ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (R-16-0701)
Title 9, Chapter 21, Article 1, General Provisions; Article 2, Rights of Persons with Serious Mental Illness; Article 3, Individual Service Planning for Behavioral Health Services for Persons with Serious Mental Illness; Article 4, Appeals, Grievances, and Requests for Investigation for Persons with Serious Mental Illness

Amend: R9-21-101, R9-21-102, R9-21-103, R9-21-104, R9-21-105, R9-21-106, R9-21-201, R9-21-203, R9-21-204, R9-21-205, R9-21-206, R9-21-206.01, R9-21-208, R9-21-209, Exhibit A, R9-21-301, R9-21-303, R9-21-307, R9-21-309, R9-21-310, R9-21-311, R9-21-401, R9-21-402, R9-21-403, R9-21-404, R9-21-405, R9-21-406, R9-21-407, R9-21-408, R9-21-409, R9-21-410

GOVERNOR'S REGULATORY REVIEW COUNCIL
M E M O R A N D U M

MEETING DATE: July 6, 2016 **AGENDA ITEM: E-1**

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

FROM: Shama Thathi, Staff Attorney

DATE: June 20, 2016

SUBJECT: **ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (R-16-0701)**
Title 9, Chapter 21, Article 1, General Provisions; Article 2, Rights of Persons with Serious Mental Illness; Article 3, Individual Service Planning For Behavioral Health Services for Persons with Serious Mental Illness; Article 4, Appeals, Grievances, and Requests for Investigation for Persons with Serious Mental Illness

Amend: R9-21-101; R9-21-102; R9-21-103; R9-21-104; R9-21-105; R9-21-106; R9-21-201; R9-21-203; R9-21-204; R9-21-205; R9-21-206; R9-21-206.01; R9-21-208; R9-21-209; Exhibit A; R9-21-301; R9-21-303; R9-21-307; R9-21-309; R9-21-310; R9-21-311; R9-21-401; R9-21-402; R9-21-403; R9-21-404; R9-21-405; R9-21-406; R9-21-407; R9-21-408; R9-21-409; R9-21-410

General Comments

Purpose of the Agency and Summary of What the Rulemaking Does

The Arizona Health Care Cost Containment System ("AHCCCS") is established "to promote a comprehensive health care system to eligible citizens of this state." Laws 2013, 1st S.S., Ch. 10, § 53. This system is managed by the Director of the AHCCCS Administration ("Administration"), which is established under A.R.S. § 36-2902(A). The Director has the powers and duties as outlined in A.R.S. §§ 36-2903 and 2903.01.

This rulemaking seeks to amend thirty-one rules in A.A.C. Title 9, Chapter 21, Articles 1-4, which contain rules related to behavioral health services for persons with serious mental illness.

Article Contents, Including the Subject Matter of Each Rule Affected

Article 1 contains six rules, related to general provisions, all of which are affected by this rulemaking. The rules address definitions; applicability; computation of time; office of human rights, human rights advocates; human rights committees; and state protection and advocacy system.

Article 2 contains twelve rules and two exhibits, related to rights of persons with serious mental illness. Eight rules and one exhibit are affected by this rulemaking. The rules address civil and other legal rights; protection from abuse, neglect, exploitation, and mistreatment; restraint and seclusion; labor; competency and consent; informed consent; property and possessions; records. The exhibit addresses notice of legal rights for persons with serious mental illness.

Article 3 contains fourteen rules, related to individual service planning for behavioral health services for persons with serious mental illness. Six of those rules are affected by this rulemaking. The rules address general provisions; eligibility determination and initial assessment; the individual service plan; selection of service providers; implementation of the individual service plan; and interim services.

Article 4 contains ten rules, related to appeals, grievances, and requests for investigation for persons with serious mental illness, all of which are affected by this rulemaking. The rules address appeals; general; initiating a grievance or investigation; persons responsible for resolving grievances and requests for investigations; preliminary disposition; conduct of investigation; administrative appeal; further appeal to administrative hearing; notice and records; and miscellaneous.

Year that Each Rule was Last Amended or Newly Made

All rules were last amended by exempt rulemaking on June 30, 2003. The exhibit was last amended on September 30, 1993.

Proposed Action

This rulemaking intends to transfer the responsibilities of behavioral health services from the Arizona Department of Health Services to the Administration.

Summary of Reasons for the Proposed Action

Senate Bill 1257 (Laws 2015, Chapter 195) authorized the statutory transfer of behavioral health services from Arizona Department of Health Services to the Administration effective July 1, 2016. This rulemaking allocates the Administration's responsibility to oversee the provision of behavioral health services under Title 9, Chapter 21 for persons with a serious mental illness.

The Administration indicates that it will make changes to Chapter 21 in two phases. This rulemaking is the first phase, in which the language is being updated to reflect the

Administration's organizational structure and terminology. In addition, cross-references are being updated, and the hearing process is being aligned with the Administrative Procedure Act. The second phase will occur in the fourth quarter of 2017 to provide adequate time for stakeholder input. In that phase, the Administration will submit another rulemaking package addressing substantive changes.

Exemption or Request and Approval for Exception from the Moratorium

The Administration requested and received approval for an exception from the moratorium on January 13, 2016.

Substantive or Procedural Concerns

None.

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

Yes. The Administration cites A.R.S. §§ 36-502, 36-2907 and 36-3403 as general authority for the rules. Under A.R.S. § 36-502(A), the director of the Administration shall "make rules that include standards for agencies other than the state hospital when providing services and shall prescribe forms as may be necessary for the proper administration and enforcement of this chapter [Mental Health Services]." Further, the director shall "adopt rules for the coverage of behavioral health services…." See A.R.S. § 36-2907(F). Lastly, pursuant to A.R.S. § 36-3403(A)(4), the director may "[a]dopt rules that are necessary to carry out the requirements of the [A]dministration." As for specific authority, the Administration cites to A.R.S. §§ 36-3401, 36-3407 and 36-3413.

2. Are the rules written in a manner that is clear, concise, and understandable to the general public?

Yes. The rules are clear, concise, and understandable.

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

Yes. The Administration indicates that it received one written stakeholder comment from the Arizona State Association of Physician Assistants. The comment requested the Administration to amend R9-21-204(G)(1)(a) and (G)(2)(a) to explicitly include physician assistants in the provisions since ordering restraint and seclusion is within the scope of their employment as delegated by a supervising physician. In addition, the comment suggested that R9-21-204(G)(1)(b)(i) and (G)(2)(b)(i) be revised to state "medical practitioner," which includes physician assistants. The Administration states that it will consider this comment in the second phase of rulemaking since it constitutes a substantive change to the rules.

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

No. The Administration only made technical changes from the proposed rules, such as changing the term "Hearing Officer" to "Administrative Law Judge," updating a cross-reference to statute for the serious mental illness definition, adding "in writing" within the definition of "Designated Representative" to ensure the member has given written consent to have an individual representative, and striking a definition of outdated term. In addition, minor grammatical and style corrections were made at the request of Council's staff.

5. Does the preamble disclose a reference to any study relevant to the rules that the agency reviewed and either did or did not rely on in the agency's evaluation of or justification for the rules?

No. The Administration indicates that no study was reviewed or relied upon for the rules.

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

No. The Administration indicates that no federal laws directly correspond to the rules.

7. Do the rules require a permit or license and if so, does the agency use a general permit or is any exception applicable under A.R.S. § 41-1037?

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

8. 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.

9. Conclusion

The Administration requests an immediate effective date of July 6, 2016 for the rules. This analyst recommends approval of the rules.

GOVERNOR'S REGULATORY REVIEW COUNCIL
M E M O R A N D U M

MEETING DATE: July 6, 2016 **AGENDA ITEM: E- 1**

TO: Members of the Governor's Regulatory Review Council

FROM: GRRC Economist

DATE : June 20, 2016

SUBJECT: **ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (R-16-0701)**
Title 9, Chapter 21, Article 1, General Provisions; Article 2, Rights of Persons with Serious Mental Illness; Article 3, Individual Service Planning For Behavioral Health Services for Persons with Serious Mental Illness; Article 4, Appeals, Grievances, and Requests for Investigation for Persons with Serious Mental Illness

Amend: R9-21-101; R9-21-102; R9-21-103; R9-21-104; R9-21-105; R9-21-106; R9-21-201; R9-21-203; R9-21-204; R9-21-205; R9-21-206; R9-21-206.01; R9-21-208; R9-21-209; Exhibit A; R9-21-301; R9-21-303; R9-21-307; R9-21-309; R9-21-310; R9-21-311; R9-21-401; R9-21-402; R9-21-403; R9-21-404; R9-21-405; R9-21-406; R9-21-407; R9-21-408; R9-21-409; R9-21-410

I reviewed the economic, small business, and consumer impact statement (hereafter referred to as EIS) and make the following comments. These comments are made to assist the Council in its review and may be used as the Council determines.

As of July 1, 2016, the Administration will take full responsibility for the administration of behavioral health services for those with Serious Mental Illness (SMI). These rules will apply to people with SMI regardless of Medicaid eligibility. The Administration does not anticipate an economic impact on businesses, the public, or the implementing agencies because the funding and staffing are being transferred from the Department of Health Services (DHS).

GRRC Economist comments:

The rules were first enacted in October 1993, and were last amended in 2003. Since then, Senate Bill 1257 (Laws 2015, Chapter 195) shifted behavioral responsibilities from DHS to the Administration for the provision of behavioral health services.

Article 1 defines the general provisions of the chapter. The proposed edits remove sections that were no longer applicable with the administrative change. For example, the licensing requirements were stricken since the Administration does not license agencies.

Article 2 describes the rights of the people with SMI, and Article 3 clarifies the Individual Service Planning for those with SMI. No significant changes were proposed in either of these sections.

Article 4 states the appeals, grievances, and request process for investigation for people with SMI. Changes to this Article have been proposed due to differences in processes and timelines utilized. As well, sections were removed which described processes not adhered to by AHCCCS.

1. **Costs and Benefits for:**

a. The implementing agency:

The amendments seek to clarify existing policy and are not anticipated to result in any costs. Funding and staff will be transferred from DHS to support the needed requirements, therefore no additional hiring is anticipated. The proposed clarifications will help the Administration's employees, DHS contractors, and others involved in SMI administrative services more easily understand and comply with the rules.

b. Political subdivisions:

The amendments do not directly affect political subdivisions.

c. Businesses:

The Administration does not anticipate a negative impact to businesses due to the proposed changes. Businesses and entities providing SMI services benefit from the clarification of language in the rules.

d. Small businesses:

The Administration anticipates no fiscal impact on small businesses from the proposed amendments.

e. Consumers directly affected by the rulemaking:

The EIS states that private persons, consumers, and members of the Administration will benefit from the amendments, because they clarify terminology and processes.

2. Do the probable benefits outweigh the probable costs?

Based on the information provided above, the Administration indicates that there are only benefits to clarifying the rules, which provide clarity and conciseness to the rule language. This will help persons more easily understand and comply with the rules.

3. Analysis of methods to reduce the small business impact:

The amendments will not have a fiscal impact on small businesses. The Administration did not identify any less stringent compliance or reporting requirements.

4. The probable effect on state revenues:

The Administration anticipates that amendments will have no impact on state revenues.

5. Analysis of any less intrusive or less costly alternative methods:

The Administration did not consider other alternatives, because the proposed rule amendments represent the most cost effective and efficient method of complying with federal law and state statute.

6. Whether an analysis was submitted to the agency regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states:

No analysis was submitted that compares the rules' impact of the competiveness of businesses in this state to the impact on businesses in other states.

7. A description of any data on which a rule is based with an explanation of how the data was obtained and why the data is acceptable data, and the methods used by the agency to evaluate the costs and benefits in the EIS.

The Administration indicates that no outside data or studies were used in the development of the proposed rule amendments.

8. Conclusion:

The submitted economic, small business and consumer impact statement is generally accurate, and contains the information required for compliance with A.R.S. §§ 41-1035, 41-1052(D)(1-3), and 41-1055. This analyst recommends that the proposed rule amendments be approved. In addition, the Administration has requested and received approval to proceed with this rulemaking from the Governor's Office.

AHCCCS
Arizona Health Care Cost Containment System

Douglas A. Ducey, Governor
Thomas J. Betlach, Director

May 12, 2016

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. 21, Articles 1-4, General Provisions, Rights of Persons with Serious Mental Illness, Individual Service Planning for Behavioral Health Services for Persons with Serious Mental Illness, Appeals, Grievances, and Requests for Investigation for Persons with Serious Mental Illness.

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., May 9, 2016.

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 competiveness 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 2016-03.

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

NOTICE OF FINAL RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 21. ~~DEPARTMENT OF HEALTH SERVICES~~ ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM

BEHAVIORAL HEALTH SERVICES FOR PERSONS WITH SERIOUS MENTAL

PREAMBLE

1. Article, Part, or Section Affected (as applicable)	**Rulemaking Action:**
R9-21-101	Amend
R9-21-102	Amend
R9-21-103	Amend
R9-21-104	Amend
R9-21-105	Amend
R9-21-106	Amend
R9-21-201	Amend
R9-21-203	Amend
R9-21-204	Amend
R9-21-205	Amend
R9-21-206	Amend
R9-21-206.01	Amend
R9-21-208	Amend
R9-21-209	Amend
Exhibit A	Amend
R9-21-301	Amend
R9-21-303	Amend
R9-21-307	Amend
R9-21-309	Amend
R9-21-310	Amend
R9-21-311	Amend
R9-21-401	Amend
R9-21-402	Amend

R9-21-403	Amend
R9-21-404	Amend
R9-21-405	Amend
R9-21-406	Amend
R9-21-407	Amend
R9-21-408	Amend
R9-21-409	Amend
R9-21-410	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. § 36-502, 36-2907, 36-3403(A)(4)

Implementing statute: A.R.S. § 36-3401, 36-3407, 36-3413

3. The effective date of the rule:

The Administration requests an immediate effective date of July 6, 2016 or upon filing with the Secretary of State. This rulemaking meets the following criteria in A.R.S. § 41-1032(A)(2) "To avoid a violation of federal law or regulation or state law, if the need for an immediate effective date is not created due to the agency's delay or inaction." because this rulemaking has been created due to the statutory changes made to transfer the administrative and operational responsibility to the Administration.

4. Citations 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: 22 A.A.R. 782, April 8, 2016

Notice of Proposed Rulemaking: 22 A.A.R. 731, April 8, 2016

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

Name: James Maguire

Address: 701 E. Jefferson St.

Telephone: (602) 417-4501

Fax: (602) 253-9115
E-mail: AHCCCSrules@azahcccs.gov
Web site: www.azahcccs.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 Administration is proposing rule to implement the statutory "behavioral health simplification and integration" where the Arizona Health Care Cost Containment System (AHCCCS) Administration assumes full administrative and operational responsibility for the provision of behavioral health services effective July 1, 2016. Senate Bill 1257 (Laws 2015, Chapter 195) provides for the statutory transfer of behavioral health responsibilities from the Arizona Department of Health Services (ADHS) to AHCCCS. This rulemaking delineates the responsibilities of the AHCCCS Administration to oversee the provision of behavioral health services under Title 9 Chapter 21 of the Arizona Administrative Code (AAC) for persons with a serious mental illness (SMI) as defined under R9-21-101 and A.R.S.§ 36-550.

Rules under Title 9, Chapter 21 of the AAC, first enacted in October 1993 and last amended in June 2003; apply to persons with a SMI diagnosis, regardless of Medicaid eligibility. The Administration has chosen to make changes to this Chapter in two phases. This rulemaking is the first phase, and because the Administration is assuming administrative and operational responsibility for the provision of behavioral health services to persons with a SMI diagnosis, within all rules, the terms "department," "division," or "director" were changed to "Administration" or "mental health agency," where applicable, and cross-references were updated to statutes or other rule sections, as appropriate. More significant of these proposed changes includes alignment of the hearing process with the Administrative Procedure Act (APA), A.R.S. §41-1092, deletion of antiquated or inaccurate language, updating of language to reflect AHCCCS terminology, and updating of language to reflect AHCCCS organizational structure.

- Article 1's objective is to describe General Provisions that apply to this Chapter. This Article describes definitions, the applicability of the SMI requirements, how time is

computed when actions are made, the establishment of the Human Rights Committees, requirements of the Office of Human Rights and Advocates, and the State Protection and Advocacy System. Within this Article, we have verified the use of the definitions described, updated cross-references, and added a section to guide the person to where the definitions can be found. The Article was updated to reflect that this Chapter will apply to the Administration and all mental health agencies. Sections were stricken that are no longer applicable, such as licensing (the Administration does not license or certify these agencies)

- Article 2's objective is to describe the rights of persons with SMI. This Article describes Civil and Other Legal Rights, Right to Support and Treatment, Protection from Abuse, Neglect, Exploitation and Mistreatment, Restraint and Seclusion, Labor, Competency and Consent, Informed Consent, Medication, Property and Possessions, Records, Policies and Procedures of Service Providers, Notice of Rights, and Exhibits. Within this Article, no significant changes were made, except for the terms relative to the Administration assuming responsibility, cross-reference updates, and minor clarifications.
- Article 3's objective is to describe the Individual Service Planning for behavioral health services for person with SMI. This Article describes General Provisions, Identification, Application, and Referral for Services of Persons with Serious Mental Illness, Eligibility Determination and Initial Assessment, Interim and Emergency Services, Assessments, Identification of Potential Service Providers, Selection of Service Providers, Implementation of the Individual Service Plan, Interim Services, Inpatient Treatment and Discharge Plan, Periodic Review of Individual Service Plans, and Modification or Termination of Plans. Within this Article, no significant changes were made, except for the terms relative to the Administration assuming responsibility.
- Article 4's objective is to describe appeals, grievances, and requests for investigation for persons with SMI. This Article describes Appeals, General Requirements, Initiating a Grievance or Investigation, Persons Responsible for Resolving Grievances and Requests for Investigations, Preliminary Disposition, Conduct of Investigation, Administrative Appeal, Further Appeal to Administrative Hearing, Notice and

Records, and Miscellaneous requirements. Within this Article, there were several changes. Like the other Articles, there were updates made to reflect the terms relative to the Administration assuming responsibility, cross-reference updates, and minor clarifications. This Article, on its face, appears to have significant changes made. However, the Administration adheres to timelines and processes set forth in the APA (A.R.S. §41-1092), and much of the previous language in this Article relating to timelines was stricken and replaced with cross-references to the APA. There are also the removal of some of the processes that were used when ADHS had the responsibility, but to which the Administration does not adhere.

The second phase, which will likely be 4th quarter FY2017, is intended to address more substantive changes through further review of statute and relevant litigation as well as consideration of best practices for the treatment and support of persons with SMI, with particular emphasis on patient outcomes.

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 Administration does not anticipate an economic impact on small businesses, the public or the implementing agencies since funding and staffing will be transferred to the Administration from ADHS. This rulemaking intends to adopt rules to delineate the delivery system resulting from SB 1257. This rulemaking informs stakeholders of the revised operational structure and the new functional responsibilities. This transfer of responsibilities from ADHS to AHCCCS is

budget neutral and this rulemaking is administrative in nature, not affecting the coverage of services, or the rights or protections of persons with SMI.

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

No significant changes were made between the proposed rulemaking and the final rulemaking. The changes made where technical in nature, such as changing where the term "hearing officer" is used to "Administrative Law Judge" since that is the appropriate title, updated a cross-reference to statute for the SMI definition, added "in writing" within the definition of "Designated representative" to ensure the member has given their consent to have an individual represent them, the definition of "Division" was struck since the term is no longer used, etc.

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

The following comment was received as of the close of the comment period of May 9, 2016

Item #	Rule Cite Line #	Comment From and Date rec'd.	Comment	Analysis/ Recommendation
1.	R9-21-204G1 and G2	Shawna Boyle 05/09/16 ASAPA AZ State Association of Physician Assistants	While this rule includes Physician Assistants under the definition of "medical practitioner," **it only allows those under the definition of medical practitioner to order restraint/seclusion in specific instances**. Ordering restraint and seclusion **is within the scope of practice of a Physician Assistant** as delegated by their supervising physician. In order to allow efficiency in patient care and to allow physician assistants to practice to their fullest capability, I would like to request that the following changes be made to section R9-21-204: That G.(1)(a) and G.(2)(a) **include Physician Assistants specifically**. And that that item	This suggestion was not within the scope of the 1st phase of this rulemaking. This is a more substantive change to the Rules to be determined in the second phase.

			G.(1)(b)(i) and G.(2)(b)(i) be **revised to state "medical practitioner"** in order to include Physician Assistants	

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

No other matters are applicable.

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

Not applicable.

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

Not applicable.

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

Not applicable.

13. A list of any incorporated by reference material 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 21. ~~DEPARTMENT OF HEALTH SERVICES~~ ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM

BEHAVIORAL HEALTH SERVICES FOR PERSONS WITH SERIOUS MENTAL ILLNESS

ARTICLE 1. GENERAL PROVISIONS

Section

R9-21-101. Definitions and location of Definitions

R9-21-102. Applicability

R9-21-103. Computation of Time

R9-21-104. Office of Human Rights; Human Rights Advocates

R9-21-105. Human Rights Committees

R9-21-106. State Protection and Advocacy System

ARTICLE 2. RIGHTS OF PERSONS WITH SERIOUS MENTAL ILLNESS

Section

R9-21-201. Civil and Other Legal Rights

R9-21-203. Protection from Abuse, Neglect, Exploitation and Mistreatment

R9-21-204. Restraint and Seclusion

R9-21-205. Labor

R9-21-206. Competency and Consent

R9-21-206.01. Informed Consent

R9-21-208. Property and Possessions

R9-21-209. Records

Exhibit A. Notice of Legal Rights for Persons with Serious Mental Illness

ARTICLE 3. INDIVIDUAL SERVICE PLANNING FOR BEHAVIORAL HEALTH SERVICES FOR PERSONS WITH SERIOUS MENTAL ILLNESS

Section

R9-21-301. General Provisions

R9-21-303. Eligibility Determination and Initial Assessment
R9-21-307. The Individual Service Plan
R9-21-309. Selection of Service Providers
R9-21-310. Implementation of the Individual Service Plan
R9-21-311. Interim Services

ARTICLE 4. APPEALS, GRIEVANCES, AND REQUESTS FOR INVESTIGATION FOR PERSONS WITH SERIOUS MENTAL ILLNESS

Section

R9-21-401. Appeals
R9-21-402. General
R9-21-403. Initiating a Grievance or Investigation
R9-21-404. Persons Responsible for Resolving Grievances and Requests for Investigations
R9-21-405. Preliminary Disposition
R9-21-406. Conduct of Investigation
R9-21-407. Administrative Appeal
R9-21-408. Further Appeal to Administrative Hearing
R9-21-409. Notice and Records
R9-21-410. Miscellaneous

ARTICLE 1. GENERAL PROVISIONS

R9-21-101. Definitions and Location of Definitions

A. Location of definitions. Unless the context otherwise requires, terms used in this Chapter that are defined in A.R.S. 36-501 shall have the same meaning as in A.R.S. 36-501. In addition, the following definitions applicable to this Chapter are found in the following Section or Citation:

"Abuse" R9-21-101

"ADHS" R9-22-101

"Administration" A.R.S. § 36-2901

"Agency director" R9-21-101

"AHCCCS" R9-22-101

"Applicant" R9-21-101

"ASH" R9-21-101

"Authorization" R9-21-101

"Behavioral health issue" R9-21-101

"Burden of proof" R9-21-101

"Case manager" R9-21-101

"Client" R9-21-101

"Client record" R9-21-101

"Client who needs special assistance" R9-21-101

"Clinical team" R9-21-101

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"Condition requiring investigation" R9-21-101

"County Annex" R9-21-101

"Court" A.R.S. § 36-501

"Court-ordered treatment" R9-21-101

"Crisis services" or "emergency services" R9-21-101

"Danger to others" A.R.S. § 36-501

"Dangerous" R9-21-101

"Department" R9-21-101, A.R.S. § 36-501

"Designated representative" R9-21-101

"Director" A.R.S. § 36-501

“Discharge plan” R9-21-101

“Division” R9-21-101

“Drug used as a restraint” R9-21-101

“DSM” or “Diagnostic and Statistical Manual of Mental Disorders” R9-21-101

“Emergency safety situation” R9-21-101

“Enrolled Children” R9-21-101

“Evaluation” A.R.S. § 36-501

“Exploitation” R9-21-101

“Family member” A.R.S. § 36-501

“Frivolous” R9-21-101

“Generic services” R9-21-101

“Grievance” R9-21-101

“Guardian” R9-21-101

“Hearing officer” R9-21-101

“Human rights advocate” R9-21-101

“Human rights committee” R9-21-101

“Illegal” R9-21-101

“Individual service plan” or “ISP” R9-21-101

“Informed consent” A.R.S. § 36-501

“Inhumane” R9-21-101

“Inpatient facility” R9-21-101

“Inpatient treatment and discharge plan” or “ITDP” R9-21-101

“licensed physician” A.R.S. § 36-501

“Long-term view” R9-21-101

“Mechanical restraint” R9-21-101

“Medical practitioner" R9-21-101

“Meeting” R9-21-101

“Mental disorder” A.R.S. § 36-501

“Mental health agency” R9-21-101

“mental health provider” A.R.S. § 36-501

“Nurse” R9-21-101

"Outpatient treatment" A.R.S. § 36-501

"Party" or "parties" R9-21-101

"Persistent or acute disability" A.R.S. § 36-501

"Personal restraint" R9-21-101

"PRN order" or "Pro re rata medication" R9-21-101

"Professional" A.R.S. § 36-501

"Program director" R9-21-101

"Proposed patient" A.R.S. § 36-501

"Psychiatrist" A.R.S. § 36-501

"Psychologist" A.R.S. § 36-501

"Qualified clinician" R9-21-101

"Records" A.R.S. § 36-501

"Region" R9-21-101

"Regional authority" R9-21-101

"Regional Behavioral Health Authority (RBHA)" A.R.S. § 36-3401

"Restraint" R9-21-101

"Seclusion" R9-21-101

"Seriously Mentally Ill (SMI) A.R.S. § 36-550

"Service provider" R9-21-101

"Social worker" A.R.S. § 36-501

"State Protection and Advocacy System" R9-21-101

"Title XIX" R9-21-101

"Treatment team" R9-21-101

A. ~~In this Chapter, unless the context otherwise requires, the terms defined in A.R.S. § 36-501 shall have the same meaning as in A.R.S. § 36-501.~~

B. In this Chapter, unless the context otherwise requires:

~~1.~~ "Abuse" means, with respect to a client, the infliction of, or allowing another person to inflict or cause, physical pain or injury, impairment of bodily function, disfigurement or serious emotional damage which may be evidenced by severe anxiety, depression, withdrawal or untoward aggressive behavior. Such abuse may be caused by acts or

omissions of an individual having responsibility for the care, custody or control of a client receiving behavioral health services or community services under this Chapter. Abuse shall also include sexual misconduct, assault, molestation, incest, or prostitution of, or with, a client under the care of personnel of a mental health agency.

~~2.~~ "Agency director" means the person primarily responsible for the management of an outpatient or inpatient mental health agency, service provider, regional authority or the ~~deputy director of the division~~ Administration, or their designees.

3. "AHCCCS~~A~~" means the Arizona Health Care Cost Containment System ~~Administration~~.

~~4.~~ "Applicant" means an individual who:

   a. Submits to a regional authority an application for behavioral health services under this Chapter or on whose behalf an application has been submitted; or
   b. Is referred to a regional authority for a determination of eligibility for behavioral health services according to this Chapter.

~~5.~~ "ASH" means the Arizona State Hospital.

~~6.~~ "Authorization" means written permission for a mental health agency to release or disclose a client's record or information, containing:

   a. The name of the mental health agency releasing or disclosing the client's record or information;
   b. The purpose of the release or disclosure;
   c. The individual, mental health agency, or entity requesting or receiving the client's record or information;
   d. A description of the client's record or information to be released or disclosed;
   e. A statement:
      i. Of permission for the mental health agency to release or disclose the client's record or information; and
      ii. That permission may be revoked at any time;
   f. The date when or conditions under which the permission expires;
   g. The date the document is signed; and
   h. The signature of the client or, if applicable, the client's guardian.

~~7.~~ "Behavioral health issue" means an individual's condition related to a mental disorder, personality disorder, substance abuse, or a significant psychological or behavioral response to an identifiable stressor or stressors.

~~8.~~ "Behavioral health service" means the assessment, diagnosis, or treatment of an individual's behavioral health issue.

~~9.~~ "Burden of proof" means the necessity or obligation of affirmatively proving the fact or facts in dispute.

~~10.~~ "Case manager" means the person responsible for locating, accessing and monitoring the provision of services to clients in conjunction with a clinical team.

~~11.~~ "Client" means an individual who is seriously mentally ill and is being evaluated or treated for a mental disorder by or through a regional authority.

~~12.~~ "Client record" means the written compilation of information that describes and documents the evaluation, diagnosis or treatment of a client.

~~13.~~ "Client who needs special assistance" means a client who has been:

a. Deemed by a qualified clinician, case manager, clinical team, or regional authority to need special assistance in participating in the ISP or ITDP process, which may include, but is not limited to:

   i. A client who requires 24-hour supervision;

   ii. A client who is, in fact, incapable of making or communicating needs but is without a court-appointed fiduciary; or

   iii. A client with physical disabilities or language difficulties impacting the client's ability to make or communicate decisions or to prepare or participate in meetings; or

b. Otherwise deemed by a program director, the ~~deputy director of the Division~~ Administration, or a ~~hearing officer~~ Administrative Law Judge to need special assistance to effectively file a written grievance, to understand the grievance and investigation procedure, or to otherwise effectively participate in the grievance process under this Chapter.

~~14.~~ "Clinical team" refers to the interdisciplinary team of persons who are responsible for providing continuous treatment and support to a client and for locating, accessing and monitoring the provision of behavioral health services or community services. A clinical

team consists of a psychiatrist, case manager, vocational specialist, psychiatric nurse, and other professionals or paraprofessionals, such as a psychologist, social worker, consumer case management aide, or rehabilitation specialist, as needed, based on the client's needs. The team shall also include a team leader who is a certified behavioral health supervisor ~~under Laws 1992, Ch. 310~~.

~~15.~~ "Community services" means services ~~required to be provided under A.R.S. Title 36, Chapter 5, Article 10~~ such as clinical case management, outreach, housing and residential services, crisis intervention and resolution services, mobile crisis teams, day treatment, vocational training and opportunities, rehabilitation services, peer support, social support, recreation services, advocacy, family support services, outpatient counseling and treatment, transportation, and medication evaluation and maintenance.

~~16.~~ "Condition requiring investigation" means, within the context of the grievance and investigation procedure set forth in Article 4 of this Chapter, an incident or condition which appears to be dangerous, illegal, or inhumane, including a client death.

~~17.~~ "County Annex" means the Maricopa County Psychiatric Annex of the Maricopa Medical Center.

~~18.~~ "Court-ordered treatment" means treatment ordered by the court ~~under A.R.S. Title 36, Chapter 5~~.

~~19.~~ "Court-ordered evaluation" means evaluation ordered by the court ~~under A.R.S. Title 36, Chapter 5~~.

~~20.~~ "Crisis services" or "emergency services" means immediate and intensive, time-limited, crisis intervention and resolution services which are available on a 24-hour basis and may include information and referral, evaluation and counseling to stabilize the situation, triage to an inpatient setting, clinical crisis intervention services, mobile crisis services, emergency crisis shelter services, and follow-up counseling for clients who are experiencing a psychiatric emergency.

~~21.~~ "Dangerous" as used in Article 4 of this Chapter means a condition that poses or posed a danger or the potential of danger to the health or safety of any client.

~~22.~~ "Department" means the Arizona Department of Health Services.

~~23.~~ "Designated representative" means a parent, guardian, relative, advocate, friend, or other person, designated <u>in writing</u> by a client or guardian who, upon the request of the client or

guardian, assists the client in protecting the client's rights and voicing the client's service needs.

~~24.~~ "Discharge plan" means a hospital or community treatment and discharge plan prepared according to Article 3 of these rules.

~~25. "Division" means the Division of Behavioral Health Services of the Department.~~

~~26.~~ "Drug used as a restraint" means a pharmacological restraint as used in A.R.S. § 36-513 that is not standard treatment for a client's medical condition or behavioral health issue and is administered to:

a. Manage the client's behavior in a way that reduces the safety risk to the client or others,
b. Temporarily restrict the client's freedom of movement.

~~27.~~ "DSM" means the latest edition of the "Diagnostic and Statistical Manual of Mental Disorders," edited by the American Psychiatric Association.

~~28.~~ "Emergency safety situation" means unanticipated client behavior that creates a substantial and imminent risk that the client may inflict injury, and has the ability to inflict injury, upon:

a. The client, as evidenced by threats or attempts to commit suicide or to inflict injury on the client; or
b. Another individual, as evidenced by threats or attempts to inflict injury on another individual or individuals, previous behavior that has caused injury to another individual or individuals, or behavior that places another individual or individuals in reasonable fear of sustaining injury.

~~29.~~ "Enrolled Children" means persons under the age of 18 who receive behavioral health services by or through a regional authority.

~~30.~~ "Exploitation" means the illegal or improper use of a client or a client's resources for another's profit or advantage.

~~31.~~ "Frivolous~~,~~" as used in this Chapter, means a grievance that is devoid of merit. Grievances are presumed not to be frivolous unless ~~the program director has good reason to believe that~~ the grievance:

a. Involves conduct that is not within the scope of this Chapter,
b. Is impossible on its face, or

c. Is substantially similar to conduct alleged in two previous grievances within the past year that have been determined to be unsubstantiated as provided in this Chapter.

~~32.~~ "Generic services" means services other than behavioral health services or community services for which clients may have a need and ~~includes~~ include, but are ~~is~~ not limited to, health, dental, vision care, housing arrangements, social organizations, recreational facilities, jobs, and educational institutions.

~~33.~~ "Grievance" means a complaint regarding an act, omission or condition, as provided in this Chapter.

~~34.~~ "Guardian" means an individual appointed by court order according to A.R.S. Title 14, Chapter 5, or similar proceedings in another state or jurisdiction where said guardianship has been properly domesticated under Arizona law.

~~35.~~ "Hearing officer" refers to an impartial person designated by the ~~director~~ Office of Administrative Hearing to hear a dispute and render a written decision.

~~36.~~ "Human rights advocate" means the human rights advocates appointed by the Administration under R9-21-105.

~~37.~~ "Human rights committee" means the human rights committee established under ~~R9-21-106 by the Department~~ A.R.S. § 41-3803.

~~38.~~ "Illegal" means, within the context of the grievance and investigation procedure set forth in Article 4 of this Chapter, an incident or occurrence which is or was likely to constitute a violation of a state or federal statute, regulation, court decision or other law, including the provisions of these Articles.

~~39.~~ "Individual service plan" or "ISP" means the written plan for services to a client, prepared in accordance with Article 3 of this Chapter.

~~40.~~ "Inhumane" as used in Article 4 of this Chapter means an incident, condition or occurrence that is demeaning to a client~~.~~, or which is inconsistent with the proper regard for the right of the client to humane treatment.

~~41.~~ "Inpatient facility" means the Arizona State Hospital, the County Annex, or any other inpatient treatment facility ~~licensed~~ registered with or funded by or through the ~~Department~~ Administration to provide behavioral health services, including psychiatric health facilities, ~~licensed~~ psychiatric hospitals, ~~licensed~~ and psychiatric units in general hospitals~~, and licensed inpatient or behavioral health facilities in jails~~.

~~42.~~ "Inpatient treatment and discharge plan" or "ITDP" means the written plan for services to a client prepared and implemented by an inpatient facility in accordance with Article 3 of this Chapter.

~~43.~~ "Long-term view" means a planning statement that identifies, from the client's perspective, what the client would like to be doing for work, education, and leisure and where the client would like to be living for up to a three-year period. The long-term view is based on the client's unique interests, strengths, and personal desires. It includes predicted times for achievement.

~~44.~~ "Mechanical restraint" means any, device, article, or garment attached or adjacent to a client's body that the client cannot easily remove and that restricts the client's freedom of movement or normal access to the client's body, but does not include a device, article, or garment:

a. Used for orthopedic or surgical reasons, or
b. Necessary to allow a client to heal from a medical condition or to participate in a treatment program for a medical condition.

~~45.~~ "Medical practitioner" means a~~:~~

~~a.~~ Physician, ~~licensed according to A.R.S. Title 32, Chapter 13 or 17;~~
~~b.~~ Physician assistant, ~~licensed according to A.R.S. Title 32, Chapter 25;~~ or
c. Nurse practitioner~~, licensed according to A.R.S. Title 32, Chapter 15~~.

~~46.~~ "Meeting" means an encounter or assembly of individuals which may be conducted in person or by telephone or by video-conferencing.

~~47.~~ "Mental health agency" includes a regional authority, service provider, inpatient facility, or ~~an agency licensed~~ an entity that conducts ~~to conduct~~ screening~~,~~ and evaluation ~~and treatment~~ under ~~this Chapter~~ Article 5.

~~48.~~ "Nurse" means an individual licensed as a registered nurse or a practical nurse according to A.R.S. Title 32, Chapter 15.

~~49.~~ "Party" or "parties" as used in Articles 3 and 4 of these rules means the person filing a grievance under this Chapter, the agency director who issued any final resolution or decision of such a grievance, the person whose conduct is complained of in the grievance, any client or applicant who is the subject of the request or grievance, the legal guardian of client or applicant, and, in selected cases, the appropriate human rights committee.

~~50.~~ "Personal restraint" means the application of physical force without the use of any device, for the purpose of restricting the free movement of a client's body, but for a behavioral health agency licensed as a level 1 Residential Treatment Center RTC or a Level I sub-acute agency ~~according to A.A.C. R9-20-102~~ does not include:

a. Holding a client for no longer than five minutes, without undue force, in order to calm or comfort the client; or

b. Holding a client's hand to escort the client from one area to another.

~~51.~~ "PRN order" or "Pro re ~~rata~~ nata medication" means medication given as needed.

~~52.~~ "Program director" means the person with the day-to-day responsibility for the operation of a programmatic component of a service provider, such as a specific residential, vocational, or case management program.

~~53.~~ "Qualified clinician" means a behavioral health professional who is licensed or certified under A.R.S. Title 32, or a behavioral health technician who is supervised by a licensed or certified behavioral health professional.

~~54.~~ "Region" means the geographical region designated by the ~~Department~~ Administration in its contract with the regional authority.

~~55.~~ "Regional authority" means the ~~regional behavioral health authority~~ Regional Behavioral Health Authority (RBHA) under contract with the ~~Department~~ Administration to organize and administer the delivery of behavioral health services or community services to clients and enrolled children within a defined geographic area.

~~56.~~ "Restraint" means personal restraint, mechanical restraint, or drug used as a restraint.

~~57.~~ "Seclusion" means restricting a client to a room or area through the use of locked doors or any other device or method which precludes a client from freely exiting the room or area or which a client reasonably believes precludes his unrestricted exit. In the case of an inpatient facility, confining a client to the facility, the grounds of the facility, or a ward of the facility does not constitute seclusion. In the case of a community residence, restricting a client to the residential site, according to specific provisions of an individual service plan or court order, does not constitute seclusion.

~~58.~~ "Seriously mentally ill" means a person 18 years of age or older ~~r chronically mentally ill as those terms are~~ as defined in A.R.S. § 36-550.

~~59.~~ "Service provider" means an agency, inpatient facility or other mental health provider funded by or through, under contract or subcontract with, ~~licensed by,~~ certified by, approved by, registered with, or supervised bythe ~~Department~~Administration or receiving funds under Title XIX, to provide behavioral health services or community services.

~~60.~~ "State Protection and Advocacy System" means the agency designated as the Protection and Advocacy System for individuals with mental illness, according to ~~42 U.S.C. 10801-51~~ 42 U.S.C. 10801-10851.

~~61.~~ "Title XIX" means Title XIX of the Social Security Act, 42 U.S.C. 1396 et seq.

~~62.~~ "Treatment team" means the multidisciplinary team of persons who are responsible for providing continuous treatment and support to a client ~~who is a current resident of an inpatient facility~~ who is in an inpatient facility.

R9-21-102. Applicability

With regard to the provision of behavioral health services or community services to clients under A.R.S. Title 36 Chapter 5, this Chapter shall apply to the ~~Department~~ Administration and to all mental health agencies. ~~funded by or through, under contract or subcontract with, licensed by, certified by, approved by, registered with, or supervised by the Department or receiving funds under Title XIX, to provide behavioral health services or community services.~~ This Chapter shall not apply to the Arizona Department of Corrections.

R9-21-103. Computation of Time

For any period of time prescribed or allowed by this Chapter, the time shall be calculated as follows:

1. The period of time shall not include the day of the act, event or default from which the designated period of time begins to run;
2. ~~If the period of time is designated as calendar days, the period of time shall include each day after the day of the act, event or default from which the designated period of time begins to run;~~
3. ~~If the period of time is not designated as calendar days:~~
   ~~a.~~ If the period of time prescribed or allowed is less than 11 days, the period of time shall not include intermediate Saturdays, Sundays and legal holidays;

3. ~~b.~~ If the period of time is 11 days or more, the period of time shall include intermediate Saturdays, Sundays and legal holidays;

~~c. If the last day of the period of time is not a Saturday, Sunday, or legal holiday, the period of time shall include the last day of the period of time; and~~

4.~~d.~~ If the last day of the period of time is a Saturday, Sunday, or legal holiday, the period of time shall extend until the end of the next day that is not a Saturday, Sunday or legal holiday.

R9-21-104. Office of Human Rights; Human Rights Advocates

A. ~~The director shall establish an~~ An Office of Human Rights shall be established ~~for clients~~ within the ~~Department~~ Administration. The office shall have its own chief officer ~~appointed by the directorThe chief officer shall report directly to the director and~~ who shall be responsible for the management and control of the office, as well as the hiring, training, supervision, and coordination of ~~all Department~~ human rights advocates.

B. No change

C. The human rights advocates shall be given access to all:

1. Clients; and
2. Client records from a service provider, regional authority, or the ~~Department~~ Administration, except as prohibited by federal or state law.

D. No change

E. No change

F. No change

G. No change

R9-21-105. Human Rights Committees

A. According to A.R.S. §§ 41-3803 and 41-3804, the ~~Department~~ Administration shall establish human rights committees to provide independent oversight to ensure that the rights of clients and enrolled children are protected. The ~~Department~~ Administration shall establish at least one human rights committee for each region and the Arizona State Hospital. Upon the establishment of a human rights committee, if more than 2,500 clients reside within a region,

the ~~Department~~ Administration shall establish additional human rights committees until there is one human rights committee for each 2,500 clients in a region.

B. No change

C. The ~~director~~ Administration shall appoint the initial members to each regional committee and the human rights committee for the Arizona State Hospital. ~~The Director shall appoint members~~ Members shall be appointed to fill vacancies on a human rights committee, subject to the approval of the committee.

D. Each committee shall meet at least four times each year. Within three months of its formation, each committee shall establish written guidelines governing the committee's operations. These guidelines shall be consistent with A.R.S. §§ 41-3803 and 41-3804. The adoption and amendment of the committee's guidelines shall be by a majority vote of the committee and shall be submitted to the ~~Director~~ Administration for approval.

E. No employee ~~of~~ or individual under contract with the ~~Department~~ Administration, regional authority, or service provider may be a voting member of a committee.

F. No change

G. No change

H. No change

I. A committee may request the services of a consultant or staff person to advise the committee on specific issues. The cost of the consultant or staff person shall be assumed by the ~~Department~~ Administration or regional authority subject to the availability of funds specifically allocated for that purpose. A consultant or staff person may, in the sole discretion of the committee, be a member of another committee or an employee of the ~~Department~~ Administration, regional authority, or service provider. No committee consultant or staff person shall vote or otherwise direct the committee's decisions.

J. Committee members and committee consultants and staff persons shall have access to client records according to A.R.S. §§ ~~36-509(13)~~ 36-509(A)(11) and 41-3804(I). If a human rights committee's request for information or records is denied, the committee may request a review of the decision to deny the request according to A.R.S. § 41-3804(J). Nothing in this rule shall be construed to require the disclosure of records or information to the extent that such information is protected by A.R.S. § 36-445 et seq.

K. On the first day of the months of January, April, July, and October of each year, each committee shall issue a quarterly report summarizing its activities for the prior quarter, including any written objections to the ~~Director~~ Administration according to A.R.S. § 41-3804(F), and make any recommendations for changes it believes the ~~Department~~ Administration or regional authorities should implement. In addition, the committee may, as it deems appropriate, issue reports on specific problems or violations of client's rights. The report of a regional committee shall be delivered to the regional authority and the ~~Division~~ Administration.

L. The ~~Department~~ Administration shall provide training and support to human rights committees.

M. No change

N. No change

O. No change

R9-21-106. State Protection and Advocacy System

Staff of mental health agencies shall cooperate with the State Protection and Advocacy System in its investigations and advocacy for clients and shall provide the System access to clients, records and facilities to the extent permitted and required by federal law, ~~42 U.S.C.A. 10801-51~~ 42 U.S.C. 10801-10851. Nothing in this rule shall be construed to create an independent cause of action that does not already exist for the State Protection and Advocacy System either in state court or any administrative proceeding provided by these rules.

ARTICLE 2. RIGHTS OF PERSONS WITH SERIOUS MENTAL ILLNESS

R9-21-201. Civil and Other Legal Rights

A. Clients shall have all rights accorded by applicable law, including but not limited to those prescribed in A.R.S. §§ 36-504 through ~~36-514~~ 36-517.02 ~~and in 9 A.A.C. 20~~. Any individual or agency providing behavioral health services or community services as defined in R9-21-101 shall not abridge these rights, including the following:

1. Those civil rights set forth in A.R.S. § 36-506;
2. The right to acquire and dispose of property, to execute instruments, to enter into contractual relationships, to hold professional or occupational or vehicle operator's

licenses, unless the ~~Client~~ client has been adjudicated incompetent or there has been a judicial order or finding that such client is unable to exercise the specific right or category of rights. In the case of a client adjudicated incompetent, these rights may be exercised by the client's guardian, in accordance with applicable law;

3. The right to be free from unlawful discrimination by the ~~Department~~ Administration or by any mental health agency on the basis of race, creed, religion, sex, sexual preference, age, physical or mental handicap or degree of handicap; provided, however, classifications based on age, sex, category or degree of handicap shall not be considered discriminatory, if based on written criteria of client selection developed by a mental health agency and approved by the ~~Department~~ Administration as necessary to the safe operation of the mental health agency and in the best interests of the clients involved;
4. The right to equal access to all existing behavioral health services, community services, and generic services provided by or through the state of Arizona;
5. The right to religious freedom and practice, without compulsion and according to the preference of the client;
6. The right to vote, unless under guardianship, including reasonable assistance when desired in registering and voting in a nonpartisan and noncoercive manner;
7. The right to communicate including:
   a. The right to have reasonable access to a telephone and reasonable opportunities to make and receive confidential calls and to have assistance when desired and necessary to implement this right;
   b. The unrestricted right to send and receive uncensored and unopened mail, to be provided with stationery and postage in reasonable amounts, and to receive assistance when desired and necessary to implement this right;
8. The right to be visited and visit with others, provided that reasonable restrictions may be placed on the time and place of the visit but only to protect the privacy of other clients or to avoid serious disruptions in the normal functioning of the mental health agency;
9. The right to associate with anyone of the client's choosing, to form associations, and to discuss as a group, with those responsible for the program, matters of general interest to the client, provided that these do not result in serious disruptions in the normal functioning of the mental health agency. Clients shall receive cooperation from the mental health

agency if they desire to publicize and hold meetings and clients shall be entitled to invite visitors to attend and participate in such meetings, provided that they do not result in serious disruptions in the normal functioning of the mental health agency;

10. The right to privacy, including the right not to be fingerprinted and photographed without authorization, except as provided by A.R.S. § 36-507(2);
11. The right to be informed, in appropriate language and terms, of client rights;
12. The right to assert grievances with respect to infringement of these rights, including the right to have such grievances considered in a fair, timely, and impartial procedure, as set forth in Article 4 of these rules, and the right not to be retaliated against for filing a grievance~~.~~;
13. The right of access to a human rights advocate in order to understand, exercise, and protect a client's rights;
14. The right to be assisted by an attorney or designated representative of the client's own choice, including the right to meet in a private area at the program or facility with an attorney or designated representative. Nothing in this ~~Section~~ Chapter shall be construed to require the ~~Department~~ Administration or any mental health agency to pay for the services of an attorney who consults with or represents a client;
15. The right to exercise all other rights, entitlements, privileges, immunities provided by law, and specifically those rights of consumers of behavioral health services or community services set forth in A.R.S. §§ 36-504 through ~~514~~ 36-517.02;
16. The same civil rights as all other citizens of Arizona, including the right to marry and to obtain a divorce, to have a family, and to live in the community of their choice without constraints upon their independence, except those constraints to which all citizens are subject.

B. No change

R9-21-203. Protection from Abuse, Neglect, Exploitation, and Mistreatment

A. No mental health agency shall mistreat a client or permit the mistreatment of a client by staff subject to its direction. Mistreatment includes any intentional, reckless or negligent action or

omission which exposes a client to a serious risk of physical or emotional harm. Mistreatment includes but is not limited to:

1. Abuse, neglect, or exploitation;
2. Corporal punishment;
3. Any other unreasonable use or degree of force or threat of force not necessary to protect the client or another person from bodily harm;
4. Infliction of mental or verbal abuse, such as screaming, ridicule, or name calling;
5. Incitement or encouragement of clients or others to mistreat a client;
6. Transfer or the threat of transfer of a client for punitive reasons;
7. Restraint or seclusion used as a means of coercion, discipline, convenience, or retaliation;
8. Any act in retaliation against a client for reporting any violation of the provisions of this Chapter to the ~~Department~~ Administration; or
9. Commercial exploitation.

B. The following special sanctions shall be available to the Department and/or the Administration, in addition to those set forth in 9 A.A.C. 10, Article 10 of ~~it's~~ the Department's rules, to protect the interests of the client involved as well as other current and former clients of the mental health agency.

1. Mistreatment of a client by staff or persons subject to the direction of a mental health agency may be grounds for suspension or revocation of the license of the mental health agency or the provision of ~~Departmental~~ financial assistance, and, with respect to employees of the ~~Department~~ mental health agency, grounds for disciplinary action, which may include dismissal.
2. Failure of an employee of the ~~Department~~ Administration to report ~~to the Department~~ any instance of mistreatment within any mental health agency subject to this Chapter shall be grounds for disciplinary action, which may include dismissal.
3. Failure of ~~an agency director~~ a mental health agency to report client deaths and allegations of sexual and physical abuse to the ~~Department~~ Administration and to comply with the procedures described in Article 4 of this Chapter for the processing and investigation of grievances and reports shall be grounds for suspension of the license of the mental health agency or the provision of ~~Departmental~~ financial assistance, and, with respect to a service

provider directly operated by the Department, grounds for disciplinary action, which may include dismissal.

4. ~~The agency director~~ A mental health agency shall report all allegations of mistreatment and denial of rights to the Office of Human Rights and the regional authority for review and monitoring in accordance with R9-21-105.

C. ~~An agency director~~ A mental health agency shall report all incidents of abuse, neglect, or exploitation to the appropriate authorities as required by A.R.S. § 46-454 and shall document all such reports in the mental health agency's records.

D. ~~Where an agency director~~ If a mental health agency has reasonable cause to believe that a felony relevant to the functioning of the program has been committed by staff persons subject to the agency's direction, a report shall be filed with the county attorney.

E. The identity of persons making reports of abuse, neglect, exploitation, or mistreatment shall not be disclosed by the ~~agency director~~ mental health agency or by the ~~Department~~ Administration, except as necessary to investigate the subject matter of the report.

R9-21-204. Restraint and Seclusion

A. A mental health agency shall only use restraint or seclusion to the extent permitted by and in compliance with this Chapter, ~~9 A.A.C. 20,~~ and other applicable federal or state law.

B. No change

C. No change

D. A service provider shall at all times have staff qualified ~~according to 9 A.A.C. 20~~ on duty to provide:

1. Restraint and seclusion according to this Section, and
2. The behavioral health services the mental health agency is authorized to provide ~~according to 9 A.A.C. 20~~.

E. No change

F. No change

G. A mental health agency shall only use restraint or seclusion according to:

1. A written order given:
   a. By a physician providing treatment to a client; or
   b. If a physician providing treatment to a client is not present on the premises or on-call:

i. If the agency is licensed as a level 1 psychiatric acute hospital ~~according to R9-20-102~~, by a physician or a nurse practitioner; or

ii. If the agency is licensed as a level 1 subacute agency or a level 1 RTC ~~according to R9-20-102~~, by a medical practitioner.

2. An oral order given to a nurse by:

a. A physician providing treatment to a client, or

b. If a physician providing treatment to a client is not present on the premises or on-call:

i. If the agency is licensed as a level 1 psychiatric acute hospital ~~according to R9-20-102~~, by a physician or a nurse practitioner; or

ii. If the agency is licensed as a level 1 sub-acute agency or a level 1 RTC ~~according to R9-20-102~~, by a medical practitioner.

H. If a restraint or seclusion is used according to subsection (G)(2), the individual giving the order shall, at the time of the oral order in consultation with the nurse, determine whether, based upon the client's current and past medical, physical and psychiatric condition, it is clinically necessary for:

1. If the agency is licensed as a level 1 psychiatric acute hospital ~~according to R9-20-102~~, a physician to examine the client as soon as possible and, if applicable, the physician shall examine the client as soon as possible; or

2. If the agency is licensed as a level 1 sub-acute agency or a level 1 RTC ~~according to R9-20-102~~, a medical practitioner to examine the client as soon as possible and, if applicable, the medical practitioner shall examine the client as soon as possible.

I. An individual who gives an order for restraint or seclusion shall:

1. Order the least restrictive restraint or seclusion that may resolve the client's behavior that is creating the emergency safety situation, based upon consultation with a staff member at the agency;

2. Be available to the agency for consultation, at least by telephone, throughout the period of the restraint or seclusion;

3. Include the following information on the order:

a. The name of the individual ordering the restraint or seclusion,

b. The date and time that the restraint or seclusion was ordered,

c. The restraint or seclusion ordered,

d. The criteria for release from restraint or seclusion without an additional order, and

e. The maximum duration for the restraint or seclusion;

4. If the order is for mechanical restraint or seclusion, limit the order to a period of time not to exceed three hours.

5. If the order is for a drug used as a restraint, limit the:

a. ~~The dosage~~ Dosage to that necessary to achieve the desired effect, and

b. Drug ordered to a drug other than a time-released drug designed to be effective for more than three hours; and

6. If the individual ordering the use of restraint or seclusion is not a physician providing treatment to the client:

a. After ordering the restraint or seclusion, consult with the physician providing treatment as soon as possible, and

b. Inform the physician providing treatment of the client's behavior that created the emergency safety situation and required the client to be restrained or placed in seclusion.

J. No change

K. If an individual has not examined the client according to subsection (H), the following individual shall conduct a face-to-face assessment of a client's physical and psychological well-being within one hour after the initiation of restraint or seclusion:

1. For a behavioral health agency licensed ~~according to R9-20-102~~ as a level 1 psychiatric acute hospital, a physician or nurse practitioner who is either on-site or on-call at the time the mental health agency initiates the restraint or seclusion; or

2. For a behavioral health agency licensed ~~according to R9-20-102~~ as a level 1 RTC or a level 1 sub-acute agency a medical practitioner or a registered nurse with at least one year of full time behavioral health work experience, who is either on-site or on-call at the time the mental health agency initiates the restraint or seclusion.

L. No change

M. For each restraint or seclusion of a client, a mental health agency shall include in the client's record the order and any renewal order for the restraint or seclusion, and shall document in the client's record:

1. The nature of the restraint or seclusion;

2. The reason for the restraint or seclusion, including the facts and behaviors justifying it;
3. The types of less restrictive alternatives that were attempted and the reasons for the failure of the less restrictive alternatives;
4. The name of each individual authorizing the use of restraint or seclusion and each individual restraining or secluding a client or monitoring a client who is in restraint or seclusion;
5. The evaluation and assessment of the need for seclusion or restraint conducted by the individual who ordered the restraint or seclusion;
6. The determination and the reasons for the determination made according to subsection (H) ~~above~~;
7. The specific and measurable criteria for client release from mechanical restraint or seclusion with documentation to support that the client was notified of the release criteria and the client's response;
8. The date and times the restraint or seclusion actually began and ended;
9. The time and results of the face-to-face assessment required in subsection (L);
10. For the monitoring of a client in restraint or seclusion required by subsection (P):
    a. The time of the monitoring,
    b. The name of the staff member who conducted the monitoring, and
    c. The observations made by the staff member during the monitoring; and
11. The outcome of the restraint or seclusion.

N. No change

O. No change

P. No change

Q. No change

R. No change

S. No change

T. No change

U. No change

V. Not later than the tenth day of every month, the program director shall prepare and file with the ~~Division~~ Administration and the Office of Human Rights a written report describing the use of any form of restraint or seclusion during the preceding month in the mental health

agency or by any employees of the agency. In the case of an inpatient facility, the report shall also be filed with any patient or human rights committee for that facility.

W. The ~~Department's human rights committee, the~~ Office of Human Rights, and any applicable ~~regional~~ human rights committee shall review such reports to determine if there has been any inappropriate or unlawful use of restraint or seclusion and to determine if restraint or seclusion may be used in a more effective or appropriate fashion.

X. If any human rights committee or the Office of Human Rights determines that restraint or seclusion has been used in violation of any applicable law or rule, the committee or Office may take whatever action is appropriate, including investigating the matter itself or referring the matter to the ~~Division~~ Administration for remedial action.

R9-21-206. Competency and Consent

A. No change

B. No change

C. Only an applicant or client who is competent may provide informed consent, authorization, or permission as required in this Chapter. A mental health agency shall use the following criteria to determine if an applicant or client is competent and the appropriateness of establishing or removing a guardianship, temporary guardianship, conservatorship, or guardianship ad litem for the client:

1. An applicant or client shall be determined to be in need of guardianship or conservatorship only if the applicant's or client's ability to make important decisions concerning the applicant or client or the applicant's or client's property is so limited that the absence of a person with legal authority to make such decisions for the applicant or client creates a serious risk to the applicant's or client's health, welfare or safety.
2. Although the capability of the applicant or client to make important decisions is the central factor in determining the need for guardianship, the capabilities of the applicant's or client's family, the applicant's or client's living circumstances, the probability that available treatment will improve the applicant's or client's ability to make decisions on the applicant's or client's behalf, and the availability and utility of nonjudicial alternatives to

guardianships such as trusts, representative payees, citizen advocacy programs, or community support services should also be considered.

3. If the applicant or client has been determined to be incapable of making important decisions with regard to the applicant's or client's personal or financial affairs, and if nonjudicial, less restrictive alternatives such as trusts, representative payees, cosignatory bank accounts, and citizen advocates are inadequate to protect the applicant or client from a substantial and unreasonable risk to the applicant's or client's health, safety, welfare, or property, the applicant's or client's nearest living relatives shall be notified with an accompanying recommendation that a guardian or conservator be appointed.
4. If the applicant or client is capable of making important decisions concerning the applicant's or client's health, welfare, and property, either independently or through other less restrictive alternatives such as trusts, representative payees, cosignatory bank accounts, and citizen advocates, the applicant's or client's nearest living relative shall be notified with an accompanying recommendation that any existing guardian or conservator be removed.
5. If the client has been determined to require or no longer require assistance in the management of financial or personal affairs, and the nearest living relative cannot be found or is incapable of or not interested in caring for the client's interest, the mental health agency shall assist in the recruitment or removal of a trustee, representative payee, advocate, conservator, or guardian. Nothing in this ~~Section~~ Chapter shall be construed to require the ~~Department~~ Administration or any regional authority or service provider to pay for the recruitment, appointment or removal of a trustee, representative payee, advocate, conservator, or guardian.
6. The assessment or periodic review shall identify the specific area or areas of the client's functioning that forms the basis of the recommendation for the appointment or removal of a guardian or conservator, such as an inability to respond appropriately to health problems or consent to medical care, or an inability to manage savings or routine expenses.

D. No change

R9-21-206.01. Informed Consent

A. Except in an emergency according to A.R.S. §§ 36-512 or 36-513 or R9-21-204, or a court order according to A.R.S. Title 36, Chapter 5, Articles 4 and 5, a mental health agency shall obtain written informed consent in at least the following circumstances:

1. Before providing a client a treatment with known risks or side effects, including:
   a. Psychotropic medication,
   b. Electro-convulsive therapy, or
   c. Telemedicine;
2. Before ~~having~~ a client ~~participate~~ participates in research activities ~~approved under Department rules or policy~~; and
3. Before admitting a client to any medical detoxification, inpatient facility, or residential program operated by a mental health agency.

B. The informed consent in subsection (A) shall be voluntary and shall be obtained from:

1. The client, if the client is determined to be competent according to R9-21-206,; or
2. The client's guardian, if a court of competent jurisdiction has adjudicated the client incompetent.

C. No change

D. No change

E. No change

F. No change

G. No change

H. No change

R9-21-208. Property and Possessions

A. No change

B. If a mental health agency, which offers assistance to its clients in managing their funds, takes possession or control of a client's funds at the request of the client, guardian, or by court order, the mental health agency shall issue a receipt to the client or guardian for each transaction involving such funds. If deposited funds in excess of $250 are held by the mental health agency, where the likelihood of the client's stay will exceed 30 days, an individual bank account or an amalgamated client trust account shall be maintained for the benefit of the client. All interest

shall become the property of the client or the fair allocation of the interest in the case of an amalgamated client trust account. The mental health agency shall provide a bond to cover client funds held.

1. Unless a guardian, conservator, or representative payee has been appointed, the client shall have an unrestricted right to manage and spend deposited funds.
2. The mental health agency shall obtain prior written permission from the client, the guardian or conservator for any arrangement involving shared or delegated management responsibilities. The permission shall set forth the terms and conditions of the arrangement.
3. Where the mental health agency has shared or delegated management responsibilities, the mental health agency shall meet the following requirements:
   a. Client funds shall not be applied to goods or services which the mental health agency is obligated by law or funded by contract to provide, except as permitted by ~~the~~ a client fee schedule authorized by the ~~Department~~ Administration;
   b. The mental health agency and its staff shall have no direct or indirect ownership or survivorship interest in the funds;
   c. Such arrangements shall be accompanied by a training program, documented in the ISP, to eliminate the need for such assistance;
   d. Staff shall not participate in arrangements for shared or delegated management of the client's funds except as representatives of the mental health agency;
   e. Any arrangements made to transfer a client from one mental health agency to another shall include provisions for transferring shared or delegated management responsibilities to the receiving mental health agency;
   f. The client shall be informed of all proposed expenditures and any expression of preference within reason shall be honored; and
   g. Expenditures shall be made only for purposes which directly benefit the client in accordance with the client's interests and desires.
4. A record shall be kept of every transaction involving deposited funds, including the date and amount received or disbursed, and the name of the person to or from whom the funds are received or disbursed. The client, guardian, conservator, mental health agency or regional human rights advocate or other representative may demand an accounting at any reasonable time, including at the time of the client's transfer, discharge or death.

5. Any funds so deposited shall be treated for the purpose of collecting charges for care the same as any other property held by or on behalf of the client. The client or guardian shall be informed of any possible charges before the onset of services.

R9-21-209. Records

A. No change

B. No change

C. Inspection by specially authorized persons or entities shall be permitted as follows unless otherwise prohibited by federal or state law:

1. Records of a client may be available to those individuals and agencies listed in A.R.S. § 36-509.
2. Records of a client shall be open to inspection upon proper judicial order, whether or not such order is made in connection with pending judicial proceedings.
3. Records of a client shall be made available to a physician who requests such records in the treatment of a medical emergency, provided that the client is given notice of such access as soon as possible.
4. Records of a client shall be made available to ~~Division~~ staff authorized by the ~~Department~~ Administration to monitor the quality of services being provided by the mental health agency to the client.
5. Records of a client shall be made available to guardians and family members actively participating in the client's care, treatment or supervision as provided by A.R.S. §§ 36-504, 36-509(A)(8) and (B). Except when inspection of a client's record is required under a proper judicial order or by a physician in a medical emergency, a client, guardian or family member may challenge the decision to allow or deny inspection of the record by filing a request for administrative and judicial review in accordance with the provisions of A.R.S. § 36-517.01 or other applicable federal or state law. Once a request is filed, no further disclosure of records shall be made until the review has been completed.

D. No change

E. No change

F. No change

G. No change

H. No change

Exhibit A. Notice of Legal Rights for Persons with Serious Mental Illness

If you have a serious or chronic mental illness, you have legal rights under federal and state law. Some of these rights include:

- The right to appropriate mental health services based on your individual needs;
- The right to participate in all phases of your mental health treatment, including individual service plan (ISP) meetings;
- The right to a discharge plan upon discharge from a hospital;
- The right to consent to or refuse treatment (except in an emergency or by court order);
- The right to treatment in the least restrictive setting;
- The right to freedom from unnecessary seclusion or restraint;
- The right not to be physically, sexually, or verbally abused;
- The right to privacy (mail, visits, telephone conversations);
- The right to file an appeal or grievance when you disagree with the services you receive or your rights are violated;
- The right to choose a designated representative(s) to assist you in ISP meetings and in filing grievances;
- The right to a case manager to work with you in obtaining the services you need;
- The right to a written ISP that sets forth the services you will receive;
- The right to associate with others;
- The right to confidentiality of your psychiatric records;
- The right to obtain copies of your own psychiatric records (unless it would not be in your best interests to have them);
- The right to appeal a court-ordered involuntary commitment and to consult with an attorney and to request judicial review of court-ordered commitment every 60 days;
- The right not to be discriminated against in employment or housing.

If you would like information about your rights, you may request a copy of the "Your Rights in Arizona as an Individual with Serious Mental Illness" brochure or you may also call the ~~Arizona Department of Health Services~~ Administration, Office of Human Rights at 1-800-421-2124.

ADHS/BHS Form MH-211 (9/93)

ARTICLE 3. INDIVIDUAL SERVICE PLANNING FOR BEHAVIORAL HEALTH SERVICES FOR PERSONS WITH SERIOUS MENTAL ILLNESS

R9-21-301. General Provisions

A. Responsibilities of the regional authority, clinical team, and case manager.

1. The regional authority is responsible for providing, purchasing, or arranging for all services identified in ISPs.
   a. The regional authority shall perform all intake and case management for its region. The regional authority may contract with a mental health agency to perform intake or case management but only with the written approval of the ~~Department,~~ Administration, which may be given in its sole discretion.
   b. Other services may be provided directly by programs operated by the ~~Department~~ Administration or by the regional authority through contracts with service providers ~~that are licensed or approved by the Department~~, or through arrangements with other agencies or generic providers.
2. The regional authority and the clinical team shall work diligently to ensure equal access to generic services for its clients in order to integrate the client into the mainstream of society.
3. The initial clinical team shall work to meet the individual's needs from the date of application or referral for services until such time as eligibility is established and an ISP is developed.
4. The assigned clinical team shall be primarily responsible for providing continuous treatment, outreach and support to a client, for identifying appropriate behavioral health services or community services, and for developing, implementing and monitoring ISPs for clients.
5. The case manager, in conjunction with the clinical team, shall:
   a. Locate services identified in the ISP;

b. Confirm the selection of service providers and include the names of such providers in the ISP;
c. Obtain a written client service agreement from each provider;
d. Be responsible for ensuring that services are actually delivered in accordance with the ISP; and
e. Monitor the delivery of services rendered to clients. Monitoring shall consider, at a minimum, the consistency of the services with the goals and objectives of the ISP.

6. The case manager shall also be responsible to:
   a. Initiate and maintain close contact with clients and service providers;
   b. Provide support and assistance to a client, with the client's permission and consistent with the client's individual needs;
   c. Ensure that each service provider participates in the development of the ISP for each client of the service provider;
   d. Ensure that each inpatient facility, according to R9-21-312, develops an ITDP that is integrated in and consistent with the ISP;
   e. Assess progress toward, and identify impediments to, the achievement of the client's goals and objectives identified in the ISP;
   f. Promote client involvement in the development, review, and implementation of the ISP;
   g. Attempt to resolve problems and disagreements with respect to any component of the ISP;
   h. Assist in resolving emergencies concerning the implementation of the ISP;
   i. Attend all periodic reviews of the ISP and ITDP meetings;
   j. Assist in the exploration of less restrictive alternatives to hospitalization or involuntary commitment; and
   k. Otherwise coordinate services provided to the client.
7. If a case manager is assigned to a client who, at any time, is admitted to an inpatient facility, the case manager shall ensure the development, modification or revision of a client's ISP and the integration of the ITDP according to this Article.

a. The inpatient facility clinician responsible for coordinating the ITDP shall immediately notify the client's case manager of the time of the admission and ensure that all treatment and discharge planning includes the case manager.
b. The case manager shall be provided notice of all treatment and discharge meetings, shall participate as a full member of the inpatient facility treatment team in such meetings, shall receive periodic and other reports concerning the client's treatment, and shall be responsible for identifying and securing appropriate community services to facilitate the client's discharge.
c. If no case manager has been assigned, the inpatient facility clinician primarily responsible for the client's inpatient care shall, within three days of admission, make a referral to the appropriate regional authority- for the appointment of a case manager.
d. Delays in the assignment of a case manager or in the development or modification of an ISP or ITDP shall not be construed to prevent the clinically appropriate discharge of a client from an inpatient facility.
e. Inpatient facilities shall establish a mechanism for the credentialing of case managers and other members of the clinical team in order that they may participate in ITDP meetings.

B. No change

C. No change

D. Notices to the individual.

1. Any individual or mental health agency required to give notice to an individual of any documents, including eligibility determinations, assessment reports, ISPs, and ITDPs according to this rule shall do so by:
   a. Providing a copy of the document to the individual;
   b. Providing copies to any designated representative and guardian;
   c. Personally explaining to the individual and designated representative and/or guardian any right to accept, reject, or appeal the contents of the document and the procedures for doing so under this Article.
2. Individuals requesting or receiving behavioral health services or community services shall be informed:
   a. Of the right to request an assessment;

b. Of the right to have a designated representative assist the client at any stage of the service planning process;

c. Of the right to participate in the development of any plan prepared under this Article, including the right to attend all planning meetings;

d. Of the right to appeal any portion of any assessment, plan, or modification to an assessment or plan, according to R9-21-401;

e. Of the ~~authority of the~~ ~~Department~~ Administration's authority to require necessary and relevant information about the individual's needs, income, and resources;

f. Of the availability of assistance from the regional authority in obtaining information necessary to determine the need for behavioral health services or community services;

g. Of the ~~authority of the~~ ~~Department~~ Administration's or mental health agency's ~~or mental health agency~~ authority to charge for services and assessments; h. That if the individual declines the services of a case manager or an ISP, the individual has the right to apply for services at a subsequent time; and

i. That if the individual declines any particular service or treatment modality, it will not jeopardize other accepted services.

E. No change

F. No change

R9-21-303. Eligibility Determination and Initial Assessment

A. No change

B. No change

C. The qualified clinician in subsection (B) shall obtain information necessary to make an eligibility determination, including:

1. Identifying data and residence, including a social security number if available;
2. The reasons for the request or referral for services;
3. The individual's psychiatric diagnosis;
4. The individual's present level of functioning, based upon the criteria set forth in the definition of "seriously mentally ill" ~~in R9-21-101~~;

5. The individual's history of mental health treatment;
6. The individual's abilities, needs, and preferences for services; and
7. A preliminary determination as to the individual's need for special assistance ~~as defined by R9-21-101(B)(13)~~.

D. No change

E. To be eligible for behavioral health services or community services according to this Chapter the individual must be:

1. A resident of the state of Arizona, and
2. Seriously mentally ill ~~as defined in R9-21-101~~.

F. No change

G. No change

H. No change

R9-21-307. The Individual Service Plan

A. General provisions.

1. An individual service plan (ISP) shall be developed by the clinical team and each client.
2. The ISP shall include the most appropriate and least restrictive services, consistent with the client's needs and preferences, as identified in the assessment conducted according to R9-21-305, and without regard to the availability of services or resources.
3. The ISP shall identify those services which maximize the client's strengths, independence, and integration into the community.
4. Generic services available to the general public should be utilized, to the maximum extent possible, when adequate to meet the client's needs and if access can be arranged by the case manager or client.
5. If all needed services are not available, a plan for alternative services shall detail those services which are, to the maximum extent possible, adequate, appropriate, consistent with the client's needs, and least restrictive of the client's freedom.
6. The clinical team shall solicit and actively encourage the participation of the client and guardian.
7. The clinical team shall inform the client of the right to have a designated representative throughout the ISP process and to invite family members or other persons who could

contribute to the development of the ISP. The case manager shall seek to obtain a representative for clients who need special assistance or otherwise have limited capacity to articulate their own preferences and to protect their own interests in the ISP process and shall advise the relevant human rights committee that the client has been determined to need special assistance.

8. The ISP shall contain goals and objectives which are measurable and which facilitate meaningful evaluation of the progress toward attaining those goals and objectives.
9. The ISP shall incorporate a specific description of the client objectives, services, and interventions for each mental health agency which will provide services to the client. Each existing service provider will bring to the ISP meeting a detailed written description of the objectives and services currently in effect for the client.
10. For residents of an inpatient facility, the facility's treatment and discharge plan shall be developed according to R9-21-312 and shall be incorporated in the ISP.
11. Prior to the planned discharge of a new client from an inpatient facility, the clinical team shall develop an ISP which describes the community services, including alternative housing and residential supports, that will be provided when the client leaves the facility.
12. The ISP shall be written in language which can be easily understood by a lay person.
13. In developing the ISP, the case manager shall facilitate resolution of differences among service providers and, if resolution is not achieved, shall refer the matter to the regional authority, which shall resolve the matter in accordance with ~~Department~~ the Administration's policy.

B. No change

C. No change

D. No change

R9-21-309. Selection of Service Providers

A. Within seven days of the distribution of the ISP to the service providers identified in the ISP, the case manager, after consultation with the clinical team and the provider, shall determine whether each of these providers are capable of serving the client.

1. A contracted service provider shall not refuse to serve a client except for good cause related to the inability of the service provider to safely and professionally meet the client's needs as identified in the ISP~~, or except for Department contractual limitations~~.
2. If a contracted service provider believes it is incapable of meeting the client's needs or of implementing the ISP, the provider shall inform the case manager in writing within five days of receipt of the ISP. A contracted service provider shall specify the reasons for its conclusion.

B. No change

C. No change

D. No change

R9-21-310. Implementation of the Individual Service Plan

A. No change

B. No change

C. No change

D. No change

E. All contracts with service providers shall include:

1. A provision that the service provider shall abide by the rules contained in this Chapter and shall not alter, terminate, or otherwise interrupt services required under the ISP except parts of the ISP that have been modified according to R9-21-314;
2. A provision that the service provider shall cooperate with the ~~Department~~ Administration in collecting data necessary to determine if the ~~Department~~ Administration is meeting its obligations under this Chapter and A.R.S. Title 36, Chapter 5, Article 10; and
3. A provision that the service provider agrees to maintain current client records that document progress toward achievement of ISP goals and objectives and that meet applicable requirements of law, contract, and professional standards.

R9-21-311. Alternative Services

A. No change

B. No change

C. No change

D. No change

E. If the clinical team determines that a recommended service is unavailable or does not exist, it shall forward a description of that service to the director of the regional authority. The director shall:

1. Use best efforts to locate the needed service through existing services or reallocated resources;
2. Forward a description of the unmet service need to the ~~deputy director of the Division~~ Administration, if the appropriate service cannot be located or developed through existing services or reallocated resources; and
3. maintain a list of unmet service needs.

F. The ~~Division~~ Administration shall use information concerning unmet service needs to provide the appropriate service through existing services or reallocated resources or, if necessary, to plan for the development of the needed services.

G. No change

ARTICLE 4. APPEALS, GRIEVANCES, AND REQUESTS FOR INVESTIGATION FOR PERSONS WITH SERIOUS MENTAL ILLNESS

R9-21-401. Appeals

A. A client or an applicant may file an appeal concerning decisions regarding eligibility for behavioral health services, including Title XIX services, fees and waivers; assessments and further evaluations; service and treatment plans and planning decisions; and the implementation of those decisions. Appeals regarding a determination of categorical ineligibility for Title XIX shall be directed to the agency that made the determination.

1. Disagreements among employees of the ~~Department~~ Administration, the regional authority, clinical teams, and service providers concerning services, placement, or other issues are to be resolved using ~~Departmental~~ the Administration's guidelines, rather than this Article.

2. The case manager shall attempt to resolve disagreements prior to utilizing this appeal procedure; however, the client's right to file an appeal shall not be interfered with by any mental health agency or the ~~Department~~ Administration.
3. The Office of Human Rights shall assist clients in resolving appeals according to R9-21-104.
4. If a client or, if applicable, an individual on behalf of the client, files an appeal of a modification to or termination of a behavioral health service according to this Section, the client's service shall continue while the appeal is pending unless:
   a. A qualified clinician determines that the modification or termination is necessary to avoid a serious or immediate threat to the health or safety of the client or another individual; or
   b. The client or, if applicable, the client's guardian agrees in writing to the modification or termination.

B. Applicants and clients shall be informed of their right to appeal at the time an application for services is made, when an eligibility determination is made, when a decision regarding fees or the waiver of fees is made, upon receipt of the assessment report, during the ISP, ITDP, and review meetings, at the time an ISP, ITDP, and any modification to the ISP or ITDP is distributed, when any service is suspended or terminated, and at any other time provided by this Chapter. The notice shall be in writing in English and Spanish and shall include:

1. The client's right to appeal and to an administrative hearing according to A.R.S. § 41-1092.03;
2. The method by which an appeal and an administrative hearing may be obtained;
3. That the client may represent himself or use legal counsel or other appropriate representative;
4. The services available to assist the client from the Office of Human Rights, Human Rights Committees, State Protection and Advocacy System, and other peer support and advocacy services;
5. What action the mental health agency or ~~Department~~ regional authority intends to take;
6. The reasons for the intended action;
7. The specific rules or laws that support such action; and

8. An explanation of the circumstances under which services will continue if an appeal or an administrative hearing is requested.

C. The right to appeal in this Section does not include the right to appeal a court order entered according to A.R.S. Title 36, Chapter 5, Articles 4 and 5. The following issues may be appealed:

1. Decisions regarding the individual's eligibility for behavioral health services;
2. The sufficiency or appropriateness of the assessment or any further evaluation;
3. The long-term view, service goals, objectives, or timelines stated in the ISP or ITDP;
4. The recommended services identified in the assessment report, ISP, or ITDP;
5. The actual services to be provided, as described in the ISP, plan for interim services, or ITDP;
6. The access to or prompt provision of services provided under Title XIX;
7. The findings of the clinical team with regard to the client's competency, capacity to make decisions, need for guardianship or other protective services, or need for special assistance;
8. A denial of a request for a review of, the outcome of a review of, a modification to or failure to modify, or a termination of an ISP, ITDP, or portion of an ISP or ITDP;
9. The application of the procedures and timetables as set forth in this Chapter for developing the ISP or ITDP;
10. The implementation of the ISP or ITDP;
11. The decision to provide service planning, including the provision of assessment or case management services, to a client who is refusing such services, or a decision not to provide such services to such a client; or
12. Decisions regarding a client's fee assessment or the denial of a request for a waiver of fees;
13. Denial of payment for a client; and
14. Failure of the regional authority or the ~~Division~~ Administration to act within the time frames for appeal established in this Chapter.

D. Initiation of the appeal.

1. An appeal may be initiated by the client or by any of the following persons on behalf of a client or applicant requesting behavioral health services or community services:
   a. The client's or applicant's guardian,
   b. The client's or applicant's designated representative, or

c. A service provider of the client, if the client or, if applicable, the client's guardian gives permission to the service provider;

2. An appeal is initiated by notifying the director of the regional authority or the director designee orally or in writing of the decision, report, plan or action being appealed, including a brief statement of the reasons for the appeal and the current address and telephone number, if available, of the applicant or client and designated representative.
3. An appeal shall be initiated within 60 days of the decision, report, plan, or action being appealed. However, the director of the regional authority or the director designee shall accept a late appeal for good cause. If the regional authority director or the director designee refuses to accept a late appeal, the director or director designee shall notify the individual or client in writing, with a statement of reasons for the decision. Within 10 days of the notification, the client or applicant may request review of that decision by the ~~deputy director of the division~~ Administration, who shall act within 15 days of receipt of the request for review. The decision of the ~~deputy director~~ Administration shall be final.
4. Within five days of receipt of an appeal, the director of the regional authority shall inform the client in writing ~~in English and Spanish~~ that the appeal has been received and of the procedures that shall be followed during the appeal.

E. Informal conference with the regional authority.

1. Within seven days of receipt of the notice of appeal, the director of the regional authority or the director designee shall hold an informal conference with the client, any designated representative and/or guardian, the case manager and representatives of the clinical team, and a representative of the service provider, if appropriate.
   a. The regional authority director or the director's designee shall schedule the conference at a convenient time and place and shall inform all participants in writing of the time, date, and location two days before the conference.
   b. Individuals may participate in the conference by telephone.
2. The director of the regional authority or the director's designee shall chair the informal conference and shall seek to mediate and resolve the issues in dispute. To the extent that resolution satisfactory to the client or guardian is not achieved, the regional authority director or director's designee shall clarify issues for further appeal and shall determine the agreement, if any, of the participants as to the material facts of the case.

3. Except to the extent that statements of the participants are reduced to an agreed statement of facts, all statements made during the informal conference shall be considered as offers in compromise and shall be inadmissible in any subsequent hearing or court proceedings under this rule.
4. If the informal conference with the director of the regional authority or the ~~director~~ director's designee does not resolve the issues in dispute to the satisfaction of the client or, if applicable, the client's guardian, and the issues in dispute are not related to the client's eligibility for behavioral health services, the client or, if applicable, the client's guardian shall be informed that the matter ~~shall~~ may be further appealed to the Administration ~~to the Division~~, and of the procedure for requesting a waiver of the informal conference with the ~~Division~~ Administration.
5. If a client or, if applicable, the client's guardian waives the right to an informal conference with the ~~Division~~ Administration according to subsection (E)(4) or, if the informal conference with the director of the regional authority or the director designee does not resolve the issues in dispute to the satisfaction of the client or, if applicable, the client's guardian, and the issues in dispute are related to the client's eligibility for behavioral health services, the regional authority shall, at the informal conference:
   a. Provide written notice to the client or, if applicable, the client's guardian according to A.R.S. § 41-1092.03, and
   b. Ask the client or, if applicable, the client's guardian whether the client or, if applicable, the client's guardian would like the regional authority to request an administrative hearing according to A.R.S. § 41-1092.03 on behalf of the client.
   c. For a client who needs special assistance, send a copy of the notice in subsection (5)(a) to the appropriate human rights committee.
6. If, at the informal conference, a client or, if applicable, the client's guardian requests that the regional authority file a request for an administrative hearing according to A.R.S. § 41-1092.03 on behalf of the client, the regional authority shall file the request within three days of the informal conference.
7. If resolution satisfactory to the client or guardian is achieved, the director of the regional authority or the director designee shall issue a dated written notice to all parties which shall

include a statement of the nature of the appeal, the issues involved, the resolution achieved and the date by which the resolution will be implemented.

F. Informal conference with the ~~Division~~ Administration.

1. Within three days of the conclusion of an informal conference with the regional authority according to subsection (E)(4), the director of the regional authority or the director designee shall notify the ~~deputy director of the Division~~ Administration and shall immediately forward the client's notice of appeal, all documents relevant to the resolution of the appeal and any agreed statements of fact.
2. Within 15 days of the notification from the regional authority director or the director designee, the ~~deputy director of the Division~~ Administration shall hold an informal conference with the client, any designated representative and/or guardian, the case manager, and representatives of the clinical team, the service provider, if appropriate, for the purpose of mediating and resolving the issues being appealed.
   a. The ~~deputy director of the Division~~ Administration shall schedule the conference at a convenient time and place and shall inform the participants in writing of the time, date, and location five days prior to the conference.
   b. Individuals may participate in the conference by telephone.
   c. If a client is unrepresented at the conference but needs assistance, or if for any other reason the ~~deputy director of the Division~~ Administration determines the appointment of a representative to be in the client's best interest, the ~~deputy director~~ Administration may designate a human rights advocate or other person to assist the client in the appeal.
3. To the extent that resolution satisfactory to the client or guardian is not achieved, the ~~deputy director~~ Administration shall clarify issues for further appeal and shall determine the agreement, if any, of the participants as to the material facts of the case.
4. If resolution satisfactory to the client or guardian is achieved, the ~~deputy director~~ Administration shall issue a dated written notice to all parties which shall include a statement of the nature of the appeal, the issues involved, the resolution achieved, and the date by which the resolution will be implemented.
5. Except to the extent that statements of the participants are reduced to an agreed statement of facts, all statements made during the informal conference shall be considered as offers

in compromise and shall be inadmissible in any subsequent hearing or court proceedings under this rule.

6. If all issues in dispute are not resolved to the satisfaction of the client or guardian at the informal conference with the ~~Division~~ Administration, the ~~Division~~ Administration shall, at the informal conference:
   a. Provide written notice to the client or, if applicable, the client's guardian according to A.R.S. § 41-1092.03, and
   b. Ask the client or, if applicable, the client's guardian whether the client or, if applicable, the client's guardian would like the ~~Division~~ Administration to file a request for an administrative hearing according to A.R.S. § 41-1092.03 on behalf of the client.
   c. For all clients including clients who needs special assistance, send a copy of the notice in subsection (6)(a) to the Office of Human Rights and the appropriate human rights committee.
7. If, at the informal conference, a client or, if applicable, the client's guardian requests that the ~~Division~~ Administration file a request for an administrative hearing according to A.R.S. § 41-1092.03 on behalf of the client, the ~~Division~~ Administration shall file the request within three days of the informal conference according to subsection (G).

G. The fair hearing.

1. Within three days of the informal conference with the ~~Division~~ Administration, if the conference failed to resolve the appeal, or within five days of the date the conference was waived, the ~~deputy director of the Division~~ Administration shall ~~notify the director to~~ forward a request to schedule a fair hearing.
2. Within five days of the notification, the ~~director~~ Administration shall send a written notice of fair hearing to all parties, informing them of the time and place of the hearing, the name, address, and telephone number of the ~~hearing officer~~ Administrative Law Judge, and the issues to be resolved. The notice shall also be sent to the appropriate human rights committee and the Office of Human Rights for all clients, including clients who need ~~of~~ special assistance.
3. ~~Not less than 20 nor more than 30 days from such notice, the Department shall hold a~~ A fair hearing shall be held on the appeal in a manner consistent with A.R.S. ~~§§ 36-111 and 36-112, and 41-1061~~ § 41-1092 et seq. ~~(the Administrative Procedure Act)~~, and those

portions of ~~R9-1-101 through R9-1-126~~ 9 A.A.C. 1 which are consistent with this Article. ~~The client or any designated representative and/or guardian may request that the hearing be scheduled in a shorter or longer time. The Department shall make reasonable efforts to accommodate such request.~~

4. During the pendency of the appeal, the client, any designated representative and/or guardian, the clinical team, and representatives of any service providers may agree to implement any part of the ISP or ITDP or other matter under appeal without prejudice to the appeal.

~~5. The hearing shall be conducted by an impartial hearing officer appointed by the Department. The hearing officer may not be an employee of the Department, a regional authority or of a service provider under contract or subcontract with the Department. The Department may contract with a qualified individual to serve as a hearing officer under this rule.~~

~~6.~~5. The client or applicant shall have the right to be represented at the hearing by a person chosen by the client or applicant at the client's or applicant's own expense, in accordance with Rule 31~~(a)(3)~~, Rules of the Supreme Court.

~~7.~~ 6. The client, any designated representative and/or guardian, and the opposing party shall have the right to present any evidence relevant to the issues under appeal and to call and examine witnesses. The ~~Division~~ Administration shall have the right to appear to present legal argument.

~~8.~~ 7. The client and any designated representative and/or guardian shall have the right to examine and copy at a reasonable time prior to the hearing all records held by the ~~Department~~ Administration, regional authority, or service provider pertaining to the client and the issues under appeal, including all records upon which the ISP or ITDP decisions were based.

~~9.~~ 8. Any portion of the hearing may be closed to the public if the client requests or if the ~~hearing officer~~ Administrative Law Judge determines that it is necessary to prevent the unwarranted invasion of a client's privacy or that public disclosure would pose a substantial risk of harm to a client.

~~10. Within five days of the conclusion of the hearing, the hearing officer shall prepare and send a written, proposed decision to the director of the Department, together with the appeal~~

~~record. The proposed decision shall be based exclusively on the evidence introduced at the hearing, shall designate these issues which relate to Title XIX services, and shall include findings of fact, conclusions, and a recommendation for appropriate action.~~

11. ~~Within 15 days of the conclusion of the hearing, the director shall render a final written decision, based upon the findings, conclusions, and recommendations of the hearing officer.~~
    a. ~~The decision shall include a concise statement of the facts found, a summary of the evidence relied upon, the decision and the reasons for so deciding and a notice of the right to seek rehearing under R9-1-120 and judicial review under A.R.S. § 36-113.~~
    b. ~~The decision shall also include a notice to the parties of their right to appeal to AHCCCSA for review of decisions related to Title XIX services.~~
    c. ~~The decision shall be mailed by certified mail to the parties to the hearing, their designated representatives, and the Division.~~
    d. ~~The Department shall arrange to have the director decision explained to the client, together with the right to seek rehearing, judicial review, or appeal to AHCCCSA, in a manner that is understandable to the client or the client's designated representative.~~

H. Expedited appeal.

1. At the time an appeal is initiated, the applicant, client, or mental health agency may request orally or in writing an expedited appeal on issues related to crisis or emergency services or for good cause. Any appeal from a decision denying admission to or continued stay at an inpatient psychiatric facility due to lack of medical necessity shall be accompanied by all medical information necessary to resolution of the appeal and shall be expedited.
2. An expedited appeal shall be conducted in accordance with the provisions of this Section, except as provided for in this subsection.
3. Within one day of receipt of an expedited appeal, the director of the regional authority shall inform the client in writing ~~in English and Spanish~~ that the appeal has been received.
4. The director of the regional authority shall accept an expedited appeal on issues related to crisis or emergency services. The regional authority ~~director~~ shall also accept an expedited appeal for good cause. If the regional authority ~~director~~ refuses to expedite the appeal based on a determination that good cause does not exist, the director shall notify the applicant or client in writing within one day of the initiation of the appeal, with a statement of reasons

for the decision, and shall proceed with the appeal in accordance with the provisions of this Section. Within three days of the notification of refusal to expedite the appeal for good cause, the client or applicant may request review of the decision by the ~~deputy director of the Division~~ Administration, who shall act within one day. The decision of the ~~deputy director~~ Administration shall be final.

5. If the regional authority ~~director~~ accepts the appeal for expedited consideration, the director shall hold the informal conference according to R9-21-401(E) within two days of the initiation of the appeal. The ~~regional director~~ regional authority shall schedule the conference at a convenient time and place and shall inform all participants of the time, date and location prior to the conference.
6. If the informal conference with the director of the regional authority or the director's designee does not resolve the issues in dispute to the satisfaction of the client or, if applicable, the client's guardian, and the issues in dispute are not related to the client's eligibility for behavioral health services, the client or, if applicable, the client's guardian shall be informed that the matter ~~shall~~ may be further appealed to the ~~Division~~ Administration, and of the procedure for requesting waiver of the informal conference with the ~~Division~~ Administration.
7. If a client or, if applicable, the client's guardian waives the right to an informal conference with the ~~Division~~ Administration or, if the informal conference with the director of the regional authority or the director's designee does not resolve the issues in dispute to the satisfaction of the client or, if applicable, the client's guardian, and the issues in dispute are related to the client's eligibility for behavioral health services, the regional authority shall, at the informal conference:
    a. Provide written notice to the client or, if applicable, the client's guardian according to A.R.S. § 41-1092.03, and
    b. Ask the client or, if applicable, the client's guardian whether the client or, if applicable, the client's guardian would like the regional authority to request an administrative hearing according to A.R.S. § 41-1092.03 on behalf of the client.
    c. Send a copy of the notice in subsection (H)(7)(a) to the Office of Human Rights and the appropriate human rights committee.

8. If, at the informal conference, a client or, if applicable, the client's guardian requests that the regional authority file a request for an administrative hearing according to A.R.S. § 41-1092.03 on behalf of the client, the ~~Division~~ Administration shall file the request within one day of the informal conference.
9. Within one day of the conclusion of an informal conference with the regional authority, the director of the regional authority shall notify the ~~deputy director of the Division~~ Administration if the informal conference failed to resolve the appeal and shall immediately forward the client's notice of appeal and any agreed statements of fact unless the client or, if applicable, the client's guardian waived the client's right to an informal conference with the ~~Division~~ Administration or the issues in dispute are related to the client's eligibility for behavioral health services.
10. Within two days of the notification from the regional authority ~~director~~, the ~~deputy director of the Division~~ Administration shall hold the informal conference pursuant to subsection (F).
11. If all issues in dispute are not resolved to the satisfaction of the client or if applicable, the client's guardian at the informal conference with the ~~Division~~ Administration, the ~~Division~~ Administration shall, at the informal conference:
    a. Provide written notice to the client or, if applicable, the client's guardian according to A.R.S. § 41-1092.03, and
    b. Ask the client or, if applicable, the client's guardian whether the client or, if applicable, the client's guardian would like the ~~Division~~ Administration to file a request for an administrative hearing according to A.R.S. § 41-1092.03 on behalf of the client.
    c. For a client who needs special assistance, send a copy of the notice in subsection (H)(11)(a) to the Office of Human Rights and the appropriate human rights committee.
12. If, at the informal conference, a client or, if applicable, the client's guardian requests that the ~~Division~~ Administration file a request for an administrative hearing according to A.R.S. § 41-1092.03 on behalf of the client, the ~~Division~~ Administration shall file the request within one day of the informal conference.
13. Within one day of the informal conference with the ~~Division~~ Administration, if the conference failed to resolve the appeal, or within two days of the date the conference was

waived, the ~~deputy director~~ Administration shall ~~notify the director~~ forward a request to schedule a fair hearing.

14. Within one day of notification, the ~~director~~ Administration shall send a written notice of an expedited fair hearing in accordance with subsection (G)(2) and A.R.S. 41-1092, et seq.
15. ~~Within five days of such notice, the Department shall hold a~~ An expedited fair hearing shall be held on the appeal in accordance with ~~(G)(3) 41-1092~~ subsection (G)(3) and A.R.S. 41-1092, et seq.
16. ~~Within one day of the conclusion of the hearing, the hearing officer shall prepare and send a written, proposed decision to the director of the Department in accordance with (G)(10).~~
17. ~~Within two days of the conclusion of the hearing, the director shall render a final written decision in accordance with (G)(11). The decision of the director is the final decision of the Department on all issues and there shall be no right to a rehearing before the director.~~

~~**I.** Appeal of Title XIX services.~~

1. ~~Within 15 days of the decision of the director, the client may appeal the decisions relating to Title XIX services to AHCCCSA by filing a written notice of appeal with the Department. The client may request a de novo hearing or a record review with oral argument before AHCCCSA.~~
2. ~~An appeal to AHCCCSA does not preclude a client or individual from also seeking rehearing and judicial review subsection (J), if appropriate.~~

~~**J.** Rehearing or review of decision. A client or applicant aggrieved by the director decision on issues not related to Title XIX services must file for rehearing within 30 days of service of the decision. The decision of the director on rehearing is the final decision of the Department on all decisions not related to Title XIX services.~~

K. No change

L. Implementation of final decision. Within five days after a satisfactory resolution is achieved at an informal conference or after the expiration of an appeal period when no appeal is taken, or after the exhaustion of all appeals and subject to the final decision thereon, ~~the director~~ the regional authority shall implement the final decision and shall notify the client, any designated representative and/or guardian, and ~~Division~~ Administration of such action.

M. Appeal log.

1. The ~~Department~~ Administration and regional authority shall maintain ~~a public log~~ logs of ~~all~~ appeals filed under this ~~rule~~ Section. ~~The director of the regional authority shall forward to the Department all information necessary for the accurate and timely maintenance of the public log.~~
2. The log maintained by the Administration ~~public log~~ shall not include personally identifiable information ~~but~~ and shall be a public record, available for inspection and copying by any person.
3. With respect to each entry, the ~~Department's public~~ ~~logs~~ logs shall contain:
   a. A unique docket number or matter number ~~assigned by the~~ ~~Department~~;
   b. A substantive but concise description of the appeal including whether the appeal related to the provision of Title XIX services;
   c. The date of the filing of appeal;
   d. The date of the initial decision appealed from;
   e. The date, nature and outcome of all subsequent decisions, appeals, or other relevant events; and
   f. A substantive but concise description of the final decision and the action taken by the agency director ~~and deputy director of the Division~~ and the date the action was taken.

R9-21-402. General

A. It is the policy of the ~~Division~~ Administration to conduct investigations and bring matters to a resolution in four circumstances: first, in the event of a death of a client; second, whenever there is alleged to have occurred a rights violation; third, whenever there is alleged to exist a condition requiring investigation because it is dangerous, illegal or inhumane; and fourth, in any other case where an investigation would be in the public interest, as determined by the ~~director of the Department or the deputy director of the Division~~ Administration. The purpose of R9-21-402 through R9-21-410 is to implement that policy. All investigations according to R9-21-402 through R9-21-410 shall be carried out in a prompt and equitable manner and with due regard for the dignity and rights of all persons involved. R9-21-402 through R9-21-410 do not obviate the need for systematically reporting, where appropriate, accidents and injuries involving clients.

B. No change

R9-21-403. Initiating a Grievance or Investigation

A. No change

B. No change

C. An employee of or individual under contract with one of the following shall file a grievance if the employee has reason to believe that a mental health agency has abridged one or more of a client's rights in Article 2 of this Chapter or that a condition requiring investigation exists, and shall receive disciplinary action for failure to comply with this subsection:

1. A service provider,
2. A regional authority,
3. An inpatient facility, or
4. The ~~Division~~ Administration.

D. ~~The director of a~~ A service provider or ~~the director of a~~ regional authority shall file a grievance if it:

1. ~~The director receives~~ Receives a non-frivolous allegation that:
   a. A mental health agency has abridged one or more of a client's rights in Article 2 of this Chapter, or
   b. A condition requiring investigation exists; or
2. ~~The director has~~ Has reason to believe that there exists or has occurred a condition requiring investigation in a mental health agency or program.

E. ~~The director or deputy director of the Department~~ The Administration shall request an investigation if:

1. The ~~director or deputy director~~ Administration determines that it would be in the best interests of a client, the ~~Department~~ Administration, or the public; or
2. The ~~director or deputy director~~ Administration receives a non-frivolous allegation or has reason to believe that:
   a. A mental health agency has abridged one or more of a client's rights in Article 2 of this Chapter, or
   b. A condition requiring investigation exists.

F. To file a grievance, an individual shall communicate the grievance orally or submit the grievance in writing to ~~the director of or~~ any employee of a mental health agency~~.~~ who shall~~,~~

forward the grievance to the appropriate person as identified in R9-21-404. If asked to do so by a client, an employee shall assist the client in making an oral or written grievance or shall direct the client to the available supervisory or managerial staff who shall assist the client in making an oral or written grievance.

G. Any grievance or request for investigation shall be accurately and completely reduced to writing on ~~a Department~~ an Administration-provided grievance or request for investigation form by:

1. The individual filing the grievance or request for investigation, or
2. The mental health agency to whom the grievance or request for investigation is made.

R9-21-404. Persons Responsible for Resolving Grievances and Requests for Investigation

A. Allegations involving rights violations:

1. Of other than physical abuse, sexual abuse, or sexual misconduct that occurred in a mental health agency, or as a result of an action of a person employed by a mental health agency, shall be addressed to and initially decided by:
   a. The ~~director of the~~ appropriate regional authority~~, if applicable~~; or
   b. If the mental health agency is operated exclusively by a governmental entity~~, the director of the agency~~ the allegation shall be addressed to and initially decided by that agency; or
2. Of physical abuse, sexual abuse, or sexual misconduct that occurred in a mental health agency, or as a result of an action of a person employed by a mental health agency, shall be addressed to and decided by the ~~deputy director of the Division~~ Administration.

B. Allegations involving conditions requiring investigation:

1. Of other than a client death, which occurred in a mental health agency, or as a result of a person employed by a mental health agency, shall be addressed to and initially decided by:
   ~~a. The director of the appropriate regional authority, if applicable; or~~
   ~~b. If the mental health agency is operated exclusively by a governmental entity, the director of the agency; or~~
   a. The appropriate regional authority; or
   b. If the mental health agency is operated exclusively by a governmental entity, the allegation shall be addressed to and initially decided by that agency; or

2. Of a client death, which occurred in a mental health agency, or as a result of an action of a person employed by a mental health agency, shall be addressed to and decided by the ~~deputy director of the Division~~ Administration.

C. Within five days of receipt by a mental health agency of a grievance or request for investigation:

1. The ~~director of the~~ mental health agency shall inform the person filing the grievance or request, in writing, that the grievance or request has been received;
2. If the mental health agency is operated exclusively by a governmental entity, the ~~director of the~~ mental health agency shall provide a copy of the grievance to the appropriate regional authority; and
3. If the client is in need of special assistance, the ~~agency director or deputy director~~ mental health agency shall immediately send a copy of the grievance or request to the Office of Human Rights and the human rights committee with jurisdiction over the agency.

R9-21-405. Preliminary Disposition

A. The agency director ~~or any other official~~ before whom a grievance or request for investigation has been initiated shall immediately take whatever action may be reasonable to protect the health, safety and security of any client, witness, individual filing the grievance or request for investigation, or individual on whose behalf the grievance or request for investigation is filed.

B. Summary disposition.

1. ~~The agency~~ A mental health agency ~~director or deputy director of the Division~~ or the Administration may summarily dispose of any grievance or a request for an investigation where the alleged rights violation or condition occurred more than one year immediately prior to the date on which the grievance or request is made.
2. ~~An agency director or deputy director of the Division~~ A mental health agency or the Administration who receives a grievance or request which is primarily directed to the level or type of mental health treatment provided to a client, which can be fairly and efficiently addressed within the procedures set forth in Article 3 and in R9-21-401, and which do not directly or indirectly involve any rights set forth in A.R.S. Title 36 or Article 2, may refer the grievance for resolution through the Individual Service Plan process or the appeal process in R9-21-401.

C. Disposition without investigation.

1. Within seven days of receipt of a grievance or request for an investigation, ~~an agency director or deputy director of the Division~~ a mental health agency or the Administration may promptly resolve a grievance or request without conducting a full investigation, where the matter:
   a. Involves no dispute as to the facts;
   b. Is patently frivolous; or
   c. Is resolved fairly and efficiently within seven days without a formal investigation.
2. Within seven days of receipt of the grievance or request described in subsection (C)(1), the ~~agency~~ ~~director or deputy director of the Division~~ mental health agency or the Administration shall prepare a written, dated decision.
   a. The decision shall explain the essential facts, why the ~~agency~~ ~~director or deputy director~~ mental health agency or the Administration believes that the matter is appropriately resolved without the appointment of an investigator, and the resolution of the matter.
   b. The ~~agency~~ ~~director or deputy director of the Division~~ mental health agency or the Administration shall send copies of the decision to the parties, together with a notice of appeal rights according to A.R.S. § 41-1092.03, and to anyone else having a direct interest in the matter.
3. After the expiration of the appeal period without appeal by any party, or after the exhaustion of all appeals and subject to the final decision on the appeal, the ~~agency director or deputy director~~ mental health agency or the Administration shall promptly take appropriate action and prepare and add to the case record a written, dated report of the action taken to resolve the grievance or request.

D. Matters requiring investigation.

1. If the matter complained of cannot be resolved without a formal investigation according to the criteria set forth in subsection (C)(1), within seven days of receipt of the grievance or request the ~~agency~~ ~~director or deputy director~~ mental health agency or the Administration shall prepare a written, dated appointment of an impartial investigator who, in the judgment of the ~~agency~~ ~~director or deputy director~~ mental health agency or the Administration, is capable of proceeding with the investigation in an objective manner but who shall not be:

a. Any of the persons directly involved in the rights violation or condition requiring investigation; or

b. A staff person who works in the same administrative unit as, except a person with direct line authority over, any person alleged to have been involved in the rights violation or condition requiring investigation.

2. Immediately upon the appointment of an investigator, the ~~agency~~ ~~director or deputy director~~ mental health agency or the Administration shall notify the person filing the grievance or request for investigation in writing of the appointment. The notice shall contain the name of the investigator, the procedure by which the investigation will be conducted and the method by which the person may obtain assistance or representation.

E. If a client is a client who needs special assistance, the ~~agency~~ ~~director or deputy director~~ mental health agency or the Administration shall immediately send a copy of the grievance or request to the Office of Human Rights and the human rights committee with jurisdiction over the agency and shall send a copy of all decisions required by this Chapter made by the ~~agency director or the deputy director~~ mental health agency or the Administration regarding the grievance or request to the Office of Human Rights and the human rights committee with jurisdiction over the agency.

R9-21-406. Conduct of Investigation

A. Within 10 days of the appointment, the investigator shall hold a private, face-to-face conference with the person who filed the grievance or request for investigation to learn the relevant facts that form the grounds for the grievance or request, unless the grievance or request has been initiated by ~~the agency director~~ a mental health agency or ~~deputy director of the Division~~ the Administration according to ~~R9-21-403(E)~~ R9-21-403 (D) or (E).

1. In scheduling such conference, and again at the conference, if the client appears without a designated representative, the investigator shall advise the client that:

   a. The client may be represented by a designated representative of the client's own choice. The investigator shall also advise the client of the availability of assistance from the State Protection and Advocacy System, the Office of Human Rights, and the relevant human rights committee.

b. The client may make an audio tape of the conference and all future conferences, meetings or hearings to which the client may be a party during the investigation, provided that the client notify all other parties not later than the beginning of the meeting or hearing that the client intends to do so.

c. In any case where the person initiating the grievance or request, or the person(s) who is alleged to have been responsible for the rights violation or condition, is a client and is in need of special assistance and is unrepresented, the investigator shall give the Office of Human Rights notice of the need for representation.

2. Where the grievance has been initiated by the ~~agency director~~ mental health agency or ~~deputy director~~ the Administration ~~of the Division~~, the investigator shall promptly determine which persons have relevant information concerning the occurrence of the alleged rights violation or condition requiring investigation and proceed to interview such individuals.

B. Within 15 days of the appointment, but only after the conference with the person initiating the grievance or request for investigation, the investigator shall hold a private, face-to-face conference with the person(s) complained of or thought to be responsible for the rights violation or condition requiring investigation to discuss the matter and, in scheduling the conference with such person(s) or with any other witness, the investigator shall advise the person(s) or any other witness that:

1. The individual may make ~~an audio tape~~ a recording of the conference and all future conferences, meetings or hearings during the course of the investigation, provided that the individual must notify all other parties to such meetings or hearings not later than the beginning of the meeting or hearing if the individual intends to so record.
2. An employee of an inpatient facility, service provider, regional authority or the ~~Division~~ Administration has an obligation to cooperate in the investigation.
3. Failure of an employee to cooperate may result in appropriate disciplinary action.

C. No change

D. No change

E. Within five days of receiving the investigator's report, the agency director ~~or deputy director of the Division~~ shall review the report and the case record and prepare a written, dated decision which shall either:

1. Accept the investigator's report in whole or in part, at least with respect to the facts as found, and state a summary of findings and conclusions and the intended action of the agency director ~~or deputy director of the Division~~; and send:
   a. A copy of the decision to:
      i. The investigator;
      ii. The individual who filed the grievance or request for investigation;
      iii. The individual who is the subject of the grievance or request for investigation, if applicable;
      iv. The Office of Human Rights; and
      v. The appropriate human rights committee.
   b. A notice to the individual who filed the grievance or request for investigation and, if applicable, the client who is the subject of the grievance or request for investigation or, if applicable, the client's guardian, of:
      i. If the decision is from an agency director, the client's right to appeal to ~~the Division~~ the Administration according to R9-21-406 and to an administrative hearing according to A.R.S. § 41-1092.03; and
      ii. If the decision is from the ~~deputy director of the Division~~ Administration, the client's right to an administrative hearing according to A.R.S. § 41-1092.03; or
2. Reject the report for insufficiency of facts and return the matter for further investigation. In such event, the investigator shall complete the further investigation and deliver a revised report to the agency director ~~deputy director of the Division or designee~~ within 10 days. Upon receipt of the report, the agency director ~~or deputy director~~ shall proceed as provided in subsection (E)(l).

F. Actions that an agency director ~~or the deputy director of the Division~~ may take according to subsection (E)(1) include:
1. Identifying training or supervision for or disciplinary action against an individual responsible for a rights violation or condition requiring investigation identified during the course of investigating a grievance or request for investigation.
2. Developing or modifying a mental health agency's policies and procedures;
3. Notifying the regulatory entity that licensed or certified an individual according to A.R.S. Title 32, Chapter 33 of the findings from the investigation; or

4. Imposing sanctions, including monetary penalties, according to terms of a contract, if applicable.

G. After the expiration of the appeal period set forth in R9-21-407, or after the exhaustion of all appeals and subject to the final decision on the appeal, the agency director ~~or deputy director of the Division~~ shall promptly take the action set forth in the decision and add to the case record a written, dated report of the action taken. A copy of the report shall be sent to the Office of Human Rights and the human rights committee if the client is in need of special assistance.

R9-21-407. Administrative Appeal

A. Any grievant or the client who is the subject of the grievance who is dissatisfied with the final decision of the agency director may, within 30 days of receipt of the decision, file a notice of appeal with ~~eputy director of the Division~~ the Administration. The appealing party shall send copies of the notice to the other parties and their representatives and to the agency director who shall forward the full case record to the ~~deputy director of the Division~~ Administration.

B. The ~~deputy director of the Division~~ Administration shall review the notice of appeal and the case record, and may discuss the matter with any of the persons involved or convene an informal conference. Within 15 days of the filing of the appeal, the ~~deputy director of the Division~~ Administration shall prepare a written, dated decision which shall either:

1. Accept the investigator's report, in whole or in part, at least with respect to the facts as found, and affirm, modify or reject the decision of the agency director with a statement of reasons; or
2. Reject the investigator's report for insufficiency of facts and return the matter with instructions to the agency director for further investigation and decision. In such event, the further investigation shall be completed and a revised report and decision shall be delivered to the ~~deputy director of the Division~~ Administration within 10 days. Upon receipt of the report and decision, the ~~deputy director of the Division~~ Administration shall render a final decision, consistent with the procedures set forth in subsection (B)(1).
3. A designated representative shall be afforded the opportunity to be present at any meeting or conference convened by ~~the deputy director of the Division~~ the Administration to which the represented party is invited.
4. The ~~deputy director of the Division~~ Administration shall send copies of the decision to:

a. The parties, together with a notice of appeal rights according to A.R.S. § 41-1092.03;
b. The agency director; and
c. The Office of Human Rights and the applicable human rights committee for all clients, including clients who are in need of special assistance.

R9-21-408. Further Appeal to Administrative Hearing

A. Any grievant or the client who is the subject of the grievance who is dissatisfied with the ~~decision~~ Director's decision of the ~~deputy director of the Division~~ Administration may request a fair hearing before an ~~administrative hearing officer~~ Administrative Law Judge.

1. Within 30 days of the date of the ~~decision~~ Director's decision, the appealing party shall file with ~~director~~ the Administration ~~of the Department~~ a notice requesting a fair hearing.
2. Upon receipt of the notice, the ~~director~~ Administration shall send a copy to the parties, ~~to the deputy director of the Division,~~ and to the Office of Human Rights and the human rights committee for clients who are in need of special assistance.
3. ~~Within five days of the receipt of the notice of further appeal, the director of the Department shall appoint an impartial hearing officer. The hearing officer may not be an employee of the Department, a regional authority, or of a service provider under contract or subcontract with the Department. However, the Department may contract with a qualified individual to serve as the hearing officer under this rule. The director shall send copies of the appointment to the hearing officer together with the case record and to the parties including the Division.~~
4. ~~Within five days of the appointment, the hearing officer shall inform the parties, the Office of Human Rights, and the human rights committee if the client is in need of special assistance, of the time and place of the hearing. The hearing shall be scheduled not less than 20 nor more than 30 days from the receipt of the request for fair hearing at a location convenient to all parties.~~

B. The hearing shall be conducted consistent with A.R.S. §~~§ 36-111 and 36-112 and 41-1061~~ 41-1092 et seq. ~~(the Administrative Procedure Act)~~, and those portions of ~~R9-1-101 through R9-1-126~~ 9 A.A.C. 1 which are ~~consistent~~consistent with this Article.

1. The client shall have the right to be represented at the hearing by an individual chosen by the client at the client's own expense, in accordance with Rule 31~~(a)(3)~~, Rules of the Supreme Court.

   ~~a.~~ If the client has not designated a representative to assist the client at the hearing and is in need of special assistance, the human rights committee, ~~through one of its members~~ or the human rights advocate unless refused by the client, shall make all reasonable efforts to represent the client.

   ~~b. If the client is unrepresented and the deputy director of the Division determines the appointment of a representative to be in the client's best interest, the deputy director shall designate a representative to assist the client in the appeal.~~

~~2. The client or other appealing party shall have the right to present any evidence relevant to the issues under appeal and shall have the right to call and examine witnesses.~~

~~3. The client or other party appealing on behalf of the client shall have the right to examine all records held by the Department pertaining to the client.~~

~~4.~~2. Any portion of the hearing may be closed to the public if the client requests or if the ~~hearing officer~~ Administrative Law Judge determines that it is necessary to prevent an unwarranted invasion of the client's privacy or that public disclosure would pose a substantial risk of harm to the client.

~~5. The standard of proof on all issues shall be a preponderance of the evidence.~~

~~6. The burden of proof on all issues shall be on the appealing party.~~

~~7. Within 10 days of the conclusion of the hearing, the hearing officer shall prepare, date, sign, and send a written recommended decision to director of the Department, together with the case record. The recommended decision shall include findings of fact, which shall be binding on the Department for administrative purposes, and conclusions and recommendations for action as appropriate.~~

~~C. Within 20 days of the conclusion of the hearing, the director of the Department shall render a final written decision, based upon the recommendation of the hearing officer.~~

~~1. The decision shall include a concise statement of the facts found, a summary of the evidence relied upon, the decision and the reasons for so deciding, and a notice of the~~

~~client's right to petition the director of the Department for a rehearing under R9-1-113 and to seek judicial review under A.R.S. § 36-113.~~

~~2. The decision shall be mailed promptly to the client, the other parties, and their designated representatives.~~

3. The ~~Division~~ Administration shall ~~arrange to have~~ explain the Director's decision ~~explained~~ to the client at the client's request, together with the right to seek rehearing and judicial review.

~~4. Except to the extent that the decision is subject to an order for rehearing, the decision of the director is the final decision of the Department on all issues.~~

~~**D.** Within 30 days of the date of service of the decision of the director, the client or party appealing on behalf of the client may petition the director for a rehearing or review pursuant to R9-1-120.~~

R9-21-409. Notice and Records

A. No change

B. Notice and oversight by the Office of Human Rights and human rights committees.

1. Upon receipt of any grievance or request for investigation involving a client, including a client who is in need of special assistance, the agency director ~~or deputy director of the Division~~ shall immediately forward a copy of such grievance or request to the Office of Human Rights and the appropriate regional human rights committee.
2. Upon receipt of such a grievance from the agency director ~~or the deputy director of the Division~~, at the request of a client, or on its own initiative, the Office of Human Rights and/or the appropriate human rights committee shall assist a client in filing a grievance or request, if necessary. The Office and/or committee shall use its best efforts to see that such client is represented by an attorney, human rights advocate, committee member, or other person to protect the individual's interests and present information on the client's behalf. The Office and/or committee shall maintain a list of attorneys and other representatives, including the state protection and advocacy system, available to assist clients.
3. Whenever the human rights committee has reason to believe that a rights violation involving abuse or a dangerous condition requiring investigation, including a client death, has occurred or currently exists, or that any rights violation or condition requiring

investigation occurred or exists which involves a client who is in need of special assistance, it may, upon written notice to the official before whom the matter is pending, become a party to the grievance or request. As a party it shall receive copies of all reports, plans, appeals, notices and other significant documents relevant to the resolution of the grievance or request and be able to appeal any finding or decision.

4. The Office of Human Rights shall assist clients in resolving grievances according to R9-21-104.

C. Notification of other persons.

1. Whenever any rule, regulation, statute, or other law requires notification of a law enforcement officer, public official, medical examiner, or other person that an incident involving the death, abuse, neglect, or threat to a client has occurred, or that there exists a dangerous condition or event, such notice shall be given as required by law.
2. ~~An agency director~~ A mental health agency shall immediately notify the ~~deputy director of the Division~~ Administration when:
   a. A client brings criminal charges against an employee;
   b. An employee brings criminal charges against a client;
   c. An employee or client is indicted or convicted because of any action required to be investigated by this Article;d. A client of an inpatient facility, a mental health agency, or a service provider dies,~~.~~ The agency director shall report such death according to the ~~Department's~~ Administration's policy on the reporting and investigation of deaths.
   e. A client of an inpatient facilty, ~~agency,~~ a mental health agency, or a service provider allegedly is physically or sexually abused.
3. The investigation by the ~~Department~~ Administration provided for by this Article is independent of any investigation conducted by police, the county attorney, or other authority.

D. Case records.

1. A file, known as the case record, shall be kept for each grievance or request for investigation which is received by the ~~Division~~ Administration, ~~including~~ ASH, regional authority or service provider under contract or subcontract with the ~~Department~~ Administration. The record shall include the grievance or request, the docket number or matter number assigned ~~by the Department~~, the names of all persons interviewed and the

dates of those interviews, either a taped or written summary of those interviews, a summary of documents reviewed, copies of memoranda generated by the investigation, the investigator's report, the agency director's decision, and all documents relating to any appeal.

2. The investigator shall maintain possession of the case record until the investigation report is submitted. Thereafter, the agency director shall maintain control over the case record, except when the matter is on appeal. During any appeal, the record will be in the custody of the official who hears or decides ~~hearing or deciding~~ the appeal.

E. Public logs.

1. The ~~Department~~ Administration and regional authority shall maintain ~~a public log~~ logs of ~~all~~ deaths and non-frivolous grievances or requests for investigation for ~~all~~ inpatient facilities, agencies, ~~and~~ service providers, and mental health agencies which it operates, funds, or supervises. ~~The agency director of each facility or mental health agency shall forward to the Department all information necessary for the accurate and timely maintenance of the public log.~~
2. The ~~public~~ log maintained by the Administration shall not include ~~personal identities~~ personally identifiable information ~~but~~ and shall be a public record, available for inspection and copying by any person.
3. With respect to each grievance or request for investigation, the ~~Department's~~ Administration's ~~public~~ log shall contain:
   a. A unique docket number or matter number, ~~consisting of a symbol for the agency, the last two digits of the year and a serial number assigned by the Department~~;
   b. A substantive but concise description of the grievance or request for investigation;
   c. The date of the filing of grievance;
   d. The date of the initial decision or appointment of investigator;
   e. The date of the filing of the investigator's final report;
   f. A substantive but concise description of the investigator's final report;
   g. The date of all subsequent decisions, appeals, or other relevant events; and
   h. A substantive but concise description of the final decision and the action taken by the ~~agency director~~ mental health agency or ~~deputy director of the Division~~ the Administration.

R9-21-410. Miscellaneous

A. Disqualification of official. The agency director, ~~deputy director of the Division,~~ investigator, or any other official with authority to act on a grievance or request for investigation shall disqualify himself ~~themselves~~ from acting, if such official cannot act on the matter impartially and objectively, in fact or in appearance. In the event of such disqualification, the official shall forthwith prepare and forward a written, dated memorandum explaining the reasons for the decision to the ~~deputy director of the Division or designee or director of the Department or designee~~ Administration, as appropriate, who shall, within 10 days of receipt of the memorandum, take such steps as are necessary to resolve the grievance in an impartial, objective manner.

B. Request for extension of time.

1. The investigator or any other official of a mental health agency acting according to this Article may secure an extension of any time limit provided in this Article with the permission of the ~~director of the~~ regional authority.
2. The investigator or any other official of an inpatient facility operated exclusively by a governmental entity acting according to this Article may secure an extension of any time limit provided in this Article with the permission of the ~~deputy director of the Division~~ the CEO of the entity or his designee.~~Department.~~
3. The investigator or any other official of the ~~office of the deputy director of the Division~~ Administration acting according to this Article may secure an extension of any time limit provided in this Article with the permission of the ~~director of the Department~~ Administration or designee.
4. An extension of time may only be granted upon a showing of necessity and a showing that the delay will not pose a threat to the safety or security of the client.
5. A request for extension shall be in writing, with copies to all parties. The request shall explain why an extension is needed and propose a new time limit which does not unreasonably postpone a final resolution of the matter.
6. Such request shall be submitted to and acted upon ~~by the director of the regional authority, deputy director of the Division, or director of the Department, as appropriate,~~ prior to the

expiration of the original time limit. Failure of the relevant official to act within the time allowed shall constitute a denial of the request for an extension.

C. Procedural irregularities.

1. Any party may protest the failure or refusal of any official with responsibility to take action in accord with the procedural requirements of this Article, including the time limits, by filing a written protest with the ~~deputy director of the Division~~ Administration ~~a written protest. A protest concerning the failure or refusal to take action by the deputy director of the Division or designee should be filed with the director of the Department~~.
2. Within 10 days of the filing of such a protest, the ~~official with whom it is filed~~ Administration shall take appropriate action to ensure that if there is or was a violation of a procedure or timeline, it is promptly corrected, including, if appropriate, disciplinary action against the official responsible for the violation or by removal of an investigator and the appointment of a substitute. ~~or by removal of an investigator or hearing officer and the appointment of a substitute~~.

D. ~~Deputy director's or director's investigation~~ Special Investigation.

1. The ~~deputy director of the Division or director of the Department~~ Administration may at any time order that a special investigator review and report ~~directly to the director or deputy director as to~~ the facts of a grievance or condition requiring investigation, including a death or other matter.
2. The special investigator~~,~~ ~~deputy director and director~~ and the Administration shall comply with the time limits and other procedures for an investigation set forth in this Article.
3. Any final decision issued by the ~~deputy director of the Division or the director of the Department~~ Administration based on such an investigation under this rule is appealable as provided in R9-21-408.
4. Nothing in this Article shall prevent the ~~Department or the Division~~ Administration from conducting an investigation independent of these rules.

9 May 2016

Mariaelena Ugarte
AHCCCS, Ofc of Administrative Legal Svcs
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AHCCCSrules@azahcccs.gov

Dear Ms. Ugarte:

On behalf of the Arizona State Association of Physician Assistants, I would like to submit a comment in regards to the recently released rule R16-46 regarding behavioral health services for persons with serious mental illness. While this rule includes Physician Assistants under the definition of "medical practitioner," it only allows those under the definition of medical practitioner to order restraint/seclusion in specific instances. Ordering restraint and seclusion is within the scope of practice of a Physician Assistant as delegated by their supervising physician.

We have over 2400 licensed Physician Assistants in the State of Arizona working in a variety of hospitals and facilities where restraints are ordered. Not specifying physician assistants in the language of this rule may directly result in delays of patient care that put the safety of the patient and staff at risk. In order to allow efficiency in patient care and to allow physician assistants to practice to their fullest capability, I would like to request that the following changes be made to section R9-21-204: That G.(1)(a) and G.(2)(a) include Physician Assistants specifically. And that that item G.(1)(b)(i) and G.(2)(b)(i) be revised to state “medical practitioner” in order to include Physician Assistants.

> R9-21-204. Restraint and Seclusion
> G. A mental health agency shall only use restraint or seclusion according to:
> 1. A written order given:
> a. By a **physician** or **physician assistant** providing treatment to a client; or
> b. If a **physician** providing treatment to a client is not present on the premises or on-call:
> i. If the agency is licensed as a level 1 psychiatric acute hospital [D> according to R9-20-102 <D] , by a **medical** practitioner; or
> ii. If the agency is licensed as a level 1 subacute agency or a level 1 RTC [D> according to R9-20-102 <D] , by a medical practitioner;
> 2. An oral order given to a **nurse** by:
> a. A **physician** or **physician assistant** providing treatment to a client, or
> b. If a **physician** providing treatment to a client is not present on the premises or on-call:
> i. If the agency is licensed as a level 1 psychiatric acute hospital [D> according to R9-20-102 <D] , by a **medical** practitioner; or

ii. If the agency is licensed as a level 1 sub-acute agency or a level 1 RTC [D> according to R9-20-102 <D] , by a medical practitioner;

Excluding Physician Assistants in provisions regarding ordering restraint and seclusion is inconsistent with the trend to include Physician Assistants in such provisions in other states. This year Washington State adopted rules clarifying Physician Assistant authority to order restraint and seclusion in private psychiatric hospitals. They also adopted an interpretive statement that applies to Physician Assistants practicing outside of private psychiatric hospitals. Other states have also adopted similar provisions.

We hope that you will add Physician Assistants to the provisions as requested above to assure patient access to care in these situations.

Thank you for your time and consideration.

Sincerely,

Shawna S. Boyle, MMS, PA-C
Legal and Legislative Committee Chair
Arizona State Association of Physician Assistants
shawna.sando@gmail.com

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT

TITLE 9. HEALTH SERVICES

CHAPTER 21. ~~DEPARTMENT OF HEALTH SERVICES~~ ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM

BEHAVIORAL HEALTH SERVICES FOR PERSONS WITH SERIOUS MENTAL ILLNESS

Introduction:

As of July 1, 2016, the AHCCCS Administration will take responsibility for the administration of behavioral health services for persons with a Serious Mental Illness. These services were previously under the administration of the Arizona Department of Health Services(ADHS) . Senate Bill 1257 (Laws 2015, Chapter 195) provides for the statutory transfer of behavioral health responsibilities from ADHS to AHCCCS. Rules promulgated under Title 9, Chapter 21 of the Arizona Administrative Code (A.A.C.), were first enacted in October 1993 and last amended in June 2003; these rules apply to persons determined to be SMI, regardless of the Medicaid eligibility.

Purpose of Rule:

The Administration is proposing rules to implement the statutory "behavioral health simplification and integration" where the AHCCCS Administration assumes full administrative and operational responsibility for the provision of behavioral health services effective July 1, 2016. This rulemaking delineates the responsibilities of the AHCCCS Administration to oversee the provision of behavioral health services under Title 9 Chapter 21 of the A.A.C. for personsdetermined to be SMI as defined under R9-21-101 and A.R.S.§ 36-550.

1. Identification of rulemaking.

The Administration has chosen to make changes to this Chapter in two phases. This rulemaking is the first phase, and because the Administration is assuming administrative and operational responsibility for the provision of behavioral health services to persons determined to be SMI , within all rules, the terms "department", "division", or "director"

were changed to “Administration” or “mental health agency”, where applicable, and cross-references were updated to statutes or other rule sections, as appropriate. More significant of these proposed changes includes alignment of the hearing process with the Administrative Procedure Act (APA), A.R.S. §41-1092, deletion of antiquated or inaccurate language, updating of language to reflect AHCCCS terminology, and updating of language to reflect the AHCCCS organizational structure.

- Article 1’s objective is to describe General Provisions that apply to this Chapter. This Article describes definitions, the applicability of the SMI requirements, how time is computed when actions are made, the establishment of the Human Rights Committees, requirements of the Office of Human Rights and Advocates, and the state protection and Advocacy system. Within this Article, we have verified the use of the definitions described, updated cross-references, and added a section to guide the reader to where the definitions can be found. The Article was updated to reflect that this Chapter will apply to the Administration and all mental health agencies. Sections were stricken that are no longer applicable, such as licensing (the Administration does not license or certify these agencies).
- Article 2’s objective is to describe the rights of persons with SMI. This Article describes Civil and Other Legal Rights, Right to Support and Treatment, Protection from Abuse, Neglect, Exploitation and Mistreatment, Restraint and Seclusion, Labor, Competency and Consent, Informed Consent, Medication, Property and Possessions, Records, Policies and Procedures of Service Providers, Notice of Rights, and Exhibits. Within this Article, no significant changes were made, except for the terms relative to the Administration assuming responsibility, cross-reference updates, and minor clarifications.
- Article 3’s objective is to describe the Individual Service Planning for behavioral health services for a persons determined to be SMI . This Article describes General Provisions, Identification, Application, and Referral for Services of Persons with Serious Mental Illness, Eligibility Determination and Initial Assessment, Interim and Emergency Services, Assessments, Identification of Potential Service Providers, Selection of Service Providers, Implementation of the Individual Service Plan,

Interim Services, Inpatient Treatment and Discharge Plan, Periodic Review of Individual Service Plans, and Modification or Termination of Plans. Within this Article, no significant changes were made, except for the terms relative to the Administration assuming responsibility.

- Article 4's objective is to describe appeals, grievances, and requests for investigation for persons with SMI. This Article describes Appeals, General Requirements, Initiating a Grievance or Investigation, Persons Responsible for Resolving Grievances and Requests for Investigations, Preliminary Disposition, Conduct of Investigations, Administrative Appeals, Further Appeal to Administrative Hearing, Notice and Records, and Miscellaneous requirements. Within this Article, there were several changes. As with other Articles, there were updates made to reflect the terms relative to the Administration assuming responsibility, cross-reference updates, and minor clarifications. This Article, on its face, appears to have significant changes. However, the Administration adheres to timelines and processes set forth in the APA (A.R.S. §41-1092), and much of the previous language in this Article relating to timelines was stricken and replaced with cross-references to the APA. There was also the removal of some processes used when ADHS had the responsibility, but to which the Administration does not adhere.
- Article 5 – Article 5's objective is to describe Court-Ordered Evaluation and Treatment for persons with SMI. This Article describes Court-Ordered Evaluations, Emergency Admissions for evaluation, Voluntary Admission, Court-Ordered Treatment, Coordination of Court-Ordered Treatment with ISP's and ITDP;s. Review and Transfers of Court-Ordered Individuals, Requests for Notification, Voluntary Admission for Treatment, Informed Consent, Use of Psychotropic Medication, Seclusion and Restraint, and Exhibits. No changes were made to this Article.

The second phase, which will be initiated at a later date, is intended to address more substantive changes through further review of statute and relevant litigation as well as consideration of best practices for the treatment and support of persons designated to be SMI, with particular emphasis on patient outcomes.

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

The majority of the proposed changes are for clarification and do not change the current process, with the exception of aligning the hearing process with the APA, A.R.S. §41-1092.

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:

If the rulemaking is not made, the public will be misinformed and will not be able to properly comply with requirements delineated in this rulemaking.

c. The estimated change in frequency of the targeted conduct expected from the rule change:

The Administration does not expect a change in frequency of any conduct; this rulemaking was made to inform the public of the new administration of these requirements.

A brief summary of the information included in the economic, small business, and consumer impact statement.

The Administration does not anticipate an economic impact on small businesses, the public or the implementing agencies since funding and staffing will be transferred to the Administration from ADHS. This rulemaking intends to adopt rules to delineate the delivery system resulting from SB 1257. This rulemaking informs stakeholders of the revised operational structure and new functional responsibilities. This transfer of responsibilities from ADHS to AHCCCS is budget neutral and this rulemaking is administrative in nature, not affecting the coverage of services, or the rights or protections of persons with SMI.

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

Members

Providers

Administration

Contractors

DHS

3. Cost benefit analysis.

a. Probable costs and benefits to implementing agency and other agencies directly affected by the implementation and enforcement of the proposed rulemaking. The probable costs to the implementing agency shall include the number of new full-time employees necessary to implement and enforce the proposed rule. The preparer of the economic, small business and consumer impact statement shall notify the Joint Legislative Budget Committee (JLBC) of the number of new full-time employees necessary to implement and enforce the rule before the rule is approved by the council:

i. Cost:

The Administration anticipates that the transition of requirements from DHS to the Administration will not have a cost impact since funding and staff to support these requirements has been transferred as well.

ii. Benefit:

The clarifications made to the rule language assists AHCCCS employees, DHS, contractors, members, and providers to more easily understand and comply with the rules.

iii. Do any Full-time Employees need to be hired?

The Administration does not anticipate the need to hire full-time employees as a result of the proposed rule changes.

b. Probable costs and benefits to political subdivision of this state directly affected by the implementation and enforcement of the proposed rulemaking.

This proposed rule revision does not directly affect political subdivisions.

c. Probable costs and benefits to businesses directly affected by the proposed rulemaking, including any anticipated effect on the revenues or payroll expenditures of employers who are subject to the proposed rulemaking.

The Administration does not anticipate an impact to businesses by these changes. The Administration anticipates that adding the clarifications permits entities to more easily understand and comply with the requirements.

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 does not anticipate an impact to public and private employment by these changes. The Administration anticipates that adding the clarifications to the rule language permits the Administration employees, DHS, contractors, members, and providers to more easily understand and comply with rules.

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 intended to transfer the administration of the existing rules.

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

The Administration does not anticipate an impact upon the administrative expenses of the small business community because the proposed rule language changes are intended to transfer the administration of the existing rules.

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;

The Administration did not identify a less stringent compliance or reporting requirement for small businesses since this rulemaking was only intended to transfer the administration of the existing rules.

ii. Establishing less stringent schedules deadlines in the rule for compliance or reporting requirements for small businesses;

The Administration did not identify a less stringent schedule deadline for the compliance or reporting requirement for small businesses since this rulemaking was only intended to transfer the administration of the existing rules.

iii. Consolidate or simplify the rule's compliance or reporting requirements for small businesses;

The Administration did not consolidate or simplify the rule's compliance or reporting requirement for small businesses since this rulemaking was only intended to transfer the administration of the existing rules.

iv. Establish performance standards for small businesses to replace design or operational standards in the rule; and

The Administration did not establish performance standards for small businesses since this rulemaking was only intended to transfer the administration of the existing rules.

v. Exempting small businesses from any or all requirements of the rule.

The Administration cannot exempt small businesses from any rule requirements.

d. The probable cost and benefit to private persons and consumers who are directly affected by the proposed rulemaking.

Private persons, consumers, and AHCCCS members are impacted and benefit by the clarifications, which provide additional clarity and conciseness to rule language enabling persons to more easily understand and comply with rules.

6. Statement of the probable effect on state revenues.

The Administration does not anticipate a fiscal impact upon state revenues. The clarifications are designed to deliver health care in the most cost-effective and efficient manner while complying with the state and federal requirements.

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 changes are the most cost effective and efficient method of complying with federal law and state statute.

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

The Administration did not consider any data to base the rule upon. This rulemaking was made to transfer the administration of these requirements to the AHCCCS Administration.

36-502. Powers and duties of the director of AHCCCS; rules; expenditure limitation
(L15, Ch. 195, sec. 20. Eff. 7/1/16)

A. The director shall make rules that include standards for agencies other than the state hospital when providing services and shall prescribe forms as may be necessary for the proper administration and enforcement of this chapter. The rules shall be applicable to patients admitted to or treated in agencies, other than the state hospital, as set forth in this chapter and shall provide for periodic inspections of such agencies.

B. The director shall make rules concerning the admission of patients and the transfer of patients between mental health treatment agencies other than the state hospital. A patient undergoing court-ordered treatment may be transferred from one mental health treatment agency to another in accordance with the rules of the director, subject to the approval of the court.

C. The director may make rules concerning leaves, visits and absences of patients from evaluation agencies and mental health treatment agencies other than the state hospital.

D. The total amount of state monies that may be spent in any fiscal year by the administration for mental health services pursuant to this chapter may not exceed the amount appropriated or authorized by section 35-173 for that purpose. This chapter does not impose a duty on an officer, agent or employee of this state to discharge a responsibility or 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.

36-2907. Covered health and medical services; modifications; related delivery of service requirements; definition
(L15, Ch. 195, sec. 57. Eff. 7/1/16)
A. Subject to the limitations and exclusions specified in this section, contractors shall provide the following medically necessary health and medical services:
1. Inpatient hospital services that are ordinarily furnished by a hospital for the care and treatment of inpatients and that are provided under the direction of a physician or a primary care practitioner. For the purposes of this section, inpatient hospital services exclude services in an institution for tuberculosis or mental diseases unless authorized under an approved section 1115 waiver.
2. Outpatient health services that are ordinarily provided in hospitals, clinics, offices and other health care facilities by licensed health care providers. Outpatient health services include services provided by or under the direction of a physician or a primary care practitioner.
3. Other laboratory and x-ray services ordered by a physician or a primary care practitioner.
4. Medications that are ordered on prescription by a physician or a dentist licensed pursuant to title 32, chapter 11. Persons who are dually eligible for title XVIII and title XIX services must obtain available medications through a medicare licensed or certified medicare advantage prescription drug plan, a medicare prescription drug plan or any other entity authorized by medicare to provide a medicare part D prescription drug benefit.
5. Medical supplies, durable medical equipment, insulin pumps and prosthetic devices ordered by a physician or a primary care practitioner. Suppliers of durable medical equipment shall provide the administration with complete information about the identity of each person who has an ownership or controlling interest in their business and shall comply with federal bonding requirements in a manner prescribed by the administration.
6. For persons who are at least twenty-one years of age, treatment of medical conditions of the eye, excluding eye examinations for prescriptive lenses and the provision of prescriptive lenses.
7. Early and periodic health screening and diagnostic services as required by section 1905(r) of title XIX of the social security act for members who are under twenty-one years of age.
8. Family planning services that do not include abortion or abortion counseling. If a contractor elects not to provide family planning services, this election does not disqualify the contractor from delivering all other covered health and medical services under this chapter. In that event, the administration may contract directly with another contractor, including an outpatient surgical center or a noncontracting provider, to deliver family planning services to a member who is enrolled with the contractor that elects not to provide family planning services.
9. Podiatry services ordered by a primary care physician or primary care practitioner.
10. Nonexperimental transplants approved for title XIX reimbursement.
11. Ambulance and nonambulance transportation, except as provided in subsection G of this section.
12. Hospice care.

B. The limitations and exclusions for health and medical services provided under this section are as follows:
1. Circumcision of newborn males is not a covered health and medical service.
2. For eligible persons who are at least twenty-one years of age:
(a) Outpatient health services do not include occupational therapy or speech therapy.
(b) Prosthetic devices do not include hearing aids, dentures, bone-anchored hearing aids or cochlear implants. Prosthetic devices, except prosthetic implants, may be limited to twelve thousand five hundred dollars per contract year.
(c) Percussive vests and orthotics are not covered health and medical services.
(d) Durable medical equipment is limited to items covered by medicare.
(e) Podiatry services do not include services performed by a podiatrist.
(f) Nonexperimental transplants do not include pancreas-only transplants.
(g) Bariatric surgery procedures, including laparoscopic and open gastric bypass and restrictive procedures, are not covered health and medical services.
C. The system shall pay noncontracting providers only for health and medical services as prescribed in subsection A of this section and as prescribed by rule.
D. The director shall adopt rules necessary to limit, to the extent possible, the scope, duration and amount of services, including maximum limitations for inpatient services that are consistent with federal regulations under title XIX of the social security act (P.L. 89-97; 79 Stat. 344; 42 United States Code section 1396 (1980)). To the extent possible and practicable, these rules shall provide for the prior approval of medically necessary services provided pursuant to this chapter.
E. The director shall make available home health services in lieu of hospitalization pursuant to contracts awarded under this article. For the purposes of this subsection, "home health services" means the provision of nursing services, home health aide services or medical supplies, equipment and appliances that are provided on a part-time or intermittent basis by a licensed home health agency within a member's residence based on the orders of a physician or a primary care practitioner. Home health agencies shall comply with the federal bonding requirements in a manner prescribed by the administration.
F. The director shall adopt rules for the coverage of behavioral health services for persons who are eligible under section 36-2901, paragraph 6, subdivision (a). The administration acting through the regional behavioral health authorities shall establish a diagnostic and evaluation program to which other state agencies shall refer children who are not already enrolled pursuant to this chapter and who may be in need of behavioral health services. In addition to an evaluation, the administration acting through regional behavioral health authorities shall also identify children who may be eligible under section 36-2901, paragraph 6, subdivision (a) or section 36-2931, paragraph 5 and shall refer the children to the appropriate agency responsible for making the final eligibility determination.
G. The director shall adopt rules for the provision of transportation services and rules providing for copayment by members for transportation for other than emergency purposes. Subject to approval by the centers for medicare and medicaid services, nonemergency medical transportation shall not be provided except for stretcher vans and ambulance transportation. Prior authorization is required for transportation by stretcher van and for medically necessary ambulance transportation initiated pursuant to a physician's direction. Prior authorization is not

required for medically necessary ambulance transportation services rendered to members or eligible persons initiated by dialing telephone number 911 or other designated emergency response systems.
H. The director may adopt rules to allow the administration, at the director's discretion, to use a second opinion procedure under which surgery may not be eligible for coverage pursuant to this chapter without documentation as to need by at least two physicians or primary care practitioners.
I. If the director does not receive bids within the amounts budgeted or if at any time the amount remaining in the Arizona health care cost containment system fund is insufficient to pay for full contract services for the remainder of the contract term, the administration, on notification to system contractors at least thirty days in advance, may modify the list of services required under subsection A of this section for persons defined as eligible other than those persons defined pursuant to section 36-2901, paragraph 6, subdivision (a). The director may also suspend services or may limit categories of expense for services defined as optional pursuant to title XIX of the social security act (P.L. 89-97; 79 Stat. 344; 42 United States Code section 1396 (1980)) for persons defined pursuant to section 36-2901, paragraph 6, subdivision (a). Such reductions or suspensions do not apply to the continuity of care for persons already receiving these services.
J. Additional, reduced or modified hospitalization and medical care benefits may be provided under the system to enrolled members who are eligible pursuant to section 36-2901, paragraph 6, subdivision (b), (c), (d) or (e).
K. All health and medical services provided under this article shall be provided in the geographic service area of the member, except:
1. Emergency services and specialty services provided pursuant to section 36-2908.
2. That the director may permit the delivery of health and medical services in other than the geographic service area in this state or in an adjoining state if the director determines that medical practice patterns justify the delivery of services or a net reduction in transportation costs can reasonably be expected. Notwithstanding the definition of physician as prescribed in section 36-2901, if services are procured from a physician or primary care practitioner in an adjoining state, the physician or primary care practitioner shall be licensed to practice in that state pursuant to licensing statutes in that state similar to title 32, chapter 13, 15, 17 or 25 and shall complete a provider agreement for this state.
L. Covered outpatient services shall be subcontracted by a primary care physician or primary care practitioner to other licensed health care providers to the extent practicable for purposes including, but not limited to, making health care services available to underserved areas, reducing costs of providing medical care and reducing transportation costs.
M. The director shall adopt rules that prescribe the coordination of medical care for persons who are eligible for system services. The rules shall include provisions for the transfer of patients, the transfer of medical records and the initiation of medical care.
N. For the purposes of this section, "ambulance" has the same meaning prescribed in section 36-2201.

36-3401. Definitions
(L15, Ch. 195, sec. 60. Eff. 7/1/16)
In this chapter, unless the context otherwise requires:
1. "Administration" means the Arizona health care cost containment system administration.
2. "Advisory council" means the Arizona state advisory council on the seriously mentally ill.
3. "Children" means persons who are under the age of nineteen years or persons who are under the age of twenty-two years and enrolled in an educational facility.
4. "Clean claim" means a claim that can be processed without obtaining additional information from the service provider or from a third party. Clean claim does not include claims under investigation for fraud or abuse or claims under review for medical necessity.
5. "Director" means the director of the administration.
6. "Regional behavioral health authority" means an organization under contract with the administration to coordinate the delivery of mental health services in a geographically specific service area of the state for eligible persons.
7. "Service provider" means an organization or mental health professional that meets the criteria established by the administration and has a contract with the administration or a regional behavioral health authority.

36-3403. Powers and duties of the director; study; capitation rates
(L15, Ch. 195, sec. 62. Eff. 7/1/16)
A. In addition to the powers and duties prescribed in chapter 29 of this title, in carrying out the duties of this chapter, the director may:
1. Employ professional, secretarial and clerical staff as are determined necessary by the director to carry out the functions and duties of the administration, subject to legislative appropriation.
2. Contract for the services of consultants and other persons that are reasonably necessary to enable the administration to carry out its functions and duties, subject to legislative appropriation.
3. Contract and incur obligations that are reasonably necessary within the general scope of the administration.
4. Adopt rules that are necessary to carry out the requirements of the administration.
5. Contract or enter into intergovernmental agreements with other public and private nonprofit agencies and entities.
6. Use monies, facilities or services to provide matching contributions under federal or other programs that further the objectives and programs of the administration.
7. Accept gifts, grants, matching monies or direct payments from public or private agencies or private persons and enterprises for the conduct of programs that are consistent with the general purposes and objectives of the administration.
B. The director shall administer:
1. Unified mental health programs, excluding the functions of the state hospital but including community mental health.
2. Addictive behavior programs to include alcohol and drug abuse.
C. Notwithstanding any other law, the director may waive or reduce the requirements for local match.
D. Except as otherwise required by this chapter, the director shall carry out the duties of this chapter subject to and consistent with chapter 29 of this title.
E. The administration shall contract with an independent consulting firm for an annual study of the adequacy and appropriateness of title XIX reimbursement rates to providers of behavioral health services. The administration may require and the regional behavioral health authorities and service providers shall provide to the administration financial data in the format prescribed by the administration to assist in the study. A complete study of reimbursement rates shall be completed at least once every five years. The administration shall provide the report to the joint legislative budget committee on or before October 1 of each year. If results of the study are not completely incorporated into the capitation rate, the administration shall provide a report to the joint legislative budget committee within thirty days of setting the final capitation rate, including reasons for differences between the rate and the study.
F. Capitation rate adjustments shall be limited to utilization of existing services and inflation unless policy changes, including creation or expansion of programs, have been approved by the legislature or are specifically required by federal law or court mandate.

36-3407. Services; contract

(L15, Ch. 195, sec. 66. Eff. 7/1/16)

The administration shall contract for the provision of the following services relating to the seriously mentally ill:

1. Community education to increase public awareness of the needs of persons experiencing behavioral health problems.
2. Coordinated screening and intake.
3. A coordinated service delivery system.
4. Coordinated case management and individualized treatment planning for each client.
5. Ongoing family participation in the planning for and selection of continuum of care services.
6. A comprehensive continuum of care services, as appropriate for each client, that includes the following:

(a) Home-based services.
(b) Prevention and early intervention.
(c) Psychiatric evaluation and consultation.
(d) Ancillary support services.
(e) Crisis intervention, including short-term and mobile crisis stabilization.
(f) Outpatient counseling.
(g) Residential treatment services.
(h) Case management.
(i) Partial care services.
(j) Secure residential treatment services.
(k) Residential treatment services for clients discharged from the Arizona state hospital.
(l) Hospitalization services.
(m) Psychotropic medication services.
(n) Independent living services.
(o) Detoxification services.
(p) Respite care.
(q) Vocational rehabilitation.
(r) Transportation.
(s) Socialization and recreation.

36-3413. Grievance and appeal process
(L15, Ch. 195, sec. 73. Eff. 7/1/16)
A. The administration shall require all regional behavioral health authorities to establish and implement a grievance and appeal process for use by service providers and by individuals receiving and requesting services. The administration shall stipulate any required elements of the process in the request for proposal issued to solicit bids from entities that wish to become a regional behavioral health authority.
B. The process shall be as prescribed in title 41, chapter 6, article 10, subject to the exceptions in section 36-2903.01, subsection B, paragraph 4 and rules adopted by the director, for grievances and appeals filed by regional behavioral health authorities and by service providers and individuals receiving and requesting services that have already exhausted the regional behavioral health authority grievance and appeal process. In the case of individuals receiving behavioral health services by a service provider that has contracted directly with the administration instead of through a regional behavioral health authority, the administration's grievance and appeal process is considered the primary process.

ARIZONA DEPARTMENT OF ADMINISTRATION (F-16-0502)
Title 2, Chapter 1, Article 6, Adjusted Work Hours

GOVERNOR'S REGULATORY REVIEW COUNCIL
ANALYSIS OF FIVE-YEAR REVIEW REPORT

MEETING DATE: July 6, 2016 **AGENDA ITEM: F-1**

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

FROM: Preston Knight, Legal Intern

DATE: June 20, 2016

SUBJECT: **ARIZONA DEPARTMENT OF ADMINISTRATION (F-16-0502)**
Title 2, Chapter 1, Article 6, Adjusted Work Hours

COMMENTS ON THE FIVE-YEAR-REVIEW REPORT

Purpose of the Agency and Number of Rules in the Report

The purpose of the Arizona Department of Administration is "to provide services to state government in the following areas:

1. Automation
2. Finance
3. Personnel administration
4. Public buildings maintenance
5. Surplus property
6. Risk management.

See Laws 2006, Ch. 5, § 3.

This five-year-review report covers three rules in A.A.C. Title 2, Chapter 1, Article 6, which require a minimum of eighty-five percent of state employees to have adjusted work schedules during the high carbon monoxide period beginning October 1 and ending April 1 each year.

Article Contents, Including the Subject Matter of Each Rule in the Report

Article 6 contains three rules containing definitions of key terms, requirements for adjusted work schedules, and monitoring of compliance.

Year that Each Rule was Last Amended or Newly Made

The rules were last amended on April 30, 2011.

Proposed Action

None. The Department indicates a group consisting of Travel Reduction staff and Human Resource Division staff reviewed Article 6, held discussions, and determined no action is necessary at this time.

Summary of Reasons for the Proposed Action

The Department indicates the rules are effective, are consistent with other rules and statutes, are enforced as written, and are clear, concise, and understandable.

Exemption or Request and Approval for Exception from the Moratorium

The Department does not plan to request an exception from the moratorium.

Substantive or Procedural Concerns

None.

Analysis of the agency's report pursuant to criteria in A.R.S. § 41-1056 and R1-6-301:

1. **Has the agency certified that it is in compliance with A.R.S. § 41-1091?**

Yes. The Department has certified that it is in compliance with A.R.S. § 41-1091.

2. **Has the agency analyzed the rules' effectiveness in achieving their objectives?**

Yes. The Department indicates the rules are effective in achieving their objectives.

3. **Has the agency received any written criticisms of the rules during the last five years, including any written analysis questioning whether the rules are based on valid scientific or reliable principles or methods?**

No. The Department indicates that it has received no written criticisms during the last five years.

4. **Has the agency analyzed whether the rules are authorized by statute?**

Yes. The Department provides general statutory authority for the rules reviewed. Under A.R.S. § 41-703(3), the Director shall "[a]dopt rules the director deems necessary or desirable to further the objectives and programs of the department."

The Department also provides specific statutory authority for these rules. Under A.R.S. § 41-796.01, "[t]he director shall require adjusted work hours for at least eighty-five percent of state employees with offices located in area A or area B as defined in [A.R.S. §] 49-541 each year beginning October 1 and ending April 1 in order to reduce the level of carbon monoxide concentrations caused by vehicular travel."

5. Has the agency analyzed the rules' consistency with other rules and statutes?

Yes. The Department indicates that the rules are consistent with federal statutes and state statutes and 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. Has the agency analyzed whether the rules are clear, concise, and understandable?

Yes. The Department indicates the rules are clear, concise, and understandable.

8. Stringency of the Rules:

a. Are the rules more stringent than corresponding federal law?

No. While the Environmental Protection Agency (EPA) may enforce the standards of the Clean Air Act (CAA), the Administrator of the EPA is required to approve a State Implementation Plan (SIP) that complies with the provisions of the CAA and applicable federal regulations. The EPA's role is to approve state choices provided they meet CAA criteria and not to impose federal rules. Approval of Arizona Air Plan Revisions; Phoenix, Arizona; Second 10-Year Carbon Monoxide Maintenance Plan, 81 Fed. Reg. 11,120 (March, 2016) (to be codified at 40 C.F.R. pt. 52).

b. If so, is there statutory authority to exceed the requirements of federal law?

Not applicable.

9. For rules adopted after July 29, 2010:

a. Do the rules require issuance of a regulatory permit, license or agency authorization?

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

b. If so, are the general permit requirements of A.R.S. § 41-1037 met or does an exception apply?

Not applicable.

10. Has the agency indicated whether it completed the course of action identified in the previous five-year-review report?

The Department notes the 2011 amendments were in response to a previous five-year review report. Since that time no further action has been required.

11. <u>Has the agency included a proposed course of action?</u>

No. The Department has determined no action is required at this time.

<u>Conclusion</u>

The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. This analyst recommends that the report be approved.

GOVERNOR'S REGULATORY REVIEW COUNCIL
M E M O R A N D U M

MEETING DATE: July 6, 2016 **AGENDA ITEM: F-1**

TO: Members of the Governor's Regulatory Review Council

FROM: GRRC Economic Team

DATE : June 20, 2016

SUBJECT: **ARIZONA DEPARTMENT OF ADMINISTRATION (F-16-0502)**
Title 2, Chapter 1, Article 6, Adjusted Work Hours

I have reviewed the five-year-review report's economic, small business, and consumer impact comparison for compliance with A.R.S. § 41-1056 and make the following comments.

1. <u>Economic Impact Comparison</u>

The economic, small business, and consumer impact statement (EIS) from the most recent Department rulemaking completed in 2011 was reviewed for Article 6.

The rules reviewed provide guidance to state agencies on work schedules that can reduce carbon monoxide levels in Maricopa, Pima, Pinal, and Yavapai Counties. This is one of the programs that the Department utilizes to reduce the carbon monoxide levels caused by the commuting patterns of workers. The Office of Travel Reduction Programs within the Arizona Department of Administration is responsible for the education, motivation, and implementation of alternative commute options for state employees.

Key stakeholders that will be impacted are the Department, state employees, and residents of the counties impacted by these rules (Maricopa, Pima, Pinal, and Yavapai Counties). The Department notes that state agencies bear all costs of administering this program while residents receive all the benefits associated with reduced levels of carbon monoxide. These rules do not impose any regulations on businesses.

The Department originally estimated these rules would save the state agencies approximately $500,000 per year by eliminating each agency's responsibility to create an individual annual trip reduction plan. Compliance information is currently gathered using the travel reduction survey, which has resulted in even higher annual cost savings.

The Department concludes the economic impact has generally been as predicted in the prior EIS for the rules in the Article 6.

2. Has the agency determined that the rules impose the least burden and costs to persons regulated by the rules?

The Department has determined that the rules impose the least burden and costs to persons regulated by the rules. The Department does not anticipate any amendments to the rules.

3. Was an analysis submitted to the agency under A.R.S. § 41-1056(A)(7)?

No analysis was submitted to the Department by another person that compares the rules' impact on this state's business competitiveness to the impact on businesses in other states under A.R.S. § 41-1056(A)(7).

4. Conclusion

After review, staff concludes that the report complies with A.R.S. § 41-1056 and recommends approval.

Douglas A. Ducey
Governor

Craig C. Brown
Director

ARIZONA DEPARTMENT OF ADMINISTRATION

OFFICE OF THE DIRECTOR

100 NORTH FIFTEENTH AVENUE • SUITE 401
PHOENIX, ARIZONA 85007

(602) 542-1500

February 4, 2016

Nicole A. Ong, Chair
Governor's Regulatory Review Council
100 N. 15th Ave., Suite 402
Phoenix, Arizona 85007

RE: Arizona Department of Administration; Five-year Review Report
Arizona Administrative Code (A.A.C.) Title 2, Chapter 1
Article 6, Adjusted Work Hours

Dear Ms. Ong:

In compliance with A.R.S. §41-1056, the Arizona Department of Administration, Human Resources Division submits a report of its five-year review of Title 2, Chapter 1, Article 6 of the Arizona Administrative Code. This Article contains rules that require adjusted work hours for at least 85% of state employees who work in certain areas of Maricopa, Pima, Pinal or Yavapai counties during the winter months to reduce carbon monoxide caused by vehicular travel. In addition, I certify that the Department is in compliance with A.R.S. §41-1091.

If you have any questions regarding this five-year review report or need additional information, please contact Christine Bronson, Human Resource Division, by phone at (602) 542-1423 or by email at christine.bronson@azdoa.gov. Ms. Bronson and/or Abigail Cooksey-Williams, Travel Reduction Programs Manager, will be present at the Council meeting to answer any questions that the Council members may have about this five-year review report.

Sincerely,

Craig C. Brown
Director

cc: Elizabeth Thorson, Human Resources Director
Abigail Cooksey-Williams, Travel Reduction Programs Manager
Christine Bronson, HRD Policy and Legislative Services Section Manager

FIVE YEAR REVIEW REPORT

TITLE 2. ADMINISTRATION
CHAPTER 1. DEPARTMENT OF ADMINISTRATION
ARTICLE 6. ADJUSTED WORK HOURS

INTRODUCTION AND BACKGROUND

The Arizona Department of Administration (ADOA) Office of Travel Reduction Programs is responsible for the education, motivation, and implementation of alternate commute options for state employees. In accordance with current laws, the State of Arizona is required, as an employer, to have a program whereby employees are encouraged to reduce their commute.

The Office of Travel Reduction Programs (program) is comprised of three main sections: Capitol Rideshare, State of Arizona Telework Program and Agency Liaison Services. Working together with a variety of stakeholders, the program assists state agencies in meeting travel reduction goals. Additionally, the program designs and implements the State of Arizona Travel Reduction Plan for Maricopa County in accordance with A.R.S. § 49-588.

Title 2, Chapter 1, Article 6 – Adjusted Work Hours, is the set of rules that require adjusted work hours for at least 85% of state employees who work in certain areas of Maricopa, Pima, Pinal or Yavapai counties during the winter months to reduce the level of carbon monoxide concentrations caused by vehicular travel. This article includes definitions of terms used in the rules, agency requirements for achieving adjusted work hours and monitoring methods to ensure compliance. These rules were initially adopted in 1989 and include R2-1-601 through R2-5-603, inclusive. The rules were substantially revised effective April 30, 2011.

In July 2011, the Governor's Regulatory Review Council (GRRC) granted the agency's request to reschedule the Five-year Review of the rules in Title 2, Chapter 1, Article 6, because the rules had been substantially revised within the previous two years. In its approval letter, GRRC rescheduled the report to March 2016, which is five years from the date GRRC approved the revisions to Article 6. These revisions were a result of the agency's previous Five-year Review Report that had been approved by GRRC in 2006.

During the past five years, none of the rules in Title 2, Chapter 1, Article 6 have been repealed, adopted or amended.

REVIEW PROCEDURES

Article 6 was reviewed by a group consisting of Travel Reduction staff and other Human Resources Division staff.

The group reviewed all existing rules, held discussions, and determined that no action is necessary for these rules at this time.

ANALYSIS THAT IS IDENTICAL FOR ALL OF THE RULES

As provided by Arizona Administrative Code (A.A.C.) R1-6-301(B), the following information is the same for all of the rules in this report:

1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules:

A.R.S. §41-703(3) provides general authority. A.R.S. §41-796.01 provides specific authority for the Director to adopt rules to require adjusted work hours for state employees who work in certain areas of Maricopa, Pima, Pinal or Yavapai counties during the period of October 1 through the following April 1.

2. Objective of the rule, including the purpose for the existence of the rule:

The objective of the rules is to reduce carbon monoxide concentration levels in the specified counties during the carbon monoxide season, by requiring agencies to adjust work hours and thus the commute times of state employees.

- R2-1-601: objective is to define the words and terms used in Title 2, Chapter 1, Article 6.
- R2-1-602: objective is to provide the work schedule options that meet the adjusted workhours criteria to achieve the 85% compliance requirement.
- R2-1-603: objective is to provide the method the agency uses to determine compliance.

3. Effectiveness of the rule in achieving the objective, including a summary of any available data supporting the conclusion reached:

Because the agency has not received any comments, criticisms or questions from persons subject to these rules, the agency believes the rules are effective in achieving the intended objectives.

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:

a. Consistency with federal statutes

The rules are consistent with applicable federal law. The federal law used in determining the consistency is listed below:

- The Clean Air Act, which sets limits on certain air pollutants and gives the Environmental Protection Agency authority to limit emissions of air pollutants from various sources; state, local and tribal governments have the responsibility of developing a State Implementation Plan (SIP) that outlines how each state will control air pollution under the Clean Air Act.

b. Consistency with state statutes

The rules are consistent with state laws. The state laws used in determining consistency include, but are not limited to:

- A.R.S. §38-401, Office hours for state offices, which requires state offices to be open from 8:00 a.m. until 5:00 p.m.
- A.R.S. §41-101.03, State employee travel reduction program; designated state agency; fund, which governs the designation of an appropriate state agency to establish, administer, and operate a travel reduction program for the transportation of state employees between their residences and their places of work.
- A.R.S. §41-703, Duties of the [ADOA] director, which grants general authority to the ADOA Director for the agency's activities and operations.
- A.R.S. §49-541, Definitions, which set forth definitions of applicable areas in Maricopa, Pima, Pinal and Yavapai counties that are covered by the requirements set forth in A.R.S. §49-588.
- A.R.S. §49-581, [Travel Reduction Programs] Definitions, which defines common terms used throughout the travel reduction programs statutes.
- A.R.S. §49-588, Requirements for major employers, which outlines the various requirements major employers must follow related to the establishment and administration of travel reduction programs. Subsection (A)(3)(c) includes suggested measures for an employer's trip reduction plan. One such measure is adjusted work hours.

c. Consistency with other rules made by the agency

The rules are consistent with other rules made by the agency. The rules used in determining the consistency include, but are not limited to:

- 1 A.A.C. 6, Governor's Regulatory Review Council
- 2 A.A.C. 1, Department of Administration
- 2 A.A.C. 5, Department of Administration – State Personnel System
- 2 A.A.C. 6, Department of Administration – Benefit Services Division
- 2 A.A.C. 7, Department of Administration – Finance Division, Purchasing Office
- 2 A.A.C. 10, Department of Administration – Risk Management Division
- 2 A.A.C. 11, Department of Administration – Public Buildings Maintenance
- 2 A.A.C. 15, Department of Administration – General Services Division

5. Agency enforcement policy, including whether the rules are currently being enforced and, if so, whether there are any problems with enforcement:

The rules have been enforced consistently during the past five years through the use of travel reduction survey data. The Office of Travel Reduction Programs conducts a mandatory travel reduction survey that is distributed to state employees in affected areas. The survey is conducted during the carbon monoxide season and asks employees to indicate their work hours and how they typically commute to work. The survey response rate is typically above 85% and continues to indicate that the State is meeting the minimum percentage necessary for compliance with the rules.

6. Clarity, conciseness and understandability of the rule:

The agency considers the language of the rules to be clear, concise and understandable.

7. Summary of the written criticisms of the rules received by the agency within the five years immediately preceding the five-year review report, 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:

During the five years immediately preceding this five-year review report, the agency has not received any written criticisms, reports or other analyses questioning whether the rule is based on valid scientific or reliable principles or methods. In addition, the agency has not been party to any litigation or administrative proceedings in which written allegations were presented alleging the rule to be discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency.

8. A comparison of the current 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 economic impact of the rules has not differed significantly from that projected in the economic impact statement (EIS) submitted with the last rulemaking effective April 2011. In that EIS, it was anticipated that the rulemaking would result in cost savings of approximately $500,000 per year, by eliminating the requirement for agencies to develop and submit annual trip reduction plans. Instead, the data necessary to determine compliance with statute has been and continues to be collected through the annual travel reduction survey, resulting in substantial savings to the State on an ongoing basis. The rules directly affect state agencies and employees and not small businesses or consumers.

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:

Not applicable. No analysis was submitted to the agency regarding the impact of the rules on business competitiveness.

10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report:

As stated previously, the 2011 Five-year Review Report was rescheduled to March 2016 because the rules had been substantially revised within two years of the report due date. The revisions were the result of the agency's previous Five-year Review Report that had been approved by GRRC in 2006.

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:

After analysis the agency believes that the rules contained in this report impose the least burden and costs to persons regulated by the rules.

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:

Not applicable; there is no corresponding federal law pertaining to adjusted work hours. The federal Clean Air Act authorizes the Environmental Protection Agency (EPA) to establish air quality standards to protect public health and welfare. States are responsible for developing state implementation plans to meet the standards. The requirement for the provision of adjusted work hours for state employees is a state requirement only.

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:

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

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:

The rules remain effective, and no repeal or amendments are projected.

ARTICLE 6. ADJUSTED WORK HOURS

R2-1-601. Definitions

In this Article, unless the context otherwise requires:

1. "Agency head" means the head of each department, agency, board and commission of this state.
2. "Area A" has the same meaning in A.R.S. § 49-541(1).
3. "Area B" has the same meaning in A.R.S. § 49-541(2).
4. "Director" means the Director of the Department of Administration or the Director's designee.
5. "Employee" means any person elected or appointed to a state position, or employed on a part-time or full-time basis by a department, agency, board, or commission of this state.
6. "Period" means October 1 through the following April 1.
7. "Travel Reduction Survey Data" means information collected pursuant to A.R.S. § 49-588, Pima County Ordinance 1988-72, and Pinal County Ordinance 121300-AQ1.

Historical Note

Adopted as an emergency effective October 2, 1987, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 87-4). Emergency expired. Readopted as an emergency effective February 2, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-1). Emergency expired. New Section R2-1-601 adopted as a permanent rule effective May 3, 1989 (Supp. 89-2). Amended by final rulemaking at 17 A.A.R. 422, effective April 30, 2011 (Supp. 11-1).

R2-1-602. Requirements

A. During the period, each agency head shall provide work schedule options so that a minimum of 85% of employees whose offices are located in Area A or Area B are on adjusted work hours to reduce carbon monoxide concentration levels caused by vehicular travel. Adjusted work hours are schedules that:

1. Begin the workday on or before 7:30 a.m., or on or after 8:30 a.m., and conclude the workday on or before 4:30 p.m., or on or after 5:30 p.m.;
2. Adjust work hours into a four-day, 40-hour work week. Employees shall avoid a workday that begins between 7:30 a.m. and 8:30 a.m. or concludes between 4:30 p.m. and 5:30 p.m., whenever possible; or
3. Allow the employee to telework, commute by public transit, carpool, vanpool, bicycling, or walking. Employees who carpool or vanpool shall avoid a workday that begins between 7:30 a.m. and 8:30 a.m., or concludes between 4:30 p.m. and 5:30 p.m., whenever possible.

B. Notwithstanding the requirements of subsection (A), each agency shall comply with A.R.S. § 38-401 requiring state offices to be open from 8:00 a.m. until 5:00 p.m.

Historical Note

Adopted effective May 3, 1989 (Supp. 89-2). Amended by final rulemaking at 17 A.A.R. 422, effective April 30, 2011 (Supp. 11-1).

R2-1-603. Monitoring

The Director shall utilize existing travel reduction survey data to determine the percentage of employee work schedules that are in compliance with R2-1-602(A).

Historical Note

Adopted effective May 3, 1989 (Supp. 89-2). Section repealed; new Section made by final rulemaking at 17 A.A.R. 422, effective April 30, 2011 (Supp. 11-1).

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41-703. Duties of director

The director shall:

1. Be directly responsible to the governor for the direction, control and operation of the department.
2. Provide assistance to the governor and legislature as requested.
3. Adopt rules the director deems necessary or desirable to further the objectives and programs of the department.
4. Formulate policies, plans and programs to effectuate the missions and purposes of the department.
5. Employ, determine the conditions of employment and prescribe the duties and powers of administrative, professional, technical, secretarial, clerical and other persons as may be necessary in the performance of the department's duties and contract for the services of outside advisors, consultants and aides as may be reasonably necessary.
6. Make contracts and incur obligations within the general scope of the department's activities and operations subject to the availability of monies.
7. Contract with or assist other departments, agencies and institutions of the state, local and federal governments in the furtherance of the department's purposes, objectives and programs.
8. Accept and disburse grants, gifts, donations, matching monies and direct payments from public or private agencies for the conduct of programs that are consistent with the overall purposes and objectives of the department.
9. Establish and maintain separate financial accounts as required by federal law or regulations.
10. Advise and make recommendations to the governor and the legislature on all matters concerning the department's objectives.
11. Delegate the administrative functions, duties and powers as the director deems necessary to carry out the efficient operation of the department.

41-796.01. Adjusted work hours

The director by rule shall require adjusted work hours for at least eighty-five per cent of state employees with offices located in area A or area B as defined in section 49-541 each year beginning October 1 and ending April 1 in order to reduce the level of carbon monoxide concentrations caused by vehicular travel.

49-541. Definitions

In this article, unless the context otherwise requires:

1. "Area A" means the area delineated as follows:

(a) In Maricopa county:

Township 8 north, range 2 east and range 3 east
Township 7 north, range 2 west through range 5 east
Township 6 north, range 5 west through range 6 east
Township 5 north, range 5 west through range 7 east
Township 4 north, range 5 west through range 8 east
Township 3 north, range 5 west through range 8 east
Township 2 north, range 5 west through range 8 east
Township 1 north, range 5 west through range 7 east
Township 1 south, range 5 west through range 7 east
Township 2 south, range 5 west through range 7 east
Township 3 south, range 5 west through range 1 east
Township 4 south, range 5 west through range 1 east

(b) In Pinal county:

Township 1 north, range 8 east and range 9 east
Township 1 south, range 8 east and range 9 east
Township 2 south, range 8 east and range 9 east
Township 3 south, range 7 east through range 9 east

(c) In Yavapai county:

Township 7 north, range 1 east and range 1 west through range 2 west
Township 6 north, range 1 east and range 1 west

2. "Area B" means the area delineated in Pima county as township 11 and 12 south, range 12 through 14 east; township 13 through 15 south, range 11 through 16 east; township 16 south, range 12 through 16 east, excluding any portion of the Coronado national forest and the Saguaro national park.

3. "Certificate of inspection" means a serially numbered device or symbol, as may be prescribed by the director, indicating that a vehicle has been inspected pursuant to the provisions of section 49-546 and has passed inspection.

4. "Certificate of waiver" means a uniquely numbered device or symbol, as may be prescribed by the director, indicating that the requirement of passing reinspection has been waived for a vehicle pursuant to the provisions of this article.

5. "Conditioning mode" means either a fast idle test or a loaded test.

6. "Curb idle test" means an exhaust emissions test conducted with the engine of a vehicle running at the manufacturer's specified idle speed plus or minus one hundred revolutions per minute but without pressure exerted on the accelerator.

7. "Emissions inspection station permit" means a certificate issued by the director authorizing the holder to perform vehicular inspections pursuant to this article.

8. "Fast idle test" means an exhaust emissions test conducted with the engine of the vehicle running under an accelerated condition to an extent prescribed by the director.

9. "Fleet emissions inspection station" means any inspection facility operated under a permit issued to a qualified fleet owner or lessee as determined by the director.

10. "Golf cart" means a motor vehicle which has not less than three wheels in contact with the ground, has an unladen weight of less than thirteen hundred pounds, is designed to be and is operated at not more than fifteen miles an hour and is designed to carry golf equipment and persons.

11. "Gross weight" has the same meaning prescribed in section 28-5431.

12. "Independent contractor" means any person, business, firm, partnership or corporation with which the director may enter into an agreement providing for the construction, equipment, maintenance, personnel, management and operation of official emissions inspection stations pursuant to section 49-545.
13. "Loaded test" means an exhaust emissions test conducted at cruise or transient conditions as prescribed by the director.
14. "Official emissions inspection station" means an inspection facility, other than a fleet emissions inspection station, whether placed in a permanent structure or in a mobile unit for conveyance among various locations within this state, for the purpose of conducting emissions inspections of all vehicles required to be inspected pursuant to this article.
15. "Tampering" means removing, defeating or altering an emissions control device which was installed at the time a vehicle was manufactured.
16. "Vehicle" means any automobile, truck, truck tractor, motor bus or self-propelled or motor-driven vehicle registered or to be registered in this state and used upon the public highways of this state for the purpose of transporting persons or property, except implements of husbandry, road rollers or road machinery temporarily operated upon the highway.
17. "Vehicle emissions control area" means area A or area B.

49-581. Definitions

In this article, unless the context otherwise requires:

1. "Alternate mode" means any mode of commute transportation other than the single occupancy motor vehicle.
2. "Approvable travel reduction plan" means a plan that is submitted by a major employer and that meets the requirements set forth in section 49-588.
3. "Area A" has the same meaning prescribed in section 49-541.
4. "Board" means the board of supervisors of a county with a population of more than one million two hundred thousand persons according to the most recent United States decennial census.
5. "Carpool" or "vanpool" means two or more persons traveling in an automobile, truck or van to or from work.
6. "Commute trip" means a trip taken by an employee to or from a work site located within the county.
7. "Commuter matching service" means a system, whether it uses computer or manual methods, which assists in matching employees for the purpose of sharing rides to reduce the drive alone travel.
8. "Employer" means any sole proprietor, partnership, corporation, unincorporated association, cooperative, joint venture, agency, department, district or other individual or entity, either public or private, that employs workers.
9. "Full-time employee" means an employee who works at or reports to a single work site during any twenty-four hour period for at least three days per week during at least six months of the year.
10. "Full-time student" means a driving-aged high school, community college or university student commuting to school three or more days of the week during any regular school term.
11. "Major employer" means an employer with one hundred or more employees working at or reporting to a single work site during any twenty-four hour period for at least three days per week during at least six months of the year, except that in area A the threshold is fifty employees.
12. "Mode" means the type of conveyance used in transportation, including single occupancy motor vehicle, rideshare vehicles, transit, bicycle and walking.
13. "Motor vehicle" means any self-propelled vehicle including a car, van, bus or motorcycle and all other motorized vehicles.
14. "Political subdivision" means a city, town or county of this state.
15. "Public interest group" means any nonprofit group whose purpose is to further the welfare of the community.
16. "Reduced emission vehicle" means a motor vehicle that is certified by the task force as being substantially lower emitting in actual use than vehicles generally purchased in the area and that shall be counted as less than a single motor vehicle for travel reduction plan purposes.
17. "Reduced emission vehicle factor" means a factor that is applied to the single occupancy vehicle count and the motor vehicle miles traveled count pursuant to section 49-588 to allow a reduced emission vehicle to receive less than the full count of a regular motor vehicle or a mile traveled by a regular motor vehicle.
18. "Regional" means an area which encompasses or overlaps territory within the jurisdiction of two or more political subdivisions of this state.
19. "Regional program" means the combination of all implemented plans within area A which program shall begin in January, 1989.
20. "Ridesharing" means transportation of more than one person for commute purposes in a motor vehicle, with or without the assistance of a commuter matching service.

21. "Staff" means the county staff assigned to the task force.
22. "Task force" means the travel reduction program regional task force in area A which is designated by the board as the responsible agency to implement and enforce this article.
23. "Transit" means a bus or other public conveyance system.
24. "Transportation coordinator" means a person designated by an employer, property manager or transportation management association as the lead person in developing and implementing a travel reduction plan.
25. "Transportation management association" means a group of employers or associations formally organized to seek solutions for transportation problems experienced by the group.
26. "Travel reduction plan" means a written report outlining travel reduction measures.
27. "Travel reduction program" means a program that implements a travel reduction plan by an employer and is designed to achieve a predetermined level of travel reduction through various incentives and disincentives.
28. "Vehicle miles traveled" means the number of miles traveled by a motor vehicle for commute trips. A mile traveled by a reduced emission vehicle shall be counted as less than a full vehicle mile traveled for travel reduction plan purposes.
29. "Vehicle occupancy" means the number of occupants in a motor vehicle including the driver.
30. "Voluntary participant" means an employer that is not included in the definition of major employer and chooses to participate in a travel reduction program.
31. "Work site" means a building and any grouping of buildings which are on physically contiguous parcels of land or on parcels separated solely by private or public roadways or rights-of-way and which are owned or operated by the same employer.

49-588. <u>Requirements for major employers</u>

A. In each year of the regional program each major employer shall:

1. Provide each regular employee with information on alternate mode options and travel reduction measures. This information shall also be provided to new employees at the time of hiring.

2. Participate in a survey and reporting effort as directed by the task force and as scheduled by the staff. The results of this survey shall form a baseline against which attainment of the targets in subsection D of this section shall be measured as follows:

(a) The baseline for participation in alternative modes of transportation shall be based on the proportion of employees commuting by single occupancy vehicles.

(b) The baseline for vehicle miles traveled shall be the average vehicle miles traveled from place of residence to work per employee for employees not residing on the work site.

3. Prepare and submit a travel reduction plan for submittal to the staff and presentation to the task force. The staff shall assist in preparing the plan. Major employers shall submit plans within nine weeks after they receive survey data results. The plan shall contain the following elements:

(a) The name of the designated transportation coordinator.

(b) A description of employee information programs and other travel reduction measures which have been completed in the previous year.

(c) A description of additional travel reduction measures to be undertaken by the major employer in the coming year. The following measures may be included:

(i) A commuter matching service to facilitate employee ridesharing for work trips.

(ii) Provision of vans for vanpooling.

(iii) Subsidized carpooling or vanpooling which may include payment for fuel, insurance or parking.

(iv) Use of company vehicles for carpooling.

(v) Provision for preferential parking for carpool or vanpool users which may include close-in parking or covered parking facilities.

(vi) Cooperation with other transportation providers to provide additional regular or express service buses to the work site.

(vii) Subsidized bus fares.

(viii) Construction of special loading and unloading facilities for transit and carpool and vanpool users.

(ix) Cooperation with political subdivisions to construct walkways or bicycle routes to the work site.

(x) Provision of bicycle racks, lockers and showers for employees who walk or bicycle to and from work.

(xi) Provision of a special information center where information on alternate modes and other travel reduction measures is available.

(xii) Establishment of a full-time or part-time work at home program for employees.

(xiii) Establishment of a program of adjusted work hours which may include telecommuting, compressed workweeks or staggered work hours. Work hour adjustments should not interfere with or discourage the use of ridesharing and transit.

(xiv) Establishment of a program of parking incentives such as a rebate for employees who do not use the parking facility.

(xv) Incentives to encourage employees to live closer to work.

(xvi) Implementation of other measures designed to reduce commute trips such as the provision of day care facilities or emergency taxi services.

(xvii) Incentives for use of reduced emission vehicles and alternative fuel vehicle refueling facilities.
B. All employers in area A with one hundred or more employees at a single work site shall notify their employees of the employees' duty to comply with the requirements of section 49-542. The travel reduction program regional task force shall prepare and make available a standard information form for use by all employees of those employers.
C. Except as provided in subsection F of this section, an approvable travel reduction plan shall meet all of the following criteria:
1. The plan shall designate a transportation coordinator.
2. The plan shall describe a mechanism for regular distribution of alternate mode transportation information to employees.
3. For employers that in any year meet or exceed annual regional targets for travel reduction, the plan shall accurately and completely describe current and planned travel reduction measures.
4. For employers that, in any year, fall below the regional targets for travel reduction, the plan shall include commitments to implement:
(a) At least two specific travel reduction measures in the first year of the regional program.
(b) At least three specific travel reduction measures in the second year of the regional program.
D. After the second year, the task force shall review the travel reduction programs for employers not meeting regional targets and may recommend additional measures.
E. Employers shall implement all travel reduction measures they consider necessary to attain the following reduction in the proportion of employees commuting by single occupancy vehicles or commuter trip vehicle miles travel reductions per regulated work site:
1. Five per cent reduction in the proportion of employees commuting by single occupancy vehicles as determined in the annual survey in the first year, except that in area A the reduction shall be ten per cent.
2. In the second, third, fourth and fifth years, an additional five per cent reduction in the proportion of employees commuting by single occupancy vehicles as determined in the annual survey, except that in area A the reduction shall be ten per cent. If the percentage of employees commuting in single occupancy vehicles is sixty per cent or less, additional reductions are not required.
F. Notwithstanding any other requirements, a major employer may be in compliance with the requirements of subsections A, C and E of this section by submitting a plan that demonstrates achievement of emissions reductions equivalent to those that would have been obtained through compliance with the requirements of subsection E of this section. Emissions reductions achieved for the purpose of compliance with this subsection shall be in addition to any other emissions reductions that are otherwise required by law, rule, ordinance or permit. The plan may contain any of the following measures to achieve emissions reductions:
1. Voluntary polluting vehicle trade-outs only if both of the following conditions are met:
(a) Vehicles are not crushed.
(b) The program applies only to vehicles owned by the major employer or its employees.
2. Use of clean on-road vehicles.
3. Use of clean off-road mobile equipment.
4. Remote sensing.
5. Other mobile source emissions reductions.
6. Emissions reductions from stationary sources.
7. Peak commute trip reductions.
8. Other work-related trip reductions.
9. Vehicle miles traveled reduction programs.

10. Fuel additives which have been shown to reduce hydrocarbon, carbon monoxide or particulate matter emissions of significant polluting on-road vehicles, off-road mobile sources or area sources by twenty per cent or more.

ARIZONA DEPARTMENT OF HEALTH SERVICES (F-16-0604)
Title 9, Chapter 17, All Articles

GOVERNOR'S REGULATORY REVIEW COUNCIL
ANALYSIS OF FIVE-YEAR-REVIEW REPORT

MEETING DATE: July 6, 2016 **AGENDA ITEM: E-2**

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

FROM: Matthew Rippentrop, Legal Intern

DATE: June 20, 2016

SUBJECT: **ARIZONA DEPARTMENT OF HEALTH SERVICES (F-16-0604)**
Title 9, Chapter 17, Article 1, General; Article 2, Qualifying Patients and Designated Caregivers; Article 3, Dispensaries and Dispensary Agents

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COMMENTS ON THE FIVE-YEAR-REVIEW REPORT

Purpose of the Agency and Number of Rules in the Report

The purpose of the Arizona Department of Health Services (Department) is "to protect the physical and mental health of the people of this state and to promote the highest standards for licensed health care institutions, emergency services, and care facilities for adults and children." Laws 2010, Ch. 8, § 3. This report covers 36 rules in A.A.C. Title 9, Chapter 17.

In November 2010, voters passed the Arizona Medical Marijuana Act (Act), codified as A.R.S. Title 36, Chapter 28.1. The Department indicates that the Act requires the Department to adopt and enforce a regulatory system for the distribution of marijuana for medical use, including a system for approving, renewing, and revoking the registration of qualifying patients, designated caregivers, dispensaries, and dispensary agents.

In April 2011, exempt rules were adopted relating to the Department's authority and responsibilities concerning the Act. Later in 2011, a court order, CV 2011-011290, invalidated several rules related to dispensary eligibility and application requirements and caused the Department to amend the rules through emergency rulemaking in December 2012.

A 2013 court order CV 2013-005901 directed the Department to establish, by rule, a consideration process concerning why a dispensary failed to obtain an Approval to Operate (ATO) within a year after being granted a Dispensary Registration Certificate (DRC). A DRC is necessary for a dispensary to operate and is set to expire by statute after one year. Previous to this court order, no consideration was given, and a dispensary lost its DRC if it failed to obtain an ATO, regardless of the reason. This was ruled an undue burden by Superior Court judge Randall H. Warner, who granted a preliminary injunction precluding "the Department from

denying a timely application for renewal of a DRC for failure to obtain an ATO until it [the Department] has a mechanism in place by which individual circumstances can be considered." Accordingly, requests by a dispensary for renewal of their DRC are currently granted in accordance with the 2013 preliminary injunction. Currently, six entities hold a DRC without an ATO.

Under an exception to the previous moratorium, the Department began the rulemaking process to amend the rules to be in compliance with the 2013 court order, as well as make other changes consistent with the normal process of rule review. Under the new moratorium, the Department requested an exception from Governor Ducey's office, granted in February 2016. The Department now intends to bring the rules in compliance with the 2013 court order and make other changes enumerated in the report and memo below.

Article Content and Subject Matter

Article 1 titled "General" provides for definitions used throughout the Chapter, establishes fees and timeframes, and regulates Registry Identification cards. The Article further provides the procedure for the addition of a medical condition to the list of debilitating medical conditions. Article 1 contains nine Sections relating to Definitions; Fees; Applicable Submissions; Changing Information on a Registry Identification Card; Requesting a Replacement Registry Identification Card; Adding a Debilitating Medical Condition; Time-Frames; Expiration of a Registry Identification Card; or a Dispensary Registration Certificate; Notifications and Void Registry Identification Cards.

Article 2 titled "Qualifying Patients and Designated Caregivers" specifies the requirements for qualifying patients designated caregivers. Article 2 contains five Sections relating to Debilitating Medical Conditions; Applying for a Registry Identification Card for a Qualifying Patient or a Designated Caregiver; Amending a Qualifying Patient's or Designated Caregiver's Registry Identification Card; Denial or Revocation of a Qualifying Patient's or Designated Caregiver's Registry Identification Card.

Article 3 titled "Dispensaries and Dispensary Agents" specifies the requirements for dispensaries and dispensary agents. Article 3 contains 22 Sections relating to Principal Officers and Board Members; Dispensary Registration Certificate Allocation Process; Applying for a Dispensary Registration Certificate; Applying for Approval to Operate a Dispensary; Changes to a Dispensary Registration Certificate; Applying to Change a Dispensary's Location or Change or Add a Dispensary's Cultivation Site; Renewing a Dispensary Registration Certificate; Inspections; Administration; Submitting an Application for a Dispensary Agent Registry Identification Card; Submitting an Application to Renew a Dispensary Agent's Registry Identification Card; Medical Director; Dispensing Medical Marijuana; Qualifying Patient Records; Inventory Control System; Product Labeling and Analysis; Security; Edible Food Products; Cleaning and Sanitation; Physical Plant; Denial or Revocation of a Dispensary Registration Certificate; Denial or Revocation of a Dispensary Agent's Registry Identification Card.

Year Each Rule was Last Amended or Newly Made

- December 5, 2012: Sections 101, 102, 103, 107, 109, 202, 203, 303, 304, 308, 309, 310, 311, 312, and 322
- April 14, 2011: Sections 104, 105, 106, 108, 201, 204, 205, 301, 305, 306, 307, 313, 314, 315, 316, 317, 318, 319, 320, 321, and 323

Proposed Action

The Department plans to amend the rules in response to the aforementioned court orders and to address issues identified in the report, as enumerated in the following sections. The Department plans on submitting these proposed changes to the Council by December of 2017.

Summary of Reasons for Proposed Actions

The Department seeks to amend the rules in response to the court order and to address the issues identified in the report.

Substantive or Procedural Concerns

None.

Analysis of the Agency's Report Pursuant to Criteria in A.R.S. § 41-1056 and R1-6-301:

1. **Has the agency certified that it is in compliance with A.R.S. § 41-1091?**

Yes. The Department has certified its compliance with A.R.S. § 41-1091.

2. **Has the agency analyzed the rules' effectiveness in achieving their objectives?**

Yes. Concerning Article 1, with the exception of Sections 102, 106, 107 and 108, the Department indicates the rules could be made more effective. The Department notes expanding definitions, correcting documentation and missing registration requirements, making more accessible the electronic registry identification card system, and providing the voidable conditions for a registry identification card would make Article 1 more effective.

The Department indicates Sections 203 and 204 could be made more effective by specifying that in amending or renewing a registry identification card, a qualifying patient must submit a copy of an Arizona driver's license, Arizona identification card, or the photograph page of the qualifying patient's U.S. passport when accessing the electronic system.

The Department indicates Sections 304, 308, 309, 310, 311, 318, 321, and 322 could be made more effective by clarifying requirements of submitted materials and information, appropriate remedies when a dispensary is in conflict with a rule, and appropriate operational timeframes for dispensaries after the required information has been submitted.

3. **<u>Has the agency received any written criticisms of the rules during the last five years, including any written analysis questioning whether the rules are based on valid scientific or reliable principles or methods?</u>**

Yes. The Department received written criticism concerning Section 202 for the current rulemaking. An individual was concerned that the 25-mile distance calculation between the nearest dispensary and the patient's residence should be calculated based on driving distance, rather than "as the crow flies." The Department indicates it may consider mechanisms to take into consideration the terrain or other circumstances which may make the actual driving distance considerably farther than the distance on a map.

The Department also received a number of comments from the public concerning the discontinued rulemaking under the last moratorium. The Department has provided a summary of these comments:

Many comments address statutory requirements, which cannot be changed in rule. These include many comments on:

- Wanting no restriction on the cultivation of marijuana, related to the 25-mile requirement
- Requesting that "cultivation rights" be available for purchase
- Wanting recertification to be at 2-5 year intervals due to the burden of annual certification
- Allowing for certification by nurse practitioners and other non-physicians
- Wanting the rules to include reciprocity of the card in other states
- Wanting no fingerprint requirement for renewals of cards
- Requesting that a patient/caregiver be able to grow more plants
- Allowing cultivating patients/caregivers to sell plants to dispensaries
- Requesting that cultivation by caregivers be eliminated
- Wanting dispensary agents be given a card independent of a dispensary and use that card to work at any dispensary
- Wanting satellite dispensing sites
- Wanting to have products containing medical marijuana produced in a location other than a dispensary or cultivation site
- Adding use in public places
- Wanting no rules at all

Other comments addressed issues not covered in statute and with no statutory authority to address in rule. These include:

- Addressing qualifying patients being cited under DUI laws
- Adding the use of other illegal substances (heroin, cocaine, etc.) to the rules
- Requiring random drug testing of dispensary agents
- Instituting a citizen's advisory group to write the rules
- Using seized marijuana to supply indigent qualifying patients
- Generalized harangues against the Department and the Director
- Addressing employer testing
- Precluding cities from prohibiting the delivery of medical marijuana to patients

- Using monies collected from fees to fund research studies
- Complaining about the high cost of medical marijuana purchased from dispensaries and suggesting the imposition in rule of price controls on dispensaries for medical marijuana

Other comments were related to the rulemaking but did not address topics that were part of the rulemaking. These include:

- Requesting the addition of debilitating medical conditions through the on-line survey, just by naming the desired additions
- Requesting that dispensaries be required to have a third-party test medical marijuana for the presence of mold, pesticides, contaminants, etc. or analyze the content of active ingredients in the medical marijuana
- Allowing patients access to the medical marijuana electronic verification system
- Structuring the rules to make it as easy as possible to obtain/use marijuana
- Requesting more monitoring of dispensaries

Still other comments were germane to the rulemaking:

- The current rules have a provision for a reduced fee for SNAP participants. Many comments were received proposing other groups that should receive a reduced fee or lower fees for all. One comment wanted the rules to specify "seasonal" dispensary agents whose card would come at a reduced fee.
- The rules specify a procedure for the addition of debilitating medical conditions. The Department was planning to change from two submissions/reviews per year to an annual submission/review. Comments requested that two reviews per year be retained. Another comment suggested that the decision be made through patient voting. Other comments suggested that the criteria be simplified.
- The rules specify a requirement for a physician providing a written certification to state that the physician reviewed the "qualifying patient's medical records including medical records from other treating physicians from the previous 12 months." The Department had heard that some patients may not have been to a physician in the previous 12 months and that some physicians were reluctant to make that statement. The draft rules included a mechanism by which a patient could attest that the patient had no medical records or could not obtain a copy of the medical records. Comments were received expressing concern about the attestation.
- Many other comments were received about changes to Article 3. These included comments on:
    - The allocation process
    - Contractors working at dispensaries
    - Specific wording changes in the draft to clarify meaning
    - Allowing the dispensing of medical marijuana in public places
    - Labeling of medical marijuana
    - Donations by patients or caregivers
    - Child-resistant packaging
    - Transport with the intent of dispensing (delivery to patients)
    - Dispensaries having to be open within a year
    - Dispensaries moving locations after three years
    - Audit requirements

- Cultivation site requirements
- Wanting decreased or increased regulation of dispensaries

4. **Has the agency analyzed whether the rules are authorized by statute?**

Yes. A.R.S. § 36-136(F) provides "[t]he director may make and amend rules necessary for the proper administration and enforcement of the laws relating to the public health." A.R.S. § 36-2803 provides the Department shall adopt rules controlling how the Department considers petitions from the public, applications for and renewals of registry identification cards, rules governing non-profit medical dispensaries, and establish fees.

The rules in Article 1 have specific statutory authority under A.R.S. §§ 36-2801.01, 36-2804.01, 36-2804.06, 36-2808, 36-2819, 41-1073 through 41-1076, and 41-1079. Article 2 has specific statutory authority under A.R.S. §§ 36-2804.02 through 36-2804.05. Article 3 has specific statutory authority under A.R.S. §§ 36-2804, 36-2804.03 through 36-2804.06, and 36-2806.

5. **Has the agency analyzed the rules' consistency with other rules and statutes?**

The Department indicates that the rules are consistent with state statutes and rules and as well as applicable federal statutes and regulations.

6. **Has the agency analyzed the current enforcement status of the rules?**

The Department indicates that the rules are enforced as written, except where in conflict with court order CV 2013-005901.

7. **Has the agency analyzed whether the rules are clear, concise, and understandable?**

Yes. The Department indicates that Sections 101, 107, 202, 203, 204, 205, 308, 310, 313, 316, 318, and 319 could be made clearer. Changes include expanding definitions, moving portions of rule text to more relevant sections, better specifying certain licensing requirements, and better explaining the responsibilities and duties of registered individuals.

8. **Stringency of the Rules:**

   a. **Are the rules more stringent than corresponding federal law?**

The Department indicates that the rules are governed by Arizona statutes and are less stringent than federal laws.

   b. **If so, is there statutory authority to exceed the requirements of federal law?**

Not applicable.

9. **For rules adopted after July 29, 2010:**

   a. **Do the rules require issuance of a regulatory permit, license or agency authorization?**

Yes. The rules establish licensing, certification, and permit requirements.

   b. **If so, are the general permit requirements of A.R.S. § 41-1037 met or does an exception apply?**

Yes. The Department indicates that the licenses, certifications, and permits comply with A.R.S. § 41-1037(A)(2). Dispensary registration certificates are issued under A.R.S. § 36-2804. Registry identification cards are issued under A.R.S. § 36-2804.01 for dispensary agents and under A.R.S. § 36-2804.02 for qualifying patients and designated caregivers.

10. **Has the agency indicated whether it completed the course of action identified in the previous five-year-review report?**

Not applicable. This is the first five-year-review report on these rules.

11. **Has the agency included a proposed course of action?**

Yes. The Department intends to continue rulemaking to address the issues identified in the report and ensure compliance with court order CV 2013-005901. The Department plans to submit a Notice of Final Rulemaking to the Council by December of 2017.

Conclusion

The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. Staff recommends the report be approved.

GOVERNOR'S REGULATORY REVIEW COUNCIL
M E M O R A N D U M

MEETING DATE: July 6, 2016 **AGENDA ITEM: F-2**

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

FROM: GRRC Economic Team

DATE: June 20, 2016

SUBJECT: **ARIZONA DEPARTMENT OF HEALTH SERVICES (F-16-0604)**
Title 9, Chapter 17, Article 1, General; Article 2, Qualifying Patients and Designated Caregivers; Article 3, Dispensaries and Dispensary Agents

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I have reviewed the five-year-review report's economic, small business, and consumer impact comparison for compliance with A.R.S. § 41-1056 and make the following comments.

1. <u>Economic Impact Comparison</u>

The economic, small business, and consumer impact statement (EIS) from the most recent rulemaking completed in 2012 was reviewed.

The rules address procedures involved in the administration of the Arizona Medical Marijuana Act (Act). Article 1 provides basic definitions for medical marijuana patients and dispensaries. Article 2 provides the guidance necessary to determine which patients are eligible to participate in the Medical Marijuana Program. Finally, Article 3 enumerates the regulations that govern the operations of dispensaries.

Key stakeholders that are impacted are the Department, patients, their caregivers, and dispensaries. The Department notes that application fees from dispensary operators generally have a positive impact on the General Fund.

Dispensaries are the primary category of businesses that are directly impacted by these rules. The Department concludes that these regulations are a substantial burden for each dispensary, but these regulatory burdens are more than offset by the benefits of operating a dispensary.

In order to qualify for and receive a Registry Identification Card (RIC), patients must be diagnosed with a qualifying condition. Currently, qualifying medical conditions are limited to eight defined diseases, five undefined conditions with defined symptoms,

and debilitating medical conditions that are approved by the Department. The Department receives roughly eight requests each year to approve additional qualifying medical conditions. The Department estimates that each of these requests costs approximately $13,000 in Department resources. These costs are entirely borne by the Department.

Patients are also required to pay a fee when submitting an application for a medical marijuana RIC. This fee is $150 for qualifying patients and $200 for designated caregivers. Qualifying patients who also participate in the Supplemental Nutrition Assistance Program (SNAP) are eligible for a reduced fee of $75. Since April 14, 2011, the Department has issued 278,000 registry cards. As of December 31, 2015, there were 87,733 qualifying patients with active registry cards, and 11,093 (12.6%) of these were SNAP participants.

From July 1, 2014 to June 30, 2015, the Department voided 2,898 cards for patients and caregivers, and revoked seven cards for designated caregivers. A card is voided when the cardholder is no longer eligible under the rules. Examples of events that could void a card are the death of the patient or significant medical improvement of the patient. This differs from revoking a card, which has negative repercussions. Examples of events that could revoke a card are knowingly violating the rules or conviction of an excluded felony offense. The Department notes that any costs incurred by voiding or revoking cards result from the statutes, not the Department's rules.

The Department concludes that the economic impact has generally been as predicted in the prior EIS for the rules.

2. <u>Has the agency determined that the rules impose the least burden and costs to persons regulated by the rules?</u>

The Department determines that the rules mostly impose the least burden to persons regulated by the rules in order to achieve the underlying regulatory objective. Some of the rules could be amended to increase clarity and reduce ambiguity.

3. <u>Was an analysis submitted to the agency under A.R.S. § 41-1056(A)(7)?</u>

No analysis was submitted to the Department by another person that compares the rules' impact on this state's business competitiveness to the impact on businesses in other states under A.R.S. § 41-1056(A)(7).

4. <u>Conclusion</u>

After review, staff concludes that the report complies with A.R.S. § 41-1056 and recommends approval.

Division for Policy & Intergovernmental Affairs
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DOUGLALS A. DUCEY, GOVERNOR
CARA M. CHRIST, MD, DIRECTOR

April 1, 2016

Nicole A. Ong, Esq., Chair
Governor's Regulatory Review Council
Arizona Department of Administration
100 N. 15th Avenue, Suite 402
Phoenix, AZ 85007

RE: Report for A.A.C. Title 9, Chapter 17

Dear Ms. Nicole Ong:

According to the five-year-review report schedule of the Governor's Regulatory Review Council (Council), a report for Arizona Administrative Code (A.A.C.) Title 9, Chapter 17, is due to the Council no later than April 29, 2016. The Arizona Department of Health Services (Department) has reviewed 9 A.A.C. 17, Medical Marijuana Program, and is enclosing a report to the Council for the reviewed 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, copies of authorizing statutes, and copies of each rule reviewed are included in this package. As stated in the report, the Department intends to amend these rules by December 2017.

The Department certifies that the Department 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

ARIZONA DEPARTMENT
OF HEALTH SERVICES

FIVE-YEAR-REVIEW-REPORT

TITLE 9. HEALTH SERVICES

CHAPTER 17. DEPARTMENT OF HEALTH SERVICES

MEDICAL MARIJUANA PROGRAM

April 2016

FIVE-YEAR-REVIEW REPORT

TITLE 9. HEALTH SERVICES

CHAPTER 17. DEPARTMENT OF HEALTH SERVICES

MEDICAL MARIJUANA PROGRAM

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TITLE 9. HEALTH SERVICES

CHAPTER 17. DEPARTMENT OF HEALTH SERVICES

MEDICAL MARIJUANA PROGRAM

FIVE-YEAR-REVIEW SUMMARY

On November 2, 2010, Arizona voters passed I-04-2010, the Arizona Medical Marijuana Act (Act), which became Arizona Revised Statutes (A.R.S.) Title 36, Chapter 28.1. The Act allows a "qualifying patient" who has a "debilitating medical condition" to obtain an "allowable amount of marijuana" from a "nonprofit medical marijuana dispensary" and to possess and use the marijuana to treat or alleviate the debilitating medical condition or symptoms associated with the medical condition. The Act also requires the Arizona Department of Health Services (Department) to adopt and enforce a regulatory system for the distribution of marijuana for medical use, including a system for approving, renewing, and revoking the registration of qualifying patients, designated caregivers, dispensaries, and dispensary agents. The Department implemented A.R.S. Title 36, Chapter 28.1 in Arizona Administrative Code (A.A.C.) Title 9, Chapter 17.

The rules in 9 A.A.C. 17 were originally adopted by exempt rulemaking, effective April 14, 2011. The rules in Article 1 contain requirements that affect qualifying patients, designated caregivers, dispensaries, and dispensary agents. Article 1 provides definitions, time-frames, and expiration information; specifies fees, general requirements for submitting applications, and procedures for changing information on a registry identification card or requesting a replacement registry identification card; and identifies requirements related to adding a debilitating medical condition. Article 2 contains requirements associated with qualifying patients and designated caregivers. Article 3 contains the requirements associated with dispensaries and dispensary agents. Subsequently, a court order (CV 2011-011290) invalidated several rules in 9 A.A.C. 17 related to dispensary eligibility and application requirements and caused the Department to amend the rules. Several rules were amended by emergency rulemaking, effective April 11, 2012, with a subsequent regular rulemaking, effective December 5, 2012.

On July 29, 2013, the Arizona Superior Court issued an order (CV 2013-005901) directing the Department to establish by rule a process by which the Department may consider the reasons why a dispensary had not obtained an approval to operate within a year after being allocated a dispensary registration certificate and criteria by which to decide whether a dispensary registration certificate should be renewed despite the dispensary not receiving an approval to operate. Under an exception to the rulemaking moratorium established by Executive Order 2012-03, the Department began amending the rules in 9 A.A.C. 17 to comply with the court order and to make other changes that may reduce the regulatory burden, improve processes, increase security, or enhance clarity and consistency. When Executive Order 2015-01 established

a new rulemaking moratorium, the Department discontinued rulemaking activity and requested an exception to the moratorium to continue the rulemaking. An exception was received on February 1, 2016.

Through an analysis of the rules in 9 A.A.C. 17, the Department has determined that a number of rules could be revised to improve their effectiveness or to clarify their content, as described in this report, in addition to changes required by the court order. The Department plans to resume rulemaking and to submit a Notice of Final Rulemaking to the Governor's Regulatory Review Council (Council) by December 2017.

INFORMATION THAT IS IDENTICAL FOR ALL THE RULES

1. Authorization of the rule by existing statute

The rules in 9 A.A.C. 17 have A.R.S. § 36-136(F) as general statutory authority and A.R.S. § 36-2803 as specific rulemaking authority.

The rules in Article 2 have additional specific statutory authority in A.R.S. §§ 36-2804.02 through 36-2804.05.

The rules in Article 3 have additional specific statutory authority in A.R.S. §§ 36-2804, 36-2804.03 through 36-2804.06, and 36-2806.

2. The purpose of the rule

Except for R9-17-106, the purpose of the rules in Article 1 is to specify requirements that affect qualifying patients, designated caregivers, and dispensaries and dispensary agents.

The purpose of the rules in Article 2 is to specify requirements for qualifying patients and designated caregivers.

The purpose of the rules in Article 3 is to specify requirements for dispensaries and dispensary agents.

4. Analysis of consistency with state and federal statutes and rules

The rules are consistent with state statutes and rules and, to the extent that federal statutes and regulations are consistent with state statutes, with federal statutes and regulations.

5. Status of enforcement of the rule

Except for R9-17-308, which is enforced as required by court order, CV 2013-005901, the Department enforces the rules as written.

7. Summary of the written criticisms of the rule received within the last five years

The Department has received many comments on the Department's implementation of the current rules and on the possible rule changes to the rules during the rulemaking that had been discontinued by the moratorium established by Executive Order 2015-01. Except for the written criticism of R9-17-202, the Department does not have a record of receiving any written criticisms of the rules that are not related to the discontinued rulemaking.

8. Economic, small business, and consumer impact comparison

For the purpose of this economic impact comparison, annual costs/revenues are designated as minimal when $5,000 or less, moderate when between $5,000 and $50,000, and substantial when $50,000 or greater in additional costs or revenues. A cost is listed as significant when meaningful or important, but not readily subject to quantification.

The rules in 9 A.A.C. 17 were originally adopted by exempt rulemaking, effective April 14, 2011. Several rules were amended by emergency rulemaking, effective April 11, 2012, to

comply with a court order (CV 2011-011290) alleging that the Department did not have authority for some provisions in the rules. The Department conducted a subsequent regular rulemaking, effective December 5, 2012. Although minor changes were made to rules in Articles 1 and 2 through the regular rulemaking, the bulk of the changes were made to the rules in Article 3. An Economic, Small Business, and Consumer Impact Statement (EIS) was submitted with the regular rulemaking, which made changes to requirements for applicants for dispensary registration certificates, the allocation process, and time-frames for completion of the review of an application for a dispensary registration certificate; repealed R9-17-302; and made minor changes to other Sections in Article 3.

The rules in Article 1 contain requirements that affect qualifying patients, designated caregivers, dispensaries, and dispensary agents. Article 1 provides definitions, time-frames, and expiration information; specifies fees, general requirements for submitting applications, and procedures for requesting changes to information on a registry identification card or requesting a replacement registry identification card; and identifies requirements related to adding a debilitating medical condition. The Department uses an electronic system for all applications and registry identification card-related requests, including obtaining information for a new registry identification card. The rules contain requirements to ensure that the individual using the electronic system to request a replacement or change to a registry identification card is the individual for whom the registry identification card was initially issued. The Department believes that the information required in rule to obtain a replacement registry identification card or a registry identification card on which the cardholder's name or address has been changed is the minimum necessary to achieve these purposes. If a cardholder has the required information/documents available, it may take the cardholder less than five minutes to make the request, thereby imposing at most a minimal burden on cardholders. The requirements to help ensure the correct individual receives the replacement or changed registry identification card provide a significant benefit to the cardholder to whom the registry identification card was initially issued and to the general public.

Over the past four years, approximately four requests to add debilitating medical conditions were received per review cycle or approximately eight per year. In January 2012, the Department received requests according to R9-17-106 to add Post-Traumatic Stress Disorder (PTSD), Depression, Migraines, and Generalized Anxiety Disorder to the list of debilitating medical conditions. After holding a public meeting on May 25, 2012, to collect public comments about the addition of these medical conditions, and reviewing medical and scientific literature about use of medical marijuana for the debilitating medical conditions, the Department denied the

requests. In July 2012 and January 2013, additional requests were received to add debilitating medical conditions, but the requests were denied without a public hearing. In July 2013, the Department received nine requests to add debilitating medical conditions, and a public hearing was held on October 29, 2013, to collect comments about PTSD, Depression, and Migraines. On January 15, 2014, the Department issued a decision denying the request for adding these medical conditions. Subsequent to an appeal of that decision and the receipt of more evidence for the benefit of palliative use of medical marijuana for PTSD, the Department issued a decision to add the palliative use of medical marijuana for PTSD beginning January 1, 2015.

The Department estimates that it costs the Department approximately $13,000 in staff time to process a request. This amount covers the costs of a review of the request; a review of medical, scientific, or other evidence submitted to or obtained by the Department related to the request; setting up and holding a public hearing; making a determination about the request; and notifying the requester of the Department's decisions. For a request for which a public hearing is not scheduled, the cost would be less. The rules do not require a person to submit a request to add a debilitating medical condition or incur the cost of preparing a submission. Therefore, the rules impose a burden only on the Department, which may incur a moderate-to-substantial cost due to the rule. The public may receive a significant benefit from being able to have a debilitating medical condition added based on a request made according to the rule.

Article 2 contains requirements for qualifying patients and designated caregivers, including requirements for applying for, amending, or renewing a registry identification card and conditions under which a qualifying patient's or designated caregiver's registry identification card may be denied or revoked. The Department has issued more than 278,000 registry identification cards since April 14, 2011, over 94% of which were for qualifying patients. As of December 31, 2015, there were 87,733 qualifying patients with active registry identification cards. Of these, 11,093 qualifying patients (approximately 12%), who provided documentation of participation in the U.S. Department of Agriculture, Food and Nutrition Services, Supplemental Nutrition Assistance Program, paid a reduced fee for a registry identification card. As of December 31, 2015, 149 qualifying patients with active registry identification cards are minors. As of December 31, 2015, 789 designated caregivers (approximately 0.87% of cardholders) had active registry identification cards, including a custodial parent or legal guardian of a qualifying patient who is a minor.

The Department also uses the electronic system for individuals applying for, amending, or renewing a qualifying patient or designated caregiver registry identification card, and made the application process as simple as possible. If an applicant or cardholder has the required

information/documents available and submits the fee required in R9-17-102, it may take the applicant or cardholder only a few minutes, depending on the applicant's computer skills and access to a computer, to complete the request for initial issuance of a qualifying patient or designated caregiver registry identification card or to amend or renew a qualifying patient or designated caregiver registry identification card. By using the electronic system for these actions, the Department attempted to impose the minimal burden on applicants or cardholders who are qualifying patients or designated caregivers, consistent with obtaining required information.

Before a qualifying patient can apply for a registry identification card, the Arizona Medical Marijuana Act (Act) requires the qualifying patient to obtain a certification from a physician stating that the qualifying patient has at least one of the debilitating medical conditions and that the physician is recommending the medical use of marijuana for the qualifying patient. The rules in Article 2 specify the information required for a physician's certification, and the Department provides a form containing that information for a physician to use. From July 1, 2013 to December 31, 2015, a total of 934 physicians provided certifications to qualifying patients. Since much of the form contains check boxes, with a place for the physician's initials, the Department estimates that it may take a physician only a few minutes to complete the form. Thus, a physician completing a certification for a qualifying patient may incur a minimal burden from the time it takes to complete the form, which would be offset by the fee paid by the qualifying patient for the examination and certification.

From July 1, 2014 to June 30, 2015, the Department voided a total of 2,898 cards for qualifying patients and designated caregivers. For the same period, the Department revoked the cards for seven designated caregivers and no qualifying patients. The Act specifies the conditions under which a registry identification card may be denied or revoked, which are reflected in rule. The Department estimates that the Department may incur costs from actions necessary to deny or revoke a registry identification card, but these costs are a result of the Act, not the rules.

Article 3 contains requirements for dispensaries and dispensary agents. In 2012, the Department conducted an allocation of dispensary registration certificates according to the rules adopted through the emergency rulemaking, which are no longer in effect. During May 2012, the Department accepted 486 dispensary registration certificate applications. Dispensary registration certificates were allocated based on one dispensary per Community Health Analysis Area (CHAA). For CHAAs for which more than one application was received that was complete and in compliance, the Department held a lottery on August 7, 2012. In total, 100 dispensary registration certificates have been allocated. The entities holding these dispensary registration

certificates are estimated to have received a substantial benefit from the rules in effect during the allocation process.

In the 2012 regular rulemaking, the time for completion of administrative and substantive reviews of applications for dispensary registration certificate was reduced to ensure compliance with the Act's time-frames. The EIS stated that the Department might experience a moderate increase in cost due to the reduced time-frames allowed for the Department to complete the administrative and substantive reviews for dispensary registration certificate applications. Conversely, the Department estimated that the Department might receive a moderate benefit from clarifying language and cross-references and reducing the amount of time it would take the Department to review applications, since fewer documents were required to be submitted as part of an application. The Department anticipated that applicants for dispensary registration certificates might also receive a moderate benefit from clarifying language and cross-references and a moderate-to-substantial benefit from the reduction in the documents required to be submitted to the Department as part of an application for a dispensary registration certificate. Since no dispensary registration certificates have been allocated under the current rules, the Department cannot determine whether the actual economic impact would be as estimated in the 2012 EIS.

The rules in Article 3 also specify requirements for an entity with a dispensary registration certificate to apply for an approval to operate a dispensary, to make changes to a dispensary registration certificate or the location of a dispensary or cultivation site, and to apply to renew a dispensary registration certificate. The Department believes that any requirements in rule not specifically required in statute may impose a minimal burden on entities applying for or holding a dispensary registration certificate. Similarly, administrative requirements in rule for operating a dispensary that are not specifically required in statute may impose a minimal burden on entities holding a dispensary registration certificate. As of December 31, 2015, 91 dispensaries have received an approval to operate, and all these dispensaries are currently available to dispense medical marijuana. During calendar year 2015, five entities holding a dispensary registration certificate submitted an application to change the location of a dispensary and three to change the location of a cultivation site, of which four of the five dispensary applications and all three cultivation site applications were approved.

Article 3 also contains requirements for operating a dispensary, including requirements for qualifying patient records, a medical director, inventory control, product labeling and analysis, security, edible food products, cleaning and sanitation, and physical plant. These requirements are based on what is specified in statute and were developed to help prevent diversion and ensure

that a dispensary meets minimum requirements for recordkeeping, security, and health and safety. The Department believes that these requirements may impose a substantial burden on entities applying for or holding a dispensary registration certificate, but would be offset by the substantial benefit of operating a dispensary.

Requirements for submitting a request for a dispensary agent registry identification card for an individual serving as a principal officer or board member for the dispensary, employed by the dispensary, or providing volunteer services at or on behalf of the dispensary, or to renew a dispensary registry identification card for such an individual are also contained in Article 3. Statutes specify application requirements, which are included in the rules. A dispensary may incur a minimal burden due to the rules for each dispensary agent registry identification card, which may be offset by the benefit of having an additional dispensary agent to assist in operating the dispensary. As of December 31, 2015, there were 2,250 dispensary agents (approximately 2.5% of cardholders) with active registry identification cards. From July 1, 2014 to June 30, 2015, the Department voided the cards for 537 dispensary agents and revoked the cards for 3 dispensary agents.

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

Not applicable. This is the first five-year-review report on these rules.

12. Analysis of stringency compared to federal laws

The rules are governed by Arizona statutes and are less stringent than federal laws.

13. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with section 41-1037

The rules establish licensing, certification, or permit requirements that comply with A.R.S. § 41-1037(A)(2). Dispensary registration certificates are issued under A.R.S. § 36-2804 for dispensaries, and registry identification card are issued under A.R.S. § 36-2804.01 for dispensary agents and under A.R.S. § 36-2804.02 for qualifying patients and designated caregivers.

14. Proposed course of action

The Department plans to continue the rulemaking to amend the rules in 9 A.A.C. 17 in response to the court order and to address issues identified in this report, now that the Department has received an exception from the rulemaking moratorium established by Executive Order 2015-01, and to submit a Notice of Final Rulemaking to the Council by December 2017.

INFORMATION FOR INDIVIDUAL RULES

ARTICLE 1. GENERAL

R9-17-101. Definitions

2. <u>Objective</u>

The objective of the rule is to define terms and phrases used in the Chapter to enable the reader to clearly understand the requirements of the Chapter and allow for consistent interpretation.

3. <u>Analysis of effectiveness in achieving the objective</u>

The rule's effectiveness in achieving its objective could be enhanced by including "public transportation vehicles," as well as "public transportation facilities," in the definition of "public place."

6. <u>Analysis of clarity, conciseness, and understandability</u>

The rule is clear, concise, and understandable, but the definitions of "batch" and "batch number" could be clearer. Since the term "enclosed area" is not used in the rules, the descriptions of the term expressed in the definition could be moved into the appropriate Sections. The definition of "residence address," which is now in R9-17-202, could also be moved into the rule, since the term is also used in Sections in Articles 1 and 3.

11. <u>A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective</u>

Despite the minor clarifications needed, as described in paragraphs 3 and 6, 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.

R9-17-102. Fees

2. <u>Objective</u>

The objectives of the rule are to specify the:

a. Fees required for applying for, renewing, or amending or changing a registry identification card or dispensary registration certificate; and

b. Reduced fee for a qualifying patient enrolled in the U.S. Department of Agriculture, Food and Nutrition Services, Supplemental Nutrition Assistance Program who submits documentation of enrollment.

3. <u>Analysis of effectiveness in achieving the objective</u>

The rule is effective in achieving its objective.

6. <u>Analysis of clarity, conciseness, and understandability</u>

The rule is clear, concise, and understandable.

11. <u>A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective</u>

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.

R9-17-103. Application Submission

2. <u>Objective</u>

The objective of the rule is to specify general requirements for submitting a dispensary registration certificate application or an application to the Department for a registry identification card or to amend, change, or replace a registry identification card for a qualifying patient, designated caregiver, or dispensary agent.

3. <u>Analysis of effectiveness in achieving the objective</u>

The rule is mostly effective in achieving its objective but appears to be missing Arizona residential address requirements for a dispensary agent, other than a principal officer or board member, which are implied by the identification requirements in R9-17-311(5) and R9-17-312(2) for obtaining a dispensary agent registry identification card.

6. <u>Analysis of clarity, conciseness, and understandability</u>

The rule is clear, concise, and understandable.

11. <u>A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective</u>

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.

R9-17-104. Changing Information on a Registry Identification Card

1. <u>Authorization of the rule by existing statute</u>

The rule has A.R.S. § 36-2808 as additional specific authority.

2. <u>Objective</u>

The objective of the rule is to specify the requirements for a request to change a cardholder's name or address on the cardholder's registry identification card.

3. Analysis of effectiveness in achieving the objective

The electronic system, which the Department uses for all registry identification card-related requests, requires a cardholder to provide documentation supporting the cardholder's identity before allowing the cardholder to undertake any action. The rule requires such documentation when requesting a name change on a registry identification card, but the rule could be more effective in achieving its objective if it also stated that the documentation is required when requesting a change in address.

6. Analysis of clarity, conciseness, and understandability

The rule is clear, concise, and understandable.

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 persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective

Because of the issue described in paragraph 3 of the analysis of this rule, the rule does not impose the least burden and costs on persons regulated by the rule.

R9-17-105. Requesting a Replacement Registry Identification Card

1. Authorization of the rule by existing statute

The rule has A.R.S. § 36-2804.06 as additional specific authority.

2. Objective

The objective of the rule is to specify the requirements for a request for replacement of a registry identification card that has been lost, stolen, or destroyed.

3. Analysis of effectiveness in achieving the objective

Since the electronic system, which the Department uses for all registry identification card-related requests, requires a registry identification number for a cardholder to access the system, the rule is lacking a method by which a cardholder can obtain the registry identification number of the lost, stolen, or destroyed registry identification card so the cardholder can request a replacement through the electronic system.

6. Analysis of clarity, conciseness, and understandability

The rule is clear, concise, and understandable.

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 persons

regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective

Because of the issue described in paragraph 3 of the analysis of this rule, the rule does not impose the least burden and costs on persons regulated by the rule.

R9-17-106. Adding a Debilitating Medical Condition

1. Authorization of the rule by existing statute

The rule has A.R.S. § 36-2801.01 as additional specific authority.

2. Purpose/Objective

The purpose of the rule is to specify a mechanism for adding a debilitating medical condition. The objectives of the rule are to:

a. Identify requirements related to adding a debilitating medical condition, and

b. Specify the review process.

3. Analysis of effectiveness in achieving the objective

The rule is effective in achieving its objective.

6. Analysis of clarity, conciseness, and understandability

The rule is clear, concise, and understandable.

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 persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective

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.

R9-17-107. Time-frames

1. Authorization of the rule by existing statute

The rule has A.R.S. §§ 36-2804.01, 36-2819, 41-1073 through 41-1076, and 41-1079 as additional specific statutory authority.

2. Objective

The objective of the rule is to specify the review-time-frame process for each type of approval in Table 1.1.

3. Analysis of effectiveness in achieving the objective

The rule is effective in achieving its objective.

6. Analysis of clarity, conciseness, and understandability

The rule is mostly clear, concise, and understandable. The language in subsection (F)(2)(b) that states that the "Department shall deny the dispensary agent registry identification card application and provide notice…" could be revised to state that the Department shall issue a notice of an intent to deny the dispensary agent registry identification card application that complies with A.R.S. § 41-1092.03 to ensure that the affected individual knows that the denial can be appealed.

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 persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective

Despite the minor clarification needed, as described in paragraph 6, 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.

TABLE 1.1 Time-frames

1. Authorization of the rule by existing statute

The rule has A.R.S. §§ 41-1073 through 41-1076, and 41-1079 as additional specific statutory authority.

2. Objective

The objective of the rule is to specify time-frames for the Department to approve or deny an action specified in the Table.

3. Analysis of effectiveness in achieving the objective

The rule is effective in achieving its objective.

6. Analysis of clarity, conciseness, and understandability

The rule is clear, concise, and understandable.

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 persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective

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.

R9-17-108. Expiration of a Registry Identification Card or a Dispensary Registration Certificate

1. Authorization of the rule by existing statute

The rule has A.R.S. § 36-2804.06 as additional specific authority.

2. Objective

The objective of the rule is to specify when registry identification cards and dispensary registration certificates expire.

3. Analysis of effectiveness in achieving the objective

The rule is effective in achieving its objective.

6. Analysis of clarity, conciseness, and understandability

The rule is clear, concise, and understandable.

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 persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective

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.

R9-17-109. Notifications and Void Registry Identification Cards

1. Authorization of the rule by existing statute

The rule has A.R.S. §§ 36-2804.06 and 36-2808 as additional specific authority.

2. Objective

The objective of the rule is to specify when and to whom notification is provided when the Department voids a registry identification card.

3. Analysis of effectiveness in achieving the objective

The rule is partially effective in achieving its objective, but does not first specify the conditions under which a registry identification card is void, before specifying the notification the Department provides when a registry identification card is void.

6. Analysis of clarity, conciseness, and understandability

The rule is clear, concise, and understandable.

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 persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective

Because of the issue described in paragraph 3 of the analysis of this rule, the rule does not impose the least burden and costs on persons regulated by the rule.

ARTICLE 2. QUALIFYING PATIENTS AND DESIGNATED CAREGIVERS

R9-17-201. Debilitating Medical Conditions

1. Authorization of the rule by existing statute

The rule has A.R.S. § 36-2801 as additional specific authority.

2. Objective

The objective of the rule is to specify the debilitating medical conditions, a diagnosis with which makes an individual eligible for a qualifying patient registry identification card.

3. Analysis of effectiveness in achieving the objective

The rule is effective in achieving its objective.

6. Analysis of clarity, conciseness, and understandability

The rule is clear, concise, and understandable.

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 persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective

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.

R9-17-202. Applying for a Registry Identification Card for a Qualifying Patient or a Designated Caregiver

1. Authorization of the rule by existing statute

The rule has A.R.S. § 36-2819 as additional specific authority.

2. Objective

The objective of the rule is to specify requirements for a qualifying patient or, for a qualifying patient who is under 18 year of age, the qualifying patient's custodial parent or legal guardian to apply for:

a. A registry identification card for the qualifying patient; and

b. If applicable, a registry identification card for a designated caregiver for the qualifying patient.

3. Analysis of effectiveness in achieving the objective

The rule is effective in achieving its objective. Although not affecting the effectiveness of this rule, the rules in 9 A.A.C. 17 would be more effective if the definition of "residence address" were moved from subsection (I) into R9-17-101.

6. Analysis of clarity, conciseness, and understandability

The rule is mostly clear, concise, and understandable, but it is not clear in subsection (F)(5) that a physician's written certification that is submitted in support of an application must be from the physician identified in the application in subsection (F)(1).

7. Summary of the written criticisms of the rule received within the last five years

Criticism: The Department has received a written criticism of the rule from an individual who was concerned that the 25 miles "includes the area contained within a circle that extends for 25 miles in all directions from a specific location," stating that the distance should be calculated based on the driving distance between a qualifying patient's residence and the nearest operating dispensary, rather than "as the crow flies."

Response: As stated in paragraph 14 under *Information That Is Identical for All of the Rules*, the Department plans to amend the rules in 9 A.A.C. 17 by December 2017. As part of the rulemaking, the Department may consider mechanisms to take into consideration the terrain or other circumstances that may affect road placement, which may make the driving distance in Arizona considerably farther that distance on a map.

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 persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective

Because of the issue described in paragraph 6 of the analysis of this rule, the rule does not impose the least burden and costs on persons regulated by the rule.

R9-17-203. Amending a Qualifying Patient's or Designated Caregiver's Registry Identification Card

1. Authorization of the rule by existing statute

The rule has A.R.S. § 36-2819 as additional specific authority.

2. Objective

The objective of the rule is to specify requirements for a qualifying patient to amend:

a. A registry identification card to add a designated caregiver or to request a change of the qualifying patient's designated caregiver,

b. The qualifying patient's address on a registry identification card when the qualifying patient or the qualifying patient's designated caregiver is authorized to cultivate marijuana, or

c. A registry identification card to add authorization to cultivate marijuana.

3. Analysis of effectiveness in achieving the objective

The rule is mostly effective in achieving its objective but does not specify that a qualifying patient must submit a copy of an Arizona driver's license, an Arizona identification card, or the photograph page in the qualifying patient's U.S. passport when accessing the electronic system to request the amendment. The rule also does not allow a qualifying patient to remove a designated caregiver without replacement.

6. Analysis of clarity, conciseness, and understandability

The rule is mostly clear, concise, and understandable. The conciseness of the rule would be improved by removing the redundant wording in subsection (C)(4), "Whether the qualifying patient is requesting," and (C)(5) "If the qualifying patient is requesting authorization for cultivating marijuana plants," since the lead-in for the subsection already contains this information about the purpose of the subsection.

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 persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective

Despite the minor clarifications needed, as described in paragraphs 3 and 6, 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.

R9-17-204. Renewing a Qualifying Patient's or Designated Caregiver's Registry Identification Card

1. Authorization of the rule by existing statute

The rule has A.R.S. § 36-2819 as additional specific authority.

2. Objective

The objective of the rule is to specify requirements for a qualifying patient or, for a qualifying patient who is under 18 year of age, the qualifying patient's custodial parent or legal guardian to apply for renewal of:

a. A registry identification card for the qualifying patient; and

b. If applicable, a registry identification card for a designated caregiver for the qualifying patient.

3. Analysis of effectiveness in achieving the objective

The rule is mostly effective in achieving its objective but does not specify that a qualifying patient or, if the qualifying patient is under 18 year of age, the qualifying patient's custodial

parent or legal guardian must submit a copy of an Arizona driver's license, an Arizona identification card, or the photograph page in the qualifying patient's or, if applicable, custodial parent's or legal guardian's U.S. passport when accessing the electronic system to request renewal of the registry identification card.

6. Analysis of clarity, conciseness, and understandability

The rule is mostly clear, concise, and understandable, but it is not clear in subsection (A)(5) that a physician's written certification that is submitted in support of an application must be from the physician identified in the application in subsection (A)(1).

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 persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective

Despite the minor clarifications needed, as described in paragraphs 3 and 6, 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.

R9-17-205. Denial or Revocation of a Qualifying Patient's or Designated Caregiver's Registry Identification Card

1. Authorization of the rule by existing statute

The rule has A.R.S. § 36-2815 as additional specific authority.

2. Objective

The objective of the rule is to specify:

a. The circumstances under which the Department will deny an application for a qualifying patient registry identification card or a designated caregiver registry identification card or revoke a qualifying patient's or designated caregiver's registry identification card, and

b. How the Department will provide notice of the denial or revocation.

3. Analysis of effectiveness in achieving the objective

The rule is effective in achieving its objective.

6. Analysis of clarity, conciseness, and understandability

The rule is mostly clear, concise, and understandable. The language in subsections (G) and (H) that state that "If the Department denies or revokes . . . , the Department shall provide written notice…" could be revised to state that the Department shall issue a notice of an intent to deny or revoke the qualifying patient or designated caregiver registry identification card application that

complies with A.R.S. § 41-1092.03 to ensure that the affected individual knows that the denial or revocation can be appealed.

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 persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective**

Despite the minor clarification needed, as described in paragraph 6, 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.

ARTICLE 3. DISPENSARIES AND DISPENSARY AGENTS

R9-17-301. Principal Officers and Board Members

2. Objective

The objective of the rule is to specify who the Department considers to be a principal officer or board member of an entity applying for or holding a dispensary registration certificate.

3. Analysis of effectiveness in achieving the objective

The rule is effective in achieving its objective.

6. Analysis of clarity, conciseness, and understandability

The rule is clear, concise, and understandable.

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 persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective

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.

R9-17-303. Dispensary Registration Certificate Allocation Process

2. Objective

The objective of the rule is to specify the process the Department will use to allocate dispensary registration certificates.

3. Analysis of effectiveness in achieving the objective

The Department believes the rule would be effective in achieving its objective but has not conducted an allocation of dispensary registration certificates under this rule. The Department plans to conduct an allocation later in 2016.

6. Analysis of clarity, conciseness, and understandability

The rule is clear, concise, and understandable.

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 persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective

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.

R9-17-304. Applying for a Dispensary Registration Certificate

2. <u>Objective</u>

The objectives of the rule are to specify:

a. Limitations on the number of dispensary registration certificate applications for which an individual may be an applicant, principal officer, or board member;

b. How the Department will handle situations when the limitation is exceeded;

c. Requirements for applying for a dispensary registration certificate; and

d. The requirement that an entity with a dispensary registration certificate applies for and obtains an approval to operate a dispensary before the entity begins operating a dispensary.

3. <u>Analysis of effectiveness in achieving the objective</u>

The rule is mostly effective in achieving its objective but does not include a requirement for how current the documentation required in subsections (C)(6) and (7) must be.

6. <u>Analysis of clarity, conciseness, and understandability</u>

The rule is clear, concise, and understandable.

11. <u>A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective</u>

Despite the minor clarification needed, as described in paragraph 6, 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.

R9-17-305. Applying for Approval to Operate a Dispensary

2. <u>Objective</u>

The objective of the rule is to specify the requirements for an entity with a dispensary registration certificate to apply for an approval to operate a dispensary.

3. <u>Analysis of effectiveness in achieving the objective</u>

The rule is effective in achieving its objective.

6. <u>Analysis of clarity, conciseness, and understandability</u>

The rule is clear, concise, and understandable.

11. <u>A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to persons</u>

regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective

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.

R9-17-306. Changes to a Dispensary Registration Certificate

2. Objective

The objective of the rule is to specify limitations on:

a. The transfer or assign the dispensary registration certificate;

b. A change in the location of a dispensary or cultivation site; and

c. A dispensary's or cultivation site's ability to cultivate, manufacture, distribute, dispense, or sell medical marijuana at a new location.

3. Analysis of effectiveness in achieving the objective

The rule is effective in achieving its objective.

6. Analysis of clarity, conciseness, and understandability

The rule is clear, concise, and understandable.

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 persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective

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.

R9-17-307. Applying to Change a Dispensary's Location or Change or Add a Dispensary's Cultivation Site

2. Objective

The objectives of the rule are to:

a. Specify the mechanism by which a dispensary that is operating in a CHAA may change the location of the dispensary or the dispensary's cultivation site or add a cultivation site, and

b. Provide notice that an application for a change in location may not be combined with an application for renewing a dispensary registration certificate.

3. Analysis of effectiveness in achieving the objective

The rule is effective in achieving its objective.

6. Analysis of clarity, conciseness, and understandability

The rule is clear, concise, and understandable.

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 persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective

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.

R9-17-308. Renewing a Dispensary Registration Certificate

2. Objective

The objective of the rule is to specify the requirements for an entity to renew a dispensary registration certificate.

3. Analysis of effectiveness in achieving the objective

The rule is mostly effective in achieving its objective, but the requirement in subsection (B)(3) for an applicant to include as part of the application a copy of an annual financial statement for the previous year may not be appropriate. Since a renewal of a dispensary registration certificate must, according to A.R.S. § 36-2804.03(A)(1), approve or deny an application for renewal within 10 days, it may be more effective for the Department to review the annual financial statement as part of an on-site inspection.

5. Status of enforcement of the rule

The rule requires an entity with a dispensary registration certificate to have an approval to operate before submitting an application for renewal of the dispensary certificate. Due to the court order (CV 2013-005901), the Department is not denying timely filed applications for a renewal of a dispensary registration certificate on the ground that the applicant has not obtained an approval to operate. Otherwise, the Department enforces the rule as written.

6. Analysis of clarity, conciseness, and understandability

The rule is clear, concise, and understandable but could be clearer by specifying in subsection (B) that it is the entity with a dispensary registration certificate that would submit a request to renew the dispensary registration certificate.

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 persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective

Because of the issues described in paragraphs 3 and 6 of the analysis of this rule, the rule does not impose the least burden and costs on persons regulated by the rule.

R9-17-309. Inspections

2. <u>Objective</u>

The objectives of the rule are to:

a. Provide notice of the Department's right to enter and inspect a dispensary and, if applicable, the dispensary's cultivation site;

b. Provide notice that the Department does not accept anonymous reports alleging a dispensary's noncompliance with medical marijuana statutes and rules;

c. Specify the conditions under which the Department may conduct an inspection; and

d. Specify the process to be followed if the Department identifies a violation.

3. <u>Analysis of effectiveness in achieving the objective</u>

The rule is mostly effective in achieving its objective but does not specifically state that a Department inspection may include an inspection of dispensary records or that the Department may periodically review the information in the medical marijuana electronic verification system to monitor a dispensary's compliance with statutes and rules.

6. <u>Analysis of clarity, conciseness, and understandability</u>

The rule is clear, concise, and understandable.

11. <u>A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective</u>

Despite the minor clarifications needed, as described in paragraph 3, 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.

R9-17-310. Administration

2. <u>Objective</u>

The objective of the rule is to specify the administrative actions a dispensary is required to take and the documents the dispensary is required to develop and maintain.

3. <u>Analysis of effectiveness in achieving the objective</u>

The rule is mostly effective in achieving its objective but does not include requirements for a dispensary to send to the Department a copy of amended by-laws and to notify the Department

when there is a change in the designated individual listed on an initial application, in R9-17-304(C)(1)(d), or renewal application, in R9-17-308(B)(1)(e).

6. Analysis of clarity, conciseness, and understandability

The rule is mostly clear, concise, and understandable but does not establish a period of time after the dispensary receives an approval to operate to allow the dispensary to grow, stock, or otherwise obtain a supply of marijuana before the dispensary is able to dispense medical marijuana.

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 persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective

Because of the issues described in paragraphs 3 and 6 of the analysis of this rule, the rule does not impose the least burden and costs on persons regulated by the rule.

R9-17-311. Submitting an Application for a Dispensary Agent Registry Identification Card

1. Authorization of the rule by existing statute

The rule has A.R.S. § 36-2819 as additional specific authority.

2. Objective

The objective of the rule is to specify requirements for a dispensary when submitting a request for a dispensary agent registry identification card for an individual serving as a principal officer or board member for the dispensary, employed by the dispensary, or providing volunteer services at or on behalf of the dispensary.

3. Analysis of effectiveness in achieving the objective

The rule is mostly effective in achieving its objective but does not contain identification documentation requirements for obtaining a dispensary agent registry identification card specific to a principal officer or board member, since principal officers and board members are not required to be Arizona residents.

6. Analysis of clarity, conciseness, and understandability

The rule is clear, concise, and understandable.

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 persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective

Because of the issue described in paragraph 3 of the analysis of this rule, the rule does not impose the least burden and costs on persons regulated by the rule.

R9-17-312. Submitting an Application to Renew a Dispensary Agent's Registry Identification Card

1. Authorization of the rule by existing statute

The rule has A.R.S. § 36-2819 as additional specific authority.

2. Objective

The objective of the rule is to specify requirements for a dispensary when submitting a request for renewing a dispensary agent registry identification card for an individual serving as a principal officer or board member for the dispensary, employed by the dispensary, or providing volunteer services at or on behalf of the dispensary.

3. Analysis of effectiveness in achieving the objective

The rule is effective in achieving its objective.

6. Analysis of clarity, conciseness, and understandability

The rule is clear, concise, and understandable.

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 persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective

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.

R9-17-313. Medical Director

2. Objective

The objective of the rule is to specify the qualifications and responsibilities of a medical director for a dispensary.

3. Analysis of effectiveness in achieving the objective

The rule is effective in achieving its objective.

6. Analysis of clarity, conciseness, and understandability

The rule is mostly clear, concise, and understandable but does not state that it is a dispensary agent, not a qualifying patient, who must be able to contact the medical director.

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 persons

regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective

Despite the minor clarification needed, as described in paragraph 6, 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.

R9-17-314. Dispensing Medical Marijuana

1. Authorization of the rule by existing statute

The rule has A.R.S. §§ 36-2806.02, 36-2807, and 36-2816 as additional specific authority.

2. Objective

The objective of the rule is to specify the responsibilities of a dispensary agent when dispensing medical marijuana.

3. Analysis of effectiveness in achieving the objective

The rule is effective in achieving its objective.

6. Analysis of clarity, conciseness, and understandability

The rule is clear, concise, and understandable.

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 persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective

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.

R9-17-315. Qualifying Patient Records

1. Authorization of the rule by existing statute

The rule has A.R.S. § 36-2801 as additional specific authority.

2. Objective

The objective of the rule is to establish requirements:

a. For a dispensary to establish and maintain a qualifying patient record for each qualifying patient who obtains medical marijuana from the dispensary, including the content of the qualifying patient record; and

b. Regarding access to and security of a qualifying patient record.

3. Analysis of effectiveness in achieving the objective

The rule is effective in achieving its objective.

6. <u>Analysis of clarity, conciseness, and understandability</u>

The rule is clear, concise, and understandable.

11. <u>A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective</u>

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.

R9-17-316. Inventory Control System

1. <u>Authorization of the rule by existing statute</u>

The rule has A.R.S. § 36-2816 as additional specific authority.

2. <u>Objective</u>

The objectives of the rule are to specify requirements for:

a. A dispensary's inventory control system to document information about the marijuana acquired by the dispensary, cultivated by the dispensary, or provided by the dispensary to another dispensary;

b. Oversight of the dispensary's inventory control system and from whom the dispensary may acquire marijuana;

c. Conducting an audit of the dispensary's inventory; and

d. Maintaining documentation related to the dispensary's inventory control system.

3. <u>Analysis of effectiveness in achieving the objective</u>

The rule is effective in achieving its objective.

6. <u>Analysis of clarity, conciseness, and understandability</u>

The rule is mostly clear, concise, and understandable but requires "an audit of the dispensary's inventory," which may be confused with an audit of financial records, rather than a review and reconciliation of a dispensary's inventory with acquisition and disbursement (provision to another dispensary or dispensing for a qualifying patient) records.

11. <u>A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective</u>

Because of the issue described in paragraph 6 of the analysis of this rule, the rule does not impose the least burden and costs on persons regulated by the rule.

R9-17-317. Product Labeling and Analysis

2. <u>Objective</u>

The objectives of the rule are to:

a. Specify how medical marijuana is required to be labeled, and

b. Provide notice that a dispensary is required to provide to the Department upon request a sample of the dispensary's medical marijuana for analysis.

3. <u>Analysis of effectiveness in achieving the objective</u>

The rule is effective in achieving its objective.

6. <u>Analysis of clarity, conciseness, and understandability</u>

The rule is clear, concise, and understandable.

11. <u>A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective</u>

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.

R9-17-318. Security

2. <u>Objective</u>

The objective of the rule is to specify security requirements for a dispensary or the dispensary's cultivation site or when a dispensary is transporting marijuana.

3. <u>Analysis of effectiveness in achieving the objective</u>

The rule is mostly effective in achieving its objective but does not require in subsection (C)(1)(c) a list by qualifying patient or dispensary and the products being transported to each.

6. <u>Analysis of clarity, conciseness, and understandability</u>

The rule is mostly clear, concise, and understandable but could be improved by clarifying in subsection (C)(1) that a trip plan is "developed and documented."

11. <u>A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective</u>

Despite the minor clarifications needed, as described in paragraphs 3 and 6, 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.

R9-17-319. Edible Food Products

2. <u>Objective</u>

The objective of the rule is to specify requirements related to the preparation, sale, or dispensing of edible food products containing marijuana.

3. <u>Analysis of effectiveness in achieving the objective</u>

The rule is effective in achieving its objective.

6. <u>Analysis of clarity, conciseness, and understandability</u>

The rule is mostly clear, concise, and understandable but does not specifically state in subsection (A)(2) that marijuana-infused food products are required to be prepared at a dispensary or the dispensary's cultivation site.

11. <u>A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective</u>

Despite the minor issue described in paragraph 6, 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.

R9-17-320. Cleaning and Sanitation

2. <u>Objective</u>

The objective of the rule is to specify requirements:

a. For a dispensary to ensure that buildings or equipment used by a dispensary for the cultivation, harvest, preparation, packaging, storage, infusion, or sale of medical marijuana are maintained in a clean and sanitary condition; and

b. To reduce the possibility of contamination of marijuana by a dispensary agent.

3. <u>Analysis of effectiveness in achieving the objective</u>

The rule is effective in achieving its objective.

6. <u>Analysis of clarity, conciseness, and understandability</u>

The rule is clear, concise, and understandable.

11. <u>A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective</u>

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.

R9-17-321. Physical Plant

2. <u>Objective</u>

The objective of the rule is to specify requirements related to the physical plant of a dispensary and, if applicable, the dispensary's cultivation site.

3. <u>Analysis of effectiveness in achieving the objective</u>

The rule is partially effective in achieving its objective but should be revised because of an issue with subsection (A). Subsection (A) specifies that a "dispensary or a dispensary's cultivation site shall be located at least 500 feet from a private school or a public school that existed before the date the dispensary submitted the initial dispensary registration certificate application," but states nothing about where a dispensary may move or establish a new cultivation site.

6. <u>Analysis of clarity, conciseness, and understandability</u>

The rule is clear, concise, and understandable.

11. <u>A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective</u>

Because of the issue described in paragraph 3 of the analysis of this rule, the rule does not impose the least burden and costs on persons regulated by the rule.

R9-17-322. Denial or Revocation of a Dispensary Registration Certificate

1. <u>Authorization of the rule by existing statute</u>

The rule has A.R.S. § 36-2815 as additional specific authority.

2. <u>Objective</u>

The objective of the rule is to specify:

a. The circumstances under which the Department will deny an application for a dispensary registration certificate or revoke a dispensary's registration certificate, and

b. How the Department will provide notice of the denial or revocation.

3. Analysis of effectiveness in achieving the objective

The rule is partially effective in achieving its objective but should be revised. Subsection (A)(1) should be revised because of the issue described in paragraph 3 of the analysis for R9-17-321, and subsection (A)(2)(b)(ii) should be revised to comply with the court order.

6. Analysis of clarity, conciseness, and understandability

The rule is clear, concise, and understandable.

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 persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective

Because of the issues described in paragraph 3 of the analysis of this rule, the rule does not impose the least burden and costs on persons regulated by the rule.

R9-17-323. Denial or Revocation of a Dispensary Agent's Registry Identification Card

1. Authorization of the rule by existing statute

The rule has A.R.S. §§ 36-2804.01 and 36-2815 as additional specific authority.

2. Objective

The objective of the rule is to specify:

a. The circumstances under which the Department will deny an application for a dispensary agent registry identification card or revoke a dispensary agent's registry identification card, and

b. How the Department will provide notice of the denial or revocation.

3. Analysis of effectiveness in achieving the objective

The rule is effective in achieving its objective.

6. Analysis of clarity, conciseness, and understandability

The rule is clear, concise, and understandable.

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 persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective

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.

ATTACHMENT A

DEPARTMENT OF HEALTH SERVICES
CHAPTER 17: MEDICAL MARIJUANA PROGRAM

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ARTICLE 1. GENERAL

R9-17-101. Definitions

In addition to the definitions in A.R.S. § 36-2801, the following definitions apply in this Chapter unless otherwise stated:

1. "Acquire" means to obtain through any type of transaction and from any source.
2. "Activities of daily living" means ambulating, bathing, dressing, grooming, eating, toileting, and getting in and out of bed.
3. "Amend" means adding or deleting information on an individual's registry identification card that affects the individual's ability to perform or delegate a specific act or function.
4. "Batch" means a specific lot of medical marijuana grown from one or more seeds or cuttings that are planted and harvested at the same time.
5. "Batch number" means a unique numeric or alphanumeric identifier assigned to a batch by a dispensary when the batch is planted.
6. "Calendar day" means each day, not including the day of the act, event, or default from which a designated period of time begins to run, but including the last day of the period unless it is a Saturday, Sunday, statewide furlough day, or legal holiday, in which case the period runs until the end of the next day that is not a Saturday, Sunday, statewide furlough day, or legal holiday.
7. "CHAA" means a Community Health Analysis Area, a geographic area based on population, established by the Department for use by public health programs.
8. "Change" means adding or deleting information on an individual's registry identification card that does not substantively affect the individual's ability to perform or delegate a specific act or function.
9. "Commercial device" means the same as in A.R.S. § 41-2051.
10. "Cultivation site" means the one additional location where marijuana may be cultivated, infused, or prepared for sale by and for a dispensary.
11. "Current photograph" means an image of an individual, taken no more than 60 calendar days before the submission of the individual's application, in a Department-approved electronic format capable of producing an image that:
    a. Has a resolution of at least 600 x 600 pixels but not more than 1200 x 1200 pixels;
    b. Is 2 inches by 2 inches in size;
    c. Is in natural color;
    d. Is a front view of the individual's full face, without a hat or headgear that obscures the hair or hairline;
    e. Has a plain white or off-white background; and
    f. Has between 1 and I 3/8 inches from the bottom of the chin to the top of the head.
12. "Denial" means the Department's final decision not to issue a registry identification card, a dispensary registration certificate, or an approval of a change of dispensary or a dispensary's cultivation site location, to an applicant because the applicant or the application does not comply with the applicable requirements in A.R.S. Title 36, Chapter 28.1 or this Chapter.
13. "Dispensary" means the same as "nonprofit medical marijuana dispensary" as defined in A.R.S. § 36-2801.
14. "Dispensary agent" means the same as "nonprofit medical marijuana dispensary agent" as defined in A.R.S. § 36-2801.
15. "Edible food product" means a substance, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption.

16. "Enclosed area" when used in conjunction with "enclosed, locked facility" means outdoor space surrounded by solid, 10-foot walls, constructed of metal, concrete, or stone that prevent any viewing of the marijuana plants, and a 1-inch thick metal gate.
17. "Entity" means a "person" as defined in A.R.S. § 1-215.
18. "Generally accepted accounting principles" means the set of financial reporting standards established by the Financial Accounting Standards Board, the Governmental Accounting Standards Board, or another specialized body dealing with accounting and auditing matters.
19. "In-state financial institution" means the same as in A.R.S. § 6-101.
20. "Legal guardian" means an adult who is responsible for a minor:
    a. Through acceptance of guardianship of the minor through a testamentary appointment or an appointment by a court pursuant to A.R.S. Title 14, Chapter 5, Article 2; or
    b. As a "custodian" as defined in A.R.S. § 8-201.
21. "Medical record" means the same as:
    a. "Adequate records" as defined in A.R.S. § 32-1401,
    b. "Adequate medical records" as defined in A.R.S. § 32-1501,
    c. "Adequate records" as defined in A.R.S. § 32-1800, or
    d. "Adequate records" as defined in A.R.S. § 32-2901.
22. "Out-of-state financial institution" means the same as in A.R.S. § 6-101.
23. "Private school" means the same as in A.R.S. § 15-101.
24. "Public place":
    a. Means any location, facility, or venue that is not intended for the regular exclusive use of an individual or a specific group of individuals;
    b. Includes, but not is limited to:
        i. Airports;
        ii. Banks;
        iii. Bars;
        iv. Child care facilities;
        v. Child care group homes during hours of operation;
        vi. Common areas of apartment buildings, condominiums, or other multifamily housing facilities;
        vii. Educational facilities;
        viii. Entertainment facilities or venues;
        ix. Health care institutions, except as provided in subsection (24)(c);
        x. Hotel and motel common areas;
        xi. Laundromats;
        xii. Libraries;
        xiii. Office buildings;
        xiv. Parking lots;
        xv. Parks;
        xvi. Public transportation facilities;
        xvii. Reception areas;
        xviii. Restaurants;
        xix. Retail food production or marketing establishments;
        xx. Retail service establishments;
        xxi. Retail stores;
        xxii. Shopping malls;
        xxiii. Sidewalks;
        xxiv. Sports facilities;
        xxv. Theaters; and

xxvi. Waiting rooms; and

c. Does not include:

i. Nursing care institutions as defined in A.R.S. § 36-401,

ii. Hospices as defined in A.R.S. § 36-401,

iii. Assisted living centers as defined in A.R.S. § 36-401,

iv. Assisted living homes as defined in A.R.S. § 36-401,

v. Adult day health care facilities as defined in A.R.S. § 36-401,

vi. Adult foster care homes as defined in A.R.S. § 36-401, or

vii. Private residences.

25. "Public school" means the same as "school" as defined in A.R.S. § 15-101.

26. "Registry identification number" means the random 20-digit alphanumeric identifier generated by the Department, containing at least four numbers and four letters, issued by the Department to a qualifying patient, designated caregiver, dispensary, or dispensary agent.

27. "Revocation" means the Department's final decision that an individual's registry identification card or a dispensary registration certificate is rescinded because the individual or the dispensary does not comply with the applicable requirements in A.R.S. Title 36, Chapter 28.1 or this Chapter.

28. "Working day" means a Monday, Tuesday, Wednesday, Thursday, or Friday that is not a state holiday or a statewide furlough day.

R9-17-102. Fees

A. An applicant submitting an application to the Department shall submit the following nonrefundable fees:

1. Except as provided in R9-17-303(D), for registration of a dispensary, $5,000;
2. To renew the registration of a dispensary, $1,000;
3. To change the location of a dispensary, $2,500;
4. To change the location of a dispensary's cultivation site or add a cultivation site, $2,500;
5. For a registry identification card for a:
   a. Qualifying patient, except as provided in subsection (B), $150;
   b. Designated caregiver, $200; and
   c. Dispensary agent, $500;
6. For renewing a registry identification card for a:
   a. Qualifying patient, except as provided in subsection (B), $150;
   b. Designated caregiver, $200; and
   c. Dispensary agent, $500;
7. For amending or changing a registry identification card, $10; and
8. For requesting a replacement registry identification card, $10.

B. A qualifying patient may pay a reduced fee of $75 if the qualifying patient submits, with the qualifying patient's application for a registry identification card or the qualifying patient's application to renew the qualifying patient's registry identification card, a copy of an eligibility notice or electronic benefits transfer card demonstrating current participation in the U.S. Department of Agriculture, Food and Nutrition Services, Supplemental Nutrition Assistance Program.

R9-17-103. Application Submission

A. An applicant submitting an application for a registry identification card or to amend, change, or replace a registry identification card for a qualifying patient, designated caregiver, or dispensary agent shall submit the application electronically in a Department-provided format.

B. A residence address or mailing address submitted for a qualifying patient or designated caregiver as part of an application for a registry identification card is located in Arizona.

C. A mailing address submitted for a principal officer or board member as part of a dispensary registration certificate application or as part of an application for a dispensary agent registration identification card is located in Arizona.

R9-17-104. Changing Information on a Registry Identification Card

Except as provided in R9-17-203(B) and (C), to make a change to a cardholder's name or address on the cardholder's registry identification card, the cardholder shall submit to the Department, within 10 working days after the change, a request for the change that includes:

1. The cardholder's name and the registry identification number on the cardholder's current registry identification card;
2. The cardholder's new name or address, as applicable;
3. For a change in the cardholder's name, one of the following with the cardholder's new name:
   a. An Arizona driver's license,
   b. An Arizona identification card, or
   c. The photograph page in the cardholder's U.S. passport;
4. For a change in address, the county where the new address is located;
5. The effective date of the cardholder's new name or address; and
6. The applicable fee in R9-17-102 for changing a registry identification card.

R9-17-105. Requesting a Replacement Registry Identification Card

To request a replacement card for a cardholder's registry identification card that has been lost, stolen, or destroyed, the cardholder shall submit to the Department, within 10 working days after the cardholder's registry identification card was lost, stolen, or destroyed, a request for a replacement card that includes:

1. The cardholder's name and date of birth;
2. If known, the registry identification number on the cardholder's lost, stolen, or destroyed registry identification card;
3. If the cardholder cannot provide the registry identification number on the cardholder's lost, stolen, or destroyed registry identification card, a copy of one of the following documents that the cardholder submitted when the cardholder obtained the registry identification card:
   a. Arizona driver's license,
   b. Arizona identification card,
   c. Arizona registry identification card, or
   d. Photograph page in the cardholder's U.S. passport; and
4. The applicable fee in R9-17-102 for requesting a replacement registry identification card.

R9-17-106. Adding a Debilitating Medical Condition

A. An entity may request the addition of a medical condition to the list of debilitating medical conditions in R9-17-201 by submitting to the Department, at the times specified in subsection (C), the following in writing:

1. The entity's name;
2. The entity's mailing address, name of contact individual, telephone number, and, if applicable, e-mail address;
3. The name of the medical condition the entity is requesting be added;
4. A description of the symptoms and other physiological effects experienced by an individual suffering from the medical condition or a treatment of the medical condition that may impair the ability of the individual to accomplish activities of daily living;
5. The availability of conventional medical treatments to provide therapeutic or palliative benefit for the medical condition or a treatment of the medical condition;

6. A summary of the evidence that the use of marijuana will provide therapeutic or palliative benefit for the medical condition or a treatment of the medical condition; and
7. Articles, published in peer-reviewed scientific journals, reporting the results of research on the effects of marijuana on the medical condition or a treatment of the medical condition supporting why the medical condition should be added.

B. The Department shall:

1. Acknowledge in writing the Department's receipt of a request for the addition of a medical condition to the list of debilitating medical conditions listed in R9-17-201 within 30 calendar days after receiving the request;
2. Review the request to determine if the requester has provided evidence that:
   a. The specified medical condition or treatment of the medical condition impairs the ability of the individual to accomplish activities of daily living, and
   b. Marijuana usage provides a therapeutic or palliative benefit to an individual suffering from the medical condition or treatment of the medical condition;
3. Within 90 calendar days after receiving the request, notify the requester that the Department has determined that the information provided by the requester:
   a. Meets the requirements in subsection (B)(2) and the date the Department will conduct a public hearing to discuss the request; or
   b. Does not meet the requirements in subsection (B)(2), the specific reason for the determination, and the process for requesting judicial review of the Department's determination pursuant to A.R.S. Title 12, Chapter 7, Article 6;
4. If applicable:
   a. Schedule a public hearing to discuss the request;
   b. Provide public notice of the public hearing by submitting a Notice of Public Information to the Office of the Secretary of State, for publication in the *Arizona Administrative Register* at least 30 calendar days before the date of the public hearing;
   c. Post a copy of the request on the Department's web site for public comment at least 30 calendar days before the date of the public hearing; and
   d. Hold the public hearing no more than 150 calendar days after receiving the request; and
5. Within 180 calendar days after receiving the request:
   a. Add the medical condition to the list of debilitating medical conditions; or
   b. Provide written notice to the requester of the Department's decision to deny the request that includes:
      i. The specific reasons for the Department's decision; and
      ii. The process for requesting judicial review of the Department's decision pursuant to A.R.S. Title 12, Chapter 7, Article 6.

C. The Department shall accept requests for the addition of a medical condition to the list of debilitating medical conditions in R9-17-201 in January and July of each calendar year starting in January 2012.

R9-17-107. Time-frames

A. Within the administrative completeness review time-frame for each type of approval in Table 1.1, the Department shall:

1. Issue a registry identification card or dispensary registration certificate;
2. Provide a notice of administrative completeness to an applicant; or
3. Provide a notice of deficiencies to an applicant, including a list of the information or documents needed to complete the application.

B. An application for approval to operate a dispensary is not complete until the date the applicant states on a written notice provided to the Department that the dispensary is ready for an inspection by the Department.

C. If the Department provides a notice of deficiencies to an applicant:

1. The administrative completeness review time-frame and the overall time-frame are suspended from the date of the notice of deficiencies until the date the Department receives the missing information or documents from the applicant;
2. If the applicant does not submit the missing information or documents to the Department within the time-frame in Table 1.1, the Department shall consider the application withdrawn; and
3. If the applicant submits the missing information or documents to the Department within the time-frame in Table 1.1, the substantive review time-frame begins on the date the Department receives the missing information or documents.

D. Within the substantive review time-frame for each type of approval in Table 1.1, the Department:

1. Shall issue or deny a registry identification card or dispensary registration certificate;
2. May complete an inspection that may require more than one visit to a dispensary and, if applicable, the dispensary's cultivation site; and
3. May make one written comprehensive request for more information, unless the Department and the applicant agree in writing to allow the Department to submit supplemental requests for information.

E. If the Department issues a written comprehensive request or a supplemental request for information:

1. The substantive review time-frame and the overall time-frame are suspended from the date of the written comprehensive request or the supplemental request for information until the date the Department receives all of the information requested, and
2. The applicant shall submit to the Department all of the information and documents listed in the written comprehensive request or supplemental request for information within 10 working days after the date of the comprehensive written request or supplemental request for information.

F. If an applicant for an initial dispensary registration certificate is allocated a dispensary registration certificate as provided in R9-17-303, the Department shall provide a written notice to the applicant of the allocation of the dispensary registration certificate that contains the dispensary's registry identification number.

1. After the applicant receives the written notice of the allocation, the applicant shall submit to the Department for each principal officer or board member for whom fingerprints were submitted:
    a. An application for a dispensary agent registry identification card that includes:
        i. The principal officer's or board member's first name; middle initial, if applicable; last name; and suffix, if applicable;
        ii. The principal officer's or board member's residence address and mailing address;
        iii. The county where the principal officer or board member resides;
        iv. The principal officer's or board member's date of birth;
        v. The identifying number on the applicable card or document in subsection (F)(1)(b)(i) through (v);
        vi. The name and registry identification number of the dispensary;
        vii. One of the following:
            (1) A statement that the principal officer or board member does not currently hold a valid registry identification card, or

(2) The assigned registry identification number for each valid registry identification card currently held by the principal officer or board member;

viii. A statement signed by the principal officer or board member pledging not to divert marijuana to any individual who or entity that is not allowed to possess marijuana pursuant to A.R.S. Title 36, Chapter 28.1;

ix. An attestation that the information provided in and with the application is true and correct; and

x. The signature of the principal officer or board member and the date the principal officer or board member signed;

b. A copy the principal officer's or board member's:

i Arizona driver's license issued on or after October 1, 1996;

ii. Arizona identification card issued on or after October 1, 1996;

iii. Arizona registry identification card;

iv. Photograph page in the principal officer's or board member's U.S. passport; or

v. Arizona driver's license or identification card issued before October 1, 1996 and one of the following for the principal officer or board member:

(1) Birth certificate verifying U.S. citizenship,

(2) U. S. Certificate of Naturalization, or

(3) U. S. Certificate of Citizenship;

c. A current photograph of the principal officer or board member; and

d. The applicable fee in R9-17-102 for applying for a dispensary agent registry identification card.

2. After receipt of the information and documents in subsection (F)(1), the Department shall review the information and documents.

a. If the information aud documents for at least one of the principal officers or board members complies with the A.R.S. Title 36, Chapter 28.1 and this Chapter, the Department shall issue:

i. A dispensary agent registry identification card to any principal officer or board member whose dispensary agent registry identification card application complies with A.R.S. Title 36, Chapter 28.1 and this Chapter; and

ii. The dispensary registration certificate.

b. If the information and documents for a dispensary agent registry identification card application for any principal officer or board member does not comply with A.R.S. Title 36, Chapter 28.1 and this Chapter, the Department shall deny the dispensary agent registry identification card application and provide notice to the principal officer or board member and to the dispensary that includes:

i. The specific reasons for the denial; and

ii. The process for requesting a judicial review of the Department's decision pursuant to A.R.S. Title 12, Chapter 7, Article 6.

G. The Department shall issue:

1. A registry identification card or an approval to operate a dispensary, as applicable, if the Department determines that the applicant complies with A.R.S. Title 36, Chapter 28.1 and this Chapter;

2. For an applicant for a registry identification card, a denial that includes the reason for the denial and the process for requesting judicial review if:

a. The Department determines that the applicant does not comply with A.R.S. Title 36, Chapter 28.1 and this Chapter; or

b. The applicant does not submit all of the information and documents listed in the written comprehensive request or supplemental request for information within 10 working days after the date of the comprehensive written request or supplemental request for information;

3. For an applicant for a dispensary registration certificate, if the Department determines that the dispensary registration certificate application complies with A.R.S. Title 36, Chapter 28.1 and this Chapter but the Department is not issuing a dispensary registration certificate to the applicant because all available dispensary registration certificates have been allocated according to the criteria and processes in R9-17-303, written notice that:
   a. The dispensary registration certificate application complies with A.R.S. Title 36, Chapter 28.1 and this Chapter;
   b. The applicant was not allocated a dispensary registration certificate according to the criteria and processes in R9-17-303; and
   c. The written notice is not a denial and is not considered a final decision of the Department subject to administrative review; or
4. For an applicant for a dispensary registration certificate, a denial that includes the reason for the denial and the process for administrative review if:
   a. The Department determines that a dispensary registration certificate application does not comply with A.R.S. Title 36, Chapter 28.1 or this Chapter; or
   b. The applicant does not submit all of the information and documents listed in the written comprehensive request or supplemental request for information within 10 working days after the date of the comprehensive written request or supplemental request for information.

TABLE 1.1 Time-frames

Type of approval	Authority (A.R.S. § or A.A.C.)	Overall Time-frame (in working days)	Time-frame for applicant to complete application (in working days)	Administrative Completeness Time-frame (in working days)	Substantive Review Time-frame (in working days)
Changing a registry identification card	36-2808	10	10	5	5
Requesting a replacement registry identification card	36-2804.06	5	5	2	3
Applying for a registry identification card for a qualifying patient or a designated caregiver	36-2804.02(A)	15	30	5	10
Amending a registry identification card for a qualifying patient or a designated	36-2808	10	10	5	5

caregiver					
Renewing a qualifying patient's or designated caregiver's registry identification card	36-2804.02(A) and 36-2804.06	15	15	5	10
Applying for a dispensary registration certificate	36-2804	30	10	5	25
Applying for approval to operate a dispensary	R9-17-305	45		15	30
Changing a dispensary location or adding or changing a dispensary's cultivation site location	36-2804 and R9-17-307	90	90	30	60
Renewing a dispensary registration certificate	36-2804.06	15	15	5	10
Applying for a dispensary agent registry identification card	36-2804.01 and 36-2804.03	15	30	5	10
Renewing a dispensary agent's registry identification card	36-2804.06	15	15	5	10

R9-17-108. Expiration of a Registry Identification Card or a Dispensary Registration Certificate

A. Except as provided in subsection (B), a registry identification card issued to a qualifying patient, designated caregiver, or dispensary agent is valid for one year after the date of issuance.

B. If the Department issues a registry identification card to a qualifying patient, designated caregiver, or dispensary agent based on a request for a replacement registry identification card or an application to change or amend a registry identification card; the replacement, changed, or amended registry identification card shall have the same expiration date as the registry identification card being replaced, changed, or amended.

C. Except as provided in subsection (D), a dispensary registration certificate is valid for one year after the date of issuance.

D. If the Department issues an amended dispensary registration certificate based on a change of location or an addition of a cultivation site, the dispensary registration certificate shall have the same expiration date as the dispensary registration certificate previously held by the dispensary.

E. An approval to operate a dispensary shall have the same expiration date as the dispensary registration certificate associated with the approval to operate the dispensary.

R9-17-109. Notifications and Void Registry Identification Cards

A. The Department shall provide written notice that a cardholder's registry identification card is void and no longer valid under A.R.S. Title 36, Chapter 28.1 and this Chapter to a:

1. Qualifying patient when the Department receives notification from:
   a. The qualifying patient that the qualifying patient no longer has a debilitating medical condition; or
   b. The physician who provided the qualifying patient's written certification that the:
      i. Qualifying patient no longer has a debilitating medical condition,
      ii. Physician no longer believes that the qualifying patient would receive therapeutic or palliative benefit from the medical use of marijuana, or
      iii. Physician believes that the qualifying patient is not using the medical marijuana as recommended;
2. Designated caregiver when:
   a. The Department receives notification from the designated caregiver's qualifying patient that the designated caregiver no longer assists the qualifying patient with the medical use of marijuana, or
   b. The registry identification card for the qualifying patient that is listed on the designated caregiver's registry identification card is no longer valid; or
3. Dispensary agent when:
   a. The Department receives the written notification, required in R9-17-310(A)(9), that the dispensary agent:
      i. No longer serves as a principal officer, board member, or medical director for the dispensary;
      ii. Is no longer employed by the dispensary; or
      iii. No longer provides volunteer service at or on behalf of the dispensary; or
   b. The registration certificate for the dispensary that is listed on the dispensary agent's registry identification card is no longer valid.

B. The Department shall void a qualifying patient's registry identification card:

1. When the Department receives notification that the qualifying patient is deceased; or
2. For a qualifying patient under 18 years of age, when the qualifying patient's designated caregiver's registry identification card is revoked.

C. The written notice required in subsection (A) that a registry identification card is void is not a revocation and is not considered a final decision of the Department subject to judicial review.

ARTICLE 2. QUALIFYING PATIENTS AND DESIGNATED CAREGIVERS

R9-17-201. Debilitating Medical Conditions

An individual applying for a qualifying patient registry identification card shall have a diagnosis from a physician of at least one of the following debilitating medical conditions:

1. Cancer;
2. Glaucoma;
3. Human immunodeficiency virus;
4. Acquired immune deficiency syndrome;
5. Hepatitis C;
6. Amyotrophic lateral sclerosis;
7. Crohn's disease;
8. Agitation of Alzheimer's disease;
9. A chronic or debilitating disease or medical condition or the treatment for a chronic or debilitating disease or medical condition that produces cachexia or wasting syndrome;
10. A chronic or debilitating disease or medical condition or the treatment for a chronic or debilitating disease or medical condition that produces severe and chronic pain;
11. A chronic or debilitating disease or medical condition or the treatment for a chronic or debilitating disease or medical condition that produces severe nausea;
12. A chronic or debilitating disease or medical condition or the treatment for a chronic or debilitating disease or medical condition that produces seizures, including those characteristic of epilepsy;
13. A chronic or debilitating disease or medical condition or the treatment for a chronic or debilitating disease or medical condition that produces severe or persistent muscle spasms, including those characteristic of multiple sclerosis; or
14. A debilitating medical condition approved by the Department under A.R.S. § 36-2801.01 and R9-17-106.

R9-17-202. Applying for a Registry Identification Card for a Qualifying Patient or a Designated Caregiver

A. Except for a qualifying patient who is under 18 years of age, a qualifying patient is not required to have a designated caregiver.

B. A qualifying patient may have only one designated caregiver at any given time.

C. Except for a qualifying patient who is under 18 years of age, if the information submitted for a qualifying patient complies with A.R.S. Title 36, Chapter 28.1 and this Chapter but the information for the qualifying patient's designated caregiver does not comply with A.R.S. Title 36, Chapter 28.1 and this Chapter, the Department shall issue the registry identification card for the qualifying patient separate from issuing a registry identification card for the qualifying patient's designated caregiver.

D. If the Department issues a registry identification card to a qualifying patient under subsection (C), the Department shall continue the process for issuing or denying the qualifying patient's designated caregiver's registry identification card.

E. The Department shall not issue a designated caregiver's registry identification card before the Department issues the designated caregiver's qualifying patient's registry identification card.

F. Except as provided in subsection (G), to apply for a registry identification card, a qualifying patient shall submit to the Department the following:

1. An application in a Department-provided format that includes:
   a. The qualifying patient's:
      i. First name; middle initial, if applicable; last name; and suffix, if applicable;
      ii. Date of birth; and
      iii. Gender;

b. Except as provided in subsection (F)(1)(i), the qualifying patient's residence address and mailing address;
c. The county where the qualifying patient resides;
d. The qualifying patient's e-mail address;
e. The identifying number on the applicable card or document in subsection (F)(2)(a) through (e);
f. The name, address, and telephone number of the physician providing the written certification for medical marijuana for the qualifying patient;
g. Whether the qualifying patient is requesting authorization for cultivating marijuana plants for the qualifying patient's medical use because the qualifying patient believes that the qualifying patient resides at least 25 miles from the nearest operating dispensary;
h. If the qualifying patient is requesting authorization for cultivating marijuana plants, whether the qualifying patient is designating the qualifying patient's designated caregiver to cultivate marijuana plants for the qualifying patient's medical use;
i. If the qualifying patient is homeless, an address where the qualifying patient can receive mail;
j. Whether the qualifying patient would like notification of any clinical studies needing human subjects for research on the medical use of marijuana;
k. An attestation that the information provided in the application is true and correct; and
l. The signature of the qualifying patient and date the qualifying patient signed;

2. A copy of the qualifying patient's:
   a. Arizona driver's license issued on or after October 1, 1996;
   b. Arizona identification card issued on or after October 1, 1996;
   c. Arizona registry identification card;
   d. Photograph page in the qualifying patient's U.S. passport; or
   e. Arizona driver's license or identification card issued before October 1, 1996 and one of the following for the qualifying patient:
      i. Birth certificate verifying U.S. citizenship,
      ii. U.S. Certificate of Naturalization, or
      iii. U.S. Certificate of Citizenship;
3. A current photograph of the qualifying patient;
4. A statement in a Department-provided format signed by the qualifying patient pledging not to divert marijuana to any individual who or entity that is not allowed to possess marijuana pursuant to A.R.S. Title 36, Chapter 28.1;
5. A physician's written certification in a Department-provided format dated within 90 calendar days before the submission of the qualifying patient's application that includes:
   a. The physician's:
      i. Name,
      ii. License number including an identification of the physician license type,
      iii. Office address on file with the physician's licensing board,
      iv. Telephone number on file with the physician's licensing board, and
      v. E-mail address;
   b. The qualifying patient's name and date of birth;
   c. A statement that the physician has made or confirmed a diagnosis of a debilitating medical condition as defined in A.R.S. § 36-2801 for the qualifying patient;

d. An identification, initialed by the physician, of one or more of the debilitating medical conditions in R9-17-201 as the qualifying patient's specific debilitating medical condition;

e. If the debilitating medical condition identified in subsection (F)(5)(d) is a condition in:
   i. R9-17-201(9) through (13), the underlying chronic or debilitating disease or medical condition; or
   ii. R9-17-201(14), the debilitating medical condition;

f. A statement, initialed by the physician, that the physician:
   i. Has established a medical record for the qualifying patient, and
   ii. Is maintaining the qualifying patient's medical record as required in A.R.S. § 12-2297;

g. A statement, initialed by the physician, that the physician has conducted an in-person physical examination of the qualifying patient within the previous 90 calendar days appropriate to the qualifying patient's presenting symptoms and the qualifying patient's debilitating medical condition diagnosed or confirmed by the physician;

h. The date the physician conducted the in-person physical examination of the qualifying patient;

i. A statement, initialed by the physician, that the physician reviewed the qualifying patient's:
   i. Medical records including medical records from other treating physicians from the previous 12 months,
   ii. Response to conventional medications and medical therapies, and
   iii. Profile on the Arizona Board of Pharmacy Controlled Substances Prescription Monitoring Program database;

j. A statement, initialed by the physician, that the physician has explained the potential risks and benefits of the medical use of marijuana to the qualifying patient;

k. A statement, initialed by the physician, that in the physician's professional opinion, the qualifying patient is likely to receive therapeutic or palliative benefit from the qualifying patient's medical use of marijuana to treat or alleviate the qualifying patient's debilitating medical condition;

l. A statement, initialed by the physician, that if the physician has referred the qualifying patient to a dispensary, the physician has disclosed to the qualifying patient any personal or professional relationship the physician has with the dispensary;

m. An attestation that the information provided in the written certification is true and correct; and

n. The physician's signature and the date the physician signed;

6. If the qualifying patient is designating a caregiver, the following in a Department-provided format:
   a. The designated caregiver's first name; middle initial, if applicable; last name; and suffix, if applicable;
   b. The designated caregiver's date of birth;
   c. The designated caregiver's residence address and mailing address;
   d. The county where the designated caregiver resides;
   e. The identifying number on the applicable card or document in subsection (F)(6)(i)(i) through (v);
   f. One of the following:

i. A statement that the designated caregiver does not currently hold a valid registry identification card, or

ii. The assigned registry identification number for the designated caregiver for each valid registry identification card currently held by the designated caregiver;

g. An attestation signed and dated by the designated caregiver that the designated caregiver has not been convicted of an excluded felony offense as defined in A.R.S. § 36-2801;

h. A statement signed by the designated caregiver:

i. Agreeing to assist the qualifying patient with the medical use of marijuana; and

ii. Pledging not to divert marijuana to any individual who or entity that is not allowed to possess marijuana pursuant to A.R.S. Title 36, Chapter 28.1;

i. A copy of the designated caregiver's:

i Arizona driver's license issued on or after October 1, 1996;

ii. Arizona identification card issued on or after October 1, 1996;

iii. Arizona registry identification card;

iv. Photograph page in the designated caregiver's U.S. passport; or

v. Arizona driver's license or identification card issued before October 1, 1996 and one of the following for the designated caregiver:

(1) Birth certificate verifying U.S. citizenship,

(2) U.S. Certificate of Naturalization, or

(3) U.S. Certificate of Citizenship;

j. A current photograph of the designated caregiver; and

k. For the Department's criminal records check authorized in A.R.S. § 36-2804.05:

i. The designated caregiver's fingerprints on a fingerprint card that includes:

(1) The designated caregiver's first name; middle initial, if applicable; and last name;

(2) The designated caregiver's signature;

(3) If different from the designated caregiver, the signature of the individual physically rolling the designated caregiver's fingerprints;

(4) The designated caregiver's address;

(5) If applicable, the designated caregiver's surname before marriage and any names previously used by the designated caregiver;

(6) The designated caregiver's date of birth;

(7) The designated caregiver's Social Security number;

(8) The designated caregiver's citizenship status;

(9) The designated caregiver's gender;

(10) The designated caregiver's race;

(11) The designated caregiver's height;

(12) The designated caregiver's weight;

(13) The designated caregiver's hair color;

(14) The designated caregiver's eye color; and

(15) The designated caregiver's place of birth; or

ii. If the designated caregiver's fingerprints and information required in subsection (F)(6)(k)(i) were submitted to the Department as part of an application for a designated caregiver or a dispensary agent registry identification card within the previous six months, the registry

identification number on the registry identification card issued to the designated caregiver as a result of the application; and

7. The applicable fees in R9-17-102 for applying for:
   a. A qualifying patient registry identification card; and
   b. If applicable, a designated caregiver registry identification card.

G. To apply for a registry identification card for a qualifying patient who is under 18 years of age, the qualifying patient's custodial parent or legal guardian responsible for health care decisions for the qualifying patient shall submit to the Department the following:

1. An application in a Department-provided format that includes:
   a. The qualifying patient's:
      i. First name; middle initial, if applicable; last name; and suffix, if applicable;
      ii. Date of birth; and
      iii. Gender;
   b. The qualifying patient's residence address and mailing address;
   c. The county where the qualifying patient resides;
   d. The qualifying patient's custodial parent's or legal guardian's first name; middle initial, if applicable; last name; and suffix, if applicable;
   e. The identifying number on the applicable card or document in subsection (G)(5)(a) through (e);
   f. The qualifying patient's custodial parent's or legal guardian's residence address and mailing address;
   g. The county where the qualifying patient's custodial parent or legal guardian resides;
   h. The qualifying patient's custodial parent's or legal guardian's e-mail address;
   i. The name, address, and telephone number of a physician who has a physician-patient relationship with the qualifying patient and is providing the written certification for medical marijuana for the qualifying patient;
   j. The name, address, and telephone number of a second physician who has conducted a comprehensive review of the patient's medical record maintained by other treating physicians, and is providing a written certification for medical marijuana for the qualifying patient;
   k. The qualifying patient's custodial parent's or legal guardian's date of birth;
   l. Whether the qualifying patient's custodial parent or legal guardian is requesting authorization for cultivating medical marijuana plants for the qualifying patient's medical use because the qualifying patient's custodial parent or legal guardian believes that the qualifying patient resides at least 25 miles from the nearest operating dispensary;
   m. Whether the qualifying patient's custodial parent or legal guardian would like notification of any clinical studies needing human subjects for research on the medical use of marijuana;
   n. Whether the individual submitting the application on behalf of the qualifying patient under 18 years of age is the qualifying patient's custodial parent or legal guardian;
   o. One of the following:
      i. A statement that the qualifying patient's custodial parent or legal guardian does not currently hold a valid registry identification card, or
      ii. The assigned registry identification number for the qualifying patient's custodial parent or legal guardian for each valid registry identification card currently held by the qualifying patient's custodial parent or legal guardian;

p. An attestation that the information provided in the application is true and correct; and

q. The signature of the qualifying patient's custodial parent or legal guardian and the date the qualifying patient's custodial parent or legal guardian signed;

2. A current photograph of the:
   a. Qualifying patient, and
   b. Qualifying patient's custodial parent or legal guardian serving as the qualifying patient's designated caregiver;
3. An attestation in a Department-provided format signed and dated by the qualifying patient's custodial parent or legal guardian that the qualifying patient's custodial parent or legal guardian has not been convicted of an excluded felony offense as defined in A.R.S. § 36-2801;
4. A statement in a Department-provided format signed by the qualifying patient's custodial parent or legal guardian who is serving as the qualifying patient's designated caregiver:
   a. Allowing the qualifying patient's medical use of marijuana;
   b. Agreeing to assist the qualifying patient with the medical use of marijuana; and
   c. Pledging not to divert marijuana to any individual who or entity that is not allowed to possess marijuana pursuant to A.R.S. Title 36, Chapter 28.1;
5. A copy of one of the following for the qualifying patient's custodial parent or legal guardian:
   a. Arizona driver's license issued on or after October 1, 1996;
   b. Arizona identification card issued on or after October 1, 1996;
   c. Arizona registry identification card;
   d. Photograph page in the qualifying patient's custodial parent or legal guardian U.S. passport; or
   e. Arizona driver's license or identification card issued before October 1, 1996 and one of the following for the qualifying patient's custodial parent or legal guardian:
      i. Birth certificate verifying U.S. citizenship,
      ii. U. S. Certificate of Naturalization, or
      iii. U. S. Certificate of Citizenship;
6. If the individual submitting the application on behalf of a qualifying patient is the qualifying patient's legal guardian, a copy of documentation establishing the individual as the qualifying patient's legal guardian;
7. For the Department's criminal records check authorized in A.R.S. § 36-2804.05:
   a. The qualifying patient's custodial parent or legal guardian's fingerprints on a fingerprint card that includes:
      i. The qualifying patient's custodial parent or legal guardian's first name; middle initial, if applicable; and last name;
      ii. The qualifying patient's custodial parent or legal guardian's siguature;
      iii. If different from the qualifying patient's custodial parent or legal guardian, the signature of the individual physically rolling the qualifying patient's custodial parent's or legal guardian's fingerprints;
      iv. The qualifying patient's custodial parent's or legal guardian's address;
      v. If applicable, the qualifying patient's custodial parent's or legal guardian's surname before marriage and any names previously used by the qualifying patient's custodial parent or legal guardian;
      vi. The qualifying patient's custodial parent's or legal guardian's date of birth;
      vii. The qualifying patient's custodial parent's or legal guardian's Social Security number;

viii. The qualifying patient's custodial parent's or legal guardian's citizenship status;
ix. The qualifying patient's custodial parent's or legal guardian's gender;
x. The qualifying patient's custodial parent's or legal guardian's race;
xi. The qualifying patient's custodial parent's or legal guardian's height;
xii. The qualifying patient's custodial parent's or legal guardian's weight;
xiii. The qualifying patient's custodial parent's or legal guardian's hair color;
xiv. The qualifying patient's custodial parent's or legal guardian's eye color; and
xv. The qualifying patient's custodial parent's or legal guardian's place of birth; or

b. If the qualifying patient's custodial parent's or legal guardian's fingerprints and information required in subsection (G)(7)(a) were submitted to the Department as part of an application for a designated caregiver or a dispensary agent registry identification card within the previous six months, the registry identification number on the registry identification card issued to the qualifying patient's custodial parent or legal guardian as a result of the application;

8. A written certification from the physician in subsection (G)(1)(i) and a separate written certification from the physician in (G)(1)(j) in a Department-provided format dated within 90 calendar days before the submission of the qualifying patient's application that includes:

a. The physician's:
i. Name,
ii. License number including an identification of the physician license type,
iii. Office address on file with the physician's licensing board,
iv. Telephone number on file with the physician's licensing board, and
v. E-mail address;

b. The qualifying patient's name and date of birth;

c. An identification of one or more of the debilitating medical conditions in R9-17-201 as the qualifying patient's specific debilitating medical condition;

d. If the debilitating medical condition identified in subsection (G)(9)(c) is a condition in:
i. R9-17-201(9) through (13), the underlying chronic or debilitating disease or medical condition; or
ii. R9-17-201(14), the debilitating medical condition;

e. For the physician listed in subsection (G)(1)(i):
i. A statement that the physician has made or confirmed a diagnosis of a debilitating medical condition as defined in A.R.S. § 36-2801 for the qualifying patient;
ii. A statement, initialed by the physician, that the physician:
(1) Has established a medical record for the qualifying patient, and
(2) Is maintaining the qualifying patient's medical record as required in A.R.S. § 12-2297;
iii. A statement, initialed by the physician, that the physician has conducted an in-person physical examination of the qualifying patient within the previous 90 calendar days appropriate to the qualifying patient's presenting symptoms and the qualifying patient's debilitating medical condition diagnosed or confirmed by the physician;
iv. The date the physician conducted the in-person physical examination of the qualifying patient;

v. A statement, initialed by the physician, that the physician reviewed the qualifying patient's:
(1) Medical records, including medical records from other treating physicians from the previous 12 months,
(2) Response to conventional medications and medical therapies, and
(3) Profile on the Arizona Board of Pharmacy Controlled Substances Prescription Monitoring Program database; and

vi. A statement, initialed by the physician, that the physician has explained the potential risks and benefits of the use of medical marijuana to the qualifying patient's custodial parent or legal guardian responsible for health care decisions for the qualifying patient;

f. For the physician listed in subsection (G)(1)(j), a statement, initialed by the physician, that the physician conducted a comprehensive review of the qualifying patient's medical records from other treating physicians;

g. A statement, initialed by the physician, that, in the physician's professional opinion, the qualifying patient is likely to receive therapeutic or palliative benefit from the qualifying patient's medical use of marijuana to treat or alleviate the qualifying patient's debilitating medical condition;

h. A statement, initialed by the physician, that if the physician has referred the qualifying patient's custodial parent or legal guardian to a dispensary, the physician has disclosed to the qualifying patient any personal or professional relationship the physician has with the dispensary;

i. An attestation that the information provided in the written certification is true and correct; and

j. The physician's signature and the date the physician signed; and

9. The applicable fees in R9-17-102 for applying for a:
a. Qualifying patient registry identification card, and
b. Designated caregiver registry identification card.

H. For purposes of this Article, "25 miles" includes the area contained within a circle that extends for 25 miles in all directions from a specific location.

I. For purposes of this Article, "residence address" when used in conjunction with a qualifying patient means:
1. The street address including town or city and zip code assigned by a local jurisdiction; or
2. For property that does not have a street address assigned by a local jurisdiction, the legal description of the property on the title documents recorded by the assessor of the county in which the property is located.

R9-17-203. Amending a Qualifying Patient's or Designated Caregiver's Registry Identification Card

A. To add a designated caregiver or to request a change of a qualifying patient's designated caregiver, the qualifying patient shall submit to the Department, within 10 working days after the addition or the change, the following:
1. An application in a Department-provided format that includes:
a. The qualifying patient's name and the registry identification number on the qualifying patient's current registry identification card;
b. If applicable, the name of the qualifying patient's current designated caregiver and the date the designated caregiver last provided or will last provide assistance to the qualifying patient;
c. The name of the individual that the qualifying patient is designating as caregiver; and

d. The signature of the qualifying patient and date the qualifying patient signed;

2. For the caregiver the qualifying patient is designating:
   a. The designated caregiver's first name; middle initial, if applicable; last name; and suffix, if applicable;
   b. The designated caregiver's date of birth;
   c. The designated caregiver's residence address and mailing address;
   d. The county where the designated caregiver resides;
   e. The identifying number on the applicable card or document in subsection (A)(2)(i)(i) through (v);
   f. One of the following:
      i. A statement that the designated caregiver does not currently hold a valid registry identification card, or
      ii. The assigned registry identification number for the designated caregiver for each valid registry identification card currently held by the designated caregiver;
   g. An attestation in a Department-provided format signed and dated by the designated caregiver that the designated caregiver has not been convicted of an excluded felony offense as defined in A.R.S. § 36-2801;
   h. A statement in a Department-provided format signed by the designated caregiver:
      i. Agreeing to assist the qualifying patient with the medical use of marijuana; and
      ii. Pledging not to divert marijuana to any individual who or entity that is not allowed to possess marijuana pursuant to A.R.S. Title 36, Chapter 28.1;
   i. A copy the designated caregiver's:
      i. Arizona driver's license issued on or after October 1, 1996;
      ii. Arizona identification card issued on or after October 1, 1996;
      iii. Arizona registry identification card;
      iv. Photograph page in the designated caregiver's U.S. passport; or
      v. Arizona driver's license or identification card issued before October 1, 1996 and one of the following for the designated caregiver:
         (1) Birth certificate verifying U.S. citizenship,
         (2) U. S. Certificate of Naturalization, or
         (3) U. S. Certificate of Citizenship;
   j. A current photograph of the designated caregiver; and
   k. For the Department's criminal records check authorized in A.R.S. § 36-2804.05:
      i. The designated caregiver's fingerprints on a fingerprint card that includes:
         (1) The designated caregiver's first name; middle initial, if applicable; and last name;
         (2) The designated caregiver's signature;
         (3) If different from the designated caregiver, the signature of the individual physically rolling the designated caregiver's fingerprints;
         (4) The designated caregiver's address;
         (5) If applicable, the designated caregiver's surname before marriage and any names previously used by the designated caregiver;
         (6) The designated caregiver's date of birth;
         (7) The designated caregiver's Social Security number;
         (8) The designated caregiver's citizenship status;
         (9) The designated caregiver's gender;

(10) The designated caregiver's race;
(11) The designated caregiver's height;
(12) The designated caregiver's weight;
(13) The designated caregiver's hair color;
(14) The designated caregiver's eye color; and
(15) The designated caregiver's place of birth; or

ii. If the designated caregiver's fingerprints and information required in subsection (A)(2)(k)(i) were submitted to the Department as part of an application for a designated caregiver or a dispensary agent within the previous six months, the registry identification number on the registry identification card issued to the designated caregiver as a result of the application; and

3. The applicable fee in R9-17-102 for applying for a designated caregiver registry identification card.

B. To amend a qualifying patient's address on the qualifying patient's registry identification card when the qualifying patient or the qualifying patient's designated caregiver is authorized to cultivate marijuana, the qualifying patient shall submit to the Department, within 10 working days after the change in address, the following:

1. The qualifying patient's name and the registry identification number on the qualifying patient's current registry identification card;
2. The qualifying patient's new address;
3. The county where the new address is located;
4. The name of the qualifying patient's designated caregiver, if applicable;
5. Whether the qualifying patient is requesting authorization for cultivating marijuana plants for the qualifying patient's medical use because the qualifying patient believes that the qualifying patient resides at least 25 miles from the nearest operating dispensary;
6. If the qualifying patient is requesting authorization for cultivating marijuana plants, whether the qualifying patient is designating the qualifying patient's designated caregiver to cultivate marijuana plants for the qualifying patient's medical use;
7. The effective date of the qualifying patient's new address; and
8. The applicable fee in R9-17-102 for applying to:
   a. Amend a qualifying patient's registry identification card; and
   b. If the qualifying patient is designating a designated caregiver for cultivation authorization, amend a designated caregiver's registry identification card.

C. To request authorization to cultivate marijuana based on a qualifying patient's current address or a new address, the qualifying patient shall submit to the Department, if applicable within 10 working days after the change in address, the following:

1. The qualifying patient's name and the registry identification number on the qualifying patient's current registry identification card;
2. If the qualifying patient's address is a new address, the qualifying patient's:
   a. Current address,
   b. New address,
   c. The county where the new address is located, and
   d. The effective date of the qualifying patient's new address;
3. The name of the qualifying patient's designated caregiver, if applicable;
4. Whether the qualifying patient is requesting authorization for cultivating marijuana plants for the qualifying patient's medical use because the qualifying patient believes that the qualifying patient resides at least 25 miles from the nearest operating dispensary;
5. If the qualifying patient is requesting authorization for cultivating marijuana plants, whether the qualifying patient is designating the qualifying patient's designated caregiver to cultivate marijuana plants for the qualifying patient's medical use; and

6. The applicable fee in R9-17-102 for applying to:
   a. Amend a qualifying patient's registry identification card; and
   b. If the qualifying patient is designating a designated caregiver for cultivation authorization, amend a designated caregiver's registry identification card.

R9-17-204. Renewing a Qualifying Patient's or Designated Caregiver's Registry Identification Card

A. Except for a qualifying patient who is under 18 years of age, to renew a qualifying patient's registry identification card, the qualifying patient shall submit the following to the Department at least 30 calendar days before the expiration date of the qualifying patient's registry identification card:

1. An application in a Department-provided format that includes:
   a. The qualifying patient's first name; middle initial, if applicable; last name; and suffix, if applicable;
   b. The qualifying patient's date of birth;
   c. Except as provided in subsection (A)(1)(j), the qualifying patient's residence address and mailing address;
   d. The county where the qualifying patient resides;
   e. The qualifying patient's e-mail address;
   f. The registry identification number on the qualifying patient's current registry identification card;
   g. The name, address, and telephone number of the physician providing the written certification for medical marijuana for the qualifying patient;
   h. Whether the qualifying patient is requesting authorization for cultivating marijuana plants for the qualifying patient's medical use because the qualifying patient believes that the qualifying patient resides at least 25 miles from the nearest operating dispensary;
   i. If the qualifying patient is requesting authorization for cultivating marijuana plants, whether the qualifying patient is designating the qualifying patient's designated caregiver to cultivate marijuana plants for the qualifying patient's medical use;
   j. If the qualifying patient is homeless, an address where the qualifying patient can receive mail;
   k. Whether the qualifying patient would like notification of any clinical studies needing human subjects for research on the medical use of marijuana;
   l. An attestation that the information provided in the application is true and correct; and
   m. The signature of the qualifying patient and the date the qualifying patient signed;
2. If the qualifying patient's name in subsection (A)(1)(a) is not the same name as on the qualifying patient's current registry identification card, one of the following with the qualifying patient's new name:
   a. An Arizona driver's license,
   b. An Arizona identification card, or
   c. The photograph page in the qualifying patient's U.S. passport;
3. A current photograph of the qualifying patient;
4. A statement in a Department-provided format signed by the qualifying patient pledging not to divert marijuana to any individual who or entity that is not allowed to possess marijuana pursuant to A.R.S. Title 36, Chapter 28.1;
5. A physician's written certification in a Department-provided format dated within 90 calendar days before the submission of the qualifying patient's renewal application that includes:

a. The physician's:
   i. Name,
   ii. License number including an identification of the physician license type,
   iii. Office address on file with the physician's licensing board,
   iv. Telephone number on file with the physician's licensing board, and
   v. E-mail address;
b. The qualifying patient's name and date of birth;
c. A statement that the physician has made or confirmed a diagnosis of a debilitating medical condition as defined in A.R.S. § 36-2801 for the qualifying patient;
d. An identification of one or more of the debilitating medical conditions in R9-17-201 as the qualifying patient's specific debilitating medical condition;
e. If the debilitating medical condition identified in subsection (A)(5)(d) is a condition in:
   i. R9-17-201(9) through (13), the underlying chronic or debilitating disease or medical condition; or
   ii. R9-17-201(14), the debilitating medical condition;
f. A statement, initialed by the physician, that the physician:
   i. Has established a medical record for the qualifying patient, and
   ii. Is maintaining the qualifying patient's medical record as required in A.R.S. § 12-2297;
g. A statement, initialed by the physician, that the physician has conducted an in-person physical examination of the qualifying patient within the previous 90 calendar days appropriate to the qualifying patient's presenting symptoms and the qualifying patient's debilitating medical condition diagnosed or confirmed by the physician;
h. The date the physician conducted the in-person physical examination of the qualifying patient;
i. A statement, initialed by the physician, that the physician reviewed the qualifying patient's:
   i. Medical records including medical records from other treating physicians from the previous 12 months,;
   ii. Response to conventional medications and medical therapies, and
   iii. Profile on the Arizona Board of Pharmacy Controlled Substances Prescription Monitoring Program database;
j. A statement, initialed by the physician, that the physician has explained the potential risks and benefits of the medical use of marijuana to the qualifying patient;
k. A statement, initialed by the physician, that in the physician's professional opinion, the qualifying patient is likely to receive therapeutic or palliative benefit from the qualifying patient's medical use of marijuana to treat or alleviate the qualifying patient's debilitating medical condition;
l. A statement, initialed by the physician, that if the physician has referred the qualifying patient to a dispensary, the physician has disclosed to the qualifying patient any personal or professional relationship the physician has with the dispensary;
m. An attestation that the information provided in the written certification is true and correct; and
n. The physician's signature and the date the physician signed;

6. If the qualifying patient is designating a caregiver or if the qualifying patient's designated caregiver's registry identification card has the same expiration date as the qualifying patient's registry identification card, the following in a Department-provided format:
   a. The designated caregiver's first name; middle initial, if applicable; last name; and suffix, if applicable;
   b. The designated caregiver's date of birth;
   c. The designated caregiver's residence address and mailing address;
   d. The county where the designated caregiver resides;
   e. If the qualifying patient is renewing the designated caregiver's registry identification card, the registry identification number on the designated caregiver's registry identification card associated with the qualifying patient;
   f. If the qualifying patient is designating an individual not previously designated as the qualifying patient's designated caregiver, the identification number on and a copy of the designated caregiver's:
      i. Arizona driver's license issued on or after October 1, 1996;
      ii. Arizona identification card issued on or after October 1, 1996;
      iii. Arizona registry identification card;
      iv. Photograph page in the designated caregiver's U. S. passport; or
      v. Arizona driver's license or identification card issued before October 1, 1996 and one of the following for the designated caregiver:
         (1) Birth certificate verifying U.S. citizenship,
         (2) U. S. Certificate of Naturalization, or
         (3) U. S. Certificate of Citizenship;
   g. If the qualifying patient is designating an individual not previously designated as the qualifying patient's designated caregiver, one of the following:
      i. A statement that the designated caregiver does not currently hold a valid registry identification card, or
      ii. The assigned registry identification number for the designated caregiver for each valid registry identification card currently held by the designated caregiver;
   h. A current photograph of the designated caregiver;
   i. An attestation signed and dated by the designated caregiver that the designated caregiver has not been convicted of an excluded felony offense as defined in A.R.S. § 36-2801;
   j. A statement in a Department-provided format signed by the designated caregiver:
      i. Agreeing to assist the qualifying patient with the medical use of marijuana; and
      ii. Pledging not to divert marijuana to any individual who or entity that is not allowed to possess marijuana pursuant to A.R.S. Title 36, Chapter 28.1; and
   k. For the Department's criminal records check authorized in A.R.S. § 36-2804.05:
      i. The designated caregiver's fingerprints on a fingerprint card that includes:
         (1) The designated caregiver's first name; middle initial, if applicable; and last name;
         (2) The designated caregiver's signature;
         (3) If different from the designated caregiver, the signature of the individual physically rolling the designated caregiver's fingerprints;
         (4) The designated caregiver's address;

(5) If applicable, the designated caregiver's surname before marriage and any names previously used by the designated caregiver;
(6) The designated caregiver's date of birth;
(7) The designated caregiver's Social Security number;
(8) The designated caregiver's citizenship status;
(9) The designated caregiver's gender;
(10) The designated caregiver's race;
(11) The designated caregiver's height;
(12) The designated caregiver's weight;
(13) The designated caregiver's hair color;
(14) The designated caregiver's eye color; and
(15) The designated caregiver's place of birth; or

ii. If the designated caregiver's fingerprints and information required in subsection (A)(6)(k)(i) were submitted to the Department as part of an application for a designated caregiver or a dispensary agent registry identification card within the previous six months, the registry identification number on the registry identification card issued to the designated caregiver as a result of the application;

7. If the qualifying patient's designated caregiver's registry identification card has the same expiration date as the qualifying patient's registry identification card and the designated caregiver's name in subsection (A)(6)(a) is not the same name as on the designated caregiver's current registry identification card, one of the following with the designated caregiver's new name:
   a. An Arizona driver's license,
   b. An Arizona identification card, or
   c. The photograph page in the designated caregiver's U.S. passport; and
8. The applicable fees in R9-17-102 for applying to:
   a. Renew a qualifying patient's registry identification card; and
   b. If applicable, issue or renew a designated caregiver's registry identification card.

B. To renew a registry identification card for a qualifying patient who is under 18 years of age, the qualifying patient's custodial parent or legal guardian responsible for health care decisions for the qualifying patient shall submit to the Department the following:

1. An application in a Department-provided format that includes:
   a. The qualifying patient's:
      i. First name; middle initial, if applicable; last name; and suffix, if applicable; and
      ii. Date of birth;
   b. The qualifying patient's residence address and mailing address;
   c. The county where the qualifying patient resides;
   d. The registry identification number on the qualifying patient's current registry identification card;
   e. The qualifying patient's custodial parent's or legal guardian's first name; middle initial, if applicable; last name; and suffix, if applicable;
   f. The qualifying patient's custodial parent's or legal guardian's residence address and mailing address;
   g. The county where the qualifying patient's custodial parent or legal guardian resides;
   h. The qualifying patient's custodial parent's or legal guardian's e-mail address;
   i. The registry identification number on the qualifying patient's custodial parent's or legal guardian's current registry identification card;

j. The name, address, and telephone number of a physician who has a physician-patient relationship with the qualifying patient and is providing the written certification for medical marijuana for the qualifying patient;

k. The name, address, and telephone number of a second physician who has conducted a comprehensive review of the qualifying patient's medical record maintained by other treating physicians, and is providing a written certification for medical marijuana for the qualifying patient;

l. Whether the qualifying patient's custodial parent or legal guardian is requesting approval for cultivating marijuana plants for the qualifying patient's medical use because the qualifying patient's custodial parent or legal guardian believes that the qualifying patient resides at least 25 miles from the nearest operating dispensary;

m. Whether the qualifying patient's custodial parent or legal guardian would like notification of any clinical studies needing human subjects for research on the medical use of marijuana;

n. A statement in a Department-provided format signed by the qualifying patient's custodial parent or legal guardian who is serving as the qualifying patient's designated caregiver:

   i. Allowing the qualifying patient's medical use of marijuana;

   ii. Agreeing to assist the qualifying patient with the medical use of marijuana; and

   iii. Pledging not to divert marijuana to any individual who or entity that is not allowed to possess marijuana pursuant to A.R.S. Title 36, Chapter 28.1;

o. An attestation that the information provided in the application is true and correct; and

p. The signature of the qualifying patient's custodial parent or legal guardian and the date the qualifying patient's custodial parent or legal guardian signed;

2. If the qualifying patient's custodial parent's or legal guardian's name in subsection (B)(1)(e) is not the same name as on the qualifying patient's custodial parent's or legal guardian's current registry identification card, one of the following with the custodial parent's or legal guardian's new name:

   a. An Arizona driver's license,

   b. An Arizona identification card, or

   c. The photograph page in the qualifying patient's custodial parent's or legal guardian's U.S. passport;

3. A current photograph of the qualifying patient;

4. A written certification from the physician in subsection (B)(1)(j) and a separate written certification from the physician in subsection (B)(1)(k) in a Department-provided format dated within 90 calendar days before the submission of the qualifying patient's renewal application that includes:

   a. The physician's:

      i. Name,

      ii. License number including an identification of the physician license type,

      iii. Office address on file with the physician's licensing board,

      iv. Telephone number on file with the physician's licensing board, and

      v. E-mail address;

   b. The qualifying patient's name and date of birth;

   c. An identification of one or more of the debilitating medical conditions in R9-17-201 as the qualifying patient's specific debilitating medical condition;

d. If the debilitating medical condition identified in subsection (B)(4)(c) is a condition in:
   i. R9-17-201(9) through (13), the underlying chronic or debilitating disease or medical condition; or
   ii. R9-17-201(14), the debilitating medical condition;
e. For the physician listed in subsection (B)(1)(j):
   i. A statement that the physician has made or confirmed a diagnosis of a debilitating medical condition as defined in A.R.S. § 36-2801 for the qualifying patient;
   ii. A statement, initialed by the physician, that the physician:
      (1) Has established a medical record for the qualifying patient, and
      (2) Is maintaining the qualifying patient's medical record as required in A.R.S. § 12-2297;
   iii. A statement, initialed by the physician, that the physician has conducted an in-person physical examination of the qualifying patient within the previous 90 calendar days appropriate to the qualifying patient's presenting symptoms and the qualifying patient's debilitating medical condition diagnosed or confirmed by the physician;
   iv. The date the physician conducted the in-person physical examination of the qualifying patient;
   v. A statement, initialed by the physician, that the physician reviewed the qualifying patient's:
      (1) Medical records including medical records from other treating physicians from the previous 12 months,;
      (2) Response to conventional medications and medical therapies, and
      (3) Profile on the Arizona Board of Pharmacy Controlled Substances Prescription Monitoring Program database; and
   vi. A statement, initialed by the physician, that the physician has explained the potential risks and benefits of the use of medical marijuana to the qualifying patient's custodial parent or legal guardian responsible for health care decisions for the qualifying patient;
f. For the physician listed in subsection (B)(1)(k), a statement, initialed by the physician, that the physician conducted a comprehensive review of the qualifying patient's medical records from other treating physicians;
g. A statement, initialed by the physician, that in the physician's professional opinion the qualifying patient is likely to receive therapeutic or palliative benefit from the qualifying patient's medical use of marijuana to treat or alleviate the qualifying patient's debilitating medical condition;
h. A statement, initialed by the physician, that if the physician has referred the qualifying patient's custodial parent or legal guardian to a dispensary, the physician has disclosed to the qualifying patient's custodial parent or legal guardian any personal or professional relationship the physician has with the dispensary;
i. An attestation that the information provided in the written certification is true and correct; and
j. The physician's signature and the date the physician signed; and

5. A current photograph of the qualifying patient's custodial parent or legal guardian;
6. For the Department's criminal records check authorized in A.R.S. § 36-2804.05:
   a. The qualifying patient's custodial parent's or legal guardian's fingerprints on a fingerprint card that includes:

i. The qualifying patient's custodial parent's or legal guardian's first name; middle initial, if applicable; and last name;
ii. The qualifying patient's custodial parent's or legal guardian's signature;
iii. If different from the qualifying patient's custodial parent or legal guardian, the signature of the individual physically rolling the qualifying patient's custodial parent's or legal guardian's fingerprints;
iv. The qualifying patient's custodial parent's or legal guardian's address;
v. If applicable, the qualifyiug patient's custodial parent's or legal guardian's surname before marriage and any names previously used by the qualifying patient's custodial parent or legal guardian;
vi. The qualifying patient's custodial parent's or legal guardian's date of birth;
vii. The qualifying patient's custodial parent's or legal guardian's Social Security number;
viii. The qualifying patient's custodial parent's or legal guardian's citizenship status;
ix. The qualifying patient's custodial parent's or legal guardian's gender;
x. The qualifying patient's custodial parent's or legal guardian's race;
xi. The qualifying patient's custodial parent's or legal guardian's height;
xii. The qualifying patient's custodial parent's or legal guardian's weight;
xiii. The qualifying patient's custodial parent's or legal guardian's hair color;
xiv. The qualifying patient's custodial parent's or legal guardian's eye color; and
xv. The qualifying patient's custodial parent's or legal guardian's place of birth; or

b. If the qualifying patient's custodial parent's or legal guardian's fingerprints and information required in subsection (B)(6)(a) were submitted as part of an application for a designated caregiver or a dispensary agent registry identification card to the Department within the previous six months, the registry identification number on the registry identification card issued to the patient's custodial parent or legal guardian serving as the qualifying patient's designated caregiver as a result of the application; and

7. The applicable fees in R9-17-102 for applying to renew a:
   a. Qualifying patient's registry identification card, and
   b. Designated caregiver's registry identification card.

C. Except as provided in subsection (A)(6), to renew a qualifying patient's designated caregiver's registry identification card, the qualifying patient shall submit to the Department, at least 30 calendar days before the expiration date of the designated caregiver's registry identification card, the following:

1. An application in a Department-provided format that includes:
   a. The qualifying patient's first name; middle initial, if applicable; last name; and suffix, if applicable;
   b. The registry identification number on the qualifying patient's current registry identification card;
   c. The designated caregiver's first name; middle initial, if applicable; last name; and suffix, if applicable;
   d. The designated caregiver's date of birth;
   e. The designated caregiver's residence address and mailing address;
   f. The county where the designated caregiver resides;
   g. The registry identification number on the designated caregiver's current registry identification card;

2. If the designated caregiver's name in subsection (C)(1)(a) is not the same name as on the designated caregiver's current registry identification card, one of the following with the designated caregiver's new name:
   a. An Arizona driver's license,
   b. An Arizona identification card, or
   c. The photograph page in the designated caregiver's U.S. passport;
3. A current photograph of the designated caregiver;
4. A statement in a Department-provided format signed by the designated caregiver:
   a. Agreeing to assist the qualifying patient with the medical use of marijuana; and
   b. Pledging not to divert marijuana to any individual or person who is not allowed to possess marijuana pursuant to A.R.S. Title 36, Chapter 28.1; and
5. For the Department's criminal records check authorized in A.R.S. § 36-2804.05:
   a. The designated caregiver's fingerprints on a fingerprint card that includes:
      i. The designated caregiver's first name; middle initial, if applicable; and last name;
      ii. The designated caregiver's signature;
      iii. If different from the designated caregiver, the signature of the individual physically rolling the designated caregiver's fingerprints;
      iv. The designated caregiver's address;
      v. If applicable, the designated caregiver's surname before marriage and any names previously used by the designated caregiver;
      vi. The designated caregiver's date of birth;
      vii. The designated caregiver's Social Security number;
      viii. The designated caregiver's citizenship status;
      ix. The designated caregiver's gender;
      x. The designated caregiver's race;
      xi. The designated caregiver's height;
      xii. The designated caregiver's weight;
      xiii. The designated caregiver's hair color;
      xiv. The designated caregiver's eye color; and
      xv. The designated caregiver's place of birth; or
   b. If the designated caregiver's fingerprints and information required in subsection (C)(1)(j)(i) were submitted as part of an application for a designated caregiver or a dispensary agent registry identification card to the Department within the previous six months, the registry identification number on the registry identification card issued to the designated caregiver as a result of the application; and
6. The applicable fee in R9-17-102 for renewing a designated caregiver's registry identification card.

R9-17-205. Denial or Revocation of a Qualifying Patient's or Designated Caregiver's Registry Identification Card

A. The Department shall deny a qualifying patient's application for or renewal of the qualifying patient's registry identification card if the qualifying patient does not have a debilitating medical condition.

B. The Department shall deny a designated caregiver's application for or renewal of the designated caregiver's registry identification card if the designated caregiver does not meet the definition of "designated caregiver" in A.R.S. § 36-2801.

C. The Department may deny a qualifying patient's or designated caregiver's application for or renewal of the qualifying patient's or designated caregiver's registry identification card if the qualifying patient or designated caregiver:

1. Previously had a registry identification card revoked for not complying with A.R.S. Title 36, Chapter 28.1 or this Chapter; or
2. Provides false or misleading information to the Department.

D. The Department shall revoke a qualifying patient's or designated caregiver's registry identification card if the qualifying patient or designated caregiver provides medical marijuana to an individual who is not authorized to possess medical marijuana under A.R.S. Title 36, Chapter 28.1.

E. The Department shall revoke a designated caregiver's registry identification card if the designated caregiver has been convicted of an excluded felony offense.

F. The Department may revoke a qualifying patient's or designated caregiver's registry identification card if the qualifying patient or designated caregiver knowingly violates A.R.S. Title 36, Chapter 28.1 or this Chapter.

G. If the Department denies or revokes a qualifying patient's registry identification card, the Department shall provide written notice to the qualifying patient that includes:
1. The specific reason or reasons for the denial or revocation; and
2. The process for requesting a judicial review of the Department's decision pursuant to A.R.S. Title 12, Chapter 7, Article 6.

H. If the Department denies or revokes a qualifying patient's designated caregiver's registry identification card, the Department shall provide written notice to the qualifying patient and the designated caregiver that includes:
1. The specific reason or reasons for the denial or revocation; and
2. The process for requesting a judicial review of the Department's decision pursuant to A.R.S. Title 12, Chapter 7, Article 6.

ARTICLE 3. DISPENSARIES AND DISPENSARY AGENTS

R9-17-301. Principal Officers and Board Members

A. For the purposes of this Chapter, in addition to the individual or individuals identified in the dispensary's by-laws as principal officers of the dispensary, the following individuals are considered principal officers:

1. If an individual is applying for a dispensary registration certificate, the individual;
2. If a corporation is applying for a dispensary registration certificate, two individuals who are officers of the corporation;
3. If a partnership is applying for a dispensary registration certificate, two of the individuals who are partners;
4. If a limited liability company is applying for a dispensary registration certificate, a manager or, if the limited liability company does not have a manager, an individual who is a member of the limited liability company;
5. If an association or cooperative is applying for a dispensary registration certificate, two individuals who are members of the governing board of the association or cooperative;
6. If a joint venture is applying for a dispensary registration certificate, two of the individuals who signed the joint venture agreement; and
7. If a business organization type other than those described in subsections (A)(2) through (6) is applying for a dispensary registration certificate, two individuals who are members of the business organization.

B. For purposes of this Chapter, in addition to the individual or individnals identified in the dispensary's by-laws as board members of the dispensary, the following individuals are considered board members:

1. If a corporation is applying for a dispensary registration certificate, the officers of the corporation;
2. If a partnership is applying for a dispensary registration certificate, the partners;
3. If a limited liability company is applying for a dispensary registration certificate, the members of the limited liability company;
4. If an association or cooperative is applying for a dispensary registration certificate, the members of the association or cooperative;
5. If a joint venture is applying for a dispensary registration certificate, the individuals who signed the joint venture agreement; and
6. If a business organization type other the types of business organizations in subsections (B)(1) throngh (5), the members of the business organization.

C. When a dispensary is required by this Chapter to provide information, sign documents, or ensure actions are taken, the individual or individuals in subsection (A) shall comply with the requirement on behalf of the dispensary.

R9-17-303. Dispensary Registration Certificate Allocation Process

A. Each calendar year beginning in 2013, the Department shall review current valid dispensary registration certificates to determine if the Department may issue additional dispensary registration certificates pursuant to A.R.S. § 36-2804(C).

1. If the Department determines that the Department may issue additional dispensary registration certificates, the Department shall post, on the Department's web site, the information that the Department is accepting dispensary registration certificate applications, including the deadline for accepting dispensary registration certificate applications.
   a. The Department shall post the information in subsection (A)(1) at least 30 calendar days before the date the Department begins accepting applications.
   b. The deadline for submission of dispensary registration certificate applications is 10 working days after the date the Department begins accepting applications.

c. Sixty working days after the date the Department begins accepting applications, the Department shall determine if the Department received more dispensary registration certificate applications that are complete and in compliance with A.R.S. Title 36, Chapter 28.1 and this Chapter to participate in the allocation process than the Department is allowed to issue.

i. If the Department received more dispensary registration certificate applications than the Department is allowed to issue, the Department shall allocate any available dispensary registration certificates according to the priorities established in subsection (B).

ii. If the Department is allowed to issue a dispensary registration certificate for each dispensary registration certificate application the Department received, the Department shall allocate the dispensary registration certificates to those applicants.

2. If the Department determines that the Department is not allowed to issue additional dispensary registration certificates, the Department shall, on the Department's web site:

a. Post the information that the Department is not accepting dispensary registration certificate applications, and

b. Maintain the information until the next review.

B. Beginning in 2013, if the Department receives, by 60 working days after the date the Department begins accepting applications, more dispensary registration certificate applications that are complete and are in compliance with A.R.S. Title 36, Chapter 28.1 and this Chapter to participate in the allocation process than the Department is allowed to issue, the Department shall allocate the dispensary registration certificates according to the following criteria:

1. If dispensary registration certificate applications are received for a county that does not contain a dispensary:

a. If only one dispensary registration certificate application for a dispensary located in the county is received, the Department shall allocate the dispensary registration certificate to that applicant; or

b. If more than one dispensary registration certificate application for a dispensary located in the county is received, the Department shall prioritize and allocate a dispensary registration certificate to an applicant whose proposed dispensary location will provide dispensary services to the most qualifying patients based on:

i. The number of registry identification cards issued to qualifying patients who reside within 10 miles of the applicant's proposed dispensary location, and

ii. The number of dispensaries operating within 10 miles of the applicant's proposed dispensary location;

2. If there are additional dispensary registration certificates available after dispensary registration certificates are allocated according to subsection (B)(1), the Department shall allocate the dispensary registration certificates as follows:

a. The Department shall prioritize and assign a dispensary registration certificate allocation to a CHAA based on which CHAA has the most registry identification cards issued to qualifying patients who reside within the CHAA;

b. If the Department receives only one dispensary registration certificate application for a dispensary located in a CHAA assigned a dispensary registration certificate allocation under this subsection, the Department shall allocate the dispensary registration certificate to that applicant;

c. If the Department receives more than one dispensary registration certificate application for a dispensary located in a CHAA assigned a dispensary registration certificate allocation under this subsection, the Department shall

prioritize and allocate dispensary registratiou certificates to an applicant whose proposed dispensary location will provide dispensary services to the most qualifying patients based on:

i. The number of registry identification cards issued to qualifying patients who reside within 10 miles of the applicant's proposed dispensary location, and

ii. The number of dispensaries operating within 10 miles of the applicant's proposed dispensary location;

3. If there are additional dispensary registration certificates available after dispensary registration certificates are allocated accordiug to subsections (B)(1) and (2), for all dispensary registration certificate applications not allocated a dispensary registration certificate pursuant to subsections (B)(1) and (2) and any other dispensary registration certificate applications received, the Department shall prioritize and allocate a dispensary registration certificate to an applicant whose proposed dispensary location will provide dispensary services to the most qualifying patients based on:

a. The number of registry identification cards issued to qualifying patients who reside within 10 miles of the applicant's proposed dispensary location, and

b. The number of dispensaries operating within 10 miles of the applicant's proposed dispensary location; and

4. If there is a tie or a margin of 0.1% or less in the scores generated by applying the criteria in subsection (B), the Department shall randomly select one dispensary registration certificate application and allocate a dispensary registration certificate to that applicant.

C. For purposes of subsection (B), "10 miles" includes the area contained within a circle that extends for 10 miles in all directions from a specific location.

D. If the Department does not allocate a dispensary registration certificate to an applicant that had submitted a dispensary registration certificate application that the Department determined was complete and in compliance with A.R.S. Title 36, Chapter 28.1 and this Chapter to participate in the allocation process, the Department shall:

1. Provide a written notice to the applicant that states that, although the applicant's dispensary registration certificate application was complete and complied with A.R.S. Title 36, Chapter 28.1 and this Chapter, the Department did not allocate the applicant a dispensary registration certificate under the processes in this Section; and

2. Return $1,000 of the application fee to the applicant.

E. If the Department receives a dispensary registration certificate application at a time other than the time stated in subsection (B), the Department shall return the dispensary registration certificate application, including the application fee, to the entity that submitted the dispensary registration certificate application.

R9-17-304. Applying for a Dispensary Registration Certificate

A. An individual shall not be an applicant, principal officer, or board member on:

1. More than one dispensary registration certificate application for a location in a single CHAA, or

2. More than five dispensary registration certificate applications for locations in different CHAAs.

B. If the Department determines that an individual is an applicant, principal officer, or board member on more than one dispensary registration certificate application for a CHAA or more than five dispensary registration certificate applications, the Department shall review the applications and provide the applicant on each of the dispensary registration certificate applications with a written comprehensive request for more information that includes the specific requirements in A.R.S. Title 36, Chapter 28.1 and this Chapter that the dispensary registration certificate application does not comply with.

1. If an applicant withdraws an application to comply with this Chapter and submits information demonstrating compliance with A.R.S. Title 36, Chapter 28.1 and this Chapter, the Department shall process the applicant's remaining dispensary registration certificate applications according to this Chapter.
2. If an applicant does not withdraw an application or submit information demonstrating compliance with A.R.S. Title 36, Chapter 28.1 and this Chapter, the Department shall issue a denial to the applicant according to R9-17-322.
3. An application fee submitted with a dispensary registration certificate application in subsection (B) that is withdrawn is not refunded.

C. To apply for a dispensary registration certificate, an entity shall submit to the Department the following:

1. An application in a Department-provided format that includes:
   a. The legal name of the dispensary;
   b. The physical address of the proposed dispensary;
   c. The following information for the entity applying:
      i. Name,
      ii. Type of business organization,
      iii. Mailing address,
      iv. Telephone number, and
      v. E-mail address;
   d. The name of the individual designated to submit dispensary agent registry identification card applications on behalf of the dispensary;
   e. The name and license number of the dispensary's medical director;
   f. The name, residence address, and date of birth of each:
      i. Principal officer, and
      ii. Board member;
   g. For each principal officer or board member, whether the principal officer or board member:
      i. Has served as a principal officer or board member for a dispensary that had the dispensary registration certificate revoked;
      ii. Is a physician currently providing written certifications for qualifying patients;
      iii. Is a law enforcement officer; or
      iv. Is employed by or a contractor of the Department;
   h. Whether the entity agrees to allow the Department to submit supplemental requests for information;
   i. A statement that, if the dispensary is issued a dispensary registration certificate, the dispensary will not operate until the dispensary is inspected and obtains an approval to operate from the Department;
   j. An attestation that the information provided to the Department to apply for a dispensary registration certificate is true and correct; and
   k. The signatures of the principal officers of the dispensary according to R9-17-301(A) and the date the principal officers signed;
2. If the entity applying is one of the business organizations in R9-17-301(A)(2) through (7), a copy of the business organization's articles of incorporation, articles of organization, or partnership or joint venture documents that include:
   a. The name of the business organization,
   b. The type of business organization, and
   c. The names and titles of the individuals in R9-17-301(A) and (B);
3. For each principal officer and board member:

a. An attestation signed and dated by the principal officer or board member that the principal officer or board member has not been convicted of an excluded felony offense as defined in A.R.S. § 36-2801; and

b. For the Department's criminal records check authorized in A.R.S. § 36-2804.05:

i. The principal officer's or board member's fingerprints on a fingerprint card that includes:

(1) The principal officer's or board member's first name; middle initial, if applicable; and last name;

(2) The principal officer's or board member's signature;

(3) If different from the principal officer or board member, the signature of the individual physically rolling the principal officer's or board member's fingerprints;

(4) The principal officer's or board member's residence address;

(5) If applicable, the principal officer's or board member's surname before marriage and any names previously used by the principal officer or board member;

(6) The principal officer's or board member's date of birth;

(7) The principal officer's or board member's Social Security number;

(8) The principal officer's or board member's citizenship status;

(9) The principal officer's or board member's gender;

(10) The principal officer's or board member's race;

(11) The principal officer's or board member's height;

(12) The principal officer's or board member's weight;

(13) The principal officer's or board member's hair color;

(14) The principal officer's or board member's eye color; and

(15) The principal officer's or board member's place of birth; or

ii. If the fingerprints and information required in subsection (C)(3)(b)(i) were submitted to the Department as part of an application for a designated caregiver or a dispensary agent registry identification card within the previous six months, the registry identification number on the registry identification card issued to the principal officer or board member as a result of the application;

4. Policies and procedures that comply with the requirements in this Chapter for:

a. Inventory control,

b. Qualifying patient recordkeeping,

c. Security, and

d. Patient education and support;

5. As required in A.R.S. § 36-2804(B)(1)(d), a sworn statement signed and dated by the individual or individuals in R9-17-301(A) certifying that the dispensary is in compliance with any local zoning restrictions;

6. Documentation from the local jurisdiction where the dispensary's proposed physical address is located that:

a. There are no local zoning restrictions for the dispensary's location, or

b. The dispensary's location is in compliance with any local zoning restrictions;

7. Documentation of:

a. Ownership of the physical address of the proposed dispensary, or

b. Permission from the owner of the physical address of the proposed dispensary for the entity applying for a dispensary registration certificate to operate a dispensary at the physical address;

8. The dispensary's by-laws including:

a. The names and titles of individuals designated as principal officers and board members of the dispensary;

b. Whether the dispensary plans to:

i. Cultivate marijuana;

ii. Acquire marijuana from qualifying patients, designated caregivers, or other dispensaries;

iii. Sell or provide marijuana to other dispensaries;

iv. Transport marijuana;

v. Prepare, sell, or dispense marijuana-infused edible food products;

vi. Prepare, sell, or dispense marijuana-infused non-edible products;

vii. Sell or provide marijuana paraphernalia or other supplies related to the administration of marijuana to qualifying patients and designated caregivers;

viii. Deliver medical marijuana to qualifying patients; or

ix. Provide patient support and related services to qualifying patients;

c. Provisions for the disposition of revenues and receipts to ensure that the dispensary operates on a not-for-profit basis; and

d. Provisions for amending the dispensary's by-laws;

9. A business plan demonstrating the on-going viability of the dispensary on a not-for-profit basis that includes:

a. A description and total dollar amount of expenditures already incurred to establish the dispensary or to secure a dispensary registration certificate by the individual or business organization applying for the dispensary registration certificate,

b. A description and total dollar amount of monies or tangible assets received for operating the dispensary from entities other than the individual applying for the dispensary registration certificate or a principal officer or board member associated with the dispensary including the entity's name and the interest in the dispensary or the benefit the entity obtained,

c. Projected expenditures expected before the dispensary is operational,

d. Projected expenditures after the dispensary is operational, and

e. Projected revenue; and

10. The applicable fee in R9-17-102 for applying for a dispensary registration certificate.

D. Before an entity with a dispensary registration certificate begins operating a dispensary, the entity shall apply for and obtain an approval to operate a dispensary from the Department.

R9-17-305. Applying for Approval to Operate a Dispensary

A. To apply for approval to operate a dispensary, a person holding a dispensary registration certificate shall submit to the Department, at least 60 calendar days before the expiration of the dispensary registration certificate, the following:

1. An application in a Department-provided format that includes:

a. The name and registry identification number of the dispensary;

b. The physical address of the dispensary;

c. The name, address, and date of birth of each dispensary agent;

d. The name and license number of the dispensary's medical director;

e. If applicable, the physical address of the dispensary's cultivation site;

f. The dispensary's Transaction Privilege Tax Number issued by the Arizona Department of Revenue;

g. The dispensary's proposed hours of operation during which the dispensary plans to be available to dispense medical marijuana to qualifying patients and designated caregivers;

h. Whether the dispensary agrees to allow the Department to submit supplemental requests for information;
i. Whether the dispensary and, if applicable, the dispensary's cultivation site are ready for an inspection by the Department;
j. If the dispensary and, if applicable, the dispensary's cultivation site are not ready for an inspection by the Department, the date the dispensary and, if applicable, the dispensary's cultivation site will be ready for an inspection by the Department;
k. An attestation that the information provided to the Department to apply for approval to operate a dispensary is true and correct; and
l. The signatures of the principal officers of the dispensary according to R9-17-301(A) and the date the principal officers signed;

2. A copy of documentation issued by the local jurisdiction to the dispensary authorizing occupancy of the building as a dispensary and, if applicable, as the dispensary's cultivation site, such as a certificate of occupancy, a special use permit, or a conditional use permit;
3. A sworn statement signed and dated by the individual or individuals in R9-17-301(A) certifying that the dispensary is in compliance with local zoning restrictions;
4. The distance to the closest private school or public school from:
   a. The dispensary; and
   b. If applicable, the dispensary's cultivation site;
5. A site plan drawn to scale of the dispensary location showing streets, property lines, buildings, parking areas, outdoor areas if applicable, fences, security features, fire hydrants if applicable, and access to water mains;
6. A floor plan drawn to scale of the building where the dispensary is located showing the:
   a. Layout and dimensions of each room,
   b. Name and function of each room,
   c. Location of each hand washing sink,
   d. Location of each toilet room,
   e. Means of egress,
   f. Location of each video camera,
   g. Location of each panic button, and
   h. Location of natural and artificial lighting sources;
7. If applicable, a site plan drawn to scale of the dispensary's cultivation site showing streets, property lines, buildings, parking areas, outdoor areas if applicable, fences, security features, fire hydrants if applicable, and access to water mains; and
8. If applicable, a floor plan drawn to scale of each building at the dispensary's cultivation site showing the:
   a. Layout and dimensions of each room,
   b. Name and function of each room,
   c. Location of each hand washing sink,
   d. Location of each toilet room,
   e. Means of egress,
   f. Location of each video camera,
   g. Location of each panic button, and
   h. Location of natural and artificial lighting sources.

B. A dispensary's cultivation site may be located anywhere in the state where a cultivation site is allowed by the local jurisdiction.

R9-17-306. Changes to a Dispensary Registration Certificate

A. A dispensary may not transfer or assign the dispensary registration certificate.

B. A dispensary may change the location of the:

1. Dispensary:
   a. Within the first three years after the Department issues the dispensary's registration certificate, to another location in the CHAA where the dispensary is located; or
   b. After the first three years after the Department issues a dispensary registration certificate to the dispensary, to another location in the state; or
2. Dispensary's cultivation site to another location in the state.

C. A dispensary or the dispensary's cultivation site shall not cultivate, manufacture, distribute, dispense, or sell medical marijuana at a new location until the dispensary submits an application for a change in a dispensary location or a change or addition of a cultivation site in R9-17-307 and the Department issues an amended dispensary registration certificate or an approval for the dispensary's cultivation site's new location to the dispensary.

R9-17-307. Applying to Change a Dispensary's Location or Change or Add a Dispensary's Cultivation Site

A. To change the location of a dispensary or the dispensary's cultivation site or to add a cultivation site, the dispensary shall submit an application to the Department that includes:

1. The following information in a Department-provided format:
   a. The legal name of the dispensary;
   b. The registry identification number for the dispensary;
   c. Whether the request is for:
      i. A change of location for the dispensary,
      ii. A change of location for the dispensary's cultivation site, or
      iii. An addition of a cultivation site;
   d. The current physical address of the dispensary or the dispensary's cultivation site;
   e. The physical address of the proposed location for the dispensary or the dispensary's cultivation site;
   f. The distance to the closest public or private school from:
      i. The proposed location for the dispensary, or
      ii. The proposed location for the dispensary's cultivation site;
   g. The name of the entity applying;
   h. If applicable, the anticipated date of the change of location;
   i. Whether the proposed dispensary or the dispensary's proposed cultivation site is ready for an inspection by the Department;
   j. If the proposed dispensary or the dispensary's proposed cultivation site is not ready for an inspection by the Department, the date the dispensary or the dispensary's cultivation site will be ready for an inspection by the Department;
   k. An attestation that the information provided to the Department to apply for a change in location is true and correct; and
   l. The signature of the individual or individuals in R9-17-301(A) and the date the individual or individuals signed;
2. A copy of documentation issued by the local jurisdiction to the dispensary authorizing occupancy of the proposed building as a dispensary or the dispensary's cultivation site such as a certificate of occupancy, a special use permit, or a conditional use permit;
3. A sworn statement signed by the individual or individuals in R9-17-301(A) certifying that the building where the proposed dispensary or the dispensary's proposed cultivation site will be located is in compliance with local zoning restrictions;
4. If the change in location is for the dispensary:

a. A site plan drawn to scale of the proposed dispensary location showing streets, property lines, buildings, parking areas, outdoor areas if applicable, fences, security features, fire hydrants if applicable, and access to water mains; and

b. A floor plan drawn to scale of the building where the proposed dispensary is located showing the:

i. Layout and dimensions of each room,

ii. Name and function of each room,

iii. Location of each hand washing sink,

iv. Location of each toilet room,

v. Means of egress,

vi. Location of each video camera,

vii. Location of each panic button, and

viii. Location of natural and artificial lighting sources;

5. If the change in location is for the dispensary's cultivation site or if adding a cultivation site:

a. A site plan drawn to scale of the dispensary's proposed cultivation site showing streets, property lines, buildings, parking areas, outdoor areas if applicable, fences, security features, fire hydrants if applicable, and access to water mains; and

b. If applicable, a floor plan drawn to scale of each building used by the dispensary's proposed cultivation site showing the:

i. Layout and dimensions of each room,

ii. Name and function of each room,

iii. Location of each hand washing sink,

iv. Location of each toilet room,

v. Means of egress,

vi. Location of each video camera,

vii. Location of each panic button, and

viii. Location of natural and artificial lighting sources; and

6. The applicable fee in R9-17-102 for applying for a change in location or adding a cultivation site.

B. If the information and documents submitted by the dispensary comply with A.R.S. Title 36, Chapter 28.1 and this Chapter, the Department shall issue an amended dispensary registration certificate that includes the new address of the new location and retains the expiration date of the previously issued dispensary registration certificate.

C. An application for a change in location of a dispensary or a dispensary's cultivation site or the addition of a cultivation site may not be combined with an application for renewing a dispensary registration certificate. The Department shall process each application separately according to the applicable time-frame established in R9-17-107.

D. A dispensary shall submit written notification to the Department when the dispensary no longer uses a previously approved cultivation site.

R9-17-308. Renewing a Dispensary Registration Certificate

A. An entity with a dispensary registration certificate that has not submitted an application for approval to operate a dispensary to the Department at least 60 calendar days before the expiration date of the dispensary registration certificate or has not obtained an approval to operate a dispensary issued by the Department is prohibited from renewing the dispensary registration certificate.

B. To renew a dispensary registration certificate, a dispensary that has an approval to operate a dispensary issued by the Department, shall submit to the Department, at least 30 calendar days

before the expiration date of the dispensary's current dispensary registration certificate, the following:

1. An application in a Department-provided format that includes:
    a. The legal name of the dispensary;
    b. The registry identification number for the dispensary;
    c. The physical address of the dispensary;
    d. The name of the entity applying;
    e. The name of the individual designated to submit dispensary agent registry identification card applications on behalf of the dispensary;
    f. The name and license number of the dispensary's medical director;
    g. The dispensary's hours of operation during which the dispensary is available to dispense medical marijuana to qualifying patients and designated caregivers;
    h. The name, address, date of birth, and registry identification number of each:
        i. Principal officer,
        ii. Board member, and
        iii. Dispensary agent;
    i. For each principal officer or board member, whether the principal officer or board member:
        i. Has served as a principal officer or board member for a dispensary that had the dispensary registration certificate revoked,
        ii. Is a physician currently providing written certifications for qualifying patients,
        iii. Is a law enforcement officer, or
        iv. Is employed by or a contractor of the Department;
    j. The dispensary's Transaction Privilege Tax Number issued by the Arizona Department of Revenue;
    k. Whether the dispensary agrees to allow the Department to submit supplemental requests for information;
    l. An attestation that the information provided to the Department to renew the dispensary registration certificate is true and correct; and
    m. The signature of the individual or individuals in R9-17-301(A) and the date the individual or individuals signed;
2. If the application is for renewing a dispensary registration certificate that was initially issued within the previous 12 months, a copy of the dispensary's approval to operate a dispensary issued by the Department;
3. A copy of an annual financial statement for the previous year, or for the portion of the previous year the dispensary was operational, prepared according to generally accepted accounting principles;
4. A report of an audit by an independent certified public accountant of the annual financial statement required in subsection (B)(3); and
5. The applicable fee in R9-17-102 for applying to renew a dispensary registration certificate.

R9-17-309. Inspections

A. Submission of an application for a dispensary registration certificate constitutes permission for entry to and inspection of the dispensary and, if applicable, the dispensary's cultivation site.

B. Except as provided in subsection (D), an onsite inspection of a dispensary or the dispensary's cultivation site shall occur at a date and time agreed to by the dispensary and the Department that is no later than five working days after the date the Department submits a written request to the dispensary to schedule the certification or compliance inspection, unless the Department agrees to a later date and time.

C. The Department shall not accept allegations of a dispensary's noncompliance with A.R.S. Title 36, Chapter 28.1 or this Chapter from an anonymous source.

D. If the Department receives an allegation of a dispensary's or a dispensary's cultivation site's noncompliance with A.R.S. Title 36, Chapter 28.1 or this Chapter, the Department may conduct an unannounced inspection of the dispensary or the dispensary's cultivation site.

E. If the Department identifies a violation of A.R.S. Title 36, Chapter 28.1 or this Chapter during an inspection of a dispensary or the dispensary's cultivation site:

1. The Department shall provide the dispensary with a written notice that includes the specific rule or statute that was violated; and
2. The dispensary shall notify the Department in writing, with a postmark date within 20 working days after the date of the notice of violations, identifying the corrective actions taken and the date of the correction.

R9-17-310. Administration

A. A dispensary shall:

1. Ensure that the dispensary is operating and available to dispense medical marijuana to qualifying patients and designated caregivers at least 30 hours weekly between the hours of 7:00 a.m. and 10:00 p.m.;
2. Develop, document, and implement policies and procedures regarding:
   a. Job descriptions and employment contracts, including:
      i. Personnel duties, authority, responsibilities, and qualifications;
      ii. Personnel supervision;
      iii. Training in and adherence to confidentiality requirements;
      iv. Periodic performance evaluations; and
      v. Disciplinary actions;
   b. Business records, such as manual or computerized records of assets and liabilities, monetary transactions, journals, ledgers, and supporting documents, including agreements, checks, invoices, and vouchers;
   c. Inventory control, including:
      i. Tracking;
      ii. Packaging;
      iii. Accepting marijuana from qualifying patients and designated caregivers;
      iv. Acquiring marijuana from other dispensaries; and
      v. Disposing of unusable marijuana, which may include submitting any unusable marijuana to a local law enforcement agency;
   d. Qualifying patient records, including purchases, denials of sale, any delivery options, confidentiality, and retention; and
   e. Patient education and support, including:
      i. Availability of different strains of marijuana and the purported effects of the different strains;
      ii. Information about the purported effectiveness of various methods, forms, and routes of medical marijuana administration;
      iii. Methods of tracking the effects on a qualifying patient of different strains and forms of marijuana; and
      iv. Prohibition on the smoking of medical marijuana in public places;
3. Maintain copies of the policies and procedures at the dispensary and provide copies to the Department for review upon request;
4. Review dispensary policies and procedures at least once every 12 months from the issue date of the dispensary registration certificate and update as needed;
5. Employ or contract with a medical director;

6. Ensure that each dispensary agent has the dispensary agent's registry identification card in the dispensary agent's immediate possession when the dispensary agent is:
   a. Working or providing volunteer services at the dispensary or the dispensary's cultivation site, or
   b. Transporting marijuana for the dispensary;
7. Ensure that a dispensary agent accompanies any individual other than another dispensary agent associated with the dispensary when the individual is present in the enclosed, locked facility where marijuana is cultivated by the dispensary;
8. Not allow an individual who does not possess a dispensary agent registry identification card issued under the dispensary registration certificate to:
   a. Serve as a principal officer or board member for the dispensary,
   b. Serve as the medical director for the dispensary,
   c. Be employed by the dispensary, or
   d. Provide volunteer services at or on behalf of the dispensary;
9. Provide written notice to the Department, including the date of the event, within 10 working days after the date, when a dispensary agent no longer:
   a. Serves as a principal officer or board member for the dispensary,
   b. Serves as the medical director for the dispensary,
   c. Is employed by the dispensary, or
   d. Provides volunteer services at or on behalf of the dispensary;
10. Document and report any loss or theft of marijuana from the dispensary to the appropriate law enforcement agency;
11. Maintain copies of any documentation required in this Chapter for at least 12 months after the date on the documentation and provide copies of the documentation to the Department for review upon request;
12. Post the following information in a place that can be viewed by individuals entering the dispensary:
   a. If applicable, the dispensary's approval to operate;
   b. The dispensary's registration certificate;
   c. The name of the dispensary's medical director and the medical director's license number on a sign at least 20 centimeters by 30 centimeters; and
   d. The hours of operation during which the dispensary will dispense medical marijuana to a qualifying patient or a designated caregiver;
13. Not lend any part of the dispensary's income or property without receiving adequate security and a reasonable rate of interest;
14. Not purchase property for more than adequate consideration in money or cash equivalent;
15. Not pay compensation for salaries or other compensation for personal services that is in excess of a reasonable allowance;
16. Not sell any part of the dispensary's property or equipment for less than adequate consideration in money or cash equivalent; and
17. Not engage in any other transaction that results in a substantial diversion of the dispensary's income or property.

B. If a dispensary cultivates marijuana, the dispensary shall cultivate the marijuana iu an enclosed, locked facility.

R9-17-311. Submitting an Application for a Dispensary Agent Registry Identification Card

Except as provided in R9-17-107(F), to obtain a dispensary agent registry identification card for an individual serving as a principal officer or board member for the dispensary, employed by the dispensary, or providing volunteer services at or on behalf of the dispensary, the dispensary shall submit to the Department the following for each dispensary agent:

1. An application in a Department-provided format that includes:

a. The dispensary agent's first name; middle initial, if applicable; last name; and suffix, if applicable;
b. The dispensary agent's residence address and mailing address;
c. The county where the dispensary agent resides;
d. The dispensary agent's date of birth;
e. The identifying number on the applicable card or document in subsection (5)(a) through (e);
f. The name and registry identification number of the dispensary; and
g. The signature of the individual in R9-17-304(C)(1)(d) or R9-17-308(B)(1)(e), as applicable, designated to submit dispensary agent applications on the dispensary's behalf and the date the individual signed;

2. An attestation signed and dated by the dispensary agent that the dispensary agent has not been convicted of an excluded felony offense as defined in A.R.S. § 36-2801;
3. One of the following:
   a. A statement that the dispensary agent does not currently hold a valid registry identification card, or
   b. The assigned registry identification number for the dispensary agent for each valid registry identification card currently held by the dispensary agent;
4. A statement in a Department-provided format signed by the dispensary agent pledging not to divert marijuana to any individual who or entity that is not allowed to possess marijuana pursuant to A.R.S. Title 36, Chapter 28.1;
5. A copy of the dispensary agent's:
   a. Arizona driver's license issued on or after October 1, 1996;
   b. Arizona identification card issued on or after October 1, 1996;
   c. Arizona registry identification card;
   d. Photograph page in the dispensary agent's U.S. passport; or
   e. Arizona driver's license or identification card issued before October 1, 1996 and one of the following for the dispensary agent:
      i. Birth certificate verifying U.S. citizenship,
      ii. U. S. Certificate of Naturalization, or
      iii. U. S. Certificate of Citizenship;
6. A current photograph of the dispensary agent;
7. For the Department's criminal records check authorized in A.R.S. § 36-2804.05:
   a. The dispensary agent's fingerprints on a fingerprint card that includes:
      i. The dispensary agent's first name; middle initial, if applicable; and last name;
      ii. The dispensary agent's signature;
      iii. If different from the dispensary agent, the signature of the individual physically rolling the dispensary agent's fingerprints;
      iv. The dispensary agent's address;
      v. If applicable, the dispensary agent's surname before marriage and any names previously used by the dispensary agent;
      vi. The dispensary agent's date of birth;
      vii. The dispensary agent's Social Security number;
      viii. The dispensary agent's citizenship status;
      ix. The dispensary agent's gender;
      x. The dispensary agent's race;
      xi. The dispensary agent's height;
      xii. The dispensary agent's weight;
      xiii. The dispensary agent's hair color;
      xiv. The dispensary agent's eye color; and

xv. The dispensary agent's place of birth; or

b. If the dispensary agent's fingerprints and information required in subsection (7)(a) were submitted to the Department within the previous six months as part of an application for a designated caregiver registry identification card or a dispensary agent registry identification card for another dispensary, the registry identification number on the registry identification card issued to the dispensary agent as a result of the application; and

8. The applicable fee in R9-17-102 for applying for a dispensary agent registry identification card.

R9-17-312. Submitting an Application to Renew a Dispensary Agent's Registry Identification Card

To renew a dispensary agent's registry identification card for an individual serving as a principal officer or board member for the dispensary, employed by the dispensary, or providing volunteer services at or on behalf of the dispensary, the dispensary shall submit to the Department, at least 30 calendar days before the expiration of the dispensary agent's registry identification card, the following:

1. An application in a Department-provided format that includes:
   a. The dispensary agent's first name; middle initial, if applicable; last name; and suffix, if applicable;
   b. The dispensary agent's residence address and mailing address;
   c. The county where the dispensary agent resides;
   d. The dispensary agent's date of birth;
   e. The registry identification number on the dispensary agent's current registry identification card;
   f. The name and registry identification number of the dispensary; and
   g. The signature of the individual in R9-17-304(C)(1)(d) or R9-17-308(B)(1)(e), as applicable, designated to submit dispensary agent applications on the dispensary's behalf and the date the individual signed;
2. If the dispensary agent's name in subsection (1)(a) is not the same name as on the dispensary agent's current registry identification card, one of the following with the dispensary agent's new name:
   a. An Arizona driver's license,
   b. An Arizona identification card, or
   c. The photograph page in the dispensary agent's U.S. passport;
3. A statement in a Department-provided format signed by the dispensary agent pledging not to divert marijuana to any individual who or entity that is not allowed to possess marijuana pursuant to A.R.S. Title 36, Chapter 28.1;
4. A current photograph of the dispensary agent;
5. For the Department's criminal records check authorized in A.R.S. § 36-2804.05:
   a. The dispensary agent's fingerprints on a fingerprint card that includes:
      i. The dispensary agent's first name; middle initial, if applicable; and last name;
      ii. The dispensary agent's signature;
      iii. If different from the dispensary agent, the signature of the individual physically rolling the dispensary agent's fingerprints;
      iv. The dispensary agent's address;
      v. If applicable, the dispensary agent's surname before marriage and any names previously used by the dispensary agent;
      vi. The dispensary agent's date of birth;
      vii. The dispensary agent's Social Security number;
      viii. The dispensary agent's citizenship status;

ix. The dispensary agent's gender;
x. The dispensary agent's race;
xi. The dispensary agent's height;
xii. The dispensary agent's weight;
xiii. The dispensary agent's hair color;
xiv. The dispensary agent's eye color; and
xv. The dispensary agent's place of birth; or

b. If the dispensary agent's fingerprints and information required in subsection (5)(a) were submitted to the Department within the previous six months as part of an application for a designated caregiver registry identification card or a dispensary agent registry identification card for another dispensary, the registry identification number on the registry identification card issued to the dispensary agent as a result of the application; and

6. The applicable fee in R9-17-102 for applying to renew a dispensary agent's registry identification card.

R9-17-313. Medical Director

A. A dispensary shall appoint an individual who is a physician to function as a medical director.

B. During a dispensary's hours of operation, a medical director or an individual who is a physician and is designated by the medical director to serve as medical director in the medical director's absence is:

1. Onsite; or
2. Able to be contacted by any means possible, such as by telephone or pager.

C. A medical director shall:

1. Develop and provide training to the dispensary's dispensary agents at least once every 12 months from the initial date of the dispensary's registration certificate on the following subjects:
   a. Guidelines for providing information to qualifying patients related to risks, benefits, and side effects associated with medical marijuana;
   b. Guidelines for providing support to qualifying patients related to the qualifying patient's self-assessment of the qualifying patient's symptoms, including a rating scale for pain, cachexia or wasting syndrome, nausea, seizures, muscle spasms, and agitation;
   c. Recognizing signs and symptoms of substance abuse; and
   d. Guidelines for refusing to provide medical marijuana to an individual who appears to be impaired or abusing medical marijuana; and
2. Assist in the development and implementation of review and improvement processes for patient education and support provided by the dispensary.

D. A medical director shall provide oversight for the development and dissemination of:

1. Educational materials for qualifying patients and designated caregivers that include:
   a. Alternative medical options for the qualifying patient's debilitating medical condition;
   b. Information about possible side effects of and contraindications for medical marijuana including possible impairment with use and operation of a motor vehicle or heavy machinery, when caring for children, or of job performance;
   c. Guidelines for notifying the physician who provided the written certification for medical marijuana if side effects or contraindications occur;
   d. A description of the potential for differing strengths of medical marijuana strains and products;
   e. Information about potential drug-to-drug interactions, including interactions with alcohol, prescription drugs, non-prescription drugs, and supplements;

f. Techniques for the use of medical marijuana and marijuana paraphernalia;
g. Information about different methods, forms, and routes of medical marijuana administration;
h. Signs and symptoms of substance abuse, including tolerance, dependency, and withdrawal; and
i. A listing of substance abuse programs and referral information;

2. A system for a qualifying patient or the qualifying patient's designated caregiver to document the qualifying patient's pain, cachexia or wasting syndrome, nausea, seizures, muscle spasms, or agitation that includes:
   a. A log book, maintained by the qualifying patient and or the qualifying patient's designated caregiver, in which the qualifying patient or the qualifying patient's designated caregiver may track the use and effects of specific medical marijuana strains and products;
   b. A rating scale for pain, cachexia or wasting syndrome, nausea, seizures, muscles spasms, and agitation;
   c. Guidelines for the qualifying patient's self-assessment or, if applicable, assessment of the qualifying patient by the qualifying patient's designated caregiver; and
   d. Guidelines for reporting usage and symptoms to the physician providing the written certification for medical marijuana and any other treating physicians; and
3. Policies and procedures for refusing to provide medical marijuana to an individual who appears to be impaired or abusing medical marijuana.

E. A medical director for a dispensary shall not provide a written certification for medical marijuana for any qualifying patient.

R9-17-314. Dispensing Medical Marijuana

Before a dispensary agent dispenses medical marijuana to a qualifying patient or a designated caregiver, the dispensary agent shall:

1. Verify the qualifying patient's or the designated caregiver's identity;
2. Offer any appropriate patient education or support materials;
3. Enter the qualifying patient's or designated caregiver's registry identification number on the qualifying patient's or designated caregiver's registry identification card into the medical marijuana electronic verification system;
4. Verify the validity of the qualifying patient's or designated caregiver's registry identification card;
5. Verify that the amount of medical marijuana the qualifying patient or designated caregiver is requesting would not cause the qualifying patient to exceed the limit on obtaining no more than two and one-half ounces of medical marijuana during any 14-calendar-day period; and
6. Enter the following information into the medical marijuana electronic verification system for the qualifying patient or designated caregiver:
   a. The amount of medical marijuana dispensed,
   b. Whether the medical marijuana was dispensed to the qualifying patient or to the qualifying patient's designated caregiver,
   c. The date and time the medical marijuana was dispensed,
   d. The dispensary agent's registry identification number, and
   e. The dispensary's registry identification number.

R9-17-315. Qualifying Patient Records

A. A dispensary shall ensure that:

1. A qualifying patient record is established and maintained for each qualifying patient who obtains medical marijuana from the dispensary;
2. An entry in a qualifying patient record:
   a. Is recorded only by a dispensary agent authorized by dispensary policies and procedures to make an entry,
   b. Is dated and signed by the dispensary agent,
   c. Includes the dispensary agent's registry identification number, and
   d. Is not changed to make the initial entry illegible;
3. If an electronic signature is used to sign an entry, the dispensary agent whose signature the electronic code represents is accountable for the use of the electronic signature;
4. A qualifying patient record is only accessed by a dispensary agent authorized by dispensary policies and procedures to access the qualifying patient record;
5. A qualifying patient record is provided to the Department for review upon request;
6. A qualifying patient record is protected from loss, damage, or unauthorized use; and
7. A qualifying patient record is maintained for five years from the date of the qualifying patient's or, if applicable, the qualifying patient's designated caregiver's last request for medical marijuana from the dispensary.

B. If a dispensary maintains qualifying patient records electronically, the dispensary shall ensure that:
1. There are safeguards to prevent unauthorized access, and
2. The date and time of an entry in a qualifying patient record is recorded electronically by an internal clock.

C. A dispensary shall ensure that the qualifying patient record for a qualifying patient who requests or whose designated caregiver on behalf of the qualifying patient requests medical marijuana from the dispensary contains:
1. Qualifying patient information that includes:
   a. The qualifying patient's name;
   b. The qualifying patient's date of birth; and
   c. The name of the qualifying patient's designated caregiver, if applicable;
2. Documentation of any patient education and support materials provided to the qualifying patient or the qualifying patient's designated caregiver, including a description of the materials and the date the materials were provided;
3. For each time the qualifying patient requests and does not obtain medical marijuana or, if applicable, the designated caregiver requests on behalf of the qualifying patient and does not obtain medical marijuana from the dispensary, the following:
   a. The date,
   b. The name and registry identification number of the individual who requested the medical marijuana, and
   c. The dispensary's reason for refusing to provide the medical marijuana.

R9-17-316. Inventory Control System

A. A dispensary shall designate in writing a dispensary agent who has oversight of the dispensary's medical marijuana inventory control system.

B. A dispensary shall only acquire marijuana from:
1. The dispensary's cultivation site,
2. Another dispensary or another dispensary's cultivation site,
3. A qualifying patient authorized by the Department to cultivate marijuana, or
4. A designated caregiver authorized by the Department to cultivate marijuana.

C. A dispensary shall establish and implement an inventory control system for the dispensary's medical marijuana that documents:

1. Each day's beginning inventory, acquisitions, harvests, sales, disbursements, disposal of unusable marijuana, and ending inventory;
2. For acquiring medical marijuana from a qualifying patient or designated caregiver:
    a. A description of the medical marijuana acquired including the amount and strain,
    b. The name and registry identification number of the qualifying patient or designated caregiver who provided the medical marijuana,
    c. The name and registry identification number of the dispensary agent receiving the medical marijuana on behalf of the dispensary, and
    d. The date of acquisition;
3. For acquiring medical marijuana from another dispensary:
    a. A description of the medical marijuana acquired including the amount, strain, and batch number;
    b. The name and registry identification number of the dispensary providing the medical marijuana;
    c. The name and registry identification number of the dispensary agent providing the medical marijuana;
    d. The name and registry identification number of the dispensary agent receiving the medical marijuana on behalf of the dispensary; and
    e. The date of acquisition;
4. For each batch of marijuana cultivated:
    a. The batch number;
    b. Whether the batch originated from marijuana seeds or marijuana cuttings;
    c. The origin and strain of the marijuana seeds or marijuana cuttings planted;
    d. The number of marijuana seeds or marijuana cuttings planted;
    e. The date the marijuana seeds or cuttings were planted;
    f. A list of all chemical additives, including nonorganic pesticides, herbicides, and fertilizers used in the cultivation;
    g. The number of plants grown to maturity;
    h. Harvest information including:
        i. Date of harvest,
        ii. Final processed usable marijuana yield weight, and
        iii. Name and registry identification number of the dispensary agent responsible for the harvest, and
    i. The disposal of medical marijuana that is not usable marijuana including the:
        i. Description of and reason for the marijuana being disposed of including, if applicable, the number of failed or other unusable plants;
        ii. Date of disposal;
        iii. Method of disposal; and
        iv. Name and registry identification number of the dispensary agent responsible for the disposal;
5. For providing medical marijuana to another dispensary:
    a. The amount, strain, and batch number of medical marijuana provided;
    b. The name and registry identification number of the other dispensary;
    c. The name and registry identification number of the dispensary agent who received the medical marijuana on behalf of the other dispensary; and
    d. The date the medical marijuana was provided; and
6. For receiving edible food products infused with medical marijuana from another dispensary:
    a. A description of the edible food products received from the dispensary including total weight of each edible food product and estimated amount and batch number of the medical marijuana infused in each edible food product;

b. Total estimated amount and batch number of medical marijuana infused in the edible food products;

c. The name and registry identification number of the:

i. Dispensary and the dispensary agent providing the edible food products to the receiving dispensary, and

ii. Dispensary agent receiving the edible food products on behalf of the receiving dispensary; and

d. The date the edible food products were provided to the dispensary.

D. The individual designated in subsection (A) shall conduct and document an audit of the dispensary's inventory that is accounted for according to generally accepted accounting principles at least once every 30 calendar days.

1. If the audit identifies a reduction in the amount of medical marijuana in the dispensary's inventory not due to documented causes, the dispensary shall determine where the loss has occurred and take and document corrective action.
2. If the reduction in the amount of medical marijuana in the dispensary's inventory is due to suspected criminal activity by a dispensary agent, the dispensary shall report the dispensary agent to the Department and to the local law enforcement authorities.

E. A dispensary shall:

1. Maintain the documentation required in subsections (C) and (D) at the dispensary for five years from the date on the document, and
2. Provide the documentation required in subsections (C) and (D) to the Department for review upon request.

R9-17-317. Product Labeling and Analysis

A. A dispensary shall ensure that medical marijuana provided by the dispensary to a qualifying patient or a designated caregiver is labeled with:

1. The dispensary's registry identification number;
2. The amount, strain, and batch number of medical marijuana;
3. The following statement: "ARIZONA DEPARTMENT OF HEALTH SERVICES' WARNING: Marijuana use can be addictive and can impair an individual's ability to drive a motor vehicle or operate heavy machinery. Marijuana smoke contains carcinogens and can lead to an increased risk for cancer, tachycardia, hypertension, heart attack, and lung infection. KEEP OUT OF REACH OF CHILDREN";
4. If not cultivated by the dispensary, whether the medical marijuana was obtained from a qualifying patient, a designated caregiver, or another dispensary;
5. The date of manufacture, harvest, or sale;
6. A list of all chemical additives, including nonorganic pesticides, herbicides, and fertilizers, used in the cultivation and production of the medical marijuana; and
7. The registry identification number of the qualifying patient.

B. If a dispensary provides medical marijuana cultivated by the dispensary to another dispensary, the dispensary shall ensure that the medical marijuana is labeled with:

1. The dispensary's registry identification number;
2. The amount, strain, and batch number of the medical marijuana;
3. The date of harvest or sale; and
4. A list of all chemical additives, including nonorganic pesticides, herbicides, and fertilizers, used in the cultivation of the medical marijuana.

C. If medical marijuana is provided as part of an edible food product, a dispensary shall, in addition to the information in subsection (A), include on the label the total weight of the edible food product.

D. A dispensary shall provide to the Department upon request a sample of the dispensary's medical marijuana inventory of sufficient quantity to enable the Department to conduct an analysis of the medical marijuana.

R9-17-318. Security

A. Except as provided in ~~R9-17-310(A)(7)~~, a dispensary shall ensure that access to the enclosed, locked facility where marijuana is cultivated is limited to the dispensary's principal officers, board members, and authorized dispensary agents.

B. A dispensary agent may transport marijuana , marijuana plants, and marijuana paraphernalia between the dispensary and:

1. The dispensary's cultivation site,
2. A qualifying patient, and
3. Another dispensary.

C. Before transportation, a dispensary agent shall:

1. Complete a trip plan that includes:
   a. The name of the dispensary agent in charge of transporting the marijuana;
   b. The date and start time of the trip;
   c. A description of the marijuana, marijuana plants, or marijuana paraphernalia being transported; and
   d. The anticipated route of transportation; and
2. Provide a copy of the trip plan in subsection (C)(1) to the dispensary.

D. During transportation, a dispensary agent shall:

1. Carry a copy of the trip plan in subsection (C)(1) (with the dispensary agent for the duration of the trip;
2. Use a vehicle without any medical marijuana identification;
3. Have a means of communication with the dispensary; and
4. Ensure that the marijuana, marijuana plants, or marijuana paraphernalia are not visible.

E. After transportation, a dispensary agent shall enter the end time of the trip and any changes to the trip plan on the trip plan required in subsection (C)(1).

F. A dispensary shall:

1. Maintain the documents required in subsection (C)(2) and (E), and
2. Provide a copy of the documents required in subsection (C)(2) and (E) to the Department for review upon request.

G. To prevent unauthorized access to medical marijuana at the dispensary and, if applicable, the dispensary's cultivation site, the dispensary shall have the following:

1. Security equipment to deter and prevent unauthorized entrance into limited access areas that include:
   a. Devices or a series of devices to detect unauthorized intrusion, which may include a signal system interconnected with a radio frequency method, such as cellular, private radio signals, or other mechanical or electronic device;
   b. Exterior lighting to facilitate surveillance;
   c. Electronic monitoring including:
      i. At least one 19-inch or greater call-up monitor;
      ii. A video printer capable of immediately producing a clear still photo from any video camera image;
      iii. Video cameras:
         (1) Providing coverage of all entrances to and exits from limited access areas and all entrances to and exits from the building, capable of identifying any activity occurring in or adjacent to the building, and

(2) Having a recording resolution of at least 704 x 480 or the equivalent;

iv. A video camera at each point of sale location allowing for the identification of any qualifying patient or designated caregiver purchasing medical marijuana;

v. A video camera in each grow room capable of identifying any activity occurring within the grow room in low light conditions;

vi. Storage of video recordings from the video cameras for at least 30 calendar days;

vii. A failure notification system that provides an audible and visual notification of any failure in the electronic monitoring system; and

viii. Sufficient battery backup for video cameras and recording equipment to support at least five minutes of recording in the event of a power outage; and

d. Panic buttons in the interior of each building; and

2. Policies and procedures:

a. That restrict access to the areas of the dispensary that contain marijuana and if applicable, the dispensary's cultivation site to authorized individuals only;

b. That provide for the identification of authorized individuals;

c. That prevent loitering;

d. For conducting electronic monitoring; and

e. For the use of a panic button.

R9-17-319. Edible Food Products

A. A dispensary that prepares, sells, or dispenses marijuana-infused edible food products shall:

1. Before preparing, selling, or dispensing marijuana-infused edible food product obtain written authorization from the Department to prepare, sell, or dispense marijuana-infused edible food products;

2. If the dispensary prepares the marijuana-infused edible food products, ensure that the marijuana-infused edible food products are prepared according to the applicable requirements in 9 A.A.C. 8, Article 1;

3. If the marijuana-infused edible food products are not prepared at the dispensary, obtain and maintain at the dispensary a copy of the current written authorization to prepare marijuana-infused edible food products from the dispensary that prepares the marijuana-infused edible products; and

4. If a dispensary sells or dispenses marijuana-infused edible food products, ensure that the marijuana-infused edible food products are sold or dispensed according to applicable requirements in 9 A.A.C. 8, Article 1.

B. A dispensary is responsible for the content and quality of any edible food product sold or dispensed by the dispensary.

R9-17-320. Cleaning and Sanitation

A. A dispensary shall ensure that any building or equipment used by a dispensary for the cultivation, harvest, preparation, packaging, storage, infusion, or sale of medical marijuana is maintained in a clean and sanitary condition.

1. Medical marijuana in the process of production, preparation, manufacture, packing, storage, sale, distribution, or transportation is protected from flies, dust, dirt, and all other contamination.

2. Refuse or waste products incident to the manufacture, preparation, packing, selling, distributing, or transportation of medical marijuana are removed from the building used

as a dispensary and, if applicable, a building at the dispensary's cultivation site at least once every 24 hours or more often as necessary to maintain a clean condition.

3. All trucks, trays, buckets, other receptacles, platforms, racks, tables, shelves, knives, saws, cleavers, other utensils, or the machinery used in moving, handling, cutting, chopping, mixing, canning, packaging, or other processes are cleaned daily.
4. All stored edible food products are securely covered.

B. A dispensary shall ensure that a dispensary agent at the dispensary or the dispensary's cultivation site:

1. Cleans the dispensary agent's hands and exposed portions of the dispensary agent's arms in a hand washing sink:
   a. Before preparing medical marijuana including working with food, equipment, and utensils;
   b. During preparation, as often as necessary to remove soil and contamination and to prevent cross-contamination when changing tasks;
   c. After handling soiled equipment or utensils;
   d. After touching bare human body parts other than the dispensary agent's clean hands and exposed portions of arms; and
   e. After using the toilet room;
2. If working directly with the preparation of medical marijuana or the infusion of marijuana into non-edible products:
   a. Keeps the dispensary agent's fingernails trimmed, filed, and maintained so that the edges and surfaces are cleanable;
   b. Unless wearing intact gloves in good repair, does not have fingernail polish or artificial fingernails on the dispensary agent's fingernails; and
   c. Wears protective apparel such as coats, aprons, gowns, or gloves to prevent contamination;
3. Wears clean clothing appropriate to assigned tasks;
4. Reports to the medical director any health condition experienced by the dispensary agent that may adversely affect the safety or quality of any medical marijuana with which the dispensary agent may come into contact; and
5. If the medical director determines that a dispensary agent has a health condition that may adversely affect the safety or quality of the medical marijuana, is prohibited from direct contact with any medical marijuana or equipment or materials for processing medical marijuana until the medical director determines that the dispensary agent's health condition will not adversely affect the medical marijuana.

R9-17-321. Physical Plant

A. A dispensary or a dispensary's cultivation site shall be located at least 500 feet from a private school or a public school that existed before the date the dispensary submitted the initial dispensary registration certificate application.

B. A dispensary shall provide onsite parking or parking adjacent to the building used as the dispensary.

C. A building used as a dispensary or the location used as a dispensary's cultivation site shall have:

1. At least one toilet room;
2. Each toilet room shall contain:
   a. A flushable toilet;
   b. Mounted toilet tissue;
   c. A sink with running water;
   d. Soap contained in a dispenser; and
   e. Disposable, single-use paper towels in a mounted dispenser or a mechanical air hand dryer;

3. At least one hand washing sink not located in a toilet room;
4. Designated storage areas for medical marijuana or materials used in direct contact with medical marijuana separate from storage areas for toxic or flammable materials; and
5. If preparation or packaging of medical marijuana is done in the building, a designated area for the preparation or packaging that:
   a. Includes work space that can be sanitized, and
   b. Is only used for the preparation or packaging of medical marijuana.

D. For each commercial device used at a dispensary or the dispensary's cultivation site, the dispensary shall:
1. Ensure that the commercial device is licensed or certified pursuant to A.R.S. § 41-2091,
2. Maintain documentation of the commercial device's license or certification, and
3. Provide a copy of the commercial device's license or certification to the Department for review upon request.

R9-17-322. Denial or Revocation of a Dispensary Registration Certificate

A. The Department shall deny an application for a dispensary registration certificate or a renewal if:
1. For an application for a dispensary registration certificate, the physical address of the building or, if applicable, the physical address of the dispensary's cultivation site is within 500 feet of a private school or a public school that existed before the date the dispensary submitted the initial dispensary registration certificate application;
2. A principal officer or board member:
   a. Has been convicted of an excluded felony offense;
   b. Has served as a principal officer or board member for a dispensary that:
      i. Had the dispensary registration certificate revoked, or
      ii. Did not obtain an approval to operate the dispensary within the first year after the dispensary registration certificate was issued;
   c. Is under 21 years of age;
   d. Is a physician currently providing written certifications for medical marijuana for qualifying patients;
   e. Is a law enforcement officer; or
   f. Is an employee or contractor of the Department; or
3. The application or the dispensary does not comply with the requirements in A.R.S. Title 36, Chapter 28.1 and this Chapter.

B. The Department may deny an application for a dispensary registration certificate if a principal officer or board member of the dispensary provides false or misleading information to the Department.

C. The Department shall revoke a dispensary's registration certificate if:
1. The dispensary:
   a. Operates before obtaining approval to operate a dispensary from the Department;
   b. Dispenses, delivers, or otherwise transfers marijuana to an entity other than another dispensary with a valid dispensary registration certificate issued by the Department, a qualifying patient with a valid registry identification card, or a designated caregiver with a valid registry identification card; or
   c. Acquires usable marijuana or mature marijuana plants from any entity other than another dispensary with a valid dispensary registration certificate issued by the Department, a qualifying patient with a valid registry identification card, or a designated caregiver with a valid registry identification card; or
2. A principal officer or board member has been convicted of an excluded felony offense.

D. The Department may revoke a dispensary registration certificate if the dispensary does not:
1. Comply with the requirements in A.R.S. Title 36, Chapter 28.1 and this Chapter; or

2. Implement the policies and procedures or comply with the statements provided to the Department with the dispensary's application.

E. If the Department denies a dispensary registration certificate application, the Department shall provide notice to the applicant that includes:

1. The specific reason or reasons for the denial, and
2. All other information required by A.R.S. § 41-1076.

F. If the Department revokes a dispensary registration certificate, the Department shall provide notice to the dispensary that includes:

1. The specific reason or reasons for the revocation; and
2. The process for requesting a judicial review of the Department's decision pursuant to A.R.S. Title 12, Chapter 7, Article 6.

R9-17-323. Denial or Revocation of a Dispensary Agent's Registry Identification Card

A. The Department shall deny a dispensary agent's application for or renewal of the dispensary agent's registry identification card if the dispensary agent:

1. Does not meet the requirements in A.R.S. § 36-2801(10); or
2. Previously had a registry identification card revoked for not complying with A.R.S. Title 36, Chapter 28.1 or this Chapter.

B. The Department may deny a dispensary agent's application for or renewal of the dispensary agent's registry identification card if the dispensary agent provides false or misleading information to the Department.

C. The Department shall revoke a dispensary agent's registry identification card if the dispensary agent:

1. Uses medical marijuana, if the dispensary agent does not have a qualifying patient registry identification card;
2. Diverts medical marijuana to an individual who is not authorized to possess medical marijuana under A.R.S. Title 36, Chapter 28.1; or
3. Has been convicted of an excluded felony offense.

D. The Department may revoke a dispensary agent's registry identification card if the dispensary agent knowingly violates A.R.S. Title 36, Chapter 28.1 or this Chapter.

E. If the Department denies or revokes a dispensary agent's registry identification card, the Department shall provide notice to the dispensary agent and the dispensary agent's dispensary that includes:

1. The specific reason or reasons for the denial or revocation; and
2. The process for requesting a judicial review of the Department's decision pursuant to A.R.S. Title 12, Chapter 7, Article 6.

ATTACHMENT B

Statutes

36-136. <u>Powers and duties of director; compensation of personnel</u>

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 assure 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, 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 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 assure 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 that takes place at a workplace, 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.
5. Prescribe reasonably necessary measures to assure 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 assure 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 assure 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.
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 is 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.

36-2801. <u>Definitions</u>
(Caution: 1998 Prop. 105 applies)
In this chapter, unless the context otherwise requires:
1. "Allowable amount of marijuana"
(a) With respect to a qualifying patient, the "allowable amount of marijuana" means:
(i) Two-and-one-half ounces of usable marijuana; and
(ii) If the qualifying patient's registry identification card states that the qualifying patient is authorized to cultivate marijuana, twelve marijuana plants contained in an enclosed, locked facility except that the plants are not required to be in an enclosed, locked facility if the plants are being transported because the qualifying patient is moving.
(b) With respect to a designated caregiver, the "allowable amount of marijuana" for each patient assisted by the designated caregiver under this chapter means:

(i) Two-and-one-half ounces of usable marijuana; and
(ii) If the designated caregiver's registry identification card provides that the designated caregiver is authorized to cultivate marijuana, twelve marijuana plants contained in an enclosed, locked facility except that the plants are not required to be in an enclosed, locked facility if the plants are being transported because the designated caregiver is moving.
(c) Marijuana that is incidental to medical use, but is not usable marijuana as defined in this chapter, shall not be counted toward a qualifying patient's or designated caregiver's allowable amount of marijuana.
2. "Cardholder" means a qualifying patient, a designated caregiver or a nonprofit medical marijuana dispensary agent who has been issued and possesses a valid registry identification card.
3. "Debilitating medical condition" means one or more of the following:
(a) Cancer, glaucoma, positive status for human immunodeficiency virus, acquired immune deficiency syndrome, hepatitis C, amyotrophic lateral sclerosis, crohn's disease, agitation of alzheimer's disease or the treatment of these conditions.
(b) A chronic or debilitating disease or medical condition or its treatment that produces one or more of the following: cachexia or wasting syndrome; severe and chronic pain; severe nausea; seizures, including those characteristic of epilepsy; or severe and persistent muscle spasms, including those characteristic of multiple sclerosis.
(c) Any other medical condition or its treatment added by the department pursuant to section 36-2801.01.
4. "Department" means the Arizona department of health services or its successor agency.
5. "Designated caregiver" means a person who:
(a) Is at least twenty-one years of age.
(b) Has agreed to assist with a patient's medical use of marijuana.
(c) Has not been convicted of an excluded felony offense.
(d) Assists no more than five qualifying patients with the medical use of marijuana.
(e) May receive reimbursement for actual costs incurred in assisting a registered qualifying patient's medical use of marijuana if the registered designated caregiver is connected to the registered qualifying patient through the department's registration process. The designated caregiver may not be paid any fee or compensation for his service as a caregiver. Payment for costs under this subdivision shall not constitute an offense under title 13, chapter 34 or under title 36, chapter 27, article 4.
6. "Enclosed, locked facility" means a closet, room, greenhouse or other enclosed area equipped with locks or other security devices that permit access only by a cardholder.
7. "Excluded felony offense" means:
(a) A violent crime as defined in section 13-901.03, subsection B, that was classified as a felony in the jurisdiction where the person was convicted.
(b) A violation of a state or federal controlled substance law that was classified as a felony in the jurisdiction where the person was convicted but does not include:
(i) An offense for which the sentence, including any term of probation, incarceration or supervised release, was completed ten or more years earlier.

(ii) An offense involving conduct that would be immune from arrest, prosecution or penalty under section 36-2811 except that the conduct occurred before the effective date of this chapter or was prosecuted by an authority other than the state of Arizona.
8. "Marijuana" means all parts of any plant of the genus cannabis whether growing or not, and the seeds of such plant.
9. "Medical use" means the acquisition, possession, cultivation, manufacture, use, administration, delivery, transfer or transportation of marijuana or paraphernalia relating to the administration of marijuana to treat or alleviate a registered qualifying patient's debilitating medical condition or symptoms associated with the patient's debilitating medical condition.
10. "Nonprofit medical marijuana dispensary agent" means a principal officer, board member, employee or volunteer of a nonprofit medical marijuana dispensary who is at least twenty-one years of age and has not been convicted of an excluded felony offense.
11. "Nonprofit medical marijuana dispensary" means a not-for-profit entity that acquires, possesses, cultivates, manufactures, delivers, transfers, transports, supplies, sells or dispenses marijuana or related supplies and educational materials to cardholders. A nonprofit medical marijuana dispensary may receive payment for all expenses incurred in its operation.
12. "Physician" means a doctor of medicine who holds a valid and existing license to practice medicine pursuant to title 32, chapter 13 or its successor, a doctor of osteopathic medicine who holds a valid and existing license to practice osteopathic medicine pursuant to title 32, chapter 17 or its successor, a naturopathic physician who holds a valid and existing license to practice naturopathic medicine pursuant to title 32, chapter 14 or its successor or a homeopathic physician who holds a valid and existing license to practice homeopathic medicine pursuant to title 32, chapter 29 or its successor.
13. "Qualifying patient" means a person who has been diagnosed by a physician as having a debilitating medical condition.
14. "Registry identification card" means a document issued by the department that identifies a person as a registered qualifying patient, registered designated caregiver or a registered nonprofit medical marijuana dispensary agent.
15. "Usable marijuana" means the dried flowers of the marijuana plant, and any mixture or preparation thereof, but does not include the seeds, stalks and roots of the plant and does not include the weight of any non-marijuana ingredients combined with marijuana and prepared for consumption as food or drink.
16. "Verification system" means a secure, password-protected, web-based system established and maintained by the department that is available to law enforcement personnel and nonprofit medical marijuana dispensary agents on a twenty-four hour basis for verification of registry identification cards.
17. "Visiting qualifying patient" means a person:
(a) Who is not a resident of Arizona or who has been a resident of Arizona less than thirty days.
(b) Who has been diagnosed with a debilitating medical condition by a person who is licensed with authority to prescribe drugs to humans in the state of the person's residence or, in the case of a person who has been a resident of Arizona less than thirty days, the state of the person's former residence.

18. "Written certification" means a document dated and signed by a physician, stating that in the physician's professional opinion the patient is likely to receive therapeutic or palliative benefit from the medical use of marijuana to treat or alleviate the patient's debilitating medical condition or symptoms associated with the debilitating medical condition. The physician must:
(a) Specify the qualifying patient's debilitating medical condition in the written certification.
(b) Sign and date the written certification only in the course of a physician-patient relationship after the physician has completed a full assessment of the qualifying patient's medical history.

36-2801.01. Addition of debilitating medical conditions
(Caution: 1998 Prop. 105 applies)
The public may petition the department to add debilitating medical conditions or treatments to the list of debilitating medical conditions set forth in section 36-2801, paragraph 3. The department shall consider petitions in the manner required by department rule, including public notice and hearing. The department shall approve or deny a petition within one-hundred-eighty days of its submission. The approval or denial of a petition is a final decision of the department subject to judicial review pursuant to title 12, chapter 7, article 6. Jurisdiction and venue are vested in the superior court.

36-2803. Rulemaking
(Caution: 1998 Prop. 105 applies)
A. Not later than one hundred twenty days after the effective date of this chapter, the department shall adopt rules:
1. Governing the manner in which the department shall consider petitions from the public to add debilitating medical conditions or treatments to the list of debilitating medical conditions set forth in section 36-2801, paragraph 3, including public notice of, and an opportunity to comment in a public hearing upon, petitions.
2. Establishing the form and content of registration and renewal applications submitted under this chapter.
3. Governing the manner in which it shall consider applications for and renewals of registry identification cards.
4. Governing nonprofit medical marijuana dispensaries, for the purpose of protecting against diversion and theft without imposing an undue burden on nonprofit medical marijuana dispensaries or compromising the confidentiality of cardholders, including:
(a) The manner in which the department shall consider applications for and renewals of registration certificates.
(b) Minimum oversight requirements for nonprofit medical marijuana dispensaries.
(c) Minimum recordkeeping requirements for nonprofit medical marijuana dispensaries.
(d) Minimum security requirements for nonprofit medical marijuana dispensaries, including requirements for protection of each registered nonprofit medical marijuana dispensary location by a fully operational security alarm system.

(e) Procedures for suspending or revoking the registration certificate of nonprofit medical marijuana dispensaries that violate the provisions of this chapter or the rules adopted pursuant to this section.
5. Establishing application and renewal fees for registry identification cards and nonprofit medical marijuana dispensary registration certificates, according to the following:
(a) The total amount of all fees shall generate revenues sufficient to implement and administer this chapter except that fee revenue may be offset or supplemented by private donations.
(b) Nonprofit medical marijuana dispensary application fees may not exceed $5,000.
(c) Nonprofit medical marijuana dispensary renewal fees may not exceed $1,000.
(d) The total amount of revenue from nonprofit medical marijuana dispensary application and renewal fees and registry identification card fees for nonprofit medical marijuana dispensary agents shall be sufficient to implement and administer the nonprofit medical marijuana dispensary provisions of this chapter, including the verification system, except that the fee revenue may be offset or supplemented by private donations.
(e) The department may establish a sliding scale of patient application and renewal fees based upon a qualifying patient's household income.
(f) The department may consider private donations under section 36-2817 to reduce application and renewal fees.
B. The department is authorized to adopt the rules set forth in subsection A and shall adopt those rules pursuant to title 41, chapter 6.

36-2804. <u>Registration and certification of nonprofit medical marijuana dispensaries</u>
(Caution: 1998 Prop. 105 applies)
A. Nonprofit medical marijuana dispensaries shall register with the department.
B. Not later than ninety days after receiving an application for a nonprofit medical marijuana dispensary, the department shall register the nonprofit medical marijuana dispensary and issue a registration certificate and a random 20-digit alphanumeric identification number if:
1. The prospective nonprofit medical marijuana dispensary has submitted the following:
(a) The application fee.
(b) An application, including:
(i) The legal name of the nonprofit medical marijuana dispensary.
(ii) The physical address of the nonprofit medical marijuana dispensary and the physical address of one additional location, if any, where marijuana will be cultivated, neither of which may be within five hundred feet of a public or private school existing before the date of the nonprofit medical marijuana dispensary application.
(iii) The name, address and date of birth of each principal officer and board member of the nonprofit medical marijuana dispensary.
(iv) The name, address and date of birth of each nonprofit medical marijuana dispensary agent.

(c) Operating procedures consistent with department rules for oversight of the nonprofit medical marijuana dispensary, including procedures to ensure accurate record-keeping and adequate security measures.
(d) If the city, town or county in which the nonprofit medical marijuana dispensary would be located has enacted zoning restrictions, a sworn statement certifying that the registered nonprofit medical marijuana dispensary is in compliance with the restrictions.
2. None of the principal officers or board members has been convicted of an excluded felony offense.
3. None of the principal officers or board members has served as a principal officer or board member for a registered nonprofit medical marijuana dispensary that has had its registration certificate revoked.
4. None of the principal officers or board members is under twenty-one years of age.
C. The department may not issue more than one nonprofit medical marijuana dispensary registration certificate for every ten pharmacies that have registered under section 32-1929, have obtained a pharmacy permit from the Arizona board of pharmacy and operate within the state except that the department may issue nonprofit medical marijuana dispensary registration certificates in excess of this limit if necessary to ensure that the department issues at least one nonprofit medical marijuana dispensary registration certificate in each county in which an application has been approved.
D. The department may conduct a criminal records check in order to carry out this section.

36-2804.01. <u>Registration of nonprofit medical marijuana dispensary agents; notices; civil penalty; classification</u>
(Caution: 1998 Prop. 105 applies)
A. A nonprofit medical marijuana dispensary agent shall be registered with the department before volunteering or working at a medical marijuana dispensary.
B. A nonprofit medical marijuana dispensary may apply to the department for a registry identification card for a nonprofit medical marijuana dispensary agent by submitting:
1. The name, address and date of birth of the nonprofit medical marijuana dispensary agent.
2. A nonprofit medical marijuana dispensary agent application.
3. A statement signed by the prospective nonprofit medical marijuana dispensary agent pledging not to divert marijuana to anyone who is not allowed to possess marijuana pursuant to this chapter.
4. The application fee.
C. A registered nonprofit medical marijuana dispensary shall notify the department within ten days after a nonprofit medical marijuana dispensary agent ceases to be employed by or volunteer at the registered nonprofit medical marijuana dispensary.
D. No person who has been convicted of an excluded felony offense may be a nonprofit medical marijuana dispensary agent.
E. The department may conduct a criminal records check in order to carry out this section.

36-2804.02. Registration of qualifying patients and designated caregivers
(Caution: 1998 Prop. 105 applies)
A. A qualifying patient may apply to the department for a registry identification card by submitting:
1. Written certification issued by a physician within the ninety days immediately preceding the date of application.
2. The application fee.
3. An application, including:
(a) Name, mailing address, residence address and date of birth of the qualifying patient except that if the applicant is homeless no address is required.
(b) Name, address and telephone number of the qualifying patient's physician.
(c) Name, address and date of birth of the qualifying patient's designated caregiver, if any.
(d) A statement signed by the qualifying patient pledging not to divert marijuana to anyone who is not allowed to possess marijuana pursuant to this chapter.
(e) A signed statement from the designated caregiver, if any, agreeing to be the patient's designated caregiver and pledging not to divert marijuana to anyone who is not allowed to possess marijuana pursuant to this chapter.
(f) A designation as to who will be allowed to cultivate marijuana plants for the qualifying patient's medical use if a registered nonprofit medical marijuana dispensary is not operating within twenty-five miles of the qualifying patient's home.
B. The application for a qualifying patient's registry identification card shall ask whether the patient would like the department to notify him of any clinical studies needing human subjects for research on the medical use of marijuana. The department shall notify interested patients if it is notified of studies that will be conducted in the United States.

36-2804.03. Issuance of registry identification cards
(Caution: 1998 Prop. 105 applies)
A. Except as provided in subsection B and in section 36-2804.05, the department shall:
1. Verify the information contained in an application or renewal submitted pursuant to this chapter and approve or deny an application or renewal within ten days of receiving a completed application or renewal.
2. Issue a registry identification card to a qualifying patient and his designated caregiver, if any, within five days of approving the application or renewal. A designated caregiver must have a registry identification card for each of his qualifying patients.
3. Issue each nonprofit medical marijuana dispensary agent a registry identification card and log-in information for the verification system within five days of approving the application or renewal.
B. The department may not issue a registry identification card to a qualifying patient who is under the age of eighteen unless:
1. The qualifying patient's physician has explained the potential risks and benefits of the medical use of marijuana to the custodial parent or legal guardian responsible for health care decisions for the qualifying patient.

2. A custodial parent or legal guardian responsible for health care decisions for the qualifying patient submits a written certification from two physicians.
3. The custodial parent or legal guardian with responsibility for health care decisions for the qualifying patient consents in writing to:
(a) Allow the qualifying patient's medical use of marijuana.
(b) Serve as the qualifying patient's designated caregiver.
(c) Control the acquisition of the marijuana, the dosage and the frequency of the medical use of marijuana by the qualifying patient.
C. A registry identification card, or its equivalent, that is issued under the laws of another state, district, territory, commonwealth or insular possession of the United States that allows a visiting qualifying patient to possess or use marijuana for medical purposes in the jurisdiction of issuance has the same force and effect when held by a visiting qualifying patient as a registry identification card issued by the department, except that a visiting qualifying patient is not authorized to obtain marijuana from a nonprofit medical marijuana dispensary.

36-2804.04. <u>Registry identification cards</u>
(Caution: 1998 Prop. 105 applies)
A. Registry identification cards for qualifying patients and designated caregivers shall contain all of the following:
1. Name, address and date of birth of the cardholder.
2. A statement of whether the cardholder is a qualifying patient or a designated caregiver.
3. The date of issuance and expiration date of the registry identification card.
4. A random 20-digit alphanumeric identification number, containing at least four numbers and at least four letters, that is unique to the cardholder.
5. If the cardholder is a designated caregiver, the random identification number of the registered qualifying patient the designated caregiver is assisting.
6. A photograph of the cardholder.
7. A clear indication of whether the cardholder has been authorized by this chapter to cultivate marijuana plants for the qualifying patient's medical use.
B. Registry identification cards for nonprofit medical marijuana dispensary agents shall contain the following:
1. The name, address and date of birth of the nonprofit medical marijuana dispensary agent.
2. A statement that the cardholder is a nonprofit medical marijuana dispensary agent.
3. The legal name of the registered nonprofit medical marijuana dispensary with which the nonprofit medical marijuana dispensary agent is affiliated.
4. A random 20-digit alphanumeric identification number that is unique to the cardholder.
5. The date of issuance and expiration date of the registry identification card.
6. A photograph, if the department decides to require one.
C. If the registry identification card of either a qualifying patient or the patient's designated caregiver does not state that the cardholder is authorized to cultivate marijuana plants, then the department must give written notice to the registered qualifying patient, when the qualifying patient's registry identification card is

issued, of the name and address of all registered nonprofit medical marijuana dispensaries.

36-2804.05. Denial of registry identification card

(Caution: 1998 Prop. 105 applies)

A. The department may deny an application or renewal of a qualifying patient's registry identification card only if the applicant:

1. Does not meet the requirements of section 36-2801, paragraph 13.
2. Does not provide the information required.
3. Previously had a registry identification card revoked for violating this chapter.
4. Provides false information.

B. The department may deny an application or renewal of a designated caregiver's registry identification card if the applicant:

1. Does not meet the requirements of section 36-2801, paragraph 5.
2. Does not provide the information required.
3. Previously had a registry identification card revoked for violating this chapter.
4. Provides false information.

C. The department may deny a registry identification card to a nonprofit medical marijuana dispensary agent if:

1. The agent applicant does not meet the requirements of section 36-2801(10).
2. The applicant or dispensanry did not provide the required information.
3. Previously had a registry identification card revoked for violating this chapter.
4. The applicant or dispensary provides false information.

D. The department may conduct a criminal records check of each designated caregiver or nonprofit medical marijuana dispensary agent applicant to carry out this section.

E. The department shall give written notice to the registered nonprofit medical marijuana dispensary of the reason for denying a registry identification card to a nonprofit medical marijuana dispensary agent.

F. The department shall give written notice to the qualifying patient of the reason for denying a registry identification card to the qualifying patient's designated caregiver.

G. Denial of an application or renewal is considered a final decision of the department subject to judicial review pursuant to title 12, chapter 7, article 6. Jurisdiction and venue for judicial review are vested in the superior court.

36-2804.06. Expiration and renewal of registry identification cards and registration certificates; replacement

(Caution: 1998 Prop. 105 applies)

A. All registry identification cards and registration certificates expire one year after date of issue.

B. A registry identification card of a nonprofit medical marijuana dispensary agent shall be cancelled and his access to the verification system shall be deactivated upon notification to the department by a registered nonprofit medical marijuana dispensary that the nonprofit medical marijuana dispensary agent is no longer employed by or no longer volunteers at the registered nonprofit medical marijuana dispensary.

C. A renewal nonprofit medical marijuana dispensary registration certificate shall be issued within ten days of receipt of the prescribed renewal application and renewal fee from a registered nonprofit medical marijuana dispensary if its registration certificate is not under suspension and has not been revoked.
D. If a cardholder loses his registry identification card, he shall promptly notify the department. Within five days of the notification, and upon payment of a ten dollar fee, the department shall issue a new registry identification card with a new random identification number to the cardholder and, if the cardholder is a registered qualifying patient, to the registered qualifying patient's registered designated caregiver, if any.

36-2806. Registered nonprofit medical marijuana dispensaries; requirements
(Caution: 1998 Prop. 105 applies)
A. A registered nonprofit medical marijuana dispensary shall be operated on a not-for-profit basis. The bylaws of a registered nonprofit medical marijuana dispensary shall contain such provisions relative to the disposition of revenues and receipts to establish and maintain its nonprofit character. A registered nonprofit medical marijuana dispensary need not be recognized as tax-exempt by the internal revenue service and is not required to incorporate pursuant to title 10, chapter 19, article 1.
B. The operating documents of a registered nonprofit medical marijuana dispensary shall include procedures for the oversight of the registered nonprofit medical marijuana dispensary and procedures to ensure accurate recordkeeping.
C. A registered nonprofit medical marijuana dispensary shall have a single secure entrance and shall implement appropriate security measures to deter and prevent the theft of marijuana and unauthorized entrance into areas containing marijuana.
D. A registered nonprofit medical marijuana dispensary is prohibited from acquiring, possessing, cultivating, manufacturing, delivering, transferring, transporting, supplying or dispensing marijuana for any purpose except to assist registered qualifying patients with the medical use of marijuana directly or through the registered qualifying patients' designated caregivers.
E. All cultivation of marijuana must take place in an enclosed, locked facility at a physical address provided to the department during the registration process, which can only be accessed by registered nonprofit medical marijuana dispensary agents associated in the registry with the nonprofit medical marijuana dispensary.
F. A registered nonprofit medical marijuana dispensary may acquire usable marijuana or marijuana plants from a registered qualifying patient or a registered designated caregiver only if the registered qualifying patient or registered designated caregiver receives no compensation for the marijuana.
G. A nonprofit medical marijuana dispensary shall not permit any person to consume marijuana on the property of a nonprofit medical marijuana dispensary.
H. Registered nonprofit medical marijuana dispensaries are subject to reasonable inspection by the department. The department shall give reasonable notice of an inspection under this subsection.

36-2806.02. Dispensing marijuana for medical use
(Caution: 1998 Prop. 105 applies)

A. Before marijuana may be dispensed to a registered designated caregiver or a registered qualifying patient, a nonprofit medical marijuana dispensary agent must access the verification system and determine for the registered qualifying patient for whom the marijuana is intended and any registered designated caregiver transporting the marijuana to the patient, that:
1. The registry identification card presented to the registered nonprofit medical marijuana dispensary is valid.
2. Each person presenting a registry identification card is the person identified on the registry identification card presented to the nonprofit medical marijuana dispensary agent.
3. The amount to be dispensed would not cause the registered qualifying patient to exceed the limit on obtaining no more than two-and-one-half ounces of marijuana during any fourteen-day period.
B. After making the determinations required in subsection A, but before dispensing marijuana to a registered qualifying patient or a registered designated caregiver on a registered qualifying patient's behalf, a nonprofit medical marijuana dispensary agent must enter the following information in the verification system:
1. How much marijuana is being dispensed to the registered qualifying patient.
2. Whether it was dispensed directly to the registered qualifying patient or to the registered qualifying patient's registered designated caregiver.
3. The date and time the marijuana was dispensed.
4. The registry identification card number of the nonprofit medical marijuana dispensary and of the nonprofit medical marijuana dispensary agent who dispensed the marijuana.

36-2807. <u>Verification system</u>
(Caution: 1998 Prop. 105 applies)
A. Within one hundred twenty days of the effective date of this chapter, the department shall establish a secure, password-protected, web-based verification system for use on a twenty-four hour basis by law enforcement personnel, nonprofit medical marijuana dispensary agents and employers to verify registry identification cards. An employer may use the verification system only to verify a registry identification card that is provided to the employer by a current employee or by an applicant who has received a conditional offer of employment.
B. The verification system must allow law enforcement personnel and nonprofit medical marijuana dispensary agents to enter a registry identification number and verify whether the number corresponds with a current, valid identification card.
C. The system shall disclose:
1. The name of the cardholder, but must not disclose the cardholder's address.
2. The amount of marijuana that each registered qualifying patient received from nonprofit medical marijuana dispensaries during the past sixty days.
D. The verification system must include the following data security features:
1. Any time an authorized user enters five invalid registry identification numbers within five minutes, that user cannot log in to the system again for ten minutes.
2. A users log-in information shall be deactivated after five incorrect login attempts until the authorized user contacts the department and verifies the user's identity.
3. The server must reject any log-in request that is not over an encrypted connection.

36-2808. Notifications to department; civil penalty
(Caution: 1998 Prop. 105 applies)
A. A registered qualifying patient shall notify the department within ten days of any change in the registered qualifying patient's name, address, designated caregiver or preference regarding who may cultivate marijuana for the registered qualifying patient or if the registered qualifying patient ceases to have his debilitating medical condition.
B. A registered designated caregiver or nonprofit medical marijuana dispensary agent shall notify the department within ten days of any change in his name or address.
C. When a cardholder notifies the department of any changes listed in subsection A but remains eligible under this chapter, the department shall issue the cardholder a new registry identification card with new random 20-digit alphanumeric identification numbers within ten days of receiving the updated information and a ten-dollar fee. If the person notifying the department is a registered qualifying patient, the department shall also issue his registered designated caregiver, if any, a new registry identification card within ten days of receiving the updated information.
D. If the registered qualifying patient's certifying physician notifies the department in writing that either the registered qualifying patient has ceased to suffer from a debilitating medical condition or that the physician no longer believes the patient would receive therapeutic or palliative benefit from the medical use of marijuana, the card is void upon notification by the department to the qualifying patient.
E. When a registered qualifying patient ceases to be a registered qualifying patient or changes registered designated caregiver, the department shall promptly notify the former designated caregiver that his duties and rights under this chapter as to that qualifying patient expire fifteen days after notification by the department is sent.
F. A registered qualifying patient, designated caregiver or nonprofit medical marijuana dispensary agent who fails to comply with subsection A or B is subject to a civil penalty of not more than one hundred fifty dollars.

36-2815. Revocation
(Caution: 1998 Prop. 105 applies)
A. The department shall immediately revoke the registry identification card of a nonprofit medical marijuana dispensary agent who violates section 36-2804.01, subsection D, or section 36-2816, subsection B. The department shall suspend or revoke the registry identification card of a nonprofit medical marijuana dispensary agent for other violations of this chapter.
B. The department shall immediately revoke the registration certificate of a registered nonprofit medical marijuana dispensary that violates section 2816, subsections B or C, and its board members and principal officers may not serve as the board members or principal officers for any other registered nonprofit medical marijuana dispensary.
C. Any cardholder who sells marijuana to a person who is not allowed to possess marijuana for medical purposes under this chapter shall have his registry

identification card revoked, and shall be subject to other penalties for the unauthorized sale of marijuana and other applicable offenses.
D. The department may revoke the registry identification card of any cardholder who knowingly violates this chapter, and the cardholder shall be subject to other penalties for the applicable offense.
E. Revocation is a final decision of the department subject to judicial review pursuant to title 12, chapter 7, article 6. Jurisdiction and venue are vested in the superior court.

36-2816. Violations; civil penalty; classification
(Caution: 1998 Prop. 105 applies)
A. A registered qualifying patient may not directly, or through his designated caregiver, obtain more than two-and-one-half ounces of marijuana from registered nonprofit medical marijuana dispensaries in any fourteen-day period.
B. A registered nonprofit medical marijuana dispensary or agent may not dispense, deliver or otherwise transfer marijuana to a person other than another registered nonprofit medical marijuana dispensary, a registered qualifying patient or a registered qualifying patient's registered designated caregiver.
C. A registered nonprofit medical marijuana dispensary may not acquire usable marijuana or mature marijuana plants from any person other than another registered nonprofit medical marijuana dispensary, a registered qualifying patient or a registered designated caregiver. A knowing violation of this subsection is a class 2 felony.
D. It is a class 1 misdemeanor for any person, including an employee or official of the department or another state agency or local government, to breach the confidentiality of information obtained pursuant to this chapter.
E. Making false statements to a law enforcement official about any fact or circumstance relating to the medical use of marijuana to avoid arrest or prosecution is subject to a civil penalty of not more than five hundred dollars, which shall be in addition to any other penalties that may apply for making a false statement or for the use of marijuana other than use undertaken pursuant to this chapter.

36-2819. Fingerprinting requirements
(Caution: 1998 Prop. 105 applies)
Each person applying as a designated caregiver, a principal officer, agent or employee of a nonprofit medical marijuana dispensary or a medical marijuana dispensary agent shall submit a full set of fingerprints to the department 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 without disclosing that the records check is related to the medical marijuana act and acts permitted by it. The department shall destroy each set of fingerprints after the criminal records check is completed.

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. <u>Compliance with administrative completeness review time frame</u>

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.

41-1079. 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.

F-3

ARIZONA RADIATION REGULATORY AGENCY (F-16-0702)
Title 12, Chapter 1, Article 1, General Provisions; Article 15, Transportation

GOVERNOR'S REGULATORY REVIEW COUNCIL
ANALYSIS OF FIVE-YEAR REVIEW REPORT

MEETING DATE: July 6, 2016 **AGENDA ITEM: F-3**

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

FROM: Preston Knight, Legal Intern

DATE: June 20, 2016

SUBJECT: **ARIZONA RADIATION REGULATORY AGENCY (F-16-0702)**
Title 12, Chapter 1, Article 1, General Provisions; Article 15, Transportation

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COMMENTS ON THE FIVE-YEAR-REVIEW REPORT

Purpose of the Agency and Number of Rules in the Report

The purpose of the Arizona Radiation Regulatory Agency (Agency) and Radiation Regulatory Hearing Board is to protect the public health and safety by regulating the use and sources of radiation in order to provide for: the use of demonstrably safe methods and procedures relating to radiation, and the exposure to sources of radiation to levels as low as reasonably achievable by means of good planning, practice, and enforcement.[i]

This five-year-review report covers twenty-one rules in A.A.C. Title 12, Chapter 1, Article 1 and Article 15.

Article Contents, Including the Subject Matter of Each Rule in the Report

Article 1 contains seven rules with general provisions related to scope and incorporated materials; definitions; exemptions; prohibited uses; quality factors for converting absorbed dose to does equivalent; units of activity; and misconduct.

Article 15 contains fourteen rules related to transportation including the requirement for license; definitions; transportation of licensed material; intrastate transportation and storage of radioactive materials; storage of radioactive materials in transport; preparation of radioactive materials for transport; packaging quality assurance; advance notification of nuclear waste transportation; general license for plutonium-beryllium special for materials; packaging; air transportation of plutonium; advance notification of shipment of irradiated reactor fuel and nuclear waste; opening instructions; and exemption for low-level radioactive materials.

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[i] *See* Laws 2006, Chapter 60, § 3

Year that Each Rule was Last Amended or Newly Made

• May 9, 2003	Sections 104, 105, 106
• July 3, 2004	Section 107
• August 1, 2009	Sections 101, 103, 1502, 1503, 1504, 1505, 1506, 1507, 1508, 1511, 1515
• September 10, 2012	Sections 1501, 1509, 1510, 1513
• February 2, 2016	Sections 102, 1512

Proposed Action

The Agency intends to amend R12-1-102 to add definitions used in Article 14 that will also be used in the newly created Article 16. The Agency also intends to amend all of the rules in Article 15 except Section 1502 to incorporate language found in 10 C.F.R. 71 to meet Nuclear Regulatory Commission (NRC) compatibility requirements.

Summary of Reasons for the Proposed Action

The Agency indicates there have been extensive updates to controlling federal regulations which the state must comply with and incorporate into the rules in order for the rules to be clear, concise, and understandable. The NRC requires Agreement States, such as Arizona, to comply with compatibility rules found in the NRC SA-200 handbook. The NRC requires state rules to comply with level "B" requirements which state the program elements with significant direct transboundary implications should be essentially identical to that of the NRC rules.

Exemption or Request and Approval for Exception from the Moratorium

The Agency plans to request an exception from the moratorium and expects the request to be granted. The Agency plans to submit a rulemaking package to the Council in October 2016.

Substantive or Procedural Concerns

None.

Analysis of the agency's report pursuant to criteria in A.R.S. § 41-1056 and R1-6-301:

1. **<u>Has the agency certified that it is in compliance with A.R.S. § 41-1091?</u>**

Yes. The Agency has certified that it is in compliance with A.R.S. § 41-1091.

2. **<u>Has the agency analyzed the rules' effectiveness in achieving their objectives?</u>**

Yes. The Agency has analyzed the rules for effectiveness and has found R12-1-101, R12-1-103 through R12-1-107, and R12-1-1502 to be effective. R12-1-102 and the remaining rules in article 15 require revision to be effective and compliant with NRC requirements. The following necessary changes have been identified by the Agency:

- Section 102 should include definitions from Article 14 that will also apply to Article 16. Also, other changes are necessary to meet compatibility requirements of the NRC.
- Section 1501 should include essentially the same language as 10 C.F.R. 71.3 to meet compatibility requirements and should include verbiage showing Article 15 does not authorize possession of licensed materials outside limits set forth for transportation.
- Section 1503 should be updated to incorporate language from 10 C.F.R. 71.5 to meet compatibility requirements.
- Section 1504 should be updated to incorporate language from 49 C.F.R. 171 through 49 C.F.R. 180 to meet compatibility requirements.
- Section 1505 should be extensively updated to incorporate language from 49 C.F.R. 177.848 to meet compatibility requirements.
- Section 1506 should be updated to incorporate language from 49 C.F.R. 171 through 49 C.F.R. 180 and 39 C.F.R. 111.1 to meet compatibility requirements.
- Section 1507 should be updated to incorporate language from 10 C.F.R. 71 subsection (H) to meet compatibility requirements.
- Section 1508 should be updated to incorporate language from 49 C.F.R. 172.202 and 49 C.F.R. 172.203 to meet compatibility requirements.
- Section 1509 should be updated to incorporate language from 49 C.F.R. 173.417(a) to meet compatibility requirements.
- Section 1510 should be updated to incorporate language addressing Type "A" packaging and language from 10 C.F.R. 71 to meet compatibility requirements.
- Section 1511 should be updated to incorporate language from 10 C.F.R. 71, 10 C.F.R. 73, 49 C.F.R. 107, and 49 C.F.R. 171 through 49 C.F.R. 180 to meet compatibility requirements.
- Section 1512 should be updated to incorporate language from 10 C.F.R. 71.97 to meet compatibility requirements.
- Section 1513 should be updated to incorporate language from 10 C.F.R. 20.1906(e) to meet compatibility requirements.
- Section 1515 should be updated to incorporate language from 10 C.F.R. 71 to meet compatibility requirements.

3. <u>Has the agency received any written criticisms of the rules during the last five years, including any written analysis questioning whether the rules are based on valid scientific or reliable principles or methods?</u>

No. The Agency has not received any written criticisms of the rules during the last five years.

4. <u>Has the agency analyzed whether the rules are authorized by statute?</u>

Yes. The Agency cites general statutory authority under A.R.S. §§ 30-654(A)(2) and 30-654(B)(5), which allow the agency to "[d]o all things necessary, within the limitations of this Chapter, to carry out the powers and duties of the agency" and the agency shall "[a]dopt rules deemed necessary to administer this Chapter in accordance with Title 41, Chapter 6." Specific

statutory authority is granted under A.R.S. §§ 30-654(B)(9), 30-654(b) (13), 30-657(A), 30-671(B), 30-672, 30-672.01, and 30-673.

5. Has the agency analyzed the rules' consistency with other rules and statutes?

Yes. The Agency indicates that the rules are consistent with other rules and statutes.

6. Has the agency analyzed the current enforcement status of the rules?

Yes. The Agency indicates that R12-1-101, R12-1-103 through R12-1-107, and R12-1-1502 are enforced as written. The other rules reviewed in this report are not enforced as written and are enforced according to updated NRC rules because of compatibility requirements and the likelihood of interstate transportation. The current Arizona rules meet the goals of the NRC rules, however they do not meet the compatibility requirement of being essentially identical to the NRC rules which is why they are not enforced as written and are being amended.

7. Has the agency analyzed whether the rules are clear, concise, and understandable?

Yes. The Agency indicates that R12-1-101, R12-1-103 through R12-1-107, and R12-1-1502 are clear, concise, and understandable. The remainder of the rules in Article 1 and Article 15 need amendments to ensure they are clear, concise, and understandable and meet the NRC compatibility requirements of being essentially identical to the NRC rules.

8. Stringency of the Rules:

a. Are the rules more stringent than corresponding federal law?

No. The Agency indicates that the rules are not more stringent than any federal laws.

b. If so, is there statutory authority to exceed the requirements of federal law?

Not applicable.

9. For rules adopted after July 29, 2010:

a. Do the rules require issuance of a regulatory permit, license or agency authorization?

Yes. The Agency indicates that Article 15 requires special licenses to transport radioactive material.

b. If so, are the general permit requirements of A.R.S. § 41-1037 met or does an exception apply?

The Agency requires specific permits for those who transport radioactive material and are exempt from issuing a general permit under A.R.S. § 41-1037(A)(2) allowing for the

issuance of alternative type permits, licenses or authorizations if specifically authorized by state statute. The statute authorizing these licenses is A.R.S. § 30-672.

10. Has the agency indicated whether it completed the course of action identified in the previous five-year-review report?

Yes. The Agency has not completed the course of action identified in the previous five-year-review report. The Agency indicates that it shall incorporate all changes necessary in its upcoming rule amendments if they are given an exception to the moratorium by the Governor's Office.

11. Has the agency included a proposed course of action?

Yes. The Agency plans to have a revised rule package completed and submitted to the Council in October 2016.

Conclusion

The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. This analyst recommends the report be approved.

GOVERNOR'S REGULATORY REVIEW COUNCIL
M E M O R A N D U M

MEETING DATE: July 6, 2016 **AGENDA ITEM: F-3**

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

FROM: GRRC Economic Team

DATE: June 20, 2016

SUBJECT: **ARIZONA RADIATION REGULATORY AGENCY (F-16-0702)**
Title 12, Chapter 1, Article 1, General Provisions; Article 15, Transportation

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I reviewed the five-year-review report's economic, small business, and consumer impact comparison for compliance with A.R.S. § 41-1056 and make the following comments.

1. <u>Economic Impact Comparison</u>

Economic, small business, and consumer impact statements (EIS) from the most recent rulemakings were available for the rules contained in the five-year-review report.

The rules contained in Article 1 provide general definitions used throughout the chapter, prohibitions on radiation uses and a general dose table used in all sections of the chapter. These rules were developed to provide standards as set forth by the Agreement signed by Arizona and the Nuclear Regulatory Commission (NRC), and portions of the Suggested State Regulations (SSR's) for control of radiation as presented by the Conference of Radiation Control Program Directors (CRCPD).

The rules contained in Article 15 provide standards for transportation of radioactive material in accordance with NRC regulations and the federal Department of Transportation (DOT). These rules were developed to meet standards as set forth by Part A and T of the SSR's for control of radiation as presented by the CRCPD in order to meet the intended registration and regulatory oversight described in §30-671, 30-6722 and defined in 30-651.

Since the last rulemaking, there has not been a significant change in the number of registrants and licensees. There are approximately 7,000 registrants, 400 licensees, 8,000 technologists licensed by the Medical Radiologic Technology Board of Examiners (MRTBE), 1,600 technicians certified as cosmetic laser techs, and 1,500 nonionizing

facilities using the rules and incorporated materials in Article 1.There are approximately 400 licensees using the rules and incorporated materials in Article 15.

The Agency believes that the economic impact for Articles 1 and 15 is as predicted on the last rulemaking, and is consistent with the actual economic impact expressed in EIS reports submitted prior to 2011.

2. Has the agency determined that the rules impose the least burden and costs to persons regulated by the rules?

The Agency has determined that the rules in Articles 1 and 15 generally impose the least burden and costs to the regulated community, but that benefits could be gained by clarifying language in the rules.

3. Was an analysis submitted to the agency under A.R.S. § 41-1056(A)(7)?

No analysis was submitted to the agency by another person that compares the rules' impact on this state's business competitiveness to the impact on businesses in other states under A.R.S. § 41-1056(A)(7).

4. Conclusion

After review, staff concludes that the report complies with A.R.S. § 41-1056 and recommends approval.

Douglas A. Ducey
Governor

Aubrey V. Godwin
Director

April 20, 2016

Nicole A. Ong, Council Chair
Governor's Regulatory Review Council
100 N. 15th Avenue, Suite 402
Phoenix, Arizona 85007

Dear Ms. Ong:

A review of the rules contained in A.A.C Title 12, Chapter 1, Article 1, "General Provisions", and Article 15, "Transportation" has been conducted by the Arizona Radiation Regulatory Agency.

In accordance with A.R.S. § 41-1056, a review of each rule was conducted to determine whether it should be amended or repealed. This report summarizes the Agency's findings with supporting reasons. A concise analysis of each rule is provided summarizing the essential elements of this five-year review in accordance with A.A.C. R1-6-301. In addition, the Agency is in compliance with A.R.S. § 41-1091 and all incorporated material is open to the public and available at the Agency location.

Finally, there are several changes needed in these articles. The changes are required provide clarity; and to address updates to incorporated materials.

Please feel free to contact me if you have any questions regarding this five-year review.

Sincerely,

Aubrey V. Godwin
Director

JWP:AVG:jwp

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FIVE-YEAR-REVIEW REPORT

TITLE 12. NATURAL RESOURCES

CHAPTER 1. RADIATION REGULATORY AGENCY

ARTICLE 1. GENERAL PROVISIONS

ARTICLE 15. TRANSPORTATION

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5. ECONOMIC IMPACT STATEMENT (EIS) . . . . . Exhibit 1
6. CURRENT RULES . . . . . Exhibit 2
7. ENABLING AND RELATED STATUTES . . . . . Exhibit 3

FIVE-YEAR-REVIEW SUMMARY

The rules contained in Article 1 provide general definitions used throughout the chapter, prohibitions on radiation uses and a general dose table used in all sections of the chapter. These rules were developed to provide standards as set forth by the Agreement signed by Arizona and the Nuclear Regulatory Agency (NRC) as well as general portions of the Suggested State Regulations (SSR's) for control of radiation as presented by the Conference of Radiation Control Program Directors (CRCPD).

The rules contained in Article 15 provide standards for transportation of radioactive material in accordance with NRC regulations and the federal Department of Transportation (DOT). These rules were developed to meet standards as set forth by Part A and T of the SSR's for control of radiation as presented by the CRCPD in order to meet the intended registration and regulatory oversight described in §30-671, 30-6722 and defined in 30-651 .

Article 1

R12-1-104, R12-1-105, and R12-1-106 were last amended in 2003. R12-1-207 was last amended in 2004. R12-1-101, and R12-1-103 were last amended in 2009. R12-1-102 was last amended in 2016.

Article 15

R12-1-1502 through R12-1-1508, R12-1-1511, and R12-1-1515 were last amended in 2009. R12-1-1501, R12-1-1509 through R12-1-1510, and R12-1-1513 were last amended in 2012. R12-1-1512 was last amended in 2016.

Exhibit 1

Prior communication with GRRC staff indicated that these EIS statements were already on file and did not need to be submitted again historically. Therefore, the EIS statements submitted in this Exhibit are those that affect the amendments of these articles since 2011 to current date.

FIVE-YEAR-REVIEW REPORT

TITLE 12. NATURAL RESOURCES

CHAPTER 1. RADIATION REGULATORY AGENCY

ARTICLE 1. GENERAL PROVISIONS

R12-1-101. Scope and Incorporated Materials

R12-1-102. Definitions

R12-1-103. Exemptions

R12-1-104. Prohibited Uses

R12-1-105. Quality Factors for Converting Absorbed Dose to Dose Equivalent

R12-1-106. Units of Activity

R12-1-107. Misconduct

ARTICLE 15. TRANSPORTATION

R12-1-1501. Requirement for License

R12-1-1502. Definitions

R12-1-1503. Transportation of Licensed Material

R12-1-1504. Intrastate Transportation and Storage of Radioactive Materials

R12-1-1505. Storage of Radioactive Material in Transport

R12-1-1506. Preparation of Radioactive Material for Transport

R12-1-1507. Packaging Quality Assurance

R12-1-1508. Advance Notification of Nuclear Waste Transportation

R12-1-1509. General License: Plutonium-Beryllium Special Form Material

R12-1-1510. Packaging

R12-1-1511. Air Transportation of Plutonium

R12-1-1512. Advance Notification of Shipment of Irradiated Reactor Fuel and Nuclear Waste

R12-1-1513. Opening Instructions

R12-1-1514. Reserved

R12-1-1515. Exemption for Low-level Radioactive Materials

INFORMATION THAT IS IDENTICAL FOR ALL THE RULES

The following information is the same for all of the rules and is not restated in the analysis of each rule:

1. General and Specific Statutes Authorizing the Rules:

All of the rules have general authority in A.R.S. §§ 30-654(A)(2), 30-654(B)(5), 30-654(B)(9), 30-654(B)(13), 30-657(A), 30-671(B), 30-672, 30-672.01, and 30-673. Any specific authority is stated in the applicable rule.

4. Consistency of the Rules with State and Federal Statutes and Rules:

The rules contained in Article 1 and 15 consistent with other relevant agency rules posted in Title 12 and with federal statutes and regulations in accordance with the Agreement State document that Arizona entered into with the U.S. Nuclear Regulatory Commission (formerly the Atomic Energy Commission) authorized by A.R.S. §30-656 authorizing the governor of Arizona to enter into the agreement. In accordance with Public Law 83-703, Title 1- Atomic Energy, Chapter 19, Section 274, as well as Article VI of the Agreement signed the 30th day of March 1967 by Jack Williams, Governor of Arizona [F.R. Doc. 67-4212; Filed, Apr. 17, 1967 8:48 a.m.], Agreement States delegated authority to regulate nuclear material will substantially adopt the rules and language used by the U.S. NRC in order to be compatible nationally to standards of protection. In addition, A.R.S. §30-654(B)(6) requires the Agency to be as nearly as possible in conformity with the regulations of the NRC except for those types of radiation protection use whose regulation is authorized by Arizona statute that are not in the jurisdiction of an equivalent federal regulating body.

7. Summary of Written Criticisms of the Rules Received Within the Last Five Years:

The Agency has not received any written criticisms concerning the rules contained in Articles 1, and 15.

8. Estimated Economic, Small Business, and Consumer Impact of the Rules Compared to the Economic Impact Statement Prepared on the Last Revision or Creation of the Rules:

Currently there are approximately 7,000 registrants, 400 licensees, 8,000 technologists licensed by MRTBE, 1,600 technicians certified as cosmetic laser techs, and 1,500 nonionizing facilities using the rules and incorporated materials in Article 1; 400 approximate licensees use the rules and incorporated materials in Article 15.

Analysis of the economic impact statement for the rules created or last amended since the last report is attached as Exhibit 1.

The Agency believes that economic impact is as predicted on the last making of the rules in Articles 1, and 15 and are consistent with the actual economic impact expressed in EIS reports submitted prior to 2011 already on file with GRRC or with Exhibit 1 in relation to Articles 1, and 15 except as expressed below.

9. Analysis Submitted to the Agency Comparing the Economic Impact on this State's Businesses to the Impact to Businesses in Other States:

The Agency has not received any analysis comparing the economic impact to this state's businesses with businesses in other states.

10. Completion of Course of Action from a Previous Five year Report:

The actions addressed in the previous 5 year report related to Article 1 were completed or are no longer under consideration for modification except as expressed in this report. The updates for Article 15 have not been completed but will be added into the next rulemaking package related to Radioactive Materials following the conclusion of the U.S. NRC IMPEP audit currently in process and anticipated to conclude June, 2016.

12. Stringency of the Rules Compared with Federal Laws or Regulations:

The Agency has determined that the rules in Article 1, and 15 are not more stringent than corresponding federal regulations.

13. For Rules Adopted After July 29, 2010 that Require Issuance of a Regulatory Authorization, Whether the Rules Comply with A.R.S. § 41-1037:

The Agency believes that the registrations issued by Article 15 are exempt from A.R.S. § 41-1037 due to paragraph (A)(2) as the issuance of an alternative type of permit is authorized under the statutory requirement of A.R.S. §§ 30-672, 32-516(A), and 32-3233(E) to protect the public health and safety or to certify laser technicians and laser technician training schools. A registration is not issued in Article 1 as these are considered in other Articles of the rules.

14. <u>Course of Action for Rule Making:</u>

The Agency would like to amend the existing rules once the Governor's Offices provide approval. It is believed that the Governor's office will likely support the rulemaking in the mid-portion of 2016, after approval to proceed with the elimination/amendments of the rules identified in the September report as a part of the 2015-01 Executive Order. The GRRC could see this rulemaking in October of 2016. The rulemaking that is needed includes the following amendments or adoptions:

<u>ARTICLE 1</u>

R12-1-102: Inclusion of definitions from Article 14 that will apply to both Article 14 and a newly created article 16. In addition, modifications of the definitions based upon updates to title 10 of the Code of Federal Regulations related to compatibility issues between Arizona and the U.S. Nuclear Regulatory Commission.

<u>ARTICLE 15</u>

R12-1-1501: An addition to this rule is required because of Arizona's Agreement State status to meet a compatibility code B classification and add verbiage that clarifies that Article 15 does not authorize possession of licensed material outside of the limits set forth for transportation as stated in 10 CFR 71.3.

R12-1-1503: An update of the incorporated material to 10 CFR 71.5 revised January 1, 2016 is needed.

R12-1-1504: An update of the incorporated material to 49 CFR 171 through 180, revised October 1, 2015 is needed.

R12-1-1505: An update of the incorporated material to 49 CFR 177.848,

revised October 1, 2015 is needed.

R12-1-1506: An update of the incorporated material to 49 CFR 171 through 180, revised October 1, 2015 and 39 CFR 111.1, revised July 1, 2015 is needed.

R12-1-1507: An update of the incorporated material to 10 CFR 71, revised January 1, 2016 is needed.

R12-1-1508: An update of the incorporated material to 49 CFR 172.202 and 49 CFR 172.203, revised October 1, 2015 is needed.

R12-1-1509: An update of the incorporated material to 49 CFR 173.417(a), revised October 1, 2015 is needed.

R12-1-1510: Additional language to address Type "A" packaging to remain in compliance with the Agreement State Status is needed for this rule. In addition, an update of the incorporated material to 10 CFR 71, all portions or subdivisions, revised January 1, 2016 is needed. In addition, an update to 49 CFR 171, 173, and 178, revised October 1, 2015 is needed.

R12-1-1511: An update of the incorporated material to 10 CFR 71 and 73, all portions or subdivisions, revised January 1, 2016 is needed. In addition, an update to 49 CFR 107 and 171 through 180, revised October 1, 2015 is needed.

R12-1-1512: An update of the incorporated material to 10 CFR 71.97, revised January 1, 2016 is needed.

R12-1-1513: An update of the incorporated material to 10 CFR 20.1906(e), revised January 1, 2016 is needed.

R12-1-1515: An update of the incorporated material to 10 CFR 71, revised January 1, 2016 is needed.

INFORMATION THAT IS IDENTICAL WITHIN GROUPS OF RULES

3. Effectiveness of the Rules in Achieving the Objectives:

The following rules are effective in achieving their objectives:

R12-1-101, R12-1-103 through R12-1-107, and R12-1-1502.

5. Status of enforcement of the rule

The following rules are enforced as written:

R12-1-101, R12-1-103 through R12-1-107, and R12-1-1502.

6. Analysis of clarity, conciseness, and understandability

The following rules are clear, concise, and understandable:

R12-1-101, R12-1-103 through R12-1-107, and R12-1-1502.

10. Whether the agency completed the course of action proposed in the previous Five-year-review Report

The Agency has not completed the rule amendments listed in the previous five year report for Articles 1 and 15. These actions will be taken following the completion of the current IMPEP review of the Arizona Agreement State status.

11. Probable Benefit of the Rules in Meeting Regulatory Objective and Determination that the Rules Impose the Least Burden and Costs to the Regulated Community to Achieve Objective:

The following rules impose the least burden and costs on the public:

R12-1-101, R12-1-103 through R12-1-107, and R12-1-1502.

The following rules will impose the least burden and costs on the public when the issues identified in this report are addressed:

R12-1-102, R12-1-1501, R12-1-1503, R12-1-1504, R12-1-1505, R12-1-1506, R12-1-1507, R12-1-1508, R12-1-1509, R12-1-1510, R12-1-1511, R12-1-1512, R12-1-1513, and R12-1-1515.

ANALYSIS OF INDIVIDUAL RULES

ARTICLE 1

R12-1-102. Definitions

1. Authorization of the rule by existing statute

A.R.S. §§ 30-654(A)(2), 30-654(B)(5), 30-654(B)(9), 30-654(B)(13), 30-657(A), 30-671(B), 30-672, 30-672.01, 30-673, and 30-686.

2. Objective

This rule provides the definitions for radiation devices and radioactive material regulated and described in Title 12 Chapter 1.

3. Analysis of effectiveness in achieving the objective

The rule is not effective because it is missing definitions from Article 14 that will apply to both Article 14 and a newly created article 16. In addition, modifications of the definitions based upon updates to title 10 of the Code of Federal Regulations related to compatibility issues between Arizona and the U.S. Nuclear Regulatory Commission.

5. Status of enforcement of the rule

The rule is not enforced as written. As an alternative, definitions from Article 14 and from Title 10 and Title 21 of the U.S code of federal regulations are used by professionals working in the field of radiation use and compliance.

6. Analysis of clarity, conciseness, and understandability

The rule is not clear, concise, or understandable and thereby does not fulfill its objective.

10. Whether the agency completed the course of action proposed in the previous Five-year-review Report

No.

R12-1-1501. Requirement for License

1. Authorization of the rule by existing statute

A.R.S. §§ 30-654(A)(2), 30-654(B)(5), 30-654(B)(9), 30-654(B)(13), 30-657(A), 30-671(B), 30-672, 30-672.01, 30-673, and 30-686.

2. Objective

This rule describes the requirements of licensing for transport of radioactive material to a transportation carrier.

3. Analysis of effectiveness in achieving the objective

The rule is not effective because it needs an addition to the rule to meet a compatibility code classification and add verbiage that clarifies that Article 15 does not authorize possession of licensed material outside of the limits set forth for transportation as stated in 10 CFR 71.3.

5. Status of enforcement of the rule

The rule is not enforced as written. As an alternative, enforcement is based upon the most current version of 10 CFR 71.3.

6. Analysis of clarity, conciseness, and understandability

The rule is not clear, concise, or understandable and thereby does not fulfill its objective.

10. Whether the agency completed the course of action proposed in the previous Five-year-review Report

No.

R12-1-1503. Transportation of Licensed Material

1. Authorization of the rule by existing statute

A.R.S. §§ 30-654(A)(2), 30-654(B)(5), 30-654(B)(9), 30-654(B)(13), 30-657(A), 30-671(B), 30-672, 30-672.01, 30-673, and 30-686.

2. Objective

This rule incorporates by reference the regulations for transportation of nuclear material under the jurisdiction of the federal DOT.

3. Analysis of effectiveness in achieving the objective

The rule is not effective because it needs update to the incorporated material in 10 CFR 71.5 to meet a compatibility code classification.

5. Status of enforcement of the rule

The rule is not enforced as written. As an alternative, enforcement is based upon the most current version of 10 CFR 71.5.

6. Analysis of clarity, conciseness, and understandability

The rule is not clear, concise, or understandable and thereby does not fulfill its objective.

10. Whether the agency completed the course of action proposed in the previous Five-year-review Report

No.

R12-1-1504. Intrastate Transportation and Storage of Radioactive Materials

1. <u>Authorization of the rule by existing statute</u>

A.R.S. §§ 30-654(A)(2), 30-654(B)(5), 30-654(B)(9), 30-654(B)(13), 30-657(A), 30-671(B), 30-672, 30-672.01, 30-673, and 30-686.

2. <u>Objective</u>

This rule issues a general license to persons transporting nuclear material in accordance with appropriate regulations of the DOT. The rule also requires that any notification required under federal regulations regarding an incident involving radiation during transport be filed with or made to the Agency.

3. <u>Analysis of effectiveness in achieving the objective</u>

The rule is not effective because it needs update to the incorporated material in 49 CFR 171 through 180 to meet a compatibility code classification.

5. <u>Status of enforcement of the rule</u>

The rule is not enforced as written. As an alternative, enforcement is based upon the most current version of 49 CFR 171 through 180.

6. <u>Analysis of clarity, conciseness, and understandability</u>

The rule is not clear, concise, or understandable and thereby does not fulfill its objective.

10. <u>Whether the agency completed the course of action proposed in the previous Five-year-review Report</u>

No.

R12-1-1505. Storage of Radioactive Material in Transport

1. <u>Authorization of the rule by existing statute</u>

A.R.S. §§ 30-654(A)(2), 30-654(B)(5), 30-654(B)(9), 30-654(B)(13), 30-657(A), 30-671(B), 30-672, 30-672.01, 30-673, and 30-686.

2. <u>Objective</u>

This rule provides the specific storage requirements for radioactive hazardous material bearing a yellow class II or class III label.

3. <u>Analysis of effectiveness in achieving the objective</u>

The rule is not effective because it needs update to the incorporated material in 49 CFR 177.848 to meet a compatibility code classification.

5. <u>Status of enforcement of the rule</u>

The rule is not enforced as written. As an alternative, enforcement is based upon the most current version of 49 CFR 177.848.

6. <u>Analysis of clarity, conciseness, and understandability</u>

The rule is not clear, concise, or understandable and thereby does not fulfill its objective.

10. <u>Whether the agency completed the course of action proposed in the previous Five-year-review Report</u>

No.

R12-1-1506. Preparation of Radioactive Material for Transport

1. <u>Authorization of the rule by existing statute</u>

A.R.S. §§ 30-654(A)(2), 30-654(B)(5), 30-654(B)(9), 30-654(B)(13), 30-657(A), 30-671(B), 30-672, 30-672.01, 30-673, and 30-686.

2. <u>Objective</u>

This rule provides the specific storage requirements for radioactive hazardous material bearing a yellow class II or class III label.

3. <u>Analysis of effectiveness in achieving the objective</u>

The rule is not effective because it needs update to the incorporated material in 49 CFR 171 through 180, and 39 CFR 111.1 to meet a compatibility code classification.

5. <u>Status of enforcement of the rule</u>

The rule is not enforced as written. As an alternative, enforcement is based upon the most current version of 49 CFR 171 through 180, and 39 CFR 111.1.

6. <u>Analysis of clarity, conciseness, and understandability</u>

The rule is not clear, concise, or understandable and thereby does not fulfill its objective.

10. <u>Whether the agency completed the course of action proposed in the previous Five-year-review Report</u>

No.

R12-1-1507. Packaging Quality Assurance

1. Authorization of the rule by existing statute

A.R.S. §§ 30-654(A)(2), 30-654(B)(5), 30-654(B)(9), 30-654(B)(13), 30-657(A), 30-671(B), 30-672, 30-672.01, 30-673, and 30-686.

2. Objective

This rule states that a quality assurance program and associated record keeping are required prior to shipping radioactive material. It further requires that the Agency approve the quality assurance program before shipment of a Type B package.

3. Analysis of effectiveness in achieving the objective

The rule is not effective because it needs update to the incorporated material in 10 CFR 71 to meet a compatibility code classification.

5. Status of enforcement of the rule

The rule is not enforced as written. As an alternative, enforcement is based upon the most current version of 10 CFR 71.

6. Analysis of clarity, conciseness, and understandability

The rule is not clear, concise, or understandable and thereby does not fulfill its objective.

10. Whether the agency completed the course of action proposed in the previous Five-year-review Report

No.

R12-1-1508. Advance Notification of Nuclear Waste Transportation

1. Authorization of the rule by existing statute

A.R.S. §§ 30-654(A)(2), 30-654(B)(5), 30-654(B)(9), 30-654(B)(13), 30-657(A), 30-671(B), 30-672, 30-672.01, 30-673, and 30-686.

2. Objective

This rule requires notification be made to the Agency prior to shipping or transporting nuclear waste.

3. Analysis of effectiveness in achieving the objective

The rule is not effective because it needs update to the incorporated material in 49 CFR 172.202 and 49 CFR 172.203 to meet a compatibility code classification.

5. Status of enforcement of the rule

The rule is not enforced as written. As an alternative, enforcement is based upon the most current version of 49 CFR 172.202 and 49 CFR 172.203.

6. <u>Analysis of clarity, conciseness, and understandability</u>

The rule is not clear, concise, or understandable and thereby does not fulfill its objective.

10. <u>Whether the agency completed the course of action proposed in the previous Five-year-review Report</u>

No.

R12-1-1509. General License: Plutonium-Beryllium Special Form Material

1. <u>Authorization of the rule by existing statute</u>

A.R.S. §§ 30-654(A)(2), 30-654(B)(5), 30-654(B)(9), 30-654(B)(13), 30-657(A), 30-671(B), 30-672, 30-672.01, 30-673, and 30-686.

2. <u>Objective</u>

This rule grants a general license to transport cert types of fissile material if appropriately packaged and under the restrictions listed in the rule.

3. <u>Analysis of effectiveness in achieving the objective</u>

The rule is not effective because it needs update to the incorporated material in 49 CFR 173.417(a) to meet a compatibility code classification.

5. <u>Status of enforcement of the rule</u>

The rule is not enforced as written. As an alternative, enforcement is based upon the most current version of 49 CFR 173.417(a).

6. <u>Analysis of clarity, conciseness, and understandability</u>

The rule is not clear, concise, or understandable and thereby does not fulfill its objective.

10. <u>Whether the agency completed the course of action proposed in the previous Five-year-review Report</u>

No.

R12-1-1510. Packaging

1. <u>Authorization of the rule by existing statute</u>

A.R.S. §§ 30-654(A)(2), 30-654(B)(5), 30-654(B)(9), 30-654(B)(13), 30-657(A), 30-671(B), 30-672, 30-672.01, 30-673, and 30-686.

2. Objective

This rule provides packaging requirements and limits the use or possession of radioactive material.

3. Analysis of effectiveness in achieving the objective

The rule is not effective because it needs additional language to address Type "A" packaging to remain in compliance with the Agreement State Status. In addition, an update of the incorporated material to 10 CFR 71, all portions or subdivisions, to meet a compatibility code classification.

5. Status of enforcement of the rule

The rule is not enforced as written. As an alternative, enforcement is based upon the most current version of 10 CFR 71.

6. Analysis of clarity, conciseness, and understandability

The rule is not clear, concise, or understandable and thereby does not fulfill its objective.

10. Whether the agency completed the course of action proposed in the previous Five-year-review Report

No.

R12-1-1511. Air Transport of Plutonium

1. Authorization of the rule by existing statute

A.R.S. §§ 30-654(A)(2), 30-654(B)(5), 30-654(B)(9), 30-654(B)(13), 30-657(A), 30-671(B), 30-672, 30-672.01, 30-673, and 30-686.

2. Objective

This rule limits in any form the amounts of plutonium that may be shipped by air.

3. Analysis of effectiveness in achieving the objective

The rule is not effective because it needs update to the incorporated material in 10 CFR 71 and 73, all portions or subdivisions, and 49 CFR 107 and 171 through 180 to meet a compatibility code classification.

5. Status of enforcement of the rule

The rule is not enforced as written. As an alternative, enforcement is based upon the most current version of 10 CFR 71 and 73, all portions or subdivisions, and 49 CFR 107 and 171 through 180.

6. Analysis of clarity, conciseness, and understandability

The rule is not clear, concise, or understandable and thereby does not fulfill its objective.

10. Whether the agency completed the course of action proposed in the previous Five-year-review Report

No.

R12-1-1512. Advance Notification of Shipment of Irradiated Reactor Fuel and Nuclear Waste

1. Authorization of the rule by existing statute

A.R.S. §§ 30-654(A)(2), 30-654(B)(5), 30-654(B)(9), 30-654(B)(13), 30-657(A), 30-671(B), 30-672, 30-672.01, 30-673, and 30-686.

2. Objective

This rule states the general requirement of notifying the Governor or Agency director prior to shipping spent reactor fuel waste.

3. Analysis of effectiveness in achieving the objective

The rule is not effective because it needs update to the incorporated material in 10 CFR 71.97 to meet a compatibility code classification.

5. Status of enforcement of the rule

The rule is not enforced as written. As an alternative, enforcement is based upon the most current version of 10 CFR 71.97.

6. Analysis of clarity, conciseness, and understandability

The rule is not clear, concise, or understandable and thereby does not fulfill its objective.

10. Whether the agency completed the course of action proposed in the previous Five-year-review Report

No.

R12-1-1513. Opening Instructions

1. Authorization of the rule by existing statute

A.R.S. §§ 30-654(A)(2), 30-654(B)(5), 30-654(B)(9), 30-654(B)(13), 30-657(A), 30-671(B), 30-672, 30-672.01, 30-673, and 30-686.

2. Objective

This rule states requirement to follow special package opening directions for radioactive material in transport.

3. <u>Analysis of effectiveness in achieving the objective</u>

The rule is not effective because it needs update to the incorporated material in 10 CFR 20.1906(e) to meet a compatibility code classification.

5. <u>Status of enforcement of the rule</u>

The rule is not enforced as written. As an alternative, enforcement is based upon the most current version of 10 CFR 20.1906(e).

6. <u>Analysis of clarity, conciseness, and understandability</u>

The rule is not clear, concise, or understandable and thereby does not fulfill its objective.

10. <u>Whether the agency completed the course of action proposed in the previous Five-year-review Report</u>

No.

R12-1-1515. Exemption for Low-level Radioactive Materials

1. <u>Authorization of the rule by existing statute</u>

A.R.S. §§ 30-654(A)(2), 30-654(B)(5), 30-654(B)(9), 30-654(B)(13), 30-657(A), 30-671(B), 30-672, 30-672.01, 30-673, and 30-686.

2. <u>Objective</u>

This rule exempts licensees that are transporting exempt quantities or naturally radioactive ore from the requirements of this article.

3. <u>Analysis of effectiveness in achieving the objective</u>

The rule is not effective because it needs update to the incorporated material in 10 CFR 71 to meet a compatibility code classification.

5. <u>Status of enforcement of the rule</u>

The rule is not enforced as written. As an alternative, enforcement is based upon the most current version of 10 CFR 71.

6. <u>Analysis of clarity, conciseness, and understandability</u>

The rule is not clear, concise, or understandable and thereby does not fulfill its objective.

10. <u>Whether the agency completed the course of action proposed in the previous Five-year-review Report</u>

No.

Exhibit 2

ARTICLE 1. GENERAL PROVISIONS

R12-1-101. Scope and Incorporated Materials

A. Except as otherwise specifically provided, this Chapter applies to all persons who receive, possess, use, transfer, own, or acquire any source of radiation.

B. This Chapter does not apply to any person that is subject to regulation by the Nuclear Regulatory Commission.

C. State control of source material, byproduct material, and special nuclear material in quantities not sufficient to form a critical mass is subject to the provisions of the agreement between the state and the U.S. Nuclear Regulatory Commission, signed March 30, 1967 and incorporated by reference. This incorporated material contains no later editions or amendments, and together with all other incorporated materials in this Chapter, is available for inspection or copying at the Arizona Radiation Regulatory Agency, 4814 S. 40th St., Phoenix, AZ 85040.

D. Federal regulations incorporated by reference in this Chapter are available from the U.S. Government Printing Office, P.O. Box 979050, St. Louis, MO 63197-9000 and http://www.gpoaccess.gov/cfr/.

Historical Note

Former Rule Section A.1; Former Section R12-1-101 repealed, new Section R12-1-101 adopted effective June 30, 1977 (Supp. 77-3). Amended effective April 2, 1990 (Supp. 90-2). Amended effective August 10, 1994 (Supp. 94-3). Amended effective June 13, 1997 (Supp. 97-2). Amended by final rulemaking at 9 A.A.R. 1126, effective May 9, 2003 (Supp. 03-1). Amended by final rulemaking at 15 A.A.R. 1023, effective August 1, 2009 (Supp. 09-2).

R12-1-102. Definitions

Terms defined in A.R.S. § 30-651 have the same meanings when used in this Chapter, unless the context otherwise requires. Additional subject-specific definitions are used in other Articles.

"A1" means the maximum activity of special form radioactive material permitted in a type A package. These values are either listed in 10 CFR 71, Appendix A, Table A-1, or may be derived in accordance with the procedures prescribed in 10 CFR 71, Appendix A, revised January 1, 2013, incorporated by reference, and available under R12-1-101. This incorporated material contains no future editions or amendments.

"A2" means the maximum activity of radioactive material, other than special form radioactive material, low specific activity (LSA) material, and surface contaminated object (SCO) material, permitted in a Type A package. These values are either listed in 10 CFR 71, Appendix A, Table A-1, or may be derived in accordance with the procedure prescribed in 10 CFR 71, Appendix A, revised January 1, 2013, incorporated by reference, and available under R12-1-101. This incorporated material contains no future editions or amendments.

"Absorbed dose" means the energy imparted by ionizing radiation per unit mass of irradiated material. The units of absorbed dose are the gray (Gy) and the rad.

"Accelerator" means any machine capable of accelerating electrons, protons, deuterons, or other charged particles in a vacuum and of discharging the resultant particulate or other radiation into a medium at energies usually in excess of 1 MeV. For purposes of this definition, "particle accelerator" is an equivalent term.

"Accelerator produced material" means any material made radioactive by irradiating it in a particle accelerator.

"Act" means A.R.S. Title 30, Chapter 4.

"Activity" means the rate of disintegration, transformation, or decay of radioactive material. The units of activity are the becquerel (Bq) and the curie (Ci).

"Adult" means an individual 18 or more years of age.

"Agency," or "ARRA" means the Arizona Radiation Regulatory Agency.

"Agreement State" means any state with which the United States Nuclear Regulatory Commission has entered into an effective agreement under Section 274(b) of the Atomic Energy Act of 1954, as amended (73 Stat. 689). "Nonagreement State" means any other state.

"Airborne radioactive material" means any radioactive material dispersed in the air in the form of aerosols, dusts, fumes, mists, vapors, or gases.

"Airborne radioactivity area" means a room, enclosure, or area in which airborne radioactive materials, composed wholly or partly of licensed radioactive material, exist in concentrations:

In excess of the derived air concentrations (DACs) specified in Appendix B, Table I of Article 4 of these rules; or

That an individual present in the area without respiratory protective equipment could exceed, during the hours an individual is present in a week, an intake of 0.6 percent of the annual limit on intake (ALI) or 12 DAC-hours.

“ALARA” means as low as is reasonably achievable, making every reasonable effort to maintain exposures to radiation as far below the dose limits in these rules as is practical, consistent with the purpose for which the licensed or registered activity is undertaken, taking into account the state of technology, the economics of improvements in relation to state of technology, the economics of improvements in relation to benefits to the public health and safety, and other societal and socioeconomic considerations, and in relation to utilization of nuclear energy and licensed or registered sources of radiation in the public interest.

“Analytical x-ray equipment” means equipment used for x-ray diffraction or x-ray-induced fluorescence analysis.

“Analytical x-ray system” means a group of components utilizing x-rays to determine the elemental composition or to examine the microstructure of materials.

“Annual” means done or performed yearly. For purposes of Chapter 1 any required activity done or performed within plus or minus two weeks of the annual due date is considered done or performed in a timely manner.

“Authorized medical physicist” means an individual who meets the requirements in R12-1-711; or is identified as an authorized medical physicist or teletherapy physicist on:

A specific medical use license issued by the Agency, NRC, or another Agreement State;

A medical use permit issued by a NRC master material licensee;

A permit issued by an Agency, NRC, or another Agreement State broad scope medical use licensee; or

A permit issued by a NRC master material license broad scope medical use permittee.

“Authorized nuclear pharmacist” means a pharmacist who meets the requirements in R12-1-712; or is identified as an authorized nuclear pharmacist on:

A specific license issued by an Agency, NRC, or another Agreement State that authorizes medical use or the practice of nuclear pharmacy;

A permit issued by a NRC master material licensee that authorizes medical use or the practice of nuclear pharmacy;

A permit issued by an Agency, NRC, or another Agreement State broad scope medical use licensee that authorizes medical use or the practice of nuclear pharmacy; or

A permit issued by a NRC master material license broad scope medical use permittee that authorizes medical use or the practice of nuclear pharmacy; or

Is identified as an authorized nuclear pharmacist by a commercial nuclear pharmacy that has been authorized to identify authorized nuclear pharmacists; or

Is designated as an authorized nuclear pharmacist in accordance with R12-1-311(G).

“Authorized user” means a physician, dentist, or podiatrist who meets the requirements in R12-1-719, R12-1-723, R12-1-727, R12-1-728, or R12-1-744; or is identified as an authorized user on:

An Agency, NRC, or another Agreement State license that authorizes the medical use of radioactive material;

A permit issued by a NRC master material licensee that is authorized to permit the medical use of radioactive material;

A permit issued by an Agency, NRC, or another Agreement State specific licensee of broad scope that is authorized to permit the medical use of radioactive material; or

A permit issued by a NRC master material license broad scope permittee that is authorized to permit the medical use of radioactive material.

“Background radiation” means radiation from cosmic sources; not technologically enhanced naturally occurring radioactive material, including radon (except as a decay product of source or special nuclear material); and global fallout as it exists in the environment from the testing of nuclear explosive devices or from past nuclear accidents, such as Chernobyl, that contribute to background radiation and are not under the control of a licensee. “Background radiation” does not include sources of radiation regulated by the Agency.

“Becquerel” (Bq) means the International System (SI) unit for activity and is equal to 1 disintegration per second (dps or tps).

“Bioassay” means the determination of kinds, quantities, or concentrations, and in some cases, the locations of radioactive material in the human body, whether by direct measurement, in vivo counting, or by analysis and evaluation of materials excreted or removed from the human body. For purposes of these rules, “radiobioassay” is an equivalent term.

“Brachytherapy” means a method of radiation therapy in which an encapsulated source or group of sources is utilized to deliver beta or gamma radiation at a distance of up to a few centimeters, by surface, intracavitary or interstitial application.

“Byproduct material” means:

Any radioactive material, except special nuclear material, yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material;

The tailings or wastes produced by the extraction or concentration of uranium or thorium from ore processed primarily for its source material content, including discrete surface wastes resulting from uranium or thorium solution extraction processes. Underground ore bodies depleted by these solution extraction operations do not constitute “byproduct material” within this definition;

Any discrete source of radium-226 that is produced, extracted, or converted after extraction, for use for a commercial, medical, or research activity; or any material that, has been made radioactive by use of a particle accelerator; and is produced, extracted, or converted after extraction, for use for a commercial, medical, or research activity; and

Any discrete source of naturally occurring radioactive material, other than source material, that the NRC, in consultation with the Administrator of the Environmental Protection Agency, the Secretary of Energy, the Secretary of Homeland Security, and the head of any other appropriate federal agency, determines would pose a threat similar to the threat posed by a discrete source of radium-226 to the public health and safety or the common defense and security and; before, on, or after August 8, 2005, is extracted or converted after extraction for use in a commercial, medical, or research activity.

"Calendar quarter" means not less than 12 consecutive weeks nor more than 14 consecutive weeks. The first calendar quarter of each year shall begin in January and subsequent calendar quarters shall be so arranged such that no day is included in more than one calendar quarter and no day in any one year is omitted from inclusion within a calendar quarter. A licensee or registrant shall not change the method of determining calendar quarters for purposes of this Chapter except at the beginning of a calendar year.

"Calibration" means the determination of:

The response or reading of an instrument relative to a series of known radiation values over the range of the instrument, or

The strength of a source of radiation relative to a standard.

"Certifiable cabinet x-ray system" means an existing uncertified x-ray system that meets or has been modified to meet the certification requirements specified in 21 CFR 1020.40, revised April 1, 2013, incorporated by reference, and available under R12-1-101. This incorporated material contains no future editions or amendments.

"Certificate holder" means a person who has been issued a certificate of compliance or other package approval by the Agency or NRC.

"Certificate of Compliance" (CoC) means the certificate issued by the NRC under 10 CFR 71, Subpart D, (Revised January 1, 2010, incorporated by reference, and available under R12-1-101. This incorporated material contains no future editions or amendments.), which authorizes the design of a package for the transportation of radioactive material.

"Certified cabinet x-ray system" means an x-ray system that has been certified in accordance with 21 CFR 1010.2, as being manufactured and assembled on or after April 10, 1975, in accordance with the provisions of 21 CFR 1020.40, both sections revised April 1, 2013, incorporated by reference, and available under R12-1-101. This incorporated material contains no future editions or amendments.

"CFR" means Code of Federal Regulations.

"Chelating agent" means amine polycarboxylic acids, hydroxycarboxylic acids, gluconic acid, and polycarboxylic acids.

"Civil penalty" means the monetary fine which may be imposed on licensees by the Agency, pursuant to A.R.S. § 30-687, for violations of the Act, this Chapter, or license conditions.

"Collective dose" means the sum of the individual doses received in a given period of time by a specified population from exposure to a specified source of radiation.

"Committed dose equivalent" (HT,50) means the dose equivalent to organs or tissues of reference (T) that will be received from an intake of radioactive material by an individual during the 50-year period following the intake.

"Committed effective dose equivalent" (HE,50) is the sum of the products of the weighting factors applicable to each of the body organs or tissues that are irradiated and the committed dose equivalent to each of these organs or tissues (HE,50 = S wT,HT,50).

"Consortium" means an association of medical use licensees and a PET radionuclide production facility in the same geographical area that jointly own or share in the operation and maintenance cost of the PET radionuclide production facility that produces PET radionuclides for use in producing radioactive drugs within the consortium for noncommercial distributions among its associated members for medical use. The PET radionuclide production facility within the consortium must be located at an educational institution or a federal facility or a medical facility.

"Curie" means a unit of quantity of radioactivity. One curie (Ci) is that quantity of radioactive material which decays at the rate of 3.7E + 1010 transformations per second (tps).

"Current license or registration" means a license or registration issued by the Agency and for which the licensee has paid the license or registration fee for the current year according to R12-1-1304.

“Deep-dose equivalent” (Hd), which applies to external whole body exposure, is the dose equivalent at a tissue depth of 1 centimeter (1000 mg/cm2).

“Depleted uranium” means the source material uranium in which the isotope uranium-235 is less than 0.711 weight percent of the total uranium present. Depleted uranium does not include special nuclear material.

“Discrete source” means a radionuclide that has been processed so that its concentration within a material has been purposely increased for use for commercial, medical, or research activities.

“Dose” is a generic term that means absorbed dose, dose equivalent, effective dose equivalent, committed dose equivalent, committed effective dose equivalent, total organ dose equivalent, or total effective dose equivalent. For purposes of these rules, “radiation dose” is an equivalent term.

“Dose equivalent” (HT) means the product of the absorbed dose in tissue, quality factor, and all other necessary modifying factors at the location of interest. The units of dose equivalent are the sievert (Sv) and rem.

“Dose limits” means the permissible upper bound of radiation doses established in accordance with these rules. For purposes of these rules, “limits” is an equivalent term.

“Dosimeter” (See “Individual monitoring device”)

“Effective dose equivalent” (HE) means the sum of the products of the dose equivalent to each organ or tissue (HT) and the weighting factor (wT) applicable to each of the body organs or tissues that are irradiated (HE = S wTHT).

“Effluent release” means any disposal or release of radioactive material into the ambient atmosphere, soil, or any surface or subsurface body of water.

“Embryo/fetus” means the developing human organism from conception until the time of birth.

“Enclosed beam x-ray system” means an analytical x-ray system constructed in such a way that access to the interior of the enclosure housing the x-ray source during operation is precluded except through bypassing of interlocks or other safety devices to perform maintenance or servicing.

“Enclosed radiography” means industrial radiography conducted by using cabinet radiography or shielded room radiography.

“Cabinet radiography” means industrial radiography conducted by using an x-ray machine in an enclosure not designed for human admittance and which is so shielded that every location on the exterior meets the conditions for an “unrestricted area.”

“Shielded room radiography” means industrial radiography conducted using an x-ray machine in an enclosure designed for human admittance and which is so shielded that every location of the exterior meets the conditions for an “unrestricted area.”

“Entrance or access point” means any opening through which an individual or extremity of an individual could gain access to radiation areas or to licensed radioactive materials. This includes entry or exit portals of sufficient size to permit human entry, irrespective of their intended use.

“Exhibit” for purposes of these rules, is equivalent in meaning to the word “Schedule” as found in previously issued rules, current license conditions, and regulation guide.

“Explosive material” means any chemical compound, mixture, or device which produces a substantial instantaneous release of gas and heat spontaneously or by contact with sparks or flame.

“Exposure” means:

Being subjected to ionizing radiation or radioactive materials.

The quotient of dQ by dm where “dQ” is the absolute value of the total charge of the ions of one sign produced in air when all the electrons (negatrons and positrons) liberated by photons in a volume element of air having mass “dm” are completely stopped in air. The special unit of exposure is the roentgen (R).

“Exposure rate” means the exposure per unit of time.

“External dose” means that portion of the dose equivalent received from any source of radiation outside the body.

“Extremity” means hand, elbow, arm below the elbow, foot, knee, and leg below the knee.

“Fail-safe characteristics” means a design feature which causes beam port shutters to close, or otherwise prevents emergence of the primary beam, upon the failure of a safety or warning device.

“FDA” means the United States Food and Drug Administration

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“Field radiography” means industrial radiography, utilizing a portable or mobile x-ray system, which is not conducted in a shielded enclosure.

“Field station” means a facility where radioactive sources may be stored or used and from which equipment is dispatched to temporary job sites.

“Former U.S. Atomic Energy Commission (AEC) or U.S. Nuclear Regulatory Commission (NRC) licensed facilities” means nuclear reactors, nuclear fuel reprocessing plants, uranium enrichment plants, or critical mass experimental facilities where AEC or NRC licenses have been terminated.

“Generally applicable environmental radiation standards” means standards issued by the U.S. Environmental Protection Agency (EPA), 40 CFR 190 and 191, revised July 1, 2013, incorporated by reference, and available under R12-1-101, under the authority of the Atomic Energy Act of 1954, as amended, that impose limits on radiation exposures or levels, or concentrations or quantities of radioactive material, in the general environment outside the boundaries of locations under the control of persons possessing or using radioactive material. This incorporated material contains no future editions or amendments.

“Gray” (Gy) means the International System (SI) unit of absorbed dose and is equal to 1 joule per kilogram. One gray equals 100 rad.

“Hazardous waste” means those wastes designated as hazardous in A.R.S. § 49-921(5).

“Healing arts” means the practice of medicine, dentistry, osteopathy, podiatry, chiropractic, and veterinary medicine.

“Health care institution” means every place, institution, or building which provides facilities for medical services or other health-related services, not including private clinics or offices which do not provide overnight patient care.

“High radiation area” means an area, accessible to individuals, in which radiation levels from radiation sources external to the body could result in an individual receiving a dose equivalent in excess of 1 mSv (0.1 rem) in one hour at 30 centimeters from the radiation source or 30 centimeters from any surface that the radiation penetrates.

“Human use” means the internal or external administration of radiation or radioactive materials to human beings.

“Impound” means to abate a radiological hazard. Actions which may be taken by the Agency in impounding a source of radiation include seizing the source of radiation, controlling access to an area, and preventing a radiation machine from being utilized.

“Individual” means any human being.

“Individual monitoring” means the assessment of:

Dose equivalent

By the use of individual monitoring devices, or

By the use of survey data, or

Committed effective dose equivalent

By bioassay; or

By determination of the time-weighted air concentrations to which an individual has been exposed, that is, DAC-hours. (See the definition of DAC-hours in Article 4).

“Individual monitoring device” means a device designed to be worn by a single individual for the assessment of dose equivalent. For purposes of this Chapter, “dosimeter” and “personnel dosimeter,” are equivalent terms. Examples of individual monitoring devices are film badges, thermoluminescence dosimeters (TLDs), pocket ionization chambers, optical stimulation devices, and personal (“lapel”) air sampling devices.

“Individual monitoring equipment” means one or more individual monitoring devices. For purposes of this Chapter, “personnel monitoring equipment” is an equivalent term.

“Industrial radiography” means the examination of the macroscopic structure of materials by non-destructive methods utilizing sources of ionizing radiation.

“Injection tool” means a device used for controlled subsurface injection of radioactive tracer material.

“Inspection” means an examination or observation by a representative of the Agency, including but not limited to tests, surveys, and monitoring to determine compliance with rules, orders, requirements and conditions of the License or certificate of registration.

“Interlock” means a device arranged or connected such that the occurrence of an event or condition is required before a second event or condition can occur or continue to occur.

“Internal dose” means that portion of the dose equivalent received from radioactive material taken into the body.

“Irradiate” means to expose to radiation.

“Laser” (light amplification by the stimulated emission of radiation) means any device which can produce or amplify electromagnetic radiation with wave lengths in the range of 180 nanometers to 1 millimeter primarily by the process of controlled stimulated emission.

“Lens dose equivalent” (LDE) means the external exposure of the lens of the eye and is taken as the dose equivalent at a tissue depth of 0.3 centimeters (300 mg/cm2).

“License” means the grant of authority, issued pursuant to Articles 3 and 14 of this Chapter and A.R.S. §§ 30-671, 30-672, and 30-721 et seq., to acquire, possess, transfer, and use sources of radiation. The types of licenses issued by the Agency are described in R12-1-1302.

“Licensed material” means radioactive material received, possessed, used, transferred, or disposed of under a general or specific license issued by the Agency.

“Licensed practitioner” means a person licensed or otherwise authorized by law to practice medicine, dentistry, osteopathy, chiropractic, podiatry, or naturopathy in this state.

“Licensee” means any person who is licensed by the Agency under this Chapter to acquire, possess, transfer, or use sources of radiation.

“Licensing State” means any state having regulations equivalent to this Chapter relating to, and an effective program for the regulation of, naturally occurring and accelerator-produced radioactive material (NARM).

“Limits” (See “Dose limits”)

“Local components” means those parts of an analytical x-ray system that are struck by x-rays, including radiation source housings, port and shutter assemblies, collimator, sample holders, cameras, goniometer, detectors and shielding but not including power supplies, transformers, amplifiers, readout devices, and control panels.

“Logging supervisor” means the individual who provides personal supervision of the utilization of sources of radiation at the well site.

“Logging tool” means a device used subsurface to perform well logging.

“Lost or missing licensed or registered source of radiation” means licensed or registered source of radiation the location of which is unknown. Included are licensed radioactive material or a registered radiation source that has been shipped but has not reached its planned destination and whose location cannot be readily traced or ascertained in the transportation system.

“Low-level waste” means waste material which contains radioactive nuclides in concentrations or quantities which exceed applicable standards for unrestricted release but does not include:

High-level waste, such as irradiated reactor fuel, liquid waste from reprocessing irradiated reactor fuel, or solids into which any such liquid waste has been converted;

Waste material containing transuranic elements with contamination levels greater than 10 nanocuries per gram (370 kilobecquerels per kilogram) of waste material;

The tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content.

“Major processor” means a user processing, handling, or manufacturing radioactive material exceeding Type A quantities as unsealed sources or material or exceeding four times Type B quantities as sealed sources but does not include nuclear medicine programs, universities, industrial radiographers, or small industrial programs. Type A and B quantities are defined in 10 CFR 71.4, revised January 1, 2013, incorporated by reference, and available under R12-1-101. This incorporated material contains no future editions or amendments.

“Medical dose” means a radiation dose intentionally delivered to an individual for medical examination, diagnosis, or treatment.

“Member of the public” means any individual except when that individual is receiving an occupational dose.

“MeV” means Mega Electron Volt which equals 1 million volts (106 eV).

“Mineral logging” means any well logging performed in a borehole drilled for the purpose of exploration for minerals other than oil or gas.

“Minor” means an individual less than 18 years of age.

“Monitoring” means the measurement of radiation, radio active material concentrations, surface area activities, or quantities of radioactive material, and the use of the results of these measurements to evaluate potential exposures and doses. For purposes of these rules, “radiation monitoring” and “radiation protection monitoring” are equivalent terms.

“Multiplier” means a letter representing a number. The use of a multiplier is based on the code given below:

Prefix	*Multiplier Symbol*	*Value*
eka	E	10^{18}
peta	P	10^{15}
tera	T	10^{12}
giga	G	10^{9}
mega	M	10^{6}
kilo	k	10^{3}
milli	m	10^{-3}
micro	u	10^{-6}
nano	n	10^{-9}
pico	p	10^{-12}
femto	f	10^{-15}
atto	a	10^{-18}

“NARM” means any naturally occurring or accelerator-produced radioactive material. It does not include byproduct, source, or special nuclear material. This term should not be confused with “NORM” which is defined as naturally occurring radioactive material.

“Normal operating procedures” means the entire set of instructions necessary to accomplish the intended use of the source of radiation. These procedures shall include, but are not limited to, sample insertion and manipulation, equipment alignment, routine maintenance by the licensee, and data recording procedures which are related to radiation safety.

“Natural radioactivity” means the radioactivity of naturally occurring radioactive substances.

“NRC” means Nuclear Regulatory Commission, the U.S. Nuclear Regulatory Commission, or its duly authorized representatives.

“Nuclear waste” means any highway route controlled quantity (defined in 49 CFR 173.403, revised October 1, 2012, incorporated by reference, and available under R12-1-101; this incorporated material contains no future editions or amendments) of source, byproduct, or special nuclear material required to be in NRC-approved packaging while transported to, through, or across state boundaries to a disposal site, or to a collection point for transport to a disposal site. Additional requirements associated with transportation of radioactive material can be found in Article 15.

“Occupational dose” means the dose received by an individual in the course of employment in which the individual’s assigned duties involve exposure to sources of radiation, whether in the possession of a licensee, registrant, or other person. Occupational dose does not include a dose received from background radiation, medical administration of radiation to the individual, exposure to an individual who has been administered radioactive material and released in accordance with R12-1-717, voluntary participation in a medical research program, or as a member of the public.

“Open beam system” means an analytical x-ray system in which an individual could place some body part in the primary beam path during normal operation.

“Package” means the packaging together with its radioactive contents as presented for transport.

“Particle accelerator” (See “Accelerator”)

“Permanent radiographic installation” means a fixed, shielded installation or structure designed or intended for industrial radiography and in which industrial radiography is regularly performed.

“Personnel dosimeter” (See “Individual monitoring device”)

“Personnel monitoring equipment” (See “Individual monitoring device”)

“Personal supervision” means supervision in which the supervising individual is physically present at the site where sources of radiation and associated equipment are being used, watching the performance of the supervised individual and in such proximity that immediate assistance can be given if required.

“PET” (See Positron Emission Tomography (PET))

“Pharmacist” means an individual licensed by this state to compound and dispense drugs, prescriptions, and poisons.

“Physician” means an individual licensed pursuant to A.R.S. Title 32, Chapters 13 or 17.

“Positron Emission Tomography (PET)” means an imaging technique using radionuclides to produce high resolution images of the body’s biological functions.

“Positron Emission Tomography radionuclide production facility” means a facility operating a cyclotron or accelerator for the purpose of producing PET radionuclides.

“Preceptor” means an individual who provides, directs, or verifies training and experience required for an individual to become an authorized user, an authorized medical physicist, an authorized nuclear pharmacist, or a Radiation Safety Officer.

“Primary beam” means radiation which passes through an aperture of the source housing by a direct path from the x-ray tube or a radioactive source located in the radiation source housing.

“Public dose” means the dose received by a member of the public from radiation from radioactive material released by a licensee or registrant, or exposure to a source of radiation used in a licensed or registered operation. It does not include an occupational dose or a dose received from background radiation, medical administration of radiation to the individual, exposure to an individual who has been administered radioactive material and released in accordance with R12-1-717, or voluntary participation in a medical research program.

“Pyrophoric liquid” means any liquid that ignites spontaneously in dry or moist air at or below 130× F (54.4× C).

“Pyrophoric solid” means any solid material, other than one classed as an explosive, which under normal conditions is liable to cause fires through friction, retained heat from manufacturing or processing, or which can be ignited readily and, when ignited, burns so vigorously and persistently that it creates a serious transportation, handling, or disposal hazard. Included are spontaneously combustible and water-reactive materials.

“Qualified expert” means an individual certified in the appropriate field by the American Board of Radiology or the American Board of Health Physics, or having equivalent qualifications that provide the knowledge and training to measure ionizing radiation, to evaluate safety techniques, and to advise regarding radiation protection needs; or an individual certified in Therapeutic Radiological Physics or X-ray and Radium Physics by the American Board of Radiology, or having equivalent qualifications that provide training and experience in the clinical applications of radiation physics to radiation therapy, to calibrate radiation therapy equipment. The detailed requirements for a particular qualified expert may be provided in the respective Articles of this Chapter. For clarification purposes, a qualified expert is not always an authorized medical physicist; however, an authorized medical physicist is included within the definition of “qualified expert.”

“Quality Factor” (Q) means the modifying factor, listed in Tables I and II of this Article, that is used to derive dose equivalent from absorbed dose.

“Quarter” (See “Calendar quarter”)

“Rad” means the special unit of absorbed dose. One rad equals 100 ergs per gram, or 0.01 gray.

“Radiation” means alpha particles, beta particles, gamma rays, x-rays, neutrons, high-speed electrons, high-speed protons, and other particles capable of producing ions. For purposes of these rules, this term is synonymous with ionizing radiation. Equivalent terminology for non-ionizing radiation is defined in Article 14.

“Radiation area” means any area accessible to individuals, in which radiation levels could result in an individual receiving a dose equivalent in excess of 0.05 mSv (0.005 rem) in one hour at 30 centimeters from the source of radiation or from any surface that the radiation penetrates.

“Radiation dose” (See “Dose”)

“Radiation machine” means any device capable of producing radiation except those devices with radioactive material as the only source of radiation.

“Radiation Safety Officer” (RSO) means the individual and who for license conditions:

> Meets the requirements in 10 CFR 35.50(a) or (c)(1) and 10 CFR 35.59, (revised January 1, 2010, incorporated by reference, and available under R12-1-101. This incorporated material contains no future editions or amendments.); or is identified as a Radiation Safety Officer on a specific medical use license issued by the NRC or an Agreement State; or a medical use permit issued by a NRC master material licensee;

Or, who, for registration conditions, is designated by the registrant as the individual who has the knowledge, authority, and responsibility to apply appropriate radiation protection principles to ensure radiation safety and compliance with the Act, this Chapter and any registration conditions.

"Radiation Safety Officer" (RSO) means the individual and who for license conditions:

Meets the requirements of R12-1-407, and for a medical license meets the training requirements of R12-1-710 or is identified as a Radiation Safety Officer on a specific medical use license issued by the Agency, NRC, or another Agreement State; or a medical use permit issued by a NRC master material licensee;
Or, who meets the requirements in R12-1-512 on a specific industrial license issued by the Agency, NRC, or another Agreement State; or an industrial use permit issued by a NRC master material licensee

;

Or, who, for registration conditions, is designated by the registrant as the individual who has the knowledge, authority, and responsibility to apply appropriate radiation protection principles to ensure radiation safety and compliance with the Act, this Chapter and any registration conditions.

"Radioactive marker" means radioactive material placed subsurface or on a structure intended for subsurface use for the purpose of depth determination or direction orientation.

"Radioactive material" means any solid, liquid, or gas which emits radiation spontaneously.

"Radioactivity" means emission of electromagnetic energy or particles or both during the transformation of unstable atomic nuclei.

"Radiographer" means any individual who performs or personally supervises industrial radiographic operations and who is responsible to the licensee or registrant for assuring compliance with the requirements of this Chapter and all conditions of the license or certificate of registration.

"Radiographer's assistant" means any individual who, under the personal supervision of a radiographer, uses sources of radiation, radiographic exposure devices, related handling tools, or survey instruments in industrial radiography.

"Registrant" means any person who is registered with the Agency and is legally obligated to register with the Agency pursuant to these rules and the Act.

"Registration" is the process by which a person becomes a registrant pursuant to Article 2 of this Chapter. With the exception of registration of persons who install or service radiation machines, the types of registrations issued by the Agency are described in R12-1-1302.

"Regulations of the U.S. Department of Transportation" means the federal regulations in 49 CFR 107, 171 through 180, revised October 1, 2013, incorporated by reference, and available under R12-1-101. This incorporated material contains no future editions or amendments.

"Rem" means the special unit of dose equivalent (see "Dose equivalent"). The dose equivalent in rem is equal to the absorbed dose in rad multiplied by the quality factor (1 rem - 0.01 sievert).

"Research and Development" means exploration, experimentation, or the extension of investigative findings and theories of a scientific or technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials, and processes. Research and Development does not include the internal or external administration of radiation or radioactive material to human beings.

"Restricted area" means any area where the licensee or registrant controls access for purposes of protecting individuals from exposure to radiation and radioactive material. A restricted area does not include any areas used for residential quarters, although a room or separate rooms in a residential building may be set apart as a restricted area.

"Roentgen" (R) means the special unit of exposure and is equal to the quantity of x or gamma radiation which causes ionization in air equal to 258 microcoulomb per kilogram (see "Exposure").

"Safety system" means any device, program, or administrative control designed to ensure radiation safety.

"Sealed source" means radioactive material that is permanently bonded or fixed in a capsule or matrix designed to prevent release and dispersal of the radioactive material under the most severe conditions which are likely to be encountered in normal use and handling.

"Sealed Source and Device Registry" means the national registry that contains all the registration certificates, generated by both the NRC and the Agreement States, that summarize the radiation safety information for the sealed sources and devices and describe the licensing and use conditions approved for each source or device.

"Shallow dose equivalent" (HS), which applies to the external exposure of the skin of the whole body or the skin of an extremity, is taken as the dose equivalent at a tissue depth of 0.007 centimeter (7 mg/cm2).

“Shielded position” means the location within a radiographic exposure device or storage container which, by manufacturer’s design, is the proper location for storage of the sealed source.

“Sievert” means the SI unit of dose equivalent (see “Dose equivalent”). The dose equivalent in sievert is equal to the absorbed dose in gray multiplied by the quality factor (1 Sv = 100 rem).

“Site boundary” means that line beyond which the land or property is not owned, leased, or otherwise controlled by the licensee or registrant.

“Source changer” means a device designed and used for replacement of sealed sources in radiographic exposure devices, including those also used for transporting and storage of sealed sources.

“Source holder” means a housing or assembly into which a radioactive source is placed for the purpose of facilitating the handling and use of the source in well-logging operations.

“Source material” means:

Uranium or thorium, or any combination of uranium or thorium, in any physical or chemical form; or

Ores that contain by weight 1/20 of 1 percent (0.05 percent) or more of uranium, thorium, or any combination of uranium and thorium.

Source material does not include special nuclear material.

“Source material milling” means any activity that results in the production of byproduct material as defined by the second subsection under the definition of “Byproduct material.”

“Source of radiation” or “source” means any radioactive material or any device or equipment emitting, or capable of producing, radiation.

“Special form radioactive material” means radioactive material that satisfies all of the following conditions:

It is either a single solid piece or is contained in a sealed capsule that can be opened only by destroying the capsule;

The piece or capsule has at least one dimension not less than 5 millimeters (0.2 inch); and

It satisfies the test requirements specified in 10 CFR 71.75, revised January 1, 2013, incorporated by reference, available under R12-1-101. This incorporated material contains no future editions or amendments. A special form encapsulation designed in accordance with the U.S. Nuclear Regulatory Commission requirements in effect on June 30, 1983, and constructed prior to July 1, 1985, may continue to be used. A special form encapsulation constructed after June 30, 1985, shall meet requirements of this definition applicable at the time of its construction.

“Special nuclear material in quantities not sufficient to form a critical mass” means Uranium enriched in the isotope U-235 in quantities not exceeding 350 grams of contained U-235; Uranium-233 in quantities not exceeding 200 grams; Plutonium in quantities not exceeding 200 grams; or any combination of them in accordance with the following formula: for each kind of special nuclear material, determine the ratio between the quantity of that special nuclear material and the quantity specified above for the same kind of special nuclear material. The sum of such ratios for all of the kinds of special nuclear material in combination shall not exceed one. For example, the following quantities in combination would not exceed the limitation and

$$\frac{XgmsU235}{350} + \frac{YgmsU233}{200} + \frac{ZgmsPu}{200} \leq I$$

are within the formula:

“Storage area” means any location, facility, or vehicle which is used to store, transport, or secure a radiographic exposure device, storage container, sealed source, or other source of radiation when it is not in use.

“Storage container” means a device in which sealed sources are transported or stored.

“Subsurface tracer study” means the release of a substance tagged with radioactive material for the purpose of tracing the movement or position of the tagged substance in the well-bore or adjacent formation.

“Survey” means an evaluation of the production, use, release, disposal, or presence of sources of radiation or any combination thereof under a specific set of conditions to determine actual or potential radiation hazards. Such evaluations include, but are not limited to, tests, physical examination and measurements of levels of radiation or concentration of radioactive material present.

“TEDE” (See “Total Effective Dose Equivalent”)

“Teletherapy” means therapeutic irradiation in which the source of radiation is at a distance from the body.

“Temporary job site” means any location where sources of radiation are used other than the specified locations listed on a license document. Storage of sources of radiation at a temporary jobsite shall not exceed six months unless the Agency has granted an amendment authorizing storage at that jobsite.

“Test” means the process of verifying compliance with an applicable rule, order, or license condition.

“These rules” means all Articles of 12 A.A.C. 1.

“Total Effective Dose Equivalent” (TEDE) means the sum of the effective dose equivalent (for external exposures) and the committed effective dose equivalent (for internal exposures).

“Total Organ Dose Equivalent” (TODE) means the sum of the deep-dose equivalent and the committed dose equivalent to the organ receiving the highest dose. Determination of TODE is described in R12-1-411.

“Unrefined and unprocessed ore” means ore in its natural form prior to any processing, such as grinding, roasting, beneficiating, or refining.

“Unrestricted area” means any area access to which is not controlled by the licensee for purposes of protection of individuals from exposure to radiation and radioactive material. Any area used for residential quarters is an unrestricted area.

“U.S. Department of Energy” means the Department of Energy established by P.L. 95-91, August 4, 1977, 91 Stat. 565, 42 U.S.C. 7101 et seq., to the extent that the Department exercises functions formerly vested in the U.S. Atomic Energy Commission, its Chairman, members, officers, and components; and transferred to the U.S. Energy Research and Development Administration and to the administrator of that agency under sections 104(b), (c), and (d) of the Energy Reorganization Act of 1974 (P.L. 93-438, October 11, 1974, 88 Stat. 1233 at 1237, 42 U.S.C. 5814, effective January 19, 1975) and retransferred to the Secretary of Energy under Section 301(a) of the Department of Energy Organization Act (P.L. 95-91, August 4, 1977, 91 Stat. 565 at 577-578, 42 U.S.C. 7151, effective October 1, 1977).

“Very high radiation area” means an area, accessible to individuals, in which radiation levels from radiation sources external to the body could result in an individual receiving an absorbed dose that exceeds 5 grays (500 rads) in one hour at one meter from a radiation source or one meter from any surface that the radiation penetrates.

“Waste” (See “Low-level waste”)

“Waste handling licensees” means persons licensed to receive and store radioactive wastes prior to disposal and persons licensed to dispose of radioactive waste.

“Week” means seven consecutive days starting on Sunday.

“Well-bore” means a drilled hole in which wireline service operations and subsurface tracer studies are performed.

“Well-logging” means the lowering and raising of measuring devices or tools which may contain sources of radiation into well-bores or cavities for the purpose of obtaining information about the well and adjacent formations.

“Whole body” means, for purposes of external exposure, head, trunk including male gonads, arms above the elbow, or legs above the knee.

“Wireline” means an armored cable containing one or more electrical conductors which is used to lower and raise logging tools in the well-bore.

“Wireline service operation” means any evaluation or mechanical service which is performed in the well-bore using devices on a wireline.

“Worker” means any individual engaged in work under a license issued by the Agency and controlled by employment or contract with a licensee.

“WL” means working level, any combination of short-lived radon daughters in 1 liter of air that will result in the ultimate emission of 1.3E + 5 MeV of potential alpha particle energy. The short-lived radon daughters are – for radon-222: polonium-218, lead-214, bismuth-214, and polonium-214; and for radon-220: polonium-216, lead-212, bismuth-212, and polonium-212.

“WLM” means working level month, an exposure to one working level for 170 hours (2,000 working hours per year divided by 12 months per year is approximately equal to 170 hours per month).

“Workload” means the degree of use of an x-ray or gamma-ray source per unit time.

“Year” means the period of time beginning in January used to determine compliance with the provisions of these rules. The licensee or registrant may change the starting date of the year used to determine compliance by the licensee or registrant provided that the change is made at the beginning of the year and that no day is omitted or duplicated in consecutive years.

Historical Note

Former Rule Section A.2. Former Section R12-1-102 repealed, new Section R12-1-102 adopted effective June 30, 1977 (Supp. 77-3). Amended effective November 19, 1982 (Supp. 82-6). Amended effective February 25, 1985 (Supp. 85-1). Amended by adding a new paragraph (31), subparagraph (w) and renumbering the former paragraph (31), subparagraphs (w) through (z) accordingly effective November 28, 1986 (Supp. 86-6). Amended by adding a new paragraph (34) and renumbering the former paragraphs (34) through (68) accordingly effective June 26, 1987 (Supp.

87-2). Amended effective April 2, 1990 (Supp. 90-2). Amended effective November 5, 1993 (Supp. 93-4). Amended effective February 18, 1994 (Supp. 94-1). Amended effective August 10, 1994 (Supp. 94-3). Amended effective January 2, 1996 (Supp. 96-1). Amended effective June 13, 1997 (Supp. 97-2). Amended by final rulemaking at 5 A.A.R. 1817, effective May 12, 1999 (Supp. 99-2). Amended by final rulemaking at 7 A.A.R. 2584, effective June 8, 2001 (Supp. 01-2). Amended by final rulemaking at 9 A.A.R. 1126, effective May 9, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 2122, effective July 3, 2004 (Supp. 04-2). Amended by final rulemaking at 10 A.A.R. 4458, effective December 4, 2004 (Supp. 04-4). Amended by final rulemaking at 12 A.A.R. 75, effective February 7, 2006 (Supp. 05-4). Amended by final rulemaking at 13 A.A.R. 1217, effective May 5, 2007 (Supp. 07-1). Amended by final rulemaking at 15 A.A.R. 1023, effective August 1, 2009 (Supp. 09-2). Amended by final rulemaking at 18 A.A.R. 1895, effective September 10, 2012 (Supp. 12-3). Amended by final rulemaking at 20 A.A.R. 324, effective March 8, 2014 (Supp. 14-1).

R12-1-102. Definitions No change
"A1" means the maximum activity of special form radioactive material permitted in a type A package. These values are either listed in 10 CFR 71, Appendix A, Table A-1, or may be derived in accordance with the procedures prescribed in 10 CFR 71, Appendix A, revised January 1, 2015, incorporated by reference, and available under R12-1-101. This incorporated material contains no future editions or amendments.
"A2" means the maximum activity of radioactive material, other than special form radioactive material, low specific activity (LSA) material, and surface contaminated object (SCO) material, permitted in a Type A package. These values are either listed in 10 CFR 71, Appendix A, Table A-1, or may be derived in accordance with the procedure prescribed in 10 CFR 71, Appendix A, revised January 1, 2015, incorporated by reference, and available under R12-1-101. This incorporated material contains no future editions or amendments.
"Absorbed dose" No change
"Accelerator" No change
"Accelerator produced material" No change
"Act" No change
"Activity" No change
"Adult" No change
"Agency," or "ARRA" No change
"Agreement State" No change
"Airborne radioactive material" No change
"Airborne radioactivity area" No change
"ALARA" No change
"Analytical x-ray equipment" No change
"Analytical x-ray system" No change
"Annual" No change
"Authorized medical physicist" No change
"Authorized nuclear pharmacist" No change
"Authorized user" No change
"Background radiation" No change
"Becquerel" (Bq) No change
"Bioassay" No change
"Brachytherapy" No change
"Byproduct material" No change
"Calendar quarter" No change
"Calibration" No change
"Carrier" means a person engaged in the transportation of passengers or property by land or water as a common, contract, or private carrier, or by civil aircraft.
"Certifiable cabinet x-ray system" No change
"Certificate holder" No change
"Certificate of Compliance" No change
"CFR" No change
"Chelating agent" No change
"Civil penalty" No change

“Collective dose” No change
“Committed dose equivalent” No change
“Committed effective dose equivalent” No change
“Consortium” No change
“Curie” No change
“Current license or registration” No change
“Deep-dose equivalent” No change
“Depleted uranium” No change
“Discrete source” No change
“Dose” No change
“Dose equivalent” No change
“Dose limits” No change
“Dosimeter” No change
“Effective dose equivalent” No change
“Effluent release” No change
“Embryo/fetus” No change
“Enclosed beam x-ray system” No change
“Enclosed radiography” No change
“Cabinet radiography” No change
“Shielded room radiography” No change
“Entrance or access point” No change
“Exhibit” No change
“Explosive material” No change
“Exposure” No change
“Exposure rate” No change
“External dose” No change
“Extremity” means the shoulder girdle to the phalanges and the lower two-thirds of the femur to the phalanges.
“Fail-safe characteristics” No change
“FDA” No change
“Field radiography” No change
“Field station” No change
“Former U.S. Atomic Energy Commission (AEC) or U.S. Nuclear Regulatory Commission (NRC) licensed facilities” No change
“Generally applicable environmental radiation standards” No change
“Gray” No change
“Hazardous waste” No change
“Healing arts” No change
“Health care institution” No change
“High radiation area” No change
“Human use” No change
“Impound” No change
“Indian tribe” means an Indian or Alaska native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a.
“Individual” No change
“Individual monitoring” No change
“Individual monitoring device” No change
“Individual monitoring equipment” No change
“Industrial radiography” No change
“Injection tool” No change
“Inspection” No change
“Interlock” No change
“Internal dose” No change
“Irradiate” No change
“Laser” No change
“Lens dose equivalent” No change

“License” No change
“Licensed material” No change
“Licensed practitioner” No change
“Licensee” No change
“Licensing State” No change
“Limits” No change
“Local components” No change
“Logging supervisor” No change
“Logging tool” No change
“Lost or missing licensed or registered source of radiation” No change
“Low-level waste” No change
“Major processor” No change
“Medical dose” No change
“Member of the public” No change
“Mineral logging” No change
“Minor” No change
“Monitoring” No change
“Multiplier” No change
“NARM” No change
“Normal operating procedures” No change
“Natural radioactivity” No change
“NRC” No change
“Nuclear waste” No change
“Occupational dose” No change
“Open beam system” No change
“Package” No change
“Particle accelerator” No change
“Permanent radiographic installation” No change
“Personnel dosimeter” No change
“Personnel monitoring equipment” No change
“Personal supervision” No change
“PET” No change
“Pharmacist” No change
“Positron Emission Tomography (PET)” No change
“Positron Emission Tomography radionuclide production facility” No change
“Preceptor” No change
“Primary beam” No change
“Public dose” No change
“Pyrophoric liquid” No change
“Pyrophoric solid” No change
“Qualified expert” No change
“Quality Factor” No change
“Quarter” No change
“Rad” No change
“Radiation” No change
“Radiation area” No change
“Radiation dose” No change
“Radiation machine” No change
“Radiation Safety Officer” No change
“Radioactive marker” No change
“Radioactive material” No change
“Radioactivity” No change
“Radiographer” No change
“Radiographer’s assistant” No change
“Registrant” No change

“Registration” is the process by which a person becomes a registrant pursuant to Article 2 or 14 of this Chapter. With the exception of registration of persons who install or service radiation machines, the types of registrations issued by the Agency are described in R12-1-1302.
“Regulations of the U.S. Department of Transportation” No change
“Rem” No change
“Research and Development” No change
“Restricted area” No change
“Roentgen” No change
“Safety system” No change
“Sealed source” No change
“Sealed Source and Device Registry” No change
“Shallow dose equivalent” No change
“Shielded position” No change
“Sievert” No change
“Site boundary” No change
“Source changer” No change
“Source holder” No change
“Source material” No change
“Source material milling” No change
“Source of radiation” or “source” No change
“Special form radioactive material” No change
“Special nuclear material in quantities not sufficient to form a critical mass” No change
“Storage area” No change
“Storage container” No change
“Subsurface tracer study” No change
“Survey” No change
“TEDE” No change
“Teletherapy” No change
“Temporary job site” No change
“Test” No change
“These rules” No change
“Total Effective Dose Equivalent” (TEDE) No change
“Total Organ Dose Equivalent” (TODE) No change
“Tribal official” means the highest ranking individual that represents Tribal leadership, such as the Chief, President, or Tribal Council leadership.
“Unrefined and unprocessed ore” No change
“Unrestricted area” No change
“U.S. Department of Energy” No change
“Very high radiation area” No change
“Waste” No change
“Waste handling licensees” No change
“Week” No change
“Well-bore” No change
“Well-logging” No change
“Whole body” No change
“Wireline” No change
“Wireline service operation” No change
“Worker” means any individual engaged in work under a license or registration issued by the Agency and controlled by employment or contract with a licensee or registrant.
“WL” No change
“WLM” No change
“Workload” No change

R12-1-103. Exemptions

A. Common and contract carriers, freight forwarders, and warehousemen who are subject to 49 CFR 107.109, 107.111, 107.113, 171.2, 171.3, 172.200, 173.1, 173.3, 173.4, 173.401, 175.3, 175.10, 176.3, 176.5, 176.11, 176.24, 176.27, and 177.801, revised October 1, 2007, of the U.S. Department of Transportation, or 39 CFR 111.1 of the U.S. Postal Service, revised July 1, 2007, incorporated by reference, and available under R12-1-101, and who if need be, store radioactive material, for periods of less than 72 hours, in the regular course of their carriage for another, are exempt from this Chapter. The incorporated materials above contain no future editions or amendments.

B. Any U.S. Department of Energy contractor or subcontractor and any U.S. Nuclear Regulatory Commission contractor or subcontractor of the following categories operating within this state are exempt from this Chapter to the extent that such contractor or subcontractor under the contract receives, possesses, uses, transfers, or acquires sources of radiation:

1. Prime contractors performing work for the Department of Energy at U.S. Government-owned or controlled sites, including the transportation of sources of radiation to or from such sites and the performance of contract services during temporary interruptions of such transportation;
2. Prime contractors of the Department of Energy performing research or development, manufacture, storage, testing or transportation of nuclear weapons or components thereof;
3. Prime contractors of the Department of Energy using or operating nuclear reactors or other nuclear devices in a United States Government-owned vehicle or vessel; and
4. Any other prime contractor or subcontractor of the Department of Energy or of the Nuclear Regulatory Commission when the state and the Nuclear Regulatory Commission jointly determine:
   a. That the exemption of the prime contractor or subcontractor is authorized by law; and
   b. That under the terms of the contract or subcontract, there is adequate assurance that the work thereunder can be accomplished without undue risk to the public health and safety.

C. Any licensee who delivers to a carrier for transport any package which contains radioactive material having a specific activity of 74 kBq/kg (2 nanocuries per gram) or less, is exempt from the provisions of this Chapter with respect to that package.

Historical Note

Former Rule Section A.3; Former Section R12-1-103 repealed, new Section R12-1-103 adopted effective June 30, 1977 (Supp. 77-3). Amended effective April 2, 1990 (Supp. 90-2). Amended effective August 10, 1994 (Supp. 94-3). Amended effective June 13, 1997 (Supp. 97-2). Amended by final rulemaking at 9 A.A.R. 1126, effective May 9, 2003 (Supp. 03-1). Amended by final rulemaking at 13 A.A.R. 1217, effective May 5, 2007 (Supp. 07-1). Amended by final rulemaking at 15 A.A.R. 1023, effective August 1, 2009 (Supp. 09-2).

R12-1-104. Prohibited Uses

A. A person shall not use the following fluoroscopic devices:

1. Hand-held fluoroscopic screens,
2. Shoe-fitting fluoroscopic devices.

B. Except as specifically authorized by law, a person shall not use sources of ionizing radiation for the purpose of screening an individual or inspecting an individual for:

1. Concealed weapons,
2. Hazardous materials,
3. Stolen property, or
4. Contraband.

C. Unless there is a medical or dental indication for the exposure and the exposure is prescribed by a licensed practitioner, a person shall not deliberately expose an individual to the useful beam from:

1. An ionizing radiation machine; or
2. A non-ionizing radiation source, having a radiation beam known to be harmful to human tissue.

Historical Note

Former Rule Section A.4; Former Section R12-1-104 repealed, new Section R12-1-104 adopted effective June 30, 1977 (Supp. 77-3). Former Section R12-1-104 repealed, new Section R12-1-104 renumbered from R12-1-112 and amended effective April 2, 1990 (Supp. 90-2). Amended effective August 10, 1994 (Supp. 94-3). Amended by final rulemaking at 9 A.A.R. 1126, effective May 9, 2003 (Supp. 03-1).

R12-1-105. Quality Factors for Converting Absorbed Dose to Dose Equivalent

A. As used in these rules, the quality factors for converting absorbed dose to dose equivalent are shown in Table I.

TABLE I
QUALITY FACTORS AND ABSORBED DOSE EQUIVALENCIES

Quality Factor (Q)	Absorbed Dose Equal to a Unit Dose Equivalent[a]
TYPE OF RADIATION	

X, gamma, or beta radiation and high-speed electrons	1	
Alpha particles, multiple-charged particles, fission fragments, and heavy particles of unknown charge	20	0.05
Neutrons of unknown energy	10	0.1
High-energy protons	10	0.1

[a]The absorbed dose in gray is equal to 1 Sv or the absorbed dose in rad is equal to 1 rem.

B. If it is more convenient to measure the neutron fluence rate than to determine the neutron dose equivalent rate in sievert per hour or rem per hour, 0.01 Sv (1 rem) of neutron radiation of unknown energies may, for purposes of these rules, be assumed to result from a total fluence of 25 million neutrons per square centimeter incident upon the body. If sufficient information exists to estimate the approximate energy distribution of the neutrons, the licensee or registrant may use the fluence rate per unit dose equivalent or the appropriate Q value from Table II to convert a measured tissue dose in gray or rad to dose equivalent in sievert or rem.

TABLE II
MEAN QUALITY FACTORS, Q, AND FLUENCE PER UNIT DOSE EQUIVALENT FOR MONOENERGETIC NEUTRONS

	Neutron Energy (meV)	Quality Factor (Q)	Fluence per Unit Dose Equivalent[b] (neutrons cm^{-2} $^{r}em^{-1}$)	Fluence per Unit Dose Equivalent[b] (neutrons cm^{-2} $^{S}v^{-1}$)
(thermal)	2.5E-8	2	980E+6	980E+8
	1E-7	2	980E+6	980E+8
	1E-6	2	810E+6	810E+8
	1E-5	2	810E+6	810E+8
	1E-4	2	840E+6	840E+8
	1E-3	2	980E+6	980E+8
	1E-2	2.5	1010E+6	1010E+8
	1E-1	7.5	170E+6	170E+8
	5E-1	11	39E+6	39E+8
	1	11	27E+6	27E+8
	2.5	9	29E+6	29E+8
	5	8	23E+6	23E+8
	7	7	24E+6	24E+8
	10	6.5	24E+6	24E+8
	14	7.5	17E+6	17E+8
	20	8	16E+6	16E+8
	40	7	14E+6	14E+8
	60	5.5	16E+6	16E+8
	1E+2	4	20E+6	20E+8
	2E+2	3.5	19E+6	19E+8

3E+2	3.5	16E+6	16E+8
4E+2	3.5	14E+6	14E+8

[a] Value of quality factor (Q) at the point where the dose equivalent is maximum in a 30-centimeter diameter cylinder tissue-equivalent phantom.
[b] Monoenergetic neutrons incident normally on a 30-centimeter diameter cylinder tissue-equivalent phantom.

Historical Note

Former Rule Section A.5; Former Section R12-1-105 repealed, new Section R12-1-105 adopted effective June 30, 1977 (Supp. 77-3). Section repealed effective April 2, 1990 (Supp. 90-2). New Section adopted effective August 10, 1994 (Supp. 94-3). Amended by final rulemaking at 9 A.A.R. 1126, effective May 9, 2003 (Supp. 03-1).

R12-1-106. Units of Activity

For purposes of these rules, activity is expressed in the SI unit of becquerel (Bq) or in the special unit of curie (Ci), or their multiples, or disintegrations or transformations per unit of time. The definitions for these units are located in R12-1-102.

Historical Note

Former Rule Section A.6; Former Section R12-1-1-6 repealed, new Section R12-1-106 adopted effective June 30, 1977 (Supp. 77-3). Section repealed effective April 2, 1990 (Supp. 90-2). New Section adopted effective August 10, 1994 (Supp. 94-3). Amended by final rulemaking at 9 A.A.R. 1126, effective May 9, 2003 (Supp. 03-1).

R12-1-107. Misconduct

A. A licensee, registrant, applicant for a license or certificate of registration, or employee of a licensee, registrant, or applicant; or any contractor (including a supplier or consultant), subcontractor, or employee of a contractor or subcontractor of any licensee or certificate of registration holder who provides to any licensee, registrant, applicant, contractor, or subcontractor, any components, equipment, materials, or other goods or services that relate to a licensee's, registrant's, or applicant's activities in this Chapter, shall not:
   1. Knowingly engage in conduct that violates or will result in a violation by a licensee, registrant, or applicant, of any statute, rule, regulation, or order; or any term, condition, or limitation of any license or registration issued by the Agency; or
   2. Knowingly submit to the Agency, or a licensee, registrant, or applicant, or a licensee's, registrant's, or applicant's contractor or subcontractor, information that is incomplete or inaccurate.

B. The Board shall impose the applicable civil penalty listed in R12-1-1216 on a person who violates subsection (A)(1) or (A)(2). For this purpose the person is classified as a Division II licensee and the violation is classified as a Severity II violation.

C. For the purposes of this Section, "misconduct" means conduct prohibited under subsection (A).

D. A person who is not a licensee, registrant, or applicant and knowingly violates a rule for the safe use of radiation sources in 12 A.A.C.1 is subject to the enforcement actions in 12 A.A.C. 1, Article 12.

Historical Note

Former Rule Section A.7; Former Section R12-1-107 repealed, new Section R12-1-107 adopted effective June 30, 1977 (Supp. 77-3). Section repealed effective April 2, 1990 (Supp. 90-2). New Section made by final rulemaking at 10 A.A.R. 2122, effective July 3, 2004 (Supp. 04-2).

R12-1-108. Repealed

Historical Note

Former Rule Section A.8; Former Section R12-1-108 repealed, new Section R12-1-108 adopted effective June 30, 1977 (Supp. 77-3). Change of address (Supp. 85-6). Section repealed effective April 2, 1990 (Supp. 90-2).

R12-1-109. Repealed

Historical Note

Adopted effective June 30, 1977 (Supp. 77-3). Section repealed effective April 2, 1990 (Supp. 90-2).

R12-1-110. Repealed

Historical Note

Adopted effective June 30, 1977 (Supp. 77-3). Section repealed effective April 2, 1990 (Supp. 90-2).

R12-1-111. Repealed

Historical Note

Adopted effective June 30, 1977 (Supp. 77-3). Section repealed effective April 2, 1990 (Supp. 90-2).

R12-1-112. Renumbered

Historical Note

Adopted effective June 30, 1977 (Supp. 77-3). Former Section R12-1-112 renumbered to R12-1-104 effective April 2, 1990

(Supp. 90-2).

Appendix A. Repealed

Historical Note

Adopted effective June 30, 1977 (Supp. 77-3). Repealed effective August 10, 1994 (Supp. 94-3).

Appendix B. Repealed

Historical Note

Adopted effective June 30, 1977 (Supp. 77-3). Repealed effective August 10, 1994 (Supp. 94-3).

ARTICLE 15. TRANSPORTATION

R12-1-1501. Requirement for License

A. A person shall not transport radioactive material or deliver radioactive material to a carrier for transport unless the person is authorized in a general or specific license issued by the Agency or exempt under R12-1-103(A).

B. This Article applies to any licensee to transfer licensed material if the licensee delivers that material to a carrier for transport, transports the material outside the site of usage as specified in the license, or transports that material on public highways. No provision of this Article authorizes possession of licensed material.

Historical Note

New Section made by final rulemaking at 9 A.A.R. 1126, effective May 9, 2003 (Supp. 03-1). Amended by final rulemaking at 18 A.A.R. 1895, effective September 10, 2012 (Supp. 12-3).

R12-1-1502. Definitions

Terms defined in Article 1 have the same meaning when used in this Article.

Historical Note

Adopted effective December 20, 1985 (Supp. 85-6). Amended effective June 13, 1997 (Supp. 97-2). Amended by final rulemaking at 15 A.A.R. 1023, effective August 1, 2009 (Supp. 09-2).

R12-1-1503. Transportation of Licensed Material

Each licensee that transports licensed material outside the site of usage, as specified in an Agency license, or where transport is on public highways, or that delivers licensed material to a carrier for transport, shall comply with the applicable requirements of the U.S. Department of Transportation regulations listed in 10 CFR 71.5, revised January 1, 2008, incorporated by reference and available under R12-1-101. This incorporated material contains no future editions or amendments.

Historical Note

Adopted effective December 20, 1985 (Supp. 85-6). Repealed effective June 13, 1997 (Supp. 97-2). New Section made by final rulemaking at 15 A.A.R. 1023, effective August 1, 2009 (Supp. 09-2).

R12-1-1504. Intrastate Transportation and Storage of Radioactive Materials

A. A general license is issued to:

1. Any common or contract carrier not exempt under R12-1-103 to receive, possess, transport, and store radioactive material in the regular course of carriage for others or to store radioactive material incident to the transport activities, provided the transportation or storage is in accordance with applicable requirements for the mode of transport of the U.S. Department of Transportation, 49 CFR 171 through 180, revised October 1, 2007, incorporated by reference, and available under R12-1-101. This incorporated material contains no future editions or amendments.
2. Any private carrier or licensee who transports and stores radioactive material, provided the transportation and storage are in accordance with the requirements applicable to the mode of transport, of the U.S. Department of Transportation, 49 CFR 171 through 180, revised October 1, 2007, incorporated by reference, and available under R12-1-101. This incorporated material contains no future editions or amendments.

B. Any notification of incidents required under federal regulations in subsection (A) shall also be filed with, or made to, the Agency.

C. A person who transports or stores radioactive material according to the general license in this Section is exempt from the requirements of Article 4 and Article 10 of this Chapter to the extent that this Section applies to transportation of the radioactive material.

Historical Note

Adopted effective December 20, 1985 (Supp. 85-6). Amended effective June 13, 1997 (Supp. 97-2). Amended by final rulemaking at 10 A.A.R. 4458, effective December 4, 2004 (Supp. 04-4). Amended by final rulemaking at 15 A.A.R. 1023, effective August 1, 2009 (Supp. 09-2).

R12-1-1505. Storage of Radioactive Material in Transport

A. A carrier shall not store, for any period in excess of 72 hours, any package that contains radioactive material bearing a Department of Transportation Yellow II or Yellow III label, unless the radioactive material is stored in an area other than, and not adjacent to, any food storage area or area that is normally occupied by an individual.

B. A carrier shall not store a package that contains radioactive material with other hazardous materials, except as authorized by U.S. Department of Transportation regulations in 49 CFR 177.848, revised October 1, 2007, incorporated by reference, and available under R12-1-101. This incorporated material contains no future editions or amendments.

C. Whenever a package containing radioactive material is stored in excess of 48 hours, the storage area shall be conspicuously posted according to the requirements of Article 4.

D. When transit is interrupted and storage is required for an extended period, the following requirements apply:

1. When radioactive materials are stored for longer than 48 hours during transit, the carrier shall notify the local fire department and provide the following information:
   a. Warehouse location and carrier name and telephone number;
   b. Radionuclide(s);
   c. Activity per package in curies or becquerels and number of packages;
   d. Form (solid, metallic, liquid, gas);
   e. Flammability (if flammable);
   f. Specific location in warehouse;
   g. Estimated date of departure;
   h. Toxicity (if toxic).
2. If the radioactive material will be, or has been in storage for longer than 90 days, the carrier shall notify the Agency in writing and include the information required in subsection (D)(1).
3. The licensee or carrier shall immediately notify the Department of Public Safety of an accident involving radioactive material.

Historical Note

Adopted effective December 20, 1985 (Supp. 85-6). Amended effective June 13, 1997 (Supp. 97-2). Amended by final rulemaking at 9 A.A.R. 1126, effective May 9, 2003 (Supp. 03-1). Amended by final rulemaking at 15 A.A.R. 1023, effective August 1, 2009 (Supp. 09-2).

R12-1-1506. Preparation of Radioactive Material for Transport

A licensee shall not deliver any package that contains radioactive material to a carrier for transport or transport radioactive material, unless the licensee:

1. Complies with the U.S. Department of Transportation packaging, monitoring, manifesting, marking, and labeling regulations applicable to the mode of transport, (Contained in 49 CFR 171 through 180, revised October 1, 2007, or 39 CFR 111.1, revised July 1, 2007, incorporated by reference, and available under R12-1-101. This incorporated material contains no future editions or amendments.); and
2. Establishes procedures for safely opening and closing packages in which radioactive material is transported; and
3. Prior to delivery of a package to a carrier for transport, assures that:
   a. The package is properly closed, and
   b. Any special instructions needed to safely open the package are made available to the consignee.

Historical Note

Adopted effective December 20, 1985 (Supp. 85-6). Amended effective June 13, 1997 (Supp. 97-2). Amended by final rulemaking at 9 A.A.R. 1126, effective May 9, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 4458, effective December 4, 2004 (Supp. 04-4). Amended by final rulemaking at 15 A.A.R. 1023, effective August 1, 2009 (Supp. 09-2).

R12-1-1507. Packaging Quality Assurance

A. A licensee that transports radioactive material in the course of business or delivers radioactive material to a carrier for transport in a package for which a license, certificate of compliance, or other approval has been issued by the Nuclear Regulatory Commission, or meets the applicable criteria (10 CFR 71, Subpart H, revised January 1, 2008, incorporated by reference, and available under R12-1-101. This incorporated material contains no future editions or amendments.), shall establish, maintain, and execute the quality assurance program specified in 10 CFR 71, Subpart H.

B. In addition to the requirements in subsection (A) for a quality assurance program, a licensee shall verify by procedures such as checking or inspection, that deficiencies or defective material or equipment relative to the shipment of packages containing radioactive material are promptly identified and corrected.

C. Before the first use of any Type B packaging, a licensee shall obtain approval of its quality assurance program by the Agency.

D. A licensee shall maintain sufficient written records to demonstrate compliance with the quality assurance program. Records of quality assurance pertaining to the use of a Type B package for shipment of radioactive material shall be maintained for three years after the package is used for a shipment.

Historical Note

Adopted effective December 20, 1985 (Supp. 85-6). Amended effective June 13, 1997 (Supp. 97-2). Amended by final rulemaking at 9 A.A.R. 1126, effective May 9, 2003 (Supp. 03-1). Amended by final rulemaking at 15 A.A.R. 1023, effective August 1, 2009 (Supp. 09-2).

R12-1-1508. Advance Notification of Nuclear Waste Transportation

A. Prior to the transport of any nuclear waste, as defined in Article 1, outside of the confines of the licensee's facility or other place of use or storage, or prior to the delivery of any nuclear waste to a carrier for transport, each licensee shall provide advance notification of such transport to the Agency.

B. Each advance notification required in subsection (A) above shall contain the following information:
1. The name, address, and telephone number of the shipper, carrier, and receiver of the shipment;
2. A description of the nuclear waste contained in the shipment as required by 49 CFR 172.202 and 172.203(d) (Revised October 1, 2007, incorporated by reference, and available under R12-1-101. This incorporated material contains no future editions or amendments.);
3. The point of origin of the shipment and the seven-day period during which departure of the shipment will occur;
4. The seven-day period during which arrival of the shipment at state boundaries will occur;
5. The destination of the shipment, and the seven-day period during which arrival of the shipment will occur; and
6. A point of contact with a telephone number for current shipment information.

C. The licensee shall make the notification required by subsection (A) in writing to the Agency. A notification delivered by mail must be postmarked at least seven days before the beginning of the seven-day period during which departure of the shipment is estimated to occur. The licensee shall maintain a copy of the notification for one year.

D. The licensee shall notify the Agency of any changes in shipment plans, including cancellations, rerouting, or rescheduling, provided pursuant to subsection (A). Such notification shall be by telephoning the Agency. The licensee shall maintain for one year a record of the name of the individual contacted.

Historical Note

Adopted effective December 20, 1985 (Supp. 85-6). Amended effective June 13, 1997 (Supp. 97-2). Amended by final rulemaking at 9 A.A.R. 1126, effective May 9, 2003 (Supp. 03-1). Amended by final rulemaking at 15 A.A.R. 1023, effective August 1, 2009 (Supp. 09-2).

R12-1-1509. General License: Plutonium-Beryllium Special Form Material

A. A general license is issued to any licensee of the Agency to transport fissile material in the form of plutonium-beryllium (Pu-Be) special form sealed sources, or to deliver Pu-Be sealed sources to a carrier for transport, if the material is shipped in accordance with this Article. This material must be contained in a Type A package. The Type A package must also meet the DOT requirements of 49 CFR 173.417(a), revised October 1, 2010, incorporated by reference, and available under R12-1-101. This incorporated material contains no future editions or amendments.

B. The general license applies only to a licensee who has a quality assurance program approved by the Agency as satisfying the provisions of R12-1-1507.

C. The general license applies only when a package's contents:
1. Contain no more than a Type A quantity of radioactive material; and
2. Contain less than 1000 g of plutonium, provided that: plutonium-239, plutonium-241, or any combination of these radionuclides, constitutes less than 240 g of the total quantity of plutonium in the package.

D. The general license applies only to packages labeled with a CSI which:
1. Has been determined in accordance with subsection (E) of this Section;
2. Has a value less than or equal to 100; and
3. For a shipment of multiple packages containing Pu-Be sealed sources, the sum of the CSIs must be less than or equal to 50 (for shipment on a nonexclusive use conveyance) and less than or equal to 100 (for shipment on an exclusive use conveyance).

E. The value for the CSI must be greater than or equal to the number calculated by the following equation:
1. CSI=10[(grams of ^{239}Pu + grams of ^{241}Pu)/24],
2. The calculated CSI must be rounded up to the first decimal place.

Historical Note

New Section made by final rulemaking at 18 A.A.R. 1895, effective September 10, 2012 (Supp. 12-3).

R12-1-1510. Packaging

A. A general license is issued to any licensee to transport, or to deliver to a carrier for transport, licensed material in a package for which a license, certificate of compliance, or other approval has been issued by the NRC.
1. This general license applies only to a licensee that has a quality assurance program approved by the Agency as satisfying R12-1-1507;
2. This general license applies only to a licensee that:
   a. Has a copy of the license, certificate of compliance, or other approval of the package, and has the drawings and other documents referenced in the approval relating to the use and maintenance of the packaging and to the actions to be taken before shipment;

b. Complies with the terms and conditions of the license, certificate, or other approval, as applicable, and the applicable requirements of this Article; and
c. Before the licensee's first use of the package, submits in writing to the Agency the licensee's name, license number, and the package identification number specified in the package approval.

3. This general license applies only when the package approval authorizes use of the package under this general license.
4. For a Type B or fissile material package, the design of which was approved by NRC before April 1, 1996, the general license is subject to the additional restrictions of subsection (B).

B. Type B packages.

1. A Type B package previously approved by NRC but not designated as B(U) or B(M) in the identification number of the NRC Certificate of Compliance, may be used under the general license of subsection (A) with the following additional conditions:
   a. Fabrication of the packaging is satisfactorily completed by August 31, 1986, as demonstrated by application of its model number in accordance with 10 CFR 71.85(c) (Revised January 1, 2010, incorporated by reference, and available under R12-1-101. This incorporated material contains no future editions or amendments.);
   b. A package that is used for a shipment to a location outside the United States is subject to multilateral approval, as defined in 49 CFR 173.403 (Revised October 1, 2010, incorporated by reference, and available under R12-1-101. This incorporated material contains no future editions or amendments.); and
   c. A serial number that uniquely identifies each package which conforms to the approved design and is assigned to, and legibly and durably marked on, the outside of each package.
   d. The licensee shall ascertain that there are no cracks, pinholes, uncontrolled voids, or other defects that could significantly reduce the effectiveness of the packaging;
   e. Where the maximum normal operating pressure will exceed 35 kPa (5 lbf/in^2) gauge, the licensee shall test the containment system at an internal pressure at least 50 percent higher than the maximum normal operating pressure, to verify the capability of that system to maintain its structural integrity at that pressure; and
2. A Type B(U) package, a Type B(M) package, a low specific activity (LSA) material package or a fissile material package, previously approved by the NRC but without the "-85" designation in the identification number of the NRC certificate of compliance, may be used under the general license of subsection (A) with the following additional conditions:
   a. Fabrication of the packaging is satisfactorily completed by April 1, 1999 as demonstrated by application of its model number in accordance with 10 CFR 71.85(c) (Revised January 1, 2010, incorporated by reference, and available under R12-1-101. This incorporated material contains no future editions or amendments.);
   b. A package that is used for a shipment to a location outside the United States is subject to multilateral approval as defined in 49 CFR 173.403 (Revised October 1, 2010, incorporated by reference, and available under R12-1-101. This incorporated material contains no future editions or amendments.); and
   c. A serial number which uniquely identifies each package which conforms to the approved design and is assigned to, and legibly and durably marked on, the outside of each package.
3. A licensee may modify the design and authorized contents of a Type B package, or a fissile material package, previously approved by NRC, provided:
   a. The modifications of a Type B package are not significant with respect to the design, operating characteristics, or safe performance of the containment system, when the package is subjected to the tests specified in 10 CFR 71.71 and 71.73 (Revised January 1, 2010, incorporated by reference, and available under R12-1-101. This incorporated material contains no future editions or amendments.);
   b. The modifications of a fissile material package are not significant, with respect to the prevention of criticality, when the package is subjected to the tests specified in 10 CFR 71.71 and 71.73 (Revised January 1, 2010, incorporated by reference, and available under R12-1-101. This incorporated material contains no future editions or amendments.); and
   c. The modifications to the package satisfy the requirements of this Section.
4. The NRC will revise the package identification number to designate previously approved package designs as B(U), B(M), AF, BF, or A as applicable, and with the identification number suffix "-85" after receipt of an application demonstrating that the design meets the requirements of this Section.
5. For purposes of this Section, package types are defined in 10 CFR 71.4, revised January 1, 2010, incorporated by reference, and available under R12-1-101. This incorporated material contains no future editions or amendments.

C. A general license is issued to any licensee of the Agency to transport fissile material, or to deliver to a carrier for transport, licensed material in a specification container for fissile material or for a Type B quantity of radioactive material as specified in 49 CFR 173 and 178 (Revised October 1, 2010, incorporated by reference, and available under R12-1-101. This incorporated material contains no future editions or amendments.), if the following requirements are met:

1. The licensee shall maintain a quality assurance program approved by the Agency as satisfying R12-1-1507.
2. The licensee shall:
   a. Maintain a copy of the specification; and
   b. Comply with the terms and conditions of the specification and the applicable requirements in 10 CFR 71, Subparts A, G, and H, revised January 1, 2010, incorporated by reference, and available under R12-1-101. This incorporated material contains no future editions or amendments.

3. The licensee may not use the specification container for a shipment to a location outside the United States, except by multilateral approval, as defined in 49 CFR 173.403, revised October 1, 2010, incorporated by reference, and available under R12-1-101. This incorporated material contains no future editions or amendments.
4. The general license applies only when a package's contents:
   a. Contain no more than a Type A quantity of radioactive material; and
   b. Contain less than 500 total grams of beryllium, graphite, or hydrogenous material enriched in deuterium.
5. The general license applies only to packages containing fissile material that are labeled with a CSI which:
   a. Has been determined in accordance with Subsection (E) of this Section;
   b. Has a value less than or equal to 10; and
   c. For a shipment of multiple packages containing fissile material, the sum of the CSIs must be less than or equal to 50 (for shipment on a nonexclusive use conveyance) and less than or equal to 100 (for shipment on an exclusive use conveyance).
6. The CSI value must meet the following requirements:
   a. The value for the CSI must be greater than or equal to the number calculated by the following equation: CSI=10[(grams of ^{235}U/X) + (grams of ^{235}U/Y) + grams of ^{235}U/Z)];
   b. The calculated CSI must be rounded up to the first decimal place;
   c. The values of X, Y, and Z used in the CSI equation must be taken from Tables 71–1 or 71–2 as appropriate located in 10 CFR 71.22, (revised January 1, 2010, incorporated by reference, and available under R12-1-101. This incorporated material contains no future editions or amendments.);
   d. If Table 71–2 is used to obtain the value of X, then the values for the terms in the equation for uranium-233 and plutonium must be assumed to be zero; and
   e. Table 71–1 values for X, Y, and Z must be used to determine the CSI if:
      i. Uranium-233 is present in the package;
      ii. The mass of plutonium exceeds 1 percent of the mass of uranium-235;
      iii. The uranium is of unknown uranium-235 enrichment or greater than 24 weight percent enrichment; or
      iv. Substances having a moderating effectiveness (i.e., an average hydrogen density greater than H_2O) (e.g., certain hydrocarbon oils or plastics) are present in any form, except as polyethylene used for packing or wrapping.

D. Foreign packaging.
1. A general license is issued to any licensee of the Agency to transport, or to deliver to a carrier for transport, licensed material in a package the design of which has been approved in a foreign national competent authority certificate that has been revalidated by the Federal Department of Transportation as meeting the applicable requirements of 49 CFR 171.12, revised October 1, 2010, incorporated by reference, and available under R12-1-101. This incorporated material contains no future editions or amendments.
2. Except as otherwise provided in this Section, the general license applies only to a licensee who has a quality assurance program approved by the Agency as satisfying the applicable provisions of R12-1-1507.
3. This general license applies only to:
   a. Shipments made to or from locations outside the United States.
   b. A licensee that:
      i. Has a copy of the applicable certificate, the revalidation, and the drawings and other documents referenced in the certificate, relating to the use and maintenance of the packaging and to the actions to be taken before shipment; and
      ii. Complies with the terms and conditions of the certificate and revalidation, and with the applicable requirements in 10 CFR 71, Subparts A, G, and H, revised January 1, 2010, incorporated by reference, and available under R12-1-101. This incorporated material contains no future editions or amendments. With respect to the quality assurance provisions of Subpart H of the regulations, the licensee is exempt from design, construction, and fabrication requirements.

E. Assumptions as to unknown properties. When the isotopic abundance, mass, concentration, degree of irradiation, degree of moderation, or other pertinent property of fissile material in any package is not known, the licensee shall package the fissile material as if the unknown properties have credible values that will cause the maximum neutron multiplication.

F. Routine determination before each shipment of licensed material shall ensure that the package with its contents satisfies the applicable requirements of this Article and of the license. The licensee shall determine that:
1. The package is proper for the contents to be shipped;
2. The package is in unimpaired physical condition except for superficial defects such as marks or dents;
3. Each closure device of the packaging, including any required gasket, is properly installed and secured and free of defects;
4. Any system for containing liquid is adequately sealed and has adequate space or other specified provision for expansion of the liquid;
5. Any pressure relief device is operable and set in accordance with written procedures;
6. The package has been loaded and closed in accordance with written procedures;
7. For fissile material, any moderator or neutron absorber, if required, is present and in proper condition;
8. Any structural part of the package that could be used to lift or tie down the package during transport is rendered inoperable for that purpose, unless it satisfies the design requirements of 10 CFR 71.45 (revised January 1, 2010, incorporated by reference, and available under R12-1-101. This incorporated material contains no future editions or amendments.);

9. The level of non-fixed (removable) radioactive contamination on the external surfaces of each package offered for shipment is as low as reasonably achievable, and within the limits specified in DOT regulations in 49 CFR 173.443 (revised October 1, 2010, incorporated by reference, and available under R12-1-101. This incorporated material contains no future editions or amendments.);
10. External radiation levels around the package and around the vehicle, if applicable, will not exceed the limits specified in 10 CFR 71.47 (revised January 1, 2010, incorporated by reference, and available under R12-1-101. This incorporated material contains no future editions or amendments.), at any time during transportation; and
11. Accessible package surface temperatures will not exceed the limits specified in 10 CFR 71.43(g) (revised January 1, 2010, incorporated by reference, and available under R12-1-101. This incorporated material contains no future editions or amendments.), at any time during transportation.

Historical Note

New Section made by final rulemaking at 15 A.A.R. 1023, effective August 1, 2009 (Supp. 09-2). Amended by final rulemaking at 18 A.A.R. 1895, effective September 10, 2012 (12-3).

R12-1-1511. Air Transport of Plutonium

A. Notwithstanding the provisions of any general licenses and notwithstanding any exemptions stated directly in this Section or included indirectly by citation of 49 CFR 107, and 171 through 180, previously incorporated in this Article, as may be applicable, the licensee shall ensure that plutonium in any form, whether for import, export, or domestic shipment, is not transported by air or delivered to a carrier for air transport unless:
1. The plutonium is contained in a medical device designed for individual human application; or
2. The plutonium is contained in a material in which the specific activity is less than or equal to the activity concentration values for Plutonium specified in 10 CFR 71, Appendix A, Table A-2 (Revised January 1, 2008, incorporated by reference, and available under R12-1-101. This incorporated material contains no future editions or amendments.), and in which the radioactivity is essentially uniformly distributed; or
3. The plutonium is shipped in a single package containing no more than an A2 quantity of plutonium in any isotope or form, and is shipped in accordance with R12-1-1503 and 10 CFR 71.5 (Revised January 1, 2008, incorporated by reference, and available under R12-1-101. This incorporated material contains no future editions or amendments.); or
4. The plutonium is shipped in a package specifically authorized for the shipment of plutonium by air in the Certificate of Compliance for that package issued by the NRC.

B. Nothing in subsection (A) is to be interpreted as removing or diminishing the requirements of 10 CFR 73.24, January 1, 2008, incorporated by reference, and available under R12-1-101. This incorporated material contains no future editions or amendments.

C. For a shipment of plutonium by air that is subject to subsection (A)(4), the licensee shall, through special arrangement with the carrier, require compliance with 49 CFR 175.704, revised October 1, 2007, incorporated by reference, and available under R12-1-101. This U.S. Department of Transportation regulation is applicable to the air transport of plutonium. This incorporated material contains no future editions or amendments.

Historical Note

New Section made by final rulemaking at 15 A.A.R. 1023, effective August 1, 2009 (Supp. 09-2).

R12-1-1512. Advance Notification of Shipment of Irradiated Reactor Fuel and Nuclear Waste

A licensee shall provide advance notification to the Governor, or the Director of the Agency, of the shipment of licensed material as specified in 10 CFR 71.97, revised January 1, 2008, incorporated by reference, and available under R12-1-101. This incorporated material contains no future editions or amendments.

Historical Note

New Section made by final rulemaking at 15 A.A.R. 1023, effective August 1, 2009 (Supp. 09-2).

R12-1-1512. Advance Notification of Shipment of Irradiated Reactor Fuel and Nuclear Waste

A licensee shall provide advance notification to the Governor, or the Director of the Agency, of the shipment of licensed material as specified in 10 CFR 71.97, revised January 1, 2015, incorporated by reference, and available under R12-1- 101. This incorporated material contains no future editions or amendments.

R12-1-1513. Opening Instructions

Before delivery of a package to a carrier for transport, the licensee shall ensure that any special instructions needed to safely open the package have been sent to, or otherwise made available to, the consignee for the consignee's use in accordance with 10 CFR 20.1906(e) revised January 1, 2010, incorporated by reference, and available under R12-1-101. This incorporated material contains no future editions or amendments.

Historical Note

New Section made by final rulemaking at 18 A.A.R. 1895, effective September 10, 2012 (12-3).

R12-1-1514. Reserved

R12-1-1515. Exemption for Low-level Radioactive Materials

A licensee is exempt from all the requirements of 10 CFR 71 with respect to shipment or carriage of the low-level materials listed in 10 CFR 71.14(a), revised January 1, 2008, incorporated by reference, and available under R12-1-101. This incorporated material contains no future editions or amendments.

Historical Note

New Section made by final rulemaking at 15 A.A.R. 1023, effective August 1, 2009 (Supp. 09-2).

Appendix A. Repealed

Historical Note

Adopted effective December 20, 1985 (Supp. 85-6). Repealed effective June 13, 1997 (Supp. 97-2).

As of April 20, 2016

EXHIBIT 3: ENABLING AND RELATED STATUTES

Article 1. General Provisions
Article 15. Transportation

The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific) when appropriate:

30-654. Powers and duties of the agency
A. The agency may:
1. Accept grants or other contributions from the federal government or other sources, public or private, to be used by the agency to carry out any of the purposes of this chapter.
2. Do all things necessary, within the limitations of this chapter, to carry out the powers and duties of the agency.
3. Conduct an information program, including but not limited to:
(a) Providing information on the control and regulation of sources of radiation and related health and safety matters, on request, to members of the legislature, the executive offices, state departments and agencies and county and municipal governments.
(b) Providing such published information, audiovisual presentations, exhibits and speakers on the control and regulation of sources of radiation and related health and safety matters to the state's educational system at all educational levels as may be arranged.
(c) Furnishing to citizen groups, on request, speakers and such audiovisual presentations or published materials on the control and regulation of sources of radiation and related health and safety matters as may be available.
(d) Conducting, sponsoring or cosponsoring and actively participating in the professional meetings, symposia, workshops, forums and other group informational activities concerned with the control and regulation of sources of radiation and related health and safety matters when representation from this state at such meetings is determined to be important by the agency.
B. The agency shall:
1. Regulate the use, storage and disposal of sources of radiation.
2. Establish procedures for purposes of selecting any proposed permanent disposal site located within this state for low level radioactive waste.
3. Coordinate with the department of transportation and the corporation commission in regulating the transportation of sources of radiation.
4. Assume primary responsibility for and provide necessary technical assistance to handle any incidents, accidents and emergencies involving radiation or sources of radiation occurring within this state.
5. Adopt rules deemed necessary to administer this chapter in accordance with title 41, chapter 6.
6. Adopt uniform radiation protection and radiation dose standards to be as nearly as possible in conformity with, and in no case inconsistent with, the standards contained in

the regulations of the United States nuclear regulatory commission and the standards of the United States public health service. In the adoption of the standards, the agency shall consider the total occupational radiation exposure of individuals, including that from sources not regulated by the agency.
7. Adopt rules for personnel monitoring under the close supervision of technically competent people in order to determine compliance with safety rules adopted under this chapter.
8. Adopt a uniform system of labels, signs and symbols and the posting of the labels, signs and symbols to be affixed to radioactive products, especially those transferred from person to person.
9. By rule require adequate training and experience of persons utilizing sources of radiation with respect to the hazards of excessive exposure to radiation in order to protect health and safety.
10. Adopt standards for the storage of radioactive material and for security against unauthorized removal.
11. Adopt standards for the disposal of radioactive materials into the air, water and sewers and burial in the soil in accordance with 10 Code of Federal Regulations part 20.
12. Adopt rules applicable to the shipment of radioactive materials in conformity with and compatible with those established by the United States nuclear regulatory commission, the department of transportation, the United States treasury department and the United States postal service.
13. In individual cases, impose additional requirements to protect health and safety or grant necessary exemptions which will not jeopardize health or safety, or both.
14. Make recommendations to the governor and furnish such technical advice as required on matters relating to the utilization and regulation of sources of radiation.
15. Conduct or cause to be conducted off-site radiological environmental monitoring of the air, water and soil surrounding any fixed nuclear facility, any uranium milling and tailing site and any uranium leaching operation, and maintain and report the data or results obtained by the monitoring as deemed appropriate by the agency.
16. Develop and utilize information resources concerning radiation and radioactive sources.
17. Prescribe by rule a schedule of fees to be charged to categories of licensees and registrants of radiation sources, including academic, medical, industrial, waste, distribution and imaging categories. The fees shall cover a significant portion of the reasonable costs associated with processing the application for license or registration, renewal or amendment of the license or registration and the costs of inspecting the licensee or registrant activities and facilities, including the cost to the agency of employing clerical help, consultants and persons possessing technical expertise and using analytical instrumentation and information processing systems.
18. Adopt rules establishing radiological standards, personnel standards and quality assurance programs to assure the accuracy and safety of screening and diagnostic mammography.
C. All fees collected under subsection B, paragraph 18 shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

30-657. Records

A. Each person who possesses or uses a source of radiation shall maintain records relating to its receipt, storage, transfer or disposal and such other records as the agency provides by rules and regulations.

B. The agency shall require each person who possesses or uses a source of radiation to maintain appropriate records showing the radiation exposure of all individuals for whom personnel monitoring is required by rules and regulations promulgated by the agency. Copies of records required by this section shall be submitted to the agency on request by the agency.

C. Any person who possesses or uses a source of radiation shall furnish to each employee for whom personnel monitoring is required a copy of the employee's personal exposure record at such times as prescribed by rules and regulations promulgated by the agency.

D. Any person who possesses or uses a source of radiation shall, when requested, submit to the agency copies of records or reports submitted to the United States nuclear regulatory commission regardless of whether the person is subject to regulation by the agency. The agency shall, by rule and regulation, specify the records or reports required to be submitted to the agency under this subsection.

30-671. Exceptions; radiation standards

A. Radiation protection standards adopted in rules and regulations promulgated by the agency under this chapter shall not be construed to limit the kind or amount of radiation that may be intentionally applied to a person or animal for diagnostic or therapeutic purposes by or under the direction of a licensed practitioner of the healing arts.

B. Radiation sources shall be registered, licensed or exempt at the discretion of the agency and shall be available for inspection as specified in this chapter or rules and regulations adopted under this chapter.

30-672. Licensing and registration of sources of radiation; exemptions

A. The agency by rule shall provide for general or specific licensing of by-product, source, special nuclear materials or devices or equipment utilizing such materials. The rules shall provide for amendment, suspension or revocation of the licenses. The agency shall require from the applicant satisfactory evidence that the applicant is using methods and techniques which are demonstrated to be safe and that the applicant is familiar with the rules adopted by the agency under section 30-654, subsection B, paragraph 5 relative to uniform radiation standards, total occupational radiation exposure norms, labels, signs and symbols, storage, waste disposal and shipment of radioactive materials. The agency may require that before the agency issues a license the employees or other personnel of an applicant who may deal with sources of radiation receive a course of instruction approved by the agency concerning agency rules. The agency shall require that the applicant's proposed equipment and facilities be adequate to protect health and safety and that his proposed administrative controls over the use of the sources of radiation requested be adequate to protect health and safety.

B. The agency may require registration or licensing of other sources of radiation if it has been determined necessary to protect public health or safety.

C. The agency may exempt certain sources of radiation or kinds of uses or users from the licensing or registration requirements set forth in this section when it finds that the

exemption of such sources of radiation or kinds of uses or users will not constitute a significant risk to the health and safety of the public.
D. The agency shall not require persons licensed in this state to practice as a dentist, chiropodist or veterinarian or licensed in this state to practice medicine, surgery, osteopathy, chiropractic or naturopathy to obtain any other license for the use of an X-ray machine, but these persons are governed by their own licensing acts.
E. Persons licensed by the federal communications commission with respect to the activities for which they are licensed by that commission are exempted from this chapter.
F. Rules adopted pursuant to this chapter may provide for recognition of other state or federal licenses as the agency deems desirable, subject to such registration requirements as the agency prescribes.
G. Any licenses issued by the agency shall state the nature, use and extent of use of the source of radiation. If at any time subsequent to the issuance of a license, the licensee desires any change in the nature, use or extent, the licensee shall seek an amendment or a new license under this section.
H. The agency shall prescribe by rule requirements for financial security as a condition for licensure under this article. The agency shall deposit all amounts posted, paid or forfeited as financial security into the radiation regulatory and perpetual care fund under section 30-694.
I. Persons applying for licensure shall provide notice to the city or town where the applicant proposes to operate as part of the application process.
J. Any facility which provides diagnostic or screening mammography examinations by or under the direction of a person exempted from further licensure under subsection D of this section shall obtain certification by the agency. The agency shall prescribe by rule the requirements of certification in order to assure the accuracy and safety of diagnostic and screening mammography.

30-672.01. Registration of persons who install or service radiation machines; exception; roster
A. A person who is in the business of installing or servicing radiation machines which are defined in section 30-651 and which are required to be registered by the agency shall register with the agency on a form provided by the agency.
B. Notwithstanding subsection A, a person who is subject to the jurisdiction of the medical radiologic technology board of examiners and is engaged in operation of a radiation machine shall not be required to register with the agency.
C. The registration form required pursuant to subsection A shall be limited to the following information:
1. The full business name of the registrant.
2. The names of the owners if the registrant is a corporation or partnership.
3. The names of employees who carry out installation or service work for the registrant.
4. The business address of the registrant.
D. The agency shall maintain a roster of all registrants, including the date of initial registration. The roster shall be available for public inspection.
E. A registrant must reregister with the agency whenever there is a change in the information provided under subsection C.

30-673. Unlawful acts

It is unlawful for any person to receive, use, possess, transfer, install or service any source of radiation unless registered, licensed or exempted by the agency in accordance with this chapter and rules and regulations adopted under this chapter.

30-686. Administrative procedure and judicial review

A. Except as otherwise provided in section 30-688, the agency shall afford an opportunity for a hearing on the record upon the request of any person whose interest may be affected by article 2 of this chapter, or by the proceeding under title 41, chapter 6, article 10, and shall admit any interested person as a party to the proceeding for:

1. The issuance or modification of rules relating to control of sources of radiation.
2. Granting licenses.
3. Determining compliance with or granting exceptions from rules of the agency.

B. Except as provided in section 41-1092.08, subsection H, any final order entered in any proceeding under subsection A of this section is subject to judicial review in the manner prescribed in title 12, chapter 7, article 6.

F-4

ARIZONA DEPARTMENT OF CHILD SAFETY (F-16-0703)
Title 6, Chapter 5, Article 69, Child Placing Agency Licensing Standards

GOVERNOR'S REGULATORY REVIEW COUNCIL
ANALYSIS OF FIVE-YEAR REVIEW REPORT

MEETING DATE: July 6, 2016 **AGENDA ITEM: F-4**

TO: Members of the Governor's Regulatory Review Council

FROM: Shama Thathi, Staff Attorney

DATE : June 20, 2016

SUBJECT: **ARIZONA DEPARTMENT OF CHILD SAFETY (F-16-0703)**
Title 6, Chapter 5, Article 69, Child Placing Agency Licensing Standards

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COMMENTS ON THE FIVE-YEAR-REVIEW REPORT

Purpose of the Agency and Number of Rules in the Report

The purpose of the Arizona Department of Child Safety (Department) is "to protect children as provided in section 8-451, Arizona Revised Statutes." Laws 2014, 2nd S.S., Ch.1, § 162. On May 29, 2014, the Legislature created the Department and the responsibilities and authority in Article 69 for child placing agency were transferred from Department of Economic Security to the Department.

This five-year-review report covers ten rules in A.A.C. Title 6, Chapter 5, Article 69, which pertain to the formation and operation of child placing agencies. According to R6-5-6903(F), a child placing agency is a child welfare agency that has authority in its license to place children in foster homes. As of 2016, there are 38 licensed child placing agencies in Arizona.

Article Contents

Article 69 contains ten rules that relate to child placing agency licensing standards, addressing objectives; authority; definitions; licensing requirements; denial, suspension, or revocation of a license; license renewal requirements; standards for licensing and operating a child placing agency; confidentiality; civil rights; and fair labor standards act.

Year that Each Rule was Last Amended or Newly Made

All rules were newly made on August 31, 1978.

Proposed Action

The Department intends to complete a Notice of Proposed Rulemaking by December 2016 and submit a Notice of Final Rulemaking to the Council by July 2017.

Summary of Reasons for the Proposed Action

The Department indicates that the rules need to be amended to improve effectiveness, consistency with other statutes and rules, and to make the rules more clear, concise, and understandable.

Exemption or Request and Approval for Exception from the Moratorium

The Governor's Office granted an approval for an exception from the moratorium on January 20, 2016.

Substantive or Procedural Concerns

None.

Analysis of the agency's report pursuant to criteria in A.R.S. § 41-1056 and R1-6-301:

1. Has the agency certified that it is in compliance with A.R.S. § 41-1091?

The Department has certified that it is in compliance with A.R.S. § 41-1091.

2. Has the agency analyzed the rules' effectiveness in achieving their objectives?

Yes. The Department indicates that the rules need to revised and adopted into Title 21, Child Safety, of the Arizona Administrative Code. In addition, R6-5-6902 is ineffective and should be removed because statutory authority is addressed in authority notes rather than the rule itself.

3. Has the agency received any written criticisms of the rules during the last five years, including any written analysis questioning whether the rules are based on valid scientific or reliable principles or methods?

Yes. The Department indicates that it received numerous written comments on an initial draft of child placing agency licensing rules within the last two years. The public comments were received from August 18, 2015 to September 23, 2015 through the Department's website. In addition, comments were received at the two public hearings, September 21, 2015 in Tucson and September 22, 2015 in Phoenix. On October 21, 2015, the Department held a follow-up meeting with key stakeholders and partners to discuss the general themes of the comments received. Attached as a supplement to the report are the written comments, a copy of the issue matrix that the Department utilized to facilitate the follow-up meeting, and notes from the two public hearings.

The area of concern for most written comments are the requirements established under Article 69, such as the educational and experience level of financial staff and direct care staff, and annual audit requirement. Furthermore, the public has also requested the Department to clearly delineate between all of the different agencies and facilities, including child placing agency, child welfare agency, foster home licensing agency, residential group home facility, and adoption agency.

The Department expects the feedback process to continue until March 2017.

4. <u>Has the agency analyzed whether the rules are authorized by statute?</u>

Yes. As general authority, the Department cites to A.R.S. § 8-453(A)(5), under which the Department shall "[a]dopt rules to implement the purposes of the department and the duties and powers of the director."

The Department also cites specific authority for the rules. A.R.S. § 8-503(4)(a) states that the Department shall "[e]stablish rules, regulations, and standards for…[l]icensing of child welfare agencies."

5. <u>Has the agency analyzed the rules' consistency with other rules and statutes?</u>

Yes. The Department indicates that combining the same requirements for child placing agencies and child welfare agencies into one article, and retaining separate articles for different requirements, can provide consistency for Articles 69 and 74. Further, the Department notes that the rules are consistent with other rules and statutes with the following specific exceptions:

- R6-5-6902 contains references to outdated statutes.
- R6-5-6903 contains references to the Arizona Department of Economic Security, which should be replaced with the Department. This rule should also be updated to be consistent with procedures in A.A.C. Title 6, Chapter 5, Article 74, Licensing Process and Licensing Requirements for Child Welfare Agencies Operating Residential Group Care Facilities and Outdoor Experience Programs.
- R6-5-6904 should be updated to be consistent with Article 74.
- R6-5-6906 contains outdated citations. This rule also needs to be updated to be consistent with Article 74.
- R6-5-6907 contains outdated references to rules that are no longer in effect. The rule needs to be updated to be consistent with Article 74 and reflect any new standards in A.A.C. Title 21, Chapter 5.
- R6-5-6908 and R6-5-6909 should be revised to reflect the appropriate statutory reference for the Department in lieu of the repealed DES rule that is referenced.

6. <u>Has the agency analyzed the current enforcement status of the rules?</u>

Yes. The Department indicates that the rules are enforced as written to the extent they do not conflict with state law.

7. Has the agency analyzed whether the rules are clear, concise, and understandable?

The Department notes that several of the rules contain obsolete cross-references and outdated terminology. For example, the terms "caseworker," "casework supervisor," "receiving foster home," and "special foster home" are outdated, but are still used throughout the rules. The Department has identified the following additional changes that would make the rules more clear, concise, and understandable:

- R6-5-6901 should be removed because it does not conform to current rule writing structure.
- In R6-5-6903, the definition of "foster home" contains an incorrect citation. Furthermore, to promote understandability of the terms used for child placing agency and child welfare agency licensing, the Department proposes to combine the definitions into one Article that apply to both entities in the new rules.
- R6-5-6904 should provide more comprehensive information relevant to current licensing requirements.
- R6-5-6905 should provide more comprehensive information relevant to current adverse licensing action procedures. For instance, elaborating on specific reasons for denial, suspension, or revocation of a license will improve understandability of this rule.
- R6-5-6906 should contain current Office of Licensing and Regulation procedures and requirements for license renewals.
- R6-5-6907 should reflect the current Office of Licensing and Regulation requirements and procedures of licensing of child placing agencies. For instance, the experience and education requirements for Executive Director, Casework Supervisor and Consultant positions need to be updated. The organizational requirements should be updated to reflect other types of entities that can operate a child placing agency and the requirement for a Board of Directors should be updated to reflect other types of business structures. In addition, financial requirements need to provide more details for clarity. References to forms used for agency reports for statistics of children and the list of current staff members need to be updated. The rule should provide additional detail in regards to maintenance of children's case and staff records.

8. Has the agency analyzed whether:

a. The rules are more stringent than corresponding federal law?

Yes. The Department indicates that the rules are not more stringent than corresponding federal law.

b. There is statutory authority to exceed the requirements of federal law?

Not applicable.

9. For rules adopted after July 29, 2010, has the agency analyzed whether:

a. The rules require issuance of a regulatory permit, license or agency authorization?

Not applicable, as the rules were adopted prior to July 29, 2010.

b. It is in compliance with the general permit requirements of A.R.S. § 41-1037 or explained why it believes an exception applies?

Not applicable.

10. Has the agency indicated whether it completed the course of action identified in the previous five-year-review report?

Yes. The Department indicated that the Department of Economic Security did not take any action between October 4, 2011, when the previous five-year-review report was approved by the Council, and May 29, 2014. Since May 29, 2014, the Department has completed an initial draft of the rules in Article 69.

11. Has the agency included a proposed course of action?

Yes. As mentioned above, the Department plans to file a Notice of Proposed Rulemaking by December 2016 and submit the Notice of Final Rulemaking to the Council by July 2017 to make the amendments identified in this memo.

Conclusion

The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. This analyst recommends the report be approved.

GOVERNOR'S REGULATORY REVIEW COUNCIL
M E M O R A N D U M

MEETING DATE: July 6, 2016 **AGENDA ITEM: F-4**

TO: Members of the Governor's Regulatory Review Council

FROM: GRRC Economic Team

DATE : June 20, 2016

SUBJECT: **ARIZONA DEPARTMENT OF CHILD SAFETY (F-16-0703)**
Title 6, Chapter 5, Article 69, Child Placing Agency Licensing Standards

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I reviewed the five-year-review report's economic, small business, and consumer impact comparison for compliance with A.R.S. § 41-1056 and make the following comments.

1. Economic Impact Comparison

The economic, small business, and consumer impact statement (EIS) from the most recent rulemaking was not available for the rules contained in the report.

The rules prescribe the "standards of operation that Child Placing Agencies are responsible to uphold." According to the Department, there are presently over 19,000 children in 4,350 licensed foster homes and 112 residential group care facilities. The Department received 600 reports of alleged child abuse or neglect and 300 licensing concerns about these foster homes and facilities.

The Department consulted with the Department of Economic Security (DES), and no economic impact analysis was found for Article 69. The Department did find that the DES Office of Licensing and Regulation did not charge a licensing fee. The Department continues this practice, and does not charge a licensing fee for obtaining or maintaining a Child Placing Agency.

2. Has the agency determined that the rules impose the least burden and costs to persons regulated by the rules?

The Department indicates that with the amendments proposed in the report, the rules will impose the least burden and costs to persons regulated.

3. Was an analysis submitted to the agency under A.R.S. § 41-1056(A)(7)?

No analysis was submitted to the agency by another person that compares the rules' impact on this state's business competitiveness to the impact on businesses in other states under A.R.S. § 41-1056(A)(7).

4. Conclusion

After review, staff concludes that the report complies with A.R.S. § 41-1056 and recommends approval.

Arizona Department of Child Safety

Douglas A. Ducey
Governor

Gregory McKay
Director

April 21, 2016

Ms. Nicole A. Ong, Chair
Governor's Regulatory Review Council
100 North 15th Avenue, Suite 402
Phoenix, Arizona 85007

Re: Five-Year Review Report for A.A.C. Title 6, Chapter 5, Article 69

Dear Ms. Ong:

In compliance with A.R.S. § 41-1056, enclosed is the Department's five-year review of A.A.C. Title 6, Chapter 5, Article 69, Child Placing Agency Licensing Standards. All of the rules in Article 69 have been reviewed and none of them have been rescheduled for review under A.R.S. § 41-1056(H), or are being requested to expire under A.R.S. § 41-1056(J). Also enclosed are a copy of the rules being reviewed and public comments the Department received for the draft rules posted on the Department's website that would replace Title 6, Chapter 5, Article 69, Child Placing Agency Licensing Standards.

The agency is in compliance with A.R.S. § 41-1091.

The agency's contact person who can answer questions about this report is Carrie Senseman, Lead Rules Analyst, at (602) 255-2534 or csenseman@azdes.gov.

Sincerely,

Gregory McKay
Director

Enclosures

ARIZONA DEPARTMENT OF CHILD SAFETY

Five-Year Review Report

Title 6. Economic Security

Chapter 5. Social Services

Article 69.

Child Placing Agency Licensing Standards

I. INTRODUCTION

Prior to May 29, 2014, the rules in Article 69 were used by the Division of Children, Youth, and Families (DCYF) within the Arizona Department of Economic Security. The rules were adopted on August 31, 1978

A.R.S. § 8-451, effective May 29, 2014, created the Arizona Department of Child Safety, ("the Department" or "DCS") and the responsibilities and authority in Article 69 for child placing agency licensing were transferred to the new agency. Within DCS, the Office of Licensing and Regulation, (OLR) administers these rules. Arizona Laws, 2014, First Special Session, Chapter 1, Section 157, Succession, (C) states "Administrative rules and orders that were adopted by the Department of Economic Security continue to be in effect until superseded by administrative action by the Department of Child Safety."

Arizona Laws 2014, First Special Session, Chapter 1, Section 158, provided the Department an exemption from the rulemaking requirements of Title 41, Chapter 6, for 18 months after the effective date of the legislation creating the new agency (May 29, 2014). During that time, the Department was able to create an initial draft of Child Placing Agency Licensing rules and post them on the Department website for public comments from August 18, 2015 through September 23, 2015. A public hearing was held in Tucson on September 21, 2015 and in Phoenix on September 22, 2015 to obtain written and oral comments on the draft rules. A follow-up meeting was held with key stakeholders and partners on October 21, 2015 and general themes of comments received were discussed. Due to the degree of complexity of the subject matter involved with the Department's twenty rulemakings accomplished during the exempt period, the rules for child placing agency licensing were not completed by the close of the exemption period.

The Department requested an exception to Executive Order 2015-01, and was approved on January 20, 2016, by the Governor's Office to conduct regular rulemaking for rules covering the licensing of Child Placing Agencies and Child Welfare Agencies. The Department opened a docket on April 8, 2016 announcing the beginning of rulemaking for the Child Welfare Agency rules, which include the Child Placing Agencies. Work has begun to address oral and written comments received last year and provide a revised draft for informal public review and necessary adjustments prior to the filing of a Notice of Proposed Rulemaking.

Article 69. Child Placing Agency Licensing Standards

A Child Placing Agency, as defined in R6-5-6903(F), is a child welfare agency that is authorized in its license to place children in foster homes.

As of 2016, there were 38 agencies licensed by the Department to provide child placing services in the state of Arizona. The rules in Article 69 pertain to the formation, and ongoing operation of Child Placing Agencies.

II. ANALYSIS OF RULES

A. STATUTORY AUTHORITY

1. GENERAL AUTHORITY

The Department is granted general authority to make rules under A.R.S. § 8-453(A)(5).

2. SPECIFIC AUTHORITY

The Department is granted specific authority to make rules for Child Welfare Agencies under A.R.S. § 8-503(4)(a).

B. OBJECTIVES

The rules in Article 69 are necessary, because they protect vulnerable children in care.

There are currently over 19,000 children placed in 4,350 licensed foster homes and 112 residential group care facilities. In 2015, the Department received over 600 reports, as defined in A.R.S. § 8-455(D), of alleged child abuse or neglect concerning children placed in these foster homes and facilities. The Department received over 300 licensing concerns about these foster homes and facilities during 2014. The rules in Article 69 provide the standards for licensing specifically, Child Placing Agencies that place children in these foster homes and facilities.

The rules in Article 69 are also necessary in order to provide businesses with the information required to license and operate a Child Placing Agency in the state of Arizona. There are currently 38 licensed Child Placing Agencies in the state of Arizona.

Finally, the rules in Article 69 are necessary, because they provide the public with information about the essential services and programs of the Department and the standards of operation that Child Placing Agencies are responsible to uphold.

R6-5-6901 Objectives
The objective of this rule is to establish the objective of Article 69, which is to establish licensing and operating standards to promote quality services for children and unmarried mothers whose needs are not adequately met in their family homes.

R6-5-6902 Authority
The objective of this rule is to establish the specific authority for the rules contained in Article 69.

R6-5-6903 Definitions
The objective of this rule is to promote and ensure uniform understanding of terminology used by the Department throughout this Article.

R6-5-6904 Licensing Requirements
The objective of this rule is to establish the initial licensing requirements and the initial licensing procedure for a Child Placing Agency in the state of Arizona. The rule also establishes the criteria for issuance of a provisional or regular license. The rules define the Department's responsibilities of "supervision" under A.R.S. § 8-503.

R6-5-6905 Denial, Suspension, or Revocation of a License
The objective of this rule is to clarify for the public the circumstances under which the Department may deny, suspend, or revoke a child placing agency license. This rule also informs the public of the Department's requirement to notify a licensee in writing of an adverse licensing action, and the opportunity for the licensee to request an administrative hearing.

R6-5-6906 License Renewal Requirements
The objective of this rule is to establish specifications of what is needed to renew a Child Placing Agency license and to inform the public of the circumstances of when a license renewal is required.

R6-5-6907 Standards for Licensing and Operating a Child Placing Agency
The objective of this rule is to establish and inform the public of the criteria for operating a licensed Child Placing Agency. Categories of requirements covered include, staffing, organizational structure, financing, reporting, personnel, supervision of children in care and foster homes, provision of services, and facility standards.

R6-5-6908 Confidentiality
The objective of this rule is to establish the requirements for licensed Child Placing Agencies for using and safeguarding the confidential information of children.
R6-5-6909 Civil Rights
The objective of this rule is to establish the requirement of Child Placing Agencies to adhere to the Department of Economic Security's rules in regard to civil rights.
R6-5-6910 Fair Labor Standards Act
The objective of this rule is to establish the requirement for the Child Placing Agency's employee hiring and compensation policies to comply with the Fair Labor Standards Act.

C. EFFECTIVENESS

The Department acknowledges that the rules in Article 69 are no longer applicable to the Department of Economic Security and need to undergo revision and be adopted into Title 21, Child Safety, of the Arizona Administrative Code.

Although most of the general requirements of Article 69 for Child Placing Agency licensing are still accurate, some definitions, citations and references are outdated and are not consistent with state law, other administrative rules, and current policy and practice. The Department intends to address these issues and concerns with the new Child Placing Agency licensing rules being developed under the regular rulemaking process.

R6-5-6901. Objectives is effective in informing the public of the subject and parameters of Article 69, but may not conform to current rule writing structure and could be removed.
R6-5-6902. Authority is ineffective, because statutory authority should be addressed in authority notes rather than in rule. This rule could be removed.[i]
R6-5-6903. Definitions can be made more effective by revising definitions to match current statute and removing references to the Arizona Department of Economic Security, such as "Division", and replacing them with those that refer to the Department. Other examples for improvements include reviewing the definitions for outdated and inconsistent terms, such as, "Caseworker," "Casework Supervisor," "Receiving Foster Home," and "Special Foster Home" to determine whether they require updating and conforming to the rules promulgated last year. The definition of "foster home" is still correct, but the citation is now A.R.S. § 8-501(5), instead of A.R.S. § 8-501(4). In order to effectively promote a uniform understanding of terminology used for Child Placing Agency and Child Welfare Agency licensing, the Department is proposing to combine all definitions into one Article that apply to both entities in the new rules.[ii]
R6-5-6904. Licensing Requirements can be made more effective by replacing outdated procedures with updated procedures used by the Department of Child Safety's OLR to

make them more understandable and easy to follow. For example, both the Fingerprints and the Consultation sections may require updating due to subsequent changes in statutes. In addition, any changes to OLR procedures, such as the ability to submit an application electronically, will require updating.

R6-5-6905. Denial, Suspension, or Revocation of a License can be made more effective by revising the rule to reflect current adverse licensing action procedures to make them more understandable. For example, elaborating on specific reasons for revocation, denial or suspension will make this rule more understandable.

R6-5-6906. License Renewal Requirements can be made more effective by revising the rule to reflect current OLR procedures and updating citations. For example, the renewal application timeframes may require updating. Also, this rule references R6-5-6904(E), which will be replaced under Title 21.

R6-5-6907. Standards for Licensing and Operating a Child Placing Agency can be made more effective by revising the rule to reflect the current OLR requirements, procedures, and accurate legal references for the licensing of Child Placing Agencies. For example, education and experience requirements for the positions of Executive Director, Casework Supervisor, and Consultants may need updating. The organizational requirements may not cover all types of entities that can operate a Child Placing Agency and the requirement for a Board of Directors may need to be updated to reflect other types of business structures. Financing requirements could be more detailed to make the rule clear to the applicants and the Child Placing Agencies that are currently licensed. There are outdated specific references to forms used for agency reports on statistics of children and the list of current staff members. Additional detail to assist Child Placing Agencies with the maintenance of children's case records and staff records could be provided. The types of foster care homes listed are antiquated terms and should be updated. References to rules no longer in effect needs to be updated to reflect new Department rules.

R6-5-6908. Confidentiality This rule can be made more effective by revising the rule to reflect the appropriate statutory reference for the Department in lieu of the repealed DES rule that is referenced.

R6-5-6909. Civil Rights This rule can be made more effective by revising the rule to reflect the appropriate statutory reference for the Department in lieu of the repealed DES rule that is referenced.

R6-5-6910. Fair Labor Standards Act is believed to be effective.

D. CONSISTENCY

The following rules contain outdated statutory or Administrative Code references: R6-5-6902, R6-5-6903, R6-5-6904, R6-5-6907, R6-5-6908, and R6-5-6909. The following rules would be improved by updating them to be consistent with procedures contained in the Department's Child Welfare Agencies operating Residential Group Care Facilities rules

(Title 6, Chapter 5, Article 74): R6-5-6903, R6-5-6904, R6-5-6906, and R6-5-6907. An improvement to R6-5-6907(D)(2) would be to make it consistent with any new standards contained in Title 21, Chapter 5, (Adoption Articles). Consistency for Article 69 as well as Article 74, could be obtained by combining the same requirements for both types of Child Welfare Agency licenses into one Article, and maintaining separate Articles for the unique requirements of Child Placing Agencies and Child Welfare Agencies.

E. ENFORCEMENT POLICY

The Department enforces all Article 69 rules, as written, to the extent that they do not conflict with current state or federal law.

F. CLEAR CONCISE AND UNDERSTANDABLE

These rules can be made more concise by combining, under one Article, the rules that apply to both Child Placing and Child Welfare Agency licensing and operation. For example, the combined Article could include rules for Definitions that apply to both entities and the topics of obtaining and submitting an initial license application, the Department's licensing timeframes, the structure of the Governing Body, description and circumstances warranting an adverse licensing action, and the standards for maintaining the confidentiality of records and information.

These rules could be improved and made clearer by updating citations to reflect current administrative rule, state and federal laws. These rules can also be improved by updating antiquated terms, such as "board homes," and "caseworker supervisor." The rules can also be written with more accuracy by replacing references to the Department of Economic Security, and the Department of Health Services, where appropriate, with references to the Department of Child Safety.

These rules can be made more understandable by specifying the Department's current procedures, such as issuing initial and renewal licensing applications, explaining the licensing requirements and identifying circumstances calling for an adverse licensing action. The rules can be made more understandable by updating licensing and operating standards to reflect current statute. For example, confidentiality, fingerprinting and initial licensing requirements do not reflect recent state and federal laws.

G. WRITTEN CRITICISMS

No written criticisms were received for Article 69, by the Department of Economic Security prior to May 29, 2014. During the Department's eighteen month exempt rulemaking term, the Department posted new draft rules to replace Article 69. The

Department held public hearings and a stakeholder meeting to obtain feedback on the proposed rules.

Criticisms and comments covered a number of areas. Copies of the written comments and on-line comments are contained in the enclosed supplement of this report. In addition, a copy of the issue matrix used by the Department to facilitate the meeting with stakeholders that included the draft rules for Child Placing Agencies is included as are notes from the two public hearings held in Tucson and Phoenix.

Areas of concern included the nature of the draft requirements for a Child Placing Agency's Governing Body, the educational and experience level of financial staff and direct care staff, annual audit requirement, and whether or not these draft rules applied to foster home licensing agencies. The foster home licensing agencies, were once licensed as Child Placing Agencies by OLR, but do not provide direct care services to children. New rules in Title 21, Chapter 6, Article 2 adopted in January of 2016, now apply to the foster home licensing agencies. The draft for the new Child Placing Agency rules will provide clarification for licensed entities based upon the type of services provided.

H. ECONOMIC IMPACT COMPARISON

Prior to May 29, 2014, the Arizona Department of Economic Security administered the Child Placing Agency licensing rules in Article 69 by the DES Office of Licensing, Certification, and Regulation (OLCR). After the legislative removal of the Division of Children Youth and Families (DCYF) child welfare programs and functions from the Department of Economic Security, the Department of Child Safety established an Office of Licensing and Regulation, (OLR) to administer the rules for Article 69, as well as those for licensing Child Welfare Agencies, adoption agencies and foster homes.

After consultation with the Department of Economic Security OLCR, no Economic Impact Analysis was found in their records for the Article 69 rulemaking. The DES OLCR did not charge a licensing fee and the Department of Child Safety OLR also does not charge a licensing fee for obtaining or maintaining a Child Placing Agency license.

Child Placing Agency, as defined at R6-5-6903(F), is "a child welfare agency that is authorized in its license to place children." The Child Placing Agency can place children in a licensed foster home or facility, and a Child Welfare Agency is defined in A.R.S. § 8-501(A)(1). According to statute, a Child Placing Agency includes a state agency, a political subdivision of this state, or a person, firm, corporation, association, or organization.

Expenditures for the DCS Office of Licensing and Regulation

OLR is organized into three functional units – Licensing, Inspection, and Enforcement. Each functional unit is involved in administering Article 69. These functional units also license, inspect, and enforce the rules for Child Welfare Agencies, adoption agencies, and foster homes.

OLR tasks include, but are not limited to the following:

- Provide information and application packets to parties interested in obtaining a Child Placing Agency, Child Welfare Agency, or Adoption Agency license.
- Review administratively and substantively new and renewal licensing applications and supporting documentation.
- Identify missing documentation and information needed to process and approve a Child Placing, Child Welfare Agency or Adoption Agency license.
- Perform inspections of facilities, and document findings.
- Conduct, review and assess OLR Life Safety Inspection reports.
- Write home studies.
- Make licensing determinations, and issue licenses.
- Provide on-going technical assistance to licensed agencies.
- Conduct annual, scheduled, and unannounced monitoring inspections.
- Receive, evaluate and investigate complaints.
- Issue and track corrective action plans.
- Identify and complete adverse licensing actions, such as suspension, denials and revocations.
- Respond to adverse action appeals.

Table one displays expenditures for Budget Fiscal Year (BFY) 2015 and for BFY 2016, to date. OLR expenditures for accomplishing its Licensing, Inspection, and Enforcement functions include:

- Salaries
- Benefits
- Temporary Staff and Contracts
- In State Travel
- Rent/Other Operating Expenditures -

- Equipment

OLR - Fiscal Year 2015 & 2016													
FY2016 Budget Fiscal Month													
Expense Category	**JUL**	**AUG**	**SEP**	**OCT**	**NOV**	**DEC**	**JAN**	**FEB**	**MAR**	**APR**	**MAY**	**JUN**	**Grand Total**
Salaries	114,510	122,137	113,290	178,814	120,624	120,902	132,183	135,057	206,732	-	-	-	1,244,249
Benefits	51,880	53,066	50,978	76,592	52,921	53,518	53,704	56,090	85,467	-	-	-	534,215
Temps & Contracts			4,629	20,432	703	22,078	24,071	16,216	13,313	-	-	-	101,442
In-State Travel	727	2,801	1,083	1,306	503	228		309	907	-	-	-	7,863
Rent/Other Operating	222	1,921	2,976	4,524	***115,270**	19,517	47,321	19,419	44,410	-	-	-	255,581
Equipment								1,953	16,436	-	-	-	18,389
Grand Total	**167,338**	**179,926**	**172,956**	**281,668**	**290,022**	**216,242**	**257,278**	**229,044**	**367,265**	**-**	**-**	**-**	**2,161,740**
**** $115k in November is correcting for previous four months of rent.***													
FY 2015 Budget Fiscal Month													
Expense Category	**JUL**	**AUG**	**SEP**	**OCT**	**NOV**	**DEC**	**JAN**	**FEB**	**MAR**	**APR**	**MAY**	**JUN**	**Grand Total**
Salaries	54,056	81,666	89,619	151,175	96,589	104,713	104,984	108,105	111,298	175,008	104,523	102,679	1,284,415
Benefits	25,501	36,306	38,856	65,086	39,981	43,376	46,290	49,487	51,186	81,302	50,659	49,358	577,387
Temps & Contracts		6,860	11,248	7,481	11,597	9,581	16,212	8,543	19,366	8,906	20,638	52,709	173,140
In-State Travel			475		338	195	289	447	851	405	615	2,409	6,023
Out-of-State Travel				701									701
Other Operating			2,365	2,686	1,804	2,616	4,829	5,501	2,066	4,188	5,762	37,245	69,063
Rent			50	50					50	100			250
Equipment			1,113	119						65	0	6,715	8,012
Grand Total	**79,557**	**124,832**	**143,726**	**227,297**	**150,309**	**160,481**	**172,603**	**172,082**	**184,817**	**269,974**	**182,197**	**251,115**	**2,118,991**

Table 1. OLR Expenditures for BFY15 and BFY16

I. BUSINESS COMPETITIVENESS ANALYSIS

A business competitive analysis was not received by the Department of Economic Security or the Department from a member of the public during the timeframe or the preparation of this report.

J. COURSE OF ACTION FROM PREVIOUS FIVE-YEAR REVIEW REPORT

Since the previous five-year report for Article 69, until May 29, 2014, the Department of Economic Security did not conduct rulemaking activities for these rules due to other Department priorities and the Governor's Executive Orders prohibiting such action without permission.

After May 29, 2014, the Department of Child Safety, began to conduct rulemaking under the exemption provided in its enacting legislation. The Department began to draft new rules to replace Article 69. The previous three five-year review reports for Article 69 were obtained from the Department of Economic Security and the contents of those reports were consulted in the drafting of this report, as well as the Child Placing Agency rules released in August 2015, to correct previously identified errors and omissions. Examples of these previously identified issues are discussed in Section C of this report.

K. DETERMINATION OF BURDEN AND COSTS

With the amendments proposed for the new rule drafts in this report, the Department believes that the new Child Placing Agency licensing rules will impose the least burden of costs to persons regulated by these rules including paperwork, reporting, and other compliance costs, necessary to achieve the safety and well-being of children in care.

L. CORRESPONDING FEDERAL LAW

The corresponding federal law is, 42 U.S.C. § 675. The rules in Article 69 are not more stringent than federal law.

M. COMPLIANCE WITH A.R.S. § 41-1037

The rules are exempt from A.R.S. § 41-1037. A.R.S. § 41-1037(A)(5) provides an exception to the requirement to use a general permit for a permit, license, or authorization issued pursuant to sections A.R.S. §§ 8-503 and 8-505.

N. PROPOSED ACTION

The Department requested in December 2015, an exception to Executive Order 2015-01, and received approval from the Governor's Office on January 20, 2016 to conduct regular rulemaking for the development of Child Placing and Child Welfare Agency licensing rules. These rules will replace Title 6, Chapter 5, Articles 69 and 74 and will be located in Title 21, Chapter 7 of the Arizona Administrative Code.

The Department is currently in the process of updating and redesigning the draft rules based upon the public comments and stakeholder input received in 2015. The DCS OLR and rules staff are working with external partners and the public to develop a revised set of draft rules that is satisfactory. The Department plans to file a Notice of Proposed Rulemaking by late December 2016. The Department projects that the informal feedback process will conclude in late March, 2017. The Department plans to submit the Notice of Final Rulemaking to the Council for consideration in July of 2017.

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[i] For R6-5-6902, As of May 29, 2014, the general authority for the rules in Title 6, Chapter 5, Article 69, is now A.R.S. § 8-453(5) and the specific authority for having Child Placing Agency rules is A.R.S. § 8-503(A)(4)(a). Both are attached. Title 8, Chapter 4, Article 4, Child Welfare and Placement, statutes still apply to Article 69 but have not been included in this submission, unless specifically stated in the text of the rules. A.R.S. § 46-134 is a statute for the powers and duties of the Arizona Department of Economic Security and was included in this submission, but no longer applies to these rules.

[ii] For R6-5-6903(N), A.R.S. 36-501(4) is an incorrect cite. It is listed in the Arizona Revised Statutes as Title 36, "Public Health and Safety, 501 "Definitions," (4), "Court." The current statute defining a "medical practitioner," is found in A.R.S. § 36-1901(48) (attached), although if used in context of these rules, may not include all professions listed and would not include a veterinarian.

Historical Note
Adopted effective May 17, 1976 (Supp. 76-3). Former Section R6-5-6711 renumbered and amended as Section R6-5-6710, former Section R6-5-6713 renumbered and amended as Section R6-5-6711 effective June 19, 1979 (Supp. 79-3). Section repealed; new Section made by final rulemaking at 18 A.A.R. 1449, effective August 6, 2012 (Supp. 12-2).

R6-5-6712. Appeals

A. When the Department denies, reduces, or terminates an adoption subsidy, the Department shall send the adoptive parent written notice of the action and the parent's right to appeal.

B. The notice shall contain:
1. An explanation of the action taken and the reason for the action,
2. A statement of the adoptive parent's right to appeal the action, and
3. The time-frame for filing an appeal.

C. The request for appeal shall:
1. Specify the action being appealed;
2. The reasons for the appeal; and
3. A brief summary of why the Department's action was erroneous, unlawful, or improper.

D. The Office of Appeals shall conduct the appeal pursuant to A.R.S. § 8-145.

E. The rules of the Department in Article 24 of this Chapter apply to all services provided under this Article.

Historical Note
Adopted effective May 17, 1976 (Supp. 76-3). Repealed effective June 19, 1979 (Supp. 79-3). New Section made by final rulemaking at 18 A.A.R. 1449, effective August 6, 2012 (Supp. 12-2).

R6-5-6713. Renumbered

Historical Note
Adopted effective May 17, 1976 (Supp. 76-3). Renumbered and amended as Section R6-5-6711 effective June 19, 1979 (Supp. 79-3).

ARTICLE 68. REPEALED

R6-5-6801. Repealed

Historical Note
Adopted effective May 26, 1977 (Supp. 77-3). Repealed effective June 5, 1997 (Supp. 97-2).

R6-5-6802. Repealed

Historical Note
Adopted effective May 26, 1977 (Supp. 77-3). Repealed effective June 5, 1997 (Supp. 97-2).

R6-5-6803. Repealed

Historical Note
Adopted effective May 26, 1977 (Supp. 77-3). Repealed effective June 5, 1997 (Supp. 97-2).

R6-5-6804. Repealed

Historical Note
Adopted effective May 26, 1977 (Supp. 77-3). Repealed effective June 5, 1997 (Supp. 97-2).

R6-5-6805. Repealed

Historical Note
Adopted effective May 26, 1977 (Supp. 77-3). Repealed effective June 5, 1997 (Supp. 97-2).

R6-5-6806. Repealed

Historical Note
Adopted effective May 26, 1977 (Supp. 77-3). Repealed effective June 5, 1997 (Supp. 97-2).

R6-5-6807. Repealed

Historical Note
Adopted effective May 26, 1977 (Supp. 77-3). Repealed effective June 5, 1997 (Supp. 97-2).

R6-5-6808. Repealed

Historical Note
Adopted effective May 26, 1977 (Supp. 77-3). Repealed effective June 5, 1997 (Supp. 97-2).

ARTICLE 69. CHILD PLACING AGENCY LICENSING STANDARDS

R6-5-6901. Objectives

The objective of this Article is to establish licensing and operating standards to promote quality services for children and unmarried mothers whose needs are not adequately met in their family homes.

Historical Note
Adopted effective August 31, 1978 (Supp. 78-4).

R6-5-6902. Authority

A.R.S. §§ 8-501 through 8-520 and 46-134.

Historical Note
Adopted effective August 31, 1978 (Supp. 78-4).

R6-5-6903. Definitions

A. "Adult." Any person 18 years of age or older.

B. "Authorized representative." A designated employee of the Department.

C. "Casework supervisor." A person who holds a Bachelor's degree from a university or college and has at least three years of casework experience in a certified or licensed family/child welfare agency.

D. "Caseworker." A person who holds a Bachelor's degree from a university or college and who has training and/or experience in the field of behavioral science.

E. "Child." Any person under 18 years of age.

F. "Child placing agency." A child welfare agency which is authorized in its license to place children.

G. "Department." The Arizona State Department of Economic Security.

H. "Division." The Arizona State Department of Economic Security.

I. "Executive Director." The person responsible for overall administration of the child placing agency; also referred to as Administrator, or Director.

J. "Foster care." A social service which, for a planned period, provides substitute care for a child when its own family cannot care for it for a temporary or extended period of time. Foster care may be in a private family home or a group home.

K. "Foster child." A child placed in a foster home or child welfare agency.

L. "Foster home." A home maintained by an individual or individuals having the care or control of children, other than those related to each other by blood or marriage, or related to such individuals, or who are legal wards of such individuals (A.R.S. § 8-501(4)).

M. "License." The legal authorization to operate a child placing agency issued by the Arizona Department of Economic Security.

N. "Licensed medical practitioner." Any physician or surgeon licensed under the laws of this State to practice medicine pursuant to Title 32, Chapter 13 and 17 (A.R.S. § 36-501(4)).

O. "Licensing." Includes the agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal or amendment of a license.

P. "Parent or parents." The natural or adoptive parent or parents of the child.

Q. "Provisional license." A temporary license to operate a Child Placing Agency, issued by the Arizona Department of Economic Security for a period not to exceed six months; a provisional license is issued to an agency that is temporarily unable to conform to all licensing standards and where the deficiencies are minor, correctable and not potentially injurious to the safety or welfare of a child and the agency agrees to correct the deficiency or deficiencies, and where there is a demonstrated need for the services. A provisional license is not renewable.

R. "Receiving foster home." A licensed foster home suitable for immediate placement of children when taken into custody or pending medical examination and court disposition which is designated as a receiving foster home and it is licensed.

S. "Regular foster home." A licensed foster home suitable for placement of not more than five minor children.

T. "Regular license." A license to operate a Child Placing Agency, issued by the Arizona Department of Economic Security; a regular license which may be issued following a provisional license is valid for one year from the date of issuance and must be renewed annually.

U. "Social worker." A person who holds a Master of Social Work degree from an accredited school of social work.

V. "Special foster home." A licensed foster home capable of handling not more than five minor children who require special care for physical, mental or emotional reasons or have been adjudicated a delinquent (A.R.S. § 8-501(10)).

Historical Note
Adopted effective August 31, 1978 (Supp. 78-4).

R6-5-6904. Licensing Requirements

A. Consultation. Individuals, association, institutions or corporations considering the establishment of a Child Placing Agency shall consult the Social Services Bureau of the department about such plans:
1. Before a specific program is developed;
2. Before filing a petition for corporation; and
3. Before an application is filed.

B. Application. Individuals, associations, institutions or corporations shall make written application to the Department for a Child Placing Agency license.

C. Fingerprints
1. All members of the Child Placing Agency staff having contact with the foster children must be fingerprinted, and the fingerprints submitted to the Department for a criminal records check.
2. A license for a Child Placing Agency will not be issued, or will be revoked, if any staff member, having contact with foster children has ever been convicted of a sex offense, has been involved in child abuse, child neglect, selling narcotics, or contributing to the delinquency of a minor, or has a substantial criminal record.

D. Demonstration of need for services in the community. Evidence of need shall consist of:
1. Communication from community leaders in the field of child welfare indicating a need for the services proposed by the applicant or
2. Recent research data establishing a need for the services being proposed by the applicant.

E. Licensing study
1. A study will be made as required by A.R.S. § 8-505(C) by an authorized representative of the Department to evaluate the potential and actual ability of the Child Placing Agency to provide services to children according to the Standards prescribed in this Article.
2. To obtain this information, the authorized representative of the Department must make at least one visit to evaluate the agency setting and interview the Director and staff.
3. In addition, the authorized representative of the Department shall review documentary evidence provided by the Executive Director of the Child Placing Agency regarding agency operation and services to be provided.

F. Provisional license
1. A provisional license shall be issued to any Child Placing Agency that is temporarily unable to conform to all licensing standards, and where the deficiencies are minor, correctable and not potentially injurious to the safety or welfare of the children served, and where the agency agrees to correct the deficiencies, and where there is a demonstrated need for the services.
2. A provisional license is valid for up to six months and may not be renewed.
3. Prior to the expiration of the provisional license, a review of Standards will be conducted by the Department to determine eligibility for regular licensing. The Child Placing Agency must meet all licensing standards for the issuance of a regular license.

G. Regular license
1. The license is valid for one year from the date of issuance and must be renewed annually.
2. Each license shall state in general terms the kind of child welfare services the licensee is authorized to undertake; and the number of children that can be received or placed and supervised in foster homes, their ages and sex, and the geographical area the agency is equipped to serve (A.R.S. § 8-505(D)).

H. Supervision by the Department. The Department shall provide training, consultation and technical assistance to Child Placing Agencies.

Historical Note
Adopted effective August 31, 1978 (Supp. 78-4).

R6-5-6905. Denial, Suspension, or Revocation of a License

A. The Department shall deny, suspend or revoke any license when:
1. The Child Placing Agency is not in compliance with the licensing standards of the Department, Arizona state or federal statutes, city or county ordinances or codes; or
2. The care and/or services needed by children are not provided.

B. A license that has been suspended can be reinstated by the correction of the deficiency.

C. When a license is revoked, it is necessary to correct the deficiency and make a new application.

D. When an initial application, or an application for a renewal of a license is denied, or a license is revoked or suspended, a written notification of the action shall be forwarded by certified mail to the applicant or licensee.
1. The written notice shall state the reasons for the denial, revocation or suspension with references to applicable statutes, regulations and standards.
2. The Department shall notify the Child Placing Agency of the right to request a hearing within 20 days after receipt of the written notice.

3. The hearing shall be held within ten days of the request, and at that time the applicant or holder shall have the right to present testimony and confront witnesses.
4. When a hearing is requested, the denial, suspension or revocation of the license shall not become final until after the hearing decision is published.
5. The fair hearing process shall be in accordance with A.A.C. Title 6, Chapter 5, Article 24.

Historical Note
Adopted effective August 31, 1978 (Supp. 78-4).

R6-5-6906. License Renewal Requirements

A. Every regular license shall expire one year from the date of issuance and may be renewed annually upon application of the Child Placing Agency.
1. License renewal is not automatic.
2. License renewal requires:
   a. A consultation;
   b. An application;
   c. A written description of services provided; and
   d. Licensing study (see R6-5-6904(E)).
3. For license renewal, each Child Placing Agency must meet all standards for licensing as specified in this Article.

B. An application for the renewal for a Child Placing Agency shall be made in the same manner as the original application. A licensee shall reapply when:
1. The present license will expire within 30 days to 60 days; or
2. There is a plan to move within 30 days from the address on the current license; or
3. There is substantial material change in the program and/or purpose of the Child Placing Agency.

Historical Note
Adopted effective August 31, 1978 (Supp. 78-4).

R6-5-6907. Standards for Licensing and Operating a Child Placing Agency

A. Requirements for the staff of a Child Placing Agency
1. Executive Director. The Agency Board shall select an Executive Director.
   a. If the Executive Director is not directly involved in supervising child placing activities, the Director shall at least have a Bachelor's degree in a field related to social work such as administration, psychology, education or other allied profession, as well as demonstrated satisfactory experience in the area of service provided by the agency.
   b. If the Executive Director directly supervises child placing activities, he shall have a Master's degree in Social Work or at least a Bachelor's degree and a minimum of three years of experience in child welfare services in a certified or licensed family or child welfare agency.
2. Casework supervisor. The casework supervisor shall possess above average ability in casework practice and have knowledge of and skills applicable to casework supervision. The supervisor shall have a Bachelor's degree and at least three years of casework experience in a licensed family or child welfare agency.
3. Social worker. A person shall have a Master of Social Work degree from an accredited school of social work.
4. Caseworker. A caseworker shall have a Bachelor's degree from a university or college and have training and/or experience in the field of behavioral science.
5. Office staff. The agency shall have sufficient clerical services to keep correspondence, records, bookkeeping, and files current and in good order.
6. Consultants
   a. The agency shall have a consulting Licensed Medical Practitioner who makes recommendations as to the medical aspects of the agency program, coordinates medical care for selected children, and advises staff regarding the health problems of specific children.
   b. Psychiatric, psychological and legal consultation and/or services shall be available to the agency.

B. Requirements for the organization of a Child Placing Agency
1. Type of organization. A Child Placing Agency shall be maintained by the state, or a political subdivision thereof, a person, firm, corporation, association, or organization.
2. Incorporation
   a. Incorporated Child Placing Agencies shall provide the Department with a copy of the Articles of Incorporation and Bylaws and the Certificate of Incorporation issued by the Arizona Corporation Commission.
   b. The purpose for which the agency is incorporated shall be stated in its Articles of Incorporation and the agency shall not enter any other fields of service than those provided in its Articles of Incorporation.
3. Board of Directors
   a. All Child Placing agencies shall have a Board of Directors. The Department shall be provided a current list of all Board members, their address and office held.
   b. Persons employed by or who receive compensation from a group care agency (see Title 6, Chapter 5, Article 74) may not be Board members of a Child Placing Agency due to a possible conflict of interest.
   c. The Board of Directors shall:
      i. Assume responsibility, jointly with the Executive Director, for formulating the plans and policies of the Child Placing Agency.
      ii. Keep sufficiently informed through Board meetings and though the reports of its Executive Director and committees to ensure that the agency fulfills all of its functions in the best interest of the children.
      iii. Meet at least quarterly. Its executive committee shall meet as needed.
      iv. Keep minutes of each meeting which shall be made a permanent part of the records of the Child Placing Agency.
      v. Refrain from direct administration or operation of the Child Placing Agency, either through individual members or committees, except in emergencies.
      vi. Select and employ an Executive Director to whom the responsibility for administration of the agency shall be delegated and, when necessary, terminate such employment.
      vii. Require and approve the Child Placing Agency's annual program and financial reports.
   d. The Board of Directors should be composed of adult residents who have a genuine interest in child welfare, concern for social conditions in the community, and reflect equitably the ethnic and economic standing of the population served. The Board members should have sufficient time to discharge their obligations and have a variety of interests, talents and

points of view so that no single group or profession will have a controlling voice.

e. The names, addresses and offices held of all members of the Board of Directors shall be currently filed with the Department. All changes in composition of the Board of Directors or Officers of the Child Placing Agency must be reported to the Department in writing within 30 days of a change.

f. Provision should be made for replacement of members who become inactive for six months. Terms for Board members shall be overlapping and election of one-third of the Board membership annually is recommended to ensure continuity of policy, as well as the introduction of new and changing points of view. Administrators and staff of the Child Placing Agencies shall not be members of the Board of Directors. Agencies which do not have overlapping terms or which currently have administrators or staff members on their Board of Directors will have one year from the date of issuance of these standards to bring their Board of Directors into compliance.

4. Financing

a. Requirement for sufficient funding. The agency must furnish evidence that it has sufficient funds to pay all start-up and operating costs through the year of operation for which a license may be issued.

b. Budget and financial records

i. Child Placing Agency shall operate on a budget which has been approved by its governing board before the beginning of the fiscal year.

ii. A Child Placing Agency must maintain financial records of all receipts, disbursements, assets, and liabilities for at least three years. These records should be available for inspection by the Department upon request.

c. Solicitation of funds from the public. Each Child Placing Agency shall comply with all local and state laws relating to the solicitation of funds.

5. Operations manual. Each agency shall compile an operations manual. It shall be available to all agency staff members, and all staff members shall be familiar with the contents. It shall contain:

a. The overall philosophy, which guides the agency's services.

b. A statement of the primary purpose, services, and goals of the agency.

c. A chart of organizational structure.

d. The agency's intake policies and procedures.

e. The manual of the agency's governing board.

f. The operational procedures, which guide the delivery of the agency's services.

g. Copies of the agency's forms.

6. Records and reports

a. Files. Case records and financial records shall be kept in a locked, fire-resistant file. Access to records shall be limited to the staff who have need for the data, and to authorized representatives of the Department.

b. Case records

i. The agency shall maintain up-to-date, confidential and well-organized case records. Each child's record should indicate, from the point of admission to discharge, the service plan and the progress of the child.

ii. Records shall include the current information needed to provide services, make service plans, and evaluate each child.

iii. The case record should be divided into sections for easy reference, with the material filed under the following headings, as appropriate:

(1) Intake -- intake study, including referral material from other agencies, court, or referral sources;

(2) Legal -- specific verified information relative to the status of the child's legal guardianship and custody. Statements, agreements, and consents signed by parent(s) or guardian(s) pertaining to the child's placement, financial responsibility, and other data required for protection of the child;

(3) Medical -- medical history, including immunizations, physical defects, significant developmental history, illnesses, and hospital care and/or operations. Medical releases and/or authorizations for treatment or medical care, including the names of medical personnel involved. Records of all prescription medications consumed;

(4) Dental -- date of examinations, etc.;

(5) Psychological -- reports of psychological and/or psychiatric evaluations and examinations;

(6) Progress -- periodic (not less than every three months) evaluation of the child's progress, adjustment, development and future plans and goals.

(7) School -- school records indicating attendance and scholastic achievement;

(8) Correspondence -- letters received or sent concerning the child;

(9) Each record shall have a face sheet listing the following information which shall be kept up-to-date;

(a) Full name of child, including aliases;

(b) Date and place of birth (verified);

(c) Sex;

(d) Religion and race;

(e) Names, addresses of parents and siblings;

(f) Names, addresses and relationships of other responsible persons;

(g) Date referred to the agency;

(h) Date service was terminated;

(i) Other pertinent identifying information.

c. Reports

i. Each agency shall maintain and report accurate statistics on children receiving services, and staff employed, on forms provided for that purpose by the Department. These reports shall include:

(1) Form FC-005, "Foster Child Placement, Replacement and Discharge Central Registry Form," which must be submitted within five working days of the date action is taken.

(2) Form LC-008, "Child Welfare Agency Employee Central Registry," which must

be submitted within five days of employment or discharge.

ii. The Child Placing Agency shall report to the Department any planned change of address, change in program, or other change which significantly affects the services provided. The Department shall be notified 30 days prior to any planned changes.

C. Requirements for the personnel of a Child Placing Agency

1. Personnel practices. An agency shall employ an individual only after careful evaluation of the applicant which will include references as to character, skills, knowledge, and experience.
2. Personnel policies. The agency shall maintain a manual of all personnel policies and procedures including job descriptions and all personnel forms. The written statement of personnel policies outlining personnel practices as they affect both employer and employee should include:
   a. The conditions of employment and the conditions under which employment may be terminated.
   b. Salary scales.
   c. Provision for sick leave, time off, and paid vacation.
   d. Information regarding employment benefits, such as retirement and insurance plans.
   e. Provision for periodic assessment of work performance.
   f. Provision for staff development through in-service training.
3. Personnel records
   a. A personnel record shall be maintained for each employee. This shall include identifying and qualifying information; such as, references, previous work history and education, date of employment and evaluation.
   b. When employees resign, retire, or are discharged, the date and reason for termination shall be recorded.

D. Placement services

1. Foster care
   a. Types of homes
      i. Boarding Home. A Boarding Home provides temporary or permanent care and compensation to the foster parents for room and board. These Boarding Homes may be either Regular or Special Foster Homes.
      ii. Free home. A free home provides temporary or permanent care without compensation other than special needs.
      iii. Work and Wage Home
         (1) Work and Wage Homes are those in which the child's duties within the home constitute reimbursement for room and board and for which the child may be paid an additional wage. These homes shall be used only as a resource for mature and well adjusted children from 16 to 18 years with good work skills. The Child Placing Agency shall prepare a written statement to be signed by the agency, foster parents and child which will clearly define:
            (a) The amount of work required; and
            (b) The remuneration the child is to receive and by whom; and
            (c) The work schedule which shall permit the child time for school attendance, study, recreation, and other normal activities for a child in this age group.
         (2) The Department shall not place adjudicated dependent children in Work and Wage Homes.
   b. Foster care placement procedures
      i. The agency shall follow the preplacement procedures set forth in A.R.S. § 8-511.
      ii. Following the preplacement procedures out lined in A.R.S. § 8-511, if it is determined that the child should be placed in foster care, the agency shall provide appropriate counseling services to the child and his parents to prepare them for the placement.
         (1) If the family does not explain the reason for placement and prepare the child for this experience, the representative of the Child Placing Agency should do so.
         (2) The representative of the Child Placing Agency should explain the foster home program to the parents.
      iii. When a child is placed in foster care, the Child Placing Agency shall comply with the requirements and procedures set forth in A.R.S. § 8-514(B) and (C).
2. Adoption. If authorized in its license to place children for adoption, the agency shall comply with all laws (including but not limited to A.R.S. Title 8, Chapter 1, Article 1) regarding the investigation of potential adoptive parent and the adoption of children. The agency shall comply with the requirements of the following rules of the Department:
   a. Title 6, Chapter 5, Article 65, Adoption Placement;
   b. Title 6, Chapter 5, Article 66, Adoption Study;
   c. Title 6, Chapter 5, Article 67, Adoption Subsidy; and
   d. Title 6, Chapter 6, Article 68, Relinquishment and Severance Services.
3. Parents
   a. When there are social and/or emotional problems regarding the pregnancy, social services shall be given in accordance with the needs of mother during pregnancy and to help her with plans for her rehabilitation after delivery.
   b. Unless inappropriate, the father shall be involved in planning for the mother and child.
   c. Services to unmarried parents may also include establishing paternity and shall include making suitable plans for the child.

E. Supervision

1. The licensed Child Placing Agency shall supervise:
   a. All children placed by the agency in foster homes; and
   b. All foster homes where children are placed by the agency.
2. The licensed Child Placing Agency's representative shall:
   a. Visit Receiving Foster Homes at least once per month;
   b. Visit Regular and Special Foster Homes at least once every three months; and
   c. Prepare written reports of the visits.
3. A Child Placing Agency may allow a child to participate in activities and functions generally accepted as usual or normal for his/her age group. Permission for a child to

participate in activities shall be given in accordance with A.R.S. § 8-513.

4. Following the initial placement, the child placed in a setting other than that of his parent's home shall have medical examinations at periodic intervals, and not less than once every year.

F. Foster home studies

1. The study. Child Placing Agencies that wish to submit foster homes for licensing shall conduct an investigation of the foster home, meeting the standards established by the Department in Title 6, Chapter 5, Article 58, Family Foster Home Licensing Standards.
2. Fingerprints. Foster parent applicants and members of the household, 18 years of age or older, must be fingerprinted, and the fingerprints submitted to the Department for a criminal records check.
3. Demonstration of health
   a. The potential foster care application, prior to licensing, shall furnish a report of a physical examination, done within the last six months, demonstrating that the person has good health and is free from any communicable disease.
   b. Prior to licensing, children of the foster care applicant shall have current immunizations as prescribed by the Arizona Department of Health Services.
4. Sanitation inspection. The Child Placing Agency shall request the local or state health department to conduct a sanitation inspection of the prospective foster home prior to licensing.
5. Licensing. If the foster home meets all requirements set by the Department, the Child Placing Agency shall submit an application stating the foster home's qualifications to the Department. The Child Placing Agency may also recommend the types of licensing and certification to be granted to the foster home. The Department shall review the foster home study, and issue a license for the foster home if all licensing standards have been met.
6. License renewal. Foster home license renewal is required annually by the Department.
7. Homes exempt from licensing by the Department. When a child is placed in a home by a means other than by a court order, and when the home receives no compensation from the state or any political subdivision of the state, licensing by the Department is not required.

G. Requirements of physical plant and equipment

1. Offices
   a. There should be sufficient office space for interviewing children and families and for supervisory conferences.
   b. The Child Placing Agency shall comply with any building, health, fire or other codes in effect in the jurisdiction where it is located.
2. Fire protection. All Child Placing Agencies shall have a written fire evacuation plan posted and should conduct fire drills at least every six months.
3. Telephone. There shall be telephone service in the Child Placing Agency.
4. Vehicle(s). The vehicle(s) for transporting children shall be in a safe operating condition and all drivers shall have a current driver's license. Persons who frequently transport children as a part of their employment shall have a chauffeur's license.
5. Insurance
   a. The Child Placing Agency shall provide for insurance coverage for adequate protection against accidents.
   b. Insurance coverage must include liability insurance to cover acts of children or staff, and protection against damages to, or loss of, buildings and other valuable properties.
   c. There shall be liability insurance on all vehicles transporting children.

Historical Note

Adopted effective August 31, 1978 (Supp. 78-4).

R6-5-6908. Confidentiality

The rules and regulations of the Department for securing and using confidential information concerning the client shall be followed. Refer to Title 6, Chapter 5, Article 23, "Safeguarding of Records and Information."

Historical Note

Adopted effective August 31, 1978 (Supp. 78-4).

R6-5-6909. Civil Rights

The rules of the Department regarding civil rights shall be followed. Refer to Title 6, Chapter 5, Article 26, Civil Rights.

Historical Note

Adopted effective August 31, 1978 (Supp. 78-4).

R6-5-6910. Fair Labor Standards Act

The hiring and compensation policies of the Child Placing Agency shall comply with the Fair Labor Standards Act.

Historical Note

Adopted effective August 31, 1978 (Supp. 78-4).

ARTICLE 70. ADOPTION AGENCY LICENSING

R6-5-7001. Definitions

The definitions in R6-5-6501 apply in this Article.

Historical Note

Adopted as an emergency effective January 1, 1986, pursuant to A.R.S. §§ 41-1003, valid for only 90 days (Supp. 85-6). Emergency renewed effective April 1, 1986, pursuant to A.R.S. §§ 41-1003, valid for only 90 days (Supp. 86-2). Emergency expired. New Section adopted as an emergency effective October 17, 1986, pursuant to A.R.S. §§ 41-1003, valid for only 90 days (Supp. 86-5). Emergency expired. Adopted without change as a permanent rule effective January 23, 1987 (Supp. 87-1). Section repealed, new Section adopted effective January 2, 1996 (Supp. 96-1).

R6-5-7002. Who Shall Be Licensed

A. Only the following persons may perform the adoption services listed in subsection (B):

1. A person licensed as an agency;
2. An employee of or an independent contractor for an agency;
3. A person acting under the direct supervision and control of an adoption agency; or
4. A person or entity holding a statutory exemption from licensing pursuant to A.R.S. § 8-131, when such person is acting in the capacity described in such statutes.

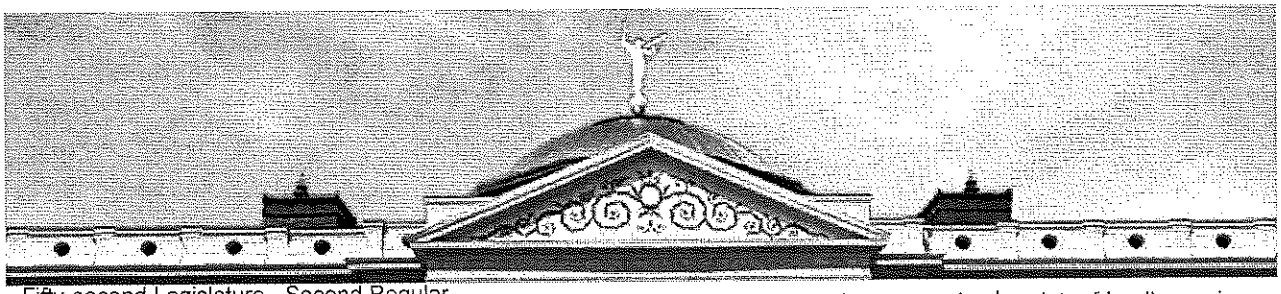
B. Only persons listed in subsection (A) may perform the following adoption services:

1. Recruiting a birth parent to place a child through a particular agency;
2. Taking a birth parent's relinquishment and consent to adoption;
3. Taking physical custody of a child for placement into an adoptive home;
4. Placing a child in an adoptive home;

Department of Child Safety
Five-Year review report for Title 6, Chapter 5. Article 69
Notes on Applicable Statutes

For R6-5-6902, As of May 29, 2014, the general authority for the rules in Title 6, Chapter 5, Article 69, is now A.R.S. § 8-453(5) and the specific authority for having Child Placing Agency rules is A.R.S. § 8-503(A)(4)(a). Both are attached. Title 8, Chapter 4, Article 4, Child Welfare and Placement, statutes still apply to Article 69 but have not been included in this submission, unless specifically stated in the text of the rules. A.R.S. § 46-134 is a statute for the powers and duties of the Arizona Department of Economic Security and was included in this submission, but no longer applies to these rules.

For R6-5-6903(N), A.R.S. 36-501(4) is an incorrect cite. It is listed in the Arizona Revised Statutes as Title 36, "Public Health and Safety, 501 "Definitions," (4), "Court." The current statute defining a "medical practitioner," is found in A.R.S. § 36-1901(48) (attached), although if used in context of these rules, may not include all professions listed and would not include a veterinarian.



8-453. Powers and duties

A. The director shall:

1. Carry out the purposes of the department prescribed in section 8-451.

2. Provide transparency by being open and accountable to the public for the actions of the department.

3. Develop a data system that enables persons and entities that are charged with a responsibility relating to child safety to access all relevant information relating to an abused, neglected or abandoned child as provided by law.

4. Subject to title 41, chapter 4, article 4 and, as applicable, articles 5 and 6, employ deputy directors and other key personnel based on qualifications that are prescribed by the director.

5. Adopt rules to implement the purposes of the department and the duties and powers of the director.

6. Petition, as necessary to implement the case plan established under section 8-824 or 8-845, for the appointment of a guardian or a temporary guardian under title 14, chapter 5 for children who are in custody of the department pursuant to court order. Persons applying to be guardians or temporary guardians under this section shall be fingerprinted. A foster parent or certified adoptive parent already fingerprinted is not required to be fingerprinted again, if the foster parent or certified adoptive parent is the person applying to be the guardian or temporary guardian.

7. Cooperate with other agencies of this state, county and municipal agencies, faith-based organizations and community social services agencies, if available, to achieve the purposes of this chapter.

8. Exchange information, including case specific information, and cooperate with the department of economic security for the administration of the department of economic security's programs.

9. Administer child welfare activities, including:

(a) Cross-jurisdictional placements pursuant to section 8-548.

(b) Providing the cost of care of:

(i) Children who are in temporary custody, are the subject of a dependency petition or are adjudicated by the court as dependent and who are in out-of-home placement, except state institutions.

(ii) Children who are voluntarily placed in out-of-home placement pursuant to section 8-806.

(iii) Children who are the subject of a dependency petition or are adjudicated dependent and who are in the custody of the department and ordered by the court pursuant to section 8-845 to reside in an independent living program pursuant to section 8-521.

(c) Providing services for children placed in adoption.

10. Formulate policies, plans and programs to effectuate the missions and purposes of the department.

11. Make contracts and incur obligations within the general scope of the department's activities and operations subject to the availability of funds.

12. Coordinate with, contract with or assist other departments, agencies and institutions of this state and local and federal governments in the furtherance of the department's purposes, objectives and programs.
13. Accept and disburse grants, matching funds and direct payments from public or private agencies for the conduct of programs that are consistent with the overall purposes and objectives of the department.
14. Collect monies owed to the department.
15. Act as an agent of the federal government in furtherance of any functions of the department.
16. Carry on research and compile statistics relating to the child welfare program throughout this state, including all phases of dependency.
17. Cooperate with the superior court in all matters related to this title and title 13.
18. Provide the cost of care and transitional independent living services for a person under twenty-one years of age pursuant to section 8-521.01.
19. Ensure that all criminal conduct allegations and reports of imminent risk of harm are investigated.
20. Ensure the department's compliance with the Indian child welfare act of 1978 (P.L. 95-608; 92 Stat. 3069; 25 United States Code sections 1901 through 1963).
21. Strengthen relationships with tribal child protection agencies or programs.
B. The director may:
1. Take administrative action to improve the efficiency of the department.
2. Contract with a private entity to provide any functions or services pursuant to this title.
3. Apply for, accept, receive and expend public and private gifts or grants of money or property on the terms and conditions as may be imposed by the donor and for any purpose provided for by this title.
4. Reimburse department volunteers, designated by the director, for expenses in transporting clients of the department on official business. Volunteers reimbursed for expenses are not eligible for workers' compensation under title 23, chapter 6.
C. The department shall administer individual and family services, including sections on services to children and youth and other related functions in furtherance of social service programs under the social security act, as amended, title IV, parts B and E, grants to states for aid and services to needy families with children and for child-welfare services, title XX, grants to states for services and other related federal acts and titles.
D. If the department has responsibility for the care, custody or control of a child or is paying the cost of care for a child, the department may serve as representative payee to receive and administer social security and veterans administration benefits and other benefits payable to the child. Notwithstanding any law to the contrary, the department:
1. Shall deposit, pursuant to sections 35-146 and 35-147, any monies it receives to be retained separate and apart from the state general fund on the books of the department of administration.
2. May use these monies to defray the cost of care and services expended by the department for the benefit, welfare and best interests of the child and invest any of the monies that the director determines are not necessary for immediate use.
3. Shall maintain separate records to account for the receipt, investment and disposition of monies received for each child.
4. On termination of the department's responsibility for the child, shall release any monies remaining to the child's credit pursuant to the requirements of the funding source or, in the absence of any requirements, shall release the remaining monies to:
(a) The child, if the child is at least eighteen years of age or is emancipated.
(b) The person who is responsible for the child if the child is a minor and not emancipated.
E. Subsection D of this section does not apply to benefits that are payable to or for the benefit of a child receiving services under title 36.

F. Notwithstanding any other law, a state or local governmental agency or a private entity is not subject to civil liability for the disclosure of information that is made in good faith to the department pursuant to this section.
G. Notwithstanding section 41-192, the department may employ legal counsel to provide legal advice to the director. The attorney general shall represent the department in any administrative or judicial proceeding pursuant to title 41, chapter 1, article 5.
H. The total amount of state monies that may be spent in any fiscal year by the department for foster care as provided in subsection A, paragraph 9, subdivision (b) of this section may not exceed the amount appropriated or authorized by section 35-173 for that purpose. This section does not impose a duty on an officer, agent or employee of this state to discharge a responsibility or to create any right in a person or group if the discharge or right would require an expenditure of state monies in excess of the expenditure authorized by legislative appropriation for that specific purpose.

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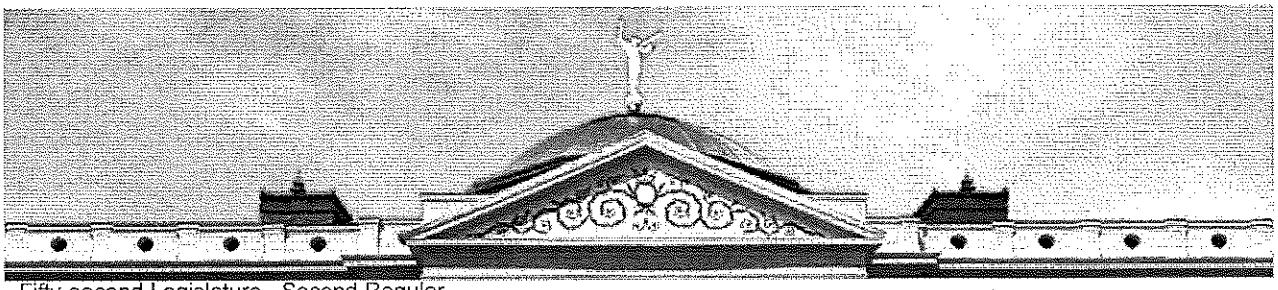

8-503. Powers and duties

A. The division shall:

1. Exercise supervision over all child welfare agencies.

2. Advise and cooperate with the governing boards of all child welfare agencies.

3. Assist the staffs of all child welfare agencies by giving advice on progressive methods and procedures of child care and improvement of services.

4. Establish rules, regulations, and standards for:

(a) Licensing of child welfare agencies.

(b) Licensing of foster homes.

(c) Classifications of foster homes as:

(i) Receiving foster homes.

(ii) Regular foster homes.

(iii) Special classes of foster homes as are needed according to the types of problems involved.

(iv) Group foster homes.

(d) Certifying each foster home according to one or more of the categories prescribed in subdivision (c) of this paragraph.

(e) Initial and ongoing foster parent training programs.

(f) The method of approving foster parent training programs.

(g) Uniform amounts of payment for all foster homes according to certification. However, variations in uniform amounts of payments may be allowed for foster homes based on consideration of geographical location or age or mental or physical condition of a foster child.

(h) Renewal of licenses of child welfare agencies and foster homes.

(i) Form and content of investigations, reports and studies concerning disposition of children and foster home placement.

5. Establish a program of counseling and rehabilitation of parents whose children have been placed in foster homes.

6. Establish foster parent training programs or contract with other agencies, institutions or groups for the provision of such programs to foster parents. Foster parent training programs shall be established in at least the following areas:

(a) Initial and ongoing training as a foster parent for a regular or group foster home.

(b) Initial and ongoing training as a foster parent for a special foster home.

7. Regulate the importation and exportation of children.

8. In conjunction with the department of education and the department of juvenile corrections, develop and implement a uniform budget format to be submitted by licensed child welfare agencies. The budget format shall be developed in such a manner that, at a minimum, residential and educational instructional costs are separate and distinct budgetary items.

9. Beginning October 1, 1983, establish as a goal that, at any given time, not more than fifty per cent of the total number of children whose

maintenance is subsidized by title IV, part E of the social security act, as amended, shall be in foster care in excess of twenty-four consecutive months. The division shall establish through regulations appropriate procedures to achieve the goal.
B. Except as provided in section 8-514.01, large group settings for children, group homes for children and child developmental foster homes which have one or more residents who are clients of the department with developmental disabilities shall be licensed pursuant to title 36, chapter 5.1, article 3. Rules, regulations and standards adopted pursuant to subsection A, paragraph 4 of this section shall not apply to group homes for children or child developmental foster homes licensed pursuant to title 36, chapter 5.1, article 3.

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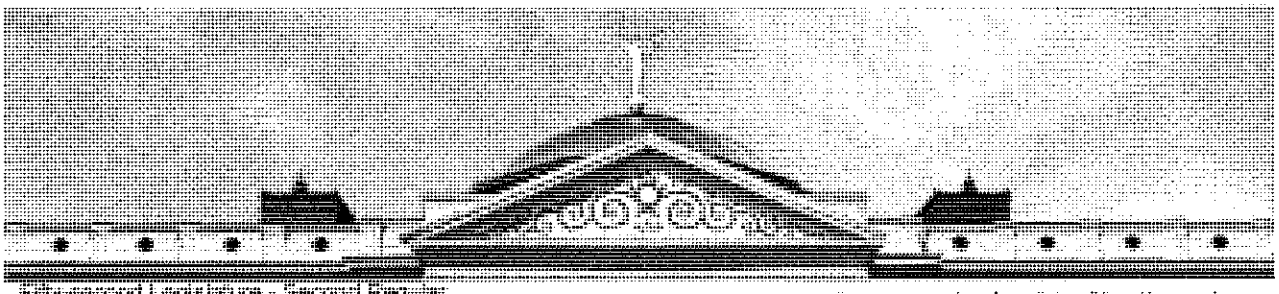

46-134. Powers and duties; expenditure; limitation

The state department shall:

1. Administer all forms of public relief and assistance except those that by law are administered by other departments, agencies or boards.
2. Develop a section of rehabilitation for the visually impaired that shall include a sight conservation section, a vocational rehabilitation section in accordance with the federal vocational rehabilitation act, a vending stand section in accordance with the federal Randolph-Sheppard act and an adjustment service section that shall include rehabilitation teaching and other social services deemed necessary, and shall cooperate with similar agencies already established. The administrative officer and staff of the section for the blind and visually impaired shall be employed only in the work of that section.
3. Assist other departments, agencies and institutions of the state and federal governments, when requested, by performing services in conformity with the purposes of this title.
4. Act as agent of the federal government in furtherance of any functions of the state department.
5. Carry on research and compile statistics relating to the entire public welfare program throughout this state, including all phases of dependency and defectiveness.
6. Cooperate with the superior court in cases of delinquency and related problems.
7. Develop plans in cooperation with other public and private agencies for the prevention and treatment of conditions giving rise to public welfare and social security problems.
8. Make necessary expenditures in connection with the duties specified in paragraphs 5, 6, 7, 13 and 14 of this subsection.
9. Have the power to apply for, accept, receive and expend public and private gifts or grants of money or property on the terms and conditions as may be imposed by the donor and for any purpose provided for by this chapter.
10. Make rules, and take action necessary or desirable to carry out the provisions of this title, that are not inconsistent with this title.
11. Administer any additional welfare functions required by law.
12. If a tribal government elects to operate a cash assistance program in compliance with the requirements of the United States department of health and human services, with the review of the joint legislative budget committee, provide matching monies at a rate that is consistent with the applicable fiscal year budget and that is not more than the state matching rate for the aid to families with dependent children program as it existed on July 1, 1994.
13. Furnish a federal, state or local law enforcement officer, at the request of the officer, with the current address of any recipient if the officer furnishes the agency with the name of the recipient and notifies the agency that the recipient is a fugitive felon or a probation, parole or

community supervision violator or has information that is necessary for the officer to conduct the official duties of the officer and the location or apprehension of the recipient is within these official duties.
14. In conjunction with Indian tribal governments, request a federal waiver from the United States department of agriculture that will allow tribal governments that perform eligibility determinations for temporary assistance for needy families programs to perform the food stamp eligibility determinations for persons who apply for services pursuant to section 36-2901, paragraph 6, subdivision (a). If the waiver is approved, the state shall provide the state matching monies for the administrative costs associated with the food stamp eligibility based on federal guidelines. As part of the waiver, the department shall recoup from a tribal government all federal fiscal sanctions that result from inaccurate eligibility determinations.

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36-501. Definitions
(L14, Ch. 215, sec. 99. Eff. until 7/1/16)
In this chapter, unless the context otherwise requires:
1. "Admitting officer" means a psychiatrist or other physician or psychiatric and mental health nurse practitioner with experience in performing psychiatric examinations who has been designated as an admitting officer of the evaluation agency by the person in charge of the evaluation agency.
2. "Chief medical officer" means the chief medical officer under the supervision of the superintendent of the state hospital.
3. "Contraindicated" means that access is reasonably likely to endanger the life or physical safety of the patient or another person.
4. "Court" means the superior court in the county in this state in which the patient resides or was found before screening or emergency admission under this title.
5. "Danger to others" means that the judgment of a person who has a mental disorder is so impaired that the person is unable to understand the person's need for treatment and as a result of the person's mental disorder the person's continued behavior can reasonably be expected, on the basis of competent medical opinion, to result in serious physical harm.
6. "Danger to self":
(a) Means behavior that, as a result of a mental disorder:
(i) Constitutes a danger of inflicting serious physical harm on oneself, including attempted suicide or the serious threat thereof, if the threat is such that, when considered in the light of its context and in light of the individual's previous acts, it is substantially supportive of an expectation that the threat will be carried out.
(ii) Without hospitalization will result in serious physical harm or serious illness to the person.
(b) Does not include behavior that establishes only the condition of persons with grave disabilities.
7. "Department" means the department of health services.
8. "Deputy director" means the deputy director of the division of behavioral health in the department of health services.
9. "Detention" means the taking into custody of a patient or proposed patient.
10. "Director" means the director of the department.
11. "Division" means the division of behavioral health in the department.
12. "Evaluation" means:
(a) A professional multidisciplinary analysis that may include firsthand observations or remote observations by interactive audiovisual media and that is based on data describing the person's identity, biography and medical, psychological and social conditions carried out by a group of persons consisting of not less than the following:

(i) Two licensed physicians, who shall be qualified psychiatrists, if possible, or at least experienced in psychiatric matters, and who shall examine and report their findings independently. The person against whom a petition has been filed shall be notified that the person may select one of the physicians. A psychiatric resident in a training program approved by the American medical association or by the American osteopathic association may examine the person in place of one of the psychiatrists if the resident is supervised in the examination and preparation of the affidavit and testimony in court by a qualified psychiatrist appointed to assist in the resident's training, and if the supervising psychiatrist is available for discussion with the attorneys for all parties and for court appearance and testimony if requested by the court or any of the attorneys.
(ii) Two other individuals, one of whom, if available, shall be a psychologist and in any event a social worker familiar with mental health and human services that may be available placement alternatives appropriate for treatment. An evaluation may be conducted on an inpatient basis, an outpatient basis or a combination of both, and every reasonable attempt shall be made to conduct the evaluation in any language preferred by the person.
(b) A physical examination that is consistent with the existing standards of care and that is performed by one of the evaluating physicians or by or under the supervision of a physician who is licensed pursuant to title 32, chapter 13 or 17 or a registered nurse practitioner who is licensed pursuant to title 32, chapter 15 if the results of that examination are reviewed or augmented by one of the evaluating physicians.
13. "Evaluation agency" means a health care agency that is licensed by the department and that has been approved pursuant to this title, providing those services required of such agency by this chapter.
14. "Family member" means a spouse, parent, adult child, adult sibling or other blood relative of a person undergoing treatment or evaluation pursuant to this chapter.
15. "Health care decision maker" has the same meaning prescribed in section 12-2801.
16. "Health care entity" means a health care provider, the department, the Arizona health care cost containment system administration or a regional behavioral health authority under contract with the department.
17. "Health care provider" means a health care institution as defined in section 36-401 that is licensed as a behavioral health provider pursuant to department rules or a mental health provider.
18. "Independent evaluator" means a licensed physician, psychiatric and mental health nurse practitioner or psychologist selected by the person to be evaluated or by such person's attorney.
19. "Informed consent" means a voluntary decision following presentation of all facts necessary to form the basis of an intelligent consent by the patient or guardian with no minimizing of known dangers of any procedures.
20. "Least restrictive treatment alternative" means the treatment plan and setting that infringe in the least possible degree with the patient's right to liberty and that are consistent with providing needed treatment in a safe and humane manner.
21. "Licensed physician" means any medical doctor or doctor of osteopathy who is either:
(a) Licensed in this state.
(b) A full-time hospital physician licensed in another state and serving on the staff of a hospital operated or licensed by the United States government.
22. "Medical director of an evaluation agency" means a psychiatrist, or other licensed physician experienced in psychiatric matters, who is designated in writing by the governing body of the agency as the person in charge of the medical services of the agency for the purposes of this chapter and may include the chief medical officer of the state hospital.
23. "Medical director of a mental health treatment agency" means a psychiatrist, or other licensed physician experienced in psychiatric matters, who is designated in writing by the governing body of the

agency as the person in charge of the medical services of the agency for the purposes of this chapter and includes the chief medical officer of the state hospital.
24. "Mental disorder" means a substantial disorder of the person's emotional processes, thought, cognition or memory. Mental disorder is distinguished from:
(a) Conditions that are primarily those of drug abuse, alcoholism or intellectual disability, unless, in addition to one or more of these conditions, the person has a mental disorder.
(b) The declining mental abilities that directly accompany impending death.
(c) Character and personality disorders characterized by lifelong and deeply ingrained antisocial behavior patterns, including sexual behaviors that are abnormal and prohibited by statute unless the behavior results from a mental disorder.
25. "Mental health provider" means any physician or provider of mental health or behavioral health services involved in evaluating, caring for, treating or rehabilitating a patient.
26. "Mental health treatment agency" means the state hospital or a health care agency that is licensed by the department and that provides those services that are required of the agency by this chapter.
27. "Outpatient treatment" or "combined inpatient and outpatient treatment" means any treatment program not requiring continuous inpatient hospitalization.
28. "Outpatient treatment plan" means a treatment plan that does not require continuous inpatient hospitalization.
29. "Patient" means any person undergoing examination, evaluation or behavioral or mental health treatment under this chapter.
30. "Peace officers" means sheriffs of counties, constables, marshals and policemen of cities and towns.
31. "Persistent or acute disability" means a severe mental disorder that meets all the following criteria:
(a) If not treated has a substantial probability of causing the person to suffer or continue to suffer severe and abnormal mental, emotional or physical harm that significantly impairs judgment, reason, behavior or capacity to recognize reality.
(b) Substantially impairs the person's capacity to make an informed decision regarding treatment, and this impairment causes the person to be incapable of understanding and expressing an understanding of the advantages and disadvantages of accepting treatment and understanding and expressing an understanding of the alternatives to the particular treatment offered after the advantages, disadvantages and alternatives are explained to that person.
(c) Has a reasonable prospect of being treatable by outpatient, inpatient or combined inpatient and outpatient treatment.
32. "Persons with grave disabilities" means a condition evidenced by behavior in which a person, as a result of a mental disorder, is likely to come to serious physical harm or serious illness because the person is unable to provide for the person's own basic physical needs.
33. "Prepetition screening" means the review of each application requesting court-ordered evaluation, including an investigation of facts alleged in such application, an interview with each applicant and an interview, if possible, with the proposed patient. The purpose of the interview with the proposed patient is to assess the problem, explain the application and, when indicated, attempt to persuade the proposed patient to receive, on a voluntary basis, evaluation or other services.
34. "Prescribed form" means a form established by a court or the rules of the division that have been approved by the director or in accordance with the laws of this state.
35. "Professional" means a physician who is licensed pursuant to title 32, chapter 13 or 17, a psychologist who is licensed pursuant to title 32, chapter 19.1 or a psychiatric and mental health nurse practitioner who is certified pursuant to title 32, chapter 15.

36. "Proposed patient" means a person for whom an application for evaluation has been made or a petition for court-ordered evaluation has been filed.
37. "Psychiatric and mental health nurse practitioner" means a registered nurse practitioner as defined in section 32-1601 who has completed an adult or family psychiatric and mental health nurse practitioner program and who is certified as an adult or family psychiatric and mental health nurse practitioner by the state board of nursing.
38. "Psychiatrist" means a licensed physician who has completed three years of graduate training in psychiatry in a program approved by the American medical association or the American osteopathic association.
39. "Psychologist" means a person who is licensed under title 32, chapter 19.1 and who is experienced in the practice of clinical psychology.
40. "Records" means all communications that are recorded in any form or medium and that relate to patient examination, evaluation or behavioral or mental health treatment. Records include medical records that are prepared by a health care provider or other providers. Records do not include:
(a) Materials that are prepared in connection with utilization review, peer review or quality assurance activities, including records that a health care provider prepares pursuant to section 36-441, 36-445, 36-2402 or 36-2917.
(b) Recorded telephone and radio calls to and from a publicly operated emergency dispatch office relating to requests for emergency services or reports of suspected criminal activity.
41. "Screening agency" means a health care agency that is licensed by the department and that provides those services required of such agency by this chapter.
42. "Social worker" means a person who has completed two years of graduate training in social work in a program approved by the council of social work education and who has experience in mental health.
43. "State hospital" means the Arizona state hospital.
44. "Superintendent" means the superintendent of the state hospital.

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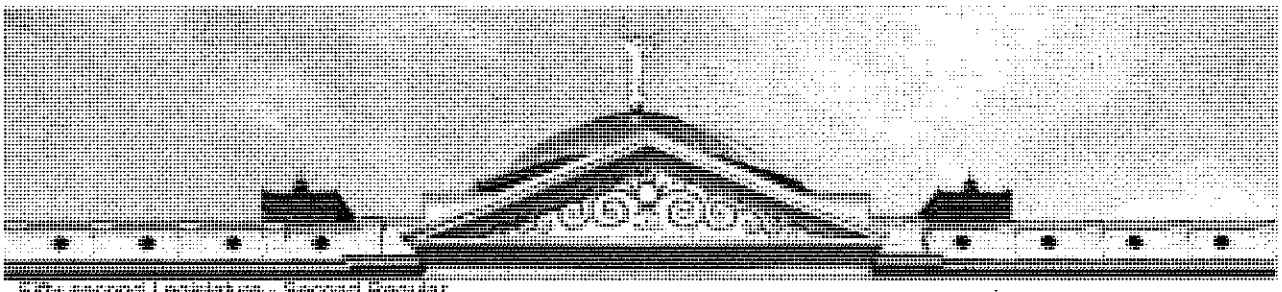

32-1901. Definitions

In this chapter, unless the context otherwise requires:

1. "Administer" means the direct application of a controlled substance, prescription-only drug, dangerous drug or narcotic drug, whether by injection, inhalation, ingestion or any other means, to the body of a patient or research subject by a practitioner or by the practitioner's authorized agent or the patient or research subject at the direction of the practitioner.

2. "Advertisement" means all representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or that are likely to induce, directly or indirectly, the purchase of drugs, devices, poisons or hazardous substances.

3. "Advisory letter" means a nondisciplinary letter to notify a licensee or permittee that either:

(a) While there is insufficient evidence to support disciplinary action, the board believes that continuation of the activities that led to the investigation may result in further board action against the licensee or permittee.

(b) The violation is a minor or technical violation that is not of sufficient merit to warrant disciplinary action.

(c) While the licensee or permittee has demonstrated substantial compliance through rehabilitation, remediation or reeducation that has mitigated the need for disciplinary action, the board believes that repetition of the activities that led to the investigation may result in further board action against the licensee or permittee.

4. "Antiseptic", if a drug is represented as such on its label, means a representation that it is a germicide, except in the case of a drug purporting to be, or represented as, an antiseptic for inhibitory use as a wet dressing, ointment or dusting powder or other use that involves prolonged contact with the body.

5. "Authorized officers of the law" means legally empowered peace officers, compliance officers of the state board of pharmacy and agents of the division of narcotics enforcement and criminal intelligence of the department of public safety.

6. "Board" or "board of pharmacy" means the Arizona state board of pharmacy.

7. "Color additive" means a material that either:

(a) Is any dye, pigment or other substance made by a process of synthesis or similar artifice, or extracted, isolated or otherwise derived, with or without intermediate or final change of identity, from any vegetable, animal, mineral or other source.

(b) If added or applied to a drug, or to the human body or any part of the human body, is capable of imparting color, except that color additive does not include any material that has been or may be exempted under the federal act. Color includes black, white and intermediate grays.

8. "Compounding" means the preparation, mixing, assembling, packaging or labeling of a drug by a pharmacist or an intern or pharmacy technician under the pharmacist's supervision, for the purpose of dispensing to a patient based on a valid prescription order. Compounding includes the preparation of drugs in anticipation of prescription orders prepared on routine, regularly observed prescribing patterns and the preparation of drugs as an incident to research, teaching or chemical analysis or for administration by a medical practitioner to the medical practitioner's patient and not for sale or dispensing. Compounding does not include the preparation of commercially available products from bulk compounds or the preparation of drugs for sale to pharmacies, practitioners or entities for the purpose of dispensing or distribution.
9. "Compressed medical gas distributor" means a person who holds a current permit issued by the board to distribute compressed medical gases pursuant to a compressed medical gas order to compressed medical gas suppliers and other entities that are registered, licensed or permitted to use, administer or distribute compressed medical gases.
10. "Compressed medical gas order" means an order for compressed medical gases that is issued by a medical practitioner.
11. "Compressed medical gas supplier" means a person who holds a current permit issued by the board to supply compressed medical gases pursuant to a compressed medical gas order and only to the consumer or the patient.
12. "Compressed medical gases" means gases and liquid oxygen that a compressed medical gas distributor or manufacturer has labeled in compliance with federal law.
13. "Controlled substance" means a drug, substance or immediate precursor identified, defined or listed in title 36, chapter 27, article 2.
14. "Corrosive" means any substance that when it comes in contact with living tissue will cause destruction of tissue by chemical action.
15. "Counterfeit drug" means a drug that, or the container or labeling of which, without authorization, bears the trademark, trade name or other identifying mark, imprint, number or device, or any likeness of these, of a manufacturer, distributor or dispenser other than the person who in fact manufactured, distributed or dispensed that drug.
16. "Dangerous drug" has the same meaning prescribed in section 13-3401.
17. "Decree of censure" means an official action that is taken by the board and that may include a requirement for restitution of fees to a patient or consumer.
18. "Deliver" or "delivery" means the actual, constructive or attempted transfer from one person to another whether or not there is an agency relationship.
19. "Deputy director" means a pharmacist who is employed by the board and selected by the executive director to perform duties as prescribed by the executive director.
20. "Device", except as used in paragraph 15 of this section, section 32-1965, paragraph 4 and section 32-1967, subsection A, paragraph 15 and subsection C, means instruments, apparatus and contrivances, including their components, parts and accessories, including all such items under the federal act, intended either:
(a) For use in the diagnosis, cure, mitigation, treatment or prevention of disease in the human body or other animals.
(b) To affect the structure or any function of the human body or other animals.
21. "Direct supervision of a pharmacist" means the pharmacist is present. If relating to the sale of certain items, direct supervision of a pharmacist means that a pharmacist determines the legitimacy or advisability of a proposed purchase of those items.
22. "Director" means the director of the division of narcotics enforcement and criminal investigation of the department of public safety.
23. "Dispense" means to deliver to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling or compounding necessary to prepare for that delivery.

24. "Dispenser" means a practitioner who dispenses.
25. "Distribute" means to deliver, other than by administering or dispensing.
26. "Distributor" means a person who distributes.
27. "Drug" means:
(a) Articles recognized, or for which standards or specifications are prescribed, in the official compendium.
(b) Articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in the human body or other animals.
(c) Articles other than food intended to affect the structure or any function of the human body or other animals.
(d) Articles intended for use as a component of any articles specified in subdivision (a), (b) or (c) of this paragraph but does not include devices or their components, parts or accessories.
28. "Drug enforcement administration" means the drug enforcement administration of the United States department of justice or its successor agency.
29. "Drug or device manufacturing" means the production, preparation, propagation or processing of a drug or device, either directly or indirectly, by extraction from substances of natural origin or independently by means of chemical synthesis and includes any packaging or repackaging of substances or labeling or relabeling of its container and the promotion and marketing of the same. Drug or device manufacturing does not include compounding.
30. "Economic poison" means any substance that alone, in chemical combination or in formulation with one or more other substances is a pesticide within the meaning of the laws of this state or the federal insecticide, fungicide and rodenticide act and that is used in the production, storage or transportation of raw agricultural commodities.
31. "Established name", with respect to a drug or ingredient of a drug, means any of the following:
(a) The applicable official name.
(b) If there is no such name and the drug or ingredient is an article recognized in an official compendium, the official title in an official compendium.
(c) If neither subdivision (a) nor (b) of this paragraph applies, the common or usual name of such drug.
32. "Executive director" means the executive director of the board of pharmacy.
33. "Federal act" means the federal laws and regulations that pertain to drugs, devices, poisons and hazardous substances and that are official at the time any drug, device, poison or hazardous substance is affected by this chapter.
34. "Full service wholesale permittee" means a permittee who may distribute prescription-only drugs and devices, controlled substances and over-the-counter drugs and devices to pharmacies or other legal outlets from a place devoted in whole or in part to wholesaling these items.
35. "Graduate intern" means a person who has graduated from a college, school or program of pharmacy approved by the board and who meets the qualifications and experience for a pharmacy intern as provided in section 32-1923.
36. "Highly toxic" means any substance that falls within any of the following categories:
(a) Produces death within fourteen days in half or more than half of a group of ten or more laboratory white rats each weighing between two hundred and three hundred grams, at a single dose of fifty milligrams or less per kilogram of body weight, when orally administered.
(b) Produces death within fourteen days in half or more than half of a group of ten or more laboratory white rats each weighing between two hundred and three hundred grams, if inhaled continuously for a period of one hour or less at an atmospheric concentration of two hundred parts per million by volume or less of gas or vapor or two milligrams per liter by volume or less of mist or dust, provided the concentration is likely to be encountered by humans if the substance is used in any reasonably foreseeable manner.

(c) Produces death within fourteen days in half or more than half of a group of ten or more rabbits tested in a dosage of two hundred milligrams or less per kilogram of body weight, if administered by continuous contact with the bare skin for twenty-four hours or less.
If the board finds that available data on human experience with any substance indicate results different from those obtained on animals in the dosages or concentrations prescribed in this paragraph, the human data shall take precedence.
37. "Hospital" means any institution for the care and treatment of the sick and injured that is approved and licensed as a hospital by the department of health services.
38. "Intern" means a pharmacy intern and a graduate intern.
39. "Internship" means the practical, experiential, hands-on training of a pharmacy intern under the supervision of a preceptor.
40. "Irritant" means any substance, other than a corrosive, that on immediate, prolonged or repeated contact with normal living tissue will induce a local inflammatory reaction.
41. "Jurisprudence examination" means a board approved pharmacy law examination that is written and administered in cooperation with the national association of boards of pharmacy or another board approved pharmacy law examination.
42. "Label" means a display of written, printed or graphic matter on the immediate container of any article that, unless easily legible through the outside wrapper or container, also appears on the outside wrapper or container of the article's retail package. For the purposes of this paragraph, the immediate container does not include package liners.
43. "Labeling" means all labels and other written, printed or graphic matter either:
(a) On any article or any of its containers or wrappers.
(b) Accompanying that article.
44. "Letter of reprimand" means a disciplinary letter that is a public document issued by the board and that informs a licensee or permittee that the licensee's or permittee's conduct violates state or federal law and may require the board to monitor the licensee or permittee.
45. "Limited service pharmacy" means a pharmacy that is approved by the board to practice a limited segment of pharmacy as indicated by the permit issued by the board.
46. "Manufacture" or "manufacturer" means every person who prepares, derives, produces, compounds, processes, packages or repackages or labels any drug in a place, other than a pharmacy, devoted to manufacturing the drug.
47. "Marijuana" has the same meaning prescribed in section 13-3401.
48. "Medical practitioner" means any medical doctor, doctor of osteopathy, dentist, podiatrist, veterinarian or other person licensed and authorized by law to use and prescribe drugs and devices for the treatment of sick and injured human beings or animals or for the diagnosis or prevention of sickness in human beings or animals in this state or any state, territory or district of the United States.
49. "Medication order" means a written or verbal order from a medical practitioner or that person's authorized agent to administer a drug or device.
50. "Narcotic drug" has the same meaning prescribed in section 13-3401.
51. "New drug" means either:
(a) Any drug the composition of which is such that the drug is not generally recognized among experts qualified by scientific training and experience to evaluate the safety and effectiveness of drugs as safe and effective for use under the conditions prescribed, recommended or suggested in the labeling.
(b) Any drug the composition of which is such that the drug, as a result of investigations to determine its safety and effectiveness for use under such conditions, has become so recognized, but that has not, other than in the investigations, been used to a material extent or for a material time under those conditions.
52. "Nonprescription drug" or "over-the-counter drug" means any nonnarcotic medicine or drug that may be sold without a prescription and

is prepackaged and labeled for use by the consumer in accordance with the requirements of the laws of this state and federal law.
Nonprescription drug does not include:
(a) A drug that is primarily advertised and promoted professionally to medical practitioners and pharmacists by manufacturers or primary distributors.
(b) A controlled substance.
(c) A drug that is required to bear a label that states "Rx only."
(d) A drug intended for human use by hypodermic injection.
53. "Nonprescription drug wholesale permittee" means a permittee who may distribute only over-the-counter drugs and devices to pharmacies or other lawful outlets from a place devoted in whole or in part to wholesaling these items.
54. "Notice" means personal service or the mailing of a copy of the notice by certified mail addressed either to the person at the person's latest address of record in the board office or to the person's attorney.
55. "Official compendium" means the latest revision of the United States pharmacopeia and the national formulary or any current supplement.
56. "Other jurisdiction" means one of the other forty-nine states, the District of Columbia, the Commonwealth of Puerto Rico or a territory of the United States of America.
57. "Package" means a receptacle defined or described in the United States pharmacopeia and the national formulary as adopted by the board.
58. "Packaging" means the act or process of placing a drug item or device in a container for the purpose or intent of dispensing or distributing the item or device to another.
59. "Person" means an individual, partnership, corporation and association, and their duly authorized agents.
60. "Pharmaceutical care" means the provision of drug therapy and other pharmaceutical patient care services.
61. "Pharmacist" means an individual currently licensed by the board to practice the profession of pharmacy in this state.
62. "Pharmacist in charge" means the pharmacist who is responsible to the board for a licensed establishment's compliance with the laws and administrative rules of this state and of the federal government pertaining to the practice of pharmacy, the manufacturing of drugs and the distribution of drugs and devices.
63. "Pharmacist licensure examination" means a board approved examination that is written and administered in cooperation with the national association of boards of pharmacy or any other board approved pharmacist licensure examination.
64. "Pharmacy" means any place:
(a) Where drugs, devices, poisons or related hazardous substances are offered for sale at retail.
(b) In which the profession of pharmacy is practiced or where prescription orders are compounded and dispensed.
(c) That has displayed on it or in it the words "pharmacist," "pharmaceutical chemist," "apothecary," "druggist," "pharmacy," "drugstore," "drugs" or "drug sundries" or any of these words or combinations of these words, or words of similar import either in English or any other language, or that is advertised by any sign containing any of these words.
(d) Where the characteristic symbols of pharmacy or the characteristic prescription sign "Rx" is exhibited.
(e) Or a portion of any building or structure that is leased, used or controlled by the permittee to conduct the business authorized by the board at the address for which the permit was issued and that is enclosed and secured when a pharmacist is not in attendance.
65. "Pharmacy intern" means a person who has all of the qualifications and experience prescribed in section 32-1923.
66. "Pharmacy technician" means a person who is licensed pursuant to this chapter.
67. "Pharmacy technician trainee" means a person who is licensed pursuant to this chapter.

68. "Poison" or "hazardous substance" includes, but is not limited to, any of the following if intended and suitable for household use or use by children:
(a) Any substance that, according to standard works on medicine, pharmacology, pharmacognosy or toxicology, if applied to, introduced into or developed within the body in relatively small quantities by its inherent action uniformly produces serious bodily injury, disease or death.
(b) A toxic substance.
(c) A highly toxic substance.
(d) A corrosive substance.
(e) An irritant.
(f) A strong sensitizer.
(g) A mixture of any of the substances described in this paragraph, if the substance or mixture of substances may cause substantial personal injury or substantial illness during or as a proximate result of any customary or reasonably foreseeable handling or use, including reasonably foreseeable ingestion by children.
(h) A substance designated by the board to be a poison or hazardous substance. This subdivision does not apply to radioactive substances, economic poisons subject to the federal insecticide, fungicide and rodenticide act or the state pesticide act, foods, drugs and cosmetics subject to state laws or the federal act or substances intended for use as fuels when stored in containers and used in the heating, cooking or refrigeration system of a house. This subdivision applies to any substance or article that is not itself an economic poison within the meaning of the federal insecticide, fungicide and rodenticide act or the state pesticide act, but that is a poison or hazardous substance within the meaning of this paragraph by reason of bearing or containing an economic poison or hazardous substance.
69. "Practice of pharmacy" means furnishing the following health care services as a medical professional:
(a) Interpreting, evaluating and dispensing prescription orders in the patient's best interests.
(b) Compounding drugs pursuant to or in anticipation of a prescription order.
(c) Labeling of drugs and devices in compliance with state and federal requirements.
(d) Participating in drug selection and drug utilization reviews, drug administration, drug or drug-related research and drug therapy monitoring or management.
(e) Providing patient counseling necessary to provide pharmaceutical care.
(f) Properly and safely storing drugs and devices in anticipation of dispensing.
(g) Maintaining required records of drugs and devices.
(h) Offering or performing of acts, services, operations or transactions necessary in the conduct, operation, management and control of a pharmacy.
(i) Implementing, monitoring and modifying drug therapy pursuant to a protocol-based drug therapy agreement with a provider as outlined in section 32-1970.
(j) Initiating and administering immunizations or vaccines pursuant to section 32-1974.
70. "Practitioner" means any physician, dentist, veterinarian, scientific investigator or other person who is licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to or administer a controlled substance in the course of professional practice or research in this state, or any pharmacy, hospital or other institution that is licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to or administer a controlled substance in the course of professional practice or research in this state.
71. "Preceptor" means a pharmacist who is serving as the practical instructor of an intern and complies with section 32-1923.
72. "Precursor chemical" means a substance that is:

(a) The principal compound that is commonly used or that is produced primarily for use and that is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail or limit manufacture.
(b) Listed in section 13-3401, paragraph 26 or 27.
73. "Prescription" means either a prescription order or a prescription medication.
74. "Prescription medication" means any drug, including label and container according to context, that is dispensed pursuant to a prescription order.
75. "Prescription-only device" includes:
(a) Any device that is limited by the federal act to use under the supervision of a medical practitioner.
(b) Any device required by the federal act to bear on its label essentially the legend "Rx only".
76. "Prescription-only drug" does not include a controlled substance but does include:
(a) Any drug that because of its toxicity or other potentiality for harmful effect, the method of its use, or the collateral measures necessary to its use is not generally recognized among experts, qualified by scientific training and experience to evaluate its safety and efficacy, as safe for use except by or under the supervision of a medical practitioner.
(b) Any drug that is limited by an approved new drug application under the federal act or section 32-1962 to use under the supervision of a medical practitioner.
(c) Every potentially harmful drug, the labeling of which does not bear or contain full and adequate directions for use by the consumer.
(d) Any drug, other than a controlled substance, required by the federal act to bear on its label the legend "Rx only".
77. "Prescription order" means any of the following:
(a) An order to a pharmacist for drugs or devices issued and signed by a duly licensed medical practitioner in the authorized course of the practitioner's professional practice.
(b) An order transmitted to a pharmacist through word of mouth, telephone or other means of communication directed by that medical practitioner. Prescription orders received by word of mouth, telephone or other means of communication shall be maintained by the pharmacist pursuant to section 32-1964, and the record so made by the pharmacist constitutes the original prescription order to be dispensed by the pharmacist. This paragraph does not alter or affect laws of this state or any federal act requiring a written prescription order.
(c) An order initiated by a pharmacist pursuant to a protocol-based drug therapy agreement with a provider as outlined in section 32-1970, or immunizations or vaccines administered by a pharmacist pursuant to section 32-1974.
78. "Professionally incompetent" means:
(a) Incompetence based on a variety of factors including a lack of sufficient pharmaceutical knowledge or skills or experience to a degree likely to endanger the health of patients.
(b) When considered with other indications of professional incompetence, a pharmacist, pharmacy intern or graduate intern who fails to obtain a passing score on a board approved pharmacist licensure examination or a pharmacy technician or pharmacy technician trainee who fails to obtain a passing score on a board approved pharmacy technician licensure examination.
79. "Radioactive substance" means a substance that emits ionizing radiation.
80. "Safely engage in employment duties" means that a permittee or the permittee's employee is able to safely engage in employment duties related to the manufacture, sale, distribution or dispensing of drugs, devices, poisons, hazardous substances, controlled substances or precursor chemicals.
81. "Symbol" means the characteristic symbols that have historically identified pharmacy, including "show globes", "mortar and pestle" and the sign "Rx".

82. "Toxic substance" means a substance, other than a radioactive substance, that has the capacity to produce injury or illness in humans through ingestion, inhalation or absorption through any body surface.
83. "Ultimate user" means a person who lawfully possesses a drug or controlled substance for that person's own use, for the use of a member of that person's household or for administering to an animal owned by that person or by a member of that person's household.

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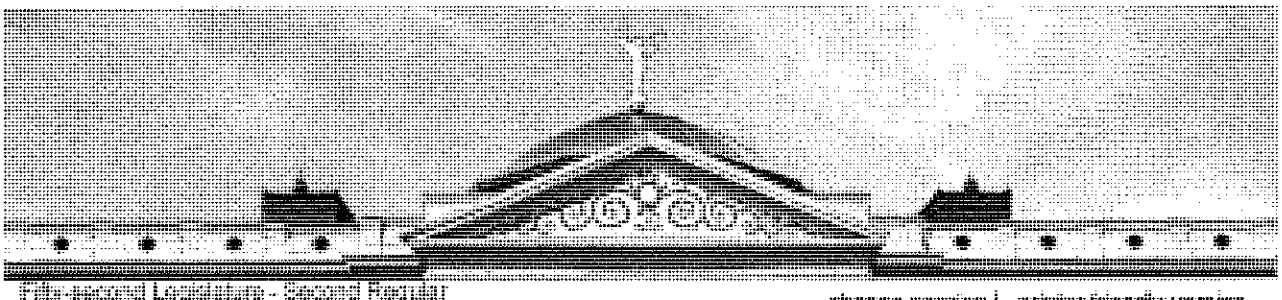

8-501. Definitions

A. In this article, unless the context otherwise requires:

1. "Child welfare agency" or "agency":

(a) Means:

(i) Any agency or institution maintained by a person, firm, corporation, association or organization to receive children for care and maintenance or for twenty-four hour social, emotional or educational supervised care or who have been adjudicated as a delinquent or dependent child.

(ii) Any institution that provides care for unmarried mothers and their children.

(iii) Any agency maintained by this state, a political subdivision of this state or a person, firm, corporation, association or organization to place children or unmarried mothers in a foster home.

(b) Does not include state operated institutions or facilities, detention facilities for children established by law, health care institutions that are licensed by the department of health services pursuant to title 36, chapter 4 or private agencies that exclusively provide children with social enrichment or recreational opportunities and that do not use restrictive behavior management techniques.

2. "Division" or "department" means the department of child safety.

3. "Former dependent child" means a person who was previously adjudicated a dependent child in a dependency proceeding that has been dismissed by order of the juvenile court.

4. "Foster child" means a child placed in a foster home or child welfare agency.

5. "Foster home" means a home maintained by any individual or individuals having the care or control of minor children, other than those related to each other by blood or marriage, or related to such individuals, or who are legal wards of such individuals.

6. "Foster parent" means any individual or individuals maintaining a foster home.

7. "Group foster home" means a licensed regular or special foster home suitable for placement of more than five minor children but not more than ten minor children.

8. "Out-of-home placement" means the placing of a child in the custody of an individual or agency other than with the child's parent or legal guardian and includes placement in temporary custody pursuant to section 8-821, subsection A or B, voluntary placement pursuant to section 8-806 or placement due to dependency actions.

9. "Parent" means the natural or adoptive mother or father of a child.

10. "Reason for leaving care" means one of the following:

(a) Reunification with a parent or primary caretaker.

(b) Living with another relative.

(c) Adoption by a relative.

(d) Adoption by a foster parent.

(e) Adoption by another person.

(f) Age of majority.
(g) Guardianship by a relative.
(h) Guardianship by another person.
(i) Transfer to another agency.
(j) Runaway.
(k) Death.
11. "Receiving foster home" means a licensed foster home suitable for immediate placement of children when taken into custody or pending medical examination and court disposition.
12. "Regular foster home" means a licensed foster home suitable for placement of not more than five minor children.
13. "Relative" means a grandparent, great-grandparent, brother or sister of whole or half blood, aunt, uncle or first cousin.
14. "Restrictive behavior management" means an intervention or procedure that attempts to guide, redirect, modify or manage behavior through the use of any of the following:
(a) Physical force to cause a child to comply with a directive. Physical force does not include physical escort. For the purposes of this subdivision, "physical escort" means temporarily touching or holding a child's hand, wrist, arm, shoulder or back to induce the child to walk to a safe location.
(b) A device, action or medication to restrict the movement or normal function of a child in order to control or change the child's behavior and that includes:
(i) Chemical restraint. For the purposes of this item, "chemical restraint" means the use of any psychoactive medication as a restraint to control the child's behavior or to restrict the child's freedom of movement and that is not a standard treatment for the child's medical or psychiatric condition.
(ii) Mechanical restraint. For the purposes of this item, "mechanical restraint" means the use of any physical device to limit a child's movement and to prevent the child from causing harm to self or to others. Mechanical restraint does not include devices such as orthopedically prescribed devices, surgical dressings or bandages, protective helmets or any other method that involves the physical holding of a child to conduct a routine physical examination or test or to protect the child from falling out of bed or to permit the child to participate in activities in order to reduce the risk of physical harm to the child.
(iii) Physical restraint. For the purposes of this item, "physical restraint" means applying physical force to reduce or restrict a child's ability to freely move the child's arms, legs or head. Physical restraint does not include temporarily holding a child to permit the child to participate in activities of daily living if this holding does not involve the risk of physical harm to the child.
(iv) Seclusion. For the purposes of this item, "seclusion" means placing a child against the child's will in a room in which the child is unable to open the door in order to prevent the child from doing harm to self or others.
15. "Special foster home" means a licensed foster home capable of handling not more than five minor children who require special care for physical, mental or emotional reasons or who have been adjudicated delinquent. Special foster home includes any home handling foster children aged twelve through seventeen.
B. A foster home or any classification of foster home defined in subsection A of this section includes a home having the care of persons who are under twenty-one years of age and the cost of whose care is provided pursuant to section 8-521.01.

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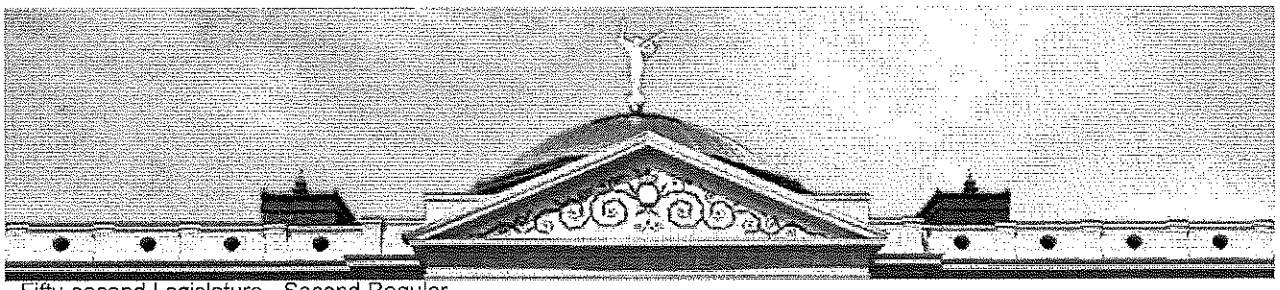

8-505. Issuance of licenses; application; investigation; renewal

A. The issuance of initial and renewal licenses for child welfare agencies shall be made by the division.

B. A child welfare agency shall not receive any child for care or maintenance or for placement in a foster home unless the agency is licensed by the division. Application for a license shall be made on a form prescribed by the division.

C. The division shall, before issuing a license to an agency, investigate the activities and standards of care of the agency, its financial stability, the character and training of the applicant, the need for such agency, and the adequacy of its intended services to insure the welfare of children. A provisional license may be issued to any agency whose services are needed but which is temporarily unable to conform to the established standards of care. If the applicant meets the standards as established by the division a regular license shall be issued for a period of one year.

D. Each license shall state in general terms the kind of child welfare service the licensee is authorized to undertake, the number of children that can be received if the licensee is a private agency, their ages and sex, and, if authorized to place and supervise children in foster homes, the geographical area the agency is equipped to serve.

E. Every license shall expire one year from the date of issuance, and may be renewed annually on application of the agency, except that provisional licenses may be issued for not more than six months from the date of issuance and may not be renewed.

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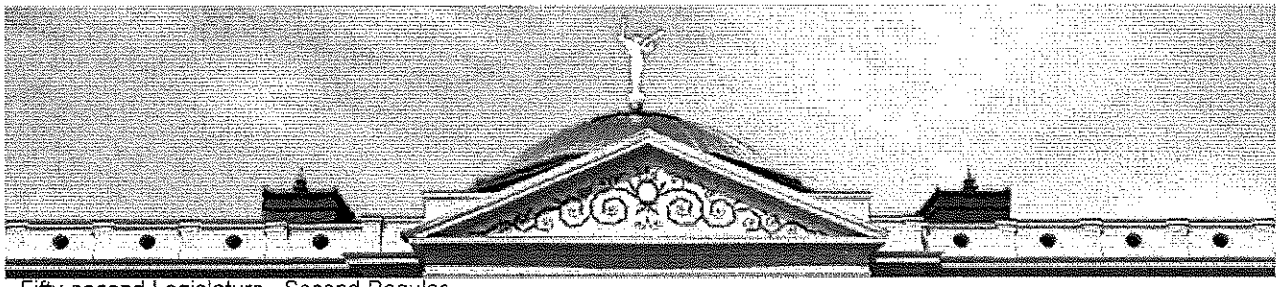

8-511. Short-term caregiver

A. Except as prescribed in subsection B, if circumstances require a foster parent to leave a foster child in the care of another person, the foster parent shall:

1. Use reasonable judgment in the foster parent's choice of an adult to provide the care.

2. Notify the department case manager before the care exceeds twenty-four hours, in a nonemergency situation.

3. Notify the department case manager before the care exceeds seventy-two hours, in an emergency situation.

B. A foster parent who is certified to provide care to a child with developmental disabilities, a medically fragile child or a child receiving treatment foster care shall implement the alternate care plan that is approved by the department, if the foster parent must leave the foster child in the care of another person.

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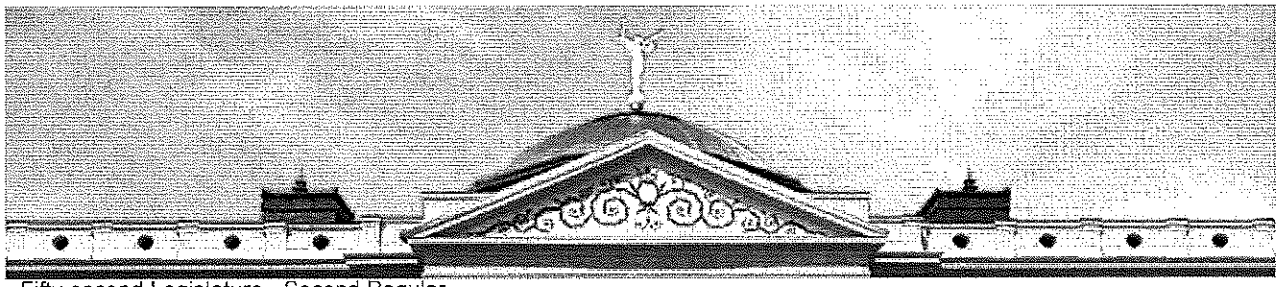

8-514. Placement in foster homes

A. Subject to the provisions of section 8-514.01, the division or a licensed child welfare agency if so authorized in its license may place a child in a licensed foster home for care or for adoption. Notwithstanding any law to the contrary, the division or a licensed child welfare agency may place a child in excess of the number of children allowed and identified in a foster parent's license if the division or agency reasonably believes the foster home has the ability to safely handle additional children and if there are no outstanding concerns, deficiencies, reports or investigations known by the division regarding the foster home, and if the child meets any of the following criteria:

1. The child is part of a sibling group that currently resides in the foster home.
2. The child is part of a sibling group that is being considered for placement in a foster home but because of the maximum child limit would otherwise have to be separated.
3. The child previously resided in the foster home.
4. The child is a kinship placement for the foster home.

B. The department shall place a child in the least restrictive type of placement available, consistent with the needs of the child. The order for placement preference is as follows:

1. With a parent.
2. With a grandparent.
3. In kinship care with another member of the child's extended family, including a person who has a significant relationship with the child.
4. In licensed family foster care.
5. In therapeutic foster care.
6. In a group home.
7. In a residential treatment facility.

C. Notwithstanding subsection B of this section, the order for placement preference of a native American child is as follows:

1. With a member of the child's extended family.
2. In a licensed family foster home approved or specified by the child's tribe.
3. In an Indian foster home licensed or approved by an authorized non-Indian licensing authority.
4. In an institution approved by the Indian tribe or operated by an Indian organization that has a program suitable to meet the Indian child's needs pursuant to 25 United States Code chapter 21.

D. At the time of placement there shall be presented to the foster parents, by the agency or division placing the child, a written summary of known, unprivileged information regarding the child, including but not limited to:

1. Demographic information.
2. Type of custody and previous placement.

3. Pertinent family information including but not limited to the names of family members who, by court order, may not visit the child.
4. Known or available medical history including but not limited to:
(a) Allergies.
(b) Immunizations.
(c) Childhood diseases.
(d) Physical disabilities.
(e) Other idiosyncrasies.
(f) The child's last doctor, if known.
5. A summary of the child's history of adjudication on acts of delinquency, as may be public record and available in the file of the clerk of the superior court.
E. The responsibility of the agency or the division for a child placed in a foster home shall be defined in writing and accepted by the person receiving the child. The agency or division shall make available to the foster parents a method of acquiring emergency information that may be necessary to deal with situations that may arise pursuant to their responsibilities as foster parents.
F. Every foster home shall maintain a record of the children received, which shall include facts in regard to the children and their care and shall be in the form and kept in the manner prescribed by the division.

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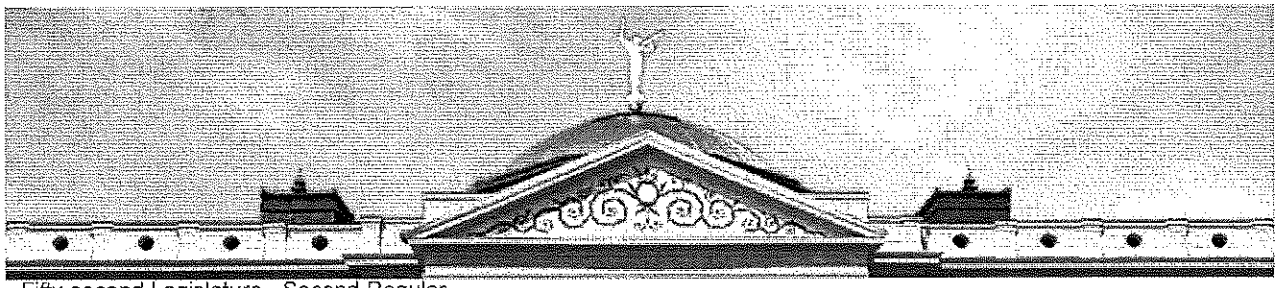

8-513. Participation in activities; contact with relatives; placement with siblings

A. A child may participate in activities and functions generally accepted as usual and normal for children of the child's age group if permission is granted as follows:

1. If the activity by law requires a license, the agency or division that placed the child may give permission on request of the foster parent.
2. If the activity includes the child leaving the jurisdiction of the court for a period not to exceed thirty days, the agency or division that placed the child may give permission on request of the foster parent.
3. If the activity is one which is associated with a school or organization not prohibited by rule of the division, the foster parents of the child may give permission.

B. The state shall indemnify and hold harmless the agency or foster parents for liability that may be incurred or alleged as a result of giving permission pursuant to subsection A if it is reasonably and prudently given. The state shall provide the defense of any action alleging such liability.

C. A child placed in foster care has the right to maintain contact with friends and other relatives unless the court has determined that contact is not in the child's best interests as determined pursuant to a court hearing.

D. If a child has been removed from the child's home and placed in out-of-home placement, guardianship or adoptive placement, the department shall make reasonable efforts to place that child with the child's siblings or, if that is not possible, to maintain frequent visitation or other ongoing contact between the child and the child's siblings unless a court determines that either the placement or the visitation or contact would be contrary to the child's or a sibling's safety or well-being.

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F-5

ARIZONA DEPARTMENT OF PUBLIC SAFETY (F-16-0704)
Title 13, Chapter 3, Department of Public Safety Tow Trucks

GOVERNOR'S REGULATORY REVIEW COUNCIL
ANALYSIS OF FIVE-YEAR REVIEW REPORT

MEETING DATE: July 6, 2016 **AGENDA ITEM: F-5**

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

FROM: Preston Knight, Legal Intern

DATE: June 20, 2016

SUBJECT: **ARIZONA DEPARTMENT OF PUBLIC SAFETY (F-16-0704)**
Title 13, Chapter 3, Article 7, Definitions, Scope, and Enforcement Dates; Article 8, Tow Truck Company Registration; Article 9, Tow Truck Registrations and Compliance Inspection; Article 10, Tow Truck Specifications by Class; Article 11, Tow Truck Equipment Requirements; Article 12, Requirements for Tow Truck Agents and Companies; Article 13, Enforcement

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COMMENTS ON THE FIVE-YEAR-REVIEW REPORT

Purpose of the Agency and Number of Rules in the Report

The purpose of the Arizona Department of Public Safety (Department) is to create and coordinate services for use by local law enforcement agencies in protecting the public safety; formulate plans with a view to establishing modern services for prevention of crime, apprehension of violators, training of law enforcement personnel; and promotion of public safety. See A.R.S. § 41-1711.

This five-year review report covers thirty rules in A.A.C. Title 13, Chapter 3 related to the licensing, registration, and requirements of tow trucks, tow truck operators, and tow truck companies.

Article Contents, Including the Subject Matter of Each Rule in the Report

Article 7 contains three rules that provide definitions of terms used in the other articles of this chapter, the scope of the chapter, and enforcement dates relating to the substantial amendments made effective July 1, 2006.

Article 8 contains one rule which addresses registration requirements for tow truck companies.

Article 9 contains three rules that address initial tow truck registration and compliance inspections, periodic and unannounced inspections of tow trucks by the Department, and requirements when a tow truck changes ownership.

Article 10 contains twelve rules which address tow truck classifications into light-duty tow trucks, light-duty tow trucks with collision recovery, light-duty flatbed tow trucks, light-duty flatbed tow trucks with collision recovery capabilities, light-duty tow truck-tractor and semi-trailer combinations, medium-duty tow trucks with collision recovery capabilities, medium-duty flatbed tow trucks with collision recovery capabilities, medium-duty tow truck-tractor and semi-trailer combinations, heavy-duty tow trucks, heavy-duty tow trucks with collision recovery capabilities, heavy-duty flatbed tow trucks with collision recovery capabilities, and heavy-duty tow truck-tractor and semi-trailer combinations.

Article 11 contains seven rules that address tow truck equipment requirements including compliance and identification requirements; axle, wheel, and tire requirements; brake requirements; equipment requirements; collision recovery equipment requirements; wire rope restrictions; and wire rope end specifications and installation.

Article 12 contains one rule which addresses tow truck agent and company requirements.

Article 13 contains three rules that address enforcement of the chapter including waivers, suspension or denial of tow truck permit decals, and appeals.

Year that Each Rule was Last Amended or Newly Made

All rules were newly made July 1, 2006.

Proposed Action

The Department indicates that it intends to amend R13-3-1301 and R13-3-1303 to make the language more consistent with statute requirements and make the rules more user friendly. The Department has not yet formally made a request for an exemption from Executive Order 2016-03, but estimates the final rulemaking will be submitted to the Council within one and a half years.

Summary of Reasons for the Proposed Action

The Department indicates the rules need to be amended to improve consistency with statutes, and to make the rules more clear, concise, and understandable.

Substantive or Procedural Concerns

None.

Analysis of the agency's report pursuant to criteria in A.R.S. § 41-1056 and R1-6-301:

1. **Has the agency certified that it is in compliance with A.R.S. § 41-1091?**

Yes. The Department has certified that it is in compliance with A.R.S. § 41-1091.

2. **Has the agency analyzed the rules' effectiveness in achieving their objectives?**

The Department indicates that the rules in Articles 7, 8, 9, 10, 11, 12, and 13 are generally effective.

3. **Has the agency received any written criticisms of the rules during the last five years, including any written analysis questioning whether the rules are based on valid scientific or reliable principles or methods?**

No. The Department indicates that it has not received any written criticisms of the rules during the last five years.

4. **Has the agency analyzed whether the rules are authorized by statute?**

Yes. The Department cites to both general and specific statutory authority for the rules. Under A.R.S. § 41-1713(A)(4), the director of the Department shall "[m]ake rules necessary for the operation of the department." Also, under A.R.S. § 41-1830.51 the director shall "adopt and enforce rules that…govern the design and operation of all tow trucks."

5. **Has the agency analyzed the rules' consistency with other rules and statutes?**

Yes. The Department indicates that the rules are consistent with other rules and statutes. The Department references compliance with A.R.S. § 41-1830.51 and state requirements found in R17-5-202 which incorporates 49 C.F.R. 40, 379, 382, 383, 390, 391, 392, 393, 395, 396, 397, and 399.

6. **Has the agency analyzed the current enforcement status of the rules?**

Yes. The Department indicates that the rules are enforced as written.

7. **Has the agency analyzed whether the rules are clear, concise, and understandable?**

Yes. The Department indicates that the rules are clear, concise, and understandable, with the following exceptions:

- R13-3-1301, which should be amended to specify whom the rule applies to specifically.
- R13-3-1303, which should be amended to specify whom the rule applies to specifically.

8. Stringency of the Rules:

a. Are the rules more stringent than corresponding federal law?

No. The Department indicates that no federal laws directly correspond to tow trucks and the rules incorporate Federal Motor Carrier Safety requirements.

b. If so, is there statutory authority to exceed the requirements of federal law?

Not applicable.

9. For rules adopted after July 29, 2010:

a. Do the rules require issuance of a regulatory permit, license or agency authorization?

Not applicable. The rules were adopted before July 29, 2010.

b. If so, are the general permit requirements of A.R.S. § 41-1037 met or does an exception apply?

Not applicable.

10. Has the agency indicated whether it completed the course of action identified in the previous five-year-review report?

Yes. The Department indicates a statutory change removing the bond requirement for tow truck companies eliminated the need for changes identified in the previous five-year review report.

11. Has the agency included a proposed course of action?

Yes. The Department indicates it intends to submit a request for an exception to Executive Order 2016-03 to amend the rules as follows:

- R13-3-701 to update the statutory reference from A.R.S. § 28-1108 to A.R.S. § 41-1830.51
- R13-3-703 to remove the reference to the grandfather period which ended June 1, 2010
- R13-3-902 to add telephone and email options for notification
- R13-3-1201 to update a reference from 2003 to 2015
- R13-3-1301 and R13-3-1303 to clarify language about whom the rule applies to.

Conclusion

The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. Staff recommends that the report be approved.

GOVERNOR'S REGULATORY REVIEW COUNCIL
M E M O R A N D U M

MEETING DATE: July 6, 2016 **AGENDA ITEM: F-5**

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

FROM: GRRC Economic Team

DATE: June 20, 2016

SUBJECT: **ARIZONA DEPARTMENT OF PUBLIC SAFETY (F-16-0704)**
Title 13, Chapter 3, Article 7, Definitions, Scope, and Enforcement Dates; Article 8, Tow Truck Company Registration; Article 9, Tow Truck Registrations and Compliance Inspection; Article 10, Tow Truck Specifications by Class; Article 11, Tow Truck Equipment Requirements; Article 12, Requirements for Tow Truck Agents and Companies; Article 13, Enforcement

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I reviewed the five-year-review report's economic, small business, and consumer impact comparison for compliance with A.R.S. § 41-1056 and make the following comments.

1. <u>Economic Impact Comparison</u>

The economic, small business, and consumer impact statement (EIS) from the most recent rulemaking was available for the rules contained in the five-year-review report.

The Department believes the projected economic impact in the 2006 EIS remains accurate. In the report, the Department explains that presently there are 4,528 tow trucks permitted by the Department, 800 tow truck safety inspections are conducted, and 1,100 work hours are spent on these inspections. The rules, according to the 2006 EIS, have minimal (less than $1,000 per year) or no economic impact. Specifically, the cost bearers identified in the EIS from 2006 were identified to be 1.1% of the towing industry. The predicted financial burden in the EIS was $1.8 million in equipment annually.

<u>2.</u> <u>Has the agency determined that the rules impose the least burden and costs to persons regulated by the rules?</u>

The Department reports that the "public safety benefits outweigh the costs to the State and impose the least burden and cost to the regulated industry". These rules have existed the last five years without comment. However, the Department does believe after the expiration of the moratorium, rules R13-3-1301 and R13-3-1303 can be improved for efficiency.

3. Was an analysis submitted to the agency under A.R.S. § 41-1056(A)(7)?

No analysis was submitted to the agency by another person that compares the rules' impact on this state's business competitiveness to the impact on businesses in other states under A.R.S. § 41-1056(A)(7).

4. Conclusion

After review, staff concludes that the report complies with A.R.S. § 41-1056 and recommends approval.

ARIZONA DEPARTMENT OF PUBLIC SAFETY

2102 WEST ENCANTO BLVD. P.O. BOX 6638 PHOENIX, ARIZONA 85005-6638 (602) 223-2000

"Courteous Vigilance"

DOUGLAS A. DUCEY Governor
FRANK L. MILSTEAD Director

April 22, 2016

Ms. Nicole A. Ong, Chair
Governor's Regulatory Review Council
100 North 15th Avenue, Suite 402
Phoenix, AZ 85007

Dear Ms. Ong:

Pursuant to Arizona Revised Statute §41-1056, the Department of Public Safety submits, for your approval, a five-year review report of its rules listed in Title 13 Public Safety, Chapter 3 Tow Trucks.

The Department reviewed Chapter 3, Articles 7 through 13 totaling thirty rules and does not intend for any of the rules to expire under A.R.S. § 41-1056(J).

The Department does not have any active Substantive Policy Statements for this chapter and therefore is in compliance with A.R.S. §41-1091.

If you have any questions regarding this report, please contact Mr. Paul Swietek, Police Planner at (602) 223-2049.

Thank you for your consideration.

Sincerely,

Frank L. Milstead, Colonel
Director

ps

Enclosure

ARIZONA DEPARTMENT OF PUBLIC SAFETY

ARIZONA ADMINISTRATIVE CODE FIVE YEAR REVIEW REPORT

TITLE 13 – PUBLIC SAFETY

CHAPTER 3 – TOW TRUCKS

ARTICLES
7 – DEFINITIONS, SCOPE, AND ENFORCEMENT DATES
8 – TOW TRUCK COMPANY REGISTRATION
9 – TOW TRUCK REGISTRATION AND COMPLIANCE INSPECTION
10 – TOW TRUCK SPECIFICATIONS BY CLASS
11 – TOW TRUCK EQUIPMENT REQUIREMENTS
12 – REQUIREMENTS FOR TOW TRUCK AGENTS AND COMPANIES
13 – ENFORCEMENT

June 2, 2016

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INTRODUCTION

The Department of Public Safety, which is created by A.R.S. § 41-1711, is charged with, among other things, preventing crime and protecting the public. The State Regulated Vehicle Unit, a section of the Highway Patrol Division, manages the regulatory function. The Department promotes consistency in tow truck equipment, standards for the tow truck operators, and safety for the motoring public using towing services. This mission is accomplished through administrative rulemaking supported by inspections and enforcement action. The State Regulated Vehicle Unit:

- Inspects tow trucks for safety upon submittal of an application for tow truck registration.
- Issues identification decals for tow trucks in compliance with tow truck rules.
- Registers tow trucks operating in Arizona.
- Maintains a database on towing companies.
- Handles complaints regarding compliance with tow truck rules.
- Takes enforcement action on violations of tow truck rules and applicable state statutes.
- Handles appeals of sanctions and enforcement action.

Included in this report is a review of the following thirty rules:

- R13-3-701 Definitions
- R13-3-702 Scope of Chapter
- R13-3-703 Enforcement Dates
- R13-3-801 Tow Truck Company Registration
- R13-3-901 Tow Truck Registration
- R13-3-902 Inspection by the Department
- R13-3-903 Changes in Ownership
- R13-3-1001 Light-duty Tow Truck
- R13-3-1002 Light-duty Tow Truck with Collision Recovery Capabilities
- R13-3-1003 Light-duty Flatbed Tow Truck

- R13-3-1004 Light-duty Flatbed Tow Truck with Collision Recovery Capabilities
- R13-3-1005 Light-duty Tow Truck-tractor and Semi-trailer Combination
- R13-3-1006 Medium-duty Tow Truck with Collision Recovery Capabilities
- R13-3-1007 Medium-duty Flatbed Tow Truck with Collision Recovery Capabilities
- R13-3-1008 Medium-duty Tow Truck-tractor and Semi-trailer Combination
- R13-3-1009 Heavy-duty Tow Truck
- R13-3-1010 Heavy-duty Tow Truck with Collision Recovery Capabilities
- R13-3-1011 Heavy-duty Flatbed Tow Truck with Collision Recovery Capabilities
- R13-3-1012 Heavy-duty Tow Truck-tractor and Semi-trailer Combination
- R13-3-1101 Compliance with Chapter and Identification Requirements
- R13-3-1102 Axle, Wheel and Tire Requirements
- R13-3-1103 Brake Requirements
- R13-3-1104 Required Equipment
- R13-3-1105 Collision Recovery Equipment Requirements
- R13-3-1106 Wire Rope Restrictions
- R13-3-1107 Wire Rope End Specifications and Installment
- R13-3-1201 Tow Truck Agent and Company Requirements
- R13-3-1301 Waiver
- R13-3-1302 Suspension or Denial of Tow Truck Permit Decal
- R13-3-1303 Appeals

INFORMATION IDENTICAL FOR A GROUP OF RULES

Under A.A.C. R1-6-301(B), the following information is provided only once because it is identical for a group of rules:

1. Authorization of the rule by existing statutes

   The Department's general authority is authorized under:

   - A.R.S. § 41-1713(A)(4) states the Department may make rules necessary for the operation of the Department.

   The Department's specific authority is authorized under:

   - A.R.S. § 41-1830.51(C) which authorizes the Department to adopt and enforce rules regarding the design and operation of all tow trucks.

3. Effectiveness of the Rule in Achieving the Objective

   The Department believes the rules are generally effective in accomplishing their objectives. However, as indicated in the Analysis of Individual Rules, the Department believes the effectiveness of the following rules could be improved: R13-3-703, R13-3-902, R13-3-1201, R13-3-1301 and R13-3-1303.

4. Consistency of the Rule with State and Federal Statues or Other Rules

   The Department determined that the rules are consistent with A.R.S. § 41-1830.51 and state requirements specified in A.A.C. R17-5-202 with the exception of R13-3-701 and R13-3-1201.

5. Agency Enforcement Policy

   The Department enforces the current rules.

6. Clarity, Conciseness, and Understandability of the Rule

The rules are clear, concise, and understandable.

7. Summary of Written Criticisms of the Rules Received in the Last Five Years

The Department has received no written criticisms of the rules in the last five years.

8. A Review of the Economic Impact Statement (EIS) Prepared on the Last Making of the Rule.

The Department believes that the statement prepared in 2006 was accurate for the time period and is still accurate for today's economy.

There are 4,528 tow trucks permitted by the Department. The Department does not permit drivers. The Department annually conducts over 800 tow truck safety inspections. Those annual inspections account for 1,100 work hours.

On July 1, 2006, new Articles 7 through 13 were codified. To accommodate the tow truck industry and lessen any negative economic impact, a four-year grace period was put into effect keeping Articles 1 through 6 active. On June 1, 2010 Articles 1 through 6 expired. During the grace period, tow trucks that were regulated by Articles 1 through 6 had nearly four years to spread the cost of making modifications or replacing equipment to comply with Articles 7 through 13.

Various municipalities and jurisdictions throughout the state can set additional standards above the minimum compliance level for tow trucks under contract or on service rotation for that jurisdiction. In addition, responsible members of the tow truck industry, by necessity, have adopted new technology and replaced equipment through attrition with tow trucks that feature manufacturer's specifications which exceeds guidelines in existing rules.

The minimum equipment and tow truck operation requirements in the current rules promote safety, which benefits the public and insurance industry. The cost of meeting or exceeding current requirements is passed along to the consumer in terms of fees and towing charges.

9. Analysis of the State's Business Competitiveness as Compared to Other States

The Department has not received any business comparative analysis by any person regarding the rules' impact on this state's business competitiveness as compared to the competitiveness of business in other states.

10. Agency Stated Course of Action from the Previous Five-Year Report

The Department's previous Five-Year Review Report was approved by the Council in 2011. The analysis of R13-3-801 stated that the rule should be amended to address the bond issue in A.R.S. § 28-1108(D). However legislative action later repealed the statute, shifted its contents to A.R.S. § 41-1830.51(D) and removed the bond requirement. With the bond requirement removed by the Legislature, no action was necessary by the Department. The Department still intends to amend R13-3-1301 and R13-3-1303 but was not able to do so under the rulemaking moratoriums in effect.

11. Determination of Probable Benefits Outweighing the Probable Costs

The Department determined that the public safety benefits of the rules will outweigh the costs to the State and impose the least burden and cost to the regulated industry.

12. Determination of the Rules' Stringency Against Federal Law

There are no applicable federal laws.

13. Issuance of a Regulatory Permit for Rules Adopted After July 29, 2010, in Compliance with A.R.S. § 41-1037

None of the rules reviewed were adopted or amended after July 29, 2010; therefore, this analysis is not required for these rules.

14. Course of Action for the Rules

The Department intends to amend the following rules: R13-3-701, R13-3-703, R13-3-902, R13-3-1201, R13-3-1301 and R13-3-1303. The State Regulated Vehicle Unit has estimated that the final rulemaking will be submitted to Council within one and a half years after the Council's approval of this Five-Year Review Report under the assumption that a rulemaking waiver submitted after the approval of the report by the council is approved. The statute reference in rules R13-3-701(B) and R13-3-1201(B) will be amended by sending a request to the Secretary of State for a technical fix.

ANALYSIS OF INDIVIDUAL RULES

ARTICLE 7 – DEFINITIONS, SCOPE, AND ENFORCEMENT DATES

R13-3-701. Definitions

2. Objective

The objective of this rule is to clarify the rules by defining words that are used in a manner specific to the rules.

4. Consistency of the Rule with State and Federal Statues or Other Rules

The statutory reference of A.R.S. § 28-1108 has changed to A.R.S. § 41-1830.51. The Department will make a request to the Secretary of State to conduct a technical fix.

R13-3-702. Scope of Chapter

2. Objective

The objective of this rule is to ensure a clear understanding is achieved on who and what this chapter applies to.

R13-3-703. Enforcement Duties

2. Objective

The objective of this rule is to clearly convey the dates on which the old rules were repealed and the new rules became effective and enforced.

3. Effectiveness of the Rule in Achieving the Objective

The Department believes the rule is generally effective in accomplishing its objectives; however, Paragraph 2 can be amended as there are no tow truck companies operating under Articles 1 through 6 and the grandfather date has passed.

ARTICLE 8 – TOW TRUCK COMPANY REGISTRATION

R13-3-801. Tow Truck Company Registration

2. Objective

The objective of this rule is to set forth procedures for a tow truck company to properly register with the Department.

ARTICLE 9 – TOW TRUCK REGISTRATION AND COMPLAINCE INSPECTION

R13-3-901. Tow Truck Registration

2. Objective

The objective of this rule is to ensure that a tow truck in operation has been inspected for safety and compliance purposes.

R13-3-902. Inspection by the Department

2. Objective

The objective of this rule is to inform the public of the duties of the Department regarding inspection of tow trucks.

3. Effectiveness of the Rule in Achieving the Objective

The Department believes the rule is generally effective in accomplishing its objectives; however, the rule can be made more effective by adding a telephone number and email address to notify the Department in lieu of mailing in a notice.

R13-3-903. Changes in Ownership

2. Objective

The objective of this rules is to set forth the procedures on what a tow truck company should do when a change in ownership occurs.

ARTICLE 10 – TOW TRUCK SPECIFICATIONS BY CLASS

R13-3-1001. Light-duty Tow Truck

2. Objective

The objective of this rule is to set forth the requirements and specifications to operate a light-duty tow truck.

R13-3-1002. Light-duty Tow Truck with Collision Recovery Capabilities

2. Objective

The objective of this rule is to set forth the requirements and specifications to operate a light-duty tow truck that recovers vehicles from collisions.

R13-3-1003. Light-duty Flatbed Tow Truck

2. Objective

The objective of this rule is to set forth the requirements and specifications to operate a light-duty flatbed tow truck.

R13-3-1004. Light-duty Flatbed Tow Truck with Collision Recovery Capabilities

2. Objective:

The objective of this rule is to set forth the requirements and specifications to operate a light-duty flatbed tow truck that recovers vehicles involved in collisions.

R13-3-1005. Light-duty Tow Truck-tractor and Semi-trailer Combination

2. Objective

The objective of this rule is to set forth the requirements and specifications to operate a light-duty tow truck-tractor and semi-trailer combination.

R13-3-1006. Medium-duty Tow Truck with Collision Recovery Capabilities

2. Objective

The objective of this rule is to set forth the requirements and specifications to operate a medium-duty tow truck that recovers vehicles involved in a collision.

R13-3-1007. Medium-duty Flatbed Tow Truck with Collision Recovery Capabilities

2. Objective

The objective of this rule is to set forth the requirements and specifications to operate a medium-duty flatbed tow truck that recovers vehicles involved in a collision.

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R13-3-1008. Medium-duty Tow Truck-tractor and Semi-trailer Combination

2. Objective

The objective of this rule is to set forth the requirements and specifications to operate a medium-duty truck-tractor and semi-trailer combination.

R13-3-1009. Heavy-duty Tow Truck

2. Objective

The objective of this rule is to set forth the requirements and specifications to operate a heavy-duty tow truck.

R13-3-1010. Heavy-duty Tow Truck with Collision Recovery Capabilities

2. Objective

The objective of this rule is to set forth the requirements and specifications to operate a heavy-duty tow truck that recovers vehicles involved in collisions.

R13-3-1011. Heavy-duty Flatbed Tow Truck with Collision Recovery Capabilities

2. Objective

The objective of this rule is to set forth the requirements and specifications to operate a heavy-duty flatbed tow truck that recovers vehicles involved in collisions.

R13-3-1012. Heavy-duty Tow Truck-tractor and Semi-trailer Combination

2. Objective

The objective of this rule is to set forth the requirements and specifications to operate a heavy-duty tow truck-tractor and semi-trailer combination.

ARTICLE 11 – TOW TRUCK EQUIPMENT REQUIREMENTS

R13-3-1101. Compliance with Chapter and Identification Requirements

2. Objective

The objective of this rule is to set forth the requirements on markings required for tow trucks.

R13-3-1102. Axle, Wheel and Tire Requirements

2. Objective

The objective of this rule is to set forth requirements on tow truck wheels and tires.

R13-3-1103. Brake Requirements

2. Objective

The objective of this rule is to set forth the requirements for tow truck brakes.

R13-3-1104. Required Equipment

2. Objective

The objective of this rule is to set forth the equipment requirements for tow trucks in the categories of strapping and anchors, warning lights, load securement devices, working lights, mirrors, backup light sources, fire extinguishers, steering wheel locking mechanisms.

R13-3-1105. Collision Recovery Equipment Requirements

2. Objective

The objective of this rule is to set forth the equipment requirements for a tow truck to operate as a collision-recovery tow truck.

R13-3-1106. Wire Rope Restrictions

2. Objective

The objective of this rule is to set forth the conditions that a wire rope would be prohibited from being used in conjunction with a tow truck.

R13-3-1107. Wire Rope End Specifications and Installation

2. Objective

The objective of this rule is to set forth the conditions, specifications, and installation of a wire rope end.

ARTICLE 12 – REQUIREMENTS FOR TOW TRUCK AGENTS AND COMPANIES

R13-3-1201. Tow Truck Agent and Company Requirements

2. Objective

The objective of this rule is to set forth operating practices for a tow truck agent and company.

3. Effectiveness of the Rule in Achieving the Objective

The Department believes the rule is generally effective in accomplishing its objectives; however, the incorporated by reference date for 49 CFR 391.45 could be updated from October 2003 to October 2015. The update reads the same as the older version and is acceptable with the tow truck industry.

4. Consistency of the Rule with State and Federal Statues or Other Rules

The statutory reference of A.R.S. § 28-1108 has changed to A.R.S. § 41-1830.51. The Department will make a request to the Secretary of State to conduct a technical fix.

ARTICLE 13 – ENFORCEMENT

R13-3-1301. Waiver

2. Objective

The objective of this rule is to set forth the procedures to request a waiver of enforcement of the rules in writing to the Director of the Department of Public Safety if there is a compelling public necessity.

3. Effectiveness of the Rule in Achieving the Objective

The effectiveness of the rule could be improved. There is no record of a request for a waiver but the Department believes the rule would be effective if a waiver request were submitted. This waiver request is for new or improved design technology for a tow truck which has not been specified in the rules. The waiver request is only for the registered tow truck company making the request.

R13-3-1302. Suspension or Denial of Tow Truck Permit Decal

2. Objective

The objective of this rule is to set forth the conditions under which an owner or agent in violation may have their permit denied or suspended.

R13-3-1303. Appeals

2. Objective

The objective of this rule is to set forth the conditions under which an appeal or hearing would be set for persons with denied or suspended permits.

3. Effectiveness of the Rule in Achieving the Objective

The effectiveness of the rule could be improved. There is no record of a request for a waiver but the Department believes the rule would be effective if a waiver request were submitted. This appeal is for the tow truck company, as opposed to the individual person as currently specified in the rule, that has been issued tow permits and those permits have been denied or suspended per violations in R13-3-1201. There is no appeal if the Department denied the tow truck company waiver request for new technology items in R13-3-1301.

Department of Public Safety - Tow Trucks

TITLE 13. PUBLIC SAFETY

CHAPTER 3. DEPARTMENT OF PUBLIC SAFETY TOW TRUCKS

(Authority: A.R.S. § 28-1007 et seq.)

ARTICLE 7. DEFINITIONS, SCOPE, AND ENFORCEMENT DATES

Article 7, consisting of Sections R13-3-701 through R13-3-703, made by final rulemaking at 12 A.A.R. 1735, effective July 1, 2006 (Supp. 06-2).

Section
R13-3-701. Definitions
R13-3-702. Scope of Chapter
R13-3-703. Enforcement Dates

ARTICLE 8. TOW TRUCK COMPANY REGISTRATION

Article 8, consisting of Section R13-3-801, made by final rulemaking at 12 A.A.R. 1735, effective July 1, 2006 (Supp. 06-2).

Section
R13-3-801. Tow Truck Company Registration

ARTICLE 9. TOW TRUCK REGISTRATION AND COMPLIANCE INSPECTION

Article 9, consisting of Sections R13-3-901 through R13-3-903, made by final rulemaking at 12 A.A.R. 1735, effective July 1, 2006 (Supp. 06-2).

R13-3-901. Tow Truck Registration
R13-3-902. Inspection by the Department
R13-3-903. Changes in Ownership

ARTICLE 10. TOW TRUCK SPECIFICATIONS BY CLASS

Article 10, consisting of Sections R13-3-1001 through R13-3-1012, made by final rulemaking at 12 A.A.R. 1735, effective July 1, 2006 (Supp. 06-2).

R13-3-1001. Light-duty Tow Truck
R13-3-1002. Light-duty Tow Truck with Collision Recovery Capabilities
R13-3-1003. Light-duty Flatbed Tow Truck
R13-3-1004. Light-duty Flatbed Tow Truck with Collision Recovery Capabilities
R13-3-1005. Light-duty Tow Truck-tractor and Semi-trailer Combination
R13-3-1006. Medium-duty Tow Truck with Collision Recovery Capabilities
R13-3-1007. Medium-duty Flatbed Tow Truck with Collision Recovery Capabilities
R13-3-1008. Medium-duty Tow Truck-tractor and Semi-trailer Combination
R13-3-1009. Heavy-duty Tow Truck
R13-3-1010. Heavy-duty Tow Truck with Collision Recovery Capabilities
R13-3-1011. Heavy-duty Flatbed Tow Truck with Collision Recovery Capabilities
R13-3-1012. Heavy-duty Tow Truck-tractor and Semi-trailer Combination

ARTICLE 11. TOW TRUCK EQUIPMENT REQUIREMENTS

Article 11, consisting of Sections R13-3-1101 through R13-3-1107, made by final rulemaking at 12 A.A.R. 1735, effective July 1, 2006 (Supp. 06-2).

R13-3-1101. Compliance with Chapter and Identification Requirements
R13-3-1102. Axle, Wheel and Tire Requirements
R13-3-1103. Brake Requirements
R13-3-1104. Required Equipment
R13-3-1105. Collision Recovery Equipment Requirements
R13-3-1106. Wire Rope Restrictions
R13-3-1107. Wire Rope End Specifications and Installation

ARTICLE 12. REQUIREMENTS FOR TOW TRUCK AGENTS AND COMPANIES

Article 12, consisting of Section R13-3-1201, made by final rulemaking at 12 A.A.R. 1735, effective July 1, 2006 (Supp. 06-2).

Section
R13-3-1201. Tow Truck Agent and Company Requirements

ARTICLE 13. ENFORCEMENT

Article 13, consisting of Sections R13-3-1301 through R13-3-1303, made by final rulemaking at 12 A.A.R. 1735, effective July 1, 2006 (Supp. 06-2).

R13-3-1301. Waiver
R13-3-1302. Suspension or Denial of Tow Truck Permit Decal
R13-3-1303. Appeals

ARTICLE 1. REPEALED AND EXPIRED

ARTICLE 7. DEFINITIONS, SCOPE, AND ENFORCEMENT DATES

R13-3-701. Definitions

A. The definitions in A.R.S. §§ 28-101 and 41-1701 apply to this Chapter.

B. In this Chapter:

1. "Alter" means adding, modifying, or removing any equipment or component after a tow truck has received a permit decal from the Department, in a manner that may affect the operation of the tow truck, compliance with A.R.S. § 28-1108 and this Chapter, or the health, safety, or welfare of any individual.
2. "Bed assembly" means the part of a tow truck that is located behind the cab, is attached to the frame, and is used to mount a boom assembly, hoist, winch, or equipment for transporting vehicles.
3. "Boom assembly" means a device, consisting of sheaves, one or more winches, and wire rope, that is attached to a tow truck and used to lift or tow another vehicle.
4. "Collision" means an incident involving one or more moving vehicles resulting in damage to a vehicle or its load that requires the completion of a written report of accident under A.R.S. § 28-667(A).
5. "Collision recovery" means initial towing or removing a vehicle involved in a collision from the collision scene.
6. "Denial" means refusal to satisfy a request.
7. "Department" means the Arizona Department of Public Safety.
8. "Director" means the Director of the Arizona Department of Public Safety or the Director's designee.
9. "Emergency brake" means the electrical, mechanical, hydraulic, or air brake components used to slow or stop a vehicle after a failure of the service brake system.
10. "Flatbed" means an open platform that is located behind the cab and attached to the frame of a truck.
11. "G.V.W.R." means Gross Vehicle Weight Rating, the value specified by the manufacturer as the fully assembled weight of a single motor vehicle.
12. "Hook" means a steel hook attached to an end of a wire rope or chain.
13. "Parking brake system" means the electrical, mechanical, hydraulic, or air brake components used to hold the tow truck or combination under any condition of loading to prevent movement when parked.
14. "Permit decal" means the non-transferable decal that a tow truck company is required to obtain from the Department before operating a tow truck for the purpose of towing a vehicle.
15. "Person" means the same as in A.R.S. § 1-215.
16. "Power-assisted service brake system" means a service-brake system that is equipped with a booster to supply additional power to the service-brake system by means of air, vacuum, electric, or hydraulic pressure.
17. "Power-operated winch" means a winch that is operated by electrical, mechanical, or hydraulic power.
18. "Service-brake system" means the electrical, mechanical, hydraulic, or air brake components used to slow or stop a vehicle in motion.
19. "Snatch block" means a metal case that encloses one or more pulleys and can be opened to receive a wire rope and redirect energy from a winch.
20. "State" means the state of Arizona.
21. "Steering wheel clamp" means a device used to secure in a fixed position the steering wheel of a vehicle being towed.
22. "Suspension" is the temporary withdrawal of the tow truck permit decal because the Department determines the tow truck or tow truck agent is not in compliance with one or more requirements of this Chapter.
23. "Tow bar" means a device attached to the rear of a tow truck to secure a towed vehicle to the tow truck by chains, straps, or hooks.
24. "Tow plate" means a solid metal support attached to the rear of a tow truck to secure a towed vehicle to the tow truck by chains, straps, or hooks.
25. "Tow sling" means two or more flexible straps attached to the wire rope or boom assembly of a tow truck to hoist a towed vehicle by chains, straps, or hooks.

26. "Tow truck" means a motor vehicle designed, manufactured, or altered to tow or transport one or more vehicles. The following are tow trucks:
    a. A truck with a flatbed equipped with a winch;
    b. A truck drawing a semi-trailer or trailer equipped with a winch;
    c. A motor vehicle that has a boom assembly or hoist permanently attached to its bed or frame;
    d. A motor vehicle that has a tow sling, tow plate, tow bar, under-lift, or wheel-lift attached to the rear of the vehicle; and
    e. A truck-tractor drawing a semi-trailer equipped with a winch.
27. "Tow truck agent" means an individual who operates a tow truck on behalf of a tow truck company, and includes owners, individuals employed by the tow truck company, and independent contractors.
28. "Tow truck company" means a person that owns, leases, or operates a tow truck that travels on a street or highway to transport a vehicle, including, but not limited to a vehicle that is damaged, disabled, unattended, repossessed, or abandoned.
29. "Truck-tractor protection valve" means a device that supplies air to the service brake system of a trailer to release the service brakes while the trailer is being towed by a truck- tractor, or to activate the service brakes if the supply of air from the truck-tractor to the trailer is disconnected or depleted.
30. "Under-lift" means an electrical, mechanical, or hydraulic device attached to the rear of a tow truck used to lift the front or rear of a vehicle by its axles or frame.
31. "Vehicle" means the same as in A.R.S. § 28-101.
32. "Wheel lift" means an electrical, hydraulic, or mechanical device attached to the rear of a tow truck used to lift the front or rear of a vehicle by its tires or wheels.
33. "Winch" means a device used for winding or unwinding wire rope.
34. "Wire rope" means flexible steel or synthetic strands that are twisted or braided together and may surround a hemp or wire core.
35. "Work lamp" means a lighting system that is mounted on a tow truck capable of illuminating an area to the rear of the tow truck.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 1735, effective July 1, 2006 (Supp. 06-2).

R13-3-702. Scope of Chapter

This Chapter applies only to a tow truck company in the business of towing and a tow truck agent.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 1735, effective July 1, 2006 (Supp. 06-2).

R13-3-703. Enforcement Dates

As of the effective date of Articles 7 through 13, a tow truck agent shall ensure that a tow truck:

1. Introduced into the state on or after the effective date of Articles 7 through 13 meets the requirements of Articles 7 through 13;
2. Registered and operating as a tow truck in the state before the effective date of Articles 7 through 13, either meets the requirements of Articles 7 through 13 or Articles 1 through 6 until June 1, 2010, at which time the tow truck shall meet the requirements of Articles 7 through 13;
3. Sold to a new owner meets the requirements of Articles 7 through 13 before operating as a tow truck within this state; or
4. Not included in the definition of "tow truck" in R13-3-701 before the effective date of Articles 7 through 13, meets the requirements of Articles 7 through 13 within six months of the effective date of Articles 7 through 13 when operating as a tow truck in this state.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 1735, effective July 1, 2006 (Supp. 06-2).

ARTICLE 8. TOW TRUCK COMPANY REGISTRATION

R13-3-801. Tow Truck Company Registration

A. A person shall not operate a tow truck to tow a vehicle unless a tow truck agent registers the tow truck company with the Department. The tow truck agent shall:

1. Obtain a tow truck company application from the Department and complete the application form by including the following information:
    a. The name, address, and telephone number of the tow truck company;
    b. The tow truck owner's name, address, telephone number and date of birth. If the owner is a corporation, the corporation's name, address, and telephone number;
2. Obtain and keep in effect at all times the minimum limits of financial responsibility required by A.R.S. §§ 28-4009, 28-4032, 28-4033, 28-4131, and 28-4135, as applicable, for each tow truck owned, leased, or operated by the company; and
3. Sign the application in the presence of a Notary Public or Department Officer certifying under penalty of suspension of the permit decal that the tow truck company and the tow truck agent shall:

a. Comply with this Chapter; and
b. Have the necessary experience and qualifications to operate a tow truck in the manner required by this Chapter;

4. Include with a completed application, proof of financial responsibility that indicates:
   a. Name of the insured;
   b. Name, address, and telephone number of the insurance carrier;
   c. Policy number;
   d. Date on which the policy expires; and
   e. Amount of coverage; and
5. Submit the completed application form and proof of financial responsibility in person to the Department.

B. If information provided on the original application form changes, the tow truck agent shall submit a new application form to the Department within 10 calendar days of the change. The Department may suspend a tow truck permit decal for failure to notify the Department of a change.

C. If it is discovered that a tow truck permit decal was issued on information supplied by the applicant that the applicant knew or should have reasonably known was false or inaccurate, the Department may suspend the tow truck permit decal.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 1735, effective July 1, 2006 (Supp. 06-2).

ARTICLE 9. TOW TRUCK REGISTRATION AND COMPLIANCE INSPECTION

R13-3-901. Tow Truck Registration

A. A tow truck company shall register each tow truck by obtaining an identification number and permit decal before operating the tow truck to tow a vehicle.

B. A tow truck company shall apply for an identification number and permit decal by completing the Department's tow truck inspection application. The company may obtain the application from the Department. The signature on the application of the owner or a tow truck agent shall be notarized or signed in the presence of a Department officer.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 1735, effective July 1, 2006 (Supp. 06-2).

R13-3-902. Inspection by the Department

A. The Department shall inspect a tow truck for compliance with this Chapter as soon as possible after the tow truck inspection application form is filed and no later than seven days after the application form is filed.

B. The Department may conduct unannounced, in-service inspections of a tow truck at the roadside, at the company's place of business, or any reasonable time and place to determine the condition of the tow truck.

C. The Department shall issue tow truck permit decals and identification number decals individually for each approved tow truck.

D. When a tow truck inspection is conducted under subsection (A) or (B), the following apply:
1. Department inspectors shall examine the tow truck for compliance with the safety requirements and specifications for the tow truck class under this Chapter.
2. If the Department finds that the tow truck complies with this Chapter, the Department shall issue an inspection report and if applicable, a permit decal.
3. If the Department finds that the tow truck does not comply with this Chapter, but has no deficiency listed in R13-3-1201(C)(7), the Department shall issue an inspection report that:
   a. Specifies the deficiencies found,
   b. Requires corrective measures, and
   c. Allows five calendar days for the tow truck agent to correct the deficiencies.
4. If the Department finds that the tow truck does not comply with this Chapter because of deficiencies listed in R13-3-1201(C)(7), the Department shall not issue a permit decal but shall issue an inspection report that:
   a. Specifies the deficiencies found, and
   b. Requires corrective measures.

E. A tow truck agent shall ensure that a legible copy of the most recent tow truck inspection report is kept in the driver's compartment area of the tow truck and is produced upon demand to any peace officer. The Department may suspend a tow truck permit decal for failure to comply with this subsection.
1. A tow truck agent shall ensure that:
   a. A permit decal is affixed to the lower outside right corner of the tow truck's windshield, and
   b. An identification number decal is permanently affixed to the driver's compartment area.
2. The Department may suspend a permit decal for failure to maintain the permit decal or identification number decal in compliance with subsection (E)(1).

3. If a tow truck inspection report, permit decal, or identification number decal is lost, damaged, destroyed, or stolen, the tow truck company shall immediately notify the Department.
   a. The tow truck company shall provide notification in writing to Arizona Department of Public Safety, P.O. Box 6638, Phoenix, AZ 85005-6638, and include the name of the tow truck agent who registered the tow truck and the number of the lost, damaged, destroyed, or stolen inspection report, permit decal, or identification number decal.
   b. Upon receipt of the notification, the Department shall issue the replacement inspection report, permit decal, or identification number decal.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 1735, effective July 1, 2006 (Supp. 06-2). Amended by final rulemaking at 14 A.A.R. 713, effective April 5, 2008 (Supp. 08-1).

R13-3-903. Changes in Ownership

If a tow truck is sold, leased, or otherwise disposed of, the permit decal issued to the tow truck immediately becomes void.

1. Before sale, lease, or other disposal of a tow truck, a tow truck agent shall remove and destroy the permit decal.
2. Within 10 calendar days following the sale, lease, or other disposal of the tow truck, a tow truck agent shall notify the Department in writing of the action. The notice shall include:
   a. Date on which ownership changed or the tow truck was disposed of;
   b. Whether the tow truck was sold, leased, or the method and reason for other disposal;
   c. Name of person who sold, leased, or disposed of the tow truck;
   d. If applicable, name and address of the person that purchased or leased the tow truck; and
   e. Vehicle identification number of tow truck that was sold, leased, or disposed of.
3. A person to whom a tow truck is sold, leased, or otherwise disposed of shall complete the registration and inspection process before operating the tow truck to tow a vehicle within this state.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 1735, effective July 1, 2006 (Supp. 06-2).

ARTICLE 10. TOW TRUCK SPECIFICATIONS BY CLASS

R13-3-1001. Light-duty Tow Truck

A light-duty tow truck has a minimum of:

1. A G.V.W.R. of 10,000 pounds;
2. A boom assembly with a rated capacity of 8,000 pounds, if so equipped;
3. A power-operated winch with a line pull capacity of 8,000 pounds and a 3/8-inch diameter wire rope with a breaking strength of 12,200 pounds, if so equipped;
4. A tow sling, tow plate, or tow bar that meets the requirements of R13-3-1201(C)(16), or a wheel-lift or under-lift with a lifting capacity of 2,500 pounds when fully extended;
5. Chains or straps and hooks that meet the requirements of R13-3-1104;
6. Axles, wheels, and tires that meet the requirements of R13-3-1102; and
7. Brakes that meet the requirements of R13-3-1103.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 1735, effective July 1, 2006 (Supp. 06-2).

R13-3-1002. Light-duty Tow Truck with Collision Recovery Capabilities

A light-duty tow truck with collision recovery capabilities has a minimum of:

1. A G.V.W.R. of 14,001 pounds;
2. A boom assembly with a rated capacity of 8,000 pounds;
3. A power-operated winch with a line pull capacity of 8,000 pounds and a 3/8-inch diameter wire rope with a breaking strength of 12,200 pounds;
4. A tow sling, tow plate, or tow bar that meets the requirements of R13-3-1201(C)(16), or a wheel-lift or under-lift with a lifting capacity of 3,000 pounds when fully extended;
5. Chains or straps and hooks that meet the requirements of R13-3-1104;
6. Axles, wheels, and tires that meet the requirements of R13-3-1102; and
7. Brakes that meet the requirements of R13-3-1103.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 1735, effective July 1, 2006 (Supp. 06-2).

R13-3-1003. Light-duty Flatbed Tow Truck

A light-duty flatbed tow truck has a minimum of:

1. A G.V.W.R. of 10,000 pounds;
2. A power-operated winch with a line pull capacity of 8,000 pounds and a 3/8-inch diameter wire rope with a breaking strength of 12,200 pounds;
3. A bed assembly with a distributed load capacity of 7,500 pounds;
4. A wheel-lift or under-lift with a lifting capacity of 2,000 pounds when fully extended, if so equipped;
5. A tow plate or tow bar that meets requirements of R13-3-1201(C)(16), if so equipped;
6. Chains or straps and hooks that meet the requirements of R13-3-1104;
7. Axles, wheels, and tires that meet the requirements of R13-3-1102; and
8. Brakes that meet the requirements of R13-3-1103.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 1735, effective July 1, 2006 (Supp. 06-2). Amended by final rulemaking at 14 A.A.R. 713, effective April 5, 2008 (Supp. 08-1).

R13-3-1004. Light-duty Flatbed Tow Truck with Collision Recovery Capabilities

A light-duty flatbed tow truck with collision recovery capabilities has a minimum of:

1. A G.V.W.R. of 14,001 pounds;
2. A power-operated winch with a line pull capacity of 8,000 pounds and a 3/8-inch diameter wire rope with a breaking strength of 12,200 pounds;
3. A bed assembly with a distributed load capacity of 7,500 pounds;
4. A wheel-lift or under-lift with a lifting capacity of 2,500 pounds when fully extended, if so equipped;
5. A tow plate or tow bar that meets requirements of R13-3-1201(C)(16), if so equipped;
6. Chains or straps and hooks that meet the requirements of R13-3-1104;
7. Axles, wheels, and tires that meet the requirements of R13-3-1102; and
8. Brakes that meet the requirements of R13-3-1103.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 1735, effective July 1, 2006 (Supp. 06-2). Amended by final rulemaking at 14 A.A.R. 713, effective April 5, 2008 (Supp. 08-1).

R13-3-1005. Light-duty Tow Truck-tractor and Semi-trailer Combination

A light-duty tow truck-tractor and semi-trailer combination has a minimum of:

1. A G.V.W.R. of 8,600 pounds for a truck-tractor;
2. A G.V.W.R. of 7,500 pounds for a semi-trailer;
3. A power-operated winch with a line pull capacity of 8,000 pounds and a 3/8-inch diameter wire rope with a breaking strength of 12,200 pounds;
4. Chains or straps and hooks that meet the requirements of R13-3-1104;
5. Axles, wheels, and tires that meet the requirements of R13-3-1102; and
6. Brakes that meet the requirements of R13-3-1103 and A.R.S. § 28-952(A).

Historical Note

New Section made by final rulemaking at 12 A.A.R. 1735, effective July 1, 2006 (Supp. 06-2).

R13-3-1006. Medium-duty Tow Truck with Collision Recovery Capabilities

A medium-duty tow truck has a minimum of:

1. A G.V.W.R. of 23,500 pounds;
2. A boom assembly with a rated capacity of 24,000 pounds;
3. A power-operated winch with a line-pull capacity of 20,000 pounds and a 1/2-inch diameter wire rope with a breaking strength of 21,400 pounds, or two power-operated winches each with a line-pull capacity of 10,000 pounds and a 7/16-inch diameter wire rope with breaking strength of 16,540 pounds;
4. A tow sling, tow plate, or tow bar that meets the requirements of R13-3-1201(C)(16), or a wheel-lift or under-lift with a lifting capacity of 5,000 pounds when fully extended;
5. Chains or straps and hooks that meet the requirements of R13-3-1104;
6. Axles, wheels, and tires that meet the requirements of R13-3-1102; and
7. Brakes that meet the requirements of R13-3-1103.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 1735, effective July 1, 2006 (Supp. 06-2).

R13-3-1007. Medium-duty Flatbed Tow Truck with Collision Recovery Capabilities

A medium-duty flatbed tow truck has a minimum of:

1. A G.V.W.R. of 23,500 pounds;
2. A power-operated winch with a line pull capacity of 10,000 pounds and a 7/16-inch diameter wire rope with a breaking strength of 16,540 pounds;
3. A bed assembly with a distributed load capacity of 15,000 pounds;
4. A wheel-lift or under-lift with a lifting capacity of 3,000 pounds when fully extended, if so equipped;
5. A tow plate or tow bar that meets the requirements of R13-3-1201(C)(16), if so equipped;
6. Chains or straps and hooks that meet the requirements of R13-3-1104;
7. Axles, wheels, and tires that meet the requirements of R13-3-1102; and
8. Brakes that meet the requirements of R13-3-1103.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 1735, effective July 1, 2006 (Supp. 06-2).

R13-3-1008. Medium-duty Tow Truck-tractor and Semi-trailer Combination

A medium-duty tow truck-tractor and semi-trailer combination has a minimum of:

1. A G.V.W.R. of 23,500 pounds for a truck-tractor;
2. A G.V.W.R. of 17,000 pounds for a semi-trailer;
3. A power-operated winch with a line pull capacity of 10,000 pounds and a 7/16-inch diameter wire rope with a breaking strength of 16,540 pounds;
4. Chains or straps and hooks that meet the requirements of R13-3-1104;
5. Axles, wheels, and tires that meet the requirements of R13-3-1102; and
6. Brakes that meet the requirements of R13-3-1103 and A.R.S. § 28-952(A)(3).

Historical Note

New Section made by final rulemaking at 12 A.A.R. 1735, effective July 1, 2006 (Supp. 06-2).

R13-3-1009. Heavy-duty Tow Truck

A heavy-duty tow truck has a minimum of:

1. A G.V.W.R. of 35,000 pounds;
2. Tandem rear axles;
3. A boom assembly with a rated capacity of 50,000 pounds, if so equipped;
4. Two power-operated winches with a line pull capacity of 25,000 pounds each and a 9/16-inch diameter wire rope with a breaking strength of 27,000 pounds, if so equipped;
5. A tow sling, tow plate, or tow bar that meets the requirements of R13-3-1201(C)(16), or a wheel-lift or under-lift with a lifting capacity of 12,000 pounds when fully extended;
6. Chains or straps and hooks that meet the requirements of R13-3-1104;
7. Axles, wheels, and tires that meet the requirements of R13-3-1102;
8. Air brakes that meet the requirements of R13-3-1103; and
9. Seventy-five feet of air line configured so the ends can be connected between the tow truck and the towed unit, allowing the air supply of the tow truck's brake system to be transmitted to the towed unit's service brake system.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 1735, effective July 1, 2006 (Supp. 06-2).

R13-3-1010. Heavy-duty Tow Truck with Collision Recovery Capabilities

A heavy-duty tow truck has a minimum of:

1. A G.V.W.R. of 35,000 pounds;
2. Tandem rear axles;
3. A boom assembly with a rated capacity of 50,000 pounds;
4. Two power-operated winches with a line pull capacity of 25,000 pounds each and a 9/16-inch diameter wire rope with a breaking strength of 27,000 pounds;
5. A tow sling, tow plate, or tow bar that meets the requirements of R13-3-1201(C)(16), or a wheel-lift or under-lift with a lifting capacity of 12,000 pounds when fully extended;
6. Chains or straps and hooks that meet the requirements of R13-3-1104;
7. Axles, wheels, and tires that meet the requirements of R13-3-1102;
8. Air brakes that meet the requirements of R13-3-1103; and
9. Seventy-five feet of air line configured so the ends can be connected between the tow truck and the towed unit, allowing the air supply of the tow truck's brake system to be transmitted to the towed unit's service brake system.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 1735, effective July 1, 2006 (Supp. 06-2).

R13-3-1011. Heavy-duty Flatbed Tow Truck with Collision Recovery Capabilities

A heavy-duty flatbed tow truck has a minimum of:

1. A G.V.W.R. of 33,000 pounds;
2. A power-operated winch with a line pull capacity of 20,000 pounds and a 1/2-inch diameter wire rope with a breaking strength of 21,400 pounds;
3. A bed assembly with a distributed load capacity of 20,000 pounds;
4. A wheel-lift or under-lift with a lifting capacity of 4,000 pounds when fully extended, if so equipped;
5. A tow plate or tow bar that meets the requirements of R13-3-1201(C)(16), if so equipped;
6. Chains or straps and hooks that meet the requirements of R13-3-1104;
7. Axles, wheels and tires that meet the requirements of R13-3-1102; and
8. Air brakes that meet the requirements of R13-3-1103.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 1735, effective July 1, 2006 (Supp. 06-2).

R13-3-1012. Heavy-duty Tow Truck-tractor and Semi-trailer Combination

A heavy-duty tow truck-tractor and semi-trailer combination has a minimum of:

1. A truck tractor with a G.V.W.R. of 35,000 pounds;
2. Tandem rear axles for both a truck-tractor and semi-trailer;
3. A G.V.W.R. of 30,000 pounds on the semi-trailer;
4. A power-operated winch with a single line pull capacity of 20,000 pounds and a 1/2-inch diameter wire rope with a breaking strength of 21,400 pounds;
5. Chains or straps and hooks that meet the requirements of R13-3-1104;
6. Axles, tires, and wheels that meet the requirements of R13-3-1102; and
7. Air brakes that meet the requirements of R13-3-1103 for both a truck-tractor and semi-trailer.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 1735, effective July 1, 2006 (Supp. 06-2).

ARTICLE 11. TOW TRUCK EQUIPMENT REQUIREMENTS

R13-3-1101. Compliance with Chapter and Identification Requirements

A. At all times a tow truck agent shall display on both sides of each tow truck the company name, full name of the town or city in which the company is located, and ten digit telephone number. Letters shall contrast sharply in color with the background on which the letters are placed, be readily legible during daylight hours from a distance of 50 feet while the tow truck is stationary, and be maintained in a manner that retains the legibility.

B. A tow truck agent shall ensure that all tow trucks meet the requirements of this Chapter. The Department may suspend a permit decal for failure to meet the requirements of this Chapter.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 1735, effective July 1, 2006 (Supp. 06-2).

R13-3-1102. Axle, Wheel, and Tire Requirements

A. A tow truck agent shall ensure that a tow truck has:

1. Axles, wheels, and tires with a manufacturer's capacity rating equal to or greater than the tow truck's G.V.W.R.; and
2. At all points on major tread grooves, a tread-groove pattern depth of at least 4/32 of an inch on all tires on the steering axle, and 2/32 of an inch on all other tires.

B. A tow truck agent shall ensure that a tow truck does not have:

1. Fabric or cord exposed through the tire tread or sidewall;
2. A tire contacting another tire, suspension, or any other part of the vehicle; or
3. A tire visibly under-inflated or flat.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 1735, effective July 1, 2006 (Supp. 06-2).

R13-3-1103. Brake Requirements

A. A tow truck shall have a power-assisted service brake system, separate from the parking brake system, capable of stopping and holding the tow truck and its load under all conditions and on any grade on which the tow truck is operated. If a tow truck's service brake system is actuated by air, the tow truck shall be equipped with:
1. A truck-tractor protection valve; and
2. An audible or visible low air warning device that actuates at a minimum of 55 psi.

B. A tow truck shall have a parking brake system, separate from the service brake system, which is capable of holding the tow truck and its load. If the tow truck's parking brake system is actuated by air, the tow truck shall be equipped with:
1. A truck-tractor protection valve; and
2. An audible or visible low air warning device that actuates at a minimum of 55 psi.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 1735, effective July 1, 2006 (Supp. 06-2).

R13-3-1104. Required Equipment

A. A light-duty tow truck shall be equipped with a minimum of 20 feet of recovery straps or 5/16-inch diameter chains with a hook on each end of each section. The straps or chains shall have an identifiable mark indicating a minimum working load limit strength of 3,900 pounds.

B. A medium-duty tow truck shall be equipped with a minimum of 20 feet of recovery straps or 3/8-inch diameter chains with a hook on each end of each section. The straps or chains shall have an identifiable mark indicating a minimum working load limit strength of 7,100 pounds.

C. A heavy-duty tow truck shall be equipped with a minimum of 20 feet of recovery straps or 1/2-inch diameter chains with a hook on each end of each section. The straps or chains shall have an identifiable mark indicating a minimum working load limit strength of 12,000 pounds.

D. A semi-trailer or flatbed shall be equipped with "T" slots, eye bolts, "D" rings, or other means for attaching chains or straps, and four tie-down chains or straps with appropriate attachment hooks.

E. All tow trucks shall be equipped with:
1. Appropriate load securement devices if equipped with a wheel-lift, under-lift, tow bar, tow plate, or tow sling.
2. A warning light assembly with a minimum of two light emitting sources. The lights shall:
   a. Be mounted on the tow truck as high as practical and be visible from the front and rear of the tow truck for a distance of 100 feet under normal atmospheric conditions;
   b. Show amber to the front and amber or red to the rear; and
   c. Be wired independently of all other electrical circuits.
3. A minimum of two work lamps. The lamps shall:
   a. Have clear lenses;
   b. Be capable of illuminating the area directly behind the tow truck for a distance of 50 feet; and
   c. Be wired independently of all other electrical circuits.
4. Two portable lamps consisting of tail lights, brake lights, turn signals, and emergency flashers, if a tow truck is equipped with a wheel-lift, under-lift, tow bar, tow plate or tow sling. Each portable lamp shall be visible from 100 feet under normal atmospheric conditions and comply with A.R.S. §§ 28-925(A), 28-927, and 28-939.
5. One rear-vision mirror on each side of the tow truck. Each mirror shall have a minimum surface area of 24 square inches.
6. An operational battery-powered electric lantern or a two-cell flashlight.
7. A fire extinguisher having an Underwriter's Laboratories rating of 10 B:C or higher. The fire extinguisher shall be filled, readily accessible for use, and mounted securely to the tow truck.
8. A steering wheel securement device of sufficient strength to lock the steering mechanism in a straight, forward position, if a tow truck is equipped with a wheel-lift, under-lift, tow bar, tow plate or tow sling.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 1735, effective July 1, 2006 (Supp. 06-2).

R13-3-1105. Collision Recovery Equipment Requirements

A tow truck with collision recovery capabilities shall be equipped with at least:
1. One #2 or larger square-point shovel;
2. One 14-inch wide or larger push broom;
3. Five gallons or 20 pounds of fluid absorbent material stored in a weatherproof container; and
4. One snatch block for each installed winch on the tow truck. Each snatch block shall be of a size and rating compatible with the size and rating of the installed wire rope.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 1735, effective July 1, 2006 (Supp. 06-2).

R13-3-1106. Wire Rope Restrictions

A tow truck agent shall ensure that a wire rope is not used in a tow truck if it:

1. Has kinks, bird caging, or knots;
2. Is crushed more than 33% of original diameter;
3. Has core protrusion along the length of the rope;
4. Has more than 11 broken wires in six diameters of length;
5. Has more than three broken wires in any one strand; or
6. Has more than two broken wires at the end connection or fitting.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 1735, effective July 1, 2006 (Supp. 06-2).

R13-3-1107. Wire Rope End Specifications and Installation

A tow truck agent shall ensure that:

1. All wire rope eye loops used on a tow truck are protected by a thimble;
2. Cable clamps are not used on a wire rope; and
3. Thimbles are not cracked, deformed, worn, loose, or have a strand of wire that slips.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 1735, effective July 1, 2006 (Supp. 06-2).

ARTICLE 12. REQUIREMENTS FOR TOW TRUCK AGENTS AND COMPANIES

R13-3-1201. Tow Truck Agent and Company Requirements

A. A tow truck company shall ensure that each tow truck agent:

1. While operating a tow truck possesses and carries a valid driver's license for the class of tow truck operated;
2. While operating a tow truck possesses and carries a current medical examination certificate in accordance with 49 CFR 391.45 (October 1, 2003) as incorporated by reference in A.A.C. R17-5-202;
3. Does not operate a tow truck if the agent has more than two moving violation convictions within the previous 12 months;
4. Possesses the skill and knowledge to rig, move, pick up, and transport a vehicle without causing avoidable damage to the vehicle or other property;
5. Has not consumed any alcoholic beverage within four hours of operating the tow truck;
6. Is not using or under the influence of alcohol or any of the following substances as defined in A.R.S. § 13-3401 while operating a tow truck:
   a. Peyote;
   b. Vapor-releasing substance containing a toxic substance;
   c. Marijuana;
   d. Dangerous drugs;
   e. Narcotic drugs; or
   f. Prescription-only drug unless the tow truck agent obtains the prescription-only drug pursuant to a valid prescription.
7. Has not been convicted of committing a crime involving fraud, embezzlement, or theft in the five years before operating a tow truck and has never been convicted of committing a felony homicide, felony kidnapping, felony assault, felony sexual offense, or felony robbery;
8. Has not been convicted under A.R.S. § 28-1381 (driving while under the influence of narcotics, dangerous drugs, or intoxicating beverages) or A.R.S. § 28-693 (reckless driving) while engaged in the operation of a tow truck; and
9. Does not operate a tow truck while the agent's license to drive is suspended under A.R.S. § 28-1321 (Implied Consent Law), A.R.S. § 28-3473 (license suspension or revocation), or A.R.S. § 28-4141 (suspended license, no insurance).

B. A tow truck agent shall:

1. Comply with A.R.S. § 28-1108;
2. Permit a peace officer or other duly authorized agent of a law enforcement agency to inspect a tow truck to determine compliance with the requirements of this Chapter. The inspection may be conducted without notice at any reasonable time and place; and
3. Have a certification from a licensed testing facility certifying the tested line-pull of the winch or the tested lifting capacity of the boom assembly, if the tow truck is equipped with a homemade boom assembly or homemade winch.

C. A tow truck agent shall not:

1. Operate a tow truck without an identification number and a legible copy of a tow truck inspection report, as required by this Chapter;
2. Transfer a permit decal or tow truck inspection report from one tow truck to another;
3. Tow or move a vehicle from a highway, street, or public property without prior authorization from the owner or operator of the vehicle, the owner's agent, a person responsible for maintaining the public property, or a law enforcement officer. The tow truck

agent may move, but shall not tow, a vehicle to extract an individual from wreckage or to remove a hazard to life or property at a collision scene;

4. Use a hand-operated or electric winch for collision recovery work;
5. Operate a tow truck for collision recovery work unless certified for collision recovery;
6. Use a flatbed tow truck with a G.V.W.R. of less than 14,001 pounds to transport more than one vehicle unless the additional vehicle is a golf cart, a motor-driven cycle, or a trailer that weighs less than 1,500 pounds;
7. Operate a tow truck that has one or more of the following defects;
   a. Both warning light assembly lights missing or inoperative;
   b. All load securement devices missing or defective;
   c. A portable lamp not in compliance with A.R.S. §§ 28-925(A), 28-927 or 28-939, if a portable lamp is required;
   d. Any steering axle tire with less than 4/32-inch tread depth in one major groove;
   e. For an axle other than a steering axle, a tire with less than 2/32-inch tread depth and for a dual wheel axle, both tires on the same side with less than 2/32-inch tread depth;
   f. Any flat tire or tire with cord exposed by cut or wear;
   g. Any tow plate, tow bar, tow sling, wheel-lift, or under-lift exhibiting wear in excess of manufacturer standards at any pivot point or any crack in a structural component;
   h. Wire rope in violation of R13-3-1106;
   i. Any component not maintained within manufacturer standards; or
   j. A deficiency noted on an inspection report after the time-frame available to the tow truck agent to correct deficiencies has elapsed;
8. Equip a tow truck with homemade boom assembly or homemade winch, unless the tow truck company has a certification from a licensed testing facility certifying the tested line pull of the winch or the tested lifting capacity of the boom assembly;
9. Tow a vehicle using a tow sling, tow plate, or tow bar unless appropriate load securement devices are attached;
10. Transport a vehicle by flatbed or truck, truck-tractor, or semi-trailer unless the vehicle is secured with a minimum of a four-point tie-down, not including the winch;
11. Tow a vehicle with a wheel-lift, under-lift, tow plate, tow bar, or tow sling unless two safety chains are attached by crossing the chains with one end of each chain attached to a major structural member of the tow truck and the other end attached to a major structural member of the towed vehicle, with no attachments to the bumpers;
12. Tow a vehicle using a tow plate, tow bar, tow sling, wheel-lift, or under-lift unless a portable lamp is affixed to the rear of the rear-most towed vehicle, in plain view, and when activated, visible to traffic traveling in the same direction;
13. Activate warning light assembly except at the scene of service, or when transporting a vehicle that presents a hazard from a collision scene;
14. Use any vehicle towed or article stored in the towed vehicle, unless it is the property of the tow truck company or tow truck agent;
15. Operate a tow truck that exceeds the manufacturer's G.V.W.R. without a load or the manufacturer's rated capacity for the boom or bed assembly;
16. Operate a tow truck that is equipped with a tow plate, tow bar, or tow sling unless the tow plate, tow bar, or tow sling has a manufacturer weight rating that exceeds any load carried on it; or
17. Refuse to make prompt restitution for any damage for which the tow truck company is legally liable.

D. The Department may suspend a permit decal for failure to comply with these standards.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 1735, effective July 1, 2006 (Supp. 06-2).

ARTICLE 13. ENFORCEMENT

R13-3-1301. Waiver

If the Director determines there is a compelling public necessity, the Director may waive the enforcement of this Chapter.

1. A person shall make a waiver request in writing.
2. The Director shall separately consider and decide each request for a waiver and each waiver shall only apply to the person requesting the waiver.
3. The Director shall provide the decision in writing.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 1735, effective July 1, 2006 (Supp. 06-2).

R13-3-1302. Suspension or Denial of Tow Truck Permit Decal

A. The Director may deny or suspend a permit decal for up to one year if a person violates this Chapter.

B. The Department shall provide a written notice of a permit decal suspension to a tow truck company that includes the information specified in A.R.S. § 41-1092.03(A) and lists:

1. The effective date of the suspension;
2. The tow truck affected by the suspension;
3. The specific violation; and
4. The actions necessary for compliance and for the Department to end the suspension.

C. Beginning on the effective date of the suspension, the tow truck company shall not operate the identified tow truck to tow.

D. The tow truck company shall submit a corrective action plan to the Department that lists the steps the tow truck company will take to reach compliance.

1. A tow truck agent shall sign the plan and submit the plan to the Department for approval and signature.
2. Failure to submit a plan within 90 days of written notice of suspension by the Department constitutes withdrawal from the permit process and requires the tow truck company to reapply under Article 9 of this Chapter.

E. If the tow truck company complies with the corrective action plan, the Department shall reinstate the tow truck permit decal.

F. The Department shall not suspend a permit decal for a violation of R13-3-1201(A)(3) unless the tow truck company owner knew or should have known of the tow truck agent's convictions.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 1735, effective July 1, 2006 (Supp. 06-2).

R13-3-1303. Appeals

A. A person that has had issuance of a tow truck permit decal denied or suspended has a right to a hearing.

1. The Director or designee may combine requests for hearings into one hearing where there are common parties or issues.
2. The hearing shall be conducted by the Office of Administrative Hearings pursuant to A.R.S. § 41-1092, et seq.

B. A person shall make a request for a hearing in writing to the Department within 30 calendar days from receipt of the notice of denial or suspension. If the request for a hearing is not received within the 30-day period, the person's right to a hearing is waived, unless the person shows that failure to timely request a hearing was beyond the person's control.

C. If a hearing is requested, the Department shall notify the person in writing at least 30 calendar days before the date set for hearing and include the following in the notice:

1. A statement of the time, place, and nature of the hearing;
2. A statement of the legal authority and jurisdiction under which the hearing is to be held;
3. A reference to the particular sections of the statutes and rules involved; and
4. A short and plain statement of the matters asserted.

D. A final administrative decision shall be issued pursuant to A.R.S. § 41-1092.08.

1. A copy of the decision shall be mailed to each party.
2. Within 35 calendar days after the date of service of the final decision rendered in the hearing, an appeal may be taken to the Superior Court of the county in which any of the conditions in A.R.S. § 12-905 apply. Appeals to the Superior Court are governed by the provisions of A.R.S. § 12-901 et seq.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 1735, effective July 1, 2006 (Supp. 06-2).

TITLE 17. TRANSPORTATION

CHAPTER 5. DEPARTMENT OF TRANSPORTATION COMMERCIAL PROGRAMS

Editor's Note: 17 A.A.C. 5 was created from Sections recodified from 17 A.A.C. 4 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

ARTICLE 1. GENERAL PROVISIONS

ARTICLE 2. MOTOR CARRIERS

Section
R17-5-202. Motor Carrier Safety: Incorporation of Federal Regulations; Applicability

R17-5-202. Motor Carrier Safety: Incorporation of Federal Regulations; Applicability

A. The Department incorporates by reference 49 CFR 40, 379, 382, 383, 390, 391, 392, 393, 395, 396, 397, and 399, revised as of October 1, 2009, and no later amendments or editions, as amended under this Article. The incorporated material is on file with the Department and is available from the U.S. Government Printing Office, P.O. Box 979050, St. Louis, Missouri 63197-9000. The incorporated material can be ordered online by visiting the U.S. Government Online Bookstore at http://bookstore.gpo.gov.

B. The sections of 49 CFR incorporated under subsection (A) apply as amended under this Article to all intrastate and interstate motor carriers operating in Arizona, except as provided under subsection (C).

C. The intrastate operator of a tow truck with a gross vehicle weight rating of 26,000 pounds or less is exempt from the requirements of 49 CFR 390 through 399, except that the driver is subject to the physical qualifications and examination requirements of 49 CFR 391, subpart E.

Historical Note

New Section recodified from R17-4-435 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 8 A.A.R. 3249, effective July 10, 2002 (Supp. 02-3). Amended by final rulemaking at 9 A.A.R. 1867, effective June 3, 2003 (Supp. 03-2). Amended by final rulemaking at 10 A.A.R. 2679, effective June 8, 2004 (Supp. 04-2). Amended by final rulemaking at 12 A.A.R. 1559, effective May 2, 2006 (Supp. 06-2). Amended by final rulemaking at 14 A.A.R. 3797, effective November 8, 2008 (Supp. 08-3). Amended by final rulemaking at 17 A.A.R. 1691, effective August 2, 2011 (Supp. 11-3).

41-1830.51. Vehicle towing; rules; contractual agreement for towing services; weight exemption

A. If a vehicle is towing another vehicle, the drawbar or other connection shall be of sufficient strength to pull all weight towed by the vehicle and the drawbar or other connection shall not exceed fifteen feet from one vehicle to the other, except the connection between any two vehicles transporting poles, pipe, machinery or other objects of a structural nature that cannot readily be dismembered. For the purposes of this subsection, "drawbar" means a rigid structure that connects a trailer and a towing vehicle and that articulates at the point of connection with the trailer and articulates at the point of connection with the towing vehicle.

B. If a vehicle is towing another vehicle and the connection consists of a chain, rope or cable, a white flag or cloth at least twelve inches square shall be displayed on the connection.

C. The director shall:

1. Adopt and enforce rules that are not inconsistent with this article to govern the design and operation of all tow trucks.

2. Adopt guidelines to protect consumers against being overcharged for towing services. The guidelines shall specify that a larger class of tow vehicle used for lighter tows must be billed at the lighter duty towing service rates.

D. A person may not operate a tow truck for the purpose of towing vehicles without first registering with the director, and obtaining a permit pursuant to the rules that govern tow trucks and that are adopted by the department.

E. The director or a county, city or town may enter into a contractual agreement with a towing firm or firms for towing or storage services, or both. At the time of application for a contractual agreement, a towing firm must disclose in writing the owners of the towing firm and, if the owners own other towing firms that are also applying for the same contractual agreement, the names of those towing firms. The contractual agreement shall comply with this section and all rules adopted under this section. Contracts shall be awarded on the basis of competitive bidding. The director or a county, city or town shall reserve the right to reject all bids. If only one bid is received, the director or a county, city or town may reject the bid and negotiate a contract without bidding if the negotiated contract is at a price lower than the bid price under the terms and conditions specified in the call for bids.

F. Except as provided in subsection G of this section, a towing firm may only have one contractual agreement per geographic towing area with the department or a county, city or town for towing or storage services, or both. If an owner of a towing firm has a common ownership interest in another towing firm or the assets of another towing firm, the owner may not participate in any other application for a contractual agreement within the same geographic towing area.

G. If a towing firm that has a contractual agreement pursuant to this section acquires another towing firm that has a contractual agreement pursuant to this section, both contractual agreements remain valid for one year after the date of the acquisition or until the end of the contractual agreement, whichever is shorter.

H. Notwithstanding subsection F of this section, an agency may allow a towing firm to use resources from another towing firm if an agency deems the use of those resources is necessary for traffic incident management.

I. The total weight of a tow truck and the towed vehicle is exempt from the maximum total gross weight load allowed under section 28-1100 if a damaged, disabled or abandoned vehicle or vehicle combination is towed.

ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (F-16-0705)
Title 9, Chapter 22, Article 20, Breast and Cervical Cancer Treatment Program

GOVERNOR'S REGULATORY REVIEW COUNCIL
ANALYSIS OF FIVE-YEAR REVIEW REPORT

MEETING DATE: July 6, 2016 **AGENDA ITEM: F-6**

TO: Members of the Governor's Regulatory Review Council

FROM: Shama Thathi, Staff Attorney

DATE : June 20, 2016

SUBJECT: **ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (F-16-0705)**
Title 9, Chapter 22, Article 20, Breast and Cervical Cancer Treatment Program

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COMMENTS ON THE FIVE-YEAR-REVIEW REPORT

Purpose of the Agency and Number of Rules in the Report

The purpose of the Arizona Health Care Cost Containment System (AHCCCS) is "to promote a comprehensive health care system to eligible citizens of this state." Laws 2013, 1st S.S., Ch. 10, § 53. This system is managed by the Director of the AHCCCS Administration (Administration), which is established under A.R.S. § 36-2902(A). The Director has the powers and duties prescribed in A.R.S. §§ 36-2903 and 2903.01.

This five-year-review report covers eight rules in A.A.C. Title 9, Chapter 22, Article 9, related to the Breast and Cervical Cancer Treatment Program (BCCTP). The program delivers services through prepaid, contracted health plans to women under the age of 65 who are diagnosed with breast cancer, cervical cancer, or pre-cancerous cervical lesion. There are 255 women enrolled in BCCTP as of May 1, 2016.

Article Contents

Article 20 contains eight rules that address definitions; general requirements; eligibility criteria; treatment; application process; approval, denial, or discontinuance of eligibility; effective and end date of eligibility; and redetermination of eligibility.

Year that Each Rule was Last Amended or Newly Made

Sections 2001, 2002, 2003, 2004, 2005, 2006, and 2008 were made by final rulemaking on January 6, 2007. Section 2007 was last amended on November 30, 2013.

Proposed Action

The Administration plans to amend Sections 2002 through 2008. Specific actions are outlined throughout this memorandum.

Summary of Reasons for the Proposed Action

The rules need to be amended to improve consistency with other rules and statutes, and to make the rules more clear, concise, and understandable.

Exemption or Request and Approval for Exception from the Moratorium

The Administration notes that it will seek an approval for exception from the moratorium "later this summer."

Substantive or Procedural Concerns

Staff is concerned about the lack of specificity in the Administration's report. In particular, the Administration has not provided a date for when it will seek approval for exception from the moratorium from the Governor's office or when the Administration will submit a rulemaking package to the Council with the amendments outlined in this memo.

Analysis of the agency's report pursuant to criteria in A.R.S. § 41-1056 and R1-6-301:

1. Has the agency certified that it is in compliance with A.R.S. § 41-1091?

Yes. The Administration has certified its compliance with A.R.S. § 41-1091.

2. Has the agency analyzed the rules' effectiveness in achieving their objectives?

Yes. The Administration indicates that the rules are effective in achieving their objectives.

3. Has the agency received any written criticisms of the rules during the last five years, including any written analysis questioning whether the rules are based on valid scientific or reliable principles or methods?

Yes. The Administration indicates that it has not received any written criticisms of the rules during the last five years.

4. Has the agency analyzed whether the rules are authorized by statute?

Yes. The Administration cites to A.R.S. § 36-2903.01(F) as general authority for the rules. Under A.R.S. § 36-2903.01(F), in relevant part, "[i]n addition to the rules otherwise specified in this article [Arizona Health Care Cost Containment System], the [Administration] may adopt necessary rules pursuant to [T]itle 41, [C]hapter 6 to carry out this article."

The Administration cites to A.R.S. § 36-2901.05 as specific authority for the Administration to assist a person in obtaining treatment through the BCCTP.

5. Has the agency analyzed the rules' consistency with other rules and statutes?

Yes. The Administration indicates that the rules are consistent with other rules and statutes with two exceptions:

- Section 2003 is inconsistent with A.R.S. § 36-2905.01. The Administration recommends revising subsection (A)(1) to remove ambiguity regarding the program's screening requirements. Originally, screening for breast and cervical cancer was required by the Well Women Healthcheck Program (WWHP) through Arizona programs for National Breast and Cervical Cancer Early Detection Program (AZ-NBCCEDP) in order to qualify for the BCCTP. However, after AHCCCS promulgated the current rules. A.R.S. §36-2905.01 was amended to liberalize the screening requirements, allowing screening to be conducted by providers or entities recognized by WWHP. Finally, under subsection (B)(2) should eliminate the reference to R9-22-112 because that rule has been repealed.
- Section 2005(A) should be amended to eliminate the outdated reference to R9-22-1406.

6. Has the agency analyzed the current enforcement status of the rules?

Yes. The Administration indicates that the rules are enforced as written, except where inconsistent with statute.

7. Has the agency analyzed whether the rules are clear, concise, and understandable?

Yes. The Administration notes that rules should cross-reference Article 3 for all areas that Article 3 applies to, rather than repeating the language. The Administration identified the following additional changes that would make the rules more clear, concise, and understandable:

- Subsection (D) in Section 2002 should be removed because the eligibility of an American Indian woman is addressed in Section 2003. In addition, subsection (E) should be amended to clarify that a woman under BCCTP is exempt from copays as addressed in R9-22-711.
- Section 2003 needs to be amended to provide clarity to applicants eligible for BCCTP. Subsection (A)(3) should be updated to include a reference to Chapter 28. This amendment will help clarify that a person must be ineligible for Title XIX, including Arizona Long-term Care System (ALTCS) eligibility, to qualify for BCCTP. Subsection (A)(6) should include a reference to Article 3. Subsection (B)(3) does not need to explicitly state that a person is ineligible when the person no longer meets the eligibility requirements. In subsection (C), the reference to Chief Medical Officer should be replaced with the Administration because the Administration is responsible for conducting the continuation of eligibility. Lastly, subsection (D) should be revised to clarify the reoccurrence of cancer and eligibility.

- Subsections (A)(4), (B)(4), and (C)(4) in Section 2004 should be removed to clarify the Administration, not necessarily the Chief Medical Officer, has the authority to make determinations of whether a treatment is considered the standard of care.

8. Has the agency analyzed whether:

a. The rules are more stringent than corresponding federal law?

Yes. The Administration indicates that the rules are not more stringent than federal law.

b. There is statutory authority to exceed the requirements of federal law?

Not applicable.

9. For rules adopted after July 29, 2010, has the agency analyzed whether:

a. The rules require issuance of a regulatory permit, license or agency authorization?

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

b. It is in compliance with the general permit requirements of A.R.S. § 41-1037 or explained why it believes an exception applies?

Not applicable.

10. Has the agency indicated whether it completed the course of action identified in the previous five-year-review report?

Yes. Upon completion of the rulemaking that it intends to submit to the Council, the Administration will complete the course of action proposed in the 2011 report.

11. Has the agency included a proposed course of action?

Yes. The Administration plans to amend Sections 2002 through 2008. However, the Administration has not provided a time frame for the completion of its proposed course of action.

Conclusion

The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. Staff recommends that the report be approved.

GOVERNOR'S REGULATORY REVIEW COUNCIL
M E M O R A N D U M

MEETING DATE: July 6, 2016 **AGENDA ITEM: F-6**

TO: Members of the Governor's Regulatory Review Council

FROM: GRRC Economic Team

DATE : June 20, 2016

SUBJECT: **ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (F-16-0705)**
Title 9, Chapter 22, Article 20, Breast and Cervical Cancer Treatment Program

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I have reviewed the five-year-review report's economic, small business, and consumer impact comparison for compliance with A.R.S. § 41-1056 and make the following comments.

1. <u>Economic Impact Comparison</u>

The economic, small business, and consumer impact statement (EIS) from the most recent Administration rulemaking completed in 2006 was reviewed.

The rules address procedures involved in administering the Breast and Cervical Cancer Treatment Program (BCCTP) through the Arizona Health Care Cost Containment System (AHCCCS). BCCTP provides health care coverage for women under the age of 65 who lack creditable coverage and require treatment for either breast cancer or cervical cancer. AHCCCS is Arizona's Medicaid agency that offers health care programs to low-income residents of Arizona.

BCCTP is an extension of the National Breast and Cervical Cancer Early Detection Program (NBCCEDP), which is administered by the Centers for Disease Control and Prevention (CDC). NBCCEDP provides breast and cervical cancer screenings for women without health insurance. Uninsured women who are diagnosed with breast or cervical cancer through the NBCCEDP can subsequently qualify for AHCCCS through BCCTP.

Key stakeholders that are impacted are the Administration, taxpayers, tribal facilities, and women under the age of 65 with cancer. The Administration notes that these rules will not adversely affect tribal facilities that are small businesses because these rules do not change current practices or operations.

As of April 1, 2008, there were 108 women receiving AHCCCS services through BCCTP. As of May 1, 2016, this number has increased to 255 women. Total AHCCCS

enrollment in March of 2016 was roughly 1.6 million people. Less than 0.02% of AHCCCS recipients receive health care coverage under BCCTP provisions.

The Administration concludes that the economic impact has generally been as predicted in the prior EIS for the rules in the Article cited above.

2. Has the agency determined that the rules impose the least burden and costs to persons regulated by the rules?

The Administration determines that the rules require revisions because they could be updated to provide clarity. Once the rules are clarified, the Administration expects that they will impose the least burden and costs to persons regulated by the rules. In order to address the lack of clarity, the Administration is in the process of completing the updates, and it expects to be completed in December 2016.

3. Was an analysis submitted to the agency under A.R.S. § 41-1056(A)(7)?

No analysis was submitted to the Administration by another person that compares the rules' impact on this state's business competitiveness to the impact on businesses in other states under A.R.S. § 41-1056(A)(7).

4. Conclusion

After review, staff concludes that the report complies with A.R.S. § 41-1056 and recommends approval.

AHCCCS
Arizona Health Care Cost Containment System

Douglas A. Ducey, Governor
Thomas J. Betlach, Director

May 12, 2016

Ms. Nicole Ong, Chair
Governor's Regulatory Review Council
100 N. 15th Ave, Suite 402
Phoenix, AZ 85007

Dear Ms. Ong:

Pursuant to requirements in R1-6-301, attached is a copy of the 5-Year Review Report for Title 9, Chapter 22, Article 20. The report includes all of the documentation required by R1-6-301 (C) and (D).

As required by A.R.S. § 41-1056, the Administration certifies that the agency is in compliance with A.R.S. § 41-1091.

If you have any questions or comments regarding this report, please contact Mariaelena Ugarte, Office of Administrative Legal Services at (602)-417-4693.

Sincerely,

Matthew Devlin
Assistant Director

Attachments

Arizona Health Care Cost Containment System (AHCCCS)

5 YEAR REVIEW REPORT

A.A.C. Title 9, Chapter 22, Article 20

May 2016

I. General Information about 9 A.A.C. 22, Article 20

Overview

In the spring of 2001, the Arizona State Legislature passed a law to add the Breast and Cervical Cancer Treatment Program (BCCCTP) to Arizona's Medicaid program (Arizona Health Care Cost Containment System (AHCCCS)) as an optional coverage group effective January 1, 2002.

State Law ARS §36-2901.05 originally specified that to be eligible for the optional coverage group, a woman must be screened and diagnosed as needing treatment for breast and/or cervical cancer by the Well Woman Healthcheck Program (WWHP) administered by the Arizona Department of Health Services (ADHS). However, based on written authorization from WWHP, AHCCCS may accept BCCTP referrals directly from Arizona's American Indian programs that are funded by the Centers for Disease Control and Prevention (CDC) to provide screening and diagnosis under the National Breast and Cervical Cancer Early Detection Program (NBCCEDP). State Law A.R.S. § 36-2901.05 was amended in 2012 to permit screening "by a provider or entity that is recognized by the well woman health check program administered by the department of health services…." This 5-year review report includes an analysis of the rules in 9 A.A.C. 22, Article 20 in light of the statutory changes. The rules in Title 9 Chapter 22 Article 20 apply to the AHCCCS BCCTP, which delivers services through prepaid, capitated, contracted health plans. This coverage is available to women under age 65 who are screened and diagnosed as needing medical treatment for breast cancer, cervical cancer or a pre-cancerous cervical lesion by providers authorized to conduct the screenings..

As of May 1, 2016 there were 255 women receiving these services through this AHCCCS program. The Article was originally created as part of a December 6, 2001 rulemaking.

II. Five Year Report on 9 A.A.C. 22 Art 20 rules:

General and specific statutes authorizing the rule:

A.R.S. § 36-2903.01(F) provides general authority to AHCCCS to adopt rules.

A.R.S. § 36-2901.05 specifically authorizes the Breast and Cervical Cancer Treatment Program.

Objective of the rule:

R9-22-2001 – The objective of the rule is to provide definitions for terms used within the Breast and Cervical Cancer Treatment Program.

R9-22-2002 - This rule provides General Requirements that apply to the Breast and Cervical Cancer Treatment Program.

R9-22-2003 - The rule provides criteria that must be met in order to be eligible for the Breast and Cervical Cancer Treatment Program.

R9-22-2004 - The rule provides information regarding the scope of coverage for the Breast and Cervical Cancer Treatment Program.

R9-22-2005 - The rule provides how a person may apply for the Breast and Cervical Cancer Treatment Program.

R9-22-2006 - The rule provides how the administration determines, approves, denies or discontinues eligibility for BCCTP.

R9-22-2007 - The rule describes when eligibility for the Breast and Cervical Cancer Treatment Program is effective and when it ends.

R9-22-2008 - The rule describes the redetermination of eligibility for the Breast and Cervical Cancer Treatment Program.

Effectively meets its objectives, including any available data supporting conclusion:

Chapter 22, Article 20 rules meet the objectives listed above. No data was attained.

Consistent with Statutes, rules, (including Federal, State, Waiver, Policy)

Chapter 22, Article 20 rules are consistent with statutes and federal regulations 42 CFR 435 Subpart E.

Is enforced:

Chapter 22, Article 20 rules are enforced with no issues.

Clarity, conciseness and understandability of the rule:

R9-22-2002 – R9-22-2008 – The Administration recommends cross-referencing Article 3 for *all* areas that Article 3 applies to, rather than repeating the language.

R9-22-2002 - Subsection (D) is not necessary because the eligibility of an American Indian woman is addressed under R9-22-2003. A clarifying change should be made to subsection (E) stating that a woman under this program is exempt from copays as described under R9-22-711.

R9-22-2003 – The Administration believes this rule can be updated to provide clarity, conciseness and a better understanding to the reader of the eligibility criteria related to the BCCTP. Revising the rule to be consistent with ARS §36-2905.01 will ensure alignment with State Law and will remove ambiguity. In addition, updating subsection (A)(3) with a reference to Chapter 28 will provide greater clarity because a person must be ineligible for Title XIX, including Arizona Long Term Care System (ALTCS) eligibility, to qualify for the BCCTP. The reference to R9-22-112 in subsection (B)(2) will be eliminated, since that rule has been repealed. Under subsection (A)(6) a correction is needed to also include a cross-reference to Article 3; under subsection (B)(3) it is not necessary to state that a person is ineligible when the person no longer meets the eligibility

requirements; under subsection (C), the reference to the Chief Medical Officer should be stricken and replaced with a reference to the Administration since the Administration staff conduct the continuation of eligibility; and finally, subsection (D) should be reworded to clarify the reoccurrence of cancer and eligibility.

R9-22-2004 – The Administration believes the reference to the Chief Medical Officer in subsections (A)(4), (B)(4) and (C)(4) should be stricken, because the determination of whether a treatment is considered the standard of care may be made by the Administration, not necessarily by the Chief Medical Officer.

R9-22-2005 – Amend section (A) to eliminate the outdated reference to R9-22-1406.

R9-22-2008

Had written criticisms in the past five years, including written analyses submitted questioning if the rule is based on valid scientific or reliable principles or methods:

Chapter 22, Article 20 regulations did not have any written criticisms or analyses submitted in the past five years.

Comparison of estimated economic, small business, and consumer impact.

The economic impact estimated at the time of rule promulgation has not been significantly different than the actual economic impact.

Was there any analysis submitted to the agency by another person regarding the rule's impact on this state's business competiveness as compared to the competitiveness of businesses in other states:

Chapter 22, Article 20 rules did not have an analyses submitted regarding the rule's impact on state business or compared to competitiveness of businesses in other states.

If applicable, has the agency completed the course of action indicated in the agency's previous five-year review:

The Administration is in process of completing the recommended course of action described in the previous 5yr report within the rulemaking proposed with an estimated effective date of fourth quarter 2017. We have not yet filed a request; we intend to do so later this summer.

Has there been a determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs

to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective:

The Administration believes the rules as written impose the least burden and costs when meeting their objectives.

A determination after analysis that the rule is not more stringent than a corresponding federal law. Are the rules more stringent than a corresponding federal law? Is there a statutory authority that exceeds the requirements of that federal law?:

The rules as written are not more stringent than federal law 42 U.S.C. 1320b-7, 42 U.S.C. 1396a, 42 U.S.C. 1396b(r)(3), and 42 U.S.C. 1396w-3.

Does the rule comply with section 41-1037 for issuance of permit, license or agency authorization?

Not applicable, the Administration does not issue permits, license or agency authorization for the imposition of the BCCP program requirements.

Course of action, including the month and year when the agency anticipates submitting rules to the GRRC to amend repeal or make a rule:

R9-22-2002 thru R9-22-2008 – The Administration intends to update these rules as recommended above by December 2016.

ARTICLE 20. BREAST AND CERVICAL CANCER TREATMENT PROGRAM

Section
R9-22-2001. Breast and Cervical Cancer Treatment Program Related Definitions
R9-22-2002. General Requirements
R9-22-2003. Eligibility Criteria
R9-22-2004. Treatment
R9-22-2005. Application Process
R9-22-2006. Approval, Denial, or Discontinuance of Eligibility
R9-22-2007. Effective and End Date of Eligibility
R9-22-2008. Redetermination of Eligibility

ARTICLE 20. BREAST AND CERVICAL CANCER TREATMENT PROGRAM

R9-22-2001. Breast and Cervical Cancer Treatment Program Related Definitions

In addition to definitions contained in A.R.S. § 36-2901, the words and phrases in this Chapter have the following meaning unless the context explicitly requires another meaning:

"AZ-NBCCEDP" means the Arizona programs of the National Breast and Cervical Cancer Early Detection Program. AZ-NBCCEDP provides breast and cervical cancer screening and diagnosis in Arizona.

"Cryotherapy" means the destruction of abnormal tissue using an extremely cold temperature.

"LEEP" means the loop electrosurgical excision procedure that passes an electric current through a thin wire loop.

"Peer-reviewed study" means that, prior to publication, a medical study has been subjected to the review of medical experts who:

Have expertise in the subject matter of the study,
Evaluate the science and methodology of the study,
Are selected by the editorial staff of the publication, and
Review the study without knowledge of the identity or qualifications of the author.

"WWHP" means the Well Women Healthcheck Program administered by the Arizona Department of Health Services. The WWHP is one of the programs within AZ-NBCCEDP that provides breast and cervical cancer screening and diagnosis.

Historical Note

New Section made by final rulemaking at 7 A.A.R. 5814, effective December 6, 2001 (Supp. 01-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4488, effective January 6, 2007 (Supp. 06-4).

R9-22-2002. General Requirements

A. Confidentiality. The Administration shall maintain the confidentiality of a woman's records and shall not disclose a woman's financial, medical, or other confidential information except as allowed under R9-22-512.

B. Covered services. A woman who is eligible under this Article receives all medically necessary services under Articles 2 and 12 of this Chapter.

C. Choice of health plan. A woman who is eligible under this Article shall be enrolled with a contractor under Article 17 of this Chapter.

D. A Native American woman who receives services through Indian Health Service (IHS) or through a tribal health program qualifies for services provided under this Article if all eligibility requirements are met.

E. A woman qualified under this Article shall pay co-pays as described in R9-22-711.

Historical Note

New Section made by final rulemaking at 7 A.A.R. 5814, effective December 6, 2001 (Supp. 01-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4488, effective January 6, 2007 (Supp. 06-4).

R9-22-2003. Eligibility Criteria

A. General. To be eligible under this Article, a woman shall meet the requirements of this Article and:

1. Be screened for breast and cervical cancer through AZ-NBCCEDP;
2. Be less than 65 years of age;
3. Be ineligible for Title XIX under Articles 14 and 15 in this Chapter;
4. Receive a positive screen under subsection (A)(1), a confirmed diagnosis through AZ-NBCCEDP, and need treatment for breast cancer or cervical cancer, including a pre-cancerous cervical lesion, as specified in R9-22-2004;
5. Not be covered under creditable coverage as specified in Section 2701(c) of the Public Health Services Act, 42 U.S.C. 300gg(c). For purposes of this Article, IHS or Tribal health coverage is not considered creditable coverage as specified in 42 U.S.C. 1396a(a)(10)(A)(ii), as amended by the Native American Breast and Cervical Cancer Treatment Technical Amendment Act of 2002; and
6. Meet the requirements under R9-22-1417 and R9-22-1418.

B. Ineligible woman. A woman is ineligible under this Article if the woman:

1. Is an inmate of a public institution and federal financial participation (FFP) is not available,

2. Is at least age 21 but less than age 65 and resides in an Institution for Mental Disease (IMD) as defined in R9-22-112, except if allowed under the Administration's Section 1115 waiver, or
3. No longer meets an eligibility requirement under this Article.

C. Metastasized cancer. The AHCCCS Chief Medical Officer may continue a woman's eligibility under this Article if a metastasized cancer is found in another part of the woman's body and that metastasized cancer is a known or a presumed complication of the breast or cervical cancer as determined by the treating physician.

D. Reoccurrence of cancer. A woman shall have eligibility reestablished after eligibility under this Article ends if the woman is screened under the AZ-NBCCEDP program and additional breast cancer or cervical cancer, including a pre-cancerous cervical lesion, is found.

E. Ineligible male. A male is precluded from receiving screening and diagnostic services under the AZ-NBCCEDP program and is ineligible under this Article.

Historical Note

New Section made by final rulemaking at 7 A.A.R. 5814, effective December 6, 2001 (Supp. 01-4). Amended by final rulemaking at 12 A.A.R. 4488, effective January 6, 2007 (Supp. 06-4).

R9-22-2004. Treatment

A. Breast cancer. Coverage for treatment for breast cancer under this Article shall conclude on the last provider visit for the specific treatment of the cancer or at the end of hormonal therapy for the cancer, whichever is later. For purposes of this subsection treatment means:
1. Lumpectomy or surgical removal of breast cancer;
2. Chemotherapy;
3. Radiation therapy; and
4. A treatment for breast cancer that, as determined by the AHCCCS Chief Medical Officer, is considered the standard of care as supported by a peer-reviewed study published in a medical journal.

B. Pre-cancerous cervical lesion. Coverage for treatment for a pre-cancerous cervical lesion under this Article, including moderate or severe cervical dysplasia or carcinoma in situ, shall conclude on the last provider visit for specific treatment for the pre-cancerous lesion. For purposes of this subsection treatment means:
1. Conization;
2. LEEP;
3. Cryotherapy; and
4. A treatment for pre-cancerous cervical lesion that, as determined by the AHCCCS Chief Medical Officer, is considered the standard of care as supported by a peer-reviewed study published in a medical journal.

C. Cervical cancer. Coverage for treatment for cervical cancer under this Article shall conclude on the last provider visit for the specific treatment for the cancer. For purposes of this subsection treatment means:
1. Surgery;
2. Radiation therapy;
3. Chemotherapy; and
4. A treatment for cervical cancer that, as determined by the AHCCCS Chief Medical Officer, is considered the standard of care as supported by a peer-reviewed study published in a medical journal.

Historical Note

New Section made by final rulemaking at 7 A.A.R. 5814, effective December 6, 2001 (Supp. 01-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4488, effective January 6, 2007 (Supp. 06-4).

R9-22-2005. Application Process

A. Application. A woman may apply for eligibility under this Article by submitting a complete application as specified in R9-22-1406.

B. Submitting the application. The woman may complete and submit an application at the time of the AZ-NBCCEDP screening. The AZ-NBCCEDP staff may mail or fax the application directly to the Administration.

C. Date of application. The date of the application is the date of the diagnostic procedure that results in a positive diagnosis for breast cancer or cervical cancer, including a pre-cancerous cervical lesion.

D. Responsibility of a woman who is applying or who is a member. A woman who is applying or who is a member shall:
1. Provide medical insurance information, including any changes in medical insurance; and
2. Inform the Administration about a change in address, residence, and alienage status.

Historical Note

New Section made by final rulemaking at 7 A.A.R. 5814, effective December 6, 2001 (Supp. 01-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4488, effective January 6, 2007 (Supp. 06-4).

R9-22-2006. Approval, Denial, or Discontinuance of Eligibility

A. Eligibility determination. The Administration shall determine eligibility under this Article and send the notice under subsection (B) or (C) within seven days of receiving a complete application.

B. Approval. If a woman meets all the eligibility requirements in this Article, the Administration shall provide the woman with an approval notice. The approval notice shall contain:

1. The name of the eligible woman, and
2. The effective date of eligibility.

C. Denial. If the Administration denies eligibility, the Administration shall provide the woman with a denial notice. The denial notice shall contain:
1. The name of the ineligible woman,
2. The specific reason why the woman is ineligible,
3. The legal citations supporting the reason for the denial,
4. The location where the woman can review the legal citations, and
5. Information regarding the woman's appeal and request for hearing rights.

D. Discontinuance.
1. Except as specified in subsection (D)(2), if a woman no longer meets an eligibility requirement under this Article, the Administration shall provide the woman a Notice of Action no later than 10 days before the effective date of the discontinuance.
2. The Administration may mail the Notice of Action no later than the effective date of the discontinuance if the Administration:
   a. Receives a written statement from the woman voluntarily withdrawing from AHCCCS,
   b. Receives information confirming the death of the woman,
   c. Receives returned mail with no forwarding address from the post office and the woman's whereabouts are unknown, or
   d. Receives information confirming that the woman has been approved for Title XIX services outside the state of Arizona.
3. The Notice of Action shall contain the:
   a. Name of the ineligible woman,
   b. Effective date of the discontinuance,
   c. Specific reason why the woman is discontinued,
   d. Legal citations supporting the reason for the discontinuance,
   e. Location where the woman can review the legal citations, and
   f. Information regarding the woman's appeal and request for hearing rights.

E. Request for hearing. A woman who is denied, or discontinued for the Breast and Cervical Cancer Treatment Program may request a hearing under Chapter 34.

Historical Note

New Section made by final rulemaking at 7 A.A.R. 5814, effective December 6, 2001 (Supp. 01-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4488, effective January 6, 2007 (Supp. 06-4).

R9-22-2007. Effective and End Date of Eligibility

A. Eligibility is effective on the first day of the month that all eligibility requirements are met, including the period described under R9-22-303.

B. The end date of eligibility:
1. For breast cancer, is 12 months after the last provider visit for a treatment specified in R9-22-2004 for the cancer or at the end of hormonal therapy for the cancer, whichever is later.
2. For pre-cancerous cervical lesion, is four months after the last provider visit for a treatment specified in R9-22-2004 for the pre-cancerous lesion.
3. For cervical cancer, is 12 months after the last provider visit for a treatment specified in R9-22-2004 for the cancer.

Historical Note

New Section made by final rulemaking at 7 A.A.R. 5814, effective December 6, 2001 (Supp. 01-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4488, effective January 6, 2007 (Supp. 06-4). Section amended by final rulemaking at 19 A.A.R. 3309, effective November 30, 2013 (Supp. 13-4).

R9-22-2008. Redetermination of Eligibility

A. Redetermination. Except as provided in subsection (B), the Administration shall redetermine eligibility at least once a year. If a woman continues to meet the requirements of eligibility for the Breast and Cervical Cancer Treatment Program under this Article, the Administration shall notify the woman of continued eligibility. A woman is not required to be screened for breast and cervical cancer through AZ-NBCCEDP at redetermination.

B. Change in circumstance. The Administration shall complete a redetermination of eligibility if there is a change in the woman's circumstances that may affect eligibility, including a change in treatment.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 4488, effective January 6, 2007 (Supp. 06-4).

36-2901.05. Breast and cervical cancer treatment; additional definition of eligibility

A. For the purposes of this article, beginning January 1, 2002, "eligible person" includes a person who meets all of the following requirements:

1. Has been screened for breast and cervical cancer by a provider or entity that is recognized by the well woman healthcheck program administered by the department of health services as part of its program under title XV of the public health service act and that operates consistently with well woman healthcheck program guidelines.
2. Needs treatment for breast or cervical cancer.
3. Has an income level that is at or below two hundred fifty per cent of the federal poverty guidelines.
4. Is under sixty-five years of age.
5. Is not otherwise covered under creditable coverage as defined in section 2701(c) of the public health services act (42 United States Code section 300gg(c)).

B. The administration shall limit the assistance it provides pursuant to this section to medically necessary services provided during the period that the person requires treatment for breast or cervical cancer as determined by the administration.

C. The administration shall use a simplified eligibility form that the applicant may mail to the administration. Once the administration receives a completed application, the administration shall expedite the eligibility determination and enrollment on a prospective basis.

ARIZONA PEACE OFFICER STANDARDS AND TRAINING BOARD (F-16-0706)
Title 13, Chapter 4, Arizona Peace Officer Standards and Training Board

GOVERNOR'S REGULATORY REVIEW COUNCIL
ANALYSIS OF FIVE-YEAR REVIEW REPORT

MEETING DATE: July 6, 2016 **AGENDA ITEM: F-7**

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

FROM: Chris Kleminich, Staff Attorney

DATE: June 20, 2016

SUBJECT: **ARIZONA PEACE OFFICER STANDARDS AND TRAINING BOARD (F-16-0706)**
Title 13, Chapter 4, Article 1, General Provisions

COMMENTS ON THE FIVE-YEAR-REVIEW REPORT

Purpose of the Agency and Number of Rules in the Report

The Arizona Peace Officer Standards and Training Board (Board) establishes standards for selection, recruitment, retention, and training for peace officers and state correctional officers and curriculum standards for law enforcement and state correctional officer training facilities.

On February 2, 2016, the Council approved a rulemaking that amended all 24 rules in A.A.C. Title 13, Chapter 4, Articles 1 and 2. Nineteen of the rules became effective on April 8, 2016. A.R.S. § 41-1823 requires that Sections 103, 105, 107, 110, and 111, which establish minimum qualifications for law enforcement officers, not go into effect until August 8, 2016, six months after being filed with the Secretary of State.

After the Council approved its rulemaking, the Board requested a rescheduling of this report. The Council's rules, however, only allowed for this request to be partially granted. Under R1-6-302, the Council may only grant a rescheduling request for rules that are substantially revised <u>at the time that the report is due</u>. Because five of the Board's amended rules did not take effect until after the report's due date, May 27, 2016, the Council's Chair determined that the Board was required to submit a report on Sections 103, 105, 107, 110, and 111.

Article Contents, Including the Subject Matter of Each Rule in the Report

The five rules addressed in this report relate to certification of peace officers; minimum qualifications for appointment; medical requirements; basic training requirements; and certification retention requirements.

Year that Each Rule was Last Amended or Newly Made

- January 11, 2003: Sections 103, 107
- July 10, 2006: Sections 105, 110, 111

Proposed Action

None.

Summary of Reasons for the Proposed Action

The Board indicates that no action is needed or planned beyond the rulemaking that was approved by the Council on February 2, 2016.

For reference, the following is a summary of the actions taken by the Board in its February rulemaking with respect to the rules reviewed in this report:

- Section 103: A new subsection (F), which requires open enrollees to obtain appointments from an agency within one year after graduation from a Board-prescribed Peace Officer Basic Course, was added. Clarifying changes were also made.
- Section 105: Clarifying changes were made, related to minimum qualifications for individuals being appointed to, or attending, an academy. One notable change is that "possession" of marijuana or other drugs will be considered in the same way as "use" of marijuana or other drugs.
- Section 107: The rule, related to medical requirements, was largely rewritten. The amended rule is more concise, and the Board believes that it is simplifying the medical assessment of whether an individual is able to perform the essential functions of a peace officer.
- Section 110: Clarifying changes, related to basic training requirements, were made.
- Section 111: Subsection (A)(3)(e) was added, to clarify that the Board may withdraw its confirmation that a continuing training course conducted by an outside provider meets requirements of the basic peace officer course if the Board receives information that the course content does not meet requirements. Clarifying changes were also made.

Substantive or Procedural Concerns

None.

Analysis of the agency's report pursuant to criteria in A.R.S. § 41-1056 and R1-6-301:

1. **<u>Has the agency certified that it is in compliance with A.R.S. § 41-1091?</u>**

Yes. The Board has certified its compliance with A.R.S. § 41-1091.

2. Has the agency analyzed the rules' effectiveness in achieving their objectives?

Yes. The Board indicates that the rules are generally effective in achieving their objectives.

3. Has the agency received any written criticisms of the rules during the last five years, including any written analysis questioning whether the rules are based on valid scientific or reliable principles or methods?

Yes. The Board indicates that it received no written criticisms of the rules during the last five years.

Staff would note that, in the February rulemaking, three commenters noted that R13-4-105(A)(9), which said that an individual attending an academy shall not have illegally possessed marijuana, was inconsistent with the requirement in subsection (B)(1) that indicates that illegal possession, up to 20 times, is consistent with experimentation. The Board agreed with these commenters, and rewrote R13-4-105(A)(9) accordingly: "Not have illegally possessed, ~~sold~~, produced, cultivated, or transported marijuana for sale or sold marijuana."

4. Has the agency analyzed whether the rules are authorized by statute?

Yes. As general and specific authority for the rules, the Board cites to A.R.S. § 41-1822. The Board has authority under A.R.S. § 41-1822(A) to establish standards for appointment and certification of peace officers and standards for peace officer training academies.

5. Has the agency analyzed the rules' consistency with other rules and statutes?

Yes. The Board indicates that the rules are generally consistent with other rules and statutes.

6. Has the agency analyzed the current enforcement status of the rules?

Yes. The Board indicates that it enforces the rules as written.

7. Has the agency analyzed whether the rules are clear, concise, and understandable?

Yes. The Board indicates that the rules are generally clear, concise, and understandable.

8. Stringency of the Rules:

a. Are the rules more stringent than corresponding federal law?

No. The Board indicates that no federal laws directly correspond to the rules.

b. <u>If so, is there statutory authority to exceed the requirements of federal law?</u>

Not applicable.

9. <u>For rules adopted after July 29, 2010:</u>

Not applicable. The rules, as currently in effect, were last amended in 2006.

a. <u>Do the rules require issuance of a regulatory permit, license or agency authorization?</u>

Not applicable.

b. <u>If so, are the general permit requirements of A.R.S. § 41-1037 met or does an exception apply?</u>

Not applicable.

10. <u>Has the agency indicated whether it completed the course of action identified in the previous five-year-review report?</u>

Yes. The Board indicates that in its 2011 five-year-review report, the Board indicated that it would amend R13-4-105 and R13-4-110. As indicated previously, the Board completed that rulemaking.

11. <u>Has the agency included a proposed course of action?</u>

Yes. As noted above, the Board indicates that no action is needed or planned beyond the rulemaking that was approved by the Council on February 2, 2016.

<u>Conclusion</u>

The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. Staff recommends that the report be approved.

GOVERNOR'S REGULATORY REVIEW COUNCIL
M E M O R A N D U M

MEETING DATE: July 6, 2016 **AGENDA ITEM: F-7**

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

FROM: GRRC Economic Team

DATE: June 20, 2016

SUBJECT: **ARIZONA PEACE OFFICER STANDARDS AND TRAINING BOARD (F-16-0706)**
Title 13, Chapter 4, Article 1, General Provisions

I reviewed the five-year-review report's economic, small business, and consumer impact comparison for compliance with A.R.S. § 41-1056 and make the following comments.

1. Economic Impact Comparison

The economic, small business, and consumer impact statement (EIS) from the most recent rulemaking was available for the rules. There are currently 14,604 certified peace officers and 5,807 correctional officers in Arizona who together are employed by 165 law enforcement agencies across the State. The Board conducted 121 hearings in the previous year. As a result of these hearings, the Board revoked the certification of 34 peace officers.

2. Has the agency determined that the rules impose the least burden and costs to persons regulated by the rules?

The Board indicates that, once amendments take effect in August, the rules will impose the least burden and costs to persons regulated by the rules

3. Was an analysis submitted to the agency under A.R.S. § 41-1056(A)(7)?

No analysis was submitted to the agency by another person that compares the rules' impact on this state's business competitiveness to the impact on businesses in other states under A.R.S. § 41-1056(A)(7).

4. Conclusion

After review, staff concludes that the report complies with A.R.S. § 41-1056 and recommends approval.

Arizona Peace Officer Standards and Training Board
2643 East University Drive Phoenix, Arizona 85034-6914 Phone (602) 223-2514 FAX (602) 244-0477

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MAY 23 2016
GRRC

May 23, 2016

Nicole A. Ong, Chair
Governor's Regulatory Review Council
100 North 15th Avenue, Ste. 402
Phoenix, AZ 85007

RE: Five-year-review Report on R13-4-103, R13-4-105, R13-4-107, R13-4-110, and R13-4-111

Dear Ms. Ong:

As required by A.R.S. § 41-1056, the Arizona Peace Officer Standards and Training Board submits for your approval a report on a review of the five referenced rules.

You will recall that in a rulemaking approved by the Council on February 2, 2016, the Board substantially amended all of its rules. Most of the approved rulemaking, which was published at 22 A.A.R. 555 on March 11, 2016, went into effect on April 8, 2016. However, under the provision at A.R.S. § 41-1823(A), the five rules reviewed, which establish minimum qualifications for law enforcement officers, do not go into effect until August 8, 2016. On August 8, 2016, the five rules that are reviewed and the subject of this report will no longer exist.

As required under A.R.S. § 41-1056(A), the Board certifies that 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) 774-9350. Thank you for your consideration.

Sincerely,

Jack G. Lane
Executive Director

ARIZONA PEACE OFFICER STANDARDS AND TRAINING BOARD

Five-year-review Report: R13-4-103, R13-4-105, R13-4-107, R13-4-110, and R13-4-111

May 2016

Five-year-review Report

A.A.C. Title 13. Public Safety

Chapter 4. Arizona Peace Officer Standards and Training Board

INTRODUCTION

The Peace Officer Standards and Training Board (Board), which is established by A.R.S. § 41-1821, was created in 1968 to address the need for uniform minimum peace officer selection, recruitment, retention, and training standards and to provide curriculum and standards for all certified law enforcement training facilities. In 1984, the legislature charged the Board with the added responsibilities of approving a state correctional officer training curriculum and establishing minimum standards for state correctional officers. The Board is also responsible for administering the Peace Officer Training Fund, which receives approximately 16.64% of the monies generated by a surcharge on all criminal and traffic fines (See A.R.S. §§ 12-116.01 and 41-2401). During FY2015, the Fund received $6,533,201.

The Board, whose mission is to foster public trust and confidence by establishing and maintaining standards of integrity, competence, and professionalism for Arizona peace officers and correctional officers, provides services to approximately 165 law enforcement agencies, 14,604 peace officers, and 5,807 correctional officers. There are 12 peace officer training academies.

In a rulemaking approved by the Council on February 2, 2016, the Board substantially amended all of its rules. This approved rulemaking went into effect on April 8, 2016. However, under the provision at A.R.S. § 41-1823(A), the five rules reviewed, which establish minimum qualifications for law enforcement officers, do not go into effect until August 8, 2016. On August 8, 2016, the five rules that are reviewed and the subject of this report will no longer exist.

<u>Statute that generally authorizes the agency to make rules:</u> A.R.S. § 41-1822(A)

1. Specific statute authorizing the rule:

   R13-4-103: A.R.S. §§ 41-1822(A)(3) and 41-1823(B)

   R13-4-105: A.R.S. § 41-1822(A)(3)

   R13-4-107: A.R.S. § 41-1822(A)(3)

   R13-4-110: A.R.S. § 41-1822(A)(4)

   R13-4-111: A.R.S. § 41-1822(A)(4)

2. Objective of the rule including the purpose for the existence of the rule:

   R13-4-103. Certification of Peace Officers: The objective of this rule is to clarify that active certified status is required to function as a peace officer; establish an exception to required certified status; establish the categories of certified status; list the requirements for applying for certification; and indicate the Board's authority to waive a qualification, standard, or training requirement when the Board determines that waiver is in the best interest of the law enforcement profession. This facilitates efficiency in the certification process by ensuring those who seek to be peace officers fully understand the requirements.

   R13-4-105. Minimum Qualifications for Appointment: The objective of this rule is to establish limitations on certain peace officer categories, circumstances for changing from one peace officer category to another, the difference between inactive and lapsed status, and standards for reinstatement from inactive status. This facilitates efficiency in the certification process by ensuring those who seek to be peace officers fully understand minimum qualifications for appointment.

   R13-4-107. Medical Requirements: The objective of this rule is to establish the medical standards required for certification as a peace officer and the procedure for determining whether reasonable accommodation can be made to allow an individual who does not meet the medical standards to be certified. This facilitates efficiency in the certification process by ensuring those who seek to be peace officers fully understand minimum medical requirements for certification.

R13-4-110. Basic Training Requirements: The objective of this rule is to specify the training required for an individual to obtain certified status as a peace officer, exceptions to the required training, and a procedure for obtaining a waiver of the required training. This facilitates efficiency in the certification process by ensuring those who seek to be peace officers fully understand the training expectations for certification.

R13-4-111. Certification Retention Requirements: The objective of this rule is to specify the continuing, proficiency, and firearms training required for an individual to maintain certified status as a peace officer and to establish standards for and identify approved providers of continuing, proficiency, and firearms training courses. This facilitates efficiency in the certification process by ensuring those who are certified as peace officers fully understand the training requirements for maintaining certification.

3. Effectiveness of the rule in achieving the objective including a summary of any available data supporting the conclusion: The Board determined the rules are generally effective in achieving their objectives. This conclusion is based on the ability of law enforcement agencies to appoint qualified individuals and training academies to train peace officers. However, the Board believes R13-4-103(E) needs to be amended to address individuals who attend an academy without an appointment and R13-4-110 would be more effective if it included a time limit within which an applicant must complete the waiver process.

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 Board determined the rules are generally consistent with its statutes and other rules. However, R13-4-103(B) needs to clarify that it is only elected sheriffs who are exempt from being certified.

No federal law is directly applicable to the subject of these rules. There are many federal laws that apply to law enforcement agencies and the work done by peace officers. These include general laws such as OSHA, EEOC, and ADA, federal laws regarding crimes, and federal case law regarding law enforcement. The training provided to peace officers is consistent with federal law.

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 without difficulty.

6. Clarity, conciseness, and understandability of the rule:
   The Board determined the rules are clear, concise, and understandable. However, the heading to R13-4-105 is misleading because it references only appointment but the minimum qualifications apply also to an individual who attends an academy without appointment.

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 did not receive written criticisms of these rules during the past 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:
   2002 Rulemaking
   R13-4-103 and R13-4-107 were last amended in 2002. The EIS prepared at the time of rulemaking was available. The amendments to R13-4-103 included clarifying that constables are not exempt from the certification requirement, renamed the peace officer categories, established that an application is required for appointment, and provided a procedure for obtaining a waiver of provisions. The Board believes it correctly estimated the economic impact of these changes would be minimal. The amendments to R13-4-107 updated the medical requirements for being a peace officer to comply with the Americans with Disabilities Act and simplified the procedure for a Board-trained physician to review a

diagnosis by a non-Board-trained physician. The Board believes it correctly estimated the economic impact of these changes would be minimal.

2006 Rulemaking

R13-4-105, R13-4-110, and R13-4-111 were last amended in 2006. The EIS prepared at the time of rulemaking was available. In R13-4-105, the Board established a provision that enables an otherwise disqualified individual to be appointed if the Board determines the disqualification results from a juvenile indiscretion. In R13-4-110, the Board established a requirement that an individual pass a Comprehensive Final Examination (CFE) to complete the full-authority peace officer training course. Amendments to R13-4-111 made the Section more clear, concise, and understandable.

During the last year, the Board received five petitions regarding use of illegal drugs constituting a juvenile indiscretion. Because the standards for finding juvenile indiscretion are defined clearly, few petitions are received. Last year, all five petitions received were granted. This enables the five individuals involved the opportunity to become a peace officer. The Board accurately predicted it would incur cost to administer and score the CFE. The Board believes these costs are offset by being able to target training to students who need additional help to become a well-trained peace officer. During the last year, 97 percent of trainees passed the CFE on the first attempt.

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:

    In the five-year-review report approved by Council on June 7, 2011, the Board indicated it would amend R13-4-105 and R13-4-110. As indicated previously, the Board completed the rulemaking and it was approved by Council on February 2, 2016. This five-year-review

report is being prepared simply because the amended rules will not be in effect, under A.R.S. § 41-1823(A), until August 8, 2016. The rules reviewed will cease to exist on that date.

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:
    Because peace officers are in positions of public trust and charged with enforcing the laws of the state, it is important they be qualified and well trained. There are substantial costs involved with ensuring that a peace officer is qualified and well trained. The Board has determined that the costs resulting from its rules impose the least burden and costs possible consistent with achieving the goal of having qualified and well trained peace officers.

    Some of the costs involved with ensuring that a peace officer is qualified and well trained result from the requirements that an applicant undergo a background investigation, be physically and mentally able to perform the functions of a peace officer, receive comprehensive training that meets specified minimum standards, and pass a comprehensive final examination. After being certified, the peace officer is required to participate in continuing and proficiency training.

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 federal law is directly applicable to the subject matter of the rules.

13. For a rule made after July 29, 2010, that require issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037:
    None of the rules was made after July 29, 2010.

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 rules reviewed were substantially amended in a rulemaking approved by Council on February 2, 2016. No additional action is needed or planned.

Arizona Peace Officer Standards and Training Board

TITLE 13. PUBLIC SAFETY

CHAPTER 4. ARIZONA PEACE OFFICER STANDARDS AND TRAINING BOARD

(Authority: A.R.S. § 41-1822(1) et seq.)

The Arizona Law Enforcement Officer Advisory Council's name was changed by Laws 1994, Ch. 324, § 1, effective July 17, 1994. All references to the Council were changed to reflect the new Board. (Supp. 94-3).

ARTICLE 1. GENERAL PROVISIONS

New Article 1 consisting of Sections R13-4-101 through R13-4-118 adopted effective March 23, 1989.

Former Article 1 consisting of Sections R13-4-01 through R13-4-08 repealed effective March 23, 1989.

Section
R13-4-103. Certification of Peace Officers
R13-4-105. Minimum Qualifications for Appointment
R13-4-107. Medical Requirements
R13-4-110. Basic Training Requirements
R13-4-111. Certification Retention Requirements

ARTICLE 1. GENERAL PROVISIONS

R13-4-103. Certification of Peace Officers

A. Certified status mandatory. A person who is not certified by the Board or whose certified status is inactive shall not function as a peace officer or be assigned the duties of a peace officer by an agency, except as provided in subsection (B).

B. Sheriffs are exempt from the requirement of certified status.

C. A person shall satisfy the minimum qualifications and training requirements to receive certified status.

D. Peace officer categories. The categories for which certified status may be granted are:
1. Full-authority peace officer,
2. Specialty peace officer,
3. Limited-authority peace officer, and
4. Limited correctional peace officer.

E. Application for certification. A person who seeks to be certified as a peace officer shall make application as follows:
1. Submit to an agency an application that contains all documents required by R13-4-105, R13-4-106(A) and (B), and R13-4-107;
2. Obtain an appointment from an agency; and
3. Obtain either a certificate of graduation from a Board-prescribed Peace Officer Basic Course or a certificate of successful completion of the waiver of training process prescribed by R13-4-110(D).

F. Establishment or enforcement of qualifications, standards, or training requirements. The Board may waive in whole or in part any provision of this Article upon a finding that the best interests of the law enforcement profession are served and the public welfare and safety is not jeopardized by the waiver. The Board may place restrictions or requirements on a peace officer as a condition of certified status.

G. This Section is effective six months after filing with the Secretary of State as required by A.R.S. § 41-1823(A).

Historical Note

Adopted effective March 23, 1989 (Supp. 89-1). Amended effective October 20, 1995; filed with the Secretary of State April 20, 1995 (Supp. 95-2). Amended by final rulemaking at 8 A.A.R. 3201, effective January 11, 2003 (Supp. 02-3).

R13-4-105. Minimum Qualifications for Appointment

A. Except as provided in subsection (C) or (D), a person shall meet the following minimum qualifications before being appointed to or attending an academy:
1. Be a United States citizen;
2. Be at least 21 years of age; except that a person may attend an academy if the person will be 21 before graduating;
3. Be a high school graduate or have successfully completed a General Education Development (G.E.D.) examination;
4. Undergo a complete background investigation that meets the standards of R13-4-106. A person may begin an academy before the results of the fingerprint check are returned. However, the academy shall not graduate the person and the Board shall not reimburse the academy for the person's training expenses until a qualifying fingerprint check return is obtained;
5. Undergo a medical examination that meets the standards of R134107 within one year before appointment. An agency may make a conditional offer of appointment before the medical examination. If the medical examination is conducted more than 180 days before appointment, the person shall submit a written statement indicating that the person's medical condition has not changed since the examination;
6. Not have been convicted of a felony or any offense that would be a felony if committed in Arizona;
7. Not have been dishonorably discharged from the United States Armed Forces;
8. Not have been previously denied certified status, have certified status revoked, or have current certified status suspended;

9. Not have illegally sold, produced, cultivated, or transported for sale marijuana;
10. Not have illegally used marijuana for any purpose within the past three years;
11. Not have ever illegally used marijuana other than for experimentation;
12. Not have ever illegally used marijuana while employed or appointed as a peace officer;
13. Not have illegally sold, produced, cultivated, or transported for sale a dangerous drug or narcotic;
14. Not have illegally used a dangerous drug or narcotic, other than marijuana, for any purpose within the past seven years;
15. Not have ever illegally used a dangerous drug or narcotic other than for experimentation;
16. Not have ever illegally used a dangerous drug or narcotic while employed or appointed as a peace officer;
17. Not have a pattern of abuse of prescription medication;
18. Undergo a polygraph examination that meets the requirements of R13-4-106, unless prohibited by law;
19. Not have been convicted of or adjudged to have violated traffic regulations governing the movement of vehicles with a frequency within the past three years that indicates a disrespect for traffic laws or a disregard for the safety of other persons on the highway;
20. Read the code of ethics in subsection (F) and affirm by signature the person's understanding of and agreement to abide by the code.

B. The illegal use of marijuana, or a dangerous drug or narcotic is presumed to be not for experimentation if:
1. The use of marijuana exceeds a total of 20 times or exceeds five times since the age of 21 years; or
2. The use of any dangerous drug or narcotic, other than marijuana, in any combination exceeds a total of five times, or exceeds one time since the age of 21 years.

C. An agency head who wishes to appoint a person whose illegal use of marijuana or a dangerous drug or narcotic is presumed to be not for experimentation under this Section may petition the Board for a determination that, given the unique circumstances of the person's use, the use was for experimentation. The petition shall:
1. Specify the type of drugs illegally used, the number of uses, the age at the time of each use, the method by which the information regarding illegal use of drugs came to the agency's attention, and any attempt by the agency head to verify the accuracy of the information; and
2. State the factors the agency head wishes the Board to consider in making its determination. These factors may include:
   a. The duration of use,
   b. The motivation for use,
   c. The time elapsed since the last use,
   d. How the drug was obtained,
   e. How the drug was ingested,
   f. Why the person stopped using the drug, and
   g. Any other factor the agency head believes is relevant to the Board's determination.

D. An agency head who wishes to appoint a person whose conduct is grounds to deny certification under R13-4-109 may petition the Board for a determination that the otherwise disqualifying conduct constitutes juvenile indiscretion. The petition shall:
1. Specify the nature of the conduct, the number of times the conduct occurred, the method by which information regarding the conduct came to the agency's attention, and any attempt by the agency head to verify the accuracy of the information; and
2. Include sufficient information for the Board to determine that all of the following are true:
   a. The conduct occurred when the person was less than age 18;
   b. The conduct occurred more than 10 years before application for appointment;
   c. The person has consistently exhibited responsible, law-abiding behavior between the time of the conduct and application for appointment;
   d. There is reason to believe that the person's immaturity at the time of the conduct contributed substantially to the conduct;
   e. There is evidence that the person's maturity at the time of application makes reoccurrence of the conduct unlikely; and
   f. The conduct was not so egregious that public trust in the law enforcement profession would be jeopardized if the person is certified.
3. If the Board finds that the information submitted is sufficient for the Board to determine that the factors listed in subsection (D)(2) are true, the Board shall determine that the conduct constituted juvenile indiscretion and grant appointment.

E. For a limited correctional peace officer, previous completion of a background investigation conducted under R13-4-203 and a physical examination conducted under R13-4-202(A)(6) satisfies the requirements of this Section when there has been no interruption of employment by the agency, except that:
1. The limited correctional peace officer shall submit to a polygraph examination as required by subsection (A)(18); and
2. The agency shall query the National Crime Information Center/Interstate Identification Index (NCIC/III), and the Arizona Criminal Information Center/Arizona Computerized Criminal History (ACIC/ACCH) and review the returns to determine that the person meets the requirements of this Section.

F. Code of Ethics. Because the people of the state of Arizona confer upon all peace officers the authority and responsibility to safeguard lives and property within constitutional parameters, a peace officer shall commit to the following Code of Ethics and shall affirm the peace officer's commitment by signing the Code.

"I will exercise selfrestraint and be constantly mindful of the welfare of others. I will be exemplary in obeying the laws of the land and loyal to the state of Arizona and my agency and its objectives and regulations. Whatever I see or hear of a confidential nature or that is confided to me in my official capacity will be kept secure unless revelation is necessary in the performance of my duty.

I will never take selfish advantage of my position and will not allow my personal feelings, animosities, or friendships to influence my actions or decisions. I will exercise the authority of my office to the best of my ability, with courtesy and vigilance, and without

favor, malice, ill will, or compromise. I am a servant of the people and I recognize my position as a symbol of public faith. I accept it as a public trust to be held so long as I am true to the law and serve the people of Arizona."

G. This Section is effective six months after filing with the Secretary of State as required by A.R.S. § 41-1823(A).

Historical Note

Adopted effective March 23, 1989 (Supp. 89-1). Amended effective August 6, 1991 (Supp. 91-3). Amended effective January 13, 1993; filed July 13, 1992 (Supp. 92-3). References to "Council" changed to "Board" (Supp. 94-3). Amended effective October 20, 1995; filed with the Secretary of State April 20, 1995 (Supp. 95-2). Amended by final rulemaking at 8 A.A.R. 3201, effective January 11, 2003 (Supp. 02-3). Amended by final rulemaking at 12 A.A.R. 331, effective July 10, 2006 (Supp. 06-1).

R13-4-107. Medical Requirements

A. Medical Categories. The medical categories for certification are:

1. Category I. No medical, physical, or mental circumstance exists that limits the person's ability to effectively perform all the duties of a peace officer or creates a reasonable probability of substantial harm to the person or others;
2. Category II. A medical, physical, or mental circumstance exists that absent a reasonable accommodation by the appointing agency would limit the person's ability to effectively perform all the duties of a peace officer or create a reasonable probability of substantial harm to the person or others; and
3. Category III. A medical, physical, or mental circumstance exists that despite reasonable accommodation by the appointing agency limits the person's ability to effectively perform all the duties of a peace officer or creates a reasonable probability of substantial harm to the person or others.

B. Eligibility for certified status.

1. Category I. A person in Category I may be appointed if the person meets all other qualifications.
2. Category II. If an agency chooses to make the required accommodation and appoint a person in Category II, and the examination was made by a Board-trained physician, the appointment may be made without further action by the Board. However, if the examining physician has not been trained by the Board, a medical review under subsection (H) by a Board-trained physician is required to determine eligibility for certified status. If the Board-trained physician agrees with the finding of the other physician, the appointment may be made without further action by the Board.
3. Category III. If an agency wishes to appoint a person in Category III, the agency shall submit a letter to the Board asking for a determination of eligibility for certification. The letter shall include a report from a Board-trained physician identifying the medical limitations and the proposed accommodations. The Board shall determine the person's eligibility for certified status, based upon whether the appointing agency is able to make reasonable accommodations, and whether by placing restrictions or requirements on the person as a condition of certified status under R13-4-103(F), the person is able to perform the duties authorized within the restriction without endangering the person or others.

C. Medical, physical, or mental circumstances in Category II and Category III include:

1. Angina pectoris;
2. Asthma;
3. Cancer - metastatic or leukemia;
4. Cardiac arrhythmias or murmurs;
5. Cerebral vascular accident;
6. Chest pains of unknown origin;
7. Contagious hepatitis;
8. Contagious tuberculosis;
9. Chronic respiratory disease;
10. Diabetes, insulin dependent or ketosis-prone;
11. Fixation of major joint;
12. Hearing not specified in subsection (D);
13. Herniated lumbar disc;
14. Hypertension, uncontrolled;
15. Inguinal hernia;
16. Liver or renal dysfunction;
17. Migraine headache;
18. Myocardial infarction, history of;
19. Paralysis;
20. Pilonidal cyst;
21. Prosthetic device, e.g., limbs, hearing aid, colostomy;
22. Recurrent dislocation of a major joint;
23. Schizophrenia or manic depressive psychosis;
24. Scoliosis greater than 15 degrees;
25. Seizure disorders;
26. Current substance abuse;
27. Valvular heart disease, uncorrected;

28. Vision not specified in subsection (D) or monocular vision;
29. Wasting disease, chronic, such as multiple sclerosis, myasthenia gravis, or amyotrophic lateral sclerosis; and
30. Any other medical, physical, or mental circumstance that the examining physician determines may interfere with the person's ability to function as a peace officer effectively or may create a reasonable probability of substantial harm to the person or others.

D. Vision and hearing. Vision and hearing meeting the following requirements are classified in Category I:
1. Visual acuity of:
   a. 20/20 or better uncorrected;
   b. 20/20 or better, corrected by spectacles or hard contact lenses, if uncorrected acuity is 20/80 or better. The applicant shall demonstrate satisfactory adaptation to the contact lenses; or
   c. 20/20 or better, corrected by soft contact lenses, if the uncorrected acuity is 20/200 or better. The applicant shall demonstrate satisfactory adaptation to the contact lenses;
2. Vision capable of distinguishing basic color groups against a favorable background.
3. Peripheral vision:
   a. That does not reveal scotoma or quadrantonopia; or
   b. In which vision perimeter testing is intact at 170 degrees; and
4. Uncorrected hearing with no loss greater than 25 db in the 500, 1000, 2000, or 3000 hertz frequencies as measured by an audiometer.

E. Medical history. A person who seeks to be appointed shall supply to the examining physician a statement of the person's medical history that includes past and present diseases, injuries, operations, immunization status, and medications taken.

F. Medical examination. The examining physician shall review the person's medical history and examine the person.

G. Examination report. The examining physician shall record the findings of the medical examination on a form prescribed by the Board. The physician shall indicate whether a medical, physical, or mental circumstance in Category II or III exists, describe how the circumstance affects the person's ability to perform the duties of a peace officer, and specify the type and duration of any treatment required. In all Category II or III cases, the physician shall advise the appointing agency in writing of any limitation on the person's ability to function as a peace officer.

H. Category II and Category III reviews. The diagnosis of a person with a circumstance classified in Category II or Category III by an examining physician who is not Board trained shall be reviewed by a Board-trained physician if the agency intends to appoint the person. The Board-trained physician may review prior medical examination reports concerning the person and contact examining physicians to review their findings. If required by the Board-trained physician, an independent medical examination shall be conducted, if the agency wishes to appoint the person, and the person shall be referred to a specialist in the appropriate medical field.

I. Additional findings. The appointing agency may submit to the Board results of additional examinations or tests, or obtain additional opinions from other licensed physicians.

J. This Section is effective six months after filing with the Secretary of State as required by A.R.S. § 41-1823(A).

Historical Note

Adopted effective March 23, 1989 (Supp. 89-1). References to "Council" changed to "Board" (Supp. 94-3). Amended by final rulemaking at 8 A.A.R. 3201, effective January 11, 2003 (Supp. 02-3).

R13-4-110. Basic Training Requirements

A. Required training for certified status. The Board shall not certify and a person shall not perform the duties of a peace officer until the person successfully completes basic training as follows:
1. To be certified as a full-authority peace officer, a person shall complete the 585-hour full-authority peace officer basic training course, specified in R13-4-116, at an academy and pass the CFE.
   a. Board staff shall administer the CFE.
   b. The Board shall ensure that the CFE is administered during the final two weeks of the full-authority peace officer basic training course.
   c. A person passes the CFE by achieving a score of at least 70 percent on each of the three blocks of the CFE when each block is scored separately.
   d. A person who fails one or more blocks of the CFE may retake the failed block one time before the person is scheduled to graduate from the academy.
   e. A person who fails a retake of a block of the CFE, as described in subsection (A)(1)(d), may retake the failed block once more within 60 days from the original testing date if the person remains appointed by the original appointing agency or enrolled in the academy.
   f. A person who fails a second retake of a block of the CFE, as described in subsection (A)(1)(e), may pursue certification only by repeating the 585-hour full-authority peace officer basic training course.
   g. An agency head is not required to continue to appoint a person during the 60 days permitted for a second retake of a failed block of the CFE, as described in subsection (A)(1)(e).
2. To be certified as a specialty peace officer, a person shall complete a Board-prescribed specialty peace officer basic training course or the 585-hour full-authority peace officer basic training course, specified in R13-4-116, at an academy.
3. To be certified as a limited-authority peace officer, a person shall complete a Board-prescribed limited-authority peace officer basic training course or the 585-hour full-authority peace officer basic training course, specified in R13-4-116, at an academy.

4. To be certified as a limited correctional peace officer, a person shall complete the correctional officer basic training course specified in R13-4-205 and the 48-hour limited correctional peace officer supplement course specified in R13-4-116, at the Arizona correctional officer training academy.

B. Exceptions. The training requirement in subsection (A) is waived when an agency uses a person during a:
1. Riot, insurrection, disaster, or other event that exhausts the peace officer resources of the agency and the person is attending an academy; or
2. Field training program that is a component of a basic training program at an academy, and the person is under the direct supervision and control of a certified peace officer.

C. Firearms training required.
1. Unless otherwise specified in this Section, a peace officer shall complete the firearms qualification courses required in R13-4-116(E) before the peace officer carries a firearm in the course of duty.
2. Before carrying a firearm in the course of duty, a limited correctional peace officer shall:
   a. Meet the requirements of R13-4-205, and
   b. Complete a night-time firearms qualification shoot based on the course of fire, as described in R13-4-205.

D. Waiver of required training. A person may apply to the Board for a waiver of required training if the person's certified status is lapsed or the person has functioned in the capacity of a peace officer in another state or for a federal law enforcement agency. The Board shall grant a complete or partial waiver of required training if the Board determines that the best interests of the law enforcement profession are served, the public welfare and safety are not jeopardized, and:
1. The appointing agency submits to the Board written verification of the person's previous experience and training on a form prescribed by the Board;
2. The person meets the minimum qualifications listed in R13-4-105;
3. The person complies with the requirements of R13-4-103(E)(1);
4. The appointing agency complies with the requirements of R13-4-106(C);
5. The person successfully completes an examination measuring the person's comprehension of the full-authority peace officer basic training course as follows:
   a. If during the last three years, the person has at least two years of experience as a peace officer in another state or for a federal law enforcement agency, and the person submits to the Board basic training and in-service training records that the Board determines demonstrate substantial comparability to Arizona's full-authority peace officer basic training course, the person shall pass the portions of the CFE covering legal and liability issues specific to Arizona;
   b. If the person's certification is lapsed, the person shall pass all blocks of the CFE; or
   c. If the person's out-of-state or federal law enforcement experience does not meet the criterion in subsection (D)(5)(a), but the Board determines that the person's basic training and in-service training records demonstrate substantial comparability to Arizona's full-authority peace officer basic training course, the person shall pass all blocks of the CFE; and
6. In addition to the examination required under subsection (D)(5), the person satisfactorily performs the practical demonstrations of proficiency in physical conditioning, vehicle operations, pursuit operations, and firearms, including firearms qualifications, as required under R13-4-116(E)(1).

E. This Section is effective six months after filing with the Secretary of State as required by A.R.S. § 41-1823(A).

Historical Note

Adopted effective March 23, 1989 (Supp. 89-1). References to "Council" changed to "Board" (Supp. 94-3). Amended effective October 20, 1995; filed with the Secretary of State April 20, 1995 (Supp. 95-2). Amended by final rulemaking at 8 A.A.R. 3201, effective January 11, 2003 (Supp. 02-3). Amended by final rulemaking at 12 A.A.R. 331, effective July 10, 2006 (Supp. 06-1).

R13-4-111. Certification Retention Requirements

A. Continuing training required.
1. The following continuing training standards apply for a peace officer to retain certification:
   a. A full-authority peace officer shall complete eight hours of continuing training each year beginning January 1, following the date the officer is certified.
   b. A specialty, limited-authority, or limited correctional peace officer shall complete eight hours of continuing training every three years beginning January 1, following the date the officer is certified.
2. Continuing training course standards for peace officers. The provider of a continuing training course for peace officers shall ensure that:
   a. The course curriculum consists of advanced or remedial instruction on one or more of the topic areas specified in R13-4-116(E)(1);
   b. The instructor meets the requirements of R13-4-114(A)(2)(a) or (b);
   c. An attendance verification certificate, which includes a statement that the provider believes the course meets the requirements of this Section, is given to each attendee for audit purposes;
   d. If the training provider is an agency, an attendance roster and lesson plan or other information sufficient to determine compliance with this Section is made available upon request by the Board for Board audit;

e. If the training provider is an outside provider that does not seek confirmation that the course meets the requirements under subsection (A)(3)(c), a copy of the lesson plan or other information sufficient to determine compliance with this Section is given to each attendee; and

f. If the training provider is an outside provider that seeks and receives confirmation under subsection (A)(3)(c), a copy of the Board's written confirmation is distributed to each attendee.

3. Training providers. Courses of continuing training may be conducted by the Board, an agency, or an outside provider.

a. All Board-provided continuing training courses meet the requirements of this Section.

b. Agency-provided continuing training courses meet the requirements of this Section if all the requirements of subsection (A)(2) are met.

c. Outside-provider continuing training courses meet the requirements of this Section if all the requirements of subsection (A)(2) are met. The Board shall inform an outside provider in writing whether a continuing training course meets these requirements if a course package is submitted to the Board, before the training is conducted, that includes:

i. A description of the training course that allows the Board to determine whether the course contains advanced or remedial instruction on one or more of the topic areas specified in R13-4-116(E)(1);

ii. The name of the person, or if applicable, the institution or organization, providing the training with sufficient information to allow the Board to determine whether the requirements of R13-4-114(A)(2)(a) or (b) are met;

iii. A course schedule listing the number of instructional hours; and

iv. An attestation that the outside provider shall, upon request by the Board, make the lesson plan or other information sufficient to determine compliance with this Section available for Board audit, and shall ensure that the requirement of subsection (A)(2)(b) is met.

d. The Board's confirmation that a continuing training course conducted by an outside provider meets the requirements of this Section is effective as long as the information submitted to the Board under subsection (A)(3)(c) is unchanged.

4. A limited correctional peace officer satisfies the requirements of this Section by obtaining training that is:

a. Approved under R13-4-206,

b. Provided by an instructor who meets the requirements of R13-4-205(C)(5), and

c. On a topic area listed in R13-4-116(E)(4).

5. Required records. A peace officer shall provide to the appointing agency a copy of all documents provided to the peace officer under subsection (A)(2)(c), (A)(2)(e), or (A)(2)(f). The appointing agency shall maintain the documents and make them available, upon request by the Board, for Board audit.

B. Proficiency training required.

1. To retain certification, a peace officer who is not in a supervisory position within the peace officer's appointing agency shall complete eight hours of proficiency training every three years beginning January 1, following the date the peace officer is certified.

2. Proficiency training course standards. The provider of a proficiency training course for peace officers shall ensure that:

a. The training requires physical demonstration of one or more performance objectives included in the 585-hour full-authority peace officer basic training course under R13-4-116 and demonstration of the use of judgment in the application of the physical act;

b. The curriculum consists of advanced or remedial instruction on one or more of the following topic areas:

i. Defensive tactics and impact weapons,

ii. Tactical firearms (not the annual firearms qualification required under this Section),

iii. Emergency vehicle operations,

iv. Pursuit operations,

v. First aid and emergency care,

vi. Physical conditioning, and

vii. High-risk stops;

c. The instructor meets the requirements of R13-4-114(A)(2)(c);

d. An attendance verification certificate, which includes a statement that the provider believes the course meets the requirements of this Section, is given to each attendee for audit purposes;

e. If the training provider is an agency, an attendance roster and lesson plan or other information sufficient to determine compliance with this Section is made available upon request by the Board for Board audit;

f. If the training provider is an outside provider that does not seek confirmation under subsection (B)(3)(c) that the course meets the requirements of this Section, a copy of the lesson plan or other information sufficient to determine compliance with this Section is given to each attendee; and

g. If the training provider is an outside provider that seeks and receives confirmation under subsection (B)(3)(c), a copy of the Board's written confirmation is given to each attendee.

3. Training providers. Proficiency training courses may be conducted by the Board, an agency, or an outside provider.

a. All Board-provided proficiency training courses meet the requirements of this Section.

b. Agency-provided proficiency training courses meet the requirements of this Section if all the requirements of subsection (B)(2) are met.

c. Outside-provider proficiency training courses meet the requirements of this Section if all the requirements of subsection (B)(2) are met. The Board shall inform an outside provider in writing whether a proficiency training course meets these requirements if a course package is submitted to the Board, before the training is conducted, that includes:

i. A description of the training course that allows the Board to determine whether the course contains advanced or remedial instruction on one or more of the topic areas specified in subsection (B)(2);
ii. The name of the person, or if applicable, the institution or organization, providing the training with sufficient information to allow the Board to determine whether the requirements of R13-4-114(A)(2)(c) are met;
iii. A course schedule listing the number of instructional hours; and
iv. An attestation that the outside provider shall, upon request by the Board, make the lesson plan and other information sufficient to determine compliance with this Section available for Board audit, and shall ensure that the requirement of subsection (B)(2)(d) is met.

d. The Board's confirmation that a proficiency training course conducted by an outside provider meets the requirements of this Section is effective as long as the information submitted to the Board under subsection (B)(3)(c) is unchanged.

4. A limited correctional peace officer satisfies the requirements of this Section by obtaining training that is:
   a. Approved under R13-4-206,
   b. Provided by an instructor who meets the requirements of R13-4-205(C), and
   c. On a topic area listed in subsection (B)(2)(b) except (B)(2)(b)(iv).
5. Required records. A peace officer shall provide to the appointing agency a copy of all documents provided to the peace officer under subsection (B)(2)(d), (B)(2)(f) or (B)(2)(g). The appointing agency shall maintain the documents and make them available, upon request by the Board, for Board audit.

C. Firearms qualification required. A peace officer authorized to carry a firearm shall qualify to continue to be authorized to carry a firearm each year beginning January 1 following certification by completing a Board-prescribed firearms qualification course, using a service handgun and service ammunition, and a Board-prescribed target identification and judgment course.

1. Firearms qualification course standards.
   a. A firearms qualification course is a course:
      i. Prescribed under R13-4-116(E)(1), or
      ii. Determined by the Board to measure firearms competency at least as accurately as courses prescribed under R13-4-116(E)(1).
   b. The provider of a firearms qualification course shall ensure that the course includes:
      i. A timed accuracy component;
      ii. A type and style of target that is equal to, or more difficult than, targets used in a course prescribed under R13-4-116(E)(1); and
      iii. A success criterion that is equal to, or more difficult than, criteria used in a course prescribed under R13-4-116(E)(1).
2. Firearms target identification and judgment course standards.
   a. A firearms target identification and judgment course is a course:
      i. Prescribed under R13-4-116(E)(1), or
      ii. Determined by the Board to measure target identification and judgment competency at least as accurately as courses prescribed under R13-4-116(E)(1).
   b. The provider of a firearms target identification and judgment course shall ensure that the course includes:
      i. A timed accuracy component;
      ii. A type and style of target discrimination test that is equal to, or more difficult than, those used in a course prescribed under R13-4-116(E)(1); and
      iii. A success criterion that is equal to, or more difficult than, criteria used in a course prescribed under R13-4-116(E)(1).
3. The provider of a firearms qualification or firearms target identification and judgment course shall ensure that the course is taught by a firearms instructor who meets the requirements of R13-4-114(A)(2)(c).

D. This Section is effective six months after filing with the Secretary of State as required by A.R.S. § 41-1823(A).

Historical Note

Adopted effective March 23, 1989 (Supp. 89-1). References to "Council" changed to "Board" (Supp. 94-3). Amended effective October 20, 1995; filed with the Secretary of State April 20, 1995 (Supp. 95-2). Section repealed; new Section made by final rulemaking at 8 A.A.R. 3201, effective January 11, 2003 (Supp. 02-3). Amended by final rulemaking at 12 A.A.R. 331, effective July 10, 2006 (Supp. 06-1).

41-1821. Arizona peace officer standards and training board; membership; appointment; term; vacancies; meetings; compensation; acceptance of grants

A. An Arizona peace officer standards and training board is established that consists of thirteen members appointed by the governor. The membership shall include:

1. Two sheriffs, one appointed from a county having a population of two hundred thousand or more persons and the remaining sheriff appointed from a county having a population of less than two hundred thousand persons.
2. Two chiefs of city police, one appointed from a city having a population of sixty thousand or more persons and the remaining chief appointed from a city having a population of less than sixty thousand persons, as reflected by the most recent United States decennial census.
3. A college faculty member in public administration or a related field.
4. The attorney general.
5. The director of the department of public safety.
6. The director of the state department of corrections.
7. One member who is employed in administering county or municipal correctional facilities.
8. Two certified law enforcement officers with a rank of patrolman or sergeant, with one appointed from a county sheriff's office and the other from a city police department.
9. Two public members.

B. The governor shall appoint a chairman from among the members at its first meeting and every year thereafter, except that an ex officio member shall not be appointed chairman. The governor shall not appoint more than one member from the same law enforcement agency. No board member who was qualified when appointed becomes disqualified unless the member ceases to hold the office that qualified the member for appointment.

C. Meetings shall be held at least quarterly or upon the call of the chairman or by the written request of five members of the board or by the governor. A vacancy on the board shall occur when a member except an ex officio member is absent without the permission of the chairman from three consecutive meetings. The governor may remove a member except an ex officio member for cause.

D. The term of each regular member shall be three years unless a member vacates the public office which qualified the member for this appointment.

E. The board members are not eligible to receive per diem but are eligible to receive reimbursement for travel expenses pursuant to title 38, chapter 4, article 2.

F. On behalf of the board, the executive director may seek and accept contributions, grants, gifts, donations, services or other financial assistance from any individual, association, corporation or other organization having an interest in police training, and from the United States of America and any of its agencies or instrumentalities, corporate or otherwise. Only the executive director of the board may seek monies pursuant to this subsection. Such monies shall be deposited in the fund created by section 41-1825.

G. Membership on the board shall not constitute the holding of an office, and members of the board shall not be required to take and file oaths of office before serving on the board. No member of the board shall be disqualified from holding any public office or employment nor shall such member forfeit any such office or

employment by reason of such member's appointment, notwithstanding the provisions of any general, special or local law, ordinance or city charter.

41-1822. Powers and duties of board; definition

A. With respect to peace officer training and certification, the board shall:

1. Establish rules for the government and conduct of the board, including meeting times and places and matters to be placed on the agenda of each meeting.

2. Make recommendations, consistent with this article, to the governor, the speaker of the house of representatives and the president of the senate on all matters relating to law enforcement and public safety.

3. Prescribe reasonable minimum qualifications for officers to be appointed to enforce the laws of this state and the political subdivisions of this state and certify officers in compliance with these qualifications. Notwithstanding any other law, the qualifications shall require United States citizenship, shall relate to physical, mental and moral fitness and shall govern the recruitment, appointment and retention of all agents, peace officers and police officers of every political subdivision of this state. The board shall constantly review the qualifications established by this section and may amend the qualifications at any time, subject to the requirements of section 41-1823.

4. Prescribe minimum courses of training and minimum standards for training facilities for law enforcement officers. Only this state and political subdivisions of this state may conduct basic peace officer training. Basic peace officer academies may admit individuals who are not peace officer cadets only if a cadet meets the minimum qualifications established by paragraph 3 of this subsection. Training shall include:

(a) Courses in responding to and reporting all criminal offenses that are motivated by race, color, religion, national origin, sexual orientation, gender or disability.

(b) Training certified by the director of the department of health services with assistance from a representative of the board on the nature of unexplained infant death and the handling of cases involving the unexplained death of an infant.

(c) Medical information on unexplained infant death for first responders, including awareness and sensitivity in dealing with families and child care providers, and the importance of forensically competent death scene investigations.

(d) Information on the protocol of investigation in cases of an unexplained infant death, including the importance of a consistent policy of thorough death scene investigation.

(e) The use of the infant death investigation checklist pursuant to section 36-3506.

(f) If an unexplained infant death occurs, the value of timely communication between the medical examiner's office, the department of health services and appropriate social service agencies that address the issue of infant death and bereavement, to achieve a better understanding of these deaths and to connect families to various community and public health support systems to enhance recovery from grief.

5. Recommend curricula for advanced courses and seminars in law enforcement and intelligence training in universities, colleges and community colleges, in conjunction with the governing body of the educational institution.

6. Make inquiries to determine whether this state or political subdivisions of this state are adhering to the standards for recruitment, appointment, retention and training established pursuant to this article. The failure of this state or any political subdivision to adhere to the standards shall be reported at the next regularly scheduled meeting of the board for action deemed appropriate by that body.
7. Employ an executive director and other staff as are necessary to fulfill the powers and duties of the board in accordance with the requirements of the law enforcement merit system council.
B. With respect to state department of corrections correctional officers, the board shall:
1. Approve a basic training curriculum of at least two hundred forty hours.
2. Establish uniform minimum standards. These standards shall include high school graduation or the equivalent and a physical examination as prescribed by the director of the state department of corrections.
3. Establish uniform standards for background investigations, including criminal histories under section 41-1750, of all applicants before enrolling in the academy. The board may adopt special procedures for extended screening and investigations in extraordinary cases to ensure suitability and adaptability to a career as a correctional officer.
4. Issue a certificate of completion to any state department of corrections correctional officer who satisfactorily complies with the minimum standards and completes the basic training program. The board may issue a certificate of completion to a state department of corrections correctional officer who has received comparable training in another state if the board determines that the training was at least equivalent to that provided by the academy and if the person complies with the minimum standards.
5. Establish continuing training requirements and approve curricula.
C. With respect to peace officer misconduct, the board may:
1. Receive complaints of peace officer misconduct from any person, request law enforcement agencies to conduct investigations and conduct independent investigations into whether an officer is in compliance with the qualifications established pursuant to subsection A, paragraph 3 of this section.
2. Receive a complaint of peace officer misconduct from the president or chief executive officer of a board recognized law enforcement association that represents the interests of certified law enforcement officers if the association believes that a law enforcement agency refused to investigate or made findings that are contradictory to prima facie evidence of a violation of the qualifications established pursuant to subsection A, paragraph 3 of this section. If the board finds that the law enforcement agency refused to investigate or made findings that contradicted prima facie evidence of a violation of the qualifications established pursuant to subsection A, paragraph 3 of this section, the board shall conduct an independent investigation to determine whether the officer is in compliance with the qualifications established pursuant to subsection A, paragraph 3 of this section and provide a letter of the findings based on the investigation conducted by the board to the president or chief executive officer of the board recognized law enforcement association who made the complaint.
D. The board may:

1. Deny, suspend, revoke or cancel the certification of an officer who is not in compliance with the qualifications established pursuant to subsection A, paragraph 3 of this section.
2. Provide training and related services to assist state, tribal and local law enforcement agencies to better serve the public.
3. Enter into contracts to carry out its powers and duties.
E. This section does not create a cause of action or a right to bring an action, including an action based on discrimination due to sexual orientation.
F. For the purposes of this section, "sexual orientation" means consensual homosexuality or heterosexuality.

41-1823. Adoption of minimum qualifications; certification required
A. No minimum qualifications for law enforcement officers adopted pursuant to this article shall be effective until six months after they have been filed with the secretary of state pursuant to section 41-1031.
B. Except for agency heads duly elected as required by the constitution and persons given the authority of a peace officer pursuant to section 8-205, 11-572, 12-253, 13-916 or 22-131, no person may exercise the authority or perform the duties of a peace officer unless he is certified by the board pursuant to section 41-1822, subsection A, paragraph 3.

41-1824. Training expenditures
In exercising its powers and duties, the board shall endeavor to minimize costs of administration, including utilization of training facilities already in existence and available, so that the greatest possible proportion of the funds available to it shall be expended for the purposes of providing training for local law enforcement officers.

41-1825. Peace officers' training fund
A. A special fund designated as the peace officers' training fund is established. All monies deposited in the fund are continuously appropriated to the department of public safety for the benefit of the board. The monies shall be used exclusively for the costs of training peace officers, including Indian tribe police officers who are training to be qualified pursuant to section 13-3874 and full authority peace officers who are appointed by the director of the state department of corrections and the director of the department of juvenile corrections, for grants to state agencies, counties, cities and towns of this state for peace officer training and for expenses for the operation of the board. No peace officers' training fund monies may be spent for training correctional officers of the state department of corrections.
B. All amounts to be paid or advanced from the fund shall be on warrants drawn by the department of administration on presentation of a proper claim or voucher that is approved and signed by the executive director.
C. The executive director shall lawfully disburse monies as approved by the board.
D. The board may use and the department of public safety shall provide to the board administrative support services. The board shall reimburse the department

for expenses incurred for administrative support services. This subsection does not require the department to provide administrative support services that are different in kind from those that were provided on January 1, 2000. For the purposes of this subsection, "administrative support services" includes all services relating to business office, finance and procurement, information management and technology, fleet, human resources, supply, telecommunications, facilities, security and clerical and administrative assistance personnel.

41-1826. Arizona law enforcement training academy; former property; title transfer
A. Notwithstanding any law to the contrary and for the benefit of the board, the department of public safety shall transfer to the state department of corrections the title to the property that was formerly known as the Arizona law enforcement training academy and that is operated as the correctional officer training academy in Tucson.
B. If at any time after title is transferred the state department of corrections leases or sells the property, the proceeds from the lease or sale shall be deposited, pursuant to sections 35-146 and 35-147, as follows:
1. 53.66 per cent of the proceeds or 53.66 per cent of the fair market value, whichever is greater, in the peace officers' training fund established by section 41-1825.
2. 46.34 per cent of the proceeds or 46.34 per cent of the fair market value, whichever is greater, in the state general fund.

41-1827. Application for grants
Any state agency, county, city or town which desires to receive a grant pursuant to section 41-1825 shall make application to the board for such aid. The application shall contain such information as the board may request.

41-1828. Allocation of monies
A. On the recommendation of the board, the executive director shall allocate and the state treasurer shall pay from the peace officers' training fund to each county, city or town of this state that has applied and qualified for a grant pursuant to this chapter a sum that will reimburse the political subdivision in an amount not to exceed one-half of the salary paid to each peace officer while participating in training. The cost of the training and living and travel expenses up to the maximum as prescribed by title 38, chapter 4, article 2 that are incurred by state, county, city or town officers while participating in training may be paid to the appropriate state agency or political subdivision.
B. If the monies in the peace officers' training fund budgeted by the board for such salary reimbursement are insufficient to allocate such amount to each participating county, city or town, the amount that is allocated to each shall be reduced proportionately. The board may refuse to allocate monies to any state agency, county, city or town that has not, throughout the period covered by the allocation, adhered to the recruitment and training standards established by the board as

applicable to personnel recruited or trained by the state agency, county, city or town during the allocation period.

41-1828.01. Required law enforcement agency reporting

A. A law enforcement agency may report to the board any peace officer misconduct in violation of the rules for retention established pursuant to section 41-1822, subsection A, paragraph 3 at any time and shall report this misconduct on the peace officer's termination, resignation or separation from the agency.

B. On request of a law enforcement agency conducting a background investigation of an applicant for the position of a peace officer, another law enforcement agency employing, previously employing or having conducted a complete or partial background investigation on the applicant shall advise the requesting agency of any known misconduct in violation of the rules for retention established pursuant to section 41-1822, subsection A, paragraph 3.

C. Civil liability may not be imposed on either a law enforcement agency or the board for providing information specified in subsections A and B of this section if there exists a good faith belief that the information is accurate.

F-8

ARIZONA OMBUDSMAN – CITIZENS' AIDE (F-16-0707)
Title 2, Chapter 16, All Articles

GOVERNOR'S REGULATORY REVIEW COUNCIL
ANALYSIS OF FIVE-YEAR REVIEW REPORT

MEETING DATE: July 6, 2016 **AGENDA ITEM: F-8**

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

FROM: Chris Kleminich, Staff Attorney

DATE: June 20, 2016

SUBJECT: **ARIZONA OMBUDSMAN-CITIZENS' AIDE (F-16-0707)**
Title 2, Chapter 16, Article 1, General Provisions; Article 2, Handling Confidential Material; Article 3, Receiving and Processing Complaints; Article 4, Conducting Investigations; Article 5, Incorporating Agency Responses into Reports and Recommendations

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COMMENTS ON THE FIVE-YEAR-REVIEW REPORT

Purpose of the Agency and Number of Rules in the Report

The purpose of the Office of Ombudsman-Citizens' Aide (Office) is "to service citizens' complaints by investigating the administrative acts of state agencies and to annually report to the governor, the legislature and the public on its activities." Laws 2010, Ch. 12, § 3.

This five-year-review report covers 20 rules in A.A.C. Title 2, Chapter 16. The rules contain definitions and cover the handling of confidential material, receiving and processing complaints, conducting investigations, and incorporating agency responses into reports and recommendations.

Article Contents, Including the Subject Matter of Each Rule in the Report

Article 1 contains one rule addressing definitions.

Article 2 contains six rules addressing protecting the identity of a complainant or witness; requirement to close case before violating confidentiality; protecting confidential agency information; returning a confidential document to a complainant; prohibition against discussing open complaint investigations; and summaries of closed cases.

Article 3 contains six rules addressing exhausting reasonable alternatives within the agency; inmate complaints; resolution without investigation; anonymous complaints; filing complaints; and complaints alleging employee misconduct.

Article 4 contains four rules addressing notice; closing cases; findings; and recommendations.

Article 5 contains three rules addressing preliminary reports; final reports; and advising the complainant.

Year that Each Rule was Last Amended or Newly Made

All of the rules were last amended or newly made on June 4, 2006.

Proposed Action

None.

Summary of Reasons for the Proposed Action

The Office indicates that the rules are effective, are consistent with other rules and statutes, are enforced as written, and are clear, concise, and understandable.

Substantive or Procedural Concerns

None.

Analysis of the agency's report pursuant to criteria in A.R.S. § 41-1056 and R1-6-301:

1. **Has the agency certified that it is in compliance with A.R.S. § 41-1091?**

Yes. The Office has certified its compliance with A.R.S. § 41-1091.

2. **Has the agency analyzed the rules' effectiveness in achieving their objectives?**

Yes. The Office indicates that the rules are effective in achieving their objectives.

3. **Has the agency received any written criticisms of the rules during the last five years, including any written analysis questioning whether the rules are based on valid scientific or reliable principles or methods?**

Yes. The Office indicates that it has not received any written criticisms of the rules during the last five years.

4. **Has the agency analyzed whether the rules are authorized by statute?**

Yes. A.R.S. § 41-1376(A)(3) requires the Office to adopt rules to ensure that confidential information that the office gathers will not be disclosed to unauthorized individuals. In addition, A.R.S. § 41-1376(A)(5) requires the Office to adopt rules that "establish procedures for receiving and processing complaints, including guidelines to ensure each complainant has exhausted all

reasonable alternatives within the agency, conducting investigations, incorporating agency responses into recommendations and reporting findings."

5. Has the agency analyzed the rules' consistency with other rules and statutes?

Yes. The Office indicates that the rules are consistent with other rules and statutes.

6. Has the agency analyzed the current enforcement status of the rules?

Yes. The Office indicates that the rules are enforced as written.

7. Has the agency analyzed whether the rules are clear, concise, and understandable?

Yes. The Office indicates that the rules are clear, concise, and understandable.

8. Stringency of the Rules:

a. Are the rules more stringent than corresponding federal law?

No. The Office indicates that no federal laws directly correspond to the rules.

b. If so, is there statutory authority to exceed the requirements of federal law?

Not applicable.

9. For rules adopted after July 29, 2010:

The Office indicates that the rules were adopted before July 29, 2010, and do not establish licensing, certification, or permit requirements.

a. Do the rules require issuance of a regulatory permit, license or agency authorization?

Not applicable.

b. If so, are the general permit requirements of A.R.S. § 41-1037 met or does an exception apply?

Not applicable.

10. Has the agency indicated whether it completed the course of action identified in the previous five-year-review report?

Yes. The Office indicates that no action was proposed in the 2011 five-year-review report.

11. Has the agency included a proposed course of action?

Yes. No action is proposed.

Conclusion

The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. Staff recommends that the report be approved.

GOVERNOR'S REGULATORY REVIEW COUNCIL
M E M O R A N D U M

MEETING DATE: July 6, 2016 **AGENDA ITEM: F-8**

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

FROM: GRRC Economic Team

DATE: June 20, 2016

SUBJECT: **ARIZONA OMBUDSMAN-CITIZENS' AIDE (F-16-0707)**
Title 2, Chapter 16, Article 1, General Provisions; Article 2, Handling Confidential Material; Article 3, Receiving and Processing Complaints; Article 4, Conducting Investigations; Article 5, Incorporating Agency Responses into Reports and Recommendations

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I reviewed the five-year-review report's economic, small business, and consumer impact comparison for compliance with A.R.S. § 41-1056 and make the following comments.

1. Economic Impact Comparison

Economic, small business, and consumer impact statements (EIS) from the most recent rulemakings were available for the rules contained in the five-year-review report.

The rules detail procedures for receiving and processing complaints, including guidelines to ensure each complainant has exhausted all reasonable alternatives within the agency, conducting investigations, incorporating agency responses into recommendations and reporting findings, as well as ensuring that confidential information that the office gathers will not be disclosed to unauthorized individuals

The total number of approaches to resolving cases has stayed consistent with the 2006 EIS. When complaints are made against a state agency or employee, the Office takes one of three approaches to each contact. The Office first provides coaching to the parties involved in the case to help ensure they have adequate information. When coaching is not enough, the Office tries to resolve the problem quickly and informally by facilitating communication between the complainant and the agency. The third approach results in a formal investigation. In 2004, the year cited in the 2006 rulemaking, 60% of the contacts resulted in coaching, 35% of the contacts were resolved by informal assistance, and less than 5% of the contacts in resulted in an investigations.

YEAR	Coaching Cases	Assistance Cases	Investigation Cases	TOTAL CASES
2010	2353	1388	202	3943
2011	1806	1931	267	4004
2012	3191	1324	219	4734
2013	3388	1253	212	4853
2014	3590	1408	245	5243
2015	3166	1403	398	4967

2. Has the agency determined that the rules impose the least burden and costs to persons regulated by the rules?

The Office has determined that the rules in Article 1 through 5 impose the least burden and costs to the regulated community.

3. Was an analysis submitted to the agency under A.R.S. § 41-1056(A)(7)?

No analysis was submitted to the agency by another person that compares the rules' impact on this state's business competitiveness to the impact on businesses in other states under A.R.S. § 41-1056(A)(7).

4. Conclusion

After review, staff concludes that the report complies with A.R.S. § 41-1056 and recommends approval.

Arizona Ombudsman-Citizens' Aide
3737 N. 7th St., Ste. 209
Phoenix, Arizona 85014
(602) 277-7292 (800) 872-2879

May 18, 2016

Nicole A. Ong, Chair
Governor's Regulatory Review Council
Arizona Department of Administration
100 N. 15th Avenue, Suite 402
Phoenix, AZ 85007

Dear Ms. Ong:

The Ombudsman-Citizens' Aide has reviewed Arizona Administrative Code, Title 2, Chapter 16, Articles 1 through 5.

The Ombudsman believes that this report complies with the requirements of A.R.S. § 41-1056 and R1-6-301(C). Individual reports on each rule, copies of all authorizing statutes, copies of each rule reviewed, and any economic impact statements completed at the time the rules were promulgated are included in this package. The Department intends to take the action described in the report.

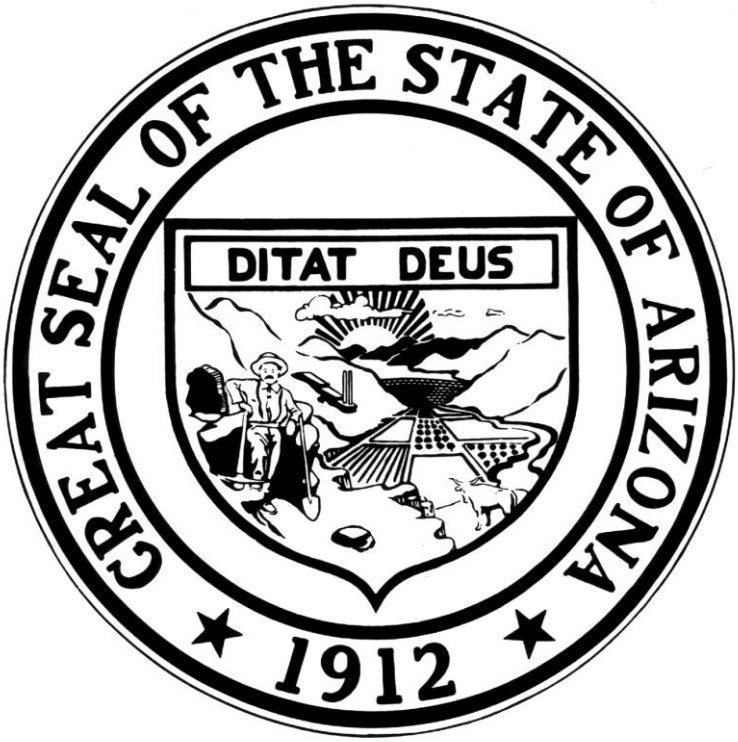
Additionally, the Ombudsman believes that the agency is in compliance with A.R.S. § 41-1091.

If you need any further information, please contact Deputy Ombudsman Joanne MacDonnell at (602) 544-8704 or myself at (602) 544-8709.

Sincerely,

Dennis Wells

Dennis Wells
Ombudsman-Citizens' Aide



Arizona Ombudsman-Citizens Aide
Five-Year Review Report

A.A.C. Title 2, Chapter 16, Articles 1 through 5

Submitted to the

Governor's Regulatory Review Council (GRRC)

2016

Overview of the Ombudsman's Office

The ombudsman-citizens' aide office is a nine-person, independent office of the legislative branch of Arizona State government.

Its mission is to improve the effectiveness, efficiency, and responsiveness of State government by receiving public complaints, investigating the administrative acts of State agencies and, if warranted, recommending a fair and appropriate remedy.

The Ombudsman is an independent and impartial official to whom people can go with grievances about state agencies. The Ombudsman will listen to a citizen's complaint and look into it. If the complaint is justified, the office will help the citizen resolve it through both formal and informal methods.

The Ombudsman has no authority to reverse administrative decisions or to issue orders, but can investigate, make recommendations, and report results to the Governor, Legislature, and public. The office derives its influence from the fact that the Ombudsman is appointed by, and reports directly to, the State Legislature.

The Ombudsman is not a public advocate. Instead, the office is an impartial, independent investigator of complaints. By examining complaints dispassionately and making findings and recommendations free of political bias and influence, the office has earned a reputation for integrity and objectivity.

The Ombudsman will not investigate a complaint until after the complainant has exhausted reasonable avenues of relief within the agency. However, the office helps citizens use existing programs more effectively by providing information and advice and by referring them to the correct administrator who can address the problem.

The office does not replace existing complaint resolution systems. Rather, it supplements those systems by checking to ensure they work effectively and by providing an alternate avenue to resolve those disputes that don't fit existing processes.

Information that is Identical

Title 2, Chapter 16, All Articles

1. General Statute Authorizing the Rules:

A.R.S. § 41-1376(A)(3) requires the office to adopt rules to ensure that confidential information that the office gathers will not be disclosed to unauthorized individuals. Article 2 contains the rules that fulfill this requirement.

A.R.S. § 41-1376(A)(5) requires the office to adopt rules that "establish procedures for receiving and processing complaints, including guidelines to ensure each complainant has exhausted all reasonable alternatives within the agency, conducting investigations, incorporating agency responses into recommendations and reporting findings." Articles 1, 3, 4, and 5 contain the rules that fulfill this requirement.

3. Effectiveness of the Rules in Achieving Their Objectives:

The rules effectively achieve their objective.

4. Consistency of the Rules with State and Federal Statutes and Rules:

These rules are consistent with federal statutes and rules concerning confidentiality of personal information. There are no other federal statutes or rules with which the office's rules must be consistent.

The rules are consistent with state statutes and rules.

5. Enforcement of the Rules:

All of the rules are being enforced and there are no issues with enforcement.

6. Clarity, Conciseness, and Understandability:

All of the rules are clear, concise and understandable.

7. Written Criticisms:

The office has not received any written criticisms regarding the rules during the last five years.

8. Economic, Small Business, and Consumer Impact:

The economic impact of the rules has not differed from the projected economic impact statement submitted for the June 4, 2006 rulemaking, which significantly revised the entire chapter, or the 2011 rulemaking, which reiterated the 2006 economic impact statement.

9. Comparison of Impact in Arizona to Other States:

The office has not received an analysis from a person that compares the rules' impact on this state's business competitiveness to the impact on businesses in other states.

10. Completion of Proposed Action in the Last Five Year Review Report:

No action was proposed in the last five-year-review report.

11. Determination that the Rule Imposes the Least Burden and Costs:

The rules impose the least burden and costs to persons regulated by the rule. All required communication is the minimum required for the office to perform an effective investigation. The benefits of each rule outweigh the probable costs because the rules clarify how the office fulfills its statutory mandates and meets its statutory requirements but adds little additional cost to our office or the agencies over which we have jurisdiction.

12. Analysis of stringency compared to federal laws

The rules are not related to 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 were adopted before July 29, 2010 and do not establish licensing, certification, or permit requirements

14. Proposed Course of Action:

The office has no proposed action.

Analysis of Individual Rules

R2-16-101. Definitions

2. Objective:

This rule defines the terms used throughout Title 2, Chapter 16.

R2-16-201. Protecting the Identity of a Complainant or Witness

2. Objective:

This rule clarifies the prohibition contained in A.R.S. § 41-1378(F) that the office shall not release identifying information about a person making a complaint.

R2-16-203. Requirement to Close Case Before Violating Confidentiality

2. Objective:

This rule establishes a procedure for handling situations when a complainant has requested confidentiality and an investigation reaches a point when the office cannot proceed any further without revealing the complainant's identity.

R2-16-205. Protecting Confidential Agency Information

2. Objective;

This rule informs agencies and the public how the office will accomplish the requirements of A.R.S. § 41-1378(F) and protect confidential information received from a state agency.

R2-16-208. Returning a Confidential Document to a Complainant

2. Objective:

This rule assures a complainant that the office will not provide a confidential document that the office receives from the complainant to anyone else. It also informs complainants that the office will only return documents that the complainant is lawfully entitled to.

R2-16-209. Prohibition Against Discussing Open Complaint Investigations

2. Objective:

This rule informs the public that the office will not discuss open complaint investigations.

R2-16-210. Summaries of Closed Cases

2. Objective:

This rule establishes procedures for providing summaries of closed cases and screening those summaries to prevent the disclosure of confidential information..

R2-16-301. Exhausting Reasonable Alternatives within the Agency

2. Objective:

This rule informs the public how the office ensures that complainants have exhausted reasonable alternatives before intervening, as required by A.R.S. § 41-1376(A)(5).

R2-16-302. Inmate Complaints

2. Objective:

This rule informs the public that the office does not accept complaints from persons in the custody of the department of corrections. It also says that the office does not accept complaints on behalf of inmates.

R2-16-303. Resolution without Investigation

2. Objective:

This rule informs state agencies and the public that the office will resolve a complaint by mutual agreement instead of conducting a full investigation, when appropriate.

R2-16-304. Anonymous Complaints

2. Objective:

This rule establishes criteria for the office to use when deciding whether to accept an anonymous complaint.

R2-16-305. Filing Complaints

2. Objective:

This rule establishes procedures for submitting a complaint against a State agency or an employee.

R2-16-306. Complaints Alleging Employee Misconduct

2. Objective:

This rule establishes Due Process procedures for complaints alleging individual misconduct.

R2-16-401. Notice

2. Objective:

This rule establishes procedures for prior notification to agencies when the office exercises rights of access to records and staff. This rule also informs agencies of the timeframe to respond to these requests.

R2-16-403. Closing Cases

2. Objective:

This rule establishes criteria the office will use when deciding whether to close a case.

R2-16-404. Findings

2. Objective:

This rule specifies the four findings the office may use in an investigative report.

R2-16-405. Recommendations

2. Objective:

This rule informs state agencies and the public of how the office will fulfill the requirement contained in A.R.S. § 41-1376(B) to make recommendations to agencies.

R2-16-501. Preliminary Report

2. Objective:

This rule establishes procedures for incorporating agency responses into findings and recommendations.

R2-16-502. Final Report

2. Objective:

This rule prescribes the process the office and agencies will follow to produce a final report from a preliminary report.

R2-16-503. Advising the Complainant

2. Objective:

This rule informs citizens how the office will fulfill the statutory requirement contained in A.R.S. § 41-1379(D) to notify a complainant of the results of an investigation.

TITLE 2. ADMINISTRATION

CHAPTER 16. OFFICE OF THE OMBUDSMAN CITIZENS' AIDE

(Authority: A.R.S. § 41-1376 et seq.)

Editor's Note: The Office of the Secretary of State publishes all Code Chapters on white paper (Supp. 02-1).

Editor's Note: This Chapter contains rules which were adopted under an exemption from the provisions of the Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1995, Ch. 281, Section 5. Exemption from A.R.S. Title 41, Chapter 6 means that the Office of the Ombudsman did not submit these rules to the Governor's Regulatory Review Council for review; the Office did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; and the Office was not required to hold public hearings on these rules. According to Laws 1995, Ch. 281, Section 5, the Office of Ombudsman-Citizens' Aide is exempt from the requirements of A.R.S. Title 41, Chapter 6 until July 1, 1997. Because this Chapter contains rules which are exempt from the regular rulemaking process, the Chapter is being printed on blue paper.

ARTICLE 1. GENERAL PROVISIONS

Article 1, consisting of Section R2-16-101, adopted effective October 30, 1996 (Supp. 96-4).

Section
R2-16-101. Definitions

ARTICLE 2. HANDLING CONFIDENTIAL MATERIAL

Article 2, consisting of Sections R2-16-201 through R2-16-210, adopted effective October 30, 1996 (Supp. 96-4).

Section
R2-16-201. Protecting the Identity of a Complainant or Witness
R2-16-202. Expired
R2-16-203. Requirement to Close Case before Violating Confidentiality
R2-16-204. Expired
R2-16-205. Protecting Confidential Agency Information
R2-16-206. Expired
R2-16-207. Expired
R2-16-208. Returning a Confidential Document to a Complainant
R2-16-209. Prohibition against Discussing Open Complaint Investigations
R2-16-210. Summaries of Closed Cases

ARTICLE 3. RECEIVING AND PROCESSING COMPLAINTS

Article 3, consisting of Sections R2-16-301 through R2-16-306, amended by final rulemaking at 12 A.A.R. 1372, effective June 4, 2006 (Supp. 06-2).

Article 3, consisting of Sections R2-16-301 through R2-16-306, adopted effective October 30, 1996 (Supp. 96-4).

Section
R2-16-301. Exhausting Reasonable Alternatives within the Agency
R2-16-302. Inmate Complaints
R2-16-303. Resolution without Investigation
R2-16-304. Anonymous Complaints
R2-16-305. Filing Complaints
R2-16-306. Complaints Alleging Employee Misconduct

ARTICLE 4. CONDUCTING INVESTIGATIONS

Article 4, consisting of Sections R2-16-401 through R2-16-405, adopted effective October 30, 1996 (Supp. 96-4).

Section
R2-16-401. Notice
R2-16-402. Expired
R2-16-403. Closing Cases
R2-16-404. Findings
R2-16-405. Recommendations

ARTICLE 5. INCORPORATING AGENCY RESPONSES INTO REPORTS AND RECOMMENDATIONS

Article 5, consisting of Sections R2-16-501 through R2-16-503, amended by final rulemaking at 12 A.A.R. 1372, effective June 4, 2006 (Supp. 06-2).

Article 5, consisting of Sections R2-16-501 through R2-16-503, adopted effective October 30, 1996 (Supp. 96-4).

Section
R2-16-501. Preliminary Report
R2-16-502. Final Report
R2-16-503. Advising the Complainant

ARTICLE 1. GENERAL PROVISIONS

R2-16-101. Definitions

In addition to the definitions provided in A.R.S. § 41-1371, the following apply in this Chapter:

1. "Complainant" means a person who files a complaint with the Office.
2. "Confidential information" means oral or written information, including a record, for which restricted access is required by federal or Arizona law. Confidential information also includes identifying personal information a complainant or witness requests not be disclosed.
3. "Document" means a paper or electronic: record, memorandum, form, book, letter, file, drawing, map, or plat.
4. "Misconduct" means any act or omission by an employee that constitutes a material or substantial breach of the employee's duties or obligations or that adversely affects a material or substantial interest of the employer.
5. "Office" means the Office of the Ombudsman-Citizens' Aide.
6. "Ombudsman-citizens' aide" means the person appointed to the position of ombudsman-citizens' aide under the provisions of A.R.S. § 41-1373.
7. "Photograph" means a paper or electronic photographic representation, photographic file, motion picture, video tape, microfilm, or microphotograph.

Historical Note

Adopted under an exemption from the Administrative Procedure Act pursuant to Laws 1995, Ch. 281, Section 5; effective October 30, 1996 (Supp. 96-4). Amended by final rulemaking at 12 A.A.R. 1372, effective June 4, 2006 (Supp. 06-2).

ARTICLE 2. HANDLING CONFIDENTIAL MATERIAL

R2-16-201. Protecting the Identity of a Complainant or Witness

The Office shall not release to an agency, the public, or anyone else, information that reveals the identity of a complainant or witness without permission from the complainant or witness.

Historical Note
Adopted under an exemption from the Administrative Procedure Act pursuant to Laws 1995, Ch. 281, Section 5; effective October 30, 1996 (Supp. 96-4). Amended by final rulemaking at 12 A.A.R. 1372, effective June 4, 2006 (Supp. 06-2).

R2-16-202. Expired

Historical Note
Adopted under an exemption from the Administrative Procedure Act pursuant to Laws 1995, Ch. 281, Section 5; effective October 30, 1996 (Supp. 96-4). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 1834, effective February 28, 2002 (Supp. 02-1).

R2-16-203. Requirement to Close Case before Violating Confidentiality
The Office shall stop an investigation and close a case if it cannot proceed further without releasing identifying information about a complainant who requested confidentiality. Before stopping the investigation and closing the case for this reason, the Office shall ask the complainant for permission to release identifying information.

Historical Note
Adopted under an exemption from the Administrative Procedure Act pursuant to Laws 1995, Ch. 281, Section 5; effective October 30, 1996 (Supp. 96-4). Amended by final rulemaking at 12 A.A.R. 1372, effective June 4, 2006 (Supp. 06-2).

R2-16-204. Expired

Historical Note
Adopted under an exemption from the Administrative Procedure Act pursuant to Laws 1995, Ch. 281, Section 5; effective October 30, 1996 (Supp. 96-4). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 1834, effective February 28, 2002 (Supp. 02-1).

R2-16-205. Protecting Confidential Agency Information
The Office shall give confidential information received from an agency the same degree of protection as provided by the agency. The Office shall not release confidential agency information to the complainant, or any other person, without the agency's prior authorization, unless ordered by a court or other lawful authority.

Historical Note
Adopted under an exemption from the Administrative Procedure Act pursuant to Laws 1995, Ch. 281, Section 5; effective October 30, 1996 (Supp. 96-4). Amended by final rulemaking at 12 A.A.R. 1372, effective June 4, 2006 (Supp. 06-2).

R2-16-206. Expired

Historical Note
Adopted under an exemption from the Administrative Procedure Act pursuant to Laws 1995, Ch. 281, Section 5; effective October 30, 1996 (Supp. 96-4). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 1834, effective February 28, 2002 (Supp. 02-1).

R2-16-207. Expired

Historical Note
Adopted under an exemption from the Administrative Procedure Act pursuant to Laws 1995, Ch. 281, Section 5; effective October 30, 1996 (Supp. 96-4). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 1834, effective February 28, 2002 (Supp. 02-1).

R2-16-208. Returning a Confidential Document to a Complainant
When requested, the Office shall return a confidential document received from a complainant to the complainant. The Office shall not release a confidential document to anyone other than the complainant unless the complainant provides written authorization for release of the document to a third party or the Office determines that the document was not lawfully in the possession of the complainant.

Historical Note
Adopted effective October 30, 1996 (Supp. 96-4). Amended by final rulemaking at 12 A.A.R. 1372, effective June 4, 2006 (Supp. 06-2).

R2-16-209. Prohibition against Discussing Open Complaint Investigations
The Office shall not discuss an open complaint investigation with the general public or the media.

Historical Note
Adopted under an exemption from the Administrative Procedure Act pursuant to Laws 1995, Ch. 281, Section 5; effective October 30, 1996 (Supp. 96-4). Amended by final rulemaking at 12 A.A.R. 1372, effective June 4, 2006 (Supp. 06-2).

R2-16-210. Summaries of Closed Cases
The Office shall make available to the public a summary of a closed case if the Office determines that the summary will assist in the management of a state government program, respond to an inquiry about the performance of a state program, or inform the public about the activity and performance of the Office. The Office shall ensure that the summary does not disclose identifying information about a complainant or witness whose identity is protected, confidential investigator notes, or confidential information received from an agency.

Historical Note
Adopted under an exemption from the Administrative Procedure Act pursuant to Laws 1995, Ch. 281, Section 5; effective October 30, 1996 (Supp. 96-4). Amended by final rulemaking at 12 A.A.R. 1372, effective June 4, 2006 (Supp. 06-2).

ARTICLE 3. RECEIVING AND PROCESSING COMPLAINTS

R2-16-301. Exhausting Reasonable Alternatives within the Agency

A. The Office shall make inquiry of the complainant and the agency to determine whether a complainant has exhausted all reasonable alternatives to resolve a complaint within an agency before initiating an investigation.

B. If the complainant has not made a reasonable effort to resolve the complaint within the agency, the Office shall refer the complainant to the appropriate person or office within the agency and provide the complainant information about available steps to resolve the complaint.

C. The Office shall defer action in a matter that is being litigated in the courts or is the subject of a current formal administrative procedure unless the ombudsman-citizens' aide determines that immediate action is necessary to protect the public health, safety, or welfare.

Historical Note
Adopted under an exemption from the Administrative Procedure Act pursuant to Laws 1995, Ch. 281, Section 5; effective October 30, 1996 (Supp. 96-4). Amended by

final rulemaking at 12 A.A.R. 1372, effective June 4, 2006 (Supp. 06-2).

R2-16-302. Inmate Complaints

In accordance with A.R.S. § 41-1377, the Office shall refuse to investigate a complaint filed by a person in the custody of the Department of Corrections, filed by another person on behalf of an inmate, or concerning a rule or substantive policy statement about inmates.

Historical Note

Adopted under an exemption from the Administrative Procedure Act pursuant to Laws 1995, Ch. 281, Section 5; effective October 30, 1996 (Supp. 96-4). Amended by final rulemaking at 12 A.A.R. 1372, effective June 4, 2006 (Supp. 06-2).

R2-16-303. Resolution without Investigation

If a complaint can be resolved quickly by mutual agreement, the Office shall attempt to resolve the complaint informally, without resorting to an investigation.

Historical Note

Adopted under an exemption from the Administrative Procedure Act pursuant to Laws 1995, Ch. 281, Section 5; effective October 30, 1996 (Supp. 96-4). Amended by final rulemaking at 12 A.A.R. 1372, effective June 4, 2006 (Supp. 06-2).

R2-16-304. Anonymous Complaints

The Office shall not investigate an anonymous complaint. If the Office receives facts from an anonymous source that are compelling and can be reasonably independently verified, the Office may investigate the matter if it is within the scope of A.R.S. § 41-1377.

Historical Note

Adopted under an exemption from the Administrative Procedure Act pursuant to Laws 1995, Ch. 281, Section 5; effective October 30, 1996 (Supp. 96-4). Amended by final rulemaking at 12 A.A.R. 1372, effective June 4, 2006 (Supp. 06-2).

R2-16-305. Filing Complaints

A. A complaint against an agency shall be filed with the Office in person or by the U.S. Postal Service, telephone, electronic facsimile, or electronic mail.

B. A complaint that alleges misconduct by a state employee shall be in writing, signed by the complainant, and filed with the Office in person or by the U. S. Postal Service or electronic facsimile.

Historical Note

Adopted under an exemption from the Administrative Procedure Act pursuant to Laws 1995, Ch. 281, Section 5; effective October 30, 1996 (Supp. 96-4). Amended by final rulemaking at 12 A.A.R. 1372, effective June 4, 2006 (Supp. 06-2).

R2-16-306. Complaints Alleging Employee Misconduct

A. Before investigating an allegation of misconduct by a state employee, the Office shall provide written notice of the pending investigation to the employee and the chief executive officer of the employee's agency.

B. If an investigation of an allegation of misconduct by a state employee results in a preliminary report that contains an adverse opinion or recommendation, the Office shall consult with the employee about the preliminary report before submitting the preliminary report to the agency and shall include the employee's written response, if any, with the preliminary report that is forwarded to the agency.

1. This consultation with the employee shall be confidential and shall not be publicly disclosed.
2. The employee shall have 15 working days to respond to the preliminary report, unless the ombudsman - citizens' aide believes a 15-day delay will cause significant harm.
3. An employee may request an extension of time in which to respond to the preliminary report for a compelling reason. The Office shall grant the request unless the ombudsman-citizens' aide believes an extension will cause significant harm.

C. If an investigation of an allegation of misconduct by a state employee results in a final report that contains an adverse opinion or recommendation, the Office shall consult with the employee about the final report before submitting the final report to the agency and shall include the employee's written response, if any, with the final report that is forwarded to the agency.

1. The employee shall have 15 working days to respond to the final report, unless the ombudsman - citizens' aide believes a 15-day delay will cause significant harm.
2. An employee may request an extension of time in which to respond to the final report for a compelling reason. The Office shall grant the request unless the ombudsman-citizens' aide believes an extension will cause significant harm.

Historical Note

Adopted under an exemption from the Administrative Procedure Act pursuant to Laws 1995, Ch. 281, Section 5; effective October 30, 1996 (Supp. 96-4). Amended by final rulemaking at 12 A.A.R. 1372, effective June 4, 2006 (Supp. 06-2).

ARTICLE 4. CONDUCTING INVESTIGATIONS

R2-16-401. Notice

When it will not compromise the effectiveness of an investigation, the Office shall exercise the right of access under A.R.S. § 41-1378 by giving the agency at least 10 days notice before conducting interviews, examining necessary records, or requiring the production of information. An agency may request an extension to this period for a compelling reason. The ombudsman-citizens' aide shall grant a request for extension unless the ombudsman-citizens' aide believes a delay will cause significant harm or damage.

Historical Note

Adopted under an exemption from the Administrative Procedure Act pursuant to Laws 1995, Ch. 281, Section 5; effective October 30, 1996 (Supp. 96-4). Amended by final rulemaking at 12 A.A.R. 1372, effective June 4, 2006 (Supp. 06-2).

R2-16-402. Expired

Historical Note

Adopted under an exemption from the Administrative Procedure Act pursuant to Laws 1995, Ch. 281, Section 5; effective October 30, 1996 (Supp. 96-4). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 1834, effective February 28, 2002 (Supp. 02-1).

R2-16-403. Closing Cases

The Office may close a case for any of the following reasons:

1. *Discontinued*. The ombudsman-citizens' aide determines that an investigation should be terminated before the investigation is completed because:
   a. Disclosure of the complainant's identity is necessary to enable full investigation and the complainant refuses to allow the disclosure;

b. Information or a record is requested from the complainant and the complainant fails to produce the information or record within the time specified by the Office;
c. The complainant withdraws the complaint;
d. The complaint relates to a matter that has become the subject of an administrative or judicial proceeding;
e. The Office forwards the complaint to an appropriate prosecutor because it involves possible criminal activity; or
f. The ombudsman-citizens' aide determines there is other good cause not to proceed with an investigation;

2. *Closed - not substantiated.* Following an investigation, the ombudsman-citizens' aide makes a finding that the allegations in the complaint are not substantiated;
3. *Closed - complaint resolved (before preliminary report).* Following an investigation, the ombudsman-citizens' aide determines that the complaint has merit, either wholly or in part, and, before a preliminary report is issued, the agency agrees to provide a remedy that is acceptable to the agency and the ombudsman-citizens' aide;
4. *Closed - complaint resolved (after preliminary report).* Following an investigation, the ombudsman - citizens' aide determines that the complaint has merit, either wholly or in part, and, after a preliminary report is issued, the agency agrees to provide a remedy that is acceptable to the ombudsman-citizens' aide;
5. *Closed - complaint unresolved.* Following an investigation, the ombudsman - citizens' aide determines that the complaint has merit, either wholly or in part, and the agency does not accept the recommendations of the ombudsman - citizens' aide; or
6. *Other.* Any other reason the Office determines requires that a complaint be closed.

Historical Note
Adopted under an exemption from the Administrative Procedure Act pursuant to Laws 1995, Ch. 281, Section 5; effective October 30, 1996 (Supp. 96-4). Amended by final rulemaking at 12 A.A.R. 1372, effective June 4, 2006 (Supp. 06-2).

R2-16-404. Findings

The Office shall make one of the following findings in an investigative report:

1. *Substantiated.* The investigation establishes that the administrative act did occur and the complainant's criticism of the administrative act is valid.
2. *Partially substantiated.*
   a. In a complaint having multiple allegations, the investigation establishes that at least one allegation is substantiated and at least one allegation is not substantiated or indeterminate; or
   b. The investigation establishes there is shared fault between the complainant and agency.
3. *Not substantiated.* The investigation establishes that:
   a. The administrative act did not occur; or
   b. The administrative act occurred, but the complainant's criticism of the administrative act is not valid.
4. *Indeterminate.* The investigation does not provide sufficient evidence for the Office to determine conclusively:
   a. Whether the administrative act occurred; or
   b. If the administrative act occurred, whether the complainant's criticism of the administrative act is valid.

Historical Note
Adopted under an exemption from the Administrative Procedure Act pursuant to Laws 1995, Ch. 281, Section 5; effective October 30, 1996 (Supp. 96-4). Amended by final rulemaking at 12 A.A.R. 1372, effective June 4, 2006 (Supp. 06-2).

R2-16-405. Recommendations

A. In accordance with A.R.S. §§ 41-1376 and 41-1379, the Office shall recommend a resolution to a complaint when a completed investigation results in a finding of "substantiated" or "partially substantiated."
B. The Office shall not recommend that a specific employee disciplinary action be imposed.

Historical Note
Adopted under an exemption from the Administrative Procedure Act pursuant to Laws 1995, Ch. 281, Section 5; effective October 30, 1996 (Supp. 96-4). Amended by final rulemaking at 12 A.A.R. 1372, effective June 4, 2006 (Supp. 06-2).

ARTICLE 5. INCORPORATING AGENCY RESPONSES INTO REPORTS AND RECOMMENDATIONS

R2-16-501. Preliminary Report

A. Before issuing an opinion or recommendation, the Office shall consult with the agency and send a confidential preliminary report to the agency.
B. In accordance with A.R.S. § 41-1379, the Office or agency may share a preliminary report with other state officials only if it is necessary to resolve the complaint, but shall not publicly disclose the contents of the preliminary report.
C. An agency may seek modification of an opinion or recommendation presented in the preliminary report by including a request for modification in a written response submitted within 15 working days of receiving the preliminary report.
D. An agency may request, for a compelling reason, an extension to the time in which to respond. The Office shall grant an agency's request for extension, unless the ombudsman-citizens' aide believes an extension will cause significant harm or damage.
E. The Office shall consider an agency's request for modification of an opinion or recommendation before it prepares the final report and shall notify the agency of the acceptance or rejection of the request within 15 working days of receiving the request.
F. If an agency does not request modification, the preliminary report becomes the final report 15 working days after the agency receives the preliminary report.

Historical Note
Adopted under an exemption from the Administrative Procedure Act pursuant to Laws 1995, Ch. 281, Section 5; effective October 30, 1996 (Supp. 96-4). Amended by final rulemaking at 12 A.A.R. 1372, effective June 4, 2006 (Supp. 06-2).

R2-16-502. Final Report

A. After the Office receives an agency's response, if any, to a preliminary report and makes accepted modifications to the preliminary report, or if no timely response is filed, the Office shall send the final report to the chief executive officer of the agency.
B. If the Office requests that an agency respond to a final report, the agency shall respond to the Office, in writing, within 20 working days after receiving the final report. The agency shall include in the response the agency's decision to accept or reject a recommendation. If the agency accepts a recommen-

dation, the agency shall specify a date by which the recommendation will be implemented.

C. If the ombudsman-citizens' aide determines that an early response to a final report is necessary to protect the public health, safety, or welfare, the Office shall require an agency to respond on a date sooner than 20 working days. Additionally, the ombudsman - citizens' aide may extend a response period for good cause at the request of an agency.

Historical Note

Adopted under an exemption from the Administrative Procedure Act pursuant to Laws 1995, Ch. 281, Section 5; effective October 30, 1996 (Supp. 96-4). Amended by final rulemaking at 12 A.A.R. 1372, effective June 4, 2006 (Supp. 06-2).

R2-16-503. Advising the Complainant

A. The Office shall provide a final response to a complainant. If requested by the complainant, the Office shall provide the final response in writing.

B. Before releasing a final report to any person not authorized to receive confidential information, the Office shall purge the final report of any confidential information.

Historical Note

Adopted under an exemption from the Administrative Procedure Act pursuant to Laws 1995, Ch. 281, Section 5; effective October 30, 1996 (Supp. 96-4). Amended by final rulemaking at 12 A.A.R. 1372, effective June 4, 2006 (Supp. 06-2).

41-1376. Powers and duties

A. The ombudsman-citizens aide shall:

1. Investigate the administrative acts of agencies pursuant to section 41-1377, subsections A and B except as provided in section 41-1377, subsections C, D and E. The ombudsman-citizens aide shall investigate the administrative acts of an agency without regard to the finality of the administrative act.

2. Annually before January 1 prepare a written report to the governor, the legislature and the public that contains a summary of the ombudsman-citizens aide's activities during the previous fiscal year. The ombudsman-citizens aide shall semiannually present this report before the legislative council and distribute copies of the report to the director of the governor's office of strategic planning and budgeting, the chairperson of the joint legislative budget committee and the cochairpersons of the administrative rules oversight committee. This report shall include:

(a) The ombudsman-citizens aide's mission statement.

(b) The number of matters that were within each of the categories specified in section 41-1379, subsection B.

(c) Legislative issues affecting the ombudsman-citizens aide.

(d) Selected case studies that illustrate the ombudsman-citizens aide's work and reasons for complaints.

(e) Ombudsman-citizens aide's contact statistics.

(f) Ombudsman-citizens aide's staff.

3. Before conducting the first investigation, adopt rules that ensure that confidential information that is gathered will not be disclosed.

4. Appoint a deputy ombudsman and prescribe the duties of employees or, subject to appropriation, contract for the services of independent contractors necessary to administer the duties of the office of ombudsman-citizens aide. All staff serves at the pleasure of the ombudsman-citizens aide, and they are exempt from chapter 4, articles 5 and 6 of this title. All staff shall be subject to the conflict of interest provisions of title 38, chapter 3, article 8.

5. Before conducting the first investigation, adopt rules that establish procedures for receiving and processing complaints, including guidelines to ensure each complainant has exhausted all reasonable alternatives within the agency, conducting investigations, incorporating agency responses into recommendations and reporting findings.

6. Notify the chief executive or administrative officer of the agency in writing of the intention to investigate unless notification would unduly hinder the investigation or make the investigation ineffectual.

7. Appoint an assistant to help the ombudsman-citizens aide investigate complaints relating to the department of child safety. The assistant shall have expertise in the department of child safety procedures and laws. Notwithstanding any law to the contrary, the ombudsman-citizens aide and the assistant have access to the department of child safety records and to any automated case management system used by the department of child safety.

B. After the conclusion of an investigation and notice to the head of the agency pursuant to section 41-1379, the ombudsman-citizens aide may present the ombudsman-citizens aide's opinion and recommendations to the governor, the legislature, the office of the appropriate prosecutor or the public, or any combination of these persons. The ombudsman-citizens aide shall include in the opinion the reply of the agency, including those issues that were resolved as a result of the ombudsman-citizens aide's preliminary opinion or recommendation.