the last established full cash value for state ad valorem tax purposes. Whether or not the selected state road rights-of-way to be exchanged and the private road rights-of-way being offered are of substantially equal value shall be a determination of the Department and such determination shall be final.
- F. Maps and photographs. The applicant shall furnish maps of the road rights-of-way to be exchanged, coded as to ownership in a suitable manner, as the Department may require and deem necessary to evaluate the application and assist in making an appraisal; and, in addition the Department may require aerial photographs of such road rights-of-way as it may specify in a request therefor.
- G. Notices. All notices shall be by regular mail to the last known address of a party in the Department's records and shall conclusively be deemed to have been received on the day following the deposit of such notice in the U.S. Mail by the Department.
- H. Road rights-of-way conveyed to the state. Road rights-of-way conveyed to the state shall upon acceptance and recording be dedicated to the same purpose and administered under the same laws to which the road rights-of-way conveyed were subject prior to such conveyance, but may be reclassified as provided in A.R.S. § 37-212.
- I. Conveyance. The form and substance of all instruments of conveyance of the rights-of-way to be granted pursuant hereto shall be as determined by the Department. An applicant may be required to furnish the Department with evidence satisfactory to it that the applicant can convey to the state of Arizona the offered road rights-of-way owned or held subject only to easements or rights consistent with the Department's use of such road rights-of-way as the Department may specify. The Department may in its absolute discretion accept a policy or contract of insurance insuring the state of Arizona in an amount specified by the Department against such loss which the state of Arizona may sustain by reason of the unmarketability of the title to the road rights-of-way agreed to be conveyed to it; however, the acceptance by the Department of any such policy or contract of insurance shall not in any event be considered as a waiver of the obligation of the applicant to convey to the state of Arizona except as may be specifically modified in writing by the Department.
- J. Controversy as to rights. The Commissioner may in his discretion hold in suspension or reject any application to exchange where it is found that the rights in any of the road rights-of-way offered are in controversy. The Department will not become a party to any controversy between different claimants to any of the road rights-of-way sought to be exchanged.
- K. Judicial notice. The Department may take notice of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the Department's specialized knowledge; and the Department's experience, technical competence and specialized knowledge may be utilized in the evaluation of any information and evidence submitted to it.
- L. Commissioner's decision. The Commissioner shall render his decision regarding any such protest pursuant to A.R.S. § 37-604.

Historical Note

Adopted effective September 22, 1978 (Supp. 78-5). Emergency amendment filed September 26, 1990, adopted effective September 27, 1990, pursuant to A.R.S. 41-1026, valid for only 90 days (Supp. 90-3). Emergency expired. Section R12-5-921 renumbered from Section R12-5-199 (Supp. 93-3).

ARTICLE 10. EXPIRED

Article 10, consisting of Sections R12-5-1001 through R12-5-1012, expired under A.R.S. § 41-1056(E) at 8 A.A.R. 4240, effective September 6, 2002 (Supp. 02-3).

R12-5-1001. Expired

Historical Note

Original rule, Art. XI, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-1001 renumbered from Section R12-5-200 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 4240, effective September 6, 2002 (Supp. 02-3).

R12-5-1002. Expired

Historical Note

Original rule, Art. XI, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-1002 renumbered from Section R12-5-201 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 4240, effective September 6, 2002 (Supp. 02-3).

R12-5-1003. Expired

Historical Note

Original rule, Art. XI, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-1003 renumbered from Section R12-5-202 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 4240, effective September 6, 2002 (Supp. 02-3).

R12-5-1004. Expired

Historical Note

Original rule, Art. XI, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-1004 renumbered from Section R12-5-203 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 4240, effective September 6, 2002 (Supp. 02-3).

R12-5-1005. Expired

Historical Note

Original rule, Art. XI, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-1005 renumbered from Section R12-5-204 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 4240, effective September 6, 2002 (Supp. 02-3).

R12-5-1006. Expired

Historical Note

Original rule, Art. XI, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-1006 renumbered from Section R12-5-205 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 4240, effective September 6, 2002 (Supp. 02-3).

R12-5-1007. Expired

Historical Note

Original rule, Art. XI, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-1007 renumbered from Section R12-5-206 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 4240, effective September 6, 2002 (Supp. 02-3).

R12-5-1008. Expired

Historical Note

Original rule, Art. XI, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-1008 renumbered from Section R12-5-207 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 4240, effective September 6, 2002 (Supp. 02-3).

R12-5-1009. Expired

Historical Note

Original rule, Art. XI, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-1009 renumbered from Section R12-5-208 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 4240, effective September 6, 2002 (Supp. 02-3).

R12-5-1010. Expired

Historical Note

Original rule, Art. XI, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-1010 renumbered from Section R12-5-209 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 4240, effective September 6, 2002 (Supp. 02-3).

R12-5-1011. Expired

Historical Note

Original rule, Art. XI, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-1011 renumbered from Section R12-5-210 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 4240, effective September 6, 2002 (Supp. 02-3).

R12-5-1012. Expired

Historical Note

Original rule, Art. XI, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-1012 renumbered from Section R12-5-211 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 4240, effective September 6, 2002 (Supp. 02-3).

ARTICLE 11. SPECIAL USE PERMITS

R12-5-1101. Policy; Use of Lands

It is the policy of the Commissioner in the administration of state lands to permit, where practical, the beneficial use thereof for special purposes not specifically provided for by existing law or the rules and regulations of the Land Division and the leasing of state lands. Permits for such special use will not be issued, however, in any case where the provisions of existing state land laws may be invoked.

The contemplated use must not be in conflict with any federal or state laws.

An applicant must state in his application the use to which he intends to put the lands and he will not be permitted to devote them to any other use unless he secures an additional permit.

1. Qualifications of applicants. Any person of the age of 21 years or over, a citizen of the United States or who has declared an intention to become a citizen of the United States or any firm, association or corporation which has complied with the laws of the state, shall be qualified to apply for a special use permit.
2. Application for special use permit; renewal thereof; application fee. An application for general special use permit shall be made on Land Division form. Such application shall describe with particularity the land applied for, and shall state in detail the use to which the applicant intends to put the lands and the period for such use.
A renewal of a general special use permit shall be made on Land Division form.
If an applicant for renewal of a special use permit has not used the land for the purpose for which the initial permit was granted him, he must state in detail reasons therefor unless he has obtained from the Commissioner authorization in writing for such non-use as required by law and these rules and regulations.
3. Form of special use permit. The form of a general special use permit will be prepared by the Department and will be subject to the provisions and supplemental conditions therein contained and the provisions of law and these rules and regulations.
4. Term of permit. A special use permit shall not be issued for a period to exceed ten years or such lesser term as may be established by the Commissioner if he deems such lessor term to be in the best interest of the state.
An application for an initial special use permit shall not be approved for a period of longer than two years.
Unless it is deemed to be for the best interest of the state, it is not the policy of the Department to allow and issue a special use permit which will seriously interfere with the operations of an established lessee or permittee holding a lease or permit from the Department to the surface or subsurface rights to the land.
5. Minimum fee. No special use permit shall provide for an annual fee for less than appraised rental value of the land and in no event for less than 5¢ per acre per annum or a minimum of \$10.00 per annum per permit.
6. Failure to use land for purposes authorized. Any permittee who shall fail to use the land for the purpose for which he holds a permit during the term of his permit, unless for good cause such failure has been authorized or ratified by the Commissioner in writing, may subject his permit to forfeiture or cancellation as provided by law and these rules and regulations.
7. Rights of permittee. All permits granted by the Commissioner are only a license or permit for the use of the land described in the permit for the purpose for which the permit is issued and in a manner compatible with the terms of said permit. The Commissioner reserves the right to grant other permits for the use of said lands for the removal of natural products therefrom. No permittee has the authority or right to issue to any person any right to the use of said land or the removal of any products therefrom, but such right of use vests solely in the Commissioner and must be granted by the Commissioner in writing.
8. Use of state lands. No permittee shall use lands under permit to him except for the purpose for which the permit is issued, unless authorized by the Commissioner in writing.
Applications for a special use of lands under permit to a permittee for purposes other than which the permit was issued shall be made in writing in triplicate, and shall state in detail the reasons for such use. The application shall be signed and verified as provided for in applications for permit. Upon approval of the application by the Commissioner, two copies of the application with the Commissioner's approval and any limitations to such approval endorsed by the Commissioner thereon will be returned by the Commissioner to the permittee, one copy thereof being retained in the files of the Department. Failure of any permittee to use the land for the purposes for which he holds a permit, without having been authorized to do so by the Commissioner in writing, may, in the discretion of the Commissioner, subject said permit to forfeiture or to the cancellation as provided by law and these rules and regulations.
9. Advertising displays on state lands without permits unauthorized. The erection or maintenance on state lands of advertising displays, without permission, is unauthorized by law. Any person erecting or maintaining one or more advertising displays on state lands, except under authority of a permit issued by the Commissioner as hereinafter provided, shall be deemed a trespasser.
10. Advertising displays defined. The words "advertising displays" as used in this Article shall include structures of any kind with or without lighting effects erected or maintained for outdoor advertising purposes, upon which any poster, bill, printing, painting, or other advertisement of any kind whatsoever, including statuary, may be placed for advertising purposes but shall not include:
 - a. Official notices or advertisements posted by or under the direction of any public or court officer in the performance of his official duties;
 - b. Danger, precautionary and information signs erected by officials of the Federal Government or officials of the state or any subdivision thereof, or any nonprofit organization in the state, relating to the premises, or warning of the conditions of travel on a highway, or of forest fires, or road symbols, or speed limits, and including all civil defense directional signs;

- c. Highway markers or signs relating to any city, town, village or historic place or shrine;
 - d. Notice of any railroad, bridge, ferry, or other transportation or transmission company necessary for the direction or safety of the public;
 - e. Official signs, notices or symbols for the information of aviators, as to location, direction or landings, and conditions affecting safety in aviation;
 - f. Signs containing 16 square feet or less bearing an announcement of any town, village or city, or nonprofit association, or chamber of commerce, advertising itself, or local industries, buildings, meetings, or attractions, but not advertising any particular individual or corporation engaged in business for a profit; providing not more than one sign bearing the same or similar announcement shall be placed on any one approach to the city or village involved;
 - g. Signs erected by Red Cross authorities relating to Red Cross Emergency Station.
11. Applications for advertising display permits. Applications for permits must be executed upon Land Division form No. A-73-3. Each application must contain a sufficient recital of the facts relative to the advertising display, including its size and lighting effect, if any, to enable its substantial production from the description. A sketch showing the location on which the display is to be placed with respect to adjacent physical features should be furnished. The application should identify the highway or other medium of travel along which it is proposed to erect the display and should give the distance and direction of the site, measured by highway travel, to the nearest cities or towns. If the land on which it is desired to place the display has been surveyed, its description should be given in terms of the public land surveys.
 12. Fees and rentals for advertising display permits
 - a. A fee of \$1.00 must accompany each application for an advertising display permit.
 - b. The initial and annual charges for advertising displays shall be as follows: not less than 10¢ per annum for each square foot of sign surface and not less than \$2.50 per annum for each display. The amount of the charge, subject to such minima, will be fixed by the Commissioner, which in no event will be less than the appraised rental value for such use.
 - c. Due consideration will be given in fixing the amounts to all pertinent facts and circumstances, including the charges made for corresponding privileges on privately owned lands similarly situated.
 - d. When conflicting applications are filed, due consideration will be given to the showing of each applicant and such action will be taken as is deemed to be warranted by the facts and circumstances.
 13. Form of advertising display permit and terms. Special use permits to erect and maintain advertising displays on state lands may be issued by or under authority of the Commissioner on forms provided by the Department, or, in his discretion, will be issued on Land Division form and will be subject to the provisions and supplemental conditions therein contained and to such other conditions as may be added thereto, and the provisions of law and these rules and regulations. The term thereof shall be for periods of not exceeding ten years and the permits will be revocable in the discretion of the Commissioner at any time.
 14. Renewal of advertising display permits. An advertising display permit issued pursuant to these rules and regulations may be renewed, in the discretion of the Commissioner, upon the filing of an application for renewal not more than 60 nor less than 30 days prior to its expiration.
 15. Identification of authorized advertising displays. Each advertising display erected or maintained under a permit issued pursuant to these rules and regulations shall, for convenient identification, have the serial number of such permit marked or painted thereon.
 16. Unauthorized advertising displays
 - a. Persons who heretofore have erected advertising displays on state lands must either obtain permits to continue such displays, if authorized by these rules and regulations, or must remove the displays as promptly as possible.
 - b. Where an unauthorized advertising display on state land is found, the Commissioner will take appropriate steps to secure its removal, unless the owner obtains a permit. The owner, if known, will be given notice in writing of the requirements. Displays erected without permission prior to January 1, 1953, must be removed within three months from and after the date of the approval of these rules and regulations, unless application for a permit is made within that period. Displays erected prior to January 1, 1953, for which applications for permits are made but for which permits are refused, and unauthorized displays thereafter erected must be removed within such reasonable time as may be fixed by the Commissioner. If the owner fails to remove the display within the time allowed, it may be removed by the Commissioner and the owner will be held liable to the Department for expenses incurred in removing it. If the owner is unknown, or cannot be found, the display may be removed by the Commissioner without notice. A registered letter addressed to the owner at his last known place of residence, if returned unclaimed, will be considered sufficient service of notice.
 17. Restrictions on advertising displays
 - a. No advertising display shall be permitted which, in the opinion of the Commissioner, would mar the landscape, hide road intersections or crossing, or which, in his opinion, is otherwise objectionable.
 - b. No advertising display shall be affixed to, or painted on any tree or rock situate on state lands or on any other natural object on such lands.
 - c. All advertising displays shall conform to the applicable state laws and local ordinances or regulations.

Historical Note

Original rule, Art. XI, Subchapter B, Ch. II (Supp. 76-4). Emergency amendment filed September 26, 1990, adopted effective September 27, 1990, pursuant to A.R.S. 41-1026, valid for only 90 days (Supp. 90-3). Emergency expired. Section R12-5-1101 renumbered from Section R12-5-241 (Supp. 93-3).

37-101. Definitions

In this title, unless the context otherwise requires:

1. "Agricultural lands" means lands which are used or can be used principally for:
 - (a) Raising crops, fruits, grains and similar farm products.
 - (b) Algaculture. For the purposes of this subdivision "algaculture" means the controlled propagation, growth and harvest of algae.
2. "Amortized value" means the value for improvements established pursuant to section 37-281.02, subsection G.
3. "Commercial lands" means lands which can be used principally for business, institutional, religious, charitable, governmental or recreational purposes, or any general purpose other than agricultural, grazing, mining, oil, homesite or rights-of-way.
4. "Commissioner" means the state land commissioner.
5. "Community identity package" means a design theme including such elements as architecture, landscape, lighting, street furniture, walls and signage.
6. "Department" means the state land department.
7. "Grazing lands" means lands which can be used only for the ranging of livestock.
8. "Holding lease" means a commercial lease issued solely to grant a limited use leasehold interest in state land in anticipation of future development.
9. "Homesite lands" means lands which are suitable for residential purposes.
10. "Improvements" means anything permanent in character which is the result of labor or capital expended by the lessee or his predecessors in interest on state land in its reclamation or development, and the appropriation of water thereon, and which has enhanced the value of the land.
11. "Infrastructure" means facilities or amenities, such as streets, utilities, landscaping and open space, which are constructed or located on state lands and which are intended to benefit more than the land on which they are immediately located by enhancing the development potential and value of the state lands impacted by the facility or amenities.

12. "Leapfrog development" means the development of lands in a manner requiring the extension of public facilities and services from their existing terminal point through intervening undeveloped areas that are scheduled for development at a later time, according to the plans of the local governing body having jurisdiction for the area and which is responsible for the provision of these facilities and services.

13. "Leased school or university land" means school or university land for which a lease has been issued by the state, or the territory of Arizona, under which the lessee retains rights.

14. "Master developer" means a person who assumes, as a condition of a land disposition, the responsibilities prescribed by the department for infrastructure or community identity package amenities, or both, or for implementing a development plan containing a master plan area.

15. "Participation contract" means a contract arising out of a sale together with other rights and obligations in trust lands whereby the department receives a share of the revenues generated by subsequent sales or leases.

16. "Section of land" means an area of land consisting of six hundred forty acres.

17. "State lands" means any land owned or held in trust, or otherwise, by the state, including leased school or university land.

18. "Sublease" means an agreement in which the lessee relinquishes control of the leased land to another party for the purposes authorized in the lease.

19. "Urban lands" means any state lands which are adjoining existing commercially or homesite developed lands and which are either:

(a) Within the corporate boundaries of a city or town.

(b) Adjacent to the corporate boundaries of a city or town.

(c) Lands for which the designation as urban lands is requested pursuant to section 37-331.01.

20. "Urban sprawl" means the development of lands in a manner requiring the extension of public facilities and services on the periphery of an existing urbanized area where such extension is not provided for in the existing plans of the local governing body having the responsibility for the provision of these facilities and services to the lands in question.

37-132. Powers and duties

A. The commissioner shall:

1. Exercise and perform all powers and duties vested in or imposed upon the department, and prescribe such rules as are necessary to discharge those duties.
2. Exercise the powers of surveyor-general except for the powers of the surveyor-general exercised by the treasurer as a member of the selection board pursuant to section 37-202.
3. Make long-range plans for the future use of state lands in cooperation with other state agencies, local planning authorities and political subdivisions.
4. Promote the infill and orderly development of state lands in areas beneficial to the trust and prevent urban sprawl or leapfrog development on state lands.
5. Classify and appraise all state lands, together with the improvements on state lands, for the purpose of sale, lease or grant of rights-of-way. The commissioner may impose such conditions and covenants and make such reservations in the sale of state lands as the commissioner deems to be in the best interest of the state trust. The provisions of this paragraph are subject to hearing procedures pursuant to title 41, chapter 6, article 10 and, except as provided in section 41-1092.08, subsection H, are subject to judicial review pursuant to title 12, chapter 7, article 6.
6. Have authority to lease for grazing, agricultural, homesite or other purposes, except commercial, all land owned or held in trust by the state.
7. Have authority to lease for commercial purposes and sell all land owned or held in trust by the state, but any such lease for commercial purposes or any such sale shall first be approved by the board of appeals.
8. Except as otherwise provided, determine all disputes, grievances or other questions pertaining to the administration of state lands.
9. Appoint deputies and other assistants and employees necessary to perform the duties of the department and assign their duties subject to title 41, chapter 4, article 4 and require of them such surety bonds as the commissioner deems proper. The compensation of the deputy, assistants or employees shall be as determined pursuant to section 38-611.

10. Make a written report to the governor annually, not later than September 1, disclosing in detail the activities of the department for the preceding fiscal year, and publish it for distribution. The report shall include an evaluation of auctions of state land leases held during the preceding fiscal year considering the advantages and disadvantages to the state trust of the existence and exercise of preferred rights to lease reclassified state land.

11. Withdraw state land from surface or subsurface sales or lease applications if the commissioner deems it to be in the best interest of the trust. This closure of state lands to new applications for sale or lease does not affect the rights that existing lessees have under law for renewal of their leases and reimbursement for improvements.

B. The commissioner may:

1. Take evidence relating to, and may require of the various county officers information on, any matter that the commissioner has the power to investigate or determine.

2. Under such rules as the commissioner adopts, use private real estate brokers to assist in any sale or long-term lease of state land and pay, from fees collected under section 37-107, subsection B, paragraph 1, a commission to a broker that is licensed pursuant to title 32, chapter 20 and that provides the purchaser or lessee at auction. The purchaser or lessee at auction is not eligible to receive a commission pursuant to this subsection. A commission shall not be paid on a sale or a long-term lease if the purchaser or lessee is a political subdivision of this state.

3. Require a permittee, lessee or grantee to post a surety bond or any form of collateral deemed sufficient by the commissioner for performance or restoration purposes. The commissioner shall use the proceeds of a bond or collateral only for the purposes determined at the time the bond or collateral is posted. For agricultural lessees, the commissioner may require collateral as follows:

(a) As security for payment of the annual assessments levied by the irrigation district in which the state land is located if the lessee has a history of late payments or defaults. The amount of the collateral required shall not exceed the annual assessment levied by the irrigation district.

(b) As security for payment of rent, if an extension of time for payment is requested or if the lessee has a history of late payments of rent. The collateral shall be submitted at the time any extension of time for payment is requested. The amount of the collateral required shall not exceed the annual amount of rent for the land.

(c) A surety bond shall be required only if the commissioner determines that other forms of collateral are insufficient.

4. Withhold market and economic analyses, preliminary engineering, site and area studies and appraisals that are collected during the urban planning process from public viewing before they are submitted to local planning and zoning authorities.

5. Withhold from public inspection proprietary information received during lease negotiations. The proprietary information shall be released to public inspection unless the release may harm the competitive position of the applicant and the information could not have been obtained by other legitimate means.

6. Issue permits for short-term use of state land for specific purposes as prescribed by rule.

7. Contract with a third party to sell recreational permits. A third party under contract pursuant to this paragraph may assess a surcharge for its services as provided in the contract, in addition to the fees prescribed pursuant to section 37-107.

8. Close urban lands to specific uses as prescribed by rule if necessary for dust abatement, to reduce a risk from hazardous environmental conditions that pose a risk to human health or safety or for remediation purposes.

9. Notwithstanding subsection A, paragraph 4 of this section, authorize, in the best interest of the trust, the extension of public services and facilities either:

(a) That are necessary to implement plans of the local governing body, including plans adopted or amended pursuant to section 9-461.06 or 11-805.

(b) Across state lands that are either:

(i) Classified as suitable for conservation pursuant to section 37-312.

(ii) Sold or leased at auction for conservation purposes.

C. The commissioner or any deputy or employee of the department shall not have, own or acquire, directly or indirectly, any state lands or the products on any state lands, any interest in or to such lands or products, or improvements on leased state lands, or be interested in any state irrigation project affecting state lands.

37-211. Investigations of and experiments on state lands to determine possible uses; reclassification

A. The state land commissioner may conduct investigations and experiments on the lands of the state to:

1. Determine which are suitable for agricultural purposes, or which may be suitable therefor by the development of water and otherwise.
2. Determine which are useful for grazing purposes only.
3. Ascertain the requirements of lands susceptible of agricultural development and the method or means best adapted to insure the development.
4. Determine which trust lands are suitable for conservation purposes pursuant to article 4.2 of this chapter.
5. Obtain other information and data which will aid in the leasing, sale and administration of lands belonging to the state.

B. If in the investigation the commissioner determines that lands have been erroneously classified, the classification shall be changed.

37-281. Lease of state lands for certain purposes without advertising; terms and conditions

A. All state lands are subject to lease as provided in this article for a term of not more than ten years for agricultural, commercial and homesite purposes, without advertising. The leases shall be granted according to the constitution, the law and the rules of the state land department.

B. No lease shall be granted as provided by this section without application. All applications for leases shall be made upon forms prepared and furnished by the department, shall be signed and sworn to by the applicant or his authorized agent or attorney and shall be filed with the department. In lieu of signing and swearing to the application before a notary public or other person authorized to take acknowledgments, the applicant may affix his signature to the application, accompanied by a certification, under penalty of perjury, that the information and statements made in the application are to the best of his knowledge and belief true, correct and complete, and the application shall be accepted as duly executed.

C. Any material false statement or concealment of facts made by an applicant, his authorized agent or his attorney in the application to lease, which, if known to the department, would have prevented issuance of the lease in the form or to the person issued, shall be grounds for cancellation of a lease issued upon such application.

D. No lessee shall use lands leased to him except for the purpose for which the lands are leased.

E. No lessee shall sublease lands leased to him without written permission of the state land department.

37-283. Subleases by grazing lessee; limitation upon grazing use; sublease surcharge

A. A grazing lessee shall not sublease his lease or sell or lease pasturage to lands included in his lease, without written permission from the state land department. A grazing lessee, his sublessee or users under pasturage agreement shall not graze, without written permission of the department, in excess of the carrying capacity as previously determined by the department, upon state lands under lease or being used by such persons, within the exterior boundaries of any one ranch unit or units in the same general locality jointly operated. If permission is granted for such excess, the department shall assess and collect the rental for the excess on the rental basis provided for in this article.

B. In addition to the annual rental on grazing lands established pursuant to section 37-285, grazing subleases are subject to a surcharge that is equal to twenty-five per cent of the annual rental on grazing land, multiplied by the number of animal unit months to be grazed on the subleased state trust land. The surcharge shall be assessed only for that period of time the state trust land is subleased. The surcharge shall be paid to the department when the annual rental is due, or upon receiving department permission to sublease if the sublease is approved after the annual rental is due.

37-285. Rental rates for grazing and other lands; grazing land valuation commission; reclassification and reappraisal; definitions

A. An agricultural, commercial or homesite lease shall provide for an annual rental of not less than the appraised rental value of the land, and never less than five cents per acre per year. The rental provided in such leases is subject to adjustment each year.

B. A grazing lease shall provide for an annual rental of the grazing land as computed under this section. All grazing land shall be classified and appraised on the basis of its forage and annual carrying capacity, measured in animal unit months. The annual rental rate for grazing land shall be the amount determined by multiplying the number

of animal unit months to be grazed on the lands by the true value rental rate per animal unit month as established by the commissioner. The rental rate per animal unit month is the rental rate determined by the commissioner based on the recommendations of the grazing land valuation commission under subsection E of this section.

C. Before September 1, 1994, and at other times the commissioner may propose, but not more frequently than every five years, the governor shall appoint a grazing land valuation commission consisting of five members appointed by the governor pursuant to section 38-211. The commission shall serve for a period of one year from the date the members assume office during which period the commission shall complete the appraisal. The commission shall consist of the following members, each of whom shall have experience in analyzing and valuing the use of forage on grazing land:

1. One member who is a professional appraiser and who is certified in this state.
2. One member who is a professor and who serves on the faculty of the college of agriculture at the university of Arizona.
3. One member who is a retired employee of a financial institution that is actively engaged in agricultural lending.
4. One member who primarily derives income from livestock grazing and who does not hold a state lease.
5. One member who is a conservationist and who represents a natural resource conservation district in this state.

D. Each member of the grazing land valuation commission shall receive compensation at the rate of one hundred dollars for each meeting. Each member of the commission shall receive reimbursement for expenses pursuant to title 38, chapter 4, article 2.

E. The grazing land valuation commission may employ a person who is experienced in analyzing and valuing the use of forage on grazing land and who, together with the members of the commission, shall gather the information that is necessary to prepare an appraisal to determine the true value of the use of forage on state grazing land and shall prepare this appraisal using both the market and income approaches. The appraisal report shall recommend a grazing fee that will equal the true value as recommended by the commission. The information and work products gathered in preparing the appraisal shall be available to the public. In determining the rental rate using the market approach the commission shall determine the typical lease of two years or more of private grazing land located in this state during normal years. The

commission shall compare all factors that make up the bundle of rights and obligations in the typical private lease with the factors that make up the bundle of rights and obligations in the typical state lease. The commission shall document all adjustments, calculations and assumptions made in reaching a conclusion of true rental value for the state land grazing fee and shall determine economic benefit, burden or value attributable to each of these factors. These factors shall include the following:

1. All services, equipment and water rights provided by the lessor or lessee.
2. All improvements typically constructed and maintained to facilitate or enhance the use of the land for livestock grazing, wildlife, hunting or recreation.
3. All management and protection services that are typically provided.
4. The tenure, right to renew, assignability, right to reimbursement for improvements, responsibility for property taxes, right of others to share in the use of the land and ability to control access by others.
5. The size, location, accessibility, condition and carrying capacity of the land being leased and all related costs.

F. The commissioner's decision under this section may be appealed by any affected lessee to the board of appeals pursuant to section 37-215, and, except as provided in section 41-1092.08, subsection H, the decision of the board of appeals may be appealed to the superior court pursuant to title 12, chapter 7, article 6.

G. The commissioner may make a reclassification or reappraisal, or both, at any time. If a reclassification or reappraisal, or both, is made pursuant to a request of a lessee, before expiration of the lease, the lessee shall pay a reclassification fee prescribed pursuant to section 37-107 plus the actual expenses incurred in making a reappraisal.

H. The department may authorize nonuse for part or all of the grazing use upon request of the lessee at least sixty days prior to the beginning of the billing date. The rental fee shall be based on the animal unit months used, but the total rental fee for partial or full nonuse shall not be less than five cents per acre per year.

I. For the purposes of this section:

1. "Animal unit" means one weaned beef animal over six months of age, or one horse, or five goats, or five sheep, or the equivalent.

2. "Animal unit month" means one animal unit grazing for one month.

37-287. Reservation of rights in state land leases

A. Unless the rights and interests described in this section are specifically included in a particular lease, all leases of state lands shall expressly except and reserve to the state:

1. All oils, gases, geothermal resources, coal, ores, minerals, fertilizer and fossils of every kind, which may be in or upon the land leased.

2. Any legal claim existing or which may be established under the mineral land laws of the United States or the state.

3. The right to enter upon the land for the purpose of exploring for those commodities or extracting any or all of such commodities from the land.

4. The right to relinquish to the United States lands needed for irrigation works in connection with a government reclamation project, and to grant or dispose of rights-of-way and sites for canals, reservoirs, dams, power or irrigating plants or works, railroads, tramways, transmission lines or any other purpose or use on or over the land.

B. The reservations of rights required in subsection A do not apply to existing or future leases under article 5.1 of this chapter, except as required by the state constitution, the enabling act or the commissioner acting in the best interests of the state lands.

C. If the state reserves the rights described in subsection A, the lease shall provide for reasonable compensation to the lessee for any damage resulting from the exercise of those rights.

37-461. Grants of rights-of-way and sites for public uses

A. The department may grant rights-of-way for any purpose it deems necessary, and sites for reservoirs, dams and power or irrigation plants, or other purposes, on and over state lands, subject to terms and conditions the department imposes. The department may make rules respecting the granting and maintenance of such rights-of-way and sites.

B. The department may grant rights-of-way for transportation purposes to federal agencies, state agencies or political subdivisions of this state for nonexclusive uses for

a term exceeding ten years without a public auction. If a grant of a right-of-way or site to any other entity amounts to the disposition of or conveys a perpetual right to use the surface of the land, the department shall grant the right-of-way or site at public auction to the highest and best bidder.

C. The department may grant rights-of-way to any person for nonexclusive uses for a term of not more than fifty years without a public auction.

37-604. Exchange of state land; procedure; limitation and exceptions; definition

A. State land may be exchanged for public land in this state to improve the management of state lands for the purpose of sale or lease or conversion to public use of state lands or to assist in preserving and protecting military facilities in this state. Exchanges may be made for land owned or administered by other state agencies, counties, municipalities or the United States or its agencies. Exchanges with the United States or its agencies shall be in conformance with section 37-722, but the department shall also follow the procedures and requirements prescribed by article X, section 12, Constitution of Arizona, subsection C, paragraph 7 of this section and the classification procedures in section 37-212.

B. The department shall adopt rules governing the application and procedure for the exchange of state land. Such rules shall include the following requirements:

1. The application shall include:

(a) The name, mailing address, telephone number and relevant affiliation, if any, of the applicant.

(b) A legal description of all lands to be considered for exchange.

(c) A list of permanent improvements on the state lands to be considered for exchange.

(d) A list of the leasehold interest in the state land to be considered for exchange.

(e) Accompanying agreements, if any, with the leaseholder or owner of improvements on the state land to be considered for exchange.

2. Payment of fees prescribed for that purpose pursuant to section 37-107.

3. Such additional requirements as the department determines to be necessary. On determining that the application is complete and correct, including payment of the

required fees, and on completion of processing and analyzing the application, and on determining that the proposed exchange would benefit the applicable trust, the department shall notify and deliver a report containing details of the proposed exchange to the president of the senate, the speaker of the house of representatives and the state legislators from the legislative districts in which the lands proposed to be exchanged are located.

C. Exchanges of state lands are subject to the following requirements:

1. The commissioner shall determine by at least two independent appraisals that the state lands being considered for exchange are of substantially equal value or of lesser value than the land offered by the applicant.

2. At least two independent analyses of the proposed exchange must be conducted to determine:

(a) The income to the trust from the lands before the exchange and the projected income to the trust after the exchange.

(b) The fiscal impact of the exchange on each county, city or town and school district in which all the lands involved in the exchange are located.

(c) The physical, economic and natural resource impacts of the proposed exchange on the surrounding or directly adjacent communities and the impacts on military facilities, local land uses and land use plans.

3. The commissioner may require the applicant to pay the cost of the independent appraisals and analyses required by this subsection.

4. No county or municipality may be permitted to select lands in another county or municipality.

5. State lands known to contain oil, gases and other hydrocarbon substances, coal or stone, metals, minerals, fossils and fertilizer, in paying quantities, and state lands adjoining lands on which there are producing oil or gas wells, or adjoining lands known to contain any of such substances in paying quantities shall not be exchanged. These prohibitions against exchange shall not prevent the exchange of lands where the state does not own such substances, minerals or metals in the lands to be considered for exchange.

6. All state lands offered for trade pursuant to this section must be located in the same county as the lands offered to the state. However, lands in adjoining counties more

than three miles outside the corporate boundaries of incorporated cities and towns having a population of ten thousand people or less and lands in adjoining counties but more than five miles outside the corporate boundaries of incorporated cities and towns having a population in excess of ten thousand people may be exchanged to facilitate consolidating land ownership if the boards of supervisors of the counties in which lands are to be exchanged give their prior approval.

7. Prior to public notice of a proposed exchange of state lands for other lands, the department shall give thirty days' notice in writing to other interested state agencies, counties, municipalities, the military affairs commission established by section 26-261, each military facility at the address on record at the department and to leaseholders on state lands that are to be exchanged and on state lands that are adjacent to the lands to be exchanged.

8. Before any state land may be considered for exchange under this article, the land shall be classified as suitable for such purposes in accordance with section 37-212. Any person adversely affected by such classification may appeal from the decision as provided in section 37-215.

9. After determining that the application is complete and correct and all required payments, appraisals and analyses have been completed, the department shall publish notice of the proposed exchange in the same manner and places as is required for the sale of state lands pursuant to section 37-237, except that the notice shall be published once each week for six consecutive weeks. The notice shall contain a legal description of the properties involved and other pertinent terms and conditions of the exchange. The department shall also schedule at least two public hearings on the exchange contemplated in the notice. One hearing must be held at the state capital and another hearing must be held in a location of general accessibility in the proximate vicinity of the state lands being exchanged. Any person may appear and comment on the proposed exchange at that time.

10. Within sixty days after the conclusion of the last hearing, the commissioner shall determine and issue a written finding recommending either that the exchange be denied or approved and shall transmit the finding to the governor, the president of the senate, the speaker of the house of representatives and the secretary of state.

D. Each exchange transaction must be approved by the qualified electors of this state in the form of a referendum submitted and conducted pursuant to article IV, part 1, section 1, Constitution of Arizona, at the next regular general election. To be approved, the proposition must receive an affirmative vote of a majority of the qualified electors voting on the measure.

E. Lands conveyed to the state under this article shall, on acceptance of title and recording, be dedicated to the same purpose and administered under the same laws to which the lands conveyed were subject, but may be reclassified as provided in section 37-212.

F. This section applies with respect to the exchange of lands held in trust by this state pursuant to the enabling act and the Constitution of Arizona and does not apply with respect to any other state land under the jurisdiction of the department or the commissioner.

G. The provisions of this section do not diminish or otherwise affect the commissioner's fiduciary responsibilities with respect to lands held in trust by this state as provided by the enabling act and the Constitution of Arizona.

H. For the purposes of this section, "military facilities" includes:

1. Military airports, ancillary military facilities, military training routes, high noise or accident potential zones and territory in the vicinity as defined in section 28-8461.
2. Military reservations or other real property owned by, leased to, designated for, reserved to or under the jurisdiction of an active unit of the uniformed services of the United States or any reserve or national guard component of the uniformed services of the United States.
3. Military electronics ranges as defined in section 9-500.28.
4. Military restricted airspace identified pursuant to section 37-102.
5. The Barry M. Goldwater range as described in section 37-620, subsection D, paragraph 3.

BOARD OF PSYCHOLOGIST EXAMINERS (F-18-0101)

Title 4, Chapter 26, Article 4, Behavior Analysis



GOVERNOR'S REGULATORY REVIEW COUNCIL

STAFF MEMORANDUM – FIVE-YEAR REVIEW REPORT

MEETING DATE: January 9, 2018

AGENDA ITEM: E-3

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

FROM: Council Staff

DATE : December 19, 2017

SUBJECT: BOARD OF PSYCHOLOGIST EXAMINERS (F-18-0101)
Title 4, Chapter 26, Article 4, Behavior Analysis

COMMENTS ON THE FIVE-YEAR REVIEW REPORT

Purpose of the Agency and Number of Rules in the Report

The purpose of the Arizona Board of Psychologist Examiners (Board) is to “regulate the practice of psychology for the public health, safety, and welfare.” Laws 2010, Ch. 7, § 3.

This five-year review report covers seven rules: R4-26-402, R4-26-411, R4-26-412, R4-26-413, R4-26-415, R4-26-416, and R4-26-418. The rules in A.A.C. Title 4, Chapter 26, Article 4 relate to behavior analysis, which is both a scientific study and an application of principles of learning and behavior. A licensed behavior analyst is a mental health professional who performs applied behavior analysis. Currently, the Board licenses 260 behavior analysts, nine of which are inactive. Even though behavior analysts work with individuals displaying different behavioral issues, most analysts work for organizations that provide services to individuals with autism.

This is the first five-year review report on these rules. The remaining 12 rules in Article 4 were either amended or newly made in a rulemaking approved by the Council on January 4, 2017. Thus, the Board's request to reschedule a report on those rules until February 28, 2022 was granted.

Proposed Action

The Board does not intend to amend or repeal any of the rules reviewed in this report.

1. Has the agency analyzed whether the rules are authorized by statute?

Yes. The Board cites to A.R.S. §§ 32-2063(A)(1) and (9) as general authority for the rules. Under A.R.S. § 32-2063(A)(9), the Board must “[a]dopt rules pursuant to [T]itle 41, [C]hapter 6 to carry out this chapter [Title 32, Chapter 19.1, Psychologists] and to define unprofessional conduct.” The Board also cites to specific authority for each rule in the report.

2. Summary of the agency’s economic impact comparison and identification of stakeholders:

The Board of Psychologist Examiners provides regulatory oversight of psychology and behavior analysis professionals. The rules reviewed pertain to the regulation of licensed behavior analysts. The Board currently licenses 260 behavior analysts; nine of which are inactive. Key stakeholders include the Board, behavior analysts, and the public.

Rule revisions were most recently completed in 2012 and the rules reviewed have not been amended since they were created in 2012. The Board believes it correctly estimated that the economic impact of the reviewed rules would be minimal. During the last year, two individuals requested a license to be reinstated. The Board collected \$86,502 from behavior analysts last year. The Board has four FTE’s and received no extra staff when these rules were originally adopted.

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 that though the rules may impose minimal burden on the licensed behavior analyst, the limitations protect the public and are consistent with best professional practice.

4. Has the agency received any written criticisms of the rules over the last five years?

No. The Board indicates that it has not received any written criticisms of the rules over the last five years.

5. Has the agency analyzed the rules’ effectiveness, consistency with other rules and statutes, and the rules’ clarity, conciseness, and understandability?

Yes. The Board indicates that the rules are effective, consistent with other rules and statutes, and clear, concise and understandable.

6. Has the agency analyzed the current enforcement status of the rules?

Yes. The Board indicates that it enforces the rules as written.

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

No. The Board indicates that no federal laws are directly applicable to the rules.

8. **For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

Yes. The Board believes that the licenses are general permits consistent with A.R.S. § 41-1037 because they are issued to qualified individuals to conduct activities that are substantially similar in nature.

9. **Conclusion**

As noted above, the Board does not intend to amend or repeal any of the rules reviewed in this report. The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. Staff recommends that the report be approved.



Governor
Douglas A. Ducey

Arizona Board of Psychologist Examiners
1400 W. Washington, Suite 240
Phoenix, Arizona 85007
Phone (602) 542-8163 Fax (602) 542-8279
<https://psychboard.az.gov>

Board Members

Bob Bohanske, Ph.D. FNAP, Chair
Lynn Flowers, Ph.D., Vice-Chair
Janice Brundage, Ph.D. Secretary
Joseph Donaldson, Ph.D.
Ramona N. Mellott, Ph.D.
Tamara Shreeve, MPA
Frederick S. Wechsler, Ph.D., Psy.D.

Executive Director
Dr. Cindy Olvey

October 25, 2017

Nicole O. Colyer, Chair
Governor's Regulatory Review Council
100 North 15th Avenue, Ste. 305
Phoenix, AZ 85007

RE: Five-year-review Report on 4 A.A.C. 26, R4-26-402, R4-26-411, R4-26-412, R4-26-413, R4-26-415, R4-26-416, and R4-26-418

Dear Ms. Colyer:

As required by A.R.S. § 41-1056 and under a partial rescheduling provided under R1-6-302(B), the Board of Psychologist Examiners submits for your approval a report on a review of the referenced rules. The Board reviewed all referenced rules.

As required under A.R.S. § 41-1056(A), the Board certifies it is in compliance with A.R.S. § 41-1091 regarding a substantive policy directory.

If you have questions regarding this report, please contact me at (602) 542-3018. Thank you for your consideration.

Sincerely,

Cindy Olvey, Psy.D.
Executive Director

BOARD OF PSYCHOLOGIST EXAMINERS

BEHAVIOR ANALYSIS

Five-year-review Report: A.A.C. Title 4, Chapter 26
R4-26-402, R4-26-411, R4-26-412, R4-26-413, R4-26-415, R4-26-416,
and R4-26-418

October 2017

Five-year-review Report

A.A.C. Title 4. Professions and Occupations

Chapter 26. Board of Psychologist Examiners

INTRODUCTION

Behavior analysis is both the scientific study and application of principles of learning and behavior. A licensed behavior analyst is a type of mental health professional who performs applied behavior analysis. Licensed behavior analysts work in a natural setting and involve the parents, teachers, friends, and other caregivers of an individual in implementing a behavior-intervention plan. The Board currently licenses 260 behavior analysts. Nine of those licenses are inactive. Although behavior analysts work with individuals displaying a number of different behavior issues, most work for or in organizations that provide services to individuals who display autism spectrum disorder.

The licensure and regulatory framework for behavior analysts was established under the Board of Psychologist Examiners by Laws 2008, Chapter 288. The legislation required individuals practicing as a behavior analyst to be licensed beginning January 2, 2011. The Board initially licensed behavior analysts under a waiver from the licensing requirements provided by Laws 2010, Chapter 299, § 2.

The Board's initial 18 rules regulating behavior analysts went into effect on September 11, 2012. As a result of statutory changes made in 2014 (See Laws 2014, Chapter 166), the Board substantially amended 11 of those rules and made a new rule in a rulemaking that went into effect on March 5, 2017. In response to the Board's request, in a letter dated September 11, 2017, the Council rescheduled the review of the recently amended and made rules. As a result, this report addresses a review of only the seven rules not eligible for rescheduling.

Statute that generally authorizes the agency to make rules: A.R.S. § 32-2063(A)(1) and (A)(9)

1. Specific statute authorizing the rule:

- R4-26-402. A.R.S. § 32-2091.01(A) and (B)
- R4-26-411. A.R.S. §§ 32-2091.06 and 32-2091.07
- R4-26-412. A.R.S. § 32-2091(2)
- R4-26-413. A.R.S. §§ 32-2091.06(F), 32-2091.07(C), and 32-2091.09(I)
- R4-26-415. A.R.S. § 32-2091.09(H)
- R4-26-416. A.R.S. § 41-1092.09
- R4-26-418. A.R.S. § 32-3208

2. Objective of the rule including the purpose for the existence of the rule:

R4-26-402. Fees and Charges: The objective of this rule is to specify the fees the Board charges for its licensing activities. This increases efficiency in the licensing process by enabling an applicant to submit the correct amount.

R4-26-411. License Reinstatement: The objective of this rule is to specify the requirements and procedures for seeking reinstatement from inactive to active status. This increases efficiency in the licensing process by enabling an inactive licensee to know and comply with the requirements.

R4-26-412. Client Records: The objective of this rule is to clarify the manner in which a licensee is required to maintain client records. This protects the public by ensuring confidential information is not disclosed except under specified circumstances.

R4-26-413. Change of Name, Mailing Address, E-mail Address, or Telephone Number: The objective of this rule is to provide notice the Board communicates with a licensee using the information the licensee has provided. This ensures a licensee knows it is important to keep the Board apprised of changes in contact information.

R4-26-415. Informal Interview: The objective of this rule is to specify the manner in which the Board conducts an informal interview. This avoids surprise by enabling a licensee against whom a complaint is made to know what to expect from the Board in an informal interview.

R4-26-416. 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. This

enables a licensee to know how to exhaust the licensee's administrative remedies before making application for judicial review under A.R.S. § 12-901.

R4-26-418. Mandatory Reporting Requirement: The objective of this rule is to inform a licensee of the statutory requirement that the licensee notify the Board timely if the licensee is charged with certain crimes. This enables the Board to fulfill its obligation to protect the public.

3. Effectiveness of the rule in achieving the objective including a summary of any available data supporting the conclusion:

The Board concluded the reviewed rules effectively achieve their objectives. It bases this conclusion on the fact it is able to perform its statutory responsibilities to license and regulate behavior analysts, conduct investigations of complaints, and take disciplinary action.

4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency:

The rules are consistent with state law and other rules.

In 2008, Arizona enacted laws requiring health insurers to provide coverage for the diagnosis and treatment of autism spectrum disorders, with some limitations (See Laws 2008, Chapter 4). Medically necessary behavioral therapy services may not be excluded from or denied coverage.

There is no federal law specifically applicable to the rules. There are federal laws, such as HIPAA (Health Insurance Portability and Accountability Act), with which a medical professional must comply. The Board does not have authority to supervise or review licensee compliance with these federal laws.

5. Agency enforcement policy including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement:

The Board enforces the rules as written without difficulty.

6. Clarity, conciseness, and understandability of the rule:

The rules are clear, concise, and understandable.

7. Summary of written criticisms of the rule received by the agency with the past five years, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods, and, written allegations made in litigation or administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute or beyond the authority of the agency to enact, and the result of the litigation of administrative proceedings:
The Board received no written criticism of the rules.

8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule:

The rules reviewed have not been amended since initially made in 2012. The EIS prepared at that time is available. The Board believes it correctly estimated the economic impact of the reviewed rules would be minimal. During the last year, two individuals requested a license be reinstated. No complaints went to informal interview and there were no motions for review or rehearing of a Board decision. No licensed behavior analysts reported committing a reportable misdemeanor or felony during the last year.

The Board collected \$86,502 from behavior analysts last year. This included licensing fees and charges for other services. The Board has four FTEs, all of whom work with the regulation of behavior analysts. The Board received no extra staff when regulation of behavior analysts was added to its statutory responsibilities. The Board's single appropriation is for all of its work. Beginning November 1, 2017, two behavior analysts will be added to the Board and a new five-member committee of behavior analysts will be created to make recommendations to the Board relating to the licensing and regulation of behavior analysts (See A.R.S. § 32-2091.15).

9. Any analysis submitted to the agency by another person regarding the rule's impact on this state's business competitiveness as compared to the competitiveness of businesses in other states:

No analysis has been submitted.

10. How the agency completed the course of action indicated in the agency's previous 5YRR:

There has been no previous 5YRR.

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 probable costs and burdens of the reviewed rules are minimal. R4-26-402 specifies the fees for obtaining a license and other services from the Board. It is statute (See A.R.S. § 32-2091.02) that requires an individual be licensed before practicing as a behavior analyst. It is also statute that requires an individual applying for licensure to pay a licensing fee. The rule simply establishes the fees at an amount intended to cover the Board's expenses.

R4-26-412 establishes limits on handling and release of client records. Although these limits may impose a burden on the licensed behavior analyst, the limitations protect the public and are consistent with best professional practice.

12. A determination after analysis that the rule is not more stringent than a corresponding federal law unless there is statutory authority to exceed the requirements of that federal law:

There is no federal law specifically applicable to the reviewed rules.

13. For a rule made after July 29, 2010, that require issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037:

All the reviewed rules were made after July 29, 2010. All the licenses for which a fee is established under R4-26-402 comply with A.R.S. § 41-1037 because they are issued to qualified individuals to conduct activities that are substantially similar in nature.

14. Course of action the agency proposes to take regarding each rule, including the month and year in which the agency anticipates submitting the rules to the Council if the agency determines it is necessary to amend or repeal an existing rule or to make a new rule. If no issues are identified for a rule in the report, the agency may indicate that no action is necessary for the rule:

The Board does not intend to amend or repeal any of the reviewed rules.

TITLE 4. PROFESSIONS AND OCCUPATIONS
CHAPTER 26. BOARD OF PSYCHOLOGIST EXAMINERS

(Authority: A.R.S. § 32-2061 et seq.)

ARTICLE 4. BEHAVIOR ANALYSIS

Article 4, consisting of Sections R4-26-401 through R4-26-418, made by final rulemaking effective September 11, 2012 (Supp. 12-3).

Section		
R4-26-401.	Definitions	21
R4-26-402.	Fees and Charges	22
R4-26-403.	Application for Initial License	22
R4-26-404.	License Examination	23
R4-26-405.	Coursework Requirement	23
R4-26-406.	Ethical Standard	24
R4-26-407.	License by Reciprocity	24
R4-26-408.	License Renewal	24
R4-26-409.	Continuing Education Requirement	25
R4-26-410.	Voluntary Inactive Status	25
R4-26-411.	License Reinstatement	26
R4-26-412.	Client Records	26
R4-26-413.	Change of Name, Mailing Address, E-mail Address, or Telephone Number	26
R4-26-414.	Complaints and Investigations	26
R4-26-415.	Informal Interview	26
R4-26-416.	Rehearing or Review of Decision	27
R4-26-417.	Licensing Time-frames	27
R4-26-418.	Mandatory Reporting Requirement	28

ARTICLE 4. BEHAVIOR ANALYSIS

R4-26-401. Definitions

- A. The definitions in A.R.S. § 32-2091 apply in this Article.
- B. Additionally, in this Article:
 - 1. “Accredited” means an institution of higher education:
 - a. In the U.S. is listed with the Council for Higher Education Accreditation,
 - b. In Canada is a member of the Universities Canada, and
 - c. Outside of the U.S. or Canada is determined by a member of the National Association of Credential Evaluation Services to have standards substantially similar to those of an institution of higher education in the U.S. or Canada.
 - 2. “Advertising” means any media used to disseminate information regarding the qualifications of a behavior analyst in order to solicit clients for behavior analysis services, regardless of whether the behavior analyst pays for the advertising.
 - 3. “Applicant” means an individual who applies to the Board for an initial or renewal license.
 - 4. “BACB” means the Behavior Analyst Certification Board.
 - 5. “Confidential information” means:
 - a. Minutes of an executive session of the Board except as provided under A.R.S. § 38-431.03(B);
 - b. A record that is classified as confidential by a statute or rule applicable to the Board;
 - c. Materials relating to an investigation by the Board, including a complaint, response, client record, witness statement, investigative report, and any information relating to a client’s diagnosis, treatment, or personal family life; and
 - d. The following regarding an applicant or licensee:
 - i. College or university transcripts if requested from the Board by a person other than the applicant or licensee;
 - ii. Home address, telephone number, and e-mail address;
 - iii. Test scores;
 - iv. Date of birth;
 - v. Place of birth; and
 - vi. Social Security number.
 - 6. “Gross negligence” means an extreme departure from the ordinary standard of care.
 - 7. “Inactive status” means a behavior analyst maintains a license as a behavior analyst but is prohibited from practicing behavior analysis or holding oneself out as practicing behavior analysis in Arizona.
 - 8. “License period” means:
 - a. For a licensee who holds an odd-numbered license, the two years between the first day of the month after the licensee’s birth month of one odd-numbered year and the last day of the licensee’s birth month of the next odd-numbered year; and

- b. For a licensee who holds an even-numbered license, the two years between the first day of the month after the licensee's birth month of one even-numbered year and the last day of the licensee's birth month of the next even-numbered year.
- 9. "Mitigating circumstances that prevent resolution" means factors the Board considers in reviewing allegations against an applicant or licensee of unprofessional conduct occurring in another regulatory jurisdiction when the allegations would not prohibit licensure in Arizona. The factors may include:
 - a. Nature of the alleged conduct,
 - b. Severity of the alleged conduct,
 - c. Recentness of the alleged conduct,
 - d. Actions taken by the applicant to remedy potential violations, and
 - e. Whether the alleged conduct was an isolated incident or part of a recurring pattern.
- 10. "Party" means the Board, an applicant, a licensee, or the state.
- 11. "Psychometric testing materials" means manuals, instruments, protocols, and questions or stimuli used in testing.
- 12. "Raw test data" means test scores, client responses to test questions or stimuli, and a behavior analyst's notes and recordings concerning client statements and behavior during examination.
- 13. "Regulatory jurisdiction" means a state or territory of the United States, the District of Columbia, or a foreign country with authority to grant or deny entry into a profession or occupation.
- 14. "Renewal year" means:
 - a. Each odd-numbered year for a licensee who holds an odd-numbered license, and
 - b. Each even-numbered year for a licensee who holds an even-numbered license.
- 15. "Supervised experience" means supervised independent fieldwork, practicum, or intensive practicum.

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).

R4-26-402. Fees and Charges

- A. As specifically authorized by A.R.S. §§ 32-2091.01(A) and 32-2091.07(B), the Board establishes and shall collect the following fees:
 - 1. Application for an active license: \$350;
 - 2. Renewal of an active license: \$500;
 - 3. Renewal of an inactive license: \$85;
 - 4. Issuance of an initial license: \$500; and
 - 5. Reinstatement of expired license: \$200.
- B. As specifically authorized by A.R.S. § 32-2091.01(B), the Board establishes and shall collect the following charges for the services specified:
 - 1. Duplicate license: \$25;
 - 2. Duplicate renewal receipt: \$5;
 - 3. Copy of the Board's statutes and rules: \$5;
 - 4. Verification of a license: \$2;
 - 5. Audio recording of a Board meeting: \$10 per meeting;
 - 6. Electronic medium containing the name and address of all licensees: \$.05 per name;
 - 7. Customized electronic medium containing the name and address of all licensees: \$.25 per name;
 - 8. Customized electronic medium: \$.35 per name; and
 - 9. Copy of Board records, letters, minutes, applications, files, policy statements, and other non-confidential documents: \$.25 per page.
- C. Except as provided by law, including A.R.S. § 41-1077, the fees listed in subsection (A) are not refundable.

Historical Note

Section made by final rulemaking at 18 A.A.R. 2490, effective September 11, 2012 (Supp. 12-3).

R4-26-403. Application for Initial License

- A. An individual who wishes to practice as a behavior analyst and is qualified under A.R.S. § 32-2091.02 shall submit an application form, which is available from the Board office and on its website, and provide the following information:
 - 1. Full name;
 - 2. Other names by which the applicant is or ever has been known;
 - 3. Home address and telephone number;
 - 4. Business name and address;
 - 5. Work telephone and fax numbers;
 - 6. E-mail address;
 - 7. Gender;
 - 8. Date of birth;
 - 9. Social Security number;
 - 10. An indication of the address and telephone number to be listed in the agency's public directory and used in correspondence;
 - 11. Place of birth;
 - 12. A statement of whether the applicant:

- a. Is or ever has been licensed or certified as a behavior analyst in any regulatory jurisdiction and if so, the jurisdictions and license numbers;
 - b. Is or ever has been certified as a behavior analyst by the BACB and if so, the date of original certification and if not, whether the applicant has ever taken the examination required under R4-26-404;
 - c. Is or ever has been licensed or certified in other fields or professions and if so, the name of the professions, regulatory jurisdictions, and license numbers;
 - d. Is or ever has been a member of a hospital staff or provider panel and if so, the name of the hospital or provider and dates of service;
 - e. Is or ever has been a member of a professional association and if so, the name of the professional association and dates of membership;
 - f. Has ever had a professional license, certification, or registration refused, revoked, suspended, or restricted in any regulatory jurisdiction for reasons relating to unprofessional conduct;
 - g. Has ever voluntarily surrendered a license, certification, or registration, relinquished responsibilities, resigned a position in lieu of termination, or been involuntary terminated in any regulatory jurisdiction while under investigation or in lieu of administrative proceedings for reasons relating to unprofessional conduct;
 - h. Has ever resigned or been terminated from a professional organization, hospital staff, or provider panel while a complaint against the applicant was investigated or adjudicated;
 - i. Is or ever has been under investigation by any professional organization, health care institution, provider panel of which the applicant is a member or staff, or a regulatory agency in any jurisdiction, including the Arizona Board of Psychologist Examiners, concerning the ethical propriety or legality of the applicant's conduct and if so, the entity doing and dates of the investigation;
 - j. Has ever been disciplined by a regulatory agency in any jurisdiction, including the Arizona Board of Psychologist Examiners, health care institution, provider panel, or ethics panel for acts pertaining to the applicant's conduct as a behavior analyst or as a professional in any field and if so, the regulatory agency, jurisdiction, and date of discipline;
 - k. Has ever been convicted of, pled no contest or guilty to, entered into a diversion program to avoid prosecution, or is under indictment or awaiting trial for a felony or misdemeanor, other than a minor traffic offense, including any conviction that has been expunged, pardoned, reversed, or set aside;
 - l. Has ever been sued in a civil court or charged in a criminal court for an act or omission relating to practice as a behavior analyst or work under a license or certificate in another profession, or work as a member of a profession;
 - m. Currently uses alcohol or another drug that in any way impairs or limits the applicant's ability to practice behavior analysis safely and competently; and
 - n. Has a medical, physical, or psychological condition that limits the applicant's ability to practice behavior analysis safely and competently; and
13. The applicant's signature attesting that all statements in the application are true in every respect.
- B.** Additionally, an applicant shall submit:
1. An original, un-retouched, passport-quality photograph that is no larger than 1.5 X 2 inches in size and taken no more than 60 days before the date of application;
 2. The application fee required under R4-26-402;
 3. As required under A.R.S. § 41-1080(A), the specified documentation of citizenship or alien status indicating the applicant's presence in the U.S. is authorized under federal law; and
 4. The Board's Mandatory Confidential Information form.
- C.** Additionally, an applicant shall ensure that the following is submitted directly to the Board:
1. Verification the applicant passed the examination referenced in R4-26-404 submitted by the BACB;
 2. Verification of supervised experience submitted by an individual with direct knowledge of the supervised experience;
 3. Official transcript for the graduate degree required under R4-26-404.1 submitted by the accredited institution of higher education that awarded the degree;
 4. Official transcript or other official document demonstrating the applicant completed the coursework required under R4-26-405 submitted by the accredited institution of higher education or BACB-approved program in which the coursework was completed; and
 5. Verification of licensure, certification, or registration by another regulatory jurisdiction submitted by the regulatory jurisdiction.

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).

R4-26-404. Examination Requirement

To be licensed as a behavior analyst in Arizona, an individual shall take and pass the examination administered by the BACB for Board Certified Behavior Analysts as part of its certification process.

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).

R4-26-404.1. Education 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 have a master's degree or higher from an accredited institution of higher education in:
1. Behavior analysis, education, psychology, or another subject area related to behavior analysis acceptable to the Board; or
 2. A degree program in which the applicant completed a BACB-approved course sequence.

Historical Note

New Section made by final rulemaking at 23 A.A.R. 215, effective March 5, 2017 (Supp. 17-1).

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, 270 classroom hours of graduate-level instruction. The individual shall ensure that the classroom hours include the following content areas:
1. Ethical and professional conduct in behavior analysis: 45 hours;
 2. Concepts and principles of behavior analysis: 45 hours;
 3. Research methods in behavior analysis: 45 hours:
 - a. Measurement and data analysis: 25 hours; and
 - b. Experimental design: 20 hours;
 4. Applied behavior analysis: 105 hours:
 - a. Fundamental elements of behavior change and specific behavior change procedures: 45 hours;
 - b. Identification of the problem and assessment: 30 hours;
 - c. Intervention and behavior change considerations: 10 hours;
 - d. Behavior change systems: 10 hours; and
 - e. Implementation, management, and supervision: 10 hours; and
 5. Discretionary content related to behavior analysis: 30 hours.
- C.** The Board shall accept classroom hours of graduate-level instruction completed at an accredited institution of higher education or in a program approved by the BACB.

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).

R4-26-406. Ethical Standard

The Board incorporates by reference BACB Professional and Ethical Compliance Code for Behavior Analysts, January 1, 2016, published by the BACB and available for review at the Board office and online at www.BACB.com. The incorporated material includes no later editions or amendments.

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).

R4-26-407. License by Reciprocity

An individual who is licensed or certified as a behavior analyst in another state may apply for an initial license as a behavior analyst in Arizona by complying with R4-26-403 and submitting evidence that the individual is licensed or certified as a behavior analyst in good standing and:

1. Obtained a graduate degree from an accredited institution of higher education in a subject area specified in R4-26-404.1;
2. Completed a minimum of 1,500 hours of supervised experience;
3. Completed a minimum of 270 classroom hours of graduate-level instruction in the content areas listed in R4-26-405 or was certified as a behavior analyst by the BACB before January 1, 2015; and
4. Passed the examination referenced in R4-26-404.

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).

R4-26-408. License Renewal

- A.** Beginning May 1, 2017, 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, and provide the following information:
1. License number;

2. Name;
 3. Other names by which the licensee is or ever has been known;
 4. Home address and telephone number;
 5. Business name and address;
 6. Work telephone and fax number;
 7. E-mail address;
 8. Date of birth;
 9. Social Security number;
 10. BACB certificate number, if applicable;
 11. A statement of whether the licensee:
 - a. Is in compliance with or exempt from the requirements of A.R.S. § 32-3211 regarding secure storage, transfer, and access of patient records and if not, explain;
 - b. Is currently licensed or certified as a behavior analyst in any regulatory jurisdiction other than Arizona and if so, the jurisdictions and license numbers;
 - c. Is currently licensed or certified in other fields or professions and if so, the name of the professions, regulatory jurisdictions, and license numbers;
 - d. Is a member of a hospital staff or provider panel and if so, the name of the hospital or provider;
 - e. Is currently a member of a professional association and if so, the name of the professional association;
 - f. Has, during the last license period, had a professional license, certification, or registration refused, revoked, suspended, or restricted in any regulatory jurisdiction for reasons relating to unprofessional conduct;
 - g. Has, during the last license period, voluntarily surrendered a license, certification, or registration, relinquished responsibilities, resigned a position in lieu of termination, or been involuntary terminated in any regulatory jurisdiction while under investigation or in lieu of administrative proceedings for reasons relating to unprofessional conduct;
 - h. Has, during the last license period, resigned or been terminated from a professional organization, hospital staff, or provider panel while a complaint against the licensee was investigated or adjudicated;
 - i. Has, during the last license period, been investigated by any professional organization, health care institution, provider panel of which the licensee is a member or staff, or a regulatory agency in any jurisdiction, including the Arizona Board of Psychologist Examiners, concerning the ethical propriety or legality of the licensee's conduct and if so, the entity doing and dates of the investigation;
 - j. Has, during the last license period, been disciplined by a regulatory agency in any jurisdiction, including the Arizona Board of Psychologist Examiners, health care institution, provider panel, or ethics panel for acts pertaining to the licensee's conduct as a behavior analyst or as a professional in any field and if so, the regulatory agency, jurisdiction, and date of discipline;
 - k. Has, during the last license period, been convicted of, pled no contest or guilty to, entered into a diversion program to avoid prosecution, or is under indictment or awaiting trial for a felony or misdemeanor, other than a minor traffic offense, including any conviction that has been expunged, pardoned, reversed, or set aside;
 - l. Has, during the last license period, been sued in a civil court or charged in a criminal court for an act or omission relating to practice as a behavior analyst or work under a license or certificate in another profession, or work as a member of a profession;
 - m. Currently uses alcohol or another drug that in any way impairs or limits the licensee's ability to practice behavior analysis safely and competently; and
 - n. Has a medical, physical, or psychological condition that limits the licensee's ability to practice behavior analysis safely and competently;
 12. An indication whether the licensee is requesting an active license, voluntary inactive license, or medical inactive license;
 13. An attestation that the licensee is in compliance with the continuing education requirement specified in R4-26-409; and
 14. The licensee's signature attesting that the information provided is true in every respect.
- D.** Additionally, to renew a license, a licensee shall submit:
1. The license renewal fee required under R4-26-402;
 2. If the documentation previously submitted under R4-26-403(B)(3) was a limited form of work authorization issued by the federal government, evidence that the work authorization has not expired; and
 3. The Board's Mandatory Confidential Information form.
- E.** If a completed application is timely submitted under subsections (C) and (D) to renew an active license, the licensee may continue to practice behavior analysis under the active license until notified by the Board that the application for renewal has been approved or denied. If the Board denies license renewal, the licensee may continue to practice behavior analysis until the last day for seeking review of the Board's decision or a later date fixed by a reviewing court.
- F.** Under A.R.S. § 32-2091.07, the license of a licensee who fails to submit a renewal application on or before the last day of the licensee's birth month during the licensee's renewal year expires and the licensee shall immediately stop practicing as a behavior analyst in Arizona.
- G.** A behavior analyst whose license expires under subsection (F) may have the license reinstated by submitting the following to the Board within two months after last day of the licensee's birth month during the licensee's renewal year:
1. The license renewal application required under subsection (C) and the document required under subsection (D)(2),
 2. A sworn affidavit that the applicant has not practiced as a behavior analyst in Arizona since the applicant's license expired, and
 3. The license renewal and license reinstatement fees.
- H.** A behavior analyst whose license expires under subsection (F) and who fails to have the license reinstated under subsection (G) may have the license reinstated by:

1. Complying with subsection (G) within one year after the last day of the licensee's birth month during the licensee's renewal year, and
 2. Providing proof of competency and qualifications to the Board.
- I. A behavior analyst whose license expires under subsection (F) and who fails to have the license reinstated under subsection (G) or (H) may be licensed again only by complying with R4-26-403.

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).

R4-26-409. Continuing Education Requirement

- A. A licensee shall complete a minimum of 30 hours of continuing education during each license period. A licensee shall ensure that at least four hours of continuing education addresses ethics.
- B. During a licensee's first license period, the licensee shall complete a pro-rated number of continuing education hours. To determine the number of continuing education hours required during the first license period, the licensee shall multiply the number of whole months from the month of license issuance to the end of the license period by 1.25.
- C. A licensee shall ensure that each continuing education program provides the necessary understanding of current developments, skills, or procedures related to the practice of behavior analysis. The following provide the necessary understanding of current developments, skills, or procedures related to the practice of behavior analysis:
1. College or university graduate coursework that directly relates to behavior analysis and is provided by an accredited educational institution: 15 hours of continuing education for each semester hour completed and 10 hours of continuing education for each quarter hour completed; a course syllabus and transcript are required for documentation;
 2. Continuing education programs offered by a BACB-approved provider: One hour of continuing education for each hour of participation; a certificate or letter from the BACB-approved provider is required for documentation;
 3. Self-study, online, or correspondence course that is directly related to behavior analysis and offered by BACB-approved provider or approved or offered by an accredited educational institution: Hours of continuing education determined by the course provider; a certificate or letter from the BACB-approved provider or a course syllabus and transcript from the accredited educational institution are required for documentation;
 4. Teaching a continuing education program offered by a BACB-approved provider or teaching a graduate university or college course offered by an accredited educational institution: One hour of continuing education for each hour taught; for graduate courses taught, 15 hours of continuing education for each semester hour completed and 10 hours of continuing education for each quarter hour completed;
 5. Credentialing activities or events pre-approved for continuing education and initiated by the BACB: One hour of continuing education for each hour of participation; documentation from the BACB is required;
 6. Publication of a peer-reviewed article or text book on the practice of behavior analysis or serving as a reviewer or action editor of an article pertaining to behavior analysis: eight hours of continuing education for one publication and one hour of continuing education for one review; and
 7. Attending a Board meeting: Three hours for attending a morning or afternoon session of a Board meeting and six hours for attending a full-day Board meeting.
- D. The number of hours of continuing education is limited as follows:
1. No more than 50 percent of the required hours may be obtained from teaching a continuing education program or course under subsection (C)(4). A licensee shall not obtain continuing education hours for teaching the same continuing education program or course more than once during each licensing period. A licensee shall earn no continuing education hours for participating as a member of a panel at a continuing education program or course;
 2. No more than 25 percent of the required hours may be obtained from continuing education under each of subsections (C)(3), (5), and (6).
 3. No more than six of the required hours may be obtained under subsection (C)(7). Hours obtained under subsection (C)(7) may be used to complete the ethics requirement under subsection (A).
 4. Hours obtained in excess of the minimum required during a license period shall not be carried over to a subsequent license period.
- E. A licensee shall obtain a certificate or other evidence of attendance from the provider of each continuing education program or course attended that includes the following:
1. Name of the licensee;
 2. Title of the continuing education;
 3. Name of the continuing education provider;
 4. Date, time, and location of the continuing education; and
 5. Number of hours of continuing education obtained.
- F. A licensee shall maintain the evidence of attendance described in subsection (E) for two licensing periods and make the evidence available to the Board upon request.
- G. The Board may audit a licensee's compliance with the continuing education requirement. The Board may deny license renewal or take other disciplinary action against a licensee who fails to obtain or document the required continuing education hours. The Board may discipline a licensee who commits fraud, deceit, or misrepresentation regarding the continuing education hours.
- H. A licensee who cannot comply with the continuing education requirement for good cause may seek an extension of time in which to comply by submitting a written request to the Board with the timely submission of the renewal application required under R4-26-408.

1. Good cause includes but is not limited to illness or injury of the licensee or a close family member, death of a close family member, birth or adoption of a child, military service, relocation, natural disaster, financial hardship, or residence in a foreign country for at least 12 months of the license period.
2. The Board shall not grant an extension longer than one year.
3. A licensee who obtains hours of continuing education during an extension of time provided by the Board shall ensure the hours are reported only for the license period extended.
4. A licensee who cannot comply with the continuing education requirement within an extension may apply to the Board for inactive license status under A.R.S. § 32-2091.06(E).

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).

R4-26-410. Voluntary Inactive Status

- A.** A licensed behavior analyst may request that the Board place the license on inactive status for one of the following reasons:
1. The behavior analyst no longer provides behavior analysis services in Arizona,
 2. The behavior analyst is retired, or
 3. The behavior analyst is physically or mentally incapacitated or otherwise disabled.
- B.** To place a license on inactive status, a licensee shall comply with R4-26-408.
- C.** To remain licensed, a licensee on inactive status shall comply with R4-26-408 on or before the last day of the licensee's birth month during the licensee's renewal year.

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).

R4-26-411. License Reinstatement

A licensee seeking reinstatement from an inactive to an active license shall:

1. Comply with the provisions of R4-26-408(C) and (D);
2. Submit evidence of completing a pro-rated number of hours of continuing education. The licensee shall calculate the number of continuing education hours required by multiplying the number of whole months that the license was on inactive status by 1.25; and
3. Complete any other requirements the Board determines are necessary to ensure that the licensee has maintained and updated the licensee's ability to practice as a behavior analyst.

Historical Note

Section made by final rulemaking at 18 A.A.R. 2490, effective September 11, 2012 (Supp. 12-3).

R4-26-412. Client Records

- A.** A licensee shall not condition release of a client's record on payment for services by the client or a third party.
- B.** A licensee shall release a client's raw test data to another licensed behavior analyst only after obtaining the client's informed, written consent to the release. Without a client's informed, written consent, a licensee shall release the client's raw test data only to the extent required by law or under court order compelling production.
- C.** A licensee shall retain all client records under the licensee's control for at least six years from the date of the last client activity. If a client is a minor, the licensee shall retain the client's record for at least three years past the client's 18th birthday or six years from the date of the last client activity, whichever is longer.
- D.** Audio or video tapes created primarily for training or supervisory purposes are exempt from the requirement of subsection (C).
- E.** A licensee who is notified by the Board or municipal, state, or federal officials of an investigation or pending case shall retain all records relating to the investigation or case until the licensee receives written notice that the investigation is complete or the case is closed.
- F.** A licensee may retain client records in electronic form. The licensee shall ensure that client records in electronic form are stored securely and a backup copy is maintained.
- G.** The provisions of this Section apply to all licensees including those on inactive status.

Historical Note

Section made by final rulemaking at 18 A.A.R. 2490, effective September 11, 2012 (Supp. 12-3).

R4-26-413. Change of Name, Mailing Address, E-mail Address, or Telephone Number

- A.** The Board shall communicate with a licensee using the contact information provided to the Board. To ensure timely communication from the Board, a licensee shall notify the Board, in writing, within 30 days of any change of name, mailing address, e-mail address, or residential or business telephone number.
- B.** A licensee who reports a name change shall submit to the Board legal documentation that explains the name change.

Historical Note

Section made by final rulemaking at 18 A.A.R. 2490, effective September 11, 2012 (Supp. 12-3).

R4-26-414. Complaints and Investigations

- A. Anyone, including the Board, may file a complaint. A complainant shall ensure that a complaint filed with the Board involves:
 - 1. An individual licensed under this Article; or
 - 2. An individual, including an applicant, believed to be engaged in the unlicensed practice of behavior analysis.
- B. Complaint requirements. A complainant shall:
 - 1. Submit the complaint to the Board in writing; and
 - 2. Provide the following information:
 - a. Name and business address of licensee or other individual who is the subject of complaint;
 - b. Name and address of complainant;
 - c. Allegations constituting unprofessional conduct;
 - 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 the complainant has contacted the licensee or other individual concerning the complaint and if so, the response, if any.

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).

R4-26-415. Informal Interview

- A. As authorized by A.R.S. § 32-2091.09(H), the Board may facilitate investigation of a complaint by conducting an informal interview. The Board shall send written notice of an informal interview 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 interview.
- B. The Board shall ensure that the written notice of informal interview contains the following information:
 - 1. The time, date, and place of the informal interview;
 - 2. An explanation of the informal nature of the proceedings;
 - 3. The individual's right to appear with legal counsel who is authorized to practice law in Arizona 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 interview;
 - 6. The licensee's right, as specified in A.R.S. § 32-3206, to request a copy of information the Board will consider in making its determination; and
 - 7. Notice that the Board may take disciplinary action as a result of the informal interview if it finds the individual violated A.R.S. Title 32, Chapter 19.1, Article 4, or this Article;
- C. The Board shall ensure that an informal interview proceeds as follows:
 - 1. Introduction of the respondent and, if applicable, the complainant, any other witnesses, and legal counsel for the respondent;
 - 2. Introduction of the Board members, staff, and Assistant Attorney General present;
 - 3. Swearing in of the respondent, complainant, and witnesses;
 - 4. Brief summary of the allegations and purpose of the informal interview;
 - 5. Optional opening comment by the respondent and complainant;
 - 6. Questioning of the respondent and witnesses by the Board;
 - 7. Questioning of the complainant by the respondent through the Chair;
 - 8. Optional additional comments by the respondent and complainant; and
 - 9. Deliberation by the Board.

Historical Note

Section made by final rulemaking at 18 A.A.R. 2490, effective September 11, 2012 (Supp. 12-3).

R4-26-416. 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.
- B. Except as provided in subsection (H), 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 a 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 all or some of the parties on all or some 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. Within 30 days after the date of a decision and after giving the parties notice and an opportunity to be heard, the Board 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 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 is based upon affidavits, they shall be served with the motion. An opposing party may, within 15 days after service, serve opposing affidavits.
- H. If, in a particular decision, the Board makes a specific finding that the immediate effectiveness of the decision is necessary for preservation of the public health, safety, or welfare and that a rehearing or review of the decision is impracticable, unnecessary, or contrary to the public interest, the decision may be issued as a final decision without an opportunity for a rehearing or review.
- I. An application for judicial review of any final Board decision may be made under A.R.S. § 12-901 et seq.

Historical Note

Section made by final rulemaking at 18 A.A.R. 2490, effective September 11, 2012 (Supp. 12-3).

R4-26-417. Licensing Time Frames

- A. For the purpose of A.R.S. § 41-1073, the Board establishes the following time frames:
 - 1. Initial license.
 - a. Overall time frame: 120 days,
 - b. Administrative completeness review time frame: 30 days, and
 - c. Substantive review time frame: 90 days; and
 - 2. Renewal license.
 - a. Overall time frame: 150 days,
 - b. Administrative completeness review time frame: 60 days, and
 - c. Substantive review time frame: 90 days.
- B. 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% of the overall time frame.
- C. The administrative completeness review time frame begins when the Board receives the application materials required under R4-26-403 or R4-26-408(C) and (D). During the administrative completeness review time frame, the Board shall notify the applicant that the application is either complete or incomplete. If the application is incomplete, the Board shall specify in the notice what information is missing.
- D. An applicant whose application is incomplete shall submit the missing information to the Board within 240 days for an initial license. Both the administrative completeness review and overall time frames are suspended from the date of the Board's notice under subsection (C) until the Board receives all of the missing information.
- E. Upon receipt of all missing information, the Board shall notify the applicant that the application is complete. The Board shall not send a separate notice of completeness if the Board grants or denies a license within the administrative completeness review time frame listed in subsection (A)(1)(b) or (A)(2)(b).
- F. The substantive review time frame begins on the date of the Board's notice of administrative completeness.
- G. If the Board determines during the substantive review that additional information is needed, the Board shall send the applicant a comprehensive written request for additional information.
- H. An applicant who receives a request under subsection (G) shall submit the additional information to the Board within 240 days. Both the substantive review and overall time frames are suspended from the date of the Board's request until the Board receives the additional information.
- I. An applicant may receive a 30-day extension of the time provided under subsection (D) or (H) by providing written notice to the Board before the time expires. If an applicant fails to submit to the Board the missing or additional information within the time provided under subsection (D) or (H) or the time as extended, the Board shall close the applicant's file. To receive further consideration, a person whose file is closed shall re-apply.
- J. Within the overall time frame listed in subsection (A), the Board shall:
 - 1. Grant a license if the Board determines that the applicant meets all criteria required by statute and this Article; or
 - 2. Deny a license if the Board determines that the applicant does not meet all criteria required by statute and this Article.
- K. If the Board grants a license under subsection (J)(1), the Board shall send the applicant a notice explaining that the Board shall issue the license only after the applicant pays the license issuance fee specified under R4-26-402 and pro-rated as prescribed under A.R.S. § 32-2091.07(A).
- L. If the Board denies a license, the Board shall send the applicant a written notice explaining:
 - 1. The reason for denial, with citations to supporting statutes or rules;
 - 2. The applicant's right to appeal the denial by filing an appeal under A.R.S. Title 41, Chapter 6, Article 10;
 - 3. The time for appealing the denial; and
 - 4. The applicant's right to request an informal settlement conference.
- M. If a time frame's last day falls on a Saturday, Sunday, or official state holiday, the next business day is the time frame's last day.

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).

R4-26-418. Mandatory Reporting Requirement

- A. As required by A.R.S. § 32-3208, an applicant or licensee who is charged with a misdemeanor involving conduct that may affect client safety or a felony shall provide written notice of the charge to the Board within 10 days after the charge is filed.
- B. A list of reportable misdemeanors is available on the Board's website.

Historical Note

Section made by final rulemaking at 18 A.A.R. 2490, effective September 11, 2012 (Supp. 12-3).

September 9, 2017

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.

September 9, 2017

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.

September 9, 2017

(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.

September 9, 2017

(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.

32-2091.01. Fees

A. The board, by a formal vote, shall establish fees for the following relating to the licensure of behavior analysts:

1. An application for an active license.
2. An application for a temporary license.
3. Renewal of an active license.
4. Issuance of an initial license.

B. The board may charge additional fees for services it deems necessary and appropriate to carry out this article. These fees shall not exceed the actual cost of providing the service.

C. The board shall not refund fees except as otherwise provided in this article. On special request and for good cause, the board may return the license renewal fee.

32-2091.02. Qualifications of applicant

September 9, 2017

Beginning January 1, 2011, a person who wishes to practice as a behavior analyst must be licensed pursuant to this article. An applicant for licensure must meet all of the following requirements:

1. Submit an application as prescribed by the board.
2. Be at least twenty-one years of age.
3. Be of good moral character. The board's standard to determine good moral character shall not violate federal discrimination laws.
4. Pay all applicable fees prescribed by the board.
5. Have the physical and mental capability to safely and competently engage in the practice of behavior analysis.
6. Not have committed any act or engaged in any conduct that would constitute grounds for disciplinary action against a licensee pursuant to this article.
7. Not have had a professional license or certificate refused, revoked, suspended or restricted in any regulatory jurisdiction in the United States or in another country for reasons that relate to unprofessional conduct. If the board finds that the applicant committed an act or engaged in conduct that would constitute grounds for disciplinary action in this state, the board shall determine to its satisfaction that the conduct has been corrected, monitored and resolved. If the matter has not been resolved, the board shall determine to its satisfaction that mitigating circumstances exist that prevent its resolution.
8. Not have voluntarily surrendered a license or certificate in another regulatory jurisdiction in the United States or in another country while under investigation for reasons that relate to unprofessional conduct. If another jurisdiction has taken disciplinary action against an applicant, the board shall determine to its satisfaction that the cause for the action was corrected and the matter resolved. If the matter has not been resolved by that jurisdiction, the board shall determine to its satisfaction that mitigating circumstances exist that prevent its resolution.
9. Not have a complaint, allegation or investigation pending before another regulatory jurisdiction in the United States or another country that relates to unprofessional conduct. If an applicant has any such complaints, allegations or investigations pending, the board shall suspend the application process and may not issue or deny a license to the applicant until the complaint, allegation or investigation is resolved.

32-2091.03. Educational and training standards for licensure

An applicant for licensure as a behavior analyst must meet standards adopted by the state board of psychologist examiners, including meeting graduate level education and supervised experience requirements and passing a national examination. The state board of psychologist examiners shall adopt standards consistent with the standards set by a nationally recognized

September 9, 2017

behavior analyst certification board, except that the number of hours required for supervised experience must be at least one thousand five hundred hours of supervised work experience or independent fieldwork, university practicum or intensive university practicum. The standards adopted for supervised experience must also be consistent with the standards set by a nationally recognized behavior analyst certification board. If the state board of psychologist examiners does not agree with a standard set by a nationally recognized behavior analyst certification board, the state board may adopt an alternate standard.

32-2091.04. Reciprocity

The board may issue a license to a person as a behavior analyst if the person is licensed or certified by a regulatory agency of another state that imposes requirements that are substantially equivalent to those imposed by this article at an equivalent or higher practice level as determined by the board, pays the fee prescribed by the board and meets all of the following requirements:

1. Submits a written application prescribed by the board.
2. Is of good moral character. The board's standard to determine good moral character shall not violate federal discrimination laws.
3. Documents to the board's satisfaction proof of initial licensure or certification at an equivalent designation for which the applicant is seeking licensure in this state and proof that the license or certificate is current and in good standing.
4. Documents to the board's satisfaction proof that any other license or certificate issued to the applicant by another state has not been suspended or revoked. If a licensee or certificate holder has been subjected to any other disciplinary action, the board may assess the magnitude of that action and make a decision regarding reciprocity based on this assessment.
5. Meets any other requirements prescribed by the board by rule.

32-2091.06. Temporary licenses; inactive status; reinstatement to active status

A. If the board requires an additional examination, it may issue a temporary license to a behavior analyst who is licensed or certified under the laws of another jurisdiction, if the behavior analyst applies to the board for licensure and meets the educational, experience and first examination requirements of this article.

B. A temporary license issued pursuant to this section is effective from the date the application is approved until the last day of the month in which the applicant receives the results of the additional examination.

C. The board shall not extend, renew or reissue a temporary license or allow it to continue in effect beyond the period authorized by this section.

D. The board's denial of an application for licensure terminates a temporary license.

September 9, 2017

E. The board may place on inactive status and waive the license renewal fee requirements for a person who is temporarily or permanently unable to practice as a behavior analyst due to physical or mental incapacity or disability. An initial request for the waiver of renewal fees shall be accompanied by the renewal fee for an active license, which the board shall return if the waiver is granted. The board shall judge each request for the waiver of renewal fees on its own merits and may seek the verification it deems necessary to substantiate the facts of the situation. A behavior analyst who is retired is exempt from paying the renewal fee. A behavior analyst may request voluntary inactive status by submitting to the board an application on a form prescribed by the board and an affirmation that the behavior analyst will not practice as a behavior analyst in this state for the duration of the voluntary inactive status and by paying the required fee as prescribed by the board by rule.

F. A behavior analyst who is on any form of inactive status shall renew the inactive status every two years by submitting a renewal form provided by the board and paying any applicable fee as prescribed by the board by rule. A notice to renew is fully effective by mailing the renewal application to the licensee's last known address of record in the board's file. Notice is complete at the time of its deposit in the mail. A behavior analyst who is on inactive status due to physical or mental incapacity or disability or retirement shall use the term "inactive" to describe the person's status and shall not practice as a behavior analyst.

G. A behavior analyst on inactive status may request reinstatement of the license to active status by applying to the board. The board shall determine whether the person has been or is in violation of any provisions of this article and whether the person has maintained and updated the person's professional knowledge and capability to practice as a behavior analyst. The board may require the person to take or retake the licensure examinations and may require other knowledge or skill training experiences. If approved for active status, the person shall pay a renewal fee that equals the renewal fee for the license to be reinstated.

32-2091.07. Active license; issuance; renewal; expiration; continuing education

A. Beginning May 1, 2017, if the applicant satisfies all of the requirements for licensure pursuant to this article, the board shall issue an active license and shall prorate the fee for issuing that license for the period remaining until the last day of the birth month of the applicant of the next odd-numbered year or even-numbered year pursuant to subsection B, paragraph 1 or 2 of this section.

B. Beginning May 1, 2017, a person holding an active or inactive license shall apply to renew the license on or before the last day of the birth month of the licensee every other year as follows:

1. In each odd-numbered year, if the licensee holds an odd-numbered license.
2. In each even-numbered year, if the licensee holds an even-numbered license.

C. The application shall include any applicable renewal fee as prescribed by the board by rule. Except as provided in section 32-4301 or 41-1092.11, a license expires if the licensee fails to renew the license on or before the last day of the licensee's birth month of the licensee's renewal

September 9, 2017

year pursuant to subsection B of this section. A licensee may reinstate an expired license by paying a reinstatement fee as prescribed by the board by rule within two months after the last day of the licensee's birth month of that year. Beginning two months after the last day of the licensee's birth month during the licensee's renewal year until the last day of the licensee's birth month the following year, a licensee may reinstate the license by paying a reinstatement fee as prescribed by the board by rule and providing proof of competency and qualifications to the board. This proof may include continuing education, an oral examination, a written examination or an interview with the board. A licensee whose license is not reinstated within a year after the last day of the licensee's birth month of the licensee's renewal year may reapply for licensure as prescribed by this article. A notice to renew is fully effective by mailing or electronically providing the notice to the licensee's last known address of record or last known e-mail address of record in the board's file. Notice is complete at the time of deposit in the mail or when the e-mail is sent.

D. A person renewing a license shall attach to the completed renewal form a report of disciplinary actions or restrictions placed against the license by another state licensing or disciplinary board or disciplinary actions or sanctions imposed by a state or national behavior analysis ethics committee or health care institution. The report shall include the name and address of the sanctioning agency or health care institution, the nature of the action taken and a general statement of the charges leading to the action.

E. A person who renews an active license to practice behavior analysis in this state shall satisfy a continuing education requirement designed to provide the necessary understanding of current developments, skills, procedures or treatment related to the practice of behavior analysis in the amount and during the period the board prescribes. The board shall prescribe documentation requirements.

32-2091.08. Exemptions from licensure

A. This article does not limit the activities, services and use of a title by the following:

1. A behavior analyst who is employed in a common school, high school or charter school setting and who is certified to use that title by the department of education if the services or activities are a part of the duties of that person's common school, high school or charter school employment.

2. An employee of a government agency in a subdoctorate position who uses the word "assistant" or "associate" after the title and who is supervised by a doctorate position employee who is licensed as a behavior analyst, including a temporary licensee.

3. A matriculated graduate student, or a trainee whose activities are part of a defined behavior analysis program of study, practicum, intensive practicum or supervised independent fieldwork. The practice under this paragraph requires direct supervision consistent with the standards set by a nationally recognized behavior analyst certification board, as determined by the state board of psychologist examiners. A student or trainee may not claim to be a behavior analyst and must use a title that clearly indicates the person's training status, such as "behavior analysis student" or "behavior analysis trainee".

September 9, 2017

4. A person who resides outside of this state and who is currently licensed or certified as a behavior analyst in that state if the activities and services conducted in this state are within the behavior analyst's customary area of practice, do not exceed twenty days per year and are not otherwise in violation of this article and the client, public or consumer is informed of the limited nature of these activities and services and that the behavior analyst is not licensed in this state.

5. A person in the employ of Arizona state university, northern Arizona university, the university of Arizona or another regionally accredited university in this state if the services are a part of the faculty duties of that person's salaried position and the person is participating in a graduate program.

6. A noncredentialed individual who delivers applied behavior analysis services under the extended authority and direction of a licensed behavior analyst. The individual may not claim to be a professional behavior analyst and must use a title indicating the person's nonprofessional status, such as "ABA technician", "behavior technician" or "tutor".

B. This article does not prevent a member of other recognized professions who is licensed, certified or regulated under the laws of this state from rendering services within that person's scope of practice and code of ethics if that person does not claim to be a behavior analyst.

32-2091.08. [Exemptions from licensure](#)

A. This article does not limit the activities, services and use of a title by the following:

1. A behavior analyst who is employed in a common school, high school or charter school setting and who is certified to use that title by the department of education if the services or activities are a part of the duties of that person's common school, high school or charter school employment.

2. An employee of a government agency in a subdoctorate position who uses the word "assistant" or "associate" after the title and who is supervised by a doctorate position employee who is licensed as a behavior analyst, including a temporary licensee.

3. A matriculated graduate student, or a trainee whose activities are part of a defined behavior analysis program of study, practicum, intensive practicum or supervised independent fieldwork. The practice under this paragraph requires direct supervision consistent with the standards set by a nationally recognized behavior analyst certification board, as determined by the state board of psychologist examiners. A student or trainee may not claim to be a behavior analyst and must use a title that clearly indicates the person's training status, such as "behavior analysis student" or "behavior analysis trainee".

4. A person who resides outside of this state and who is currently licensed or certified as a behavior analyst in that state if the activities and services conducted in this state are within the behavior analyst's customary area of practice, do not exceed twenty days per year and are not otherwise in violation of this article and the client, public or consumer is informed of the limited nature of these activities and services and that the behavior analyst is not licensed in this state.

September 9, 2017

5. A person in the employ of Arizona state university, northern Arizona university, the university of Arizona or another regionally accredited university in this state if the services are a part of the faculty duties of that person's salaried position and the person is participating in a graduate program.

6. A noncredentialed individual who delivers applied behavior analysis services under the extended authority and direction of a licensed behavior analyst. The individual may not claim to be a professional behavior analyst and must use a title indicating the person's nonprofessional status, such as "ABA technician", "behavior technician" or "tutor".

B. This article does not prevent a member of other recognized professions who is licensed, certified or regulated under the laws of this state from rendering services within that person's scope of practice and code of ethics if that person does not claim to be a behavior analyst.

32-2091.09. Grounds for disciplinary action; duty to report; immunity; proceedings; board action; notice requirements; civil penalty

A. The board on its own motion may investigate evidence that appears to show that a behavior analyst is incompetent as a behavior analyst, guilty of unprofessional conduct or mentally or physically unable to safely engage in the practice of behavior analysis. A health care institution shall, and any other person may, report to the board information that appears to show that a behavior analyst is incompetent as a behavior analyst, guilty of unprofessional conduct or mentally or physically unable to safely engage in the practice of behavior analysis. The board shall notify the licensee about whom information has been received as to the content of the information within one hundred twenty days after receiving the information. A person who reports or provides information to the board in good faith is not subject to an action for civil damages. The board, if requested, shall not disclose the name of the person providing information unless this information is essential to proceedings conducted pursuant to this section. The board shall report a health care institution that fails to report as required by this section to the institution's licensing agency.

B. A health care institution shall inform the board if the privileges of a licensee to practice in that institution are denied, revoked, suspended or limited because of actions by the licensee that appear to show that the person is incompetent as a behavior analyst, guilty of unprofessional conduct or mentally or physically unable to safely engage in the practice of behavior analysis, along with a general statement of the reasons that led the health care institution to take this action. A health care institution shall inform the board if a licensee under investigation resigns the licensee's privileges or if a licensee resigns in lieu of disciplinary action by the health care institution. Notification must include a general statement of the reasons for the resignation.

C. The board may require the licensee to undergo any combination of mental, physical or psychological competence examinations at the licensee's expense and shall conduct investigations necessary to determine the competence and conduct of the licensee.

September 9, 2017

D. The committee on behavior analysts shall review all complaints against behavior analysts and, based on the information provided pursuant to subsection A or C of this section, shall submit its recommendations to the full board.

E. If the board finds, based on the information it receives under subsection A or C of this section, that the public health, safety or welfare requires emergency action, the board may order a summary suspension of a license pending proceedings for revocation or other action. If the board issues this order, it shall serve the licensee with a written notice of complaint and formal hearing pursuant to title 41, chapter 6, article 10, setting forth the charges made against the licensee and the licensee's right to a formal hearing before the board or an administrative law judge within sixty days. The board shall notify the committee on behavior analysts of any action taken pursuant to this subsection.

F. If the board finds that the information provided pursuant to subsection A or C of this section is not of sufficient seriousness to merit direct action against the licensee, it may take any of the following actions:

1. Dismiss if the board believes the information is without merit.
2. File a letter of concern.
3. Issue a nondisciplinary order requiring the licensee to complete a prescribed number of hours of continuing education in an area or areas prescribed by the board to provide the licensee with the necessary understanding of current developments, skills, procedures or treatment.

G. If the board believes the information provided pursuant to subsection A or B of this section is or may be true, it may request an informal interview with the licensee. If the licensee refuses to be interviewed or if pursuant to an interview the board determines that cause may exist to revoke or suspend the license, it shall issue a formal complaint and hold a hearing pursuant to title 41, chapter 6, article 10. If as a result of an informal interview or a hearing the board determines that the facts do not warrant revocation or suspension of the license, it may take any of the following actions:

1. Dismiss if the board believes the information is without merit.
2. File a letter of concern.
3. Issue a decree of censure.
4. Fix a period and terms of probation best adapted to protect the public health and safety and to rehabilitate or educate the licensee. Probation may include temporary suspension for not more than twelve months, restriction of the license or restitution of fees to a client resulting from violations of this article. If a licensee fails to comply with a term of probation, the board may file a complaint and notice of hearing pursuant to title 41, chapter 6, article 10 and take further disciplinary action.

September 9, 2017

5. Enter into an agreement with the licensee to restrict or limit the licensee's practice or activities in order to rehabilitate the licensee, protect the public and ensure the licensee's ability to safely engage in the practice of behavior analysis.

6. Issue a nondisciplinary order requiring the licensee to complete a prescribed number of hours of continuing education in an area or areas prescribed by the board to provide the licensee with the necessary understanding of current developments, skills, procedures or treatment.

H. If the board finds that the information provided pursuant to subsection A or C of this section warrants suspension or revocation of a license, it shall hold a hearing pursuant to title 41, chapter 6, article 10. Notice of a complaint and hearing is fully effective by mailing a true copy to the licensee's last known address of record in the board's files. Notice is complete at the time of its deposit in the mail.

I. The board may impose a civil penalty of at least three hundred dollars but not more than three thousand dollars for each violation of this article or a rule adopted under this article. The board shall deposit, pursuant to sections 35-146 and 35-147, all monies it collects from civil penalties pursuant to this subsection in the state general fund.

J. If the board determines after a hearing that a licensee has committed an act of unprofessional conduct, is mentally or physically unable to safely engage in the practice of behavior analysis or is incompetent as a behavior analyst, it may do any of the following in any combination and for any period of time it determines necessary:

1. Suspend or revoke the license.
2. Censure the licensee.
3. Place the licensee on probation.

K. A licensee may submit a written response to the board within thirty days after receiving a letter of concern. The response is a public document and shall be placed in the licensee's file.

L. A letter of concern is a public document and may be used in future disciplinary actions against a licensee. A decree of censure is an official action against the behavior analyst's license and may include a requirement that the licensee return fees to a client.

M. Except as provided in section 41-1092.08, subsection H, a person may appeal a final decision made pursuant to this section to the superior court pursuant to title 12, chapter 7, article 6.

N. If during the course of an investigation the board determines that a criminal violation may have occurred involving the delivery of behavior analysis services, it shall inform the appropriate criminal justice agency.

September 9, 2017

32-2091.10. Right to examine and copy evidence; subpoenas; right to counsel; confidentiality

A. In connection with an investigation conducted pursuant to this article, at all reasonable times the board and its authorized agents may examine and copy documents, reports, records and other physical evidence wherever located relating to the licensee's professional competence, unprofessional conduct or mental or physical ability to safely practice behavior analysis.

B. The board and its authorized agents may issue subpoenas to compel the attendance and testimony of witnesses and the production of documents and other physical evidence as prescribed in subsection A. The board may petition the superior court to enforce a subpoena.

C. Within five days of receiving a subpoena, a person may petition the board to revoke, limit or modify the subpoena. The board shall take this action if it determines that the evidence demanded is not relevant to the investigation. The person may petition the superior court for this relief without first petitioning the board.

D. A person appearing before the board or its authorized agents may be represented by an attorney.

E. Documents associated with an investigation are not open to the public and shall remain confidential. Documents may not be released without a court order compelling their production.

F. This section or any other provision of law making communications between a behavior analyst and client privileged does not apply to an investigation conducted pursuant to this article. The board, its employees and its agents shall keep in confidence the names of clients whose records are reviewed during an investigation.

32-2091.11. Injunction

A. The board may petition the superior court for an order to enjoin the following:

1. A person who is not licensed pursuant to this article from practicing behavior analysis.
2. The activities of a licensee that are an immediate threat to the public.
3. Criminal activities.

B. If the board seeks an injunction to stop the unlicensed practice of behavior analysis, it is sufficient to charge that the respondent on a certain day in a specific county engaged in the practice of behavior analysis without a license and without being exempt from the licensure requirements of this article. It is not necessary to show specific damages or injury.

C. The issuance of an injunction does not limit the board's authority to take other action against a licensee pursuant to this article.

32-2091.12. Violations; classification

September 9, 2017

A. It is a class 2 misdemeanor for a person who is not licensed pursuant to this article to engage in the practice of behavior analysis.

B. It is a class 2 misdemeanor for any person to:

1. Secure a license to practice pursuant to this article by fraud or deceit.

2. Impersonate a member of the board in order to issue a license to practice pursuant to this article.

C. It is a class 2 misdemeanor for a person who is not licensed pursuant to this article to use any combination of words, initials and symbols that leads the public to believe the person is licensed to practice behavior analysis in this state.

32-2091.13. Confidential communications

A. The confidential relations and communications between a client and a person who is licensed pursuant to this article, including temporary licensees, are placed on the same basis as those provided by law between an attorney and client. Unless the client waives the behavior analyst-client privilege in writing or in court testimony, a behavior analyst shall not voluntarily or involuntarily divulge information that is received by reason of the confidential nature of the behavior analyst's practice. The behavior analyst shall divulge to the board information it requires in connection with any investigation, public hearing or other proceeding. The behavior analyst-client privilege does not extend to cases in which the behavior analyst has a duty to report information as required by law.

B. The behavior analyst shall ensure that client records and communications are treated by clerical and paraprofessional staff at the same level of confidentiality and privilege required of the behavior analyst.

32-2091.14. Status as behavioral health professional

Notwithstanding any law to the contrary, the Arizona health care cost containment system administration shall recognize a behavior analyst who is licensed pursuant to this article as a behavioral health professional who is eligible for reimbursement of services.

32-2091.15. Committee on behavior analysts; membership; duties; board responsibilities

A. The committee on behavior analysts is established within the state board of psychologist examiners consisting of five members who are appointed by the governor and who serve at the pleasure of the governor. Each member shall serve for a term of five years beginning and ending on the third Monday in January. A committee member may not serve more than two full consecutive terms.

B. All members of the committee shall be licensed behavior analysts in professional practice, two of whom shall be members of the board. The committee shall annually elect a chairperson from among its membership.

September 9, 2017

C. Within one year after their initial appointment to the committee, members shall receive at least five hours of training prescribed by the board that includes instruction in ethics and open meeting requirements.

D. committee members shall receive reimbursement of all expenses pursuant to title 38, chapter 4, article 2.

E. The committee shall make recommendations to the board on all matters relating to the licensing and regulation of behavior analysts. The committee may recommend regulatory changes to the board that are not specific to an individual licensee, but the committee shall obtain public input from behavior analyst licensees or their designated representatives before making any final recommendation to the board.

INDUSTRIAL COMMISSION (F-18-0103)

Title 20, Chapter 5, Article 12, Arizona Minimum Wage and Earned Paid Sick Time Practice and Procedure



GOVERNOR'S REGULATORY REVIEW COUNCIL

STAFF MEMORANDUM – FIVE-YEAR REVIEW REPORT

MEETING DATE: January 9, 2017

AGENDA ITEM: E-4

TO: Members of the Governor's Regulatory Review Council (Council)
FROM: Council Staff
DATE : December 19, 2017
SUBJECT: INDUSTRIAL COMMISSION (F-18-0103)
Title 20, Chapter 5, Article 12, Arizona Minimum Wage and Earned Paid Sick Time Practice and Procedure

COMMENTS ON THE FIVE-YEAR-REVIEW REPORT

Purpose of the Agency and Number of Rules in the Report

This five-year review report from the Industrial Commission of Arizona (Commission) covers 20 rules in A.A.C. Title 20, Chapter 5, Article 12. The Commission notes that amendments to many of the rules were recently approved by the Council to align with the Fair Wages and Healthy Families Act (Act), approved by Arizona voters in 2016. The updated rules became effective on October 3, 2017.

Proposed Action

The Commission intends to take no action on the rules.

1. Has the agency analyzed whether the rules are authorized by statute?

Yes. The Commission cites to both general and specific Commission for the rules. Of particular significance is A.R.S. § 23-364(A), under which "The Commission is authorized to enforce and implement [A.R.S. Title 23, Chapter 2, Articles 8 and 8.1]" relating to the minimum wage and earned paid sick time "and may promulgate rules consistent with [A.R.S. Title 23, Chapter 2, Articles 8 and 8.1] to do so."

2. Summary of the agency’s economic impact comparison and identification of stakeholders:

Key stakeholders include all businesses and all workers in Arizona. The rules are used to administer the provisions of the Act. As the Commission recently completed a rulemaking that aligned the rules with the Act, any deficiencies that this review would have identified have already been addressed with the most recent Commission rulemaking.

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

The Commission does not plan any changes to the rules because any deficiencies were identified and updated in the most recent rulemaking. The Commission indicates that the rules impose the least burden and costs to those who are regulated by the rules.

4. Has the agency received any written criticisms of the rules over the last five years?

No. The Commission indicates that it has not received any written criticisms of the rules over the last five years.

5. Has the agency analyzed the rules’ clarity, conciseness, and understandability, consistency with other rules and statutes, and effectiveness?

Yes. The Commission indicates that the rules are clear, concise, and understandable, are consistent with other rules and statutes, and are effective in achieving their objectives.

6. Has the agency analyzed the current enforcement status of the rules?

Yes. The Commission indicates that the rules are enforced as written.

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

No. The Commission indicates that the rules implement Arizona’s minimum wage and earned paid sick time provisions and do not implicate federal law.

8. 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?

No. The Commission indicates that none of the rules affected by the 2017 rulemaking require issuance of a regulatory permit, license, or agency authorization.

9. Conclusion

The Commission does not propose action at this time. The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. Council staff recommends that the report be approved.

**THE INDUSTRIAL COMMISSION OF ARIZONA
OFFICE OF THE DIRECTOR**



DALE L. SCHULTZ, CHAIRMAN
JOSEPH M. HENNELLY, JR., VICE CHAIR
SCOTT P. LEMARR, MEMBER
ROBIN S. ORCHARD, MEMBER
STEVEN J. KRENZEL, MEMBER

P.O. Box 19070
Phoenix, Arizona 85005-9070

JAMES ASHLEY, DIRECTOR
PHONE: (602) 542-4411
FAX: (602) 542-7889

November 6, 2017

Sent via e-mail to grrc@azdoa.gov
Nicole Ong Colyer, Chair
Governor's Regulatory Review Council
Arizona Department of Administration
100 North 15th Avenue, Suite 305
Phoenix, Arizona 85007

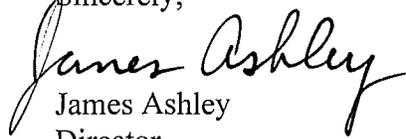
Re: A.A.C. Title 20, Chapter 5, Article 12, Five-Year Review Report

Dear Ms. Colyer:

The Industrial Commission of Arizona (the "Commission"), through its Director, submits for approval by the Governor's Regulatory Review Council (the "Council") the attached Five-Year Review Report on 20 A.A.C. 5, Article 12. Also attached are copies of the rules being reviewed (existing rules and recent rule amendments), the general and specific statutes authorizing the rules, and Economic Impact Statements from Article 12 rulemaking in 2007 and 2017. The Commission has timely filed the attached Five-Year Review Report in accordance with the Council's website calendar of five-year review report due dates, 2017-2019. The Commission believes that the Five-Year Review Report complies with the requirements of A.R.S. § 41-1056.

The Commission has reviewed all rules in Article 12 and, with this letter, I certify that the Commission is in compliance with A.R.S. § 41-1091. Should you have any questions concerning the Five-Year Review Report, please contact Assistant Chief Counsel Jonathan Hauer at (602) 542-5948 or Attorney Scott J. Cooley at (602) 542-6905.

Sincerely,


James Ashley
Director

cc: Christopher Kleminich (Christopher.Kleminich@azdoa.gov)

SJC/kh
Enclosures

FIVE-YEAR REVIEW REPORT
TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE
CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA
ARTICLE 12. ARIZONA MINIMUM WAGE AND EARNED PAID SICK TIME
PRACTICE AND PROCEDURE

FIVE-YEAR REVIEW REPORT
TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE
CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA
ARTICLE 12. ARIZONA MINIMUM WAGE AND EARNED PAID SICK TIME
PRACTICE AND PROCEDURE

1.	FIVE-YEAR REVIEW SUMMARY	1
2.	FIVE-YEAR REVIEW REPORT	3
4.	RULES REVIEWED	Attached
5.	GENERAL AND SPECIFIC STATUTES.....	Attached
6.	ECONOMIC IMPACT STATEMENTS.....	Attached

FIVE-YEAR REVIEW SUMMARY

The Industrial Commission of Arizona (the “Commission”) was created in 1925 as a result of legislation implementing the constitutional provisions establishing a workers’ compensation system. From 1925 to 1969, the workers’ compensation system consisted of the State Compensation Fund, which was then a part of the Commission, and self-insured employers (mainly the mining and the railroad companies). In 1969, the workers’ compensation system reorganized and expanded to include private insurance companies. The State Compensation Fund was split off from the Commission and established as a quasi-state entity responsible for providing workers’ compensation insurance until 2014, when it became a private mutual insurance company. The Commission retained its responsibility and authority over the processing of workers’ compensation claims. The role of the Commission has grown to include other labor-related issues, such as occupational safety and health, youth employment, resolution of wage-related disputes, minimum wage, vocational rehabilitation, workers’ compensation coverage for claimants of uninsured employers, and self-insured employers.

Certification Regarding Compliance with A.R.S. § 41-1091

In the cover letter for this report, the Commission’s Director certifies that the Commission is in compliance with A.R.S. § 41-1091 with respect to the substantive policy statements relating to the rules in Article 12, as well as other substantive policy statements and all rules, which are available on the Commission’s website.

About Article 12.

Title 20, Chapter 5, Article 12 of the Arizona Administrative Code contains rules concerning minimum wage and earned paid sick time. The minimum wage rules have been in effect in various forms since January 25, 2007, initially governing proceedings before the Commission arising under the Raise the Arizona Minimum Wage for Working Arizonans Act (as added by Proposition 202 in 2006). In November 2016, Arizona voters approved Proposition 206, the Fair Wages and Healthy Families Act. The Fair Wages and Healthy Families Act established a new state minimum wage (effective January 1, 2017)

and created an entitlement to earned paid sick time (effective July 1, 2017). The Fair Wages and Healthy Families Act directs the Commission to enforce and implement its provisions and promulgate appropriate regulations. *See* A.R.S. §§ 23-364(A); 23-376. To comply with this mandate and address the new earned paid sick time provisions, the Commission reviewed Article 12 in its entirety and completed rulemaking that amended ten of the eighteen rules in Article 12. The updated rules took effect on October 3, 2017.

FIVE-YEAR REVIEW REPORT
TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE
CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA
ARTICLE 12. ARIZONA MINIMUM WAGE AND EARNED PAID SICK
TIME PRACTICE AND PROCEDURE

1. General and specific statutes authorizing the rules, including any statute that authorizes the agency to make rules.

The rules in Article 12 have general and specific authorization under A.R.S. §§ 23-107(A)(1); 23-108.03(B)(1); 23-364(A); and 23-376.

Pursuant to A.R.S. § 23-107(A)(1), the Commission “has full power, jurisdiction, and authority to” formulate and adopt “rules . . . for effecting the purposes of [A.R.S. Title 23, Chapter 1, Article 1].” A.R.S. § 23-108.03(B)(1) provides that “[a]ny powers and duties prescribed by law to the commission in [A.R.S. Title 23, Chapters 1, 2 and 6]” may, with certain exceptions (including rulemaking), “be delegated . . . to the director or any of its department heads or assistants.”

A.R.S. § 23-364(A) provides the Commission with specific authority: “The Commission is authorized to enforce and implement [A.R.S. Title 23, Chapter 2, Articles 8 and 8.1]” relating to the minimum wage and earned paid sick time “and may promulgate rules consistent with [A.R.S. Title 23, Chapter 2, Articles 8 and 8.1] to do so.” Under A.R.S. § 23-376, the Commission is specifically authorized “to coordinate implementation and enforcement of [A.R.S. Title 23, Chapter 2, Article 8.1],” relating to earned paid sick time, and directed to “promulgate appropriate guidelines or regulations for such purposes.”

2. Objective of the rules, including the purposes for the existence of the rules.

The Commission's overarching objectives regarding Article 12 are: (1) to create a procedural framework for the Commission's Labor Department to effectively enforce statutory minimum wage and earned paid sick time requirements; (2) to reduce regulatory burden by aligning Article 12 with current Arizona law and providing clarifications that reduce uncertainty for Arizona employers and employees; and (3) to assist the Commission in achieving the regulatory objectives prescribed by the Fair Wages and Healthy Families Act. The Commission's 2017 rulemaking proceeded in accordance with these objectives. The specific purpose of each of the rules in Article 12 is summarized below:

R20-5-1201. Notice of Rules

R20-5-1201 defines the scope of Article 12 by informing the public that the rules apply to actions and proceedings before the Commission arising under Arizona statutes governing minimum wage and earned paid sick time. R20-5-1201 also informs the public that the Commission will provide a copy of the rules free of charge.

R20-5-1202. Definitions

R20-5-1202 defines relevant terms used in Article 12 and the statutes governing minimum wage and earned paid sick time (to the extent terms are not already defined by statutes).

R20-5-1203. Duty to Provide Current Address

R20-5-1203 establishes a duty for interested parties to timely advise the Labor Department of changes of address and/or telephone number.

R20-5-1204. Forms Prescribed by the Department

R20-5-1204 provides notice that any form prescribed by the Labor Department, including the poster required under R20-5-1208, may not be changed, amended, or otherwise altered without the prior written approval of the Labor Department.

R20-5-1205. Determination of Employment Relationship

The Fair Wages and Healthy Families Act governs minimum wage and earned paid sick time for each employee who works for an employer, and both “employee” and “employer” are defined by statute. R20-5-1205 provides further clarification concerning what constitutes an employment relationship under existing Arizona law. R20-5-1205 also defines categories of work which are not subject to Article 12.

R20-5-1206. Payment of Minimum Wage; Commissions; Tips; Front Loading Earned Paid Sick Time; Limitation on Carry Over of Unused Earned Paid Sick Time

R20-5-1206: (1) establishes that an Arizona employer must pay no less than minimum wage for all hours worked, whether an employee is paid on an hourly, salaried, commissioned, piece-rate, or any other basis; (2) sets the time frame used by the Labor Department in determining an employee’s hourly wage; (3) clarifies how tips and commissions are considered when determining if an employee’s minimum wage has been paid; (4) allows an employer to require or permit employees to pool, share, or split tips; and (5) allows an employer to require an employee to report tips to meet reporting requirements. Subsections (F) through (I), which were added during the recent rulemaking in 2017, clarify that an employee may only carry over to the following year the amount of earned paid sick time that the employee was entitled to use in the current year; provide earned paid sick time front-loading options for employers; and explain the effect of front-loading on carry over of earned paid sick time.

R20-5-1207. Tip Credit Toward Minimum Wage

R20-5-1207 allows employers to take tip credits when calculating minimum wages owed to an employee who customarily and regularly receives tips in his or her occupation. R20-5-1207 also outlines the procedures that an employer must follow in order to exercise the option.

R20-5-1208. Posting Requirements; Small Employer Exemption

R20-5-1208 requires that employers post approved Labor Department posters in a conspicuous place to provide employees with notice of their rights under the Fair Wages and Healthy Families Act, exempts small employers from the posting requirement, and defines “small employer” for the purposes of R20-5-1208.

R20-5-1209. Records Availability

R20-5-1209 establishes that the records required to be maintained by an employer under the Fair Wages and Healthy Families Act must be safeguarded and made accessible in a readable format to the Labor Department within 72 hours following notice given to an employer to review such records.

R20-5-1210. General Recordkeeping Requirements

R20-5-1210 outlines the recordkeeping requirements under the Fair Wages and Healthy Families Act and specifies the types of wage and earned paid sick time records that are required to be kept for different classes of employees.

R20-5-1211. Administrative Complaints

R20-5-1211 outlines the procedure for filing complaints with the Labor Department concerning failure to pay minimum wage or earned paid sick time, retaliation, discrimination, or a violation of A.R.S. § 23-377 (the Fair Wages and Healthy Families Act’s confidentiality and nondisclosure provision). R20-5-1211 also allows the Labor Department, upon its own complaint, to investigate violations under the Fair Wages and Healthy Families Act.

R20-5-1212. Conduct that Hinders Investigation

Pursuant to its power to assess civil penalties under A.R.S. § 23-364(F), the Labor Department may penalize conduct that hinders an investigation. R20-5-1212 defines types of conduct that may constitute a hindrance of a Labor Department investigation of a minimum wage or earned paid sick time claim.

R20-5-1213. Findings and Order Issued by the Department

R20-5-1213 requires that the Labor Department issue a Findings and Order after making a determination. R20-5-1213 also addresses: (1) actions that may be taken if there is a minimum wage or earned paid sick time violation; (2) actions that may be taken upon a finding of retaliation, discrimination, confidentiality, or a nondisclosure violation; (3) action that must be taken if no violation of the Fair Wages and Healthy Families Act is found; (4) assessment of civil penalties for recordkeeping, posting, or other violations; (5) the requirement that the Labor Department Director sign a Findings and Order; and (6) the Labor Department's authority to refer to a law enforcement officer a matter in which an employer does not comply with a Labor Department's order within 10 days following finality of the order.

R20-5-1214. Review of Department Findings and Order; Hearings; Issuance of Decision Upon Hearing

R20-5-1214 provides that an aggrieved party may request a hearing to review an issued Findings and Order. When a hearing is requested, an Administrative Law Judge ("ALJ") at the Commission utilizes the hearing procedures found in A.R.S. § 41-1061 *et seq.* R20-5-1214 provides that an ALJ may dismiss a request for hearing if it appears that the parties have resolved the disputed issues; that the ALJ must issue a decision no later than 30 days after the matter is submitted for decision; and that the decision is final unless a party files a request for review under R20-5-1215 or commences an action in Superior Court as provided in R20-5-1216.

R20-5-1215. Request for Rehearing or Review of Decision Upon Hearing

R20-5-1215 grants parties to a minimum wage or earned paid sick time claim the right to seek rehearing or review of a decision issued under R20-5-1214 and establishes the procedure to file a request for rehearing or review.

R20-5-1216. Judicial Review of Decision Upon Hearing or Decision Upon Review

R20-5-1216 allows a party aggrieved by an ALJ's decision to seek judicial review in Superior Court using the procedures for judicial review of administrative decisions. R20-

5-1216 also establishes that a decision upon hearing or decision upon review becomes final unless judicial review is sought pursuant to the requirements of the rule.

R20-5-1217. Assessment of Civil Penalties under A.R.S. § 23-364(F)

R20-5-1217 addresses the Commission's authority to assess civil penalties consistent with A.R.S. § 23-364(F) and the conduct described in R20-5-1212.

R20-5-1218. Collection of Wages, Earned Paid Sick Time, Equivalent Paid Time Off, or Penalty Payments Owed

R20-5-1218 establishes procedures for the Labor Department to follow in collecting wages or civil penalties owed.

R20-5-1219. Resolution of Disputes

R20-5-1219 allows the Labor Department to resolve disputes by means of mediation or conciliation.

R20-5-1220. Small Employer Request for Exception to Recordkeeping Requirements

R20-5-1220 defines "small employer" and provides procedures for obtaining an exception from R20-5-1210's recordkeeping requirements.

3. **Effectiveness of the rules in achieving their objectives, including a summary of any available data supporting the conclusion reached**

The rules reviewed are effective in achieving their respective objectives. This determination is based on the Commission's experience using the rules, as opposed to data kept on the issue of effectiveness.

4. **Consistency of the rules with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency**

The rules reviewed are consistent with federal and state statutes and are internally consistent. The Commission is unaware of any conflicting or duplicative rules. The Commission reviewed the Fair Wages and Healthy Families Act and the rules in Article 12 to determine consistency.

5. **Agency enforcement policy, including whether the rules are currently being enforced and, if so, whether there are any problems with enforcement**

The rules in Article 12 accurately reflect the Labor Department’s current enforcement policy with respect to minimum wage and earned paid sick time and are currently being enforced without issue. Additional enforcement guidance is available on the Labor Department’s webpage in the form of Frequently Asked Questions (“FAQs”).

6. **Clarity, conciseness, and understandability of the rules**

The rules in Article 12 are clear, concise, and understandable.

7. **Written criticisms of the rules received by the agency within the five years immediately preceding the five-year review report**

Since the Commission’s 2017 rulemaking regarding Article 12 became effective (October 3, 2017), and within the five years preceding this report, the Commission has not received any written criticisms of the Article 12 rules.

8. **A comparison of the estimated economic, small business, and consumer impact of the rules with the economic, small business, and consumer impact statement prepared on the last making of the rules or, if no economic, small business, and consumer impact statement was prepared on the last making of the rules, an assessment of the actual economic, small business, and consumer impact of the rules**

On November 7, 2007, the Governor’s Regulatory Review Council (the “Council”) approved an economic, small business, and consumer impact statement (“EIS”) (attached) concerning Article 12. Article 12 was subsequently addressed in a Five-Year Review Report that the Council approved on January 8, 2013. In the 2007 EIS and 2013 Five-Year Review Report, the Commission discussed the then-existing rules and found that, with the exception of R20-5-1220, the rules had a *de minimus* impact or reduced the impact of the underlying statutes. As concerns R20-5-1220, the Commission stated that the “rule has a potentially positive economic impact, as it is designed to eliminate some burden caused by the record keeping requirement on small employers that request and qualify for an exception.” To the Commission’s knowledge, no employer has applied for the R20-5-1220 exception to date. Consequently, R20-5-1220 appears to have had little or no impact on small employers.

For the Article 12 rules amended in 2017 (*i.e.*, R20-5-1201, R20-5-1202, R20-5-1205, R20-5-1206, R20-5-1208, R20-5-1209, R20-5-1210, R20-5-1211, R20-5-1213, and R20-5-1218), the actual economic impact of the rule changes is not yet apparent. Because the recent rulemaking was primarily responsive to the Fair Wages and Healthy Families Act, the Commission anticipates that the rulemaking will have minimal economic, small business, or consumer impact beyond that already created by the Fair Wages and Healthy Families Act. To the extent that the rulemaking created any impact beyond the Fair Wages and Healthy Families Act, the Commission anticipates that the amendments will reduce regulatory burden on employers by aligning Article 12 with current Arizona statutes and by providing clarifications that reduce uncertainty for Arizona employers and employees.

Among its provisions, the 2017 rulemaking included: (1) definitions (including “employee’s regular paycheck,” “health care professional,” and “smallest increment that the employer’s payroll system uses to account for absences or use of other time”) that offer clarity for employers and employees and reduce burden; (2) methods for calculating hourly rates of pay for various employee types, reducing the likelihood of disputes between employers and employees; and (3) allowance of front-loading options that

exceed the accrual and carry-over requirements in the Fair Wages and Healthy Families Act without burdening employers with recordkeeping requirements that provide no benefit to employees. In addition, the 2017 rulemaking was intended to reduce the regulatory burden on “small employers” by waiving posting requirements pursuant to A.R.S. § 23-364(D). Thus, the Commission anticipates that the 2017 rule amendments will reduce regulatory burden while achieving the Commission’s regulatory objectives as prescribed by the Fair Wages and Healthy Families Act.

9. **Any analysis submitted to the agency by another person regarding the rules’ impact on this state’s business competitiveness as compared to the competitiveness of businesses in other states**

No business competitiveness analysis has been submitted to the Commission regarding Article 12.

10. **If applicable, whether the agency completed the course of action indicated in the agency’s previous five-year-review report**

The previous Five-year Review Report regarding Article 12 proposed no action with respect to any of the rules in Article 12. At that time, Article 12 addressed only minimum wage. Article 12 (specifically R20-5-1201, R20-5-1202, R20-5-1205, R20-5-1206, R20-5-1208, R20-5-1209, R20-5-1210, R20-5-1211, R20-5-1213, and R20-5-1218) was amended in 2017 to align the rules with the Fair Wages and Healthy Families Act.

11. **A determination after analysis that probable benefits outweigh probable costs and that the rules impose the least burden and costs on persons regulated**

As stated in the EIS submitted with the 2017 rulemaking to Article 12, the Commission believes that the probable benefits of the rules outweigh the probable costs, and that the rules impose the least burden and costs on persons regulated. The EIS notes that the Fair

Wages and Healthy Families Act directly affects nearly every Arizona employer and employee (notable exceptions being state and federal employers and employees, and employers and employees subject to collective bargaining agreements that are exempted by the Fair Wages and Healthy Families Act).

The 2017 amendments to Article 12 were primarily responsive to the Fair Wages and Healthy Families Act, and, as such, create minimal economic, small business, or consumer impact beyond that already created by the Fair Wages and Healthy Families Act. To the extent that the amended rules create any impact beyond the Fair Wages and Healthy Families Act, the Commission anticipates that the amendments will reduce regulatory burden on employers by aligning Article 12 with current Arizona statutes and providing clarifications that reduce uncertainty for Arizona employers and employees.

In *Arizona Chamber of Commerce & Indus. v. Kiley*, the Arizona Supreme Court found that the Commission itself will necessarily incur costs associated with implementing and enforcing the Fair Wages and Healthy Families Act's earned paid sick time provisions. 242 Ariz. 533, ¶ 6, 399 P.3d 80, 84 (2017). The rules in Article 12 benefit the Commission by: (1) clarifying the scope and methodology of the Commission's enforcement program; (2) establishing clear recordkeeping requirements to assist the Commission in effectively conducting enforcement investigations; and (3) providing substantive guidance to employers and employees that is designed to reduce burden and increase compliance.

12. A determination after analysis that the rule is not more stringent than a corresponding federal law unless there is statutory authority to exceed the requirements of that federal law

Although federal law establishes a baseline for minimum wage, it does not preclude states from adopting a higher minimum wage. Nor does federal law address earned paid sick time. The rules in Article 12 implement Arizona's minimum wage and earned paid sick time provisions and do not implicate federal law.

13. For rules adopted 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

This analysis applies only to rules adopted after July 29, 2010. It would therefore only apply to the amendments made by the 2017 rulemaking relating to Article 12, which became effective on October 3, 2017. None of the rules affected by the 2017 rulemaking require issuance of a regulatory permit, license, or agency authorization.

14. Proposed course of action

As the rules in Article 12 have recently been updated to align with the Fair Wages and Healthy Families Act, the Commission plans to retain them in their current form. No action is proposed regarding Article 12.

- F. The Commission may file an Objection to the Plan of Reorganization in the appropriate bankruptcy court and take other actions as permitted under the United States Bankruptcy Code if it determines that the Plan of Reorganization or Liquidation does not adequately provide for the processing and payment of the self-insurer's workers' compensation claims.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

R20-5-1136. Notice of Self-insurer's Termination of Self-insurance

- A. A self-insurer shall file with the Division a completed and signed Notice of Self-insurer's Termination of Self-insurance form, if the self-insurer decides to terminate its self-insurance. The Notice of Self-insurer's Termination shall be filed with the Division 30 days before the effective date of termination of self-insurance.
- B. Before the effective date of the termination of self-insurance, the self-insurer shall file a certificate with the Claims Division designating an insurance carrier, or other proof, satisfactory to the Commission, of compliance with the requirements of A.R.S. § 23-961, to cover claims of the self-insurer that:
1. Are pending at that time the self-insurer terminates self-insurance; and
 2. Occur after the effective date of the termination of self-insurance.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

ARTICLE 12. ARIZONA MINIMUM WAGE ACT PRACTICE AND PROCEDURE

R20-5-1201. Notice of Rules

- A. This Article applies to all actions and proceedings before the Commission arising under the Raise the Arizona Minimum Wage for Working Arizonans Act, as added by 2006 Proposition 202, § 2.
- B. The Commission shall provide a copy of this Article upon request to any person free of charge.

Historical Note

New Section made by emergency rulemaking at 13 A.A.R. 473, effective January 25, 2007 for 180 days (Supp. 07-1). Emergency renewed at 13 A.A.R. 2785, effective July 17, 2007 for 180 days (Supp. 07-3). New Section made by final rulemaking at 13 A.A.R. 4315, effective January 13, 2008 (Supp. 07-4).

R20-5-1202. Definitions

In this Article, the definitions of A.R.S. § 23-362 (version two) apply. In addition, unless the context otherwise requires:

1. "Act" means the Raise the Arizona Minimum Wage for Working Arizonans Act, as added by 2006 Proposition 202, § 2.
2. "Affected employee" means an employee or employees on whose behalf a complaint may be filed alleging a violation under the Act.
3. "Authorized representative" means a person prescribed by law to act on behalf of a party who files with the Department a written instrument advising of the person's authority to act on behalf of the party.
4. "Casual Basis," when applied to babysitting services, means employment which is irregular or intermittent.
5. "Commission" means monetary compensation based on:
 - a. A percentage of total sales,

- b. A percentage of sales in excess of a specified amount,
- c. A fixed allowance per unit, or
- d. Some other formula the employer and employee agrees as a measure of accomplishment.

6. "Complainant" means a person or organization filing an administrative complaint under the Act.
7. "Department" means the Labor Department of the Industrial Commission of Arizona or other authorized division of the Industrial Commission as designated by the Industrial Commission.
8. "Filing" means receipt of a report, document, instrument, videotape, audiotape, or other written matter at an office of the Department.
9. "Hours worked" means all hours for which an employee covered under the Act is employed and required to give to the employer, including all time during which an employee is on duty or at a prescribed work place and all time the employee is suffered or permitted to work.
10. "Minimum wage" means the lowest rate of monetary compensation required under the Act.
11. "Monetary compensation" means cash or its equivalent due to an employee by reason of employment.
12. "On duty" means time spent working or waiting that the employer controls and that the employee is not permitted to use for the employee's own purpose.
13. "Tip" means a sum a customer presents as a gift in recognition of some service performed, and includes gratuities. The sum may be in the form of cash, amounts paid by bank check or other negotiable instrument payable at par, or amounts the employer transfers to the employee under directions from a credit customer who designates an amount to be added to a bill as a tip. Gifts in forms other than cash or its equivalent as described in this definition, including theater tickets, passes, or merchandise, are not tips.
14. "Violation" means a transgression of any statute or rule, or any part of a statute or rule, including both acts and omissions.
15. "Willfully" means acting with actual knowledge of the requirements of the Act or this Article, or acting with reckless disregard of the requirements of the Act or this Article.
16. "Workday" means any fixed period of 24 consecutive hours.
17. "Workweek" means any fixed and regularly recurring period of seven consecutive workdays.

Historical Note

New Section made by emergency rulemaking at 13 A.A.R. 473, effective January 25, 2007 for 180 days (Supp. 07-1). Emergency renewed at 13 A.A.R. 2785, effective July 17, 2007 for 180 days (Supp. 07-3). New Section made by final rulemaking at 13 A.A.R. 4315, effective January 13, 2008 (Supp. 07-4).

R20-5-1203. Duty to Provide Current Address

- A. A complainant shall provide and keep the Labor Department advised of the complainant's current mailing address and telephone number.
- B. An employer under investigation by the Department shall provide and keep the Labor Department advised of the employer's current mailing address and telephone number.

Historical Note

New Section made by emergency rulemaking at 13 A.A.R. 473, effective January 25, 2007 for 180 days (Supp. 07-1). Emergency renewed at 13 A.A.R. 2785,

effective July 17, 2007 for 180 days (Supp. 07-3). New Section made by final rulemaking at 13 A.A.R. 4315, effective January 13, 2008 (Supp. 07-4).

R20-5-1204. Forms Prescribed by the Department

Forms prescribed by the Department, including the poster required under R20-5-1208, shall not be changed, amended, or otherwise altered without the prior written approval of the Department.

Historical Note

New Section made by emergency rulemaking at 13 A.A.R. 473, effective January 25, 2007 for 180 days (Supp. 07-1). Emergency renewed at 13 A.A.R. 2785, effective July 17, 2007 for 180 days (Supp. 07-3). New Section made by final rulemaking at 13 A.A.R. 4315, effective January 13, 2008 (Supp. 07-4).

R20-5-1205. Determination of Employment Relationship

- A. Determination of an employment relationship under the Act, which includes whether an individual is an independent contractor, shall be based upon the economic realities of the relationship. Consideration of whether an individual is economically dependent on the employer for which the individual performs work shall be determined by factors showing dependence, which non-exclusive factors shall include:
1. The degree of control the alleged employer exercises over the individual,
 2. The individual's opportunity for profit or loss and the individual's investment in the business,
 3. The degree of skill required to perform the work,
 4. The permanence of the working relationship, and
 5. The extent to which the work performed is an integral part of the alleged employer's business.
- B. An individual that works for another person without any express or implied compensation agreement is not an employee under the Act. This may include an individual that volunteers to work for civic, charitable, or humanitarian reasons that are offered freely and without direct or implied pressure or coercion from an employer, provided that the volunteer is not otherwise employed by the employer to perform the same type of services as those which the individual proposes to volunteer.
- C. An individual that works for another individual as a babysitter on a casual basis and whose vocation is not babysitting, is not an employee under the Act even if the individual performs other household work not related to caring for the children, provided the household work does not exceed 20% of the total hours worked on the particular babysitting assignment.

Historical Note

New Section made by emergency rulemaking at 13 A.A.R. 473, effective January 25, 2007 for 180 days (Supp. 07-1). Emergency renewed at 13 A.A.R. 2785, effective July 17, 2007 for 180 days (Supp. 07-3). New Section made by final rulemaking at 13 A.A.R. 4315, effective January 13, 2008 (Supp. 07-4).

R20-5-1206. Payment of Minimum Wage; Commissions; Tips

- A. Subject to the requirements of the Act and this Article, no less than the minimum wage shall be paid for all hours worked, regardless of the frequency of payment and regardless of whether the wage is paid on an hourly, salaried, commissioned, piece rate, or any other basis.
- B. If the combined wages of an employee are less than the applicable minimum wage for a work week, the employer shall pay monetary compensation already earned, and no less than the difference between the amounts earned and the minimum wage as required under the Act.

- C. The workweek is the basis for determining an employee's hourly wage. Upon hire, an employer shall advise the employee of the employee's designated workweek. Once established, an employer shall not change or manipulate an employee's workweek to evade the requirements of the Act.
- D. In computing the minimum wage, an employer shall consider only monetary compensation and shall count tips and commissions in the workweek in which the tip or commission is earned.
- E. An employer is allowed to:
1. Require or permit employees to pool, share, or split tips; and
 2. Require an employee to report tips to the employer in order to meet reporting requirements of this Article and federal law.

Historical Note

New Section made by emergency rulemaking at 13 A.A.R. 473, effective January 25, 2007 for 180 days (Supp. 07-1). Emergency renewed at 13 A.A.R. 2785, effective July 17, 2007 for 180 days (Supp. 07-3). New Section made by final rulemaking at 13 A.A.R. 4315, effective January 13, 2008 (Supp. 07-4).

R20-5-1207. Tip Credit Toward Minimum Wage

- A. In this Section, unless the context otherwise requires, "customarily and regularly" means receiving tips on a consistent and recurrent basis, the frequency of which may be greater than occasional, but less than constant, and includes the occupations of waiter, waitress, bellhop, busboy, car wash attendant, hairdresser, barber, valet, and service bartender.
- B. For purposes of calculating the permissible credit for tips under A.R.S. § 23-363(C), the following applies:
1. Tips are customarily and regularly received in the occupation in which the employee is engaged;
 2. Except as provided in R20-5-1206(E), the employee actually receives the tip free of employer control as to how the employee uses the tip and the tip becomes the employee's property;
 3. Employees who customarily and regularly receive tips may pool, share, or split tips between them, and the amount each employee actually retains is considered the tip of the employee who retains it;
 4. Employer-required sharing of tips with employees who do not customarily and regularly receive tips in the occupation in which the employee is engaged, including management or food preparers, are not credited toward that employee's minimum wage; and
 5. A compulsory charge for service imposed on a customer by an employer's establishment are not credited toward an employee's minimum wage unless the employer actually distributes the charge to the employee in the pay period in which the charge is earned.
- C. Upon hiring or assigning an individual to a position that customarily and regularly receives tips, an employer intending to exercise a tip credit shall provide written notice to the employee prior to exercising the tip credit. Thereafter, the employer shall notify the employee in writing each pay period of the amount per hour that the employer takes as a tip credit.

Historical Note

New Section made by emergency rulemaking at 13 A.A.R. 473, effective January 25, 2007 for 180 days (Supp. 07-1). Emergency renewed at 13 A.A.R. 2785, effective July 17, 2007 for 180 days (Supp. 07-3). New Section made by final rulemaking at 13 A.A.R. 4315,

effective January 13, 2008 (Supp. 07-4).

R20-5-1208. Posting Requirements

Every employer subject to the Act shall place a poster prescribed by the Department informing employees of their rights under the Act in a conspicuous place in every establishment where employees are employed and where notices to employees are customarily placed. The employer shall ensure that the notice is not removed, altered, defaced, or covered by other material.

Historical Note

New Section made by emergency rulemaking at 13 A.A.R. 473, effective January 25, 2007 for 180 days (Supp. 07-1). Emergency renewed at 13 A.A.R. 2785, effective July 17, 2007 for 180 days (Supp. 07-3). New Section made by final rulemaking at 13 A.A.R. 4315, effective January 13, 2008 (Supp. 07-4).

R20-5-1209. Records Availability

- A. Each employer shall keep the records required under the Act and this Article safe and accessible at the place or places of employment, or at one or more established central recordkeeping offices where the records are customarily maintained. When the employer maintains the records at a central recordkeeping office other than in the place or places of employment, the employer shall make the records available to the Department within 72 hours following notice from the Department.
- B. Employers who use microfilm or another method for recordkeeping purposes shall make available to the Department any equipment that is necessary to facilitate inspection and copying of the records.
- C. Each employer required to maintain records under the Act shall make enlargement, recomputation, or transcription of the records and shall submit to the Department the records or reports in a readable format upon the Department's written request.

Historical Note

New Section made by emergency rulemaking at 13 A.A.R. 473, effective January 25, 2007 for 180 days (Supp. 07-1). Emergency renewed at 13 A.A.R. 2785, effective July 17, 2007 for 180 days (Supp. 07-3). New Section made by final rulemaking at 13 A.A.R. 4315, effective January 13, 2008 (Supp. 07-4).

R20-5-1210. General Recordkeeping Requirements

- A. Payroll records required to be kept under the Act include:
 1. All time and earning cards or sheets on which are entered the daily starting and stopping time of individual employees, or of separate work forces, or the amounts of work accomplished by individual employees on a daily, weekly, or pay period basis (for example, units produced) when those amounts determine in whole or in part the pay period wages of those employees;
 2. From their last effective date, all wage-rate tables or schedules of the employer that provide the piece rates or other rates used in computing wages; and
 3. Records of additions to or deductions from wages paid and records that support or corroborate the additions or deductions.
- B. Except as otherwise provided in this Section, every employer shall maintain and preserve payroll or other records containing the following information and data with respect to each employee to whom the Act applies:
 1. Name in full, and on the same record, the employee's identifying symbol or number if it is used in place of the employee's name on any time, work, or payroll record;
 2. Home address, including zip code;

3. Date of birth, if under 19;
 4. Occupation in which employed;
 5. Time of day and day of week on which the employee's workweek begins. If the employee is part of a workforce or employed in or by an establishment all of whose workers have a workweek beginning at the same time on the same day, then a single notation of the time of the day and beginning day of the workweek for the whole workforce or establishment is permitted;
 6. Regular hourly rate of pay for any workweek and an explanation of the basis of pay by indicating the monetary amount paid on a per hour, per day, per week, per piece, commission on sales, or other basis, including the amount and nature of each payment;
 7. Hours worked each workday and total hours worked each workweek;
 8. Total daily or weekly straight-time wages due for hours worked during the workday or workweek, exclusive of premium overtime compensation;
 9. Total premium pay for overtime hours and an explanation of how the premium pay was calculated exclusive of straight-time wages for overtime hours recorded under subsection (B)(8) of this Section;
 10. Total additions to or deductions from wages paid each pay period including employee purchase orders or wage assignments, including, for individual employee records, the dates, amounts, and nature of the items that make up the total additions and deductions;
 11. Total wages paid each pay period; and
 12. Date of payment and the pay period covered by payment.
- C. For an employee who is compensated on a salary basis at a rate that exceeds the minimum wage required under the Act and who, under 29 CFR 541, is an exempt bona fide executive, administrative, or professional employee, including an employee employed in the capacity of academic administrative personnel or teachers in elementary or secondary schools, or in outside sales, an employer shall maintain and preserve:
 1. Records containing the information and data required under subsections (B)(1) through (B)(5), (B)(11) and (B)(12) of this Section; and
 2. Records containing the basis on which wages are paid in sufficient detail to permit a determination or calculation of whether the salary received exceeds the minimum wage required under the Act, including a record of the hours upon which payment of the salary is based, whether full time or part time.
 - D. With respect to employees working on fixed schedules, an employer may maintain records showing instead of the hours worked each day and each workweek as required under this Section, the schedule of daily and weekly hours the employee normally works, provided:
 1. In weeks in which an employee adheres to this schedule, the employer indicates by check mark, statement, or other method, that the employee actually worked the hours; and
 2. In weeks in which more or fewer than the scheduled hours are worked, the employer records the number of hours actually worked each day and each week.
 - E. With respect to an employee that customarily and regularly receives tips, the employer shall ensure that the records required under this Article include the following information:
 1. A symbol, letter, or other notation placed on the pay records identifying each employee whose wage is determined in part by tips;
 2. Amount of tips the employee reports to the employer;
 3. The hourly wage of each tipped employee after taking into consideration the employee's tips;

4. Hours worked each workday in any occupation in which the employee does not receive tips, and total daily or week straight-time payment made by the employer for the hours;
 5. Hours worked each workday in occupations in which the employee receives tips and total daily or weekly straight-time wages for the hours; and
 6. Copy of the notice required under R20-5-1207(C).
- F. An employer who makes retroactive payment of wages, voluntarily or involuntarily, shall record on the pay records, the amount of the payment to each employee, the period covered by the payment, and the date of payment.

Historical Note

New Section made by emergency rulemaking at 13 A.A.R. 473, effective January 25, 2007 for 180 days (Supp. 07-1). Emergency renewed at 13 A.A.R. 2785, effective July 17, 2007 for 180 days (Supp. 07-3). New Section made by final rulemaking at 13 A.A.R. 4315, effective January 13, 2008 (Supp. 07-4).

R20-5-1211. Administrative Complaints

- A. A person or organization alleging a minimum wage violation, shall file a complaint with the Labor Department within one year from the date the wages were due.
- B. A person or organization alleging retaliation shall file a complaint with the Labor Department within one year from the date the alleged violation occurred or when the employee knew or should have known of the alleged violation.
- C. The person or organization filing a complaint with the Labor Department shall sign the complaint.
- D. Any person or organization other than an affected employee who files a complaint shall include the names of affected employees.
- E. For good cause, and upon its own complaint, the Department may investigate violations under the Act.

Historical Note

New Section made by emergency rulemaking at 13 A.A.R. 473, effective January 25, 2007 for 180 days (Supp. 07-1). Emergency renewed at 13 A.A.R. 2785, effective July 17, 2007 for 180 days (Supp. 07-3). New Section made by final rulemaking at 13 A.A.R. 4315, effective January 13, 2008 (Supp. 07-4).

R20-5-1212. Conduct that Hinders Investigation

An employer hinders an investigation under the Act if the employer engages in conduct, or causes another person to engage in conduct, that delays or otherwise interferes with the Department's investigation, including:

1. Obstructing or refusing to admit the Department to any place of employment authorized under the Act;
2. Obstructing or refusing to permit interviews authorized under the Act;
3. Failing to make, keep, or preserve records required under the Act or this Article;
4. Failing to permit the review and copying of records required under the Act and this Article; and
5. Falsifying any record required under the Act or this Article.

Historical Note

New Section made by emergency rulemaking at 13 A.A.R. 473, effective January 25, 2007 for 180 days (Supp. 07-1). Emergency renewed at 13 A.A.R. 2785, effective July 17, 2007 for 180 days (Supp. 07-3). New Section made by final rulemaking at 13 A.A.R. 4315,

effective January 13, 2008 (Supp. 07-4).

R20-5-1213. Findings and Order Issued by the Department

- A. Except as provided in R20-5-1219, after receipt of a complaint alleging a violation of the minimum wage requirement of the Act, or alleging retaliation under the Act, the Department shall issue a Findings and Order of its determination. The Department shall send its Findings and Order to both the employer and the complainant at their last known addresses served personally or by regular first class mail. If the complaint named affected employees, the Department may send a copy of its Findings and Order to the affected employees.
- B. If the Department determines that an employer has violated the minimum wage payment requirement, the Department shall order the employer to pay the employee, and if applicable, affected employees, the balance of the wages owed, including interest at the legal rate and an additional amount equal to twice the underpaid wages.
- C. If the Department determines that a retaliation violation has occurred, the Department shall direct the employer or other person to cease and desist from the violation and may take action necessary to remedy the violation, including:
 1. Rehiring or reinstatement,
 2. Reimbursement of lost wages and interest,
 3. Payment of penalty to employees or affected employees as provided for in the Act and this Article, and
 4. Posting of notices to employees.
- D. If the Department determines that no retaliation has occurred the Department shall notify the parties and shall dismiss the complaint without prejudice. After notification of the Department's determination, the complainant may bring a civil action under A.R.S. § 23-364(E).
- E. The Department may assess civil penalties for recordkeeping, posting, and other violations under the Act and this Article as part of a Findings and Order issued under subsection (A) or the civil penalties and other violations may be assessed as a separate Findings and Order. If issued as a separate Findings and Order, the Department shall serve, personally or by regular first class mail, the Findings and Order on the employer and, if a complaint has been filed, the complainant.
- F. The Director of the Department shall sign the written Findings and Order issued by the Department.
- G. If an employer does not comply with a Findings and Order issued by the Department within 10 days following finality of the Findings and Order, the Department may refer the matter to a law enforcement officer.

Historical Note

New Section made by emergency rulemaking at 13 A.A.R. 473, effective January 25, 2007 for 180 days (Supp. 07-1). Emergency renewed at 13 A.A.R. 2785, effective July 17, 2007 for 180 days (Supp. 07-3). New Section made by final rulemaking at 13 A.A.R. 4315, effective January 13, 2008 (Supp. 07-4).

R20-5-1214. Review of Department Findings and Order; Hearings; Issuance of Decision Upon Hearing

- A. Except as provided in R20-5-1213(D), a party aggrieved by a Findings and Order issued by the Department may request a hearing by filing a written request for hearing with the Department within 30 days after the Findings and Order is served upon the party. Failure to timely file a request for hearing means that the Findings and Order issued by the Department is final and res judicata to all parties.
- B. A request for hearing shall be in writing and contain:
 1. The name and address of the party requesting the hearing,
 2. The signature of the party or the party's authorized representative, and

3. A statement that a hearing is requested.
- C. Upon receipt of a timely filed request for hearing, the Department shall refer the matter to the Administrative Law Judge Division of the Commission for hearing.
- D. Except as otherwise provided in this Section, the hearing shall be conducted under A.R.S. § 41-1061 et seq.
- E. A person submitting correspondence or other documents, including subpoena requests, to an administrative law judge concerning a matter pending before the administrative law judge, shall contemporaneously serve a copy of the correspondence or other document upon all other parties, or if represented, the parties' authorized representative.
- F. The administrative law judge may dismiss a request for hearing when it appears to the judge's satisfaction that the parties have resolved the disputed issue or issues.
- G. The administrative law judge shall issue a written decision upon hearing containing findings of fact and conclusions of law no later than 30 days after the matter is submitted for decision. The decision shall be sent to the parties at their last known addresses served personally or by regular first class mail.
- H. A decision issued under this Section is final when entered unless a party files a request for rehearing or review as provided in R20-5-1215 or commences an action in the Superior Court as provided in R20-5-1216 and A.R.S. § 12-901 et seq. The decision shall contain a statement explaining the review rights of a party.

Historical Note

New Section made by emergency rulemaking at 13 A.A.R. 473, effective January 25, 2007 for 180 days (Supp. 07-1). Emergency renewed at 13 A.A.R. 2785, effective July 17, 2007 for 180 days (Supp. 07-3). New Section made by final rulemaking at 13 A.A.R. 4315, effective January 13, 2008 (Supp. 07-4).

R20-5-1215. Request for Rehearing or Review of Decision Upon Hearing

- A. A party may request rehearing or review of a decision issued under R20-5-1214 by filing with the Administrative Law Judge a written request for rehearing or review no later than 15 days after the written decision is served personally or by regular first class mail upon the parties.
- B. A request for rehearing or review shall be based upon any of the following causes that materially affected the rights of an aggrieved party:
1. Irregularities in the hearing proceeding or any order, or abuse of discretion that deprives a party seeking review of a fair hearing;
 2. Accident or surprise that could not have been prevented by ordinary prudence;
 3. Newly discovered material evidence that could not have been discovered with reasonable diligence and produced at the hearing;
 4. Error in the admission or rejection of evidence, or errors of law occurring at the hearing;
 5. Bias or prejudice of the Department or administrative law judge; and
 6. The findings of fact or conclusions of law contained in the decision are not justified by the evidence or are contrary to law.
- C. A request for rehearing or review shall state the specific facts and law in support of the request and shall specify the relief sought by the request.
- D. A party shall have 15 days from the date of the filing of a request for rehearing or review to file a written response. Failure to respond shall not be deemed an admission against interest.

- E. The administrative law judge shall issue a decision upon review no later than 30 days after receiving a request for review or response, if one is filed.
- F. A decision upon review is final unless a party seeks judicial review as provided in R20-5-1216.

Historical Note

New Section made by emergency rulemaking at 13 A.A.R. 473, effective January 25, 2007 for 180 days (Supp. 07-1). Emergency renewed at 13 A.A.R. 2785, effective July 17, 2007 for 180 days (Supp. 07-3). New Section made by final rulemaking at 13 A.A.R. 4315, effective January 13, 2008 (Supp. 07-4).

R20-5-1216. Judicial Review of Decision Upon Hearing or Decision Upon Review

- A. A party aggrieved by a decision upon hearing issued under R20-5-1214 or a decision upon review issued under R20-5-1215 may seek review by commencing an action in the Superior Court as provided in A.R.S. § 12-901 et seq. within 35 days from the date a copy of the decision sought to be reviewed is served personally or by regular first class mail upon the party affected.
- B. A decision upon hearing issued under R20-5-1214 or a decision upon review issued under R20-5-1215 is final unless a party seeks judicial review as provided under A.R.S. § 12-901 et seq.

Historical Note

New Section made by emergency rulemaking at 13 A.A.R. 473, effective January 25, 2007 for 180 days (Supp. 07-1). Emergency renewed at 13 A.A.R. 2785, effective July 17, 2007 for 180 days (Supp. 07-3). New Section made by final rulemaking at 13 A.A.R. 4315, effective January 13, 2008 (Supp. 07-4).

R20-5-1217. Assessment of Civil Penalties Under A.R.S. § 23-364(F)

The Department may assess civil penalties for violations of the Act and this Article, including the assessment of civil penalties for engaging in conduct that hinders an investigation of the Department as specified in R20-5-1212.

Historical Note

New Section made by emergency rulemaking at 13 A.A.R. 473, effective January 25, 2007 for 180 days (Supp. 07-1). Emergency renewed at 13 A.A.R. 2785, effective July 17, 2007 for 180 days (Supp. 07-3). New Section made by final rulemaking at 13 A.A.R. 4315, effective January 13, 2008 (Supp. 07-4).

R20-5-1218. Collection of Wages or Penalty Payments Owed

- A. Upon determination that wages or penalty payments are due and unpaid to any employee, the employee may, or the Department may on behalf of an employee, obtain judgment and execution, garnishment, attachment, or other available remedies for collection of unpaid wages and penalty payments established by a final Findings and Order of the Department.
- B. If payment cannot be made to the employee, the Department shall receive monetary compensation or penalty payments on behalf of the employee and transmit monies it receives as payment in a special state fund as provided in A.R.S. § 23-356(C).
- C. The Department may amend a Findings and Order to conform to the legal name of the business or the person who is the defendant employer to a complaint under the Act, provided service of the Findings and Order was made on the defendant or the defendant's agent. If a judgment has been entered on the

order, the Department may apply to the clerk of the superior court to amend a judgment that has been issued under a final order, provided service was made on the defendant or the defendant's agent.

Historical Note

New Section made by emergency rulemaking at 13 A.A.R. 473, effective January 25, 2007 for 180 days (Supp. 07-1). Emergency renewed at 13 A.A.R. 2785, effective July 17, 2007 for 180 days (Supp. 07-3). New Section made by final rulemaking at 13 A.A.R. 4315, effective January 13, 2008 (Supp. 07-4).

R20-5-1219. Resolution of Disputes

Notwithstanding any other provision of law, the Department may mediate and conciliate a dispute between the parties.

Historical Note

New Section made by emergency rulemaking at 13 A.A.R. 473, effective January 25, 2007 for 180 days (Supp. 07-1). Emergency renewed at 13 A.A.R. 2785, effective July 17, 2007 for 180 days (Supp. 07-3). New Section made by final rulemaking at 13 A.A.R. 4315, effective January 13, 2008 (Supp. 07-4).

R20-5-1220. Small Employer Request for Exception to Recordkeeping Requirements

- A. In this Section, unless context otherwise requires, "small employer" means a corporation, proprietorship, partnership, joint venture, limited liability company, trust, or association that has less than \$500,000 in gross annual revenue.
- B. A small employer, or any category of small employer that is unreasonably burdened by the recordkeeping requirements of the Act and this Article may file a written petition for exception with the Department requesting relief from certain recordkeeping requirements under this Article. The petition shall:
1. State the reasons for the request for relief;
 2. State an alternate manner or method of making, keeping, and preserving records that will enable the Department to determine hours worked and wages paid; and
 3. Include the signature of the employer or an authorized representative of the employer.
- C. Subject to any conditions or limitations necessary to ensure fulfillment of the purpose and intent of Act, the Department may grant a petition for exception if it finds that:
1. The small employer, or category of small employer is unreasonably burdened by the recordkeeping requirements of the Act and this Article; and
 2. The relief requested and alternative proposed will not hinder the Department's enforcement of the Act and this Article.
- D. For good cause, the Department may rescind a prior order granting relief under this Section.
- E. Relief under this Section is effective upon the Department's written authorization.

Historical Note

New Section made by emergency rulemaking at 13 A.A.R. 473, effective January 25, 2007 for 180 days (Supp. 07-1). Emergency renewed at 13 A.A.R. 2785, effective July 17, 2007 for 180 days (Supp. 07-3). New Section made by final rulemaking at 13 A.A.R. 4315, effective January 13, 2008 (Supp. 07-4).

ARTICLE 13. TREATMENT GUIDELINES

R20-5-1301. Adoption and Applicability of the Article

- A. The Industrial Commission of Arizona (Commission) has adopted the Work Loss Data Institute's *Official Disability*

Guidelines – Treatment in Workers Compensation (ODG) as the standard reference for evidence-based medicine used in treating injured workers within the context of Arizona's workers' compensation system. By adopting and referencing the most recent edition (at the time of treatment), and continuously updated *Official Disability Guidelines*, the Commission can ensure the latest available medical evidence is used in making medical treatment decisions for injured workers.

- B. Until further action of the Commission, the guidelines shall apply to the management of chronic pain and the use of opioids for all stages of pain management. For purposes of this process, chronic pain shall be defined by the guidelines.
- C. The Commission may modify or change the applicability of the guidelines as described in subsection (B) if the Commission determines that modification or changing the applicability of the guidelines will: 1) improve medical treatment for injured workers, 2) make treatment and claims processing more efficient and cost effective, and 3) the guidelines adequately cover the body parts or conditions. Before taking action to modify or change the applicability of the guidelines, the Commission shall provide an opportunity for public comment and hold a public hearing. A decision of the Commission under this subsection shall be made by a majority vote of a quorum of Commission members present at a public meeting.
- D. Action taken by the Commission to modify or change the applicability of the guidelines under subsection (C) shall be published in the minutes of the Commission meeting when such action was taken. The minutes of this action shall be published on the Commission's website and shall be available from the Commission upon request.
- E. The guidelines shall apply prospectively. Recommendations provided in the guidelines shall apply to medical treatment or services occurring on or after the effective date of this Article.
- F. This Article applies to all claims filed with the Commission.
- G. This Article only applies to medical treatment and services for body parts and conditions that have been accepted as compensable.
- H. The guidelines are to be used as a tool to support clinical decision making and quality health care delivery to injured employees. The guidelines set forth care that is generally considered reasonable and are presumed correct if the guidelines provide recommendations related to the requested treatment or service. This is a rebuttable presumption and reasonable medical care may include deviations from the guidelines. To support a request to deviate from the guidelines, the provider must produce documentation and justification that demonstrates by a preponderance of credible medical evidence a medical basis for departing from the guidelines. Credible medical evidence may include clinical expertise and judgment.
- I. The Commission shall provide administrative review and oversight of this Article.

Historical Note

New Section made by final rulemaking at 22 A.A.R. 1730, effective October 1, 2016 (Supp. 16-2).

R20-5-1302. Definitions

In this Article, unless the context otherwise requires:

"Act" means the Arizona Workers' Compensation Act, A.R.S. Title 23, Ch. 6, Articles 1 through 11.

"Active Practice" means performing patient care for a minimum of eight hours per week in one of the five preceding years.

"Administrative Law Judge" or "ALJ" means a hearing officer appointed under A.R.S. § 23-108.02.

administration shall be responsible for reimbursing the hospital for the entire length of stay under the DRG payment rules in sections R9-22-712.60 through R9-22-712.81.

- B. When a member’s enrollment changes during an inpatient stay, the hospital shall use the date of enrollment with the payer responsible on the date of discharge as the “from” date of service on the claim regardless of the date of admission. ~~The claim may include all surgical procedures performed during the entire inpatient stay, but the hospital shall only include revenue codes, service units, and charges for services performed on or after the date of enrollment.~~
- C. Interim claims submitted to a payer other than the payer responsible on the day of discharge shall be processed in the same manner as other interim claims as described in R9-22-712.76.

R9-22-712.80. DRG Reimbursement: New Hospitals

- A. DRG base payment for new hospitals. For any hospital that does not have a labor share or wage index published by CMS as described in section R9-22-712.62(B) because the hospital was not in operation, the DRG base rate described in section R9-22-712.62(B) shall be calculated as the statewide standardized amount of ~~\$5,295.40~~ after adjusting that amount for the labor-related share and the wage index published by CMS as described in section R9-22-712.62(B) that is appropriate to the location of the hospital published by CMS as described in section R9-22-712.62(B).
- B. Outlier calculations for new hospitals. For any hospital that does not have an operating cost-to-charge ratio listed in the impact file described in section R9-22-712.68(B) because the hospital was not in operation prior to the publication of the impact file, the statewide urban or rural default operating cost-to-charge ratio appropriate to the location of the hospital and the statewide capital cost-to-charge ratio shall be used to determine the unadjusted outlier add-on payment. The statewide urban or rural default operating cost-to-charge ratio and the statewide capital cost-to-charge ratio shall be based on the ratios published by CMS and updated by the Administration as described in section R9-22-712.68(C).
- C. In addition to the requirement of this section, DRG reimbursement for new hospitals is determined under R9-22-712.60 through R9-22-712.79.

R9-22-712.81. DRG Reimbursement: Updates

In addition to the other updates provided for in sections R9-22-712.60 through R9-22-712.80, the Administration may update the version of the APR-DRG classification system established by 3M Health Information Systems, adjust the statewide standardized amount in section R9-22-712.62, the base payments in sections R9-22-712.63 and R9-22-712.64, the provider policy adjustor in section R9-22-712.65, service policy adjustors section R9-22-712.66, and the fixed loss amounts and marginal cost percentages used to calculate the outlier threshold in section R9-22-712.68 to the extent necessary to assure that payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available at least to the extent that such care and services are available to the general population in the geographic area. The Administration shall publish any proposed classification system on the agency’s website at least 30 days prior to the effective date, to ensure a sufficient period for public comment, as required by 42 C.F.R. § 447.205. In addition, the public notice shall be available for inspection during normal business hours at 701 E. Jefferson, Phoenix, Arizona. The requirements of 42 C.F.R. § 447.205 as of November 2, 2015 are incorporated by reference and do not include any later amendments.

**NOTICE OF FINAL RULEMAKING
TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE
CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA**

[R17-201]

- | <u>1. Article, Part, or Section Affected (as applicable)</u> | <u>Rulemaking Action</u> |
|--|--------------------------|
| Article 12 | Amend |
| R20-5-1201 | Amend |
| R20-5-1202 | Amend |
| R20-5-1205 | Amend |
| R20-5-1206 | Amend |
| R20-5-1208 | Amend |
| R20-5-1209 | Amend |
| R20-5-1210 | Amend |
| R20-5-1211 | Amend |
| R20-5-1213 | Amend |
| R20-5-1218 | Amend |
- 2. Citations to agency’s statutory rulemaking authority to include both the authorizing statute (general) and the implementing statute (specific):**
 Authorizing statutes: A.R.S. §§ 23-364,23-376
 Implementing statutes: A.R.S. Title 23, Chapter 2, Articles 8 and 8.1
 - 3. The effective date of the rule:**
 October 3, 2017.
 The Industrial Commission of Arizona (the “Commission”) requests an immediate effective date under A.R.S. § 41-1032(A)(1) (“[t]o preserve the public peace, health or safety”) and (A)(3) (“[t]o comply with deadlines in amendments to an agency’s governing statute . . . , if the need for an immediate effective date is not created due to the agency’s delay or inaction”).
 The Commission requests an immediate effective date under A.R.S. § 41-1032(A)(1) (“[t]o preserve the public peace, health or safety”) and (A)(3) (“[t]o comply with deadlines in amendments to an agency’s governing statute . . . , if the need



for an immediate effective date is not created due to the agency’s delay or inaction”). Arizona voters approved Proposition 206, the Fair Wages and Healthy Families Act (the “Act”), in November 2016, and the Act’s minimum wage and earned paid sick time provisions went into effect on January 1 and July 1, 2017, respectively. In title and substance, the Act concerns the health of Arizona citizens. The Commission anticipates that the proposed rulemaking will facilitate broader employer compliance with the Act, thereby promoting public health. In addition, the Act fundamentally alters the Commission’s governing statutes by tasking it with enforcement of the Act’s earned paid sick time provisions, effective July 1, 2017. The Commission has worked diligently and transparently to craft rules that add clarity to the Act, ease the burdens of compliance for Arizona employers, and preserve the rights granted to employees by the Act. To assist the Commission in complying with its statutory enforcement obligations and to promote the health of Arizona citizens, the Commission requests an immediate effective date.

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

- Notice of Rulemaking Docket Opening: 23 A.A.R. 1047, May 5, 2017
- Notice of Proposed Rulemaking: 23 A.A.R. 1019, May 5, 2017
- Notice of Supplemental Proposed Rulemaking: 23 A.A.R. 1799, July 7, 2017

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

Name: Steven Welker
 Address: Industrial Commission of Arizona
 Labor Department
 800 W. Washington St., Suite 303
 Phoenix, AZ 85007
 Telephone: (602) 542-4515
 Fax: (602) 542-8097
 E-mail: PublicComments@azica.gov (include “Article 12 Notice of Final Rulemaking” in the subject line)

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

Arizona voters approved the Act in November 2016. The Act established a new state minimum wage effective January 1, 2017, and granted employees earned paid sick time rights effective July 1, 2017. The Act authorizes the Commission to “enforce and implement” both the minimum wage and earned paid sick time provisions and promulgate regulations consistent with the articles. *See* A.R.S. § 23-364(A); A.R.S. Title 23, Chapter 2, Articles 8 and 8.1. In the earned paid sick time context, the Act provides that “[t]he commission shall be authorized to coordinate implementation and enforcement of [Article 8.1, Earned Paid Sick Time] and shall promulgate appropriate guidelines or regulations for such purposes.” A.R.S. § 23-376.

Currently, the rules in Article 12—implemented in 2007 after the referendum that created the Arizona Minimum Wage Act—address only those procedures related to the enforcement and implementation of minimum wage law. Because the Commission is now statutorily tasked with implementing, enforcing, and regulating the Act’s earned paid sick time provisions, the Commission is proposing to amend existing rules in Article 12 to address matters related to earned paid sick time. *See infra* § 10.

In addition to amendments related to the Act’s earned paid sick time provisions, the proposed rulemaking conforms the independent contractor analysis to factors outlined in A.R.S. §§ 23- 902(D) and 23-1601(B); defines “small employer” and exempts “small employers” from the Act’s posting requirements; amends R20-5-1209 to conform to current technologies, and includes various non-substantive amendments.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

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

8. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

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

The proposed rulemaking is primarily responsive to the Act, and, as such, creates minimal economic, small business, or consumer impact beyond that already created by the Act. To the extent that the proposed rulemaking creates any impact beyond the Act, the Commission anticipates that the proposed amendments will reduce regulatory burden on employers by aligning Article 12 with current Arizona statutes and providing clarifications that reduce uncertainty for Arizona employers and employees. Among its provisions, the proposed rulemaking includes: (1) definitions (including “employee’s regular paycheck,” “health care professional,” and “smallest increment that the employer’s payroll system uses to account for absences or use of other time”) that offer clarity for employers and employees and reduce burden; (2) methods for calculating hourly rates of pay for various employee types, reducing the likelihood of disputes between employers and employees; and (3) allowance of front-loading options that exceed the accrual and carry-over requirements in the Act without burdening employers with recordkeeping requirements that provide no benefit to employees. In addition, the proposed rulemaking reduces the regulatory burden on “small employers” by waiving posting requirements pursuant to A.R.S. § 23-364(D) (*see* proposed amendment to R20-5-1208). The proposed amendments will reduce regulatory burden while achieving the Commission’s regulatory objectives as prescribed by the Act.

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

The Commission made significant substantive changes to the proposed rulemaking in its Notice of Supplemental Proposed Rulemaking. These changes were primarily prompted by public comments received after the Commission published its May 5, 2017 Notice of Proposed Rulemaking. The Notice of Supplemental Proposed Rulemaking included the following substantive changes:

Generally

- Where necessary, included “equivalent paid time off” when referencing earned paid sick time.

R20-5-1202

- Amended the rule to apply definitions found in the Act to Article 12 and apply the definitions in Article 12 to the Act.
- Added the following definitions:
 - “Amount of earned paid sick time available to the employee”;
 - “Amount of earned paid sick time taken by the employee to date in the year”;
 - “Amount of pay the employee has received as earned paid sick time”;
 - “Employee’s regular paycheck”;
 - “Equivalent paid time off”;
 - “Health care professional”;
 - “Smallest increment that the employer’s payroll system uses to account for absences or use of other time”
- Amended and reorganized the definition of “same hourly rate,” as follows: (1) modified the methods for determining “same hourly rate” to result in hourly rates, not lump sums; (2) added a reference to minimum wage in each method of determining “same hourly rate”; (3) amended the method for determining “same hourly rate” for salaried employees; (4) modified and added an option for determining “same hourly rate” for commission, piece-rate, or fee-for-service employees; and (5) added language to subsection 25(f)(ii) referencing subsection 25(e).

R20-5-1206

- Changed Section title to reference the ability to “front load” earned paid sick time.
- Added subsections (F, G, and H) to address procedures for “front loading” earned paid sick time and the effect of “front loading” on accrual and carry over.
- Amended prior proposed subsection (H) (now subsection [I]) to address: (1) an employer’s carry over obligations; (2) an employer’s ability to permit greater carry over than that required by the Act; and (3) the impact of carry over on accrual, usage rights, and usage limits.

R20-5-1210

- Added reference in subsection (B) to the collective bargaining agreement exception found in A.R.S. § 23-381.
- Deleted subsections (B)(13) and (B)(14) and replaced with subsections (B)(13) through (B)(16), which: (1) make earned paid sick time recordkeeping requirements consistent with A.R.S. § 23-375’s notice requirements; (2) add a requirement to maintain records concerning employees’ earned paid sick time balances; and (3) define the phrase “[t]he employee’s earned paid sick time balance.”
- Amended subsection (C)(1) to reference the changes to subsection (B).

R20-5-1218

- Changed Section title to reference earned paid sick time and equivalent paid time off.

11. An agency’s summary of the public or stakeholder comments made about the rulemaking:

The Commission received numerous public and stakeholder comments in response to its May 5, 2017 Notice of Proposed Rulemaking. Based on these comments, the Commission made significant substantive changes to the proposed rules via its July 7, 2017 Notice of Supplemental Proposed Rulemaking. The Notice of Supplemental Rulemaking addressed the majority of the previously-submitted comments and rendered other comments moot. During the public comment period following publication of the Notice of Supplemental Proposed Rulemaking, the Commission received additional comments, only one of which reiterated a comment raised during the initial comment period. The Commission will therefore address those comments submitted after publication of the Notice of Supplemental Proposed Rulemaking.

COMMENT 1: The proposed rules should include language permitting an employer to seek review from the Commission or the Superior Court.

A.A.C. R20-5-1214, R20-5-1215, and R20-5-1216, as currently written, provide Commission and Superior Court review rights. Additional rule changes concerning review rights is unnecessary.

COMMENT 2: Employers should not be required to report the information required by A.R.S. § 23-375(C) on an employee’s regular paycheck.

Comment 2 is not responsive to the proposed rulemaking, as it takes issue with the Act’s notice requirements. Nevertheless, in an attempt to alleviate employer burden without diminishing employee rights under the Act, the proposed rules define the term “employer’s regular paycheck” to include electronic payroll records.



COMMENT 3: The proposed rules should address the intersection of the Act's earned paid sick time provisions and federal laws (including the ADA and the FMLA) and other state laws that extend other protections to employees (including Arizona's workers' compensation laws).

The Act addresses potential conflicts between the Act and federal law in A.R.S. § 23-379, which provides that "[n]othing in this article shall be interpreted or applied so as to create a conflict with federal law." Section 23-379 also provides that the Act's earned paid sick time provisions "shall not be construed to preempt, limit, or otherwise affect the applicability of any other law . . . that extends other protections to employees." The Commission believes these statutory provisions adequately address the intersection of the Act's earned paid sick time provisions and related federal/state law. Although the Commission does not intend to promulgate rules addressing these issues, the Commission may provide additional guidance pursuant to A.R.S. § 23-376.

COMMENT 4: Proposed rule 1206(F) burdens employers by requiring that they track exempt employees' hours worked.

For over a decade, Arizona's administrative rules have required employers to track exempt employees' hours. Pursuant to A.A.C. R20-5-1210(C), employers are required to keep a "record of the hours upon which payment of [an exempt employee's] salary is based." Proposed rule 1206(F) is consistent with existing rules and adds no additional burden. In addition, eliminating this requirement would interfere with the Commission's statutorily-mandated duty to determine whether Arizona employers are complying with minimum wage and earned paid sick time requirements.

COMMENT 5: The proposed rules should require that employers use the higher of a base rate or minimum wage when determining a commissioned employee's hourly rate for earned paid sick time purposes.

The Act provides that earned paid sick time shall be "compensated at the same hourly rate . . . as the employee normally earns during hours worked." A.R.S. § 23-371. This language is somewhat incongruent in the context of commissioned employees, where employers may not have already established hourly rates for commissioned employees. To adequately address the treatment of commissioned employees, the proposed rules offer five methods for determining a commissioned employee's hourly rate (which are to be followed in priority order). See proposed rule 1202(25)(d). The first method is to use an agreed-upon hourly rate, which can be no less than minimum wage. Per the Commission's guidance, the Commission "will consider an employee-acknowledged policy concerning the hourly rate of pay adequate evidence of an agreement between employee and employer." See FREQUENTLY ASKED QUESTIONS (FAQS) ABOUT MINIMUM WAGE AND EARNED PAID SICK TIME (Rev. July 3, 2017) at https://www.azica.gov/sites/default/files/media/070317%20FREQUENTLY%20ASKED%20QUESTIONS_Masterw-TOC%20FINAL.pdf. Where an employer establishes an agreed-upon hourly rate that equals or exceeds minimum wage, and the employer pays the employee this rate for earned paid sick time, the employer will be in compliance with the Act. The proposed rules also provide flexibility in the event that an employer has not established an hourly base rate for commissioned employees. In such cases, the employer may determine a commissioned employee's hourly rate by utilizing the following (in priority order): (1) an hourly rate based on the amount the employee would have earned during the period earned paid sick time is used, if known; (2) an hourly rate based on the employer's reasonable estimation of the amount the employee would have earned during the period of earned paid sick time used; (3) an hourly rate based on the employee's earning over the previous 90 days, if the employee worked regularly during previous 90 days; and (4) an hourly rate based upon the employee's earnings over the previous year. The Commission believes the options outlined in proposed rule 1202(25) will assist employers in determining an accurate rate of pay for commissioned employees who use earned paid sick time, while still permitting employers to establish an hourly rate in the manner the commenter recommended.

COMMENT 6: The proposed rules' earned paid sick time calculation should not include shift differentials and premiums meant to compensate an employee for work performed under differing conditions (such as hazard pay or a shift differential for working at night) because it places undue burdens on employers by requiring different PTO rates and incentivizes the use of earned paid sick time during shifts that are subject to shift differentials or hazard pay.

The Act provides that earned paid sick time shall be "compensated at the same hourly rate . . . as the employee normally earns during hours worked." A.R.S. § 23-371. The Commission considers the inclusion of shift differentials and hazard pay necessary to accurately reflect an employee's hourly rate for earned sick time purposes. While the Commission recognizes that the inclusion of shift differentials and hazard pay may prevent an employer from using a singular hourly rate in the earned paid sick time context, the same burden exists when employers determine rates of pay for hours worked during overtime periods or holidays. The Commission's Notice of Supplemental Proposed Rulemaking qualifies the inclusion of differing condition pay by specifying that it need only be included "if the employee would have been entitled to the shift differential or premium for the period of time in which earned paid sick time or equivalent paid time off is used."

COMMENT 7: The rules should provide that union employers may establish a bank of accumulated earned paid sick time that short-term or itinerant union employees can take from union employer to union employer.

The Act does not contemplate the issue raised in Comment 7 and the proposed concept exceeds the scope of the Commission's authorizing and implementing statutes. The Act specifies that employees hired after July 1, 2017, are not entitled to use accrued earned paid sick time until the ninetieth calendar day after commencing employment (unless the employer permits otherwise). See A.R.S. § 23-372. Therefore, the Act already contemplates short-term or itinerant-worker employment and denies these employees access to accrued earned paid sick time before their ninetieth day of employment (unless the employer permits otherwise). Promulgating a rule that obviates this statutory provision by allowing employees to use earned paid sick time within the first 90 days of employment exceeds the Commission's authority. On the other hand, because A.R.S. § 23-381 provides employers subject to a collective bargaining agreement a method for opting out of the Act's earned paid sick time provisions, these employers could elect to opt out and instead adopt an earned paid sick time banking system, consistent with the commenter's requirements.

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

None

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

The amended rules do not require issuance of a regulatory permit or license.

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

Although federal law establishes a baseline for minimum wage, it does not preclude states from adopting a higher minimum wage. Nor does federal law address earned paid sick time. The proposed rule amendments implement Arizona's minimum wage and earned paid sick time provisions and do not implicate federal law.

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

No analysis was submitted.

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

None

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

Not applicable

15. The full text of the rules follows:

**TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE
CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA**

ARTICLE 12. ARIZONA MINIMUM WAGE ACT AND EARNED PAID SICK TIME PRACTICE AND PROCEDURE

Section

- R20-5-1201. Notice of Rules
- R20-5-1202. Definitions
- R20-5-1205. Determination of Employment Relationship
- R20-5-1206. Payment of Minimum Wage; Commissions; Tips; Front Loading Earned Paid Sick Time; Limitation on Carry Over of Unused Earned Paid Sick Time
- R20-5-1208. Posting Requirements; Small Employer Exemption
- R20-5-1209. Records Availability
- R20-5-1210. General Recordkeeping Requirements
- R20-5-1211. Administrative Complaints
- R20-5-1213. Findings and Order Issued by the Department
- R20-5-1218. Collection of Wages, Earned Paid Sick Time, Equivalent Paid Time Off, or Penalty Payments Owed

ARTICLE 12. ARIZONA MINIMUM WAGE ACT AND EARNED PAID SICK TIME PRACTICE AND PROCEDURE

R20-5-1201. Notice of Rules

- A. This Article applies to all actions and proceedings before the Industrial Commission of Arizona arising under the Raise the Arizona Minimum Wage for Working Arizonans Act, as added by 2006 Proposition 202, § 2 A.R.S. Title 23, Articles 8 and 8.1.
- B. The Industrial Commission of Arizona shall provide a copy of this Article upon request to any person free of charge.

R20-5-1202. Definitions

In this Article, the definitions of A.R.S. §§ 23-362 (version two), 23-371, and 23-364 apply. In addition, unless the context otherwise requires, the following definitions shall apply to both the Act and this Article:

1. "Act" means the Raise the Arizona Minimum Wage for Working Arizonans Act, as added by 2006 Proposition 202, § 2 A.R.S. Title 23, Chapter 2, Articles 8 and 8.1.
2. "Affected employee" means an employee or employees on whose behalf a complaint may be filed alleging a violation under the Act.
3. "Amount of earned paid sick time available to the employee" means the amount of earned paid sick time or equivalent paid time off that is available to the employee for use in the current year.
4. "Amount of earned paid sick time taken by the employee to date in the year" means the amount of earned paid sick time or equivalent paid time off taken by the employee to date in the current year. Where an employee has used available equivalent paid time off for either the purposes enumerated in A.R.S. § 23-373 or other purposes, the employer may count that usage towards the "amount of earned paid sick time taken by the employee to date in the year."
5. "Amount of pay the employee has received as earned paid sick time" means the amount of pay the employee has received as earned paid sick time or equivalent paid time off to date in the current year. Where an employee has received pay for equivalent



- paid time off for the purposes enumerated in A.R.S. § 23-373 or other purposes, the employer may count that pay towards the "amount of pay the employee has received as earned paid sick time."
- ~~3-6.~~ "Authorized representative" means a person prescribed by law to act on behalf of a party who files with the Department a written instrument advising of the person's authority to act on behalf of the party.
- ~~4-7.~~ "Casual Basis," when applied to babysitting services, means employment which is irregular or intermittent.
- ~~5-8.~~ "Commission" means monetary compensation based on:
- A percentage of total sales,
 - A percentage of sales in excess of a specified amount,
 - A fixed allowance per unit, or
 - Some other formula the employer and employee agree to as a measure of accomplishment.
9. "Communicable disease" has the meaning prescribed by A.R.S. § 36-661.
- ~~6-10.~~ "Complainant" means a person or organization filing an administrative complaint under the Act.
- ~~7-11.~~ "Department" means the Labor Department of the Industrial Commission of Arizona or other authorized division of the Industrial Commission as designated by the Industrial Commission.
12. "Earned sick time" under A.R.S. § 23-364(G) means earned paid sick time.
13. "Employee's regular paycheck" means a regular payroll record that is readily available to employees and contains the information required by A.R.S. § 23-375(C), including physical or electronic paychecks or paystubs.
14. "Equivalent paid time off" means paid time off provided under a paid leave policy, such as a paid time off policy, that makes available an amount of paid leave sufficient to meet the accrual requirements of the Act that may be used for the same purposes and under the same conditions as earned paid sick time.
- ~~8-15.~~ "Filing" means receipt of a report, document, instrument, videotape, audiotape, or other written matter at an office of the Department.
16. The term "health care professional" in A.R.S. § 23-373(G) has the same meaning as "health care professional" as defined in this Section.
17. "Health care professional" means any of the following:
- A "physician" as defined by A.R.S. § 36-2351;
 - A "physician assistant" as defined by A.R.S. § 32-2501;
 - A "registered nurse practitioner" as defined by A.R.S. § 32-1601.
 - A certified nurse midwife who is a registered nurse practitioner approved by the Arizona State Board of Nursing to provide primary care services during pregnancy, childbirth, and the postpartum period;
 - A dentist licensed under A.R.S. Title 32, Chapter 11, Article 2; or
 - A behavioral health provider practicing as:
 - A psychologist licensed under A.R.S. Title 32, Chapter 19.1;
 - A clinical social worker licensed under A.R.S. § 32-3293;
 - A marriage and family therapist licensed under A.R.S. § 32-3311; or
 - A professional counselor licensed under A.R.S. § 32-3301.
18. "Health care provider" has the meaning prescribed by A.R.S. § 36-661.
- ~~9-19.~~ "Hours worked" means all hours for which an employee covered under the Act is employed and required to give to the employer, including all time during which an employee is on duty or at a prescribed work place and all time the employee is suffered or permitted to work.
- ~~10-20.~~ "Minimum wage" means the lowest rate of monetary compensation required under the Act.
- ~~11-21.~~ "Monetary compensation" means cash or its equivalent due to an employee by reason of employment.
- ~~12-22.~~ "On duty" means time spent working or waiting that the employer controls and that the employee is not permitted to use for the employee's own purpose.
23. "Public benefits" has the same meaning as "state or local public benefit," as prescribed by A.R.S. § 1-502(I).
24. "Public health emergency" means a state of emergency declared by the governor in which there is an occurrence or imminent threat of an illness or health condition caused by bioterrorism, an epidemic or pandemic disease or a highly fatal infectious agent or biological toxin and that poses a substantial risk of a significant number of human fatalities or incidents of permanent or long-term disability.
25. "Same hourly rate" means the following:
- For employees paid on the basis of a single hourly rate, "same hourly rate" shall be the hourly rate the employee would have earned for the period of time in which earned paid sick time or equivalent paid time off is used, but shall in no case be less than minimum wage.
 - For employees who are paid multiple hourly rates of pay, "same hourly rate" shall be determined in the following order of priority, but shall in no case be less than minimum wage:

- i. The hourly rate the employee would have earned, if known, for each hour of earned paid sick time or equivalent paid time off used.
 - ii. The weighted average of all hourly rates of pay during the previous pay period.
 - c. For employees who are paid a salary, no additional pay is due when the employee's use of earned paid sick time or equivalent paid time off results in no reduction in the employee's regular salary during the pay period in which the earned paid sick time or equivalent paid time off is used. "Same hourly rate" for salaried employees shall be determined in the following order of priority, but shall in no case be less than minimum wage:
 - i. The wages an employee earns during each pay period covered by the salary divided by the number of hours agreed to be worked during each pay period, if the number of hours to be worked during each pay period was previously established.
 - ii. The wages an employee earns during each workweek covered by the salary in the current year divided by 40 hours.
 - d. For employees paid on a commission, piece-rate, or fee-for-service basis, "same hourly rate" shall be determined in the following order of priority, but shall in no case be less than minimum wage:
 - i. The hourly rate of pay previously agreed upon by the employer and the employee as: (1) a minimum hourly rate for work performed; or (2) an hourly rate for payment of earned paid sick time or equivalent paid time off.
 - ii. The wages that the employee would have been paid, if known, for the period of time in which earned paid sick time or equivalent paid time off is used, divided by the number of hours of earned paid sick time or equivalent paid time off used.
 - iii. A reasonable estimation of the commission, piece-rate, or fee-for-service compensation that the employee would have been paid for the period of time in which the earned paid sick time or equivalent paid time off is used, divided by the number of hours of earned paid sick time or equivalent paid time off used.
 - iv. The hourly average of all commission, piece-rate, or fee-for-service compensation that the employee earned during the previous 90 days, if the employee worked regularly during the previous 90-day period, based on: (1) hours that the employee actually worked; or (2) a 40-hour workweek.
 - v. The hourly average of all commission, piece-rate, or fee-for-service compensation that the employee earned during the previous 365 days, based on: (1) hours that the employee actually worked; or (2) a 40-hour workweek.
 - e. "Same hourly rate" includes shift differentials and premiums meant to compensate an employee for work performed under differing conditions (such as hazard pay or a shift differential for working at night) if the employee would have been entitled to the shift differential or premium for the period of time in which earned paid sick time or equivalent paid time off is used.
 - f. "Same hourly rate" does not include:
 - i. Additions to an employee's base rate for overtime or holiday pay;
 - ii. Subject to subsection (e), bonuses or other types of incentive pay; and
 - iii. Tips or gifts.
26. "Smallest increment that the employer's payroll system uses to account for absences or use of other time" means the smallest increment of time that an employer utilizes, by policy or practice, to account for absences or use of other paid time off.
- ~~13-27.~~ "Tip" means a sum that a customer presents as a gift in recognition of some service performed, and includes gratuities. The sum may be in the form of cash, amounts paid by bank check or other negotiable instrument payable at par, or amounts the employer transfers to the employee under directions from a credit customer who designates an amount to be added to a bill as a tip. Gifts in forms other than cash or its equivalent as described in this definition, including theater such as event tickets, passes, or merchandise, are not tips.
- ~~14-28.~~ "Violation" means a transgression of any statute or rule, or any part of a statute or rule, including both acts and omissions.
- ~~15-29.~~ "Willfully" means acting with actual knowledge of the requirements of the Act or this Article, or acting with reckless disregard of the requirements of the Act or this Article.
- ~~16-30.~~ "Workday" means any fixed period of 24 consecutive hours.
- ~~17-31.~~ "Workweek" means any fixed and regularly recurring period of seven consecutive workdays.

R20-5-1205. Determination of Employment Relationship

- A. Determination of an employment relationship under the Act, which includes whether an individual is an independent contractor, shall be based upon the economic realities of the relationship. Consideration of whether an individual is economically dependent on the employer for which the individual performs work shall be determined by factors showing dependence, which non-exclusive factors shall include: those factors identified in A.R.S. §§ 23-902(D) and 23-1601(B).
- 1. ~~The degree of control the alleged employer exercises over the individual;~~
 - 2. ~~The individual's opportunity for profit or loss and the individual's investment in the business;~~
 - 3. ~~The degree of skill required to perform the work;~~
 - 4. ~~The permanence of the working relationship; and~~
 - 5. ~~The extent to which the work performed is an integral part of the alleged employer's business.~~



- B. An individual ~~that who~~ works for another person without any express or implied compensation agreement is not an employee under the Act. This may include an individual that volunteers to work for civic, charitable, or humanitarian reasons that are offered freely and without direct or implied pressure or coercion from an employer, provided that the volunteer is not otherwise employed by the employer to perform the same type of services as those which the individual proposes to volunteer.
- C. An individual ~~that who~~ works for another individual as a babysitter on a casual basis and whose vocation is not babysitting, is not an employee under the Act even if the individual performs other household work not related to caring for the children, provided the household work does not exceed 20% of the total hours worked on the particular babysitting assignment.

R20-5-1206. Payment of Minimum Wage; Commissions; Tips; Front Loading Earned Paid Sick Time; Limitation on Carry Over of Unused Earned Paid Sick Time

- A. Subject to the requirements of the Act and this Article, no less than the minimum wage shall be paid for all hours worked, regardless of the frequency of payment and regardless of whether the wage is paid on an hourly, salaried, commissioned, piece rate, or any other basis.
- B. If the combined wages of an employee are less than the applicable minimum wage for a work week, the employer shall pay monetary compensation already earned, and no less than the difference between the amounts earned and the minimum wage as required under the Act.
- C. The workweek is the basis for determining an employee's hourly wage. Upon hire, an employer shall advise the employee of the employee's designated workweek. Once established, an employer shall not change or manipulate an employee's workweek to evade the requirements of the Act.
- D. In computing the minimum wage, an employer shall consider only monetary compensation and shall count tips and commissions in the workweek in which the tip or commission is earned.
- E. An employer is allowed to:
 1. Require or permit employees to pool, share, or split tips; and
 2. Require an employee to report tips to the employer in order to meet reporting requirements of this Article and federal law.
- F. An employer who hires an employee after the beginning of the employer's year is not required to provide additional earned paid sick time or equivalent paid time off during that year if the employer provides the employee for immediate use on the employee's ninetieth calendar day after commencing employment an amount of earned paid sick time or equivalent paid time off that meets or exceeds the employer's reasonable projection of the amount of earned paid sick time or equivalent paid time off that the employee would have accrued from the date of hire through the end of the employer's year at a rate of one hour for every 30 hours worked. If the amount of earned paid sick time or equivalent paid time off provided is less than the employee would have accrued based on hours actually worked during the employer's year, the employer shall immediately provide an amount of earned paid sick time or equivalent paid time off that reflects the difference between the employer's projection and the amount of earned paid sick time or equivalent paid time off that the employee would have accrued for hours actually worked in the year.
- G. Subject to subsection (F), an employer with 15 or more employees that provides its employees for immediate use at the beginning of each year 40 or more hours of earned paid sick time or 40 or more hours of equivalent paid time off is not required to provide carry-over or additional accrual.
- H. Subject to subsection (F), an employer with fewer than 15 employees that provides its employees for immediate use at the beginning of each year 24 or more hours of earned paid sick time or 24 or more hours of equivalent paid time off is not required to provide carryover or additional accrual.
- I. Unless an employer: (1) elects to pay an employee for unused earned paid sick time or equivalent paid time off at the end of a year pursuant to A.R.S. § 23-372(D)(4); or (2) meets the requirements of subsections (G) or (H), unused earned paid sick time and equivalent paid time off may be carried over to the next year, as follows:
 1. Subject to an employer's entitlement to permit greater carry over, an employee of an employer with 15 or more employees may carry over to the following year up to 40 hours of unused earned paid sick time or equivalent paid time off.
 2. Subject to an employer's entitlement to permit greater carry over, an employee of an employer with fewer than 15 employees may carryover to the following year up to 24 hours of unused earned paid sick time or equivalent paid time off.
 3. Carry over shall not affect accrual, usage rights, or usage limits under the Act.

R20-5-1208. Posting Requirements; Small Employer Exemption

- A. ~~Every~~With the exception of small employers, every employer subject to the Act shall place ~~a poster~~the posters prescribed by the Department informing employees of their rights under the Act in a conspicuous place in every establishment where employees are employed and where notices to employees are customarily placed. The employer shall ensure that ~~the notice is~~notices are not removed, altered, defaced, or covered by other material.
- B. In this Section, unless context otherwise requires, "small employer" means a corporation, proprietorship, partnership, joint venture, limited liability company, trust, or association that has less than \$500,000 in gross annual revenue.

R20-5-1209. Records Availability

- A. Each employer shall keep the records required under the Act and this Article safe and accessible at the place or places of employment, or at one or more established central recordkeeping offices where the records are customarily maintained. When the employer maintains the records at a central recordkeeping office other than in the place or places of employment, the employer shall make the records available to the Department within 72 hours following notice from the Department.
- B. ~~Employers who use microfilm or another method for recordkeeping purposes shall~~ make available to the Department any equipment ~~or technology~~ that is necessary to facilitate inspection and copying of the records.
- C. Each employer required to maintain records under the Act shall make enlargement, recomputation, or transcription of the records and shall submit to the Department the records or reports in a readable format upon the Department's written request.

R20-5-1210. General Recordkeeping Requirements

- A. Payroll records required to be kept under the Act include:

1. All time and earning cards or sheets on which are entered the daily starting and stopping time of individual employees, or of separate work forces, or the amounts of work accomplished by individual employees on a daily, weekly, or pay period basis (for example, units produced) when those amounts determine in whole or in part: (1) those employees' the pay period wages; and (2) those employees' earned paid sick time or equivalent paid time off of those employees;
 2. From their last effective date, all wage-rate tables or schedules of the employer that provide the piece rates or other rates used in computing wages; and
 3. Records of additions to or deductions from wages paid and records that support or corroborate the additions or deductions.
- B. Subject to A.R.S. § 23-381 and Except** except as otherwise provided in this Section, every employer shall maintain and preserve payroll or other records containing the following information and data with respect to each employee to whom the Act applies:
1. Name in full, and on the same record, the employee's identifying symbol or number if it is used in place of the employee's name on any time, work, or payroll record;
 2. Home address, including zip code;
 3. Date of birth, if under 19;
 4. Occupation in which employed;
 5. Time of day and day of week on which the employee's workweek begins. If the employee is part of a workforce or employed in or by an establishment all of whose workers have a workweek beginning at the same time on the same day, then a single notation of the time of the day and beginning day of the workweek for the whole workforce or establishment is permitted;
 6. Regular hourly rate of pay for any workweek and an explanation of the basis of pay by indicating the monetary amount paid on a per hour, per day, per week, per piece, commission on sales, or other basis, including the amount and nature of each payment;
 7. Hours worked each workday and total hours worked each workweek;
 8. Total daily or weekly straight-time wages due for hours worked during the workday or workweek, exclusive of premium overtime compensation;
 9. Total premium pay for overtime hours and an explanation of how the premium pay was calculated exclusive of straight-time wages for overtime hours recorded under subsection (B)(8) of this Section;
 10. Total additions to or deductions from wages paid each pay period including employee purchase orders or wage assignments, including, for individual employee records, the dates, amounts, and nature of the items that make up the total additions and deductions;
 11. Total wages paid each pay period; and
 12. Date of payment and the pay period covered by payment;
 13. The amount of earned paid sick time available to the employee;
 14. The amount of earned paid sick time taken by the employee to date in the year;
 15. The amount of pay the employee has received as earned paid sick time; and
 16. The employee's earned paid sick time balance. "The employee's earned paid sick time balance" means the sum of earned paid sick time or equivalent paid time off that is: (1) carried over to the current year; (2) accrued to date in the current year; and (3) provided to date in the current year pursuant to A.R.S. § 23-372(D)(4) or A.A.C. R20-5-1206(F), (G), or (H).
- C.** For an employee who is compensated on a salary basis at a rate that exceeds the minimum wage required under the Act and who, under 29 CFR 541, is an exempt bona fide executive, administrative, or professional employee, including an employee employed in the capacity of academic administrative personnel or teachers in elementary or secondary schools, or in outside sales, an employer shall maintain and preserve:
1. Records containing the information and data required under subsections (B)(1) through (B)(5), ~~(B)(11)~~ and (B)(11) through (B)(16) of this Section; and
 2. Records containing the basis on which wages are paid in sufficient detail to permit a determination or calculation of whether the salary received exceeds the minimum wage required under the Act, including a record of the hours upon which payment of the salary is based, whether full time or part time.
- D.** With respect to employees working on fixed schedules, an employer may maintain records showing instead of the hours worked each day and each workweek as required under this Section, the schedule of daily and weekly hours the employee normally works, provided:
1. In weeks in which an employee adheres to this schedule, the employer indicates by check mark, statement, or other method, that the employee actually worked the hours; and
 2. In weeks in which more or fewer than the scheduled hours are worked, the employer records the number of hours actually worked each day and each week.
- E.** With respect to an employee who customarily and regularly receives tips, the employer shall ensure that the records required under this Article include the following information:
1. A symbol, letter, or other notation placed on the pay records identifying each employee whose wage is determined in part by tips;
 2. Amount of tips the employee reports to the employer;
 3. The hourly wage of each tipped employee after taking into consideration the employee's tips;
 4. Hours worked each workday in any occupation in which the employee does not receive tips, and total daily or week straight-time payment made by the employer for the hours;
 5. Hours worked each workday in occupations in which the employee receives tips and total daily or weekly straight-time wages for the hours; and
 6. Copy of the notice required under R20-5-1207(C).
- F.** An employer who makes retroactive payment of wages, voluntarily or involuntarily, shall record on the pay records, the amount of the payment to each employee, the period covered by the payment, and the date of payment.

R20-5-1211. Administrative Complaints

- A.** A person or organization alleging a minimum wage, earned paid sick time, or equivalent paid time off violation shall file a complaint with the Labor Department within one year from the date the wages, earned paid sick time, or equivalent paid time off were due.



- B. A person or organization alleging retaliation, discrimination, or a violation of A.R.S. § 23-377 shall file a complaint with the Labor Department within one year from the date the alleged violation occurred or when the employee knew or should have known of the alleged violation.
- C. The person or organization filing a complaint with the Labor Department shall sign the complaint.
- D. Any person or organization other than an affected employee who files a complaint shall include the names of affected employees.
- E. ~~For good cause, and upon~~ Upon its own complaint, the Department may investigate violations under the Act.

R20-5-1213. Findings and Order Issued by the Department

- A. Except as provided in R20-5-1219, after receipt of a complaint alleging a violation of the ~~minimum wage requirement of the Act, or alleging retaliation under the Act,~~ the Department shall issue a Findings and Order of its determination. The Department shall send its Findings and Order to both the employer and the complainant at their last known addresses served personally or by regular first class mail. If the complaint named affected employees, the Department may send a copy of its Findings and Order to the affected employees.
- B. If the Department determines that an employer has violated the minimum wage, earned paid sick time, or equivalent paid time off payment requirement requirements, the Department shall order the employer to pay the employee, and if applicable, affected employees, the balance of the wages, earned paid sick time, or equivalent paid time off owed, including interest at the legal rate and an additional amount equal to twice the underpaid wages, earned paid sick time, or equivalent paid time off owed.
- C. If the Department determines that a retaliation, discrimination, confidentiality, or nondisclosure violation has occurred, the Department shall direct the employer or other person to cease and desist from the violation and may take action necessary to remedy the violation, including:
 1. Rehiring or reinstatement,
 2. Reimbursement of lost wages and interest,
 3. Payment of penalty to employees or affected employees as provided for in the Act and this Article, and
 4. Posting of notices to employees.
- D. If the Department determines that no ~~retaliation violation of the Act~~ has occurred the Department shall notify the parties and shall dismiss the complaint without prejudice. After notification of the Department’s determination, the complainant may bring a civil action under A.R.S. § 23- 364(E).
- E. The Department may assess civil penalties for recordkeeping, posting, and other violations under the Act and this Article as part of a Findings and Order issued under subsection (A) or the civil penalties and other violations may be assessed as a separate Findings and Order. If issued as a separate Findings and Order, the Department shall serve, personally or by regular first class mail, the Findings and Order on the employer and, if a complaint has been filed, the complainant.
- F. The Director of the Department shall sign the written Findings and Order issued by the Department.
- G. If an employer does not comply with a Findings and Order issued by the Department within 10 days following finality of the Findings and Order, the Department may refer the matter to a law enforcement officer.

R20-5-1218. Collection of Wages, Earned Paid Sick Time, Equivalent Paid Time Off, or Penalty Payments Owed

- A. Upon determination that wages, earned paid sick time, equivalent paid time off, or penalty payments are due and unpaid to any employee, the employee may, or the Department may on behalf of an employee, obtain judgment and execution, garnishment, attachment, or other available remedies for collection of unpaid wages and penalty payments established by a final Findings and Order of the Department.
- B. If payment cannot be made to the employee, the Department shall receive monetary compensation or penalty payments on behalf of the employee and transmit monies it receives as payment in a special state fund as provided in A.R.S. § 23-356(C).
- C. The Department may amend a Findings and Order to conform to the legal name of the business or the person who is the defendant employer to a complaint under the Act, provided service of the Findings and Order was made on the defendant or the defendant’s agent. If a judgment has been entered on the order, the Department may apply to the clerk of the superior court to amend a judgment that has been issued under a final order, provided service was made on the defendant or the defendant’s agent.

General and Specific Statutes Authorizing the Rules

23-364. Enforcement

(Caution: 1998 Prop. 105 applies)

A. The commission is authorized to enforce and implement this article and may promulgate regulations consistent with this article to do so. For purposes of this section: (1) "article" shall mean both article 8 and article 8.1 of this chapter; (2) "earned paid sick time" is as defined in section 23-371, Arizona Revised Statutes; (3) "employer" shall refer to the definition of employer in section 23-362, Arizona Revised Statutes, for purposes of minimum wage enforcement and shall refer to the definition of employer in section 23-371, Arizona Revised Statutes, for purposes of earned paid sick time enforcement; and (4) "retaliation" shall mean denial of any right guaranteed under article 8 and article 8.1 of this chapter and any threat, discharge, suspension, demotion, reduction of hours, or any other adverse action against an employee for the exercise of any right guaranteed herein including any sanctions against an employee who is the recipient of public benefits for rights guaranteed herein. Retaliation shall also include interference with or punishment for in any manner participating in or assisting an investigation, proceeding or hearing under this article.

B. No employer or other person shall discriminate or subject any person to retaliation for asserting any claim or right under this article, for assisting any other person in doing so, or for informing any person about their rights. Taking adverse action against a person within ninety days of a person's engaging in the foregoing activities shall raise a presumption that such action was retaliation, which may be rebutted by clear and convincing evidence that such action was taken for other permissible reasons.

C. Any person or organization may file an administrative complaint with the commission charging that an employer has violated this article as to any employee or other person. When the commission receives a complaint, the commission may review records regarding all employees at the employer's worksite in order to protect the identity of any employee identified in the complaint and to determine whether a pattern of violations has occurred. The name of any employee identified in a complaint to the commission shall be kept confidential as long as possible. Where the commission determines that an employee's name must be disclosed in order to investigate a complaint further, it may so do only with the employee's consent.

D. Employers shall post notices in the workplace, in such format specified by the commission, notifying employees of their rights under this article. Employers shall provide their business name, address, and telephone number in writing to employees upon hire. Employers shall maintain payroll records showing the hours worked for each day worked, and the wages and earned paid sick time paid to all employees for a period of four years. Failure to do so shall raise

a rebuttable presumption that the employer did not pay the required minimum wage rate or earned paid sick time. The commission may by regulation reduce or waive the recordkeeping and posting requirements herein for any categories of small employers whom it finds would be unreasonably burdened by such requirements. Employers shall permit the commission or a law enforcement officer to inspect and copy payroll or other business records, shall permit them to interview employees away from the worksite, and shall not hinder any investigation. Such information provided shall keep confidential except as is required to prosecute violations of this article. Employers shall permit an employee or his or her designated representative to inspect and copy payroll records pertaining to that employee.

E. A civil action to enforce this article may be maintained in a court of competent jurisdiction by a law enforcement officer or by any private party injured by a violation of this article.

F. Any employer who violates recordkeeping, posting, or other requirements that the commission may establish under this article shall be subject to a civil penalty of at least \$250 dollars for a first violation, and at least \$1000 dollars for each subsequent or willful violation and may, if the commission or court determines appropriate, be subject to special monitoring and inspections.

G. Any employer who fails to pay the wages or earned paid sick time required under this article shall be required to pay the employee the balance of the wages or earned paid sick time owed, including interest thereon, and an additional amount equal to twice the underpaid wages or earned paid sick time. Any employer who retaliates against an employee or other person in violation of this article shall be required to pay the employee an amount set by the commission or a court sufficient to compensate the employee and deter future violations, but not less than one hundred fifty dollars for each day that the violation continued or until legal judgment is final. The commission and the courts shall have the authority to order payment of such unpaid wages, unpaid earned sick time, other amounts, and civil penalties and to order any other appropriate legal or equitable relief for violations of this article. Civil penalties shall be retained by the agency that recovered them and used to finance activities to enforce this article. A prevailing plaintiff shall be entitled to reasonable attorney's fees and costs of suit.

H. A civil action to enforce this article may be commenced no later than two years after a violation last occurs, or three years in the case of a willful violation, and may encompass all violations that occurred as part of a continuing course of employer conduct regardless of their date. The statute of limitations shall be tolled during any investigation of an employer by the commission or other law enforcement officer, but such investigation shall not bar a person from bringing a civil action under this article. No verbal or written agreement or employment contract may waive any rights under this article.

I. The legislature may by statute raise the minimum wage established under this article, extend coverage, or increase penalties. A county, city, or town may by ordinance regulate minimum wages and benefits within its geographic boundaries but may not provide for a minimum wage lower than that prescribed in this article. State agencies, counties, cities, towns and other political subdivisions of the state may consider violations of this article in determining whether employers may receive or renew public contracts, financial assistance or licenses. This article shall be liberally construed in favor of its purposes and shall not limit the authority of the

legislature or any other body to adopt any law or policy that requires payment of higher or supplemental wages or benefits, or that extends such protections to employers or employees not covered by this article.

23-376. Regulations

(Caution: 1998 Prop. 105 applies)

The commission shall be authorized to coordinate implementation and enforcement of this article and shall promulgate appropriate guidelines or regulations for such purposes.

Statutes Implemented by this Rulemaking

Article 8. Minimum Wage

23-362. Definitions

(2006 Prop. 202, sec. 2. Caution: 1998 Prop. 105 applies.)

As used in this article, unless the context otherwise requires:

A. "Employee" means any person who is or was employed by an employer but does not include any person who is employed by a parent or a sibling, or who is employed performing babysitting services in the employer's home on a casual basis.

B. "Employer" includes any corporation, proprietorship, partnership, joint venture, limited liability company, trust, association, political subdivision of the state, individual or other entity acting directly or indirectly in the interest of an employer in relation to an employee, but does not include the state of Arizona, the United States, or a small business.

C. "Small business" means any corporation, proprietorship, partnership, joint venture, limited liability company, trust, or association that has less than five hundred thousand dollars in gross annual revenue and that is exempt from having to pay a minimum wage under section 206(a) of title 29 of the United States Code.

D. "Employ" includes to suffer or permit to work; whether a person is an independent contractor or an employee shall be determined according to the standards of the federal fair labor standards act, but the burden of proof shall be upon the party for whom the work is performed to show independent contractor status by clear and convincing evidence.

E. "Wage" means monetary compensation due to an employee by reason of employment, including an employee's commissions, but not tips or gratuities.

F. "Law enforcement officer" means the attorney general, a city attorney, a county attorney or a town attorney.

G. "Commission" means the industrial commission of Arizona, any successor agency, or such other agency as the governor shall designate to implement this article.

23-363. Minimum wage

(Caution: 1998 Prop. 105 applies)

A. Employers shall pay employees no less than the minimum wage, which shall be not less than:

1. \$10 on and after January 1, 2017.
2. \$10.50 on and after January 1, 2018.
3. \$11 on and after January 1, 2019.
4. \$12 on and after January 1, 2020.

B. The minimum wage shall be increased on January 1, 2021 and on January 1 of successive years, by the increase in the cost of living. The increase in the cost of living shall be measured by the percentage increase as of August of the immediately preceding year over the level as of August of the previous year of the consumer price index (all urban consumers, U.S. city average for all items) or its successor index as published by the U.S. department of labor or its successor agency, with the amount of the minimum wage increase rounded to the nearest multiple of five cents.

C. For any employee who customarily and regularly receives tips or gratuities from patrons or others, the employer may pay a wage up to \$3.00 per hour less than the minimum wage if the employer can establish by its records of charged tips or by the employee's declaration for federal insurance contributions act (FICA) purposes that for each week, when adding tips received to wages paid, the employee received not less than the minimum wage for all hours worked. Compliance with this provision will be determined by averaging tips received by the

employee over the course of the employer's payroll period or any other period selected by the employer that complies with regulations adopted by the commission.

23-364. Enforcement

(Caution: 1998 Prop. 105 applies)

A. The commission is authorized to enforce and implement this article and may promulgate regulations consistent with this article to do so. For purposes of this section: (1) "article" shall mean both article 8 and article 8.1 of this chapter; (2) "earned paid sick time" is as defined in section 23-371, Arizona Revised Statutes; (3) "employer" shall refer to the definition of employer in section 23-362, Arizona Revised Statutes, for purposes of minimum wage enforcement and shall refer to the definition of employer in section 23-371, Arizona Revised Statutes, for purposes of earned paid sick time enforcement; and (4) "retaliation" shall mean denial of any right guaranteed under article 8 and article 8.1 of this chapter and any threat, discharge, suspension, demotion, reduction of hours, or any other adverse action against an employee for the exercise of any right guaranteed herein including any sanctions against an employee who is the recipient of public benefits for rights guaranteed herein. Retaliation shall also include interference with or punishment for in any manner participating in or assisting an investigation, proceeding or hearing under this article.

B. No employer or other person shall discriminate or subject any person to retaliation for asserting any claim or right under this article, for assisting any other person in doing so, or for informing any person about their rights. Taking adverse action against a person within ninety days of a person's engaging in the foregoing activities shall raise a presumption that such action was retaliation, which may be rebutted by clear and convincing evidence that such action was taken for other permissible reasons.

C. Any person or organization may file an administrative complaint with the commission charging that an employer has violated this article as to any employee or other person. When the commission receives a complaint, the commission may review records regarding all employees at the employer's worksite in order to protect the identity of any employee identified in the complaint and to determine whether a pattern of violations has occurred. The name of any employee identified in a complaint to the commission shall be kept confidential as long as possible. Where the commission determines that an employee's name must be disclosed in order to investigate a complaint further, it may so do only with the employee's consent.

D. Employers shall post notices in the workplace, in such format specified by the commission, notifying employees of their rights under this article. Employers shall provide their business name, address, and telephone number in writing to employees upon hire. Employers shall maintain payroll records showing the hours worked for each day worked, and the wages and earned paid sick time paid to all employees for a period of four years. Failure to do so shall raise

a rebuttable presumption that the employer did not pay the required minimum wage rate or earned paid sick time. The commission may by regulation reduce or waive the recordkeeping and posting requirements herein for any categories of small employers whom it finds would be unreasonably burdened by such requirements. Employers shall permit the commission or a law enforcement officer to inspect and copy payroll or other business records, shall permit them to interview employees away from the worksite, and shall not hinder any investigation. Such information provided shall keep confidential except as is required to prosecute violations of this article. Employers shall permit an employee or his or her designated representative to inspect and copy payroll records pertaining to that employee.

E. A civil action to enforce this article may be maintained in a court of competent jurisdiction by a law enforcement officer or by any private party injured by a violation of this article.

F. Any employer who violates recordkeeping, posting, or other requirements that the commission may establish under this article shall be subject to a civil penalty of at least \$250 dollars for a first violation, and at least \$1000 dollars for each subsequent or willful violation and may, if the commission or court determines appropriate, be subject to special monitoring and inspections.

G. Any employer who fails to pay the wages or earned paid sick time required under this article shall be required to pay the employee the balance of the wages or earned paid sick time owed, including interest thereon, and an additional amount equal to twice the underpaid wages or earned paid sick time. Any employer who retaliates against an employee or other person in violation of this article shall be required to pay the employee an amount set by the commission or a court sufficient to compensate the employee and deter future violations, but not less than one hundred fifty dollars for each day that the violation continued or until legal judgment is final. The commission and the courts shall have the authority to order payment of such unpaid wages, unpaid earned sick time, other amounts, and civil penalties and to order any other appropriate legal or equitable relief for violations of this article. Civil penalties shall be retained by the agency that recovered them and used to finance activities to enforce this article. A prevailing plaintiff shall be entitled to reasonable attorney's fees and costs of suit.

H. A civil action to enforce this article may be commenced no later than two years after a violation last occurs, or three years in the case of a willful violation, and may encompass all violations that occurred as part of a continuing course of employer conduct regardless of their date. The statute of limitations shall be tolled during any investigation of an employer by the commission or other law enforcement officer, but such investigation shall not bar a person from bringing a civil action under this article. No verbal or written agreement or employment contract may waive any rights under this article.

I. The legislature may by statute raise the minimum wage established under this article, extend coverage, or increase penalties. A county, city, or town may by ordinance regulate minimum wages and benefits within its geographic boundaries but may not provide for a minimum wage lower than that prescribed in this article. State agencies, counties, cities, towns and other political subdivisions of the state may consider violations of this article in determining whether employers may receive or renew public contracts, financial assistance or licenses. This article shall be liberally construed in favor of its purposes and shall not limit the authority of the

legislature or any other body to adopt any law or policy that requires payment of higher or supplemental wages or benefits, or that extends such protections to employers or employees not covered by this article.

23-365. Reliance on administrative rule or regulation

(Added with a 1998 Prop. 105 clause pursuant to L07, Ch. 272)

In any action or proceeding commenced on or after January 1, 2007, an employer or other entity is not liable if the employer or entity fails to pay the minimum wage if the employer or entity proves that the act or omission was in good faith, conformed with and relied on an administrative regulation, order, ruling, approval or interpretation, administrative practice or enforcement policy issued by the commission pursuant to and in accordance with the commission's authority under this article. This defense, if established, bars the action or proceeding, notwithstanding that after the act or omission, the administrative regulation, order, ruling, approval, interpretation, practice or enforcement policy is modified or rescinded or is determined by judicial authority to be invalid.

Article 8.1

23-371. Definitions

(Caution: 1998 Prop. 105 applies)

For purposes of this article:

A. "Abuse" means an offense prescribed in section 13-3623, Arizona Revised Statutes.

B. "Commission" is as defined in section 23-362, Arizona Revised Statutes.

C. "Domestic Violence" is as defined in section 13-3601, Arizona Revised Statutes.

D. "Earned paid sick time" means time that is compensated at the same hourly rate and with the same benefits, including health care benefits, as the employee normally earns during hours worked and is provided by an employer to an employee for the purposes described in section 23-373 of this article, but in no case shall this hourly amount be less than that provided under the

Fair Labor Standards Act of 1938 (29 United States Code section 206(A)(1)) or section 23-363, Arizona Revised Statutes.

E. "Employ" is as defined in section 23-362, Arizona Revised Statutes.

F. "Employee" is as defined in section 23-362, Arizona Revised Statutes. Employee includes recipients of public benefits who are engaged in work activity as a condition of receiving public assistance.

G. "Employer" includes any corporation, proprietorship, partnership, joint venture, limited liability company, trust, association, political subdivision of the state, individual or other entity acting directly or indirectly in the interest of an employer in relation to an employee, but does not include the State of Arizona or the United States.

H. "Family member" means:

1. Regardless of age, a biological, adopted or foster child, stepchild or legal ward, a child of a domestic partner, a child to whom the employee stands in loco parentis, or an individual to whom the employee stood in loco parentis when the individual was a minor;
2. A biological, foster, stepparent or adoptive parent or legal guardian of an employee or an employee's spouse or domestic partner or a person who stood in loco parentis when the employee or employee's spouse or domestic partner was a minor child;
3. A person to whom the employee is legally married under the laws of any state, or a domestic partner of an employee as registered under the laws of any state or political subdivision;
4. A grandparent, grandchild or sibling (whether of a biological, foster, adoptive or step relationship) of the employee or the employee's spouse or domestic partner; or
5. Any other individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.

I. "Retaliation" is as defined in section 23-364, Arizona Revised Statutes.

J. "Sexual violence" means an offense prescribed in: (a) title 13, chapter 14, Arizona Revised Statutes, except for sections 13-1408 and 13-1422; or (b) sections 13-1304(A)(3), 13-1307, 13-3019, 13-3206, 13-3212, 13-3552, 13-3553, 13-3554, or 13-3560, Arizona Revised Statutes.

K. "Stalking" means an offense prescribed in section 13-2923, Arizona Revised Statutes.

L. "Year" means a regular and consecutive 12-month period as determined by the employer.

23-372. Accrual of earned paid sick time

(Caution: 1998 Prop. 105 applies)

A. Employees of an employer with 15 or more employees shall accrue a minimum of one hour of earned paid sick time for every 30 hours worked, but employees shall not be entitled to accrue or use more than 40 hours of earned paid sick time per year, unless the employer selects a higher limit.

B. Employees of an employer with fewer than 15 employees shall accrue a minimum of one hour of earned paid sick time for every 30 hours worked, but employees shall not be entitled to accrue or use more than 24 hours of earned paid sick time per year, unless the employer selects a higher limit.

C. In determining the number of employees performing work for an employer for compensation during a given week, all employees performing work for compensation on a full-time, part-time or temporary basis shall be counted. In situations in which the number of employees who work for an employer for compensation per week fluctuates above and below 15 employees per week over the course of the year, an employer is required to provide earned paid sick time pursuant to subsection A of this section if it maintained 15 or more employees on the payroll for some portion of a day in each of 20 different calendar weeks, whether or not the weeks were consecutive, in either the current or the preceding year (irrespective of whether the same individuals were in employment in each day).

D. All employees shall accrue earned paid sick time as follows:

1. Earned paid sick time as provided in this section shall begin to accrue at the commencement of employment or on July 1, 2017, whichever is later. An employer may provide all earned paid sick time that an employee is expected to accrue in a year at the beginning of the year.

2. An employee may use earned paid sick time as it is accrued, except that an employer may require an employee hired after July 1, 2017, to wait until the ninetieth calendar day after commencing employment before using accrued earned paid sick time, unless otherwise permitted by the employer.

3. Employees who are exempt from overtime requirements under the Fair Labor Standards Act of 1938 (29 United States Code section 213(A)(1)) will be assumed to work 40 hours in each work week for purposes of earned paid sick time accrual unless their normal work week is less than 40 hours, in which case earned paid sick time accrues based upon that normal work week.

4. Earned paid sick time shall be carried over to the following year, subject to the limitations on usage in subsections A and B. Alternatively, in lieu of carryover of unused earned paid sick time

from one year to the next, an employer may pay an employee for unused earned paid sick time at the end of a year and provide the employee with an amount of earned paid sick time that meets or exceeds the requirements of this article that is available for the employee's immediate use at the beginning of the subsequent year.

5. If an employee is transferred to a separate division, entity or location, but remains employed by the same employer, the employee is entitled to all earned paid sick time accrued at the prior division, entity or location and is entitled to use all earned paid sick time as provided in this section. When there is a separation from employment and the employee is rehired within nine months of separation by the same employer, previously accrued earned paid time that had not been used shall be reinstated. Further, the employee shall be entitled to use accrued earned paid sick time and accrue additional earned paid sick time at the re-commencement of employment.

6. When a different employer succeeds or takes the place of an existing employer, all employees of the original employer who remain employed by the successor employer are entitled to all earned paid sick time they accrued when employed by the original employer, and are entitled to use earned paid sick time previously accrued.

7. At its discretion, an employer may loan earned paid sick time to an employee in advance of accrual by such employee.

E. Any employer with a paid leave policy, such as a paid time off policy, who makes available an amount of paid leave sufficient to meet the accrual requirements of this section that may be used for the same purposes and under the same conditions as earned paid sick time under this article is not required to provide additional paid sick time.

F. Nothing in this article shall be construed as requiring financial or other reimbursement to an employee from an employer upon the employee's termination, resignation, retirement or other separation from employment for accrued earned paid sick time that has not been used.

23-373. Use of earned paid sick time

(Caution: 1998 Prop. 105 applies)

A. Earned paid sick time shall be provided to an employee by an employer for:

1. An employee's mental or physical illness, injury or health condition; an employee's need for medical diagnosis, care, or treatment of a mental or physical illness, injury or health condition; an employee's need for preventive medical care;

2. Care of a family member with a mental or physical illness, injury or health condition; care of a family member who needs medical diagnosis, care, or treatment of a mental or physical illness, injury or health condition; care of a family member who needs preventive medical care;

3. Closure of the employee's place of business by order of a public official due to a public health emergency or an employee's need to care for a child whose school or place of care has been closed by order of a public official due to a public health emergency, or care for oneself or a family member when it has been determined by the health authorities having jurisdiction or by a health care provider that the employee's or family member's presence in the community may jeopardize the health of others because of his or her exposure to a communicable disease, whether or not the employee or family member has actually contracted the communicable disease; or

4. Notwithstanding section 13-4439, Arizona Revised Statutes, absence necessary due to domestic violence, sexual violence, abuse or stalking, provided the leave is to allow the employee to obtain for the employee or the employee's family member:

(a) Medical attention needed to recover from physical or psychological injury or disability caused by domestic violence, sexual violence, abuse or stalking;

(b) Services from a domestic violence or sexual violence program or victim services organization;

(c) Psychological or other counseling;

(d) Relocation or taking steps to secure an existing home due to the domestic violence, sexual violence, abuse or stalking; or

(e) Legal services, including but not limited to preparing for or participating in any civil or criminal legal proceeding related to or resulting from the domestic violence, sexual violence, abuse or stalking.

B. Earned paid sick time shall be provided upon the request of an employee. Such request may be made orally, in writing, by electronic means or by any other means acceptable to the employer. When possible, the request shall include the expected duration of the absence.

C. When the use of earned paid sick time is foreseeable, the employee shall make a good faith effort to provide notice of the need for such time to the employer in advance of the use of the earned paid sick time and shall make a reasonable effort to schedule the use of earned paid sick time in a manner that does not unduly disrupt the operations of the employer.

D. An employer that requires notice of the need to use earned paid sick time where the need is not foreseeable shall provide a written policy that contains procedures for the employee to provide notice. An employer that has not provided to the employee a copy of its written policy for providing such notice shall not deny earned paid sick time to the employee based on non-compliance with such a policy.

E. An employer may not require, as a condition of an employee's taking earned paid sick time, that the employee search for or find a replacement worker to cover the hours during which the employee is using earned paid sick time.

F. Earned paid sick time may be used in the smaller of hourly increments or the smallest increment that the employer's payroll system uses to account for absences or use of other time.

G. For earned paid sick time of three or more consecutive work days, an employer may require reasonable documentation that the earned paid sick time has been used for a purpose covered by subsection A. Documentation signed by a health care professional indicating that earned paid sick time is necessary shall be considered reasonable documentation for purposes of this section. In cases of domestic violence, sexual violence, abuse or stalking, one of the following types of documentation selected by the employee shall be considered reasonable documentation:

1. A police report indicating that the employee or the employee's family member was a victim of domestic violence, sexual violence, abuse or stalking;

2. A protective order; injunction against harassment; a general court order; or other evidence from a court or prosecuting attorney that the employee or employee's family member appeared, or is scheduled to appear, in court in connection with an incident of domestic violence, sexual violence, abuse, or stalking;

3. A signed statement from a domestic violence or sexual violence program or victim services organization affirming that the employee or employee's family member is receiving services related to domestic violence, sexual violence, abuse, or stalking;

4. A signed statement from a witness advocate affirming that the employee or employee's family member is receiving services from a victim services organization;

5. A signed statement from an attorney, member of the clergy, or a medical or other professional affirming that the employee or employee's family member is a victim of domestic violence, sexual violence, abuse or stalking; or

6. An employee's written statement affirming that the employee or the employee's family member is a victim of domestic violence, sexual violence, abuse, or stalking, and that the leave was taken for one of the purposes of subsection A, paragraph 4 of this section. The employee's written statement, by itself, is reasonable documentation for absences under this paragraph. The written statement does not need to be in an affidavit format or notarized, but shall be legible if handwritten and shall reasonably make clear the employee's identity, and if applicable, the employee's relationship to the family member.

H. The provision of documentation under subsection G does not waive or diminish any confidential or privileged communications between a victim of domestic violence, sexual violence, abuse or stalking with one or more of the individuals named in subsection G.

I. An employer may not require that documentation under subsection G explain the nature of the health condition or the details of the domestic violence, sexual violence, abuse or stalking.

23-374. Exercise of rights protected; retaliation prohibited

(Caution: 1998 Prop. 105 applies)

A. It shall be unlawful for an employer or any other person to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right protected under this article.

B. An employer shall not engage in retaliation or discriminate against an employee or former employee because the person has exercised rights protected under this article. Such rights include but are not limited to the right to request or use earned paid sick time pursuant to this article; the right to file a complaint with the commission or courts or inform any person about any employer's alleged violation of this article; the right to participate in an investigation, hearing or proceeding or cooperate with or assist the commission in its investigations of alleged violations of this article; and the right to inform any person of his or her potential rights under this article.

C. It shall be unlawful for an employer's absence control policy to count earned paid sick time taken under this article as an absence that may lead to or result in discipline, discharge, demotion, suspension, or any other adverse action.

D. Protections of this section shall apply to any person who mistakenly but in good faith alleges violations of this article.

23-375. Notice

(Caution: 1998 Prop. 105 applies)

A. Employers shall give employees written notice of the following at the commencement of employment or by July 1, 2017, whichever is later: employees are entitled to earned paid sick time and the amount of earned paid sick time, the terms of its use guaranteed under this article, that retaliation against employees who request or use earned paid sick time is prohibited, that each employee has the right to file a complaint if earned paid sick time as required by this article is denied by the employer or the employee is subjected to retaliation for requesting or taking earned paid sick time, and the contact information for the commission where questions about rights and responsibilities under this article can be answered.

B. The notice required in subsection A shall be in English, Spanish, and any language that is deemed appropriate by the commission.

C. The amount of earned paid sick time available to the employee, the amount of earned paid sick time taken by the employee to date in the year and the amount of pay the employee has received as earned paid sick time shall be recorded in, or on an attachment to, the employee's regular paycheck.

D. The commission shall create and make available to employers, in English, Spanish, and any language deemed appropriate by the commission, model notices that contain the information required under subsection A for employers' use in complying with subsection A.

E. An employer who violates the notice requirements of this section shall be subject to a civil penalty according to section 23-364(F), Arizona Revised Statutes.

23-376. Regulations

(Caution: 1998 Prop. 105 applies)

The commission shall be authorized to coordinate implementation and enforcement of this article and shall promulgate appropriate guidelines or regulations for such purposes.

23-377. Confidentiality and nondisclosure

(Caution: 1998 Prop. 105 applies)

An employer may not require disclosure of details relating to domestic violence, sexual violence, abuse or stalking or the details of an employee's or an employee's family member's health information as a condition of providing earned paid sick time under this article. If an employer possesses health information or information pertaining to domestic violence, sexual violence, abuse or stalking about an employee or employee's family member, such information shall be treated as confidential and not disclosed except to the affected employee or with the permission of the affected employee.

23-378. Encouragement of more generous earned paid sick time policies; no effect on more generous policies or laws

(Caution: 1998 Prop. 105 applies)

A. Nothing in this article shall be construed to discourage or prohibit an employer from the adoption or retention of an earned paid sick time policy more generous than the one required herein.

B. Nothing in this article shall be construed as diminishing the obligation of an employer to comply with any contract, collective bargaining agreement, employment benefit plan or other agreement providing more generous paid sick time to an employee than required herein. Nothing in this article shall be construed as diminishing the rights of public employees regarding paid sick time or use of paid sick time.

C. Nothing in this article shall be construed to supersede any provision of any local law that provides greater rights to paid sick time than the rights established under this article.

23-379. Other legal requirements

(Caution: 1998 Prop. 105 applies)

A. Nothing in this article shall be interpreted or applied so as to create a conflict with federal law.

B. This article provides minimum requirements pertaining to earned paid sick time and shall not be construed to preempt, limit, or otherwise affect the applicability of any other law, regulation, requirement, policy, or standard that provides for greater accrual or use by employees of earned paid sick time or that extends other protections to employees.

23-380. Public education and outreach

(Caution: 1998 Prop. 105 applies)

The commission may develop and implement a multilingual outreach program to inform employees, parents and persons who are under the care of a health care provider about the availability of earned paid sick time under this article. This program may include the distribution of notices and other written materials in English, Spanish, and any language deemed appropriate by the commission to all child care and elder care providers, domestic violence shelters, schools, hospitals, community health centers and other health care providers.

23-381. Collective bargaining agreements

(Caution: 1998 Prop. 105 applies)

All or any portion of the earned paid sick time requirements of this article shall not apply to employees covered by a valid collective bargaining agreement, to the extent that such requirements are expressly waived in the collective bargaining agreement in clear and unambiguous terms. No provisions of article 8.1 shall apply to employees covered by a collective bargaining agreement in effect on the effective date of this act until the stated expiration date in the collective bargaining agreement.

DEPARTMENT OF HEALTH SERVICES (F-18-0104)

Title 9, Chapter 6, Article 8, Assaults on Public Safety Employees and Volunteers



GOVERNOR'S REGULATORY REVIEW COUNCIL

STAFF MEMORANDUM – FIVE-YEAR REVIEW REPORT

MEETING DATE: January 9, 2018

AGENDA ITEM: E-5

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

FROM: Council Staff

DATE : December 19, 2017

SUBJECT: DEPARTMENT OF HEALTH SERVICES (F-18-0104)
Title 9, Chapter 6, Article 8, Assaults on Public Safety Employees and Volunteers

COMMENTS ON THE FIVE-YEAR REVIEW REPORT

Purpose of the Agency and Number of Rules in the Report

This five-year review report from the Arizona Department of Health Services (Department) covers two rules in A.A.C. Title 9, Chapter 6, Article 8, related to assaults on public safety employees and volunteers. Pursuant to A.R.S. § 36-136(H)(1), the Department is required to prescribe reasonably necessary measures to detect and prevent communicable diseases. A.R.S. § 13-1210 authorizes a public safety employee or volunteer, an Arizona State Hospital (AzSH) employee, or the employing entity to petition for court-ordered testing of the blood of the alleged perpetrator of an assault on a public safety employee, volunteer, or an AzSH employee. The Department has adopted rules in Article 8 to implement these statutes.

Section 801 defines terms used in the Article. Section 802 establishes the court-ordered test results notification procedures and required contents of a court-ordered test result notification. The rules were adopted in 2008 and have not been amended since.

In the previous five-year review report, the Department did not propose to amend the rules because the Department believed that the omission of AzSH employees from the rules did not affect public health and safety.

Proposed Action

The Department plans to amend the rules by December 2018 to address the statutory inconsistency issue.

1. Has the agency analyzed whether the rules are authorized by statute?

Yes. The Department cites to both general and specific authority for the rules. Of particular significance is A.R.S. § 36-136(H)(1), which requires the Department to “define and prescribe reasonably necessary measures for detecting, reporting, preventing and controlling communicable and preventable diseases.”

2. Summary of the agency’s economic impact comparison and identification of stakeholders:

As the purpose of the rules is not economic in nature, and is to outline the authority for certain individuals to petition for court-ordered testing of the blood of an alleged perpetrator of an assault on a public safety employee, volunteer, or AzSH employee, the direct economic impact of the rules is little to none.

Key stakeholders include occupational health providers, correctional facility chief medical officers and officers in charge, public safety employees, court-ordered subjects, and employing entities.

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

The Department has determined that the rules impose the least burden and costs to persons regulated by the rules, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.

4. Has the agency received any written criticisms of the rules over the last five years?

No. The Department indicates that it has not received any written criticisms of the rules over the last five years.

5. Has the agency analyzed the rules’ effectiveness, consistency with other rules and statutes, and the rules’ clarity, conciseness, and understandability?

Yes. The Department indicates that the rules are clear, concise, and understandable. However, the rules are inconsistent with A.R.S. § 13-1210, as the rules do not explicitly include AzSH employees.

The Department indicates that the rules are effective, despite the omission of AzSH employees from the rules. AzSH noted that court-ordered testing related to an alleged assault on an AzSH employee has never been used because testing after an incident such as biting or scratching occurs is part of the AzSH’s infection control practice and patient treatment, and the AzSH’s patients have always consented to the testing. If consensual testing was not available, the AzSH employee would seek a court order under A.R.S. § 13-1210.

6. Has the agency analyzed the current enforcement status of the rules?

Yes. The Department indicates that it enforces the rules as written to the extent they are consistent with A.R.S. § 13-1210.

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

No. The Department indicates that no federal laws are applicable to these rules.

8. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?

Not applicable. The rules were adopted prior to July 29, 2010.

9. Conclusion

As noted above, the Department plans to amend the rules reviewed in this report by December 2018. The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. Staff recommends that the report be approved.



ARIZONA DEPARTMENT OF HEALTH SERVICES

POLICY & INTERGOVERNMENTAL AFFAIRS

November 15, 2017

Nicole O. Colyer, Esq., Chair
Governor's Regulatory Review Council
Arizona Department of Administration
100 N. 15th Avenue, Suite 305
Phoenix, AZ 85007

RE: Report for A.A.C. Title 9, Chapter 6, Article 8 of Communicable Diseases and Infestations

Dear Ms. Colyer:

According to the five-year-review report schedule of the Governor's Regulatory Review Council (Council), a report for A.A.C. Title 9, Chapter 6, Article 8 is due to the Council no later than February 28, 2018. The Arizona Department of Health Services (Department) has reviewed 9 A.A.C. 6, Article 8 and is enclosing a report to the Council for these rules.

The Department believes that this report complies with the requirements of A.R.S. § 41-1056. A five-year-review summary, information that is identical for all the rules, information for individual rules, the rules reviewed, the general and specific authority, and an economic impact statement are included in the package. As described in the report, the Department does not plan to amend the rule in 9 A.A.C. 6, Article 8 unless a threat to public health or safety occurs.

The Department certifies that it is in compliance with A.R.S. § 41-1091.

If you need any further information, please contact me at (602) 542-1020.

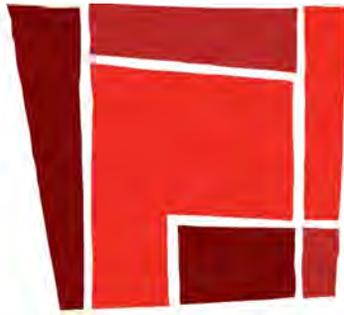
Sincerely,

A handwritten signature in black ink, appearing to read 'Robert Lane'.

Robert Lane
Director's Designee

RL:rms
Enclosures

Douglas A. Ducey | Governor Cara M. Christ, MD, MS | Director



ARIZONA DEPARTMENT OF HEALTH SERVICES

FIVE-YEAR-REVIEW REPORT

TITLE 9. HEALTH SERVICES

CHAPTER 6. DEPARTMENT OF HEALTH SERVICES

COMMUNICABLE DISEASES AND INFESTATIONS

**ARTICLE 8. ASSAULTS ON PUBLIC SAFETY EMPLOYEES AND
VOLUNTEERS**

NOVEMBER 2017

FIVE-YEAR-REVIEW REPORT
TITLE 9. HEALTH SERVICES
CHAPTER 6. DEPARTMENT OF HEALTH SERVICES
COMMUNICABLE DISEASES AND INFESTATIONS
ARTICLE 8. ASSAULTS ON PUBLIC SAFETY EMPLOYEES AND VOLUNTEERS

TABLE OF CONTENTS

1.	FIVE-YEAR-REVIEW SUMMARY	Page 3
2.	INFORMATION THAT IS IDENTICAL FOR ALL OF THE RULES	Page 4
3.	INFORMATION FOR INDIVIDUAL RULES	Page 7
4.	CURRENT RULES	Attachment A
5.	GENERAL AND SPECIFIC AUTHORITY	Attachment B
6.	ECONOMIC IMPACT STATEMENT FOR 2008	Attachment C

FIVE-YEAR-REVIEW SUMMARY

Arizona Revised Statutes (A.R.S.) § 36-136(H)(1) requires the Arizona Department of Health Services (Department) to “define and prescribe reasonably necessary measures for detecting, reporting, preventing and controlling communicable and preventable diseases.” A.R.S. § 13-1210 authorizes a public safety employee or volunteer, an Arizona State Hospital (AzSH) employee, or the employing entity to petition for court-ordered testing of the blood of the alleged perpetrator of an assault on a public safety employee or volunteer or an AzSH employee. The Department has adopted in Arizona Administrative Code (A.A.C.) Title 9, Chapter 6, Article 8, rules to implement these statutes. A.A.C. R9-6-801 provides definitions of terms used in the Article, and A.A.C. R9-6-802 establishes the court-ordered test results notification procedures and required contents of a court-ordered test result notification. Since the rules were adopted effective April 1, 2008, A.R.S. § 13-1210 has been amended by Laws 2008, Ch. 203, § 1, to add AzSH employees, and by Laws 2012, Ch. 25, § 1 and Laws 2012, Ch. 355, § 2, to add that court-ordered testing is available if “there is probable cause to believe that the person bit, scratched, spat or transferred blood or other bodily fluid on or through the skin or membranes of a public safety employee or volunteer who was performing an official duty.”

After an analysis of the rules in Article 8, the Department has determined that the rules are effective and clear, concise, and understandable, despite the inconsistency with the current A.R.S. § 13-1210 regarding AzSH employees. The Department has received no written criticisms of the rules. The Department’s enforcement of the rules is consistent with A.R.S. § 13-1210. The Department plans to amend the rules to address the omission of AzSH employees by December 2018.

INFORMATION THAT IS IDENTICAL FOR ALL OF THE RULES

1. Authorization of the rule by existing statute

The general statutory authority for the rules in 9 A.A.C. 6, Article 8 are A.R.S. §§ 36-132(A)(1), 36-136(A)(7), and 36-136(G).

The specific statutory authority for the rules in 9 A.A.C. 6, Article 8 are A.R.S. §§ 13-1210 and 36-136(I)(1).

2. The purpose of the rule

The purpose of the rules in 9 A.A.C. 6, Article 8 is to establish procedures related to the notification of court-ordered test results.

3. Analysis of effectiveness in achieving the objective

The rules are effective in achieving their objectives, despite the omission of AzSH employees from the rules. In September 2017, the AzSH reported that court-ordered testing related to an alleged assault on an AzSH employee has never been used for the following reasons: 1) testing after an incident occurs that involves biting, scratching, spitting, or transferring blood or other bodily fluids on or through an AzSH employee's skin membranes is part of the AzSH's infection control practices and patient treatment; and 2) the AzSH's patients have always consented to the testing. If consensual testing were not available, the AzSH would seek a court order under A.R.S. § 13-1210.

4. Analysis of consistency with state and federal statutes and rules

The rules are inconsistent with A.R.S. § 13-1210, as amended by Laws 2008, Ch. 203, § 1, because the rules do not explicitly include AzSH employees. The rules are otherwise consistent with applicable statutes and rules.

5. Status of enforcement of the rule

The rules in 9 A.A.C. 6, Article 8 are enforced consistent with A.R.S. § 13-1210.

6. Analysis of clarity, conciseness, and understandability

The rules are clear, concise, and understandable.

7. Summary of the written criticisms of the rule received within the last five years

The Department has not received any written criticisms of the rules in the past five years.

8. Economic, small business, and consumer impact comparison

The rules in 9 A.A.C. 6, Article 8 were revised by regular rulemaking effective April 1, 2008. In accordance with A.R.S. § 13-1210, as amended by Laws 2007, Chapter 33; Section 1, the 2008 rulemaking established "public safety employees and volunteers" as the protected individuals. The 2008 rulemaking also established short time periods for providing notification of test results to occupational health providers, correctional facility chief medical officers and officers in charge,

public safety employees, court-ordered subjects, and employing entities. An economic, small business, and consumer impact statement (EIS) was submitted to the Council as part of the Notice of Final Rulemaking package. The EIS designated annual cost/revenue changes as minimal when less than \$1,000, 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 EIS stated that the Department estimated the costs and benefits from the rules as follows:

- The Department – no costs other than those associated with rulemaking and minimal benefits associated with clarification of the notification process;
- Occupational health providers – minimal costs associated with notification and minimal benefits associated with earlier notification of test results;
- Health care providers of court-ordered subjects – minimal costs associated with notification and minimal benefits from the clarity of the rules;
- Chief medical officers of correction facilities – minimal costs associated with the shorter notification time-frame;
- Public safety personnel and volunteers – no cost and significant benefit from the information in the notification and short notification time-frame;
- Living court-ordered subjects – significant benefit from the information in the notification and shorter notification time-frame;
- Employing entities – minimal cost related to an increased number of petitioners and minimal benefit from the shorter notification time-frame and clarity of the notification requirements; and
- Officers in charge of correctional facilities – significant benefit from the information in the notification.

A.R.S. § 13-1210 does not provide for notification of the Department that a court has ordered testing of a subject or of an A.R.S. § 13-1210 court-ordered subject's test results. However, the Department does receive results of tests conducted for HIV/AIDS (and other sexually transmitted diseases) ordered by a court pursuant to A.R.S. § 13-1415. The Department determined that the number of reports of A.R.S. § 13-1415 court-ordered tests received annually by the Department has not increased over the last five years. By analogy, the Department believes that it is likely that the annual number of A.R.S. § 13-1210 court-ordered tests has not increased over the last five years. The Department believes that the costs and benefits identified in this EIS are generally consistent with the actual costs and benefits of the rules.

9. Summary of business competitiveness analyses of the rules

The Department did not receive a business competitiveness analysis of the rules in the last five years.

10. Status of the completion of action indicated in the previous five-year-review report

In the 2013 five-year-review report, the Department stated that the Department did not plan to amend the rules because the omission of AzSH employees from the rules did not affect public health and safety; testing has been and is being done without a court order for all the AzSH's A.R.S. § 13-1210(B) incidents; and if consensual testing were not available, the AzSH would seek a court order. The Department complied with this plan.

11. A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective

The Department has determined that the rules in 9 A.A.C. 6, Article 8 impose the least burden and costs to persons regulated by the rules, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.

12. Analysis of stringency compared to federal laws

Federal laws do not apply to the rules in 9 A.A.C. 6, Article 8.

13. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with section 41-1037

The rules were adopted before July 29, 2010 and do not require the issuance of regulatory permit, license, or agency authorization.

14. Proposed course of action

The Department plans to amend the rules to address the omission of AzSH employees by December 2018, likely through expedited rulemaking.

INFORMATION FOR INDIVIDUAL RULES

R9-6-801. Definitions

2. Objective

The objective of the rule is to define terms used in the Article to enable the reader to understand clearly the requirements of the Article and allow for consistent interpretation.

R9-6-802. Notice of Test Results

2. Objective

The objectives of the rule are to:

- a. Establish procedures for providing notification of court-ordered test results to applicable persons; and
- b. Specify additional requirements related to court-ordered test results, such as confidentiality and reporting in accordance with A.A.C. Title 9, Chapter 6.

ATTACHMENT A

Current Rules

ARTICLE 8. ASSAULTS ON PUBLIC SAFETY EMPLOYEES AND VOLUNTEERS

R9-6-801. Definitions

In this Article, unless otherwise specified:

1. "Employer" means an individual in the senior leadership position with an agency or entity for which a named public safety employee or volunteer works or that individual's designee.
2. "Named public safety employee or volunteer" means the public safety employee or volunteer who is listed as the assaulted individual in a petition filed under A.R.S. § 13-1210 and granted by a court.
3. "Occupational health provider" means a physician, physician assistant, registered nurse practitioner, or registered nurse, as defined in A.R.S. § 32-1601, who provides medical services for work-related health conditions for an agency or entity for which a named public safety employee or volunteer works.
4. "Public safety employee or volunteer" means the same as in A.R.S. § 13-1210.

R9-6-802. Notice of Test Results

- A.** Within 10 working days after the date of receipt of a laboratory report for a test ordered by a health care provider as a result of a court order issued under A.R.S. § 13-1210, the ordering health care provider shall:
1. If the test is conducted on the blood of a court-ordered subject who is incarcerated or detained:
 - a. Provide a written copy of the laboratory report to the chief medical officer of the correctional facility in which the court-ordered subject is incarcerated or detained; and
 - b. Notify the occupational health provider in writing of the results of the test; and
 2. If the test is conducted on the blood of a court-ordered subject who is not incarcerated or detained:
 - a. Unless the court-ordered subject is deceased, notify the court-ordered subject as specified in subsection (D);
 - b. If requested by the court-ordered subject, provide a written copy of the laboratory report to the court-ordered subject; and
 - c. Notify the occupational health provider in writing of the results of the test.
- B.** Within five working days after the date of receipt of a laboratory report for a court-ordered subject who is incarcerated or detained, the chief medical officer of the correctional facility in which the court-ordered subject is incarcerated or detained shall:
1. Notify the court-ordered subject as specified in subsection (D);
 2. If requested by the court-ordered subject, provide a written copy of the laboratory report to the court-ordered subject; and
 3. Notify the officer in charge of the correctional facility as specified in subsection (E).
- C.** Within five working days after an occupational health provider receives written notice of test results as required in subsection (A), the occupational health provider shall notify:
1. The named public safety employee or volunteer as specified in subsection (D); and
 2. The employer as specified in subsection (E).
- D.** An individual who provides notice to a court-ordered subject or named public safety employee or volunteer as required under subsection (A), (B), or (C) shall describe the test results and provide or

arrange for the court-ordered subject or named public safety employee or volunteer to receive the following information about each agent for which the court-ordered subject was tested:

1. A description of the disease or syndrome caused by the agent, including its symptoms;
2. A description of how the agent is transmitted to others;
3. The average window period for the agent;
4. An explanation that a negative test result does not rule out infection and that retesting for the agent after the average window period has passed is necessary to rule out infection;
5. Measures to reduce the likelihood of transmitting the agent to others and that it is necessary to continue the measures until a negative test result is obtained after the average window period has passed or until an infection, if detected, is eliminated;
6. That it is necessary to notify others that they may be or may have been exposed to the agent by the individual receiving notice;
7. The availability of assistance from local health agencies or other resources; and
8. The confidential nature of the court-ordered subject's test results.

E. An individual who provides notice to the officer in charge of a correctional facility, as required under subsection (B), or to an employer, as required under subsection (C), shall describe the test results and provide or arrange for the officer in charge of the facility or the employer to receive the following information about each agent for which a court-ordered subject's test results indicate the presence of infection:

1. A description of the disease or syndrome caused by the agent, including its symptoms;
2. A description of how the agent is transmitted to others;
3. Measures to reduce the likelihood of transmitting the agent to others;
4. The availability of assistance from local health agencies or other resources; and
5. The confidential nature of the court-ordered subject's test results.

F. An individual who provides notice under this Section shall not provide a copy of the laboratory report to anyone other than the court-ordered subject and, if the court-ordered subject is incarcerated or detained, the chief medical officer of the correctional facility in which the court-ordered subject is incarcerated or detained.

G. An individual who provides notice under this Section shall protect the confidentiality of the court-ordered subject's personal identifying information and test results.

H. A health care provider who orders a test on the blood of a court-ordered subject who is not incarcerated or detained may, at the time the court-ordered subject is seen by the ordering health care provider, present the court-ordered subject with a telephone number and instruct the court-ordered subject to contact the ordering health care provider after a stated period of time for notification of the test results.

I. A health care provider who orders a test has not satisfied the obligation of the health care provider to notify under subsection (A) if:

1. The health care provider provides a telephone number and instructions, as allowed by subsection (H), for a court-ordered subject to contact the ordering health care provider and receive the information specified in subsection (D); and
2. The court-ordered subject does not contact the ordering health care provider.

J. A health care provider who orders a test on a court-ordered subject's blood shall comply with all applicable reporting requirements contained in this Chapter.

Statutory Authority

13-1210. Assaults on public safety employees or volunteers and state hospital employees; disease testing; petition; hearing; notice; definitions

A. A public safety employee or volunteer or the employing agency, officer or entity may petition the court for an order authorizing testing of another person for the human immunodeficiency virus, common blood borne diseases or other diseases specified in the petition if there are reasonable grounds to believe an exposure occurred and one of the following applies:

1. The person is charged in any criminal complaint and the complaint alleges that the person interfered with the official duties of the public safety employee or volunteer by biting, scratching, spitting or transferring blood or other bodily fluids on or through the skin or membranes of the public safety employee or volunteer.
2. There is probable cause to believe that the person interfered with the official duties of the public safety employee or volunteer by biting, scratching, spitting or transferring blood or other bodily fluids on or through the skin or membranes of the public safety employee or volunteer and that the person is deceased.
3. There is probable cause to believe that the person bit, scratched, spat or transferred blood or other bodily fluid on or through the skin or membranes of a public safety employee or volunteer who was performing an official duty.
4. The person is arrested, charged or in custody and the public safety employee or volunteer alleges, by affidavit, that the person interfered with the official duties of the public safety employee or volunteer by biting, scratching, spitting or transferring blood or other bodily fluids on or through the skin or membranes of the public safety employee or volunteer.

B. An employee of the Arizona state hospital or the employing agency may petition the court for an order authorizing testing of another person for the human immunodeficiency virus, common blood borne diseases or other diseases specified in the petition if there are reasonable grounds to believe an exposure occurred and the person is a patient who is confined to the Arizona state hospital and who is alleged to have interfered with the official duties of the Arizona state hospital employee by biting, scratching, spitting or transferring blood or other bodily fluids on or through the skin or membranes of the Arizona state hospital employee.

C. The court shall hear the petition promptly. If the court finds that probable cause exists to believe that a possible transfer of blood or other bodily fluids occurred between the person and the public safety employee or volunteer or the Arizona state hospital employee, the court shall order that either:

1. The person provide two specimens of blood for testing.

2. If the person is deceased, the medical examiner draw two specimens of blood for testing.

D. Notwithstanding subsection C, paragraph 2 of this section, on written notice from the agency, officer or entity employing the public safety employee or volunteer, the medical examiner is authorized to draw two specimens of blood for testing during the autopsy or other examination of the deceased person's body. The medical examiner shall release the specimen to the employing agency, officer or entity for testing only after the court issues its order pursuant to subsection C, paragraph 2 of this section. If the court does not issue an order within thirty days after the medical examiner collects the specimen, the medical examiner shall destroy the specimen.

E. Notice of the test results shall be provided as prescribed by the department of health services to the person tested, to the public safety employee or volunteer or the Arizona state hospital employee named in the petition and to the employee's or volunteer's employing agency, officer or entity and, if the person tested is incarcerated or detained, to the officer in charge and the chief medical officer of the facility in which the person is incarcerated or detained.

F. Section 36-665 does not apply to this section.

G. For the purposes of this section:

1. "Arizona state hospital" includes the Arizona community protection and treatment center.

2. "Arizona state hospital employee" means an employee of the Arizona state hospital who has direct patient contact.

3. "Private prison security officer" means a security officer who is employed by a private contractor that contracts with a governmental entity to provide detention or incarceration facility services for offenders.

4. "Public safety employee or volunteer" means a law enforcement officer, any employee or volunteer of a state or local law enforcement agency, a probation officer, a surveillance officer, an adult or juvenile correctional service officer, a detention officer, a private prison security officer, a firefighter or an emergency medical technician.

36-132. Department of health services; functions; contracts

A. The department shall, in addition to other powers and duties vested in it by law:

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 the state and the prevention of diseases as may be useful in the discharge of functions of the department not in conflict with the provisions of 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 school children, 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 the 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 H, 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 of 1938 (52 Stat. 1040; 21 United States Code sections 1 through 905).
15. Recruit and train personnel for state, local and district health departments.
16. Conduct continuing evaluations of state, local and district public health programs, study and appraise state health problems and develop broad plans for use by the department and for recommendation to other agencies, professions and local health departments for the best solution of these problems.
17. License and regulate health care institutions according to chapter 4 of this title.
18. Issue or direct the issuance of licenses and permits required by law.
19. Participate in the state civil defense program and develop the necessary organization and facilities to meet wartime or other disasters.
20. Subject to the availability of monies, develop and administer programs in perinatal health care, including:
 - (a) Screening in early pregnancy for detecting high risk conditions.
 - (b) Comprehensive prenatal health care.
 - (c) Maternity, delivery and postpartum care.
 - (d) Perinatal consultation, including transportation of the pregnant woman to a perinatal care center when medically indicated.
 - (e) Perinatal education oriented toward professionals and consumers, focusing on early detection and adequate intervention to avert premature labor and delivery.
21. License and regulate the health and safety of group homes for persons with developmental disabilities. The department shall issue a license to an accredited facility for a period of the accreditation, except that no licensing period shall be longer than three years. The department is authorized to conduct an inspection of an accredited facility to ensure that the facility meets health and safety licensure standards. The results of the accreditation survey shall be public information. A copy of the final accreditation report

shall be filed with the department of health services. For the purposes of this paragraph, "accredited" means accredited by a nationally recognized accreditation organization.

B. The department may accept from the state or federal government, or any agency of the state or federal government, and from private donors, trusts, foundations or eleemosynary corporations or organizations grants or donations for or in aid of the construction or maintenance of any program, project, research or facility authorized by this title, or in aid of the extension or enforcement of any program, project or facility authorized, regulated or prohibited by this title, and enter into contracts with the federal government, or an agency of the federal government, and with private donors, trusts, foundations or eleemosynary corporations or organizations, to carry out such purposes. All monies made available under this section are special project grants. The department may also expend these monies to further applicable scientific research within this state.

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

D. The department may enter into contracts with organizations that perform nonrenal organ transplant operations and organizations that primarily assist in the management of end stage renal disease and related problems to provide, as payors of last resort, prescription medications necessary to supplement treatment and transportation to and from treatment facilities. The contracts may provide for department payment of administrative costs it specifically authorizes.

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

A. The director shall:

1. Be the executive officer of the department of health services and the state registrar of vital statistics but shall not receive compensation for services as registrar.
2. Perform all duties necessary to carry out the functions and responsibilities of the department.
3. Prescribe the organization of the department. The director shall appoint or remove personnel as necessary for the efficient work of the department and shall prescribe the duties of all personnel. The director may abolish any office or position in the department that the director believes is unnecessary.
4. Administer and enforce the laws relating to health and sanitation and the rules of the department.
5. Provide for the examination of any premises if the director has reasonable cause to believe that on the premises there exists a violation of any health law or rule of this state.
6. Exercise general supervision over all matters relating to sanitation and health throughout this state. When in the opinion of the director it is necessary or advisable, a sanitary survey of the whole or of any

part of this state shall be made. The director may enter, examine and survey any source and means of water supply, sewage disposal plant, sewerage system, prison, public or private place of detention, asylum, hospital, school, public building, private institution, factory, workshop, tenement, public washroom, public restroom, public toilet and toilet facility, public eating room and restaurant, dairy, milk plant or food manufacturing or processing plant, and any premises in which the director has reason to believe there exists a violation of any health law or rule of this state that the director has the duty to administer.

7. Prepare sanitary and public health rules.

8. Perform other duties prescribed by law.

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

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

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

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

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

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

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

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

H. Notwithstanding subsection I, paragraph 1 of this section, the director may define and prescribe emergency measures for detecting, reporting, preventing and controlling communicable or infectious diseases or conditions if the director has reasonable cause to believe that a serious threat to public health and welfare exists. Emergency measures are effective for no longer than eighteen months.

I. The director, by rule, shall:

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

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

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

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

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

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

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

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

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

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

(g) Baked and confectionary goods that are not potentially hazardous and that are prepared in a kitchen of a private home for commercial purposes if packaged with a label that clearly states the address of the maker, includes contact information for the maker, lists all the ingredients in the product and discloses that the product was prepared in a home. The label must be given to the final consumer of the product. If the product was made in a facility for individuals with developmental disabilities, the label must also

disclose that fact. The person preparing the food or supervising the food preparation must obtain a food handler's card or certificate if one is issued by the local county and must register with an online registry established by the department pursuant to paragraph 13 of this subsection. For the purposes of this subdivision, "potentially hazardous" means baked and confectionary goods that meet the requirements of the food code published by the United States food and drug administration, as modified and incorporated by reference by the department by rule.

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

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

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

7. Define and prescribe reasonably necessary measures governing ice production, handling, storing and distribution to ensure that all ice sold or distributed for human consumption or for the preservation or storage of food for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions and the quality of ice that shall be maintained at any ice plant, storage and truck or vehicle in which ice is produced, stored, handled or transported and shall provide for inspection and licensing of the premises and vehicles, and for abatement as public nuisances of ice, premises, equipment, processes or vehicles that do not comply with the minimum standards.

8. Define and prescribe reasonably necessary measures concerning sewage and excreta disposal, garbage and trash collection, storage and disposal, and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels. The rules shall prescribe minimum standards for preparation of food in community kitchens, adequacy of excreta disposal, garbage and trash collection, storage and disposal and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels and shall provide for inspection of these premises and for abatement as public nuisances of any premises or facilities that do not comply with the rules. Primitive camp and picnic grounds offered by this state or a political subdivision of this state are exempt from rules adopted pursuant to this paragraph but are subject to approval by a county health department under sanitary regulations adopted pursuant to section 36-183.02. Rules adopted pursuant to this paragraph do not apply to two or fewer recreational vehicles as defined in section 33-2102 that are not park models or park trailers, that are parked on owner-occupied residential property for less than sixty days and for which no rent or other compensation is paid. For the purposes of this paragraph, "primitive camp and picnic grounds" means camp and picnic grounds that are remote in nature and without accessibility to public infrastructure such as water, electricity and sewer.
9. Define and prescribe reasonably necessary measures concerning the sewage and excreta disposal, garbage and trash collection, storage and disposal, water supply and food preparation of all public schools. The rules shall prescribe minimum standards for sanitary conditions that shall be maintained in any public school and shall provide for inspection of these premises and facilities and for abatement as public nuisances of any premises that do not comply with the minimum standards.
10. Prescribe reasonably necessary measures to prevent pollution of water used in public or semipublic swimming pools and bathing places and to prevent deleterious health conditions at these places. The rules shall prescribe minimum standards for sanitary conditions that shall be maintained at any public or semipublic swimming pool or bathing place and shall provide for inspection of these premises and for abatement as public nuisances of any premises and facilities that do not comply with the minimum standards. The rules shall be developed in cooperation with the director of the department of environmental quality and shall be consistent with the rules adopted by the director of the department of environmental quality pursuant to section 49-104, subsection B, paragraph 12.
11. Prescribe reasonably necessary measures to keep confidential information relating to diagnostic findings and treatment of patients, as well as information relating to contacts, suspects and associates of communicable disease patients. In no event shall confidential information be made available for political or commercial purposes.

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

13. Establish an online registry of food preparers that are authorized to prepare food for commercial purposes pursuant to paragraph 4 of this subsection.

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

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

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

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

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

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

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

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

Q. For the purposes of this section, "fetal demise" means a fetal death that occurs or is confirmed in a licensed hospital. Fetal demise does not include an abortion as defined in section 36-2151.

DEPARTMENT OF HEALTH SERVICES (F-18-0105)
Title 9, Chapter 6, Article 9, Health Professional Exposures



GOVERNOR'S REGULATORY REVIEW COUNCIL

STAFF MEMORANDUM – FIVE-YEAR REVIEW REPORT

MEETING DATE: January 9, 2018

AGENDA ITEM: E-6

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

FROM: Council Staff

DATE : December 19, 2017

SUBJECT: DEPARTMENT OF HEALTH SERVICES (F-18-0105)
Title 9, Chapter 6, Article 9, Health Professional Exposures

COMMENTS ON THE FIVE-YEAR REVIEW REPORT

Purpose of the Agency and Number of Rules in the Report

This five-year review report from the Arizona Department of Health Services (Department) covers two rules in A.A.C. Title 9, Chapter 6, Article 9, related to health professional exposures. Pursuant to A.R.S. § 36-136(H)(1), the Department is required to prescribe reasonably necessary measures to detect and prevent communicable diseases. A.R.S. § 36-3207 authorizes a health professional to petition a court “for the testing of a patient or deceased person if there is probable cause to believe that in the course of that health professional’s practice there was a significant exposure.” The Department has adopted rules in Article 9 to implement these statutes.

Section 901 defines terms used in the Article. Section 902 establishes the court-ordered test results notification procedures and required contents of a court-ordered test result notification. The rules were adopted in 2008.

In the previous five-year review report, approved by the Council in 2013, the Department did not propose to amend the rules because the rules imposed the least burden and costs, were consistent with statutory requirements, and were enforced without difficulty.

Proposed Action

The Department does not intend to amend the rules unless a substantive or legislative change occurs, or an issue affecting health or safety arises.

1. Has the agency analyzed whether the rules are authorized by statute?

Yes. The Department cites to both general and specific authority for the rules. Of particular significance is A.R.S. § 36-136(H)(1), which requires the Department to “define and prescribe reasonably necessary measures for detecting, reporting, preventing and controlling communicable and preventable diseases.” In addition, A.R.S. § 32-3207(D) requires the Department to adopt rules that establish notification procedures to be used for a court-ordered test result.

2. Summary of the agency’s economic impact comparison and identification of stakeholders:

The rules allow a health professional to petition a court for the testing of a patient or deceased person if there is probable cause to believe that, in the course of that health professional's practice, there was a significant exposure. The 2007 EIS states that the Department received approximately 78,000 communicable disease reports annually from local health agencies. According to the November 2017 EIS, the number of disease reports has not increased over the last five years.

Key stakeholders include the Department, correctional facilities, occupational health providers, health care providers of court ordered subjects, petitioners, living court-ordered subjects, and employing facilities.

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

The Department has determined that the rules impose the least burden and costs to persons regulated by the rules, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective. The Department does not plan to amend the rules unless a substantive or legislative change occurs, or an issue affecting health or safety arises.

4. Has the agency received any written criticisms of the rules over the last five years?

No. The Department indicates that it has not received any written criticisms of the rules over the last five years.

5. Has the agency analyzed the rules’ effectiveness, consistency with other rules and statutes, and the rules’ clarity, conciseness, and understandability?

Yes. The Department indicates that the rules are effective, consistent with other rules and statutes, and clear, concise, and understandable.

6. Has the agency analyzed the current enforcement status of the rules?

Yes. The Department indicates that it enforces the rules as written.

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

No. The Department indicates that no federal laws are applicable to these rules.

8. **For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

Not applicable. The rules were adopted prior to July 29, 2010.

9. **Conclusion**

As noted above, the Department does not intend to amend the rules reviewed in this report. The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. Staff recommends that the report be approved.



ARIZONA DEPARTMENT OF HEALTH SERVICES

POLICY & INTERGOVERNMENTAL AFFAIRS

November 15, 2017

Nicole O. Colyer, Esq., Chair
Governor's Regulatory Review Council
Arizona Department of Administration
100 N. 15th Avenue, Suite 305
Phoenix, AZ 85007

RE: Report for A.A.C. Title 9, Chapter 6, Article 9 of Communicable Diseases and Infestations

Dear Ms. Colyer:

According to the five-year-review report schedule of the Governor's Regulatory Review Council (Council), a report for A.A.C. Title 9, Chapter 6, Article 9 is due to the Council no later than February 28, 2018. The Arizona Department of Health Services (Department) has reviewed 9 A.A.C. 6, Article 9 and is enclosing a report to the Council for these rules.

The Department believes that this report complies with the requirements of A.R.S. § 41-1056. A five-year-review summary, information that is identical for all the rules, information for individual rules, the rules reviewed, the general and specific authority, and an economic impact statement are included in the package. As described in the report, the Department does not plan to amend the rule in 9 A.A.C. 6, Article 9 unless a threat to public health or safety occurs.

The Department certifies that it is in compliance with A.R.S. § 41-1091.

If you need any further information, please contact me at (602) 542-1020.

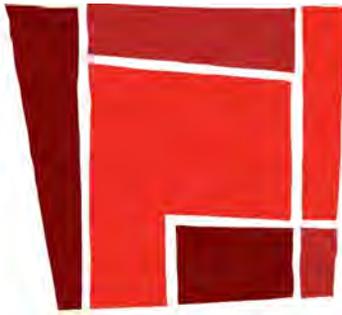
Sincerely,

A handwritten signature in black ink, appearing to read 'Robert Lane', written over a white rectangular area.

Robert Lane
Director's Designee

RL:rms
Enclosures

Douglas A. Ducey | Governor Cara M. Christ, MD, MS | Director



ARIZONA DEPARTMENT OF HEALTH SERVICES

FIVE-YEAR-REVIEW REPORT

TITLE 9. HEALTH SERVICES

CHAPTER 6. DEPARTMENT OF HEALTH SERVICES

COMMUNICABLE DISEASES AND INFESTATIONS

ARTICLE 9. HEALTH PROFESSIONAL EXPOSURES

NOVEMBER 2017

FIVE-YEAR-REVIEW REPORT
TITLE 9. HEALTH SERVICES
CHAPTER 6. DEPARTMENT OF HEALTH SERVICES
COMMUNICABLE DISEASES AND INFESTATIONS
ARTICLE 9. HEALTH PROFESSIONAL EXPOSURES

TABLE OF CONTENTS

1.	FIVE-YEAR-REVIEW SUMMARY	Page 3
2.	INFORMATION THAT IS IDENTICAL FOR ALL OF THE RULES	Page 4
3.	INFORMATION FOR INDIVIDUAL RULES	Page 8
4.	CURRENT RULES	Attachment A
5.	GENERAL AND SPECIFIC AUTHORITY	Attachment B
6.	ECONOMIC IMPACT STATEMENT FOR 2008	Attachment C

FIVE-YEAR-REVIEW SUMMARY

Arizona Revised Statutes (A.R.S.) § 36-136(H)(1) requires the Arizona Department of Health Services (Department) to “define and prescribe reasonably necessary measures for detecting, reporting, preventing and controlling communicable and preventable diseases.” A.R.S. § 32-3207 allows a health professional to petition a court “for the testing of a patient or deceased person if there is probable cause to believe that in the course of that health professional’s practice there was a significant exposure.” A.R.S. § 32-3207(D) requires the Department to adopt rules that establish notification procedures to be used for a court-ordered test result. The Department has adopted in Arizona Administrative Code (A.A.C.) Title 9, Chapter 6, Article 9, rules to implement these statutes. A.A.C. R9-6-901 provides definitions of terms used in the Article, and A.A.C. R9-6-902 establishes the court-ordered test results notification procedures and required contents of a court-ordered test result notification.

After an analysis of the rules in Article 9, the Department has determined that the rules are effective; clear, concise, and understandable; consistent with statutory requirements; and enforced without difficulty. The Department has received no written criticisms of the rules and believes the rules impose the least burden and costs to those regulated by the rules. The Department does not plan to amend the rules unless a substantive or legislative change occurs, or an issue affecting health or safety arises.

INFORMATION THAT IS IDENTICAL FOR ALL OF THE RULES

1. **Authorization of the rule by existing statute**

The general statutory authority for the rules in 9 A.A.C. 6, Article 9 are A.R.S. §§ 36-136(A)(7) and 36-136(G).

The specific statutory authority for the rules in 9 A.A.C. 6, Article 9 are A.R.S. §§ 32-3207 and 36-136(H)(1).

2. **The purpose of the rule**

The purpose of the rules in 9 A.A.C. 6, Article 9 is to establish procedures related to the notification of court-ordered test results related to a health professional exposure.

3. **Analysis of effectiveness in achieving the objective**

The rules are effective in achieving their objectives.

4. **Analysis of consistency with state and federal statutes and rules**

The rules are consistent with applicable statutes and rules.

5. **Status of enforcement of the rule**

The rules in 9 A.A.C. 6, Article 8 are enforced as written.

6. **Analysis of clarity, conciseness, and understandability**

The rules are clear, concise, and understandable.

7. **Summary of the written criticisms of the rule received within the last five years**

The Department has not received any written criticisms of the rules in the past five years.

8. **Economic, small business, and consumer impact comparison**

The rules in 9 A.A.C. 6, Article 9 were adopted by regular rulemaking effective April 1, 2008. In accordance with A.R.S. § 32-3207(D), the Department established notification procedures for the results of court-ordered tests requested by a health professional who believed that, during the course of practice, there was a significant exposure resulting from the transfer of blood or bodily fluids from another person or a decedent onto the health professional. An economic, small business, and consumer impact statement (EIS) was submitted to the Council as part of the Notice of Final Rulemaking package. The EIS designated annual cost/revenue changes as minimal when less than \$1,000, 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 EIS stated that the Department estimated the costs and benefits from the rules as follows:

- The Department – minimal costs associated with drafting the rulemaking and providing education to stakeholders and minimal benefits associated with the newly required notification process;
- Correctional facilities, including chief medical officers – minimal costs for educating employees about the new notification requirements and minimal costs for notifications made according to the rule;
- Occupational health providers – minimal costs associated with notification and minimal benefits associated with notification of test results in a short time-frame;
- Health care providers of court-ordered subjects – minimal costs associated with notification and minimal benefits from the clarity of the rules;
- Petitioners – no cost and significant benefit from the information in the notification and short notification time-frame;
- Living court-ordered subjects – significant benefit from the information in the notification and short notification time-frame; and
- Employing entities – minimal cost related to an increased number of petitioners and minimal benefit from the short notification time-frame and clarity of the notification requirements.

A.R.S. § 32-3207 does not provide for notification of the Department that a court has ordered testing of a subject or of an A.R.S. § 32-3207 court-ordered subject’s test results. However, the Department does receive results of tests conducted for HIV/AIDS (and other sexually transmitted diseases) ordered by a court pursuant to A.R.S. § 13-1415. The Department determined that the number of reports of A.R.S. § 13-1415 court-ordered tests received annually by the Department has not increased over the last five years. By analogy, the Department believes that it is likely that the annual number of A.R.S. § 32-3207 court-ordered tests has not increased over the last five years. The Department believes that the costs and benefits identified in this EIS are generally consistent with the actual costs and benefits of the rules.

9. Summary of business competitiveness analyses of the rules

The Department did not receive a business competitiveness analysis of the rules in the last five years.

10. Status of the completion of action indicated in the previous five-year-review report

In the 2013 five-year-review report, the Department stated that the Department did not plan to amend the rules because the rules are consistent with statutory requirements, impose the least burden and costs to those regulated by the rule, and are enforced without difficulty. The Department complied with this plan.

11. A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the

rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective

The Department has determined that the rules in 9 A.A.C. 6, Article 9 impose the least burden and costs to persons regulated by the rules, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.

12. Analysis of stringency compared to federal laws

Federal laws do not apply to the rules in 9 A.A.C. 6, Article 9.

13. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with section 41-1037

The rules were adopted before July 29, 2010 and do not require the issuance of regulatory permit, license, or agency authorization.

14. Proposed course of action

Because the rules are consistent with statutory requirements, impose the least burden and costs to those regulated by the rule, and are enforced without difficulty, the Department does not plan to amend the rules unless a substantive or legislative change occurs, or an issue affecting health or safety arises.

INFORMATION FOR INDIVIDUAL RULES

R9-6-901. Definitions

2. Objective

The objective of the rule is to define terms used in the Article to enable the reader to understand clearly the requirements of the Article and allow for consistent interpretation.

R9-6-902. Notice of Test Results

2. Objective

The objectives of the rule are to:

- a. Establish procedures for providing notification of court-ordered test results to applicable persons; and
- b. Specify additional requirements related to court-ordered test results, such as confidentiality and reporting in accordance with A.A.C. Title 9, Chapter 6.

Current Rules

ARTICLE 9. HEALTH PROFESSIONAL EXPOSURES

R9-6-901. Definitions

In this Article, unless otherwise specified:

1. "Employer" means an individual in the senior leadership position with the agency or entity for which a health professional works or that individual's designee.
2. "Health professional" means the same as in A.R.S. § 32-3201.
3. "Occupational health provider" means a physician, physician assistant, registered nurse practitioner, or registered nurse, as defined in A.R.S. § 32-1601, who provides medical services for work-related health conditions for an agency or entity for which a health professional works.
4. "Petitioner" means a health professional who petitions a court, under A.R.S. § 32-3207, to order testing of an individual.

R9-6-902. Notice of Test Results

- A. Within 10 working days after the date of receipt of a laboratory report for a test ordered by a health care provider as a result of a court order issued under A.R.S. § 32-3207, the ordering health care provider shall:
1. If the test is conducted on the blood of a court-ordered subject who is incarcerated or detained:
 - a. Provide a written copy of the laboratory report to the chief medical officer of the correctional facility in which the court-ordered subject is incarcerated or detained; and
 - b. Notify the petitioner's occupational health provider in writing of the results of the test; and
 2. If the test is conducted on the blood of a court-ordered subject who is not incarcerated or detained:
 - a. Unless the court-ordered subject is deceased, notify the court-ordered subject as specified in subsection (D);
 - b. If requested by the court-ordered subject, provide a written copy of the laboratory report to the court-ordered subject; and
 - c. Notify the petitioner's occupational health provider in writing of the results of the test.
- B. Within five working days after the date of receipt of a laboratory report for a court-ordered subject who is incarcerated or detained, the chief medical officer of the correctional facility in which the court-ordered subject is incarcerated or detained shall:
1. Notify the court-ordered subject as specified in subsection (D);
 2. If requested by the court-ordered subject, provide a written copy of the laboratory report to the court-ordered subject; and
 3. Notify the officer in charge of the correctional facility as specified in subsection (E).
- C. Within five working days after the petitioner's occupational health provider receives written notice of test results as required in subsection (A), the petitioner's occupational health provider shall notify the petitioner, as specified in subsection (D), and the petitioner's employer, as specified in subsection (E).
- D. An individual who provides notice to a court-ordered subject or petitioner as required under subsection (A), (B) or (C) shall describe the test results and provide or arrange for the court-ordered subject or petitioner to receive the following information about each agent for which the court-ordered subject was tested:

1. A description of the disease or syndrome caused by the agent, including its symptoms;
 2. A description of how the agent is transmitted to others;
 3. The average window period for the agent;
 4. An explanation that a negative test result does not rule out infection and that retesting for the agent after the average window period has passed is necessary to rule out infection;
 5. Measures to reduce the likelihood of transmitting the agent to others and that it is necessary to continue the measures until a negative test result is obtained after the average window period has passed or until an infection, if detected, is eliminated;
 6. That it is necessary to notify others that they may be or may have been exposed to the agent by the individual receiving notice;
 7. The availability of assistance from local health agencies or other resources; and
 8. The confidential nature of the court-ordered subject's test results.
- E. An individual who provides notice to the officer in charge of a correctional facility, as required under subsection (B), or to the petitioner's employer, as required under subsection (C), shall describe the test results and provide or arrange for the officer in charge of the facility or the employer to receive the following information about each agent for which a court-ordered subject's test results indicate the presence of infection:
1. A description of the disease or syndrome caused by the agent, including its symptoms;
 2. A description of how the agent is transmitted to others;
 3. Measures to reduce the likelihood of transmitting the agent to others;
 4. The availability of assistance from local health agencies or other resources; and
 5. The confidential nature of the court-ordered subject's test results.
- F. An individual who provides notice under this Section shall not provide a copy of the laboratory report to anyone other than the court-ordered subject and, if the court-ordered subject is incarcerated or detained, the chief medical officer of the correctional facility in which the court-ordered subject is incarcerated or detained.
- G. An individual who provides notice under this Section shall protect the confidentiality of the court-ordered subject's personal identifying information and test results.
- H. A health care provider who orders a test on the blood of a court-ordered subject who is not incarcerated or detained may, at the time the court-ordered subject is seen by the ordering health care provider, present the court-ordered subject with a telephone number and instruct the court-ordered subject to contact the ordering health care provider after a stated period of time for notification of the test results.
- I. A health care provider who orders a test has not satisfied the obligation of the health care provider to notify under subsection (A) if:
1. The health care provider provides a telephone number and instructions, as allowed by subsection (H), for a court-ordered subject to contact the ordering health care provider and receive the information specified in subsection (D); and
 2. The court-ordered subject does not contact the ordering health care provider.
- J. A health care provider who orders a test on a court-ordered subject's blood shall comply with all applicable reporting requirements contained in this Chapter.

Statutory Authority

32-3207. Health professionals disease hazard; testing; petition; definition

A. A health professional may petition the court to allow for the testing of a patient or deceased person if there is probable cause to believe that in the course of that health professional's practice there was a significant exposure.

B. The court shall hear the petition promptly. If the court finds that probable cause exists to believe that significant exposure occurred between the patient or deceased person and the health professional, the court shall order that either:

1. The person who transferred blood or bodily fluids onto the health professional provide two specimens of blood for testing.

2. If the person is deceased, the medical examiner draw two specimens of blood for testing.

C. On written notice from the employer of the health professional, the medical examiner is authorized to draw two specimens of blood for testing during the autopsy or other examination of the deceased person's body. The medical examiner shall release the specimen to the employing agency or entity for testing only after the court issues its order pursuant to subsection B. If the court does not issue an order within thirty days after the medical examiner collects the specimen, the medical examiner shall destroy the specimen.

D. Notice of the test results shall be provided as prescribed by the department of health services to the person tested, the health professional named in the petition and the health professional's employer. If the person is incarcerated or detained, the notice shall also be provided to the chief medical officer of the facility in which the person is incarcerated or detained.

E. For the purposes of this section, "significant exposure" means contact of a person's ruptured or broken skin or mucous membranes with another person's blood or bodily fluid, other than tears, saliva or perspiration, of a magnitude that the centers for disease control of the United States public health service have epidemiologically demonstrated can result in the transmission of blood borne or bodily fluid carried diseases.

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

A. The director shall:

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

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

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

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

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

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

7. Prepare sanitary and public health rules.

8. Perform other duties prescribed by law.

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

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

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

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

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

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

2. Monies appropriated or otherwise made available to the department for distribution to or division among counties or public health services districts for local health work may be allocated or reallocated in a manner designed to ensure the accomplishment of recognized local public health activities and delegated functions, powers and duties in accordance with applicable standards of performance.

Whenever in the director's opinion there is cause, the director may terminate all or a part of any delegation and may reallocate all or a part of any funds that may have been conditioned on the further performance of the functions, powers or duties conferred.

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

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

H. Notwithstanding subsection I, paragraph 1 of this section, the director may define and prescribe emergency measures for detecting, reporting, preventing and controlling communicable or infectious diseases or conditions if the director has reasonable cause to believe that a serious threat to public health and welfare exists. Emergency measures are effective for no longer than eighteen months.

I. The director, by rule, shall:

1. Define and prescribe reasonably necessary measures for detecting, reporting, preventing and controlling communicable and preventable diseases. The rules shall declare certain diseases reportable.

The rules shall prescribe measures, including isolation or quarantine, that are reasonably required to prevent the occurrence of, or to seek early detection and alleviation of, disability, insofar as possible, from communicable or preventable diseases. The rules shall include reasonably necessary measures to control animal diseases transmittable to humans.

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

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

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

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

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

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

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

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

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

(g) Baked and confectionary goods that are not potentially hazardous and that are prepared in a kitchen of a private home for commercial purposes if packaged with a label that clearly states the address of the maker, includes contact information for the maker, lists all the ingredients in the product and discloses that the product was prepared in a home. The label must be given to the final consumer of the product. If the product was made in a facility for individuals with developmental disabilities, the label must also disclose that fact. The person preparing the food or supervising the food preparation must obtain a food handler's card or certificate if one is issued by the local county and must register with an online registry established by the department pursuant to paragraph 13 of this subsection. For the purposes of this subdivision, "potentially hazardous" means baked and confectionary goods that meet the requirements of the food code published by the United States food and drug administration, as modified and incorporated by reference by the department by rule.

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

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

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

7. Define and prescribe reasonably necessary measures governing ice production, handling, storing and distribution to ensure that all ice sold or distributed for human consumption or for the preservation or storage of food for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions and the quality of ice that shall be maintained at any ice plant, storage and truck or vehicle in which ice is produced, stored, handled or transported and shall provide for inspection and licensing of the premises and vehicles, and for abatement as public nuisances of ice, premises, equipment, processes or vehicles that do not comply with the minimum standards.

8. Define and prescribe reasonably necessary measures concerning sewage and excreta disposal, garbage and trash collection, storage and disposal, and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels. The rules shall prescribe minimum standards for preparation of food in community kitchens, adequacy of excreta disposal, garbage and trash collection, storage and disposal and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels and shall provide for inspection of these premises and for abatement as public nuisances of any premises or facilities that do not comply with the rules.

Primitive camp and picnic grounds offered by this state or a political subdivision of this state are exempt from rules adopted pursuant to this paragraph but are subject to approval by a county health department under sanitary regulations adopted pursuant to section 36-183.02. Rules adopted pursuant to this paragraph do not apply to two or fewer recreational vehicles as defined in section 33-2102 that are not park models or park trailers, that are parked on owner-occupied residential property for less than sixty days and for which no rent or other compensation is paid. For the purposes of this paragraph, "primitive camp and picnic grounds" means camp and picnic grounds that are remote in nature and without accessibility to public infrastructure such as water, electricity and sewer.

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

10. Prescribe reasonably necessary measures to prevent pollution of water used in public or semipublic swimming pools and bathing places and to prevent deleterious health conditions at these places. The rules shall prescribe minimum standards for sanitary conditions that shall be maintained at any public or semipublic swimming pool or bathing place and shall provide for inspection of these premises and for abatement as public nuisances of any premises and facilities that do not comply with the minimum

standards. The rules shall be developed in cooperation with the director of the department of environmental quality and shall be consistent with the rules adopted by the director of the department of environmental quality pursuant to section 49-104, subsection B, paragraph 12.

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

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

13. Establish an online registry of food preparers that are authorized to prepare food for commercial purposes pursuant to paragraph 4 of this subsection.

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

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

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

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

M. After consultation with the state superintendent of public instruction, the director shall prescribe the criteria the department shall use in deciding whether or not to notify a local school district that a pupil in the district has tested positive for the human immunodeficiency virus antibody. The director shall prescribe the procedure by which the department shall notify a school district if, pursuant to these criteria, the department determines that notification is warranted in a particular situation. This procedure shall include a requirement that before notification the department shall determine to its satisfaction that the

district has an appropriate policy relating to nondiscrimination of the infected pupil and confidentiality of test results and that proper educational counseling has been or will be provided to staff and pupils.

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

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

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

Q. For the purposes of this section, "fetal demise" means a fetal death that occurs or is confirmed in a licensed hospital. Fetal demise does not include an abortion as defined in section 36-2151.

DEPARTMENT OF HEALTH SERVICES (F-18-0102)

Title 9, Chapter 10, Article 13, Behavioral Health Specialized Transitional Facility



GOVERNOR'S REGULATORY REVIEW COUNCIL

STAFF MEMORANDUM – FIVE-YEAR REVIEW REPORT

MEETING DATE: January 9, 2017

AGENDA ITEM: E-7

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

FROM: Council Staff

DATE : December 19, 2017

SUBJECT: DEPARTMENT OF HEALTH SERVICES (F-18-0102)
Title 9, Chapter 10, Article 13, Behavioral Health Specialized Transitional Facility

COMMENTS ON THE FIVE-YEAR-REVIEW REPORT

Purpose of the Agency and Number of Rules in the Report

This five-year review report from the Arizona Department of Health Services (Department) covers 17 rules in A.A.C. Title 9, Chapter 10, Article 13, related to Behavioral Health Specialized Transitional Facilities. As the rules were first enacted via the exempt rulemaking process in 2013, this is the first five-year review report on these rules.

R9-10-101(31) defines a behavioral health specialized transitional facility as “a health care institution that provides inpatient behavioral health services and physical health services to an individual determined to be a sexually violent person according to A.R.S. Title 36, Chapter 37.” Arizona currently has one behavioral health specialized transitional facility, the Arizona Community Protection and Treatment Center (ACPTC).

Proposed Action

The Department intends to amend four of the rules by July 2019, for the following reasons:

- Section 1302 – *Administration*: The rule incorrectly cites R9-10-224 instead of R9-10-225.
- Section 1307 – *Discharge or Conditional Release to a Less Restrictive Alternative*: Administrators of the ACPTC have reported that subsection (D)(1) is difficult to enforce, and that subsection (D)(2)(b) is potentially harmful to discharged patients.

- Section 1309 – *Patient Rights*: ACPTC administrators have concern that the rules is currently written in a manner that prohibits them from placing patients in seclusion under emergency circumstances.
- Section 1310 – *Behavioral Health Services*: ACPTC administrators indicate that subsection (C) should be broadened to include seclusion.

1. Has the agency analyzed whether the rules are authorized by statute?

Yes. The Department cites to both general and specific authority for the rules. Of particular significance is A.R.S. § 36-136(G), under which the Department “may make and amend rules necessary for the proper administration and enforcement of the laws relating to the public health.”

2. Summary of the agency’s economic impact comparison and identification of stakeholders:

The rules establish the minimum standards and requirements for the construction, modification, and licensure of behavioral health specialized transitional facilities. The rules relate to operational considerations associated with the ACPTC, and the direct economic impact of the rules is minimal.

Key stakeholders include the Department, behavioral health facilities, patients, and the ACPTC.

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

The Department has determined 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.

4. Has the agency received any written criticisms of the rules over the last five years?

Yes. The Department indicates that it has received one written criticism of the rules, specifically pertaining to Sections 1307, 1309, and 1310, over the last five years.¹ In response, the Department states that it plans to address the concerns raised by the commenter in its upcoming rulemaking.

5. Has the agency analyzed the rules’ clarity, conciseness, and understandability, consistency with other rules and statutes, and effectiveness?

Yes. The Department indicates that the rules are generally clear, concise, and understandable and are generally effective. The rules are consistent with other rules and statutes except for Section 1302(G)(2)(a), which has an outdated citation.

¹ A copy of this written criticism has been included as an attachment to the report.

6. **Has the agency analyzed the current enforcement status of the rules?**

Yes. The Department indicates that the rules are enforced as written.

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

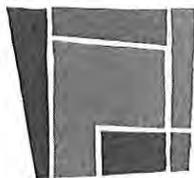
No. The Department indicates that no federal laws relate to the rules.

8. **For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

Yes. The rules require the issuance of an agency authorization. The Department indicates that, consistent with A.R.S. § 41-1037, A.R.S. § 36-405 provides specific authority for the use of this authorization.

9. **Conclusion**

As described above, the Department plans to amend Sections 1302, 1307, 1309, and 1310 by July 2019. The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. Council staff recommends that the report be approved.



ARIZONA DEPARTMENT OF HEALTH SERVICES

POLICY & INTERGOVERNMENTAL AFFAIRS

October 30, 2017

Nicole O. Colyer, Esq., Chair
Governor's Regulatory Review Council
Arizona Department of Administration
100 N. 15th Avenue, Suite 305
Phoenix, AZ 85007

RE: Report for A.A.C. Title 9, Chapter 10, Article 13, Behavioral Health Specialized Transitional Facility

Dear Ms. Colyer:

According to the five-year-review report schedule of the Governor's Regulatory Review Council (Council), a report for A.A.C. Title 9, Chapter 10, Article 13 is due to the Council no later than October 31, 2017. The Arizona Department of Health Services (Department) has reviewed 9 A.A.C. 10, Article 2 and is enclosing a report to the Council for this rule.

The Department believes that this report complies with the requirements of A.R.S. § 41-1056. A five-year-review summary, information that is identical for all the rules, information for individual rules, the rules reviewed, the general and specific authority, and written criticisms of the rules are included in the package. As described in the report, the Department plans to amend the rules in 9 A.A.C. 10, Article 13 by July 2019.

The Department certifies that it is in compliance with A.R.S. § 41-1091.

If you need any further information, please contact me at (602) 542-1020.

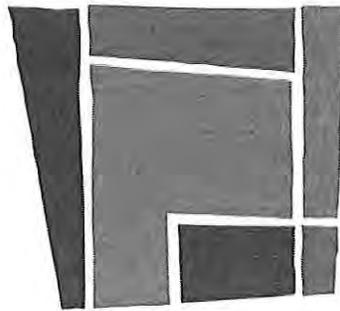
Sincerely,



Robert Lane
Director's Designee

RL:rms
Enclosures

Douglas A. Ducey | Governor Cara M. Christ, MD, MS | Director



ARIZONA DEPARTMENT OF HEALTH SERVICES

FIVE-YEAR-REVIEW REPORT

TITLE 9. HEALTH SERVICES

CHAPTER 10. DEPARTMENT OF HEALTH SERVICES

HEALTH CARE INSTITUTIONS: LICENSING

**ARTICLE 13. BEHAVIORAL HEALTH SPECIALIZED
TRANSITIONAL FACILITY**

OCTOBER 2017

FIVE-YEAR-REVIEW REPORT
TITLE 9. HEALTH SERVICES
CHAPTER 10. DEPARTMENT OF HEALTH SERVICES
HEALTH CARE INSTITUTIONS: LICENSING
ARTICLE 13. BEHAVIORAL HEALTH SPECIALIZED TRANSITIONAL FACILITY
OCTOBER 2017

TABLE OF CONTENTS

1.	FIVE-YEAR-SUMMARY	Page 3
2.	INFORMATION THAT IS IDENTICAL FOR ALL RULES	Page 4
3.	INFORMATION FOR INDIVIDUAL RULES	Page 13
4.	CURRENT RULES	Attachment A
5.	GENERAL AND SPECIFIC AUTHORITY	Attachment B
6.	WRITTEN CRITICISMS	Attachment C

FIVE-YEAR-REVIEW SUMMARY

Arizona Revised Statutes (“A.R.S.”) § 36-405(A) requires the Director of the Arizona Department of Health Services (“Department”) to adopt rules establishing minimum standards and requirements for the construction, modification, and licensure of health care institutions necessary to ensure the public health, safety, and welfare. It further requires that the standards and requirements relate to the construction, equipment, sanitation, staffing, and recordkeeping pertaining to the administration of medical, nursing, and personal care services according to generally accepted practices of health care. A.R.S. § 36-405(B)(1) allows the Director to classify and sub-classify health care institutions according to character, size, range of services provided, medical or dental specialty offered, duration of care, and standard of patient care required for the purposes of licensure. *See* R9-10-102 (listing the health care institution classes and subclasses).

Pursuant to A.A.C. R9-10-101(31), a “[b]ehavioral health specialized transitional facility” means a health care institution that provides inpatient behavioral health services and physical health services to an individual determined to be a sexually violent person according to A.R.S. Title 36, Chapter 37.” Specific rules for Arizona’s sole behavioral health specialized transitional facility, the Arizona Community Protection and Treatment Center (“ACPTC”), may be found in A.A.C Title 9, Chapter 10, Article 13.¹

After analyzing the rules encompassed under Title 9, Chapter 10, Article 13, the Department has determined that the rules are effective; mostly consistent with state and federal statutes and rules; enforced; and clear, concise, and understandable with the exception of those rules dealing with discharge procedures and the use of seclusion in patient treatment. The Department has received one written criticism of the rules in the past five years. The Department plans to initiate rulemaking in 2018 in order to clarify the permissible use of seclusion in behavioral health specialized transitional facility clinical environments and submit a Notice of Final Rulemaking to the Governor’s Regulatory Review Council by July, 2019.

¹ Initially, the specific rules for behavioral health specialized transitional facilities were adopted through exempt rulemaking and incorporated into Title 9, Chapter 20, Articles 2 and 7 and R9-20-501 on October 3, 2009.

INFORMATION THAT IS IDENTICAL FOR ALL RULES

1. Authorization of the rule by existing statute

The general statutory authority for the rules in 9 A.A.C. 10, Article 13 are located in A.R.S. §§ 36-132(A)(1), 36-132(A)(17), 36-136(G), and 36-3707.

The specific statutory authority for the rules in 9 A.A.C. 10, Article 13 is in A.R.S. §§ 36-204, 36-405, and 36-406.

2. The purpose of the rule

The purpose of the rules in 9 A.A.C. 10, Article 13 is to establish administrative requirements for behavioral health specialized transitional facilities.

3. Analysis of effectiveness in achieving the objective

The rules in 9 A.A.C. 10, Article 13 are effective in achieving their respective objectives.

4. Analysis of consistency with state and federal statutes and rules

With the exception of R9-10-1302(G)(2)(a), the rules are consistent with statutes and rules.

5. Status of enforcement of the rule

The rules in 9 A.A.C. 10, Article 13 are enforced as written by the Department.

6. Analysis of clarity, conciseness, and understandability

The rules are clear, concise and understandable.

7. Summary of the written criticisms of the rule received within the last five years

With the exception of criticisms of R9-10-1307, R9-10-1309, and R9-10-1310, described under the respective rules, the Department received no criticisms of the rules in the past five years.

8. Economic, small business, and consumer impact comparison

Presently, the ACPTC is the sole behavioral health specialized transitional facility operating in Arizona. The rules governing behavioral health specialized transitional facilities in Title 9, Chapter 10, Article 13 were enacted through an exempt rulemaking made effective on October 1, 2013. All but six of the rules were further revised and a new section added in another exempt rulemaking of Title 9, Chapter 10, made effective July 1, 2014. Stakeholders for these rulemakings included the Department, the ACPTC, physicians and other health care providers, patients, and the general public. Annual cost/revenue changes are designated as minimal when more than \$0 and \$5,000 or less, moderate when between \$5,000 and \$30,000, and substantial when \$30,000 or greater in additional costs or revenues. A cost is listed as significant when meaningful or important, but not readily subject to quantification.

Through the 2013 exempt rulemaking, the rules encompassed in Title 9, Chapter 20, Article 7, governing what were formerly known as "Level 1 specialized transitional agencies," were repealed and replaced with the current rules under Title 9, Chapter 10, Article 13. Under the new

rules, “behavioral health specialized transitional facilities” replaced “Level 1 specialized transitional agencies” as the entities designated to provide treatment to an individual determined to be a sexually violent person according to A.R.S. Title 36, Chapter 37. Due to the substantial overlap between the former and new rules, each affected subject area shall be taken in turn below:

a. Administration

General administration requirements applying to all classifications of behavioral health facilities encompassed under former R9-20-201(A) were repealed and replaced with R9-10-1302(A)-(B), setting out specific rules for the administration of behavioral health specialized transitional facilities. The change had a minimal economic effect on the ACPTPC.

Former rule R9-20-201(B) requiring the development and implementation of general policies and procedures for patient health, recordkeeping, complaints, incident reporting, staff qualifications, patient intake and discharge was repealed and replaced by similar provisions throughout 9 A.A.C. 10, Article 13. The change had a minimal economic effect on the ACPTPC.

Former rule R9-20-204 detailing skills, knowledge, and qualification requirements for ACPTC staff was repealed and replaced by R9-10-1305, requiring that ACPTC’s administrator set out policies and procedures for ensuring that staff possess the adequate skills and knowledge for their respective roles. Former rule R9-20-206 laying out orientation and training requirements was repealed and replaced with a substantially similar provision in R9-10-1305(I). The new rules created a benefit for ACPTC by simplifying administrative personnel requirements and had a minimal economic effect.

General recordkeeping requirements prescribed by R9-20-201(C) were repealed and replaced with specific recordkeeping provisions encompassed under new sections pertaining to patient records, contracted services, and facility/environmental controls. Rules for patient records, formerly prescribed by R9-20-211, were repealed and replaced with R9-10-1312. By replacing the old, general rules with new, ACPTC-specific rules, the Department provided an administrative benefit to the ACPTC with a minimal economic effect.

Annual written performance reviews for staff members required under R9-20-201(D) were repealed without replacement. The economic effect of the change was minimal to ACPTC.

b. Patient Rights

Former rules R9-20-701(B)-(C) and R9-20-203(A) were repealed and replaced by R9-10-1302(C)(1)(d) (requiring that an administrator establish policies and procedures covering patient rights) and R9-10-1306(B)(3) (requiring that a patient is provided with a written list and verbal explanation of the patient's rights and responsibilities). The enumerated rights listed in former rules R9-20-701(C) and R9-20-203(C) were repealed and replaced with a substantially similar list under R9-10-1309(1)(d), with the exception that former provisions relating to discrimination; treatment involving the denial of food, sleep, or use of the toilet; retaliation; and efforts to impede a client's exercise of his or her civil rights were removed in the new rules. Other assorted patient rights including, but not limited to, the right to file a complaint absent retaliation, the right to refuse to perform labor for an agency, the right to participate or refuse to participate in research or experimental treatment, were repealed from Title 9, Chapter 20 and replaced with substantially similar rules in R9-10-1302. It is estimated that these changes had a minimal economic effect on the ACPTC.

Former rule R9-20-701(C)(10) guaranteeing a patient the right to legal counsel was repealed and replaced with R9-10-1309(1)(c). A patient's right to counsel was also broadened, with minimal economic effect to the ACTPC, by the enactment of R9-10-1302(C)(5)(c), which provides for an individual assigned by a court of law or an attorney hired by the patient or patient's family to have access to a patient.

Former Rule R9-20-701(C)(10) giving a patient the right to receive assistance from human rights advocates provided by the Department was repealed in whole. In its stead, the Department enacted R9-10-1302(C)(1)(d), which provides for the adoption and implementation of policies and procedures that cover patient rights, including assisting a patient who has a physical or other disability to become aware of patient rights. The change had a minimal economic effect on the ACPTC.

Former rules R9-20-701(C)(11) and -701(C)(13) guaranteeing patients the right to access their own patient record and the Level I specialized transitional agency's inspection documents were repealed and replaced with similar provisions. With respect to the patient's own record, R9-10-1312(A)(6) now provides that a patient's medical record be made available to the patient or the patient's representative upon request at a time agreed upon by the patient or patient's representative and the administrator. With respect to inspection documents, a behavioral health specialized transitional facility must now post the location of inspection reports in an area easily

viewed by a patient or an individual entering or leaving the facility. *See* R9-10-1302(C)(7)(c). The changes had a minimal economic effect.

Former rules R9-20-701(C)(13), R9-20-701(C)(15), and -701(C)(16) giving patient's the right to access, receive explanation of, and participate in the formulation of their treatment plans were repealed and replaced with substantially similar provisions in R9-10-1309(2)(b), R9-10-1302(C)(1)(c), and R9-10-1310(B)(1). These changes had a minimal economic effect on the ACPTC.

Former rules R9-20-701(C)(17), R9-20-701(C)(22), and R9-20-208(E)(2) giving patients the right to informed consent in treatment and research contexts were repealed and replaced with R9-10-1310(B)(2) and R9-10-1311(B)(2). The economic effect of the changes was minimal.

Former rule R9-20-701(C)(18) guaranteeing a patient the right to participate or refuse to participate in religious and spiritual activities provided at a Level 1 specialized transitional facility was repealed without replacement with minimal economic effect.

Former rule R9-20-701(C)(23) giving patients the right to refuse to acknowledge gratitude to the agency through written statements, other media, or speaking engagements at public gatherings was repealed without replacement with minimal economic effect to ACPTC.

Former rule R9-20-701(G)(2) providing that a client's rights may be denied only if necessary to protect the safety of the client or others determined by A.R.S. 36-507(5) was repealed without replacement and had a minimal economic effect.

c. Facility, Health and Environmental Controls

Former rule R9-20-701(C)(24) granting patients the right to receive behavioral health services in a smoke-free facility was repealed and replaced with R9-10-1316(B) prohibiting smoking and tobacco products in the facility and on the premises. The change had minimal economic effect.

Former rule R9-20-701(C)(25) giving patients the right to associate in the same housing unit with a current client of the client's choice (with some exceptions) was repealed without replacement. The change had a minimal economic effect.

Former rules R9-20-701(D)(5) and R9-20-701(C)(26) dealing with a patient's right to receive

visitors and make telephone calls was repealed and replaced with similar provisions, R9-10-1317(D)(2)(a) and R9-10-1302(C)(1)(z), guaranteeing patients a working telephone in an indoor common area and directing the administrator to establish policies and procedures covering telephone use, computer use, and other recreational activities. The economic effect of the changes was minimal.

Former rules R9-20-701(C)(27) and R9-20-201(E) addressing a patient's right to privacy in correspondence, communication, visitation, financial affairs, treatment and personal hygiene were repealed and replaced with provisions directing the administrator to ensure that patients were ensured privacy in the aforementioned areas. *See* R9-10-1309(1)(a)-(b), R9-10-1302(C)(1)(z), and R9-10-1317(D)(1)(a). The economic effect of the changes was minimal.

Former rule R9-20-701(C)(28) permitting the sending and receiving of uncensored and unopened mail was repealed without replacement.

Former rule R9-20-701(C)(29) providing patients with a locked storage space was repealed and replaced with a nearly identical provision, R9-10-1316(D)(1)(a). The change had a minimal economic effect.

Former rule R9-20-701(C)(30) guaranteeing that a patient receive meals that meet their nutritional needs was repealed and replaced by R9-10-1314(B)(4) which delegates responsibility for patient nutrition to a registered dietitian or director of food services. The change had a minimal economic effect.

Former rule R9-20-701(E) setting out a facility's full-time/part-time/hourly staffing requirements was repealed without replacement. The only remaining rule dealing with hourly staffing requirements is R9-10-1314(A)(4)-(5) which deals exclusively with a facility's registered dietitian. The rule change had a minimal economic effect.

Former rule R9-20-701(G)(1) requiring that a client receive treatment in a secure facility was repealed and replaced with R9-10-1317(A) requiring an administrator to ensure that the facility complies with the applicable physical plant health and safety codes. The rule change had a minimal economic effect.

Former rules R9-20-214, R9-20-701(H), (I), and (J) prescribing premises requirements were

repealed and replaced with similar provisions encompassed throughout R9-10-1316(A), -1316(D), -1317(C), and -1317(D). Like their predecessors, the new rules lay out specifications for the facility's common areas, patient sleeping areas, dining areas, outdoor areas, hot water, laundry rooms, and bathrooms. The rule change had a minimal economic effect on the ACPTC.

Former rule R9-20-709(K) setting out the fire safety and fire inspection requirements for a facility were repealed and replaced by R9-10-1315(C). The new rules substantially mirror the former insofar as the inspection requirements remain within the discretion of the local jurisdiction's fire department or state fire marshal. The economic effect of the change was minimal.

d. Patient Rooms, Clothing, and Hygiene

Former rule R9-20-701(C)(31) requiring that patients were provided assistance in obtaining clean, seasonably appropriate clothing and R9-20-701(D)(1) requiring the implementation of policies for permitted clothing were repealed and replaced by R9-10-1316(D)(3), directing an administrator to enact policies to clean patient's clothing. The rule change had a minimal economic effect.

Former rule R9-20-701(C)(33) ensuring patients were provided with the opportunity for social contact and daily social, recreational, or rehabilitative activities was repealed and replaced with substantially similar provisions R9-10-1302(C)(1)(z), -1317(D)(2)(d), and -1317(D)(4)(b). The change had a minimal economic effect.

Former rule R9-20-701(D)(2) dealing with a licensee's obligation to develop policies and procedures addressing the issuance and return of a razor was repealed without replacement. The change had a minimal economic effect.

e. Discharge and Conditional Release to a Less Restrictive Alternative

General discharge requirements in former rule R9-20-210 were repealed and replaced with ACPTC-specific procedures in R9-10-1312(C)(19), setting out the contents of a discharge summary, and R9-10-1307, providing discharged patients with follow-up instructions for ongoing behavioral health care. The new rules substantially simplified discharge procedures to the benefit to the ACPTC and had a minimal economic effect.

Former rule R9-20-701(C)(35) providing patients the right to be informed of the requirements necessary for the client's discharge or conditional release to a less restrictive alternative was

repealed and replaced with a similar provision, R9-10-1307(A), requiring that patients be given annual written notice of their right to petition for discharge or conditional release. *See also* A.A.C. R9-10-1309(2)(e). A recordkeeping requirement for the notice, R9-10-1312(C)(16), was also put into effect. The economic effect of these changes on the ACPTC was minimal.

Former rule R9-20-701(C)(36) requiring that patients receive, at the time of discharge or legal transfer, recommendations for treatment was repealed and replaced, in part, with R9-10-1310(A)(1)(c)(vi). Instead of providing recommendations for treatment, the new rule requires that the facility's clinical director document the treatment needed after discharge in the patient's treatment plan. Under the rule, a discharged patient's record must also contain a discharge summary that includes medication and treatment information. The economic effect of these changes on the ACPTC was minimal.

f. Patient Health

Former rule R9-20-202(A) setting out notice and documentation requirements in the event of a patient death, suicide, medication error, physical injury, food poisoning or other circumstances was repealed and replaced in substantial part with R9-10-1302(D) and (E). The new rules produced a significant benefit to the ACPTC by providing a simplified notice procedure and had a minimal economic effect.

Former rules R9-20-701(C)(32) and R9-20-701(D)(4) covering access to medical services and patient medication self-administration were repealed and replaced with R9-20-1302(G)(2)(C), directing ACPTC to establish policies and procedures covering these subjects. The change had a minimal economic effect.

g. Use of Seclusion and Restraint

Former rules R9-20-602, R9-20-701(D), R9-20-701(G)(3), and R9-20-701(D)(3) addressing the use of restraint and seclusion were repealed and replaced with R9-10-1302(G)(2)(a) and R9-10-1302(C)(1)(x), requiring the creation of policies and procedures covering use of restraint in treatment and transportation settings, and R9-10-1309(1)(d), prohibiting the use of seclusion. The changes to the restraint rules provided a benefit to stakeholders by simplifying the procedures on restraint but the wholesale ban on seclusion created moderate costs for the ACPTC by forcing ACPTC staff to immediately resort to restraint.

h. Intake Procedures

Former rules R9-20-701(F) and R9-20-209 setting out the requirement that patient receive an assessment at intake contained in were repealed and replaced with R9-10-1302(H)(2) and R9-10-1306(C), directing the clinical director to establish policies and procedures covering the process for developing, reviewing, and updating patient assessments and treatment plans. The rule change had a minimal economic effect on the ACPTC and substantially simplified many of the administrative requirements at intake.

i. Summary

In general, the 2013 rules closely resemble the requirements embodied in former 9 A.A.C. 20. Whereas the former rules were more prescriptive in the nature, the new rules grant ACPTC's administrator discretion to establish policies and procedures covering the management of the facility and its patients. As noted above, the transition to the new rules generally had a minimal economic effect.

9. **Summary of business competitiveness analyses of the rules**

The Department did not receive a business competitiveness analysis of the rules in the last five years.

10. **Status of the completion of action indicated in the previous five-year-review report**

The rules in 9 A.A.C. 10, Article 13, were enacted under an exempted rulemaking in October of 2013. This is the first five-year-review of the new rules.

11. **A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective**

The Department has determined that the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.

12. **Analysis of stringency compared to federal laws**

The rules in Title 9, Chapter 10, Article 13 are not governed by federal laws.

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with section 41-1037**

The rules require the issuance of a specific agency authorization, which is authorized by A.R.S. § 36-405, so a general permit is not applicable.

14. **Plan of Action**

The Department plans to amend the rules in 9 A.A.C. 10, Article 13 to address the issues

described in this report and submit a Notice of Final Rulemaking to the Governor's Regulatory Review Council by July 2019.

INFORMATION FOR INDIVIDUAL RULES

R9-10-1301. Definitions

2. Objective

The objective of the rule is to define terms and phrases used in the Article to enable a reader to have a better understanding of the requirements contained in the Article.

R9-10-1302. Administration.

2. Objective

The objectives of the rule are to:

- a. Set out the qualifications, duties, and appointment procedures for a behavioral health specialized transitional facility's administrator;
- b. Mandate the adoption and annual review of a quality management program according to R9-10-1303;
- c. Establish protocols and reporting requirements that an administrator must abide by in the event that he or she believes abuse, neglect, or exploitation has occurred on the premises;
- d. Implement reporting and recordkeeping requirements that an administrator shall abide by in the event of a patient's death, self-injury, or absence;
- e. Set timeframes that the administrator must obey when the Department requests documentation from a behavioral health specialized transitional facility; and
- f. Prescribe the appointment procedures, duties, and qualifications for a behavioral health specialized transitional facility's medical director and clinical director.

4. Analysis of consistency with state and federal statutes and other rules made by the agency

R9-10-1302(G)(2)(a) is unclear due to the fact that the citation to R9-10-224 is out of date. The applicable rule is R9-10-225. The rule is otherwise consistent with statutes and rules.

R9-10-1303. Quality Management

2. Objective

The objectives of the rule are to:

- a. Ensure that an administrator establishes, documents, and implements an ongoing quality management program in accordance with the requirements contained in the rule; and
- b. Guarantee that the administrator prepares, submits, and retains a report to the governing authority that identifies concerns and actions taken regarding the delivery of services related to patient care.

R9-10-1304. Contracted Services

2. Objective

The objectives of the rule are to:

- a. Ensure that contracted services are provided and documented according to the requirements encompassed in A.A.C. Title 9, Chapter 10, Article 13.

R9-10-1305. Personnel Requirements and Records

2. Objective

The objectives of the rule are to:

- a. Set age and fingerprint clearance requirements for personnel working at a behavioral health specialized transitional facility;
- b. Establish qualification, skill, and knowledge requirements for personnel at behavioral health specialized transitional facilities;
- c. Implement recordkeeping and retention schedules for personnel records; and
- d. Ensure that personnel complete orientation and in-service education on an ongoing basis.

R9-10-1306. Admission Requirements

2. Objective

The objectives of the rule are to:

- a. Classify individuals eligible for admission to a behavioral health specialized transitional facility; and
- b. Establish intake procedures for patients at behavioral health specialized transitional facilities.

R9-10-1307. Discharge or Conditional Release to a Less Restrictive Alternative

2. Objective

The objectives of the rule are to:

- a. Ensure that patients in behavioral health specialized transitional facilities are provided annual written notice of their right to petition for conditional release to a less restrictive alternative under A.R.S. § 36-3709 or discharge under A.R.S. § 36-3714; and
- b. Establish discharge procedures that a clinical director must abide by before a patient is discharged or conditionally released to a less restrictive alternative.

7. Summary of written criticisms of the rules

- a. Criticism: ACPTC administrators reported that R9-10-1307(D)(1) is causing enforcement difficulties given the fact that some discharged ACPTC patients fail to seek follow-up treatment with either a health care provider or behavioral health professional. In addition, R9-

10-1307(D)(2)(b) requires ACPTC's clinical director to provide patients with a 14-day supply of medication upon discharge. ACPTC administrators reported that they felt uncomfortable giving discharged patients a supply of medication for 14 calendar days due to the risks involved in a patient's self-administration of medication (overdose, abuse, etc.).

- b. Response: The Department plans to address these issues in a rulemaking described under paragraph 14 above.

R9-10-1308. Transportation

2. Objective

The objectives of the rule are to:

- a. Establish mechanical and supply requirements for vehicles owned or leased by behavioral health specialized transitional facilities providing transportation to patients;
- b. Set requirements for personnel tasked with driving vehicles owned or leased by behavioral health specialized transitional facilities providing transportation to patients; and
- c. Ensure that documentation of current vehicle insurance and a record of maintenance is maintained by the administrator of a behavioral health specialized transitional facility.

R9-10-1309. Patient Rights

2. Objective

The objectives of the rule are to establish patient rights including, but not limited to, the right to privacy, counsel, proper treatment, information about potential courses of treatment, and facility policies.

7. Summary of written criticisms to the rules

- a. Criticism: ACPTC expressed concern that they are currently prohibited from placing patients in seclusion (locked rooms) under emergency circumstances under R9-10-1309(1)(d)(vi). Instead, staff must immediately resort to physically restraining patients, a more punitive and severe alternative than seclusion. The inability to place patients in seclusion has resulted in ACPTC receiving complaints from patients, potentially increasing costs and incurring unnecessary liability.
- b. Response: The Department plans to address these issues in the rulemaking described under paragraph 14 above.

R9-10-1310. Behavioral Health Services

2. Objective

The objectives of the rule are to:

- a. Direct that a treatment plan be developed and implemented for each of the facility's patients based on the patient's initial assessment and other enumerated factors;
- b. Ensure that a patient's treatment plan is reviewed and updated according to specified review dates or changes in circumstance;
- c. Make certain that treatment is provided only after informed consent to the treatment is obtained from the patient; and
- d. Prescribe the taking of an annual examination from patients pursuant to A.R.S. § 36-3708.

7. **Summary of written criticisms of the rules**

- a. Criticism: ACPTC administrators reported that R9-10-1310(C) solely references that restraint and that the rule ought to be broadened to include seclusion.
- b. Response: The Department plans to address these issues in the rulemaking described under paragraph 14 above.

R9-10-1311. Physical Health Services

2. **Objective**

The objectives of the rule are to:

- a. Ensure that a patient's physical health is assessed during the physical examination specified in R9-10-1306(C)(1) and that any physical health conditions identified in the assessment are addressed in the patient's treatment plan; and
- b. Establish requirements for on-going assessment and treatment of patients' physical health conditions.

R9-10-1312. Medical Records

2. **Objective**

The objectives of the rule are to:

- a. Make mandatory the creation and maintenance of a patient's medical record in accordance with A.R.S. Title 12, Chapter 13, Article 7.1;
- b. Ensure that a patient's medical record is available to authorized individuals;
- c. Prevent the tampering with or destruction of a patient's medical record; and
- d. Identify the documents and records that each patient's medical record must contain.

R9-10-1313. Medication Services

2. **Objective**

The objectives of the rule are to:

- a. Ensure that patients are aware of the anticipated results, potential adverse reactions, and side effects of their prescribed medications; and
- b. Require that a behavioral health specialized transitional facility has policies and procedures in place addressing medication administration, assistance in the self-administration of medication, and medication storage.

R9-10-1314. Food Services

2. Objective

The objectives of the rule are to:

- a. Require that a behavioral health specialized transitional facility obtain a license or permit as a food establishment under 9 A.A.C. 8, Article 1;
- b. Ensure that a behavioral health specialized transitional facility employs a registered dietitian or a director of food services in order to ensure that the patients' nutritional needs are being met; and
- c. Set environmental controls relating to the storage, preparation, and serving of food at a behavioral health specialized transitional facility.

R9-10-1315. Emergency and Safety Standards

2. Objective

The objective of the rule is to require that a behavioral health specialized transitional facility establish policies and procedures covering medical emergency treatment to a patient, fire safety, and disaster planning/preparedness.

R9-10-1316. Environmental Standards

2. Objective

The objectives of the rule are to:

- a. Ensure that a behavioral health specialized transitional facility maintains the premises and facility equipment in a safe and clean manner; and
- b. Establish requirements for linens and furniture in a patient's bedroom.

R9-10-1317. Physical Plant Standards

2. Objective

The objective of the rule is to require that a behavioral health specialized transitional facility complies with applicable physical plant health and safety codes and standards for secure residential facilities in accordance with R9-1-412.

ATTACHMENT C

WRITTEN CRITICISM

- R9-10-1302(G)(2)(a): Wrong rule citation for restraint; should be R9-10-225, not -224
- R9-10-1307(D)(1): Arizona State Hospital (“ASH”) wants to add “, if applicable” so that the rule reads as follows: “The clinical director or the clinical director’s designee, as specified in the behavioral health specialized transitional facility’s discharge policies and procedures, receives the name of the health care provider or behavioral health professional to whom a copy of the patient’s discharge summary will be sent, **if applicable, and**” The current rule causes enforcement difficulty for ASH staff. Specifically, it is often the case that residents who receive an absolute discharge fail to follow-up with a health care provider or behavioral health professional. The current rule lacks the flexibility to deal with circumstances such as these.
- R9-10-1307(D)(1)(b): ASH staff are uncomfortable giving discharged patients a supply of medication for 14 calendar days due to the risks involved in a patient’s self-administration of medication (overdose, abuse, etc.). ASH requests that the rule be compared to similar provisions in other residential treatment settings for guidance on the appropriate quantity of medication to provide patients with prior to discharge.
- R9-10-1309(1)(d)(vi): Add “, if not necessary to prevent imminent harm to self or others” immediately following seclusion. Under the current rules, ASH staff are prohibited from placing patients in seclusion (locked rooms) under emergency circumstances. Instead, ASH is forced to resort immediately to restraint, a more punitive and severe alternative than seclusion. The inability to place patients in seclusion has resulted in ASH receiving complaints from patients, potentially increasing costs and incurring unnecessary liability. Accordingly, ASH requests that an expedited rulemaking be initiated to address this issue following approval of the current 5YRR by GRRC.
- R9-10-1310(C): ASH requests that the rule be modified such that it reads as follows: “The clinical director shall ensure that **seclusion and** restraint is are used, performed, and documented according **to** the behavioral health specialized transitional facility’s policies and procedures.”
- R9-10-1312(C)(20)(d): ASH requests that the rule be modified such that it reads as follows: “Documentation of **seclusion or** restraint”
- To date, ASH has not received any comments about deficiencies in the rules. All of the issues identified above were self-identified concerns. Specifically, the issues regarding seclusion/restraint were identified in January of 2017.

Department of Health Services - Health Care Institutions: Licensing

ARTICLE 13. BEHAVIORAL HEALTH SPECIALIZED TRANSITIONAL FACILITY

R9-10-1301. Definitions

Definitions in A.R.S. § 36-401 and R9-10-101 apply in this Article unless otherwise specified.

Historical Note

Emergency rule adopted effective November 29, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective February 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Emergency rule adopted again effective May 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency rule adopted again effective August 27, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-3). Adopted with changes effective November 25, 1992 (Supp. 92-4). Reference in paragraph (24) corrected (Supp. 94-2). Section R9-10-1301 repealed effective November 1, 1998, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1998, Ch. 178, § 17; filed with the Office of the Secretary of State October 2, 1998 (Supp. 98-4). New Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2).

R9-10-1302. Administration

A. The governing authority for a behavioral health specialized transitional facility:

1. Is the superintendent of the state hospital; and
2. Shall:
 - a. Establish, in writing:
 - i. A behavioral health specialized transitional facility's scope of services, and
 - ii. Qualifications for an administrator;
 - b. Designate, in writing, an administrator who has the qualifications established in subsection (A)(2)(a)(ii);
 - c. Adopt a quality management program according to R9-10-1303;
 - d. Review and evaluate the effectiveness of the quality management program at least once every 12 months;
 - e. Designate an acting administrator, in writing, who has the qualifications established in subsection (A)(2)(a)(ii), if the administrator is:
 - i. Expected not to be present on the behavioral health specialized transitional facility's premises for more than 30 calendar days, or
 - ii. Not present on the behavioral health specialized transitional facility's premises for more than 30 calendar days; and
 - f. Except as provided in subsection (A)(2)(e), notify the Department according to A.R.S. § 36-425(I) when there is a change in the administrator and identify the name and qualifications of the new administrator.

B. An administrator:

1. Is directly accountable to the superintendent of the state hospital for the daily operation of the behavioral health specialized transitional facility and for all services provided by or at the behavioral health specialized transitional facility;
2. Has the authority and responsibility to manage the behavioral health specialized transitional facility; and
3. Except as provided in subsection (A)(2)(e), designates, in writing, an individual who is present on the behavioral health specialized transitional facility's premises and accountable for the behavioral health specialized transitional facility when the administrator is not present on the behavioral health specialized transitional facility's premises.

C. An administrator shall ensure that:

1. Policies and procedures are established, documented, and implemented to protect the health and safety of a patient that:
 - a. Cover job descriptions, duties, and qualifications, including required skills, knowledge, education, and experience for personnel members, employees, volunteers, and students;
 - b. Cover orientation and in-service education for personnel members, employees, volunteers, and students;
 - c. Cover patient admission, assessment, treatment plan, transfer, discharge planning, discharge, and recordkeeping;
 - d. Cover patient rights, including assisting a patient who does not speak English or who has a physical or other disability to become aware of patient rights;
 - e. Cover the requirements in A.R.S. §§ 36-3708, 36-3709, and 36-3714;
 - f. Establish the process for warning an identified or identifiable individual, as described in A.R.S. § 36-517.02 (B) through (C), if a patient communicates to a personnel member a threat of imminent serious physical harm or death to the identified or identifiable individual and the patient has the apparent intent and ability to carry out the threat;
 - g. Cover when informed consent is required and how informed consent is obtained;
 - h. Cover the criteria and process for conducting research using patients or patients' medical records;
 - i. Include the establishment of, disbursing from, and recordkeeping for a patient personal funds account;
 - j. Include a method of patient identification to ensure a patient receives the services ordered for the patient;
 - k. Cover contracted services;
 - l. Cover health care directives;
 - m. Cover medical records, including electronic medical records;
 - n. Cover medication procurement, storage, inventory monitoring and control, and disposal;
 - o. Cover infection control;
 - p. Cover and designate which personnel members or employees are required to have current certification in cardiopulmonary resuscitation and first aid training;
 - q. Cover environmental services that affect patient care;
 - r. Cover reporting suspected or alleged abuse, neglect, exploitation, or other criminal activity;

Department of Health Services - Health Care Institutions: Licensing

- s. Cover quality management, including incident reports and supporting documentation;
 - t. Cover emergency treatment and disaster plan;
 - u. Cover how personnel members will respond to a patient's sudden, intense, or out-of-control behavior to prevent harm to the patient or another individual;
 - v. Include security of the facility, patients and their possessions, personnel members, and visitors at the behavioral health specialized transitional facility;
 - w. Include preventing unauthorized patient absences;
 - x. Cover transportation of patients, including the criteria for using a locking mechanism to restrict a patient's movement during transportation;
 - y. Cover specific steps for:
 - i. A patient to file a complaint, and
 - ii. The behavioral health specialized transitional facility to respond to a patient's complaint;
 - z. Cover visitation, telephone usage, sending or receiving mail, computer usage, and other recreational activities; and
 - aa. Include equipment inspection and maintenance;
2. Policies and procedures are available to each personnel member;
3. Laboratory services are provided by a laboratory that holds a certificate of accreditation or certificate of compliance issued by the U.S. Department of Health and Human Services under the 1988 amendments to the Clinical Laboratories Improvement Act of 1967;
4. Food services are provided as specified in R9-10-1314;
5. The following individuals have access to a patient:
- a. The patient's representative,
 - b. An individual assigned by a court of law to provide services to the patient, and
 - c. An attorney hired by the patient or patient's family;
6. Labor performed by a patient for the behavioral health specialized transitional facility is consistent with A.R.S. § 36-510 and applicable state and federal law; and
7. The following information is posted in an area easily viewed by a patient or an individual entering or leaving the behavioral health specialized transitional facility:
- a. Patient rights,
 - b. Telephone number for the Department and the Office of Human Rights,
 - c. Location of inspection reports,
 - d. Complaint procedures, and
 - e. Visitation hours and procedures;
- D.** An administrator shall:
- 1. Provide written notification to the Department of a patient's:
 - a. Death, if the patient's death is required to be reported according to A.R.S. § 11-593, within one working day after the patient's death;
 - b. Self-injury, within two working days after the patient inflicts a self-injury that requires immediate intervention by an emergency medical service provider; and
 - c. Absence, within one working day after an unauthorized patient absence from the behavioral health specialized transitional facility is discovered;
 - 2. Maintain the documentation required in subsection (D)(1) for at least 12 months after the date of the notification; and
 - 3. Ensure that sufficient personnel are present at the behavioral health specialized transitional facility at all times to maintain safe and secure conditions.
- E.** If an administrator has a reasonable basis, according to A.R.S. § 46-454, to believe abuse, neglect, or exploitation has occurred on the premises or while the patient is receiving services from an employee or personnel member of the behavioral health specialized transitional facility, the 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 patient according to A.R.S. § 46-454;
 - 3. Document:
 - a. The suspected abuse, neglect, or exploitation of the patient;
 - b. Any action taken according to subsection (E)(1); and
 - c. The report in subsection (E)(2);
 - 4. Maintain the documentation required in subsections (E)(1) and (E)(2) for at least 12 months after the date of the report;
 - 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 (E)(2):
 - a. The dates, times, and description of the suspected abuse, neglect, or exploitation;
 - b. A description of any injury to the patient related to the abuse or neglect and any change to the patient'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

Department of Health Services - Health Care Institutions: Licensing

6. Maintain a copy of the documented information required in subsection (C)(10)(e) and any other information obtained during the investigation for at least 12 months after the date the investigation was initiated.
- F.** An administrator shall:
1. Unless otherwise stated, ensure that:
 - a. Documentation required by this Article is provided to the Department within two hours after a Department request; and
 - b. When documentation or information is required by this Chapter to be submitted on behalf of a behavioral health specialized transitional facility, the documentation or information is provided to the unit in the Department that is responsible for licensing and monitoring the behavioral health specialized transitional facility;
 2. Appoint a medical director, to direct the medical and nursing services provided by or at the behavioral health specialized transitional facility, who:
 - a. Is a medical staff member, and
 - b. Has at least two years of experience providing services in an organized psychiatric services unit of a hospital or in a behavioral health facility; and
 3. Appoint a clinical director, to provide direction for the behavioral health services provided by or at the behavioral health specialized transitional facility, who:
 - a. Is a psychiatrist or a psychologist;
 - b. Has at least two years of experience providing services in an organized psychiatric services unit of a hospital or in a behavioral health facility; and
 - c. May, if qualified, also serve as the medical director.
- G.** A medical director:
1. Is responsible for the medical services, nursing services, and physical health-related services provided to patients consistent with the patients behavioral treatment plan; and
 2. Shall ensure that policies and procedures are established, documented, and implemented to protect the health and safety of a patient that cover:
 - a. Restraint, according to R9-10-225;
 - b. The process for patient assessments, including the identification of and criteria for the on-going monitoring of a patient's physical health conditions;
 - c. Dispensing and administration of medications, including the process and criteria for determining whether a patient is capable of and eligible to self-administer medication;
 - d. The process by which emergency medical treatment will be provided to a patient; and
 - e. The requirements for completion of medication records and recording of adverse events.
- H.** A clinical director:
1. Is responsible for the behavioral health services provided to patients;
 2. Shall ensure that policies and procedures are established, documented, and implemented to protect the health and safety of a patient that cover:
 - a. Assessing the competency and proficiency of a behavioral health personnel member for each type of service the personnel member provides and each type of patient to which the personnel member is assigned;
 - b. Providing:
 - i. Supervision to behavioral health paraprofessionals, according to R9-10-115(1); and
 - ii. Clinical oversight to behavioral health technicians, according to R9-10-115(2);
 - c. The qualifications for personnel members who provide clinical oversight;
 - d. The process for patient assessments, including the identification of and criteria for the on-going monitoring of a patient's behavioral health issues;
 - e. The process for developing and implementing a patient's treatment plan;
 - f. The frequency of and process for reviewing and modifying a patient's treatment plan, based on the ongoing monitoring of the patient's response to treatment; and
 - g. The process for determining whether a patient is eligible for discharge or conditional release to a less restrictive alternative;
 3. Shall ensure that patient services are provided by personnel competent and proficient in providing the services; and
 4. Shall ensure that clinical oversight of personnel members is provided according to the policies and procedures.

Historical Note

Emergency rule adopted effective November 29, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective February 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Emergency rule adopted again effective May 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency rule adopted again effective August 27, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-3). Adopted with changes effective November 25, 1992 (Supp. 92-4). Section R9-10-1302 repealed effective November 1, 1998, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1998, Ch. 178, § 17; filed with the Office of the Secretary of State October 2, 1998 (Supp. 98-4). New Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

R9-10-1303. Quality Management

An administrator shall ensure that:

Department of Health Services - Health Care Institutions: Licensing

1. A plan is established, documented, and implemented for an ongoing quality management program that, at a minimum, includes:
 - a. A method to identify, document, and evaluate incidents;
 - b. A method to collect data to evaluate services provided to patients;
 - c. A method to evaluate the data collected to identify a concern about the delivery of services related to patient care;
 - d. A method to make changes or take action as a result of the identification of a concern about the delivery of services related to patient care; and
 - e. The frequency of submitting a documented report required in subsection (2) to the governing authority;
2. A documented report is submitted to the governing authority that includes:
 - a. An identification of each concern about the delivery of services related to patient care, and
 - b. Any change made or action taken as a result of the identification of a concern about the delivery of services related to patient care; and
3. The report required in subsection (2) and the supporting documentation for the report are maintained for at least 12 months after the date the report is submitted to the governing authority.

Historical Note

Emergency rule adopted effective November 29, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective February 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Emergency rule adopted again effective May 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency rule adopted again effective August 27, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-3). Adopted with changes effective November 25, 1992 (Supp. 92-4). Section R9-10-1303 repealed effective November 1, 1998, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1998, Ch. 178, § 17; filed with the Office of the Secretary of State October 2, 1998 (Supp. 98-4). New Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

R9-10-1304. 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

Emergency rule adopted effective November 29, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective February 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Emergency rule adopted again effective May 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency rule adopted again effective August 27, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-3). Adopted without change effective November 25, 1992 (Supp. 92-4). Section R9-10-1304 repealed effective November 1, 1998, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1998, Ch. 178, § 17; filed with the Office of the Secretary of State October 2, 1998 (Supp. 98-4). New Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

R9-10-1305. Personnel Requirements and Records

A. An administrator shall ensure that a personnel member:

1. Is at least 21 years of age; and
2. Either:
 - a. Holds a valid fingerprint clearance card issued under A.R.S. Title 41, Chapter 12, Article 3.1; or
 - b. Submits to the administrator a copy of a fingerprint clearance card application showing that the personnel member submitted the application to the fingerprint division of the Department of Public Safety under A.R.S. § 41-1758.02 within seven working days after becoming a personnel member.

B. An administrator shall ensure that each personnel member submits to the administrator a copy of the individual's valid fingerprint clearance card:

1. Except as provided in subsection (A)(2)(b), before the personnel member's starting date of employment; and
2. Each time the fingerprint clearance card is issued or renewed.

C. If a personnel member holds a fingerprint clearance card that was issued before the individual became a personnel member, an administrator shall:

1. Contact the Department of Public Safety within seven working days after the individual becomes a personnel member to determine whether the fingerprint clearance card is valid; and
2. Make a record of this determination, including the name of the personnel member, the date of the contact with the Department of Public Safety, and whether the fingerprint clearance card is valid.

D. An administrator shall ensure that:

1. The qualifications, skills, and knowledge required for each type of personnel member:
 - a. Are based on:
 - i. The type of physical health services or behavioral health services expected to be provided by the personnel member according to the established job description, and

Department of Health Services - Health Care Institutions: Licensing

- ii. The acuity of the patients receiving physical health services or behavioral health services from the personnel member according to the established job description; and
 - b. Include:
 - i. The specific skills and knowledge necessary for the personnel member to provide the expected physical health services and behavioral health services listed in the established job description,
 - ii. The type and duration of education that may allow the personnel member to have acquired the specific skills and knowledge for the personnel member to provide the expected physical health services or behavioral health services listed in the established job description, and
 - iii. The type and duration of experience that may allow the personnel member to have acquired the specific skills and knowledge for the personnel member to provide the expected physical health services or behavioral health services listed in the established job description;
 2. A personnel member's skills and knowledge are verified and documented:
 - a. Before the personnel member provides physical health services or behavioral health services, and
 - b. According to policies and procedures; and
 3. Personnel members are present on a behavioral health specialized transitional facility's premises with the qualifications, skills, and knowledge necessary to:
 - a. Provide the services in the behavioral health specialized transitional facility's scope of services,
 - b. Meet the needs of a patient, and
 - c. Ensure the health and safety of a patient.
- E.** An administrator shall comply with the requirements for behavioral health technicians and behavioral health paraprofessionals in R9-10-115.
- 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 patient for more than eight hours a week, provides evidence of freedom from infectious tuberculosis:
1. On or before the date the individual begins providing service at or on behalf of the behavioral health specialized transition facility, and
 2. As specified in R9-10-113.
- G.** 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, ending date;
 3. A copy of the individual's fingerprint clearance card; and
 4. 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 orientation and in-service education as required by policies and procedures;
 - d. The individual's license or certification, if the individual is required to be licensed or certified in this Article or policies and procedures;
 - e. If the individual is a behavioral health technician, clinical oversight required in R9-10-115;
 - f. Cardiopulmonary resuscitation training, if required for the individual according to this Article or policies and procedures;
 - g. First aid training, if required for the individual according to this Article or policies and procedures; and
 - h. Evidence of freedom from infectious tuberculosis, if required for the individual according to subsection (F).
- H.** An administrator shall ensure that personnel records are maintained:
1. Throughout an individual's period of providing services in or for the behavioral health specialized transitional facility; and
 2. For at least 24 months after the last date the individual provided services in or for the behavioral health specialized transitional facility.
- I.** 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 behavioral health services or physical health services;
 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; and
 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.

Historical Note

Emergency rule adopted effective November 29, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective February 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Emergency

Department of Health Services - Health Care Institutions: Licensing

rule adopted again effective May 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency rule adopted again effective August 27, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-3). Adopted with changes effective November 25, 1992 (Supp. 92-4). Section R9-10-1305 repealed effective November 1, 1998, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1998, Ch. 178, § 17; filed with the Office of the Secretary of State October 2, 1998 (Supp. 98-4). New Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

R9-10-1306. Admission Requirements

- A.** An administrator shall ensure that, before a patient is admitted to the behavioral health specialized transitional facility, a court of competent jurisdiction has ordered the patient to be:
1. Detained under A.R.S. § 36-3705(B) or § 36-3713(B); or
 2. Committed under A.R.S. § 36-3707.
- B.** An administrator shall ensure that, at the time a patient is admitted to the behavioral health specialized transitional facility:
1. The administrator receives a copy of the court order for the patient to be detained at or committed to the behavioral health specialized transitional facility,
 2. The patient's possessions are taken to the bedroom to which the patient has been assigned, and
 3. The patient is provided with a written list and verbal explanation of the patient's rights and responsibilities.
- C.** Within seven calendar days after a patient is admitted to the behavioral health specialized transitional facility, a medical director shall ensure that:
1. A medical history is taken from and a physical examination performed on the patient;
 2. Except as specified in subsection (C)(3), a patient provides evidence of freedom from infectious tuberculosis as required in R9-10-113;
 3. A patient is not required to be retested for tuberculosis or provide another written statement by a physician, physician assistant, or registered nurse practitioner as specified in R9-10-113(1) if:
 - a. Fewer than 12 months have passed since the patient was tested for tuberculosis or since the date of the written statement, and
 - b. The documentation of freedom from infectious tuberculosis required in subsection (C)(2) accompanies the patient at the time of the patient's admission to the behavioral health specialized transitional facility; and
 4. An assessment for the patient is completed:
 - a. According to the behavioral health specialized transitional facility's policies and procedures;
 - b. That includes the patient's:
 - i. Legal history, including criminal justice record;
 - ii. Behavioral health treatment history;
 - iii. Medical conditions and history; and
 - iv. Symptoms reported by the patient and referrals needed by the patient, if any; and
 - c. That includes:
 - i. Recommendations for further assessment or examination of the patient's needs,
 - ii. The physical health services or ancillary services that will be provided to the patient until the patient's treatment plan is completed; and
 - iii. The signature of the personnel member conducting the assessment and the date signed.

Historical Note

Emergency rule adopted effective November 29, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective February 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Emergency rule adopted again effective May 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency rule adopted again effective August 27, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-3). Adopted with changes effective November 25, 1992 (Supp. 92-4). Section R9-10-1306 repealed effective November 1, 1998, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1998, Ch. 178, § 17; filed with the Office of the Secretary of State October 2, 1998 (Supp. 98-4). New Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

R9-10-1307. Discharge or Conditional Release to a Less Restrictive Alternative

- A.** An administrator shall ensure that annual written notice is given to a patient of the patient's right to petition for:
1. Conditional release to a less restrictive alternative under A.R.S. § 36-3709, or
 2. Discharge under A.R.S. § 36-3714.
- B.** An administrator shall ensure that a patient who is detained at or committed to the behavioral health specialized transitional facility is transported to a hearing to determine the patient's continued detention at or commitment to the behavioral health specialized transitional facility.
- C.** An administrator shall ensure that a patient is not discharged or conditionally released to a less restrictive alternative before the behavioral health specialized transitional facility receives documentation from a court of competent jurisdiction of the patient's:
1. Conditional release to a less restrictive alternative, or
 2. Discharge including the disposition of the patient upon discharge.

Department of Health Services - Health Care Institutions: Licensing

- D. A clinical director shall ensure that before a patient is discharged or conditionally released to a less restrictive alternative:
1. The clinical director or the clinical director's designee, as specified in the behavioral health specialized transitional facility's discharge policies and procedures, receives the name of the health care provider or behavioral health professional to whom a copy of the patient's discharge summary will be sent; and
 2. The patient receives:
 - a. Written follow-up instructions including as applicable to the patient:
 - i. On-going behavioral health issues and physical health conditions;
 - ii. A list of the patient's medications and, for each medication, directions for taking the medication, possible side-effects, and possible results of not taking the medication; and
 - iii. Counseling goals; and
 - b. A supply of medications sufficient to last the patient for at least 14 calendar days.

Historical Note

Emergency rule adopted effective November 29, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective February 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Emergency rule adopted again effective May 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency rule adopted again effective August 27, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-3). Adopted with changes effective November 25, 1992 (Supp. 92-4). Section R9-10-1307 repealed effective November 1, 1998, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1998, Ch. 178, § 17; filed with the Office of the Secretary of State October 2, 1998 (Supp. 98-4). New Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2).

R9-10-1308. Transportation

An administrator of a behavioral health specialized transitional facility that uses a vehicle owned or leased by the behavioral health specialized transitional facility to provide transportation to a patient shall ensure that:

1. The vehicle:
 - a. Is safe and in good repair,
 - b. Contains a locked first aid kit,
 - c. Contains a working heating and air conditioning system, and
 - d. Contains drinking water sufficient to meet the needs of each patient present in the vehicle;
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 patient in the vehicle,
 - d. Does not leave a patient in the vehicle unattended, and
 - e. Ensures the safe and hazard-free loading and unloading of patients; and
4. Transportation safety is maintained as follows:
 - a. Each individual in the vehicle is sitting in a seat 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 patient's body.

Historical Note

Emergency rule adopted effective November 29, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective February 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Emergency rule adopted again effective May 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency rule adopted again effective August 27, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-3). Adopted with changes effective November 25, 1992 (Supp. 92-4). Section R9-10-1308 repealed effective November 1, 1998, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1998, Ch. 178, § 17; filed with the Office of the Secretary of State October 2, 1998 (Supp. 98-4). New Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

R9-10-1309. Patient Rights

An administrator shall ensure that:

1. A patient:
 - a. Has privacy in treatment and personal care needs;
 - b. Has the opportunity for and privacy in correspondence, communications, and visitation unless:
 - i. Restricted by court order; or
 - ii. Contraindicated on the basis of clinical judgment, as documented in the patient's medical record;
 - c. Is given the opportunity to seek, speak to, and be assisted by legal counsel:
 - i. Whom the court assigns to the patient, or
 - ii. Whom the patient obtains at the patient's own expense; and
 - d. Is not subjected to:
 - i. Abuse;

Department of Health Services - Health Care Institutions: Licensing

- ii. Neglect;
 - iii. Exploitation;
 - iv. Coercion;
 - v. Manipulation;
 - vi. Seclusion;
 - vii. Restraint, if not necessary to prevent imminent harm to self or others;
 - viii. Sexual abuse according to A.R.S. § 13-1404; or
 - ix. Sexual assault according to A.R.S. § 13-1406; and
2. A patient or the patient's representative:
- a. Is provided with the opportunity to participate in the development of the patient's treatment plan and in treatment decisions before the treatment is initiated, except in a medical emergency;
 - b. Is provided with information about proposed treatments, alternatives to treatments, associated risks, and possible complications;
 - c. Is allowed to control the patient's finances and have access to the patient's personal funds account according to the behavioral health specialized transitional facility's policies and procedures specified in R9-10-1302(C)(1)(i);
 - d. Has an opportunity to review the medical record for the patient according to the behavioral health specialized transitional facility's policies and procedures; and
 - e. Receives information about the behavioral health specialized transitional facility's policies and procedures for:
 - i. Health care directives;
 - ii. Filing complaints, including the telephone number of an individual at the behavioral health specialized transitional facility to contact about a complaint and the Department's telephone number; and
 - iii. Petitioning a court for a patient's discharge or conditional release to a less restrictive alternative.

Historical Note

Emergency rule adopted effective November 29, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective February 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Emergency rule adopted again effective May 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency rule adopted again effective August 27, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-3). Adopted with changes effective November 25, 1992 (Supp. 92-4). Section R9-10-1309 repealed effective November 1, 1998, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1998, Ch. 178, § 17; filed with the Office of the Secretary of State October 2, 1998 (Supp. 98-4). New Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

R9-10-1310. Behavioral Health Services

- A.** A clinical director shall ensure that:
- 1. A treatment plan is developed and implemented for the patient:
 - a. According to the behavioral health specialized transitional facility's policies and procedures;
 - b. Based on the assessment conducted under R9-10-1306(C)(4) and on-going changes to the assessment of the patient's behavioral health issues, mental disorders, and physical health conditions, as applicable; and
 - c. Including:
 - i. The physical health services, behavioral health services, and ancillary services to be provided to the patient until completion of the treatment plan;
 - ii. The type, frequency, and duration of counseling or other treatment ordered for the patient;
 - iii. The name of each individual who ordered medication, counseling, or other treatment for the patient;
 - iv. The signature of the patient or the patient's representative and dated signed, or documentation of the refusal to sign;
 - v. The date when the patient's treatment plan will be reviewed;
 - vi. If a discharge date has been determined, the treatment needed after discharge; and
 - vii. The signature of the personnel member who developed the treatment plan and the date signed; and
 - 2. A patient's treatment plan is reviewed and updated:
 - a. According to the review date specified in the treatment plan,
 - b. When a treatment goal is accomplished or changes,
 - c. When additional information that affects the patient's assessment is identified, and
 - d. When a patient has a significant change in condition or experiences an event that affects treatment.
- B.** A clinical director shall ensure that treatment is:
- 1. Offered to a patient according to the patient's treatment plan;
 - 2. Except for a patient obtaining treatment under A.R.S. § 36-512, only provided after obtaining informed consent to the treatment from the patient; and
 - 3. Documented in the patient's medical record as specified in R9-10-1312.
- C.** The clinical director shall ensure that restraint is used, performed, and documented according the behavioral health specialized transitional facility's policies and procedures.
- D.** A clinical director shall ensure that:
- 1. A patient receives the annual examination required by A.R.S. § 36-3708, and

Department of Health Services - Health Care Institutions: Licensing

2. A report of the patient's annual examination is prepared according to the behavioral health specialized transitional facility's policies and procedures.

Historical Note

Emergency rule adopted effective November 29, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective February 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Emergency rule adopted again effective May 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency rule adopted again effective August 27, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-3). Adopted with changes effective November 25, 1992 (Supp. 92-4). Section R9-10-1310 repealed effective November 1, 1998, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1998, Ch. 178, § 17; filed with the Office of the Secretary of State October 2, 1998 (Supp. 98-4). New Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

R9-10-1311. Physical Health Services

- A. A medical director shall ensure that:
 1. A patient's physical health is assessed during the physical examination specified in R9-10-1306(C)(1), and
 2. Any physical health conditions identified through the assessment are addressed in the patient's treatment plan.
- B. A medical director shall ensure that on-going assessment or treatment of a patient's physical health condition is:
 1. Offered to a patient according to the patient's treatment plan;
 2. Except for a patient obtaining treatment under A.R.S. § 36-512, only provided after obtaining informed consent to the assessment or treatment from the patient; and
 3. Documented in the patient's medical record as specified in R9-10-1312.
- C. An administrator shall ensure that, if a patient requires assessment or treatment not available at the behavioral health specialized transitional facility, the patient is provided with transportation to the location where assessment or treatment may be provided to the patient.

Historical Note

Emergency rule adopted effective November 29, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective February 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Emergency rule adopted again effective May 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency rule adopted again effective August 27, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-3). Adopted with changes effective November 25, 1992 (Supp. 92-4). Section R9-10-1311 repealed effective November 1, 1998, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1998, Ch. 178, § 17; filed with the Office of the Secretary of State October 2, 1998 (Supp. 98-4). New Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

R9-10-1312. Medical Records

- A. An administrator shall ensure that:
 1. A medical record is established and maintained for each patient according to A.R.S. Title 12, Chapter 13, Article 7.1;
 2. An entry in a patient's medical record is:
 - a. Recorded only by an individual authorized by facility policies and procedures to make the entry;
 - b. Dated, legible, and authenticated; and
 - c. Not changed to make the initial entry illegible;
 3. An order is:
 - a. Dated when the order is entered in the patient's medical record and includes the time of the order;
 - b. Authenticated by a medical practitioner or behavioral health professional according to facility 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 the electronic signature;
 5. A patient's medical record is available to an individual:
 - a. Authorized according to policies and procedures to access the patient's medical record;
 - b. If the individual is not authorized according to policies and procedures, with the written consent of the patient or the patient's representative; or
 - c. As permitted by law;
 6. A patient's medical record is available to the patient or patient's representative upon request at a time agreed upon by the patient or patient's representative and the administrator; and
 7. A patient's medical record is protected from loss, damage, or unauthorized use.
- B. If a behavioral health specialized transitional facility maintains patient's medical records electronically, an administrator shall ensure that:
 1. Safeguards exist to prevent unauthorized access, and
 2. The date and time of an entry in a patient's medical record is recorded by the computer's internal clock.

Department of Health Services - Health Care Institutions: Licensing

- C. An administrator shall ensure that a patient's medical record contains:
1. A copy of the court order requiring the patient to be detained at or committed to the behavioral health specialized transitional facility;
 2. The date the patient was detained at or committed to the behavioral health specialized transitional facility;
 3. Patient information that includes:
 - a. The patient's name;
 - b. The patient's address;
 - c. The patient's date of birth; and
 - d. Any known allergies, including medication allergies;
 4. Documentation of the patient's freedom from infectious tuberculosis as required in R9-10-1306(C)(2);
 5. Documentation of general consent and, if applicable, informed consent for treatment by the patient or the patient's representative, except in an emergency;
 6. If applicable, the name and contact information of the patient's representative and:
 - a. The document signed by the patient consenting for the patient's representative to act on the patient's behalf; or
 - b. If the patient's representative:
 - i. Is a legal guardian, a copy of the court order establishing guardianship; or
 - ii. Has a health care power of attorney established under A.R.S. § 36-3221 or a mental health care power of attorney executed under A.R.S. § 36-3282, a copy of the health care power of attorney or mental health care power of attorney;
 7. Documentation of medical history and physical examination of the patient;
 8. A copy of patient's health care directives, if applicable;
 9. Orders;
 10. The patient's assessment including updates;
 11. The patient's treatment plan including updates;
 12. Progress notes;
 13. Documentation of transportation provided to the patient;
 14. Documentation of behavioral health services and physical health services provided to the patient;
 15. Documentation of patient's annual examination and report required by A.R.S. § 36-3708;
 16. Documentation of the annual written notice of the patient of the patient's right to petition for:
 - a. Conditional release to a less restrictive alternative as required by A.R.S. § 36-3709, or
 - b. Discharged as required by A.R.S. § 36-3714;
 17. A copy of any petition for discharge or conditional release to a less restrictive alternative filed by the patient and provided to the behavioral health specialized transitional facility and the outcome of the petition;
 18. Documentation of the patient's, if applicable:
 - a. Conditional release to a less restrictive alternative; or
 - b. Discharge, including the disposition of the patient upon discharge;
 19. If a patient has been discharged, a discharge summary that includes:
 - a. A summary of the treatment provided to the patient;
 - b. The patient's progress in meeting treatment goals, including treatment goals that were and were not achieved;
 - c. The name, dosage, and frequency of each medication for the patient ordered at the time of the patient's discharge from the behavioral health specialized transitional facility;
 - d. A description of the disposition of the patient's possessions, funds, or medications; and
 - e. The date the patient was discharged from the behavioral health specialized transitional facility;
 20. If applicable:
 - a. Laboratory reports,
 - b. Radiologic reports,
 - c. Diagnostic reports,
 - d. Documentation of restraint,
 - e. Patient follow-up instructions, and
 - f. Consultation reports; and
 21. Documentation of a medication administered to the patient that includes:
 - a. The date and time of administration;
 - b. The name, strength, dosage, and route of administration;
 - c. For a medication administered for pain:
 - i. An assessment of the patient's pain before administering the medication, and
 - ii. The effect of the medication administered;
 - d. For a psychotropic medication:
 - i. An assessment of the patient's behavior before administering the psychotropic medication, and
 - ii. The effect of the psychotropic medication administered;
 - e. The identification, signature, and professional designation of the individual administering or observing the self-administration of the medication;
 - f. Any adverse reaction a patient has to the medication; and
 - g. If applicable, a patient's refusal to take medication ordered for the patient.

Department of Health Services - Health Care Institutions: Licensing

Historical Note

Emergency rule adopted effective November 29, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective February 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Emergency rule adopted again effective May 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency rule adopted again effective August 27, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-3). Adopted with changes effective November 25, 1992 (Supp. 92-4). Section R9-10-1312 repealed effective November 1, 1998, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1998, Ch. 178, § 17; filed with the Office of the Secretary of State October 2, 1998 (Supp. 98-4). New Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

R9-10-1313. Medication Services

- A.** An administrator shall ensure that policies and procedures for medication services:
1. Include:
 - a. A process for providing information to a patient about medication prescribed for the patient, including:
 - i. The prescribed medication's anticipated results,
 - ii. The prescribed medication's potential adverse reactions,
 - iii. The prescribed medication's potential side effects, and
 - iv. Potential adverse reactions that could result from not taking the medication as prescribed;
 - b. Procedures for preventing, responding to, and reporting:
 - i. A medication error,
 - ii. An adverse response to a medication, or
 - iii. A medication overdose;
 - c. Procedures for documenting medication services and assistance in the self-administration of medication; and
 - d. If applicable, procedures for providing medication administration or assistance in the self-administration of medication off the premises; and
 2. Specify a process for review through the quality management program of:
 - a. A medication administration error, and
 - b. An adverse reaction to a medication.
- B.** A medical director shall ensure that:
1. Policies and procedures for medication administration:
 - a. Are reviewed and approved by a medical practitioner;
 - b. Specify the individuals who may:
 - i. Order medication, and
 - ii. Administer medication; and
 - c. Ensure that medication is administered to a patient only as prescribed;
 2. A patient's refusal to take prescribed medication is documented in the patient's medical record;
 3. Verbal orders for medication services are taken by a nurse, unless otherwise provided by law;
 4. A medication administered to a patient:
 - a. Is administered in compliance with an order, and
 - b. Is documented in the patient's medical record; and
 5. If pain medication is administered to a patient on a PRN basis, documentation in the patient's medical record includes:
 - a. An identification of the patient's pain before administering the medication, and
 - b. The effect of the pain medication administered.
- C.** If a behavioral health specialized transitional facility provides assistance in the self-administration of medication, a medical director shall ensure that:
1. A patient's medication is stored by the behavioral health specialized transitional facility;
 2. The following assistance is provided to a patient:
 - a. A reminder when it is time to take the medication;
 - b. Opening the medication container for the patient;
 - c. Observing the patient while the patient removes the medication from the container;
 - d. Verifying that the medication is taken as ordered by the patient's medical practitioner by confirming that:
 - i. The patient taking the medication is the individual stated on the medication container label,
 - ii. The dosage of the medication is the same as stated on the medication container label, and
 - iii. The medication is being taken by the patient at the time stated on the medication container label; or
 - e. Observing the patient while the patient takes the medication;
 3. Policies and procedures for assistance in the self-administration of medication are reviewed and approved by a medical practitioner or registered nurse;
 4. Training for a personnel member, other than a medical practitioner or nurse, in assistance in the self-administration of medication:

Department of Health Services - Health Care Institutions: Licensing

- a. Is provided by a medical practitioner or registered nurse or an individual trained by a medical practitioner 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. Process for notifying the appropriate entities when an emergency medical intervention is needed;
 5. A personnel member, other than a medical practitioner or 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 patient:
 - a. Is in compliance with an order, and
 - b. Is documented in the patient's medical record.
- D.** An administrator shall ensure that:
1. A current drug reference guide is available for use by personnel members;
 2. A current toxicology reference guide is available for use by personnel members; and
 3. 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 a behavioral health specialized transitional facility, an administrator shall ensure that:
1. Medication is stored in a separate locked room, closet, or self-contained unit used only for medication;
 2. Medication is stored according to the instructions on the medication container; and
 3. Policies and procedures are established, documented, and implemented for:
 - a. Receiving, storing, inventorying, tracking, dispensing, and discarding medication including expired medication;
 - b. Discarding or returning prepackaged and sample medication to the manufacturer if the manufacturer requests the discard or return of the medication;
 - c. A medication recall and notification of patients who received recalled medication;
 - d. Storing, inventorying, and dispensing controlled substances; and
 - e. Documenting the maintenance of a medication requiring refrigeration.
- F.** An administrator shall ensure that a personnel member immediately reports a medication error or a patient's adverse reaction to a medication to the medical practitioner who ordered the medication and, if applicable, the behavioral health specialized transitional facility's medical director.

Historical Note

Emergency rule adopted effective November 29, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective February 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Emergency rule adopted again effective May 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency rule adopted again effective August 27, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-3). Adopted with changes effective November 25, 1992 (Supp. 92-4). Section R9-10-1313 repealed effective November 1, 1998, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1998, Ch. 178, § 17; filed with the Office of the Secretary of State October 2, 1998 (Supp. 98-4). New Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

R9-10-1314. Food Services

- A.** An administrator shall ensure that:
1. The behavioral health specialized transitional facility has a license or permit as a food establishment under 9 A.A.C. 8, Article 1;
 2. A copy of the behavioral health specialized transitional facility's food establishment license is maintained;
 3. If a behavioral health specialized transitional facility contracts with a food establishment, as defined in 9 A.A.C. 8, Article 1, to prepare and deliver food to the behavioral health specialized transitional facility:
 - a. A copy of the food establishment's license or permit under 9 A.A.C. 8, Article 1 is maintained by the behavioral health specialized transitional facility; and
 - b. The behavioral health specialized transitional facility is able to store, refrigerate, and reheat food to meet the dietary needs of a patient;
 4. A registered dietitian is employed full-time, part-time, or as a consultant; 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 meet the nutritional needs of the patients.
- B.** A registered dietitian or director of food services shall ensure that:
1. A food menu:
 - a. Is prepared at least one week in advance,
 - b. Includes the foods to be served each day,
 - c. Is conspicuously posted at least one day before the first meal on the food menu will be served,

Department of Health Services - Health Care Institutions: Licensing

- d. Includes any food substitution no later than the morning of the day of meal service with a food substitution, and
- e. Is maintained for at least 60 calendar days after the last day included in the food menu;
2. Meals and snacks provided by the behavioral health specialized transitional facility are served according to posted menus;
3. Meals for each day are planned using the applicable guidelines in <http://www.health.gov/dietaryguidelines/2010.asp>;
4. A patient is provided:
 - a. A diet that meets the patient's nutritional needs as specified in the patient's assessment plan;
 - b. Three meals a day with not more than 14 hours between the evening meal and breakfast except as provided in subsection (B)(4)(d);
 - c. The option to have a daily evening snack identified in subsection (B)(4)(d)(ii) or other snack; and
 - d. The option to extend the time span between the evening meal and breakfast from 14 hours to 16 hours if:
 - i. A patient group agrees; and
 - ii. The patient 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 patient requiring assistance to eat is provided with assistance that recognizes the patient's nutritional, physical, and social needs, including the use of adaptive eating equipment or utensils; and
6. Water is available and accessible to a patient at all times, unless otherwise specified in the patient's treatment plan.
- C. An administrator shall ensure that food is obtained, prepared, served, and stored as follows:
 1. Food is free from spoilage, filth, or other contamination and is safe for human consumption;
 2. Food is protected from potential contamination;
 3. Food is prepared:
 - a. Using methods that conserve nutritional value, flavor, and appearance; and
 - b. In a form to meet the needs of a patient such as cut, chopped, ground, pureed, or thickened;
 4. Potentially hazardous food is maintained as follows:
 - a. Foods requiring refrigeration are maintained at 41° F or below; and
 - b. Foods requiring cooking are cooked to heat all parts of the food to a temperature of at least 145° F for 15 seconds, except that:
 - i. Ground beef and ground meats are cooked to heat all parts of the food to at least 155° F;
 - ii. Poultry, poultry stuffing, stuffed meats, and stuffing that contains meat are cooked to heat all parts of the food to at least 165° F;
 - iii. Pork and any food containing pork are cooked to heat all parts of the food to at least 155° F;
 - iv. Raw shell eggs for immediate consumption are cooked to at least 145° F for 15 seconds and any food containing raw shell eggs is cooked to heat all parts of the food to at least 155° F;
 - v. Roast beef and beef steak are cooked to an internal temperature of at least 155° F; and
 - vi. Leftovers are reheated to a temperature of at least 165° F;
 5. A refrigerator contains a thermometer, accurate to plus or minus 3° F, placed at the warmest part of the refrigerator;
 6. Frozen foods are stored at a temperature of 0° F or below; and
 7. Tableware, utensils, equipment, and food-contact surfaces are clean and in good repair.

Historical Note

Emergency rule adopted effective November 29, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective February 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Emergency rule adopted again effective May 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency rule adopted again effective August 27, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-3). Adopted with changes effective November 25, 1992 (Supp. 92-4). Section R9-10-1314 repealed effective November 1, 1998, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1998, Ch. 178, § 17; filed with the Office of the Secretary of State October 2, 1998 (Supp. 98-4). New Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). 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).

R9-10-1315. Emergency and Safety Standards

- A. A medical director shall ensure that policies and procedures for providing medical emergency treatment to a patient are established, documented, and implemented and include:
 1. The medications, supplies, and equipment required on the premises for the medical emergency treatment provided by the behavioral health specialized transitional facility;
 2. A system to ensure all medications, supplies, and equipment are available, have not been tampered with, and, if applicable, have not expired;
 3. A requirement that a cart or container is available for medical emergency treatment that contains all of the medication, supplies, and equipment specified in the behavioral health specialized transitional facility's policies and procedures;
 4. A method to verify and document that the contents of the cart or container in subsection (A)(3) are available for medical emergency treatment; and
 5. A method for ensuring a patient may be transported to a hospital or other health care institution to receive treatment for a medical emergency that the behavioral health specialized transitional facility is not able or not authorized to provide.

Department of Health Services - Health Care Institutions: Licensing

- B. An administrator shall ensure that medical emergency treatment is provided to a patient admitted to the behavioral health specialized transitional facility according to the behavioral health specialized transitional facility's policies and procedures.
- C. An administrator shall ensure that the behavioral health specialized transitional facility has:
 - 1. A fire alarm system installed according to the National Fire Protection Association 72: National Fire Alarm and Signaling Code, incorporated by reference in A.A.C. R9-1-412, that is in working order; and a sprinkler system installed according to the National Fire Protection Association 13 Standard for the Installation of Sprinkler Systems, incorporated by reference in A.A.C. R9-1-412, that is in working order; or
 - 2. An alternative method to ensure a patient's safety, documented and approved by the local jurisdiction.
- D. 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. Procedures for protecting the health and safety of patients and other individuals at the behavioral health specialized transitional facility;
 - b. When, how, and where patients will be relocated;
 - c. How each patient's medical record will be available to personnel providing services to the patient during a disaster;
 - d. A plan to ensure each patient's medication will be available to administer to the patient during a disaster; and
 - e. A plan for obtaining food and water for individuals present in the behavioral health specialized transitional facility or the behavioral health specialized transitional facility's relocation site during a disaster;
 - 2. The disaster plan required in subsection (D)(1) is reviewed at least once every 12 months;
 - 3. A disaster drill is performed on each shift at least once every 12 months;
 - 4. Documentation of a disaster plan review required in subsection (D)(2) and a disaster drill required in subsection (D)(3) is created, is maintained for at least 12 months after the date of the disaster plan review or disaster drill, and includes:
 - a. The date and time of the disaster plan review or disaster drill;
 - b. The name of each personnel member, employee, or volunteer participating in the disaster plan review or disaster drill;
 - c. A critique of the disaster plan review or disaster drill; and
 - d. If applicable, recommendations for improvement;
 - 5. An evacuation drill is conducted on each shift at least once every three months;
 - 6. Documentation of an evacuation drill is created, is maintained for at least 12 months after the date of the evacuation drill, and includes:
 - a. The date and time of the evacuation drill;
 - b. The amount of time taken for all employees and patients to evacuate the behavioral health specialized transitional facility;
 - c. If applicable, an identification of patients needing assistance for evacuation;
 - d. Any problems encountered in conducting the evacuation drill; and
 - e. Recommendations for improvement, if applicable; and
 - 7. An evacuation path is conspicuously posted on each hallway of each floor of the behavioral health specialized transitional facility.
- E. 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.

Historical Note

Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

R9-10-1316. Environmental Standards

- A. An administrator shall ensure that:
 - 1. The premises and equipment are:
 - a. Cleaned and, if applicable, disinfected according to policies and procedures designed to prevent, minimize, and control illness or infection; and
 - b. Free from a condition or situation that may cause a patient or other individual to suffer physical injury;
 - 2. A pest control program is implemented and documented;
 - 3. Biohazardous medical wastes are identified, stored, and disposed of according to 18 A.A.C. 13, Article 14;
 - 4. Equipment used at the behavioral health specialized transitional facility is:
 - a. Maintained in working order;
 - b. Tested and calibrated according to the manufacturer's recommendations or, if there are no manufacturer's recommendations, as specified in policies and procedures; and
 - c. Used according to the manufacturer's recommendations;
 - 5. Documentation of equipment testing, calibration, and repair is maintained for at least 12 months after the date of the testing, calibration, or repair;
 - 6. Garbage and refuse are:
 - a. Stored in covered containers, and
 - b. Removed from the premises at least once a week;

Department of Health Services - Health Care Institutions: Licensing

7. Heating and cooling systems maintain the behavioral health specialized transitional facility at a temperature between 70° F and 84° F;
 8. Common areas:
 - a. Are lighted to assure the safety of patients, and
 - b. Have lighting sufficient to allow personnel members to monitor patient activity;
 9. Hot water temperatures are maintained between 95° F and 120° F in the areas of a behavioral health specialized transitional facility used by patients;
 10. The supply of hot and cold water is sufficient to meet the personal hygiene needs of patients and the cleaning and sanitation requirements in this Article;
 11. Soiled linen and soiled clothing stored by the behavioral health specialized transitional facility are maintained separate from clean linen and clothing and stored in closed containers away from food storage, kitchen, and dining areas; and
 12. Pets and animals, except for service animals, are prohibited on the premises.
- B.** An administrator shall ensure that smoking or tobacco products are not permitted within or on the premises of the facility.
- C.** An administrator shall ensure that:
1. Poisonous or toxic materials stored by the behavioral health specialized transitional facility are maintained in labeled containers in a locked area separate from food preparation and storage, dining areas, and medications and are inaccessible to patients;
 2. Combustible or flammable liquids and hazardous materials stored by a behavioral health specialized transitional facility are stored in the original labeled containers or safety containers in an area inaccessible to patients; and
 3. Poisonous, toxic, combustible, or flammable medical supplies in use for a patient are stored in a locked area according to the behavioral health specialized transitional facility's policies and procedures.
- D.** An administrator shall ensure that:
1. A patient's bedroom is provided with:
 - a. An individual storage space, such as a dresser or chest;
 - b. A bed that:
 - i. Consists of at least a mattress and frame, and
 - ii. Is at least 36 inches wide and 72 inches long; and
 - c. A pillow and linens that include:
 - i. A mattress pad;
 - ii. A top sheet and a bottom sheet are large enough to tuck under the mattress;
 - iii. A pillow case;
 - iv. A waterproof mattress cover, if needed; and
 - v. A blanket or bedspread sufficient to ensure the patient's warmth;
 2. Clean linens and bath towels are provided to a patient as needed and at least once every seven calendar days; and
 3. A patient's clothing may be cleaned according to policies and procedures.

Historical Note

Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

R9-10-1317. Physical Plant Standards

- A.** An administrator shall ensure that a behavioral health specialized transitional facility complies with the applicable physical plant health and safety codes and standards for secure residential facilities, incorporated by reference in A.A.C. R9-1-412, in effect on the date the behavioral health specialized transitional facility submitted architectural plans and specifications to the Department for approval according to R9-10-104.
- B.** An administrator shall ensure that the premises and equipment are sufficient to accommodate:
1. The services stated in the behavioral health specialized transitional facility's scope of services, and
 2. An individual accepted as a patient by the behavioral health specialized transitional facility.
- C.** An administrator shall ensure that:
1. A behavioral health specialized transitional facility has:
 - a. An area in which a patient may meet with a visitor,
 - b. Areas where patients may receive individual treatment,
 - c. Areas where patients may receive group counseling or other group treatment,
 - d. An area for community dining; and
 - e. Sufficient space in one or more common areas for individual and group activities.
- D.** An administrator shall ensure that the behavioral health specialized transitional facility has:
1. A bathroom adjacent to a common area for use by patients and visitors that:
 - a. Provides privacy to the user; and
 - b. Contains:
 - i. A working sink with running water,
 - ii. A working toilet that flushes and has a seat,
 - iii. Toilet tissue dispenser,
 - iv. Dispensed soap for hand washing,
 - v. Single use paper towels or a mechanical air hand dryer,

Department of Health Services - Health Care Institutions: Licensing

- vi. Lighting, and
- vii. A means of ventilation;
- 2. An indoor common area that is not used as a sleeping area and that has:
 - a. A working telephone that allows a patient to make a private telephone call;
 - b. A distortion-free mirror;
 - c. A current calendar and an accurate clock;
 - d. A variety of books, current magazines and newspapers, and arts and crafts supplies appropriate to the age, educational, cultural, and recreational needs of patients; and
 - e. A working television and access to a radio;
- 3. A dining room or dining area that:
 - a. Is lighted and ventilated,
 - b. Contains tables and seats, and
 - c. Is not used as a sleeping area;
- 4. An outdoor area that:
 - a. Is accessible to patients,
 - b. Has sufficient space to accommodate the social and recreational needs of patients, and
 - c. Has shaded and unshaded areas;
- 5. For every ten patients, at least one working toilet that flushes and has a seat and dispensed toilet tissue;
- 6. For every 12 patients, at least one sink with running water, dispensed soap for hand washing, and single use paper towels or a mechanical air hand dryer;
- 7. For every 12 patients, at least one working bathtub or shower with a slip resistant surface; and
- 8. For each patient, a private bedroom that:
 - a. Contains at least 60 square feet of floor space, not including the closet;
 - b. Has walls from floor to ceiling;
 - c. Has a door that opens into a hallway or common area;
 - d. Is constructed and furnished to provide unimpeded access to the door;
 - e. Is not used as a passageway to another bedroom or a bathroom, unless the bathroom is for the exclusive use of a the patient occupying the bedroom; and
 - f. Has sufficient lighting for a patient to read.

Historical Note

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).

STATUTORY AUTHORITY

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 §§ 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 § 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 § 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 §§ 1 through 905).

15. Recruit and train personnel for state, local and district health departments.

16. Conduct continuing evaluations of state, local and district public health programs, study and appraise state health problems and develop broad plans for use by the department and for recommendation to other agencies, professions and local health departments for the best solution of these problems.

17. License and regulate health care institutions according to chapter 4 of this title.

18. Issue or direct the issuance of licenses and permits required by law.

19. Participate in the state civil defense program and develop the necessary organization and facilities to meet wartime or other disasters.

20. Subject to the availability of monies, develop and administer programs in perinatal health care, including:

- (a) Screening in early pregnancy for detecting high-risk conditions.
- (b) Comprehensive prenatal health care.
- (c) Maternity, delivery and postpartum care.
- (d) Perinatal consultation, including transportation of the pregnant woman to a perinatal care center when medically indicated.
- (e) Perinatal education oriented toward professionals and consumers, focusing on early detection and adequate intervention to avert premature labor and delivery.

21. License and regulate the health and safety of group homes for persons with developmental disabilities. The department shall issue a license to an accredited facility for a period of the accreditation, except that no licensing period shall be longer than three years. The department is authorized to conduct an inspection of an accredited facility to ensure that the facility meets health and safety licensure standards. The results of the accreditation survey shall be public information. A copy of the final accreditation report shall be filed with the department of health services. For the purposes of this paragraph, "accredited" means accredited by a nationally recognized accreditation organization.

B. The department may accept from the state or federal government, or any agency of the state or federal government, and from private donors, trusts, foundations or eleemosynary corporations or organizations grants or donations for or in aid of the construction or maintenance of any program, project, research or facility authorized by this title, or in aid of the extension or enforcement of any program, project or facility authorized, regulated or prohibited by this title, and enter into contracts with the federal government, or an agency of the federal government, and with private donors, trusts, foundations or eleemosynary corporations or organizations, to carry out such purposes. All monies made available under this section are special project grants. The department may also expend these monies to further applicable scientific research within this state.

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

D. The department may enter into contracts with organizations that perform nonrenal organ transplant operations and organizations that primarily assist in the management of end-stage renal disease and related problems to provide, as payors of last resort, prescription medications necessary to supplement treatment and transportation to and from treatment facilities. The contracts may provide for department payment of administrative costs it specifically authorizes.

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

A. The director shall:

1. Be the executive officer of the department of health services and the state registrar of vital statistics but shall not receive compensation for services as registrar.
2. Perform all duties necessary to carry out the functions and responsibilities of the department.
3. Prescribe the organization of the department. The director shall appoint or remove personnel as necessary for the efficient work of the department and shall prescribe the duties of all personnel. The director may abolish any office or position in the department that the director believes is unnecessary.
4. Administer and enforce the laws relating to health and sanitation and the rules of the department.
5. Provide for the examination of any premises if the director has reasonable cause to believe that on the premises there exists a violation of any health law or rule of this state.
6. Exercise general supervision over all matters relating to sanitation and health throughout this state. When in the opinion of the director it is necessary or advisable, a sanitary survey of the whole or of any part of this state shall be made. The director may enter, examine and survey any source and means of water supply, sewage disposal plant, sewerage system, prison, public or private place of detention, asylum, hospital, school, public building, private institution, factory, workshop, tenement, public washroom, public restroom, public toilet and toilet facility, public eating room and restaurant, dairy, milk plant or food manufacturing or processing plant, and any premises in which the director has reason to believe there exists a violation of any health law or rule of this state that the director has the duty to administer.
7. Prepare sanitary and public health rules.
8. Perform other duties prescribed by law.

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

C. The director, after consultation with the department of administration, may take all necessary steps to enhance the highest and best use of the state hospital property, including contracting with third parties to provide services, entering into short-term lease agreements with third parties to occupy or renovate existing buildings and entering into long-term lease agreements to develop the land and buildings. The director shall deposit any monies collected from contracts and lease agreements entered into pursuant to

this subsection in the Arizona state hospital charitable trust fund established by § 36-218. At least thirty days before issuing a request for proposals pursuant to this subsection, the department of health services shall hold a public hearing to receive community and provider input regarding the highest and best use of the state hospital property related to the request for proposals. The department shall report to the joint committee on capital review on the terms, conditions and purpose of any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, and the fiscal impact on the department and any revenues generated by the agreement. Any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, must be reviewed by the joint committee on capital review.

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

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

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

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

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

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

H. Notwithstanding subsection I, paragraph 1 of this section, the director may define and prescribe emergency measures for detecting, reporting, preventing and controlling communicable or infectious

diseases or conditions if the director has reasonable cause to believe that a serious threat to public health and welfare exists. Emergency measures are effective for no longer than eighteen months.

I. The director, by rule, shall:

1. Define and prescribe reasonably necessary measures for detecting, reporting, preventing and controlling communicable and preventable diseases. The rules shall declare certain diseases reportable. The rules shall prescribe measures, including isolation or quarantine, that are reasonably required to prevent the occurrence of, or to seek early detection and alleviation of, disability, insofar as possible, from communicable or preventable diseases. The rules shall include reasonably necessary measures to control animal diseases transmittable to humans.
2. Define and prescribe reasonably necessary measures, in addition to those prescribed by law, regarding the preparation, embalming, cremation, interment, disinterment and transportation of dead human bodies and the conduct of funerals, relating to and restricted to communicable diseases and regarding the removal, transportation, cremation, interment or disinterment of any dead human body.
3. Define and prescribe reasonably necessary procedures that are not inconsistent with law in regard to the use and accessibility of vital records, delayed birth registration and the completion, change and amendment of vital records.
4. Except as relating to the beneficial use of wildlife meat by public institutions and charitable organizations pursuant to title 17,¹ prescribe reasonably necessary measures to ensure that all food or drink, including meat and meat products and milk and milk products sold at the retail level, provided for human consumption is free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe reasonably necessary measures governing the production, processing, labeling, storing, handling, serving and transportation of these products. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained in any warehouse, restaurant or other premises, except a meat packing plant, slaughterhouse, wholesale meat processing plant, dairy product manufacturing plant or trade product manufacturing plant. The rules shall prescribe minimum standards for any truck or other vehicle in which food or drink is produced, processed, stored, handled, served or transported. The rules shall provide for the inspection and licensing of premises and vehicles so used, and for abatement as public nuisances of any premises or vehicles that do not comply with the rules and minimum standards. The rules shall provide an exemption relating to food or drink that is:
 - (a) Served at a noncommercial social event such as a potluck.
 - (b) Prepared at a cooking school that is conducted in an owner-occupied home.

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

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

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

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

(g) Baked and confectionary goods that are not potentially hazardous and that are prepared in a kitchen of a private home for commercial purposes if packaged with a label that clearly states the address of the maker, includes contact information for the maker, lists all the ingredients in the product and discloses that the product was prepared in a home. The label must be given to the final consumer of the product. If the product was made in a facility for individuals with developmental disabilities, the label must also disclose that fact. The person preparing the food or supervising the food preparation must obtain a food handler's card or certificate if one is issued by the local county and must register with an online registry established by the department pursuant to paragraph 13 of this subsection. For the purposes of this subdivision, "potentially hazardous" means baked and confectionary goods that meet the requirements of the food code published by the United States food and drug administration, as modified and incorporated by reference by the department by rule.

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

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

6. Prescribe reasonably necessary measures regarding production, processing, labeling, handling, serving and transportation of bottled water to ensure that all bottled drinking water distributed for human consumption is free from unwholesome, poisonous, deleterious or other foreign

substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained at any source of water, bottling plant and truck or vehicle in which bottled water is produced, processed, stored or transported and shall provide for inspection and certification of bottled drinking water sources, plants, processes and transportation and for abatement as a public nuisance of any water supply, label, premises, equipment, process or vehicle that does not comply with the minimum standards. The rules shall prescribe minimum standards for bacteriological, physical and chemical quality for bottled water and for the submission of samples at intervals prescribed in the standards.

7. Define and prescribe reasonably necessary measures governing ice production, handling, storing and distribution to ensure that all ice sold or distributed for human consumption or for the preservation or storage of food for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions and the quality of ice that shall be maintained at any ice plant, storage and truck or vehicle in which ice is produced, stored, handled or transported and shall provide for inspection and licensing of the premises and vehicles, and for abatement as public nuisances of ice, premises, equipment, processes or vehicles that do not comply with the minimum standards.

8. Define and prescribe reasonably necessary measures concerning sewage and excreta disposal, garbage and trash collection, storage and disposal, and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels. The rules shall prescribe minimum standards for preparation of food in community kitchens, adequacy of excreta disposal, garbage and trash collection, storage and disposal and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels and shall provide for inspection of these premises and for abatement as public nuisances of any premises or facilities that do not comply with the rules. Primitive camp and picnic grounds offered by this state or a political subdivision of this state are exempt from rules adopted pursuant to this paragraph but are subject to approval by a county health department under sanitary regulations adopted pursuant to § 36-183.02. Rules adopted pursuant to this paragraph do not apply to two or fewer recreational vehicles as defined in § 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 § 49-104, subsection B, paragraph 12.

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

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

13. Establish an online registry of food preparers that are authorized to prepare food for commercial purposes pursuant to paragraph 4 of this subsection.

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

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

K. The powers and duties prescribed by this section do not apply in instances in which regulatory powers and duties relating to public health are vested by the legislature in any other state board, commission, agency or instrumentality, except that with regard to the regulation of meat and meat products, the

department of health services and the Arizona department of agriculture within the area delegated to each shall adopt rules that are not in conflict.

L. The director, in establishing fees authorized by this section, shall comply with title 41, chapter 6.2 The department shall not set a fee at more than the department's cost of providing the service for which the fee is charged. State agencies are exempt from all fees imposed pursuant to this section.

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

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

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

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

Q. For the purposes of this section, "fetal demise" means a fetal death that occurs or is confirmed in a licensed hospital. Fetal demise does not include an abortion as defined in § 36-2151.

36-204. Duties of director

The director shall:

1. Adopt rules for inpatient services that ensure proper review of treatment and discharge plans, arrangement for aftercare placements, transfer of medical records and assistance with medications.
2. If deemed advisable, establish a nurses' training school in connection with the state hospital, which shall be under the supervision of the superintendent.
3. Prescribe forms of complaints, certificates of mental illness and commitments.
4. Adopt rules for the commitment of mentally ill persons that are not inconsistent with provisions of law.

5. Adopt rules for the administration of the state hospital and to carry out the purposes of this article.

36-405. Powers and duties of the director

A. The director shall adopt rules to establish minimum standards and requirements for the construction, modification and licensure of 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 the administration of medical, nursing, behavioral health and personal care services, in accordance with generally accepted practices of health care. 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 the selection of 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, and fees for architectural plans and specifications reviews.
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.1

D. Ninety percent of the fees collected pursuant to this section shall be deposited, pursuant to §§ 35-146 and 35-147, in the health services licensing fund established by § 36-414 and ten percent of the fees collected pursuant to this section shall be deposited, pursuant to §§ 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.

36-3707. Determining sexually violent person status; commitment procedures

A. The court or jury shall determine beyond a reasonable doubt if the person named in the petition is a sexually violent person. If the state alleges that the sexually violent offense on which the petition for commitment is based was sexually motivated, the state shall prove beyond a reasonable doubt that the alleged sexually violent act was sexually motivated.

B. If the court or jury determines that the person is a sexually violent person, the court shall either:

1. Commit the person to the custody of the department of health services for placement in a licensed facility under the supervision of the superintendent of the Arizona state hospital and shall receive care, supervision or treatment until the person's mental disorder has so changed that the person would not be a threat to public safety if the person was conditionally released to a less restrictive alternative or was unconditionally discharged.

2. Order that the person be released to a less restrictive alternative if the conditions under §§ 36-3710 and 36-3711 are met.

C. If the court or jury does not determine beyond a reasonable doubt that the person is a sexually violent person, the court shall order the person's release.

D. If the person named in the petition was found incompetent to stand trial, the court first shall hear evidence and determine if the person committed the act or acts charged if the court did not enter a finding before the charges were dismissed. The court shall enter specific findings on whether the person committed the act or acts charged, the extent to which the person's incompetence to stand trial affected the outcome of the hearing, including its effect on the person's ability to consult with and assist counsel and to testify on the person's own behalf, the extent to which the evidence could be reconstructed without the assistance of the person and the strength of the prosecution's case. If the court finds beyond a reasonable doubt that the person committed the act or acts charged, the court shall enter a final order to that effect and may then consider whether the person should be committed pursuant to this section.

DEPARTMENT OF ENVIRONMENTAL QUALITY (F-18-0106)

Title 18, Chapter 2, Articles 6, Emissions from Existing and New Nonpoint Sources; Article 8, Emissions from Mobile Sources (New and Existing); Article 12, Emissions Bank



GOVERNOR'S REGULATORY REVIEW COUNCIL

STAFF MEMORANDUM – FIVE-YEAR REVIEW REPORT

MEETING DATE: January 9, 2017

AGENDA ITEM: E-8

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

FROM: Council Staff

DATE : December 19, 2017

SUBJECT: DEPARTMENT OF ENVIRONMENTAL QUALITY (F-18-0106)
Title 18, Chapter 2, Articles 6, Emissions from Existing and New Nonpoint Sources; Article 8, Emissions from Mobile Sources (New and Existing); Article 12, Emissions Bank

COMMENTS ON THE FIVE-YEAR REVIEW REPORT

Purpose of the Agency and Number of Rules in the Report

This five-year review report from the Arizona Department of Environmental Quality (Department) covers 34 rules in A.A.C. Title 18, Chapter 2, Articles 6, 8, and 12. Article 6, related to emissions from existing and new nonpoint sources, contains 21 rules. Article 8, related to emissions from mobile sources, contains five rules. Article 12, related to the Emissions Bank, contains eight rules.

The Department indicates that the Article 6 and Article 8 rules are necessary to adhere to the Federal Clean Air Act (CAA), which requires states to enforce emission limitations for compliance with the National Ambient Air Quality Standards (NAAQS). According to the Department, the purpose of Article 6 is to classify and regulate any source of air contaminants that cannot be identified as a point source due to lack of an identifiable emission point or plume, while the purpose of Article 8 is to classify and regulate mobile sources which either move while emitting air contaminants or are frequently moved during the course of their utilization but are not classified as a motor vehicle, agricultural vehicle, or agricultural equipment.

The Department states that the Article 12 rules are necessary to comply with portions of the CAA that require states to implement a New Source Review (NSR) permitting program for the Prevention of Significant Deterioration (PSD) of ambient air quality from new major sources or major modifications to existing sources of a regulated pollutant. According to the Department, the purpose of the Emissions Bank is to provide a forum and administration for the generation, certification, utilization, and withdrawal of emissions bank credits among these sources.

In its 2012 five-year review report, the Department proposed action on many of the rules. Such actions were completed on two of the rules, Sections 610 and 610.01. Other actions have not been completed, either because of competing Department rulemaking priorities or because the Department has determined that some of the proposed actions are now unnecessary and/or improper.

Proposed Action

The Department intends to amend the following rules by December 2018:

- Section 602 – *Unlawful Open Burning*: Language should be added to improve consistency with federal rules.
- Section 604 – *Open Areas, Dry Washes, or Riverbeds*: Clarity, conciseness, and understandability issues should be addressed.
- Sections 605-609: A definition for “reasonable precautions” should be added.
- Section 609 – *Agricultural Practices*: A definition for “reasonable means” should be added.
- Section 610 – *Definitions for R18-2-610.01, R18-2-610.02, and R18-2-610.03*: Clarity, conciseness, and understandability issues should be addressed.
- Section 611 – *Definitions for R18-2-611.01, R18-2-611.02, and R18-2-611.03*: Clarity, conciseness, and understandability issues should be addressed.
- Section 612 – *Definitions for R18-2-612.01*: Clarity, conciseness, and understandability issues should be addressed.
- Section 613 – *Definitions for R18-2-613.01*: Clarity, conciseness, and understandability issues should be addressed.
- Sections 801 and 802: The EPA published a limited approval of the State Implementation Plan (SIP) submitted July 15, 1998 with deficiencies identified in R18-2-801 regarding restrictions on nonroad engines. The Department indicates that it is currently investigating to determine whether federal law preempts the language in the rules. The Department states that the Article 8 rules are still enforceable and there is no risk of a sanction under the CAA for a SIP.
- Section 804 – *Roadway and Site Cleaning Machinery*: Clarity, conciseness, and understandability issues should be addressed.
- Section 805 – *Asphalt or Tar Kettles*: Clarity, conciseness, and understandability issues should be addressed.
- Article 12: In 2017, pursuant to HB 2152, the legislature amended the existing emissions bank statute, A.R.S. § 49-410, to allow for new types of emission reduction credits to be deposited in the bank. The Department intends to adopt rules implementing these changes.

The Department intends to amend the following rules by December 2019:

- Sections 610.01, 610.02, 610.03, 611.01, 611.02, 611.03: Language should be added to make the rules more consistent with Maricopa County Rule 310.

1. Has the agency analyzed whether the rules are authorized by statute?

Yes. The Department cites to both general and specific authority for the rules. Of particular significance is A.R.S. § 49-422(B), which provides, in relevant part, that the Department “shall adopt rules requiring sources of air contaminants to monitor, sample or otherwise quantify their emissions of air pollution that may reasonably be attributable to such sources for air contaminants for which ambient air quality standards or emission standards or design, equipment, work practice or operational standards have been adopted....”

2. Summary of the agency’s economic impact comparison and identification of stakeholders:

The Department is the state agency responsible for protecting and enhancing public health and the environment in Arizona. The Department administers the state’s environmental laws and delegates federal programs to prevent air, water and land pollution and ensure cleanup.

The Department determines that the economic impacts of the most recent rule changes do not differ significantly from those described in the original economic impact statement. Furthermore, the Department determines that, overall, the rules are effective, clear, and minimally intrusive. Key stakeholders include the Department, the public, and businesses that are involved in construction, material handling, and large machinery.

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

The Department determined that the rules impose the least burden and costs to the regulated public to achieve the underlying regulatory objective.

4. Has the agency received any written criticisms of the rules over the last five years?

No. The Department indicates that it has not received any written criticisms of the rules over the last five years.

5. Has the agency analyzed the rules’ clarity, conciseness, and understandability, consistency with other rules and statutes, and effectiveness?

Yes. The Department indicates that, as noted above, Sections 604, 605, 606, 607, 608, 609, 610, 611, 611.01, 612, 613, 802, 804, and 805 are not fully clear, concise, and understandable.

In addition, as noted above, the Department indicates that Sections 801 and 802 may not be fully consistent with federal law, and Sections 602, 610.01, 610.02, 610.03, 611.01, 611.02, and 611.03 may not be fully consistent with Maricopa County rules.

6. Has the agency analyzed the current enforcement status of the rules?

Yes. The Department indicates that the rules are enforced as written.

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

No. The Department indicates that the rules are not more stringent than any corresponding federal law.

8. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?

Yes. The Department indicates that the rules that require the issuance of a regulatory permit, license or agency authorization comply with A.R.S. § 41-1037 because they are issued pursuant to Title V of the CAA. See A.R.S. § 41-1037(A)(6).

9. Conclusion

The Department intends to amend most of the rules in Articles 6 and 8 by December 2019. The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. Council staff recommends that the report be approved.



Douglas A. Ducey
Governor

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY



Misael Cabrera
Director

November 28, 2017

Ms. Nicole A. Ong Colyer
Governor's Regulatory Review Council
100 N. 15th Avenue, Suite 402
Phoenix, Arizona 85007

Re: Five-year Review Report for A.A.C. Title 18, Chapter 2, Articles 6, 8, and 12

Dear Nicole,

Pursuant to A.R.S. §41-1056 and A.A.C. R1-6-301, the Arizona Department of Environmental Quality (ADEQ) submits this five-year review report of Arizona Administrative Code (A.C.C.) Title 18, Chapter 2, Articles 6, 8, and 12 to the Arizona Governor's Regulatory Review Council (GRRC).

ADEQ proposes to take the following actions prior to the next five-year review report:

- Amend R18-2-602 to be more consistent with the Code of Federal Regulations (CFR) Title 40 §§ 60.2970 through 60.2974.
- Amend R18-2-610.01, -610.02, -610.03, -611.01, -611.02, and -611.03 to clarify jurisdictional authority over cleanup of track-out from agricultural operations onto Maricopa County roads.
- Amend R18-2-801, and -802 to be more consistent with Section 209(e) of the Federal Clean Air Act.
- Amend A.A.C. Title 18, Chapter 2, Article 12 to be more consistent with A.R.S. 49-410.

A more detailed description of proposed amendments is included in the enclosed five-year rule report. If you have any questions please contact Matt Ivers, Air Quality Division, at 602-771-6723, or at Ivers.Matthew@azdeq.gov.

Sincerely,

Bret H. Parke
Deputy Director

Enclosures (2)

**FIVE-YEAR REVIEW REPORT FOR ARIZONA ADMINISTRATIVE CODE (A.A.C.),
TITLE 18, CHAPTER 2, ARTICLES 6, 8, & 12**

(See A.R.S. § 41-1056 and A.A.C. R1-6-301)

**TITLE 18. ENVIRONMENTAL QUALITY
CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY
AIR POLLUTION CONTROL**

TABLE OF CONTENTS

Introduction.....	3
Brief Summary of Reviewed Articles.....	3
ARTICLE 6. Emissions from Existing and New Nonpoint Sources	4
A. Information that Is Identical for All Rules in A.A.C. Title 18, Chapter 2, Article 6, unless otherwise stated:.....	4
B. Section by Section Analysis of Rules.....	7
R18-2-601. General.....	7
R18-2-602. Unlawful Open Burning	8
R18-2-603. Repealed	9
R18-2-604. Open Areas, Dry Washes, or Riverbeds	9
R18-2-605. Roadways and Streets	10
R18-2-606. Material Handling.....	11
R18-2-607. Storage Piles	12
R18-2-608. Mineral Tailings	14
R18-2-609. Agricultural Practices	15
R18-2-610. Definitions for R18-2-610.01, R18-2-610.02, and R18-2-610.03.....	16
R18-2-610.01. Agriculture PM General Permit for Crop Operations; Maricopa County PM Nonattainment Area	17
R18-2-610.02. Agriculture PM General Permit for Crop Operations; Moderate PM Nonattainment Areas, Designated After June 1, 2009.....	19
R18-2-610.03. Agriculture PM General permit for Crop Operations; Pinal County PM Nonattainment Area	20
R18-2-611. Definitions for R18-2-611.01, R18-2-611.02, and R18-2-611.03.....	21
R18-2-611.01. Agriculture PM General Permit for Animal Operations; Maricopa County Serious PM Nonattainment Areas	22

R18-2-611.02. Agricultural PM General Permit for Animal Operations; Moderate PM Nonattainment Areas Designated After June 1, 2009, Except Pinal County PM Nonattainment Area	24
R18-2-611.03. Agricultural PM General Permit for Animal Operations; Pinal County PM Nonattainment Area	25
R18-2-612. Definitions for R18-2-612.01	27
R18-2-612.01. Agricultural PM General Permit for Irrigation Districts; PM Nonattainment Areas Designated After June 1, 2009.....	28
R18-2-613. Definitions for R18-2-613.01	29
R18-2-613.01. Yuma PM10 Nonattainment Area; Agricultural Best Management Practices	30
R18-2-614. Evaluation of Nonpoint Sources Emissions	31
ARTICLE 8. Emissions from Mobile Sources (New and Existing).....	32
A. Information that Is Identical for All Rules in A.A.C. Title 18, Chapter 2, Article 8, unless otherwise stated:	32
B. Section by Section Analysis of Rules.....	35
R18-2-801. Classification of Mobile Sources.....	35
R18-2-802. Off-road Machinery	36
R18-2-803. Heater-plater Units	38
R18-2-804. Roadway and Site Cleaning Machinery	39
R18-2-805. Asphalt or Tar Kettles.....	40
ARTICLE 12. Emissions Bank	41
A. Information that Is Identical for All Rules in A.A.C. Title 18, Chapter 2, Article 12, unless otherwise stated:	41
B. Section by Section Analysis of Rules.....	45
R18-2-1201. Definitions	45
R18-2-1202. Applicability	45
R18-2-1203. Emissions Bank Administration	46
R18-2-1204. Credit Generation	46
R18-2-1205. Credit Certification	47
R18-2-1206. Credit Utilization	47
R18-2-1207. Credit Withdrawal	48
R18-2-1208. Fees	48

OVERVIEW OF THE FIVE-YEAR-REVIEW REPORT FOR A.A.C., TITLE 18, CHAPTER 2, ARTICLES 6, 8, & 12

Introduction

Pursuant to A.R.S. §41-1056 and A.A.C. R1-6-301, the Arizona Department of Environmental Quality (ADEQ) submits this five-year review report of Arizona Administrative Code (A.C.C.) Title 18, Chapter 2, Articles 6, 8, and 12 to the Arizona Governor's Regulatory Review Council (GRRC).

Articles 6 and 8 were originally promulgated by the Department of Health Services in 1979 under A.A.C. Title 9. Authority over these articles transferred to ADEQ in 1987 under A.A.C. Title 18. In 1993 Articles 6 and 8 were renumbered to their present location. These articles pertain to emissions from Nonpoint Sources (i.e., sources lacking an identifiable emission point) and Mobile Sources. Article 12 was promulgated in 2002 and pertains to the Emissions Bank.

ADEQ submitted the most recent five-year review report of Articles 6, 8, and 12 to GRRC on November 29, 2012. This five-year review report covers all new and updated rule information for Articles 6, 8, and 12 promulgated within the last five years.

Copies of the rule language, authorizing statutes, and the Economic Impact Statement (EIS) for Articles 6, 8, and 12 are attached.

Brief Summary of Reviewed Articles

Article 6, Emissions from Existing and New Nonpoint Sources, is necessary comply with Federal Clean Air Act §110(a)(2)(C) which requires states to enforce emission limitations in order to comply with the National Ambient Air Quality Standards (NAAQS). The purpose of Article 6 is to classify and regulate any source of air contaminants that cannot be identified as a point source due to lack of an identifiable emission point or plume.

Article 8, Emissions from Mobile Sources (New and Existing), is necessary comply with Federal Clean Air Act §110(a)(2)(C) which requires states to enforce emission limitations in order to comply with the National Ambient Air Quality Standards (NAAQS). The purpose of this article is to classify and regulate mobile sources which either move while emitting air contaminants or

are frequently moved during the course of their utilization but are not classified as a motor vehicle, agricultural vehicle, or agricultural equipment.

Article 12, Emissions Bank, exists to comply with Federal Clean Air Act §§ 110(a)(2)(A), 164, 165, 166, 167, 168, and 173, which require states to implement a New Source Review (NSR) permitting program for the Prevention of Significant Deterioration (PSD) of ambient air quality from new major sources or major modifications to existing sources of a regulated pollutant. The purpose of the Emissions Bank is to provide a forum and administration for the generation, certification, utilization, and withdrawal of emissions bank credits among these sources.

ARTICLE 6. EMISSIONS FROM EXISTING AND NEW NONPOINT SOURCES

A. Information that Is Identical for All Rules in A.A.C. Title 18, Chapter 2, Article 6, unless otherwise stated:

1. General and specific statutes authorizing the rules, including any statute that authorizes the agency to make rules.

The rules in A.A.C. Title 18, Chapter 2, Article 6 are authorized generally by §§ 49-104(A)(1), (10), 49-401, 49-404, 49-422(B), 49-424(4), and 49-425. Specific authorization for the rules are found at 49-457 and 49-501.

3. Effectiveness of the rule in achieving the objective, including a summary of any available data supporting the conclusion reached.

The rules in A.A.C. Title 18, Chapter 2, Article 6 are effective in achieving their individual objectives.

4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.

ADEQ believes the rules in A.A.C. Title 18, Chapter 2, Article 6 are consistent with state and federal statutes and other rules made by the agency. The statutes or rules used in determining consistency are as follows:

40 C.F.R. Part 51 Federal statute of SIP requirements.

A.R.S. §§ 49-104(A)(1), (10), State statutes authorizing adoption of rules
49-401, 49-404, 49-422(B), 49- and standards.

424(4), 49-425, 49-457, and 49-501.

A.R.S. § 49-104(A)(17)

State regulations adopted under Title 49 are “to be consistent with and no more stringent than the corresponding federal law that addresses the same subject matter” unless authorized by the legislature.

5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.

ADEQ has analyzed the enforceability of its rules and believes the rules in A.A.C. Title 18, Chapter 2, Article 6 are being enforced and there are no major problems with enforcement.

6. Clarity, conciseness, and understandability of the rule.

ADEQ has analyzed the clarity, conciseness, and understandability of its rules, and unless otherwise stated in an individual rule analysis, concludes that the rules in A.A.C. Title 18, Chapter 2, Article 6 are clear, concise, and understandable. ADEQ has determined that minor technical fixes could be made to some of the rules as identified in Section B below.

7. Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the five-year review report, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods, and written allegations made in litigation or administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the result of the litigation or administrative proceedings.

No written criticisms were submitted to ADEQ for any of the rules in A.A.C. Title 18, Chapter 2, Article 6 within the last five years.

8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact

statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.

ADEQ presented an Economic Impact Statement (EIS) when it submitted a five-year review report on this Chapter and Article in 2007. The economic impact of this article has not differed significantly from that described at that time. Please see the attached EIS as well as number 11 below for more information.

9. Any analysis submitted to the agency by another person regarding the rule's impact on this state's business competitiveness as compared to the competitiveness of businesses in other states.

No such analysis was submitted to ADEQ for any of the rules in A.A.C. Title 18, Chapter 2, Article 6 within the last five years.

11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule, and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.

ADEQ conducted an internal survey and concluded that the benefits of the rules in A.A.C. Title 18, Chapter 2, Article 6 outweigh, within the State, the costs of the rules and impose the least burden and cost to persons regulated by the rules, including paperwork and other compliance costs necessary to achieve the underlying regulatory objectives. The Ag BMP program, for example, requires the implementation of certain practices by commercial farming operations to control the amount of PM being admitted into the ambient air. The rules are designed to, and generally effective in, controlling emissions of the "criteria" pollutants subject to the NAAQS (or their precursors): particulate matter, nitrogen oxides, sulfur oxides, ozone, lead, and carbon monoxide. These pollutants require control because concentrations of the pollutants in the ambient air are known to cause serious health effects, including premature mortality, cardiovascular disease, and aggravated asthma. They are also known to cause serious public welfare effects such as crop deterioration, harm to wildlife and natural vegetation, and damage to man-made materials. ADEQ is not aware of any less costly or burdensome alternatives to satisfy the rules underlying objectives.

12. A determination after analysis that the rule is not more stringent than a corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.

No rule or definition in A.A.C. Title 18, Chapter 2, Article 6 is more stringent than corresponding federal law.

13. For a rule adopted after July 29, 2010, that requires issuance of a regulatory permit, license or agency authorization, whether the rule complies with A.R.S. § 41-1037.

The rules in A.A.C. Title 18, Chapter 2, Article 6 requiring the issuance of a regulatory permit, license, or agency authorization comply with A.R.S. §41-1037 because they qualify as an exception under A.R.S. §41-1037(A)(6).

B. Section by Section Analysis of Rules

R18-2-601. General

2. Objective of the rules, including the purpose for the existence of the rule.

The objective of this rule is to establish the criteria necessary for the application of Article 6 to existing and new nonpoint sources.

8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.

This rule does not generate any economic impact, in and of itself; therefore, no economic impacts have resulted from this section to date.

10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.

Not Applicable. No course of action was indicated in the agency's previous five-year review report.

14. Course of action the agency proposes to take regarding each rule, including the month and year in which the agency anticipates submitting the rules to the Council if the agency determines it is necessary to amend or repeal an existing rule, or to make a

new rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.

No course of action is necessary for this rule at this time.

R18-2-602. Unlawful Open Burning

2. Objective of the rules, including the purpose for the existence of the rule.

The objective of this rule is to define terms, determine the types of open burning that are unlawful, require a permit or annual report, create exemptions, and to establish the criteria for delegation of authority to other entities to issue open burning permits.

8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.

ADEQ presented an Economic Impact Statement (EIS) when it submitted a five-year review report on this Chapter and Article in 2007. The economic impact of this Article has not differed significantly from that described at that time. Please see the attached EIS as well as number 11 in Section A above for more information.

10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.

ADEQ proposed to add a cross-reference to Article 3 and Article 5 and to possibly add language to be more consistent with the Code of Federal Regulations Title 40 §§ 60.2970 through 60.2974. Due to other rulemaking priorities and limited resources, ADEQ did not amend this rule.

14. Course of action the agency proposes to take regarding each rule, including the month and year in which the agency anticipates submitting the rules to the Council if the agency determines it is necessary to amend or repeal an existing rule, or to make a

new rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.

ADEQ plans to submit final rulemaking to GRRC by the end of December, 2018 to add language to be more consistent the Code of Federal Regulations Title 40 §§ 60.2970 through 60.2974.

R18-2-603. Repealed

In October 1996, this section was deleted and replaced with Chapter 2, Article 15, Forest and Range Management Burns.

R18-2-604. Open Areas, Dry Washes, or Riverbeds

2. Objective of the rules, including the purpose for the existence of the rule.

The objective of this rule is establish general standards for particulate matter emissions that are legally and practically enforceable from various activities performed in or related to open areas, vacant lots, dry washes or river beds.

6. Clarity, conciseness, and understandability of the rule.

This rule is generally clear, concise, and understandable. However, this rule could be improved by changing the language from “or other acceptable means” to “or other means deemed acceptable by the Director” and providing definitions for “reasonable precautions” and “excessive amount of particulate matter.”

8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.

ADEQ presented an Economic Impact Statement (EIS) when it submitted a five-year review report on this Chapter and Article in 2007. The economic impact of this Article has not differed significantly from that described at that time. Please see the attached EIS as well as number 11 in Section A above for more information.

10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.

ADEQ proposed to publish a Notice of Rulemaking Docket Opening (NDO) in March 2008 for R18-2-604, -605, -606, -607, -608, and -609, to correct apparent deficiencies in its own rules. This has not been done because after further evaluation ADEQ now believes the changes proposed in the previous five-year review are not necessary as the rules are still enforceable and there is no risk of a sanctions clock under the Federal Clean Air Act (CAA) §179(b) for State Implementation Plans.

14. Course of action the agency proposes to take regarding each rule, including the month and year in which the agency anticipates submitting the rules to the Council if the agency determines it is necessary to amend or repeal an existing rule, or to make a new rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.

Due to other rulemaking priorities, ADEQ does not plan to amend this rule in the near future; however, if any material changes are made to A.A.C. Title 18, Chapter 2, Article 6, ADEQ will address the minor clarity issues noted above in the next rulemaking.

R18-2-605. Roadways and Streets

2. Objective of the rules, including the purpose for the existence of the rule.

The objective of this rule is to establish the requirements necessary to reduce emission from dust-producing activities performed on roadways and streets that are legally and practically enforceable.

6. Clarity, conciseness, and understandability of the rule.

This rule is generally clear, concise, and understandable but could be improved by providing a definition for "reasonable precautions."

8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact

statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.

ADEQ presented an Economic Impact Statement (EIS) when it submitted a five-year review report on this Chapter and Article in 2007. The economic impact of this Article has not differed significantly from that described at that time. Please see the attached EIS as well as number 11 in Section A above for more information.

10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.

ADEQ proposed to publish a Notice of Rulemaking Docket Opening (NDO) in March 2008 for R18-2-604, -605, -606, -607, -608, and -609, to correct apparent deficiencies in its own rules. This has not been done because after further evaluation ADEQ now believes the changes proposed in the previous five-year review are not necessary as the rules are still enforceable and there is no risk of a sanctions clock under the Federal Clean Air Act (CAA) §179(b) for State Implementation Plans.

14. Course of action the agency proposes to take regarding each rule, including the month and year in which the agency anticipates submitting the rules to the Council if the agency determines it is necessary to amend or repeal an existing rule, or to make a new rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.

Due to other rulemaking priorities, ADEQ does not plan to amend this rule in the near future; however, if any material changes are made to A.A.C. Title 18, Chapter 2, Article 6, ADEQ will address the minor clarity issues noted above in the next rulemaking.

R18-2-606. Material Handling

2. Objective of the rules, including the purpose for the existence of the rule.

The objective of this rule is to establish work practice standards for activities related to the handling of materials that are likely to result in airborne dust.

6. Clarity, conciseness, and understandability of the rule.

This rule is generally clear, concise, and understandable but could be improved by providing a definition for “reasonable precautions.”

8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.

ADEQ presented an Economic Impact Statement (EIS) when it submitted a five-year review report on this Chapter and Article in 2007. The economic impact of this Article has not differed significantly from that described at that time. Please see the attached EIS as well as number 11 in Section A above for more information.

10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.

ADEQ proposed to publish a Notice of Rulemaking Docket Opening (NDO) in March 2008 for R18-2-604, -605, -606, -607, -608, and -609, to correct apparent deficiencies in its own rules. This has not been done because after further evaluation ADEQ now believes the changes proposed in the previous five-year review are not necessary as the rules are still enforceable and there is no risk of a sanctions clock under the Federal Clean Air Act (CAA) §179(b) for State Implementation Plans.

14. Course of action the agency proposes to take regarding each rule, including the month and year in which the agency anticipates submitting the rules to the Council if the agency determines it is necessary to amend or repeal an existing rule, or to make a new rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.

Due to other rulemaking priorities, ADEQ does not plan to amend this rule in the near future; however, if any material changes are made to A.A.C. Title 18, Chapter 2, Article 6, ADEQ will address the minor clarity issues noted above in the next rulemaking.

R18-2-607. Storage Piles

2. Objective of the rules, including the purpose for the existence of the rule.

The objective of this rule is to establish work practice standards for activities involving storage piles.

6. Clarity, conciseness, and understandability of the rule.

This rule is generally clear, concise, and understandable but could be improved by providing a definition for “reasonable precautions.”

8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.

ADEQ presented an Economic Impact Statement (EIS) when it submitted a five-year review report on this Chapter and Article in 2007. The economic impact of this Article has not differed significantly from that described at that time. Please see the attached EIS as well as number 11 in Section A above for more information.

10. If applicable, how the agency completed the course of action indicated in the agency’s previous five-year review report.

ADEQ proposed to publish a Notice of Rulemaking Docket Opening (NDO) in March 2008 for R18-2-604, -605, -606, -607, -608, and -609, to correct apparent deficiencies in its own rules. This has not been done because after further evaluation ADEQ now believes the changes proposed in the previous five-year review are not necessary as the rules are still enforceable and there is no risk of a sanctions clock under the Federal Clean Air Act (CAA) §179(b) for State Implementation Plans.

14. Course of action the agency proposes to take regarding each rule, including the month and year in which the agency anticipates submitting the rules to the Council if the agency determines it is necessary to amend or repeal an existing rule, or to make a new rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.

Due to other rulemaking priorities, ADEQ does not plan to amend this rule in the near future; however, if any material changes are made to A.A.C. Title 18, Chapter 2, Article 6, ADEQ will address the minor clarity issues noted above in the next rulemaking.

R18-2-608. Mineral Tailings

2. Objective of the rules, including the purpose for the existence of the rule.

The objective of this rule is to establish a general work practice standard for particulate matter emissions from mineral tailing piles.

6. Clarity, conciseness, and understandability of the rule.

This rule is generally clear, concise, and understandable but could be improved by clarifying “reasonable precautions.”

8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.

ADEQ presented an Economic Impact Statement (EIS) when it submitted a five-year review report on this Chapter and Article in 2007. The economic impact of this Article has not differed significantly from that described at that time. Please see the attached EIS as well as number 11 in Section A above for more information.

10. If applicable, how the agency completed the course of action indicated in the agency’s previous five-year review report.

ADEQ proposed to publish a Notice of Rulemaking Docket Opening (NDO) in March 2008 for R18-2-604, -605, -606, -607, -608, and -609, to correct apparent deficiencies in its own rules. This has not been done because after further evaluation ADEQ now believes the changes proposed in the previous five-year review are not necessary as the rules are still enforceable and there is no risk of a sanctions clock under the Federal Clean Air Act (CAA) §179(b) for State Implementation Plans.

14. Course of action the agency proposes to take regarding each rule, including the month and year in which the agency anticipates submitting the rules to the Council if the agency determines it is necessary to amend or repeal an existing rule, or to make a new rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.

Due to other rulemaking priorities, ADEQ does not plan to amend this rule in the near future; however, if any material changes are made to A.A.C. Title 18, Chapter 2,

Article 6, ADEQ will address the minor clarity issues noted above in the next rulemaking.

R18-2-609. Agricultural Practices

2. Objective of the rules, including the purpose for the existence of the rule.

The objective of this rule is to establish a general work practice standard for regulating particulate matter emissions from agricultural activities outside the Phoenix metro and Yuma PM₁₀ planning areas.

6. Clarity, conciseness, and understandability of the rule.

This rule is generally clear, concise, and understandable but could be improved by clarifying “reasonable precautions” and “reasonable means.”

8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.

ADEQ presented an Economic Impact Statement (EIS) when it submitted a five-year review report on this Chapter and Article in 2007. The economic impact of this Article has not differed significantly from that described at that time. Please see the attached EIS as well as number 11 in Section A above for more information.

10. If applicable, how the agency completed the course of action indicated in the agency’s previous five-year review report.

ADEQ proposed to publish a Notice of Rulemaking Docket Opening (NDO) in March 2008 for R18-2-604, -605, -606, -607, -608, and -609, to correct apparent deficiencies in its own rules. This has not been done because after further evaluation ADEQ now believes the changes proposed in the previous five-year review are not necessary as the rules are still enforceable and there is no risk of a sanctions clock under the Federal Clean Air Act (CAA) §179(b) for State Implementation Plans.

14. Course of action the agency proposes to take regarding each rule, including the month and year in which the agency anticipates submitting the rules to the Council if the agency determines it is necessary to amend or repeal an existing rule, or to make a

new rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.

Due to other rulemaking priorities, ADEQ does not plan to amend this rule in the near future; however, if any material changes are made to A.A.C. Title 18, Chapter 2, Article 6, ADEQ will address the minor clarity issues noted above in the next rulemaking.

R18-2-610. Definitions for R18-2-610.01, R18-2-610.02, and R18-2-610.03

2. Objective of the rules, including the purpose for the existence of the rule.

The objective of this rule is to establish the definitions necessary to implement R18-2-610.01, R18-2-610.02, and R18-2-610.03.

6. Clarity, conciseness, and understandability of the rule.

This rule is generally clear, concise, and understandable but could be improved by providing a measurable limit on the amount of dust allowed from agricultural activities and by limiting the amount of time a field qualifies as fallow before being required to be placed back into agricultural production. This rule could also be improved by clarifying whether an Agricultural Best Management Practice applies to an entire agricultural operation or to individual parts of an operation.

8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.

This rule does not generate any economic impact, in and of itself; therefore, no economic impacts have resulted from this section to date.

10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.

ADEQ completed amendments to this rule pursuant to Laws 2011, Ch. 214, § 4, at 21 A.A.R. 1156, effective July 2, 2015 to address SB 1408 (Forty-ninth Legislature, Second Regular Session, 2010, Chapter 82, Section 1), which required the addition of best management practices for facilities under jurisdiction and control of an irrigation

district, including practices related to unpaved operation and maintenance roads, canals, and unpaved utility access roads.

14. Course of action the agency proposes to take regarding each rule, including the month and year in which the agency anticipates submitting the rules to the Council if the agency determines it is necessary to amend or repeal an existing rule, or to make a new rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.

Due to other rulemaking priorities, ADEQ does not plan to amend this rule in the near future; however, if any material changes are made to A.A.C. Title 18, Chapter 2, Article 6, ADEQ will address the minor clarity issues noted above in the next rulemaking.

R18-2-610.01. Agriculture PM General Permit for Crop Operations; Maricopa County PM Nonattainment Area

2. Objective of the rules, including the purpose for the existence of the rule.

The objective of this rule is to establish the agricultural Particulate Matter (PM) general permit and Agricultural Best Management Practices (Ag BMP) for regulated crop operations engaged in agricultural activities within the Maricopa County PM Nonattainment Area.

4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.

This rule is generally consistent with state and federal statutes and other rules made by ADEQ. However, this rule could be more consistent with Maricopa County Rule 610.01 by clarifying jurisdictional authority over clean-up of track-out from agricultural operations onto Maricopa County roads.

8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.

The most recent rulemaking for these rules was exempt from the provisions of Title 41, Chapter 6, Article 3 under session law at Laws 2011, Chapter 214 §4, at 21

A.A.R. 1156, effective July 2, 2015 and did not include an Economic, Small Business, and Consumer Impact Statement. This rulemaking changed the rule to only be applicable to the Maricopa County PM nonattainment area and made changes to the recordkeeping requirements. These changes may result in minor increases in costs applicable to commercial farmers but are unlikely to have any significant impact since commercial farmers were required to implement these practices and keep these types of records prior to the most recent rulemaking. The department presented an Economic Impact Statement (EIS) when it submitted a five-year review report on this Chapter and Article in 2007. The economic impact of this Article has not differed significantly from that described at that time. Please see the attached Economic Impact Statement as well as number 11 in Section A above for more information.

10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.

ADEQ completed amendments to this rule pursuant to Laws 2011, Ch. 214, § 4, at 21 A.A.R. 1156, effective July 2, 2015 to address SB 1408 (Forty-ninth Legislature, Second Regular Session, 2010, Chapter 82, Section 1), which required the addition of best management practices for facilities under jurisdiction and control of an irrigation district, including practices related to unpaved operation and maintenance roads, canals, and unpaved utility access roads.

14. Course of action the agency proposes to take regarding each rule, including the month and year in which the agency anticipates submitting the rules to the Council if the agency determines it is necessary to amend or repeal an existing rule, or to make a new rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.

ADEQ plans to submit final rulemaking to GRRC by the end of December, 2019 to add language to be more consistent with Maricopa County Rule 310.

R18-2-610.02. Agricultural PM General Permit for Crop Operations; Moderate PM Nonattainment Areas, Designated After June 1, 2009

2. Objective of the rules, including the purpose for the existence of the rule.

The objective of this rule is to establish the agricultural Particulate Matter (PM) general permit and Agricultural best Management Practices (Ag BMP) for regulated crop operations engaged in agricultural activities within moderate PM nonattainment areas, designated after June 1, 2009.

4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.

This rule is generally consistent with state and federal statutes and other rules made by ADEQ. However, this rule could be more consistent with Maricopa County Rule 610.01 by clarifying jurisdictional authority over clean-up of track-out from agricultural operations onto Maricopa County roads

8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.

The rulemaking for these rules was exempt from the provisions of Title 41, Chapter 6, Article 3 under session law at Laws 2011, Chapter 214 §4, at 21 A.A.R. 1156, effective July 2, 2015 and did not include an Economic, Small Business, and Consumer Impact Statement. This rulemaking changed the rule to only be applicable to the Maricopa County PM nonattainment area and made changes to the recordkeeping requirements. These changes may result in minor increases in costs applicable to commercial farmers but are unlikely to have any significant impact since commercial farmers were required to implement these practices and keep these types of records prior to the most recent rulemaking. The department presented an economic impact discussion when it submitted a Five-Year Review Report on this Chapter and Article in 2007. The economic impact of this Article has not differed significantly from that described at that time. Please see the attached Economic Impact Statement (EIS) as well as number 11 in Section A above for more information.

10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.

Not Applicable. No course of action was indicated in the agency's previous five-year review report because this rule became effective after the previous five-year review report.

14. Course of action the agency proposes to take regarding each rule, including the month and year in which the agency anticipates submitting the rules to the Council if the agency determines it is necessary to amend or repeal an existing rule, or to make a new rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.

ADEQ plans to submit final rulemaking to GRRC by the end of December, 2019 to add language to be more consistent with Maricopa County Rule 310.

R18-2-610.03. Agricultural PM General permit for Crop Operations; Pinal County PM Nonattainment Area

2. Objective of the rules, including the purpose for the existence of the rule.

The objective of this rule is to establish the agricultural particulate matter (PM) general permit and agricultural best management practices (Ag BMPs) for regulated crop operations engaged in agricultural activities within the Pinal County PM Nonattainment Area.

8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.

The rulemaking for these rules was exempt from the provisions of Title 41, Chapter 6, Article 3 under session law at Laws 2011, Chapter 214 §4, at 21 A.A.R. 1156, effective July 2, 2015 and did not include an Economic, Small Business, and Consumer Impact Statement. This rulemaking changed the rule to only be applicable to the Pinal County PM nonattainment area and made changes to the recordkeeping requirements. These changes may result in minor increases in costs applicable to commercial farmers but are unlikely to have any significant impact since commercial

farmers were required to implement these practices and keep these types of records prior to the most recent rulemaking. The department presented an economic impact discussion when it submitted a Five-Year Review Report on this Chapter and Article in 2007. The economic impact of this Article has not differed significantly from that described at that time. Please see the attached Economic Impact Statement (EIS) as well as number 11 in Section A above for more information.

10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.

Not Applicable. No course of action was indicated in the agency's previous five-year review report because this rule became effective after the previous five-year review report.

14. Course of action the agency proposes to take regarding each rule, including the month and year in which the agency anticipates submitting the rules to the Council if the agency determines it is necessary to amend or repeal an existing rule, or to make a new rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.

ADEQ plans to submit final rulemaking to GRRC by the end of December, 2019 to add language to be more consistent with Maricopa County Rule 310.

R18-2-611. Definitions for R18-2-611.01, R18-2-611.02, and R18-2-611.03

2. Objective of the rules, including the purpose for the existence of the rule.

The objective of this rule is to establish the definitions necessary to implement R18-2-611.01, R18-2-611.02, and R18-2-611.03.

6. Clarity, conciseness, and understandability of the rule.

This rule is generally clear, concise, and understandable but could be improved by providing a measurable limit on the amount of dust allowed from agricultural activities and by clarifying whether an Agricultural Best Management Practice applies to an entire agricultural operation or to individual parts of an operation.

8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact

statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.

This rule does not generate any economic impact, in and of itself; therefore, no economic impacts have resulted from this section to date.

10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.

Not Applicable. No course of action was indicated in the agency's previous five-year review report.

14. Course of action the agency proposes to take regarding each rule, including the month and year in which the agency anticipates submitting the rules to the Council if the agency determines it is necessary to amend or repeal an existing rule, or to make a new rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.

Due to other rulemaking priorities, ADEQ does not plan to amend this rule in the near future; however, if any material changes are made to A.A.C. Title 18, Chapter 2, Article 6, ADEQ will address the minor clarity issues noted above in the next rulemaking.

R18-2-611.01. Agricultural PM General Permit for Animal Operations; Maricopa County Serious PM Nonattainment Areas

2. Objective of the rules, including the purpose for the existence of the rule.

The objective of this rule is to establish the agricultural Particulate Matter (PM) general permit and Agricultural Best Management Practices (Ag BMP) for regulated animal operations engaged in agricultural activities within the Maricopa County Serious PM Nonattainment Areas.

4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.

This rule is generally consistent with state and federal statutes and other rules made by ADEQ. However, this rule could be more consistent with Maricopa County Rule 610.01 by clarifying jurisdictional authority over clean-up of track-out from agricultural operations onto Maricopa County roads.

6. Clarity, conciseness, and understandability of the rule.

This rule could also be improved by removing the rotary dryer operational requirements from the definition in R18-2-611(4)(u) and placing them in R18-2-611.01(D)(2)(l).

8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.

The rulemaking for these rules was exempt from the provisions of Title 41, Chapter 6, Article 3 under session law at Laws 2011, Chapter 214 §4, at 21 A.A.R. 1156, effective July 2, 2015 and did not include an Economic, Small Business, and Consumer Impact Statement. This rulemaking changed the rule to only be applicable to commercial animal operators implementing Ag BMPs in moderate PM nonattainment areas and made changes to the recordkeeping requirements. These changes may result in minor increases in costs applicable to commercial farmers but are unlikely to have any significant impact since commercial farmers were required to implement these practices and keep these types of records prior to the most recent rulemaking. The department presented an economic impact discussion when it submitted a Five-Year Review Report on this Chapter and Article in 2007. The economic impact of this Article has not differed significantly from that described at that time. Please see the attached Economic Impact Statement (EIS) as well as number 11 in Section A above for more information.

10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.

Not Applicable. No course of action was indicated in the agency's previous five-year review report.

14. Course of action the agency proposes to take regarding each rule, including the month and year in which the agency anticipates submitting the rules to the Council if the agency determines it is necessary to amend or repeal an existing rule, or to make a

new rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.

ADEQ plans to submit final rulemaking to GRRC by the end of December, 2019 to add language to be more consistent with Maricopa County Rule 310 and address the minor clarity issues noted above in the next rulemaking.

R18-2-611.02. Agricultural PM General Permit for Animal Operations; Moderate PM Nonattainment Areas Designated After June 1, 2009, Except Pinal County PM Nonattainment Area

2. Objective of the rules, including the purpose for the existence of the rule.

The objective of this rule is to establish the agricultural Particulate Matter (PM) general permit and Agricultural Best Management Practices (Ag BMP) for regulated animal operations engaged in agricultural activities within Moderate PM Nonattainment Areas Designated After June 1, 2009, except the Pinal County PM Nonattainment Area.

4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.

This rule is generally consistent with state and federal statutes and other rules made by ADEQ. However, this rule could be more consistent with Maricopa County Rule 610.01 by clarifying jurisdictional authority over clean-up of track-out from agricultural operations onto Maricopa County roads.

8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.

The rulemaking for these rules was exempt from the provisions of Title 41, Chapter 6, Article 3 under session law at Laws 2011, Chapter 214 §4, at 21 A.A.R. 1156, effective July 2, 2015 and did not include an Economic, Small Business, and Consumer Impact Statement. This rulemaking changed the rule to only be applicable to commercial animal operators implementing Ag BMPs in moderate PM nonattainment areas designated after June 1, 2009, except in the Pinal County PM

nonattainment area. The rulemaking also made changes to recordkeeping requirements. These changes may result in minor increases in costs applicable to commercial farmers but are unlikely to have any significant impact since commercial farmers were required to implement these practices and keep these types of records prior to the most recent rulemaking. The department presented an economic impact discussion when it submitted a Five-Year Review Report on this Chapter and Article in 2007. The economic impact of this Article has not differed significantly from that described at that time. Please see the attached Economic Impact Statement (EIS) as well as number 11 in Section A above for more information.

10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.

Not Applicable. No course of action was indicted in the agency's previous five-year review report because this rule became effective after the previous five-year review report.

14. Course of action the agency proposes to take regarding each rule, including the month and year in which the agency anticipates submitting the rules to the Council if the agency determines it is necessary to amend or repeal an existing rule, or to make a new rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.

ADEQ plans to submit final rulemaking to GRRC by the end of December, 2019 to add language to be more consistent with Maricopa County Rule 310.

R18-2-611.03. Agricultural PM General Permit for Animal Operations; Pinal County PM Nonattainment Area

2. Objective of the rules, including the purpose for the existence of the rule.

The objective of this rule is to establish the agricultural Particulate Matter (PM) general permit and Agricultural Best Management Practices (Ag BMP) for regulated animal operations engaged in agricultural activities within the Pinal County PM Nonattainment Area.

4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.

This rule is generally consistent with state and federal statutes and other rules made by ADEQ. However, this rule could be more consistent with Maricopa County Rule 610.01 by clarifying jurisdictional authority over clean-up of track-out from agricultural operations onto Maricopa County roads.

8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.

The rulemaking for these rules was exempt from the provisions of Title 41, Chapter 6, Article 3 under session law at Laws 2011, Chapter 214 §4, at 21 A.A.R. 1156, effective July 2, 2015 and did not include an Economic, Small Business, and Consumer Impact Statement. This rulemaking changed the rule to only be applicable to commercial animal operators implementing Ag BMPs in the Pinal County PM nonattainment area and made changes to the recordkeeping requirements. These changes may result in minor increases in costs applicable to commercial farmers but are unlikely to have any significant impact since commercial farmers were required to implement these practices and keep these types of records prior to the most recent rulemaking. The department presented an economic impact discussion when it submitted a Five-Year Review Report on this Chapter and Article in 2007. The economic impact of this Article has not differed significantly from that described at that time. Please see the attached Economic Impact Statement (EIS) as well as number 11 in Section A above for more information.

10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.

Not Applicable. No course of action was indicted in the agency's previous five-year review report because this rule became effective after the previous five-year review report.

14. Course of action the agency proposes to take regarding each rule, including the month and year in which the agency anticipates submitting the rules to the Council if the

agency determines it is necessary to amend or repeal an existing rule, or to make a new rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.

ADEQ plans to submit final rulemaking to GRRC by the end of December, 2019 to add language to be more consistent with Maricopa County Rule 310.

R18-2-612. Definitions for R18-2-612.01

2. Objective of the rules, including the purpose for the existence of the rule.

The objective of this rule is to establish the definitions necessary to implement R18-2-612.01.

6. Clarity, conciseness, and understandability of the rule.

This rule is generally clear, concise, and understandable but could be improved by providing a measurable limit on the amount of dust allowed from agricultural activities and by clarifying whether an Agricultural Best Management Practice applies to an entire agricultural operation or to individual parts of an operation.

8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.

This rule does not generate any economic impact, in and of itself; therefore, no economic impacts have resulted from this section to date.

10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.

Not Applicable. No course of action was indicted in the agency's previous five-year review report because rulemaking 21 A.A.R. 1156, effective July 2, 2015 repealed the definitions for the Yuma Ag BMP rule from R18-2-612, and added a new R18-2-612 for definitions for new section R18-2-612.01.

14. Course of action the agency proposes to take regarding each rule, including the month and year in which the agency anticipates submitting the rules to the Council if the agency determines it is necessary to amend or repeal an existing rule, or to make a

new rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.

Due to other rulemaking priorities, ADEQ does not plan to amend this rule in the near future; however, if any material changes are made to A.A.C. Title 18, Chapter 2, Article 6, ADEQ will address the minor clarity issues noted above in the next rulemaking.

R18-2-612.01. Agricultural PM General Permit for Irrigation Districts; PM Nonattainment Areas Designated After June 1, 2009

2. Objective of the rules, including the purpose for the existence of the rule.

The objective of this rule is to establish the agricultural Particulate Matter (PM) general permit and Agricultural Best Management Practices (Ag BMP) for regulated Irrigation Districts within PM Nonattainment Areas Designated after June 1, 2009.

8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.

The rulemaking for these rules was exempt from the provisions of Title 41, Chapter 6, Article 3 under session law at Laws 2011, Chapter 214 §4, at 21 A.A.R. 1156, effective July 2, 2015 and did not include an Economic, Small Business, and Consumer Impact Statement. This rulemaking added this new section to implement Ag BMPs for Irrigation Districts located in moderate nonattainment areas designated after June 1, 2009, including the Pinal County nonattainment area. These changes may result in minor increases in costs applicable to irrigation districts but are unlikely to have any significant economic impact. The department presented an economic impact discussion when it submitted a Five-Year Review Report on this Chapter and Article in 2007. The economic impact of this Article has not differed significantly from that described at that time. Please see the attached Economic Impact Statement (EIS) as well as number 11 in Section A above for more information.

10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.

Not Applicable. No course of action was indicted in the agency's previous five-year review report because this rule became effective after the previous five-year review report.

14. Course of action the agency proposes to take regarding each rule, including the month and year in which the agency anticipates submitting the rules to the Council if the agency determines it is necessary to amend or repeal an existing rule, or to make a new rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.

No course of action is necessary for this rule at this time.

R18-2-613. Definitions for R18-2-613.01

2. Objective of the rules, including the purpose for the existence of the rule.

The objective of this rule is to set forth the definitions necessary to implement R18-2-613.01.

6. Clarity, conciseness, and understandability of the rule.

This rule is generally clear, concise, and understandable but could be improved by providing a measurable limit on the amount of dust allowed from agricultural activities and by clarifying whether an Agricultural Best Management Practice applies to an entire agricultural operation or to individual parts of an operation.

8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.

This rule does not generate any economic impact, in and of itself; therefore, no economic impacts have resulted from this section to date.

10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.

Not Applicable. No course of action was indicted in the agency's previous five-year review report because rulemaking 21 A.A.R. 1156, effective July 2, 2015 repealed the Yuma Ag BMP rule at R18-2-613, and added a new section R18-2-613 to provide definitions for the Yuma Ag BMP rule R18-2-613.01. No changes were made to the rule text.

14. Course of action the agency proposes to take regarding each rule, including the month and year in which the agency anticipates submitting the rules to the Council if the agency determines it is necessary to amend or repeal an existing rule, or to make a new rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.

Due to other rulemaking priorities, ADEQ does not plan to amend this rule in the near future; however, if any material changes are made to A.A.C. Title 18, Chapter 2, Article 6, ADEQ will address the minor clarity issues noted above in the next rulemaking.

R18-2-613.01. Yuma PM10 Nonattainment Area; Agricultural Best Management Practices

2. Objective of the rules, including the purpose for the existence of the rule.

The objective of this rule is to establish the agricultural Particulate Matter (PM) general permit and Agricultural Best Management Practices (Ag BMP) for regulated crop operations engaged in agricultural activities within the Yuma PM₁₀ Nonattainment Area.

8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.

The rulemaking for these rules was exempt from the provisions of Title 41, Chapter 6, Article 3 under session law at Laws 2011, Chapter 214 §4, at 21 A.A.R. 1156, effective July 2, 2015 and did not include an Economic, Small Business, and

Consumer Impact Statement. This rulemaking added this new section for the Yuma Ag BMP rule, which was repealed from R18-2-613. No changes were made to the rule text and therefore will not result in any increase costs since commercial farmers were required to implement these practices and keep these types of records prior to the most recent rulemaking. The department presented an economic impact discussion when it submitted a Five-Year Review Report on this Chapter and Article in 2007. The economic impact of this Article has not differed significantly from that described at that time. Please see the attached Economic Impact Statement (EIS) as well as number 11 in Section A above for more information.

10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.

Not Applicable. No course of action was indicted in the agency's previous five-year review report because this rule became effective after the previous five-year review report.

14. Course of action the agency proposes to take regarding each rule, including the month and year in which the agency anticipates submitting the rules to the Council if the agency determines it is necessary to amend or repeal an existing rule, or to make a new rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.

No course of action is necessary for this rule at this time.

R18-2-614. Evaluation of Nonpoint Sources Emissions

2. Objective of the rules, including the purpose for the existence of the rule.

The objective of this rule is to establish a 40% opacity standard for any nonpoint sources and to specify the test method to be used for reading visible emissions as applicable to Article 6, and to exempt R18-2-602 (open burning permits) or Article 15 (prescribed burning) from this requirement.

8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact

statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.

ADEQ presented an Economic Impact Statement (EIS) when it submitted a five-year review report on this Chapter and Article in 2007. The economic impact of this Article has not differed significantly from that described at that time. Please see the attached EIS as well as number 11 in Section A above for more information.

10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.

ADEQ proposed to improve consistency and clarity within the rules and after evaluating technical advances and examining the ability of the agency to reduce the opacity standard from 40% to 20%. ADEQ examined the ability to reduce the opacity standard but found no federal requirement to do so. ADEQ has determined that a change in the opacity standard is not necessary at this time. Therefore, ADEQ did not seek a rulemaking to reduce the opacity standard from 40% to 20%.

14. Course of action the agency proposes to take regarding each rule, including the month and year in which the agency anticipates submitting the rules to the Council if the agency determines it is necessary to amend or repeal an existing rule, or to make a new rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.

No course of action is necessary for this rule at this time.

ARTICLE 8. EMISSIONS FROM MOBILE SOURCES (NEW AND EXISTING)

A. Information that Is Identical for All Rules in A.A.C. Title 18, Chapter 2, Article 8, unless otherwise stated:

1. General and specific statutes authorizing the rules, including any statute that authorizes the agency to make rules.

The rules in A.A.C. Title 18, Chapter 2, Article 8 are authorized generally by §§ 49-104(A)(1), (10), 49-401, 49-404, 49-422(B), 49-424(4), and 49-425.

3. Effectiveness of the rule in achieving the objective, including a summary of any available data supporting the conclusion reached.

The rules in A.A.C. Title 18, Chapter 2, Article 8 are effective in achieving their individual objectives.

4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.

Unless specified below in Section B, ADEQ believes the rules in A.A.C. Title 18, Chapter 2, Article 8 are consistent with state and federal statutes and other rules made by the agency. The statutes or rules used in determining consistency are as follows:

40 C.F.R. Part 51

Federal statute of SIP requirements.

A.R.S. §§ 49-104(A)(1), (10),
49-401, 49-404, 49-422(B), 49-
424(4), 49-425, 49-457, and
49-501.

State statutes authorizing adoption of rules
and standards.

A.R.S. § 49-104(A)(17)

State regulations adopted under Title 49
are “to be consistent with and no more
stringent than the corresponding federal
law that addresses the same subject matter”
unless authorized by the legislature.

5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.

ADEQ has analyzed the enforceability of the rules in A.A.C. Title 18, Chapter 2, Article 8, and believes the rules are being enforced and there are no problems with enforcement.

6. Clarity, conciseness, and understandability of the rule.

ADEQ has analyzed the clarity, conciseness, and understandability of the rules in A.A.C. Title 18, Chapter 2, Article 8, and believes the rules are generally clear, concise and understandable. ADEQ has determined that minor technical fixes could be made to R18-2-802; 804, and 805.

7. Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the five-year review report, including letters, memoranda, reports, written analyses submitted to the agency questioning whether

the rule is based on valid scientific or reliable principles or methods, and written allegations made in litigation or administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the result of the litigation or administrative proceedings.

There have been no written criticisms of the rules in A.A.C. Title 18, Chapter 2, Article 8 submitted to ADEQ within the last five years.

9. Any analysis submitted to the agency by another person regarding the rule's impact on this state's business competitiveness as compared to the competitiveness of businesses in other states.

No such analysis was submitted for any of the rules in A.A.C. Title 18, Chapter 2, Article 8 within the last five years.

11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule, and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.

ADEQ conducted an internal survey and concluded that the benefits of the rules in A.A.C. Title 18, Chapter 2, Article 8 outweigh, within the State, the costs of the rules and impose the least burden and cost to persons regulated by the rules, including paperwork and other compliance costs necessary to achieve the underlying regulatory objectives. The rules in Article 8 help identify and regulate sources that are not classified as a motor vehicle, agricultural vehicle, or agricultural equipment and would otherwise go unregulated. The rules are designed to, and generally effective in, controlling emissions of the "criteria" pollutants subject to the NAAQS (or their precursors): particulate matter, nitrogen oxides, sulfur oxides, ozone, lead, and carbon monoxide. These pollutants require control because concentrations of the pollutants in the ambient air are known to cause serious health effects, including premature mortality, cardiovascular disease, and aggravated asthma. They are also known to cause serious public welfare effects such as crop deterioration, harm to wildlife and natural vegetation, and damage to man-made materials. ADEQ is not aware of any less costly or burdensome alternatives to satisfy the rules underlying objectives.

12. A determination after analysis that the rule is not more stringent than a corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.

ADEQ believes that no rule or definitions in A.A.C. Title 18, Chapter 2, Article 8 is more stringent than corresponding federal law.

13. For a rule adopted after July 29, 2010, that requires issuance of a regulatory permit, license or agency authorization, whether the rule complies with A.R.S. § 41-1037.

The rules in A.A.C. Title 18, Chapter 2, Article 8 requiring the issuance of a regulatory permit, license, or agency authorization comply with A.R.S. §41-1037 because they qualify as an exception under A.R.S. §41-1037(A)(6).

B. Section by Section Analysis of Rules

R18-2-801. Classification of Mobile Sources

2. Objective of the rules, including the purpose for the existence of the rule.

The objective of this rule is to establish mobile source categories applicable to Article 8, and to set forth the opacity level.

4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.

ADEQ previously identified R18-2-801 as being inconsistent with federal statutes and rules because EPA published a limited approval of the State Implementation Plan (SIP) submitted July 15, 1998 with deficiencies identified in R18-2-801 regarding restrictions on nonroad engines. ADEQ is currently investigating to determine whether federal law preempts the language in R18-2-801. The rules are still enforceable and there is no risk of a sanctions under the Federal Clean Air Act (CAA) §179(b) for State Implementation Plans. ADEQ will address the issues noted above once a determination has been made in a rulemaking by the end of December, 2018.

8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact

statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.

This rule does not generate any economic impact, in and of itself; therefore, no economic impacts have resulted from this section to date.

10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.

ADEQ proposed to improve consistency and clarity within the rules and after evaluating technical advances and examining the ability of the agency to reduce the opacity standard from 40% to 20%. ADEQ examined the ability to reduce the opacity standard but found no federal requirement to do so. As such, A.R.S. 49-104(A)(17) requires rules adopted by ADEQ “to be consistent with and no more stringent than the corresponding federal law that addresses the same subject matter.” Therefore, ADEQ did not seek a rulemaking to reduce the opacity standard from 40% to 20%.

14. Course of action the agency proposes to take regarding each rule, including the month and year in which the agency anticipates submitting the rules to the Council if the agency determines it is necessary to amend or repeal an existing rule, or to make a new rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.

ADEQ will amend this rule based on the consistency issue noted above. When material changes are made to A.A.C. R18-2-801, ADEQ will address the minor clarity issues noted above by the end of December, 2018.

R18-2-802. Off-road Machinery

2. Objective of the rules, including the purpose for the existence of the rule.

The objective of this rule is to define the term “off-road machinery” and establish a specific opacity standard for the category.

4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.

ADEQ previously identified R18-2-802 as being inconsistent with federal statutes and rules because EPA published a limited approval of the State Implementation Plan (SIP) submitted July 15, 1998 with deficiencies identified in R18-2-801 regarding

restrictions on nonroad engines. ADEQ is currently investigating to determine whether federal law preempts the language in R18-2-802. The rules are still enforceable and there is no risk of a sanctions clock under the Federal Clean Air Act (CAA) §179(b) for State Implementation Plans. ADEQ will address the issues noted above once a determination has been made in a rulemaking by the end of December, 2018.

6. Clarity, conciseness, and understandability of the rule.

This rule is generally clear, concise, and understandable but the rule could be improved by changing the language to remove the 10 second test and replacing it with EPA Method 9 in order to be consistent with permitting language.

8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.

ADEQ presented an Economic Impact Statement (EIS) when it submitted a five-year review report on this Chapter and Article in 2007. The economic impact of this Article has not differed significantly from that described at that time. Please see the attached EIS as well as number 11 in Section A above for more information.

10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.

ADEQ proposed to improve consistency and clarity within the rules and after evaluating technical advances and examining the ability of the agency to reduce the opacity standard from 40% to 20%. ADEQ examined the ability to reduce the opacity standard but found no federal requirement to do so. As such, A.R.S. 49-104(A)(17) requires rules adopted by ADEQ "to be consistent with and no more stringent than the corresponding federal law that addresses the same subject matter." Therefore, ADEQ did not seek a rulemaking to reduce the opacity standard from 40% to 20%.

14. Course of action the agency proposes to take regarding each rule, including the month and year in which the agency anticipates submitting the rules to the Council if the agency determines it is necessary to amend or repeal an existing rule, or to make a

new rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.

ADEQ will amend this rule based on the consistency issue noted above. When material changes are made to A.A.C. R18-2-802, ADEQ will address the minor clarity issues noted above by the end of December, 2018.

R18-2-803. Heater-plater Units

2. Objective of the rules, including the purpose for the existence of the rule.

The objective of this rule is to establish the opacity limitation for heater-planters and to provide an exception.

8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.

ADEQ presented an Economic Impact Statement (EIS) when it submitted a five-year review report on this Chapter and Article in 2007. The economic impact of this Article has not differed significantly from that described at that time. Please see the attached EIS as well as number 11 in Section A above for more information.

10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.

ADEQ proposed to improve consistency and clarity within the rules and after evaluating technical advances and examining the ability of the agency to reduce the opacity standard from 40% to 20%. ADEQ examined the ability to reduce the opacity standard but found no federal requirement to do so. As such, A.R.S. 49-104(A)(17) requires rules adopted by ADEQ "to be consistent with and no more stringent than the corresponding federal law that addresses the same subject matter." Therefore, ADEQ did not seek a rulemaking to reduce the opacity standard from 40% to 20%.

14. Course of action the agency proposes to take regarding each rule, including the month and year in which the agency anticipates submitting the rules to the Council if the agency determines it is necessary to amend or repeal an existing rule, or to make a

new rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.

No course of action is necessary for this rule at this time.

R18-2-804. Roadway and Site Cleaning Machinery

2. Objective of the rules, including the purpose for the existence of the rule.

The objective of this rule is to establish an opacity standard and an exemption for roadway and site cleaning machinery and establish reasonable precautions to prevent Particulate Matter (PM) from becoming airborne.

6. Clarity, conciseness, and understandability of the rule.

This rule is generally clear, concise, and understandable but the rule could be improved by changing the language to remove the 10 second test and replacing it with EPA Method 9 in order to be consistent with permitting language. The rule could also be improved by providing a definition for “reasonable precautions.”

8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.

ADEQ presented an Economic Impact Statement (EIS) when it submitted a five-year review report on this Chapter and Article in 2007. The economic impact of this Article has not differed significantly from that described at that time. Please see the attached EIS as well as number 11 in Section A above for more information.

10. If applicable, how the agency completed the course of action indicated in the agency’s previous five-year review report.

ADEQ proposed to improve consistency and clarity within the rules and after evaluating technical advances and examining the ability of the agency to reduce the opacity standard from 40% to 20%. ADEQ examined the ability to reduce the opacity standard but found no federal requirement to do so. As such, A.R.S. 49-104(A)(17) requires rules adopted by ADEQ “to be consistent with and no more stringent than

the corresponding federal law that addresses the same subject matter.” Therefore, ADEQ did not seek a rulemaking to reduce the opacity standard from 40% to 20%.

14. Course of action the agency proposes to take regarding each rule, including the month and year in which the agency anticipates submitting the rules to the Council if the agency determines it is necessary to amend or repeal an existing rule, or to make a new rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.

Due to other rulemaking priorities, ADEQ does not plan to amend this rule in the near future; however, if any material changes are made to A.A.C. Title 18, Chapter 2, Article 8, ADEQ will address the minor clarity issues noted above in the next rulemaking.

R18-2-805. Asphalt or Tar Kettles

2. Objective of the rules, including the purpose for the existence of the rule.

The objective of this rule is to establish an opacity standard and operating procedures applicable to asphalt or tar kettles.

6. Clarity, conciseness, and understandability of the rule.

This rule is generally clear, concise, and understandable but the rule could be improved by changing the language to remove the 10 second test and replacing it with EPA Method 9 in order to be consistent with permitting language.

8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.

ADEQ presented an Economic Impact Statement (EIS) when it submitted a five-year review report on this Chapter and Article in 2007. The economic impact of this Article has not differed significantly from that described at that time. Please see the attached EIS as well as number 11 in Section A above for more information.

10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.

ADEQ proposed to improve consistency and clarity within the rules and after evaluating technical advances and examining the ability of the agency to reduce the opacity standard from 40% to 20%. ADEQ examined the ability to reduce the opacity standard but found no federal requirement to do so. As such, A.R.S. 49-104(A)(17) requires rules adopted by ADEQ "to be consistent with and no more stringent than the corresponding federal law that addresses the same subject matter." Therefore, ADEQ did not seek a rulemaking to reduce the opacity standard from 40% to 20%.

14. Course of action the agency proposes to take regarding each rule, including the month and year in which the agency anticipates submitting the rules to the Council if the agency determines it is necessary to amend or repeal an existing rule, or to make a new rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.

Due to other rulemaking priorities, ADEQ does not plan to amend this rule in the near future; however, if any material changes are made to A.A.C. Title 18, Chapter 2, Article 8, ADEQ will address the minor clarity issues noted above in the next rulemaking.

ARTICLE 12. EMISSIONS BANK

A. Information that Is Identical for All Rules in A.A.C. Title 18, Chapter 2, Article 12, unless otherwise stated:

1. General and specific statutes authorizing the rules, including any statute that authorizes the agency to make rules.

The rules in A.A.C. Title 18, Chapter 2, Article 12 are authorized generally by §§ 49-104(A)(1), (10), 49-401, 49-404, 49-422(B), 49-424(4), and 49-425. Specific authorization for the rules is found at 49-410.

3. Effectiveness of the rule in achieving the objective, including a summary of any available data supporting the conclusion reached.

The rules in A.A.C. Title 18, Chapter 2, Article 12 are effective in achieving their individual objectives.

4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.

ADEQ believes the rules in A.A.C. Title 18, Chapter 2, Article 12 are consistent with state and federal statutes and other rules made by the agency. The statutes or rules used in determining consistency are as follows:

40 C.F.R. 51.165	Federal statute establishing SIP requirements.
40 C.F.R. 51, App. S	

A.R.S. §§ 49-104(A)(1), (10), 49-401, 49-404, 49-422(B), 49-424(4), 49-425, 49-457, and 49-501.	State statutes authorizing adoption of rules and standards.
---	---

A.R.S. § 49-104(A)(17)	State regulations adopted under Title 49 are “to be consistent with and no more stringent than the corresponding federal law that addresses the same subject matter” unless authorized by the legislature.
------------------------	--

5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.

Participation in the Emissions Bank program is currently on a voluntary basis. However, the rules in Article 12 are currently being enforced when applicable.

6. Clarity, conciseness, and understandability of the rule.

ADEQ has analyzed the clarity, conciseness, and understandability of the rules in A.A.C. Title 18, Chapter 2, Article 12, and believes the rules are generally clear, concise and understandable.

7. Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the five-year review report, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods, and written allegations made in litigation or administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or

beyond the authority of the agency to enact, and the result of the litigation or administrative proceedings.

There have been no written criticisms of the rules in A.A.C. Title 18, Chapter 2, Article 12 submitted to ADEQ within the last five years.

8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.

ADEQ presented an Economic Impact Statement (EIS) when it submitted a five-year review report on this Chapter and Article in 2007. The economic impact of this article has not differed significantly from that described at that time. Please see the attached EIS as well as number 11 below for more information.

9. Any analysis submitted to the agency by another person regarding the rule's impact on this state's business competitiveness as compared to the competitiveness of businesses in other states.

No such analysis was submitted for any of the rules in A.A.C. Title 18, Chapter 2, Article 12 within the last five years.

10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.

Not Applicable. No course of action was indicated in the agency's previous five-year review report.

11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule, and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.

ADEQ conducted an internal survey and concluded that the benefits of the rules in Article 12 outweigh, within the State, the costs of the rules and impose the least burden and cost to persons regulated by the rules, including paperwork and other compliance costs necessary to achieve the underlying regulatory objectives. The New Source Review (NSR) permitting program, for example, allows for a cap and trade

market-based approach to controlling air pollution by providing economic incentives for achieving reductions in the emissions of pollutants. The rules are designed to, and generally effective in, controlling emissions of the “criteria” pollutants subject to the NAAQS (or their precursors): particulate matter, nitrogen oxides, sulfur oxides, ozone, lead, and carbon monoxide. These pollutants require control because concentrations of the pollutants in the ambient air are known to cause serious health effects, including premature mortality, cardiovascular disease, and aggravated asthma. They are also known to cause serious public welfare effects such as crop deterioration, harm to wildlife and natural vegetation, and damage to man-made materials. ADEQ is not aware of any less costly or burdensome alternatives to satisfy the rules underlying objectives.

12. A determination after analysis that the rule is not more stringent than a corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.

ADEQ believes that no rule or definitions in A.A.C. Title 18, Chapter 2, Article 12 is more stringent than corresponding federal law.

13. For a rule adopted after July 29, 2010, that requires issuance of a regulatory permit, license or agency authorization, whether the rule complies with A.R.S. § 41-1037.

The rules in Article 12 that require the issuance of a regulatory permit, license or agency authorization comply with A.R.S. §41-1037 because they qualify as an exception under A.R.S. §41-1037(A)(6).

14. Course of action the agency proposes to take regarding each rule, including the month and year in which the agency anticipates submitting the rules to the Council if the agency determines it is necessary to amend or repeal an existing rule, or to make a new rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.

On May 1, 2017, pursuant to House Bill (HB) 2152 (Fifty-third Legislature, First Regular Session, 2017, Chapter 225, Section 1) the legislature amended the existing emissions bank statute A.R.S. Section 49-410 to allow for new types of emission reduction credits to be deposited in the bank. These amendments directed ADEQ to adopt rules implementing these changes. ADEQ intends to amend the rules in Article 12 to implement these changes by the end of December 2018.

B. Section by Section Analysis of Rules

R18-2-1201. Definitions

2. Objective of the rules, including the purpose for the existence of the rule.

The objective of this rule is to establish the definitions necessary to implement Article 12.

8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.

This rule does not generate any economic impact, in and of itself; therefore, no economic impacts have resulted from this rule to date.

R18-2-1202. Applicability

2. Objective of the rules, including the purpose for the existence of the rule.

The objective of this rule is to establish criteria for the applicability of Article 12 to sources that emit particulate matter, sulfur dioxide, carbon monoxide, nitrogen oxides, or volatile organic compounds, and to exempt sources granted authority to operate under 18 A.A.C. 2, Article 5.

8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.

ADEQ presented an Economic Impact Statement (EIS) when it submitted a five-year review report on this Chapter and Article in 2007. The economic impact of this Article has not differed significantly from that described at that time. Please see the attached EIS as well as number 11 in Section A above for more information.

R18-2-1203. Emissions Bank Administration

2. Objective of the rules, including the purpose for the existence of the rule.

The objective of this rule is to establish the responsibilities of the Director related to the administration of the bank.

8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.

ADEQ presented an Economic Impact Statement (EIS) when it submitted a five-year review report on this Chapter and Article in 2007. The economic impact of this Article has not differed significantly from that described at that time. Please see the attached EIS as well as number 11 in Section A above for more information.

R18-2-1204. Credit Generation

2. Objective of the rules, including the purpose for the existence of the rule.

The objective of this rule is to establish the requirements to generate emission reduction credits.

8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.

ADEQ presented an Economic Impact Statement (EIS) when it submitted a five-year review report on this Chapter and Article in 2007. The economic impact of this Article has not differed significantly from that described at that time. Please see the attached EIS as well as number 11 in Section A above for more information.

R18-2-1205. Credit Certification

2. Objective of the rules, including the purpose for the existence of the rule.

The objective of this rule is to establish the requirements to certify an emission reduction credit.

8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.

ADEQ presented an Economic Impact Statement (EIS) when it submitted a five-year review report on this Chapter and Article in 2007. The economic impact of this Article has not differed significantly from that described at that time. Please see the attached EIS as well as number 11 in Section A above for more information.

R18-2-1206. Credit Utilization

2. Objective of the rules, including the purpose for the existence of the rule.

The objective of this rule is to establish the requirements to utilize a certified emission credit.

8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.

ADEQ presented an Economic Impact Statement (EIS) when it submitted a five-year review report on this Chapter and Article in 2007. The economic impact of this Article has not differed significantly from that described at that time. Please see the attached EIS as well as number 11 in Section A above for more information.

R18-2-1207. Credit Withdrawal

2. Objective of the rules, including the purpose for the existence of the rule.

The objective of this rule is to establish the requirements to retire or withdrawal a certified emissions credit.

8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.

ADEQ presented an Economic Impact Statement (EIS) when it submitted a five-year review report on this Chapter and Article in 2007. The economic impact of this Article has not differed significantly from that described at that time. Please see the attached EIS as well as number 11 in Section A above for more information.

R18-2-1208. Fees

2. Objective of the rules, including the purpose for the existence of the rule.

The objective of this rule is to outline the fees involved in the administration of the bank.

8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.

ADEQ presented an Economic Impact Statement (EIS) when it submitted a five-year review report on this Chapter and Article in 2007. The economic impact of this Article has not differed significantly from that described at that time. Please see the attached EIS as well as number 11 in Section A above for more information.

ARTICLE 6. EMISSIONS FROM EXISTING AND NEW NONPOINT SOURCES**R18-2-601. General**

For purposes of this Article, any source of air contaminants which due to lack of an identifiable emission point or plume cannot be considered a point source, shall be classified as a nonpoint source. In applying this criteria, such items as air-curtain destructors, heater-planners, and conveyor transfer points shall be considered to have identifiable plumes. Any affected facility subject to regulation under Article 7 of this Chapter or Title 18, Chapter 2, Article 9, shall not be subject to regulation under this Article.

Historical Note

Former Section R9-3-601 repealed, new Section R9-3-601 adopted effective May 14, 1979 (Supp. 79-1). Former Section R9-3-601 renumbered without change as Section R18-2-601 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Former Section R18-2-601 renumbered to R18-2-801, new Section R18-2-601 renumbered from R18-2-401 and amended effective November 15, 1993 (Supp. 93-4). Section updated to reflect corrected citation reference (Supp. 08-1).

R18-2-602. Unlawful Open Burning

A. In addition to the definitions contained in A.R.S. § 49-501, in this Section:

1. "Agricultural burning" means burning vegetative materials related to producing and harvesting crops and raising animals for the purpose of marketing for profit, or providing a livelihood, but does not include burning of household waste or prohibited materials. A person may conduct agricultural burns in fields, piles, ditch banks, fence rows, or canal laterals for purposes such as weed control, waste disposal, disease and pest prevention, or site preparation.
2. "Approved waste burner" means an incinerator constructed of fire resistant material with a cover or screen that is closed when in use, and has openings in the sides or top no greater than one inch in diameter.
3. "Class I Area" means any one of the Arizona mandatory federal Class I areas defined in A.R.S. § 49-401.01.
4. "Construction burning" means burning wood or vegetative material from land clearing, site preparation, or fabrication, erection, installation, demolition, or modification of any buildings or other land improvements, but does not include burning household waste or prohibited material.
5. "Dangerous material" means any substance or combination of substances that is capable of causing bodily harm or property loss unless neutralized, consumed, or otherwise disposed of in a controlled and safe manner.
6. "Delegated authority" means any of the following:
 - a. A county, city, town, air pollution control district, or fire district that has been delegated authority to issue open burning permits by the Director under A.R.S. § 49-501(E); or
 - b. A private fire protection service provider that has been assigned authority to issue open burning permits by one of the authorities in subsection (A)(6)(a).
7. "Director" means the Director of the Department of Environmental Quality, or designee.
8. "Emission reduction techniques" means methods for controlling emissions from open outdoor fires to minimize the amount of emissions output per unit of area burned.
9. "Flue," as used in this Section, means any duct or passage for air or combustion gases, such as a stack or chimney.
10. "Household waste" means any solid waste including garbage, rubbish, and sanitary waste from a septic tank 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, but does not include construction debris, landscaping rubble, or demolition debris.
11. "Independent authority to permit fires" means the authority of a county to permit fires by a rule adopted under Arizona Revised Statutes, Title 49, Chapter 3, Article 3, and includes only Maricopa, Pima, and Pinal counties.
12. "Open outdoor fire or open burning" means the combustion of material of any type, outdoors and in the open, where the products of combustion are not directed through a flue. Open outdoor fires include agricultural, residential, prescribed, and construction burning, and fires using air curtain destructors.
13. "Prohibited materials" means nonpaper garbage from the processing, storage, service, or consumption of food; chemically treated wood; lead-painted wood; linoleum flooring, and composite counter-tops; tires; explosives or ammunition; oleanders; asphalt shingles; tar paper; plastic and rubber products, including bottles for household chemicals; plastic grocery and retail bags; waste petroleum products, such as waste crankcase oil, transmission oil, and oil filters; transformer oils; asbestos; batteries; anti-freeze; aerosol spray cans; electrical wire insulation; thermal insulation; polyester products; hazardous waste products such as paints, pesticides, cleaners and solvents, stains and varnishes, and other flammable liquids; plastic pesticide bags and containers; and hazardous material containers including those that contained lead, cadmium, mercury, or arsenic compounds.
14. "Residential burning" means open burning of vegetative materials conducted by or for the occupants of residential dwellings, but does not include burning household waste or prohibited material.
15. "Prescribed burning" has the same meaning as in R18-2-1501.

B. Unlawful open burning. Notwithstanding any other rule in this Chapter, a person shall not ignite, cause to be ignited, permit to be ignited, allow, or maintain any open outdoor fire in a county without independent authority to permit fires except as provided in A.R.S. § 49-501 and this Section.

C. Open outdoor fires exempt from a permit. The following fires do not require an open burning permit from the Director or a delegated authority:

1. Fires used only for:
 - a. Cooking of food,
 - b. Providing warmth for human beings,

Department of Environmental Quality – Air Pollution Control

- c. Recreational purposes,
 - d. Branding of animals,
 - e. Orchard heaters for the purpose of frost protection in farming or nursery operations, and
 - f. The proper disposal of flags under 4 U.S.C. 1, § 8.
2. Any fire set or permitted by any public officer in the performance of official duty, if the fire is set or permission given for the following purpose:
 - a. Control of an active wildfire; or
 - b. Instruction in the method of fighting fires, except that the person setting these fires must comply with the reporting requirements of subsection (D)(3)(f).
 3. Fire set by or permitted by the Director of Department of Agriculture for the purpose of disease and pest prevention in an organized, area-wide control of an epidemic or infestation affecting livestock or crops.
 4. Prescribed burns set by or assisted by the federal government or any of its departments, agencies, or agents, or the state or any of its agencies, departments, or political subdivisions, regulated under Article 15 of this Chapter.
- D. Open outdoor fires requiring a permit.**
1. The following open outdoor fires are allowed with an open burning permit from the Director or a delegated authority:
 - a. Construction burning;
 - b. Agricultural burning;
 - c. Residential burning;
 - d. Prescribed burns conducted on private lands without the assistance of a federal or state land manager as defined under R18-2-1501;
 - e. Any fire set or permitted by a public officer in the performance of official duty, if the fire is set or permission given for the purpose of weed abatement, or the prevention of a fire hazard, unless the fire is exempt from the permit requirement under subsection (C)(3);
 - f. Open outdoor fires of dangerous material under subsection (E);
 - g. Open outdoor fires of household waste under subsection (F); and
 - h. Open outdoor fires that use an air curtain destructor, as defined in R18-2-101.
 2. A person conducting an open outdoor fire in a county without independent authority to permit fires shall obtain a permit from the Director or a delegated authority unless exempted under subsection (C). Permits may be issued for a period not to exceed one year. A person shall obtain a permit by completing an ADEQ-approved application form.
 3. Open outdoor fire permits issued under this Section shall include:
 - a. A list of the materials that the permittee may burn under the permit;
 - b. A means of contacting the permittee authorized by the permit to set an open fire in the event that an order to extinguish the open outdoor fire is issued by the Director or the delegated authority;
 - c. A requirement that burns be conducted during the following periods, unless otherwise waived or directed by the Director on a specific day basis:
 - i. Year-round: ignite fire no earlier than one hour after sunrise; and
 - ii. Year-round: extinguish fire no later than two hours before sunset;
 - d. A requirement that the permittee conduct all open burning only during atmospheric conditions that:
 - i. Prevent dispersion of smoke into populated areas;
 - ii. Prevent visibility impairment on traveled roads or at airports that result in a safety hazard;
 - iii. Do not create a public nuisance or adversely affect public safety;
 - iv. Do not cause an adverse impact to visibility in a Class I area; and
 - v. Do not cause uncontrollable spreading of the fire;
 - e. A list of the types of emission reduction techniques that the permittee shall use to minimize fire emissions.;
 - f. A reporting requirement that the permittee shall meet by providing the following information in a format provided by the Director for each date open burning occurred, on either a daily basis on the day of the fire, or an annual basis in a report to the Director or delegated authority due on March 31 for the previous calendar year:
 - i. The date of each burn;
 - ii. The type and quantity of fuel burned for each date open burning occurred;
 - iii. The fire type, such as pile or pit, for each date open burning occurred; and
 - iv. For each date open burning occurred, the legal location, to the nearest section, or latitude and longitude, to the nearest degree minute, or street address for residential burns;
 - g. A requirement that the person conducting the open burn notify the local fire-fighting agency or private fire protection service provider, if the service provider is a delegated authority, before burning. If neither is in existence, the person conducting the burn shall notify the state forester.;
 - h. A requirement that the permittee start each open outdoor fire using items that do not cause the production of black smoke;
 - i. A requirement that the permittee attend the fire at all times until it is completely extinguished;
 - j. A requirement that the permittee provide fire extinguishing equipment on-site for the duration of the burn;
 - k. A requirement that the permittee ensure that a burning pit, burning pile, or approved waste burner be at least 50 feet from any structure;
 - l. A requirement that the permittee have a copy of the burn permit on-site during open burning;

Department of Environmental Quality – Air Pollution Control

- m. A requirement that the permittee not conduct open burning when an air stagnation advisory, as issued by the National Weather Service, is in effect in the area of the burn or during periods when smoke can be expected to accumulate to the extent that it will significantly impair visibility in Class I areas;
 - n. A requirement that the permittee not conduct open burning when any stage air pollution episode is declared under R18-2-220;
 - o. A statement that the Director, or any other public officer, may order that the burn be extinguished or prohibit burning during periods of inadequate smoke dispersion, excessive visibility impairment, or extreme fire danger; and
 - p. A list of the activities prohibited and the criminal penalties provided under A.R.S. § 13-1706.
4. The Director or a delegated authority shall not issue an open burning permit under this Section:
- a. That would allow burning prohibited materials other than under a permit for the burning of dangerous materials;
 - b. If the applicant has applied for a permit under this Section to burn a dangerous material which is also hazardous waste under 40 CFR 261, but does not have a permit to burn hazardous waste under 40 CFR 264, or is not an interim status facility allowed to burn hazardous waste under 40 CFR 265; or
 - c. If the burning would occur at a solid waste facility in violation of 40 CFR 258.24 and the Director has not issued a variance under A.R.S. § 49-763.01.
- E.** Open outdoor fires of dangerous material. A fire set for the disposal of a dangerous material is allowed by the provisions of this Section, when the material is too dangerous to store and transport, and the Director has issued a permit for the fire. A permit issued under this subsection shall contain all provisions in subsection (D)(3) except for subsections (D)(3)(e) and (D)(3)(f). The Director shall permit fires for the disposal of dangerous materials only when no safe alternative method of disposal exists, and burning the materials does not result in the emission of hazardous or toxic substances either directly or as a product of combustion in amounts that will endanger health or safety.
- F.** Open outdoor fires of household waste. An open outdoor fire for the disposal of household waste is allowed by provisions of this Section when permitted in writing by the Director or a delegated authority. A permit issued under this subsection shall contain all provisions in subsection (D)(3) except for subsections (D)(3)(e) and (D)(3)(f). The permittee shall conduct open outdoor fires of household waste in an approved waste burner and shall either:
- 1. Burn household waste generated on-site on farms or ranches of 40 acres or more where no household waste collection or disposal service is available; or
 - 2. Burn household waste generated on-site where no household waste collection and disposal service is available and where the nearest other dwelling unit is at least 500 feet away.
- G.** Permits issued by a delegated authority. The Director may delegate authority for the issuance of open burning permits to a county, city, town, air pollution control district, or fire district. A delegated authority may not issue a permit for its own open burning activity. The Director shall not delegate authority to issue permits to burn dangerous material under subsection (E). A county, city, town, air pollution control district, or fire district with delegated authority from the Director may assign that authority to one or more private fire protection service providers that perform fire protection services within the county, city, town, air pollution control district, or fire district. A private fire protection provider shall not directly or indirectly condition the issuance of open burning permits on the applicant being a customer. Permits issued under this subsection shall comply with the requirements in subsection (D)(3) and be in a format prescribed by the Director. Each delegated authority shall:
- 1. Maintain a copy of each permit issued for the previous five years available for inspection by the Director;
 - 2. For each permit currently issued, have a means of contacting the person authorized by the permit to set an open fire if an order to extinguish open burning is issued; and
 - 3. Annually submit to the Director by May 15 a record of daily burn activity, excluding household waste burn permits, on a form provided by the Director for the previous calendar year containing the information required in subsections (D)(3)(e) and (D)(3)(f).
- H.** The Director shall hold an annual public meeting for interested parties to review operations of the open outdoor fire program and discuss emission reduction techniques.
- I.** Nothing in this Section is intended to permit any practice that is a violation of any statute, ordinance, rule, or regulation.

Historical Note

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective October 2, 1979 (Supp. 79-5). Correction, subsection (C) repealed effective October 2, 1979, not shown (Supp. 80-1). Former Section R9-3-602 renumbered without change as Section R18-2-602 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Former Section R18-2-602 renumbered to R18-2-802, new Section R18-2-602 renumbered from R18-2-401 effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 10 A.A.R. 388, effective March 16, 2004 (Supp. 04-1).

R18-2-603. Repealed**Historical Note**

Adopted effective May 14, 1979 (Supp. 79-1). Former Section R9-3-603 renumbered without change as Section R18-2-603 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Former Section R18-2-603 renumbered to R18-2-803, new Section R18-2-603 renumbered from R18-2-403 effective November 15, 1993 (Supp. 93-4). Repealed effective October 8, 1996 (Supp. 96-4).

R18-2-604. Open Areas, Dry Washes, or Riverbeds

- A.** No person shall cause, suffer, allow, or permit a building or its appurtenances, or a building or subdivision site, or a driveway, or a parking area, or a vacant lot or sales lot, or an urban or suburban open area to be constructed, used, altered, repaired, demolished,

Department of Environmental Quality – Air Pollution Control

cleared, or leveled, or the earth to be moved or excavated, without taking reasonable precautions to limit excessive amounts of particulate matter from becoming airborne. Dust and other types of air contaminants shall be kept to a minimum by good modern practices such as using an approved dust suppressant or adhesive soil stabilizer, paving, covering, landscaping, continuous wetting, detouring, barring access, or other acceptable means.

- B. No person shall cause, suffer, allow, or permit a vacant lot, or an urban or suburban open area, to be driven over or used by motor vehicles, trucks, cars, cycles, bikes, or buggies, or by animals such as horses, without taking reasonable precautions to limit excessive amounts of particulates from becoming airborne. Dust shall be kept to a minimum by using an approved dust suppressant, or adhesive soil stabilizer, or by paving, or by barring access to the property, or by other acceptable means.
- C. No person shall operate a motor vehicle for recreational purposes in a dry wash, riverbed or open area in such a way as to cause or contribute to visible dust emissions which then cross property lines into a residential, recreational, institutional, educational, retail sales, hotel or business premises. For purposes of this subsection “motor vehicles” shall include, but not be limited to trucks, cars, cycles, bikes, buggies and 3-wheelers. Any person who violates the provisions of this subsection shall be subject to prosecution under A.R.S. § 49-463.

Historical Note

Adopted effective May 14, 1979 (Supp. 79-1). Former Section R9-3-604 renumbered without change as Section R18-2-604 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Former Section R18-2-604 renumbered to R18-2-804, new Section R18-2-604 renumbered from R18-2-404 and amended effective November 15, 1993 (Supp. 93-4).

R18-2-605. Roadways and Streets

- A. No person shall cause, suffer, allow or permit the use, repair, construction or reconstruction of a roadway or alley without taking reasonable precautions to prevent excessive amounts of particulate matter from becoming airborne. Dust and other particulates shall be kept to a minimum by employing temporary paving, dust suppressants, wetting down, detouring or by other reasonable means.
- B. No person shall cause, suffer, allow or permit transportation of materials likely to give rise to airborne dust without taking reasonable precautions, such as wetting, applying dust suppressants, or covering the load, to prevent particulate matter from becoming airborne. Earth or other material that is deposited by trucking or earth moving equipment shall be removed from paved streets by the person responsible for such deposits.

Historical Note

Adopted effective May 14, 1979 (Supp. 79-1). Former Section R9-3-605 renumbered without change as Section R18-2-605 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Former Section R18-2-605 renumbered to R18-2-805, new Section R18-2-605 renumbered from R18-2-405 effective November 15, 1993 (Supp. 93-4).

R18-2-606. Material Handling

No person shall cause, suffer, allow or permit crushing, screening, handling, transporting or conveying of materials or other operations likely to result in significant amounts of airborne dust without taking reasonable precautions, such as the use of spray bars, wetting agents, dust suppressants, covering the load, and hoods to prevent excessive amounts of particulate matter from becoming airborne.

Historical Note

Section R18-2-606 renumbered from R18-2-406 effective November 15, 1993 (Supp. 93-4).

R18-2-607. Storage Piles

- A. No person shall cause, suffer, allow, or permit organic or inorganic dust producing material to be stacked, piled, or otherwise stored without taking reasonable precautions such as chemical stabilization, wetting, or covering to prevent excessive amounts of particulate matter from becoming airborne.
- B. Stacking and reclaiming machinery utilized at storage piles shall be operated at all times with a minimum fall of material and in such manner, or with the use of spray bars and wetting agents, as to prevent excessive amounts of particulate matter from becoming airborne.

Historical Note

Section R18-2-607 renumbered from R18-2-407 effective November 15, 1993 (Supp. 93-4).

R18-2-608. Mineral Tailings

No person shall cause, suffer, allow, permit construction of, or otherwise own or operate, mineral tailing piles without taking reasonable precautions to prevent excessive amounts of particulate matter from becoming airborne. Reasonable precautions shall mean wetting, chemical stabilization, revegetation or such other measures as are approved by the Director.

Historical Note

Section R18-2-608 renumbered from R18-2-408, new Section R18-2-408 adopted effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 15 A.A.R. 228, effective March 7, 2009 (Supp. 09-1).

R18-2-609. Agricultural Practices

Department of Environmental Quality – Air Pollution Control

A person shall not cause, suffer, allow, or permit the performance of agricultural practices outside the Phoenix and Yuma planning areas, as defined in 40 CFR 81.303, which is incorporated by reference in R18-2-210, including tilling of land and application of fertilizers without taking reasonable precautions to prevent excessive amounts of particulate matter from becoming airborne.

Historical Note

Section R18-2-609 renumbered from R18-2-409 effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 6 A.A.R. 2009, effective May 12, 2000 (Supp. 00-2). Amended by final rulemaking at 11 A.A.R. 2210, effective July 18, 2005 (Supp. 05-2).

R18-2-610. Definitions for R18-2-610.01, R18-2-610.02, and R18-2-610.03

The definitions in R18-2-101 and the following definitions apply to R18-2-610.01, R18-2-610.02, and R18-2-610.03:

1. "Access restriction" means reducing PM emissions by reducing the number of trips driven on agricultural aprons and access roads by restricting or eliminating public access to noncropland or commercial farm roads with signs or physical obstruction at locations that effectively control access to the area.
2. "Aggregate cover" means reducing PM emissions and wind erosion and stabilizing soil by applying and maintaining gravel, concrete, recycled road base, caliche, or other similar material to noncropland or commercial farm roads. The aggregate should be clean, hard and durable, and should be applied and maintained to a depth sufficient to reduce PM emissions.
3. "Area A" means the area delineated according to A.R.S. § 49-541(1).
4. "Best management practice" (BMP) means a technique verified by scientific research, that on a case-by-case basis is practical, economically feasible, and effective in reducing PM emissions from a regulated agricultural activity.
5. "Cessation of Night Tilling" means the discontinuation of tillage from sunset to sunrise on a day identified by the Maricopa or Pinal County Dust Control Forecast as being high risk of dust generation.
6. "Chemical irrigation" means reducing a minimum of one ground operation across a commercial farm by applying a fertilizer, pesticide, or other agricultural chemical to cropland through an irrigation system, which reduces soil disturbance and increases efficiency of application.
7. "Chips/ mulches" means reducing PM emissions and soil movement and preserving soil moisture by applying and maintaining nontoxic chemical or organic dust suppressants to a depth sufficient to reduce PM emissions. Materials shall meet all specifications required by federal, state, or local water agencies, and is not prohibited for use by any applicable regulations.
8. "Combining tractor operations" means reducing soil compaction and a minimum of one tillage or ground operation across a commercial farm by using a tractor, implement, harvester, or other farming support vehicle to perform two or more tillage, cultivation, planting, or harvesting operations at the same time. If Equipment modification is also chosen as a BMP, and uses the same practices as described in this BMP, this action is considered one BMP.
9. "Commercial farm" means 10 or more contiguous acres of land used for agricultural purposes within the boundary of the Maricopa PM nonattainment area and Maricopa County portion of Area A, a PM nonattainment area designated after June 1, 2009 as stated in A.R.S. § 49-457(P)(1)(f), or the Pinal County PM Nonattainment Area.
10. "Commercial farm road" means a road that is unpaved, owned by a commercial farmer, and is used exclusively to service a commercial farm.
11. "Commercial farmer" means an individual, entity, or joint operation in general control of a commercial farm.
12. "Committee" means the Governor's Agricultural Best Management Practices Committee as established by A.R.S. § 49-457.
13. "Conservation Tillage" means a tillage system that reduces a minimum of three tillage operations. This system reduces soil and water loss by planting into existing plant stubble on the field after harvest as well as managing the stubble so that it remains intact during the planting season.
14. "Cover crop" means establishing cover crops that maintain a minimum of 60 percent ground cover. Native or volunteer vegetation that meets the minimum ground cover requirement is acceptable. Compliance shall be determined by the Line Transect Test Method, NRCS National Agronomy Manual, Subpart 503.51, Estimating Crop Residue Cover, amended through February 2011 (and no future editions).
15. "Critical area planting" means reducing PM₁₀ emissions and wind erosion by planting trees, shrubs, vines, grasses, or other vegetative cover on noncropland in order to maintain at least 60 percent ground cover. Compliance shall be determined by the Line Transect Test Method, NRCS National Agronomy Manual, Subpart 503.51, Estimating Crop Residue Cover, amended through February 2011 (and no future editions).
16. "Cropland" means land on a commercial farm that:
 - a. Is within the time-frame of final harvest to plant emergence, but does not include tillage activities;
 - b. Has been tilled in a prior year and is suitable for crop production, but is currently fallow; or
 - c. Is a turn-row.
17. "Cross-wind ridges" means stabilizing soil and reducing PM emissions and wind erosion by creating soil ridges in a commercial farm by tillage or planting operations. Ridges should be at least four inches in height, and be aligned as perpendicular as possible to the prevailing wind direction.
18. "Dust Control Forecast" means a forecast, which shall identify a low, moderate or high risk of dust generation for the next five consecutive days and shall be issued by noon on each day the forecast is generated. When developing these forecasts, the department shall consider all of the following:
 - a. Projected meteorological conditions, including:
 - i. Wind speed and direction,
 - ii. Stagnation,
 - iii. Recent precipitation, and

Department of Environmental Quality – Air Pollution Control

- iv. Potential for precipitation;
 - b. Existing concentrations of air pollution at the time of the forecast; and
 - c. Historic air pollution concentrations that have been observed during meteorological conditions similar to those that are predicted to occur in the forecast.
19. "Equipment modification" means reducing PM emissions and soil erosion during tillage or ground operations by modifying and maintaining an existing piece of agricultural equipment, installing shielding equipment, modifying land planting and land leveling, matching the equipment to row spacing, or grafting to new varieties or technological improvements. If combining tractor operations is also chosen as a BMP, and uses the same practices as described in this BMP, this action is considered one BMP.
 20. "Fallow Field" means an area of land that is routinely cultivated, planted and harvested and is unplanted for one or more growing seasons or planting cycles, but is intended to be placed back in agricultural production.
 21. "Field Capacity" means the amount of water remaining in the soil two days after having been saturated and after free drainage has ceased.
 22. "Forage Crop" means a product grown for consumption by any domestic animal.
 23. "Genetically Modified" (GMO) means a living organism whose genetic material has been altered, changing one or more of its characteristics.
 24. "GPS: Global Position Satellite System" means using a satellite navigation system on farm equipment to calculate position in the field.
 25. "Green chop" means reducing soil compaction, soil disturbance and a minimum of one ground operation across a commercial farm by harvesting a Forage Crop without allowing it to dry in the field.
 26. "Ground operation" means an agricultural operation that is not a tillage operation, which involves equipment passing across the field. A ground operation includes harvest activities. A pass through the field may be a subset of a ground operation.
 27. "Harvest" means the time after planting up through harvest, including gathering mature crops from a commercial farm, as well as all actions taken immediately after crop removal, such as cooling, sorting, cleaning, and packing.
 28. "Integrated Pest Management" means reducing soil compaction and a minimum of one ground operation across a commercial farm for spraying by using a combination of techniques including organic, conventional, and biological farming practices to suppress pest problems.
 29. "Limited harvest activity" means performing no ground operations on a day identified by the Maricopa or Pinal County Dust Control Forecast to be high risk for dust generation.
 30. "Limited tillage activity" means performing no tillage operations on a day identified by the Maricopa or Pinal County Dust Control Forecast to be high risk for dust generation.
 31. "Maricopa PM nonattainment area" means the Phoenix planning area as defined in 40 CFR 81.303, which is incorporated by reference in R18-2-210.
 32. "Multi-year crop" means reducing PM emissions from wind erosion and a minimum of one tillage and ground operation across a commercial farm, by protecting the soil surface by growing a crop, pasture, or orchard that is grown, or will be grown, on a continuous basis for more than one year.
 33. "Noncropland" means any commercial farm land that:
 - a. Is no longer used for agricultural production;
 - b. Is no longer suitable for production of crops;
 - c. Is subject to a restrictive easement or contract that prohibits use for the production of crops; or
 - d. Includes a ditch, ditch bank, equipment yard, storage yard, or well head.
 34. "NRCS" means the Natural Resource Conservation Service.
 35. "Organic material cover" means reducing PM emissions and wind erosion and preserving soil moisture by applying and maintaining cover material such as animal waste or plant residue, to a soil surface to reduce soil movement. Material shall be evenly applied and maintained to a depth sufficient to reduce PM emissions and coverage should be a minimum of 70 percent.
 36. "Permanent cover" means reducing PM emissions and wind erosion by maintaining a long-term perennial vegetative cover on cropland that is temporarily not producing a major crop. Perennial species such as grasses and/or legumes shall be used to establish at least 60 percent cover. Compliance shall be determined by the Line Transect Test Method, NRCS National Agronomy Manual, Subpart 503.51, Estimating Crop Residue Cover, amended through February 2011 (and no future editions).
 37. "Pinal County PM Nonattainment Area" means the West Pinal PM₁₀ planning area and the West Central PM_{2.5} planning area, as defined in 40 CFR 81.303, and incorporated by reference in R18-2-210.
 38. "Plant stubble" means stubble on the soil surface, which insulates soil to reduce evaporation of moisture, and also protects the soil from wind and water erosion.
 39. "Planting based on soil moisture" means reducing PM emissions and wind erosion by applying water or having enough moisture in the soil to germinate the seed prior to planting. Soil must have a minimum soil moisture content of 60% of field capacity at planting depth. Compliance shall be determined by NRCS Estimating Soil Moisture by Feel and Appearance Method, amended through April 1998 (and no future editions).
 40. "PM" includes both particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers as measured by a reference method based on 40 CFR 50 Appendix L, or by an equivalent method designated according to 40 CFR 53; and particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by a reference method contained within 40 CFR 50 Appendix J or by an equivalent method designated in accordance with 40 CFR 53, as incorporated by reference in Appendix 2.

Department of Environmental Quality – Air Pollution Control

41. "Precision Farming" means reducing the number of passes across a commercial farm by at least 12 inches per pass by using GPS to precisely guide farm equipment in the field.
42. "Reduce vehicle speed" means reducing PM emissions and soil erosion from the operation of farm vehicles or farm equipment on noncropland or commercial farm roads at speeds not to exceed 15. This can be achieved through installation of engine speed governors, signage, or speed control devices.
43. "Reduced harvest activity" means reducing soil disturbance, soil and water loss, and the number of mechanical harvest passes by a minimum of one ground operation across a commercial farm, by means other than equipment modification or combining tractor operations.
44. "Reduced tillage system" means reducing soil disturbance, soil and water loss, by using a single piece of equipment that reduces a minimum of three tillage operations, by means other than equipment modification or combining tractor operations.
45. "Regulated agricultural activity" means a regulated agricultural activity as defined in A.R.S. § 49-457(P)(1)(a) through (P)(1)(d).
46. "Regulated area" means the regulated area as defined in A.R.S. § 49-457(P)(6).
47. "Residue management" means reducing PM emissions and wind erosion by maintaining a minimum of 60 percent ground cover of crop and other plant residues on a soil surface between the time of harvest of one crop and the commencement of tillage for a new crop. Compliance shall be determined by the Line Transect Test Method, NRCS National Agronomy Manual, Subpart 503.51, Estimating Crop Residue Cover, amended through February 2011 (and no future editions).
48. "Sequential cropping" means reducing PM emissions and wind erosion by growing crops in a sequence or close rotation that limits the amount of time bare soil is exposed on a commercial farm to 30 days or less.
49. "Shuttle System/Larger Carrier" means reducing one out of every four trips across a commercial farm by using multiple or larger bins/trailers to haul commodity from the field.
50. "Significant Agricultural Earth Moving Activities" means either leveling activities conducted on a commercial farm that disturb the soil more than 4 inches below the surface, or the creation, maintenance and relocation of: ditches, canals, ponds, irrigation lines, tailwater recovery systems (agricultural sumps) and other water conveyances, not to include activities performed on cropland for tillage, ground operations or harvest.
51. "Silt content test method" means the test method as described in Appendix 2.
52. "Stabilization of soil prior to plant emergence" means reducing PM emissions by applying water to soil prior to crop emergence in order to cause the soil to form a visible crust.
53. "Surface roughening" means reducing PM emissions or wind erosion by manipulating a soil surface by means such as rough discing or tillage in order to produce or maintain clods on the land surface. Compliance shall be determined by NRCS Practice Code 609, Surface Roughening, amended through November 2008 (and no future editions).
54. "Synthetic particulate suppressant" means reducing PM emissions and wind erosion by providing a stabilized soil surface on noncropland or commercial farm roads with a manufactured product such as lignosulfate, calcium chloride, magnesium chloride, an emulsion of a petroleum product, an enzyme product, or polyacrylamide that is used to control particulate matter.
55. "Tillage" means any mechanical practice that physically disturbs the soil, and includes preparation for planting, such as plowing, ripping, or discing.
56. "Tillage based on soil moisture" means reducing PM emissions by irrigating fields to the depth of the proposed cut prior to soil disturbances or conducting tillage to coincide with precipitation. Soil must have a minimum soil moisture content of 40-60% of field capacity at planting depth. Compliance shall be determined by NRCS Estimating Soil Moisture by Feel and Appearance Method, amended through April 1998 (and no future editions).
57. "Timing of a tillage operation" means reducing wind erosion and PM emissions by performing tillage operations that minimize the amount of time within 45 days.
58. "Tillage operation" means an agricultural operation that mechanically manipulates the soil for the enhancement of crop production. Examples include discing or bedding. A pass through the field may be a subset of a tillage operation.
59. "Track-out control system" means minimizing any and all material that adheres to and agglomerates on all vehicles and equipment from noncropland or commercial farm roads or and falls onto paved public roads or shoulders to paved public roads by using a device or system to remove mud or soil from a vehicle or equipment before the vehicle enters a paved public road. Devices such as a grizzly, a gravel pad or a wheel wash system can be used.
60. "Transgenic Crops" means reducing a minimum of one tillage or ground operation, the number of chemical spray applications, or soil disturbances by using plants that are genetically modified.
61. "Transplanting" means reducing a minimum of one ground operation across a commercial farm and minimizing soil disturbance by utilizing plants already in a growth state as compared to seeding.
62. "VDT" (Vehicle trips per day) means trips per day made by one vehicle, in one direction.
63. "Watering" means reducing PM emissions and wind erosion by applying water to noncropland or commercial farm road bare soil surfaces during periods of high traffic until the surfaces are visibly moist.
64. "Watering on a high risk day" means reducing PM emissions and wind erosion by applying water to commercial farm road bare soil surfaces until the surfaces are visibly moist, on a day forecast to be high risk for dust generation by the Maricopa or Pinal County Dust Control Forecast.
65. "Wind barrier" means reducing PM emissions and wind erosion by constructing a fence or structure, or providing a woody vegetative barrier by planting a row of trees or shrubs, perpendicular or across the prevailing wind direction to reduce wind speed by changing the pattern of air flow over the land surface. For fences and structures, the wind barrier shall have a density of no less than 50% and the height of the wind barrier must be proportionate to the downwind protected area. The downwind protected area is considered ten times the height of the wind barrier. For vegetative barriers, compliance shall be determined by NRCS Conservation Practice Standard, Code 380, Windbreak/Shelterbelt Establishment, amended through August 21, 2009 (and no future editions).

Department of Environmental Quality – Air Pollution Control

Historical Note

Former Section R18-2-610 renumbered to R18-2-612; new Section R18-2-610 adopted by final rulemaking at 6 A.A.R. 2009, effective May 12, 2000 (Supp. 00-2). Amended by exempt rulemaking at 13 A.A.R. 4326, effective November 14, 2007 (Supp. 07-4).

Amended by exempt rulemaking at 18 A.A.R. 137, effective December 29, 2011 (Supp. 11-4). Subsection (A) corrected at the request of the Department, Office File No. M12-133, filed April 5, 2012 (Supp. 11-4). Amended by exempt rulemaking pursuant to Laws 2011, Ch. 214, § 4, at 21 A.A.R. 1156, effective July 2, 2015 (Supp. 15-3).

R18-2-610.01. Agricultural PM General Permit for Crop Operations; Maricopa County PM Nonattainment Area

- A.** A commercial farmer within the Maricopa County PM Nonattainment Area shall implement at least two best management practices from each category to reduce PM emissions.
- B.** A commercial farmer shall implement from the following best management practices, as described in subsection (A), to reduce PM emissions during tillage, harvest or ground operation activities:
1. Chemical irrigation,
 2. Combining tractor operations,
 3. Equipment modification,
 4. Green Chop,
 5. Integrated Pest Management,
 6. Limited harvest activity,
 7. Limited tillage activity,
 8. Multi-year crop,
 9. Cessation of Night Tilling,
 10. Planting based on soil moisture,
 11. Precision Farming,
 12. Reduced harvest activity,
 13. Reduced tillage system,
 14. Tillage based on soil moisture,
 15. Timing of a tillage operation,
 16. Transgenic Crops,
 17. Transplanting,
 18. Shuttle System/Larger Carrier, or
 19. Conservation Tillage.
- C.** A commercial farmer shall implement from the following best management practices, as described in subsection (A), to reduce PM emissions from noncropland and commercial farm roads:
1. Access restriction,
 2. Aggregate cover,
 3. Wind barrier,
 4. Critical area planting,
 5. Organic material cover,
 6. Reduce vehicle speed,
 7. Synthetic particulate suppressant,
 8. Track-out control system, or
 9. Watering.
- D.** A commercial farmer shall implement from the following best management practices, as described in subsection (A), to reduce PM emissions from cropland:
1. Wind barrier,
 2. Cover crop,
 3. Cross-wind ridges,
 4. Chips/mulches,
 5. Multi-year crop,
 6. Permanent cover,
 7. Stabilization of soil prior to plant emergence,
 8. Residue management,
 9. Sequential cropping, or
 10. Surface roughening.
- E.** A commercial farmer shall implement from the following best management practices, as described in subsection (A), to reduce PM emissions when conducting Significant Agricultural Earth Moving Activities as defined in R18-2-610:
1. Apply water prior to conducting Significant Agricultural Earth Moving Activities and/or time Significant Agricultural Earth Moving Activities to coincide with precipitation. Soil must have a minimum soil moisture content of 50% of field capacity. Compliance shall be determined by NRCS Estimating Soil Moisture by Feel and Appearance Method, amended through April 1998 (and no future editions);

Department of Environmental Quality – Air Pollution Control

2. Apply water during Significant Agricultural Earth Moving Activities. Soil must have a minimum soil moisture content of 30% of field capacity. Compliance shall be determined by NRCS Estimating Soil Moisture by Feel and Appearance Method, amended through April 1998 (and no future editions);
 3. Limit activities on a day identified by the Maricopa or Pinal County Dust Control Forecast to be high risk for dust generation; or
 4. Conduct Significant Agricultural Earth Moving Activities in a manner to reduce a minimum of one ground operation across a commercial farm by using equipment that is the most efficient means of moving the soil.
- F.** From and after December 31, 2015, a commercial farmer who engages in a regulated agricultural activity shall complete and maintain a Best Management Practices Program General Permit Record Form demonstrating compliance with this Section. Thereafter, a new Best Management Practices Program General Permit Record Form shall be completed every year by March 31. The Form shall be provided to the Director within two business days of notice to the commercial farmer. The Best Management Practice Program General Permit Record Form shall include the following information:
1. The name of the commercial farmer, signature, and date signed;
 2. The mailing address or physical address of the commercial farm; and
 3. The best management practices selected for tillage, harvest, and ground operation activities, cropland, noncropland and commercial farm roads, and significant earth moving activities (if applicable).
- G.** Records of any changes to the Best Management Practices identified in the most recently submitted Best Management Practices Program General Permit Record Form shall be kept by the commercial farmer onsite and made available for review by the Director within two business days of notice to the commercial farmer.
- H.** A person may develop different practices to control PM emissions not contained in subsections (B), (C), (D), or (E) and may submit such practices that are proven effective through on-farm demonstration trials to the Committee. The proposed new practices shall not become effective unless submitted as described in A.R.S. § 49-457(L).
- I.** A commercial farmer shall maintain a record demonstrating compliance with this Section for three years. Records shall include a copy of the complete Best Management Practice Program General Permit Record Form to confirm implementation of each best management practice.
- J.** The Director shall not assess a fee to a commercial farmer for coverage under the agricultural PM₁₀ general permit.
- K.** A commercial farmer shall ensure that the implementation of all selected best management practices does not violate any other local, state, or federal law.
- L.** The Director shall document noncompliance with this Section before issuing a compliance order.
- M.** A commercial farmer who is not in compliance with this Section is subject to the provisions in A.R.S. § 49-457(I), (J), and (K).

Historical Note

New Section made by exempt rulemaking at 18 A.A.R. 137, effective December 29, 2011 (Supp. 11-4). Amended by exempt rulemaking pursuant to Laws 2011, Ch. 214, § 4, at 21 A.A.R. 1156, effective July 2, 2015 (Supp. 15-3).

R18-2-610.02. Agricultural PM General Permit for Crop Operations; Moderate PM Nonattainment Areas, Designated After June 1, 2009

- A.** A commercial farmer within a PM Moderate Nonattainment Area, designated after June 1, 2009, shall implement at least one best management practice from each category to reduce PM emissions.
- B.** A commercial farmer shall implement from the following best management practices, as described in subsection (A), to reduce PM emissions during tillage, harvest and ground operation activities:
1. Chemical irrigation,
 2. Combining tractor operations,
 3. Equipment modification,
 4. Green Chop,
 5. Integrated Pest Management,
 6. Limited harvest activity,
 7. Limited tillage activity,
 8. Multi-year crop,
 9. Cessation of Night Tilling,
 10. Planting based on soil moisture,
 11. Precision Farming,
 12. Reduced harvest activity,
 13. Reduced tillage system,
 14. Tillage based on soil moisture,
 15. Timing of a tillage operation,
 16. Transgenic Crops,
 17. Transplanting, or
 18. Shuttle System/Larger Carrier, or
 19. Conservation Tillage.
- C.** A commercial farmer shall implement from the following best management practices, as described in subsection (A), to reduce PM emissions from noncropland and commercial farm roads:
1. Access restriction,
 2. Aggregate cover,
 3. Wind barrier,

Department of Environmental Quality – Air Pollution Control

4. Critical area planting,
 5. Organic material cover,
 6. Reduce vehicle speed,
 7. Synthetic particulate suppressant,
 8. Track-out control system, or
 9. Watering.
- D.** A commercial farmer shall implement from the following best management practices, as described in subsection (A), to reduce PM emissions from cropland:
1. Wind barrier,
 2. Cover crop,
 3. Cross-wind ridges,
 4. Chips/mulches,
 5. Multi-year crop,
 6. Permanent cover,
 7. Stabilization of soil prior to plant emergence,
 8. Residue management,
 9. Sequential cropping, or
 10. Surface roughening.
- E.** A commercial farmer shall implement from the following best management practices, as described in subsection (A), when conducting Significant Agricultural Earth Moving Activities as defined in R18-2-610:
1. Apply water prior to conducting Significant Agricultural Earth Moving Activities and/or time Significant Agricultural Earth Moving Activities to coincide with precipitation. Soil must have a minimum soil moisture content of 50% of field capacity. Compliance shall be determined by NRCS Estimating Soil Moisture by Feel and Appearance Method, amended through April 1998 (and no future editions);
 2. Apply water during Significant Agricultural Earth Moving Activities. Soil must have a minimum soil moisture content of 30% of field capacity. Compliance shall be determined by NRCS Estimating Soil Moisture by Feel and Appearance Method, amended through April 1998 (and no future editions);
 3. Limit activities on a day identified by the Maricopa or Pinal County Dust Control Forecast to be high risk for dust generation; or
 4. Conduct Significant Agricultural Earth Moving Activities in a manner to reduce a minimum of one ground operation across a commercial farm by using equipment that is the most efficient means of moving the soil.
- F.** From and after December 31, 2015, a commercial farmer who engages in a regulated agricultural activity shall complete and maintain a Best Management Practices Program General Permit Record Form demonstrating compliance with this Section. Thereafter, a new Best Management Practices Program General Permit Record Form shall be completed every year by March 31. The Form shall be provided to the Director within two business days of notice to the commercial farmer. The Best Management Practice Program General Permit Record Form shall include the following information:
1. The name of the commercial farmer, signature, and date signed;
 2. The mailing address or physical address of the commercial farm; and
 3. The best management practice selected for tillage, harvest and ground operation activities, cropland, noncropland and commercial farm roads, and significant earth moving activities (if applicable).
- G.** Records of any changes to the Best Management Practices shall be noted on the Best Management Practices Program General Permit Record Form and shall be kept by the commercial farmer onsite and made available for review by the Director within two business days of notice to the commercial farmer.
- H.** A person may develop different practices to control PM emissions not contained in subsections (B), (C), (D), or (E) and may submit such practices that are proven effective through on-farm demonstration trials to the Committee. The proposed new practices shall not become effective unless submitted as described in A.R.S. § 49-457(L).
- I.** A commercial farmer shall maintain a record demonstrating compliance with this Section for three years. Records shall include a copy of the complete Best Management Practice Program General Permit Record Form to confirm implementation of each best management practice.
- J.** The Director shall not assess a fee to a commercial farmer for coverage under the agricultural PM general permit.
- K.** A commercial farmer shall ensure that the implementation of all selected best management practices does not violate any other local, state, or federal law.
- L.** The Director shall document noncompliance with this Section before issuing a compliance order.
- M.** A commercial farmer who is not in compliance with this Section is subject to the provisions in A.R.S. § 49-457(I), (J), and (K).

Historical Note

New Section made by exempt rulemaking pursuant to Laws 2011, Ch. 214, § 4, at 21 A.A.R. 1156, effective July 2, 2015 (Supp. 15-3).

R18-2-610.03. Agricultural PM General Permit for Crop Operations; Pinal County PM Nonattainment Area

- A.** On the day before and during the day that is forecast to be high risk for dust generation by the Pinal County Dust Control Forecast, a commercial farmer shall ensure implementation of best management practices as described in sections (B)(1)(b), (B)(2)(b), (B)(3)(b), (B)(4)(b), and (B)(5)(b).

Department of Environmental Quality – Air Pollution Control

- B.** On all days, a commercial farmer shall implement at least one best management practice from each category to reduce PM emissions, as described below in subsections (1)(a), (2)(a), (3)(a), (4)(a), and (6), and at least two best management practices from subsection (5)(a). If a commercial farmer implements the Conservation tillage or Reduced tillage system best management practice for the tillage category, they do not have to implement a best management practice from the subsections (2)(a), (2)(b), (5)(a) and (5)(b).
1. Tillage:
 - a. A commercial farmer shall implement at least one of the following:
 - i. Combining tractor operations,
 - ii. Equipment modification,
 - iii. Multi-year crop,
 - iv. Cessation of night tilling,
 - v. Planting based on soil moisture,
 - vi. Precision farming,
 - vii. Tillage based on soil moisture,
 - viii. Timing of a tillage operation,
 - ix. Transgenic crops,
 - x. Transplanting,
 - xi. Reduced tillage system, or
 - xii. Conservation tillage.
 - b. Unless choosing limited tillage activity (subsection iv, below), on the day before and during the day that is forecast to be high risk for dust generation by the Pinal County Dust Control Forecast, a commercial farmer shall ensure implementation of at least one of the following:
 - i. Multi-year crop,
 - ii. Planting based on soil moisture,
 - iii. Tillage based on soil moisture,
 - iv. Limited tillage activity,
 - v. Reduced tillage system, or
 - vi. Conservation tillage.
 2. Ground Operations and Harvest:
 - a. A commercial farmer shall implement at least one of the following:
 - i. Combining tractor operations,
 - ii. Equipment modification,
 - iii. Chemical irrigation,
 - iv. Green chop,
 - v. Integrated pest management,
 - vi. Multi-year crop,
 - vii. Precision farming,
 - viii. Reduced harvest activity,
 - ix. Transgenic crops, or
 - x. Shuttle System/Larger Carrier.
 - b. Unless choosing limited harvest activity (subsection iv, below), on the day before and during the day that is forecast to be high risk for dust generation by the Pinal County Dust Control Forecast, a commercial farmer shall ensure implementation of at least one of the following:
 - i. Green chop,
 - ii. Integrated pest management,
 - iii. Multi-year crop, or
 - iv. Limited harvest activity.
 3. Noncropland:
 - a. A commercial farmer shall implement at least one of the following best management practices:
 - i. Access restriction,
 - ii. Aggregate cover,
 - iii. Wind barrier,
 - iv. Critical area planting,
 - v. Organic material cover,
 - vi. Reduce vehicle speed,
 - vii. Synthetic particulate suppressant, or
 - viii. Watering.
 - b. Unless choosing watering on a high risk day (subsection vi, below), on the day before and during a day forecast to be high risk for dust generation by the Pinal County Dust Control Forecast, on a noncropland area that experiences more than 20 VDT from 2 or more axle vehicles, commercial farmer shall ensure implementation of at least one of the following best management practices:
 - i. Aggregate cover,
 - ii. Wind barrier,
 - iii. Critical area planting,
 - iv. Organic material cover,

Department of Environmental Quality – Air Pollution Control

- v. Synthetic particulate suppressant, or
 - vi. Watering on a high risk day.
4. Commercial farm roads:
- a. A commercial farmer shall implement at least one of the following best management practices:
 - i. Access restriction,
 - ii. Reduce vehicle speed,
 - iii. Track-out control system,
 - iv. Aggregate cover,
 - v. Synthetic particulate suppressant,
 - vi. Watering, or,
 - vii. Organic material cover.
 - b. Unless choosing watering on a high risk day (subsection vi, below), on the day before and during a day forecast to be high risk for dust generation by the Pinal County Dust Control Forecast, on a road that experiences more than 20 VDT from 2 or more axle vehicles, a commercial farmer shall ensure implementation of at least one of the following best management practices:
 - i. Aggregate cover,
 - ii. Synthetic particulate suppressant,
 - iii. Wind barrier,
 - iv. Organic material cover,
 - v. Roads are stabilized as determined by the silt content test method,
 - vi. Watering on a high risk day.
5. Cropland:
- a. A commercial farmer shall implement at least two of the following best management practices, one from subsection (i) through (vii), and one from subsection (viii) through (xi), to reduce PM emissions from cropland:
 - i. Wind barrier,
 - ii. Cover crop,
 - iii. Cross-wind ridges,
 - iv. Chips/mulches,
 - v. Sequential cropping
 - vi. Residue management,
 - vii. Surface roughening,
 - viii. Multi-year crop,
 - ix. Permanent cover, or
 - x. Stabilization of soil prior to plant emergence.
 - b. On the day before and during the day that is forecast to be high risk for dust generation by the Pinal County Dust Control Forecast, a commercial farmer shall ensure implementation of at least one of the following:
 - i. Wind barrier,
 - ii. Cover crop,
 - iii. Cross-wind ridges,
 - iv. Chips/mulches,
 - v. Surface roughening,
 - vi. Multi-year crop,
 - vii. Permanent cover,
 - viii. Stabilization of soil prior to plant emergence, or
 - ix. Residue management.
6. A commercial farmer shall implement at least one of the following best management practices, when conducting Significant Agricultural Earth Moving Activities as defined in R18-2-610:
- a. Apply water prior to conducting Significant Agricultural Earth Moving Activities and/or time Significant Agricultural Earth Moving Activities to coincide with precipitation. Soil must have a minimum soil moisture content of 50% of field capacity. Compliance shall be determined by NRCS Estimating Soil Moisture by Feel and Appearance Method, amended through April 1998 (and no future editions);
 - b. Apply water during Significant Agricultural Earth Moving Activities. Soil must have a minimum soil moisture content of 30% of field capacity. Compliance shall be determined by NRCS Estimating Soil Moisture by Feel and Appearance Method, amended through April 1998 (and no future editions);
 - c. Limit activities on a day identified by the Maricopa or Pinal County Dust Control Forecast to be high risk for dust generation; or
 - d. Conduct Significant Agricultural Earth Moving Activities in a manner to reduce a minimum of one ground operation across a commercial farm by using equipment that is the most efficient means of moving the soil.
- C. From and after December 31, 2015, a commercial farmer who engages in a regulated agricultural activity shall complete a Best Management Practices Program General Permit Record Form demonstrating compliance with this rule. Thereafter, a new Best Management Practices Program General Permit Record Form shall be completed every year by March 31. The Form shall be provided to the

Department of Environmental Quality – Air Pollution Control

Director within two business days of notice to the commercial farmer. The Best Management Practice Program General Permit Record Form shall include the following information:

1. The name of the commercial farmer, signature, and date signed;
 2. The mailing address or physical address of the commercial farm; and
 3. The best management practices selected for tillage, ground operations and harvest, cropland, noncropland, commercial farm roads, and significant earth moving activities (if applicable); and
 4. Any additional best management practices selected for high risk days as predicted by the Pinal County Dust Control Forecast.
- D.** Beginning in calendar year 2017, and no more than once every subsequent three calendar years, the Director, in conjunction with the Arizona Department of Agriculture, shall provide the commercial farmer with a Best Management Practices Program 3-year Survey. The commercial farmer shall complete the Survey with data from the preceding calendar year and submit the Survey to the Arizona Department of Agriculture (ADA) by January 31, 2018, and every three years thereafter. The Survey information submitted to the ADA shall be compiled by the ADA without reference to a commercial farmer's name, shall aggregate the data from the Surveys received, and be submitted to the Department. The 3-year Survey shall include the following information:
1. The name, business address, and phone number of the commercial farmer responsible for the preparation and implementation of the best management practices;
 2. The signature of the commercial farmer and the date the form was signed;
 3. The acreage of each crop type planted/growing during the calendar year that the survey is conducted;
 4. The total miles of commercial farm roads at the commercial farm;
 5. The total acreage of the noncropland at the commercial farm;
 6. The best management practices selected for tillage, ground operations and harvest, cropland, noncropland, commercial farm roads, and significant earth moving activities (if applicable); and
 7. Any additional best management practices selected for high risk days as predicted by the Pinal County Dust Control Forecast.
- E.** Records of any changes to the Best Management Practices shall be noted on the Best Management Practices Program General Permit Record Form and shall be kept by the commercial farmer onsite and made available for review by the Director within two business days of notice to the commercial farmer.
- F.** A person may develop different practices to control PM emissions not contained in subsections (B)(1) through (B)(6) and may submit such practices that are proven effective through on-farm demonstration trials to the Committee. The proposed new practices shall not become effective unless submitted as described in A.R.S. § 49-457(L).
- G.** A commercial farmer shall maintain a record demonstrating compliance with this Section for three years. Records shall include a copy of the complete Best Management Practice Program General Permit Record Form to confirm implementation of each best management practice.
- H.** The Director shall not assess a fee to a commercial farmer for coverage under the agricultural PM general permit.
- I.** A commercial farmer shall ensure that the implementation of all selected best management practices does not violate any other local, state, or federal law.
- J.** The Director shall document noncompliance with this Section before issuing a compliance order.
- K.** A commercial farmer who is not in compliance with this Section is subject to the provisions in A.R.S. § 49-457(I), (J), and (K).

Historical Note

New Section made by exempt rulemaking pursuant to Laws 2011, Ch. 214, § 4, at 21 A.A.R. 1156, effective July 2, 2015 (Supp. 15-3).

R18-2-611. Definitions for R18-2-611.01, R18-2-611.02, and R18-2-611.03

The definitions in R18-2-101 and the following definitions apply to R18-2-611.01, R18-2-611.02, and R18-611.03:

1. The following definitions apply to a commercial dairy operation, a commercial beef feedlot, a commercial poultry facility, and commercial swine facility:
 - a. "Animal waste handling and transporting" means the processes by which any animal excretions and mixtures containing animal excretions are collected and transported.
 - b. "Arenas, corrals and pens" means areas where animals are confined for the purposes of, but not limited to, feeding, displaying, safety, racing, exercising, or husbandry.
 - c. "Commercial animal operation" means a commercial dairy operation, a commercial beef feedlot, a commercial poultry facility, and a commercial swine facility, as defined in this Section.
 - d. "Commercial animal operator" means an individual, entity, or joint operation in general control of a commercial animal operation.
 - e. "Dust Control Forecast" means a forecast, which shall identify a low, moderate or high risk of dust generation for the next five consecutive days and shall be issued by noon on each day the forecast is generated. When developing these forecasts, the department shall consider all of the following:
 - i. Projected meteorological conditions, including:
 - (1) Wind speed and direction,
 - (2) Stagnation,
 - (3) Recent precipitation, and
 - (4) Potential for precipitation;
 - ii. Existing concentrations of air pollution at the time of the forecast; and
 - iii. Historic air pollution concentrations that have been observed during meteorological conditions similar to those that are predicted to occur in the forecast.

Department of Environmental Quality – Air Pollution Control

- f. “High traffic areas” means areas that experience more than 20 VDT from 2 or more axle vehicles.
 - g. “Maricopa PM nonattainment area” means the Phoenix planning area as defined in 40 CFR 81.303, which is incorporated by reference in R18-2-210.
 - h. “Paved Public Road” means any paved roadways that are open to public travel and maintained by a City, County, State, or Federal entities.
 - i. “Pinal County PM Nonattainment Area” means the West Pinal PM₁₀ planning area and the West Central PM_{2.5} planning area, as defined in 40 CFR 81.303, and incorporated by reference in R18-2-210.
 - j. “PM” includes both particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers as measured by a reference method based on 40 CFR 50 Appendix L, or by an equivalent method designated according to 40 CFR 53; and particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by a reference method contained within 40 CFR 50 Appendix J or by an equivalent method designated in accordance with 40 CFR 53, as incorporated by reference in Appendix 2.
 - k. “Regulated agricultural activity” means a regulated agricultural activity as defined in A.R.S. § 49-457(P)(5).
 - l. “Regulated area” means the regulated area as defined in A.R.S. § 49-457(P)(6).
 - m. “Track-out control device” means minimizing any and all material that adheres to and agglomerates on all vehicles and equipment from unpaved access connections and falls onto paved public roads or shoulders to paved public roads by using a device or system to remove mud or soil from a vehicle or equipment before the vehicle enters a paved public road. Devices such as a grizzly, a gravel pad or a wheel wash system can be used.
 - n. “Unpaved access connections” means any unpaved road connection which connects to a paved public road.
 - o. “Unpaved roads or feed lanes” means roads and feed lanes that are unpaved, owned by a commercial animal operator, and used exclusively to service a commercial animal operation.
 - p. “VDT” (Vehicle trips per day) means trips per day made by one vehicle, in one direction.
2. The following definitions apply to a commercial dairy operation:
- a. “Aggregate cover” means reducing PM emissions, wind erosion and stabilizing soil by applying and maintaining gravel, concrete, recycled road base, caliche, or other similar material to unpaved roads or feed lanes. The aggregate should be clean, hard and durable, and should be applied and maintained to a minimum of three inches deep.
 - b. “Apply a fibrous layer” means reducing PM emissions and soil movement, and preserving soil moisture by spreading shredded or deconstructed plant materials to cover loose soil in high animal traffic areas. Material shall be consistently applied to a minimum depth of two inches above the soil surface and coverage should be a minimum of 70 percent.
 - c. “Bunkers” means below ground level storage systems for storing large amount of silage, which is covered with a plastic tarp.
 - d. “Calves” means young dairy stock under two months of age.
 - e. “Cement cattle walkways to milk barn” means reducing PM emissions by fencing pathways from the corrals to the milking barn, restricting dairy cattle to surfaces with concrete floors.
 - f. “Commercial dairy operation” means a dairy operation with more than 150 dairy cattle within the boundary of the Maricopa PM nonattainment area and Maricopa County portion of Area A, a PM nonattainment area designated after June 1, 2009 as stated in A.R.S. § 49-457(P)(1)(f), or the Pinal County PM Nonattainment Area.
 - g. “Cover manure hauling trucks” means reducing PM emissions by completely covering the top of the loaded area.
 - h. “Covers for silage” means reducing PM emissions and wind erosion by using large plastic tarps to completely cover silage.
 - i. “Do not run cattle” means reducing PM emissions by walking dairy cattle to the milking barn.
 - j. “Feed higher moisture feed to dairy cattle” means reducing PM emissions by feeding dairy cattle one or any combination of the following:
 - i. Add water to ration mix to achieve a 20% minimum moisture level,
 - ii. Add molasses or tallow to ration mix at a minimum of 1%,
 - iii. Add silage, or
 - iv. Add green chop.
 - k. “Feed green chop” means feeding high moisture feed that contains at least 30% moisture directly to dairy cattle.
 - l. “Groom manure surface” means reducing PM emissions and wind erosion by:
 - i. Flushing or vacuuming lanes daily,
 - ii. Scraping and harrowing pens on a weekly basis, and
 - iii. Removing manure every four months with equipment that leaves an even corral surface of compacted manure on top of the soil.
 - m. “Hutches” means raised, roofed enclosures that protect the calves from the elements.
 - n. “Pile manure between cleanings” means reducing PM emissions by collecting loose surface materials within the confines of the surface area of the occupied feed pen every two weeks.
 - o. “Provide cooling in corral” means reducing PM emissions by using cooling systems under the corral shades to reduce the ambient air temperature, thereby increasing stocking density in the cool areas of the corrals.
 - p. “Provide shade in corral” means reducing PM emissions by increasing stocking density and reducing animal movement by using a permanent structure, which provides at least 16 square feet per animal of shaded pen surface.
 - q. “Push equipment” means manure harvesting equipment pushed in front of a tractor.

Department of Environmental Quality – Air Pollution Control

- r. “Silage” means fermented, high-moisture fodder that can be fed to ruminants, such as cattle and sheep; usually made from grass crops including corn, sorghum or other cereals, by using the entire green plant.
 - s. “Store and maintain feed stock” means reducing PM emissions and wind erosion by storing feed stock in a covered area where the commodity is surrounded on at least three sides by a structure.
 - t. “Synthetic particulate suppressant” means reducing PM emissions and wind erosion by providing a stabilized soil surface on a commercial dairy operation with a manufactured product such as lignosulfate, calcium chloride, magnesium chloride, an emulsion of a petroleum product, an enzyme product, or polyacrylamide that is used to control particulate matter.
 - u. “Use drag equipment to maintain pens” means reducing PM emissions by using manure equipment pulled behind a tractor instead of using push equipment, which avoids dust accumulation in floor depressions.
 - v. “Use free stall housing” means reducing PM emissions by enclosing one cow per stall, which are outfitted with concrete floors.
 - w. “Water misting systems” means reducing PM emissions from dry manure by using systems that project a cloud of very small water particles onto the manure surface, keeping the surface visibly moist.
 - x. “Wind barrier” means reducing PM10 emissions and wind erosion by constructing a fence or structure, or providing a woody vegetative barrier by planting a row of trees or shrubs, perpendicular or across the prevailing wind direction to reduce wind speed by changing the pattern of air flow over the land surface. For fences and structures, the wind barrier shall have a density of no less than 50% and the height of the wind barrier must be proportionate to the downwind protected area. The downwind protected area is considered ten times the height of the wind barrier. For vegetative barriers, compliance shall be determined by NRCS Conservation Practice Standard, Code 380, Windbreak/Shelterbelt Establishment, amended through August 21, 2009 (and no future editions).
3. The following definitions apply to a commercial beef cattle feedlot:
- a. “Add moisture to pen surface” means reducing PM emissions and wind erosion by applying at least three to six gallons of water per head/per day in pens occupied by beef cattle.
 - b. “Add molasses or tallow to feed” means reducing PM emissions by adding molasses or tallow so that it equals three percent of the total ration.
 - c. “Aggregate cover” means reducing PM emissions, wind erosion and stabilizing soil by applying and maintaining gravel, concrete, recycled road base, caliche, or other similar material to unpaved roads or feed lanes. The aggregate should be clean, hard and durable, and should be applied and maintained to a minimum of three inches deep.
 - d. “Apply a fibrous layer in working areas” means reducing PM emissions and soil movement, and preserving soil moisture by spreading shredded or deconstructed plant materials to cover loose soil in high animal traffic areas. Material shall be consistently applied to a minimum depth of two inches above the soil surface and coverage should be a minimum of 70 percent.
 - e. “Bulk materials” means reducing PM emissions by using a closed conveyor system instead of vehicular means to move grain or other.
 - f. “Commercial beef cattle feedlot” means a beef cattle feedlot with more than 500 beef cattle within the boundary of the Maricopa PM nonattainment area and Maricopa County portion of Area A, a PM nonattainment area designated after June 1, 2009 as stated in A.R.S. § 49-457(P)(1)(f), or the Pinal County PM Nonattainment Area.
 - g. “Concrete apron” means reducing PM emissions by using solidly formed concrete surface, at least 4 inches thick on top of the soil surface, inside the feed pen for 8 feet approaching the feed bunk or water trough.
 - h. “Control cattle during movements” means reducing PM emissions by suppressing the animal’s ability to run by driving them forward while intruding on their “flight zones” or restraining the animal’s movement.
 - i. “Cover manure hauling trucks” means reducing PM emissions by completely covering the top of the loaded area.
 - j. “Feed higher moisture feed to beef cattle” means reducing PM emissions by feeding beef cattle feed that contains at least 30% moisture.
 - k. “Frequent manure removal” means reducing PM emissions and wind erosion by harvesting loose manure on top of the pen surface at least once every six months.
 - l. “Pile manure between cleanings” means reducing PM emissions by collecting loose manure surface materials, by scraping or pushing, within the confines of the surface area of the occupied feed pen at least four times per year.
 - m. “Provide shade in corral” means reducing PM emissions by increasing stocking density and reducing animal movement by using a permanent structure, which provides at least 16 square feet per animal of shaded pen surface.
 - n. “Push equipment” means manure harvesting equipment pushed in front of a tractor.
 - o. “Store and maintain feed stock” means reducing PM emissions and wind erosion by storing feed stock in a covered area where the commodity is surrounded on at least three sides by a structure.
 - p. “Synthetic particulate suppressant” means reducing PM emissions and wind erosion by providing a stabilized soil surface on a commercial beef feedlot with a manufactured product such as lignosulfate, calcium chloride, magnesium chloride, an emulsion of a petroleum product, an enzyme product, or polyacrylamide that is used to control particulate matter.
 - q. “Use drag equipment to maintain pens” means reducing PM emissions by using manure harvesting equipment pulled behind a tractor instead of using push equipment, which avoids dust accumulation in floor depressions.
 - r. “Wind barrier” means reducing PM10 emissions and wind erosion by constructing a fence or structure, or providing a woody vegetative barrier by planting a row of trees or shrubs, perpendicular or across the prevailing wind direction to reduce wind speed by changing the pattern of air flow over the land surface. For fences and structures, the wind barrier shall have a density of no less than 50% and the height of the wind barrier must be proportionate to the downwind protected area. The downwind protected area is considered ten times the height of the wind barrier. For vegetative barriers, compliance shall be determined by NRCS Conservation Practice Standard, Code 380, Windbreak/Shelterbelt Establishment, amended through August 21, 2009 (and no future editions).

Department of Environmental Quality – Air Pollution Control

4. The following definitions apply to a commercial poultry facility:
- a. “Add moisture through ventilation systems” means reducing PM emissions by using a ventilation system that is designed to allow stock to maintain their normal body temperature without difficulty while maintaining a minimum of 20% moisture in the air within the housing system to bind small particles to larger particles.
 - b. “Add oil and/or moisture to the feed” means reducing PM emissions by adding a minimum of 1% edible oil and/or moisture to feed rations to bind small particles to larger particles.
 - c. “Aggregate cover” means reducing PM emissions, wind erosion and stabilizing soil by applying and maintaining gravel, concrete, recycled road base, caliche, or other similar material to unpaved roads or feed lanes. The aggregate should be clean, hard and durable, and should be applied and maintained to a minimum of three inches deep.
 - d. “Clean aisles between cage rows” means reducing PM emissions by cleaning the aisles between cage rows at least twice every 14 days to prevent dried manure, spilled feed, and debris accumulation.
 - e. “Clean fans, louvers, and soffit inlets in a commercial poultry facility” means reducing PM emissions by cleaning fans, louvers, and soffit inlets when the facility is empty between depopulating and populating the facility.
 - f. “Clean floors and walls in a commercial poultry facility” means reducing PM emissions by cleaning floors and walls to prevent dried manure, spilled feed, and debris accumulation when the facility is empty between depopulating and populating the facility.
 - g. “Commercial poultry facility” means a poultry operation with more than 25,000 egg laying hens within the boundary of the Maricopa PM nonattainment area and Maricopa County portion of Area A, a PM nonattainment area designated after June 1, 2009 as stated in A.R.S. § 49-457(P)(1)(f), or the Pinal County PM Nonattainment Area.
 - h. “Control vegetation on building exteriors” means reducing PM emissions by removing, cutting, or trimming vegetation that accumulates PM and restricts ventilation of the building, so as to leave approximately 3 feet between the vegetation and building.
 - i. “Enclose transfer points” means reducing PM emissions by enclosing the points of transfer between the enclosed, weather-proof storage structure and the enclosed feed distribution system, which reduce air contact with the feed rations during feed conveyance.
 - j. “House in fully enclosed ventilated buildings” means reducing PM emissions by utilizing fully enclosed buildings with sufficient ventilation.
 - k. “Maintain moisture in manure solids” means reducing PM emissions by maintaining a moisture content of a minimum of 15% in the solids sufficient to bind small particles to larger particles.
 - l. “Minimize drop distance” means reducing PM emissions by designing the feed distribution system so that the distance the feed ration drops from the feed distribution system into feeders is approximately 1 foot or less, which reduces air contact with the feed rations during feed conveyance.
 - m. “Poultry” means any domesticated bird including chickens, turkeys, ducks, geese, guineas, ratites and squabs.
 - n. “Remove spilled feed” means reducing PM emissions by removing spilled feed from the housing facility at least once every 14 days.
 - o. “Stack separated manure solids” means reducing PM emissions and wind erosion by reducing the amount of exposed surface area of manure solids.
 - p. “Store feed” means reducing PM emissions by storing feed in a structure that is enclosed and weatherproof, which reduces air contact with the feed rations during feed storage.
 - q. “Synthetic particulate suppressant” means reducing PM emissions and wind erosion by providing a stabilized soil surface on a commercial poultry operation with a manufactured product such as lignosulfate, calcium chloride, magnesium chloride, an emulsion of a petroleum product, an enzyme product, or polyacrylamide that is used to control particulate matter.
 - r. “Use enclosed feed distribution system” means reducing PM emissions by using an enclosed feed conveyance system that distributes feed rations throughout the housing facility, which reduces air contact with the feed rations during feed conveyance.
 - s. “Use a flexible discharge spout” means reducing PM emissions and wind erosion at the time of bulk feed deliveries to the housing units by using a flexible discharge spout on the end of the feed truck transfer auger.
 - t. “Use no bedding in the production facility” means reducing PM emissions by not using bedding such as wood shavings, sawdust, peanut hulls, straw, or other organic material.
 - u. “Use of a rotary dryer to dry manure waste” means reducing PM10 emissions by drying the manure waste in a rotary dryer fitted with a baghouse or wet scrubber. A commercial poultry facility using a rotary dryer must comply with all of the following:
 - i. Install, maintain, and operate the baghouse or wet scrubber in a manner consistent with the manufacturer’s specifications at all times the rotary dryer is operated. The manufacturer specifications must be available on site upon request.
 - ii. Conduct monthly observations using EPA Method 22 on the control equipment to ensure proper operation. If improper operation is observed through EPA Method 22, the dryer must stop immediately and the equipment repaired before resuming operations.
 - iii. For baghouses, conduct an annual black light inspection of the bags to detect broken or leaking bags. If broken or leaking bags are detected it must be repaired or replaced immediately.
 - iv. Maintain a record of all repair activity required under (ii) and (iii) that must be made available within two days of Director’s request for inspection.

Department of Environmental Quality – Air Pollution Control

5. The following definitions apply to a commercial swine facility:
- a. “Add oil and/or moisture to the feed” means reducing PM emissions by adding a minimum of 0.5% edible oil and/or moisture to feed rations to bind small particles to larger particles.
 - b. “Add moisture through ventilation systems” means reducing PM emissions by using a ventilation system that is designed to allow stock to maintain their normal body temperature without difficulty while maintaining minimum of 15% moisture in the air within the housing system to bind small particles to larger particles.
 - c. “Aggregate cover” means reducing PM emissions, wind erosion and stabilizing soil by applying and maintaining gravel, concrete, recycled road base, caliche, or other similar material to unpaved roads or feed lanes. The aggregate should be clean, hard and durable, and should be applied and maintained to a minimum of three inches deep.
 - d. “Clean aisles between pens and stalls” means reducing PM emissions by cleaning the aisles between pens and stalls at least twice every 14 days to prevent dried manure, spilled feed, and debris accumulation.
 - e. “Clean fans, louvers, and soffit inlets in a commercial swine facility” means reducing PM emissions by cleaning fans, louvers, and soffit inlets between transfer of animal groups, but in any case, at least every 6 months.
 - f. “Clean pens, floors and walls in a commercial swine facility” means reducing PM emissions by cleaning pens, floors, and walls between transfer of animal groups to prevent dried manure, spilled feed, and debris accumulation, but in any case, at least every 6 months.
 - g. “Commercial swine facility” means a swine operation with more than 50 animal units for more than 30 consecutive days within the boundary of the Maricopa PM nonattainment area and Maricopa County portion of Area A, a PM nonattainment area designated after June 1, 2009 as stated in A.R.S. § 49-457(P)(1)(f), or the Pinal County PM Nonattainment Area. One thousand pounds equals one animal unit.
 - h. “Control vegetation on building exteriors” means reducing PM emissions by removing, cutting, or trimming vegetation that accumulates PM and restricts ventilation of the building, so as to leave approximately 3 feet between the vegetation and the building.
 - i. “Enclose transfer points” means reducing PM emissions by enclosing the points of transfer between the enclosed, weather-proof storage structure and the enclosed feed distribution system, which reduces air contact with the feed rations during feed conveyance.
 - j. “House in fully enclosed ventilated buildings” means reducing PM emissions by utilizing fully enclosed buildings with sufficient ventilation.
 - k. “Lagoon” means a liquid manure storage and treatment pond.
 - l. “Maintain moisture in manure solids” means reducing PM10 emissions by maintaining a minimum moisture content of 10% in the solids sufficient to bind small particles to larger particles.
 - m. “Minimize drop distance” means reducing PM emissions by designing the feed distribution system so that the distance the feed ration drops from the feed distribution system into feeders is 3 feet or less, which reduces air contact with the feed rations during feed conveyance.
 - n. “Remove spilled feed” means reducing PM emissions by removing spilled feed from the housing facility at least once every 14 days.
 - o. “Slatted flooring” means reducing PM emissions by using flooring that is a slotted concrete or wire-mesh floor set above a liquid manure collection pit, which allows the excrement to fall through the flooring into the liquid pit below, which prevents solids build-up. Slats 4 to 8 inches wide with spacing of about 1 inch in between are recommended.
 - p. “Sloped concrete flooring” means reducing PM emissions by pouring concrete with a minimum of 0.25% grade inside of the barns which provides drainage and easier cleaning of floor areas.
 - q. “Stack separated manure solids” means reducing PM emissions and wind erosion by reducing the amount of exposed surface area of manure solids.
 - r. “Store feed” means reducing PM emissions by storing feed in a structure that is enclosed and weatherproof, which reduces air contact with the feed rations during feed storage.
 - s. “Store separated manure solids” means reducing PM emissions by storing manure solids in a wind-blocked area behind a wall, structure, or area with natural wind protection to minimize blowing air movement over the manure stack.
 - t. “Synthetic particulate suppressant” means reducing PM emissions and wind erosion by providing a stabilized soil surface on a commercial swine operation with a manufactured product such as lignosulfate, calcium chloride, magnesium chloride, an emulsion of a petroleum product, an enzyme product, or polyacrylamide that is used to control particulate matter.
 - u. “Use a flexible discharge spout” means reducing PM emissions and wind erosion at the time of bulk feed deliveries to the housing units by using a flexible discharge spout on the end of the feed truck transfer auger.
 - v. “Use enclosed feed distribution system” means reducing PM emissions by using an enclosed feed conveyance system that distributes feed rations throughout the housing facility, which reduces air contact with the feed rations during the feed conveyance.
 - w. “Use no bedding in the production facility” means reducing PM emissions by not using bedding such as wood shavings, sawdust, peanut hulls, straw, or other organic material.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2009, effective May 12, 2000 (Supp. 00-2). Amended by exempt rulemaking at 13 A.A.R. 4326, effective November 14, 2007 (Supp. 07-4). Section repealed; new Section made by exempt rulemaking at 18 A.A.R. 137, effective December 29, 2011 (Supp. 11-4). Subsection (2)(a) corrected at request of the Department, Office File No. M12-133, filed April 5, 2012 (Supp. 11-4). Amended by exempt rulemaking pursuant to Laws 2011, Ch. 214, § 4, at 21 A.A.R. 1156, effective July 2, 2015 (Supp. 15-3). Amended by exempt rulemaking pursuant to Laws 2011, Ch. 214, § 4, at 22 A.A.R.

Department of Environmental Quality – Air Pollution Control

987, effective April 5, 2016 (Supp. 16-2).

R18-2-611.01. Agricultural PM General Permit for Animal Operations; Maricopa County Serious PM Nonattainment Areas

- A.** A commercial animal operator within a Serious PM Nonattainment Area shall implement at least two best management practices from each category to reduce PM emissions.
- B.** A commercial dairy operation shall implement the following best management practices, as described in subsection (A), from each of the following categories:
1. Arenas, Corrals, and Pens:
 - a. Use free stall housing,
 - b. Provide shade in corral,
 - c. Provide cooling in corral,
 - d. Cement cattle walkways to milk barn,
 - e. Groom manure surface,
 - f. Water misting systems,
 - g. Use drag equipment to maintain pens,
 - h. Pile manure between cleanings,
 - i. Feed green chop,
 - j. Keep calves in barns or hutches,
 - k. Do not run cattle,
 - l. Apply a fibrous layer, or
 - m. Wind barrier.
 2. Animal Waste (and Feed) Handling and Transporting:
 - a. Feed higher moisture feed to dairy cattle,
 - b. Store and maintain feed stock,
 - c. Covers for silage,
 - d. Store silage in bunkers,
 - e. Cover manure hauling trucks, or
 - f. Do not load manure trucks with dry manure when wind exceeds 15 mph.
 3. Unpaved Access Connections:
 - a. Install signage to limit vehicle speed to 15 mph,
 - b. Install speed control devices,
 - c. Restrict access to through traffic,
 - d. Install and maintain a track-out control device,
 - e. Apply and maintain pavement in high traffic areas,
 - f. Apply and maintain aggregate cover,
 - g. Apply and maintain synthetic particulate suppressant, or
 - h. Apply and maintain water as a dust suppressant.
 4. Unpaved Roads or Feed Lanes:
 - a. Install engine speed governors on feed truck to 15 mph,
 - b. Install signage to limit vehicle speed to 15 mph,
 - c. Install speed control devices,
 - d. Restrict access to through traffic,
 - e. Apply and maintain pavement in high traffic areas,
 - f. Apply and maintain aggregate cover,
 - g. Apply and maintain synthetic particulate suppressant,
 - h. Apply and maintain water as a dust suppressant,
 - i. Use appropriate vehicles such as electric carts or small utility vehicles instead of trucks, or
 - j. Apply and maintain pavement or cement feed lanes.
- C.** A commercial beef cattle feedlot shall implement the following best management practices, as described in subsection (A), from each of the following categories:
1. Arenas, Corrals, and Pens:
 - a. Concrete aprons,
 - b. Provide shade in corral,
 - c. Add moisture to pen surface,
 - d. Manure removal,
 - e. Pile manure between cleanings,
 - f. Feed higher moisture feed to beef cattle,
 - g. Control cattle during movements,
 - h. Use drag equipment to maintain pens,
 - i. Apply a fibrous layer, or
 - j. Wind barrier.

Department of Environmental Quality – Air Pollution Control

2. Animal Waste (and Feed) Handling and Transporting:
 - a. Feed higher moisture feed to beef cattle,
 - b. Add molasses or tallow to feed,
 - c. Store and maintain feed stock,
 - d. Bulk materials,
 - e. Use drag equipment to maintain pens,
 - f. Cover manure hauling trucks, or
 - g. Do not load manure when wind exceeds 15 mph.
 3. Unpaved Access Connections:
 - a. Install and maintain a track-out control device,
 - b. Apply and maintain pavement in high traffic areas,
 - c. Apply and maintain aggregate cover,
 - d. Apply and maintain synthetic particulate suppressant, or
 - e. Apply and maintain water as a dust suppressant.
 4. Unpaved Roads or Feed Lanes:
 - a. Install engine speed governors on feed truck to 15 mph,
 - b. Install signage to limit vehicle speed to 15 mph,
 - c. Install speed control devices,
 - d. Restrict access to through traffic,
 - e. Apply and maintain pavement in high traffic areas,
 - f. Apply and maintain aggregate cover,
 - g. Apply and maintain synthetic particulate suppressant,
 - h. Apply and maintain water as a dust suppressant, or
 - i. Apply and maintain oil on roads or feed lanes.
- D.** A commercial poultry facility shall implement the following best management practices, as described in subsection (A), from each of the following categories:
1. Arenas, Corrals, and Pens (Housing):
 - a. Clean fans, louvers, and soffit inlets in a commercial poultry facility,
 - b. Use no bedding,
 - c. Control vegetation on building exteriors,
 - d. Add moisture through ventilation systems, or
 - e. House in fully enclosed ventilated buildings.
 2. Animal Waste (and Feed) Handling and Transporting:
 - a. Remove spilled feed,
 - b. Store feed,
 - c. Add oil and/or moisture to the feed,
 - d. Use enclosed feed distribution system,
 - e. Use flexible discharge spout,
 - f. Minimize drop distance,
 - g. Enclose transfer points,
 - h. Clean floors and walls in a commercial poultry facility,
 - i. Clean aisles between cage rows,
 - j. Stack separated manure solids,
 - k. Maintain moisture in manure solids, or
 - l. Use of a rotary dryer to dry manure waste.
 3. Unpaved Access Connections:
 - a. Install speed control devices,
 - b. Restrict traffic access,
 - c. Install and maintain a track-out control system, or
 - d. Install signage to limit vehicle speed to 15 mph.
 4. Unpaved Roads or Feed Lanes:
 - a. Install engine speed governors on feed trucks to 15 mph,
 - b. Install signage to limit vehicle speed to 15 mph,
 - c. Install speed control devices,
 - d. Restrict traffic access,
 - e. Apply and maintain aggregate cover,
 - f. Apply and maintain synthetic particulate suppressant,
 - g. Apply and maintain water, or
 - h. Apply and maintain oil on roads or feed lanes.
- E.** A commercial swine facility shall implement the following best management practices, as described in subsection (A), from each of the following categories:
1. Arenas, Corrals, and Pens (Housing):
 - a. House in fully enclosed ventilated buildings,
 - b. Use no bedding,

Department of Environmental Quality – Air Pollution Control

- c. Use a slatted floor system,
 - d. Use sloped concrete flooring,
 - e. Clean fans, louvers, and soffit inlets in a commercial swine facility,
 - f. Control vegetation on building exteriors, or
 - g. Add moisture through ventilation systems.
2. Animal Waste (and Feed) Handling and Transporting:
- a. Remove spilled feed,
 - b. Store feed,
 - c. Add oil and/or moisture to feed,
 - d. Use enclosed feed distribution system,
 - e. Use flexible discharge spout,
 - f. Minimize drop distance,
 - g. Enclose transfer points,
 - h. Clean pens, floors, and walls in a commercial swine facility,
 - i. Clean aisles between pens and stalls,
 - j. Store separated manure solids in a wind-blocked area,
 - k. Stack separated manure solids,
 - l. Maintain moisture in manure solids, or
 - m. Maintain liquid lagoon level.
3. Unpaved Access Connections:
- a. Install speed control devices,
 - b. Restrict traffic access,
 - c. Install and maintain a track-out control system,
 - d. Install signage to limit vehicle speed to 15 mph.
4. Unpaved Roads or Feed Lanes:
- a. Install engine speed governors on feed trucks to 15 mph,
 - b. Install signage to limit vehicle speed to 15 mph,
 - c. Install speed control devices,
 - d. Restrict traffic access,
 - e. Apply and maintain aggregate cover,
 - f. Apply and maintain synthetic particulate suppressant,
 - g. Apply and maintain water,
 - h. Apply and maintain oil on roads or feed lanes, or
 - i. Wind barrier.
- F.** From and after December 31, 2015, a commercial animal operator who engages in a regulated agricultural activity shall complete a Best Management Practices Program General Permit Record Form. Thereafter, a new Best Management Practices Program General Permit Record Form shall be completed every year by March 31. The Form shall be provided to the Director within two business days of notice to the commercial animal operator. The Best Management Practice Program General Permit Record form shall include the following information:
- 1. The name of the commercial animal operator, signature, and date signed,
 - 2. The mailing address or physical address of the commercial animal operation, and
 - 3. The best management practices selected for Arenas, Corrals, and Pens, Animal Waste Handling and Transporting, Unpaved Access Connections, and Unpaved Roads or Feed Lanes.
- G.** Beginning January 1, 2016, a commercial animal operator shall maintain records demonstrating compliance with this Section for three years. Records shall include a copy of the complete Best Management Practice Program General Permit Record Form to confirm implementation of each best management practice and any changes to the best management practices. Records shall be kept by the commercial animal operator onsite and made available for review by the Director within two business days of notice to the commercial animal operator.
- H.** A person may develop different practices not contained in subsection (B), (C), (D), or (E), that reduce PM and may submit such practices that are proven effective through on-operation demonstration trials to the Committee.
- I.** The Director shall not assess a fee to a commercial animal operator for coverage under the Best Management Practice Program General Permit Record Form.
- J.** A commercial animal operator shall ensure that the implementation of all selected best management practices does not violate any other local, state, or federal law.
- K.** The Director shall document noncompliance with this Section before issuing a compliance order.
- L.** A commercial animal operator who is not in compliance with this Section is subject to the provisions in A.R.S. § 49-457(I), (J), and (K).

Historical Note

New Section made by exempt rulemaking at 18 A.A.R. 137, effective December 29, 2011 (Supp. 11-4). Amended by exempt rulemaking pursuant to Laws 2011, Ch. 214, § 4, at 21 A.A.R. 1156, effective July 2, 2015 (Supp. 15-3). Amended by exempt rulemaking pursuant to Laws 2011, Ch. 214, § 4, at 22 A.A.R. 987, effective April 5, 2016 (Supp. 16-2).

Department of Environmental Quality – Air Pollution Control

R18-2-611.02. Agricultural PM General Permit for Animal Operations; Moderate PM Nonattainment Areas Designated After June 1, 2009, Except Pinal County PM Nonattainment Area

- A.** A commercial animal operator within a Moderate PM Nonattainment Area, designated after June 1, 2009, shall implement at least one best management practice from each category to reduce PM emissions.
- B.** A commercial dairy operation shall implement the following best management practices, as described in subsection (A), from each of the following categories:
1. Arenas, Corrals, and Pens:
 - a. Use free stall housing,
 - b. Provide shade in corral,
 - c. Provide cooling in corral,
 - d. Cement cattle walkways to milk barn,
 - e. Groom manure surface,
 - f. Water misting systems,
 - g. Use drag equipment to maintain pens,
 - h. Pile manure between cleanings,
 - i. Feed green chop,
 - j. Keep calves in barns or hutches,
 - k. Do not run cattle,
 - l. Apply a fibrous layer, or
 - m. Wind barrier.
 2. Animal Waste (and Feed) Handling and Transporting:
 - a. Feed higher moisture feed to dairy cattle,
 - b. Store and maintain feed stock,
 - c. Covers for silage,
 - d. Store silage in bunkers,
 - e. Cover manure hauling trucks, or
 - f. Do not load manure trucks with dry manure when wind exceeds 15 mph.
 3. Unpaved Access Connections:
 - a. Install signage to limit vehicle speed to 15 mph,
 - b. Install speed control devices,
 - c. Restrict access to through traffic,
 - d. Install and maintain a track-out control device,
 - e. Apply and maintain pavement in high traffic areas,
 - f. Apply and maintain aggregate cover,
 - g. Apply and maintain synthetic particulate suppressant, or
 - h. Apply and maintain water as a dust suppressant.
 4. Unpaved Roads or Feed Lanes:
 - a. Install engine speed governors on feed truck to 15 mph,
 - b. Install signage to limit vehicle speed to 15 mph,
 - c. Install speed control devices,
 - d. Restrict access to through traffic,
 - e. Apply and maintain pavement in high traffic areas,
 - f. Apply and maintain aggregate cover,
 - g. Apply and maintain synthetic particulate suppressant,
 - h. Apply and maintain water as a dust suppressant,
 - i. Use appropriate vehicles such as electric carts or small utility vehicles instead of trucks, or
 - j. Apply and maintain pavement or cement feed lanes.
- C.** A commercial beef cattle feedlot shall implement the following best management practices, as described in subsection (A), from each of the following categories:
1. Arenas, Corrals, and Pens:
 - a. Concrete aprons,
 - b. Provide shade in corral,
 - c. Add moisture to pen surface,
 - d. Manure removal,
 - e. Pile manure between cleanings,
 - f. Feed higher moisture feed to beef cattle,
 - g. Control cattle during movements,
 - h. Use drag equipment to maintain pens,
 - i. Apply a fibrous layer, or
 - j. Wind barrier.
 2. Animal Waste (and Feed) Handling and Transporting:
 - a. Feed higher moisture feed to beef cattle,
 - b. Add molasses or tallow to feed,
 - c. Store and maintain feed stock,

Department of Environmental Quality – Air Pollution Control

- d. Bulk materials,
 - e. Use drag equipment to maintain pens,
 - f. Cover manure hauling trucks, or
 - g. Do not load manure when wind exceeds 15 mph.
3. Unpaved Access Connections:
 - a. Install and maintain a track-out control device,
 - b. Apply and maintain pavement in high traffic areas,
 - c. Apply and maintain aggregate cover,
 - d. Apply and maintain synthetic particulate suppressant, or
 - e. Apply and maintain water as a dust suppressant.
 4. Unpaved Roads or Feed Lanes:
 - a. Install engine speed governors on feed truck to 15 mph,
 - b. Install signage to limit vehicle speed to 15 mph,
 - c. Install speed control devices,
 - d. Restrict access to through traffic,
 - e. Apply and maintain pavement in high traffic areas,
 - f. Apply and maintain aggregate cover,
 - g. Apply and maintain synthetic particulate suppressant,
 - h. Apply and maintain water as a dust suppressant, or
 - i. Apply and maintain oil on roads or feed lanes.
- D.** A commercial poultry facility shall implement the following best management practices, as described in subsection (A), from each of the following categories:
1. Arenas, Corrals, and Pens (Housing):
 - a. Clean fans, louvers, and soffit inlets in a commercial poultry facility,
 - b. Use no bedding,
 - c. Control vegetation on building exteriors;
 - d. Add moisture through ventilation systems, or
 - e. House in fully enclosed ventilated buildings.
 2. Animal Waste (and Feed) Handling and Transporting:
 - a. Remove spilled feed,
 - b. Store feed,
 - c. Add oil and/or moisture to the feed,
 - d. Use enclosed feed distribution system,
 - e. Use flexible discharge spout,
 - f. Minimize drop distance,
 - g. Enclose transfer points,
 - h. Clean floors and walls in a commercial poultry facility,
 - i. Clean aisles between cage rows,
 - j. Stack separated manure solids, or
 - k. Maintain moisture in manure solids.
 3. Unpaved Access Connections:
 - a. Install speed control devices,
 - b. Restrict traffic access,
 - c. Install and maintain a track-out control system, or
 - d. Install signage to limit vehicle speed to 15 mph.
 4. Unpaved Roads or Feed Lanes:
 - a. Install engine speed governors on feed trucks to 15 mph,
 - b. Install signage to limit vehicle speed to 15 mph,
 - c. Install speed control devices,
 - d. Restrict traffic access,
 - e. Apply and maintain aggregate cover,
 - f. Apply and maintain synthetic particulate suppressant,
 - g. Apply and maintain water, or
 - h. Apply and maintain oil on roads or feed lanes.
- E.** A commercial swine facility shall implement the following best management practices, as described in subsection (A), from each of the following categories:
1. Arenas, Corrals, and Pens (Housing):
 - a. House in fully enclosed ventilated buildings,
 - b. Use no bedding,
 - c. Use a slatted floor system,
 - d. Use sloped concrete flooring,

Department of Environmental Quality – Air Pollution Control

- e. Clean fans, louvers, and soffit inlets in a commercial swine facility,
 - f. Control vegetation on building exteriors, or
 - g. Add moisture through ventilation systems.
2. Animal Waste (and Feed) Handling and Transporting:
 - a. Remove spilled feed,
 - b. Store feed,
 - c. Add oil and/or moisture to feed,
 - d. Use enclosed feed distribution system,
 - e. Use flexible discharge spout,
 - f. Minimize drop distance,
 - g. Enclose transfer points,
 - h. Clean pens, floors, and walls in a commercial swine facility,
 - i. Clean aisles between pens and stalls,
 - j. Store separated manure solids in a wind-blocked area,
 - k. Stack separated manure solids,
 - l. Maintain moisture in manure solids, or
 - m. Maintain liquid lagoon level.
 3. Unpaved Access Connections:
 - a. Install speed control devices,
 - b. Restrict traffic access,
 - c. Install and maintain a track-out control system,
 - d. Install signage to limit vehicle speed to 15 mph.
 4. Unpaved Roads or Feed Lanes:
 - a. Install engine speed governors on feed trucks to 15 mph,
 - b. Install signage to limit vehicle speed to 15 mph,
 - c. Install speed control devices,
 - d. Restrict traffic access,
 - e. Apply and maintain aggregate cover,
 - f. Apply and maintain synthetic particulate suppressant,
 - g. Apply and maintain water,
 - h. Apply and maintain oil on roads or feed lanes, or
 - i. Wind barrier.
- F.** From and after December 31, 2015, a commercial animal operator who engages in a regulated agricultural activity shall complete a Best Management Practices Program General Permit Record Form. Thereafter, a new Best Management Practices Program General Permit Record Form shall be completed every year by March 31. The Form shall be provided to the Director within two business days of notice to the commercial animal operator. The Best Management Practices Program General Permit Record Form shall include the following information:
1. The name of the commercial animal operator, signature, and date signed,
 2. The mailing address or physical address of the commercial animal operation, and
 3. The best management practices selected for Arenas, Corrals, and Pens, Animal Waste Handling and Transporting, Unpaved Access Connections, and Unpaved Roads or Feed Lanes.
- G.** Beginning January 1, 2016, a commercial animal operator shall maintain records demonstrating compliance with this Section for three years. Records shall include a copy of the complete Best Management Practice Program General Permit Record Form to confirm implementation of each best management practice and any changes to the best management practices. Records shall be kept by the commercial animal operator onsite and made available for review by the Director within two business days of notice to the commercial animal operator.
- H.** A person may develop different practices not contained in subsection (B), (C), (D), or (F) that reduce PM and may submit such practices that are proven effective through on-operation demonstration trials to the Committee. The new best management practices shall not become effective unless submitted as described in A.R.S. § 49-457(L).
- I.** The Director shall not assess a fee to a commercial animal operator for coverage under the agricultural PM general permit.
- J.** A commercial animal operator shall ensure that the implementation of all selected best management practices does not violate any other local, state, or federal law.
- K.** The Director shall document noncompliance with this Section before issuing a compliance order.
- L.** A commercial animal operator who is not in compliance with this Section is subject to the provisions in A.R.S. § 49-457(I), (J), and (K).

Historical Note

New Section made by exempt rulemaking pursuant to Laws 2011, Ch. 214, § 4, at 21 A.A.R. 1156, effective July 2, 2015 (Supp. 15-3).

R18-2-611.03. Agricultural PM General Permit for Animal Operations; Pinal County PM Nonattainment Area

- A.** A commercial animal operator within the Pinal County PM Nonattainment Area shall implement at least one best management practice from each category to reduce PM emissions.

Department of Environmental Quality – Air Pollution Control

- B.** In addition to subsection (A), on the day that is forecast to be high risk for dust generation by the Pinal County Dust Control Forecast, commercial dairy operations within the Pinal County PM Nonattainment Area shall apply and maintain one of the four following BMPs on unpaved roads that experience more than 20 VDT from 2 or more axle vehicles:
1. Apply and maintain pavement in high traffic areas,
 2. Apply and maintain aggregate cover,
 3. Apply and maintain synthetic particulate suppressant, or
 4. Apply and maintain water as a dust suppressant.
- C.** In addition to subsection (A), commercial beef feedlots within the Pinal County PM Nonattainment Area, shall add water to pen surface, as defined in R18-2-611(3)(a), on the day that is forecast to be high risk for dust generation by the Pinal County Dust Control Forecast.
- D.** A commercial dairy operation shall implement the following best management practices, as described in subsection (A), from each of the following categories:
1. Arenas, Corrals, and Pens:
 - a. Use free stall housing,
 - b. Provide shade in corral,
 - c. Provide cooling in corral,
 - d. Cement cattle walkways to milk barn,
 - e. Groom manure surface,
 - f. Water misting systems,
 - g. Use drag equipment to maintain pens,
 - h. Pile manure between cleanings,
 - i. Feed green chop,
 - j. Keep calves in barns or hutches,
 - k. Do not run cattle,
 - l. Apply a fibrous layer, or
 - m. Wind barrier.
 2. Animal Waste (and Feed) Handling and Transporting:
 - a. Feed higher moisture feed to dairy cattle,
 - b. Store and maintain feed stock,
 - c. Covers for silage,
 - d. Store silage in bunkers,
 - e. Cover manure hauling trucks, or
 - f. Do not load manure trucks with dry manure when wind exceeds 15 mph.
 3. Unpaved Access Connections:
 - a. Install signage to limit vehicle speed to 15 mph,
 - b. Install speed control devices,
 - c. Restrict access to through traffic,
 - d. Install and maintain a track-out control device,
 - e. Apply and maintain pavement in high traffic areas,
 - f. Apply and maintain aggregate cover,
 - g. Apply and maintain synthetic particulate suppressant, or
 - h. Apply and maintain water as a dust suppressant.
 4. Unpaved Roads or Feed Lanes:
 - a. Install engine speed governors on feed truck to 15 mph,
 - b. Install signage to limit vehicle speed to 15 mph,
 - c. Install speed control devices,
 - d. Restrict access to through traffic,
 - e. Apply and maintain pavement in high traffic areas,
 - f. Apply and maintain aggregate cover,
 - g. Apply and maintain synthetic particulate suppressant,
 - h. Apply and maintain water as a dust suppressant,
 - i. Use appropriate vehicles such as electric carts or small utility vehicles instead of trucks, or
 - j. Apply and maintain pavement or cement feed lanes.
- E.** A commercial beef cattle feedlot shall implement the following best management practices, as described in subsection (A), from each of the following categories:
1. Arenas, Corrals, and Pens:
 - a. Concrete aprons,
 - b. Provide shade in corral,
 - c. Add water to pen surface,
 - d. Manure removal,
 - e. Pile manure between cleanings,

Department of Environmental Quality – Air Pollution Control

- f. Feed higher moisture feed to beef cattle,
 - g. Control cattle during movements,
 - h. Use drag equipment to maintain pens,
 - i. Apply a fibrous layer, or
 - j. Wind barrier.
2. Animal Waste (and Feed) Handling and Transporting:
 - a. Feed higher moisture feed to beef cattle;
 - b. Add molasses or tallow to feed,
 - c. Store and maintain feed stock,
 - d. Bulk materials,
 - e. Use drag equipment to maintain pens,
 - f. Cover manure hauling trucks, or
 - g. Do not load manure when wind exceeds 15 mph.
 3. Unpaved Access Connections:
 - a. Install and maintain a track-out control device,
 - b. Apply and maintain pavement in high traffic areas,
 - c. Apply and maintain aggregate cover,
 - d. Apply and maintain synthetic particulate suppressant, or
 - e. Apply and maintain water as a dust suppressant.
 4. Unpaved Roads or Feed Lanes:
 - a. Install engine speed governors on feed truck to 15 mph,
 - b. Install signage to limit vehicle speed to 15 mph,
 - c. Install speed control devices,
 - d. Restrict access to through traffic,
 - e. Apply and maintain pavement in high traffic areas,
 - f. Apply and maintain aggregate cover,
 - g. Apply and maintain synthetic particulate suppressant,
 - h. Apply and maintain water as a dust suppressant, or
 - i. Apply and maintain oil on roads or feed lanes.
- F.** A commercial poultry facility shall implement the following best management practices, as described in subsection (A), from each of the following categories:
1. Arenas, Corrals, and Pens (Housing):
 - a. Clean fans, louvers, and soffit inlets in a commercial poultry facility,
 - b. Use no bedding,
 - c. Control vegetation on building exteriors,
 - d. Add moisture through ventilation systems, or
 - e. House in fully enclosed ventilated buildings.
 2. Animal Waste (and Feed) Handling and Transporting:
 - a. Remove spilled feed,
 - b. Store feed,
 - c. Add oil and/or moisture to the feed,
 - d. Use enclosed feed distribution system,
 - e. Use flexible discharge spout,
 - f. Minimize drop distance,
 - g. Enclose transfer points,
 - h. Clean floors and walls in a commercial poultry facility,
 - i. Clean aisles between cage rows,
 - j. Stack separated manure solids, or
 - k. Maintain moisture in manure solids.
 3. Unpaved Access Connections:
 - a. Install speed control devices,
 - b. Restrict traffic access,
 - c. Install and maintain a track-out control system, or
 - d. Install signage to limit vehicle speed to 15 mph.
 4. Unpaved Roads or Feed Lanes:
 - a. Install engine speed governors on feed trucks to 15 mph,
 - b. Install signage to limit vehicle speed to 15 mph,
 - c. Install speed control devices,
 - d. Restrict traffic access,
 - e. Apply and maintain aggregate cover,
 - f. Apply and maintain synthetic particulate suppressant,
 - g. Apply and maintain water, or
 - h. Apply and maintain oil on roads or feed lanes.

Department of Environmental Quality – Air Pollution Control

- G.** A commercial swine facility shall implement the following best management practices, as described in subsection (A), from each of the following categories:
1. Arenas, Corrals, and Pens (Housing):
 - a. House in fully enclosed ventilated buildings,
 - b. Use no bedding,
 - c. Use a slatted floor system,
 - d. Use sloped concrete flooring,
 - e. Clean fans, louvers, and soffit inlets in a commercial swine facility,
 - f. Control vegetation on building exteriors, or
 - g. Add moisture through ventilation systems.
 2. Animal Waste (and Feed) Handling and Transporting:
 - a. Remove spilled feed,
 - b. Store feed,
 - c. Add oil and/or moisture to feed,
 - d. Use enclosed feed distribution system,
 - e. Use flexible discharge spout,
 - f. Minimize drop distance,
 - g. Enclose transfer points,
 - h. Clean pens, floors, and walls in a commercial swine facility,
 - i. Clean aisles between pens and stalls,
 - j. Store separated manure solids in a wind-blocked area,
 - k. Stack separated manure solids,
 - l. Maintain moisture in manure solids, or
 - m. Maintain liquid lagoon level.
 3. Unpaved Access Connections:
 - a. Install speed control devices,
 - b. Restrict traffic access,
 - c. Install and maintain a track-out control system,
 - d. Install signage to limit vehicle speed to 15 mph.
 4. Unpaved Roads or Feed Lanes:
 - a. Install engine speed governors on feed trucks to 15 mph,
 - b. Install signage to limit vehicle speed to 15 mph,
 - c. Install speed control devices,
 - d. Restrict traffic access,
 - e. Apply and maintain aggregate cover,
 - f. Apply and maintain synthetic particulate suppressant,
 - g. Apply and maintain water,
 - h. Apply and maintain oil on roads or feed lanes, or
 - i. Wind barrier.
- H.** From and after December 31, 2015, a commercial animal operator who engages in a regulated agricultural activity shall complete a Best Management Practices Program General Permit Record Form. Thereafter, a new Best Management Practices Program General Permit Record Form shall be completed every year by March 31. The Form shall be provided to the Director within two business days of notice to the commercial animal operator. The Best Management Practices Program General Permit Record Form shall include the following information:
1. The name of the commercial animal operator, signature, and date signed,
 2. The mailing address or physical address of the commercial animal operation, and
 3. The best management practices selected for Arenas, Corrals, and Pens, Animal Waste Handling and Transporting, Unpaved Access Connections, and Unpaved Roads or Feed Lanes.
- I.** Beginning in calendar year 2017, and no more than once every subsequent three calendar years, the Director shall provide the commercial animal operator with a Best Management Practices Program 3-year Survey. The commercial animal operator shall complete the Survey with data from the preceding calendar year and submit the Survey to the Arizona Department of Agriculture (ADA) by January 31, 2018, and every three years thereafter. The Survey information submitted to the ADA shall be compiled by the ADA in a format that does not refer to a commercial animal operator's name, shall aggregate the data from the Surveys received, and be submitted to the Department. The 3-year Survey shall include the following information:
1. The name, business address, and phone number of the commercial farmer responsible for the preparation and implementation of the best management practices;
 2. The signature of the commercial farmer and the date the form was signed;
 3. The number of animals in a commercial dairy operation, beef cattle feed lot, poultry facility or swine facility;
 4. The total miles of unpaved roads at the commercial dairy operation, beef cattle feed lot, poultry facility or swine facility;
 5. The total acreage of the unpaved access connections and equipment areas at the commercial dairy operation, beef cattle feed lot, poultry facility or swine facility;

Department of Environmental Quality – Air Pollution Control

6. The best management practices selected for each category; and
 7. For commercial dairy operations and beef cattle feedlots, an acknowledgement that water was applied on the day of a high risk day as predicted by the Pinal County Dust Control Forecast.
- J.** Beginning January 1, 2016, a commercial animal operator shall maintain records demonstrating compliance with this Section for three years. Records shall include a copy of the complete Best Management Practice Program General Permit Record Form to confirm implementation of each best management practice and any changes to the best management practices. Records shall be kept by the commercial animal operator onsite and made available for review by the Director within two business days of notice to the commercial animal operator.
- K.** A person may develop different practices not contained in subsection (D), (E), (F), or (G) that reduce PM and may submit such practices that are proven effective through on-operation demonstration trials to the Committee. The new best management practices shall not become effective unless submitted as described in A.R.S. § 49-457(L).
- L.** The Director shall not assess a fee to a commercial animal operator for coverage under the agricultural PM general permit.
- M.** A commercial animal operator shall ensure that the implementation of all selected best management practices does not violate any other local, state, or federal law.
- N.** The Director shall document noncompliance with this Section before issuing a compliance order.
- O.** A commercial animal operator who is not in compliance with this Section is subject to the provisions in A.R.S. § 49-457(I), (J), and (K).

Historical Note

New Section made by exempt rulemaking pursuant to Laws 2011, Ch. 214, § 4, at 21 A.A.R. 1156, effective July 2, 2015 (Supp. 15-3).

R18-2-612. Definitions for R18-2-612.01

The definitions in R18-2-101 and the following definitions apply to R18-2-612.01:

1. "Access restriction" means reducing PM emission by reducing the number of trips driven on unpaved operation and maintenance and unpaved utility roads by restricting or eliminating public access by the use of signs or physical obstruction at locations that effectively control access to roads.
2. "Aggregate cover" means reducing PM emissions, wind erosion and stabilizing soil by applying and maintaining gravel, concrete, recycled road base, caliche, or other similar material to unpaved roads. The aggregate should be clean, hard and durable, and should be applied a depth sufficient to create soil stabilization in accordance with material specifications. A minimum depth of three inches is the standard in the absence of such specifications.
3. "Apply and maintain water" means reducing PM emissions and wind erosion by applying water to bare soil surfaces until the surfaces are visibly moist.
4. "Best management practice" means a technique verified by scientific research, that on a case-by-case basis is practical, economically feasible, and effective in reducing PM emissions from a regulated agricultural activity.
5. "Biological control of aquatic weeds" means reducing at least one trip, or to one trip if only one trip is needed, per treatment, made by vehicles for the purposes of removing aquatic weeds from canals by using fish, and other biologic means, within the canal through the use of to control the growth of aquatic weeds that reduce operating capacities and create debris that causes other operational issues.
6. "Canals" means facilities constructed for the sole purpose of the control, conveyance, and delivery of water. These facilities may be either open earthen channels, lined or unlined, or buried pipelines, which are used to convey water uphill and under obstructions, such as roadways and wash and river channels. These facilities include, but are not limited to, gate, inlet, outlet, safety, and measuring structures required to control water along the canals and deliver water to irrigation district customers, as well as compacted earthen banks constructed to protect these facilities from storm runoff events.
7. "Committee" means the Governor's Agricultural Best Management Practices Committee.
8. "Debris" means trash, rubble, and other non-soil materials.
9. "Dredge canals" means reducing PM emissions by mechanically removing muck, debris, and other foreign objects from canals while material is still wet or damp.
10. "Dust Control Forecast" means a forecast, which shall identify a low, moderate or high risk of dust generation for the next five consecutive days and shall be issued by noon on each day the forecast is generated. When developing these forecasts, the department shall consider all of the following:
 - a. Projected meteorological conditions, including:
 - i. Wind speed and direction,
 - ii. Stagnation,
 - iii. Recent precipitation, and
 - iv. Potential for precipitation;
 - b. Existing concentrations of air pollution at the time of the forecast; and
 - c. Historic air pollution concentrations that have been observed during meteorological conditions similar to those that are predicted to occur in the forecast.
11. "Earth materials" means natural materials covering the ground surface, which includes, but are not limited to, dirt, rocks, or soil.
12. "Grading roadways" means mechanically smoothing and compacting the roadway surface.
13. "Irrigation District" means a political subdivision, governed by title 48, chapter 19.
14. "Limit activity" means performing only critical operational or emergency activity on a day forecast to be high risk for dust generation as forecasted by the Pinal County Dust Control Forecast.

Department of Environmental Quality – Air Pollution Control

15. "Major earth moving activities" means the mechanical movement of earth materials to reconstruct, relocate, reshape, reconfigure canals, including operation and maintenance roads and utility access roads.
16. "Maricopa PM nonattainment area" means the Phoenix planning area as defined in 40 CFR 81.303, which is incorporated by reference in R18-2-210.
17. "Minor earth moving activities" means the mechanical movement of earth materials to repair and maintain the existing configuration, location, bank slopes, or inclines of canals.
18. "Muck" means water that is saturated with mud, dirt, and soil, which accumulates over time along the bottom of canals.
19. "Paved Public Road" means any paved roadways that are open to public travel and maintained by a City, County, or the State.
20. "Pinal County PM Nonattainment Area" means the West Pinal PM₁₀ planning area and the West Central PM_{2.5} planning area, as defined in 40 CFR 81.303, and incorporated by reference in R18-2-210.
21. "PM" includes both particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers as measured by a reference method based on 40 CFR 50 Appendix L, or by an equivalent method designated according to 40 CFR 53; and particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by a reference method contained within 40 CFR 50 Appendix J or by an equivalent method designated in accordance with 40 CFR 53, as incorporated by reference in Appendix 2.
22. "Reduce vehicle speed" means reducing PM emissions and soil erosion from the use of vehicles owned or operated by the irrigation district on unpaved operation, maintenance, and utility access roads, at speeds not to exceed 25 mph. This can be achieved through worker behavior modifications, signage, or any other necessary means.
23. "Regulated agricultural activity" means activities of an irrigation district, which affects those lands and facilities that are under the jurisdiction and control of an irrigation district, as described in § 49-457(P)(1)(f) and A.R.S. § 49-457(P)(5)(b).
24. "Regulated area" means a regulated area as defined in A.R.S. § 49-457(P)(6)(c).
25. "Sediment" means muck that has dried after removal from canals.
26. "Supervisory control system" means a system that allows the irrigation district to control operational structures from a remote computer location in order to reduce at least one trip made by vehicles to access structures for operational purposes.
27. "Synthetic or natural particulate suppressant" means reducing PM emissions and wind erosion by providing a stabilized soil surface with organic material, such as muck, animal waste or biosolids, or with a manufactured product such as lignosulfate, calcium chloride, magnesium chloride, an emulsion of a petroleum product, an enzyme product, or polyacrylamide.
28. "Track-out control system" means minimizing any and all material that adheres to and agglomerates on all vehicles and equipment and falls onto paved public roads or shoulders to paved public roads by using a device or system to remove mud or soil from a vehicle or equipment before the vehicle enters a paved public road. Devices such as a grizzly, a gravel pad or a wheel wash system can be used.
29. "Unauthorized use" means any travel or access by non-district personnel in non-district vehicles along roadways under the control of an irrigation district without the permission of the irrigation district.
30. "Unpaved operation and maintenance roads" means unpaved roadways that lay adjacent to canals, which provide access for irrigation district personnel and equipment for direct operation and maintenance of canals, and are under the control of the irrigation district.
31. "Unpaved utility access roads" means unpaved roadways used to provide access to canals, and also includes office and shop facilities, equipment yards, staging areas and other lands under the control of the irrigation district.
32. "Weed management" means reducing at least one trip made by vehicles for the purposes of removing weeds by using a combination of techniques, including organic, chemical, or biological means, to control weeds along canal banks and land surfaces not used for conveying water, excluding unpaved roadways.
33. "Wind barrier" means reducing PM₁₀ emissions and wind erosion by constructing a fence or structure, or providing a woody vegetative barrier by planting a row of trees or shrubs, perpendicular or across the prevailing wind direction to reduce wind speed by changing the pattern of air flow over the land surface. For fences and structures, the wind barrier shall have a density of no less than 50% and the height of the wind barrier must be proportionate to the downwind protected area. The downwind protected area is considered ten times the height of the wind barrier. For vegetative barriers, compliance shall be determined by NRCS Conservation Practice Standard, Code 380, Windbreak/Shelterbelt Establishment, amended through August 21, 2009 (and no future editions).

Historical Note

New Section R18-2-612 renumbered from R18-2-610 at 6 A.A.R. 2009, effective May 12, 2000 (Supp. 00-2). Former Section R18-2-612 renumbered to R18-2-614; new Section R18-2-612 made by final rulemaking at 11 A.A.R. 2210, effective July 18, 2005 (Supp. 05-2). Amended by exempt rulemaking pursuant to Laws 2011, Ch. 214, § 4, at 21 A.A.R. 1156, effective July 2, 2015 (Supp. 15-3).

R18-2-612.01. Agricultural PM General Permit For Irrigation Districts; PM Nonattainment Areas Designated After June 1, 2009

- A. An irrigation district within a PM Nonattainment Area, designated after June 1, 2009, shall implement at least one best management practice from each of the following categories to reduce PM emissions:
 1. Unpaved operation and maintenance roads:
 - a. Access restriction,
 - b. Apply and maintain aggregate cover,
 - c. Install supervisory control system to limit vehicle travel,

Department of Environmental Quality – Air Pollution Control

- d. Limit activity,
 - e. Install signage to limit vehicle speed to 25 mph,
 - f. Post warning signs for unauthorized use at point of entry to roads,
 - g. Reduce vehicle speed,
 - h. Install and maintain a track-out control system,
 - i. Apply and maintain synthetic or natural particulate suppressant,
 - j. Apply and maintain water before, during, and after major and minor earth moving activities,
 - k. Apply and maintain water when grading roadways,
 - l. Use paved non-district or paved public roads to access structures, or
 - m. Install wind barriers.
2. Canals:
- a. Dredge canals while muck or debris is still wet,
 - b. Dispose of muck or debris while still damp,
 - c. Weed management,
 - d. Biological control of aquatic weeds, or
 - e. Apply and maintain water before, during and after major and minor earth moving activities.
3. Unpaved utility access roads:
- a. Access restriction,
 - b. Apply and maintain aggregate cover,
 - c. Limit activity,
 - d. Install signage to limit vehicle speed to 25 mph,
 - e. Post warning signs for unauthorized use at points of entry to roads,
 - f. Reduce vehicle speed,
 - g. Install and maintain a track-out control system,
 - h. Apply and maintain pavement,
 - i. Apply and maintain synthetic or natural particulate suppressant,
 - j. Apply and maintain water before, during and after major and minor earth moving activities,
 - k. Apply and maintain water when grading roadways,
 - l. Use paved non-district or paved public roads to access structures, or
 - m. Install wind barriers.
- B.** From and after December 31, 2015, an irrigation district engaged in a regulated agricultural activity shall complete a Best Management Practices Program General Permit Record Form. Thereafter, a new Best Management Practices Program General Permit Record Form shall be completed every year by March 31. The Form shall be provided to the Director within two business days of notice to the irrigation district. The Best Management Practice Program General Permit Record form shall include the following information:
- 1. The name, business address, and the irrigation district representative responsible for the preparation and implementation of the best management practices;
 - 2. The signature of the irrigation district representative and the date the form was signed; and
 - 3. The best management practice selected for unpaved operation and utility roads, canals, and unpaved utility access roads.
- C.** Beginning in calendar year 2017, and no more than once every subsequent three calendar years, the Director, in conjunction with the Arizona Department of Agriculture, shall provide the irrigation district with a Best Management Practices Program 3-year Survey. The irrigation district shall complete the Survey with data from the preceding calendar year and submit the Survey to the Arizona Department of Agriculture (ADA) by January 31, 2018, and every three years thereafter. The Survey information submitted to the ADA shall be compiled by the ADA then be submitted to the Department. The 3-year Survey shall include the following information:
- 1. The name, business address, and phone number of the irrigation district representative responsible for the preparation and implementation of the best management practices;
 - 2. The signature of the irrigation district representative and the date the form was signed;
 - 3. The total miles of canals that the irrigation district controls;
 - 4. The total miles of unpaved operation and maintenance roads;
 - 5. The total miles of the unpaved utility access roads; and
 - 6. The best management practices selected for unpaved operation and utility roads, canals, and unpaved utility access roads.
- D.** Records of any changes to those Best Management Practices shall be noted on the Best Management Practices Program General Permit Record Form and shall be kept by the irrigation district onsite and made available for review by the Director within two business days of notice to the irrigation district by the Department.
- E.** An irrigation district may develop different practices not contained in either of the categories of subsection (A)(1), (A)(2), or (A)(3) that reduce PM and may submit such practices that are proven effective through in-district trials. The proposed new practices shall not become effective unless submitted as described in A.R.S. § 49-457(L).
- F.** An irrigation district shall maintain a record demonstrating compliance with this Section for three years. Records shall include a copy of the complete Best Management Practice Program General Permit Record Form to confirm implementation of each best management practice.
- G.** The Director shall not assess a fee to an irrigation district for coverage under the agricultural PM general permit.
- H.** An irrigation district shall ensure that the implementation of all selected best management practices does not violate any other local, state, or federal law.
- I.** The Director shall document noncompliance with this Section before issuing a compliance order.
- J.** An irrigation district that is not in compliance with this Section is subject to the provisions in A.R.S. § 49-457(I), (J), and (K).

Department of Environmental Quality – Air Pollution Control

Historical Note

New Section made by exempt rulemaking pursuant to Laws 2011, Ch. 214, § 4, at 21 A.A.R. 1156, effective July 2, 2015 (Supp. 15-3).

R18-2-613. Definitions for R18-2-613.01

1. "Access restriction" means restricting or eliminating public access to noncropland with signs or physical obstruction.
2. "Aggregate cover" means gravel, concrete, recycled road base, caliche, or other similar material applied to noncropland.
3. "Artificial wind barrier" means a physical barrier to the wind.
4. "Bed row spacing" means increasing or decreasing the size of a planting bed area to reduce the number of passes and soil disturbance by increasing plant density.
5. "Best management practice" means a technique verified by scientific research, that on a case-by-case basis is practical, economically feasible, and effective in reducing PM₁₀ emissions from a regulated agricultural activity.
6. "Chemical irrigation" means applying a fertilizer, pesticide, or other agricultural chemical to cropland through an irrigation system.
7. "Combining tractor operations" means performing two or more tillage, cultivation, planting, or harvesting operations with a single tractor or harvester pass.
8. "Commercial farm" means 10 or more contiguous acres of land used for agricultural purposes within the boundary of the Yuma PM₁₀ nonattainment area.
9. "Commercial farmer" means an individual, entity, or joint operation in general control of a commercial farm.
10. "Conservation irrigation" means the use of drips, sprinklers, or underground lines to conserve water, and to reduce the weed population, the need for tillage, and soil compaction.
11. "Conservation tillage" means types of tillage that reduce the number of passes and the amount of soil disturbance.
12. "Cover crop" means plants or a green manure crop grown for seasonal soil protection or soil improvement.
13. "Critical area planting" means using trees, shrubs, vines, grasses, or other vegetative cover on noncropland.
14. "Cropland" means land on a commercial farm that:
 - a. Is within the time-frame of final harvest to plant emergence;
 - b. Has been tilled in a prior year and is suitable for crop production, but is currently fallow; or
 - c. Is a turn-row.
15. "Cross-wind ridges" means soil ridges formed by a tillage operation.
16. "Cross-wind strip-cropping" means planting strips of alternating crops within the same field.
17. "Cross-wind vegetative strips" means herbaceous cover established in one or more strips within the same field.
18. "Equipment modification" means modifying agricultural equipment to prevent or reduce particulate matter generation from cropland.
19. "Limited activity during a high-wind event" means performing no tillage or soil preparation activity when the measured wind speed at six feet in height is more than 25 mph at the commercial farm site.
20. "Manure application" means applying animal waste or biosolids to a soil surface.
21. "Mulching" means applying plant residue or other material that is not produced onsite to a soil surface.
22. "Multi-year crop" means a crop, pasture, or orchard that is grown, or will be grown, on a continuous basis for more than one year.
23. "Night farming" means performing regulated agricultural activities at night when moisture levels are higher and winds are lighter.
24. "Noncropland" means any commercial farmland that:
 - a. Is no longer used for agricultural production;
 - b. Is no longer suitable for production of crops;
 - c. Is subject to a restrictive easement or contract that prohibits use for the production of crops; or
 - d. Includes a private farm road, ditch, ditch bank, equipment yard, storage yard, or well head.
25. "Permanent cover" means a perennial vegetative cover on cropland.
26. "Planting based on soil moisture" means applying water to soil before performing planting operations.
27. "Precision farming" means use of satellite navigation to calculate position in the field, to reduce overlap during field operations, and allow operations to occur during nighttime and inclement weather, thus generating less PM₁₀.
28. "Reduce vehicle speed" means operating farm vehicles or farm equipment on unpaved farm roads at speeds not to exceed 20 mph.
29. "Reduced harvest activity" means reducing the number of harvest passes using a mechanized method to cut and remove crops from a field.
30. "Regulated agricultural activity" means a commercial farming practice that may produce PM₁₀ within the Yuma PM₁₀ nonattainment area.
31. "Residue management" means managing the amount and distribution of crop and other plant residues on a soil surface.
32. "Sequential cropping" means growing crops in a sequence that minimizes the amount of time bare soil is exposed on a field.
33. "Surface roughening" means manipulating a soil surface to produce or maintain clods.
34. "Synthetic particulate suppressant" means a manufactured product such as lignosulfate, calcium chloride, magnesium chloride, and polyacrylamide, an emulsion of a petroleum product, and an enzyme product that is used to control particulate matter.

Department of Environmental Quality – Air Pollution Control

35. "Tillage and harvest" means any mechanical practice that physically disturbs cropland or crops on a commercial farm.
36. "Tillage based on soil moisture" means applying water to soil before or during tillage, or delaying tillage to coincide with precipitation.
37. "Timing of a tillage operation" means performing tillage operations at a time that will minimize the soil's susceptibility to generate PM₁₀.
38. "Transgenic crops" means the use of genetically modified crops such as "herbicide ready" crops, which reduces the need for tillage or cultivation operations, and reduces soil disturbance.
39. "Track-out control system" means a device to remove mud or soil from a vehicle before the vehicle enters a paved public road.
40. "Tree, shrub, or windbreak planting" means providing a woody vegetative barrier to the wind.
41. "Watering" means applying water to noncropland.
42. "Yuma PM₁₀ nonattainment area" means the Yuma PM₁₀ planning area as defined in 40 CFR 81.303, which is incorporated by reference in R18-2-210.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 2210, effective July 18, 2005 (Supp. 05-2). Section R18-2-313 renumbered to R18-2-313.01; new Section made by exempt rulemaking pursuant to Laws 2011, Ch. 214, § 4, at 21 A.A.R. 1156, effective July 2, 2015 (Supp. 15-3).

R18-2-613.01. Yuma PM₁₀ Nonattainment Area; Agricultural Best Management Practices

- A. A commercial farmer shall comply with this Section by August 1, 2005.
- B. A commercial farmer who begins a regulated agricultural activity after August 1, 2005, shall comply with this Section within 60 days after beginning the regulated agricultural activity.
- C. A commercial farmer shall implement at least one of the best management practices from each of the following categories at each commercial farm:
 1. Tillage and harvest, subsection (E);
 2. Noncropland, subsection (F); and
 3. Cropland, subsection (G).
- D. A commercial farmer shall ensure that the implementation of each selected best management practice does not violate any other local, state, or federal law.
- E. A commercial farmer shall implement at least one of the following best management practices to reduce PM₁₀ emissions from tillage and harvest:
 1. Bed row spacing,
 2. Chemical irrigation,
 3. Combining tractor operations,
 4. Conservation irrigation,
 5. Conservation tillage,
 6. Equipment modification,
 7. Limited activity during a high-wind event,
 8. Multi-year crop,
 9. Night farming,
 10. Planting based on soil moisture,
 11. Precision farming,
 12. Reduced harvest activity,
 13. Tillage based on soil moisture,
 14. Timing of a tillage operation, or
 15. Transgenic crops.
- F. A commercial farmer shall implement at least one of the following best management practices to reduce PM₁₀ emissions from non-cropland:
 1. Access restriction;
 2. Aggregate cover;
 3. Artificial wind barrier;
 4. Critical area planting;
 5. Manure application;
 6. Reduce vehicle speed;
 7. Synthetic particulate suppressant;
 8. Track-out control system;
 9. Tree, shrub, or windbreak planting; or
 10. Watering.
- G. A commercial farmer shall implement at least one of the following best management practices to reduce PM₁₀ emissions from cropland:
 1. Artificial wind barrier;
 2. Cover crop;
 3. Cross-wind ridges;
 4. Cross-wind strip-cropping;

Department of Environmental Quality – Air Pollution Control

5. Cross-wind vegetative strips;
 6. Manure application;
 7. Mulching;
 8. Multi-year crop;
 9. Permanent cover;
 10. Planting based on soil moisture;
 11. Precision farming;
 12. Residue management;
 13. Sequential cropping;
 14. Surface roughening; or
 15. Tree, shrub, or windbreak planting.
- H.** A person may develop different practices not contained in subsections (E), (F), or (G) that reduce PM₁₀. A person may submit practices that are proven effective through demonstration trials to the Director. The Director shall review the submitted practices.
- I.** A commercial farmer shall maintain records demonstrating compliance with this Section. The commercial farmer shall provide the records to the Director within two business days of written notice to the commercial farmer. The records shall contain:
1. The name of the commercial farmer,
 2. The mailing address or physical location of the commercial farm, and
 3. The best management practices selected for tillage and harvest, noncropland, and cropland by the commercial farmer, and the date each best management practice was implemented.

Historical Note

New Section R18-2-313.01 renumbered from Section R18-2-313 by exempt rulemaking pursuant to Laws 2011, Ch. 214, § 4, at 21 A.A.R. 1156, effective July 2, 2015 (Supp. 15-3).

R18-2-614. Evaluation of Nonpoint Source Emissions

Opacity of an emission from any nonpoint source shall not be greater than 40% measured according to the 40 CFR 60, Appendix A, Reference Method 9. An open fire permitted under R18-2-602 or regulated under Article 15 is exempt from this requirement.

Historical Note

Section R18-2-614 renumbered from R18-2-612; amended by final rulemaking at 11 A.A.R. 2210, effective July 18, 2005 (Supp. 05-2). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2).

ARTICLE 8. EMISSIONS FROM MOBILE SOURCES (NEW AND EXISTING)**R18-2-801. Classification of Mobile Sources**

- A.** This Article is applicable to mobile sources which either move while emitting air contaminants or are frequently moved during the course of their utilization but are not classified as motor vehicles, agricultural vehicles, or agricultural equipment used in normal farm operations.
- B.** Unless otherwise specified, no mobile source shall emit smoke or dust the opacity of which exceeds 40%.

Historical Note

Adopted effective February 26, 1988 (Supp. 88-1). Amended effective September 26, 1990 (Supp. 90-3). Amended effective February 3, 1993 (Supp. 93-1). Former Section R18-2-801 renumbered to Section R18-2-901, new Section R18-2-801 renumbered from R18-2-601 effective November 15, 1993 (Supp. 93-4).

R18-2-802. Off-road Machinery

- A.** No person shall cause, allow or permit to be emitted into the atmosphere from any off-road machinery, smoke for any period greater than 10 consecutive seconds, the opacity of which exceeds 40%. Visible emissions when starting cold equipment shall be exempt from this requirement for the first 10 minutes.
- B.** Off-road machinery shall include trucks, graders, scrapers, rollers, locomotives and other construction and mining machinery not normally driven on a completed public roadway.

Historical Note

Adopted effective February 26, 1988 (Supp. 88-1). Amended effective September 26, 1990 (Supp. 90-3). Former Section R18-2-802 renumbered to Section R18-2-902, new Section R18-2-802 renumbered from R18-2-602 effective November 15, 1993 (Supp. 93-4).

R18-2-803. Heater-planer Units

No person shall cause, allow or permit to be emitted into the atmosphere from any heater-planer operated for the purpose of reconstructing asphalt pavements smoke the opacity of which exceeds 20%. However three minutes' upset time in any one hour shall not constitute a violation of this Section.

Historical Note

Adopted effective February 26, 1988 (Supp. 88-1). Amended effective September 26, 1990 (Supp. 90-3). Former Section R18-2-803

Department of Environmental Quality – Air Pollution Control

renumbered to Section R18-2-903, new Section R18-2-803 renumbered from R18-2-603 effective November 15, 1993 (Supp. 93-4).

R18-2-804. Roadway and Site Cleaning Machinery

- A. No person shall cause, allow or permit to be emitted into the atmosphere from any roadway and site cleaning machinery smoke or dust for any period greater than 10 consecutive seconds, the opacity of which exceeds 40%. Visible emissions when starting cold equipment shall be exempt from this requirement for the first 10 minutes.
- B. In addition to complying with subsection (A), no person shall cause, allow or permit the cleaning of any site, roadway, or alley without taking reasonable precautions to prevent particulate matter from becoming airborne. Reasonable precautions may include applying dust suppressants. Earth or other material shall be removed from paved streets onto which earth or other material has been transported by trucking or earth moving equipment, erosion by water or by other means.

Historical Note

Adopted effective February 26, 1988 (Supp. 88-1). Amended effective September 26, 1990 (Supp. 90-3). Amended effective February 3, 1993 (Supp. 93-1). Former Section R18-2-804 renumbered to Section R18-2-904, new Section R18-2-804 renumbered from R18-2-604 effective November 15, 1993 (Supp. 93-4).

R18-2-805. Asphalt or Tar Kettles

- A. No person shall cause, allow or permit to be emitted into the atmosphere from any asphalt or tar kettle smoke for any period greater than 10 consecutive seconds, the opacity of which exceeds 40%.
- B. In addition to complying with subsection (A), no person shall cause, allow or permit the operation of an asphalt or tar kettle without minimizing air contaminant emissions by utilizing all of the following control measures:
 1. The control of temperature recommended by the asphalt or tar manufacturer;
 2. The operation of the kettle with lid closed except when charging;
 3. The pumping of asphalt from the kettle or the drawing of asphalt through cocks with no dipping;
 4. The dipping of tar in an approved manner;
 5. The maintaining of the kettle in clean, properly adjusted, and good operating condition;
 6. The firing of the kettle with liquid petroleum gas or other fuels acceptable to the Director.

Historical Note

Adopted effective February 26, 1988 (Supp. 88-1). Amended effective September 26, 1990 (Supp. 90-3). Former Section R18-2-805 renumbered to Section R18-2-905, new Section R18-2-805 renumbered from R18-2-605 effective November 15, 1993 (Supp. 93-4).

ARTICLE 12. EMISSIONS BANK**R18-2-1201. Definitions**

In addition to the definitions contained in Article 1 of this Chapter, and A.R.S. § 49-401.01, the following definitions apply to this Article:

1. "Certified credit" means an emission reduction credit that meets the criteria under R18-2-1205.
2. "Conditional credit" means an emission reduction credit that is in the review process before qualifying for certification under R18-2-1205.
3. "Credit generation" means the process by which a source obtains emission reduction credits for eventual listing in the registry.
4. "Credit retirement" means a person's purchase of a banked emission reduction credit for the purpose of permanent removal from the emissions bank.
5. "Credit utilization" means the use of a certified emission reduction credit.
6. "Credit withdrawal" means the removal of an emission reduction credit from the bank by the source originally depositing the emission reduction credit.
7. "Emission reduction credit" or "credit" means a certified unit that may be banked, sold, transferred, withdrawn, or retired.
8. "Permitting authority" means the state or county that has jurisdiction over a source under A.R.S. § 49-402 and may review, issue, revise, administer, and enforce a permit; and certify a credit under this Article.
9. "Registry" means the location where emission reduction credits are posted for the purpose of public notice, allowing a person to determine the availability of credits for related market transactions.
10. "Surplus" means the amount of a permitted source's emission reduction that is not required by federal, state, or local law.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 1815, effective March 18, 2002 (Supp. 02-1).

R18-2-1202. Applicability

The provisions of this Article apply to permitted sources emitting particulate matter, sulfur dioxide, carbon monoxide, nitrogen oxides, or volatile organic compounds. The provisions of this Article shall not apply to sources granted authority to operate under 18 A.A.C. 2, Article 5.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 1815, effective March 18, 2002 (Supp. 02-1).

R18-2-1203. Emissions Bank Administration

Department of Environmental Quality – Air Pollution Control

- A. The Director shall place an emission reduction credit in the emissions bank credit registry upon conditional certification, certification, pending use, and final disposition. For each credit, the Director shall place in the registry:
 1. Source's contact name and information;
 2. Source name and information;
 3. Amount and type of pollutant;
 4. Date of emission reduction and credit status.
- B. The Director shall issue a certificate of deposit to the reducing source for each certified credit deposited in the bank, and issue a certificate of retirement to a person for each certified credit permanently retired.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 1815, effective March 18, 2002 (Supp. 02-1).

R18-2-1204. Credit Generation

- A. A source wanting to generate an emission reduction for deposit into the bank shall submit a Credit Generation Application (CGA) to the Director on a form prescribed by the Director. The CGA shall contain:
 1. The company name;
 2. The company mailing address;
 3. The owner, co-owner, or partner;
 4. The contact person name, title, and telephone number;
 5. The permitted source name, location, permit number, and industry code;
 6. The pollutant;
 7. The attainment status of the area where the source is located;
 8. The amount of actual emissions reduced;
 9. The date of emission reduction to be credited;
 10. The description of emission reduction credit generation activity;
 11. The signature of and verification of truthfulness and accuracy by a responsible official as defined in R18-2-301(17);
 12. The name, title, and telephone number of the responsible official.

The source shall submit a copy of the CGA to the permitting authority with an application to revise the permit or request to terminate the permit.
- B. Upon receipt by the Director of the CGA with a check for the administrative fee specified in R18-2-1208(A), the Director shall list each conditional credit in the registry.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 1815, effective March 18, 2002 (Supp. 02-1).

R18-2-1205. Credit Certification

- A. A permitting authority may certify an emission credit if the permitting authority verifies the credit is based on:
 1. A reduction in actual emissions that occurred after August 17, 1999;
 2. A quantifiable reduction in actual emissions;
 3. A permanent reduction in actual emissions;
 4. An enforceable reduction in actual emissions; and
 5. A surplus reduction in actual emissions occurring in addition to any other required emission reduction.
- B. The source must notify the permitting authority when the reduction occurs.
- C. In order for an emission reduction to be quantifiable under this Section:
 1. The emission reduction must be quantifiable under R18-2-301(17); and
 2. The reducing source shall submit documentation of any testing or monitoring that demonstrates an emission reduction.
- D. The permitting authority shall certify one emission reduction credit for each ton per year of particulate matter, sulfur dioxide, carbon monoxide, nitrogen dioxide, or volatile organic compound actually reduced.
- E. A banked credit does not expire.
- F. The permitting authority shall notify the source and the Director that a credit is certified. Upon receipt of the notice, the Director shall issue a certificate for each certified credit to the applicant identified in R18-2-1204, and list the certified credit in the registry.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 1815, effective March 18, 2002 (Supp. 02-1). Amended by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1).

R18-2-1206. Credit Utilization

- A. A source may use a certified emission reduction credit in the same nonattainment area, maintenance area, or modeling domain in which the emission reduction occurred by submitting a Credit Utilization Application (CUA) to the Director on a form prescribed by the Director. The CUA shall contain:
 1. The name and mailing address of the source that generated the credit;
 2. The owner, co-owner, or partner of the source that generated the credit;

Department of Environmental Quality – Air Pollution Control

3. The contact person name, title, telephone number of the source that generated the credit;
 4. The name and mailing address of the source utilizing the credit;
 5. The owner, co-owner, or partner of the source utilizing the credit;
 6. The contact person name, title, telephone number of the source utilizing the credit;
 7. The purpose of the utilization;
 8. The pollutant;
 9. The amount of emission reduction credit to be utilized;
 10. Each emission reduction credit certificate number;
 11. The signature of and verification of truthfulness and accuracy by a responsible official as defined in R18-2-301(17); and
 12. The name, title, and telephone number of the responsible official.
- The source shall submit a copy of the CUA to the permitting authority at the time the source submits an application for a permit or permit revision.
- B.** Upon receipt by the Director of the CUA with a check for the administrative fee specified in R18-2-1208(B), the Director shall list the pending sale in the registry.
 - C.** The Director shall not list the final sale in the registry until:
 1. The permitting authority evaluates and verifies the authenticity of the credit with the emissions bank;
 2. The permitting authority determines that there will be no adverse impact on air quality; and
 3. The permitting authority completes the permitting action and submits the credit certificate to the Director.
 - D.** After the permitting authority notifies the Director that the requirements of this Section have been met, the Director shall delist the credits in the registry.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 1815, effective March 18, 2002 (Supp. 02-1).

R18-2-1207. Credit Withdrawal

Any party purchasing certified credits listed in the emissions bank for the purpose of credit retirement, or any source withdrawing its own credits from the emissions bank, shall submit a CUA specified in R18-2-1204(A) with the surrendered certificates to the Director. Upon receipt of the CUA and surrendered certificates, the Director shall delist the credits in the registry.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 1815, effective March 18, 2002 (Supp. 02-1).

R18-2-1208. Fees

- A.** A source generating a credit shall pay a non-refundable administrative fee of \$200.00 to the Director when submitting the CGA. This fee is in addition to the fees specified in R18-2-326.
- B.** A source utilizing a credit shall pay a non-refundable administrative fee of \$200.00 to the Director when submitting the CUA. This fee is in addition to the fees specified in R18-2-326.
- C.** The Director shall not assess an administrative fee to a person:
 1. Purchasing a credit for retirement;
 2. Amending ownership information contained in the registry; or
 3. Withdrawing a credit from the bank.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 1815, effective March 18, 2002 (Supp. 02-1).

49-104. Powers and duties of the department and director

A. The department shall:

1. Formulate policies, plans and programs to implement this title to protect the environment.
2. Stimulate and encourage all local, state, regional and federal governmental agencies and all private persons and enterprises that have similar and related objectives and purposes, cooperate with those agencies, persons and enterprises and correlate department plans, programs and operations with those of the agencies, persons and enterprises.
3. Conduct research on its own initiative or at the request of the governor, the legislature or state or local agencies pertaining to any department objectives.
4. Provide information and advice on request of any local, state or federal agencies and private persons and business enterprises on matters within the scope of the department.
5. Consult with and make recommendations to the governor and the legislature on all matters concerning department objectives.
6. Promote and coordinate the management of air resources to ensure their protection, enhancement and balanced utilization consistent with the environmental policy of this state.
7. Promote and coordinate the protection and enhancement of the quality of water resources consistent with the environmental policy of this state.
8. Encourage industrial, commercial, residential and community development that maximizes environmental benefits and minimizes the effects of less desirable environmental conditions.
9. Ensure the preservation and enhancement of natural beauty and man-made scenic qualities.
10. Provide for the prevention and abatement of all water and air pollution including that related to particulates, gases, dust, vapors, noise, radiation, odor, nutrients and heated liquids in accordance with article 3 of this chapter and chapters 2 and 3 of this title.
11. Promote and recommend methods for the recovery, recycling and reuse or, if recycling is not possible, the disposal of solid wastes consistent with sound health, scenic and environmental quality policies. Beginning in 2014, the department shall report annually on its revenues and expenditures relating to the solid and hazardous waste programs overseen or administered by the department.
12. Prevent pollution through the regulation of the storage, handling and transportation of solids, liquids and gases that may cause or contribute to pollution.
13. Promote the restoration and reclamation of degraded or despoiled areas and natural resources.
14. Assist the department of health services in recruiting and training state, local and district health department personnel.
15. Participate in the state civil defense program and develop the necessary organization and facilities to meet wartime or other disasters.
16. 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.
17. Unless specifically authorized by the legislature, ensure that state laws, rules, standards, permits, variances and orders are adopted and construed to be consistent with and no more stringent than the corresponding federal law that addresses the same subject matter. This paragraph shall not be construed to adversely affect standards adopted by an Indian tribe under federal law.
18. Provide administrative and staff support for the oil and gas conservation commission.

B. The department, through the director, shall:

1. Contract for the services of outside advisers, consultants and aides reasonably necessary or desirable to enable the department to adequately perform its duties.
2. Contract and incur obligations reasonably necessary or desirable within the general scope of department activities and operations to enable the department to adequately perform its duties.
3. Utilize any medium of communication, publication and exhibition when disseminating information, advertising and publicity in any field of its purposes, objectives or duties.
4. Adopt procedural rules that are necessary to implement the authority granted under this title, but that are not inconsistent with other provisions of this title.
5. Contract with other agencies, including laboratories, in furthering any department program.
6. Use monies, facilities or services to provide matching contributions under federal or other programs that further the objectives and programs of the department.
7. Accept gifts, grants, matching monies or direct payments from public or private agencies or private persons and enterprises for department services and publications and to conduct programs that are consistent with the general purposes

and objectives of this chapter. Monies received pursuant to this paragraph shall be deposited in the department fund corresponding to the service, publication or program provided.

8. Provide for the examination of any premises if the director has reasonable cause to believe that a violation of any environmental law or rule exists or is being committed on the premises. The director shall give the owner or operator the opportunity for its representative to accompany the director on an examination of those premises. Within forty-five days after the date of the examination, the department shall provide to the owner or operator a copy of any report produced as a result of any examination of the premises.

9. Supervise sanitary engineering facilities and projects in this state, authority for which is vested in the department, and own or lease land on which sanitary engineering facilities are located, and operate the facilities, if the director determines that owning, leasing or operating is necessary for the public health, safety or welfare.

10. Adopt and enforce rules relating to approving design documents for constructing, improving and operating sanitary engineering and other facilities for disposing of solid, liquid or gaseous deleterious matter.

11. Define and prescribe reasonably necessary rules regarding the water supply, sewage disposal and garbage collection and disposal for subdivisions. The rules shall:

(a) Provide for minimum sanitary facilities to be installed in the subdivision and may require that water systems plan for future needs and be of adequate size and capacity to deliver specified minimum quantities of drinking water and to treat all sewage.

(b) Provide that the design documents showing or describing the water supply, sewage disposal and garbage collection facilities be submitted with a fee to the department for review and that no lots in any subdivision be offered for sale before compliance with the standards and rules has been demonstrated by approval of the design documents by the department.

12. Prescribe reasonably necessary measures to prevent pollution of water used in public or semipublic swimming pools and bathing places and to prevent deleterious conditions at such places. The rules shall prescribe minimum standards for the design of and for sanitary conditions at any public or semipublic swimming pool or bathing place and provide for abatement as public nuisances of premises and facilities that do not comply with the minimum standards. The rules shall be developed in cooperation with the director of the department of health services and shall be consistent with the rules adopted by the director of the department of health services pursuant to section 36-136, subsection I, paragraph 10.

13. Prescribe reasonable rules regarding sewage collection, treatment, disposal and reclamation systems to prevent the transmission of sewage borne or insect borne diseases. The rules shall:

(a) Prescribe minimum standards for the design of sewage collection systems and treatment, disposal and reclamation systems and for operating the systems.

(b) Provide for inspecting the premises, systems and installations and for abating as a public nuisance any collection system, process, treatment plant, disposal system or reclamation system that does not comply with the minimum standards.

(c) Require that design documents for all sewage collection systems, sewage collection system extensions, treatment plants, processes, devices, equipment, disposal systems, on-site wastewater treatment facilities and reclamation systems be submitted with a fee for review to the department and may require that the design documents anticipate and provide for future sewage treatment needs.

(d) Require that construction, reconstruction, installation or initiation of any sewage collection system, sewage collection system extension, treatment plant, process, device, equipment, disposal system, on-site wastewater treatment facility or reclamation system conform with applicable requirements.

14. Prescribe reasonably necessary rules regarding excreta storage, handling, treatment, transportation and disposal. The rules may:

(a) Prescribe minimum standards for human excreta storage, handling, treatment, transportation and disposal and shall provide for inspection of premises, processes and vehicles and for abating as public nuisances any premises, processes or vehicles that do not comply with the minimum standards.

(b) Provide that vehicles transporting human excreta from privies, septic tanks, cesspools and other treatment processes shall be licensed by the department subject to compliance with the rules. The department may require payment of a fee as a condition of licensure. The department may establish by rule a fee as a condition of licensure, including a maximum fee. As part of the rulemaking process, there must be public notice and comment and a review of the rule by the joint legislative budget committee. After September 30, 2013, the department shall not increase that fee by rule without specific statutory authority for the increase. The fees shall be deposited, pursuant to sections 35-146 and 35-147, in the solid waste fee fund established by section 49-881.

15. Perform the responsibilities of implementing and maintaining a data automation management system to support the reporting requirements of title III of the superfund amendments and reauthorization act of 1986 (P.L. 99-499) and article 2 of this chapter.

16. Approve remediation levels pursuant to article 4 of this chapter.

17. Establish or revise fees by rule pursuant to the authority granted under title 44, chapter 9, article 8 and chapters 4 and 5 of this title for the department to adequately perform its duties. All fees shall be fairly assessed and impose the least burden and cost to the parties subject to the fees. In establishing or revising fees, the department shall base the fees on:

- (a) The direct and indirect costs of the department's relevant duties, including employee salaries and benefits, professional and outside services, equipment, in-state travel and other necessary operational expenses directly related to issuing licenses as defined in title 41, chapter 6 and enforcing the requirements of the applicable regulatory program.
- (b) The availability of other funds for the duties performed.
- (c) The impact of the fees on the parties subject to the fees.
- (d) The fees charged for similar duties performed by the department, other agencies and the private sector.

18. Appoint a person with a background in oil and gas conservation to act on behalf of the oil and gas conservation commission and administer and enforce the applicable provisions of title 27, chapter 4 relating to the oil and gas conservation commission.

C. The department may:

1. Charge fees to cover the costs of all permits and inspections it performs to ensure compliance with rules adopted under section 49-203, except that state agencies are exempt from paying the fees. Monies collected pursuant to this subsection shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality fee fund established by section 49-210.
2. Contract with private consultants for the purposes of assisting the department in reviewing applications for licenses, permits or other authorizations to determine whether an applicant meets the criteria for issuance of the license, permit or other authorization. If the department contracts with a consultant under this paragraph, an applicant may request that the department expedite the application review by requesting that the department use the services of the consultant and by agreeing to pay the department the costs of the consultant's services. Notwithstanding any other law, monies paid by applicants for expedited reviews pursuant to this paragraph are appropriated to the department for use in paying consultants for services.

D. The director may:

1. If the director has reasonable cause to believe that a violation of any environmental law or rule exists or is being committed, inspect any person or property in transit through this state and any vehicle in which the person or property is being transported and detain or disinfect the person, property or vehicle as reasonably necessary to protect the environment if a violation exists.
2. Authorize in writing any qualified officer or employee in the department to perform any act that the director is authorized or required to do by law.

49-401. Declaration of policy

A. The legislature finds and declares that air pollution exists with varying degrees of severity within the state, such air pollution is potentially and in some cases actually dangerous to the health of the citizenry, often causes physical discomfort, injury to property and property values, discourages recreational and other uses of the state's resources and is esthetically unappealing. The legislature by this act intends to exercise the police power of this state in a coordinated state-wide program to control present and future sources of emission of air contaminants to the end that air polluting activities of every type shall be regulated in a manner that insures the health, safety and general welfare of all the citizens of the state; protects property values and protects plant and animal life. The legislature further intends to place primary responsibility for air pollution control and abatement in the department of environmental quality and the hearing board created thereunder. However, counties shall have the right to control local air pollution problems as specifically provided herein.

B. It is further declared to be the policy of this state that no further degradation of the air in the state of Arizona by any industrial polluters shall be tolerated. Those industries emitting pollutants in the excess of the emission standard set by the director of environmental quality shall bring their operations into conformity with the standards with all due speed. A new industry hereinafter established shall not begin normal operation until it has secured a permit attesting that its operation will not cause pollution in excess of the standards set by the director of environmental quality.

49-404. State implementation plan

A. The director shall maintain a state implementation plan that provides for implementation, maintenance and enforcement of national ambient air quality standards and protection of visibility as required by the clean air act.

B. The director may adopt rules that describe procedures for adoption of revisions to the state implementation plan.

C. The state implementation plan and all revisions adopted before September 30, 1992 remain in effect according to their terms, except to the extent otherwise provided by the clean air act, inconsistent with any provision of the clean air act, or revised by the administrator. No control requirement in effect, or required to be adopted by an order, settlement agreement or plan in effect, before the enactment of the clean air act in any area which is a nonattainment or maintenance area for

any air pollutant may be modified after enactment in any manner unless the modification insures equivalent or greater emission reductions of the air pollutant. The director shall evaluate and adopt revisions to the plan in conformity with federal regulations and guidelines promulgated by the administrator for those purposes until the rules required by subsection B are effective.

49-422. Powers and duties

A. In addition to any other powers vested in it by law, the department may:

1. Accept, receive and administer grants or other funds or gifts from public and private agencies, including the federal government, to carry out any of the purposes of this chapter. All monies resulting therefrom shall be deposited, pursuant to sections 35-146 and 35-147, in the account of the department.
2. Secure necessary scientific, technical, administrative and operational services, including laboratory facilities, by contract or otherwise to carry out the purposes of this chapter.
3. Require, as specified in subsections B and C of this section, any source of air contaminants to monitor, sample or perform other studies to quantify emissions of air contaminants or levels of air pollution that may reasonably be attributable to that source, if the director either:
 - (a) Determines that monitoring, sampling or other studies are necessary to determine the effects of the source on levels of air pollution.
 - (b) Has reasonable cause to believe a violation of this chapter, rules adopted pursuant to this chapter or a permit issued pursuant to this chapter has been committed.
 - (c) Determines that those studies or data are necessary to accomplish the purposes of this chapter, and that the monitoring, sampling or other studies by the source are necessary in order to assess the impact of the source on the emission of air contaminants.

B. The director shall adopt rules requiring sources of air contaminants to monitor, sample or otherwise quantify their emissions of air pollution that may reasonably be attributable to such sources for air contaminants for which ambient air quality standards or emission standards or design, equipment, work practice or operational standards have been adopted pursuant to section 49-424 or section 49-425, subsection A. In the development of the rules, the director shall consider the cost and effectiveness of the monitoring, sampling or other studies.

C. For those sources of air contaminants for which rules are not required to be adopted pursuant to subsection B of this section, the director may require a source of air contaminants, by permit or order, to perform monitoring, sampling or other quantification of its emissions or air pollution that may reasonably be attributed to such a source. Before requiring such monitoring, sampling or other quantification by permit or order, the director shall consider the relative cost and accuracy of any alternatives that may be reasonable under the circumstances such as emission factors, modeling, mass balance analyses or emissions projections. The director may require such monitoring, sampling or other quantification by permit or order if the director determines in writing that all of the following conditions are met:

1. The actual or potential emissions or air pollution may adversely affect public health or the environment.
2. A monitoring, sampling or quantification method is technically feasible for the subject contaminant and the source.
3. An adequate scientific basis for the monitoring, sampling or quantification method exists.
4. The monitoring, sampling or quantification method is reasonably accurate.
5. The cost of the method is reasonable in light of the use to be made of the data.

D. In determining the frequency and duration of monitoring, sampling or quantification of emissions under subsections B and C of this section, the director shall consider the five factors prescribed in subsection C of this section and the level of emissions from the source.

E. Orders issued and permit conditions imposed pursuant to this section may be appealed as appealable agency actions pursuant to title 41, chapter 6, article 10.

F. On request of the on-scene commander or the department of health services, the department of environmental quality shall assist at a significant chemical or other toxic fire event, excluding chemical or nuclear warfare or biological agents, and shall provide the following services if funding is available and if the director, in the director's professional capacity, determines the department's provision of services is necessary to protect human health and the environment:

1. Collect air samples for likely contaminants resulting from the fire. The department of environmental quality shall coordinate sampling locations, times and pollutants to be sampled with the department of health services and other appropriate health and emergency response officials.
2. Maintain an hourly plume report that includes meteorological conditions that affect dispersal of smoke.
3. In consultation with the department of health services and the on-scene coordinator, prepare a report that includes test results of any sampling, including the sampling rationale and protocol and chain of custody report using applicable environmental protection agency standards. The report shall also include, to the extent practicable, a smoke dispersion map with detail adequate to determine possible areas of impact at the level of detail practicable and a listing of likely

releases of any chemical that is categorized by the United States environmental protection agency as a hazardous air pollutant and the corresponding environmental protection agency description of possible health effects of the chemical based on a reliable inventory of hazardous materials at the site or facility.

49-424. Duties of department

The department shall:

1. Determine whether the meteorology of the state is such that airsheds can be reasonably identified and air pollution, therefore, can be controlled by establishing air pollution control districts within well defined geographical areas.
2. Make continuing determinations of the quantity and nature of emissions of air contaminants, topography, wind and temperature conditions, possible chemical reactions in the atmosphere, the character of development of the various areas of the state, the economic effect of remedial measures on the various areas of the state, the availability, use and economic feasibility of air-cleaning devices, the effect on human health and danger to property from air contaminants, the effect on industrial operations of remedial measures and other matters necessary to arrive at a better understanding of air pollution and its control. In a county with a population in excess of one million two hundred thousand persons, the department shall locate a monitoring system in at least two remote geographic sites.
3. Establish substantive policy statements for identifying air quality exceptional events that take into consideration this state's unique geological, geographical and climatological conditions and any other unusual circumstances. These substantive policy statements shall be developed with the planning agency certified pursuant to section 49-406, subsection A and the county air pollution control department or district.
4. Determine the standards for the quality of the ambient air and the limits of air contaminants necessary to protect the public health, and to secure the comfortable enjoyment of life and property by the citizens of the state or in any defined geographical area of the state where the concentration of air pollution sources, the health of the population, or the nature of the economy or nature of land and its uses so require, and develop and transmit to the county boards of supervisors minimum state standards for air pollution control.
5. Conduct investigations, inspections and tests to carry out the duties of this section under the procedures established by this article.
6. Hold hearings relating to any aspect of or matter within the duties of this section, and in connection therewith, compel the attendance of witnesses and the production of records under the procedures established by section 49-432.
7. Prepare and develop a comprehensive plan or plans for the abatement and control of air pollution in this state.
8. Encourage voluntary cooperation by advising and consulting with persons or affected groups or other states to achieve the purposes of this chapter, including voluntary testing of actual or suspected sources of air pollution.
9. Encourage political subdivisions of the state to handle air pollution problems within their respective jurisdictions, and provide as it deems necessary technical and consultative assistance therefor.
10. Compile and publish from time to time reports, data and statistics with respect to those matters studied and investigated by the department.
11. Develop and disseminate air quality dust forecasts for the Maricopa county PM-10 nonattainment or maintenance area and any other PM-10 nonattainment or maintenance areas that are designated in this state from and after December 31, 2011. Each forecast shall identify a low, moderate or high risk of dust generation for the next five consecutive days and shall be issued by noon on each day the forecast is generated. At a minimum, the forecasts shall be posted on the department's website and distributed electronically. When developing these forecasts, the department shall consider all of the following:
 - (a) Projected meteorological conditions for the PM-10 nonattainment or maintenance area, including all of the following:
 - (i) Wind speed and direction.
 - (ii) Stagnation.
 - (iii) Recent precipitation.
 - (iv) Potential for precipitation.
 - (b) Existing concentrations of air pollution at the time of the forecast.
 - (c) Historic air pollution concentrations that have been observed during meteorological conditions similar to those that are predicted to occur in the forecast.

49-425. Rules; hearing

A. The director shall adopt such rules as he determines are necessary and feasible to reduce the release into the atmosphere of air contaminants originating within the territorial limits of the state or any portion thereof and shall adopt, modify, and amend reasonable standards for the quality of, and emissions into, the ambient air of the state for the prevention, control and abatement of air pollution. Additional standards shall be established for particulate matter emissions, sulfur dioxide emissions, and other air contaminant emissions determined to be necessary and feasible for the

prevention, control and abatement of air pollution. In fixing such ambient air quality standards, emission standards or standards of performance, the director shall give consideration but shall not be limited to the relevant factors prescribed by the clean air act.

B. No rule may be enacted or amended except after the director first holds a public hearing after twenty days' notice of such hearing. The proposed rule, or any proposed amendment of a rule, shall be made available to the public at the time of notice of such hearing.

C. The department shall enforce the rules adopted by the director.

D. All rules enacted pursuant to this section shall be made available to the public at a reasonable charge upon request.

49-457. Agricultural best management practices committee; members; powers; permits; enforcement; preemption; definitions

A. A best management practices committee for regulated agricultural activities is established.

B. The committee shall consist of:

1. The director of environmental quality or the director's designee.
2. The director of the Arizona department of agriculture or the director's designee.
3. The dean of the college of agriculture of the university of Arizona or the dean's designee.
4. The state director of the United States natural resources conservation service or the director's designee.
5. One person actively engaged in the production of citrus.
6. One person actively engaged in the production of vegetables.
7. One person actively engaged in the production of cotton.
8. One person actively engaged in the production of alfalfa.
9. One person actively engaged in the production of grain.
10. One soil taxonomist from the university of Arizona college of agriculture.
11. One person actively engaged in the operation of a beef cattle feed lot.
12. One person actively engaged in the operation of a dairy.
13. One person actively engaged in the operation of a poultry facility.
14. One person actively engaged in the operation of a swine facility.
15. One person who is employed by a county air quality department or agency.

C. The governor shall appoint the members designated pursuant to subsection B, paragraphs 5 through 15 of this section for a term of six years. Members may be reappointed. Members are not entitled to compensation for their services but are entitled to receive reimbursement of expenses pursuant to title 38, chapter 4, article 2.

D. The committee shall elect a chairman from the appointed members to serve a two year term.

E. The committee shall meet at the call of the chairman or at the request of a majority of the appointed members.

F. The department of environmental quality, the Arizona department of agriculture and the college of agriculture of the university of Arizona shall cooperate with and provide technical assistance and any necessary information to the committee. The department of environmental quality shall provide the necessary staff support and meeting facilities for the committee.

G. A person who commences a regulated agricultural activity shall immediately comply with the agricultural general permit prescribed by this section.

H. The committee shall adopt, by rule, an agricultural general permit specifying best management practices, including record keeping and reporting requirements, for regulated agricultural activities to reduce PM-10 particulate emissions. A person who is subject to an agricultural general permit pursuant to this section is not subject to a permit issued pursuant to section 49-426 except as provided in subsection K of this section. The committee shall adopt by rule a list of best management practices, at least one of which shall be used in areas designated as moderate nonattainment for PM-10 particulate matter and at least two of which shall be used in areas designated as serious nonattainment for PM-10 particulate matter, to demonstrate compliance with applicable provisions of the general permit. Best management practices may vary within the regulated area, according to regional or geographical conditions or cropping patterns.

I. If the director determines that a person who is engaged in a regulated activity is not in compliance with the general permit, and that person has not previously been subject to a compliance order issued pursuant to this section, the director may serve on the person by certified mail an order requiring compliance with the general permit and notifying the person of the opportunity for a hearing pursuant to title 41, chapter 6, article 10. The order shall state with reasonable particularity the nature of the noncompliance and shall specify that the person has a period that the director determines is reasonable, but is not less than sixty days, to submit a plan to the supervisors of the natural resource conservation district in which the person engages in the regulated activity that specifies the best management practices from among those adopted in rule pursuant to subsection H of this section that the person will use to comply with the general permit.

J. If the director determines that a person who is engaged in a regulated activity is not in compliance with the general permit, and that person has previously submitted a plan pursuant to subsection I of this section, the director may serve on the person by certified mail an order requiring compliance with the general permit and notifying the person of the opportunity for a hearing pursuant to title 41, chapter 6, article 10. The order shall state with reasonable particularity the nature of the noncompliance and shall specify that the person has a period that the director determines is reasonable, but is not less than sixty days, to submit a plan to the department that specifies the best management practices from among those adopted in rule pursuant to subsection H of this section that the person will use to comply with the general permit.

K. If a person fails to comply with the plan submitted pursuant to subsection J of this section, the director may revoke the agricultural general permit for that person and require that the person obtain an individual permit pursuant to section 49-426. A revocation becomes effective after the director has provided the person with notice and an opportunity for a hearing pursuant to title 41, chapter 6, article 10.

L. The committee may periodically reexamine, evaluate and modify best management practices. Any approved modifications shall be submitted to the United States environmental protection agency as a revision to the applicable implementation plan.

M. The committee shall develop and commence an education program. The education program shall be conducted by the director or the director's designee or designees.

N. A best management practice adopted pursuant to this section does not affect any applicable requirements in an applicable implementation plan or any other applicable requirements of the clean air act, including section 110(l) of the act (42 United States Code section 7410(l)).

O. The regulation of PM-10 particulate emissions produced by regulated agricultural activities is a matter of statewide concern. Accordingly, this section preempts further regulation of regulated agricultural activities by a county, city, town or other political subdivision of this state.

P. For the purposes of this section, unless the context otherwise requires:

1. "Agricultural general permit" means best management practices that:

- (a) Reduce PM-10 particulate emissions from tillage practices and from harvesting on a commercial farm.
- (b) Reduce PM-10 particulate emissions from those areas of a commercial farm that are not normally in crop production.
- (c) Reduce PM-10 particulate emissions from those areas of a commercial farm that are normally in crop production including prior to plant emergence and when the land is not in crop production.
- (d) Reduce PM-10 particulate emissions from those areas of a commercial farm undergoing significant agricultural earthmoving activities.
- (e) Reduce PM-10 particulate emissions from the activities of a dairy, a beef cattle feed lot, a poultry facility or a swine facility, including practices relating to the following:
 - (i) Unpaved access connections.
 - (ii) Unpaved roads or feed lanes.
 - (iii) Animal waste handling and transporting.
 - (iv) Arenas, corrals and pens.
- (f) Only in those regulated areas that are established after June 1, 2009, as prescribed in paragraph 6, subdivision (c) of this subsection, reduce PM-10 particulate emissions from the activities of an irrigation district governed by title 48, chapter 19 and affecting those lands and facilities that are under the jurisdiction and control of the district, including practices relating to the following:
 - (i) Unpaved operation and maintenance roads.
 - (ii) Canals.
 - (iii) Unpaved utility access roads.

2. "Applicable implementation plan" means that term as defined in 42 United States Code section 7601(q).

3. "Best management practices" means techniques that are verified by scientific research and that on a case by case basis are practical, economically feasible and effective in reducing PM-10 particulate emissions from a regulated agricultural activity.

4. "Maricopa PM-10 particulate nonattainment area" means the Phoenix planning area as set forth in 40 Code of Federal Regulations section 81.303.

5. "Regulated agricultural activities" means:

- (a) Commercial farming practices that may produce PM-10 particulate emissions within the regulated area, including activities of a dairy, a beef cattle feed lot, a poultry facility and a swine facility.
- (b) Only in those regulated areas that are established after June 1, 2009, as prescribed in paragraph 6, subdivision (c) of this subsection, activities of an irrigation district that is governed by title 48, chapter 19.

6. "Regulated area" means any of the following:

- (a) The Maricopa PM-10 particulate nonattainment area.

- (b) Any portion of area A that is located in a county with a population of two million or more persons.
- (c) Any other PM-10 particulate nonattainment area established in this state on or after June 1, 2009.

49-501. Unlawful open burning; exceptions; civil penalty; definition

A. Notwithstanding the provisions of any other section of this article: 1. It is unlawful for any person to ignite, cause to be ignited, permit to be ignited, or suffer, allow, or maintain any open outdoor fire except as provided in this section.

2. From May 1 through September 30 each year, it is unlawful for any person to ignite, cause to be ignited, permit to be ignited or suffer, allow or maintain any open outdoor fire in area A as defined in section 49-541.

B. The following fires are excepted from this section:

1. Fires used only for cooking of food or for providing warmth for human beings or the branding of animals or the use of orchard heaters for the purpose of frost protection in farming or nursery operations.
2. Any fire set or permitted by any public officer in the performance of official duty, if such fire is set or permission given for the purpose of weed abatement, the prevention of a fire hazard, or instruction in the methods of fighting fires.
3. Fires set by or permitted by the director of the department of agriculture or county agricultural agents of the county for the purpose of disease and pest prevention.
4. Fires set by or permitted by the federal government or any of its departments, agencies or agents or the state or any of its agencies, departments or political subdivisions for the purpose of watershed rehabilitation or control through vegetative manipulation.
5. Fires permitted by any rule or regulation issued pursuant to this article, by any conditional permit issued by a hearing board established under this article or by any rule or conditional permit issued pursuant to article 2 of this chapter when the department of environmental quality pursuant to section 49-402 has assumed jurisdiction of the county in which the fire is located.
6. Fires set for the disposal of dangerous materials where there is no safe alternate method of disposal.

C. Permission for the setting of any fire given by a public officer in the performance of official duty under subsection B, paragraph 2, 3 or 4 of this section shall be given in writing and a copy of the written permission shall be transmitted immediately to the director of environmental quality and the control officer of the county, district or region in which such fire is allowed. The setting of any such fire shall be conducted in a manner and at such time as approved by the control officer or the director of environmental quality, unless doing so would defeat the purpose of the exemption.

D. Notwithstanding section 49-107, the director may delegate authority for the issuance of open burning permits to a county, city, town or fire district. A county, city, town or fire district that has been delegated authority for the issuance of open burning permits may assign the issuance of these permits to a private fire protection service provider that performs fire protection services within that county, city, town or fire district. Any private fire protection service provider that is authorized to issue open burning permits pursuant to this subsection shall maintain a copy of all currently effective permits issued including a means of contacting the person authorized by the permit to set the fire in the event that an order to extinguish the open burning is issued. Permits issued pursuant to this subsection shall contain both of the following:

1. Conditions that limit the manner and time of setting the fire and that are consistent with this section and rules adopted pursuant to this section.
2. A provision that all burning be extinguished at the discretion of the director or the director's authorized representative during periods of inadequate atmospheric smoke dispersion, periods of excessive visibility impairment that could adversely affect public safety or periods when smoke is blown into populated areas so as to create a public nuisance.

E. The director may issue a general permit to allow persons engaged in farming or ranching on forty acres or more in an unincorporated area to burn household waste, as defined in section 49-701, that is generated on site, if no household waste collection and disposal service is available. The general permit shall include the following:

1. Conditions governing the method, manner and times for burning.
2. Limitation on materials which may be burned, including a prohibition on burning of materials which generate noxious fumes.
3. A requirement that any person seeking coverage under the general permit shall register with the director on a form prescribed by the director. Upon receipt of a registration form, the director shall notify the county in which the farm or ranch is located of such registration.
4. A statement that the director, a local air pollution control officer, or any other public officer may order the extinguishment of burning or may prohibit burning during periods of inadequate smoke dispersion or excessive visibility impairment or at other times when public health or safety could be adversely affected.

F. Nothing in this section is intended to permit any practice which is a violation of any statute, ordinance, rule or regulation in a county with a population in excess of one million two hundred thousand persons. Notwithstanding any other law, such a county shall prohibit by ordinance the use of wood burning chimineas, outdoor fire pits and similar outdoor fires on those days for which the county has issued a no burn day restriction.

G. A person who violates any provision of this section may be served a notice of violation and be subject to the enforcement provisions of this article to the same extent as a person violating any rule or regulation adopted pursuant to this article, except that a violation that lasts no more than twenty-four hours and that is the first violation committed by that person is subject to a civil penalty of no more than five hundred dollars.

H. For the purposes of this section, "open outdoor fire" means any combustion of combustible material of any type outdoors, in the open where the products of combustion are not directed through a flue. For the purposes of this subsection, "flue" means any duct or passage for air, gases or the like, such as a stack or chimney.