DEPARTMENT OF TRANSPORTATION (R-18-0501)
Title 17, Chapter 4, Article 5, Safety; Article 7, Hazardous Materials Endorsement

Amend:   R17-4-501; R17-4-508; R17-4-701; R17-4-702; R17-4-705; R17-4-706;
         R17-4-707; R17-4-709; R17-4-710; R17-4-712
Repeal:  R17-4-507
GOVERNOR’S REGULATORY REVIEW COUNCIL
MEMORANDUM

MEETING DATE: May 1, 2018
AGENDA ITEM: E-1

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

FROM: Council Staff

DATE: April 16, 2018

SUBJECT: DEPARTMENT OF TRANSPORTATION (R-18-0501)
Title 17, Chapter 4, Article 5, Safety; Article 7, Hazardous Materials Endorsement

Amend: R17-4-501; R17-4-508; R17-4-701; R17-4-702; R17-4-705; R17-4-706; R17-4-707; R17-4-709; R17-4-710; R17-4-712
Repeal: R17-4-507

SUMMARY OF THE RULEMAKING

In this rulemaking, the Department of Transportation (Department) seeks to amend eleven rules in A.A.C. Title 17, Chapter 4, Articles 5 and 7, related to commercial driver license (CDL) physical qualifications and hazardous materials endorsements (HME). The updated rules will clarify what is required to obtain a commercial driver license.

The rules were last updated on varying dates between January 2001 and March 2008. The Department’s request for a rulemaking exemption was approved on September 18, 2015. The Department indicates that the rules are being updated to ensure consistency between the Department’s regulations, state statutes, and federal regulations.

Proposed Action

- **Section 501** – **Definitions**: “Arizona Driver License Manual,” “Director,” and “Identification Number” are removed as they are not used in this Article. “Division” is replaced by “Department” throughout. The capitalization of driver license is corrected. “As defined below” in the definition of “Evaluation” is removed.
- **Section 507** – **Driver License Identification Number**: This rule is no longer necessary because A.R.S. § 28-3158(F) prohibits the Department from using a social security number as a person’s identification number.
• **Section 508 – Commercial Driver License Physical Qualification:** “Division” is replaced by “Department” throughout. The capitalization of “driver license” is corrected throughout. “Medical examination form” is changed to “medical examiner’s certificate” to reflect the changes in 49 CFR 391.43. Technical changes were made to update statutes referenced and sentence structure throughout.
  o Subsection (A)(1)(a) is updated to reflect changes made to 49 CFR 391.43, which requires a medical examination to be conducted by a medical examiner who is listed on the National Registry of Certified Medical Examiners. The sentence structure is updated.
  o Subsection (A)(1)(b) is updated to reflect current practices of maintaining an active medical examiner’s certificate.
  o Subsection (A)(2) is updated to reflect changes to 49 CFR 391.41 which no longer requires a commercial driver license holder to carry an original or photographic copy of the medical examiner’s certificate.
  o Subsections (A)(2)(c) and (d) are removed as they are unnecessary.
  o Subsection (B) added “date” to clarify when the examiner’s certificate is due.
  o Subsection (D) removed “demonstration” as it is unnecessary.
  o Subsection (E) removed “according to the procedure” and added “from the Department” for clarity.

• **Section 701 – Definitions:** Definition of “Department” is added and the numbers are removed for consistent formatting. Definitions are rearranged in alphabetical order.

• **Section 702 – Scope:** The federal reference is updated to a more current edition of 49 CFR 1572 and the reference is updated for clarification and understandability.

• **Section 705 – Required Testing:** The phrase “with an existing HME” after “transfer applicant” is removed as it is repetitious and the word “any” is added before “applicable fee” for clarity.

• **Section 706 – Fees:** The first sentence is revised to “All applicants and transfer applicants shall pay all…” for clarity and understandability.

• **Section 707 – 60-Day Notice to Apply:** “Division” is replaced by “Department” throughout and the capitalization of “driver license” is corrected. Sentence structure is updated to allow for greater clarity.

• **Section 709 – Determination of Security Threat:** “Division is replaced by “Department” throughout and the capitalization of “driver license” is corrected. “Designated” is removed as it was unnecessary.

• **Section 710 – Requests for Administrative Hearing:** The rule is restructured to be more concise and understandable. The statutes reflecting the right to an administrative hearing are added.

• **Section 712 – Transfer Applicant:** Subsections (C) and (D) are removed as they are unnecessary. Subsection (B) is restructured and subsections (B)(2), (3), and (4) are removed as they are no longer necessary. STA is written out for clarity. Sentence structure is updated.
1. **Are the rules legal, consistent with legislative intent, and within the agency’s statutory authority?**

   Yes. For general authority, A.R.S. § 28-366 authorizes the director of the Department to “adopt rules pursuant to [T]itle 41, [C]hapter 6 as the director deems necessary for enforcement of the provisions of the laws the director administers or enforces.” For specific authority, A.R.S. § 28-5204 authorizes the Department to adopt “[r]easonable rules it deems proper governing the safety operations of motor carriers.”

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

   No. The rules do not establish a new fee or contain a fee increase. The Department notes that costs imposed for the HME have decreased and the fee for the U.S. Transportation Security Administration (TSA) HME Security Threat Assessment has decreased from $94 to $86.50.

3. **Summary of the agency’s economic impact analysis:**

   The Department anticipates that the economic impact of these rules is minimal. They do not expect the rulemaking will create a significant increase in costs or benefits to the agency or applicants for a CDL or HME since the rulemaking is generally to update information to be consistent with current federal regulations and current program practices. As of July 1, 2017, there were 106,413 CDL holders, 2,010 CDL holders with HME, and 14,547 CDL holders with dual endorsement of tank and hazardous materials.

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

   The Department has analyzed the costs and benefits and determined that benefits from this rulemaking outweigh the costs. The benefits of the rule making include increased public safety, clarity, understandability, and reduction of possibility of confusion for an agency, business, or person. In addition, this rulemaking will keep the state consistent with federal regulations, which allows the state to be eligible for federal funds.

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

   The Department does not expect the rule making to create a significant increase or decrease in costs or benefit to the agency since the rulemaking is generally intended to update the terminology and practices to be consistent with the federal motor carrier safety and hazardous materials regulations. The Department anticipates no new economic impact to qualified persons and business entities.

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

   Yes. The Department indicates that it did not receive any public or stakeholder comments on the proposed rule changes.
7. Are the final rules a substantial change, considered as a whole, from the proposed rules and any supplemental proposals?

No. In the final rules, “director” was removed from R17-4-501 as it is already defined in A.R.S. § 28-101. Additional minor changes were made to update terminology and technical changes were made to ensure conformity and understandability throughout. The final rules are not a substantial change from the proposed rules.

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

No. The Department indicates that the rules are not more stringent than corresponding federal laws. Federal regulations in 49 CFR 383, 390, 391, and 1572 are applicable to the rules and establish the standards required to obtain a commercial driver’s license and for Security Threat Assessments.

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

Yes. The issuance of CDL and HME require permits under A.A.C. Title 17, Chapter 5, Article 2. These rules concern only the requirements for applicants of a CDL or HME. The Department indicates that these permits are general as the activities and practices between holders are substantially the same.

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

No. The Department indicates that it did not review or rely on any study relevant to the rules.

11. Conclusion

If approved, the rules will become effective immediately upon filing with the Secretary of State. The Department requests this immediate effective date under A.R.S. § 41-1032(A) to generally preserve public peace, health, and safety, and to specifically avoid a violation of federal law or regulation or state law. Council staff recommends approval of the rulemaking.
March 8, 2018

Ms. Nicole O. Coyler, Chair
Governor’s Regulatory Review Council
100 N. 15th Ave., Suite 305
Phoenix, AZ  85007

Re: Administrative Rule R17-4-501, R17-4-507, R17-4-508, R17-4-701, R17-4-702, R17-4-705, R17-4-706, R17-4-707, R17-4-709, R17-4-710, and R17-4-712 – Motor Carriers Federal Regulation Updates

Dear Ms. Coyler:

The Arizona Department of Transportation submits the accompanying final rule package for consideration by the Governor’s Regulatory Review Council. The following information is provided to comply with R1-6-201(A)(1):

a. The rulemaking record closed on November 14, 2017, and written public comments were not received on these rules;

b. The rulemaking activity does not relate to a five-year review report, but one was completed and approved in October 2016 after this rulemaking began and was taken in consideration;

c. The rulemaking does not establish a new fee;

d. The rulemaking does not increase an existing fee;

e. An immediate effective date is requested for these rules under A.R.S. § 41-1032;

f. The preamble discloses that the Department did not review any studies relevant to the rules and did not rely on any studies in its evaluation of or justification for the rules;

g. No new full-time employees are necessary to implement and enforce the rules;

h. Documents included in this final rule package are as follows:

1. Signed cover letter;

2. Notice of Final Rulemaking;

3. Economic, Small Business and Consumer Impact Statement;

4. General authorizing statutes and specific statutes;

5. Definitions of terms;

6. Material incorporated by reference; and

7. Request for, and approval of, the Department’s exception from the rulemaking moratorium.

Sincerely,

John S. Halikowski
ADOT Director

Enclosure
NOTICE OF FINAL RULEMAKING

TITLE 17. TRANSPORTATION

CHAPTER 4. DEPARTMENT OF TRANSPORTATION

TITLE, REGISTRATION, AND DRIVER LICENSES

PREAMBLE

1. Article, Part, or Section Affected (as applicable) | Rulemaking Action
---|---
R17-4-501 | Amend
R17-4-507 | Repeal
R17-4-508 | Amend
R17-4-701 | Amend
R17-4-702 | Amend
R17-4-705 | Amend
R17-4-706 | Amend
R17-4-707 | Amend
R17-4-709 | Amend
R17-4-710 | Amend
R17-4-712 | Amend

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

   Implementing statute: A.R.S. §§ 28-3103, 28-3159(A)(3), and 28-3223

3. The effective date of the rule:

   Month X, 2018 (To be completed by the Register Editor with an immediate effective date.)

   a. If the agency selected a date earlier than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):

      The Arizona Department of Transportation (ADOT) requests that this rulemaking be effective immediately on filing with the Office of the Secretary of State, Month X, 2018 (To be completed by the Register Editor), as permitted under A.R.S. § 41-1032, in order to:

      **Preserve the public peace, health, and safety.** These rules are made in connection with the required incorporation by reference of the federal motor carrier safety and hazardous materials regulations in 17 A.A.C. Chapter 5, Article 2, thus ensuring there is a consistency between ADOT’s regulations, state statute, and the federal regulations. These changes allow for a greater understanding by commercial driver licensees and permittees of what is required of them as it pertains to their physical qualifications and, when applicable, eligibility for a hazardous materials endorsement (HME). These regulations safeguard the public by making sure there are healthy and
Avoid a violation of federal law or regulation or state law. ADOT is statutorily required to administer the driver licensing and medical evaluation activities required of commercial motor vehicle drivers under A.R.S. Title 28, Chapter 8, and these rules. ADOT is required under A.R.S. § 28-5204(A)(2) to consider, as evidence of generally accepted safety standards, the publications of the United States Department of Transportation and the Environmental Protection Agency when adopting rules necessary to administer and enforce A.R.S. Title 28, Chapter 14. 49 CFR 384 requires that each state comply with the provisions of section 12009(a) of the Commercial Motor Vehicle Safety Act of 1986 (49 U.S.C. 31311(a)), and adopt and administer a program for testing and ensuring the fitness of persons to operate commercial motor vehicles in accordance with the minimum federal standards contained in 49 CFR 383.

The updated incorporation by reference of the federal motor carrier safety and hazardous materials regulations in 17 A.A.C. Chapter 5, Article 2, allows the Arizona Department of Public Safety (DPS) to be eligible to apply for an estimated $10 million in total federal funding from FMCSA.

b. If the agency selected a date later than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the later date and state the reason or reasons the agency selected the later effective date as provided in A.R.S. § 41-1032(B):

Not applicable

4. Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the record of the final rulemaking package:

Notice of Rulemaking Docket Opening: 23 A.A.R. 2864, October 13, 2017
Notice of Proposed Rulemaking: 23 A.A.R. 2804, October 13, 2017

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

Name: Candace Olson, Rules Analyst
Address: Government Relations and Policy Development Office
Department of Transportation
206 S. 17th Ave., Mail Drop 140A
Phoenix, AZ 85007
Telephone: (602) 712-4534
E-mail: C Olson2@azdot.gov
Web site: http://www.azdot.gov/about/GovernmentRelations

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

ADOT, in partnership with DPS, is engaged in rulemaking to incorporate parts of the 2016 edition of the Code of Federal Regulations and sections of 82 FR 5292, January 17, 2017, in 17 A.A.C. Chapter 5, Article 2. Both ADOT and DPS rely on federal monies that require the adoption of federal motor carrier
safety and hazardous materials regulations. The incorporation of these parts and sections of the *Code of Federal Regulations* impacts ADOT’s rules concerning commercial driver license (CDL) physical qualifications and HMEs. ADOT engages in this rulemaking to ensure its rules are consistent and current with federal regulations, including the requirement that a CDL medical exam be performed by only medical examiners listed on the National Registry of Certified Medical Examiners, requiring a medical examiner’s certificate be carried for only 15 days after issuance, and incorporating the 2016 version of 49 CFR 1572 for the HMEs.

In addition to updating the federal regulation reference in 17 A.A.C, Chapter 4, Article 7, ADOT is removing unnecessary requirements in R17-4-712 since verification of the U.S. Transportation Security Administration (TSA) approval occurs at time of credential issuance and all transfer applicants will have existing TSA approval and ADOT is reformatting subsection (B) to accurately depict the current process of verifying the TSA approval before issuing the CDL with an HME.

ADOT is also repealing R17-4-507; this rule is unnecessary since it is duplicative of language found under A.R.S. §§ 28-3158, 28-3165, and 28-3166.

Additional changes include removing definitions that are not used, updating terminology, ensuring verbiage concerning administrative hearings is consistent, and making minor technical changes to ensure conformity to the rulemaking format and style requirements of the Arizona Administrative Procedure Act and the Office of the Secretary of State.

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:**

   ADOT not review or rely on any study relevant to the rules.

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

   Not applicable

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

   ADOT anticipates that the economic impact of these rules is minimal and does not expect this rulemaking to create a significant increase in costs or benefits to the agency or to applicants for a CDL or HME since the rulemaking is generally to update information to be consistent with current federal regulations and current program practices. There are no new fees associated with this rulemaking and costs imposed for the HME have decreased from the substantial costs originally needed to get the program implemented. The fee for the TSA HME Security Threat Assessment has decreased from $94 to $86.50.

   The benefits of this rulemaking include increased public safety, clarity, concise, understandability, and
reduction of possibility of confusion for an agency, business, or person. In addition, this rulemaking will keep the state consistent with federal regulations which allows the state to be eligible for federal funds. DPS administers and enforces the Federal Motor Carrier Safety Assistance Program (MCSAP) throughout the State of Arizona. For FY 2017, DPS is able to apply for an estimated $10,000,000 in total federal funding from FMCSA.

As of July 1, 2017, there are 106,413 CDL holders, 2,010 CDL holders with a HME, and 14,547 CDL holders with dual endorsement of tank and hazardous materials. As of September 7, 2017, there are 19,632 valid (excluded were any credentials that were cancelled, suspended, revoked, expired, marked for deletion, disqualified, and those that indicate the credential holder is deceased) CDL holders who have successfully completed the required TSA HME Security Threat Assessment. There are 189 applicants who did not successfully complete the required TSA HME Security Threat Assessment.

10. A description of any changes between the proposed rulemaking, to include supplemental notices, and the final rulemaking:
   In R17-4-501, removed the definition “director” since it is already defined under A.R.S. § 28-101 and replaced “Division” with “Department” in the definitions of “applicant,” “application,” and “licensing action” to ensure the language is consistent and in keeping with the Department’s organizational structure.

   In R17-4-501, removed “as defined below” from the definition of “evaluation” since the language is unnecessary.

   In R17-4-508(C)(2), added “medical examiner’s certificate” before “renewal” in order to clarify the type of renewal.

   In addition, minor grammatical and non-substantive technical changes were made upon review and at the request of the Governor’s Regulatory Review Council staff.

11. An agency’s summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments:
   ADOT did not receive any public or stakeholder comments regarding this rulemaking.

12. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:
   There are no other matters prescribed by statute applicable to ADOT or to any specific rule or class of rules.

   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:
      These rules concern certain requirements for applicants of a CDL or HME. A CDL and HME are
general permits since the activities and practices authorized by them are substantially similar in nature for all holders. These rules though do not require the issuance of the CDL or HME; that requirement is under 17 A.A.C. Chapter 5, Article 2.

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

   Federal regulations in 49 CFR 383, 390, 391, and 1572 are applicable to the rules. These rules are in accordance with those federal regulations and are not more stringent.

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

   No analysis was submitted to ADOT

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

   In R17-4-702: 49 CFR 1572, revised as of October 1, 2016

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:**
ARTICLE 5. SAFETY

Section
R17-4-501. Definitions
R17-4-507. Driver License Identification Number Repealed
R17-4-508. Commercial Driver License Physical Qualifications

ARTICLE 7. HAZARDOUS MATERIALS ENDORSEMENT

Section
R17-4-701. Definitions
R17-4-702. Scope
R17-4-705. Required Testing
R17-4-706. Fees
R17-4-707. 60-Day Notice to Apply
R17-4-709. Determination of Security Threat
R17-4-710. Requests for Administrative Hearing
R17-4-712. Transfer Applicant
ARTICLE 5. SAFETY

R17-4-501. Definitions
In addition to the definitions provided under A.R.S. §§ 28-101, 28-3001, 28-3005, and 32-1601, in this Article, unless otherwise specified:

“Adaptation” means a modification of or addition to the standard operating controls or equipment of a motor vehicle.

“Applicant” or “licensee” means a person:

Applying for an Arizona driver license or driver license renewal, or

Required by the Division Department to complete an examination successfully or to obtain an evaluation.

“Application” means the Division Department form required to be completed by or for an applicant for a driver license or driver license renewal.

“Arizona Driver License Manual” or “manual” means the reference booklet for applicants, issued by the Division, containing non-technical explanations of the Arizona motor vehicle laws.

“Aura” means a sensation experienced before the onset of a neurological disorder.

“Commercial Driver License” or “driver license” physical qualifications” means driver medical qualification standards for a person licensed in class A, B, or C to operate a commercial vehicle as prescribed under 49 CFR 391, incorporated by reference under R17-5-202 and R17-5-204.

“Director” means the Division Director or the Division Director’s designee.

“Disqualifying medical condition” means a visual, physical, or psychological condition, including substance abuse, that impairs functional ability.

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

“Evaluation” means a medical assessment of an applicant or licensee by a specialist as defined below to determine whether a disqualifying medical condition exists.

“Examination” means testing or evaluating an applicant’s or licensee’s:

Ability to read and understand official traffic control devices,

Knowledge of safe driving practices and the traffic laws of this state, and

Functional ability.

“Functional ability” means the ability to operate safely a motor vehicle of the type permitted by an Arizona driver license class or endorsement.

“Identification number” means a distinguishing number assigned by the Division to a person for a license or instruction permit.

“Licensee” means a person issued a driver license by this state.

“Licensing action” means an action by the Division Department to:

Issue, deny, suspend, revoke, cancel, or restrict a driver license; or

Require an examination or evaluation of an applicant or licensee.

“Medical code” means a system of numerals or letters indicating the licensee suffers from some type of adverse medical condition.
“Medical screening questions and certification” means the questions and certification on the application.
“Neurological disorder” means a malfunction or disease of the nervous system.
“Seizure” means a neurological disorder characterized by a sudden alteration in consciousness, sensation, motor control, or behavior, due to an abnormal electrical discharge in the brain.
“Specialist” means:
A physician who is a surgeon or a psychiatrist;
A physician whose practice is limited to a particular anatomical or physiological area or function of the human body, patients with a specific age range; or
A psychologist.
“Substance abuse” means:
Use of alcohol in a manner that makes the user an alcoholic as defined in A.R.S. § 36-2021, or
Use of a controlled substance in a manner that makes the user a drug dependent person as defined in A.R.S. § 36-2501.
“Substance abuse counselor” is defined in A.R.S. § 28-3005.
“Substance abuse evaluation” means an assessment by a physician, specialist, or certified substance abuse counselor to determine whether the use of alcohol or a drug impairs functional ability.
“Successful completion of an examination” means an applicant or licensee:
Establishes the visual, physical, and psychological ability to operate a motor vehicle safely, or
Achieves a score of at least 80% on any required tests.

R17-4-507. Driver License Identification Number Repealed
A. The Division shall assign an identification number to each person who receives a driver license, nonoperating identification license, or instruction permit. The Division shall place a person’s identification number on the person’s license, nonoperating identification, or instruction permit.
B. The Division shall not use a person’s Social Security Number as the person’s identification number unless:
1. The person’s current driver license or nonoperating identification license has a Social Security Number as the identification number, or
2. The person requests that the person’s Social Security Number be used as the identification number.

R17-4-508. Commercial Driver License Physical Qualifications
A. Requirements.
1. A Commercial Driver License commercial driver license applicant shall submit to the Division a U.S. Department of Transportation medical examination form examiner’s certificate, available online from the Federal Motor Carrier Safety Administration at https://www.fmcsa.dot.gov, completed as prescribed under 49 CFR 391.43; to the Department.
   a. Except as provided in subsection (A)(1)(c) of this Section, the medical examiner’s certificate must be completed by a professional licensed to practice by the federal government, any state, or U.S.
with one of the following credentials: medical examiner who is listed on the current National Registry of Certified Medical Examiners. A list of certified medical examiners is available on the National Registry website at https://nationalregistry.fmcsa.dot.gov.

i. Medical Doctor,
   ii. Doctor of Osteopathy,
   iii. Doctor of Chiropractic,
   iv. Nurse Practitioner, or
   v. Physician Assistant, and

b. Upon The medical examiner’s certificate must be completed upon the applicant’s initial application and at the time of each 24-month renewal upon or prior to expiration of the applicant’s current medical examiner’s certificate.

c. An optometrist, licensed to practice by the federal government, any state, or U.S. territory, may perform the medical examination as it pertains to visual acuity, field of vision, and the ability to recognize colors as specified in 49 CFR 391.43(b)(10) 391.41(b)(10).

2. As prescribed under 49 CFR 391.41(a) 391.41(a)(2), a licensee who possesses a Commercial Driver License commercial driver license shall keep an original or photographic copy of the licensee’s current medical examination form examiner’s certificate required under subsection (A)(1) available for law enforcement inspection upon request for no more than 15 days after the date it was issued as valid proof of medical certification.

3. A licensee who possesses a Commercial Driver License commercial driver license shall notify the Division Department of a physical condition that develops or worsens causing noncompliance with the Commercial Driver License commercial driver license physical qualifications as soon as the licensee’s medical condition allows.

B. Commercial Driver License driver license suspension and revocation notification procedure. To notify a licensee of any Commercial Driver License commercial driver license suspension and revocation under subsection (C), the Division Department shall simultaneously mail two notices within 15 days after a medical examination form’s examiner’s certificate’s due date or actual submission date to the licensee’s address of record that:

1. Suspends the licensee’s Commercial Driver License commercial driver license beginning on the notice’s date; and
2. Revokes the licensee’s Commercial Driver License commercial driver license 15 days after the date of the suspension notice issued under subsection (B)(1).

C. Noncompliance actions.

1. Initial application denial. If an applicant’s initial medical examination form examiner’s certificate required under subsection (A)(1) shows that the applicant does not comply with the Commercial Driver License commercial driver license physical qualifications, the Division Department shall immediately mail the
Commercial Driver License commercial driver license denial notification to the applicant’s address of record.

2. Twenty-four month renewal Medical examiner’s certificate renewal suspension and revocation. If a renewing Commercial Driver commercial driver licensee submits:
   a. No medical examination form examiner’s certificate required under subsection (A)(1) or a form indicating noncompliance with Commercial Driver License commercial driver license physical qualifications, the Division Department shall follow the suspension and revocation notification procedure prescribed under subsection (B).
   b. An incomplete medical examination form examiner’s certificate required under subsection (A)(1), the Division Department shall immediately return the incomplete form with a letter requesting that the licensee provide missing information to the Division Department within 45 days after the date of the Division’s Department’s letter. The Division Department shall follow the suspension and revocation notification procedure prescribed under subsection (B) if the licensee fails to return the requested information in the time-frame prescribed in this subsection.
   c. A medical examination form required under subsection (A)(1) that indicates the licensee’s blood pressure is greater than 140 systolic or 90 diastolic, the Division Department shall mail notice to the licensee requiring three additional blood pressure evaluations:
      i. Made on three different days,
      ii. Performed by a qualified professional as prescribed under subsection (A)(1)(a), and
      iii. Returned to the Division Department within 90 days after the Division’s Department’s written notification. The Division Department shall follow the suspension and revocation notification procedure prescribed under subsection (B) if the licensee fails to return requested information prescribed under this subsection.
   d. A medical examination form required under subsection (A)(1) that indicates the licensee’s blood pressure is greater than 180 systolic or 110 diastolic, the Division Department shall follow the suspension and revocation notification procedure prescribed under subsection (B).

D. A Commercial Driver License commercial driver license that remains revoked for longer than 12 months expires. The holder of an expired Commercial Driver License commercial driver license may obtain a new Commercial Driver License commercial driver license by successfully completing all Commercial Driver License commercial driver license original-application written, vision, and demonstration skill skills testing and by submitting the medical examination form examiner’s certificate prescribed under subsection (A)(1).

E. Administrative hearing. A person who is denied a Commercial Driver License commercial driver license or whose Commercial Driver License commercial driver license is suspended or revoked under this Section may request a hearing according to the procedure from the Department as prescribed under A.A.C. R17-1-511 through R17-1-513 A.R.S. Title 41, Chapter 6, Article 6 and 17 A.A.C. 1, Article 5.
ARTICLE 7. HAZARDOUS MATERIALS ENDORSEMENT

R17-4-701. Definitions
In addition to the definitions contained in 49 CFR 1572.3-1572, the following words and phrases apply to this Article:

1. “Applicant” means an individual who applies to obtain an original or renewal HME.
2. “CDL” means Commercial Driver License commercial driver license.
3. “Department” has the same meaning as defined under A.R.S. § 28-101.
5. “Security Threat Assessment” means a check by TSA that includes a fingerprint-based criminal history records check, an intelligence-related background check, and a final disposition.
6. “Transfer applicant” means an individual with an existing HME issued by another state, applying to the state of Arizona for an HME.
7. “TSA” means the U.S. Transportation Security Administration.
8. “Security Threat Assessment” means a check by TSA that includes a fingerprint-based criminal history records check, an intelligence-related background check, and a final disposition.

R17-4-702. Scope
This Article applies to commercial drivers who are applying for an original, renewal, or transfer of an existing HME, in accordance with 49 CFR Part 1572 (November 24, 2004) incorporated by reference, on file with the Arizona Department of Transportation and available from the U.S. Government Printing Office’s web page at www.gpo.gov. This incorporation by reference contains no future additions or amendments. The Department incorporates by reference 49 CFR 1572, revised as of October 1, 2016, and no later amendments or editions. The incorporated material is on file with the Department at 206 S. 17th Avenue, Phoenix, AZ 85007. The incorporated material is published by National Archives and Records Administration, Office of the Federal Register, 8601 Adelphi Road, College Park, MD 20740-6001, and is printed and distributed by the U.S. Government Publishing Office, P.O. Box 979050, St. Louis, MO 63197-9000. The incorporated material can be viewed online at http://www.ofr.gov or https://www.gpo.gov/fdsys and ordered online by visiting the U.S. Government Online Bookstore at http://bookstore.gpo.gov. The International Standard Book Number is 9780160935534.

R17-4-705. Required Testing
A. Original and renewal applicants shall successfully complete the testing requirements under A.R.S. § 28-3223.
B. A transfer applicant with an existing HME shall be required to comply with HME knowledge test requirements under A.R.S. § 28-3223, and pay any applicable fee under R17-4-706.
R17-4-706. Fees
All applicants and transfer applicants shall pay all applicable fees as prescribed by:
1. TSA for a Security Threat Assessment, and
2. A.R.S. § 28-3002.

R17-4-707. 60-Day Notice to Apply
A. The Division Department shall notify an existing HME holder 60 days prior to expiration of a Security Threat Assessment that a new Security Threat Assessment shall be successfully passed in order to retain the HME 60 days prior to the expiration of the Security Threat Assessment and the corresponding HME.
B. Upon expiration of the Division’s Department’s 60 Day Notice to Apply, the Division Department shall cancel the Arizona Driver License privileges of an applicant who fails to apply for a Security Threat Assessment and fails to remove the HME.

R17-4-709. Determination of Security Threat
Upon notification by TSA that an applicant has failed to successfully pass the Security Threat Assessment:
1. For an original applicant:
   a. The Division Department will deny the request for an HME; and
   b. If otherwise qualified, the applicant may apply for a CDL without an HME.
2. For a renewal applicant:
   a. The Division Department shall immediately cancel the HME.
   b. The Division Department will notify an HME applicant with a Notice of Action that the applicant has 15 days from the notice date to have the HME removed.
   c. The applicant shall visit a designated CDL office for removal of the HME.
   d. If the applicant fails to comply with the Division’s Department’s Notice of Action, the Division Department shall cancel the applicant’s Arizona Driver License privilege.
   e. Upon removal of an HME by the Division Department under this Section, an applicant, if otherwise qualified, may continue to hold a CDL.

R17-4-710. Requests for Administrative Hearing
A. The Division shall not accept a request for hearing for failure to qualify for an HME failing to pass. In the event an applicant has failed to successfully complete the Security Threat Assessment or failed to receive a Determination of No Security Threat, the applicant shall make an appeal directly through TSA, but cannot request an administrative hearing from the Department.
B. An applicant whose Arizona driver license privileges have been canceled under R17-4-707 or R17-4-709 may request an administrative hearing from the Department as prescribed under 17 A.A.C. 1, Article 5. The hearing is held in accordance with the procedures prescribed under A.R.S. Title 41, Chapter 6, Article 6 and 17 A.A.C. 1, Article 5.
R17-4-712. Transfer Applicant

A. Applicability. A transfer applicant shall comply with the provisions of this Article except as otherwise required by this Section.

B. Existing TSA approval. Upon application by a transfer applicant who has successfully passed a Security Threat Assessment prior to application in Arizona, the Department shall:

1. Upon application by a transfer applicant who has an existing HME and who has successfully passed a STA prior to application in Arizona, the Division shall: Verify the TSA approval of a Determination of No Security Threat;

   a. Issue a five-year Arizona CDL with an HME; and

   b. Validate the CDL with an HME upon verification of TSA approval, and the transfer applicant shall not be required to return to a designated CDL office unless otherwise required; and

   c. Consider an applicant who has been subject to any action under R17-4-708(B) an original applicant and shall require the applicant to undergo a new STA Security Threat Assessment and testing requirements under R17-4-705.

2. The Division shall not require that a transfer applicant who has received STA approval undergo an additional STA prior to expiration of existing TSA approval, unless required under federal or state law or these rules.

3. If the Division is unsuccessful in verifying successful completion of STA, the Division shall immediately cancel the HME, and require that the applicant return to designated CDL office to have HME removed from license.

4. The Division shall mail to the transfer applicant a Notice of Action that the applicant has 15 days from the notice date to visit a designated CDL office to have the HME removed.

C. No existing TSA approval.

1. Upon application by a transfer applicant with an existing HME, who has not undergone a STA prior to application in Arizona, the Division shall:

   a. Require that the transfer applicant successfully undergo a STA; and

   b. Upon verification of successful completion of STA, issue an Arizona CDL with an HME.

2. If a transfer applicant fails to successfully complete a STA or the Division is unsuccessful in verifying successful completion of STA, the Division shall deny the application for HME.

3. If the applicant fails to comply with the Division’s Notice of Action, the Division shall cancel the applicant’s Arizona Driver License privilege.

D. CDL eligibility. The Division may grant an application for a CDL, if an applicant is otherwise qualified to hold CDL.
A. Economic, small business and consumer impact summary:

1. Identification of the proposed rulemaking:

The Arizona Department of Transportation (ADOT), in partnership with the Arizona Department of Public Safety (DPS), is engaged in rulemaking to incorporate parts of the 2016 edition of the Code of Federal Regulations and sections of 82 FR 5292, January 17, 2017, in 17 A.A.C. Chapter 5, Article 2. Both ADOT and DPS rely on federal monies that require the adoption of federal motor carrier safety and hazardous materials regulations. The incorporation of these parts and sections of the Code of Federal Regulations impacts ADOT’s rules concerning commercial driver license (CDL) physical qualifications and hazardous materials endorsements (HMEs). ADOT engages in this rulemaking to ensure its rules are consistent and current with federal regulations, including the requirement that a CDL medical exam be performed by only medical examiners listed on the National Registry of Certified Medical Examiners, requiring a medical examiner’s certificate be carried for only 15 days after issuance, and incorporating the 2016 version of 49 CFR 1572 for the HMEs.

In addition to updating the federal regulation reference in 17 A.A.C, Chapter 4, Article 7, ADOT is removing unnecessary requirements in R17-4-712 since verification of the U.S. Transportation Security Administration (TSA) approval occurs at time of credential issuance and all transfer applicants will have existing TSA approval and is reformatting subsection (B) to accurately depict the current process of verifying the TSA approval before issuing the CDL with an HME.

ADOT is also repealing R17-4-507; this rule is unnecessary since it is duplicative of language found under A.R.S. §§ 28-3158, 28-3165, and 28-3166.

Additional changes include removing definitions that are not used, updating terminology, ensuring verbiage concerning administrative hearings is consistent, and making minor technical changes to ensure conformity to the rulemaking format and style requirements of the Arizona Administrative Procedure Act and the Office of the Secretary of State.

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

These rules are made in connection with the required incorporation by reference of the federal motor carrier safety and hazardous materials regulations in 17 A.A.C. Chapter 5, Article 2, thus ensuring
there is a consistency between ADOT’s regulations, state statute, and the federal regulations. These changes allow for a greater understanding by commercial driver licensees and permittees of what is required of them as it pertains to their physical qualifications and, when applicable, eligibility for a hazardous materials endorsement (HME). These regulations safeguard the public by making sure there are healthy and safe commercial driver licensees and permittees. In addition, the updated incorporation by reference of the federal motor carrier safety and hazardous materials regulations in 17 A.A.C. Chapter 5, Article 2, allows the Arizona Department of Public Safety (DPS) to be eligible to apply for an estimated $10 million in total federal funding from the Federal Motor Carrier Safety Administration (FMCSA).

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:**

ADOT is statutorily required to administer the driver licensing and medical evaluation activities required of commercial motor vehicle drivers under A.R.S. Title 28, Chapter 8, and these rules. ADOT is required under A.R.S. § 28-5204(A)(2) to consider, as evidence of generally accepted safety standards, the publications of the United States Department of Transportation and the Environmental Protection Agency when adopting rules necessary to administer and enforce A.R.S. Title 28, Chapter 14. 49 CFR 384 requires that each state comply with the provisions of section 12009(a) of the Commercial Motor Vehicle Safety Act of 1986 (49 U.S.C. 31311(a)), and adopt and administer a program for testing and ensuring the fitness of persons to operate commercial motor vehicles in accordance with the minimum federal standards contained in 49 CFR 383. If these rule amendments are not adopted, the Department would not be in compliance with federal and state law, which could expose the agency to a loss of funds; inconsistencies between state regulations; and FMCSA could prohibit ADOT’s CDL Program from issuing, renewing, transferring, or upgrading commercial driver licenses in this state if they determine that Arizona is not substantially in compliance with 49 U.S.C. 31311(a).

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

This rulemaking would reduce regulatory burdens; inconsistencies; ensure the state to be in compliance with federal and state requirements and continue to be eligible for federal funding, which total approximately $10 million annually; allow ADOT’s CDL Program to continue issuing, renewing, transferring, or upgrading commercial driver licenses in Arizona; and allow ADOT to ensure the most current and generally accepted federal standards used by industry and law enforcement personnel to promote safe operation of both interstate and intrastate commercial motor vehicles, including the physical fitness of the drivers, are being implemented and in keeping with state statutes.

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

ADOT anticipates that the economic impact of these rules is minimal and does not expect this rulemaking to create a significant increase in costs or benefits to the agency or to applicants for a CDL or HME since the rulemaking is generally to update information to be consistent with current federal regulations and current program practices. There are no new fees associated with this rulemaking and costs imposed for the
HME have decreased from the substantial costs originally needed to get the program implemented. The fee for the TSA HME Security Threat Assessment has decreased from $94 to $86.50.

The benefits of this rulemaking include increased public safety, clarity, concise, understandability, and reduction of possibility of confusion for an agency, business, or person. In addition, this rulemaking will keep the state consistent with federal regulations which allows the state to be eligible for federal funds. DPS administers and enforces the Federal Motor Carrier Safety Assistance Program (MCSAP) throughout the State of Arizona. For FY 2017, DPS is able to apply for an estimated $10,000,000 in total federal funding from FMCSA.

As of July 1, 2017, there are 106,413 CDL holders, 2,010 CDL holders with a HME, and 14,547 CDL holders with dual endorsement of tank and hazardous materials. As of September 7, 2017, there are 19,632 valid (excluded were any credentials that were cancelled, suspended, revoked, expired, marked for deletion, disqualified, and those that indicate the credential holder is deceased) CDL holders who have successfully completed the required TSA HME Security Threat Assessment. There are 189 applicants who did not successfully complete the required TSA HME Security Threat Assessment.

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

   Name: Candace Olson
   Address: Government Relations and Policy Development Office
            Department of Transportation
            206 S. 17th Ave., Mail Drop 140A
            Phoenix, AZ 85007
   Telephone: (602) 712-4534
   E-mail: COlson2@azdot.gov

B. Economic, small business and consumer impact statement:

1. Identification of the proposed rulemaking:
   See paragraph (A)(1) above.

2. Identification of the persons who will be directly affected by, bear the costs of or directly benefit from the proposed rulemaking:

<table>
<thead>
<tr>
<th>Persons to bear costs</th>
<th>Persons directly benefiting</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arizona Department of Transportation</td>
<td>Arizona Department of Transportation</td>
</tr>
<tr>
<td>CDL applicants, permittees, and licensees</td>
<td>CDL applicants, permittees, and licensees</td>
</tr>
<tr>
<td>Employers who opt to pay for the CDL medical examinations or HME Security Threat Assessments</td>
<td>Certified medical examiners listed on the National Registry</td>
</tr>
</tbody>
</table>
### Persons to bear costs
- Hazardous materials industries
- State CDL Programs

### Persons directly benefiting
- General motoring public
- TSA

#### 3. Analysis of costs and benefits occurring in this state:

Cost-revenue scale. Annual costs or revenues are defined as follows:
- Minimal: less than $1,000
- Moderate: $1,000 to $9,999
- Substantial: $10,000 or more

**a. Probable costs and benefits to ADOT and other agencies directly affected by the implementation and enforcement of the proposed rulemaking:**

ADOT does not expect this rulemaking to create a significant increase or decrease in costs or benefits to the agency since the rulemaking is generally intended to update the terminology and practices to be consistent with the federal motor carrier safety and hazardous materials regulations incorporated by reference in 17 A.A.C. Chapter 5, Article 2, and to update the incorporation by reference of 49 CFR 1572 in 17 A.A.C. Chapter 4, Article 7, and make conforming changes. The anticipated economic impact to ADOT is moderate and includes the resources necessary for rulemaking and the costs associated with implementation of the rules. ADOT should benefit by having to spend less resources on providing individual clarification of the rules to regulated persons. Annually, ADOT incurs substantial costs to review, monitor, and maintain CDL medical evaluation forms. However, the CDL medical screening process fulfills ADOT’s statutory obligations and protects the public.

There are no additional administrative costs to ADOT associated with this rulemaking since ADOT already has a CDL medical review and HME process in place.

This rulemaking will keep the state consistent with federal regulations which allows the state to be eligible for federal funds. DPS administers and enforces the Federal Motor Carrier Safety Assistance Program (MCSAP) throughout the State of Arizona. For FY 2017, DPS is able to apply for an estimated $10,000,000 in total federal funding from FMCSA.

ADOT is not required to notify the Joint Legislative Budget Committee (JLBC) under A.R.S. § 41-1055(B)(3)(a), since no new full time employees are necessary to enforce and implement these rules.

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

ADOT anticipates that political subdivisions of this State may incur minimal to substantial costs only when the agency either pays for or provides the medical evaluations required under 49 USC 391.43 to their employees who hold a CDL or pays for their employee’s TSA HME Security Threat Assessment. The actual cost is difficult to quantify as the amount is dependent upon cost for the medical evaluation...
and the number of agency employees subject to these requirements. The fee for the TSA HME Security Threat Assessment is set at $86.50 for all applicants. These costs are not new requirements and the agencies may already have a budget in place for them.

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:**

This rulemaking is updating ADOT’s rules to current practices. There are no new fees or costs associated with this rulemaking. CDL applicants, permittees, and licensees are currently paying the costs for the required medical evaluations and for the TSA HME Security Threat Assessment. TSA has streamlined the TSA HME Security Threat Assessment process and reduced the fee to $86.50 from the $94 originally charged when the rules were adopted.

The benefits of this rulemaking include increased public safety; clarity; concise; understandability; reduction of possibility of confusion for an agency, business, or person; and a reduction of a regulatory burden from some of the streamlining, technical changes.

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

ADOT anticipates a minimal impact on private and public employment as a result of this rulemaking. Employers may benefit from being able to hire from a slightly larger pool of CDL holders. CDL applicants and holders may benefit from a streamlined and clearer understanding of their requirements.

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

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

   The small businesses subject to these rules, as defined under A.R.S. § 41-1001(20), are independent motor carriers, CDL applicants and holders already subject to the federal motor carrier safety and hazardous materials regulations, and the medical examiners listed on the National Registry of Certified Medical Examiners.

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

   General administrative costs for small businesses are the same as discussed under paragraph (B)(3)(c) above. Overall, ADOT anticipates no new economic impact to qualified persons and business entities as a result of this rulemaking.

   c. **Description of the methods that ADOT may use to reduce the impact on small businesses:**

   The costs associated with this rulemaking are uniform regardless of business size. ADOT is removing unnecessary requirements in R17-4-712 since verification of the U.S. Transportation Security Administration (TSA) approval occurs at time of credential issuance.

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

   The rules support the public interest and the interests of concerned parties by ensuring that all federal motor carrier safety and hazardous materials regulations and requirements of motor carriers are
uniformly applied and enforced. The public benefits when all motor carriers remain in compliance with these rules include increased public safety, clarity, concise, understandability, and reduction of possibility of confusion for a business or person.

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

Since this rulemaking is in association with the required incorporation by reference update of the Code of Federal Regulations in 17 A.A.C. Chapter 5, Article 2, DPS will be eligible to apply for an estimated $4 million in MCSAP funding and estimated $6 million in Border Enforcement Grant funding that may be used for commercial motor vehicle safety programs such as:

- Motor carrier safety programs in accordance with 49 CFR 350.109;
- Size and weight enforcement programs in accordance with 49 CFR 350.309(c)(1);
- Drug interdiction enforcement programs in accordance with 49 CFR 350.309(c)(2); and
- Traffic safety programs in accordance with 49 CFR 350.309(d).

This rulemaking ensures that an amount of up to 5 percent of the state’s federal-aid highway funds apportioned under each of sections 104(b)(1), (b)(3), and (b)(4) of 23 U.S.C. will not be withheld for noncompliance. Based on amounts traditionally received by ADOT, this amount could reach approximately $30 million depending on the actual appropriation.

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 non-selected alternatives:**

In rulemaking, ADOT routinely adopts the least costly and least burdensome options for any process or procedure required of the regulated public or industry. However, each state is required under 49 CFR 384.301 to adopt and carry out a program for testing and ensuring the fitness of individuals to operate commercial motor vehicles consistent with the minimum standards prescribed by the Secretary of Transportation under 49 U.S.C. 31305(a) as soon as practical, or an amount of up to 5 percent of the state’s federal-aid highway funds apportioned under each of sections 104(b)(1), (b)(3), and (b)(4) of 23 U.S.C. may be withheld from the state for noncompliance. Based on amounts traditionally received by the Department, this amount could reach approximately $30 million depending on the actual appropriation. Therefore, to the extent permitted by federal law, ADOT has determined that these rules impose the least burden and costs to regulated persons.

C. **Explanation of limitations of the data and the methods that were employed in the attempt to obtain the data and a characterization of the probable impacts in qualitative terms. The absence of adequate data, if explained in accordance with this subsection, shall not be grounds for a legal challenge to the sufficiency of the economic, small business and consumer impact statement:**

None
THE ARIZONA ADMINISTRATIVE CODE

Within the stated calendar quarter, this Chapter contains all rules made, amended, repealed, renumbered, and recodified; or rules that have expired or were terminated due to an agency being eliminated under sunset law. These rules were either certified by the Governor's Regulatory Review Council or the Attorney General's Office; or exempt from the rulemaking process, and filed with the Office of the Secretary of State. Refer to the historical notes for more information. Please note that some rules you are about to remove may still be in effect after the publication date of this Supplement. Therefore, all superseded material should be retained in a separate binder and archived for future reference.

Title 17. Transportation
Chapter 4. Department of Transportation - Title, Registration, and Driver Licenses
Supplement 16-4

Sections, Parts, Exhibits, Tables or Appendices modified

R17-4-703 and R17-4-711

REMOVE Supp. 16-1
REPLACE with Supp. 16-4

Pages: 1 - 37
Pages: 1 - 37

The agency's contact person who can answer questions about expired rules in Supp. 16-4:
Agency: Governor's Regulatory Review Council
Address: 100 N. 15th Ave #402, Phoenix, AZ 85007 Phone: (602) 542-2058

Disclaimer: Please be advised the person listed is the contact of record as submitted in the rulemaking package for this supplement. The contact and other information may change and is provided as a public courtesy.
**ARTICLE 5. SAFETY**

**R17-4-501. Definitions**

In addition to the definitions provided under A.R.S. §§ 28-101, 283001, 28-3005, and 32-1601, in this Article, unless otherwise specified:

- "Adaptation" means a modification of or addition to the standard operating controls or equipment of a motor vehicle.
- "Applicant" or "licensee" means a person:
  - Applying for an Arizona driver license or driver license renewal, or
  - Required by the Division to complete an examination successfully or to obtain an evaluation.
- "Application" means the Division form required to be completed by or for an applicant for a driver license or driver license renewal.
- "Arizona Driver License Manual" or "manual" means the reference booklet for applicants, issued by the Division, containing non-technical explanations of the Arizona motor vehicle laws.
- "Aura" means a sensation experienced before the onset of a neurological disorder.
- "Commercial Driver License physical qualifications" means driver medical qualification standards for a person licensed in class A, B, or C to operate a commercial vehicle as prescribed under 49 CFR 391, incorporated by reference under R17-5202 and R17-5-204.
- "Director" means the Division Director or the Division Director’s designee.
- "Disqualifying medical condition" means a visual, physical, or psychological condition, including substance abuse, that impairs functional ability.
- "Division" means the Arizona Department of Transportation, Motor Vehicle Division.
- "Evaluation" means a medical assessment of an applicant or licensee by a specialist as defined below to determine whether a disqualifying medical condition exists.
- "Examination" means testing or evaluating an applicant’s or licensee’s:
  - Ability to read and understand official traffic control devices,
  - Knowledge of safe driving practices and the traffic laws of this state, and Functional ability.
- "Functional ability" means the ability to operate safely a motor vehicle of the type permitted by an Arizona driver license class or endorsement.
- "Identification number" means a distinguishing number assigned by the Division to a person for a license or instruction permit.
- "Licensee" means a person issued a driver license by this state.
- "Licensing action" means an action by the Division to:
  - Issue, deny, suspend, revoke, cancel, or restrict a driver license; or
  - Require an examination or evaluation of an applicant or licensee.
- "Medical code" means a system of numerals or letters indicating the licensee suffers from some type of adverse medical condition.
- "Medical screening questions and certification" means the questions and certification on the application.
- "Neurological disorder" means a malfunction or disease of the nervous system.
- "Seizure" means a neurological disorder characterized by a sudden alteration in consciousness, sensation, motor control, or behavior, due to an abnormal electrical discharge in the brain. "Specialist" means:
  - A physician who is a surgeon or a psychiatrist;
  - A physician whose practice is limited to a particular anatomical or physiological area or function of the human body, patients with a specific age range; or
  - A psychologist.
- "Substance abuse" means:
  - Use of alcohol in a manner that makes the user an alcoholic as defined in A.R.S. § 36-2021, or
  - Use of controlled substance in a manner that makes the user a drug dependent person as defined in A.R.S. § 362501.
- "Substance abuse counselor" is defined in A.R.S. § 28-3005.
- "Substance abuse evaluation" means an assessment by a physician, specialist, or certified substance abuse counselor to determine whether the use of alcohol or a drug impairs functional ability.
- "Successful completion of an examination" means an applicant or licensee:
  - Establishes the visual, physical, and psychological ability to operate a motor vehicle safely, or
  - Achieves a score of at least 80% on any required tests.

**Historical Note**


**R17-4-502. General Provisions for Visual, Physical, and Psychological Ability to Operate a Motor Vehicle Safely**

A. Applicant’s or licensee’s responsibility. To comply with the Division’s screening process for safe operation of a motor vehicle, an applicant or licensee shall:

1. Provide the Division with all requested information about the applicant’s or licensee’s visual, physical, or psychological condition;
2. Successfully complete all required examinations;
3. Obtain all required evaluations;
4. Ensure timely submission of evaluation reports to the Division; and
5. Appear at all required interviews.

B. Screening process for safe operation of a motor vehicle. This subsection and subsections (C) through (E) state the screening process for safe operation of a motor vehicle.

1. An applicant shall complete the application, including the medical screening questions and certification.
2. An applicant without a valid driver license, who successfully completes all required examinations, shall obtain an evaluation if:
   a. The Division informs the applicant that the applicant’s responses to the medical screening
questions indicate the existence of a disqualifying medical condition; or
b. The applicant comes under subsection (C)(1)(a), subsection (C)(1)(c), or subsection (C)(1)(d).

3. An applicant for license renewal shall successfully complete an examination if the applicant’s responses to the medical screening questions indicate that since the applicant’s last driver license renewal:
   a. The applicant has developed a visual, physical, or psychological condition that may constitute a disqualifying medical condition; or
   b. There has been a change in an existing visual, physical, or psychological condition that may constitute a disqualifying medical condition.

4. As soon as an applicant’s medical condition allows, the applicant shall notify the Division, in writing or by telephone, that the applicant has or may have a medical condition not previously reported to the Division that affects the applicant’s functional ability.

5. Upon receipt of the notification required under subsection (B)(4), the Division shall require the applicant to:
   a. Complete the medical screening questions and certification on the application, and
   b. Continue with the screening process for safe operation of a motor vehicle.

C. Evaluation, interview, and additional evaluation. An applicant or licensee shall submit to an evaluation, attend an interview, or submit to an additional evaluation as required by the Division.

1. The Division shall require an evaluation if the Director notifies the applicant or licensee in writing that:
   a. The applicant or licensee comes under the provisions of R17-4-503 or R17-4-506;
   b. The applicant or licensee reports a possible disqualifying medical condition or fails to successfully complete an examination;
   c. The applicant or licensee shows unexplained confusion, loss of consciousness, or incoherence that is observed by Division personnel; or
   d. A person with direct knowledge submits to the Division written information about specific events or conduct indicating the applicant or licensee may have a disqualifying medical condition.

2. The applicant or licensee shall have the physician, appropriate specialist, or certified substance abuse counselor who performs an evaluation submit, to the Division’s Medical Review Program, an evaluation report on a form provided by the Division.

3. If the evaluation report on the applicant or licensee is inconclusive regarding the existence of a disqualifying medical condition, the Division shall require the applicant or licensee to appear for an interview to explain information in the evaluation report.

4. If the Division is unable to determine whether a disqualifying medical condition exists after an interview with the applicant or licensee, the Division shall require an additional evaluation, performed by an appropriate specialist and reported to the Division’s Medical Review Program, on a form provided by the Division.

5. An applicant or licensee shall pay for any expense incurred by the applicant or licensee to show compliance with the visual, physical, and psychological standards for a driver license.

D. Licensing action. The Division shall take a licensing action after requiring an applicant or licensee to complete an examination successfully, obtain an evaluation and submit an evaluation report, or appear at an interview.

1. The Division shall deny a driver license if an applicant:
   a. Fails to complete successfully an examination; or
   b. Fails to:
      i. Obtain an evaluation; ii. Have a physician, appropriate specialist, or certified substance abuse counselor submit an evaluation report to the Division within 30 days after the Division notifies the applicant that an evaluation is required; or
      iii. Appear at an interview; or
   c. Has an evaluation report submitted that indicates a disqualifying medical condition.

2. The Division shall summarily suspend a licensee’s driver license under A.R.S. §§ 28-3306 and 41-1064 for a reason stated in subsection (D)(1).

3. The Division shall issue a revocation notice with a notice of summary suspension. The revocation notice shall inform the licensee that:
   a. Unless the Division receives the licensee’s timely hearing request under subsection (F), the revocation becomes effective:
      i. Fifteen days after the date the licensee is personally served with the notice; or
      ii. Twenty days after the date the notice is mailed to the licensee.
   b. A person who wishes to obtain a license after suspension or revocation shall reapply for a license as specified in A.R.S. § 28-3315.

4. The Division shall issue a driver license to an applicant or shall not suspend or revoke a licensee’s driver license if:
   a. The applicant or licensee successfully completes all required examinations and the Division does not require an evaluation, or
   b. The applicant or licensee obtains all required evaluations and the most recent evaluation report submitted on behalf of the applicant or licensee conclusively indicates no disqualifying medical condition.

E. Driver license restrictions. If an applicant or licensee uses an adaptation, including those listed below to demonstrate functional ability during an examination, the Division shall indicate the adaptation as a restriction on a driver license issued to the applicant or licensee and on the applicant’s or licensee’s driving record.

1. Automatic transmission,
2. Hand dimmer switch,
3. Left-foot gas pedal,
4. Parking-brake extension,
5. Power steering,
6. Power brakes,
7. Six-way power seat,
8. Right-side directional signal,
9. A device that enables an operator to spin the steering wheel,
10. A device that enables full foot control,
11. Dual outside mirrors,
12. Chest restraints,
13. Shoulder restraints,
14. A device that extends pedals, 15. A device that enables full hand control, and
16. Adapted seat.

F. Hearings. This subsection states the hearing procedure for licensing actions taken by the Division after the screening process for safe operation of a motor vehicle.

1. If the Division takes an adverse licensing action under this Section, an applicant or licensee may request a hearing with the Division’s Executive Hearing Office. A hearing request is timely if received by the Division:
   a. Within 15 days after the date the notice is delivered to the applicant or licensee, or
   b. Within 20 days after the date the notice is mailed to the applicant or licensee.
2. A.A.C. R17-1-501 through R17-1-511 and R17-1-513 govern a hearing conducted under this subsection.
3. The administrative law judge shall sustain, modify, or void the Division’s licensing action.

G. The Division shall not release information required to be submitted to the Division under this Section by an applicant or licensee except to a person or entity qualified under A.R.S. § 28-455.

Historical Note

Exhibit A. Repealed

Historical Note
New Exhibit made by final rulemaking at 8 A.A.R. 3241, effective July 12, 2002 (Supp. 02-3). Section repealed by final rulemaking at 13 A.A.R. 1127, effective May 5, 2007 (Supp. 07-1).

R17-4-503. Vision standards A.
Definitions.
1. “Binocular vision” means the ability to see in both eyes.
2. “Biotic Telescopic Lens System” means a biotic, spectacle-mounted corrective lens prescribed by a physician or optometrist for meeting vision acuity requirements for driving that uses magnification as the main method of obtaining minimal visual acuity.
3. “Corrected visual acuity” means distance vision corrected by eyeglasses, contact lenses, or a biotic telescopic lens system.
4. “Corrective lens” means eyeglasses, contact lenses, or a biotic telescopic lens system used to correct distance vision.
6. “Field of vision” means the area in which objects may be seen when the eye is fixed.
7. “Impaired night vision” means below normal ability to see in reduced light.
8. “Monocular vision” means the ability to see in one eye only.
9. “Optometrist” means a person licensed to practice optometry in any state, territory, or possession of the United States or the Commonwealth of Puerto Rico.
10. “Retinitis pigmentosa” means a chronic progressive inflammation of the retina with atrophy and pigmentary infiltration of the inner layers of the retina.
11. “Snellen Chart” means a chart imprinted with lines of black letters of decreasing size for testing visual acuity.
1. Visual acuity. A person shall have binocular or monocular vision and visual acuity of 20/40 in at least one eye.
2. Field of vision. Field of vision shall be 70 degrees temporally, and 35 degrees nasally, in at least one eye. C. Restrictions.
   A. A person with corrected vision shall wear corrective lenses at all times when driving if the corrective lens is required to achieve the vision standards in subsection (B).
   B. The Division shall restrict a person with diagnosed impaired night vision to daytime driving only.
   C. The Division shall restrict a person with binocular vision and corrected or uncorrected visual acuity of 20/50 or 20/60, when using both eyes, to daytime driving only.
   D. The Division shall not license a person with monocular vision and visual acuity of 20/50 or greater.
5. The Division shall not license a person with binocular vision and visual acuity of 20/70 or greater. D. Screening process.
   A. Beginning on the date of a initial application and every year thereafter, a person using a biotic telescopic lens system shall submit to the Division an annual exam performed by a physician or optometrist to ascertain whether the person has a progressive eye disease.
   B. The Division shall not license a person using a biotic telescopic lens system unless the person submits to the Division a written statement from a physician or optometrist that the individual meets the visual acuity standard as prescribed in subsection (B).
   C. The Division shall not license a person using a biotic telescopic lens system with magnification of the lens that is more than 4X.
3. The Division shall conduct visual acuity screening through the use of visual screening equipment or the Snellen Chart to determine whether a person’s corrected vision is 20/40 in at least one eye. E. Reporting requirements.
   A. A person choosing to have initial visual acuity and visual field screening done by a physician or an optometrist shall submit the results to the Division.
   B. If the Division does initial visual acuity and visual field screening and the person does not meet vision standards of subsection (B), the Division shall require the person to
submit the results of the person’s visual acuity and vision field screening by a physician or an optometrist.

3. The Division shall require a person diagnosed with any of the following conditions to file the results of the person’s visual acuity and visual field screening completed by the physician or optometrist:
   a. Any progressive eye disease,
   b. Diplopia, or
   c. Impaired night vision.

F. Results of visual acuity and visual field screening shall contain the following.
   1. An examination date no more than three months before the submission date to the Division;
   2. Visual acuity and field of vision;
   3. If applicable, specification that the person is monocular;
   4. If applicable, diagnosis of any condition described in subsection (E)(3);
   5. Any recommendations on frequency of reporting requirements for the person, in addition to those required by the Division;
   6. Suggested restrictions on driving, in addition to those required by the Division; and
   7. Any recommendations on the person’s ability to safely operate a motor vehicle.

G. The Division shall require a driving test if a person’s eye disease is determined by a physician or optometrist to be progressive.

Historical Note
New Section recodified from R17-4-521 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 12 A.A.R. 221, effective January 10, 2006 (Supp. 06-1).

R17-4-504. Medical Alert Conditions

A. Definition. In this Section, “license” means any class driver license, commercial driver license, non-operating identification license, or instruction permit.

B. Medical alert condition displayed on license. The Division will provide on each license a space to indicate a medical alert condition. A list of recognized medical alert conditions is available at all Motor Vehicle Division Customer Service offices and Authorized Third Party Driver License offices.

C. Retention of medical alert condition authorization. The Division will not maintain the medical alert code on the Division computer record unless written authorization is submitted.

D. A person shall submit a signed statement, from a physician or registered nurse practitioner, stating that the person is diagnosed with a medical condition. The signed statement is required every time the person requests a license unless the person authorizes the Division to maintain the medical code in the Division computer.

Historical Note

R17-4-505. Repealed
4. There is an established pattern of an aura of sufficient duration to allow the person to cease operating a motor vehicle immediately at the onset of the aura.

**Historical Note**

**R17-4-507. Driver License Identification Number**

A. The Division shall assign an identification number to each person who receives a driver license, nonoperating identification license, or instruction permit. The Division shall place a person’s identification number on the person’s license, nonoperating identification, or instruction permit.

B. The Division shall not use a person’s Social Security Number as the person’s identification number unless:
1. The person’s current driver license or nonoperating identification license has a Social Security Number as the identification number, or
2. The person requests that the person’s Social Security Number be used as the identification number.

**Historical Note**
Adopted effective July 24, 1985 (Supp. 85-4). Amended effective March 13, 1986 (Supp. 86-2). Former Section R17-4-50 renumbered without change as Section R17-4-507 (Supp. 87-2). Amended by final rulemaking at 7 A.A.R. 4355, effective September 14, 2001 (Supp. 01-3). Amended by final rulemaking at 8 A.A.R. 5223, effective December 5, 2002 (Supp. 02-4).

**R17-4-508. Commercial Driver License Physical Qualifications**

A. Requirements.
1. A Commercial Driver License applicant shall submit to the Division a U.S. Department of Transportation medical examination form completed as prescribed under 49 CFR 391.43:
   a. Except as provided in subsection (A)(1)(c) of this Section, by a professional licensed to practice by the federal government, any state, or U.S. territory with one of the following credentials: i. Medical Doctor, ii. Doctor of Osteopathy, iii. Doctor of Chiropractic, iv. Nurse Practitioner, or v. Physician Assistant, and
   b. Upon the applicant’s initial application and at the time of each 24-month renewal.
   c. An optometrist, licensed to practice by the federal government, any state, or U.S. territory, may perform the medical examination as it pertains to visual acuity, field of vision, and the ability to recognize colors as specified in 49 CFR 391.43(b)(10).
2. As prescribed under 49 CFR 391.41(a), a licensee who possesses a Commercial Driver License shall keep an original or photographic copy of the licensee’s current medical examination form required under subsection (A)(1) available for law enforcement inspection upon request.
3. A licensee who possesses a Commercial Driver License shall notify the Division of a physical condition that develops or worsens causing noncompliance with the Commercial Driver License physical qualifications as soon as the licensee’s medical condition allows.

B. Commercial Driver License suspension and revocation notification procedure. To notify a licensee of any Commercial Driver License suspension and revocation under subsection (C), the Division shall simultaneously mail two notices within 15 days after a medical examination form’s due or actual submission date to the licensee’s address of record that:
1. Suspends the licensee’s Commercial Driver License beginning on the notice’s date; and
2. Revokes the licensee’s Commercial Driver License 15 days after the date of the suspension notice issued under subsection (B)(1).

C. Noncompliance actions.
1. Initial application denial. If an applicant’s initial medical examination form required under subsection (A)(1) shows that the applicant does not comply with the Commercial Driver License physical qualifications, the Division shall immediately mail the Commercial Driver License denial notification to the applicant’s address of record.
2. Twenty-four month renewal suspension and revocation. If a renewing Commercial Driver licensee submits:
   a. No medical examination form required under subsection (A)(1) or a form indicating noncompliance with Commercial Driver License physical qualifications, the Division shall follow the suspension and revocation notification procedure prescribed under subsection (B).
   b. An incomplete medical examination form required under subsection (A)(1), the Division shall immediately return the incomplete form with a letter requesting that the licensee provide missing information to the Division within 45 days after the date of the Division’s letter. The Division shall follow the suspension and revocation notification procedure prescribed under subsection (B) if the licensee fails to return requested information in the time-frame prescribed in this subsection.
   c. A medical examination form required under subsection (A)(1) that indicates the licensee’s blood pressure is greater than 140 systolic or 90 diastolic, the Division shall mail notice to the licensee requiring three additional blood pressure evaluations: i. Made on three different days, ii. Performed by a qualified professional as prescribed under subsection (A)(1)(a), and
D. A Commercial Driver License that remains revoked for longer than 12 months expires. The holder of an expired Commercial Driver License may obtain a new Commercial Driver License by successfully completing all Commercial Driver License original-application written, vision, and demonstration-skill testing and submitting the medical examination form prescribed under subsection (A)(1).

E. Administrative hearing. A person who is denied a Commercial Driver License or whose Commercial Driver License is suspended or revoked under this Section may request a hearing according to the procedure prescribed under subsection (B).

B. The noise limits established by this Section shall be based on measurements taken at a distance of 50 feet from the center of the lane of travel within the specified speed limit. Noise measurements can be made at distances other than 50 feet from the center of the lane of travel. In such cases, the measurement shall be corrected to what it would be at the standard distance of 50 feet, for comparison with the standard.

C. For speed zones of 35 miles per hour or less, notwithstanding the provisions stated above, measurement shall not be made within 200 feet of any intersection controlled by an official traffic device or within 20 feet of the beginning or end of any grade in excess of plus or minus 1%. Measurements shall be made when it is reasonable to assume that the vehicle flow is at a constant rate of speed and measurement shall not be made under congested traffic conditions which require noticeable acceleration or deceleration.

Historical Note
Adopted effective October 17, 1986 (Supp. 86-5). Former Section R17-4-76 renumbered without change as Section R17-4-512 (Supp. 84-1). Section recodified to R17-4-704 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).
New Section recodified from R17-4-705 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

R17-4-511. Repealed

Historical Note
Adopted effective April 21, 1980 (Supp. 80-2). Former Section R17-4-62 renumbered without change as Section R17-4-511 (Supp. 87-2). Section repealed by final rulemaking at 7 A.A.R. 3831, effective August 10, 2001 (Supp. 01-3).

R17-4-512. Child-restraint Systems in Motor Vehicles

Historical Note
Former Rule, General Order 92. Former Section R17-4-37 renumbered without change as Section R17-4-512 (Supp. 87-2). Section recodified to R17-5-302 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). New Section R17-4-512 recodified from R17-4-704 at 7 A.A.R. 4157, effective September 7, 2001 (Supp. 01-3). Amended by final rulemaking at 14 A.A.R. 395, effective March 8, 2008 (Supp. 08-1).

R17-4-513. Emergency Expired

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### Table: Motorcycle Noise Limit Based on Speed Limit

<table>
<thead>
<tr>
<th>Model year of motorcycle</th>
<th>Speed limit of 35 m.p.h. or less</th>
<th>Speed limit of more than 35 m.p.h. and less than or equal to 45 m.p.h.</th>
<th>Speed limit of more than 45 m.p.h.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Before 1972</td>
<td>84 dBA</td>
<td>88 dBA</td>
<td>88 dBA</td>
</tr>
<tr>
<td>1972-1980</td>
<td>79 dBA</td>
<td>82 dBA</td>
<td>86 dBA</td>
</tr>
<tr>
<td>After 1980</td>
<td>76 dBA</td>
<td>80 dBA</td>
<td>83 dBA</td>
</tr>
</tbody>
</table>
ARTICLE 6. SCHOOL BUS STANDARDS

R17-4-602. Reserved
R17-4-601. Reserved
R17-4-603. Reserved
R17-4-604. Reserved
R17-4-605. Reserved
R17-4-606. Recodified

Historical Note
Adopted effective February 6, 1984 (Supp. 84-1). Former Section R17-4-507 renumbered without change as Section R17-4-606 (Supp. 87-2). Repealed by summary rulemaking with an interim effective date of March 8, 1996; filed in the Office of the Secretary of State February 16, 1996 (Supp. 96-1).
R17-4-701. Definitions
In addition to the definitions contained in 49 CFR Part 1572.3, the following words and phrases apply to this Article:

1. “Applicant” means an individual who applies to obtain an original or renewal HME.
2. “CDL” means Commercial Driver License.
4. “Transfer applicant” means an individual with an existing HME issued by another state, applying to the state of Arizona for an HME.
5. “TSA” means the U.S. Transportation Security Administration.
6. “Security Threat Assessment” means a check by TSA that includes a fingerprint-based criminal history records check, an intelligence-related background check, and final disposition.

Historical Note

Appendix A. Recodified
Historical Note
Adopted effective February 1, 1994 (Supp. 94-1). Appendix recodified to 17 A.A.C. 4, Article 3 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

R17-4-702. Scope
This Article applies to commercial drivers who are applying for an original HME or to renew or transfer an existing HME, in accordance with 49 CFR Part 1572 (November 24, 2004) incorporated by reference, on file with the Arizona Department of Transportation and available from the U.S. Government Printing Office’s web page at www.gpo.gov. This incorporation by reference contains no future additions or amendments.

Historical Note

R17-4-703. Expired
Historical Note

R17-4-704. Requirements for an HME
To receive an HME an applicant shall:
1. Possess a valid Arizona CDL,
2. Be at least 21 years of age,
3. Successfully complete all required testing under R17-4-705,
4. Pay all applicable fees under R17-4-706,
5. Make application to TSA for a Security Threat Assessment, and
6. Receive a Determination of No Security Threat from TSA.

Historical Note
Adopted effective October 6, 1983 (Supp. 83-5). Former Section R17-4-49 renumbered without change as Section R17-4-704 (Supp. 87-2). Amended by final rulemaking at 7 A.A.R. 3834, effective August 10, 2001 (Supp. 01-3). Section recodified to R17-4-512 at 7 A.A.R. 4157, effective September 7, 2001 (Supp. 01-3). New Section made by final rulemaking at 13 A.A.R. 684, effective April 9, 2007 (Supp. 07-1).

R17-4-705. Required Testing
A. Original and renewal applicants shall successfully complete the testing requirements under A.R.S. § 28-3223.
B. A transfer applicant with an existing HME shall be required to comply with HME knowledge test requirements under A.R.S. § 28-3223, and pay applicable fee under R17-4-706.

Historical Note

R17-4-706. Fees
All applicable fees shall be paid as prescribed by:
1. TSA for a Security Threat Assessment, and
2. A.R.S. § 28-3002.

Historical Note
Former Rule, General Order 96. Former Section R17-4-39 renumbered without change as Section R17-4-706 (Supp. 87-2). Section recodified to R17-4-407 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 13 A.A.R. 684, effective April 9, 2007 (Supp. 07-1).

R17-4-707. 60-Day Notice to Apply
A. The Division shall notify an existing HME holder 60 days prior to expiration of a Security Threat Assessment that a new Security Threat Assessment shall be successfully passed to retain the HME.
B. Upon expiration of the Division’s 60 Day Notice to Apply, the Division shall cancel the Arizona Driver License privileges of an applicant who fails to apply for a Security Threat Assessment and fails to remove the HME.

Historical Note
Adopted as an emergency effective April 24, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days.
Security Threat Assessment

A. An applicant for an HME shall successfully pass a Security Threat Assessment and HME:

1. Cancellation,
2. Suspension for a period of one year or more,
3. Expiration for a period of one year or more, and
4. Revocation for a period of one year or more.

Historical Note

Adopted effective January 13, 1993 (Supp. 93-1). Section recodified to R17-4-310 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 13 A.A.R. 684, effective April 9, 2007 (Supp. 07-1).

R17-4-708. Security Threat Assessment

A. An applicant for an HME shall successfully pass a Security Threat Assessment every five years.

B. An applicant subject to any of the following actions, as defined under A.R.S. § 28-3001, shall obtain a new Security Threat Assessment and HME:

1. Cancellation,
2. Suspension for a period of one year or more,
3. Expiration for a period of one year or more, and
4. Revocation for a period of one year or more.

Historical Note

Adopted effective January 13, 1993 (Supp. 93-1). Section recodified to R17-4-310 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 13 A.A.R. 684, effective April 9, 2007 (Supp. 07-1).

R17-4-709. Determination of Security Threat

Upon notification by TSA that an applicant has failed to successfully pass the Security Threat Assessment:

1. For an original applicant:
   a. The Division will deny the request for an HME; and
   b. If otherwise qualified, the applicant may apply for a CDL without an HME.

2. For a renewal applicant:
   a. The Division shall immediately cancel the HME.
   b. The Division will notify an HME applicant with a Notice of Action that the applicant has 15 days from the notice date to have the HME removed.
   c. The applicant shall visit a designated CDL office for removal of the HME.
   d. If the applicant fails to comply with the Division’s Notice of Action, the Division shall cancel the applicant’s Arizona Driver License privilege.
   e. Upon removal of an HME by the Division under this Section, an applicant, if otherwise qualified, may continue to hold a CDL.

Historical Note

Adopted by an emergency action effective December 1, 1998, pursuant to A.R.S. § 41-1026, effective for a maximum of 180 days (Supp. 98-4). Emergency expired May 29, 1999; Section renewed and amended by emergency rulemaking, pursuant to A.R.S. § 41-1026, at 5 A.A.R. 2433, effective July 7, 1999 for a maximum of 180 days (Supp. 99-3). Emergency Section expired January 3, 2000, pursuant to A.R.S. § 1026(C); new Section adopted by final rulemaking at 6 A.A.R. 549, effective January 11, 2000 (Supp. 00-1). Amended by final rulemaking at 7 A.A.R. 59, effective December 7, 2000 (Supp. 00-4).
Appendix B. Recodified

Historical Note
Appendix B adopted by an emergency action effective December 1, 1998, pursuant to A.R.S. § 41-1026, effective for a maximum of 180 days (Supp. 98-4). Emergency expired May 29, 1999; Appendix B renewed and amended by emergency rulemaking, pursuant to A.R.S. § 41-1026, at 5 A.A.R. 2433, effective July 7, 1999 for a maximum of 180 days (Supp. 99-3). Emergency Appendix B expired January 3, 2000, pursuant to A.R.S. § 1026(C); new Appendix B adopted by final rulemaking at 6 A.A.R. 549, effective January 11, 2000 (Supp. 00-1). Appendix recodified to 17 A.A.C. 5, Article 6 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

Appendix C. Recodified

Historical Note
Appendix C adopted by an emergency action effective December 1, 1998, pursuant to A.R.S. § 41-1026, effective for a maximum of 180 days (Supp. 98-4). Emergency expired May 29, 1999; Appendix C renewed by emergency rulemaking, pursuant to A.R.S. § 41-1026, at 5 A.A.R. 2433, effective July 7, 1999 for a maximum of 180 days (Supp. 99-3). Emergency Appendix C expired January 3, 2000, pursuant to A.R.S. § 1026(C); new Appendix C adopted by final rulemaking at 6 A.A.R. 549, effective January 11, 2000 (Supp. 00-1). Appendix recodified to 17 A.A.C. 5, Article 6 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-709.07. Recodified

Historical Note
New Section adopted by final rulemaking at 6 A.A.R. 549, effective January 11, 2000 (Supp. 00-1). Amended by final rulemaking at 7 A.A.R. 59, effective December 7, 2000 (Supp. 00-4). Section recodified to R17-5-608 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-709.08. Recodified

Historical Note
New Section adopted by final rulemaking at 6 A.A.R. 549, effective January 11, 2000 (Supp. 00-1). Section recodified to R17-5-609 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-709.09. Recodified

Historical Note
New Section adopted by final rulemaking at 6 A.A.R. 549, effective January 11, 2000 (Supp. 00-1). Amended by final rulemaking at 7 A.A.R. 59, effective December 7, 2000 (Supp. 00-4). Section recodified to R17-5-610 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

Exhibit A. Recodified

Historical Note
New Form adopted by final rulemaking at 6 A.A.R. 654, effective January 11, 2000 (Supp. 00-1). Heading “Form A” changed to “Exhibit A” to conform with R1-1-412

Exhibit B. Recodified

Historical Note
New Exhibit adopted by final rulemaking at 7 A.A.R. 59, effective December 7, 2000 (Supp. 00-4). Exhibit recodified to 17 A.A.C. 5, Article 6 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-709.10. Recodified

Historical Note
New Section adopted by final rulemaking at 7 A.A.R. 59, effective December 7, 2000 (Supp. 00-4). Section recodified to R17-4-408 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

R17-4-710. Requests for Administrative Hearing

A. The Division shall not accept a request for hearing for failure to qualify for an HME. In the event an applicant has failed to successfully complete the Security Threat Assessment, the applicant shall make appeal directly through TSA.

B. An applicant whose Arizona driving privileges have been canceled under R17-4-707 or R17-4-709 may request an administrative hearing under 17 A.A.C. 1, Article 5.

R17-4-711. Expired

Historical Note
New Section made by final rulemaking at 13 A.A.R. 684, effective April 9, 2007 (Supp. 07-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 34, effective June 30, 2016 (Supp. 16-4).

R17-4-712. Transfer Applicant

A. Applicability. A transfer applicant shall comply with the provisions of this Article except otherwise required by this Section.

B. Existing TSA approval.

1. Upon application by a transfer applicant who has an existing HME and who has successfully passed a STA prior to application in Arizona, the Division shall:
   a. Issue a five-year Arizona CDL with an HME;
   b. Validate the CDL with an HME upon verification of TSA approval, and the transfer applicant shall not be required to return to a designated CDL office unless otherwise required; and
   c. Consider an applicant who has been subject to any action under R17-4-708(B) an original applicant and shall require applicant to undergo a new STA and testing requirements under R17-4-705.

2. The Division shall not require that a transfer applicant who has received STA approval undergo an additional STA prior to expiration of existing TSA approval, unless required under federal or state law or these rules.

3. If the Division is unsuccessful in verifying successful completion of STA, the Division shall immediately cancel the HME, and require that the applicant return to...
designated CDL office to have HME removed from license.

4. The Division shall mail to the transfer applicant a Notice of Action that the applicant has 15 days from the notice date to visit a designated CDL office to have the HME removed.

C. No existing TSA approval.

1. Upon application by a transfer applicant with an existing HME, who has not undergone a STA prior to application in Arizona, the Division shall:
   a. Require that the transfer applicant successfully undergo a STA; and
   b. Upon verification of successful completion of STA, issue an Arizona CDL with an HME.

2. If a transfer applicant fails to successfully complete a STA or the Division is unsuccessful in verifying successful completion of STA, the Division shall deny the application for HME.

3. If the applicant fails to comply with the Division’s Notice of Action, the Division shall cancel the applicant’s Arizona Driver License privilege.

D. CDL eligibility. The Division may grant an application for a CDL, if an applicant is otherwise qualified to hold CDL.

Historical Note
New Section made by final rulemaking at 13 A.A.R. 3368, effective November 10, 2007 (Supp. 07-3).

Table A. Recodified

Historical Note
Table A adopted by final rulemaking at 5 A.A.R. 2928, effective August 5, 1999 (Supp. 99-3). Table recodified to 17 A.A.C. 1, Article 1 at 7 A.A.R. 919, effective January 24, 2001 (Supp. 01-1).
NOTICE OF FINAL RULEMAKING
TITLE 17. TRANSPORTATION
CHAPTER 4. DEPARTMENT OF TRANSPORTATION
TITLE, REGISTRATION, AND DRIVER LICENSES

Statutory Authority

General Authority for Rulemaking

A.R.S. § 28-366. Director; rules
The director shall adopt rules pursuant to title 41, chapter 6 as the director deems necessary for:
1. Collection of taxes and license fees.
2. Public safety and convenience.
3. Enforcement of the provisions of the laws the director administers or enforces.
4. The use of state highways and routes to prevent the abuse and unauthorized use of state highways and routes.

A.R.S. § 28-5204. Administration and enforcement; rules
A. In the administration and enforcement of this chapter, the department of transportation shall adopt:
1. Reasonable rules it deems proper governing the safety operations of motor carriers, including rules governing safety operations of motor carriers, shippers and vehicles transporting hazardous materials, hazardous substances or hazardous wastes and shall prescribe necessary forms. In determining reasonable rules, the department of transportation shall consider:
   (a) The nature of the operations and regulation of public service corporations as defined in article XV, sections 2 and 10, Constitution of Arizona.
   (b) Rules adopted by the director of environmental quality pursuant to section 49-855.
2. Rules necessary to enforce and administer this chapter, including rules setting forth reasonable procedures to be followed in the enforcement of this chapter and rules adopting transporter safety standards for hazardous materials, hazardous substances and hazardous waste. In adopting the rules, the department shall consider, as evidence of generally accepted safety standards, the publications of the United States department of transportation and the environmental protection agency.
B. Rules adopted by the department of transportation also apply to a manufacturer, shipper, motor carrier and driver.
C. The department of public safety shall and a political subdivision may enforce this chapter and any rule adopted pursuant to this chapter by the department of transportation. A person acting for a political subdivision in enforcing this chapter is required to be certified by the department of public safety as qualified for the enforcement activities.
D. The department may audit records and inspect vehicles that are subject to this chapter.
Specific Statutes

A.R.S. § 28-3103. Driver license endorsements
A. A driver license applicant shall obtain the following endorsements to the applicant’s driver license and shall submit to an examination appropriate to the type of endorsement if the applicant operates one or more of the following vehicles:

1. A motorcycle endorsement for operation of a motorcycle if the applicant qualifies for a class M license and if the applicant qualifies for or has a class A, B, C, D or G license.
2. A hazardous materials endorsement on a class A, B or C license for operation of a vehicle that transports hazardous materials, wastes or substances in a quantity and under circumstances that require the placarding or marking of the transport vehicle as required by the department’s safety rules prescribed pursuant to chapter 14 of this title. The department or an outside source authorized by the department and approved by the transportation security administration may:
   (a) Conduct background checks in accordance with the transportation security administration procedures.
   (b) Require that all hazardous materials endorsement applicants submit fingerprints.
3. A double-triple trailer endorsement on a class A license for operation of a vehicle towing double or triple trailers.
4. A passenger vehicle endorsement on a class A, B or C license for operation of a bus designed to transport sixteen or more passengers, including the driver, or a school bus.
5. A tank vehicle endorsement on a class A, B or C license for operation of a tank vehicle. For the purposes of this paragraph, “tank vehicle” means a commercial motor vehicle that is designed to transport a liquid or gaseous material within a tank that is either permanently or temporarily attached to the vehicle or chassis, including a cargo tank and a portable tank and excluding a portable tank having a rated capacity under one thousand gallons.
6. A school bus endorsement on a class A, B or C license for operation of a school bus. Applicants shall successfully complete both a written knowledge test and a driving skills test to obtain a school bus endorsement.
B. When applying for a commercial driver license endorsement pursuant to article 5 of this chapter, the applicant shall successfully complete the skills portion of the examination in a motor vehicle or vehicle combination applicable to the endorsement.
C. On notification by the transportation security administration that an individual’s authorization to hold a hazardous materials endorsement has been terminated, the department shall immediately cancel the hazardous materials endorsement on the driver’s commercial driver license.

A.R.S. § 28-3159. Restricted licenses
A. With good cause, the department may issue the following restricted driver licenses:
1. A driver license with any of the following:
   (a) Restrictions suitable to the licensee’s driving ability for the type of motor vehicle or special mechanical control devices required on a motor vehicle that the licensee may operate.
   (b) Restrictions suitable to the licensee’s ability to drive a motor vehicle in areas, at locations or on highways or during certain times.
(c) Other restrictions as the department determines appropriate to ensure the safe operation of a motor vehicle by the licensee.

2. A class A, B or C driver license that restricts the driver from operating:
   (a) A commercial motor vehicle equipped with air brakes, if the applicant either fails the air brake component of the knowledge examination or performs the skills test in a vehicle that is not equipped with air brakes.
   (b) A vehicle in interstate commerce, if the applicant is not subject to 49 Code of Federal Regulations part 391.
   (c) A motor vehicle for the purposes of interstate commerce, if an applicant for a class A, B or C license is at least eighteen years of age.

3. A class A, B or C driver license with other restrictions that the department determines are appropriate to ensure the safe operation of a commercial motor vehicle by the licensee.

4. A class M license that restricts the driver from driving a vehicle other than a motorcycle, motor driven cycle or moped with a maximum piston displacement of one hundred cubic centimeters or less, if the applicant performs the driving examination with a motorcycle, motor driven cycle or moped with a maximum piston displacement of one hundred cubic centimeters or less.

5. A special ignition interlock restricted driver license pursuant to chapter 4, article 3.1 of this title.

6. A license restricting the travel of the driver as provided in section 25-518.

B. The department may either issue a special restricted license or display the restrictions on the usual driver license form.

A.R.S. § 28-3223. Original applicant; requirements; expiration; renewal examination

A. In addition to the requirements applicable to all driver license applicants, an original applicant for a class A, B or C license is subject to the following requirements:

1. The applicant shall submit evidence of compliance with medical standards and requirements that the department adopts by rule.

2. The applicant must have held a driver license for at least one year either in this state, any other state or a foreign country.

3. The applicant shall take additional knowledge examinations to demonstrate understanding of the following:
   (a) Safety operation rules.
   (b) Commercial motor vehicle safety control systems.
   (c) Safe vehicle control.
   (d) The relationship of cargo to vehicle control.
   (e) Basic hazardous materials knowledge.
   (f) The objectives and proper procedures for performing vehicle safety inspections.
   (g) Air brake systems.
   (h) Legal requirements for size, weight and vehicle configurations.
   (i) Emergency procedures.
4. In addition to the other requirements of this section, an applicant for a class A driver license shall demonstrate a knowledge and understanding of:
   (a) Vehicle coupling and uncoupling.
   (b) Unique combination vehicle inspections.
5. The applicant shall take a driving test in a vehicle or vehicle combination that at least meets the minimum size requirements for the class of driver license sought. The driving test shall include a demonstration of familiarity with pretrip inspection procedures.

B. A person possessing a commercial driver license on or before June 30, 2005 shall renew the license within five years according to procedures established by the department.

C. Notwithstanding section 28-3171, the holder of a class A, B or C driver license shall renew the license every five years in a manner prescribed by the department.

D. The department may administer an examination to a renewal applicant for a class A, B or C driver license. This examination on renewal shall include the following:
   1. Evidence of compliance with medical standards adopted by the department.
   2. Administration of knowledge tests or road tests, or both, as required of an original applicant.
DEPARTMENT OF TRANSPORTATION (R-18-0502)
Title 17, Chapter 5, Article 2, Motor Carriers

Amend: R17-5-202; R17-5-203; R17-5-205; R17-5-206; R17-5-208; R17-5-209; R17-5-212
GOVERNOR’S REGULATORY REVIEW COUNCIL
MEMORANDUM

MEETING DATE: May 1, 2018
AGENDA ITEM: E-2

TO: Members of the Governor’s Regulatory Review Council (Council)
FROM: Council Staff
DATE: April 16, 2018

SUBJECT: DEPARTMENT OF TRANSPORTATION (R-18-0502)
Title 17, Chapter 5, Article 2, Motor Carriers

Amend: R17-5-202; R17-5-203; R17-5-205; R17-5-206; R17-5-208;
R17-5-209; R17-5-212

SUMMARY OF THE RULEMAKING

In this rulemaking, the Department of Transportation (Department) seeks to amend seven rules in A.A.C. Title 17, Chapter 5, Article 2. The rulemaking relates to the incorporations by reference of federal motor carrier safety regulations. The Department indicates that the purpose of the rulemaking is to adopt the federal standards used by industry and law enforcement personnel to promote safe operation of both interstate and intrastate commercial motor vehicles.

The Department notes that it is statutorily required to administer driver licensing and medical evaluation activities for commercial motor vehicle drivers. A.R.S. § 28-5204(A)(2) requires the Department to consider the publications of the United States Department of Transportation (USDOT) and the Environmental Protection Agency (EPA) when adopting rules to govern the safety operations of motor carriers. In addition, 49 CFR 384 provides minimum standards for states to be in substantial compliance with the federal Commercial Motor Vehicle Safety Act of 1986, and provides consequences for states who are not in compliance. The Department indicates that the Federal Motor Carrier Safety Administration (FMCSA) requires each state to adopt federal motor carrier safety and hazardous materials regulations that are current to within three years. Additional background information is provided by the Department in the Preamble to the Notice of Final Rulemaking.

The rules were last updated at various points between August 2011 and August 2016. The Department’s request for an exception from the rulemaking moratorium was approved on September 18, 2015.
Proposed Action

- **Section 202:** *Incorporation of Federal Regulations; Applicability:* Incorporations by reference are updated.
- **Section 203:** 49 CFR 390 – Federal Motor Carrier Safety Regulations; General: The rule, which contains Arizona-specific amendments to 49 CFR 390, is modified to reflect the updated incorporations by reference.
- **Section 205:** 49 CFR 383 – Commercial Driver’s License Standards; Requirements and Penalties: The rule, which contains Arizona-specific amendments to 49 CFR 383, is modified to reflect the updated incorporations by reference.
- **Section 206:** 49 CFR 392 – Driving of Commercial Motor Vehicle: Subsection (B), containing Arizona-specific amendments to 49 CFR 392.9b, Prohibited Transportation, is added.
- **Section 208:** Commercial Driver License Intrastate Medical Waiver; Intrastate Alternative Physical Qualification Standards for the Loss or Impairment of Limbs, an Insulin-Dependent Diabetic Condition, or Monocular Vision: Technical corrections are made.
- **Section 209:** Hazardous Materials Transportation: Incorporation of Federal Regulations; Applicability: Incorporations by reference are updated.
- **Section 212:** Hearing Procedure: Clarifying changes are made.

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

   Yes. The Department cites to several statutes providing general and specific authority for the rules. In particular, A.R.S. § 28-5204 authorizes the Department to adopt “[r]easonable rules it deems proper for governing the safety operations of motor carriers.”

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

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

3. **Summary of the agency’s economic impact analysis:**

   The Department indicates that the rules support the public interest and the interests of concerned parties by ensuring that all federal motor carrier safety and hazardous materials regulations are uniformly applied and enforced. The public benefits when all motor carriers remain in compliance with these rules as they ensure increased safety, lower financial responsibility premiums, increased opportunities for increasing profit margins through better customer service, and more expedient administrative processing by law enforcement.

   As of July 1, 2017, there are 106,413 valid Arizona CDLs (commercial driver license). Of those, there are 2,010 with a hazardous materials endorsement, 35,511 with a tanker endorsement, 14,547 with a combination hazardous materials/tanker endorsement, 26,182 with a passenger endorsement, 12,940 with a school bus endorsement, and 35,581 with a double/triple trailer endorsement. There are also 2,373 Arizona CLPs (commercial learner’s permit). Of those,
there are 416 with a tanker endorsement, 721 with a passenger endorsement, 284 with a school bus endorsement, and 40 with a double/triple trailer endorsement.

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

Yes. The Department has found that the benefits of this rulemaking outweigh the costs, and has determined that the rules impose the least burden and costs to those who are regulated. The Department does not expect this rulemaking to create significant increase or decrease in costs or benefits to the agency since the rulemaking is generally intended to incorporate by reference an updated version of the federal motor carrier safety and hazardous materials regulations that the agency currently has in place.

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

The Department of Public Safety (DPS) administers and enforces the federal Motor Carrier Safety Assistance Program (MCSAP) throughout the State of Arizona under these rules. The primary cost bearers in relation to these rules are DPS, ADOT, counties, municipal law enforcement agencies electing to enforce the provisions locally, and privately contracted consultant trainers of law enforcement personnel.

Stakeholders may bear minimal to moderate costs in possible federal regulation fees, inspection fees, insurance, and equipment to remain in compliance with the rules. However, these costs arise from the federal law rather than from this rulemaking.

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

Yes. The Department indicates that it received one written criticism of the rules, from the Cullen Law Firm on behalf of Owner-Operator Independent Drivers Association, Inc. (OOIDA) and Gordon W. Tullett and Gordon Tullett Logistics, LLC. The commenter expressed concern that Arizona’s implementation of the federal regulations violates the constitutional rights of their clients and would negatively impact their health, privacy, safety and economic interests.1

A summary of the comment, along with the Department’s response, can be found on pages 6-9 of the Notice of Final Rulemaking. Council staff believes that the Department has adequately addressed the comment.

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

No. Only minor grammatical and technical corrections were made between the proposed and final rules.

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1 A copy of this comment has been included as an attachment to the Notice of Final Rulemaking.
8. **Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?**

No. The Department indicates that the rules are not more stringent than corresponding federal laws.

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

Yes. The Department indicates that the required permits are general permits in compliance with A.R.S. § 41-1037, as the activities and practices authorized are substantially similar in nature for all holders.

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

No. The Department states that it did not review or rely on any study relevant to the rules.

11. **Conclusion**

If approved, the rules will become effective immediately upon filing with the Secretary of State. The Department requests this immediate effective date under A.R.S. § 41-1032(A) to preserve the public peace, health, and safety; to avoid a violation of federal law or regulation or state law; and to comply with deadlines in amendments to an agency's governing statutes or federal programs. Council staff recommends approval of the rulemaking.
March 8, 2018

Ms. Nicole O. Colyer, Chair
Governor’s Regulatory Review Council
100 N. 15th Avenue, Suite 305
Phoenix, AZ 85007


Dear Ms. Colyer:

The Arizona Department of Transportation submits the accompanying final rule package for consideration by the Governor’s Regulatory Review Council. The following information is provided to comply with R1-6-201(A)(1):

a. The rulemaking record closed on November 14, 2017, and written public comments were received on these rules;
b. The rulemaking activity does not relate to a five-year report, but one was completed and approved in April 2016 after this rulemaking began and was taken in consideration;
c. The rulemaking does not establish a new fee;
d. The rulemaking does not increase an existing fee;
e. An immediate effective date is requested for these rules under A.R.S. § 41-1032;
f. The preamble discloses that the Department did not review any studies relevant to the rules and did not rely on any studies in its evaluation of or justification for the rules;
g. No new full-time employees are necessary to implement and enforce the rules;
h. Documents included in this final rule package are as follows:
   1. Signed cover letter;
   2. Notice of Final Rulemaking;
   3. Economic, Small Business and Consumer Impact Statement;
   4. Written comments on the rules received by the agency;
   5. General authorizing statutes and specific statutes, including relevant statutory definitions;
   6. Definitions of terms;
   7. Material incorporated by reference; and
   8. Request for, and approval of, the Department’s exception from the rulemaking moratorium.

Sincerely,

[Signature]
John S. Hallikowski
ADOT Director
NOTICE OF FINAL RULEMAKING

TITLE 17. TRANSPORTATION

CHAPTER 5. DEPARTMENT OF TRANSPORTATION

COMMERCIAL PROGRAMS

PREAMBLE

1. Article, Part, or Section Affected (as applicable) Rulemaking Action
   R17-5-202 Amend
   R17-5-203 Amend
   R17-5-205 Amend
   R17-5-206 Amend
   R17-5-208 Amend
   R17-5-209 Amend
   R17-5-212 Amend

2. Citations to the agency’s statutory rulemaking authority to include both the authorizing statute (general) and the implementing statute (specific):
   Implementing statute: A.R.S. §§ 28-3223, 28-5201, 28-5235, 28-5237, and 28-5238

3. The effective date of the rule:
   Month X, 2018 (To be completed by the Register Editor with an immediate effective date.)

   a. If the agency selected a date earlier than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(I) through (5):

   The Arizona Department of Transportation (ADOT) requests that this rulemaking be effective immediately on filing with the Office of the Secretary of State, Month X, 2018 (To be completed by the Register Editor), as permitted under A.R.S. § 41-1032, in order to:

   Preserve the public peace, health, and safety. These rules incorporate by reference the generally accepted federal standards used by industry and law enforcement personnel to promote safe operation of both interstate and intrastate commercial motor vehicles. ADOT’s Enforcement and Compliance Division and Arizona Department of Public Safety (DPS) officers rely on the rules for guidance when finding issues severe enough to warrant concern for public safety and placing commercial motor vehicles out-of-service;

   Avoid a violation of federal law or regulation or state law. ADOT is statutorily required to administer the driver licensing and medical evaluation activities required of commercial motor vehicle drivers under A.R.S. Title 28, Chapter 8, and these rules. ADOT is required under A.R.S. § 28-5204(A)(2) to consider, as evidence of generally accepted safety standards, the publications of the United States Department of Transportation (USDOT) and the Environmental Protection
Agency when adopting rules necessary to administer and enforce A.R.S. Title 28, Chapter 14. 49 CFR 384 requires that each state comply with the provisions of section 12009(a) of the Commercial Motor Vehicle Safety Act of 1986 (49 U.S.C. 31311(a)), and adopt and administer a program for testing and ensuring the fitness of persons to operate commercial motor vehicles in accordance with the minimum federal standards contained in 49 CFR 383; and

**Comply with deadlines in amendments to an agency's governing statutes or federal programs.** DPS administers and enforces the federal Motor Carrier Safety Assistance Program (MCSAP) throughout the State of Arizona under these rules. To remain in compliance with federal mandates, the Federal Motor Carrier Safety Administration (FMCSA) requires that each state adopt federal motor carrier safety and hazardous materials regulations that are current to within three years. The last update was to incorporate the 2012 edition of the *Code of Federal Regulations* and was effective August 5, 2014. The possibility exists of either the withholding of, or reduction in, federal funding for the state if these rules are not codified as quickly as possible and places ADOT at risk for the withholding of up to five percent of the state’s federal-aid highway funds apportioned under each of sections 104(b)(1), (b)(3), and (b)(4) of 23 U.S.C. Notwithstanding the withholding of funds as described above, FMCSA could prohibit ADOT’s Commercial Driver License (CDL) Program from issuing, renewing, transferring, or upgrading CDLs in this state if they determine that Arizona is not substantially in compliance with 49 U.S.C. 31311(a).

As a condition of grant approval under the authority of 49 U.S.C. 31102, as amended, if this rulemaking is approved by the Governor’s Regulatory Review Council on May 1, 2018, with an immediate effective date, DPS will be eligible to apply for an estimated $10 million in total federal funding from FMCSA.

b. **If the agency selected a date later than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the later date and state the reason or reasons the agency selected the later effective date as provided in A.R.S. § 41-1032(B):**

Not applicable

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

   Notice of Rulemaking Docket Opening: 23 A.A.R. 2865, October 13, 2017
   
   Notice of Proposed Rulemaking: 23 A.A.R. 2810, October 13, 2017

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

   Name: Candace Olson, Rules Analyst
   Address: Government Relations and Policy Development Office
   Department of Transportation
   206 S. 17th Ave., Mail Drop 140A
6. **An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:**

ADOT, in partnership with DPS, engages in this rulemaking to incorporate parts of the 2016 edition of the *Code of Federal Regulations* and sections of 82 FR 5292, January 17, 2017. USDOT requires that states adopt federal motor carrier safety and hazardous materials regulations to ensure eligibility for federal enforcement grants. Both ADOT and DPS rely on these federal monies to fund numerous enforcement positions.

FMCSA is creating a new electronic on-line Unified Registration System which will streamline the registration process and serve as a clearinghouse and depository of information on, and identification of those who register with FMCSA. The 2016 edition of the *Code of Federal Regulations* included language requiring the use of this system, but in 82 FR 5292, January 17, 2017, FMSCA suspended certain sections in parts 385 and 390 that required the use of this new system and created new sections that required the previous procedures and forms that were in place before the on-line system. The resulting regulatory changes require amendments to part 390, so the Department needs to amend R17-5-203 to be consistent with the regulations and ensure the inclusion of motor carriers conducting intrastate commerce in a commercial motor vehicle, except intrastate farm vehicles.

Subsections to R17-5-205 need to be removed since they were early adoption of amendments from 78 FR 17875, March 25, 2013, and these regulations have now been codified into part 383. ADOT is also making a change to R17-5-205(C) to include “limited-term” as an applicable word that may be added to the face of a commercial learner’s permit (CLP) or CDL due to the implementation of the Arizona Voluntary Travel ID in accordance with 6 CFR 37. Additionally, ADOT is adding a clarifying statement to R17-5-205(D) to indicate that while some third party testers may be exempt from the bond requirement under A.R.S. Title 28, Chapter 13, the providers are still responsible for all associated costs for re-testing due to examination fraud.

Timely updates are critical to FMCSA’s compliance and enforcement program, so FMCSA implemented an enforcement provision that states the penalties for applicable entities operating without safety registration and an active USDOT Number in part 392, so an amendment is necessary to R17-5-206 to ensure the inclusion of motor carriers conducting intrastate commerce in a commercial motor vehicle, except intrastate farm vehicles. In addition, FMCSA made a conforming change to the terminology by amending the usage of “USDOT Registration” to “safety registration” after the 2016 edition of the *Code of Federal Regulations*.
R17-5-208(B) is being amended to clarify that there is not just one type of application for the Intrastate Medical Waiver but instead will be an applicable application based upon the type of medical condition the intrastate driver has.

R17-5-212 is being amended to remove information that is already contained in state statutes and adding and reordering information to clarify the current process with the complaint and the order to show cause.

In addition, clarifying and technical changes have been made to ensure consistent and correct language is used. Changes are also made to ensure conformity to the rulemaking format and style requirements of the Arizona Administrative Procedure Act and the Office of the Secretary of State.

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:
   ADOT did not review or rely on any study relevant to the rules.

8. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:
   Not applicable

9. A summary of the economic, small business, and consumer impact:
   DPS administers and enforces MCSAP throughout the State of Arizona under these rules. The primary cost bearers in relation to these rules are DPS, ADOT, counties, municipal law enforcement agencies electing to enforce the provisions locally, and privately contracted consultant trainers of law enforcement personnel.

   DPS incurs moderate to substantial costs (more than $10,000) annually for program administration as well as a not readily quantifiable portion of officer salaries for hazardous materials transportation program enforcement. Business entities bear minimal to moderate costs (under $100,000) in possible federal registration fees, inspection fees, insurance, and equipment to remain in compliance with the rules. However, these costs arise from the federal law rather than from this rulemaking. Minimal administrative costs are borne by independent consultant trainers who educate law enforcement and business entities on rule compliance.

   ADOT is statutorily required to administer the driver licensing and medical evaluation activities required of commercial motor vehicle drivers under A.R.S. Title 28 and these rules. ADOT does not expect this rulemaking to create a significant increase or decrease in costs or benefits to the agency since the rulemaking is generally intended to incorporate by reference an updated version of the federal motor carrier safety and hazardous materials regulations that the agency currently has in place. Administrative costs for
ADOT should be minimal to moderate.

FMCSA extends annually to DPS a substantial grant under MCSAP for state law enforcement of motor carrier safety and hazardous materials programs. MCSAP funds are distributed chiefly to DPS but may also be sub-allocated to county and municipal enforcement agencies upon application to underwrite local enforcement costs.

Local enforcement cost estimates are difficult to quantify as they are contingent upon whether officers are dedicated to motor carrier and hazardous materials provision enforcement or incorporate motor carrier/hazardous materials enforcement together with other duties. Accordingly, local law enforcement electing to engage in motor carrier and hazardous materials provision enforcement could stand to benefit substantially in cost defrayal through receipt of MCSAP fund allocation by application to DPS, the primary recipient of the MCSAP federal grant monies. For FY 2017, DPS is able to apply for an estimated $10,000,000 in total federal funding from FMCSA.

To maintain compliance with the provisions of these rules, motor carriers will likely incur moderate to substantial costs in the form of equipment, maintenance, insurance, and inspection fees. 49 CFR 395 is increasing who is required to utilize electronic logging and the specifications for the electronic logging devices (ELDs). FMCSA estimated an annualized cost of $419 for an ELD with telematics or $166 for a local transfer method type ELD and less than $1000 for the purchase price of a device. The Commercial Carrier Journal’s ELD Buyer’s Guide indicates a variety of options for the cost including no cost for the device but only a monthly fee or a higher cost for the device but no monthly fees, and leasing options based on contracts with the company. Depending on the fleet size of the motor carrier and the device selected this requirement could have a potential substantial cost, but the motor carriers should see a benefit in less time and money costs for paperwork, reduced truck downtime, decreased fuel costs, and increased safety. Overall, costs arise from the federal law rather than from this rulemaking. There are no new fees associated with this rulemaking. If a motor carrier is found to be noncompliant with provisions of these rules, costs of sanctions under A.R.S. § 28-5238 could range from $1,000 to $25,000 per citation and the possible loss of a CDL as prescribed under A.R.S. § 28-5238. Benefits to motor carriers remaining in compliance with these rules include increased safety, lower financial responsibility premiums, reduction in paperwork, the opportunity to increase profit margin through better customer service, and more expedient administrative processing by law enforcement. These updated federal regulations also include exemptions for exempted covered farm vehicles due to Moving Ahead for Progress in the 21st Century Act (MAP-21) and Fixing America’s Surface Transportation (FAST) Act exemptions for pipeline welding trucks.

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

In R17-5-206(B)(1), replaced “USDOT Registration” with “safety registration” in order to maintain
Consistency and clarity by early adoption of the conforming change made by FMCSA in 81 FR 68336, October 4, 2016.

Minor grammatical and non-substantive technical changes were made upon review and at the request of the Governor’s Regulatory Review Council staff.

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

ADOT received written comments from the Cullen Law Firm on behalf of Owner-Operator Independent Drivers Association, Inc. (OOIDA) and Gordon W. Tulett and Gordon Tulett Logistics LLC regarding this rulemaking, “OOIDA and Tulett file these comments because of their serious concern that Arizona’s adoption and implementation of 49 C.F.R. Part 395—including the ELD Mandate contained therein—violates Tulett’s and OOIDA’s members’ constitutional rights and would have wide-ranging and negative implications for the health, privacy, safety and economic interests of all U.S.-domiciled truck drivers and motor carriers including Tulett and other members of OOIDA.” There comments centered on three main issues. The following are the issues as summarized in the letter and the Department’s response:

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<th>Company/Individual</th>
<th>Comment</th>
<th>Department’s Response</th>
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<td>The Cullen Law Firm on behalf of Owner-Operator Independent Drivers Association, Inc. (OOIDA) and Gordon W. Tulett and Gordon Tulett Logistics LLC</td>
<td>“Arizona’s adoption of the ELD Mandate would violate Tulett’s and OOIDA’s members’ constitutional rights. First, the ELD Mandate authorizes the warrantless inspection of drivers and their personal effects. These warrantless searches violate the Fourth Amendment’s and the Arizona Constitution’s warrant requirement unless they fall within the exception for searches in pervasively regulated industries. Arizona’s adoption of the ELD Mandate fails to come within this exception for four reasons: (1) this exception applies only to business premises, not persons as provided in the ELD Mandate; (2) this exception applies only to administrative searches, not searches to support the ordinary needs of law enforcement, and Arizona law imposes criminal sanctions for some FMCSR violations; (3) this exception applies only if the search is necessary to further the regulatory scheme, and neither ADOT nor FMCSA has shown the ELD Mandate does so; and (4) this exception requires an administrative structure that provides a</td>
<td>In FMSCA’s final rule notice in the Federal Register, 80 FR 78292, they responded to similar comments, including from OOIDA. FMCSA disagreed that the required use of ELDs violates the Fourth Amendment and believed that the commenters’ Fourth Amendment objections are not supported by the relevant case law as applied to the final rule. They reiterated that this rule in essence is changing the methodology (going from the paper logbooks that have been required for more than 75 years to the ELD) and that the fundamental data and the purpose of data collection remains unchanged. FMSCA stipulates that an ELD records data only during operation</td>
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<td>The Cullen Law Firm on behalf of Owner-Operator Independent Drivers Association, Inc. (OOIDA) and Gordon W. Tullett and Gordon Tullett Logistics LLC</td>
<td>“Moreover, the statute authorizing promulgation of an ELD rule directed the United States Secretary of Transportation to ensure the copious data collected from ELDs would be maintained privately and used only for enforcement of hours-of-service compliance. Neither the Secretary nor FMCSA has adopted regulations to ensure such privacy and limited use, but has instead relied on the incorporating States, like Arizona, to enact such protections. This Arizona has not done.”</td>
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<td>constitutionally adequate substitute for a warrant in the form of procedures to limit officer discretion and establish limits of the search’s scope, which the ELD Mandate fails to do.”</td>
<td>of a commercial motor vehicle and drivers have no reasonable expectation of privacy in the data captured during that period. FMSCA also determined that ELDs are employed by motor carriers pursuant to a Federal regulatory requirement and drivers are aware of their use, there is no trespass or infringement of a reasonable expectation of privacy. Thus, there is no search for purposes of the Fourth Amendment, and even if it were considered a search, it is justified under the exception for administrative searches in a closely regulated industry. FMCSA also stated that the Supreme Court has long recognized that an individual’s expectation to privacy in a private vehicle is less than that in a home. The Department agrees with the response provided by FMSCA.</td>
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<td>Moreover, the statute authorizing promulgation of an ELD rule directed the United States Secretary of Transportation to ensure the copious data collected from ELDs would be maintained privately and used only for enforcement of hours-of-service compliance. Neither the Secretary nor FMCSA has adopted regulations to ensure such privacy and limited use, but has instead relied on the incorporating States, like Arizona, to enact such protections. This Arizona has not done.”</td>
<td>In FMSCA’s final rule notice, 80 FR 78292, they responded to similar comments. FMCSA stated that other statutory provisions and protections are in place (MAP-21 had limitations on use of the data and U.S. Department of Transportation governs the release of private information in 49 CFR parts 7 and 9.) In addition, FMSCA included industry</td>
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standards for protecting electronic data; it also regulates access to such data and requires motor carriers to protect drivers’ personal data in a manner consistent with sound business practices.

Arizona enforcement in the course of their job, handles confidential and private information and the safeguarding of that information. The Department does not agree with the assessment made by the Cullen Law Firm.

| The Cullen Law Firm on behalf of Owner-Operator Independent Drivers Association, Inc. (OOIDA) and Gordon W. Tullett and Gordon Tullett Logistics LLC | “Finally, the Notice makes no mention of the serious changes to ADOT regulations and Arizona commercial motor vehicle law brought about through incorporation of a significantly updated version of the FMCSRs, not least of which is incorporation of the ELD Mandate. The Notice also gives short shrift to the financial and logistical impact on small business operators, providing instead a generic conclusion that the costs will be offset by unnamed safety gains.

Indeed, the Notice demonstrates that ADOT has done little more than delegate its legislative rulemaking authority to the federal government and rubber stamp a significant change that will affect numerous persons in Arizona without considering the constitutional and other legal deficiencies therewith. For these reasons, the Notice is deficient.” |
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<td>When the Department updates the incorporation by reference of the motor carrier regulations, it makes a careful examination of all the changes and looks for any issues with Arizona law, public safety, and enforcement. In addition, for 49 CFR 395, the Department reviewed the final rule and the comments and looked at information being provided on various trucking websites. The Department also took notice that there is a divide in the trucking community with mainly OOIDA in opposition but others like the American Trucking Associations in support, that legal actions brought by OOIDA have been unsuccessful (the U.S. Court of Appeals for the 7th Circuit ruled against OOIDA’s claims of unconstitutionality and that the</td>
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U.S. Supreme Court did not review OOIDA’s appeal), and the bill in Congress, H.R. 3282, failed to extend the December 2018 compliance date.

The Department believes it adequately provided the reason and justification of this rulemaking in the Preamble of the Notice of Proposed Rulemaking. The Department does not agree that this required a detailed listing of all the changes being enacted by incorporating the 2016 edition from the current 2012 edition. The reason certain provisions are mentioned are because they caused specific changes and additions to rule text and the Department does not believe there is a need to make any changes to 49 CFR 395.

In reference to your statements regarding the economic impact of these regulations, the Department provided a more specific statement in the full Economic, Small Business and Consumer Impact Statement.

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

There are no other matters prescribed by statute applicable to ADOT or to any specific rule or class of rules.
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:**

These rules incorporate by reference federal regulations, which are consistent with state statutes, the requirements of a CLP, CDL, and endorsements. In addition, R17-5-208 provides for the issuance of an Intrastate Medical Waiver, and in keeping with state statute, requires applicable drivers to have a CLP or CDL and endorsements. These are general permits since the activities and practices authorized by them are substantially similar in nature for all holders.

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

Federal regulations in 49 CFR 40, 107, 171, 172, 173, 177, 178, 180, 379, 382, 383, 385, 390, 391, 392, 393, 395, 396, 397, and 399 are applicable to the rules. The amendment to the introductory sentence to 49 CFR 383.153(e) in R17-5-205(E) essentially removes the exception for providing the holder’s social security number (SSN) on the application by a nondomiciled CLP or CDL holder who is domiciled in a foreign jurisdiction. Pursuant to Laws 2013, Chapter 128, the exemption for the SSN of nonresident CDL applicants was removed from A.R.S. § 28-3158, which also reclassified nonresident CDL as nondomiciled CDL. This change authorizes ADOT to require all CLP and CDL holders to provide their SSNs. This amendment is consistent with other federal laws (42 U.S.C. 405 and 42 U.S.C. 666) that require states to obtain SSNs and the statutory requirement of A.R.S. § 28-3158.

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

No analysis was submitted to ADOT

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

In R17-5-202:


In R17-5-209: 49 CFR 107, 171, 172, 173, 177, 178, and 180, revised as of October 1, 2016

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:**
ARTICLE 2. MOTOR CARRIERS

Section
R17-5-202. Motor Carrier Safety: Incorporation of Federal Regulations; Applicability
R17-5-203. Motor Carrier Safety: 49 CFR 390 - Federal Motor Carrier Safety Regulations; General
R17-5-205. Motor Carrier Safety: 49 CFR 383 - Commercial Driver’s License Standards; Requirements and Penalties
R17-5-208. Commercial Driver License Intrastate Medical Waiver; Intrastate Alternative Physical Qualification Standards for the Loss or Impairment of Limbs, an Insulin-Dependent Diabetic Condition, or Monocular Vision
R17-5-209. Hazardous Materials Transportation: Incorporation of Federal Regulations; Applicability
R17-5-212. Motor Carrier Safety: Hearing Procedure
ARTICLE 2. MOTOR CARRIERS

R17-5-202. Motor Carrier Safety: Incorporation of Federal Regulations; Applicability


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 and persons operating a commercial motor vehicle, 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.

R17-5-203. Motor Carrier Safety: 49 CFR 390 - Federal Motor Carrier Safety Regulations; General

A. 49 CFR 390.3 390.3T, General applicability. Paragraph (a) is amended to read:

Regulations incorporated in this section subchapter are applicable to all motor carriers operating in Arizona and any vehicle owned or operated by the state, a political subdivision, or a state public authority that is used to transport a hazardous material in an amount requiring the vehicle to be placarded as prescribed under R17-5-209.

B. 49 CFR 390.5 390.5T, Definitions. The definitions listed under 49 CFR 390.5 390.5T are amended as follows:

“Commercial Motor Vehicle” or “CMV” has the same meaning as prescribed under A.R.S. § 28-5201.

“Shipper” has the same meaning as prescribed under A.R.S. § 28-5201.

“Special agent” means an officer or agent of the Department, the Department of Public Safety, or a political subdivision, who is trained and certified by the Department of Public Safety to enforce Arizona’s Motor Carrier Safety requirements.

“State” means a state of the United States or the District of Columbia.
“Tow truck,” as used in the definition of emergency under 49 CFR 390.5, has the same meaning as prescribed under A.A.C. R13-3-701.

C. 49 CFR 390.19 390.19T, Motor carrier, hazardous material shippers, and intermodal equipment provider identification reports for certain Mexico-domiciled motor carriers. Paragraph (a)(1) is amended to read:
A U.S.-, Canada-, Mexico-, or non-North America-domiciled motor carrier conducting operations in interstate commerce or in intrastate commerce in a CMV, except for intrastate commerce in a farm vehicle as defined under A.R.S. § 28-2514, must file a Motor Carrier Identification Report, Form MCS-150.

D. 49 CFR 390.23, Relief from regulations.
1. Paragraph (a)(2), Local emergencies, is amended by adding:
   When a local emergency exists that justifies an exemption from parts 390 through 399 of this chapter, a motor carrier may request the exemption by contacting Commercial Vehicle Enforcement at the Arizona Department of Public Safety, Highway Patrol Division, P.O. Box 6638, Phoenix, Arizona AZ 85005. The Arizona Department of Public Safety may grant the exemption with or without restrictions as necessary to provide vital service to the public.
2. Paragraph (a)(2)(i)(A) is amended to read:
   An emergency has been declared by a federal, state or local government official having authority to declare an emergency; or an emergency situation exists under A.R.S. § 28-5234(B); or

E. 49 CFR 390.25, Extension of relief from regulations - emergencies, is amended by adding:
A motor carrier seeking to extend a period of relief from these regulations may request the extension by contacting Commercial Vehicle Enforcement at the Arizona Department of Public Safety, Highway Patrol Division, P.O. Box 6638, Phoenix, Arizona AZ 85005. The Arizona Department of Public Safety may grant the extension with any restrictions it considers necessary to provide vital service to the public.

R17-5-205. Motor Carrier Safety: 49 CFR 383 - Commercial Driver’s License Standards; Requirements and Penalties
A. 49 CFR 383.5, Definitions. The definitions listed under 49 CFR 383.5 are amended as follows:
   “Commercial motor vehicle” or “CMV” has the same meaning as prescribed under A.R.S. § 28-3001.
   “Conviction” has the same meaning as prescribed under A.R.S. § 28-3001.
   “Disqualification” has the same meaning as prescribed under A.R.S. § 28-3001.
   “Motor vehicle” has the same meaning as prescribed under A.R.S. § 28-101.
   “Out-of-service order” has the same meaning as prescribed under A.R.S. § 28-5241.
   “School bus” has the same meaning as prescribed under A.R.S. § 28-101.
   “Tank vehicle” has the same meaning as prescribed under A.R.S. § 28-3103.
B. 49 CFR 383.71, Driver application and certification procedures. Paragraphs (b)(1)(ii), Excepted interstate, and (b)(1)(iv), Excepted intrastate, are deleted.
C. 49 CFR 383.73, State procedures.
   Paragraph (a)(2)(vi) is amended to read:
Require compliance with the standards for providing proof of citizenship or lawful permanent residency specified in § 383.71(a)(2)(v) and proof of state of domicile specified in § 383.71(a)(2)(vi). Exception: A state is required to check the proof of citizenship or legal presence specified in this paragraph only for initial issuance, renewal or upgrade of a CLP or non-domiciled CLP and for initial issuance, renewal, upgrade or transfer of a CDL or non-domiciled CDL for the first time after July 8, 2011, provided a notation is made on the driver’s record confirming that the proof of citizenship or legal presence check required by this paragraph has been made and noting the date it was done;

2. Paragraph (b)(6) is amended to read:

Require compliance with the standards for providing proof of citizenship or lawful permanent residency specified in § 383.71(b)(9) and proof of state of domicile specified in § 383.71(b)(10). Exception: A state is required to check the proof of citizenship or legal presence specified in this paragraph only for initial issuance, renewal or upgrade of a CLP or non-domiciled CLP and for initial issuance, renewal, upgrade or transfer of a CDL or non-domiciled CDL for the first time after July 8, 2011, provided a notation is made on the driver’s record confirming that the proof of citizenship or legal presence check required by this paragraph has been made and noting the date it was done;

3. Paragraph (c)(4) is amended to read:

If such applicant wishes to retain a hazardous materials endorsement, require compliance with standards for such endorsement specified in §§ 383.71(b)(8) and 383.141 and ensure that the driver has successfully completed a new test for such endorsement specified in § 383.121.

4. Paragraphs (c)(4)(i) and (c)(4)(ii) are deleted.

5. Paragraph (c)(7) is amended to read:

Require compliance with the standards for providing proof of citizenship or lawful permanent residency specified in § 383.71(b)(9) and proof of state of domicile specified in § 383.71(b)(10). Exception: A state is required to check the proof of citizenship or legal presence specified in this paragraph only for initial issuance, renewal or upgrade of a CLP or non-domiciled CLP and for initial issuance, renewal, upgrade or transfer of a CDL or non-domiciled CDL for the first time after July 8, 2011, provided a notation is made on the driver’s record confirming that the proof of citizenship or legal presence check required by this paragraph has been made and noting the date it was done;

6. Paragraph (d)(7) is amended to read:

Require compliance with the standards for providing proof of citizenship or lawful permanent residency specified in § 383.71(b)(9) and proof of state of domicile specified in § 383.71(b)(10). Exception: A state is required to check the proof of citizenship or legal presence specified in this paragraph only for initial issuance, renewal or upgrade of a CLP or non-domiciled CLP and for initial issuance, renewal, upgrade or transfer of a CDL or non-domiciled CDL for the first time after July 8, 2011, provided a notation is made on the driver’s record confirming that the proof of citizenship or legal presence check required by this paragraph has been made and noting the date it was done; and

7. Paragraph (e)(5) is amended to read:
Require compliance with the standards for providing proof of citizenship or lawful permanent residency specified in § 383.71(b)(9) and proof of state of domicile specified in § 383.71(b)(10). Exception: A state is required to check the proof of citizenship or legal presence specified in this paragraph only for initial issuance, renewal or upgrade of a CLP or non-domiciled CLP and for initial issuance, renewal, upgrade, or transfer of a CDL or non-domiciled CDL, for the first time after July 8, 2011, provided a notation is made on the driver's record confirming that the proof of citizenship or legal presence check required by this paragraph has been made and noting the date it was done;

8.3 Paragraph (f)(2)(ii) is amended to read:

The state must add the word “non-domiciled” to the face of the CLP or CDL, in accordance with § 383.153(c) or “limited-term” to the face of the CLP or CDL, in accordance with 6 CFR 37.21; and

9. Paragraph (m), Document verification, is amended to read:

The state must require at least two persons within the driver licensing agency to participate substantively in the processing and verification of the documents involved in the licensing process for initial issuance, renewal or upgrade of a CLP or non-domiciled CLP and for initial issuance, renewal, upgrade or transfer of a CDL or non-domiciled CDL. The documents being processed and verified must include, at a minimum, those provided by the applicant to prove legal presence and domicile, the information filled out on the application form, and knowledge and skills test scores. This section does not require two people to process or verify each document involved in the licensing process. Exception: For offices with only one staff member, at least some of the documents must be processed or verified by a supervisor before issuance or, when a supervisor is not available, copies must be made of some of the documents involved in the licensing process and a supervisor must verify them within one business day of issuance of the CLP, non-domiciled CLP, CDL or non-domiciled CDL.

D. 49 CFR 383.75, Third party testing. 1. Paragraph (a)(7) is amended to read: A skills test examiner who is also a skills instructor either as a part of a school, training program or otherwise is prohibited from administering a skills test to an applicant who received skills training by that skills test examiner, and 2. Paragraph (a)(8)(v) is amended to read:

Require the third party tester to initiate and maintain a bond in an amount pursuant to A.R.S. Title 28, Chapter 13 to be sufficient to pay for re-testing drivers in the event that the third party or one or more of its examiners is involved in fraudulent activities related to conducting skills testing of applicants for a CDL. Exception: A third party tester that is a government entity is not required to maintain a bond. A provider exempted under A.R.S. Title 28, Chapter 13, is responsible for all costs associated with all re-testing of applicants due to examination fraud as determined by the Department.

E. 49 CFR 383.153, Information on the CLP and CDL documents and applications. 1. Paragraph (b)(1) is amended to read: A CLP may, but is not required to, contain a digital color image or photograph or black and white laser engraved photograph. 2. Paragraph The introductory sentence in paragraph (e) is amended to read: Before a CLP or CDL may be issued:
a. A driver applicant must provide the driver applicant’s Social Security Number on the application of a CLP or CDL.

b. The state must provide the Social Security Number to the CDLIS.

c. The state must not display the Social Security Number on the CLP or CDL.

3. Paragraph (h) is amended to read:
   
   On or after July 8, 2014 current CLP and CDL holders who do not have the standardized endorsement and restriction codes and applicants for a CLP or CDL are to be issued CLPs with the standardized codes upon initial issuance, renewal or upgrade and CDLs with the standardized codes upon initial issuance, renewal, upgrade or transfer.


A.  49 CFR 392.5, Alcohol prohibition. Paragraph (e) is amended by adding:

   Drivers who violate the terms of an out-of-service order as prescribed under this section are also subject to the provisions and sanctions of A.R.S. § 28-5241.

B.  49 CFR 392.9b, Prohibited transportation.

   1. Paragraph (a) is amended to read:

      Safety registration required. A commercial motor vehicle providing transportation in interstate commerce or in intrastate commerce, except for intrastate commerce in a farm vehicle as defined under A.R.S. § 28-2514, must not be operated without a safety registration and an active USDOT Number.

   2. Paragraph (b), Penalties, is amended to read:

      Penalties. If it is determined that the motor carrier responsible for the operation of such a vehicle is operating in violation of paragraph (a) of this section, it may be subject to penalties in accordance with 49 U.S.C. 521 for interstate commerce and A.R.S. § 28-5245 for intrastate commerce.

R17-5-208. Commercial Driver License Intrastate Medical Waiver; Intrastate Alternative Physical Qualification Standards for the Loss or Impairment of Limbs, an Insulin-Dependent Diabetic Condition, or Monocular Vision

A. A person who is not physically qualified to drive a commercial motor vehicle in interstate commerce due to loss of limb, limb impairment, an insulin-dependent diabetic condition, or monocular vision, as provided under 49 CFR 391.41(b)(1), (b)(2), (b)(3), or (b)(10), but otherwise meets all other requirements under 49 CFR 391.41, may operate a commercial motor vehicle in intrastate commerce if granted an intrastate medical waiver by the Director. Application for an intrastate medical waiver shall be submitted according to subsection (B).

B. A driver applicant, or a driver applicant jointly with the motor carrier co-applicant that will employ the driver applicant, may shall complete and submit an the applicable intrastate medical waiver application to the Department’s Medical Review Program, P.O. Box 2100, Mail Drop 818Z, Phoenix, Arizona AZ 85001-2100, which shall with the following information as applicable:

   1. Identify the applicant:
a. Name and complete address of the driver applicant;
b. Name and complete address of the motor carrier co-applicant;
c. U.S. Department of Transportation motor carrier identification number, if known; and
d. A description of the driver applicant’s limb or visual impairment or insulin-dependent diabetic condition as applicable to the type of waiver being requested;

2. Describe the type of operation the driver applicant will be employed to perform, including the following information (if known):
   a. Average period of time the driver will be driving or on duty, per day;
   b. Type of commodities or cargo to be transported;
   c. Type of driver operation (i.e., sleeper team, relay, owner operator, etc.); and
   d. Number of years experience operating each type of commercial motor vehicle requested in the intrastate medical waiver application and total years of experience operating all types of commercial motor vehicles;

3. Describe the commercial motor vehicles the driver applicant intends to drive:
   a. Truck, truck tractor, or bus make, model, and year (if known);
   b. Drive train:
      i. Transmission type (automatic or manual - if manual, designate number of forward speeds);
      ii. Auxiliary transmission (if any) and number of forward speeds; and
      iii. Rear axle (designate single speed, two-speed, or three-speed);
   c. Type of brake system;
   d. Steering, manual or power assisted;
   e. Description of types of trailers (i.e., van, flatbed, cargo tank, drop frame, lowboy, or pole);
   f. Number of semitrailers or full trailers to be towed at one time;
   g. For commercial motor vehicles designed to transport passengers, indicate the seating capacity of the commercial motor vehicle; and
   h. Description of any modifications made to the commercial motor vehicle for the driver applicant, attach photographs where applicable;

4. Include a certification statement:
   a. The driver applicant shall certify that the driver applicant is otherwise qualified to drive a commercial motor vehicle under the regulations of 49 CFR 391 as adopted by the Department; and
   b. In case of a co-applicant, the co-applicant motor carrier shall certify that the driver applicant is otherwise qualified to drive a commercial motor vehicle under the regulations of 49 CFR 391 as adopted by the Department; and

5. Contain signature of each applicant and date signed:
   a. The driver applicant’s signature; and
b. The motor carrier official’s signature and title if the application has a co-applicant. Depending on the
motor carrier’s organizational structure (corporation, partnership, or proprietorship), the signer of the
application shall be an officer, partner, or the proprietor.

C. The completed intrastate medical waiver application for a driver applicant not physically qualified to drive
under 49 CFR 391.41(b)(1) or (b)(2) shall be accompanied by:

1. A copy of the medical examination report and medical examination examiner’s certificate completed
   pursuant to 49 CFR 391.43;

2. The Department’s medical waiver evaluation summary completed by either a board-qualified or board-
certified physiatrist or orthopedic surgeon. The co-applicant motor carrier or the driver applicant shall
provide the physiatrist or orthopedic surgeon with a description of the job-related tasks the driver applicant
will be required to perform:
   a. The medical waiver evaluation summary for a driver applicant not physically qualified to drive under
      49 CFR 391.41(b)(1) shall include:
      i. An assessment of the functional capabilities of the driver as they relate to the ability of the driver
to perform normal tasks associated with operating a commercial motor vehicle; and
      ii. A statement by a board-qualified or board-certified physiatrist or orthopedic surgeon that the
appenliant is capable of demonstrating precision prehension (e.g., manipulating knobs and
switches) and power grasp prehension (e.g., holding and maneuvering the steering wheel) with
each upper limb separately;
   b. The medical waiver evaluation summary for a driver applicant not physically qualified to drive under
      49 CFR 391.41(b)(2) shall include:
      i. An explanation as to how and why the impairment interferes with the ability of the applicant to
perform normal tasks associated with operating a commercial motor vehicle;
      ii. An assessment and medical opinion of whether the condition will likely remain medically stable
over the lifetime of the driver applicant; and
      iii. A statement by a board-qualified or board-certified physiatrist or orthopedic surgeon that the
applicant is capable of demonstrating precision prehension (e.g., manipulating knobs and
switches) and power grasp prehension (e.g., holding and maneuvering the steering wheel) with
each upper limb separately;
3. A description of the driver applicant’s prosthetic or orthotic device worn, if any; and
4. A copy of the driver applicant’s state motor vehicle driving record for the past three years from each state
   in which a motor vehicle driver license or permit has been obtained.

D. The completed intrastate medical waiver application for a driver applicant not physically qualified to drive
under 49 CFR 391.41(b)(3) shall be accompanied by:

1. A copy of the medical examination report and medical examination examiner’s certificate completed
   pursuant to 49 CFR 391.43;
2. An evaluation by a board-certified or board-eligible endocrinologist. A complete endocrinologist evaluation shall consist of:
   a. A comprehensive evaluation of the applicant’s five-year medical history and current status. The applicant shall provide the examining endocrinologist with a complete medical history as it pertains to the applicant’s diabetes or its complications or both, including, the date insulin use began, all hospitalization reports, consultation notes for diagnostic examinations, special studies, follow-up reports, reports of any hypoglycemic insulin reactions within the 12 months prior to the date of application, and other reports as requested by the endocrinologist. The evaluation shall also include a review of:
      i. Daily glucose monitoring logs, glycosylated hemoglobin (A1c) indicating a result in the range of 7% to 10%, including lab reference page performed during the last six months unless recently diagnosed;
      ii. Insulin dosages and types, diet utilized for control, and all medications taken; and
      iii. Examinations to detect any peripheral neuropathy or circulatory insufficiency of the extremities;
   b. A statement that the applicant is free from insulin reactions. Insulin reactions include any severe hypoglycemic reaction, which can be a reaction that results in seizure, loss of consciousness, requiring the assistance of another person, or a period of impaired cognitive function that occurs without warning. To be eligible the applicant must not have hypoglycemia unawareness and must have had no more than one documented severe hypoglycemic reaction in the previous 12 months and must have had:
      i. No recurrent (two or more) severe hypoglycemic reactions resulting in a loss of consciousness or seizure within the past five years:
      ii. No recurrent severe hypoglycemic reactions requiring the assistance of another person within the past five years;
      iii. No recurrent severe hypoglycemic reactions resulting in impaired cognitive functions that occurred without warning symptoms within the past five years; and
      iv. A period of one year of demonstrated stability following the first period of severe hypoglycemia;
   c. A statement prepared and signed by the examining endocrinologist whose status as board-certified or board-eligible is indicated. The signed statement shall include separate declarations indicating the following medical determinations:
      i. The endocrinologist is familiar with the applicant’s medical history for the past five years through a records review, treating the patient, or consultation with the treating physician;
      ii. The applicant is able to safely operate a commercial motor vehicle while using insulin; and
      iii. The applicant has been educated in diabetes, including the last education date, and its management and is informed of and understands how to individually manage and monitor the applicant’s diabetes mellitus and has demonstrated the ability and willingness to properly monitor and manage the applicant’s diabetes and procedures to follow if complications arise;
3. A separate signed vision evaluation report from an ophthalmologist or optometrist indicating that the applicant has been examined and does not have diabetic retinopathy and meets the vision standard of 49 CFR 391.41(b)(10), or has been issued a valid intrastate medical waiver for monocular vision. If the applicant has any evidence of diabetic retinopathy, the applicant must be examined by an ophthalmologist and submit a separate signed statement from the ophthalmologist that the applicant does not have unstable proliferative diabetic retinopathy (i.e. unstable advancing disease of blood vessels in the retina); and

4. A copy of the driver applicant’s state motor vehicle driving record for the past three years from each state in which a motor vehicle driver license or permit has been obtained.

E. The completed intrastate medical waiver application for a driver applicant not physically qualified to drive under 49 CFR 391.41(b)(10) shall be accompanied by:

1. A copy of the medical examination report and medical examination examiner’s certificate completed pursuant to 49 CFR 391.43;

2. A current vision examination report issued within the last 90 days from the date the report is received by the Department, completed by an ophthalmologist or optometrist. The report shall indicate that the applicant has distant visual acuity of at least 20/40 (Snellen), with or without a corrective lens, in one eye, and the applicant’s dominant eye has a visual field of at least 70° peripheral measurement in one direction and 35° in the opposite direction of the horizontal meridian and the ability to distinguish the colors of a traffic signal or device showing standard red, green, and amber, as applicable to the type of medical waiver being requested;

3. A copy of the driver applicant’s state motor vehicle driving record for the past three years from each state in which a motor vehicle driver license or permit has been obtained; and

4. A statement from the employer that the driver applicant has driven the type of vehicle for which the waiver is being requested for at least two of the previous five years.

F. Agreement. A motor carrier that employs a driver subject to an intrastate medical waiver granted by the Director under subsection (A), whether the waiver was granted unilaterally to the driver, or to the driver and co-applicant motor carrier, shall agree to:

1. Report to the Department’s Medical Review Program, P.O. Box 2100, Mail Drop 818Z, Phoenix, Arizona AZ 85001-2100, in writing, any suspension, revocation, disqualification, or withdrawal of the subject driver’s driver license or permit, and any accident, arrest, or conviction involving the driver within 30 days after the occurrence;

2. Provide to the Department’s Medical Review Program, on request, any documents and information pertaining to the driving activities, accidents, arrests, convictions, and driver license or permit suspensions, revocations, disqualifications, or withdrawals involving the subject driver;

3. Evaluate the subject driver with a road test using the trailer types the motor carrier intends the driver to transport, or alternatively accept a certificate of a trailer road test from another motor carrier if the trailer types are similar, or accept the trailer road test completed during the skill performance evaluation if trailer types are similar to that of the prospective motor carrier;
4. Evaluate the subject driver for those non-driving safety related job tasks associated with each type of trailer that will be used and any other non-driving safety related or job related tasks unique to the operations of the employing motor carrier; and
5. Use the subject driver to operate the type of commercial motor vehicle indicated on the intrastate medical waiver only when the driver is in compliance with the conditions and limitations of the waiver.

G. A driver subject to an intrastate medical waiver, issued by the Director under subsection (A), shall supply each employing motor carrier with a copy of the intrastate medical waiver.

H. The Department may require the driver applicant to demonstrate the driver applicant’s ability to safely operate the commercial motor vehicle the driver intends to drive.

I. If required by the Department during the application process, a driver applicant shall have a skill performance evaluation performed by a federally-certified state commercial driver license examiner at a Department commercial driver license facility when directed.

J. If the Director grants an intrastate medical waiver under subsection (A) to the driver applicant, the Department shall mail to the driver applicant and co-applicant motor carrier (if applicable) written approval of the intrastate medical waiver describing the terms, conditions, and limitations of the waiver.

K. The intrastate medical waiver granted by the Director under subsection (A) shall identify:
   1. The power unit (bus, truck, truck tractor) for which the waiver is granted; and
   2. The trailer type used in the skill performance evaluation, if applicable, without limiting the waiver to that specific trailer type.

L. A subject driver may use the intrastate medical waiver with other trailer types if the driver successfully completes:
   1. A trailer road test administered by the motor carrier under subsection (F)(3) for each type of trailer, and
   2. A non-driving safety related or job related task evaluation administered by the motor carrier under subsection (F)(4).

M. The intrastate medical waiver granted by the Director under subsection (A) is:
   1. Valid for a period of not more than two years from the date of issuance;
   2. Renewable 30 days prior to the expiration date; and
   3. Transferable from an original motor carrier co-applicant employer to a new motor carrier employer or to the subject driver, as a unilateral applicant if becoming self-employed, upon written notification to the Department’s Medical Review Program, P.O. Box 2100, Mail Drop 818Z, Phoenix, Arizona AZ 85001-2100, stating the new employer’s name and the type of equipment to be driven.

N. An intrastate medical waiver granted by the Director under subsection (A) to a driver applicant for monocular vision under subsection (E), shall prohibit the subject driver from transporting:
   1. Passengers for hire; and
   2. Reportable quantities of hazardous substances, manifested hazardous wastes, and hazardous material required to be placarded.
O. A driver subject to an intrastate medical waiver, issued by the Director under subsection (A), shall have the intrastate medical waiver (or a legible copy) in the subject driver’s possession while on duty.

P. The motor carrier employing a subject driver shall maintain a copy of the intrastate medical waiver in its driver qualification file and retain the copy in the motor carrier’s file for a period of three years after the driver’s employment is terminated.

Q. A driver subject to an intrastate medical waiver, issued by the Director under subsection (A) to an applicant for insulin-dependent diabetes under subsection (D), must comply with the following conditions:

1. Maintain appropriate medical supplies for glucose management while preparing for the operation of a commercial motor vehicle and during its operation. The supplies shall include the following:
   a. A digital glucose monitor with computerized memory,
   b. Supplies needed to obtain adequate blood samples and to measure blood glucose,
   c. Insulin to be used as necessary, and
   d. An amount of rapidly absorbable glucose to be used as necessary;

2. Maintain a daily record of actual driving time to correlate with the daily glucose measurements;

3. Monitor and maintain blood glucose levels in the range of 100 to 400 milligrams per deciliter (mg/dl) prior to and while driving.
   a. Check glucose before starting to drive and take corrective action if necessary. If glucose is less than 100 mg/dl, take glucose or food and recheck in 30 minutes. Repeat the process until glucose is greater than 100 mg/dl. Do not drive if glucose is less than 100 mg/dl;
   b. While driving, stop the vehicle in a safe location and check glucose every two to four hours and take appropriate action to maintain it in the range of 100 to 400 mg/dl;
   c. Have food available at all times when driving. If glucose is less than 100 mg/dl, stop driving and eat. Recheck in 30 minutes and repeat procedure until glucose is greater than 100 mg/dl; and
   d. If glucose is greater than 400 mg/dl, stop driving until glucose returns to the 100 to 400 mg/dl range. If more than two hours have passed since last insulin injection and eating, take additional insulin. Recheck blood glucose in 30 minutes. Do not resume driving until glucose is less than 400 mg/dl;

4. Participate in a diabetes education program annually;

5. Undergo the following evaluations and examinations and submit to the Department’s Medical Review Program, P.O. Box 2100, Mail Drop 818Z, Phoenix, Arizona AZ 85001-2100, within 10 days of the date of the evaluation or exam:
   a. A quarterly evaluation completed by a board-certified or board-eligible endocrinologist. A quarterly endocrinologist evaluation shall include a review of the driver’s daily glucose logs and glucose levels (from the subject driver’s required monitoring device), a comparison of monitoring dates to the driving log to ensure that the subject driver is checking glucose levels prior to operating a commercial motor vehicle, a certifying statement indicating that the subject driver is maintaining a glucose level in the range of 100 to 400 mg/dl while driving a commercial motor vehicle, a certifying statement indicating that the subject driver is maintaining a stable insulin regimen and that the subject driver’s quarterly
A1c result continues to reflect stable control, reports of any severe hypoglycemic episodes, any hypoglycemic-related hospitalization, and any treatment regimen changes since the last hypoglycemic episode;

b. An annual evaluation completed by a board-certified or board-eligible endocrinologist. In addition to the requirements of a quarterly endocrinologist evaluation under subsection (Q)(5)(a), an annual endocrinologist evaluation shall also include a general physical examination, an indication that the driver has continued to participate in a diabetes education program with the last education date provided, a certifying statement indicating that the driver understands how to individually manage and monitor the driver’s diabetes mellitus, an indication of the development of, or progression, or both, in diabetes complications (i.e. renal disease, cardiovascular disease, and neurological disease), a list of all medications taken and whether any of the medications may compromise the driver’s ability to operate a commercial motor vehicle, the endocrinologist’s belief that the driver has demonstrated the ability and willingness to properly manage the driver’s diabetes, and a certifying statement indicating that the driver is able to safely operate a commercial motor vehicle while using insulin;

c. An annual vision evaluation report, as prescribed under subsection (D)(3). If there is any evidence of diabetic retinopathy, provide annual documentation by an ophthalmologist that the driver does not have unstable proliferative diabetic retinopathy; and

d. An annual medical examination report and medical examination examiner’s certificate completed pursuant to 49 CFR 391.43. Provide copies of the endocrinologist evaluation and the vision evaluation report to the medical examiner for review; and

6. Report the following information to the Department’s Medical Review Program, P.O. Box 2100, Mail Drop 818Z, Phoenix, Arizona AZ 85001-2100, within two days of occurrence;

a. All episodes of severe hypoglycemia, significant complications, or inability to manage diabetes; and

b. Any involvement in an accident or any other adverse event in a commercial motor vehicle or personal vehicle, related to an episode of hypoglycemia or hyperglycemia.

R. A driver subject to an intrastate medical waiver, issued by the Director under subsection (A) to an applicant for monocular vision under subsection (E), must be physically examined every year and shall submit the following to the Department’s Medical Review Program, P.O. Box 2100, Mail Drop 818Z, Phoenix, Arizona AZ 85001-2100:

1. A vision examination report issued within the last 90 days from the date the report is received by the Department, as prescribed under subsection (E)(2); and

2. A current medical examination report and medical examination examiner’s certificate completed pursuant to 49 CFR 391.43 within the past year.

S. A driver subject to an intrastate medical waiver, or a driver subject to an intrastate medical waiver jointly with a motor carrier co-applicant, may renew an intrastate medical waiver by submitting to the Department’s Medical Review Program, P.O. Box 2100, Mail Drop 818Z, Phoenix, Arizona AZ 85001-2100, a new intrastate medical waiver application. The intrastate medical waiver application shall contain the following:
1. Name and complete address of the motor carrier currently employing the applicant;
2. Name and complete address of the subject driver;
3. Total miles driven under the current intrastate medical waiver;
4. Number of accidents incurred while driving under the current intrastate medical waiver, including the date of each accident, number of fatalities, number of injuries, and the estimated dollar amount of any property damage;
5. A current medical examination report and medical examination examiner’s certificate completed pursuant to 49 CFR 391.43;
6. A current medical examination or evaluation as applicable to the medical condition:
   a. A current medical waiver evaluation summary, as prescribed under subsection (C)(2), for a driver with a loss of limb or limb impairment;
   b. A current endocrinologist evaluation, as prescribed under subsection (D)(2), and a current vision evaluation report, as prescribed under subsection (D)(3), for a driver who is an insulin-dependent diabetic; or
   c. A current vision examination report, as prescribed under subsection (E)(2), for a driver with monocular vision;
7. A copy of the subject driver’s current state motor vehicle driving record for the period of time the current intrastate medical waiver has been in effect;
8. Notification of any change in the type of tractor the driver will operate;
9. Subject driver’s signature and date signed; and
10. Motor carrier co-applicant’s signature and date signed (if applicable).

T. The Director may deny an application for the intrastate medical waiver or may grant the waiver in whole or in part and issue the waiver subject to such terms, conditions, and limitations as the Director deems consistent with the public interest.

U. The Director may revoke an intrastate medical waiver after providing the driver subject to an intrastate medical waiver written notice of the proposed revocation and a reasonable opportunity to request a hearing pursuant to the procedure prescribed under 17 A.A.C. 1, Article 5. The Director may revoke an intrastate medical waiver if the:
   1. Driver subject to an intrastate medical waiver, or co-applicant (if applicable), or both provided false information in the application,
   2. Driver subject to an intrastate medical waiver, or co-applicant (if applicable), or both failed to comply with the terms and conditions of the intrastate medical waiver, or
   3. Issuance of the intrastate medical waiver resulted in a lower level of safety than before the waiver was granted.

V. If the enforcement of any provision of this Section would result in the loss or disqualification of federal funding for any state agency or program, that provision is invalid.
A. Incorporation of federal regulations.

1. As relevant to the transportation of hazardous materials by highway, the Department incorporates by reference, as amended under this Section, the following Parts of the Federal Hazardous Materials Regulations; revised as of October 1, 2016, and no later amendments or editions, as 49 CFR - Transportation, Subtitle B - Other Regulations Relating to Transportation, Chapter I - Pipeline and Hazardous Materials Safety Administration, Department of Transportation:

   a. Subchapter A - Hazardous Materials and Oil Transportation; Part 107 - Hazardous materials program procedures; and

   b. Subchapter C - Hazardous Materials Regulations; Parts:
      i. 171 - General information, regulations, and definitions;
      ii. 172 - Hazardous materials table, special provisions, hazardous materials communications, emergency response information, training requirements, and security plans;
      iii. 173 - Shippers - general requirements for shipments and packagings;
      iv. 177 - Carriage by public highway;
      v. 178 - Specifications for packagings; and
      vi. 180 - Continuing qualification and maintenance of packagings.

2. The material incorporated by reference under this subsection is on file with the Department at 206 S. 17th Avenue, Phoenix, AZ 85007. The incorporated material is published by National Archives and Records Administration, Office of the Federal Register, 8601 Adelphi Road, College Park, MD 20740-6001, and is available from printed and distributed by the U.S. Government Publishing Office, P.O. Box 979050, St. Louis, Missouri MO 63197-9000. The incorporated material can be viewed online at http://www.ofr.gov or https://www.gpo.gov/fdsys and ordered online by visiting the U.S. Government Online Bookstore at http://bookstore.gpo.gov. The International Standard Book Numbers are 9780160935466 for 49 CFR 107, 171, 172, 173, and 177 and 9780160935473 for 49 CFR 178 and 180.

B. Application and exceptions.

1. Application.
   a. Regulations incorporated under subsection (A) apply as amended by subsection (C) to motor carriers, shippers, and manufacturers as defined under A.R.S. § 28-5201.
   b. Regulations incorporated under subsection (A) also apply to any vehicle owned or operated by the state, a political subdivision, or a state public authority, used to transport a hazardous material, including hazardous substances and hazardous waste.

2. Exceptions. An authorized emergency vehicle, as defined under A.R.S. § 28-101, is excepted from the provisions of this Section.

C. Amendments. The following sections of the Federal Hazardous Materials Regulations, incorporated under subsection (A), are amended as follows:
1. Part 171, General information, regulations, and definitions. Section 171.8, Definitions and abbreviations. Section 171.8 is amended by revising the definitions for “Carrier,” “Hazmat employer,” and “Person,” and adding a definition for “Highway” as follows:

“‘Carrier’ means a person engaged in the transportation of passengers or property by highway as a common, contract, or private carrier and also includes the state, a political subdivision, and a state public authority engaged in the transportation of hazardous material.”

“‘Hazmat employer’ means a person who uses one or more employees in connection with: transporting hazardous material; causing hazardous material to be transported or shipped; or representing, marking, certifying, selling, offering, reconditioning, testing, repairing, or modifying containers, drums, or packagings as qualified for use in the transportation of hazardous material. This term includes motor carriers, shippers, and manufacturers defined under A.R.S. § 28-5201 and includes the state, political subdivisions, and state public authorities.”

“‘Highway’ means a public highway defined under A.R.S. § 28-5201.”

“‘Person’ has the same meaning as defined under A.R.S. § 28-5201.”

2. Part 172, Hazardous materials table, special provisions, hazardous materials communications, emergency response information, training requirements, and security plans. Section 172.3, Applicability. Paragraph (a)(2) is amended to read: “Each motor carrier that transports hazardous materials, and each state agency, political subdivision, and state public authority that transports hazardous material by highway.”

3. Part 177, Carriage by public highway.
   a. Section 177.800, Purpose and scope of this part and responsibility for compliance and training. In paragraph (a), the phrase “by private, common, or contract carriers by motor vehicle” is amended to read, “by a motor carrier operating in Arizona, a state agency, a political subdivision, or a state public authority that transports hazardous material by highway.”
   b. Section 177.802, Inspection. Section 177.802 is amended to read: “Records, equipment, packagings, and containers under the control of a motor carrier or other persons subject to this part, affecting safety in transportation of hazardous material by motor vehicle, must be made available for examination and inspection by an authorized representative of the Department as prescribed under A.R.S. §§ 28-5204 and 28-5231.”

R17-5-212. Motor Carrier Safety: Hearing Procedure

A. Scope.
   1. This Section applies only to a motor carrier enforcement action under:
      a. R17-5-201 through R17-5-209; and
      b. A.R.S. Title 28, Chapter 14.
   2. In an enforcement hearing involving a manufacturer, motor carrier, shipper, or driver under this Section, the Department shall follow the procedures prescribed under 17 A.A.C. 1, Article 5, except as modified under subsections (B) through (I) and (C).
B. Initiation of proceedings, pleadings, service.

1. The Director shall initiate a hearing under this Section by:
   a. Signing and serving a complaint in the form prescribed under subsection (G)(C) that cites a manufacturer, motor carrier, shipper, or driver for an alleged infraction; and
   b. Serving the cited manufacturer, motor carrier, shipper, or driver with a hearing notice within 15 days after the date the complaint is signed. Submitting to the Department’s Executive Hearing Office a copy of the complaint and notification of the date the complaint was served.

2. After the Director signs a complaint, the Executive Hearing Office shall act on the Director’s behalf through completion of an administrative proceeding under this Section. The date of service is the date of mailing.

C. Order Complaint; order to show cause.

1. The complaint shall contain the following:
   a. The Department as the designated petitioner;
   b. The respondent’s name and the basis of fact for the complaint, including a listing of any alleged violation of Department statute or rule;
   c. The relief sought by the Department; and
   d. A copy of the written violation notice issued by a law enforcement agency to the respondent, if applicable.

2. When a complaint is served, Upon receipt of a copy of the complaint, the Executive Hearing Office shall immediately issue a summons an order to show cause for a respondent to appear at an administrative hearing to explain why the Executive Hearing Office requested relief should not grant the requested relief be granted.

2. The Executive Hearing Office shall hold a hearing under this Section within 60 days after the date the complaint is served the time-frame required by statute.

3. The parties may resolve a complaint before the hearing date.
   a. The respondent parties shall file any notice of settlement condition with the Executive Hearing Office.
   b. Complaint settlement terminates the right of both petitioner and respondent to receive additional administrative review.

D. Service.

1. The Executive Hearing Office shall:
   a. Send an order to show cause by certified mail as prescribed under A.R.S. § 28-5232(B), and
   b. Maintain a proof of service file.

2. The date of service is the date of mailing.

E. Answer.

1. Within 15 days after service of a complaint, a respondent shall respond to the complaint by:
   a. Filing a written answer with the Executive Hearing Office; and
b. Serving the Assistant Attorney General, Transportation Division, representing the Department with a copy of the answer.

2. A respondent's written answer shall contain:
   a. An admission or denial of each complaint allegation, and
   b. A list of all defenses that the respondent intends to raise during the hearing.

3. In a hearing, the Executive Hearing Office shall consider any allegation not denied in the answer as an admission to the allegation.

F. Default.

   1. The Executive Hearing Office shall find in default a respondent that fails to file an answer within 15 days after the service date of a complaint.

   2. If the Executive Hearing Office finds a respondent in default, the Executive Hearing Office shall:
      a. Consider the respondent’s default as an admission of all complaint allegations unless the default is cured under subsection (F)(3), and
      b. Enter an order granting the relief requested in the Department's complaint.

   3. A respondent may cure a default by following Rule 60(c) of the Arizona Rules of Civil Procedure.


   1. The Director shall initiate an emergency motor carrier hearing process according to R17-5-211(E) by:
      a. Issuing a complaint and order to show cause according to the hearing scope under A.R.S. § 28-5232(C); and
      b. Ordering immediate suspension of the registration of the motor vehicle owned or leased by the manufacturer, shipper, or motor carrier, or the driver license or driver's nonresident operating privilege, as prescribed under A.R.S. § 28-5232(A).

   2. The Executive Hearing Office shall set an emergency hearing date to occur within 30 days after the date on the complaint.

   3. The complaint and order to show cause shall contain the following:
      a. The Department as the designated petitioner on the state’s behalf;
      b. The respondent's name and the basis of fact for the complaint, including a listing of any alleged violation of Department statute or rule;
      c. The relief sought by the Department; and
      d. An original copy of the written violation notice issued by a law enforcement agency that was served upon the respondent.

   4. At an emergency motor carrier hearing, an Executive Hearing Office administrative law judge shall determine whether the respondent:
      a. Was operating on a public highway and the operation created a danger to the public safety,
      b. Was responsible for the danger, and
      c. Is responsible for preventing or remedying further danger to public safety.
5. Upon a finding that the factors in subsection (G)(4) are present, the administrative law judge shall order that the motor carrier’s registration and operator’s driver license or driver’s nonresident operating privilege suspension continue.

6. If a respondent fails to appear at an emergency motor carrier hearing, any suspension previously ordered remains in effect until the respondent appears and meets all requirements under A.R.S. § 28-5232(F).

H. Upon a finding that the factors in subsection (G)(4) are present, the Director shall impose a civil penalty as prescribed under A.R.S. §§ 28-5232, 28-5237 and 28-5238.

I. A respondent may request judicial review of a motor carrier safety hearing as prescribed under A.R.S. § 28-5239.
R17-5-202. Motor Carrier Safety: Incorporation of Federal Regulations; Applicability

In this Section, the Department incorporates by reference:

1. The following parts, with noted exceptions, of the Code of Federal Regulations, revised as of October 1, 2016:
   

2. The following sections as published in 82 FR 5292, January 17, 2017:
   

R17-5-209. Hazardous Materials Transportation: Incorporation of Federal Regulations; Applicability

In this Section, the Department incorporates by reference the following parts of the Code of Federal Regulations, revised as of October 1, 2016:

49 CFR 107, 171, 172, 173, 177, 178, and 180
RE: Comments in Response to Notice of Proposed Rulemaking R17-180

Dear Ms. Olson:

I. INTRODUCTION

A. The Parties’ Interest

These comments are submitted on behalf of Owner-Operator Independent Drivers Association, Inc. (“OOIDA” or “Association”) and Gordon W. Tullett and Gordon Tullett Logistics LLC, and (collectively, “Tullett”) in response to the Department of Transportation’s (“ADOT”) Notice of Proposed Rulemaking R17-180. See 23 A.A.R. 2810–21 (October 13, 2017) (the “Notice”). The Notice requests comments on the amendment of several ADOT regulations in Chapter 5, Article 2, of Title 17, including Arizona’s incorporation of the Federal Motor Carrier Safety Regulations (“FMCSRs”) promulgated by the Federal Motor Carrier Safety Administration (“FMCSA”) and found in various Parts of Title 49 of the Code of Federal Regulations. This includes 49 C.F.R. Part 395, the current version of which mandates the use of

OOIDA is a not-for-profit corporation incorporated in 1973 under the laws of the State of Missouri, with its principal place of business in Grain Valley, Missouri. OOIDA is the largest international trade association representing the interests of independent owner-operators, small-business motor carriers, and professional drivers. The 150,000 members of OOIDA are professional drivers and small-business men and women located in all 50 states and Canada who collectively own and operate more than 240,000 individual heavy-duty trucks. Single-truck motor carriers represent nearly half of the total of active motor carriers operated in the United States. The mailing address of the Association is:

Owner-Operator Independent Drivers Association, Inc.
P.O. Box 1000
1 NW OOIDA Drive
Grain Valley, Missouri 64029
www.ooida.com

OOIDA actively promotes the views of professional drivers and small-business truckers through its interaction with state and federal government agencies, legislatures, courts, other trade associations, and private businesses to advance an equitable and safe environment for commercial drivers. OOIDA is active in all aspects of highway safety and transportation policy, and represents the positions of professional drivers and small-business truckers in numerous committees and various forums on the local, state, national, and international levels. In sum, OOIDA’s mission includes the promotion and protection of the interests of independent truckers on any issue which might touch on their economic well-being, their working conditions, or the safe operation of their motor vehicles on the nation’s highways.
Gordon Tullett Logistics, LLC is a limited liability company organized under the laws of the State of California and a motor carrier authorized to operate in interstate commerce by the United States Department of Transportation. Gordon Tullett Logistics, LLC’s commercial motor vehicles regularly haul property in interstate commerce in and through the State of Arizona. Gordon W. Tullett is the owner of Gordon Tullett Logistics, LLC and is a commercial truck driver. Mr. Tullett drives Gordon Tullett Logistics, LLC’s commercial motor vehicles, and he regularly operates in interstate commerce in and through the State of Arizona. Both Gordon Tullett Logistics, LLC and Gordon W. Tullett will be affected by the amendments proposed in the Notice. Mr. Tullett’s and Gordon Tullett Logistics, LLC’s mailing address is:

3233 Gulf Island St.
West Sacramento, California 95691-5935

OOIDA and Tullett file these comments because of their serious concern that Arizona’s adoption and implementation of 49 C.F.R. Part 395—including the ELD Mandate contained therein—violates Tullett’s and OOIDA’s members’ constitutional rights and would have wide-ranging and negative implications for the health, privacy, safety and economic interests of all U.S.-domiciled truck drivers and motor carriers including Tullett and other members of OOIDA.

B. Summary of Comments

ADOT proposes to amend several of its motor carrier regulations, including, importantly, its incorporation by reference of the FMCSR in R17-5-202(A). 23 A.A.R. 2813. The existing regulation incorporates into Arizona law the FMCSR in effect as of October 1, 2012. R17-5-202(A). The proposed amended version would incorporate the FMCSR in effect as of October 1, 2016. 23 A.A.R. 2813. FMCSA has made myriad changes to the FMCSR since October 1, 2012. Updating Arizona’s version of the FMCSR is therefore no mere semantic or technical update. ADOT’s proposed amendment significantly changes Arizona law and has real-world
implications on Tullett and OOIDA’s members and other trucking industry participants and their constitutional rights. The proposed amendment should not be taken lightly, and ADOT should not rubber stamp FMCSA’s amendments without careful consideration of the broad implications of those regulations.

For instance, FMCSA adopted the ELD Mandate effective February 16, 2016, which requires thousands of OOIDA members and other carriers and drivers to purchase and implement costly electronic logging devices (“ELDs”). 49 C.F.R. § 395.8(a)(1)(i); 80 Fed. Reg. 78,292 (Dec. 16, 2015). Compliance with the ELD Mandate is an expensive and complex endeavor. And because Arizona last incorporated the FMCSRs before FMCSA promulgated the ELD Mandate, the ELD Mandate is not currently part of Arizona law. The Notice, therefore, proposes adopting the ELD Mandate into Arizona law.

Arizona’s adoption of the ELD Mandate would violate Tullett’s and OOIDA’s members’ constitutional rights. First, the ELD Mandate authorizes the warrantless inspection of drivers and their personal effects. These warrantless searches violate the Fourth Amendment’s and the Arizona Constitution’s warrant requirement unless they fall within the exception for searches in pervasively regulated industries. Arizona’s adoption of the ELD Mandate fails to come within this exception for four reasons: (1) this exception applies only to business premises, not persons as provided in the ELD Mandate; (2) this exception applies only to administrative searches, not searches to support the ordinary needs of law enforcement, and Arizona law imposes criminal sanctions for some FMCSR violations; (3) this exception applies only if the search is necessary to further the regulatory scheme, and neither ADOT nor FMCSA has shown the ELD Mandate does so; and (4) this exception requires an administrative structure that provides a
constitutionally adequate substitute for a warrant in the form of procedures to limit officer discretion and establish limits of the search’s scope, which the ELD Mandate fails to do.

Moreover, the statute authorizing promulgation of an ELD rule directed the United States Secretary of Transportation to ensure the copious data collected from ELDs would be maintained privately and used only for enforcement of hours-of-service compliance. Neither the Secretary nor FMCSA has adopted regulations to ensure such privacy and limited use, but has instead relied on the incorporating States, like Arizona, to enact such protections. This Arizona has not done.

Finally, the Notice makes no mention of the serious changes to ADOT regulations and Arizona commercial motor vehicle law brought about through incorporation of a significantly updated version of the FMCSRs, not least of which is incorporation of the ELD Mandate. The Notice also gives short shrift to the financial and logistical impact on small business operators, providing instead a generic conclusion that the costs will be offset by unnamed safety gains.

Indeed, the Notice demonstrates that ADOT has done little more than delegate its legislative rulemaking authority to the federal government and rubber stamp a significant change that will affect numerous persons in Arizona without considering the constitutional and other legal deficiencies therewith. For these reasons, the Notice is deficient.

II. THE PROPOSED RULE VIOLATES THE UNITED STATES AND ARIZONA CONSTITUTIONS’ PROTECTIONS AGAINST WARRANTLESS SEARCHES AND SEIZURES

A. The Rule Is a Search

Except in certain well-defined circumstances, a search is not considered reasonable under the Fourth Amendment unless executed pursuant to a judicial warrant issued upon probable cause. See Skinner v. Railway Labor Executives Ass’n, 489 U.S. 602, 619 (1989).
The government-mandated 24-hours a day recording of drivers’ activities in the ELD Mandate is an intrusion upon driver privacy. See Griswold v. Connecticut, 381 U.S. 479, 484 (1965). The statute is aimed directly at drivers, thus implicating their privacy rights. The purpose of the ELD is “to improve compliance by an operator [driver] of a vehicle with hours of service regulations.” 49 U.S.C. § 31137(a)(1). The ELD devices are intended to “accurately record commercial driver hours of service.” Id. at (b)(1)(A)(i). The ELD interface must be designed to aid “law enforcement review.” Id. at (b)(2)(A). The Secretary is directed to use data gathered by ELDs “only to enforce the Secretary’s motor carrier safety and related regulations, including hours of service regulations.” Id. at (e)(1), (3).

In United States v. Jones, 132 S. Ct. 945 (2012), the Supreme Court found the FBI’s prolonged use of a warrantless GPS tracking device on a vehicle was a search within the meaning of the Fourth Amendment:

The Government physically occupied private property for the purpose of obtaining information. We have no doubt that such a physical intrusion would have been considered a “search” within the meaning of the Fourth Amendment when it was adopted.

Id. at 949. The Court rejected the Government’s contention that no search occurred, since the Defendant had no reasonable expectation of privacy in the location of the vehicle on public roads, which was visible to all, concluding:

[T]he Government acknowledges, “the officers in this case did more than conduct a visual inspection of the respondent’s vehicle . . . . By attaching the device to the Jeep, officers encroached on a protected area.
Jones, 132 S. Ct. at 951. The constitutional focus in all cases is on the methods by which the searches are conducted. “It is the exploitation of technological advances that implicates the Fourth Amendment, not their mere existence.” U.S. v. Karo, 468 U.S. 705, 712 (1984).

Under the ELD Mandate, the 24-hour electronic recording of data about a driver’s activity and location is much more invasive than previous methods of recording hours of service such as paper logbooks. A truck traveling over public highways can easily be observed by others. But circumstances change when a driver is exposed to continuous surveillance over a long period of time. Supreme Court precedent has firmly prohibited such surveillance.

B. The Rule Is a Seizure

The ELD Mandate’s attempt to compel installation of ELD devices without a warrant also constitutes an unconstitutional seizure. The Fourth Amendment “protects property as well as privacy.” Soldal v. Cook Cnty., Ill., 506 U.S. 56, 62 (1992). A seizure of property occurs when “there is some meaningful interference with an individual’s possessory interests”—“however brief” the interference may be. United States v. Jacobsen, 466 U.S. 109, 113 n.5 (1984).

Unless the police have complied with the Fourth Amendment’s requirements, “people are entitled to keep police officers’ hands and tools off their vehicles.” United States v. McIver, 186 F.3d 1119, 1135 (9th Cir. 1999) (Kleinfeld, J., concurring in the judgment).

In Silverman v. United States, the Court concluded that installation of a listening device on the defendants’ property was subject to the Fourth Amendment. 365 U.S. 505, 511-12 (1961). Here, trucks clearly are “effects” under the text of the Fourth Amendment, see United States v. Chadwick, 433 U.S. 1, 12 (1977), and are thus “constitutionally protected areas” for purposes of Silverman.

1 See also Kyllo v. United States, 533 U.S. 27 (2001) (warrantless use of thermal imaging constituted a search of a home in violation of the Fourth Amendment).
For many truckers, their truck is not simply a vehicle— it is also an office, and indeed, a home away from home. Long haul drivers eat, sleep, and engage in a wide variety of personal conduct in their trucks which are equipped with bunks, kitchens, bathroom facilities, etc. A governmental mandate that drivers install surveillance devices in their trucks thus constitutes a seizure of their property.

C. The Rule Does Not Qualify for the Exception for a Warrantless Search in a Pervasively Regulated Industry

FMCSA has previously stated that the use of ELDS falls under the pervasively regulated industry exception to the Fourth Amendment. 80 Fed. Reg. 78,365, n.39. In Donovan v. Dewey, the Supreme Court held that where an individual elects to participate in a pervasively regulated business his “justifiable expectations of privacy” are necessarily diminished. 452 U.S. 594, 600 (1981). In such cases, reasonably defined inspection schemes accompanied by appropriate standards for implementation pose only limited threats to those limited expectations of privacy. Id. at 599.

In New York v. Burger, the Court reaffirmed the principles articulated in Donovan, concluding that where (1) the business in question is closely regulated, and (2) the warrantless inspections are necessary to further the regulatory scheme, (3) compliance with the Fourth Amendment turns on whether the inspection program, in terms of the certainty and regularity of its application, provides a constitutionally adequate substitute for a warrant. New York v. Burger, 482 U.S. 691, 702-03 (1987) (emphasis added). The ELD Mandate does not satisfy these standards.

1. The pervasively regulated industry exception applies only to commercial premises not persons.
Although warrantless searches of the workplace in pervasively regulated industries have been approved by the courts, this approval has not been extended to the warrantless search of an individual, the recording of a person’s location, and the monitoring of that person’s activities.

*Burger* stands for the proposition that privacy expectations are lower in “commercial premises” than in a home and that such expectations are “particularly attenuated” in “commercial property.” *Burger*, 482 U.S. at 700. The problem here is that this rule does not involve the inspection of “commercial property.” It involves the systematic recording of the movement and activities of individual drivers over extended periods of time by the use of sophisticated electronic devices. Those recordings must be turned over to law enforcement officers upon demand. Although an *administrative inspection of business premises* (including equipment like trucks) has been approved where the inspection meets the requirements of *Burger*, this case is not about the search of trucks. The rule focuses explicitly on monitoring the movement and activities of real people. For law enforcement purposes, such privacy interests demand greater protections.

The *Burger* Court specifically noted that the statute authorizing the inspection “must be ‘sufficiently comprehensive and defined that the owner of commercial property cannot help but be aware that his *property* will be subject to periodic inspections undertaken for specific purposes.’” *Id.* at 703 (quoting *Donovan*, 452 U.S. at 600) (emphasis added). The foundation for the Court’s holding in *Burger* rests on a long series of Supreme Court cases dealing exclusively with administrative inspections of commercial premises. *Colonnade Corp. v. United States*, 397 U.S. 72, 77 (1970) (warrantless inspection of premises on which liquor was sold disapproved); *United States v. Biswell*, 406 U.S. 311, 315 (1972) (warrantless inspection of premises on which firearms were sold approved); *Donovan*, 452 U.S. at 606 (warrantless inspection of stone quarry...

In *Whren v. United States*, 517 U.S. 806 (1996), Justice Scalia, writing for a unanimous court, observed that *Burger* upheld the constitutionality of a warrantless administrative inspection which he defined as “the inspection of *business premises* conducted by authorities responsible for enforcing a pervasive regulatory scheme.” 517 U.S. at 811 n.2 (emphasis added). Research has not revealed a case where the Court held that individuals working in a pervasively regulated industry may be personally subjected to continuous recording of their whereabouts, and work and rest activities, by sophisticated monitoring devices over long periods of time.

2. The pervasively regulated industry exception applies only to administrative searches, not searches to support law enforcement.

The *Burger* case involved efforts by the state of New York to deal with car thefts and the ability of car thieves to dispose of stolen cars at “chop shops” set up to dismantle stolen cars and sell the parts at a profit. New York enacted an administrative regime to regulate chop shops through licensing and record keeping regulations. Separate penal statutes addressed dealing with stolen vehicles and parts. The issue in *Burger* was whether New York enforcement personnel could conduct warrantless inspections of “chop shops” under the administrative code where those inspections regularly uncovered evidence of criminal violations for prosecution. The majority upheld the warrantless search under the administrative regulations:

So long as a regulatory scheme is properly administrative, it is not rendered illegal by the fact that the inspecting officer has the power to arrest individuals for violations other than those created by the scheme itself.

*Burger*, 482 U.S. at 717.

In the present case Congress has enacted a single statute (49 U.S.C. § 31137) designed to support direct enforcement of the hours of service (“HOS”) regulations. The statute itself leaves
no doubt that the requirement that commercial motor vehicles be equipped with ELDs is aimed directly and exclusively at the carriers and drivers of those vehicles. The purpose of the ELD is “to improve compliance by an operator [driver] of a vehicle with hours of service regulations.” 49 U.S.C. § 31137(a)(1). The ELD devices are intended to “accurately record commercial driver hours of service.” Id. at (b)(1)(A)(i). The ELD interface must be designed to aid “law enforcement review.” Id. at (b)(2)(A). The Secretary is directed to use data gathered by ELDs “only to enforce the Secretary’s motor carrier safety and related regulations, including hours of service regulations.” Id. at (e)(1), (3).

In Burger the majority and dissenting Justices were divided over whether warrantless enforcement of the administrative regulations was being used as a pretext for criminal enforcement. 482 U.S. at 724 (Brennan, J., dissenting). The majority opinion concluded that the administrative and penal programs were sufficiently separated to permit warrantless administrative inspections. 482 U.S. at 717 (majority opinion). But the ELD Mandate presents no such separation.

The scheme here is designed to achieve direct penal enforcement of FMCSA’s HOS regulations. ADOT regulations authorize enforcement officers to issue criminal citations for certain violations of motor carrier safety regulations including HOS regulations. See A.R.S. § 28-5240. The Fourth Amendment does not permit warrantless searches to support the ordinary needs of law enforcement. City of Indianapolis v. Edmond, 531 U.S. 32, 44 (2000); Joy v. Penn-Harris-Madison Sch. Corp., 212 F.3d 1052, 1059 (7th Cir. 2000) (special needs exception approved where drug test results were not turned over to law enforcement personnel). FMCSA does not contend that its warrantless surveillance of drivers using ELDs falls into the exemption for “special needs beyond the needs of ordinary law enforcement.” 80 Fed. Reg. at 78,365 n.39.
Nor could it make such a claim because Section 31137 is specifically designed to support law enforcement.

The ELD Mandate cannot qualify for the special needs exception for two reasons. First, the government interest goes too far. The mandated use of ELDs subjects perfectly legal, private activity to public scrutiny and potential sanction. Second, FMCSA has not established any purpose beyond law enforcement. The only stated purpose of the mandated use of ELDs is to “increase compliance” with HOS requirements. As in Edmond, the primary purpose for mandatory ELD implementation is “indistinguishable” from FMCSA’s general interest in compliance with the HOS regulations. Edmond, 531 U.S. at 48. Thus, there is no “special need” to justify the warrantless search.

3. Equipping trucks with ELDs does not further the regulatory scheme.

Mandating the use of ELDs is not necessary to further the regulatory scheme because they do almost nothing to improve compliance with the HOS rules. That is, ELDs require the operator to manually input all non-driving records of duty status; thus, ELDs suffer from virtually the same potential inaccuracies due to driver harassment and coercion as the current paper log system. Therefore, this search fails to satisfy the second prong of the test set forth in Burger. 482 U.S. at 702-03. ELDs do not record compliance with the HOS rules any more accurately than the manual recording of entries on paper log books. Neither ADOT nor FMCSA have ever provided any accurate and current data establishing that ELDs will enhance compliance with the HOS regulations or that such enhanced compliance will produce any favorable impact on highway safety. In the face of such deficiencies, the deployment of ELDs fails to satisfy the second prong of the Burger test, that such deployment be necessary to further the regulatory scheme. 482 U.S. at 702.
The statutory goal for the ELD mandate is “to improve compliance by an operator of a vehicle with hours of service regulations.” 49 U.S.C. § 31137(a)(1). FMCSA states that “[t]his rule improves commercial motor vehicle (CMV) safety.” 80 Fed. Reg. at 78,293. Nothing in the record of the ELD Mandate supports the conclusion that these statutory and regulatory goals are furthered by the mandatory use of ELDs. The fact that drivers must manually enter changes in duty status into an ELD makes the device no more accurate than paper logs in meeting the regulatory goal of improving compliance with the HOS rules.

ADOT and FMCSA are completely unable to support the safety claims with current, reliable data. There is absolutely no data to support the proposition that ELDs are necessary (or capable of) supporting the regulatory objectives. The ELD Mandate does little more than substitute one method of recording duty status for another—manual ELD entries of changes in duty status for manual log book entries—but at a much greater monetary and privacy cost than paper logbooks.

4. The ELD Mandate does not include regulations that serve as a constitutionally adequate substitute for a warrant.

The third prong of the Burger analysis requires that the inspection program in terms of the certainty and regularity of its operation must provide a “constitutionally adequate substitute for a warrant.” 482 U.S. at 703 (citing Donovan, 452 U.S. at 603). The administrative regulations “must limit the discretion of the inspecting officers.” Id. Congress enacted two provisions that directed the Secretary “to institute appropriate measures” to preserve the confidentiality of personal data disclosed to enforcing officers during a roadside inspection and limiting the use to which enforcement officers could put the data obtained from the ELD. 49 U.S.C. § 31137(e)(2), (3).
FMCSA ignored this statutory mandate and took no measures to define and limit the discretion of enforcement officers respecting confidentiality and use of ELD data. *Cf. State v. Hone*, 866 P.2d 881, 883 (Ariz. App. 1st Div. 1993) (rejecting livestock vehicles search statute in part due to search statute’s failure to limit officer discretion as required under *Burger* third prong). Moreover, ADOT has not separately considered this requirement and enacted its own scheme to protect drivers’ constitutional rights. Thus, the inspection program—in terms of the certainty and regularity of its application—does not serve as a constitutionally adequate substitute for a warrant. *See Burger*, 482 U.S. at 702-03.

D. **The Arizona Constitution Provides Increased Search and Seizure Protections in the Case of Homes and Personal Possessions.**

The Arizona Constitution provides express protections against unlawful invasion of a person’s home or personal affairs: “No person shall be disturbed in his private affairs, or his home invaded, without authority of law.” Ariz. Const. art. 2, § 8. Indeed, Arizona courts have interpreted this provision to provide specific protections against unlawful searches and seizures of the home and to create a right of privacy, independent of and beyond those provided by the Fourth Amendment to the United States Constitution. *See, e.g.*, *State v. Ault*, 150 Ariz. 459, 466, 724 P.2d 545, 552 (1986) (citing *State v. Bolt*, 142 Ariz. 260, 264, 689 P.2d 519, 523 (1984)).

The ELD Mandate simply does not comport with Arizona’s constitutional protections of the home and personal possessions or the *Burger* third prong’s limiting of officer discretion in administrative searches recognized by the Arizona courts. That is, by authorizing officers to conduct searches to check compliance with the ELD Mandate without adopting additional procedures to limit officer discretion and protect drivers’ and carriers’ privacy rights, ADOT’s proposed regulations violate Article 2, Section 8 of the Arizona Constitution.
III. THE PROPOSED RULE FAILS TO PROTECT DRIVERS’ PRIVACY AND LIMIT THE USE OF ELD DATA DISCLOSED TO LAW ENFORCEMENT OFFICERS

49 U.S.C. § 31137(e) limits the use of ELD data by the Secretary and further mandates that the Secretary institute appropriate measures to deal with driver information collected from ELDs by enforcement officials during the course of an enforcement action. Several organizations, including OOIDA, filed comments on the implications of this provision. 80 Fed. Reg. at 78,320. The Secretary took no action to satisfy the obligations imposed by these provisions on either federal or state enforcement personnel. Furthermore, ADOT has likewise failed to act to ensure these important congressional mandates.

It should be noted that FMCSA relies almost exclusively on state law enforcement personnel to enforce federal motor carrier safety standards. See 49 U.S.C. § 31102; 49 C.F.R., Part 350. In order to qualify for federal grants under MCSAP, a state must submit a certification (49 C.F.R. § 350.211) to FMCSA of its compliance with numerous requirements imposed by both statute and regulation. 49 U.S.C. § 31102(b)(A)-(X); 49 C.F.R. § 350.201. If the Secretary finds that a state does not comply with MCSAP requirements, the Secretary can make a finding of non-conformity, resulting in “immediate cessation of Federal funding.” 49 C.F.R. § 350.215. By statute, the Secretary is required to make “continuing evaluation of the way the State is carrying out the plan.” 49 U.S.C. § 31102(d).

FMCSA has completely ignored the statutory mandate to “institute appropriate measures” to ensure that enforcement officers are directed to preserve the confidentiality of driver data transmitted to them during enforcement actions (§ 31137(e)(2)) and “to ensure [that] any information collected by electronic logging devices is used by enforcement personnel only for the purpose of determining compliance with hours of service requirements.” § 31137(e)(3). At a minimum, FMCSA’s “appropriate measures” should have added provisions to 49 C.F.R. §
350.201 as well as additions to the items to which a MCSAP state like Arizona must certify under 49 C.F.R. § 350.211. Even without such federal regulatory provisions, Arizona must protect drivers’ privacy and limit the use of data recovered during hours of service inspections. Arizona’s proposed regulation does neither.

IV. THE NOTICE FAILS TO COMPLY WITH ARIZONA LAW REQUIRING ADEQUATE NOTICE AND DUE CONSIDERATION ACCOMPANY PROPOSED RULEMAKINGS.

Arizona administrative law requires an agency to publish in its notice of proposed rulemaking its “justification and reason why a rule should be made[ or] amended” which must “include an explanation about the rulemaking.” R1-1-502(B)(9). The notice must also contain the “preliminary summary of economic, small business, and consumer impact.” R1-1-502(B)(12); A.R.S. § 41-1021(B)(6). The Notice fails to meet these requirements, calling into question the validity of the Notice and any rulemaking promulgated thereunder. See A.R.S. § 41-1030(A) (rules are invalid unless adopted in substantial compliance with rulemaking statutes).

First, conspicuously absent from the Notice’s “justification” section is any mention of the ELD Mandate or other new or amended rules that would be incorporated into Arizona law by virtue of the proposed amendment to R17-5-202. 23 A.A.R. 2810–11. Instead, the Notice merely references changes to FMCSA’s Unified Registration System and certain other Arizona rule changes, omitting any mention of R17-5-202. Id. The ELD Mandate, in particular, is a rule of great significance to the entire trucking industry, especially Tullet and OOIDA’s small business members. ADOT’s failure to even mention in the Notice the ELD Mandate’s would-be inclusion in Arizona law is fatal to the Notice.

Second, the Notice virtually ignores the cost-benefit analysis important to those affected by the rule. 23 A.A.R. 2811. Instead, the Notice focuses almost exclusively on the impact to ADOT’s bottom line. Id. With respect to those actually subject to the regulations, the Notice
offers precious little beyond generic statements that carriers will incur costs\(^2\) but receive safety benefits:

> To maintain compliance with the provisions of these rules, motor carriers will likely incur moderate costs in the form of equipment, maintenance, insurance, and inspection fees. However, costs arise from the federal law rather than from this rulemaking. There are no new fees associated with this rulemaking. If a motor carrier is found to be noncompliant with provisions of these rules, costs of sanctions under A.R.S. § 28-5238 could range from $1,000 to $25,000 per citation and the possible loss of a CDL as prescribed under A.R.S. § 28-5238. Benefits to motor carriers remaining in compliance with these rules include increased safety, lower financial responsibility premiums, the opportunity to increase profit margin through better customer service, and more expedient administrative processing by law enforcement.

23 A.A.R. 2811. This statement all but ignores the substantial costs incurred by regulated parties in purchasing ELDs, learning to use them to comply with regulations, and maintaining ELD subscription services. And it offers no explanation how the ELD Mandate or other rule changes adopted by the amendment will actually provide the relied-upon benefits. Indeed, mandating ELD installation and implementation imposes significant costs and its benefits are minimal.

The cost-benefit analysis conducted by FMCSA is, quite simply, insufficient, and ADOT’s failure to provide its own analysis is decisive. The statutory authority for mandated ELD implementation is “to increase compliance by operators of vehicles with hours of service regulations.” 49 U.S.C. § 31137(a) (emphasis added). However, FMCSA did not have sufficient data to make that determination. Regulatory Evaluation of Electronic Logging Devices and Hours of Service Supporting Documents Final Rule (Nov. 2015) at 16, available at https://www.regulations.gov/document?D=FMCSA-2010-0167-2281. FMCSA still has not

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\(^2\) Although the Notice fails to expressly mention the ELD Mandate or indeed ELDs generally, this cost-benefit statement, deficient though it may be, hints at this unmentioned requirement. In referring to increased “equipment” and “maintenance” costs, as well as “more expedient administrative processing by law enforcement,” ADOT seemingly recognizes that its rulemaking imposes an ELD requirement. ADOT’s failure to expressly acknowledge same becomes even more conspicuous in light of this tacit admission.
tested existing ELDs as prior courts addressing mandatory use have found to be a minimal requirement. 80 Fed. Reg. 78307 (“FMCSA will conduct a regulatory effectiveness study at an appropriate time following the compliance date.”). FMCSA uses cost-benefit data determined to be inadequate in prior iterations of an electronic logging rule, and substitutes “prediction” of crash risk, for an actual test of the effect of ELDs on real-world HOS compliance. FMCSA ignores the results of the only test that purported to measure the effect of ELD use, and defaults to the deficient 2003 data as the “benefit” that justifies the “costs” of mandated ELDs in 2015. See Regulatory Evaluation of Electronic Logging Devices and Hours of Service Supporting Documents Final Rule (Nov. 2015) at 82. This data has not gained validity over time; the difference between 2003 and 2015 is that the passing of twelve years has made the data stale in addition to its prior unreliability.

V. CONCLUSION

ADOT proposes to adopt sweeping changes to its motor carrier regulations without analyzing the content of those regulations, without verifying that adopting and implementing them will not offend Arizona and United States constitutional protections, and without giving the public notice of these significant changes. Arizona, like other states implementing federal schemes, cannot and should not be a rubber stamp for the federal government.

Adopting Arizona laws is the responsibility of the Arizona legislature, and such authority can only be delegated carefully, within the limits of the Arizona Constitution. Cf. State v. Williams, 583 P.2d 251, 254–55 (Ariz. 1978) (noting “it is universally held” that incorporation of future federal laws is unlawful delegation of legislative authority, as the Arizona legislature “exercises absolutely no control over Congress or its agencies”). ADOT’s proposed rulemaking abdicates that responsibility to the federal government, accepting sight unseen any regulations handed down thereby. ADOT, therefore, should refrain from adopting the ELD Mandate or
other FMCSRs until it has examined the constitutional issues raised herein and promulgated regulations to comport with such requirements and the privacy and data requirements imposed by federal law. ADOT should also conduct its own cost-benefit analysis of the ELD Mandate to ensure it comports with Arizona law.

Respectfully submitted,

/s/ James J. Johnston
JAMES J. JOHNSTON
President
Owner Operator Independent
Drivers Association, Inc.

/s/ Gordon W. Tullett
GORDON W. TULLETT
Individually and as owner of
Gordon Tullett Logistics, LLC

/s/ Paul D. Cullen, Sr.
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/s/ Brian J. Campbell
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Phoenix, Arizona 85015
Counsel for OOIDA and Tullet

November 14, 2017
A. Economic, small business and consumer impact summary:

1. Identification of the proposed rulemaking:

The Arizona Department of Transportation (ADOT), in partnership with the Arizona Department of Public Safety (DPS), engages in this rulemaking to incorporate parts of the 2016 edition of the Code of Federal Regulations and sections of 82 FR 5292, January 17, 2017. The United States Department of Transportation (USDOT) requires that states adopt federal motor carrier safety and hazardous materials regulations to ensure eligibility for federal enforcement grants. Both ADOT and DPS rely on these federal monies to fund numerous enforcement positions.

The Federal Motor Carrier Safety Administration (FMCSA) is creating a new electronic on-line Unified Registration System which will streamline the registration process and serve as a clearinghouse and depository of information on, and identification of those who register with FMCSA. The 2016 edition of the Code of Federal Regulations included language requiring the use of this system, but in 82 FR 5292, January 17, 2017, FMSCA suspended certain sections in parts 385 and 390 that required the use of this new system and created new sections that required the previous procedures and forms that were in place before the on-line system. The resulting regulatory changes require amendments to part 390, so the Department needs to amend R17-5-203 to be consistent with the regulations and ensure the inclusion of motor carriers conducting intrastate commerce in a commercial motor vehicle, except intrastate farm vehicles.

Subsections to R17-5-205 need to be removed since they were early adoption of amendments from 78 FR 17875, March 25, 2013, and these regulations have now been codified into part 383. ADOT is also making a change to R17-5-205(C) to include “limited-term” as an applicable word that may be added to the face of a commercial learner’s permit (CLP) or commercial driver license (CDL) due to the implementation of the Arizona Voluntary Travel ID in accordance with 6 CFR 37. Additionally, ADOT is adding a clarifying statement to R17-5-205(D) to indicate that while some third party testers may be exempt from the bond requirement under A.R.S. Title 28, Chapter 13, the providers are still responsible for all associated costs for re-testing due to examination fraud.

Timely updates are critical to FMCSA’s compliance and enforcement program, so FMCSA implemented an enforcement provision that states the penalties for applicable entities operating without a USDOT Registration and an active USDOT Number in part 392, so an amendment is necessary to R17-5-206 to
ensure the inclusion of motor carriers conducting intrastate commerce in a commercial motor vehicle, except intrastate farm vehicles.

R17-5-208(B) is being amended to clarify that there is not just one type of application for the Intrastate Medical Waiver but instead will be an applicable application based upon the type of medical condition the intrastate driver has.

R17-5-212 is being amended to remove information that is already contained in state statutes and adding and reordering information to clarify the current process with the complaint and the order to show cause.

In addition, clarifying and technical changes have been made to ensure consistent and correct language is used. Changes are also made to ensure conformity to the rulemaking format and style requirements of the Arizona Administrative Procedure Act and the Office of the Secretary of State.

a. The conduct and its frequency of occurrence that the rule is designed to change:
To preserve the public peace, health, and safety, ADOT and DPS officers inspect commercial trucks and buses under these rules. In addition, CDL applicants and holders are governed under state statute and these rules. It is necessary to update the rules on a regular basis to include the most recent guidelines generally accepted by the motor carrier industry and law enforcement agencies. This ensures that all motor carriers are held to the same regulatory standards and ADOT and DPS officers are able to more expediently place commercial motor vehicles out-of-service when finding noncompliance issues severe enough to warrant concern for public safety.

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:
DPS administers and enforces the federal Motor Carrier Safety Assistance Program (MCSAP) throughout the state under these rules. To remain in compliance with federal mandates, FMCSA requires that each state adopt federal motor carrier safety and hazardous materials regulations that are current to within three years.

FMCSA extends annually to DPS a substantial grant under MCSAP for state law enforcement of motor carrier safety and hazardous materials programs. DPS administers the federal grants received for enforcing the federal motor carrier safety and hazardous materials regulations. MCSAP funds are distributed chiefly to DPS but may also be sub-allocated to other state, county, and municipal enforcement agencies upon application to underwrite local enforcement costs. These grants total approximately $10 million annually and cover the costs of salaries, equipment, and other expenses for motor carrier and hazardous materials related enforcement.

A requirement of the grants is to adopt federal regulations into state law. Failure to do so jeopardizes possible future grant funding opportunities. The possibility exists of either the withholding of, or
reduction in, federal funding for the state if these rules are not codified as quickly as possible. A loss or reduction of federal funding would also have a safety impact on Arizona motorists if large trucks and buses are not able to be inspected as often as they are now. Notwithstanding the withholding of funds as described above, FMCSA could prohibit ADOT’s CDL Program from issuing, renewing, transferring, or upgrading CDLs in this state if they determine that Arizona is not substantially in compliance with 49 U.S.C. 31311(a).

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

DPS inspected over 42,000 commercial motor vehicles in 2016. Of these inspections, 5,291 of the drivers and 4,887 of the vehicles were placed out-of-service after the inspection, meaning that the violations were so severe that the driver was prohibited from driving and the vehicle was prohibited from being moved until the violations were corrected. With continued efforts to enforce the federal motor carrier safety and hazardous material regulations incorporated by these rules, ADOT and DPS anticipate the out-of-service rates for both drivers and vehicles will make highway travel safer.

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

DPS administers federal grants received for enforcing the federal motor carrier safety and hazardous materials regulations. These grants total approximately $10 million annually and cover the costs of salaries, equipment, and other expenses for motor carrier and hazardous materials related enforcement.

The primary cost bearers in relation to these rules are DPS, ADOT, counties, municipal law enforcement agencies electing to enforce the provisions locally, privately contracted consultant trainers of law enforcement personnel, motor carriers, and CDL applicants and holders.

DPS incurs substantial costs (more than $10,000) annually for program administration as well as a not readily quantifiable portion of officer salaries for hazardous materials transportation program enforcement. Business entities bear moderate to substantial costs in possible federal registration fees, inspection fees, insurance, equipment, and maintenance to remain in compliance with the rules. However, these costs arise from the federal law rather than from this rulemaking. Minimal administrative costs are borne by independent consultant trainers who educate law enforcement and business entities on rule compliance.

ADOT is statutorily required to administer the driver licensing and medical evaluation activities required of commercial motor vehicle drivers under A.R.S. Title 28 and these rules. As of July 1, 2017, there are 106,413 valid Arizona CDLs, of those there are 2,010 with a hazardous materials endorsement, 35,511 with a tanker endorsement, 14,547 with a combination hazardous materials/tanker endorsement, 26,182 with a passenger endorsement, 12,940 with a school bus endorsement, and 35,581 with a double/triple trailer endorsement. There are also 2,373 Arizona CLPs, of those there are 416 with a tanker endorsement, 721 with a passenger endorsement, 284 with a school bus endorsement, and 40 with a double/triple trailer endorsement. ADOT does not expect this rulemaking to create a significant increase or decrease in costs or
benefits to the agency since the rulemaking is generally intended to incorporate by reference an updated version of the federal motor carrier safety and hazardous materials regulations that the agency currently has in place.

FMCSA extends annually to DPS a substantial grant under MCSAP for state law enforcement of motor carrier safety and hazardous materials programs. MCSAP funds are distributed chiefly to DPS but may also be sub-allocated to county and municipal enforcement agencies upon application to underwrite local enforcement costs.

Local enforcement cost estimates are difficult to quantify as they are contingent upon whether officers are dedicated to motor carrier and hazardous materials provision enforcement or incorporate motor carrier/hazardous materials enforcement together with other duties. Accordingly, local law enforcement electing to engage in motor carrier and hazardous materials provision enforcement could stand to benefit substantially from cost defrayal through receipt of MCSAP fund allocation by application to DPS, the primary recipient of the MCSAP federal grant monies.

To maintain compliance with the provisions of these rules, motor carriers will likely incur moderate to substantial costs in the form of equipment, maintenance, insurance, and inspection fees. 49 CFR 395 is increasing who is required to utilize electronic logging and the specifications for the electronic logging devices (ELDs). FMCSA estimated an annualized cost of $419 for an ELD with telematics or $166 for a local transfer method type ELD and less than a $1000 for the purchase price of a device. The Commercial Carrier Journal’s ELD Buyer’s Guide indicates a variety of options for the cost including no cost for the device but only a monthly fee or a higher cost for the device but no monthly fees, and leasing options based on contracts with the company. Depending on the fleet size of the motor carrier and the device selected this requirement could have a potential substantial cost, but the motor carriers should see a benefit in less time and money costs for paperwork, reduced truck downtime, decreased fuel costs, and increased safety. Overall, costs arise from the federal law rather than from this rulemaking. There are no new fees associated with this rulemaking. If a motor carrier is found to be noncompliant with provisions of these rules, costs of sanctions under A.R.S. § 28-5238 could range from $1,000 to $25,000 per finding and the possible loss of a CDL as prescribed under A.R.S. § 28-5238. Benefits to motor carriers remaining in compliance with these rules include increased safety, lower financial responsibility premiums, reduction in paperwork, the opportunity to increase profit margin through better customer service, and more expedient administrative processing by law enforcement. These updated federal regulations also include exemptions for exempted covered farm vehicles due to Moving Ahead for Progress in the 21st Century Act (MAP-21) and Fixing America’s Surface Transportation (FAST) Act exemptions for pipeline welding trucks.

3. Name and address of agency employees who may be contacted to submit or request additional data on the information included in the economic, small business and consumer impact statement:
   Name: Candace Olson
B. Economic, small business and consumer impact statement:

1. Identification of the proposed rulemaking:
   See paragraph (A)(1) above.

2. Identification of the persons who will be directly affected by, bear the costs of or directly benefit from the proposed rulemaking:

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3. Analysis of costs and benefits occurring in this state:
   Cost-revenue scale. Annual costs or revenues are defined as follows:
   Minimal  less than $10,000
   Moderate  $10,000 to $99,999
   Substantial  $100,000 or more

a. Probable costs and benefits to ADOT and other agencies directly affected by the implementation and enforcement of the proposed rulemaking:
   ADOT does not expect this rulemaking to create a significant increase or decrease in costs or benefits to the agency since the rulemaking is generally intended to incorporate by reference an updated version of the federal motor carrier safety and hazardous materials regulations the agency currently has in
place. The anticipated economic impact to ADOT is moderate and includes the resources necessary for rulemaking and the costs associated with implementation of the rules. ADOT should benefit by having to spend less resources on providing individual clarification of the rules to regulated persons attempting to make an informed decision on whether to apply for an interstate or intrastate CDL.

ADOT is not required to notify the Joint Legislative Budget Committee (JLBC) under A.R.S. § 41-1055(B)(3)(a), since no new full time employees are necessary to enforce and implement these rules.

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

Local enforcement cost estimates are difficult to quantify as they are contingent upon whether officers are dedicated to commercial vehicle enforcement or incorporate commercial vehicle enforcement together with other duties. Accordingly, local law enforcement electing to engage in commercial vehicle enforcement could stand to benefit substantially from cost defrayal through receipt of MCSAP fund allocation by application to DPS, the primary recipient of the MCSAP federal grant monies.

Political subdivisions will benefit from an increase in the number of eligible commercial motor vehicle operators and from being able to retain experienced CDL holders who become eligible for an Intrastate Medical Waiver.

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:

To maintain compliance with the provisions of these rules, motor carriers will likely incur moderate to substantial costs in the form of equipment, maintenance, insurance, and inspection fees. 49 CFR 395 is increasing who is required to utilize electronic logging and the specifications for the ELDs. FMCSA estimated an annualized cost of $419 for an ELD with telematics or $166 for a local transfer method type ELD and less than a $1000 for the purchase price of a device. The Commercial Carrier Journal’s ELD Buyer’s Guide indicates a variety of options for the cost including no cost for the device with a monthly fee under $20, an initial cost of a device under $200 in connection with a monthly fee, paying for the device without a monthly fee (the lowest appears to be $99, but most appear to under $300), or cost offset based on various leasing options with the company. The higher prices ($700 - $2,000) indicate that this price may have been dependent on additional options (e.g. additional hardware, mounting options, and device type.) Additionally, there may be additional unseen costs for when the devices are not working. Thus, depending on the fleet size of the motor carrier and which device selected this requirement could have a potential substantial cost, but the motor carriers should see a benefit in less time and money costs for paperwork and increased safety. Overall, these costs arise from the federal law rather than from this rulemaking. There are no new fees associated with this rulemaking. If a motor carrier is found to be noncompliant with provisions of these rules, costs of sanctions under A.R.S. § 28-5238 could range from $1,000 to $25,000 per finding and the possible loss
of a CDL as prescribed under A.R.S. § 28-5238. Benefits to motor carriers remaining in compliance
with these rules include increased safety, lower financial responsibility premiums, reduction in
paperwork, the opportunity to increase profit margin through better customer service, and more
expedient administrative processing by law enforcement. These updated federal regulations also
include exemptions for exempted covered farm vehicles due to MAP-21 and FAST Act exemptions for
pipeline welding trucks.

Businesses will also benefit from an increase in the number of eligible commercial motor vehicle
operators and from being able to retain experienced CDL holders who are able to obtain an Intrastate
Medical Waiver. Motor carriers that apply as a co-applicant for their drivers who apply for the
Intrastate Medical Waiver may have minimal costs for the administration and possible testing of these
drivers.

4. **General description of the probable impact on private and public employment in businesses, agencies
and political subdivisions of this state directly affected by the proposed rulemaking:**
ADOT anticipates a minimal impact on private and public employment as a result of this rulemaking.
Employers may benefit from being able to retain experienced CDL holders and being able to hire from a
larger pool of applicants.

5. **Statement of the probable impact of the proposed rulemaking on small businesses:**
   a. **Identification of the small businesses subject to the proposed rulemaking:**
      The small businesses subject to these rules, as defined under A.R.S. § 41-1001(20), are independent
      motor carriers, commercially-licensed drivers already subject to the federal motor carrier safety and
      hazardous materials regulations, and the doctors required to perform the necessary evaluations for
      obtaining and maintaining an Intrastate Medical Waiver.
   b. **Administrative and other costs required for compliance with the proposed rulemaking:**
      Uniform safety and compliance costs for small businesses are the same as discussed under paragraph
      (B)(3)(c) above. For the most part, ADOT anticipates no new economic impact to qualified persons
      and business entities as a result of this rulemaking, except for the applicable motor carriers who may
      see additional costs for ELDs.
   c. **Description of the methods that ADOT may use to reduce the impact on small businesses:**
      The rules provide a more expedient application process for individuals seeking a medical variance
      from certain physical qualifications and procedures typically required of interstate commercial motor
      vehicle operators under 49 CFR 391.41(b)(1), (b)(2), (b)(3), or (b)(10), if the individual is otherwise
      qualified to operate a commercial motor vehicle in intrastate commerce.

Since the uniform procedures and sanctions under these rules are required by federal and state
mandates, ADOT is unable to further reduce any impact on small businesses. See paragraph (B)(7)
below.
d. Probable cost and benefit to private persons and consumers who are directly affected by the proposed rulemaking:

The rules support the public interest and the interests of concerned parties by ensuring that all federal motor carrier safety and hazardous materials regulations and requirements of motor carriers are uniformly applied and enforced. The public benefits when all motor carriers remain in compliance with these rules as they ensure increased safety, lower financial responsibility premiums, provide opportunity for increasing profit margins through better customer service, and facilitate more expedient administrative processing by law enforcement. These updated federal regulations also include exemptions for exempted covered farm vehicles due to MAP-21 and FAST Act exemptions for pipeline welding trucks. Affected motor carriers may see increased costs due to needing an ELD but should also see savings and increased benefits from a reduction in paperwork, utilizing current technology, and potential increases in safety and less crashes.

6. Statement of the probable effect on state revenues:

DPS will be eligible to apply for an estimated $4 million in MCSAP funding and estimated $6 million in Border Enforcement Grant funding that may be used for commercial motor vehicle safety programs such as:

- Motor carrier safety programs in accordance with 49 CFR 350.109;
- Size and weight enforcement programs in accordance with 49 CFR 350.309(c)(1);
- Drug interdiction enforcement programs in accordance with 49 CFR 350.309(c)(2); and
- Traffic safety programs in accordance with 49 CFR 350.309(d).

This rulemaking ensures that an amount of up to 5 percent of the state’s federal-aid highway funds apportioned under each of sections 104(b)(1), (b)(3), and (b)(4) of 23 U.S.C. will not be withheld for noncompliance. Based on amounts traditionally received by ADOT, this amount could reach approximately $30 million depending on the actual appropriation.

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 non-selected alternatives:

In rulemaking, ADOT routinely adopts the least costly and least burdensome options for any process or procedure required of the regulated public or industry. However, each state is required under 49 CFR 384.301 to adopt and carry out a program for testing and ensuring the fitness of individuals to operate commercial motor vehicles consistent with the minimum standards prescribed by the Secretary of Transportation under 49 U.S.C. 31305(a) as soon as practical, or an amount of up to 5 percent of the state’s federal-aid highway funds apportioned under each of sections 104(b)(1), (b)(3), and (b)(4) of 23 U.S.C. may be withheld from the state for noncompliance. Based on amounts traditionally received by the Department, this amount could reach approximately $30 million depending on the actual appropriation. Therefore, to the extent permitted by federal law, ADOT has determined that these rules impose the least burden and costs to regulated persons.
C. Explanation of limitations of the data and the methods that were employed in the attempt to obtain the data and a characterization of the probable impacts in qualitative terms. The absence of adequate data, if explained in accordance with this subsection, shall not be grounds for a legal challenge to the sufficiency of the economic, small business and consumer impact statement:

None
R17-5-201. Definitions
In addition to the definitions provided under A.R.S. §§ 28-3001 and 28-5201, the following definitions apply to this Article unless otherwise specified:

“Audit” means any inspection of a transporter’s motor vehicle, equipment, books, or records to determine compliance with this Article and A.R.S. Title 28, Chapter 14.

“Co-applicant” means an employer or potential employer.

“Danger to public safety” means any condition of a transporter likely to result in serious peril to the public if not discontinued immediately.

“Director” means the Director of the Arizona Department of Transportation or the Director’s designated agent.

“Executive Hearing Office” means the Arizona Department of Transportation’s Executive Hearing Office.

“Medical waiver evaluation summary” means the form, provided by the Department, to be completed by either a board qualified or board certified orthopedic surgeon or physiatrist and mailed to the Department, at the address provided on the form, on behalf of an Arizona intrastate medical waiver applicant.

“Physiatrist” means a doctor of medicine specialized in physical medicine and rehabilitation.

“Transporter” means any person, driver, motor carrier, shipper, manufacturer, or motor vehicle, including any motor vehicle transporting a hazardous material, hazardous substance, or hazardous waste, subject to this Article and A.R.S. Title 28, Chapter 14.

“Violation” means any conduct, act, or failure to act required or prohibited under this Article and A.R.S. Title 28, Chapter 14.

“Vision examination report” means a form provided by the Department to be completed by an ophthalmologist or a licensed optometrist on behalf of a driver or driver applicant and mailed to the Department, at the address provided on the form, for use in determining whether or not a medical condition affects the driver’s, or driver applicant’s, ability to safely perform the functional skills involved with driving a motor vehicle.

Historical Note
New Section made by final rulemaking at 8 A.A.R. 3249, effective July 10, 2002 (Supp. 02-3). 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).

R17-5-202. Motor Carrier Safety: Incorporation of Federal Regulations; Applicability
A. The Department incorporates by reference 49 CFR 40, 379, 382, 383, 385, 390, 391, 392, 393, 395, 396, 397, and 399, revised as of October 1, 2012, 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 and persons operating a commercial motor vehicle, 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

R17-5-203. Motor Carrier Safety: 49 CFR 390 - Federal Motor Carrier Safety Regulations; General
A. 49 CFR 390.3, General applicability. Paragraph (a) is amended to read:

Regulations incorporated in this section are applicable to all motor carriers operating in Arizona and any vehicle owned or operated by the state, a political subdivision, or a state public authority that is used to transport a hazardous material in an amount requiring the vehicle to be placarded as prescribed under R17-5-209.

B. 49 CFR 390.5, Definitions. The definitions listed under 49 CFR 390.5 are amended as follows:

“Commercial Motor Vehicle” or “CMV” has the same meaning as prescribed under A.R.S. § 28-5201.

“Special agent” means an officer or agent of the Department, the Department of Public Safety, or a political subdivision, who is trained and certified by the Department of Public Safety to enforce Arizona’s Motor Carrier Safety requirements.

“State” means a state of the United States or the District of Columbia.

“Tow truck,” as used in the definition of emergency under 49 CFR 390.5, has the same meaning as prescribed under A.A.C. R13-3-701.
C. 49 CFR 390.19, Motor carrier, hazardous material shipper, and intermodal equipment provider identification reports. Paragraph (a)(1) is amended to read:
A U.S.-, Canada-, Mexico-, or non-North America-domiciled motor carrier conducting operations in interstate commerce or in intrastate commerce in a CMV, except for intrastate commerce in a farm vehicle as defined under A.R.S. § 28-2514, must file a Motor Carrier Identification Report, Form MCS-150.

D. 49 CFR 390.23, Relief from regulations.
1. Paragraph (a)(2), Local emergencies, is amended by adding:
   When a local emergency exists that justifies an exemption from parts 390 through 399 of this chapter, a motor carrier may request the exemption by contacting Commercial Vehicle Enforcement at the Arizona Department of Public Safety, Highway Patrol Division, P.O. Box 6638, Phoenix, Arizona 85005. The Arizona Department of Public Safety may grant the exemption with or without restrictions as necessary to provide vital service to the public.

2. Paragraph (a)(2)(i)(A) is amended to read:
   An emergency has been declared by a federal, state or local government official having authority to declare an emergency; or an emergency situation exists under A.R.S. § 28-5234(B); or

E. 49 CFR 390.25, Extension of relief from regulations - emergencies, is amended by adding:
A motor carrier seeking to extend a period of relief from these regulations may request the extension by contacting Commercial Vehicle Enforcement at the Arizona Department of Public Safety, Highway Patrol Division, P.O. Box 6638, Phoenix, Arizona 85005. The Arizona Department of Public Safety may grant the extension with any restrictions it considers necessary to provide vital service to the public.

Historical Note

R17-5-204. Motor Carrier Safety: 49 CFR 391 - Qualifications of Drivers and Longer Combination Vehicle (LCV) Driver Instructors
A. 49 CFR 391.11, General qualifications of drivers. Paragraph (b)(1) is amended to read:
   Is at least 21 years of age for interstate operation or is at least 18 years of age for operations restricted to intrastate transportation not involving the transportation of a reportable quantity of hazardous substance, hazardous waste required to be manifested, or hazardous material in an amount requiring a vehicle to be placarded as prescribed under R17-5-209;

B. 49 CFR 391.51, General requirements for driver qualification files. Paragraph (b)(8) is amended to read:
   A Skill Performance Evaluation Certificate obtained from a Field Administrator, Division Administrator, or state Director issued in accordance with § 391.49; or the Medical Exemption document, issued by a Federal medical program in accordance with part 381 of this chapter; or a copy of the Arizona intrastate medical waiver, if a waiver is granted by the Director as prescribed under R17-5-208.

Historical Note

R17-5-205. Motor Carrier Safety: 49 CFR 383 - Commercial Driver’s License Standards; Requirements and Penalties
A. 49 CFR 383.5, Definitions. The definitions listed under 49 CFR 383.5 are amended as follows:
   “Commercial motor vehicle” or “CMV” has the same meaning as prescribed under A.R.S. § 28-3001.
   “Conviction” has the same meaning as prescribed under A.R.S. § 28-3001.
   “Disqualification” has the same meaning as prescribed under A.R.S. § 28-3001.
   “Motor vehicle” has the same meaning as prescribed under A.R.S. § 28-101.
   “Out-of-service order” has the same meaning as prescribed under A.R.S. § 28-5241.
   “School bus” has the same meaning as prescribed under A.R.S. § 28-101.
   “Tank vehicle” has the same meaning as prescribed under A.R.S. § 28-3103.

B. 49 CFR 383.71, Driver application and certification procedures. Paragraphs (b)(1)(ii), Excepted interstate, and (b)(1)(iv), Excepted intrastate, are deleted.

C. 49 CFR 383.73, State procedures.
   Paragraph (a)(2)(vi) is amended to read:
   Require compliance with the standards for providing proof of citizenship or lawful permanent residency specified in § 383.71(a)(2)(v) and proof of state of domicile specified in § 383.71(a)(2)(vi). Exception: A state is required to check the proof of
citizenship or legal presence specified in this paragraph only for initial issuance, renewal or upgrade of a CLP or non-domiciled CLP and for initial issuance, renewal, upgrade or transfer of a CDL or non-domiciled CDL for the first time after July 8, 2011, provided a notation is made on the driver’s record confirming that the proof of citizenship or legal presence check required by this paragraph has been made and noting the date it was done;

2. Paragraph (b)(6) is amended to read:
   Require compliance with the standards for providing proof of citizenship or lawful permanent residency specified in § 383.71(b)(9) and proof of state of domicile specified in § 383.71(b)(10). Exception: A state is required to check the proof of citizenship or legal presence specified in this paragraph only for initial issuance, renewal or upgrade of a CLP or non-domiciled CLP and for initial issuance, renewal, upgrade or transfer of a CDL or non-domiciled CDL for the first time after July 8, 2011, provided a notation is made on the driver’s record confirming that the proof of citizenship or legal presence check required by this paragraph has been made and noting the date it was done;

3. Paragraph (c)(4) is amended to read:
   If such applicant wishes to retain a hazardous materials endorsement, require compliance with standards for such endorsement specified in §§ 383.71(b)(8) and 383.141 and ensure that the driver has successfully completed a new test for such endorsement specified in § 383.121.

4. Paragraphs (c)(4)(i) and (c)(4)(ii) are deleted.

5. Paragraph (c)(7) is amended to read:
   Require compliance with the standards for providing proof of citizenship or lawful permanent residency specified in § 383.71(b)(9) and proof of state of domicile specified in § 383.71(b)(10). Exception: A state is required to check the proof of citizenship or legal presence specified in this paragraph only for initial issuance, renewal or upgrade of a CLP or non-domiciled CLP and for initial issuance, renewal, upgrade or transfer of a CDL or non-domiciled CDL for the first time after July 8, 2011, provided a notation is made on the driver’s record confirming that the proof of citizenship or legal presence check required by this paragraph has been made and noting the date it was done;

6. Paragraph (d)(7) is amended to read:
   Require compliance with the standards for providing proof of citizenship or lawful permanent residency specified in § 383.71(b)(9) and proof of state of domicile specified in § 383.71(b)(10). Exception: A state is required to check the proof of citizenship or legal presence specified in this paragraph only for initial issuance, renewal or upgrade of a CLP or non-domiciled CLP and for initial issuance, renewal, upgrade or transfer of a CDL or non-domiciled CDL for the first time after July 8, 2011, provided a notation is made on the driver’s record confirming that the proof of citizenship or legal presence check required by this paragraph has been made and noting the date it was done;

7. Paragraph (e)(5) is amended to read:
   Require compliance with the standards for providing proof of citizenship or lawful permanent residency specified in § 383.71(b)(9) and proof of state of domicile specified in § 383.71(b)(10). Exception: A state is required to check the proof of citizenship or legal presence specified in this paragraph only for initial issuance, renewal or upgrade of a CLP or non-domiciled CLP and for initial issuance, renewal, upgrade or transfer of a CDL or non-domiciled CDL, for the first time after July 8, 2011, provided a notation is made on the driver’s record confirming that the proof of citizenship or legal presence check required by this paragraph has been made and noting the date it was done;

8. Paragraph (f)(2)(ii) is amended to read:
   The state must add the word “non-domiciled” to the face of the CLP or CDL, in accordance with § 383.153(c); and

9. Paragraph (m), Document verification, is amended to read:
   The state must require at least two persons within the driver licensing agency to participate substantively in the processing and verification of the documents involved in the licensing process for initial issuance, renewal or upgrade of a CLP or non-domiciled CLP and for initial issuance, renewal, upgrade or transfer of a CDL or non-domiciled CDL. The documents being processed and verified must include, at a minimum, those provided by the applicant to prove legal presence and domicile, the information filled out on the application form, and knowledge and skills test scores. This section does not require two people to process or verify each document involved in the licensing process. Exception: For offices with only one staff member, at least some of the documents must be processed or verified by a supervisor before issuance or, when a supervisor is not available, copies must be made of some of the documents involved in the licensing process and a supervisor must verify them within one business day of issuance of the CLP, non-domiciled CLP, CDL or non-domiciled CDL.

D. 49 CFR 383.75, Third party testing.
   1. Paragraph (a)(7) is amended to read:
      A skills test examiner who is also a skills instructor either as a part of a school, training program or otherwise is prohibited from administering a skills test to an applicant who received skills training by that skills test examiner; and

2. Paragraph (a)(8)(v) is amended to read:
   Require the third party tester to initiate and maintain a bond in an amount pursuant to A.R.S. Title 28, Chapter 13 to be sufficient to pay for re-testing drivers in the event that the third party or one or more of its examiners is involved in fraudulent activities related to conducting skills testing of applicants for a CDL. Exception: A third party tester that is a government entity is not required to maintain a bond.

   1. Paragraph (b)(1) is amended to read:
      A CLP may, but is not required to, contain a digital color image or photograph or black and white laser engraved photograph.

   2. Paragraph (c) is amended to read:
      Before a CLP or CDL may be issued:
      a. A driver applicant must provide the driver applicant’s Social Security Number on the application of a CLP or CDL.
b. The state must provide the Social Security Number to the CDLIS.

c. The state must not display the Social Security Number on the CLP or CDL.

3. Paragraph (h) is amended to read:

On or after July 8, 2014 current CLP and CDL holders who do not have the standardized endorsement and restriction codes and applicants for a CLP or CDL are to be issued CLPs with the standardized codes upon initial issuance, renewal or upgrade and CDLs with the standardized codes upon initial issuance, renewal, upgrade or transfer.

Historical Note

New Section recodified from R17-4-435.03 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 14 A.A.R. 3797, effective November 8, 2008 (Supp. 08-3). Section repealed by final rulemaking at 17 A.A.R. 1691, effective August 2, 2011 (Supp. 11-3). New Section made by final rulemaking at 20 A.A.R. 2382, effective August 5, 2016 (Supp. 14-3).


49 CFR 392.5, Alcohol prohibition. Paragraph (e) is amended by adding:

Drivers who violate the terms of an out-of-service order as prescribed under this section are also subject to the provisions and sanctions of A.R.S. § 28-5241.

Historical Note

New Section recodified from R17-4-435.04 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 9 A.A.R. 1867, effective June 3, 2003 (Supp. 03-2). 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).

R17-5-207. Civil Penalties

To determine the amount of civil penalty for repeat findings of responsibility for the same class of violations involving vehicles required to be placarded, the higher level of civil penalty as prescribed under A.R.S. § 28-5238 applies.

Historical Note

New Section recodified from R17-4-435.05 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 14 A.A.R. 3797, effective November 8, 2008 (Supp. 08-3).

R17-5-208. Commercial Driver License Intrastate Medical Waiver; Intrastate Alternative Physical Qualification Standards for the Loss or Impairment of Limbs, an Insulin-Dependent Diabetic Condition, or Monocular Vision

A. A person who is not physically qualified to drive a commercial motor vehicle in interstate commerce due to loss of limb, limb impairment, an insulin-dependent diabetic condition, or monocular vision, as provided under 49 CFR 391.41(b)(1), (b)(2), (b)(3), or (b)(10), but otherwise meets all other requirements under 49 CFR 391.41, may operate a commercial motor vehicle in intrastate commerce if granted an intrastate medical waiver by the Director. Application for an intrastate medical waiver shall be submitted according to subsection (B).

B. A driver applicant, or a driver applicant jointly with the motor carrier co-applicant that will employ the driver applicant, may complete and submit an intrastate medical waiver application to the Department’s Medical Review Program, P.O. Box 2100, Mail Drop 818Z, Phoenix, Arizona 85001-2100, which shall:

1. Identify the applicant:
   a. Name and complete address of the driver applicant;
   b. Name and complete address of the motor carrier co-applicant;
   c. U.S. Department of Transportation motor carrier identification number, if known; and
d. A description of the driver applicant’s limb or visual impairment or insulin-dependent diabetic condition as applicable to the type of waiver being requested;

2. Describe the type of operation the driver applicant will be employed to perform, including the following information (if known):
   a. Average period of time the driver will be driving or on duty, per day;
   b. Type of commodities or cargo to be transported;
c. Type of driver operation (i.e., sleeper team, relay, owner operator, etc.); and
d. Number of years experience operating each type of commercial motor vehicle requested in the intrastate medical waiver application and total years of experience operating all types of commercial motor vehicles;

3. Describe the commercial motor vehicles the driver applicant intends to drive:
   a. Truck, truck tractor, or bus make, model, and year (if known);
b. Drive train:
   i. Transmission type (automatic or manual - if manual, designate number of forward speeds);
   ii. Auxiliary transmission (if any) and number of forward speeds; and
   iii. Rear axle (designate single speed, two-speed, or three-speed);
c. Type of brake system;
d. Steering, manual or power assisted;
e. Description of types of trailers (i.e., van, flatbed, cargo tank, drop frame, lowboy, or pole);
f. Number of semitrailers or full trailers to be towed at one time;
C. The completed intrastate medical waiver application for a driver applicant not physically qualified to drive under 49 CFR 391.41(b)(3) must have had:

1. A copy of the medical examination report and medical examination certificate completed pursuant to 49 CFR 391.43;
2. The Department’s medical waiver evaluation summary completed by either a board-qualified or board-certified physiatrist or orthopedic surgeon. The co-applicant motor carrier or the driver applicant shall provide the physiatrist or orthopedic surgeon with a description of the job-related tasks the driver applicant will be required to perform:
   a. The medical waiver evaluation summary for a driver applicant not physically qualified to drive under 49 CFR 391.41(b)(1) shall include:
      i. An assessment of the functional capabilities of the driver as they relate to the ability of the driver to perform normal tasks associated with operating a commercial motor vehicle; and
      ii. A statement by a board-qualified or board-certified physiatrist or orthopedic surgeon that the applicant is capable of demonstrating precision prehension (e.g., manipulating knobs and switches) and power grasp prehension (e.g., holding and maneuvering the steering wheel) with each upper limb separately;

b. The medical waiver evaluation summary for a driver applicant not physically qualified to drive under 49 CFR 391.41(b)(2) shall include:
   i. An explanation as to how and why the impairment interferes with the ability of the applicant to perform normal tasks associated with operating a commercial motor vehicle;
   ii. An assessment and medical opinion of whether the condition will likely remain medically stable over the lifetime of the driver applicant; and
   iii. A statement by a board-qualified or board-certified physiatrist or orthopedic surgeon that the applicant is capable of demonstrating precision prehension (e.g., manipulating knobs and switches) and power grasp prehension (e.g., holding and maneuvering the steering wheel) with each upper limb separately;

3. A description of the driver applicant’s prosthetic or orthotic device worn, if any; and
4. A copy of the driver applicant’s state motor vehicle driving record for the past three years from each state in which a motor vehicle license has been obtained.

D. The completed intrastate medical waiver application for a driver applicant not physically qualified to drive under 49 CFR 391.41(b)(3) shall be accompanied by:

1. A copy of the medical examination report and medical examination certificate completed pursuant to 49 CFR 391.43;
2. An evaluation by a board-certified or board-eligible endocrinologist. A complete endocrinologist evaluation shall consist of:
   a. A comprehensive evaluation of the applicant’s five-year medical history and current status. The applicant shall provide the examining endocrinologist with a complete medical history as it pertains to the applicant’s diabetes or its complications or both, including, the date insulin use began, all hospitalization reports, consultation notes for diagnostic examinations, special studies, follow-up reports, reports of any hypoglycemic insulin reactions within the 12 months prior to the date of application, and other reports as requested by the endocrinologist. The evaluation shall also include a review of:
      i. Daily glucose monitoring logs, glycosylated hemoglobin (A1c) indicating a result in the range of 7% to 10%, including lab reference page performed during the last six months unless recently diagnosed;
      ii. Insulin dosages and types, diet utilized for control, and all medications taken; and
      iii. Examinations to detect any peripheral neuropathy or circulatory insufficiency of the extremities;
   b. A statement that the applicant is free from insulin reactions. Insulin reactions include any severe hypoglycemic reaction, which can be a reaction that results in seizure, loss of consciousness, requiring the assistance of another person, or a period of impaired cognitive function that occurs without warning. To be eligible the applicant must not have hypoglycemia unawareness and must have had no more than one documented severe hypoglycemic reaction in the previous 12 months and must have had:
      i. No recurrent (two or more) severe hypoglycemic reactions resulting in a loss of consciousness or seizure within the past five years;
      ii. No recurrent severe hypoglycemic reactions requiring the assistance of another person within the past five years;
      iii. No recurrent severe hypoglycemic reactions resulting in impaired cognitive functions that occurred without warning symptoms within the past five years; and
      iv. A period of one year of demonstrated stability following the first period of severe hypoglycemia;
A statement prepared and signed by the examining endocrinologist whose status as board-certified or board-eligible is indicated. The signed statement shall include separate declarations indicating the following medical determinations:

i. The endocrinologist is familiar with the applicant’s medical history for the past five years through a records review, treating the patient, or consultation with the treating physician;

ii. The applicant has been educated in diabetes, including the last education date, and its management and is informed of and understands how to individually manage and monitor the applicant’s diabetes mellitus and has demonstrated the ability and willingness to properly monitor and manage the applicant’s diabetes and procedures to follow if complications arise;

iii. The applicant has driven the type of vehicle for which the waiver is being requested for at least two of the previous five years.

E. The completed intrastate medical waiver application for a driver applicant not physically qualified to drive under 49 CFR 391.41(b)(10) shall be accompanied by:

1. A copy of the medical examination report and medical examination certificate completed pursuant to 49 CFR 391.43;

2. A current vision examination report issued within the last 90 days from the date the report is received by the Department, completed by an ophthalmologist or optometrist. The report shall indicate that the applicant has distant visual acuity of at least 20/40 (Snellen), with or without a corrective lens, in one eye, and the applicant’s dominant eye has a visual field of at least 70° peripheral measurement in one direction and 35° in the opposite direction of the horizontal meridian and the ability to distinguish the colors of a traffic signal or device showing standard red, green, and amber, as applicable to the type of medical waiver being requested;

3. A copy of the driver applicant’s state motor vehicle driving record for the past three years from each state in which a motor vehicle the driver intends to drive.

4. A separate signed vision evaluation report from an ophthalmologist or optometrist indicating that the applicant has been examined and does not have diabetic retinopathy and meets the vision standard of 49 CFR 391.41(b)(10), or has been issued a valid intrastate medical waiver for monocular vision. If the applicant has any evidence of diabetic retinopathy, the applicant must be examined by an ophthalmologist and submit a separate signed statement from the ophthalmologist that the applicant does not have unstable proliferative diabetic retinopathy (i.e. unstable advancing disease of blood vessels in the retina); and

F. Agreement. A motor carrier that employs a driver subject to an intrastate medical waiver granted by the Director under subsection (A),

1. Report to the Department’s Medical Review Program, P.O. Box 2100, Mail Drop 818Z, Phoenix, Arizona 85001-2100, in writing, any suspension, revocation, disqualification, or withdrawal of the subject driver’s driver license or permit, and any accident, arrest, or conviction involving the driver within 30 days after the occurrence;

2. Provide to the Department’s Medical Review Program, on request, any documents and information pertaining to the driving activities, accidents, arrests, convictions, and driver license or permit suspensions, revocations, disqualifications, or withdrawals involving the subject driver;

3. Evaluate the subject driver with a road test using the trailer types the motor carrier intends the driver to transport, or alternatively accept a certificate of a trailer road test from another motor carrier if the trailer types are similar, or accept the trailer road test completed during the skill performance evaluation if trailer types are similar to that of the prospective motor carrier;

4. Evaluate the subject driver for those non-driving safety related or job related tasks associated with each type of trailer that will be used and any other non-driving safety related or job related tasks unique to the operations of the employing motor carrier; and

5. Use the subject driver to operate the type of commercial motor vehicle indicated on the intrastate medical waiver only when the driver is in compliance with the conditions and limitations of the waiver.

G. A driver subject to an intrastate medical waiver, issued by the Director under subsection (A), shall supply each employing motor carrier with a copy of the intrastate medical waiver.

H. The Department may require the driver applicant to demonstrate the driver applicant’s ability to safely operate the commercial motor vehicle the driver intends to drive.

I. If required by the Department during the application process, a driver applicant shall have a skill performance evaluation performed by a federally-certified state commercial driver license examiner at a Department commercial driver license facility when directed.

J. If the Director grants an intrastate medical waiver under subsection (A) to the driver applicant, the Department shall mail to the driver applicant and co-applicant motor carrier (if applicable) written approval of the intrastate medical waiver describing the terms, conditions, and limitations of the waiver.

K. The intrastate medical waiver granted by the Director under subsection (A) shall identify:

1. The power unit (bus, truck, truck tractor) for which the waiver is granted; and

2. The trailer type used in the skill performance evaluation, if applicable, without limiting the waiver to that specific trailer type.

L. A subject driver may use the intrastate medical waiver with other trailer types if the driver successfully completes:

1. A trailer road test administered by the motor carrier under subsection (F)(3) for each type of trailer, and

2. A non-driving safety related or job related task evaluation administered by the motor carrier under subsection (F)(4).

M. The intrastate medical waiver granted by the Director under subsection (A) is:

1. Valid for a period of not more than two years from the date of issuance;

2. Renewable 30 days prior to the expiration date; and
3. Transferable from an original motor carrier co-applicant employer to a new motor carrier employee or to the subject driver, as a unilateral applicant if becoming self-employed, upon written notification to the Department’s Medical Review Program, P.O. Box 2100, Mail Drop 818Z, Phoenix, Arizona 85001-2100, stating the new employer’s name and the type of equipment to be driven.

N. An intrastate medical waiver granted by the Director under subsection (A) to a driver applicant for monocular vision under subsection (E), shall prohibit the subject driver from transporting:
1. Passengers for hire; and
2. Reportable quantities of hazardous substances, manifested hazardous wastes, and hazardous material required to be placarded.

O. A driver subject to an intrastate medical waiver, issued by the Director under subsection (A), shall have the intrastate medical waiver (or a legible copy) in the subject driver’s possession while on duty.

P. The motor carrier employing a subject driver shall maintain a copy of the intrastate medical waiver in its driver qualification file and retain the copy in the motor carrier’s file for a period of three years after the driver’s employment is terminated.

Q. A driver subject to an intrastate medical waiver, issued by the Director under subsection (A) to an applicant for insulin-dependent diabetes under subsection (D), must comply with the following conditions:
1. Maintain appropriate medical supplies for glucose management while preparing for the operation of a commercial motor vehicle and during its operation. The supplies shall include the following:
   a. A digital glucose monitor with computerized memory,
   b. Supplies needed to obtain adequate blood samples and to measure blood glucose,
   c. Insulin to be used as necessary, and
   d. An amount of rapidly absorbable glucose to be used as necessary;
2. Maintain a daily record of actual driving time to correlate with the daily glucose measurements;
3. Monitor and maintain blood glucose levels in the range of 100 to 400 milligrams per deciliter (mg/dl) prior to and while driving.
   a. Check glucose before starting to drive and take corrective action if necessary. If glucose is less than 100 mg/dl, take glucose or food and recheck in 30 minutes. Repeat the process until glucose is greater than 100 mg/dl. Do not drive if glucose is less than 100 mg/dl;
   b. While driving, stop the vehicle in a safe location and check glucose every two to four hours and take appropriate action to maintain it in the range of 100 to 400 mg/dl;
   c. Have food available at all times when driving. If glucose is less than 100 mg/dl, stop driving and eat. Recheck in 30 minutes and repeat procedure until glucose is greater than 100 mg/dl; and
   d. If glucose is greater than 400 mg/dl, stop driving until glucose returns to the 100 to 400 mg/dl range. If more than two hours have passed since last insulin injection and eating, take additional insulin. Recheck blood glucose in 30 minutes. Do not resume driving until glucose is less than 400 mg/dl;
4. Participate in a diabetes education program annually;
5. Undergo the following evaluations and examinations and submit to the Department’s Medical Review Program, P.O. Box 2100, Mail Drop 818Z, Phoenix, Arizona 85001-2100, within 10 days of the date of the evaluation or exam:
   a. A quarterly evaluation completed by a board-certified or board-eligible endocrinologist. A quarterly endocrinologist evaluation shall include a review of the driver’s daily glucose logs and glucose levels (from the subject driver’s required monitoring device), a comparison of monitoring dates to the driving log to ensure that the subject driver is checking glucose levels prior to operating a commercial motor vehicle, a certifying statement indicating that the subject driver is maintaining a glucose level in the range of 100 to 400 mg/dl while driving a commercial motor vehicle, a certifying statement indicating that the subject driver is maintaining a stable insulin regimen and that the subject driver’s quarterly A1c result continues to reflect stable control, reports of any severe hypoglycemic episodes, any hypoglycemic-related hospitalization, and any treatment regimen changes since the last hypoglycemic episode;
   b. An annual evaluation completed by a board-certified or board-eligible endocrinologist. In addition to the requirements of a quarterly endocrinologist evaluation under subsection (Q)(5)(a), an annual endocrinologist evaluation shall also include a general physical examination, an indication that the driver has continued to participate in a diabetes education program with the last education date provided, a certifying statement indicating that the driver understands how to individually manage and monitor the driver’s diabetes mellitus, an indication of the development of, or progression, or both, in diabetes complications (i.e. renal disease, cardiovascular disease, and neurological disease), a list of all medications taken and whether any of the medications may compromise the driver’s ability to operate a commercial motor vehicle, the endocrinologist’s belief that the driver has demonstrated the ability and willingness to properly manage the driver’s diabetes, and a certifying statement indicating that the driver is able to safely operate a commercial motor vehicle while using insulin;
   c. An annual vision evaluation report, as prescribed under subsection (D)(3). If there is any evidence of diabetic retinopathy, provide annual documentation by an ophthalmologist that the driver does not have unstable proliferative diabetic retinopathy; and
   d. An annual medical examination report and medical examination certificate completed pursuant to 49 CFR 391.43. Provide copies of the endocrinologist evaluation and the vision examination report to the medical examiner for review; and
6. Report the following information to the Department’s Medical Review Program, P.O. Box 2100, Mail Drop 818Z, Phoenix, Arizona 85001-2100, within two days of occurrence:
   a. All episodes of severe hypoglycemia, significant complications, or inability to manage diabetes; and
   b. Any involvement in an accident or any other adverse event in a commercial motor vehicle or personal vehicle, related to an episode of hypoglycemia or hyperglycemia.
R. A driver subject to an intrastate medical waiver, issued by the Director under subsection (A) to an applicant for monocular vision under subsection (E), must be physically examined every year and shall submit the following to the Department’s Medical Review Program, P.O. Box 2100, Mail Drop 818Z, Phoenix, Arizona 85001-2100:
1. A vision examination report issued within the last 90 days from the date the report is received by the Department, as prescribed under subsection (E)(2); and
2. A current medical examination report and medical examination certificate completed pursuant to 49 CFR 391.43 within the past year.

S. A driver subject to an intrastate medical waiver, or a driver subject to an intrastate medical waiver jointly with a motor carrier co-applicant, may renew an intrastate medical waiver by submitting to the Department’s Medical Review Program, P.O. Box 2100, Mail Drop 818Z, Phoenix, Arizona 85001-2100, a new intrastate medical waiver application. The intrastate medical waiver application shall contain the following:
1. Name and complete address of the motor carrier currently employing the applicant;
2. Name and complete address of the subject driver;
3. Total miles driven under the current intrastate medical waiver;
4. Number of accidents incurred while driving under the current intrastate medical waiver, including the date of each accident, number of fatalities, number of injuries, and the estimated dollar amount of any property damage;
5. A current medical examination report and medical examination certificate completed pursuant to 49 CFR 391.43;
6. A current medical examination or evaluation as applicable to the medical condition:
   a. A current medical waiver evaluation summary, as prescribed under subsection (C)(2), for a driver with a loss of limb or limb impairment;
   b. A current endocrinologist evaluation, as prescribed under subsection (D)(2), and a current vision evaluation report, as prescribed under subsection (D)(3), for a driver who is an insulin-dependent diabetic; or
   c. A current vision examination report, as prescribed under subsection (E)(2), for a driver with monocular vision;
7. A copy of the subject driver’s current state motor vehicle driving record for the period of time the current intrastate medical waiver has been in effect;
8. Notification of any change in the type of tractor the driver will operate;
9. Subject driver’s signature and date signed; and
10. Motor carrier co-applicant’s signature and date signed (if applicable).

T. The Director may deny an application for the intrastate medical waiver or may grant the waiver in whole or in part and issue the waiver subject to such terms, conditions, and limitations as the Director deems consistent with the public interest.

U. The Director may revoke an intrastate medical waiver after providing the driver subject to an intrastate medical waiver written notice of the proposed revocation and a reasonable opportunity to request a hearing pursuant to the procedure prescribed under 17 A.A.C. 1, Article 5. The Director may revoke an intrastate medical waiver if the:
1. Driver subject to an intrastate medical waiver, or co-applicant (if applicable), or both provided false information in the application,
2. Driver subject to an intrastate medical waiver, or co-applicant (if applicable), or both failed to comply with the terms and conditions of the intrastate medical waiver, or
3. Issuance of the intrastate medical waiver resulted in a lower level of safety than before the waiver was granted.

V. If the enforcement of any provision of this Section would result in the loss or disqualification of federal funding for any state agency or program, that provision is invalid.

Historical Note
New Section recodified from R17-4-435.06 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). Section repealed; new Section made 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). Amended by final rulemaking at 20 A.A.R. 2382, effective August 5, 2014 (Supp. 14-3).

R17-5-209. Hazardous Materials Transportation: Incorporation of Federal Regulations; Applicability
A. Incorporation of federal regulations.
1. As relevant to the transportation of hazardous materials by highway, the Department incorporates by reference, as amended under this Section, the following Parts of the Federal Hazardous Materials Regulations; revised as of October 1, 2012, and no later amendments or editions, as 49 CFR - Transportation, Subtitle B - Other Regulations Relating to Transportation, Chapter I - Pipeline and Hazardous Materials Safety Administration, Department of Transportation:
   a. Subchapter A - Hazardous Materials and Oil Transportation; Part 107 - Hazardous materials program procedures; and
   b. Subchapter C - Hazardous Materials Regulations; Parts:
      i. 171 - General information, regulations, and definitions;
      ii. 172 - Hazardous materials table, special provisions, hazardous materials communications, emergency response information, training requirements, and security plans;
      iii. 173 - Shippers - general requirements for shipments and packagings;
      iv. 177 - Carriage by public highway;
      v. 178 - Specifications for packagings; and
      vi. 180 - Continuing qualification and maintenance of packagings.
B. Application and exceptions.
   1. Application.
      a. Regulations incorporated under subsection (A) apply as amended by subsection (C) to motor carriers, shippers, and manu-
         facturers as defined under A.R.S. § 28-5201.
      b. Regulations incorporated under subsection (A) also apply to any vehicle owned or operated by the state, a political subdivi-
         sion, or a state public authority, used to transport a hazardous material, including hazardous substances and hazardous waste.
   2. Exceptions. An authorized emergency vehicle, as defined under A.R.S. § 28-101, is excepted from the provisions of this Section.
C. Amendments. The following sections of the Federal Hazardous Materials Regulations, incorporated under subsection (A), are amend-
   ed as follows:
   1. Part 171, General information, regulations, and definitions. Section 171.8, Definitions and abbreviations. Section 171.8 is
      amended by revising the definitions for “Carrier,” “Hazmat employer,” and “Person,” and adding a definition for “Highway” as
      follows:
      “‘Carrier’ means a person engaged in the transportation of passengers or property by highway as a common, contract, or private
      carrier and also includes the state, a political subdivision, and a state public authority engaged in the transportation of hazardous
      material.”
      “‘Hazmat employer’ means a person who uses one or more employees in connection with: transporting hazardous material;
      causing hazardous material to be transported or shipped; or representing, marking, certifying, selling, offering, reconditioning,
      testing, repairing, or modifying containers, drums, or packagings as qualified for use in the transportation of hazardous material.
      This term includes motor carriers, shippers, and manufacturers defined under A.R.S. § 28-5201 and includes the state, political
      subdivisions, and state public authorities.”
      “‘Highway’ means a public highway defined under A.R.S. § 28-5201.”
      “‘Person’ has the same meaning as defined under A.R.S. § 28-5201.”
   2. Part 172, Hazardous materials table, special provisions, hazardous materials communications, emergency response information,
      training requirements, and security plans. Section 172.3, Applicability. Paragraph (a)(2) is amended to read: “Each motor carrier
      that transports hazardous materials, and each state agency, political subdivision, and state public authority that transports hazard-
      ous material by highway.”
   3. Part 177, Carriage by public highway.
      a. Section 177.800, Purpose and scope of this part and responsibility for compliance and training. In paragraph (a), the phrase
         “by private, common, or contract carriers by motor vehicle” is amended to read, “by a motor carrier operating in Arizona, a
         state agency, a political subdivision, or a state public authority that transports hazardous material by highway.”
      b. Section 177.802, Inspection. Section 177.802 is amended to read: “Records, equipment, packagings, and containers under
         the control of a motor carrier or other persons subject to this part, affecting safety in transportation of hazardous material by
         motor vehicle, must be made available for examination and inspection by an authorized representative of the Department as
         prescribed under A.R.S. §§ 28-5204 and 28-5231.”

Historical Note
New Section recodified from R17-4-436 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 8
03-2). Amended by final rulemaking at 13 A.A.R. 1262, effective May 5, 2007 (Supp. 07-1). Amended by final rulemaking at 17
A.A.R. 1691, effective August 2, 2011 (Supp. 11-3). Amended by final rulemaking at 20 A.A.R. 2382, effective August 5, 2014
(Supp. 14-3).

R17-5-210. Motor Carrier Safety: Public Service Corporation, Political Subdivision of this State that is Engaged in Rendering
Public Utility Service, or Railroad Contacting State Officials in an Emergency
A. A public service corporation, a political subdivision of this state that is engaged in rendering public utility service, or a railroad shall
notify Commercial Vehicle Enforcement, through the Arizona Department of Public Safety Duty Office, that an emergency situation
under A.R.S. § 28-5234(B) exists. Notification shall be made on a form provided by the Arizona Department of Public Safety and sent
by fax transmission to (602) 223-2929 immediately, but in no case longer than three hours from the time the public service corpora-
tion, political subdivision of this state that is engaged in rendering public utility service, or railroad determines that the emergency situa-
tion exists. The information to be provided includes:
1. Date of the emergency situation,
2. Time that the emergency situation started,
3. Description of the emergency situation,
4. Location of the emergency situation,
5. Projected duration of the emergency situation,
6. Authorized party’s signature for determining that an emergency situation exists,
7. Name and contact number of responsible party in the field, and
8. The utility’s self-generated Emergency ID or tracking number.
B. A public service corporation, a political subdivision of this state that is engaged in rendering public utility service, or a railroad shall
maintain supporting documentation for no less than three years from the date of an emergency situation and shall make the supporting
documentation available to a special agent upon request. Supporting documentation includes:
1. A list of drivers involved in the emergency situation;
2. The duration of the emergency situation;
3. The off-duty time provided for the affected drivers after the emergency situation concluded; and
4. Any United States Department of Transportation recordable accidents, as defined under 49 CFR 390.5, which occurred during the emergency situation.

C. After an emergency situation terminates and a driver returns to the principal place of business, the driver shall not drive a commercial motor vehicle unless the driver remains off duty under 49 CFR 395.

Historical Note
New Section recodified from R17-4-438 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 7 A.A.R. 4259, effective September 13, 2001 (Supp. 01-3). Section repealed by final rulemaking at 8 A.A.R. 3249, effective July 10, 2002 (Supp. 02-3). New Section made by final rulemaking at 11 A.A.R. 862, effective February 1, 2005 (Supp. 05-1). Amended by final rulemaking at 17 A.A.R. 1691, effective August 2, 2011 (Supp. 11-3).

R17-5-211. Motor Carrier Safety: Inspection, Enforcement, Sanction
A. Scope. This Section applies to any transporter subject to:
1. R17-5-201 through R17-5-209; and
2. A.R.S. Title 28, Chapter 14.
B. Audits.
1. The Department may conduct an audit for cause or without cause.
2. The Department may enter the premises of any transporter for the purpose of conducting an audit.
3. The Department may inspect a motor vehicle:
   a. Within Arizona at:
      i. A transporter’s place of business, or
      ii. Any other in-state location, or
   b. Outside Arizona at a transporter’s place of business.
4. A transporter shall make records available for audit:
   a. During the transporter’s normal business hours, and
   b. In a specific location as follows:
      i. The transporter’s Arizona place of business, or
      ii. Either an Arizona location designated by the Director or the transporter’s out-of-state place of business.
5. The Department shall charge a transporter in advance for all expenses to be incurred in performance of an out-of-state audit.
C. Violation notification. Within five days after audit completion, the Department shall notify an audited transporter in writing of all violations. The notification shall specify a deadline date for remedy of all violations.
D. Obligation to remedy violations. After receipt of a violation notification, a transporter shall remedy all violations by the specified date to comply with:
1. R17-5-201 through R17-5-209; and
2. A.R.S. Title 28, Chapter 14.
E. Noncompliance: Failure to remedy violations. If the Department determines a transporter does not remedy a violation by the date specified in a violation notice, the Department shall initiate further enforcement action as prescribed under A.R.S. §§ 28-5237 and 28-5238.
F. Danger to public safety. If the Director determines a written violation report establishes probable cause of danger to public safety, the Director shall issue an order by 5:00 p.m. the next business day suspending the Arizona registration of the motor vehicle owned or leased by the transporter, or a driver’s Arizona driver license or nonresident driving privilege.

Historical Note
New Section recodified from R17-4-439 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 7 A.A.R. 4259, effective September 13, 2001 (Supp. 01-3). Amended by final rulemaking at 17 A.A.R. 1691, effective August 2, 2011 (Supp. 11-3). Amended by final rulemaking at 20 A.A.R. 2382, effective August 5, 2014 (Supp. 14-3).

R17-5-212. Motor Carrier Safety: Hearing Procedure
A. Scope.
1. This Section applies only to a motor carrier enforcement action under:
   a. R17-5-201 through R17-5-209; and
   b. A.R.S. Title 28, Chapter 14.
2. In an enforcement hearing involving a manufacturer, motor carrier, shipper, or driver under this Section, the Department shall follow the procedures prescribed under 17 A.A.C. 1, Article 5, except as modified under subsections (B) through (I).
B. Initiation of proceedings, pleadings.
1. The Director shall initiate a hearing under this Section by:
   a. Signing and serving a complaint in the form prescribed under subsection (G) that cites a manufacturer, motor carrier, shipper, or driver for an alleged infraction; and
   b. Serving the cited manufacturer, motor carrier, shipper, or driver with a hearing notice within 15 days after the date the complaint is signed.
2. After the Director signs a complaint, the Executive Hearing Office shall act on the Director’s behalf through completion of an administrative proceeding under this Section.
C. Order to show cause.
   1. When a complaint is served, the Executive Hearing Office shall immediately issue a summons for a respondent to appear at an 
      administrative hearing to explain why the Executive Hearing Office should not grant the requested relief.
   2. The Executive Hearing Office shall hold a hearing under this Section within 60 days after the date the complaint is served.
   3. The parties may resolve a complaint before the hearing date.
      a. The respondent shall file any settlement condition with the Executive Hearing Office.
      b. Complaint settlement terminates the right of both petitioner and respondent to receive additional administrative review.

D. Service.
   1. The Executive Hearing Office shall:
      a. Send an order to show cause by certified mail as prescribed under A.R.S. § 28-5232(B), and
   2. The date of service is the date of mailing.

E. Answer.
   1. Within 15 days after service of a complaint, a respondent shall respond to the complaint by:
      a. Filing a written answer with the Executive Hearing Office; and
      b. Serving the Assistant Attorney General, Transportation Division, representing the Department with a copy of the answer.
   2. A respondent’s written answer shall contain:
      a. An admission or denial of each complaint allegation, and
      b. A list of all defenses that the respondent intends to raise during the hearing.
   3. In a hearing, the Executive Hearing Office shall consider any allegation not denied in the answer as an admission to the allega-
      tion.

F. Default.
   1. The Executive Hearing Office shall find in default a respondent that fails to file an answer within 15 days after the service date of 
      a complaint.
   2. If the Executive Hearing Office finds a respondent in default, the Executive Hearing Office shall:
      a. Consider the respondent’s default as an admission of all complaint allegations unless the default is cured under subsection
         (F)(3), and
      b. Enter an order granting the relief requested in the Department’s complaint.
   3. A respondent may cure a default by following Rule 60(c) of the Arizona Rules of Civil Procedure.

G. Emergency motor carrier hearings; scope.
   1. The Director shall initiate an emergency motor carrier hearing process according to R17-5-211(E) by:
      a. Issuing a complaint and order to show cause according to the hearing scope under A.R.S. § 28-5232(C); and
      b. Ordering immediate suspension of the registration of the motor vehicle owned or leased by the manufacturer, shipper, or
         motor carrier, or the driver license or driver’s nonresident operating privilege, as prescribed under A.R.S. § 28-5232(A).
   2. The Executive Hearing Office shall set an emergency hearing date to occur within 30 days after the date on the complaint.
   3. The complaint and order to show cause shall contain the following:
      a. The Department as the designated petitioner on the state’s behalf;
      b. The respondent’s name and the basis of fact for the complaint, including a listing of any alleged violation of Department
         statute or rule;
      c. The relief sought by the Department; and
      d. An original copy of the written violation notice issued by a law enforcement agency that was served upon the respondent.
   4. At an emergency motor carrier hearing, an Executive Hearing Office administrative law judge shall determine whether the re-
      spondent:
      a. Was operating on a public highway and the operation created a danger to the public safety,
      b. Was responsible for the danger, and
      c. Is responsible for preventing or remediying further danger to public safety.
   5. Upon a finding that the factors in subsection (G)(4) are present, the administrative law judge shall order that the motor carrier’s
      registration and operator’s driver license or driver’s nonresident operating privilege suspension continue.
   6. If a respondent fails to appear at an emergency motor carrier hearing, any suspension previously ordered remains in effect until
      the respondent appears and meets all requirements under A.R.S. § 28-5232(F).

H. Upon a finding that the factors in subsection (G)(4) are present, the Director shall impose a civil penalty as prescribed under A.R.S. §§
   28-5232, 28-5237 and 28-5238.
I. A respondent may request judicial review of a motor carrier safety hearing as prescribed under A.R.S. § 28-5239.

Historical Note
New Section recodified from R17-4-440 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 8 
A.A.R. 4230, effective November 15, 2002 (Supp. 02-3). Amended by final rulemaking at 17 A.A.R. 1691, effective August 2, 
2011 (Supp. 11-3).
Statutory Authority Including Relevant Statutory Definitions

General Authority for Rulemaking

A.R.S. § 28-366. Director; rules
The director shall adopt rules pursuant to title 41, chapter 6 as the director deems necessary for:
1. Collection of taxes and license fees.
2. Public safety and convenience.
3. Enforcement of the provisions of the laws the director administers or enforces.
4. The use of state highways and routes to prevent the abuse and unauthorized use of state highways and routes.

A.R.S. § 28-962. Vehicles transporting explosives; rules
A. A person operating a vehicle transporting an explosive on a highway shall comply at all times with the following provisions:
1. The vehicle shall be placarded in accordance with the placarding requirements specified in 49 Code of Federal Regulations part 172.
2. The vehicle shall be equipped with a fire extinguisher as required in 49 Code of Federal Regulations part 393.
B. The director shall adopt additional rules governing the transportation of explosives and other dangerous articles by vehicles on the highways as the director deems advisable for the protection of the public.

A.R.S. § 28-2169. Intrastate commercial vehicle registration; required numbers
The department may require by rule that an applicant for registration of a vehicle that is subject to the gross weight fees imposed pursuant to section 28-5432 have a United States department of transportation number and provide to the director a United States department of transportation number and a federal taxpayer identification number issued to the applicant for registration before the vehicle may be registered to travel in this state.

A.R.S. § 28-5204. Administration and enforcement; rules
A. In the administration and enforcement of this chapter, the department of transportation shall adopt:
1. Reasonable rules it deems proper governing the safety operations of motor carriers, including rules governing safety operations of motor carriers, shippers and vehicles transporting hazardous materials, hazardous substances or hazardous wastes and shall prescribe necessary forms. In determining reasonable rules, the department of transportation shall consider:
(a) The nature of the operations and regulation of public service corporations as defined in article XV, sections 2 and 10, Constitution of Arizona.

(b) Rules adopted by the director of environmental quality pursuant to section 49-855.

2. Rules necessary to enforce and administer this chapter, including rules setting forth reasonable procedures to be followed in the enforcement of this chapter and rules adopting transporter safety standards for hazardous materials, hazardous substances and hazardous waste. In adopting the rules, the department shall consider, as evidence of generally accepted safety standards, the publications of the United States department of transportation and the environmental protection agency.

B. Rules adopted by the department of transportation also apply to a manufacturer, shipper, motor carrier and driver.

C. The department of public safety shall and a political subdivision may enforce this chapter and any rule adopted pursuant to this chapter by the department of transportation. A person acting for a political subdivision in enforcing this chapter is required to be certified by the department of public safety as qualified for the enforcement activities.

D. The department may audit records and inspect vehicles that are subject to this chapter.
A.R.S. § 28-3223. Original applicant; requirements; expiration; renewal examination

A. In addition to the requirements applicable to all driver license applicants, an original applicant for a class A, B or C license is subject to the following requirements:

1. The applicant shall submit evidence of compliance with medical standards and requirements that the department adopts by rule.
2. The applicant must have held a driver license for at least one year either in this state, any other state or a foreign country.
3. The applicant shall take additional knowledge examinations to demonstrate understanding of the following:
   (a) Safety operation rules.
   (b) Commercial motor vehicle safety control systems.
   (c) Safe vehicle control.
   (d) The relationship of cargo to vehicle control.
   (e) Basic hazardous materials knowledge.
   (f) The objectives and proper procedures for performing vehicle safety inspections.
   (g) Air brake systems.
   (h) Legal requirements for size, weight and vehicle configurations.
   (i) Emergency procedures.
4. In addition to the other requirements of this section, an applicant for a class A driver license shall demonstrate a knowledge and understanding of:
   (a) Vehicle coupling and uncoupling.
   (b) Unique combination vehicle inspections.
5. The applicant shall take a driving test in a vehicle or vehicle combination that at least meets the minimum size requirements for the class of driver license sought. The driving test shall include a demonstration of familiarity with pretrip inspection procedures.

B. A person possessing a commercial driver license on or before June 30, 2005 shall renew the license within five years according to procedures established by the department.

C. Notwithstanding section 28-3171, the holder of a class A, B or C driver license shall renew the license every five years in a manner prescribed by the department.

D. The department may administer an examination to a renewal applicant for a class A, B or C driver license. This examination on renewal shall include the following:

1. Evidence of compliance with medical standards adopted by the department.
2. Administration of knowledge tests or road tests, or both, as required of an original applicant.
A.R.S. § 28-5201. Definitions
In this chapter, unless the context otherwise requires:
1. “Commercial motor vehicle” means a motor vehicle or combination of motor vehicles that is designed, used or maintained to transport passengers or property in the furtherance of a commercial enterprise on a highway in this state, that is not exempt from the gross weight fees as prescribed in section 28-5432, subsection B and that includes any of the following:
   (a) A single vehicle or combination of vehicles that has a gross vehicle weight rating of eighteen thousand one or more pounds and that is used for the purposes of intrastate commerce.
   (b) A single vehicle or combination of vehicles that has a gross vehicle weight rating of ten thousand one or more pounds and that is used for the purposes of interstate commerce.
   (c) A school bus.
   (d) A bus.
   (e) A vehicle that transports passengers for hire and that has a design capacity for eight or more persons.
   (f) A vehicle that is used in the transportation of materials found to be hazardous for the purposes of the hazardous materials transportation authorization act of 1994 (49 United States Code sections 5101 through 5128) and that is required to be placarded under 49 Code of Federal Regulations section 172.504, as adopted by the department pursuant to this chapter.
2. “Declared gross weight” has the same meaning prescribed in section 28-5431. If a declaration has not been made, declared gross weight means gross weight.
3. “Gross weight” has the same meaning prescribed in section 28-5431.
4. “Hazardous material” means a substance that has been determined by the United States department of transportation under 49 Code of Federal Regulations to be capable of posing an unreasonable risk to health, safety and property if transported in commerce.
5. “Hazardous substance” means a material and its mixtures or solutions that has been determined by the United States department of transportation under 49 Code of Federal Regulations to be capable of posing an unreasonable risk to health, safety and property if transported in commerce.
6. “Hazardous waste” means a material that is subject to the hazardous waste manifest requirements of the department of environmental quality or the United States environmental protection agency.
7. “Manufacturer” means a person who transports or causes to be transported or shipped by a motor vehicle a material that is represented, marked, certified or sold by a person for transportation in commerce.
8. “Motor carrier” means a person who operates or causes to be operated a commercial motor vehicle on a public highway.
9. “Motor vehicle” means any vehicle, machine, truck, tractor, trailer or semitrailer that is propelled or drawn by mechanical power and that is used on a public highway in the transportation of passengers or property in the furtherance of a commercial enterprise.
10. “Person” means a public or private corporation, company, partnership, firm, association or society of persons, the federal government and its departments or agencies, this state or any of its agencies, departments, political subdivisions, counties, towns or municipal corporations or a natural person.
11. “Public highway” means a public street, alley, road, highway or thoroughfare of any kind in this state that is used by the public or that is open to the use of the public as a matter of right, for the purpose of vehicular travel.
12. “Shipper” means a person who offers a material for motor vehicle transportation in commerce.
13. “Transportation” means a movement of person or property by a motor vehicle and any loading, unloading or storage incidental to the movement.
14. “Vehicle combination” has the same meaning prescribed in section 28-5431.

A.R.S. § 28-5235. Notification; denial of vehicle registration and operating privileges; audits
A. A person who owns or leases a vehicle transporting hazardous materials, hazardous substances or hazardous wastes shall notify the director of all vehicles transporting the materials, substances or wastes in a manner prescribed by the director. Each notification shall contain the name and current address of the person transporting the materials, substances or wastes and other information the department requires by rule.
B. The department may deny the vehicle registration, the operating privilege or the nonresident operating privilege for any of the following reasons:
   1. Failure to pay any applicable fees.
   2. Misrepresentation in the application or notification.
   3. Failure to comply with the rules of the department.
   4. Failure to make vehicles available for inspection or to make records available for audit.
   5. Revocation of an operating privilege within the preceding twelve months.
C. The department shall provide for compliance audits pursuant to this chapter and rules adopted pursuant to this chapter. The department of transportation shall provide for reciprocity of audits with the department of public safety and the United States department of transportation.

A.R.S. § 28-5237. Noncompliance; hearing; suspension of registration or license; civil penalty
A. The director may conduct a hearing if a law enforcement agency authorized to enforce this chapter alleges that probable cause exists that a manufacturer, shipper, motor carrier or driver refuses to comply with section 28-5231 or has failed to comply with this chapter or a rule adopted pursuant to this chapter.
B. If after reviewing the allegations the director determines that probable cause exists to believe that the manufacturer, shipper, motor carrier or driver is responsible, the director shall issue an order to show cause why the director should not impose any of the following:
   1. A suspension of the registrations of any motor vehicles owned or leased by the manufacturer, shipper or motor carrier.
   2. A suspension of the driver license or nonresident operating privilege of a driver.
   3. A civil penalty on the manufacturer, shipper, motor carrier or driver.
C. The manufacturer, shipper, motor carrier or driver shall respond to the order at a hearing held not more than sixty days after service of written notice. The director shall send the notice by certified mail to the address provided to the department in the agency’s report alleging the noncompliance.

D. A finding of responsibility requires that all of the following conditions exist, and the hearing is limited to the following:

1. The respondent refuses to comply with the requirements of section 28-5231 or failed to comply with any other provision of this chapter or a rule adopted pursuant to this chapter.
2. The respondent ordered to appear at the hearing is responsible for the noncompliance and is responsible under this chapter or a rule adopted pursuant to this chapter to effect compliance or to remedy the noncompliance.
3. The law enforcement agency submitting the report served written notice on the respondent that noncompliance exists.
4. A reasonable period of time of at least ten but not more than thirty days has been provided to attain compliance.
5. The department of public safety or the department of transportation performed a follow-up inspection or audit.
6. The inspection or audit shows that compliance was not subsequently attained.

E. After consideration of the evidence presented at the hearing and within five days after the hearing, the director shall serve notice of the director's finding and order. If the director enters a finding of responsibility, the director shall both:

1. Impose a civil penalty as prescribed in section 28-5238.
2. Suspend the registrations of any motor vehicles owned or leased by the manufacturer, shipper or motor carrier or suspend the driver license or nonresident operating privilege of a driver.

F. If the manufacturer, motor carrier, shipper or driver fails to appear for a hearing, in addition to any other remedies provided by law, the director shall suspend the registrations of any motor vehicles owned and leased by the manufacturer, shipper or motor carrier or the driver license or the nonresident operating privilege of the driver. The director shall not remove the suspension until the manufacturer, motor carrier, shipper or driver appears for the hearing and all fees required to reinstate vehicle registration or driving privileges prescribed by statute are paid.

A.R.S. § 28-5238. Civil penalty schedule; suspension of registration or license; reinstatement; enforcement

A. If the director imposes a civil penalty on the manufacturer, motor carrier, shipper or driver, the civil penalty is determined pursuant to the following schedule:

1. A minimum civil penalty of one thousand dollars but not more than five thousand dollars, or if the director determines that the manufacturer, motor carrier, shipper or driver failed to attain compliance with a rule relating to hazardous materials, hazardous substances or hazardous wastes, a minimum civil penalty of five thousand dollars but not more than twenty-five thousand dollars.
2. For a second finding of responsibility within a sixty month period involving the same manufacturer, motor carrier, shipper or driver and the same class of violation, as prescribed by subsection E of this section, either:
   (a) A minimum civil penalty of five thousand dollars but not more than ten thousand dollars.
(b) If the director determines that the manufacturer, motor carrier, shipper or driver failed to attain compliance with a rule relating to hazardous materials, hazardous substances or hazardous wastes, a minimum civil penalty of ten thousand dollars but not more than twenty-five thousand dollars.

3. For a third and any subsequent finding of responsibility within a sixty month period involving the same manufacturer, motor carrier, shipper or driver and the same class of violation, as prescribed by subsection E of this section, either:
   (a) A minimum civil penalty of ten thousand dollars but not more than twenty-five thousand dollars.
   (b) If the director determines that the manufacturer, motor carrier, shipper or driver failed to attain compliance with a rule relating to hazardous materials, hazardous substances or hazardous wastes, a minimum civil penalty of fifteen thousand dollars but not more than twenty-five thousand dollars.

B. On the third and any subsequent finding of responsibility within a sixty month period involving the same manufacturer, motor carrier, shipper or driver and the same class of violation, in addition to imposing the civil penalties prescribed in subsection A, paragraph 3 of this section, the director shall suspend the registrations of any motor vehicles owned or leased by the manufacturer, shipper or motor carrier or the driver license or nonresident operating privilege of the driver for thirty days, except that in the case of noncompliance the suspension may exceed thirty days until the department of public safety states in writing to the director of the department of transportation that the cause for the finding of responsibility has been remedied.

C. The manufacturer, motor carrier, shipper or driver shall pay the civil penalty imposed in the order to the department no later than ten days after the order is final.

D. If a civil penalty is imposed and if the civil penalty is not paid when due, the director shall suspend the registrations of any motor vehicles owned or leased by the manufacturer, shipper or motor carrier or shall suspend the driver license or nonresident operating privilege of the driver.

E. For the purpose of determining the amount of civil penalty for repeat findings of responsibility for the same class of violation, the director may adopt rules categorizing violations of this chapter or violations of rules adopted under this chapter into the following classes:
   1. Equipment.
   2. Commodities transport, including hazardous materials, hazardous substances or hazardous wastes.
   3. Driver, shipper or manufacturer records or requirements.
   4. Other records.

F. In addition to any other requirements imposed in this section, the director shall not reinstate any suspended registrations of the motor vehicles of the manufacturer, shipper or motor carrier or any suspended driver license or nonresident operating privilege of the driver, manufacturer, shipper or motor carrier until both of the following conditions are met:
   1. All fees prescribed by statute to reinstate the vehicle registration or driving privileges are paid.
   2. Any civil penalty that has been imposed is paid.

G. The director shall immediately deposit, pursuant to sections 35-146 and 35-147, all monies from civil penalties imposed under this chapter in the motor carrier safety revolving fund established by section 28-5203.
H. A city, town or county shall not enact an ordinance or resolution imposing civil penalties against any shipper, manufacturer or motor carrier for a motor carrier safety violation.

I. The attorney general shall enforce this section.
A.A.C. 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. § 41-1830.51 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.


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.

A.R.S. § 28-101. Definitions

In this title, unless the context otherwise requires:

1. “Alcohol” means any substance containing any form of alcohol, including ethanol, methanol, propynol and isopropynol.

2. “Alcohol concentration” if expressed as a percentage means either:
   (a) The number of grams of alcohol per one hundred milliliters of blood.
   (b) The number of grams of alcohol per two hundred ten liters of breath.

3. “All-terrain vehicle” means either of the following:
   (a) A motor vehicle that satisfies all of the following:
      (i) Is designed primarily for recreational nonhighway all-terrain travel.
      (ii) Is fifty or fewer inches in width.
      (iii) Has an unladen weight of one thousand two hundred pounds or less.
      (iv) Travels on three or more nonhighway tires.
      (v) Is operated on a public highway.
   (b) A recreational off-highway vehicle that satisfies all of the following:
      (i) Is designed primarily for recreational nonhighway all-terrain travel.
      (ii) Is sixty-five or fewer inches in width.
      (iii) Has an unladen weight of one thousand eight hundred pounds or less.
      (iv) Travels on four or more nonhighway tires.

4. “Authorized emergency vehicle” means any of the following:
   (a) A fire department vehicle.
   (b) A police vehicle.
   (c) An ambulance or emergency vehicle of a municipal department or public service corporation that is designated or authorized by the department or a local authority.
   (d) Any other ambulance, fire truck or rescue vehicle that is authorized by the department in its sole discretion and that meets liability insurance requirements prescribed by the department.
5. “Autocycle” means a three-wheeled motorcycle on which the driver and passengers ride in a fully or partially enclosed seating area that is equipped with a roll cage, safety belts for each occupant and antilock brakes and that is designed to be controlled with a steering wheel and pedals.

6. “Aviation fuel” means all flammable liquids composed of a mixture of selected hydrocarbons expressly manufactured and blended for the purpose of effectively and efficiently operating an internal combustion engine for use in an aircraft but does not include fuel for jet or turbine powered aircraft.

7. “Bicycle” means a device, including a racing wheelchair, that is propelled by human power and on which a person may ride and that has either:
   (a) Two tandem wheels, either of which is more than sixteen inches in diameter.
   (b) Three wheels in contact with the ground, any of which is more than sixteen inches in diameter.

8. “Board” means the transportation board.

9. “Bus” means a motor vehicle designed for carrying sixteen or more passengers, including the driver.

10. “Business district” means the territory contiguous to and including a highway if there are buildings in use for business or industrial purposes within any six hundred feet along the highway, including hotels, banks or office buildings, railroad stations and public buildings that occupy at least three hundred feet of frontage on one side or three hundred feet collectively on both sides of the highway.

11. “Certificate of ownership” means a paper or an electronic record that is issued in another state or a foreign jurisdiction and that indicates ownership of a vehicle.

12. “Certificate of title” means a paper document or an electronic record that is issued by the department and that indicates ownership of a vehicle.

13. “Combination of vehicles” means a truck or truck tractor and semitrailer and any trailer that it tows but does not include a forklift designed for the purpose of loading or unloading the truck, trailer or semitrailer.

14. “Controlled substance” means a substance so classified under section 102(6) of the controlled substances act (21 United States Code section 802(6)) and includes all substances listed in schedules I through V of 21 Code of Federal Regulations part 1308.

15. “Conviction” means:
   (a) An unvacated adjudication of guilt or a determination that a person violated or failed to comply with the law in a court of original jurisdiction or by an authorized administrative tribunal.
   (b) An unvacated forfeiture of bail or collateral deposited to secure the person’s appearance in court.
   (c) A plea of guilty or no contest accepted by the court.
   (d) The payment of a fine or court costs.

16. “County highway” means a public road that is constructed and maintained by a county.

17. “Dealer” means a person who is engaged in the business of buying, selling or exchanging motor vehicles, trailers or semitrailers and who has an established place of business and has paid fees pursuant to section 28-4302.

18. “Department” means the department of transportation acting directly or through its duly authorized officers and agents.

19. “Digital network or software application” has the same meaning prescribed in section 28-9551.
20. “Director” means the director of the department of transportation.
21. “Drive” means to operate or be in actual physical control of a motor vehicle.
22. “Driver” means a person who drives or is in actual physical control of a vehicle.
23. “Driver license” means a license that is issued by a state to an individual and that authorizes the individual to drive a motor vehicle.
24. “Electric personal assistive mobility device” means a self-balancing device with one wheel or two nontandem wheels and an electric propulsion system that limits the maximum speed of the device to fifteen miles per hour or less and that is designed to transport only one person.
25. “Farm” means any lands primarily used for agriculture production.
26. “Farm tractor” means a motor vehicle designed and used primarily as a farm implement for drawing implements of husbandry.
27. “Foreign vehicle” means a motor vehicle, trailer or semitrailer that is brought into this state other than in the ordinary course of business by or through a manufacturer or dealer and that has not been registered in this state.
28. “Golf cart” means a motor vehicle that has not less than three wheels in contact with the ground, that has an unladen weight of less than one thousand eight hundred pounds, that is designed to be and is operated at not more than twenty-five miles per hour and that is designed to carry not more than four persons including the driver.
29. “Hazardous material” means a material, and its mixtures or solutions, that the United States department of transportation determines under 49 Code of Federal Regulations is, or any quantity of a material listed as a select agent or toxin under 42 Code of Federal Regulations part 73 that is, capable of posing an unreasonable risk to health, safety and property if transported in commerce and that is required to be placarded or marked as required by the department’s safety rules prescribed pursuant to chapter 14 of this title.
30. “Implement of husbandry” means a vehicle that is designed primarily for agricultural purposes and that is used exclusively in the conduct of agricultural operations, including an implement or vehicle whether self-propelled or otherwise that meets both of the following conditions:
   (a) Is used solely for agricultural purposes including the preparation or harvesting of cotton, alfalfa, grains and other farm crops.
   (b) Is only incidentally operated or moved on a highway whether as a trailer or self-propelled unit. For the purposes of this subdivision, “incidentally operated or moved on a highway” means travel between a farm and another part of the same farm, from one farm to another farm or between a farm and a place of repair, supply or storage.
31. “Limousine” means a motor vehicle providing prearranged ground transportation service for an individual passenger, or a group of passengers, that is arranged in advance or is operated on a regular route or between specified points and includes ground transportation under a contract or agreement for services that includes a fixed rate or time and is provided in a motor vehicle with a seating capacity not exceeding fifteen passengers including the driver.
32. “Livery vehicle” means a motor vehicle that:
   (a) Has a seating capacity not exceeding fifteen passengers including the driver.
(b) Provides passenger services for a fare determined by a flat rate or flat hourly rate between geographic zones or within a geographic area.

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

(d) May do any of the following:

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

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

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

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

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

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

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

37. “Motor vehicle”:

(a) Means either:

(i) A self-propelled vehicle.

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

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

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

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

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

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

40. “Motorized quadricycle” means a self-propelled motor vehicle to which all of the following apply:
(a) The vehicle is self-propelled by an emission-free electric motor and may include pedals operated by the passengers.

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

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

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

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

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

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

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

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

(a) The vehicle is emission free.

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

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

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

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

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

45. “Owner” means:

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

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

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

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

47. “Power sweeper” means an implement, with or without motive power, that is only incidentally operated or moved on a street or highway and that is designed for the removal of debris, dirt, gravel, litter or sand whether by broom, vacuum or regenerative air system from asphaltic concrete or cement concrete surfaces, including parking lots, highways, streets and warehouses, and a vehicle on which the implement is permanently mounted.
48. “Public transit” means the transportation of passengers on scheduled routes by means of a conveyance on an individual passenger fare-paying basis excluding transportation by a sightseeing bus, school bus or taxi or a vehicle not operated on a scheduled route basis.

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

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

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

52. “School bus” means a motor vehicle that is designed for carrying more than ten passengers and that is either:
   (a) Owned by any public or governmental agency or other institution and operated for the transportation of children to or from home or school on a regularly scheduled basis.
   (b) Privately owned and operated for compensation for the transportation of children to or from home or school on a regularly scheduled basis.

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

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

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

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

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

58. “Taxi” means a motor vehicle that has a seating capacity not exceeding fifteen passengers, including the driver, that provides passenger services and that:
   (a) Does not primarily operate on a regular route or between specified places.
   (b) Offers local transportation for a fare determined on the basis of the distance traveled or prearranged ground transportation service as defined in section 28-141 for a predetermined fare.
59. “Title transfer form” means a paper or an electronic form that is prescribed by the department for the purpose of transferring a certificate of title from one owner to another owner.

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

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

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

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

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

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

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

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

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

A.R.S. § 28-2514. Farm vehicle license plates; reciprocity; definitions

A. The department shall issue a farm vehicle license plate to a person who owns a farm vehicle.

B. The fee for an original farm vehicle license plate is twenty-five dollars. Eight dollars of the fee for an original farm vehicle license plate is a special plate administration fee. The fee for renewal of a farm vehicle license plate is eight dollars and is a special plate administration fee. The department shall deposit, pursuant to sections 35-146 and 35-147, the special plate administration fees in the state highway fund established by section 28-6991.

C. Possession of a farm vehicle license plate issued pursuant to this section does not exempt a driver of a farm vehicle from the requirements prescribed in chapter 8 of this title.

D. If another state extends registration reciprocity to farm vehicles with farm vehicle license plates issued pursuant to this section, this state shall extend registration reciprocity to farm vehicles with farm vehicle license plates issued by that state.
E. For the purposes of this section:

1. “Commercial farming” and “commercial stock raising” have the same meanings prescribed in section 28-3102.
2. “Farm vehicle” means a vehicle or vehicle combination that is all of the following:
   (a) Used for commercial farming or commercial stock raising.
   (b) Controlled and operated by the farm vehicle owner or the owner’s family member or employee.
   (c) Used to transport agricultural products, machinery or supplies to or from a commercial farming or a commercial stock raising operation.
   (d) Not used in the operations of a common or contract motor carrier.
   (e) Not exempt from registration pursuant to section 28-2153.

A.R.S. § 28-3001. Definitions
In this chapter, unless the context otherwise requires:

1. “Cancellation” means the annulment or termination of a driver license because of an error or defect or because the licensee is no longer entitled to the license.
2. “Commercial driver license” means a license that is issued to an individual and that authorizes the individual to operate a class of commercial motor vehicles.
3. “Commercial motor vehicle” means a motor vehicle or combination of motor vehicles that is used in commerce to transport passengers or property and that includes any of the following:
   (a) A motor vehicle or combination of motor vehicles that has a gross combined weight rating of twenty-six thousand one or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than ten thousand pounds.
   (b) A motor vehicle that has a gross vehicle weight rating of twenty-six thousand one or more pounds.
   (c) A bus.
   (d) A motor vehicle or combination of motor vehicles that is used in the transportation of materials found to be hazardous for the purposes of the hazardous materials transportation authorization act of 1994 (49 United States Code sections 5101 through 5128) and is required to be placarded under 49 Code of Federal Regulations section 172.504, as adopted by the department pursuant to chapter 14 of this title.
4. “Conviction” has the same meaning prescribed in section 28-101 and also means a final conviction or judgment, including an order of a juvenile court finding that a juvenile has violated a provision of this title or has committed a delinquent act that if committed by an adult constitutes any of the following:
   (a) Criminal damage to property pursuant to section 13-1602, subsection A, paragraph 1.
   (b) A felony offense in the commission of which a motor vehicle was used, including theft of a motor vehicle pursuant to section 13-1802, unlawful use of means of transportation pursuant to section 13-1803 or theft of means of transportation pursuant to section 13-1814.
   (c) A forfeiture of bail or collateral deposited to secure a defendant’s appearance in court that has not been vacated.
5. “Disqualification” means a prohibition from obtaining a commercial driver license or driving a commercial motor vehicle.
6. “Employer” means a person, including the United States, a state or a political subdivision of a state, that owns or leases a commercial motor vehicle or that assigns a person to operate a commercial motor vehicle.
7. “Endorsement” means an authorization that is added to an individual’s driver license and that is required to permit the individual to operate certain types of vehicles.
8. “Foreign” means outside the United States.
9. “Gross vehicle weight rating” means the weight that is assigned by the vehicle manufacturer to a vehicle and that represents the maximum recommended total weight including the vehicle and the load for the vehicle.
10. “Judgment” means a final judgment and any of the following:
   (a) The finding by a court that an individual is responsible for a civil traffic violation.
   (b) An individual’s admission of responsibility for a civil traffic violation.
   (c) The voluntary or involuntary forfeiture of deposit in connection with a civil traffic violation.
   (d) A default judgment entered by a court pursuant to section 28-1596.
11. “License class” means, for the purpose of determining the appropriate class of driver license required for the type of motor vehicle or vehicle combination a driver intends to operate or is operating, the class of driver license prescribed in section 28-3101.
12. “Nondomiciled commercial driver license” means a commercial driver license issued to an individual domiciled in a foreign country or to an individual domiciled in another state if that state is prohibited from issuing commercial driver licenses.
13. “Original applicant” means any of the following:
   (a) An applicant who has never been licensed or cannot provide evidence of licensing.
   (b) An applicant who is applying for a higher class of driver license than the license currently held by the applicant.
   (c) An applicant who has a license from a foreign country.
14. “Revocation” means that the driver license and driver’s privilege to drive a motor vehicle on the public highways of this state are terminated and shall not be renewed or restored, except that an application for a new license may be presented and acted on by the department after one year from the date of revocation.
15. “State of domicile” means the state or jurisdiction where a person has the person’s true, fixed and permanent home and principal residence and to which the person has the intention of returning after an absence.
16. “Suspension” means that the driver license and driver’s privilege to drive a motor vehicle on the public highways of this state are temporarily withdrawn during the period of the suspension.
17. “Vehicle combination” means a motor vehicle and a vehicle in excess of ten thousand pounds gross vehicle weight that it tows, if the combined gross vehicle weight rating is more than twenty-six thousand pounds.

**A.R.S. § 28-3103. Driver license endorsements**

A. A driver license applicant shall obtain the following endorsements to the applicant’s driver license and shall submit to an examination appropriate to the type of endorsement if the applicant operates one or more of the following vehicles:
1. A motorcycle endorsement for operation of a motorcycle if the applicant qualifies for a class M license and if the applicant qualifies for or has a class A, B, C, D or G license.

2. A hazardous materials endorsement on a class A, B or C license for operation of a vehicle that transports hazardous materials, wastes or substances in a quantity and under circumstances that require the placarding or marking of the transport vehicle as required by the department’s safety rules prescribed pursuant to chapter 14 of this title. The department or an outside source authorized by the department and approved by the transportation security administration may:
   (a) Conduct background checks in accordance with the transportation security administration procedures.
   (b) Require that all hazardous materials endorsement applicants submit fingerprints.

3. A double-triple trailer endorsement on a class A license for operation of a vehicle towing double or triple trailers.

4. A passenger vehicle endorsement on a class A, B or C license for operation of a bus designed to transport sixteen or more passengers, including the driver, or a school bus.

5. A tank vehicle endorsement on a class A, B or C license for operation of a tank vehicle. For the purposes of this paragraph, “tank vehicle” means a commercial motor vehicle that is designed to transport a liquid or gaseous material within a tank that is either permanently or temporarily attached to the vehicle or chassis, including a cargo tank and a portable tank having a rated capacity under one thousand gallons.

6. A school bus endorsement on a class A, B or C license for operation of a school bus. Applicants shall successfully complete both a written knowledge test and a driving skills test to obtain a school bus endorsement.

B. When applying for a commercial driver license endorsement pursuant to article 5 of this chapter, the applicant shall successfully complete the skills portion of the examination in a motor vehicle or vehicle combination applicable to the endorsement.

C. On notification by the transportation security administration that an individual’s authorization to hold a hazardous materials endorsement has been terminated, the department shall immediately cancel the hazardous materials endorsement on the driver’s commercial driver license.

A.R.S. § 28-5241. Out-of-service orders; violation; civil penalty; definition

A. A motor carrier shall not require or permit a driver:

1. To operate a commercial motor vehicle that is subject to an out-of-service order until all repairs required by the out-of-service order have been satisfactorily completed.

2. Who is subject to an out-of-service order to operate a commercial motor vehicle until the reason for the out-of-service order has been remedied.

B. A driver:

1. Shall not operate a commercial motor vehicle that is subject to an out-of-service order until all repairs required by the out-of-service order have been satisfactorily completed.

2. Who is subject to an out-of-service order shall not operate a commercial motor vehicle until the reason for the out-of-service order has been remedied.

C. Notwithstanding section 28-5240, a violation of this section is a civil traffic violation.
D. The court shall impose:

1. On a driver who violates or fails to comply with an out-of-service order a civil penalty of:
   (a) At least two thousand five hundred dollars for an initial violation or failure.
   (b) Five thousand dollars for a subsequent violation or failure.

2. A civil penalty of at least two thousand seven hundred fifty dollars and not more than twenty-five thousand dollars on a motor carrier who violates an out-of-service order or who requires or permits a driver to violate or fail to comply with an out-of-service order.

E. In addition to other penalties prescribed by this chapter, if a motor carrier or driver is found responsible for a violation of this section, the motor carrier or driver is subject to disqualification pursuant to section 28-3312.

F. For the purposes of this section, “out-of-service order” means a declaration by a specialty officer of the department or a law enforcement officer authorized pursuant to section 28-5204 that a driver, motor vehicle or motor carrier is out of service pursuant to this chapter.
NEW ARTICLE: Article 1; Article 2; Article 3
NEW SECTION: R13-14-101; R13-14-102; R13-14-103; R13-14-201; R13-14-202; R13-14-203; R13-14-204; R13-14-205; R13-14-301; R13-14-302
SUMMARY OF THE RULEMAKING

Pursuant to A.R.S. § 22-137, the purpose of the Constable Ethics, Standards and Training Board (Board) is to set standards for constables throughout the State, ensure every constable is meeting their continuing education mandates, and provide funding to counties for constable training and equipment. Constables are officers of the county justice courts, and they are elected by the people of their local precincts to serve four-year terms. Additionally, the Board is required to adopt rules regarding constables, complaints, investigations and hearings, discipline, and training grants.

In this rulemaking, the Board seeks to create three new articles containing ten new rules. Article 1 relates to definitions, conduct of the Board, and the code of conduct for constables. Article 2 establishes the complaint and hearing procedures, as well as disciplinary actions that can be taken against a constable. Lastly, Article 3 discusses training and equipment grants.

The Board received an exemption from the Governor’s Office on August 8, 2017.
Proposed Action

- Article 1 – General Provisions: The new article relates to definitions, conduct of the Board, and the constable code of conduct.
- Section 101 – Definitions: The rule defines terms used throughout the chapter.
- Section 102 – Conduct of the Board: The rule provides guidelines for operation of the Board. The Board must comply with the statutes referenced in the rule.
- Section 103 – Constable Code of Conduct: The rule establishes a code of conduct for constables. In particular, the rule requires constables to perform their duties without bias or prejudice and not solicit any gift or favor from a person who does business with an Arizona justice court.
- Article 2 – Complaints; Hearings; Disciplinary Action: The article establishes procedures for filing a written complaint with the Board, hearing procedures, factors that must be considered by the Board when determining disciplinary action, and procedures to request a review of Board’s decision.
- Section 201 – Filing a Complaint; Jurisdiction: The rule provides details on the complaint procedure, including contents of a complaint and any supporting documents. Subsection (B) requires the Board to determine whether a complaint is within the Board’s jurisdiction based on the criteria provided in the rule.
- Section 202 – Complaint Processing: The rule describes how the Board should process a complaint once it determines that the complaint is within the Board’s jurisdiction. The Board is required to send notice to the constable and request that the constable file a written response to the allegations within 45 days.
- Section 203 – Hearing Procedures: The rule establishes that the Board shall conduct a hearing according to A.R.S. Title 41, Chapter 6, Article 10 and the rules of the Office of Administrative Hearings.
- Section 204 – Disciplinary Action: The rule establishes factors the Board shall consider when determining appropriate disciplinary action.
- Section 205 – Review or Rehearing of Decision: The rule notifies an aggrieved party of their right to seek judicial review of the Board’s decision and file a motion for rehearing or review. Subsection (C) lists causes that may allow the Board to grant rehearing or review of the Board’s order or decision. In addition, subsection (H) clarifies that a complainant is not a party to a Board’s decision and is not entitled to seek rehearing or review of a Board’s decision.
- Article 3 – Training and Equipment Program Grants: The article establishes grant application procedure and how the Board shall evaluate grant applications.
- Section 301 – Request for Grant Applications: The rule requires the Board to comply with A.R.S. § 22-138 when making grants for constable training and support and equipment. In addition, the rule requires that the Board provide sufficient notice on its website for requests for grant applications.
- Section 302 – Evaluation of Grant Applications: The rule requires the Board to review and evaluate each grant application in a manner consistent with A.R.S. § 41-2702, and vote on each application at an open public meeting.
1. **Are the rules legal, consistent with legislative intent, and within the agency’s statutory authority?**

   Yes. The Board cites to A.R.S. § 22-137(A)(1) as general authority for the rules, under which the Board shall adopt rules for the administration and conduct of the Board. In addition, A.R.S. § 22-137(A) requires the Board to “[a]dopt a code of conduct for constables and adopt rules to enforce the code of conduct.”

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

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

3. **Summary of the agency’s economic impact analysis:**

   The Board provides oversight for 73 constables and 15 deputy constables in Arizona. Constables are elected within a local precinct as an officer of the county justice courts. Constables are required to attend approved training each year. FY 2017 activities for the Board and constables included:

   - $295,762 collected by constables
   - $292,690 approved by the Board for training grants
   - $43,817 approved by the Board for equipment grants

   The Board received 24 complaints in FY 2017. The disposition of these complaints is as follows:

   - 12 dismissed
   - One constable resigned before the hearing
   - Nine resulted in disciplinary action
   - Two are still pending

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

   Yes. The Board concludes that this rulemaking is required by state statute. The rulemaking benefits the stakeholders by transparently codifying the administration and conduct of the Board. The benefits outweigh the costs.

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

   Key stakeholders are the Board, constables, and the general public.

   The Board and constables will benefit from this rulemaking because it codifies the procedures and policies of the Board. The Board has been using informal rules that did not follow the procedures prescribed in the Administrative Procedures Act. Following this process provides transparency and opportunities for public input in the rulemaking process.
Constables will benefit from this rulemaking because it confirms their due process rights if they receive a complaint. These rules also benefit constables by codifying the administration procedures for constable training grants.

The general public will benefit from this rulemaking because it provides a definitive source that can inform the public about the Board’s duties and policies. If the general public has a complaint about a constable, these rules provide a transparent framework for addressing their complaint.

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

Yes. The Board indicates that it received two oral comments during the oral proceeding held on February 21, 2018.

The first comment was regarding the Board’s authority to deem someone a vexatious litigant. In response, the Board added its statutory authority for the provision to the rules. The second comment was related to Section 205(A)(2), which indicates that service is complete upon personal service or five days after the Board’s decision is mailed to the party. In response, the Board provided statutory authority, A.R.S. § 41-1092.09(C), for the provision.

Council staff believes the Board adequately addressed the comments on the proposed rules.

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

No. Only non-substantive changes were made between the proposed and final rules at the request of Council staff.

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

No. The Board indicates that no federal law applies to the rules.

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

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

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

No. The Board did not review or rely on any study for this rulemaking.
11. **Conclusion**

The Board requests the usual 60-day delayed effective date for the rules. Council staff recommends approval of the rulemaking.
State of Arizona  
Constable Ethics, Standards & Training Board

March 16, 2018

Ms. Nicole O. Colyer, Chair
The Governor’s Regulatory Review Council
100 North 15th Avenue, Ste. 305
Phoenix, AZ 85007

Re: A.A.C.       Title 13. Public Safety
              Chapter 14. Constable Ethics, Standards and Training Board

Dear Ms. Colyer:

The attached final rule package is submitted for review and approval by the Council. The following information is provided for Council's use in reviewing the rule package:

A. Close of record date: The rulemaking record was closed on March 15, 2018, following a period for public comment and an oral proceeding. This rule package is being submitted within the 120 days provided by A.R.S. § 41-1024(B).

B. Relation of the rulemaking to a five-year-review report: The rulemaking does not relate to a five-year-review report.

C. New fee: The rulemaking does not establish a new fee.

D. Fee increase: The rulemaking does not increase an existing fee.
E. Immediate effective date: An immediate effective date is not requested.

F. Certification regarding studies: I certify that the preamble accurately discloses the Board did not review or rely on a study in its evaluation of or justification for any rule in this rulemaking.

G. Certification that the preparer of the EIS notified the JLBC of the number of new full-time employees necessary to implement and enforce the rule: I certify that none of the rules in this rulemaking will require a state agency to employ a new full-time employee. No notification was provided to JLBC.

H. List of documents enclosed:
1. Cover letter signed by the Board president;
2. Notice of Final Rulemaking including the preamble, table of contents, and rule text;

Sincerely,

[Signature]

Mike Cobb
President
NOTICE OF FINAL RULEMAKING
TITLE 13. PUBLIC SAFETY
CHAPTER 14. CONSTABLE ETHICS, STANDARDS AND TRAINING BOARD

PREAMBLE

1. Articles, Parts, and Sections Affected
   Rulemaking Action
   Article 1                     New Article
   R13-14-101                   New Section
   R13-14-102                   New Section
   R13-14-103                   New Section
   Article 2                     New Article
   R13-14-201                   New Section
   R13-14-202                   New Section
   R13-14-203                   New Section
   R13-14-204                   New Section
   R13-14-205                   New Section
   Article 3                     New Article
   R13-14-301                   New Section
   R13-14-302                   New Section

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. § 22-137(A)(1)
   Implementing statute: A.R.S. § 22-137(A) and (B)

3. The effective date for the rules:
   As specified under A.R.S. § 41-1032(A), the rule will be effective 60 days after the rule package is filed with the Office of the Secretary of State.
   a. If the agency selected a date earlier than the 60-day effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):
      Not applicable
   b. If the agency selected a date later than the 60-day effective date as specified in A.R.S. § 41-1032(A), include the later date and state the reason or reasons the agency selected the later effective date as provided in A.R.S. § 41-1032(B):
4. **Citation to all related notices published in the Register to include the Register as specified in R1-1-409(A) that pertain to the record of the final rulemaking package:**

Notice of Rulemaking Docket Opening: 13 A.A.R. 3556, December 29, 2017
Notice of Proposed Rulemaking: 13 A.A.R. 3529, December 29, 2017

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

Name: Tracy Unmacht
Address: 818 N First Street; Phoenix, AZ 85004; and P.O. Box 13116; Phoenix, AZ 85002
Telephone: (602) 343-6280
Fax: (602) 712-1252
E-mail: cestb@azcapitolconsulting.com
Website: www.cestb.az.gov

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

The Constable Ethics, Standards and Training Board (CESTB) was established at A.R.S. § 22-136 in 2006. Under A.R.S. § 22-137, the CESTB is required to make rules regarding constables, complaints, investigations and hearings, discipline, and training grants. The CESTB has made some informal rules but has never made the rules using the required Arizona Administrative Procedure Act, even though the CESTB is not exempt from the APA. In this rulemaking, the CESTB makes the required rules.

An exemption from Executive Order 2017-02 was provided for this rulemaking by Mara Mellstron, Policy Advisor in the Governor’s Office, in an e-mail dated August 8, 2017.

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

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

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

Not applicable

9. **A summary of the economic, small business, and consumer impact:**
The CESTB expects the rulemaking to have minimal economic impact. The CESTB is simply making the rules required by statute. A constable against whom a complaint is made will benefit from having due process protections but will incur the expense of defending against the complaint. This expense can be avoided by complying fully with A.R.S. § 22-131 and R13-14-103.

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

No changes were made between the proposed and final rulemaking.

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

Two questions were asked at the oral proceeding held on February 21, 2018. The first question was about the CESTB’s authority to deem someone a vexatious litigant. The CESTB’s authority for this provision, which was added to the rules at the request of the CESTB’s assistant attorney general, is at A.R.S. § 22-137(A)(3).

The second question asked why R13-14-205(A)(2) set the time after mailing for completion of service at five days. This provision mirrors that established under A.R.S. § 41-1092.09(C).

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

None

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

The CESTB does not issue permits.

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

No federal law is applicable to these rules.

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

No analysis was submitted.

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

None
14. **Whether the rule was previously made, amended, or repealed as an emergency rule. If so, cite the notice published in the Register as specified in R1-1-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:**

No rule in this rule package was previously made, amended, or repealed as an emergency rule.

15. **The full text of the rules follows:**
TITLE 13. PUBLIC SAFETY
CHAPTER 14. CONSTABLE ETHICS, STANDARDS AND TRAINING BOARD

ARTICLE 1. GENERAL PROVISIONS

Section
R13-14-101. Definitions
R13-14-102. Conduct of the Board
R13-14-103. Constable Code of Conduct

ARTICLE 2. COMPLAINTS; HEARINGS; DISCIPLINARY ACTION

Section
R13-14-201. Filing a Complaint; Jurisdiction
R13-14-202. Complaint Processing
R13-14-203. Hearing Procedures
R13-14-204. Disciplinary Action
R13-14-205. Review or Rehearing of Decision

ARTICLE 3. TRAINING AND EQUIPMENT PROGRAM GRANTS

Section
R13-14-301. Request for Grant Applications
R13-14-302. Evaluation of Grant Applications
ARTICLE 1. GENERAL PROVISIONS

R13-14-101. Definitions

In this Chapter, unless the context requires otherwise:

“Board” means the Constable Ethics, Standards, and Training Board established under A.R.S. § 22-136(A).

“Complainant” means a person, other than the Board, that files a complaint regarding a constable.

“Constable” means an individual elected under A.R.S. § 22-102 and any deputy constable appointed, employed, or authorized by the county board of supervisors.

“Party” has the meaning specified at A.R.S. § 41-1001.

“Person” has the meaning specified at A.R.S. § 1-215.

“Respondent” means a constable against whom a complaint is filed.

R13-14-102. Conduct of the Board

A. Board members shall elect the officers specified under A.R.S. § 22-136(B) annually. An individual elected as an officer may serve successive terms without limit.

B. The Board shall comply with A.R.S. Title 38, Chapter 3, Article 3.1 regarding open meetings. A person that wishes to have an item placed on the agenda of the Board for discussion and action shall submit the item in writing to the Board at least 48 hours before the Board meeting.

C. A Board member present at a Board meeting in real time by telephone or other electronic means is present for the purpose of determining a quorum.

D. Board members shall comply with A.R.S. Title 38, Chapter 3, Article 8 regarding conflicts of interest.

R13-14-103. Constable Code of Conduct

A. A constable shall:

1. Comply with all federal, state, and local law;

2. Act in a manner that promotes public confidence in the constable’s office;

3. Be honest and conscientious in all professional and personal interactions;
4. Avoid a conflict of interest, including the appearance of a conflict of interest, in the performance of constable duties;

5. Perform constable duties without:
   a. Bias or prejudice; and
   b. Regard for kinship, social or economic status, political interests, public opinion, or fear of criticism or reprisal;

6. Maintain accurate public information regarding the performance of the constable’s duties including the daily activity log required under A.R.S. § 11-445;

7. Provide complete and accurate answers to questions regarding court and other procedures available to an individual who comes in contact with the constable’s office;

8. Act at all times in a manner appropriate for an elected public official;

9. Be courteous, patient, and respectful toward all individuals who come in contact with the constable’s office;

10. Inform an individual who asks for legal advice that as a matter of law, a constable is not allowed to give legal advice while performing the constable’s official duties; and

11. Comply with all training requirements relating to being a constable.

B. A constable shall not:

1. Use or attempt to use the constable position to obtain a privilege or exemption for the constable or any other person;

2. Use public funds, property, or other resources for a private or personal purpose;

3. Solicit or accept a gift or favor from any person known to do business with an Arizona justice court;

4. Solicit or accept payment other than mandated compensation for providing assistance that is part of an official duty;

5. Use words or engage in other conduct that a reasonable person would believe reflects bias or prejudice based on race, gender, religion, national origin, disability, age, sexual orientation, or socioeconomic status;

6. Disclose confidential information received in the course of performing an official duty unless disclosure is required by law; or
7. Use information received in the course of performing an official duty for personal gain or advantage.

ARTICLE 2. COMPLAINTS; HEARINGS; DISCIPLINARY ACTION

R13-14-201. Filing a Complaint; Jurisdiction

A. A person may submit to the Board a written complaint regarding a constable using the complaint form on the Board’s website. A written complaint may be submitted in person at the Board office or by U.S. Postal Service or e-mail. The complainant shall include in the complaint facts that allege the constable failed to comply fully with A.R.S. § 22-131 or R13-14-103 within the last four years. The complainant may attach to the complaint form any documents or other evidence relevant to the complaint.

B. At the monthly Board meeting following receipt of a written complaint under subsection (A), the Board shall review the complaint to determine whether the complaint is within the Board’s jurisdiction.

1. The Board shall find a complaint is within the Board’s jurisdiction if the complaint meets the standards in subsection (A). If the Board determines the complaint is within the Board’s jurisdiction, the Board shall process the complaint as described in R13-14-202.

2. The Board shall find a complaint is not within the Board’s jurisdiction if the complaint does not meet the standards in subsection (A). Following the meeting at which the Board determines the complaint is not within the Board’s jurisdiction, the Board shall provide notice to the person that submitted the complaint and the constable who was the subject of the complaint.

C. If the Board obtains information the Board believes may indicate a constable failed to comply fully with A.R.S. § 22-131 or R13-14-103 within the last four years, the Board may initiate a complaint against the constable. If the Board initiates a complaint against a constable, the Board shall process the complaint as described in R13-14-202.

R13-14-202. Complaint Processing

A. Following the meeting at which the Board determines a complaint is within the Board’s jurisdiction, as described under R13-14-201, the Board shall send notice to the respondent and:

1. A copy of the complaint received, including any documents or other evidence attached to the complaint form; and
2. A request that the respondent submit a written response to the allegations in the complaint within 45 days after the date on the notice.

B. After receiving the written response or 45 days after providing notice under subsection (A), the Board shall review the respondent’s written response and conduct any investigation the Board determines is necessary.

C. The Board shall schedule the complaint for hearing at the Board’s second meeting following the meeting referenced in subsection (A).

D. Before allowing review of the complaint investigative file, the Board may redact confidential information.

R13-14-203. Hearing Procedures

A. Except as modified by this Chapter, the Board shall conduct a hearing regarding a complaint according to the procedures at A.R.S. Title 41, Chapter 6, Article 10 and the rules of the Office of Administrative Hearings at 2 A.A.C. 19.

B. If the Board finds after a hearing that a complainant is a vexatious litigant, as defined at A.R.S. § 12-3201, the Board may take the same action with regard to the complainant as the Superior Court would be allowed to take under A.R.S. § 12-3201.

R13-14-204. Disciplinary Action

If the Board determines disciplinary action under A.R.S. § 22-137(A)(5) is warranted, the Board shall consider factors including, but not limited to, the following when determining the appropriate discipline:

1. Prior disciplinary offenses;
2. Dishonest or self-serving motive;
3. Pattern and frequency of misconduct;
4. Bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the Board;
5. Submission of false evidence, false statements, or other deceptive practices during the investigative or disciplinary process;
6. Refusal to acknowledge wrongful nature of conduct; and
7. Harm caused to a member of the public.
R13-14-205. Review or Rehearing of Decision

A. A party aggrieved by a Board order or decision may:
   1. Seek judicial review of the order or decision under A.R.S. § 12-904; or
   2. Except as provided in subsection (G), file a written motion for review or rehearing with the Board not later than 30 days after service of the order or decision. For purposes of this subsection, service is complete on personal service or five days after the date the Board order or decision was mailed to the party’s last known address.

B. A motion for rehearing or review may be amended at any time before it is ruled on by the Board. A party may file a response within 15 days after service of the motion or amended motion by any other party. The Board may require written briefs regarding the issues raised in the motion and may provide for oral argument.

C. The Board may grant rehearing or review of a Board order or decision for any of the following causes materially affecting the moving party’s rights:
   1. An irregularity in the administrative proceedings of the Board or the prevailing party or any order or abuse of discretion that caused the moving party to be deprived of a fair hearing;
   2. Misconduct of the Board or the prevailing party;
   3. An accident or surprise that could not be prevented by ordinary prudence;
   4. Newly discovered material evidence that could not with reasonable diligence be discovered and produced at the original hearing;
   5. An error in the admission or rejection of evidence or other errors of law occurring at the administrative hearing or during the progress of the case; or
   6. The order or decision is not justified by the evidence or is contrary to law.

D. The Board may affirm or modify a Board order or decision or grant a rehearing or review to all or any of the parties, on all or part of the issues, for any of the reasons specified in subsection (C). An order granting a rehearing or review shall specify the grounds on which the rehearing or review is granted, and the rehearing or review shall cover only the matters specified.

E. Not later than 30 days after a Board order or decision is rendered, the Board may on its own initiative order a rehearing or review of its order or decision for any reason specified in subsection (C). After giving the parties or their counsel notice and an opportunity to be heard on the matter, the Board may grant a motion for rehearing or review for a reason not stated in the motion.

F. When a motion for rehearing or review is based on affidavits, the party shall serve the affidavits with the motion. An opposing party may, within 15 days after service, serve opposing affidavits. The Board for good cause or by written agreement of all parties may extend the period for service of opposing affidavits to a total of 20 days. Reply affidavits are permitted.
G. If the Board finds that the immediate effectiveness of a Board order or decision is necessary to preserve public peace, health, or safety and that a rehearing or review of the Board order or decision is impracticable, unnecessary, or contrary to the public interest, the Board order or decision may be issued as a final order or decision without an opportunity for a rehearing or review. If a Board order or decision is issued as a final order or decision without an opportunity for rehearing or review, any application for judicial review of the order or decision shall be made within the time permitted for final orders or decisions.

H. A complainant:
   1. Is not a party to:
      a. A Board administrative action, decision, or proceeding; or
      b. A court proceeding for judicial review of a Board decision under A.R.S. §§ 12-901 through 12-914; and
   2. Is not entitled to seek rehearing or review of a Board action or decision under this Section.

ARTICLE 3. TRAINING AND EQUIPMENT PROGRAM GRANTS

R13-14-301. Request for Grant Applications
A. As required under A.R.S. § 22-138, the Board makes grants for constable training and support and equipment.
B. The Board shall issue requests for grant applications that meet the standards required under A.R.S. § 41-2702.
C. The Board shall post the requests for grant applications on the Board’s website at least six weeks before grant applications are due. The Board shall send written notice of the online availability of the requests for grant applications to all constables and any person that has submitted a written request to receive the notice.

R13-14-302. Evaluation of Grant Applications
A. Members of the Board shall review and evaluate each grant application in a manner consistent with A.R.S. § 41-2702. The Board shall base the Board’s decision regarding an application only on the criteria specified in the request for grant applications.
B. The Board shall vote on each application and award grants at a public meeting.
ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT
TITLE 13. PUBLIC SAFETY
CHAPTER 14. CONSTABLE ETHICS, STANDARDS AND TRAINING BOARD

1. Identification of the rulemaking:
The Constable Ethics, Standards and Training Board (CESTB) was established at A.R.S. § 22-136 in 2006. Under A.R.S. § 22-137, the CESTB is required to make rules regarding constables, complaints, investigations and hearings, discipline, and training grants. The CESTB has made some informal rules but has never made the rules using the required Arizona Administrative Procedure Act, even though the CESTB is not exempt from the APA. In this rulemaking, the CESTB makes the required rules. An exemption from Executive Order 2017-02 was provided for this rulemaking by Mara Mellstron, Policy Advisor in the Governor’s Office, in an e-mail dated August 8, 2017.

   a. The conduct and its frequency of occurrence that the rule is designed to change:
      Until the rulemaking is completed, the CESTB will not to be in compliance with its statutory responsibility to make rules.

   b. The harm resulting from the conduct the rule is designed to change and the likelihood it will continue to occur if the rule is not changed:
      It is not good government for a state agency to fail to comply with statute.

   c. The estimated change in frequency of the targeted conduct expected from the rule change:
      When the rulemaking is completed, the CESTB will be in compliance with it statutory responsibility to make rules.

2. A brief summary of the information included in the economic, small business, and consumer impact statement:
The CESTB expects the rulemaking to have minimal economic impact. The CESTB is simply making the rules required by statute. A constable against whom a complaint is made will benefit from having due process protections but will incur the expense of defending against the complaint. This expense can be avoided by complying fully with A.R.S. § 22-131 and R13-14-103.

3. The person to contact to submit or request additional data on the information included in the economic, small business, and consumer impact statement:

   If adequate data are not reasonably available, the agency shall explain the limitations of the data, the methods used in an attempt to obtain the data, and characterize the probable impacts in qualitative terms.
4. Persons who will be directly affected by, bear the costs of, or directly benefit from the rulemaking:

Constables and the CESTB will be directly affected by, bear the costs of, and directly benefit from the rulemaking.

There are currently 73 constables and 15 deputy constables in Arizona. Constables are elected within a local precinct and serve four-year terms. They serve as an officer of the county justice courts. A deputy constable is appointed by the constable with approval of the county board of supervisors. Although constables and sheriffs perform similar duties for different courts, the two offices are not related.

Constables are required to attend a basic training course approved by the Arizona Peace Officer Standards and Training Board (POST) within six months after election and an additional 16 hour of training approved by either POST or CESTB every year. The Arizona Constables Association (ACA) provides two CESTB-approved training events annually. There are no costs to constables to attend training. Counties are required under A.R.S. § 22-132 to pay the actual and necessary expenses incurred for training by a constable. Additionally, monies collected by the constables under A.R.S. § 11-445 are used to pay training expenses.

During FY2017, constables collected $295,762 under A.R.S. § 11-445. During the year, the CESTB approved $292,690 in training grants and $43,817 in equipment grants. Because some grant activities were completed under budget, the CESTB spent $246,306. In FY2017, nine counties applied to the CESTB for a grant. Every county that applied for a grant received one. Equipment grants were for items such as computers and related equipment, uniforms, Tasers, ballistic vests, safety equipment, radios, firearms and ammunition, and cameras.

(A.R.S. § 41-1055(C)).
There were 24 complaints regarding constables in FY2017. Complaints generally are submitted by a member of the public who has had an encounter with a constable. This could be a citizen served by a constable or an individual who requested a service from the constable and complains about the manner or responsiveness of the constable in providing the service. Complaints can also arise from information passed to the CESTB by the county board of supervisors, attorney general, or county attorney. Of the 24 complaints received in FY2017, 12 were dismissed (lack of jurisdiction; frivolous; previously addressed; or no violation by the constable) and one resulted in the constable resigning before the CESTB conducted its investigation. Two complaints are still pending. Nine resulted in disciplinary action.

The CESTB incurred the expense of making the rules and will incur the expense of enforcing them. The CESTB will have the benefit of complying with statute and fulfilling its statutory responsibility. It will also have the benefit of clear, concise, and understandable rules to guide its work.

5. Cost-benefit analysis:
   a. Costs and benefits to state agencies directly affected by the rulemaking including the number of new full-time employees at the implementing agency required to implement and enforce the proposed rule:
      The CESTB is the only state agency directly affected by this rulemaking. It will not need to employ an additional FTE to implement and enforce the rules.
   b. Costs and benefits to political subdivisions directly affected by the rulemaking:
      No political subdivision is directly affected by the rulemaking.
   c. Costs and benefits to businesses directly affected by the rulemaking:
      No businesses are directly affected by the rulemaking. Businesses from which equipment is purchased using a CESTB-provided grant will be indirectly affected.

6. Impact on private and public employment:
   The rulemaking will have no impact on private or public employment.

7. Impact on small businesses:
   The rulemaking has no direct impact on businesses.

8. Cost and benefit to private persons and consumers who are directly affected by the rulemaking:

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2 Small business has the meaning specified in A.R.S. § 41-1001(21).
No private persons and consumers are directly affected by the rulemaking. Citizens who have contact with constables or request services from them may have indirect benefits.

9. **Probable effects on state revenues:**
   
The rulemaking will have no effect on state revenue.

10. **Less intrusive or less costly alternative methods considered:**
    
The only cost a constable may incur as a result of this rulemaking is the cost associated with defending oneself against a complaint. The complaint procedures ensure the due process rights of a constable are protected. A constable can avoid the cost of defending against a complaint by complying fully with A.R.S. § 22-131 and R13-14-103.
22-131. Constables; powers and duties; prohibited acts

A. Constables shall attend the courts of justices of the peace within their precincts when required, and within their counties shall execute, serve and return all processes, warrants and notices directed or delivered to them by a justice of the peace of the county or by competent authority. In addition to any other provision of law these duties may be enforced by the presiding judge of the superior court in the county, including the use of the power of contempt.

B. Constables shall attend the training prescribed in section 22-137.

C. Constables, with the consent of and at salaries fixed by the board of supervisors, may appoint deputies who are certified pursuant to section 41-1822, subsection A, paragraph 3, stenographers, clerks and assistants necessary to conduct the affairs of their offices. The appointments shall be in writing.

D. The provisions of law relating to sheriffs, as far as applicable, shall govern the powers, duties and liabilities of constables.

E. A constable who is duly elected or who is appointed by the board of supervisors has the authority of a peace officer only in the performance of the constable's official duties.

F. A constable may execute, serve and return processes and notices as prescribed in subsection A of this section within any precinct in another county if that precinct adjoins the precinct in which the constable was elected or appointed.

G. A constable is prohibited from engaging in any act as a private process server outside of the constable's elected or appointed duties. A constable shall not own an interest in any entity that operates a private process serving business.

22-132. Expenses

Constables shall be allowed by the board of supervisors, as a county charge, the actual and necessary expenses incurred in training as required by section 22-137, pursuing defendants, transacting business relating to civil and criminal matters and serving notices and processes, except that the allowable expenses for service of process in civil actions shall be as provided in section 11-445.

22-133. Failure to disburse fine or forfeiture received; classification

A constable who receives a fine or forfeiture and knowingly fails or refuses to pay or disburse it according to law within thirty days after receipt thereof, is guilty of a class 2 misdemeanor.

22-134. Purchase of judgment; violation; classification

A constable who knowingly purchases or offers directly or indirectly to purchase any judgment or part of a judgment is guilty of a class 2 misdemeanor.
22-135. Forfeiture of and disqualification from office on conviction of certain crimes

In addition to the punishment prescribed by the crime, a constable who is convicted of any of the following crimes shall forfeit the office and is forever disqualified from holding office in this state:

1. Asking, receiving or agreeing to receive a bribe on an agreement or understanding that his vote, opinion or decision on any matter or question that is or may be brought before him for decision shall be influenced thereby.

2. Asking or receiving any emolument, gratuity or reward or any promise thereof, except as authorized by law, for doing any official act.

3. Purchasing or holding an interest in the purchase of any judgment or part of a judgment.

22-136. Constable ethics standards and training board

A. A constable ethics standards and training board is established consisting of the following voting members:

1. One constable who is from a county with a population of less than one million persons and who is appointed by a statewide constables association established prior to January 1, 2010.

2. One constable who is from a county with a population of one million or more persons and who is appointed by a statewide constables association established prior to January 1, 2010.

3. One justice of the peace who is appointed by the chief justice of the supreme court.

4. One county administrator or designee who is appointed by the county supervisors association.

5. The director of the Arizona peace officer standards and training board or the director's designee.

6. One member of the public who is appointed by the governor.

7. One member who is a board member of the Arizona multihousing association at the time of appointment and who is appointed by the governor.

B. The board shall annually elect a chairperson, vice-chairperson and secretary from among its members. The chairperson may establish committees to assist and advise the board in carrying out its responsibilities. A majority of the board constitutes a quorum and a majority vote of the quorum is necessary for the board to take any action.

C. Terms of the board members are four years. If a member ceases to hold the position that qualified the member for the appointment, the member's membership terminates and the appointing authority pursuant to subsection A fills the vacancy for the unexpired term.
D. Members of the board are not eligible to receive compensation but are eligible for reimbursement of expenses pursuant to title 38, chapter 4, article 2.

22-137. Constable ethics standards and training board; powers and duties; judicial review; constable training; definition

A. The constable ethics standards and training board shall:

1. Adopt rules for the administration and conduct of the board, including meeting times, meeting places and matters to be placed on the agenda of each meeting, and for the distribution of monies in the constable ethics standards and training fund pursuant to section 22-138.

2. Adopt a code of conduct for constables and adopt rules to enforce the code of conduct.

3. Establish procedures for conducting confidential investigations and holding hearings.

4. Hear and investigate written complaints from any person involving a constable's ethical conduct.

5. Remedy a constable's inappropriate behavior by:

   (a) Mediating.

   (b) Issuing warnings, reprimands or admonishments.

   (c) Instructing constables to take a particular action or to take educational classes.

   (d) Urging a constable to resign from office.

   (e) Placing a constable on probation for up to thirty days, except that after the initial thirty days of probation if the constable is making progress on probation but the constable's behavior is not yet compliant, the board may extend probation in additional thirty-day increments up to a total length of probation of one hundred eighty days.

   (f) Recommending to the board of supervisors that a constable who has previously been placed on probation be suspended from performing the constable's duties without pay for any specified length of time not to exceed the remainder of the constable's term.

6. Adopt a standardized daily activity log for constables that is approved by the director of the Arizona peace officer standards and training board and that complies with section 11-445, subsections I and J.

B. The board may:

1. Employ an executive director and other staff necessary to fulfill the powers and duties of the board.

2. Enter into contracts and interagency agreements to carry out its powers and duties.

3. Certify organizations to provide training and support programs for constables.
4. Provide support grants to constables for local or statewide training programs.

5. Take and hear evidence, administer oaths and affirmations and compel by subpoena the attendance of witnesses, including constables, and the production of books, papers, records, documents and other information relating to any investigation or hearing.

C. If the board determines that a constable has committed a criminal act, the board shall refer the investigation to the county attorney's office in the county in which the conduct at issue occurred. The board shall submit the investigation's findings to the county attorney. If the county attorney determines that a crime has not occurred or does not file a criminal complaint against the constable, the board shall adjudicate the complaint pursuant to subsection A, paragraph 5 of this section.

D. A constable may seek judicial review of a final order that is issued by the board of supervisors suspending the constable in the superior court in the county in which the constable is elected or appointed. Judicial review shall be conducted pursuant to title 12, chapter 7, article 6. Judicial review must be commenced pursuant to section 12-904.

E. The Arizona peace officer standards and training board shall approve a mandatory basic training course for newly elected constables covering topics including civil and criminal process, conflict resolution and firearm safety. Constables must attend the mandatory training course within six months after election. In subsequent years, constables must annually attend at least sixteen hours of additional training approved by the Arizona peace officer standards and training board. The constable ethics standards and training board may approve additional training courses for constables. The constable ethics standards and training fund established by section 22-138 may be used for constable training. Copies of certificates of completion of the constable training shall be forwarded to the constable ethics standards and training board within thirty days after completion.

F. This section does not:

1. Create a cause of action or a right to bring an action against the board.

2. Preclude a prosecuting agency from filing charges against a constable.

G. The board of supervisors may accept or modify a recommendation to suspend a constable from performing the constable's duties without pay pursuant to subsection A, paragraph 5 of this section. The board of supervisor's determination is final unless a constable seeks judicial review pursuant to subsection D of this section.

H. For the purposes of this section, "constable" includes a deputy constable who is appointed, employed or authorized by the county board of supervisors.

22-138. Constable ethics standards and training fund; budget

A. A constable ethics standards and training fund is established consisting of monies received from writ fees collected pursuant to section 11-445, subsection A, paragraph 17. The constable ethics standards and training board shall administer the fund. On notice from the board, the state treasurer shall invest and divest monies in the fund pursuant to section 35-313, and monies earned from investment shall be credited to the fund. Monies in the fund are exempt from the provisions of section 35-190 relating to lapsing of appropriations and are continuously appropriated to the board for the purposes of this section.
B. The constable ethics standards and training board shall use:

1. Eighty per cent of the monies appropriated from the fund for constable training, equipment and related grants.

2. Twenty per cent of the monies appropriated from the fund for operating expenses of the board.

C. On or before July 1 of each year, the board shall adopt a budget. The budget is effective on the approval of the board.

11-445. Fees chargeable in civil actions by sheriffs and constables; constables' standardized daily activity logs

A. The sheriff shall receive the following fees in civil actions:

1. For serving each true copy of the original summons in a civil suit, sixteen dollars, except that the sheriff shall not charge a fee for service of any document pursuant to section 13-3602 or any injunction against harassment pursuant to section 12-1809 if the court indicates the injunction arises out of a dating relationship.

2. For summoning each witness, sixteen dollars.

3. For levying and returning each writ of attachment or claim and delivery, forty-eight dollars.

4. For taking and approving each bond and returning it to the proper court when necessary, twelve dollars.

5. For endorsing the forfeiture of any bond required to be endorsed by the sheriff, twelve dollars.

6. For levying each execution, twenty-four dollars.

7. For returning each execution, sixteen dollars.

8. For executing and returning each writ of possession or restitution, forty-eight dollars plus a rate of forty dollars per hour per deputy or constable for the actual time spent in excess of three hours.

9. For posting the advertisement for sale under execution, or any order of sale, twelve dollars.

10. For posting or serving any notice, process, writ, order, pleading or paper required or permitted by law, not otherwise provided for, sixteen dollars except that posting for a writ of restitution shall not exceed ten dollars.

11. For executing a deed to each purchaser of real property under execution or order of sale, twenty-four dollars.

12. For executing a bill of sale to each purchaser of real and personal property under an execution or order of sale, when demanded by the purchaser, sixteen dollars.
13. For services in designating a homestead or other exempt property, twelve dollars.

14. For receiving and paying money on redemption and issuing a certificate of redemption, twenty-four dollars.

15. For serving and returning each writ of garnishment and related papers, forty dollars.

16. For the preparation, including notarization, of each affidavit of service or other document pertaining to service, eight dollars.

17. For every writ served on behalf of a justice of the peace, a fee established by the board of supervisors not to exceed five dollars per writ. Monies collected from the writ fees shall be deposited in the constable ethics standards and training fund established by section 22-138.

B. The sheriff shall also collect the appropriate recording fees if applicable and other appropriate disbursements.

C. The sheriff may charge:

1. Fifty-six dollars plus disbursements for any skip tracing services performed.

2. A reasonable fee for executing a civil arrest warrant ordered pursuant to court rule by a judge or justice of the peace. The fee shall only be charged to the party requesting the issuance of the civil arrest warrant.

3. A reasonable fee for storing personal property levied on pursuant to title 12, chapter 9.

D. For traveling to serve or on each attempt to serve civil process, writs, orders, pleadings or papers, the sheriff shall receive two dollars forty cents for each mile actually and necessarily traveled but not to exceed two hundred miles, nor to be less than sixteen dollars. Mileage shall be charged one way only. For service made or attempted at the same time and place, regardless of the number of parties or the number of papers so served or attempted, only one charge for travel fees shall be made for such service or attempted service.

E. For collecting money on an execution when it is made by sale, the sheriff and the constable shall receive eight dollars for each one hundred dollars or major portion thereof not to exceed a total of two thousand dollars, but when money is collected by the sheriff without a sale, only one-half of such fee shall be allowed. When satisfaction or partial satisfaction of a judgment is received by the judgment creditor after the sheriff or constable has received an execution on the judgment, the commission is due the sheriff or constable and is established by an affidavit of the judgment creditor filed with the officer. If the affidavit is not lodged with the officer within thirty days of the request, the commission shall be based on the total amount of judgment due as billed by the officer and may be collected as any other debt by that officer.

F. The sheriff shall be allowed for all process issued from the supreme court and served by the sheriff the same fees as are allowed the sheriff for similar services on process issued from the superior court.
G. The constable shall receive the same fees as the sheriff for performing the same services in civil actions, except that mileage shall be computed from the office of the justice of the peace originating the civil action to the place of service.

H. Notwithstanding subsection G of this section, in a county with a population of more than three million persons, if an office of a justice of the peace is located outside of the precinct boundaries, the mileage for a constable shall be calculated pursuant to subsection D of this section, except that the distance between the precinct boundaries and the office of the justice of the peace, as determined by the county and certified by the board of supervisors of that county, shall be subtracted from the mileage calculation. This certified mileage calculation shall be transmitted to the justice courts and the clerks of those courts shall calculate the mileage between the office of the justice of the peace and the location where the civil process, writ, order, pleading or paper was served and reduce the mileage used to calculate the mileage fee according to the certified mileage calculation for that respective jurisdiction.

I. Constables shall maintain a standardized daily activity log of work related activities, including a listing of all processes served and the number of processes attempted to be served by case number, the names of the plaintiffs and defendants, the names and addresses of the persons to be served except as otherwise precluded by law, the date of process and the daily mileage.

J. The standardized daily activity log maintained in subsection I of this section is a public record and shall be made available by the constable at the constable's office during regular office hours. The standardized daily log shall be filed monthly by the tenth day of the following month with the clerk of the board of supervisors. The board of supervisors shall determine the method for filing the standardized daily log.
DEPARTMENT OF HOUSING (R-18-0504)
Title 4, Chapter 34, Board of Manufactured Housing

Amend: R4-34-101; R4-34-102; R4-34-103; R4-34-201; R4-34-202; R4-34-203; R4-34-204;
R4-34-301; R4-34-302; R4-34-303; R4-34-401; R4-34-402; R4-34-501; R4-34-502;
R4-34-504; R4-34-505; R4-34-603; R4-34-605; R4-34-606; R4-34-607; R4-34-701;
R4-34-702; R4-34-703; R4-34-704; R4-34-705; R4-34-706; R4-34-801; R4-34-802;
R4-34-805; R4-34-1001

New Section: R4-34-707

Repeal: R4-34-104; R4-34-503; R4-34-506; R4-34-601; R4-34-604; R4-34-803; R4-34-804
GOVERNOR’S REGULATORY REVIEW COUNCIL
MEMORANDUM

MEETING DATE: May 1, 2018
AGENDA ITEM: E-4

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

FROM: Council Staff

DATE: April 16, 2018

SUBJECT: DEPARTMENT OF HOUSING (R-18-0504)
Title 4, Chapter 34, Article 1, General; Article 2, Licensing; Article 3, Sales Transactions and Trust or Escrow Account; Article 4, Surety Bonds; Article 5, Fees; Article 6, Manufacturing, Construction, and Inspection; Article 7, Plan Approvals; Article 8, Permits and Installations; Article 10, Administrative Procedures

Amend: R4-34-101; R4-34-102; R4-34-103; R4-34-201; R4-34-202; R4-34-203; R4-34-204; R4-34-301; R4-34-302; R4-34-303; R4-34-401; R4-34-402; R4-34-501; R4-34-502; R4-34-504; R4-34-505; R4-34-603; R4-34-605; R4-34-606; R4-34-607; R4-34-701; R4-34-702; R4-34-703; R4-34-704; R4-34-705; R4-34-706; R4-34-801; R4-34-802; R4-34-805; R4-34-1001

New Section: R4-34-707

Repeal: R4-34-104; R4-34-503; R4-34-506; R4-34-601; R4-34-604; R4-34-803; R4-34-804

SUMMARY OF THE RULEMAKING

Pursuant to A.R.S. § 41-4002, the purpose of the Office of Manufactured Housing (Office), within the Department of Housing (Department), is to maintain and enforce standards of quality and safety for manufactured homes, factory-built buildings, mobile homes and accessory structures. Prior to June 30, 2016, the Office was located within the Department of Fire, Building and Life Safety (DFBLS). The Office is required to conduct its affairs consistently with minimum standards of the U.S. Department of Housing and Urban Development (HUD) so the Office can be designated the “state inspector” for manufactured homes and related industries. Additionally, the Board of Manufactured Housing (Board) is responsible for adopting rules regarding standards of quality and safety for manufactured homes and factory built buildings.
In this rulemaking, the Board seeks to amend 30 rules, create one new rule, and repeal seven rules in A.A.C. Title 4, Chapter 34. Article 1 contains definitions and general provisions. Article 2 contains licensing rules for manufacturers, retailers, and installers. Article 3 relates to transaction documents, advertising, and brokered transactions. Article 4 contains rules regarding submission of surety bond forms and posting cash bonds in place of commercial surety bonds. Article 5 relates to various types of fees. Article 6 contains rules regarding manufacturing, construction, and inspection of manufactured homes and factory-built buildings. Article 7 contains rules related to plan approvals. Article 8 relates to various permits required by the Office. Lastly, Article 10 contains a rule on rehearing or review of the director’s decision.

This rulemaking relates to a five-year-review report approved by the Council on July 6, 2017. The proposed amendments correct internal cross references and make the rules more clear, concise, and understandable. The Board received an exemption from the Governor’s Office on May 1, 2017.

**Proposed Action**

- **Section 101 – Definitions**: Definitions are modified to reflect changes to the other rules in the chapter.
- **Section 102 – Materials Incorporated by Reference**: Clarifying changes are being made.
- **Section 103 – Exceptions**: A statutory reference is being updated in subsection (B) and clarifying changes are made throughout the rule.
- **Section 104 – Workmanship Standards**: The rule is being repealed.
- **Section 201 – General**: In addition to clarifying changes made throughout the rule, subsection (E) is added to explicitly state that a retailer selling a mobile home shall know the ordinances of the town, city, or county where the unit is to be installed.
- **Section 202 – Manufacturers**: Terms are being updated to reflect changes to Section 101.
- **Section 203 – Retailers**: The rule establishes four retailer license classes. Clarifying changes are being made throughout the rule.
- **Section 204 – Installers**: The rule establishes three installer license classes. Subsection (A) is updated to provide specific examples corresponding to each class. In addition, subsection (A)(1)(f) is modified to allow general installers with an I-10C license to subcontract installation of a manufactured or mobile home.
- **Section 301 – Transaction Copies**: Clarifying changes are being made.
- **Section 302 – Advertising**: The term “broker” is replaced with “retailer.”
- **Section 303 – Brokered Transactions**: Statutory reference is being updated. Subsection (D), which requires a purchaser’s broker to provide the purchaser with a closing statement, is being removed.
- **Section 401 – Surety Bond Forms**: Subsection (B), which establishes the changes that requires a rider to the bond, is added.
- **Section 402 – Cash Deposits**: Clarifying changes are being made and a statutory reference is updated.
- **Section 501 – General**: Subsection (B) is amended to require the Department to post the fee schedule on its website.
- **Section 502 – License Bond Amounts**: Clarifying changes are being made throughout the rule.
- Section 503 – *HUD Monitoring Inspection*: The rule is being repealed.
- Section 504 – *HUD Label Administration*: A reference to the Office of Administration is changed to the Department.
- Section 505 – *Plans and Supplements*: A requirement that the Department provide written notice to the licensee of an incomplete plan is added.
- Section 506 – *Intergovernmental Agreement Permits*: The rule is being repealed.
- Section 601 – *Manufactured Homes*: The rule is being repealed.
- Section 603 – *Factory built Buildings and FBB Subassemblies*: The title of the rule is being changed to “FBBs.” References throughout the rule are updated. The requirement that each completed module be affixed with an Arizona Insignia of Approval is replaced by a Modular Manufacturer’s Certificate. In addition, subsection (B) that required a manufacturer to comply with the Americans with Disability Act Accessibility Guidelines is removed.
- Section 604 – *Alterations*: The rule is being repealed.
- Section 605 – *Reconstruction*: The title is changed to “Reconstruction of FBBs.” The rule is modified to explicitly include standards that a manufacturer shall comply with when reconstructing an FBB.
- Section 606 – *Rehabilitation of Mobile Homes*: In addition to clarifying changes throughout the rule, references to R4-36-102 are added. References to Office to Administration are replaced with the Department. Subsection (E), which allowed the Office of Administration to issue a waiver for a unit that did not qualify as a mobile home, is removed.
- Section 607 – *Manufacturing Inspection and Certification*: Statutory reference is updated and clarifying changes are being made to reflect updated rules throughout the chapter.
- Section 701 – *General*: Subsection (D) is modified to provide detailed standards of a plan. Additionally, the rule is amended to clarity and conciseness.
- Section 702 – *Quality Assurance Manuals*: The title is changed to “Compliance Assurance Manuals.” The rule is updated to provide details on the correct format and contents of a compliance assurance manual.
- Section 703 – *Drawings and Specifications*: The rule establishes format and content requirements for a plan to be sufficient for Department approval. Clarifying changes are being made.
- Section 704 – *Alterations or Reconstruction*: The title is changed to “Reconstruction Plans.” The rule details requirements for a reconstruction plan. Subsection (C), which requires a reconstruction plan to include a certification statement regarding the existing components, is added.
- Section 705 – *Accessory Structures and Ground Anchoring*: The title is changed to “Accessory Structures.” Subsection (B), related to ground anchoring plans, is being removed.
- Section 706 – *Factory-built Building Installation*: The title is changed to “FBB Installation.” Clarifying changes are made throughout the rule. In addition, subsections (4)(d) – (f) are added to require additional specific details in plumbing drawings.
- Section 707 – *Designated Flood-prone Area Installation*: The new rule establishes contents of an installation plan for a manufactured home, mobile home, or FBB to be installed in a flood-prone area.
• Section 801 – Permits: Subsection (B) is amended to provide an applicant 20 business days to submit an updated application if a permit is denied. Numerous clarifying changes are made throughout the rule.
• Section 802 – General Installation: Subsection (E), requiring a licensed entity to assess the site and soil and make site preparations necessary to ensure the site is compatible with the manufactured home, mobile home, or FBB to be installed, is added. Additionally, subsection (F) is added to require that only a properly licensed entity shall install a home or FBB. Clarifying changes are being made.
• Section 803 – Soil and Materials: The rule is being repealed.
• Section 804 – Utilities: The rule is being repealed.
• Section 805 – Accessory Structures: Subsections (C) – (E) are removed and the definition of “attached” is rewritten for clarity.
• Section 10001 – Rehearing or Review: The term “petition” is replaced with “motion” and statutory references are being updated.

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

   Yes. The Board cites to A.R.S. § 41-4010(A) as general authority for the rules, under which the Board shall adopt rules related to construction requirements, design and installation, inspection, licensing standards and bonding requirements, fire and life safety requirements, issuing permits to licensees, etc. The Board also cites to A.R.S. §§ 41-4004, 41-4005, 41-4010, and 41-4039 as specific statutory authority for the rules.

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

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

3. **Summary of the agency’s economic impact analysis:**

   The Board notes that there are 2,500 manufactured-housing businesses employing approximately 5,000 people in Arizona. In FY 2017, the Board issued 1,058 licenses to manufacturers, dealers, installers, and salespersons.

   The majority of the licenses are issued to salespersons. However, most of the 55 consumer complaints received by the Board were about manufacturers, dealers, or installers. During FY 2017, the Department collected $1,062,742 in licensing, inspecting, and permitting fees.

   The Board estimates that 314,000 families in Arizona live in manufactured homes. To protect these families, the Department reviews and approves plans for the construction and installation of manufactured homes. The Department also collaborates with local jurisdictions to conduct inspections. In FY 2017, Department activities included:

   • 615 plan reviews and approvals
   • 1,365 permits
8,811 inspections

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

Yes. The Board concludes that the economic costs of manufactured housing oversight are created by state statute and federal regulations. Stakeholders will benefit from the improved rules. The benefits outweigh the costs.

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

Key stakeholders are the Department and the Department’s licensees.

The Department incurred the cost of this rulemaking. The Department will benefit from improved rules.

The Board notes that licensure for manufacturers, dealers, salespersons, and installers of manufactured homes is required by state statute. Requirements for submitting plans to the Department are required by statute as well as the HUD. The economic impact of this oversight on these businesses is not created by the Department’s rules.

The licensees of the Department will benefit from this rulemaking because compliance will be easier for these businesses with improved rules.

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

Yes. The Board indicates that it did not receive any comments on the proposed rules and no one attended the oral proceeding held on March 5, 2018.

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

No. Only non-substantive and clarifying changes were made between the Notice of Proposed Rulemaking and the Notice of Final Rulemaking at the request of Council staff.

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

No. The Board indicates that the rules are not more stringent than federal laws. The federal laws establishing standards for manufactured homes (24 CFR 3280 through 3288) have been incorporated by reference by the Board. Additionally, the Board enforces the federal regulations regarding dispute resolution for consumers of manufactured homes (24 CFR 3288), plant monitoring (24 CFR 3280 and 3282), and installation inspection (24 CFR 3285 and 3286).
9. **Do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

   Yes. The Board indicates that the licenses, permits, and approval issued by the Office are general permits consistent with A.R.S. § 41-1037 because they are issued to qualified individuals or entities to perform activities that are substantially similar in nature.

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

   No. The Board did not review or rely on any study for this rulemaking.

11. **Conclusion**

    The Board requests the usual 60-day delayed effective date for the rules. Council staff recommends approval of the rulemaking.
March 16, 2018

Ms. Nicole O. Colyer, Chair
The Governor’s Regulatory Review Council
100 North 15th Avenue, Ste. 305
Phoenix, AZ 85007

Re: A.A.C. Title 4, Professions and Occupations
Chapter 34. Board of Manufactured Housing

Dear Ms. Colyer:

The attached final rule package is submitted for review and approval by the Council. The following information is provided for Council’s use in reviewing the rule package:

A. Close of record date: The rulemaking record was closed on March 5, 2018, following a period for public comment and an oral proceeding. This rule package is being submitted within the 120 days provided by A.R.S. § 41-1024(B).

B. Relation of the rulemaking to a five-year-review report: The rulemaking relates to a five-year-review report approved by the Council on July 6, 2017.

C. New fee: The rulemaking does not establish a new fee.

D. Fee increase: The rulemaking does not increase an existing fee.

E. Immediate effective date: An immediate effective date is not requested.

F. Certification regarding studies: I certify that the preamble accurately discloses the Board did not review or rely on a study in its evaluation of or justification for any rule in this rulemaking.

G. Certification that the preparer of the FIS notified the JLBC of the number of new full-time employees necessary to implement and enforce the rule: I certify that none of the rules in this rulemaking will require a state agency to employ a new full-time employee. No notification was provided to JLBC.

H. List of documents enclosed:
   1. Cover letter signed by the Assistant Deputy Director;
   2. Notice of Final Rulemaking including the preamble, table of contents, and rule text;

Sincerely,

Debra Blake
Assistant Deputy Director
NOTICE OF FINAL RULEMAKING  
TITLE 4. PROFESSIONS AND OCCUPATIONS  
CHAPTER 34. BOARD OF MANUFACTURED HOUSING  
PREAMBLE

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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. § 41-4010(A)(13)

   Implementing statute:  A.R.S. §§ 41-4004, 41-4005, 41-4010, and 41-4039

3. **The effective date for the rules:**

   As specified under A.R.S. § 41-1032(A), the rule will be effective 60 days after the rule package is filed with the Office of the Secretary of State.

   **a. If the agency selected a date earlier than the 60-day effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):**

   Not applicable

   **b. If the agency selected a date later than the 60-day effective date as specified in A.R.S. § 41-1032(A), include the later date and state the reason or reasons the agency selected the later effective date as provided in A.R.S. § 41-1032(B):**

   Not applicable

4. **Citation to all related notices published in the Register to include the Register as specified in R1-1-409(A) that pertain to the record of the final rulemaking package:**

   Notice of Rulemaking Docket Opening: 23 A.A.R. 2386, September 1, 2017

   Notice of Proposed Rulemaking: 24 A.A.R. 165, January 26, 2018

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

   Name:  Debra Blake, Assistant Deputy Director

   Address:  Office of Manufactured Housing, Arizona Department of Housing

   1110 W. Washington Street, Ste. 280
6. **An agency's justification and reason why a rule should be made, amended, repealed, or renumbered, to include an explanation about the rulemaking:**

The Board is amending or repealing all of its rules in response to a review of the rules conducted at the direction of the Governor’s office and a five-year-review report approved by the Governor’s Regulatory Review Council on July 6, 2017. Both reviews found that as a result of moving the Office from the Department of Fire, Building and Life Safety to the Department of Housing and re-codifying the Office’s statutes, all internal cross references in the rules are incorrect. Additionally, the reviews concluded there are numerous ways in which to make the rules more clear, concise, and understandable. In response to multiple discussions with the Department’s legislative liaison, Josh Tucker, and after reviewing a chart showing all intended rule changes, an exemption from Executive Order 2017-02 was given for this rulemaking by Mara Mellstrom, Policy Advisor in the Governor’s Office, in an e-mail dated May 1, 2017.

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

The Board did not review or rely on a study in its evaluation of or justification for any rule in this rulemaking.

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

Not applicable

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

The Board believes this rulemaking will have minimal economic impact on licensees, applicants, and consumers because the substance of the amended rules is not substantially different from the substance of the rules being amended.

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

Only minor, non-substantive, word-choice changes were made between the proposed and final rulemaking.
11. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to comments:

The Board received no comments regarding the rulemaking. No one attended the oral proceeding on March 5, 2018.

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

None

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

The licenses, permits, and approvals issued by the Office are general permits consistent with A.R.S. § 41-1037 because they are issued to qualified individuals or entities to conduct activities that are substantially similar in nature.

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

Federal law applies to the subject of these rules (See 24 CFR 3280, 3282, 3284, 3285, 3286, and 3288). The Board has ensured the rules are no more stringent than federal law by incorporating the federal law by reference.

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

No analysis was submitted.

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

None

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

No rule in the rulemaking was previously made, amended, or repealed as an emergency rule.

15. The full text of the rules follows:
TITLE 4. PROFESSIONS AND OCCUPATIONS
CHAPTER 34. BOARD OF MANUFACTURED HOUSING

ARTICLE 1. GENERAL

Section
R4-34-101. Definitions
R4-34-102. Materials Incorporated by Reference
R4-34-103. Exceptions
R4-34-104. Workmanship Standards Repealed

ARTICLE 2. LICENSING

Section
R4-34-201. General
R4-34-202. Manufacturers
R4-34-203. Retailers
R4-34-204. Installers

ARTICLE 3. SALES TRANSACTIONS AND TRUST OR ESCROW ACCOUNT

Section
R4-34-301. Transaction Copies
R4-34-302. Advertising
R4-34-303. Brokered Transactions

ARTICLE 4. SURETY BONDS

Section
R4-34-401. Surety Bond Forms
R4-34-402. Cash Deposits

ARTICLE 5. FEES

Section
R4-34-501. General
R4-34-502. License Bond Amounts
R4-34-503. HUD Monitoring Inspection Repealed
R4-34-504. HUD Label Administration
R4-34-505. Plans and Supplements
R4-34-506. Intergovernmental Agreement Permits Repealed
ARTICLE 6. MANUFACTURING, CONSTRUCTION, AND INSPECTION

Section
R4-34-601. Manufactured Homes Repealed
R4-34-603. Factory-built Buildings and FBB Subassemblies FBBs
R4-34-604. Alterations Repealed
R4-34-605. Reconstruction of FBBs
R4-34-606. Rehabilitation of Mobile Homes
R4-34-607. Manufacturing Inspection and Certification

ARTICLE 7. PLAN APPROVALS

Section
R4-34-701. General
R4-34-702. Quality Compliance Assurance Manuals
R4-34-703. Drawings and Specifications
R4-34-704. Alterations or Reconstruction Plans
R4-34-705. Accessory Structures and Ground Anchoring
R4-34-706. Factory-built Building Installation
R4-34-707. Designated Flood-prone Area Installation

ARTICLE 8. PERMITS AND INSTALLATION

Section
R4-34-801. Permits
R4-34-802. General Installation
R4-34-803. Soil and Materials Repealed
R4-34-804. Utilities Repealed
R4-34-805. Accessory Structures

ARTICLE 10. ADMINISTRATIVE PROCEDURES

Section
R4-34-1001. Rehearing or Review
ARTICLE 1. GENERAL

R4-34-101. Definitions

The definitions in A.R.S. §§ 41-2142, 41-2152 41-4001, and 41-215 41-4008 apply to this Chapter. Additionally, in this Chapter:


2. “Agency” means, in a brokered transaction, the consensual relationship that exists between an agent and the seller or purchaser of a used home when either the purchaser or seller authorizes the agent and the agent agrees to the authorization in writing. A licensed salesperson may establish an agency relationship on behalf of the salesperson’s licensed and employing retailer, the seller or purchaser of a used home has given a licensed salesperson written legal authority to act on behalf of the seller or purchaser when dealing with a third party. The written legal authority is also binding on the salesperson’s licensed and employing retailer.

3. “Agency disclosure” means a document that specifies the party or parties that an agent represents in a brokered transaction as a seller’s agent, purchaser’s agent, or dual agent who represents both the seller and purchaser, person a licensed salesperson or licensed retailer represents in a brokered transaction.

4. “Agent” means a licensed retailer or broker who is authorized to act on behalf of either the a seller, or purchaser, or both the seller and purchaser of a used home or as a dual agent representing both.

5. “Branch location” means an a satellite office, unit, station, facility, or space at a fixed location other than a in addition to the principal office, however designated, at which anywhere business may be conducted at the principal office is transacted.

6. “Brokered transaction” means a transaction in which a properly licensed broker acts as an agent for the seller, purchaser, or both.

7. “Certificate” means an Arizona Insignia of Approval, which is required for modular manufacture, installation, reconstruction, or rehabilitation work.

7-8. “Co-brokered transaction” means a transaction in which the listing retailer and the selling retailer are not the same person.

9. “Commercial” means an FBB with a use-occupancy classification other than single-family dwelling.

10. “Consummation of sale, as defined at A.R.S. § 41-1001, includes filing an Affidavit of Affixture, if applicable.

8.11. “FBB” means factory-built building.
12. “Field installed” means components, equipment, and/or construction that is to be completed or
installed at the site. Field installed does not include reconstruction.
13. “HVAC” means heating, ventilation, and air conditioning.
9. “Lease with option to purchase” means a lease under which the lessee has the right to purchase
the leased property for a specified price and terms.
14. “Modular” means an FBB.
10.15. “New” means a unit or subassembly not previously sold, bargained, exchanged, or given
away to a purchaser.
11. “Offer to purchase in a brokered transaction” means a written proposal to purchase a used home
listed for sale that a broker presents to the seller for acceptance or rejection.
12. “Open subassembly” means that the components of the subassembly can be readily inspected
without being disassembled.
13.16. “Permanent foundation” means a system of support and perimeter enclosure of crawl space
that is:
a. Constructed of durable materials (e.g., concrete, masonry, steel, or treated wood);
b. Developed in accordance with the manufacturer’s installation instructions or designed by a
licensed professional Arizona registered engineer;
c. Attached in a manner that effectively transfers all vertical and horizontal design loads that
could be imposed on the structure by wind, snow, frost, seismic, or flood conditions, as
applicable, to the underlying soil or rock;
d. Designed to exclude unwanted elements and varmints, ensure sufficient ventilation, and
provide adequate access to the building; and
e. Not affixed with anchoring straps or cable affixed to ground anchors other than footings.
14.17. “Purchase contract in a brokered transaction” means a written agreement between a purchaser
and seller of a used home that indicates the sales price and terms of the sale.
15. “Reconstruction” means construction work performed on a manufactured home, mobile home, or
factory-built building for the purpose of restoring the unit to a usable condition, but does not
include work limited to remodeling, replacing, or repairing appliances or components that will
not significantly alter the systems or structural integrity of the living area.
18. “Repair” means work performed on a manufactured home, mobile home, or FBB to restore the
building to a habitable condition but does not impact the original structure, electrical, plumbing,
HVAC, mechanical, use occupancy, or energy design.
19. “Residential” means a building with a use-occupancy classification of single family dwelling or
as governed by the International Residential Code.
16. “Respond” means to furnish the Office of Manufactured Housing or Office of Administration with a written explanation detailing any reasons why a complaint is not justified or the signature of the complainant indicating that the complainant is satisfied with the resolution of the verified complaint.

17-20. “Retailer” means a dealer broker or broker dealer as prescribed at A.R.S. § 41-2142(9) and (5) 41-4001(5) and (10).

21. “Site” means a parcel of land bounded by a property line or a designated portion of a public right-of-way.

22. “Site work” means soil preparation including soil analysis, grading, drainage, utility trenches, and foundation systems preparation, and field-installed work including terminal and connections, on-site utility connections, accessibility structures, egress paths, parking, lighting, landscaping, and similar work.

18-23. “Standards” means the materials incorporated by reference in R4-34-102.

19-24. “Supplement” means a submittal of not more than two sheets of paper that indicates floor plan dimensional sizes, does not change more than 25% of a system or configuration, and is incorporated as part of an originally approved plan.

20-25. “Technical service” means engineering assistance and interpretative application or clarification of compliance and enforcement of A.R.S. Title 41, Chapter 16, Articles 1, 2, and 4 and this Chapter.

21. “Typical plan” means a design plan that may be duplicated numerous times.

22-26. “Used home” means a used unit that is a previously titled manufactured home, mobile home, or factory-built building FBB designed for use as a residential dwelling.

R4-34-102. Materials Incorporated by Reference

The following materials, which the Board incorporates by reference, apply to this Chapter. The materials, which include no later amendments of or editions, are available from the Board. If there is a conflict between the incorporated material and a statute or rule, the statute or rule controls.

1. HUD Manufactured Housing Program


2. Factory-built Building Program


f. International Energy Conservation Code (IECC), 2009 edition, available from the International Code Council, 4051 Flossmoor Road, Country Club Hills, IL 60478; and

g. National Electrical Code (NEC), 2008 edition, available from the National Fire Protection Association, One Batterymarch Park, Quincy, MA 02169; and

3. Installation, Foundation, and Accessory Structures

a. Materials incorporated in subsections (1) and (2); and

R4-34-103. Exceptions

A. The Board makes the following exceptions to the materials incorporated by reference in R4-34-102:
   1. International Building Code and International Residential Code. A water or gas connection may be a flexible connector if the flexible connector:
      a. Is not more than 6 feet long,
      b. Is of the rated size necessary to supply the total demand of the unit, and
      c. Made of materials that comply with the International Plumbing Code and International Fuel Gas Code; and

B. Under A.R.S. § 41-2144(D) 41-4010(D), a local jurisdiction may petition the Board for an exception to a standard. The Board may grant a local jurisdiction an exception to a standard, the local jurisdiction shall be bound by any conditions in the exception order issued by the Board. The local jurisdiction shall ensure that the petition for an exception:
   1. Specifies the standard or code sections affected;
   2. Justifies the requested exception with documented evidence of the local conditions that support the requested exception;
   3. Specifies the boundaries of the area affected by the local conditions;
   4. States why the exception is necessary to protect the health and safety of the public; and
   5. Provides an estimate of the economic impact that the requested exception will have on the petitioning jurisdiction, other affected governmental entities, the public, unit owners, and licensees, and the facts upon which the estimate is based.

C. An exception ordered by the Board applies only within the jurisdiction that petitioned for the exception. The jurisdiction shall comply with any conditions specified in the exception order.

D. An exception order is effective on the date specified in the order, which will be at least 60 days after a Departmental Substantive Policy Statement has been issued to all licensed installers describing the exception, the area within which it applies, and any provisions applicable to its use.

R4-34-104. Workmanship Standards Repealed

A. All work shall be performed in a professional manner.

B. All work shall be performed in accordance with any applicable building code and professional industry standards.

C. If there is a conflict between professional standards and building code requirements, the latter will prevail.
ARTICLE 2. LICENSING

R4-34-201. General
A. An administrative review of the application shall be performed within five business days of following receipt, the Department shall perform an administrative review of an application. If the Department determines the application is incomplete, the applicant will be provided an opportunity to complete the application. The Deputy Director shall issue a conditional license within 14 business days of the Department’s following receipt of the completed license application and written evidence that after the applicant has passed any required license examination. The five day administrative completeness and 14 day substantive review time-frames provide an overall time-frame of 19 days excluding time requirements that are the responsibility of the applicant the Department shall issue a conditional license.

B. Corporate applicants shall submit a copy of their organizational documents, including the articles of incorporation or organization, and with all amendments, to the articles filed with the Arizona Corporation Commission, or, if a foreign corporation, the application for authority to state, as applicable, and a certificate of good standing to transact business in this state.

C. When a retailer or installer licensee changes its legal entity but remains within the scope of the license and retains the same qualifying party, the licensee may request an exemption from any applicable testing examination requirement may be granted if a new license application identifies the same license classification and the same qualifying party listed on a previously held license, provided the previous license is in good standing before it expired.

D. Upon receipt and review of the applicant’s criminal background analysis by the Deputy Director of the Office of Administration, and upon mailing notification to the applicant, the previously issued license will be given notice that a conditional license is automatically effective as a permanent license to transact business within the scope of the license following review and approval by the Department of the licensee’s criminal background analysis.

E. Unless otherwise stated in the purchase contract, a retailer selling a mobile home, manufactured home, or FBB shall know the ordinances of the town, city, or county where the unit is to be installed regardless of whether the retailer is obligated to provide for the delivery or installation of the unit.

R4-34-202. Manufacturers
The Department shall place a manufacturer’s license application into one of the following license classes, based on the listed activities that limit the scope of each class:
1. M-9A Manufacturer of Factory-Built Buildings and FBB Subassemblies: FBBs
a. Manufactures factory-built buildings and manufactures or reconstructs FBB subassemblies, or FBBs;
   b. Reconstructs factory-built buildings and FBB subassemblies.

2. M-9C Manufacturer of Manufactured Homes: manufactured homes
   a. Manufactures manufactures or reconstructs manufactured homes; and
   b. Reconstructs manufactured homes.

3. M-9E Master Manufacturer: Performs performs work within the scope of classes M-9A and M-9C.

R4-34-203. Retailers

The Department shall place a retailer’s Retailers’ license application applications fall into one of the following license classes, based on the listed activities that limit the scope of each class:

1. D-8 Retailer of Manufactured Homes manufactured homes or Mobile Homes mobile homes:
   a. Buys, sells, or exchanges new or used manufactured homes, and used mobile homes, or accessory structures;
   b. May sell new or used accessory structures included in a sales agreement;
   b.c. Acts as an agent for the sale or exchange of used manufactured homes, or mobile homes, or including existing or new accessory structures included in a sales agreement;
   c.d. Makes alterations to new manufactured homes before a sale to a purchaser under R4-34-604; or
   d.e. Contracts with properly licensed installers or contractors for the installation of manufactured homes, mobile homes, or and existing or new accessory structures included in a sales agreement.

2. D-8B Broker of Manufactured Homes manufactured homes or Mobile Homes mobile homes:
   a. Acts as an agent for the sale or exchange of used manufactured homes or mobile homes, or that may include existing or new accessory structures included in a sales agreement;
   b. Contracts with properly licensed installers or contractors for the installation of manufactured homes, mobile homes, or and existing or new accessory structures included in a sales agreement.

3. D-10 Retailer of Factory-Built Buildings and FBB Subassemblies FBBs:
   a. Buys, sells, or exchanges new or used factory-built buildings and FBB subassemblies FBBs;
   b. Acts as an agent for the sale or exchange of new or used factory-built buildings and FBB subassemblies FBBs;
c. Makes alterations to new factory-built buildings and FBB subassemblies before a sale to a purchaser; or

d. Contracts with properly licensed installers or contractors for the installation of factory-built buildings, FBB subassemblies, and FBBs residential single-family factory-built buildings, or including any existing or new accessory structures included in a sales agreement.

4. D-12 Master Retailer: Performs work within the scope of classes D-8, D-8B, and D-10.

R4-34-204. Installers

A. The Department shall place an installer’s license application applications into one of the following license classes, based on the listed activities that limit the scope of each class:

1. I-10C General Installer of Manufactured Homes manufactured homes, Mobile Homes mobile homes, or Residential Single-Family Factory-Built Buildings FBBs:
   a. Installs manufactured homes, mobile homes, or residential single-family factory-built buildings FBBs on foundation systems;
   b. Installs ground anchors and tie-downs for manufactured homes or mobile homes;
   c. Connects water, sanitary waste, gas, and electrical systems of all amperages to the proper onsite utility terminals provided by others;
   d. Installs evaporative coolers and cooler systems on manufactured homes, mobile homes, or residential single-family factory-built buildings FBBs including providing roof jack to cooler ducts, installing exterior duct work, providing electrical service and controls to cooler from nearest supply source, providing water to the cooler from nearest fresh water source, and performing cooler repair work;
   e. Installs roof jack to cooler ducts Performs repair work, replaces or newly installs to existing mobile homes, manufactured homes, and residential single-family FBBs items in subsections (A)(1)(a) through (d); and
   f. Installs duct work. May subcontract to a properly licensed entity for installation of a manufactured home, mobile home, or residential single-family FBB or installation of an accessory structure in conjunction with installation of a home.
   g. Provides electrical service and controls to cooler from nearest supply source;
   h. Provides water to the cooler from the nearest fresh water source; or
   i. Performs work as indicated under manufacturer’s warranty for the unit.

2. I-10D Installer of Accessory Structures accessory structures attached to Manufactured Homes manufactured homes, Mobile Homes mobile homes, or Residential Single-Family Factory-
Built Buildings: residential single-family FBBs including installation of prefabricated accessory structure units, on-site constructed accessory structures, concrete footings or slabs for accessory structures, and plumbing, electrical, and mechanical equipment. An I-10 Installer may subcontract, as needed, to a properly licensed installer or contractor for installation of any accessory-structure item under this subsection.

a. Installs prefabricated accessory structure units;

b. Constructs accessory structures onsite;

c. Places concrete footings or slabs for accessory structures; or

d. Contracts with properly licensed contractors for the installation of plumbing, electrical, and mechanical equipment as part of an accessory structure and subcontracts all or any part of the items within this subsection to properly licensed installers or contractors.

3. I-10G Master Installer installer of Manufactured Homes, Mobile Homes, or Residential Single-Family Factory-Built Buildings: manufactured homes, mobile homes, residential single-family FBBs, or commercial single-story FBBs built on a chassis with an electrical system no greater than 400 amperes is qualified to perform the work described under subsections (A)(1) and (2) and installs HVAC systems including electrical wiring, gas connections, and ductwork. An I-10G Master installer does not provide service, maintenance, repair, or discharging, adding, or reclaiming refrigerants or any other work requiring certification. An I-10G Master installer may subcontract to a properly licensed entity for installation of any item under this subsection.

a. Performs work within the scope of classes I-10C and I-10D;

b. Installs evaporative cooling units and refrigeration air conditioning units, or

c. Subcontracts with properly licensed installers or contractors.

B. Installer applicants. In addition to meeting the applicable requirements in subsections (A)(1) through (3), an applicant for To be qualified for an installer I-10C, I-10D, or I-10G license, an applicant shall:

1. Have a minimum of three years practical or field management experience in the specific type of installation, a related construction field, or the equivalent, for which the applicant is applying. At least two of the three years’ experience shall be within 10 years of the date of application. The applicant may substitute technical training in the specific type of installation, a related construction field, or the equivalent, from an accredited college or university or from a Department of Fire, Building and Life Safety Housing workshop for no more than one year of the three years’ experience required in this subsection;

2. Supply a written, notarized statement from each employer or other individual familiar with the applicant’s employment or other work experience, which includes the name, address, and
telephone number of the individual making the statement, the dates of the applicant’s employment or other work experience, a description of the position the applicant held, and a notarial certificate, signature indicating that the signer vouches for the truthfulness of the statement as proof of the applicant meets the experience requirement in subsection (B)(1); and

3. Supply a certified copy of each official transcript or certificate, demonstrating successful completion of any technical training the applicant wishes the Department to consider as proof of meeting the experience requirement in subsection (B)(1).

ARTICLE 3. SALES TRANSACTIONS AND TRUST OR ESCROW ACCOUNT

R4-34-301. Transaction Copies
A. In all retail transactions, the retailer shall provide the purchaser with completed and signed copies of all documents pertaining to the transaction. The retailer shall maintain a record of all transaction documents. In every transaction:

B. 1. In all brokered transactions, each broker shall provide the client with a copy of all completed and signed copies of all documents pertaining to the transaction;

C. 2. In a brokered transaction where the purchaser is not represented by an agent, the listing broker shall provide the purchaser with a copy of all completed and signed copies of all documents pertaining to the transaction;

D. 3. In a transaction is co-brokered transaction, the listing broker shall provide a copy of the listing agreement to the selling broker, and the selling broker shall provide a copy of all completed and signed documents pertaining to the transaction to the listing broker.

E. A retailer or broker shall maintain records containing all transaction documents.

R4-34-302. Advertising
A. A retailer or broker shall include the retailer’s licensed business name in all advertising.

B. A broker shall not advertise or market a used home for more than the listed price.

R4-34-303. Brokered Transactions
A. A broker shall provide a copy of the agency disclosure to the party or parties being represented by the broker represents.
B. The seller’s broker retailer shall place all earnest money deposits received in connection with a sales transaction in the broker’s retailer’s trust or escrow account in accordance with A.R.S. § 44-2180 41-4030 except as provided in the exception provision.

C. Upon consummation of a brokered transaction, the seller’s broker shall provide the seller with a closing statement that includes an accounting of all expenses charged to the seller, all pro rations, and all credits.

D. Upon consummation of a brokered transaction, the purchaser’s broker shall provide the purchaser with a closing statement that includes an accounting of all expenses charged to the purchaser, all pro rations, and all credits.

E. In a co-brokered transaction, the seller shall pay the commission shown on the listing agreement as the total commission.

F. The seller’s broker shall prepare an addendum to the listing agreement if any of the terms of the listing agreement change. The seller’s signature is required for the addendum to be valid. The addendum to the listing agreement shall reflect the date that the seller signs the addendum to the listing agreement.

G. Should the seller or broker elect to finance the unpaid balance reflected on the offer to purchase or purchase contract, the agent broker shall:
   1. Maintain evidence of the original portion of the purchase price being financed by the seller or agent broker, and
   2. Maintain evidence that the title has been transferred into the name of the purchaser and that the lienholder’s position has been secured on the title.

ARTICLE 4. SURETY BONDS

R4-34-401. Surety Bond Forms

A. Manufacturers, installers, and retailers except brokers (except those with a D-8B license classification) of manufactured homes, mobile homes, or residential single-family factory-built buildings, shall submit the applicable surety bond amount from the list in R4-34-502, with a form provided by the Office of Administration.

B. A rider to the bond is required for the following changes:
   1. Location of the licensee’s principal place of business,
   2. Business name,
   3. Branch address,
   4. License classification, or
   5. Bond amount.
R4-34-402. Cash Deposits

A. Except for applicants unless exempt under R4-34-401, any applicant for a license or renewal of a license who desires to post an applicant or licensee posting cash in lieu of a commercial surety bond shall deposit the applicable amount with the Deputy Director of the Office of Administration using any one of the following payment methods:

1. Cash. A cash deposit is not transferrable and shall be made in the name of the applicant or licensee as the name appears on the license application or issued license; or
2. Certified or cashier’s check or bank or postal money order made payable to the Arizona State Treasurer;
3. Cashier’s check payable to the State Treasurer;
4. Bank money order payable to the State Treasurer, or
5. Postal money order payable to the State Treasurer.

B. Upon the receipt by the Deputy Director of the Office of Administration of an order from any court of competent jurisdiction directing for the payment of funds on deposit, the Deputy Director shall make payment according to the court order as directed, at which time and suspend the license is suspended under A.R.S. § 41-2179 if applicable. In order to reinstate the license, the licensee shall return the cash deposit to the required balance or, as an alternative, file a commercial surety bond for the full amount, and pay all applicable reinstatement fees.

C. The cash deposit is not transferable.

D. The applicant shall make the cash deposit in the name of the applicant as it appears on the license application.

E. The applicant may withdraw the cash deposit by the applicant, licensee, or someone having authority to act on behalf of the applicant or licensee, under the following circumstances:

1. The license is not issued to the applicant;
2. The license has been terminated, for two years or more by expiration, revocation, or voluntary cancellation, cancelled for at least two years, and there are no outstanding claims against the deposit; and
3. Two years after the applicant files a commercial surety bond as a replacement for that replaces the cash deposit, if there are no outstanding claims.

F. Upon written request and subsequent approval by the Deputy Director of the Office of Administration, a cash deposit may be withdrawn by the owner of a sole proprietorship, any partner
of a partnership, any person with written evidence of authority to withdraw the cash deposit for a corporation, and any other person who can establish legal right to the cash deposit.

**ARTICLE 5. FEES**

**R4-34-501. General**

A. The Board shall establish a fee schedule before May 15 for the coming fiscal year.

B. The Deputy Director of the Office of Administration shall notify all licensees of the established fee schedule before June 1 of each year and post the fee schedule on the Department’s website.

C. Licensees shall pay fees for the following services and may request a fee schedule from the Office:

1. Manufacturer license,
2. Retailer license,
3. Installer license,
4. Salesperson license,
5. Inspection and technical service,
6. Plans and supplements,
7. Installation permits and insignias, or and
8. Administrative functions.

**R4-34-502. License Bond Amounts**

A. An applicant shall submit the applicable license bond amount listed for each license class.

<table>
<thead>
<tr>
<th>License Class</th>
<th>Bond Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>M-9A</td>
<td>$10,000.00 $10,000</td>
</tr>
<tr>
<td>M-9C</td>
<td>$65,000.00 $65,000</td>
</tr>
<tr>
<td>M-9E</td>
<td>$100,000.00 $100,000</td>
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<tr>
<td>I-10D</td>
<td>$1,000.00 $1,000</td>
</tr>
<tr>
<td>I-10G</td>
<td>$5,000.00 $5,000</td>
</tr>
</tbody>
</table>

B. The Board shall not renew a license unless and until the applicant’s licensee’s surety bond is in full force and effect or the full cash deposit is in full force and effect made or in place.
R4-34-503. **HUD Monitoring Inspection Repealed**

Each manufactured home manufacturer shall pay a fee as established by the U.S. Department of Housing and Urban Development for each unit manufactured in this state. This fee shall be made payable to the Secretary of HUD for purchase of HUD labels. This fee is in addition to the inspection fee required by R4-34-501(C)(5).

R4-34-504. **HUD Label Administration**

In addition to the fees required under R4-34-501(C), each a manufactured home manufacturer of manufactured homes shall pay $5 to the Office of Administration a fee of $5 Department for each label issued in this state.

R4-34-505. **Plans and Supplements**

If a licensee submits a plan or supplement submitted that is not acceptable complete and correct, the Department shall provide written notice the plan or supplement is not acceptable and provide and the licensee fails to supply a complete and correct submittal within 60 days after from the date on the notification letter, notice for the licensee to submit a complete and correct plan or supplement. If the licensee fails to submit a complete and correct plan or supplement within the time provided, the Department shall return the submitted plan or supplement and treat the submittal fee originally paid by the licensee as forfeited and return the submittal. Resubmissions To resubmit a plan or supplement, the licensee shall be accompanied by pay a new submittal fee.

R4-34-506. **Intergovernmental Agreement Permits Repealed**

The permit fee charged by local enforcement agencies participating in the Installation Inspection Program shall not exceed the amount established by the Board for the same service.

**ARTICLE 6. MANUFACTURING, CONSTRUCTION, AND INSPECTION**

R4-34-601. **Manufactured Homes Repealed**

A manufacturer shall build a manufactured home according to the standards in R4-34-102.

R4-34-603. **Factory-built Buildings and FBB Subassemblies FBBs**

A. A manufacturer shall construct a factory-built building or a FBB subassembly an FBB according to the applicable standards in R4-34-102(2) and:
1. Provide a complete set of drawings and specifications to the Department under R4-34-703(B);
2. Affix a permanent serial or identification number to each unit during the first stage of manufacturing. If a unit an FBB has multiple sections (modules), the manufacturer shall ensure that each section module is separately identified. The serial or identification number location and application method shall be shown in the plans required under R4-34-703(B)(7); and
3. Affix an Arizona Insignia of Approval a Modular Manufacturer’s Certificate to each completed section. The insignia shall indicate the unit serial number and plan approval number, and be located on the unit as module where indicated in the plans plan required under R4-34-703(B)(8) (B)(5).

B. A manufacturer of a non-residential factory-built building or a FBB subassembly shall comply with 10 A.A.C. 3 relating to the Americans with Disabilities Act Accessibility Guidelines (ADAAG).

C.B. The Department may require that a manufacturer of a factory-built building or an FBB subassembly that is produced and shipped before plan approval to remove the unit FBB from this state and remove insignias: the Modular Manufacturer’s Certificate based on the Department’s assessment of the following factors:
1. Probable harm to the public’s public safety and welfare,
2. Number of previous Previous violations of a similar nature, and
3. Unwillingness of the manufacturer Manufacturer’s failure to comply with plan submittal and requirements.

R4-34-604. Alterations Repealed
A retailer shall ensure that alterations are consistent with applicable standards and codes, as prescribed in R4-34-704(A).

R4-34-605. Reconstruction of FBBs
A manufacturer shall ensure that reconstruction of an FBB is consistent with applicable codes, as standards prescribed in R4-34-704(B), R4-34-102 and:
1. Existing construction, systems (electrical, plumbing, HVAC, energy, etc.), and components are structurally and otherwise sound and compliant with standards governing at the time of manufacture;
2. New construction, systems, and components comply with applicable standards in R4-34-102;
3. A permanent serial or identification number is affixed to each reconstructed FBB as required under R4-34-603(A);
4. An Arizona Reconstruction Certificate is affixed to each module; and
5. The reconstructed FBB complies with R4-34-102.

R4-34-606. Rehabilitation of Mobile Homes

A. A rehabilitation permit shall be obtained from the office prior to any modification of the mobile home.

B. The following requirements shall be met for a mobile home to be issued a certificate of compliance:

1. A smoke detector (which may be a single station alarm device) shall be installed on any wall in a hallway or space connecting each sleeping room and living areas outside each separate sleeping area in the immediate vicinity of the sleeping rooms. When located in a hallway, the detector shall be between the return air intake and the living area. Each smoke detector shall be installed in accordance with its listing. The top of the detector shall be located between 4 inches to 12 inches below the ceiling. Each smoke detector shall be installed in accordance with its manufacturer’s instructions.

2. The walls, ceilings, and doors of each gas-fired furnace and water heater compartment shall be lined with 5/16 inch gypsum board, unless the door to a compartment that opens to the exterior of the unit mobile home, in which case the door may be all metal construction. All exterior compartments shall seal to the interior of the unit mobile home.

3. Each room designated expressly for sleeping purposes shall have at least one outside egress window or an approved exit device, unless it has an exterior exit door. The window or exit shall have a minimum clear dimension of 22 inches and a minimum clear opening of 5 square feet. The bottom of the exit shall not be more than 36 inches above the floor.

4. All electrical systems shall be The electrical system is tested for continuity to assure that metallic parts are properly bonded, tested for operation to demonstrate that all equipment is connected and in working order, and given a polarity check to determine that connections are proper. The electrical system shall be properly protected for the required amperage load. If the unit wiring is of aluminum conductors are used, all receptacles and switches rated 20 amperes or less and directly connected to the aluminum conductors shall be marked CO/ALR. Exterior receptacles other than heat tape receptacles shall be of the ground fault circuit interrupter (GFI) type. Conductors of dissimilar metals (Copper/Aluminum or Copper Clad Aluminum) must be connected in accordance with NEC Section 110-14 of the National Electrical Code incorporated at R4-36-102; and

5. The unit’s gas piping shall be tested with the appliance valves removed from the piping system and piping capped at those areas. The piping system shall withstand a pressure of at least 6 inch mercury or 3 psi gauge for a period of not less than 10 minutes without showing any drop.

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in pressure. Pressure shall be measured with a mercury manometer or a slope gauge calibrated so as to read in increments of not greater than 1/10th pound or equivalent device. The source of normal operating pressure shall be isolated before the pressure test is made. After the appliance connections are reinstalled, the piping system and connections shall be tested with line pressure of not less than 10 inches nor more than 14 inches water column air pressure. The appliance connections shall be tested for leakage with soapy water or bubble solution. All gas furnaces and water heaters shall be vented to the exterior in accordance with UMC Chapter 8 methods incorporated at R4-36-102. All gas furnaces and water heaters shall be installed in compliance with materials incorporated at R4-36-102. If a rehabilitated mobile home is to be relocated following rehabilitation, the gas tests required under this subsection may be performed and inspected at the time of installation at the new location.

C. The rehabilitated mobile home unit shall be inspected by the office Department to ascertain compliance with subsection (B).

D. The office Department shall issue a certification of compliance for each unit rehabilitated mobile home in compliance with subsection (B), and affix an insignia of approval to the exterior wall nearest the point of entrance of the electrical service.

E. Upon request the office shall issue a waiver for a unit that does not qualify as a mobile home. The category of the unit shall be determined by inspection of the unit or presentation of acceptable documents. The waiver fee is applicable if the category of the unit can be determined to qualify for exemption. If an inspection of the unit is necessary to determine its category, the inspection fee shall apply.

F-E. A person served with If the Department determines a rehabilitated mobile home does not comply with subsection (B), the Department shall serve a correction notice shall make the required and require the person served to make corrections within the time period specified in the notice. The Department shall determine the time period shall be determined by the office for correction based on the severity of the hazard or violation in and the time reasonably needed to make the correction. A minimum of The Department shall allow at least 30 days shall be allowed for correction unless an imminent safety hazard is found, or if the correction has been unreasonably delayed. In either event, in which case, the Department shall serve an Order to Vacate shall be issued to the person occupying the unit rehabilitated mobile home.

G-E. A The Department shall serve an Order to Vacate on a person occupying a non-rehabilitated unit mobile home shall be served with an Order to Vacate that unit within 5 five days if on after an inspection of the unit is found to contain non-rehabilitated mobile home finds an imminent safety hazard.
R4-34-607. Manufacturing Inspection and Certification

A. The Department shall conduct manufactured home plant certification under R4-34-102(1).

B. Before issuing insigias Certificates, the Department shall certify that each a manufacturing facility of factory-built buildings FBBs or FBB subassemblies is capable of manufacturing the units or subassemblies FBBs to the specifications in the approved drawings and procedures in the approved the quality assurance compliance assurance manual required under R4-34-702.

C. Unit certification:
   1. The Department shall conduct manufactured home certification under R4-34-102(1); and
   2. Each A manufacturer of factory-built buildings FBBs, FBB subassemblies, and reconstructed units FBBs shall certify compliance with approved plans by affixing an Arizona Insignia of Approval a Modular Manufacturer Certificate or Reconstruction Certificate, as appropriate, to each unit or subassembly FBB before delivery to a retailer.

D. Records and reporting: By the 15th of each month:
   1. Each A manufacturer of manufactured homes shall report to the Department affixing HUD labels, complete any other required reports, and establish and maintain records required under R4-34-102(4); and
   2. Each An manufacturer of factory-built buildings FBB manufacturer, reconstructed units, and FBB subassemblies shall report to the Department affixing Arizona Insignias of Approval by the 15th day of each month Modular and Reconstruction Certificates during the previous month.

E. The Department shall decertify a production manufacturing facility for any one of the following reasons if:
   1. An inspector identifies a serious defect existing exists in more than one unit FBB;
   2. An inspector identifies three or more repetitive failures to comply with specifications in the approved plans, codes standards, or quality assurance compliance assurance manual;
   3. A An in-state licensee within this state fails to produce approved units for more than six consecutive months; or
   4. An out-of-state licensee fails to file quarterly inspection reports for a period of six consecutive months.

F. Recertification is required upon decertification of Before resuming a production, a decertified manufacturing facility shall be recertified by the Department.
   1. The Department shall evaluate the production process at the decertified manufacturing facility to ensure the manufacturer’s procedures are consistent with the approved plans, codes standards, and quality assurance compliance assurance manual at every stage of production.
2. Upon successful completion of the recertification process, the Department shall issue insignias Certificates or Labels to the manufacturer.

G. Inspection of retailer lots:
   1. The Department may conduct regular inspections of retailer lots to ensure compliance with approved plans, standards, and A.R.S. § 41-2195 41-4048.
   2. The Department may require that a manufacturer of units produced and shipped before plan approval remove the units from this state and remove insignias based on the following factors:
      a. Probable harm to the public’s safety and welfare,
      b. Number of previous violations of a similar nature, and
      c. Unwillingness of the manufacturer to comply with plan submittal and requirements.

ARTICLE 7. PLAN APPROVALS

R4-34-701. General
A. Before construction of a unit or subassembly manufactured home or FBB, a manufacturer shall submit to the office:
   1. The quality assurance manual required by R4-34-702, and
   2. The drawings and specifications required by R4-34-703.

B. Before performance of any alteration, a retailer shall obtain plan approval under R4-34-704(A), performing one of the following, a person shall obtain plan approval:
   1. Under R4-34-704(A) for an alteration,
   2. Under R4-34-704(B) for a reconstruction,
   3. Under R4-34-705 to install an attached accessory structure, and
   4. Under R4-34-706 to install an FBB.

C. Before installing an accessory structure or ground anchors for a manufactured home, mobile home, or residential single-family factory-built building, an installer shall obtain plan approval under R4-34-705.

D. Before reconstructing a manufactured home or factory-built building, a manufacturer shall obtain plan approval under R4-34-704(B).

E. Before the installation of a factory-built building, a person installing the building shall obtain plan approval under R4-34-706.

F. The Department shall determine whether a submittal is administratively complete within 20 business days after receipt of a plan submitted under subsection (B), the Department shall perform an administrative review of the plan submittal and if incomplete, require
the licensee to provide a complete plan submittal. The Department shall review all plans within 20 business days after receipt of a complete submittal. The overall timeframe for plan approval is 40 days, excluding time for requirements that are the responsibility of the applicant. After receiving a complete plan submittal, the Department shall approve or disapprove the plan submittal.

G. A manufacturer, retailer, or installer shall provide an original and one copy of each submittal. A person that submits a plan under subsection (B) shall ensure the plan conforms with the following standards:

1. Each page is at least 8 1/2 X 11 inches;
2. The font is at least eight point;
3. The cover page includes an index and provides a 3 X 5 inch blank space near the title block;
4. The plan and all details and calculations are sealed by an Arizona registered engineer; and
5. The plan is consistent with all applicable standards incorporated at R4-34-102.

H. A manufacturer, retailer, or installer shall update each plan so that it is consistent with current standards and codes adopted by the Board. Supplements are acceptable for this purpose.

I. Plans submitted shall be stamped by an engineer registered by the State of Arizona.

R4-34-702. Quality Compliance Assurance Manuals

A. A manufacturer of manufactured homes shall prepare the quality assurance manual required by R4-34-102(1).

B. A manufacturer of factory-built buildings and FBB subassemblies shall prepare a quality compliance assurance manual that has all of the following attributes:

1. Format: An 8 1/2 X 11 inch format with page numbers and revision traceability;
   a. 8 1/2 by 11 inch size, The manufacturer’s name and address of the factory to which the manual applies;
   b. An index page, and A table of contents that identifies key elements in the quality and compliance control process;
   c. Revision traceability. An organizational chart that shows titles and functions of all positions responsible for any aspect of quality and compliance control;
2. Contents: A description of the design-document control process and procedures for ensuring the current approved design package or building plans are available to production, quality, and compliance personnel;
   a. An organization chart, by position, of all quality control personnel responsible for compliance of incoming components and in-plant manufacturing activities; A description of
procedures for handling materials, including treatment and disposal of rejected materials, in compliance with standards;

b. 7. A description of the quality assurance program adhered to by personnel listed on the organization chart; A description of the FBB-identification system including a unique identifier, such as a serial or identification number, that is permanently affixed to each module of the FBB at the beginning of manufacturing and where the unique identifier is located on the FBB;

e. 8. A flow chart depicting the minimum in-plant inspection requirements, using stations, a production control routing document, stage of manufacture or type of work control, or an equivalent method of in-plant inspection; A drawing showing the layout of the factory and location of the work area for each step in the manufacturing sequence with a description of the scope of work performed at each work area, including off-line processes;

d. 9. A description of tests performed and test equipment used; An inspection checklist, keyed to the drawing required in subsection (8), that identifies the inspections and tests to be performed at each step in the manufacturing sequence and title of the position responsible for ensuring inspections and tests are performed;

e. 10. A description of procedures for receiving and inspecting construction materials, handling damaged material, and rotating stock; A list that includes step-by-step procedures for ensuring all required tests are performed, the equipment needed to perform each test, and procedures for maintaining test equipment;

f. 11. A description of procedures for control of drawings and insignias; and A description of procedures for maintaining control of certificates, installing certificates on FBBs, and making the monthly report of certificates and title of the position responsible for ensuring these tasks are performed;

g. 12. A description of recordkeeping procedures. A description of the procedures for storing completed FBBs at the facility including the manner in which stored FBBs are protected from the elements and other sources of potential damage; and

13. A description of procedures for ensuring building documents are retained and title of the position responsible for ensuring document retention.

R4-34-703. Drawings and Specifications

A. A manufacturer of manufactured homes shall submit to the Department drawings and specifications that comply with applicable standards in R4-34-102(4).
B. A manufacturer of factory-built buildings FBBs or FBB subassemblies shall submit to the Department plans that comply with the applicable standards in R4-34-102(2). The manufacturer shall ensure the plans shall provide or have the following information or format attributes:

1. A set of Dimensioned drawings and details identifying, process descriptions, component specification lists, shop drawings, or and other documents that specify and identify each component, process, assembly operation, and manufacturing step. Include electrical, plumbing, gas, and HVAC systems;

2. A complete set of dimensional views designating the location of all processes performed in the manufacture of the unit or subassembly; A traceable identification for each component and subassembly listed;

3. A complete listing of all components and subassemblies by cross identification to usage; Design analysis calculations for all loads and systems;

4. A traceable identification for each component and subassembly listed;

5. A complete listing of all processes by cross identification to usage;

6. An onsite foundation specification for each unit for a given soil bearing capacity;

7. The location and process for stamping the permanent serial or identification number on the FBB or subassembly; and

8. The location of the Arizona Insignia of Approval Modular Manufacturer Certificate; and

6. Dimensional plans and details identifying all components and construction to be field installed.

R4-34-704. Alterations or Reconstruction Plans

A. Alterations:

1. A retailer or broker performing any alteration on a unit shall send notice of the alteration to the manufacturer of the unit.

2. A retailer or broker performing an alteration on a unit shall prepare a detailed set of drawings and specifications that depict all aspects of the alteration and any serial numbers of the unit.

3. A retailer or broker shall ensure that manufactured home plans comply with the manufactured home construction and safety standards prescribed in R4-34-102(1).

4. A retailer or broker shall ensure that factory-built building and FBB subassembly plans comply with R4-34-703(B).

B. Reconstruction:

1. A manufacturer shall comply with the standards in R4-34-102(2) when preparing a reconstruction plans plan.

2. A manufacturer preparing a reconstruction plans plan shall prepare ensure the plan contains
a detailed set of dimensioned drawings and specifications that depict all aspects of the reconstruction and contain, including a plan depicting the original configuration, and contains the serial or identification number of the unit.

C. A manufacturer shall include with a reconstruction plan a certification statement regarding existing components, construction, and systems indicating they are structurally sound, functional, and do not pose a life safety threat.

R4-34-705. Accessory Structures and Ground Anchoring

A. Accessory structures.

1. For commercial factory-built buildings FBBs, an installer a properly licensed entity or person shall comply with the International Building Code when preparing attached accessory structure plans. For manufactured homes, mobile homes, and residential single-family factory-built buildings FBBs an installer a properly licensed entity or person shall comply with the International Residential Code when preparing attached accessory structure plans.

2. The Department may approve a design that does not comply with the International Building Code or the International Residential Code subsection (A) based on a demonstration by an Arizona Registered Engineer registered engineer that the design is engineered to meets standards at least equivalent to those in the applicable code subsection (A).

3. An installer A properly licensed entity or person shall submit plans, which are sealed by an Arizona registered engineer, for all attached accessory structures except skirting systems that have manufacturer installation instructions and HVAC systems, evaporative coolers, refrigeration, air conditioning systems, and storage rooms of less than 120 square feet.

B. Ground anchoring plans shall be certified by a registered engineer or approved by the Office of Manufactured Housing so that anchoring systems resist overturning and lifting effects of the wind.

1. An installer shall comply with the applicable requirements in R4-34-102 or the manufacturer’s installation manual when preparing ground anchoring plans. If neither apply, the Department shall compare the plans to those of an equivalent, current installation to determine whether the plans are approveable.

2. The plans shall be of sufficient detail and description that all materials, dimensions, and processes can be readily identified.

R4-34-706. Factory-built Building FBB Installation

A. An installer shall complete and submit an application form obtained from the Department.
B. An installer A properly licensed entity or person shall include the following in the installation plans submitted to the Department:

1. The A site plans plan, including that includes the location of the building and location of all utility lines;

2. The A foundation plans, including plan that includes:
   a. A description of the soil class and the soil bearing pressure;
   b. Footings A description of footings and other foundation supports designed to meet the minimum bearing pressure at the depth required;
   c. A complete set of drawings indicating dimensions and details of the foundation footing and anchoring; and a complete list of materials, and with a cross-identification of how materials will be used, in the appropriate view; and
   d. Calculations, prepared by an Arizona registered engineer, for all load conditions, including wind loads for horizontal loads, uplift loads, and overturning; and horizontal and torsional earthquake effects on foundations.

3. Electrical drawings, including the isometric one-line diagram required by R4-34-102(2)(g), that contain the following information:
   a. Size and type of conductors, length of feeders, and all amperage;
   b. Dimensions of gutterways and raceways;
   c. Complete details of panelboards, switchboards, and distribution centers; and
   d. All grounding and bonding connections.

4. Plumbing drawings, including any one-line diagrams required by R4-34-102(2)(d) and (e) that contain the following information:
   a. Location of sewer tap, water meter, and gas meter;
   b. Size, length, and all materials for sewer, water, and gas lines;
   c. Location of all cleanouts and grade of sewer line;
   d. Fixture unit calculations for plumbing and gas fixtures;
   e. Fastening and closure details for connection of multiple modules; and
   f. Dimensional plans and details for all components and construction to be field installed.

R4-34-707. Designated Flood-prone Area Installation

Before installing a manufactured home, mobile home, or FBB in a designated flood-prone area, an installer shall submit and obtain Department approval of an installation plan that includes the following:

1. A site plan showing the location of the manufactured home, mobile home, or FBB;
2. A copy of the designated flood-use permit or flood design conditions issued by the local enforcement agency showing the flood zone type and regulatory and base flood elevations;

3. A site-specific foundation plan that is prepared by an Arizona registered engineer and includes:
   a. A complete set of drawings indicating dimensions and details of the foundation system and anchoring to prevent floatation, collapse, or lateral movement of the structure;
   b. A complete list of materials cross identified to the drawings in subsection (3)(a) showing how the materials will be used;
   c. An indication of how to place to the structure to ensure the bottom frame of the structure is at or above the regulatory flood elevation;
   d. An indication of where to place external utilities and equipment to ensure they are at or above the regulatory flood elevation;
   e. If the structure has an enclosed foundation, an indication of where to place flood vents or other openings; and
   f. All calculations used to determine all load conditions; and

4. Written approval of the information in subsections (1) through (3) from the local flood-district administrator having authority.

ARTICLE 8. PERMITS AND INSTALLATION

R4-34-801. Permits
A. A licensee or consumer properly licensed entity or person shall obtain a permit for the installation of a manufactured homes home, mobile homes home, factory-built buildings FBB, or attached accessory structures structure, or rehabilitation of a mobile homes home.

B. The Department shall issue or deny a permit within seven business days from the date after the application is received. If a permit is denied, corrections to the application shall be submitted to the Department within 20 business days after the denial.

C. A licensee or consumer properly licensed entity or person shall obtain all required permit permits, such as zoning, flood plain, and installation, from the Department or local jurisdiction before beginning any installation work, and post the permit. All permits shall be posted in a conspicuous location onsite. The licensee properly licensed entity or person who contracts to install a unit perform the installation and or a licensed installer who subcontracts to perform the installation shall verify that a valid installation permit has all required permits have been obtained from the Department and local jurisdiction before beginning the installation.

D. Local jurisdictions A local jurisdiction that have entered into agreement with the Department may issue installation permits and conduct inspections.
E. A permit fee shall be charged either by the The Department or the a local jurisdiction participating in the installation inspection program shall charge the permit fee expressly authorized under A.R.S. § 41-2144(A)(4). The fee charged by the Department shall be the amount established by the Board under A.R.S. § 41-2144(A)(4). The fee charged by a the local jurisdiction shall not exceed the amount established by the Board under A.R.S. § 41-2144(A)(4).

F. Every permit, except a special use special-use permit, expires six months from the date after the permit is issued. The Department may extend the permit for good cause if a written request is made to the Department before the permit expires and the fee established by the Board under A.R.S. § 41-2144(A)(4) is paid again.

G. A licensee or consumer shall obtain a certificate of occupancy from the Department before occupying a commercial factory-built building manufactured home, mobile home, or FBB.

H. The permit holder, owner, or contractor shall call for request all required inspections.

I. At the time of a scheduled inspection, the permit holder, owner, or contractor shall ensure all work listed on the permit to be inspected shall be is accessible (opened) for inspections and no work is performed beyond the point indicated for each successive inspection without first obtaining approval from the Department.

J. The permit holder, owner, or contractor shall ensure approved plans or the manufacturer’s installation manual and all applicable manuals shall be available onsite.

K. A special use special-use permit for factory-built buildings an FBB used for events an event of 45 days or less shall be obtained from the Department. The special-use permit expires 45 days from the date of issuance. The unit holder of a special-use permit shall be removed remove the FBB from the site when the permit expires.

R4-34-802. General Installation

A. An installer or contractor A properly licensed entity shall complete and affix and complete an Arizona Insignia of Approval Installation Certificate to each a manufactured home, mobile home, or single-family factory-built building FBB at the tail-light end of each the unit, opposite the hitch and adjacent to the manufacturer certificate or HUD label, approximately one foot up from the floor and one foot in from the road side. “Road side” means the right side of the unit when viewing the unit from the hitch. The installer or contractor properly licensed entity shall affix the insignia Arizona Installation Certificate before calling the Office Department for an inspection.

B. An installer or contractor A properly licensed entity shall make a report by the 15th of each month regarding compliance with subsection (A).
C. **An installer or contractor** Before beginning an installation, a properly licensed entity shall check with the local jurisdictions for frost line jurisdiction regarding frost-line requirements governing permanent foundations or utilities.

D. **An installer or contractor** A properly licensed entity shall install multi-sectional all new manufactured homes, manufactured after June 30, 1977, according to the manufacturer’s instructions for joining the sections, making utility cross-over connections, and providing center (marriage) line and perimeter supports if the instructions are consistent with this Chapter used manufactured homes, and mobile homes according to the materials incorporated by reference in R4-34-102.

E. Before making an installation, a properly licensed entity shall perform or contract with a qualified professional to assess the site and soil and make site preparations necessary to ensure the site is compatible with the manufactured home, mobile home, or residential single-family FBB to be installed. The entity that actually assesses and prepares the site has primary responsibility for the work performed. The entity that contracts to have the site assessment and preparation done, if different, has secondary responsibility for the work performed.

F. Installation of a manufactured home, mobile home, or FBB shall be performed only by a properly licensed entity.

R4-34-803. **Soil and Materials Repealed**

A. A licensee that contracts with a consumer for an installation shall perform or contract for any site preparation necessary to make the site compatible with the manufactured home, mobile home, or residential single-family factory-built building to be installed. The licensee may contract with a licensed installer or other qualified professional to assess site and soil compatibility or perform any necessary preparation work. The party actually performing the site compatibility assessment or work is primarily responsible for work related to site compatibility or preparation. The licensee that contracts with the consumer, if a different entity, is secondarily responsible.

B. **Soil Preparation**

1. Unless contrary to law, an installer or contractor shall:
   a. Divert any surface water away from the dwelling, any accessory structures, and their support components;
   b. Provide sufficient drainage to prevent standing water and soil saturation detrimental to structures;
   c. Establish soil grades that slope away from the dwelling, any accessory structures, and their support components; and
   d. Compact all fill and backfill within 6 feet of the perimeter of the unit to prevent displacement.
2. When determining soil compaction an installer or contractor shall:
   a. Assume a minimum bearing capacity of 1,000 psf; or
   b. Test and prove a minimum bearing capacity of 1,000 psf to the onsite inspector; or
   c. Adhere to the specifications of a registered engineer, provided onsite, to an inspector.

C. Materials: An installer or contractor shall use materials that comply with applicable standards incorporated in R4-34-102.

D. Footings: An installer or contractor shall:
   1. Place each footing on a surface capable of distributing equalized transfer of applied loads;
   2. Calculate and use the minimum size of each footing, necessary to minimize settling of the unit accounting for local soil conditions;
   3. Use piers with a maximum square base of 11 1/2 inch installed on 12 inch by 12 inch footings to support mobile and manufactured homes manufactured before January 1, 1984;
   4. Use main frame blocking installed on footings with 144 square inches of surface placed 3 feet, 6 inches from center, or footings with 256 square inches of surface placed at 6 foot intervals to support manufactured homes manufactured on or after January 1, 1984;
   5. Use footing material with one of the following attributes:
      a. Minimum 3/4-inch thick plywood or two layers of 5/8-inch thick plywood no less than 12 inches wide. The plywood shall be Grade CDX APA Rated Sheeting Exposure 1, PSI-treated for ground contact, conforming to International Building Code or International Residential Code, as applicable under R4-34-102(2)(a) or (b);
      b. Minimum 2-inch nominal thickness wood no less than 12 inches wide, and treated for ground contact, conforming to the International Building Code or the International Residential Code, as applicable under R4-34-102(2)(a) or (b);
      c. Minimum 3-inch thick precast concrete pad with either 256 or 144 square inches of ground surface. The concrete shall have a minimum of 28 days compressive strength of not less than 4000 pounds per square inch; or
      d. Hard plastic pad with either 256 or 144 square inches of ground surface. The plastic pad shall withstand a minimum vertical concentrated load failure rating of 15,000 pounds when tested on very dense and coarse gravel soils. “Failure” means that a crack at least 4 inches in length has appeared anywhere on the pad or the pad’s surface has curled or bowed.
   6. Stack plywood with face grain perpendicular and fasten the plywood with corrosion-resistant nails or 7/16 inch wide-crown staples or screws;
   7. Fasten wood products that are stacked with corrosion-resistant nails or 7/16 inch wide-crown staples or screws;
8. Not use any 2-inch thick piece of wood with split penetration greater than 4 inches into the end of the piece and parallel to the edges of the piece;
9. When precast concrete pads are stacked, use pads with equal sized surface sides;
10. When concrete masonry unit (CMU) building blocks are used for supports, use only 256 square inch ground and 8 inch by 16 inch caps;
11. Stack plastic pads only when the pad is provided with an interlocking system; and
12. Stack no more than two equal sized concrete pads per support.

E. Supports (piers): An installer or contractor shall:
1. Place supports or piers on footings that do not exceed the size of the footing;
2. Ensure that supports or piers bear no greater load than 8,000 pounds;
3. Ensure that supports or piers have a minimum vertical concentrated load failure rating of 15,000 pounds;
4. Not use supports with a height in excess of 36 inches or less than 12 inches for more than 25% of the supports along the main beams of the chassis, including footing;
5. For a below ground installation, ensure that the height of the bottom of the perimeter rim joist is a minimum of 6 inches above finished grade;
6. Ensure that the height of the bottom of the floor joist is a minimum of 18 inches above soil base unless otherwise specified by the manufacturer in instructions consistent with this Chapter;
7. Locate supports or piers under the main beams of the chassis at intervals no greater than 6 feet and no more than 2 feet from either end of each main beam. When intervals no greater than 6 feet are not feasible because of running gear, supports shall be located as close as possible to the running gear with the remainder of the supports spaced according to the 6 and 2 foot requirements;
8. Stagger the flanges on top of supports or piers so that every other flange is on the opposite side of the beam; and
9. Construct permanent support heights to the International Building Code or the International Residential Code as applicable under R4-34-102(2)(a) or (b).

F. Wedges: An installer or contractor shall:
1. Use two wedges in alignment per support;
2. Use wood wedges that are a minimum of 1 1/2 inches by 3 1/2 inches by 6 inches; and
3. Drive wedges in tightly so that the height developed does not exceed 2 inches at the support; and
4. Provide each I-Beam of the building with full bearing on the wedge; or
5. Use listed or approved shimming material according to the manufacturer’s wedge instructions; or
6. Use material and methods designed by an Arizona professional engineer or architect and approved by the authority having jurisdiction.

G. Anchoring: An installer or contractor shall use an anchoring system that is certified by a registered, professional engineer.

H. Snow/Wind Loads
1. Under 24 CFR 3282.11 and 3280.305, the authority having jurisdiction may not require manufactured homes to be built or installed to a snow load greater than 20 pounds per square foot unless the jurisdiction has received approval from HUD.

2. Manufactured homes may be manufactured and installed, at the owner’s option, to withstand greater than a 20 pound snow load. An installer or contractor shall install these units according to the manufacturer’s instructions for the foundation support system if the instructions are consistent with this Chapter.

I. Permanent Foundation Systems
1. An installer or contractor shall install factory-built buildings in compliance with R4-34-102(2).

2. An installer or contractor shall install manufactured and mobile homes according to the manufacturer’s permanent foundation requirements or sealed engineered plans if the requirements or plans are consistent with this Chapter.

R4-34-804. Utilities Repealed
A. Utility service facilities. An installer or contractor shall not enter into an agreement to connect units to utility service facilities that are not compatible with the units.

B. Electric. An installer or contractor shall make all electric connections or installations according to the National Electric Code.

1. An installer or contractor shall connect manufactured or mobile homes using a piece of flexible metal conduit no greater than 36 inches and no less than 18 inches long. The installer or contractor shall use liquidtight, flexible metal conduit when a manufactured home is set at ground level or in a wet location. The installer or contractor shall connect the flexible metal conduit at the location so that only the rigid conduit emerges from the ground and the conduit extends at least 6 inches above ground level.

2. When service equipment is installed on a manufactured home, an installer or contractor shall install the grounding electrode in compliance with the National Electrical Code. The following items shall be installed according to the National Electrical Code:
   a. Feeder size according to Table 310.15(B)(6);
   b. Power-supply cord according to 550.10, and
C. Sewer. An installer or contractor shall make sewer connections or installations in compliance with the International Plumbing Code.

D. Water. An installer or contractor shall make water connections or installations in compliance with the International Plumbing Code.

E. Gas. An installer or contractor shall make gas connections or installations in compliance with the International Fuel Gas Code.

1. The installer or contractor shall perform a gas test with the gas appliance flex connectors capped and the valves in the open position. The installer or contractor shall pressurize the system at 6 inches of mercury (45 ounces of mercury) or 3 psi gauge for 15 minutes. The system passes if there is no drop in pressure during the test. Pressure shall be measured with a mercury manometer or slope gauge calibrated in increments not greater than 1/10th of a pound, or an equivalent device. The source of normal operating pressure shall be isolated before the pressure test.

2. The flexible connector shall not be more than 6 feet long.

3. Flex connectors are not required for permanent foundation systems.

F. Mechanical. An installer or contractor shall make mechanical connections and installations in compliance with the International Mechanical Code and the International Energy Conservation Code.

R4-34-805. Accessory Structures

A. For the purpose of “Attached,” as used in A.R.S. § 41-2142(1), the word “attached” means fastened by any means to a manufactured home, or mobile home, or residential single-family, factory-built building FBB at the time of its installation and removable without degradation of the structural integrity of the unit.

B. An installer or contractor shall install, assemble, or construct each accessory structure in compliance with applicable standards incorporated by reference in R4-34-102(3).

C. An installer or contractor installing manufactured homes, mobile homes, or factory-built buildings shall provide an opening that permits access to the underfloor area. If the access is through the skirting, retaining wall, or perimeter foundation wall, the access opening shall measure at least 18 inches by 24 inches.

D. The Department shall approve or reject plans as prescribed in R4-34-705.

E. Above or Below Grade Skirting

1. For all skirting, an installer or contractor shall:
   a. Provide an 18 inch by 24 inch minimum access crawl hole;
b. Ventilate skirting according to the International Building Code or the International Residential Code, and

c. Install skirting according to this Chapter or the manufacturer’s instructions if the instructions are consistent with this Chapter.

2. For below grade skirting, an installer or contractor shall design and construct skirting as a retaining wall according to the International Building Code or the International Residential Code.

ARTICLE 10. ADMINISTRATIVE PROCEDURES

R4-34-1001. Rehearing or Review

A. A party may amend a petition motion for rehearing or review filed under A.R.S. § 41-2184 or 41-4038 at any time before it is ruled upon by the Director. The opposing party may file a response within 15 days after the date the petition motion or amended petition motion is filed. The Director may require the filing of parties to file written briefs explaining the issues raised in the petition motion and provide for oral argument.

B. The Director may affirm or modify the decision or grant a rehearing to all or any of the parties on all or part of the issues for any of the reasons in A.R.S. § 41-2184(D) or 41-4038(D). An order modifying the decision or granting a rehearing shall specify with particularity the grounds on which the modification or rehearing is granted, and any rehearing shall cover only those matters.

C. When a petition motion for rehearing or review is based upon affidavits, the affidavits shall be served with the petition motion. An opposing party or the Attorney General may, within 10 days after service, serve opposing affidavits.

D. Not later than 15 days after the date of the decision, the Director may grant a rehearing or review on the Director’s own initiative for any reason for which the Director might have granted relief on the petition motion of a party. The Director may grant a petition motion for rehearing or review, timely served, for a reason not stated in the motion.
ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT
TITLE 4. PROFESSIONS AND OCCUPATIONS
CHAPTER 34. BOARD OF MANUFACTURED HOUSING

1. Identification of the rulemaking:

The Board is amending or repealing all of its rules in response to a five-year-review report approved by the Governor’s Regulatory Review Council on July 6, 2017. Additionally, the Board is responding to the Governor’s request that agencies review and eliminate rules the agency determines are antiquated, redundant, or otherwise unnecessary. In response to multiple discussions with the Department’s legislative liaison, Josh Tucker, and after reviewing a chart showing all intended rule changes, an exemption from Executive Order 2017-02 was given for this rulemaking by Mara Mellstrom, Policy Advisor in the Governor’s Office, in an e-mail dated May 1, 2017.

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

Until the rulemaking is completed, the Board will not have implemented the course of action identified in the five-year-review report approved by the Council on July 6, 2017, and will not have responded timely to the Governor’s request that agencies review and eliminate rules determined to be antiquated, redundant, or otherwise unnecessary.

b. The harm resulting from the conduct the rule is designed to change and the likelihood it will continue to occur if the rule is not changed:

It is not good government practice for the Board to fail to implement a needed plan of action or to respond timely to the Governor’s request. This harm will cease to exist when the rulemaking is completed.

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

When the rulemaking is completed, the Board will have implemented the plan of action and eliminated rules that are antiquated, redundant, or otherwise unnecessary.

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

1 If adequate data are not reasonably available, the agency shall explain the limitations of the data, the methods used in an attempt to obtain the data, and characterize the probable impacts in qualitative terms. (A.R.S. § 41-1055(C)).
The Board believes this rulemaking will have minimal economic impact on licensees, applicants, and consumers because the substance of the amended rules is not substantially different from the substance of the current rules.

3. The person to contact to submit or request additional data on the information included in the economic, small business, and consumer impact statement:

Name: Debra Blake, Assistant Deputy Director
Address: Office of Manufactured Housing, Arizona Department of Housing
1110 W. Washington Street, Ste. 280
Phoenix, AZ 85007
Telephone: (602) 771-1000
Fax: (602) 771-1992
E-mail: Debra.blake@azhousing.gov
Web site: www.housing.az.gov

4. Persons who will be directly affected by, bear the costs of, or directly benefit from the rulemaking:

Applicants, licensees, and the Department will be directly affected by, bear the costs of, and directly benefit from the rulemaking.

The Department issues four kinds of licenses: manufacturer, dealer, installer, and salesperson. During FY2017, it issued 1,058 licenses. Sixty-two percent of the licenses were to salespersons. The Department issues a new license in an average of three days. There are currently 2,500 manufactured-housing businesses in Arizona employing 5,000 individuals. Each year, approximately 1,800 new and 2,400 used manufactured homes are sold in Arizona and 2,600 new manufactured homes are constructed. Approximately 314,000 Arizona families live in manufactured homes.

During 2017, the Department received 55 complaints regarding licensees. Most of the consumer complaints alleged that manufacturers, dealers, or installers failed to provide all goods or services or failed to manufacture or install in a workmanlike manner. The Department scheduled seven hearings to be held at the Office of Administrative Hearings. Four of the hearings resulted in administrative discipline and one in license suspension. The Department issued 14 cease and desist orders regarding unlicensed activity. During FY2018, the Department issued 135 citations against licensees. Most of the citations were for failing to timely file monthly reports, installing a unit before issuance of a permit, failing to respond to
a consumer complaint, failing to meet installation training requirements, and violating dealer sales audit requirements.

To protect the public, the Department reviews and approves engineered plans for the construction and installation of manufactured homes and factory-built buildings. The Department enters Intergovernmental Agreements with local jurisdictions to support the volume of installation inspections that must be conducted. During FY2017, the Department approved 615 plans and supplements and conducted 8,811 inspections. After approving plans, the Department issued 1,365 permits. The Department generally completes a plan review and approval within seven days. It issues permits within three days.

During FY2017, the Department collected $1,062,742 in licensing, inspecting, and permitting fees. It receives no appropriation because fees collected are intended to cover costs. The Manufactured Housing Division within the Department of Housing has 15 FTE employees.

The Department incurred the cost of completing this rulemaking and will incur the minimal cost of implementing the amended rules. The Department will have the benefit of rules that are consistent with industry standards and agency practice.

5. Cost-benefit analysis:
   a. Costs and benefits to state agencies directly affected by the rulemaking including the number of new full-time employees at the implementing agency required to implement and enforce the proposed rule:
      The Department is the only state agency directly affected by this rulemaking. Its costs and benefits are described above. The Department will not need to employ any new FTE to implement or enforce the rules.
   b. Costs and benefits to political subdivisions directly affected by the rulemaking:
      No political subdivision is directly affected by the rulemaking. If a local jurisdiction chooses to enter an Intergovernmental Agreement with the Department, the agreement will require the local jurisdiction to conduct an inspection in accordance with the standards in rule.
   c. Costs and benefits to businesses directly affected by the rulemaking:
      The only businesses directly affected by the rulemaking are those that manufacture, install, or sell manufactured homes and factory-built buildings. The effect is as described above.
6. **Impact on private and public employment:**
   The Department expects the rulemaking to have no impact on private or public employment.

7. **Impact on small businesses:***
   a. **Identification of the small business subject to the rulemaking:**
      Manufacturers, dealers, salespersons, and installers are businesses subject to this rulemaking. Most of them are small businesses. There are several large manufacturers that have a nationwide presence.
   b. **Administrative and other costs required for compliance with the rulemaking:**
      Manufacturers, dealers, salespersons, and installers are required by statute to be licensed. The rules simply prescribe the procedure for obtaining a license. Those who wish to be licensed must incur the cost of complying with the prescribed procedures, but the benefits from being able to be employed in this industry outweigh the costs of compliance. These individuals must also comply with the statutory requirements that they submit plans and obtain a permit before installing a manufactured home or factory-built building and submit plans before constructing a factory-built building. Again, this cost results from statute and requirements of the U.S. Department of Housing and Urban Development (USHUD) rather than rule.
   c. **Description of methods that may be used to reduce the impact on small businesses:**
      Because most of the businesses subject to these rules are small businesses, there is no method to reduce the impact of the rules on small businesses only. This is an industry heavily regulated at the federal level. The Department, which is under contract with the USHUD to monitor construction of manufactured homes and inspect and verify the installation of manufactured homes, is not in position to change the federal requirements.

8. **Cost and benefit to private persons and consumers who are directly affected by the rulemaking:**
   Private persons and consumers are not directly affected by the rulemaking. However, because the rules are designed to protect consumers who purchase a manufactured home or factory-built building, consumers will indirectly benefit from the rulemaking.

9. **Probable effects on state revenues:**
   The Department expects the rulemaking to have no effect on state revenues.

10. **Less intrusive or less costly alternative methods considered:**

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2 Small business has the meaning specified in A.R.S. § 41-1001(21).
Because the rules simply prescribe procedures for implementing statute and incorporate by reference federal requirements and because the procedures result in minimal cost for those subject to the rules, no less intrusive or less costly alternative method was considered.
ARTICLE 1. GENERAL

Article 1, consisting of Sections R4-34-101 through R4-34-104, adopted by final rulemaking at 6 A.A.R. 145, effective December 8, 1999 (Supp. 99-4).

Article 1, consisting of Sections R4-34-101 through R4-34-107, repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999 (Supp. 99-4).

Section
R4-34-101. Definitions
R4-34-102. Materials Incorporated by Reference
R4-34-103. Exceptions
R4-34-104. Workmanship Standards
R4-34-105. Repealed
R4-34-106. Repealed
R4-34-107. Repealed

ARTICLE 2. LICENSING

Article 2, consisting of Sections R4-34-201 through R4-34-204, adopted by final rulemaking at 6 A.A.R. 145, effective December 8, 1999 (Supp. 99-4).

Article 2, consisting of Sections R4-34-201 through R4-34-205, repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999 (Supp. 99-4).

Section
R4-34-201. General
R4-34-202. Manufacturers
R4-34-203. Retailers
R4-34-204. Installers
R4-34-205. Repealed

ARTICLE 3. SALES TRANSACTIONS AND TRUST OR ESCROW ACCOUNT

Article 3, consisting of Sections R4-34-301 through R4-34-303, adopted by final rulemaking at 6 A.A.R. 145, effective December 8, 1999 (Supp. 99-4).

Article 3, consisting of Sections R4-34-301 through R4-34-309, repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999 (Supp. 99-4).

Former Article 3, consisting of Sections R4-34-301 through R4-34-304, renumbered to Article 7, Sections R4-34-701 through R4-34-704, effective July 3, 1991 (Supp. 91-3).

New Article 3, consisting of Sections R4-34-301 through R4-34-306, renumbered from Article 7, Sections R4-34-701 through R4-34-706, effective July 3, 1991 (Supp. 91-3).

Section
R4-34-301. Transaction Copies
R4-34-302. Advertising
R4-34-303. Brokered Transactions
R4-34-304. Repealed
R4-34-305. Repealed
R4-34-306. Repealed
R4-34-307. Repealed
R4-34-308. Repealed
R4-34-309. Repealed

ARTICLE 4. SURETY BONDS

Article 4, consisting of Sections R4-34-401 and R4-34-402, adopted by final rulemaking at 6 A.A.R. 145, effective December 8, 1999 (Supp. 99-4).

Article 4, consisting of Sections R4-34-401 through R4-34-404, repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999 (Supp. 99-4).

Former Article 4, consisting of Sections R4-34-401 through R4-34-403, renumbered to Article 5, Sections R4-34-501 through R4-34-503, effective July 3, 1991 (Supp. 91-3).

New Article 4, consisting of Sections R4-34-401 through R4-34-404, renumbered from Article 7, Sections R4-34-701 through R4-34-704, effective July 3, 1991 (Supp. 91-3).

Section
R4-34-401. Surety Bond Forms
R4-34-402. Cash Deposits
R4-34-403. Repealed
R4-34-404. Repealed

ARTICLE 5. FEES

Article 5, consisting of Sections R4-34-501 through R4-34-506, adopted by final rulemaking at 6 A.A.R. 145, effective December 8, 1999 (Supp. 99-4).

Article 5, consisting of Sections R4-34-501 through R4-34-503, repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999 (Supp. 99-4).

Former Article 5, consisting of Sections R4-34-501 and R4-34-502, renumbered to Article 8, Sections R4-34-801 and R4-34-802, effective July 3, 1991 (Supp. 91-3).

New Article 5, consisting of Sections R4-34-501 through R4-34-503, renumbered from Article 4, Sections R4-34-401 through R4-34-404, effective July 3, 1991 (Supp. 91-3).

Section
R4-34-501. General
R4-34-502. License Bond Amounts
R4-34-503. HUD Monitoring Inspection
R4-34-504. HUD Label Administration
R4-34-505. Plans and Supplements
R4-34-506. Intergovernmental Agreement Permits

ARTICLE 6. MANUFACTURING, CONSTRUCTION, AND INSPECTION

Article 6, consisting of Sections R4-34-601 through R4-34-607, adopted by final rulemaking at 6 A.A.R. 145, effective December 8, 1999 (Supp. 99-4).

Article 6, consisting of Sections R4-34-601 through R4-34-610, repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999 (Supp. 99-4).

Section
R4-34-601. Manufactured Homes
R4-34-602. Repealed
R4-34-603. Factory-built Buildings and FBB Subassemblies
R4-34-604. Alterations
R4-34-605. Reconstruction
R4-34-606. Rehabilitation of Mobile Homes
R4-34-607. Manufacturing Inspection and Certification
R4-34-608. Repealed
ARTICLE 7. PLAN APPROVALS

Article 7, consisting of Sections R4-34-701 through R4-34-706, adopted by final rulemaking at 6 A.A.R. 145, effective December 8, 1999 (Supp. 99-4).

Article 7, consisting of Sections R4-34-701 through R4-34-704, repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999 (Supp. 99-4).

Former Article 7, consisting of Sections R4-34-701 through R4-34-706, renumbered to Article 3, Sections R4-34-301 through R4-34-306, effective July 3, 1991 (Supp. 91-3).

New Article 7, consisting of Sections R4-34-701 through R4-34-704, renumbered from Article 3, Sections R4-34-301 through R4-34-304, effective July 3, 1991 (Supp. 91-3).

Section
R4-34-701. General
R4-34-702. Quality Assurance Manuals
R4-34-703. Drawings and Specifications
R4-34-704. Alterations or Reconstruction
R4-34-705. Accessory Structures and Ground Anchoring
R4-34-706. Factory-built Building Installation

ARTICLE 8. PERMITS AND INSTALLATION

Article 8, consisting of Sections R4-34-801 through R4-34-805, adopted by final rulemaking at 6 A.A.R. 145, effective December 8, 1999 (Supp. 99-4).

Article 8, consisting of Sections R4-34-801 and R4-34-802, repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999 (Supp. 99-4).

Former Article 8, consisting of Sections R4-34-801 through R4-34-804, repealed effective July 3, 1991 (Supp. 91-3).

New Article 8, consisting of Sections R4-34-801 and R4-34-802, renumbered from Article 5, Sections R4-34-501 and R4-34-502, effective July 3, 1991 (Supp. 91-3).

Section
R4-34-801. Permits
R4-34-802. General Installation
R4-34-803. Soil and Materials
R4-34-804. Utilities
R4-34-805. Accessory Structures
Exhibit 1. Repealed

ARTICLE 9. REPEALED

Article 9, consisting of Section R4-34-901, repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999 (Supp. 99-4).

Former Article 9, consisting of Sections R4-34-901 through R4-34-904, renumbered to Article 4, Sections R4-34-401 through R4-34-404, effective July 3, 1991 (Supp. 91-3).

New Article 9, consisting of Section R4-34-901, renumbered from Article 10, Section R4-34-1001, effective July 3, 1991 (Supp. 91-3).

Section
R4-34-901. Repealed

ARTICLE 10. ADMINISTRATIVE PROCEDURES

Article 10, consisting of Section R4-34-1001, adopted by final rulemaking at 6 A.A.R. 145, effective December 8, 1999 (Supp. 99-4).

Former Article 10, consisting of Section R4-34-1001, renumbered to Article 9, Section R4-34-901, effective July 3, 1991 (Supp. 91-3).

Article 10, consisting of Section R4-34-1001, adopted effective April 4, 1985.

Section
R4-34-1001. Rehearing or Review

ARTICLE 11. RENUMBERED

Article 11, consisting of Section R4-34-1101, renumbered to 4 A.A.C. 36, R4-36-201 (Supp. 95-4).

Article 11, consisting of Section R4-34-1101, adopted as a permanent rule effective November 16, 1988.

Article 11, consisting of Section R4-34-1101, adopted as an emergency effective March 14, 1988 pursuant to A.R.S. § 41-1026, valid for only 90 days. Emergency expired.

ARTICLE 1. GENERAL

R4-34-101. Definitions

The definitions in A.R.S. §§ 41-2142, 41-2152, and 41-2157 apply to this Chapter. Additionally, in this Chapter:


2. “Agency” means, in a brokered transaction, the consensual relationship that exists between an agent and the seller or purchaser of a used home when either the purchaser or seller authorizes the agent and the agent agrees to the authorization in writing. A licensed salesperson may establish an agency relationship on behalf of the salesperson’s licensed and employing retailer.

3. “Agency disclosure” means a document that specifies the party or parties that an agent represents in a brokered transaction as a seller’s agent, purchaser’s agent, or dual agent who represents both the seller and purchaser.

4. “Agent” means a licensed retailer or broker who is authorized to act on behalf of either the seller or purchaser of a used home or as a dual agent representing both.

5. “Branch location” means an office, unit, station, facility, or space at a fixed location other than a principal office, however designated, at which any business that may be conducted at the principal office is transacted.

6. “Brokered transaction” means a transaction in which a properly licensed broker acts as an agent for the seller, purchaser, or both.

7. “Co-brokered transaction” means a transaction in which the listing retailer and the selling retailer are not the same person.


9. “Lease with option to purchase” means a lease under which the lessee has the right to purchase the leased property for a specified price and terms.

10. “New” means a unit or subassembly not previously sold, bargained, exchanged, or given away to a purchaser.

11. “Offer to purchase in a brokered transaction” means a written proposal to purchase a used home listed for sale that a broker presents to the seller for acceptance or rejection.

12. “Open subassembly” means that the components of the subassembly can be readily inspected without being disassembled.

13. “Permanent foundation” means a system of support and perimeter enclosure of crawl space that is: a. Constructed of durable materials (e.g., concrete, masonry, steel, or treated wood);
b. Developed in accordance with the manufacturer’s installation instructions or designed by a licensed professional engineer;

c. Attached in a manner that effectively transfers all vertical and horizontal design loads that could be imposed on the structure by wind, snow, frost, seismic, or flood conditions, as applicable, to the underlying soil or rock;

d. Designed to exclude unwanted elements and varnishes, ensure sufficient ventilation, and provide adequate access to the building; and

e. Not anchoring straps or cable affixed to ground anchors other than footings.

14. “Purchase contract in a brokered transaction” means a written agreement between a purchaser and seller of a used home that indicates the sales price and terms of the sale.

15. “Reconstruction” means construction work performed on a manufactured home, mobile home, or factory-built building for the purpose of restoring the unit to a usable condition, but does not include work limited to remodeling, replacing, or repairing appliances or components that will not significantly alter the systems or structural integrity of the living area.

16. “Respond” means to furnish the Office of Manufactured Housing or Office of Administration with a written explanation detailing any reasons why a complaint is not justified or the signature of the complainant indicating that the complainant is satisfied with the resolution of the verified complaint.

17. “Retailer” means a dealer or broker as prescribed at A.R.S. § 41-2142(9) and (5).

18. “Standards” means the materials incorporated by reference in R4-34-102.

19. “Supplement” means a submittal of not more than two sheets of paper that indicates floor plan dimensional sizes, does not change more than 25% of a system or configuration, and is incorporated as part of an originally approved plan.

20. “Technical service” means engineering assistance and interpretative application or clarification of compliance and enforcement of A.R.S. Title 41, Chapter 16, Articles 1, 2, and 4 and this Chapter.

21. “Typical plan” means a design plan that may be duplicated numerous times.

22. “Used home” means a used unit that is a previously titled manufactured home, mobile home, or factory-built building designed for use as a residential dwelling.

Historical Note

R4-34-102. Materials Incorporated by Reference
The following materials, which the Board incorporates by reference, apply to this Chapter. The materials, which include no later amendments of editions, are available from the Board. If there is a conflict between the incorporated material and a statute or rule, the statute or rule controls.

1. HUD Manufactured Housing Program


2. Factory-built Building Program


   f. International Energy Conservation Code (IECC), 2009 edition, available from the International Code Council, 4051 Flossmoor Road, Country Club Hills, IL 60478; and


3. Installation, Foundation, and Accessory Structures

   a. Materials incorporated in subsections (1) and (2); and


Historical Note

R4-34-103. Exceptions
A. The Board makes the following exceptions to the materials incorporated by reference in R4-34-102:
   1. International Building Code and International Residential Code. A water or gas connection may be a flexible connector if the flexible connector:
      a. Is not more than 6 feet long;
      b. Is of the rated size necessary to supply the total demand of the unit, and
      c. Made of materials that comply with the International Plumbing Code and International Fuel Gas Code; and
B. Under A.R.S. § 41-2144(D), a local jurisdiction may petition the Board for an exception to a standard. The local jurisdiction shall ensure that the petition for an exception:
   1. Specifies the standard or code sections affected;
   2. Justifies the requested exception with documented evidence of the local conditions that support the requested exception;
   3. Specifies the boundaries of the area affected by the local conditions;
   4. States why the exception is necessary to protect the health and safety of the public; and
   5. Provides an estimate of the economic impact that the requested exception will have on the petitioning jurisdiction, other affected governmental entities, the public, unit owners, and licensees, and the facts upon which the estimate is based.
C. An exception ordered by the Board applies only within the jurisdiction that petitioned for the exception. The jurisdiction shall comply with any conditions specified in the exception order.
D. An exception order is effective on the date specified in the order, which will be at least 60 days after a Department Substantive Policy has been issued to all licensed installers describing the exception, the area within which it applies, and any provisions applicable to its use.

Historical Note

R4-34-104. Workmanship Standards
A. All work shall be performed in a professional manner.
B. All work shall be performed in accordance with any applicable building code and professional industry standards.
C. If there is a conflict between professional standards and building code requirements, the latter will prevail.

Historical Note

R4-34-105. Repealed

Historical Note

R4-34-106. Repealed

Historical Note

R4-34-107. Repealed

Historical Note

ARTICLE 2. LICENSING
R4-34-201. General
A. An administrative review of the application shall be performed within five business days of receipt of an application. The Deputy Director shall issue a conditional license within 14 business days of the Department’s receipt of the completed license application and written evidence that the applicant has passed any required license examination. The five day administrative completeness and 14 day substantive review time-
frames provide an overall time-frame of 19 days excluding time requirements that are the responsibility of the applicant.

B. Corporate applicants shall submit a copy of the articles of incorporation, and all amendments to the articles filed with the Arizona Corporation Commission, or, if a foreign corporation, the application for authority to transact business.

C. When a retailer or installer licensee changes its legal entity but remains within the scope of the license and retains the same qualifying party, the licensee may request an exemption from any applicable testing requirement, provided the license is in good standing.

D. Upon receipt and review of the applicant’s criminal background analysis by the Deputy Director of the Office of Administration, and upon mailing notification to the applicant, the previously issued conditional license is automatically effective as a permanent license to transact business within the scope of the license.

Historical Note
Adopted effective January 31, 1979 (Supp. 79-1).

R4-34-202. Manufacturers
The Department shall place a manufacturer’s license application into one of the following license classes, based on the listed activities that limit the scope of each class:

1. M-9A Manufacturer of Factory-Built Buildings and FBB Subassemblies:
   a. Manufactures factory-built buildings and FBB subassemblies;
   b. Reconstructs factory-built buildings and FBB subassemblies.

2. M-9C Manufacturer of Manufactured Homes:
   a. manufactures manufactured homes;
   b. Reconstructs manufactured homes.

3. M-9E Master Manufacturer: Performs work within the scope of classes M-9A and M-9C.

Historical Note
Adopted effective January 31, 1979 (Supp. 79-1).

R4-34-203. Retailers
The Department shall place a retailer’s license application into one of the following license classes, based on the listed activities that limit the scope of each class:

1. D-8 Retailer of Manufactured Homes or Mobile Homes:
   a. Buys, sells, or exchanges new or used manufactured homes, mobile homes, or accessory structures;
   b. Acts as an agent for the sale or exchange of used manufactured homes, mobile homes, or accessory structures;
   c. Makes alterations to new manufactured homes before a sale to a purchaser under R4-34-604; or
   d. Contracts with properly licensed installers or contractors for the installation of manufactured homes, mobile homes, or accessory structures.

2. D-8B Broker of Manufactured Homes or Mobile Homes:
   a. Acts as an agent for the sale or exchange of used manufactured homes or mobile homes, or
   b. Contracts with properly licensed installers or contractors for the installation of manufactured homes, mobile homes, or accessory structures.

3. D-10 Retailer of Factory-Built Buildings and FBB Subassemblies:
   a. Buys, sells, or exchanges new or used factory-built buildings and FBB subassemblies;
   b. Acts as an agent for the sale or exchange of new or used factory-built buildings and FBB subassemblies;
   c. Makes alterations to new factory-built buildings and FBB subassemblies before a sale to a purchaser; or
   d. Contracts with properly licensed installers or contractors for the installation of factory-built buildings, FBB subassemblies, and residential single-family factory-built buildings, or accessory structures.

4. D-12 Master Retailer: Performs work within the scope of classes D-8, D-8B, and D-10.

Historical Note
A. The Department shall place an installer’s license application into one of the following license classes, based on the listed activities that limit the scope of each class:

1. I-10C General Installer of Manufactured Homes, Mobile Homes, or Residential Single-Family Factory-Built Buildings:
   a. Installs manufactured homes, mobile homes, or residential single-family factory-built buildings on foundation systems;
   b. Installs ground anchors and tie down manufactured homes or mobile homes;
   c. Connects water, sanitary waste, gas, and electrical systems of all amperages to the proper onsite utility terminals provided by others;
   d. Installs evaporative coolers and cooler systems on manufactured homes, mobile homes, or residential single-family factory-built buildings;
   e. Installs roof jack to cooler ducts;
   f. Installs duct work;
   g. Provides electrical service and controls to cooler from nearest supply source;
   h. Provides water to the cooler from the nearest fresh water source; or
   i. Performs work as indicated under manufacturer’s warranty for the unit.

2. I-10D Installer of Accessory Structures attached to Manufactured Homes, Mobile Homes, or Residential Single-Family Factory-Built Buildings:
   a. Installs prefabricated accessory structure units;
   b. Constructs accessory structures onsite;
   c. Places concrete footings or slabs for accessory structures; or
   d. Contracts with properly licensed contractors for the installation of plumbing, electrical, and mechanical equipment as part of an accessory structure and subcontracts all or any part of the items within this subsection to properly licensed installers or contractors.

3. I-10G Master Installer of Manufactured Homes, Mobile Homes, or Residential Single-Family Factory-Built Buildings:
   a. Performs work within the scope of classes I-10C and I-10D,
   b. Installs evaporative cooling units and refrigeration air conditioning units, or
   c. Subcontracts with properly licensed installers or contractors.

B. Installer applicants. In addition to meeting the applicable requirements in subsections (A)(1) through (3), an applicant for an installer I-10C, I-10D, or I-10G license shall:

1. Have a minimum of three years practical or field management experience in the specific type of installation, a related construction field, or the equivalent, for which the applicant is applying. At least two of the three years experience shall be within 10 years of the date of application. The applicant may substitute technical training in the specific type of installation, a related construction field, or the equivalent, from an accredited college or university or from a Department of Fire, Building and Life Safety workshop for no more than one year of the three years experience required in this subsection;

2. Supply a written, notarized statement from each employer or other individual familiar with the applicant’s employment or other work experience, which includes the name, address, and telephone number of the individual making the statement, the dates of the applicant’s employment or other work experience, a description of the position held, and a notarial certificate, indicating that the signer vouches for the truthfulness of the statement as proof of meeting the experience requirement in subsection (B)(1); and

3. Supply a certified copy of each official transcript or certificate, demonstrating successful completion of any technical training the applicant wishes the Department to consider as proof of meeting the experience requirement in subsection (B)(1).

Historical Note
R4-34-302. Advertising
A. A retailer or broker shall include the retailer’s licensed business name in all advertising.
B. A broker shall not advertise or market a used home for more than the listed price.

Historical Note
Adopted effective January 31, 1979 (Supp. 79-1). Amended effective March 17, 1981 (Supp. 81-2). Amended subsections (A) and (C) effective October 20, 1981 (Supp. 81-5). Former Section R4-34-302 renumbered to R4-34-702, new Section R4-34-302 renumbered from R4-34-702 and amended effective July 3, 1991 (Supp. 91-3). Section repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999; new Section adopted by final rulemaking at 6 A.A.R. 145, effective December 8, 1999 (Supp. 99-4).

R4-34-303. Brokered Transactions
A. A broker shall provide a copy of the agency disclosure to the party or parties being represented.
B. The seller’s broker shall place all earnest money deposits received in connection with a sales transaction in the broker’s trust or escrow account in accordance with A.R.S. § 41-2180.
C. Upon consummation of a brokered transaction, the seller’s broker shall provide the seller with a closing statement that includes an accounting of all expenses charged to the seller, all pro rations, and all credits.
D. Upon consummation of a brokered transaction, the purchaser’s broker shall provide the purchaser with a closing statement that includes an accounting of all expenses charged to the purchaser, all pro rations, and all credits.
E. In a co-brokered transaction, the seller shall pay the commission shown on the listing agreement as the total commission.
F. The seller’s broker shall prepare an addendum to the listing agreement if any of the terms of the listing agreement change. The seller’s signature is required for the addendum to be valid. The addendum to the listing agreement shall reflect the date that the seller signs the addendum to the listing agreement.
G. Should the seller elect to finance the unpaid balance reflected on the offer to purchase or purchase contract, the agent shall:
   1. Maintain evidence of the original portion of the purchase price being financed by the seller or agent, and
   2. Maintain evidence that the title has been transferred into the name of the purchaser and that the lienholder’s position has been secured on the title.

Historical Note

R4-34-304. Repealed

Historical Note

R4-34-305. Repealed

Historical Note

R4-34-306. Repealed

Historical Note

R4-34-307. Repealed

Historical Note

R4-34-308. Repealed

Historical Note

R4-34-309. Repealed

Historical Note
Adopted effective February 8, 1991 (Supp. 91-1). Section repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999 (Supp. 99-4).

ARTICLE 4. SURETY BONDS

R4-34-401. Surety Bond Forms
Manufacturers, installers, and retailers except brokers of manufactured homes, mobile homes, or residential single-family factory-built buildings, shall submit the applicable surety bond amount from the list in R4-34-502, with a form provided by the Office of Administration.

Historical Note
R4-34-402. Cash Deposits
A. Except for applicants exempt under R4-34-401, any applicant for a license or renewal of a license who desires to post cash in place of a commercial surety bond shall deposit the applicable amount with the Deputy Director of the Office of Administration using any one of the following payment methods:
1. Cash,
2. Certified check payable to the State Treasurer,
3. Cashier’s check payable to the State Treasurer,
4. Bank money order payable to the State Treasurer, or
5. Postal money order payable to the State Treasurer.
B. Upon the receipt by the Deputy Director of the Office of Administration of an order from any court for the payment of funds on deposit, the Deputy Director shall make payment according to the court order, at which time the license is suspended under A.R.S. § 41-2179, if applicable. In order to reinstate the license, the licensee shall return the cash deposit to the required balance or, as an alternative, file a commercial surety bond for the full amount and pay all applicable reinstatement fees.
C. The cash deposit is not transferable.
D. The applicant shall make the cash deposit in the name of the applicant as it appears on the license application.
E. The applicant may withdraw the cash deposit under the following circumstances:
1. The license is not issued;
2. The license has been terminated for two years or more by expiration, revocation, or voluntary cancellation, and there are no outstanding claims against the deposit; and
3. Two years after an applicant files a commercial surety bond as a replacement for the cash deposit, if there are no outstanding claims.
F. Upon written request and subsequent approval by the Deputy Director of the Office of Administration, a cash deposit may be withdrawn by the owner of a sole proprietorship, any partner of a partnership, any person with written evidence of authority to withdraw the cash deposit for a corporation, and any other person who can establish legal right to the cash deposit.

Historical Note

R4-34-403. Repealed

Historical Note

R4-34-404. Repealed

Historical Note
R4-34-904 adopted effective January 31, 1979 (Supp. 79-1). Amended subsections (A) and (B) effective October 20, 1981 (Supp. 81-5). Editor’s correction, subsection (B)(2) (Supp. 85-2). Former Section R4-34-904 renumbered to R4-34-404 and amended effective July 3, 1991 (Supp. 91-3). Section repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999 (Supp. 99-4).

ARTICLE 5. FEES

R4-34-501. General
A. The Board shall establish a fee schedule before May 15 for the coming fiscal year.
B. The Deputy Director of the Office of Administration shall notify all licensees of the established fee schedule before June 1 of each year.
C. Licensees shall pay fees for the following services and may request a fee schedule from the Office:
1. Manufacturer license,
2. Retailer license,
3. Installer license,
4. Salesperson license,
5. Inspection and technical service,
6. Plans and supplements,
7. Installation permits and insignias,
or
8. Administrative functions.

Historical Note

R4-34-502. License Bond Amounts
A. An applicant shall submit the applicable license bond amount listed for each license class.

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<tr>
<td>I-10G</td>
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</tr>
</tbody>
</table>

B. The Board shall not renew a license unless the applicant’s surety bond or cash deposit is in full force and effect.

Historical Note
R4-34-503. HUD Monitoring Inspection

Each manufactured home manufacturer shall pay a fee as established by the U.S. Department of Housing and Urban Development for each unit manufactured in this state. This fee shall be made payable to the Secretary of HUD for purchase of HUD labels. This fee is in addition to the inspection fee required by R4-34-501(C)(5).

Historical Note

Adopted effective January 31, 1979 (Supp. 79-1).

R4-34-504. HUD Label Administration

In addition to the fees required under R4-34-501(C), each manufactured home manufacturer shall pay to the Office of Administration a fee of $5 for each label issued in this state.

Historical Note


R4-34-505. Plans and Supplements

If a plan or supplement submitted is not acceptable and the licensee fails to supply a complete and correct submittal within 60 days after the date on the notification letter, the Department shall treat the submittal fee originally paid by the licensee as forfeited and return the submittal. Resubmissions shall be accompanied by a new submittal fee.

Historical Note


R4-34-506. Intergovernmental Agreement Permits

The permit fee charged by local enforcement agencies participating in the Installation Inspection Program shall not exceed the amount established by the Board for the same service.

Historical Note


ARTICLE 6. MANUFACTURING, CONSTRUCTION, AND INSPECTION

R4-34-601. Manufactured Homes

A manufacturer shall build a manufactured home according to the standards in R4-34-102.

Historical Note


R4-34-602. Repealed

Historical Note


R4-34-603. Factory-built Buildings and FBB Subassemblies

A. A manufacturer shall construct a factory-built building or a FBB subassembly according to the applicable standards in R4-34-102(2) and:

1. Provide a complete set of drawings and specifications to the Department under R4-34-703(B);
2. Affix a permanent serial number to each unit during the first stage of manufacturing. If a unit has multiple sections, the manufacturer shall ensure that each section is separately identified. The serial number location and application method shall be shown in the plans required under R4-34-703(B)(7); and
3. Affix an Arizona Insignia of Approval to each completed section. The insignia shall indicate the unit serial number and plan approval number, and be located on the unit as indicated in the plans required under R4-34-703(B)(8).

B. A manufacturer of a non-residential factory-built building or a FBB subassembly shall comply with 10 A.A.C. 3 relating to the Americans with Disabilities Act Accessibility Guidelines (ADAAG).

C. The Department may require that a manufacturer of a factory-built building or FBBs subassembly produced and shipped before plan approval remove the unit from this state and remove insignias based on the following factors:

1. Probable harm to the public’s safety and welfare,
2. Number of previous violations of a similar nature, and
3. Unwillingness of the manufacturer to comply with plan submittal and requirements.

Historical Note


R4-34-604. Alterations

A retailer shall ensure that alterations are consistent with applicable standards and codes, as prescribed in R4-34-704(A).

Historical Note


R4-34-605. Reconstruction

A manufacturer shall ensure that reconstruction is consistent with applicable codes, as prescribed in R4-34-704(B).
**Historical Note**

Adopted effective January 31, 1979 (Supp. 79-1).
Amended effective April 21, 1982 (Supp. 82-2).

R4-34-606. Rehabilitation of Mobile Homes

A. A rehabilitation permit shall be obtained from the office prior to any modification of the unit.
B. The following requirements shall be met for a mobile home to be issued a certificate of compliance:
   1. A smoke detector (which may be a single station alarm device) shall be installed on any wall in a hallway or space connecting bedroom(s) and living areas. When located in a hallway the detector shall be between the return air intake and the living area. Each smoke detector shall be installed in accordance with its listing. The top of the detector shall be located between 4 inches to 12 inches below the ceiling;
   2. The walls, ceilings, and doors of each gas fired furnace and water heater compartment shall be lined with 5/16 inch gypsum board, unless the door opens to the exterior of the unit in which case the door may be all metal construction. All exterior compartments shall seal to the interior of the unit;
   3. Each room designated expressly for sleeping purposes shall have at least one outside egress window or approved exit device, unless it has an exterior exit door. The window or exit shall have a minimum clear dimension of 22 inches and a minimum clear opening of 5 square feet. The bottom of the exit shall not be more than 36 inches above the floor;
   4. All electrical systems shall be tested for continuity to assure that metallic parts are properly bonded, tested for operation to demonstrate that all equipment is connected and in working order, and given a polarity check to determine that connections are proper. The electrical system shall be properly protected for the required amperage load. If the unit wiring is of aluminum conductors, all receptacles and switches rated 20 amperes or less directly connected to the aluminum conductors shall be marked CO/ALR. Exterior receptacles other than heat tape receptacles, shall be of the ground fault circuit interrupter (GFI) type. Conductors of dissimilar metals (Copper/Aluminum/or Copper Clad Aluminum) must be connected in accordance with NEC Section 110-14; and
   5. The unit’s gas piping shall be tested with the appliance valves removed from the piping system and piping capped at those areas. The piping system shall withstand a pressure of at least 6 inch mercury or 3 psi gauge for a period of not less than 10 minutes without showing any drop in pressure. Pressure shall be measured with a mercury manometer or a slope gauge calibrated so as to read in increments of not greater than 1/10th pound or equivalent device. The source of normal operating pressure shall be isolated before the pressure test is made. After the appliance connections are reinstalled, the piping system and connections shall be tested with line pressure of not less than 10 inches nor more than 14 inches water column air pressure. The appliance connections shall be tested for leakage with soapy water or bubble solution. All gas furnaces and water heaters shall be vented to the exterior in accordance with UMC Chapter 8.
   C. The unit shall be inspected by the office to ascertain compliance with subsection (B).
   D. The office shall issue a certification of compliance for each unit in compliance with subsection (B), and affix an insignia of approval to the exterior wall nearest the point of entrance of the electrical service.
   E. Upon request the office shall issue a waiver for a unit that does not qualify as a mobile home. The category of the unit shall be determined by inspection of the unit or presentation of acceptable documents. The waiver fee is applicable if the category of the unit can be determined to qualify for exemption. If an inspection of the unit is necessary to determine its category, the inspection fee shall apply.
   F. A person served with a correction notice shall make the required corrections within the time period specified in the notice. The time period shall be determined by the office based on the severity of the hazard or violation in the time reasonably needed to make the correction. A minimum of 30 days shall be allowed unless an imminent safety hazard is found, or if the correction has been unreasonably delayed. In either event an Order to Vacate shall be issued to the person occupying the unit.
   G. A person occupying a non-rehabilitated unit shall be served with an Order to Vacate that unit within 5 days if on inspection the unit is found to contain an imminent safety hazard.

Historical Note

Adopted effective January 31, 1979 (Supp. 79-1).
Amended effective August 13, 1980 (Supp. 80-4).
Amended effective October 20, 1981 (Supp. 81-5).
Amended effective January 31, 1986 (Supp. 86-1).

R4-34-607. Manufacturing Inspection and Certification

A. The Department shall conduct manufactured home plant certification under R4-34-102(1).
B. Before issuing insignias the Department shall certify that each manufacturing facility of factory-built buildings or FBB subassemblies is capable of manufacturing the units or subassemblies to the specifications in the approved drawings and the quality assurance manual.
C. Unit certification:
   1. The Department shall conduct manufactured home certification under R4-34-102(1); and
   2. Each manufacturer of factory-built buildings, FBB subassemblies, and reconstructed units shall certify compliance with approved plans by affixing an Arizona Insignia of Approval to each unit or subassembly before delivery to a retailer.
D. Records and reporting:
   1. Each manufacturer of manufactured homes shall report affixing HUD labels, complete any other required reports, and establish and maintain records required under R4-34-102(1); and
   2. Each manufacturer of factory-built buildings, reconstructed units, and FBB subassemblies shall report to the Department affixing Arizona Insignias of Approval by the 15th day of each month.
E. The Department shall decertify a production facility for any one of the following reasons:
   1. An inspector identifies a serious defect existing in more than one unit;
ARTICLE 7. PLAN APPROVALS

R4-34-701. General
A. Before construction of a unit or subassembly, a manufacturer shall submit to the office:
1. The quality assurance manual required by R4-34-702,
2. The drawings and specifications required by R4-34-703.
B. Before performance of any alteration, a retailer shall obtain plan approval under R4-34-704(A).
C. Before installing an accessory structure or ground anchors for a manufactured home, mobile home, or residential single-family factory-built building, an installer shall obtain plan approval under R4-34-705.
D. Before reconstructing a manufactured home or factory-built building, a manufacturer shall obtain plan approval under R4-34-704(B).
E. Before the installation of a factory-built building a person installing the building shall obtain plan approval under R4-34-706.
F. The Department shall determine whether a submittal is administratively complete within 20 business days after receipt of a submittal. The Department shall review all plans within 20 business days after receipt of a complete submittal. The overall time-frame for plan approval is 40 days, excluding time for requirements that are the responsibility of the applicant.
G. A manufacturer, retailer, or installer shall provide an original and one copy of each submittal.
H. A manufacturer, retailer, or installer shall update each plan so that it is consistent with current standards and codes adopted by the Board. Supplements are acceptable for this purpose.
I. Plans submitted shall be stamped by an engineer registered by the State of Arizona.

Historical Note

R4-34-702. Quality Assurance Manuals
A. A manufacturer of manufactured homes shall prepare the quality assurance manual required by R4-34-102.(1).
B. A manufacturer of factory-built buildings and FBB subassemblies shall prepare a quality assurance manual that has all of the following attributes:
1. Format:
   a. 8 1/2 by 11 inch size,
   b. An index page, and
   c. Revision traceability.
2. Contents:
   a. An organization chart, by position, of all quality control personnel responsible for compliance of
A manufacturer of factory-built buildings or FBB subassemblies shall submit drawings and specifications that comply with the applicable standards in R4-34-102(1). The plans shall provide or have the following information or format attributes:

a. A description of the quality assurance program adhered to by personnel listed on the organization chart;

b. A flow chart depicting the minimum in-plant inspection requirements, using stations, a production control routing document, stage of manufacture or type of work control, or an equivalent method of in-plant inspection;

c. A description of tests performed and test equipment used;

d. A description of procedures for receiving and inspecting construction materials, handling damaged material, and rotating stock;

e. A description of procedures for control of drawings and insignias; and

f. A description of recordkeeping procedures.

**Historical Note**

Adopted effective January 31, 1979 (Supp. 79-1). Amended effective May 9, 1980 (Supp. 80-3). Amended subsections (B), (C), (D) effective October 20, 1981 (Supp. 81-5). Amended by adding subsection (E) effective January 20, 1982 (Supp. 82-1). Amended by adding subsection (C), paragraph (3) and subsection (D), paragraph (3) effective April 30, 1982 (Supp. 82-2). Amended effective April 5, 1985 (Supp. 85-2). Former Section R4-34-702 renumbered to R4-34-302, new Section R4-34-702 renumbered from R4-34-302 and amended effective July 3, 1991 (Supp. 91-1). Section repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999; new Section adopted by final rulemaking at 6 A.A.R. 145, effective December 8, 1999 (Supp. 99-4). Amended by final rulemaking at 11 A.A.R. 464, effective March 5, 2005 (Supp. 05-1). Amended by final rulemaking at 14 A.A.R. 286, effective March 8, 2008 (Supp. 08-1). Amended by final rulemaking at 18 A.A.R. 944, effective June 4, 2012 (Supp. 12-2).

**R4-34-704. Alterations or Reconstruction**

A. Alterations.

1. A retailer or broker performing any alteration on a unit shall send notice of the alteration to the manufacturer of the unit.

2. A retailer or broker performing an alteration on a unit shall prepare a detailed set of drawings and specifications that depict all aspects of the alteration and any serial numbers of the unit.

3. A retailer or broker shall ensure that manufactured home plans comply with the manufactured home construction and safety standards prescribed in R4-34-102(1).

4. A retailer or broker shall ensure that factory-built buildings and FBB subassemblies comply with R4-34-703(B).

B. Reconstruction.

1. A manufacturer shall comply with the standards in R4-34-102(2) when preparing reconstruction plans.

2. A manufacturer preparing reconstruction plans shall prepare a detailed set of drawings and specifications that depict all aspects of the reconstruction and contain the serial number of the unit.

**Historical Note**


**R4-34-705. Accessory Structures and Ground Anchoring**

A. Accessory structures.

1. For commercial factory-built buildings, an installer shall comply with the International Building Code when preparing accessory structure plans. For residential single-family factory-built buildings, an installer shall comply...
with the International Residential Code when preparing accessory structure plans.

2. The Department may approve a design that does not comply with the International Building Code or the International Residential Code based on a demonstration by an Arizona Registered Engineer that the design is engineered to standards at least equivalent to those in the applicable code.

3. An installer shall submit plans for all accessory structures except skirting, evaporative coolers, refrigeration, air conditioning systems, and storage rooms of less than 120 square feet.

B. Ground anchoring plans shall be certified by a registered engineer or approved by the Office of Manufactured Housing so that anchoring systems resist overturning and lifting effects of the wind.

1. An installer shall comply with the applicable requirements in R4-34-102 or the manufacturer’s installation manual when preparing ground anchoring plans. If neither apply, the Department shall compare the plans to those of an equivalent, current installation to determine whether the plans are approvable.

2. The plans shall be of sufficient detail and description that all materials, dimensions, and processes can be readily identified.

Historical Note


R4-34-706. Factory-built Building Installation

A. An installer shall complete and submit an application form obtained from the Department.

B. An installer shall include the following in the installation plans:

1. The site plans, including the location of the building and location of all utility lines;

2. The foundation plans, including:
   a. A description of the soil class and the soil bearing pressure;
   b. Footings designed to meet the minimum bearing pressure at the depth required;
   c. A complete set of drawings indicating dimensions and details of the foundation footing and anchoring; a complete list of materials, and a cross-identification of how materials will be used, in the appropriate view; and
   d. Calculations, prepared by an engineer, for all load conditions, including wind loads for horizontal loads, uplift loads, overturning; and horizontal and torsional earthquake effects on foundations.

3. Electrical drawings, including the isometric one-line diagram required by R4-34-102(2)(g), that contain the following information:
   a. Size and type of conductors, length of feeders, and all amperage;
   b. Dimensions of gutterways and raceways;
   c. Complete details of panelboards, switchboards, and distribution centers; and
   d. All grounding and bonding connections.

4. Plumbing drawings, including any one-line diagrams required by R4-34-102(2)(d) and (e) that contain the following information:
   a. Location of sewer tap, water meter, and gas meter;  
   b. Size, length, and all materials for sewer, water, and gas lines; and
   c. Location of all cleanouts and grade of sewer line.

Historical Note


ARTICLE 8. PERMITS AND INSTALLATION

R4-34-801. Permits

A. A licensee or consumer shall obtain a permit for the installation of manufactured homes, mobile homes, factory-built buildings, accessory structures, or rehabilitation of mobile homes.

B. The Department shall issue or deny a permit within seven business days from the date the application is received.

C. A licensee or consumer shall obtain a permit before beginning any work and post the permit in a conspicuous location onsite. The licensee who contracts to install a unit or a licensed installer who subcontracts to perform the installation shall verify that a valid installation permit has been obtained before beginning the installation.

D. Local jurisdictions that have entered into agreement with the Department may issue installation permits and conduct inspections.

E. A permit fee shall be charged either by the Department or the local jurisdiction participating in the installation inspection program. The fee charged by the Department shall be the amount established by the Board under A.R.S. § 41-2144(A)(4). The fee charged by a local jurisdiction shall not exceed the amount established by the Board under A.R.S. § 41-2144(A)(4).

F. Every permit except a special use permit expires six months from the date the permit is issued. The Department may extend the permit for good cause.

G. A licensee or consumer shall obtain a certificate of occupancy from the Department before occupying a commercial factory-built building.

H. The permit holder, owner, or contractor shall call for all required inspections.

I. All work listed on the permit shall be accessible (opened) for inspections.

J. Approved plans or the manufacturer’s installation manual shall be available onsite.

K. A special use permit for factory-built buildings used for events of 45 days or less shall be obtained from the Department. The permit expires 45 days from the date of purchase. The unit shall be removed from the site when the permit expires.

Historical Note


R4-34-802. General Installation

A. An installer or contractor shall affix and complete an Arizona Insignia of Approval to each manufactured home, mobile home, or single-family factory-built building at the tail-light...
end of each unit, approximately one foot up from the floor and one foot in from the road side. “Road side” means the right side of the unit when viewing the unit from the hitch. The installer or contractor shall affix the insignia before calling the Office for an inspection.

B. An installer or contractor shall make a report by the 15th of each month regarding compliance with subsection (A).

C. An installer or contractor shall check with local jurisdictions for frost line requirements governing permanent foundations or utilities.

D. An installer or contractor shall install multi-sectional manufactured homes manufactured after June 30, 1977, according to the manufacturer’s instructions for joining the sections, making utility cross-over connections, and providing center (marriage) line and perimeter supports if the instructions are consistent with this Chapter.

Historical Note
Adopted effective January 31, 1979 (Supp. 79-1). Amended subsections (A), (D), (F), and (L) effective October 20, 1981 (Supp. 81-5). Former Section R4-34-802 repealed, new Section R4-34-802 renumbered from R4-34-502 and amended effective July 3, 1991 (Supp. 91-1). Section repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999; new Section adopted by final rulemaking at 6 A.A.R. 145, effective December 8, 1999 (Supp. 99-4).

R4-34-803. Soil and Materials
A. A licensee that contracts with a consumer for an installation shall perform or contract for any site preparation necessary to make the site compatible with the manufactured home, mobile home, or residential single-family factory-built building to be installed. The licensee may contract with a licensed installer or other qualified professional to assess site and soil compatibility or perform any necessary preparation work. The party actually performing the site compatibility assessment or work is primarily responsible for work related to site compatibility or preparation. The licensee that contracts with the consumer, if a different entity, is secondarily responsible.

B. Soil Preparation
1. Unless contrary to law, an installer or contractor shall:
   a. Divert any surface water away from the dwelling, any accessory structures, and their support components;
   b. Provide sufficient drainage to prevent standing water and soil saturation detrimental to structures;
   c. Establish soil grades that slope away from the dwelling, any accessory structures, and their support components; and
   d. Compact all fill and backfill within 6 feet of the perimeter of the unit to prevent displacement.
2. When determining soil compaction an installer or contractor shall:
   a. Assume a minimum bearing capacity of 1,000 psf; or
   b. Test and prove a minimum bearing capacity of 1,000 psf to the onsite inspector; or
   c. Adhere to the specifications of a registered engineer, provided onsite, to an inspector.
C. Materials: An installer or contractor shall use materials that comply with applicable standards incorporated in R4-34-102.
D. Footings: An installer or contractor shall:
1. Place each footing on a surface capable of distributing equalized transfer of applied loads;
5. For a below ground installation, ensure that the height of the bottom of the perimeter rim joist is a minimum of 6 inches above finished grade;

6. Ensure that the height of the bottom of the floor joist is a minimum of 18 inches above soil base unless otherwise specified by the manufacturer in instructions consistent with this Chapter;

7. Locate supports or piers under the main beams of the chassis at intervals no greater than 6 feet and no more than 2 feet from either end of each main beam. When intervals no greater than 6 feet are not feasible because of running gear, supports shall be located as close as possible to the running gear with the remainder of the supports spaced according to the 6 and 2 foot requirements;

8. Stagger the flanges on top of supports or piers so that every other flange is on the opposite side of the beam; and

9. Construct permanent support heights to the International Building Code or the International Residential Code as applicable under R4-34-102(2)(a) or (b).

F. Wedges: An installer or contractor shall:
1. Use two wedges in alignment per support;
2. Use wood wedges that are a minimum of 1 1/2 inches by 3 1/2 inches by 6 inches; and
3. Drive wedges in tightly so that the height developed does not exceed 2 inches at the support; and
4. Provide each I-Beam of the building with full bearing on the wedge; or
5. Use listed or approved shimming material according to the manufacturer’s wedge instructions; or
6. Use material and methods designed by an Arizona professional engineer or architect and approved by the authority having jurisdiction.

G. Anchoring: An installer or contractor shall use an anchoring system that is certified by a registered, professional engineer.

H. Snow/Wind Loads
1. Under 24 CFR 3282.11 and 3280.305, the authority having jurisdiction may not require manufactured homes to be built or installed to a snow load greater than 20 pounds per square foot unless the jurisdiction has received approval from HUD.
2. Manufactured homes may be manufactured and installed, at the owner’s option, to withstand greater than a 20 pound snow load. An installer or contractor shall install these units according to the manufacturer’s instructions for the foundation support system if the instructions are consistent with this Chapter.

I. Permanent Foundation Systems
1. An installer or contractor shall install factory-built buildings in compliance with R4-34-102(2).
2. An installer or contractor shall install manufactured and mobile homes according to the manufacturer’s permanent foundation requirements or sealed engineered plans if the requirements or plans are consistent with this Chapter.

Historical Note

R4-34-804. Utilities
A. Utility service facilities. An installer or contractor shall not enter into an agreement to connect units to utility service facilities that are not compatible with the units.

B. Electric. An installer or contractor shall make all electric connections or installations according to the National Electric Code.
1. An installer or contractor shall connect manufactured or mobile homes using a piece of flexible metal conduit no greater than 36 inches and no less than 18 inches long. The installer or contractor shall use liquidtight, flexible metal conduit when a manufactured home is set at ground level or in a wet location. The installer or contractor shall connect the flexible metal conduit at the location so that only the rigid conduit emerges from the ground and the conduit extends at least 6 inches above ground level.
2. When service equipment is installed on a manufactured home, an installer or contractor shall install the grounding electrode in compliance with the National Electrical Code. The following items shall be installed according to the National Electrical Code:
   a. Feeder size according to Table 310.15(B)(6),
   b. Power supply cord according to 550.10, and
   c. Conduit according to Chapter 9 (including Annex C).

C. Sewer. An installer or contractor shall make sewer connections or installations in compliance with the International Plumbing Code.

D. Water. An installer or contractor shall make water connections or installations in compliance with the International Plumbing Code.

E. Gas. An installer or contractor shall make gas connections or installations in compliance with the International Fuel Gas Code.
1. The installer or contractor shall perform a gas test with the gas appliance flex connectors capped and the valves in the open position. The installer or contractor shall pressurize the system at 6 inches of mercury (45 ounces of mercury) or 3 psi gauge for 15 minutes. The system passes if there is no drop in pressure during the test. Pressure shall be measured with a mercury manometer or slope gauge calibrated in increments not greater than 1/10th of a pound, or an equivalent device. The source of normal operating pressure shall be isolated before the pressure test.
2. The flexible connector shall not be more than 6 feet long.
3. Flex connectors are not required for permanent foundation systems.

F. Mechanical. An installer or contractor shall make mechanical connections and installations in compliance with the International Mechanical Code and the International Energy Conservation Code.

Historical Note

R4-34-805. Accessory Structures
A. For the purpose of A.R.S. § 41-2142(1), the word “attached” means fastened to a manufactured or mobile home or residential single-family, factory-built building at the time of its
installation and removable without degradation of the structural integrity of the unit.

B. An installer or contractor shall install, assemble, or construct each accessory structure in compliance with applicable standards incorporated by reference in R4-34-102(3).

C. An installer or contractor installing manufactured homes, mobile homes, or factory-built buildings shall provide an opening that permits access to the underfloor area. If the access is through the skirting, retaining wall, or perimeter foundation wall, the access opening shall measure at least 18 inches by 24 inches.

D. The Department shall approve or reject plans as prescribed in R4-34-705.

E. Above or Below Grade Skirting
   1. For all skirting, an installer or contractor shall:
      a. Provide an 18 inch by 24 inch minimum access crawl hole,
      b. Ventilate skirting according to the International Building Code or the International Residential Code, and
      c. Install skirting according to this Chapter or the manufacturer’s instructions if the instructions are consistent with this Chapter.
   2. For below grade skirting, an installer or contractor shall design and construct skirting as a retaining wall according to the International Building Code or the International Residential Code.

Historical Note

Exhibit 1. Repealed

Historical Note
Exhibit 1 repealed by final rulemaking at 18 A.A.R. 944, effective June 4, 2012 (Supp. 12-2).

ARTICLE 9. REPEALED

R4-34-901. Repealed

Historical Note

ARTICLE 10. ADMINISTRATIVE PROCEDURES

R4-34-1001. Rehearing or Review
A. A party may amend a petition for rehearing or review filed under A.R.S. § 41-2184 at any time before it is ruled upon by the Director. The opposing party may file a response within 15 days after the date the petition or amended petition is filed. The Director may require the filing of written briefs explaining the issues raised in the petition and provide for oral argument.

B. The Director may affirm or modify the decision or grant a rehearing to all or any of the parties on all or part of the issues for any of the reasons in A.R.S. § 41-2184(D). An order modifying the decision or granting a rehearing shall specify with particularity the grounds on which the modification or rehearing is granted, and any rehearing shall cover only those matters.

C. When a petition for rehearing or review is based upon affidavits, they shall be served with the petition. An opposing party or the Attorney General may, within 10 days after service, serve opposing affidavits.

D. Not later than 15 days after the date of the decision, the Director may grant a rehearing or review on the Director’s own initiative for any reason for which the Director might have granted relief on the petition of a party. The Director may grant a petition for rehearing or review, timely served, for a reason not stated in the motion.

Historical Note

ARTICLE 11. RENUMBERED

R4-34-1101. Renumbered

Historical Note
Adopted as an emergency effective March 24, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-2). Former Section R8-2-41 adopted as an emergency now adopted as a permanent rule effective June 24, 1982 (Supp. 82-3). Adopted as an emergency effective October 12, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-5). Emergency expired. Former Section R8-2-41 repealed, new Section R8-2-41 adopted effective April 2, 1985 (Supp. 85-2). Former Section R8-2-41 repealed, new Section R4-34-1101 adopted as an emergency effective March 14, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-1). Emergency expired. Former Section R8-2-41 repealed, new Section R4-34-1101 adopted as a permanent rule with editorial corrections effective November 16, 1988 (Supp. 88-4). Section R4-34-1101 repealed, new Section adopted effective July 20, 1990 (Supp. 90-3). Section R4-34-1101 renumbered to R4-36-201 (Supp. 95-4).
41-3953. **Department powers and duties**

A. The department is responsible for establishing policies, procedures and programs that the department is authorized to conduct to address the affordable housing issues confronting this state, including housing issues of low income families, moderate income families, housing affordability, special needs populations and decaying housing stock. Among other things, the department shall provide to qualified housing participants and political subdivisions of this state financial, advisory, consultative, planning, training and educational assistance for the development of safe, decent and affordable housing, including housing for low and moderate income households.

B. Under the direction of the director, the department shall:

1. Establish guidelines applicable to the programs and activities of the department for the construction and financing of affordable housing and housing for low and moderate income households in this state. These guidelines shall meet or exceed all applicable state or local building and health and safety code requirements and, if applicable, the national manufactured home construction and safety standards act of 1974 and title VI of the housing and community development act of 1974 (P.L. 93-383, as amended by P.L. 95-128, 96-153 and 96-339). Guidelines established pursuant to this paragraph do not apply to the department's activities prescribed in section 35-726, subsection E.

2. Accept and allocate any monies as from time to time may be appropriated by the legislature for the purposes set forth in this article.

3. Perform other duties necessary to administer this chapter.

4. Perform the duties prescribed in sections 35-726 and 35-728.

5. Stimulate and encourage all local, state, regional and federal governmental agencies and all private persons and enterprises that have similar and related objectives and purposes, cooperate with the agencies, persons and enterprises and correlate department plans, programs and operations with those of the agencies, persons and enterprises.

6. Conduct research on its own initiative or at the request of the governor, the legislature or state or local agencies pertaining to any department objectives.

7. Provide information and advice on request of any local, state or federal agencies, private persons and business enterprises on matters within the scope of department activities.

8. Consult with and make recommendations to the governor and the legislature on all matters concerning department objectives.

9. Make annual reports to the governor and the legislature on its activities, including the geographic location of its activities, its finances and the scope of its operations.

C. Under the direction of the director, the department may:

1. Assist in securing construction and mortgage financing from public and private sector sources.
2. Assist mortgage financing programs established by industrial development authorities and political subdivisions of this state.

3. Assist in the acquisition and use of federal housing assistance programs pertinent to enhance the economic feasibility of a proposed residential development.

4. Assist in the compliance of a proposed residential development with applicable federal, state and local codes and ordinances.

5. Prepare and publish planning and development guidelines for the establishment and delivery of housing assistance programs.

6. Contract with a federal agency to carry out financial work on the federal agency's behalf and accept payment for the work.

7. Subcontract for the financial work prescribed in paragraph 6 of this subsection and make payments for that subcontracted work based on the expectation that the federal agency will pay for that work.

8. Accept payment from a federal agency for work prescribed in paragraph 6 of this subsection and deposit those payments in the Arizona department of housing program fund established by section 41-3957.

9. Contract for the services of outside advisers, consultants and aides reasonably necessary or desirable to enable the department to adequately perform its duties.

10. Contract for and incur obligations reasonably necessary or desirable within the general scope of department activities and operations to enable the department to adequately perform its duties.

11. Use any media of communication, publication and exhibition in the dissemination of information, advertising and publicity in any field of its purposes, objectives or duties.

12. Adopt rules deemed necessary or desirable to govern its procedures and business.

13. Contract with other agencies in furtherance of any department program.

14. Use monies, facilities or services to provide contributions under federal or other programs that further the objectives and programs of the department.

15. Accept gifts, grants, matching monies or direct payments from public or private agencies or private persons and enterprises for the conduct of programs that are consistent with the general purposes and objectives of this article and deposit these monies in the Arizona department of housing program fund established by section 41-3957.

16. Establish and collect fees and receive reimbursement of costs in connection with any programs or duties performed by the department and deposit the fees and cost reimbursements in the Arizona department of housing program fund established by section 41-3957.

D. For the purposes of this section, the department is exempt from chapter 23 of this title.
E. The department is the designated state public housing agency as defined in the United States housing act of 1937 (42 United States Code sections 1401 through 1440) for the purpose of accepting federal housing assistance monies and may participate in the housing assistance payments program. Federal monies may be secured for all areas of this state subject only to the limitations prescribed in subsection F of this section.

F. For areas of this state where an existing public housing authority has not been established pursuant to section 36-1404, subsection A, the department acting as a public housing agency may undertake all activities under the section 8 tenant-based rental housing assistance payment program, except that the department shall not undertake a section 8 tenant-based rental housing assistance payment program within the boundaries of a city, town or county unless authorized by resolution of the governing body of the city, town or county. If the department accepts monies for a section 8 tenant-based rental housing assistance payment program for areas of this state where an existing public housing authority has been established pursuant to section 36-1404, subsection A, the department shall only accept and secure federal monies to provide housing for the seriously mentally ill or other populations with disabilities. The department may accept and secure federal monies for undertaking all contract administrator activities authorized under a section 8 project-based rental housing assistance payment program in all areas of this state and this participation does not require the authorization of any local governing body.

G. The department shall not itself directly own, construct, operate or rehabilitate any housing units, except as may be necessary to protect the department's collateral or security interest arising out of any department programs.

H. Notwithstanding any other provision of this section, the department may obligate monies as loans or grants applicable to programs and activities of the department for the purpose of providing housing opportunities for low or moderate income households or for housing affordability or to prevent or combat decaying housing stock. Unless otherwise required by federal or state law, any loan repayments shall be deposited in the Arizona department of housing program fund established by section 41-3957.

I. For any construction project financed by the department pursuant to subsection C of this section, except for contract administration activities in connection with the project-based section 8 program, the department shall notify a city, town, county or tribal government that a project is planned for its jurisdiction and, before proceeding, shall seek comment from the governing body of the city, town, county or tribal government or an official authorized by the governing body of the city, town, county or tribal government. The department shall not interfere with or attempt to override the local jurisdiction's planning, zoning or land use regulations.

41-4001. Definitions

In this chapter, unless the context otherwise requires:

1. "Accessory structure" means the installation, assembly, connection or construction of any one-story habitable room, storage room, patio, porch, garage, carport, awning, skirting, retaining wall, evaporative cooler, refrigeration air conditioning system, solar system or wood decking attached to a new or used manufactured home, mobile home or residential single family factory-built building.

3. "Alteration" means the replacement, addition, modification or removal of any equipment or installation after
the sale by a manufacturer to a dealer or distributor but before the sale by a dealer to a purchaser, which may
affect compliance with the standards, construction, fire safety, occupancy, plumbing or heat-producing or
electrical system. Alteration does not mean the repair or replacement of a component or appliance requiring
plug-in to an electrical receptacle if the replaced item is of the same configuration and rating as the component
or appliance being repaired or replaced. Alteration also does not mean the addition of an appliance requiring
plug-in to an electrical receptacle if such appliance is not provided with the unit by the manufacturer and the
rating of the appliance does not exceed the rating of the receptacle to which such appliance is connected.

4. "Board" means the board of manufactured housing.

5. "Broker" means any person who acts as an agent for the sale or exchange of a used manufactured home or
mobile home except as exempted in section 41-4028.

6. "Certificate" means a numbered or serialized label or seal that is issued by the director as certification of
compliance with this chapter.

7. "Component" means any part, material or appliance that is built-in as an integral part of the unit during the
manufacturing process.

8. "Consumer" means either a purchaser or seller of a unit regulated by this chapter who utilizes the services of
a person licensed by the department.

9. "Consummation of sale" means that a purchaser has received all goods and services that the dealer or broker
agreed to provide at the time the contract was entered into, the transfer of title or the filing of an affidavit of
affixture, if applicable, to the sale. Consummation of sale does not include warranties.

10. "Dealer" means any person who sells, exchanges, buys, offers or attempts to negotiate or acts as an agent
for the sale or exchange of factory-built buildings, manufactured homes or mobile homes except as exempted
in section 41-4028. A lease or rental agreement by which the user acquired ownership of the unit with or
without additional remuneration is considered a sale under this chapter.

11. "Defect" means any defect in the performance, construction, components or material of a unit that renders
the unit or any part of the unit unfit for the ordinary use for which it was intended.

12. "Department" means the Arizona department of housing.

13. "Director" means the director of the department.

14. "Earnest monies" means all monies given by a purchaser or a financial institution to a dealer or broker
before consummation of the sale.

15. "Factory-built building":

(a) Means a residential or commercial building that is:

(i) Either wholly or in substantial part manufactured at an off-site location and transported for installation or
completion, or both, on-site.

(ii) Constructed in compliance with adopted codes, standards and procedures.
(iii) Installed temporarily or permanently.

(b) Does not include a manufactured home, recreational vehicle, panelized building or domestic or light commercial storage building.

16. "HUD" means the United States department of housing and urban development.

17. "Imminent safety hazard" means an imminent and unreasonable risk of death or severe personal injury.

18. "Installation" means:

(a) Connecting new or used mobile homes, manufactured homes or factory-built buildings to on-site utility terminals or repairing these utility connections.

(b) Placing new or used mobile homes, manufactured homes, accessory structures or factory-built buildings on foundation systems or repairing these foundation systems.

(c) Providing ground anchoring for new or used mobile homes or manufactured homes or repairing the ground anchoring.

19. "Installer" means any person who engages in the business of performing installations of manufactured homes, mobile homes or residential single family factory-built buildings.

20. "Installer of accessory structures" means any person who engages in the business of installing accessory structures.

21. "Listing agreement" means a document that contains the name and address of the seller, the year, manufacturer and serial number of the listed unit, the beginning and ending dates of the time period that the agreement is in force, the name of the lender and lien amount, if applicable, the price the seller is requesting for the unit, the commission to be paid to the licensee and the signatures of the sellers and the licensee who obtains the listing.

22. "Local enforcement agency" means a zoning or building department of a city, town or county or its agents.

23. "Manufactured home" means a structure built in accordance with the act.

24. "Manufacturer" means any person engaged in manufacturing, assembling or reconstructing any unit regulated by this chapter.

25. "Mobile home" means a structure built before June 15, 1976, on a permanent chassis, capable of being transported in one or more sections and designed to be used with or without a permanent foundation as a dwelling when connected to on-site utilities. Mobile home does not include recreational vehicles and factory-built buildings.

26. "Office" means the office of manufactured housing within the department.

27. "Purchaser" means a person purchasing a unit in good faith from a licensed dealer or broker for purposes other than resale.
28. "Qualifying party" means a person who is an owner, employee, corporate officer or partner of the licensed business and who has active and direct supervision of and responsibility for all operations of that licensed business.

29. "Reconstruction" means construction work performed for the purpose of restoration or modification of a unit by changing or adding structural components or electrical, plumbing or heat or air producing systems.

30. "Recreational vehicle" means a vehicular type unit that is:

(a) A portable camping trailer mounted on wheels and constructed with collapsible partial sidewalls that fold for towing by another vehicle and unfold for camping.

(b) A motor home designed to provide temporary living quarters for recreational, camping or travel use and built on or permanently attached to a self-propelled motor vehicle chassis or on a chassis cab or van that is an integral part of the completed vehicle.

(c) A park trailer built on a single chassis, mounted on wheels and designed to be connected to utilities necessary for operation of installed fixtures and appliances and has a gross trailer area of not less than three hundred twenty square feet and not more than four hundred square feet when it is set up, except that it does not include fifth wheel trailers.

(d) A travel trailer mounted on wheels, designed to provide temporary living quarters for recreational, camping or travel use, of a size or weight that may or may not require special highway movement permits when towed by a motorized vehicle and has a trailer area of less than three hundred twenty square feet. This subdivision includes fifth wheel trailers. If a unit requires a size or weight permit, it shall be manufactured to the standards for park trailers in 119.5 of the American national standards institute code.

(e) A portable truck camper constructed to provide temporary living quarters for recreational, travel or camping use and consisting of a roof, floor and sides designed to be loaded onto and unloaded from the bed of a pickup truck.

31. "Salesperson" means any person who, for a salary, commission or compensation of any kind, is employed by or acts on behalf of any dealer or broker of manufactured homes, mobile homes or factory-built buildings to sell, exchange, buy, offer or attempt to negotiate or act as an agent for the sale or exchange of an interest in a manufactured home, mobile home or factory-built building.

32. "Seller" means a natural person who enters into a listing agreement with a licensed dealer or broker for the purpose of resale.

33. "Site development" means the development of an area for the installation of the unit's or units' locations, parking, surface drainage, driveways, on-site utility terminals and property lines at a proposed construction site or area.

34. "Statutory agent" means a person who is on file with the corporation commission as the statutory agent.

35. "Title transfer" means a true copy of the application for title transfer that is stamped or validated by the appropriate government agency.

36. "Unit" means a manufactured home, mobile home, factory-built building or accessory structures.
37. "Used unit" means any unit that is regulated by this chapter and that has been sold, bargained, exchanged or given away from a purchaser who first acquired the unit that was titled in the name of such purchaser.

38. "Workmanship" means a minimum standard of construction or installation reflecting a journeyman quality of the work of the various trades.

41-4002. Office of manufactured housing; purpose

The purpose of the office of manufactured housing within the department is to maintain standards of quality and safety for manufactured homes, factory-built buildings, mobile homes and accessory structures and installation of manufactured and mobile homes, factory-built buildings and accessory structures. The affairs of the office of manufactured housing shall be conducted consistently with minimum standards of the United States department of housing and urban development so as to be designated the "state inspector" for manufactured homes and related industries. The office shall implement all existing laws and regulations mandated by the federal government, its agencies and this state for such purposes.

41-4004. Powers and duties of the deputy director; work by unlicensed person; inspection agreement; permit

A. The deputy director under the authority and direction of the director shall administer the provisions of this article and the rules adopted by the board.

B. The deputy director shall:

1. Establish a state inspection and design approval bureau within the office.

2. Enter into reciprocity agreements and compacts with other states or private organizations that adopt and maintain standards of construction reasonably consistent with those adopted pursuant to this article on determining that such standards are being enforced. The deputy director may void such agreements on determining such standards are not being maintained.

3. Authorize affixment of insignia to indicate compliance with the construction and installation requirements of this article.

4. Enter and inspect or investigate premises at reasonable times, after presentation of credentials by the deputy director or personnel of the office or under contract with the office, where units regulated by this article are manufactured, sold or installed, to determine if any person has violated this article or the rules adopted pursuant to this article.

5. Enter into agreements with local enforcement agencies to enforce the installation standards in their jurisdiction provided the deputy director is monitoring their performance to be consistent with the installation standards of the office.

6. If an inspection reveals that a mobile home entering this state for sale or installation is in violation of this chapter, order its use discontinued and the mobile home or any portion of the mobile home vacated. The order to vacate shall be served on the person occupying the mobile home and copies of the order shall be posted at or on each exit of the mobile home. The order to vacate shall include a reasonable period of time in which the violation can be corrected.
7. If an inspection of a new installation of any mobile home or manufactured home reveals that the natural gas or electrical connections of the installation do not conform to the installation standards promulgated pursuant to this article and the nonconformance constitutes an immediate danger to life and property, the inhabitants of the home shall be notified immediately and in their absence a notice citing the violations shall be posted in a conspicuous location. The deputy director may order that the public service corporation, municipal corporation or other entity or individual supplying the service to the unit discontinue such service. If the danger is not immediate, the deputy director shall allow at least twenty-four hours to correct the condition before ordering any discontinuation of service.

8. If construction, installation, rebuilding or any other work is performed in violation of this chapter or any rule adopted pursuant to this chapter, order the work stopped. The order to stop work shall be served on the person doing the work or on the person causing the work to be done. The person served with the order shall immediately cease the work until authorized by the office to continue.

9. Verify written complaints filed with the office by purchasers within one year after the date of purchase or installation of units. Complaints shall be accepted from consumers which allege violations by any dealer, broker, salesperson, installer or manufacturer of this chapter or the rules adopted pursuant to this chapter.

10. On verification of a complaint pursuant to paragraph 9 of this subsection, serve notice to the dealer, broker, salesperson, installer or manufacturer that such verified complaint shall be satisfied as specified by the office.

C. Any dealer, broker, salesperson, installer or manufacturer licensed by the office shall respond within thirty days to a notice served pursuant to subsection B, paragraph 10 of this section. Failure to respond is grounds for disciplinary action pursuant to section 41-4039.

D. If an inspection or an investigation reveals that any work that is required to be performed by a licensee was performed by an unlicensed person required to be licensed pursuant to this chapter, the deputy director, an employee or a person under contract with the office may cite the unlicensed person. The citation may be issued and served pursuant to section 13-3903. The action shall be filed in the justice court in the precinct where the unlicensed activity occurred.

E. The deputy director may enter into agreements with acceptable qualified building inspection personnel or inspection organizations for enforcement of inspection requirements provided the deputy director is monitoring their performance to be consistent with this article, rules adopted pursuant to this article and the established procedures of the office. If the deputy director determines that the person's or organization's performance is not consistent with this article, rules adopted pursuant to this article and the established procedures of the office, the person or organization may not enforce the contract and the aggrieved person shall be entitled to a refund of the consideration paid under the agreement.

F. If a mobile or manufactured home or factory-built building is installed without first obtaining an installation permit, the deputy director shall send a written notice to the purchaser specifying that a permit is required. If a permit is not obtained within thirty days after receipt of the written notice, the department shall issue and serve by personal service or certified mail a citation on the purchaser. Service of the citation by certified mail is complete after forty-eight hours after the time of deposit in the mail. On failure of the purchaser to comply with the citation within twenty days after its receipt, the deputy director shall file an action in the justice court in the precinct where installation occurred for violation of this subsection.
41-4005. Submission of construction, reconstruction or alteration plans by manufacturers; approval; revocation

A. Prior to the construction of any new model of factory-built building or subassembly, each manufacturer who intends to manufacture for delivery or sell such unit in this state shall submit to the director for approval detailed plans of each model and shall have obtained such approval.

B. Prior to reconstruction of any factory-built building, including those for which the director has not approved plans before construction, the licensee shall submit to the director for approval detailed plans of the factory-built building that indicate conformance with this state's adopted codes as certified by an engineer who is registered pursuant to title 32, chapter 1.

C. Prior to installation of a factory-built building or accessory structure, each licensee who intends to accomplish the construction shall submit to the director for approval detailed plans for each project and shall obtain the director's approval.

D. The office or a third party inspector who is authorized by the deputy director to verify compliance with the approved plans shall inspect the factory-built building.

E. A plan approval may be immediately suspended by the written notice of the deputy director if the deputy director has reasonable cause to believe that the licensee is not complying with the plan as approved or that the licensee has used inferior materials or workmanship in construction. This notice shall be served by personal service to an in-state licensee and by certified mail to an out-of-state licensee. Service of process by certified mail is complete after forty-eight hours from the time of deposit in the mail.

41-4006. Preemption of local building codes; responsibility for maintenance of utility connections

A. No building code or local enforcement agency or its adopted building codes may require, as a condition of entry into or sale in any county or municipality, that any unit which has been certified pursuant to this article be subjected to any local enforcement inspection to determine compliance with any standard covering any aspect of the unit which is inspected pursuant to this article.

B. Except where a local enforcement agency participates in the office permit and insignia issuance program for the installation of manufactured homes, mobile homes, factory-built buildings and accessory structures and inspection of such installations, no local enforcement agency shall subject any unit installed to any local inspections or charge a fee for any services provided pursuant to this article.

C. A local enforcement agency in any county or municipality shall recognize the minimum standards of the act as equal to any nationally accepted or locally adopted building code standard.

D. Nothing in subsection A, B or C of this section shall prevent the application of local codes and ordinances governing zoning requirements, fire zones, building setback, maximum area and fire separation requirements, site development and property line requirements and requirements for on-site utility terminals for factory-built buildings, manufactured homes and mobile homes.

E. Notwithstanding any other provision of this section, the owner of a manufactured home or mobile home located in a park subject to title 33, chapter 11 is responsible for the maintenance of utility connections from any outlets furnished by the landlord pursuant to section 33-1434 to the unit, except that
the landlord is responsible for the maintenance of connections for any distance greater than twenty-five feet to the point at which the utility connections are the property of the providing utility company if the outlet is located outside the lot line of the owner's unit and is more than twenty-five feet from the unit. A local enforcement agency that determines that local code requirements are not being met or that maintenance or safety activities are needed for utility connections may not require anyone except the responsible party to perform or pay for such activities.

41-4007. Notification and correction of defects by manufacturer; notice to purchaser

A. Every manufacturer of units shall furnish notification of any defect in any unit produced by such manufacturer which he determines, in good faith, relates to a construction or safety standard adopted pursuant to this chapter or contains a defect which constitutes an imminent safety hazard to the purchaser of such unit, within sixty days after such manufacturer has discovered the defect. Every manufacturer of units shall maintain a record of the names and addresses of the purchaser of each unit for the purposes of this section. Such information shall be provided by the dealer or broker upon purchase of each unit and reported monthly to the manufacturer.

B. The notification required by subsection A shall contain a clear description of such defect or failure to comply with such construction or safety standards, an evaluation of the risk to the occupants' safety reasonably related to such defect and a statement of the measures needed to repair the defect. The notification shall also inform the owner whether the defect will be corrected at no cost to the purchaser of the unit or at the expense of the purchaser.

41-4008. Costs of complying with standards; reimbursement from relocation fund; definition

A. The costs of bringing a mobile home into compliance with the requirements of this article may be reimbursed to the owner from the mobile home relocation fund established by section 33-1476.02 if all of the following are true:

1. The mobile home is moved from one mobile home park in this state to another mobile home park in this state.

2. The household income of the owner of the mobile home is at or below one hundred per cent of the current federal poverty level guidelines as published annually by the United States department of health and human services.

3. The mobile home is not being relocated as the result of a judgment in a forcible detainer or special detainer action requiring the owner to vacate the mobile home park in which the mobile home is located.

B. The amount of the reimbursement pursuant to this section shall not exceed one thousand five hundred dollars for the costs related to any mobile home.

C. The fund shall have a claim for reimbursement of sums received under this section by an individual who fails to reside in the mobile home for six months following its relocation, unless the failure was due to the death or disability of a resident.

D. For the purposes of this section, "owner" means an individual whose primary residence has been the mobile home continuously for the six-month period preceding an application for reimbursement, or an
individual who has purchased the mobile home and who intends to reside in the mobile home as the 
individual's primary residence after the relocation.

41-4009. Board of manufactured housing; members; meetings
A. There is established a board of manufactured housing. The board shall consist of nine members 
appointed by the governor pursuant to section 38-211. One member shall represent the manufacturers, one 
shall represent the installer industry, one shall represent manufactured home park owners, one shall 
represent financial institutions, one shall represent the manufacturers of residential factory-built buildings, 
one shall represent the dealers and brokers and three members of the public, at least one of whom has as 
his residence a mobile or manufactured home and is a resident of a mobile home park or manufactured 
home park, shall represent the consumers of this state. Each member shall be appointed for a term of three 
years. The governor may remove any member from the board for incompetency, improper conduct, 
disability or neglect of duty. Members are eligible to receive compensation pursuant to section 38-611 
and are eligible for reimbursement for expenses incurred while attending meetings called by the board 
pursuant to title 38, chapter 4, article 2.

B. The board annually shall select from its membership a chairperson for the board.

C. The board shall meet on call of the chairperson or on the request of at least four members.

41-4010. Powers and duties of board
A. The board shall:

1. Adopt rules imposing minimum construction requirements for factory-built buildings, subassemblies 
and components thereof that are reasonably consistent with nationally recognized and accepted 
publications or generally accepted manufacturing practices pertinent to the construction and safety 
standards for such item to be manufactured. These standards shall include minimum requirements for the 
safety and welfare of the public.

2. Adopt rules imposing requirements for body and frame design and construction and installation of 
plumbing, heating and electrical systems for manufactured homes that are consistent with the rules and 
regulations for construction and safety standards adopted by the United States department of housing and 
urban development.

3. Adopt rules relating to plan approvals as to requirements for the design, construction, alteration, 
reconstruction and installation of units or accessory structures as deemed necessary by the board to carry 
out this chapter.

4. Establish a schedule of fees, payable by persons, licensees or owners of units regulated by this chapter, 
for inspections, licenses, permits, plan reviews, administrative functions and insignia so that the total 
annual income derived from such fees will not be less than ninety-five percent and not more than one 
hundred five percent of the anticipated expenditures for the operation of the office of manufactured 
housing.

5. Adopt rules relating to the inspection throughout the state by the director of the installation of 
manufactured homes, mobile homes, factory-built buildings and accessory structures included as part of a
sales contract for a new or used mobile or manufactured home or part of an agreement to move a new or used mobile or manufactured home.

6. Establish and maintain licensing standards and bonding requirements for all manufacturers of manufactured homes, factory-built buildings and subassemblies regulated pursuant to this chapter.

7. Establish and maintain licensing standards and bonding requirements for all dealers and brokers of manufactured homes, mobile homes, factory-built buildings and subassemblies thereof who sell or arrange the sale of such products within this state.

8. Establish and maintain licensing standards and bonding requirements for all installers of manufactured homes, mobile homes and accessory structures and certified standards for all persons who repair these homes and structures under warranties and who are not employees of the manufacturer.

9. Establish and maintain licensing standards for all salespersons of manufactured homes, mobile homes and factory-built buildings. These standards shall not include educational requirements.

10. Adopt rules consistent with the United States department of housing and urban development procedural and enforcement regulations and enter into such contracts necessary to administer the federal manufactured home regulations.

11. Adopt rules imposing minimum fire and life safety requirements in the categories of fire detection equipment, flame spread for gas furnace and water heater compartments, egress windows, electrical system and gas system for mobile homes entering this state.

12. Adopt rules for inspections and permits for minimum fire and life safety requirements and establish fees for such inspections and permits for mobile homes entering this state.

13. Adopt such other rules as the board deems necessary for the director to carry out this chapter and, to the extent not authorized by other provisions of this section, adopt rules as necessary to interpret, clarify, administer or enforce this article and article 4 of this chapter.

14. Adopt rules relating to the installation of manufactured homes, mobile homes, factory-built buildings and accessory structures included as part of a sales contract for a new or used mobile or manufactured home or part of an agreement to move a new or used mobile or manufactured home. This paragraph does not apply to:

(a) Single wide factory-built buildings that are used for construction project office purposes and that are not used by the public.

(b) Storage buildings of less than one hundred sixty-eight square feet that are not used by the public.

(c) Equipment buildings that are not used by the public.

15. Adopt rules relating to acceptable workmanship standards.

16. Adopt rules relating to issuing permits to licensees, owners of units or other persons for the installation of manufactured homes, mobile homes, factory-built buildings and accessory structures.
17. Adopt rules including a requirement that a permit shall be obtained before the installation of a mobile or manufactured home.

18. Establish standards for the permanent foundation of a manufactured home, mobile home or factory-built building.

B. In adopting rules pursuant to subsection A, paragraph 3 of this section, the board shall consider for adoption any amendments to the codes and standards referred to in subsection A, paragraphs 1 and 2 of this section. If the board adopts the amendments to such codes and standards, the director shall notify the manufacturers licensed pursuant to article 4 of this chapter ninety or more days prior to the effective date of such amendments.

C. Chapter 6 of this title does not apply to the setting of fees under subsection A, paragraph 4 of this section.

D. Rules adopted pursuant to subsection A, paragraph 14 of this section shall be standard throughout this state and may be enforced by the local enforcement agencies on installation to ensure a standard of safety. The board may make an exception to the standard if, on petition by a local jurisdiction participating in the installation inspection program, local conditions justify the exemption or it is necessary to protect the health and safety of the public. On its own motion, the board may revise or repeal any exception.

41-4029. Bonds and cash deposits; requirements; fund

A. Before granting an original license, the director shall require of the applicant, except an applicant for salesperson or broker of manufactured homes, mobile homes or factory-built buildings designed for use as residential buildings, a surety bond in a form acceptable to the director or a cash deposit pursuant to this section. A separate bond or cash deposit shall be required for each branch location of any licensed manufacturer or installer. No license shall be renewed unless the applicant's surety bond or cash deposit is in full force and effect. A change of location of a licensee's principal place of business requires a rider or endorsement to the existing bond and payment of the administrative function fee. The rider or endorsement shall indicate the new location and acceptance of claims for the previous location.

B. The bonds or cash deposit shall be in amounts prescribed by the board.

C. The surety bonds shall be executed by the applicant as principal with a corporation duly authorized to transact surety business in this state. Evidence of a surety bond shall be submitted to the director in a form prescribed by the director. The applicant may in the alternative establish a cash deposit in the amount of the bond with the state treasurer pursuant to the rules adopted by the director. The bond funds shall be deposited, pursuant to sections 35-146 and 35-147, in a special account to be known as the consumer recovery fund. The state treasurer shall invest and divest monies in the fund as provided by section 35-313, and monies earned from investment shall be credited to the fund. Such cash deposits may be withdrawn, if there are no outstanding claims against them, two years after the termination of the license in connection with which the cash is deposited. The cash deposit may be withdrawn two years after the filing of a commercial surety bond as a replacement to the cash deposit.

D. The bond or deposit required by this section shall be in favor of the state for the benefit of any person covered by this subsection. The bond or deposit shall be subject to claims by:

1. Any consumer of a unit regulated by this chapter who enters into an agreement with any licensee, except a salesperson or broker of manufactured homes, mobile homes or factory-built buildings designed for use as
residential buildings, and is damaged by the failure of the principal to perform a sales or installation agreement or to perform repairs under a warranty.

2. The director, if the principal fails to pay any of the fees or costs which the principal owes the office.

E. Any person claiming against the bond or deposit, except the department, may maintain an action against the principal and the surety. Such principal's bond or deposit may be sued on in successive actions until the full amount is exhausted. No suit may be commenced on the bond or deposit after the expiration of two years after the date of sale or installation of the unit, whichever is later, on which the suit is based, except that the time for purposes of the claim for fraud shall be measured pursuant to section 12-543.

F. The surety bond or deposit shall be continuous in form and shall contain the condition that the total aggregate liability of the surety or depository for all claims shall be limited to the face amount of the bond or depository irrespective of the number of years the bond or depository is in force. If the corporate surety desires to make payment without awaiting court action, the amount of the bond filed shall be reduced to the extent of any payment or payments made by the corporate surety in good faith. Any such payments shall be based on priority of written claims received by the corporate surety prior to court action. The surety bond or depository shall be continuous as long as the corporate surety or the depository maintains the face amount of the bond or deposit. Failure to maintain the face amount of the bond or deposit constitutes a suspension of such license until the face amount of the bond or deposit is restored.

G. The corporate surety shall notify the director of the intent of the principal to cancel the bond and of any monies paid from the bond. On receipt by the director of notice to cancel a bond by any corporate surety, the director shall immediately notify the licensee who is the principal on the bond of the effective date of cancellation of the bond and that the licensee shall furnish a like bond or make cash deposit on or before the effective date of cancellation or the license shall be suspended. Notice to the licensee shall be by certified mail postage fully prepaid, addressed to the licensee's last address of record with the office. The license shall be suspended on the date the bond is canceled unless a replacement bond or cash deposit in lieu of a bond is on file with the director.

H. The director and director shall have no personal liability for the performance of duties relating to the bond and cash deposit requirements of this section if such duties are performed in good faith.

41-4030. Trust and escrow requirements; rules; exemptions

A. Beginning July 1, 2012, each dealer or broker licensed pursuant to this article shall establish an independent escrow account with an independent financial institution or escrow agent authorized to handle such an account in this state as prescribed by title 6, chapter 7 or 8, for each transaction involving:

1. A new manufactured home.

2. A new factory-built building designed for use as a residential dwelling.

3. A manufactured home, mobile home or factory-built building designed for use as a residential dwelling that is previously owned and that has a purchase price of fifty thousand dollars or more.

B. For the purposes of subsection A of this section, a financial institution or escrow agent is independent if the individual or entity is not controlled by the licensee, a family member of the licensee or a business
affiliated with the licensee and the licensee, family member or business affiliate does not have a majority interest in the financial institution or escrow agent.

C. The owner of a mobile home park who also is or owns a dealership licensed pursuant to this article to sell new units may sell a new manufactured home or a new factory-built building designed for use as a residential dwelling as a licensee without complying with subsection A of this section if all of the following apply:

1. The home will be sited in a mobile home park that is owned by the park owner.

2. At the time of the sale, the park owner has on file at the office of manufactured housing the name and address of all mobile home parks owned by the park owner, the name, address and license number of the licensed dealership and documentation showing to the satisfaction of the office of manufactured housing that the park owner either holds the license, owns a majority interest in the license or is controlled by an entity that holds a controlling interest in the license.

3. At the time of the sale, the licensed dealership has posted with the office of manufactured housing a dealer bond in an amount of at least one hundred thousand dollars in a form satisfactory to the office of manufactured housing covering sales by parks sharing common control.

D. Each dealer or broker who is licensed pursuant to this article and who sells manufactured homes, mobile homes or factory-built buildings designed for use as residential dwellings or a manufactured home, mobile home or factory-built building designed for use as a residential dwelling that is previously owned and that has a purchase price of less than fifty thousand dollars shall maintain a trust account or an escrow account with a financial institution or escrow agent located in this state and shall deposit all earnest money received for the sale of manufactured homes, mobile homes or factory-built buildings designed for use as residential dwellings in such account. The department shall conduct an audit of each dealer's or broker's trust or escrow account, including any transactions with an independent escrow account, at least once every two years. Beginning July 1, 2012, a purchaser under this subsection may request that the dealer or broker establish an independent escrow account and if such a request is made in writing no later than the time the purchase contract is signed, and the seller consents, the dealer or broker shall comply with this subsection by complying with subsection A of this section. A licensee handling a transaction under this subsection shall disclose to the purchaser, in writing and before or at the time the purchaser signs the purchase contract, that the purchaser may request in writing the use of an independent escrow account, and that the transaction will otherwise be handled through a trust account controlled by the licensee.

E. All dealers or brokers shall notify the director in writing when the trust or escrow account has been established by indicating the name and number of the account and the name and location of the financial institution used.

F. The dealer or broker, in writing, shall authorize the depository to release any and all information relative to trust or escrow accounts to the director or the director's agent, employee or deputy.

G. The dealer's or broker's earnest money receipt book shall reflect all earnest monies received and shall be at the minimum in duplicate and consecutively numbered.

H. All earnest monies shall be deposited in the escrow account or trust fund account no later than the close of the second banking business day after receipt.
I. The terms or instructions for any escrow account opened under subsection A or D of this section are deemed to be and enforceable as part of the purchase contract. All parties to the purchase contract and the licensee shall sign the terms and instructions. If practicable, the escrow terms or instructions shall be included in the purchase contract or stated in an addendum to the purchase contract. The licensee shall provide a copy of the purchase contract to the escrow agent even if the escrow terms or instructions are contained in a separate document. The licensee shall promptly provide the escrow account information to all parties to the purchase contract once the account is opened.

J. At a minimum, the escrow terms or instructions shall contain:

1. Identification of the escrow agent with information containing at least the name, address and telephone number of the agent.

2. All conditions or requirements that affect or pertain to closing the escrow account and disbursement of the monies in the account.

3. Any conditions or requirements where monies are to be disbursed from the escrow account in advance of the account being closed.

4. Any conditions or requirements where additional monies or documents must be deposited with an escrow agent after the escrow account is opened.

K. A dealer or broker may deposit and maintain up to two hundred dollars in the trust account to offset service charges that may be assessed by the financial institutions.

L. Every deposit into a trust account shall be made with a deposit slip that identifies each transaction as follows:

1. The amount of deposit.

2. The names of all parties involved in the transaction. All receipts for monies deposited in escrow shall be made accountable by containing the same information.

M. A complete record shall be retained by the dealer's or broker's office of all earnest monies received. The record shall contain provisions for entering:

1. The amount received.

2. From whom the money was received.

3. The date of receipt.

4. The place of deposit.

5. The date of deposit.

6. The daily balance of the trust fund account deposit of each transaction.
7. When the transaction has been completed.

8. The date and payment for all goods and services the dealer has contracted to provide.

N. All earnest money deposited in the trust or escrow account shall be held in such account until one of the following is completed:

1. An application for title transfer has been made.

2. The transaction involved is consummated or terminated and a complete accounting is made.

O. On completion pursuant to subsection N of this section, the earnest money deposit shall be conveyed to the lending institution or the dealer, broker, purchaser, seller, manufacturer or lienholder, whichever is applicable.

P. The dealer or broker shall retain true copies of the purchase agreements, earnest money receipts, depository receipts, evidence of delivery documents and evidence of consummation of sale or termination of sale for a period of three years.

Q. The deposits referred to in this section shall not be used for any purpose other than the transaction for which they were provided.

R. Notwithstanding any other provision of this section and except that this subsection does not apply to an independent escrow account established pursuant to subsection A of this section, before an event listed under subsection N of this section is completed, a licensed dealer may release trust account earnest monies to pay for flooring or inventory for the unit that is the subject of the transaction for which the earnest monies were provided. Either a licensed dealer or broker may release trust account earnest monies to pay other lawfully imposed interim loan amounts and charges imposed by a financial institution or other bona fide lender on the unit that is the subject of the transaction for which the earnest monies were provided. The dealer or broker shall not make any payment out of trust account monies pursuant to this subsection unless done in compliance with all of the following:

1. The payment is made no more than ten business days before the completion date pursuant to subsection N of this section.

2. The payment is made directly to the financial institution or other bona fide lender.

3. The payment is recorded in the dealer's or broker's records under this section and documented by a receipt, a payment record or any other evidence from the financial institution or lender.

4. If the transaction is terminated, the dealer or broker replaces the amount of the payment in the trust account within three business days after receiving written notification of the termination.

This subsection does not affect any other rights or obligations between the purchaser and the licensed dealer or broker.
S. The board shall adopt separate rules for dealer trust and escrow accounts and broker trust and escrow accounts. At a minimum, these rules shall contain trust and escrow account requirements for the following:

1. Recordkeeping.
2. Administration.
3. Service fees or charges.
4. Deposits.
5. Advances or payments out of trust and escrow accounts.
6. Closing or termination of sales transactions.
7. Auditing or investigation of trust or escrow account complaints.

T. This section shall not apply to a real estate broker or salesperson licensed pursuant to section 32-2122 and pursuant to this article when the unit is sold in conjunction with real estate.

41-4038. Rehearing

A. Any party may apply for a rehearing by filing with the director a motion pursuant to chapter 6, article 10 of this title.

B. The filing of a motion for rehearing shall suspend the operation of the administrative law judge's action, except for an action which upholds a cease and desist order, and permits the licensee or the person who was issued a citation to continue to do business pending denial or granting of the petition. If the motion is granted, the administrative law judge's action is suspended pending the decision of the director upon the rehearing.

C. In the order granting or denying a rehearing, the director shall include a statement of the particular grounds and reasons for the director's action on the petition and shall promptly mail a copy of the order to the parties who have appeared in support of or in opposition to the petition for rehearing. If a rehearing is granted, the administrative law judge shall set the matter for further hearing on due notice to the parties. After submission of the matter upon rehearing, the administrative law judge shall render a decision in writing and give notice of the decision in the same manner as of a decision rendered upon an original hearing.

D. A rehearing may be granted for any of the following reasons materially affecting the moving party's rights:

1. Irregularity in the proceedings before the director, or any order or abuse of discretion which deprived the moving party of a fair hearing.

2. Misconduct by the director, the director's employees or the administrative law judge.
3. Accident or surprise that could not have been prevented by ordinary prudence.

4. Newly discovered material evidence that could not with reasonable diligence have been discovered and produced at the original hearing.

5. Excessive or insufficient penalties.

6. Error in the admission or rejection of evidence or other errors of law occurring at the hearing.

7. That the decision is not justified by the evidence or is contrary to law.

E. If an order denying a rehearing or a decision given upon a rehearing results in immediate suspension or revocation of a license, then operation of such order or decision shall be suspended until ten days after service of notice of the suspension or revocation.

F. In a rehearing pursuant to this section, a corporation may be represented by a corporate officer or employee who is not a member of the state bar if:

1. The corporation has specifically authorized the officer or employee to represent it.

2. The representation is not the officer's or employee's primary duty to the corporation but is secondary or incidental to the officer's or employee's duties relating to the management or operation of the corporation.

**41-4039. Grounds for disciplinary action**

The director may, on the director's own motion, and shall, on the complaint in writing of any person, cause to be investigated by the office the acts of any manufacturer, dealer, broker, salesperson or installer licensed with the office and may temporarily suspend or permanently revoke any license issued under this article, impose an administrative penalty or place on probation any licensee, if the holder of the license, while a licensee, is guilty of or commits any of the following acts or omissions:

1. Failure in any material respect to comply with this article or article 3 of this chapter.

2. Violation of any rule that is adopted by the board and that pertains to the construction of any unit or of any rule that is adopted by the board and that is necessary to effectively carry out the intent of this article, article 3 of this chapter or the laws of the United States or of this state.

3. Misrepresentation of a material fact by the applicant in obtaining a license.

4. Aiding or abetting an unlicensed person or knowingly combining or conspiring with an unlicensed person to evade this article or article 3 of this chapter, or allowing one's license to be used by an unlicensed person or acting as an agent, partner or associate of an unlicensed person with intent to evade this article or article 3 of this chapter.

5. Conviction of a felony.

6. The doing of a wrongful or fraudulent act by a licensee that relates to this article or article 3 of this chapter, including, beginning July 1, 2012, failure to comply with section 41-4030, subsection A, or the doing of any
other wrongful or fraudulent act in conjunction with the sale, transfer or relocation of a mobile home in this state.

7. Departure from or disregard of any code or any rule adopted by the board.

8. Failure to disclose or subsequent discovery by the office of facts that, if known at the time of issuance of a license or the renewal of a license, would have been grounds to deny the issuance or renewal of a license.

9. Knowingly entering into a contract with a person not duly licensed in the required classification for work to be performed for which a license is required.

10. Acting in the capacity of a licensee under any license issued under this article in a name other than as set forth on the license.

11. Acting as a licensee while the license is under suspension or in any other invalid status.

12. Failure to respond relative to a verified complaint after notice of such complaint.


14. False, misleading or deceptive sales practices by a licensee in the sale or offer of sale of any unit regulated by this article or article 3 of this chapter.

15. Failure to remit the consumer recovery fund fee pursuant to section 41-4042.

16. Acting as a salesperson while not employed by a dealer or broker.

17. As a salesperson, representing or attempting to represent a dealer or broker other than by whom the salesperson is employed.

18. Failure by a salesperson to promptly place all cash, checks and other items of value and any related documents received in connection with a sales transaction in the care of the employing dealer or broker.

19. Failure to provide all agreed on goods and services.

20. Failure to manufacture or install in a workmanlike manner all subassemblies, units and accessory structures that are suitable for their intended purpose.

21. Failure of the licensee to work only within the scope of the license held.

22. An action by a licensee, who is also a mobile home park owner, manager, agent or representative, that restricts a resident's or prospective resident's access to buyers, sellers or licensed dealers or brokers in connection with the sale of a home or the rental of a space, that the department finds constitutes a violation of section 33-1434, subsection B or section 33-1452, subsection F or that violates any law or regulation relating to fair housing or credit practices.
41-4048. Violation; classification; penalty

A. No person required to be licensed pursuant to this article may sell or offer to sell in this state any manufactured home, factory-built building or subassembly unless the proper state insignia or HUD label is affixed to such unit.

B. No person required to be licensed pursuant to this article may manufacture for delivery, sell or offer to sell in this state any manufactured home, factory-built building or subassembly unless the unit and its components, systems and appliances have been constructed and assembled in accordance with the standards and rules adopted pursuant to this chapter.

C. A person shall not occupy or otherwise use a mobile home that has been brought into this state or move a mobile home from one mobile home park in this state to another mobile home park in this state unless it meets the standards adopted pursuant to this chapter and displays the proper state insignia. A mobile home that is rehabilitated in accordance with rehabilitation rules adopted by the department and receives an insignia of approval shall be deemed by a county or municipality to be acceptable for relocation into an existing mobile home park. This subsection does not apply to a person bringing a mobile home into this state as a tourist.

D. A person shall not advertise or offer for sale a mobile home that has been brought into this state unless it meets the standards adopted pursuant to this chapter and displays the proper state insignia.

E. No person may remove or cause to be removed an insignia of approval or a notice of violation without prior authorization of the office.

F. A person shall not occupy or use a mobile home in violation of an order to vacate issued pursuant to section 41-4004, subsection B, paragraph 6.

G. Except as provided in subsections I and J of this section, a person who violates this chapter, or any such rule or standard, is guilty of a class 2 misdemeanor.

H. The director, after notice and a hearing pursuant to section 41-4031, subsection A, may deny the issuance of a license or revoke or suspend the license of, impose an administrative penalty on or place on probation any manufacturer, dealer, broker, salesperson or installer who has violated this chapter or any standards and rules adopted pursuant to this chapter.

I. Any manufacturer, dealer, broker, salesperson or installer who knowingly violates this chapter or the rules adopted pursuant to section 41-4010, subsection A, paragraph 1, 2, 9 or 10 or any person who knowingly provides false information to seek reimbursement of expenses under section 41-4008 is guilty of a class 1 misdemeanor. Each violation of this chapter shall constitute a separate violation with respect to each failure or refusal to allow or perform an act required by this chapter, except that the maximum fine may not exceed one million dollars for any related series of violations occurring within one year from the date of the first violation.

J. An individual or a director, officer or agent of a corporation who knowingly violates this chapter or the rules adopted pursuant to this chapter in a manner which threatens the health or safety of any purchaser is guilty of a class 1 misdemeanor.
K. A manufacturer, dealer, salesperson or broker shall not knowingly sell a unit regulated by this chapter to an unlicensed person for the purpose of resale, nor shall a dealer offer for sale or sell a new unit manufactured by an unlicensed person.

L. In addition to any other obligations imposed by law or contract during the term of a listing agreement, a licensee who has agreed to act as an agent to offer a manufactured home for sale shall promptly submit all offers to purchase the listed unit from any source to the client. The offers shall be in writing and signed and dated by the party making the offer and the client on receipt. A copy of the executed document shall be maintained as part of the record of sales.

M. No licensee, owner or other persons may manufacture, alter, reconstruct or install units regulated by this chapter, unless it is accomplished in a workmanlike manner in accordance with the rules adopted pursuant to this chapter and is suitable for the intended purpose.
AHCCCS (R-18-0505)
Title 9, Chapter 22, Article 7, Standard for Payments

Amend: R9-22-718
SUMMARY OF THE RULEMAKING

This rulemaking, from the Arizona Health Care Cost Containment System Administration (AHCCCS or Administration), seeks to amend one rule in A.A.C. Title 9, Chapter 22, Article 7, related to the Urban Hospital Inpatient Reimbursement Program.

AHCCCS indicates that the rulemaking is intended to allow for a wider range of providers to potentially be reimbursed under the Urban Hospital Inpatient Reimbursement Program (Program). The Governor’s Office provided an exception from the rulemaking moratorium on January 25, 2018.

Proposed Action

- AHCCCS is eliminating the distinctions between “urban” contractors and “rural” contractors for purposes of the Program. AHCCCS indicates that it encourages contracting between providers and all contractors to best serve AHCCCS members who require inpatient stays, regardless of whether the contractor is urban or rural.
- Exceptions for Tribal Regional Behavioral Health Authorities (TRBHAs) and the Arizona Department of Health Services’ Division of Behavioral Health Services (ADHS/BHS), currently interpreted as extending to Regional Behavioral Health Authorities (RBHAs) because RBHAs were subcontractors of ADHS/BHS at the time the rule was last amended, are eliminated.
- Psychiatric hospitals are now explicitly included in the definition of “Noncontracted Hospital.”
1. Are the rules legal, consistent with legislative intent, and within the agency’s statutory authority?

Yes. AHCCCS cites to both general and specific authority for the rule. Of particular significance is A.R.S. § 36-2905.01, under which, in relevant part, the Administration is required to “…operate a program for inpatient hospital reimbursement in each county with a population of more than five hundred thousand persons.”

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

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

3. Summary of the agency’s economic impact analysis:

The costs of this rulemaking minimally impact non-contracting hospitals. This rulemaking increases the network of health care providers available to AHCCCS members, and it increases the number of health care providers eligible to contract with the Administration.

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

Yes. The Administration has determined that the benefits of the rulemaking outweigh the costs and that the rules impose the least burden and costs to those who are regulated.

5. What are the economic impacts on stakeholders?

Key stakeholders are the Administration, the Administration’s Contractors, TRBHAs, RBHAs, non-contracting hospitals, and AHCCCS members. The Administration will benefit from this rulemaking because it will increase the network of health care providers that are eligible to contract with the Administration’s Contractors. The Administration notes that encouraging more contracting between health care providers and Contractors improves outcomes for AHCCCS members.

The Administration’s Contractors will benefit from this rulemaking by increasing the number of health care providers that are eligible to contract with them.

TRBHAs and RBHAs will benefit from this rulemaking because they will be specifically identified as Contractors.

Non-contracting hospitals will bear some costs associated with this rulemaking. Non-contracting hospitals will only be eligible for 95% of the reimbursement rate for inpatient hospital stays. The Administration intends for this discounted rate to encourage non-contracting hospitals to contract at a greater rate.

AHCCCS members will benefit from this rulemaking because it will increase the network of health care providers that are available.
6. **Does the agency adequately address the comments on the proposed rules and any supplemental proposals?**

   Yes. AHCCCS indicates that it received no public comments on the rulemaking.

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

   No. One typographical change was made between the Notice of Proposed Rulemaking and the Notice of Final Rulemaking.

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

   No. AHCCCS indicates that the rule is not more stringent than the corresponding federal law found at 42 CFR 435.915.

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

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

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

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

11. **Conclusion**

    If approved, this rulemaking will become effective 60 days after filing with the Secretary of State. Council staff recommends approval of the rulemaking.
March 20, 2018

Ms. Nicole Ong, Chair  
Governor’s Regulatory Review Council  
100 N. 15th Ave, Suite 402  
Phoenix, AZ 85007

Dear Ms. Ong:

The Arizona Health Care Cost Containment System (AHCCCS) Administration is submitting the attached regular rule package for your consideration:

- 9 A.A.C. 22, Article 7, Standards for Payments

AHCCCS is providing the following information as required in A.A.C. R1-6-104:

a. The close of record date was 5 p.m., March, 19, 2018.

b. Definitions of terms contained in statute or other rules and used in the rule are either cross-referenced or attached.

c. The rulemaking does not relate to a 5-year-review.

d. The rulemaking contains no new fees.

e. The rulemaking contains no fee increase.

f. Documents enclosed:
   - Notice of Final Rulemaking, including the preamble, table of contents for the rule, and text of the rule;
   - Economic, small business, and consumer impact statement;
   - If applicable, copy of definitions of terms, contained in statutes or other rules, used in the rule.

g. All written comments submitted by the public concerning the proposed rule,

h. The adopted rules contain no materials incorporated by reference,

i. The adopted rules do not require a permit,

j. The rule is not more stringent than federal law and the citation to the statutory authority does not exceed the requirements of federal law.

k. A person has not submitted an analysis to the agency that compares the rule’s impact of the competitiveness of businesses in this state to the impact on businesses in other states, and
1. 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 2018-02.

I certify that the information provided in number 7 of the Preamble is accurate. An immediate effective date is requested. I respectfully request that the Council consider and approve the adopted rules.

Sincerely,

Matthew Devlin
Assistant Director - Office of Legal Assistance
Attachments
NOTICE OF FINAL RULEMAKING
TITLE 9. HEALTH SERVICES
CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM—ADMINISTRATION

PREAMBLE

1. Article, Part, or Section Affected (as applicable)  Rulemaking Action:
   R9-22-718  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. § 36-2903.01
   Implementing statutes:  A.R.S. § 36-2905.01

3. The effective date of the rule:
   AHCCCS requests a regular 60-day delayed effective date.

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:  24 A.A.R. 354, February 16, 2018
   Notice of Proposed Rulemaking  24 A.A.R. 345, February 16, 2018

5. The agency's contact person who can answer questions about the rulemaking:
   Name:  Nicole Fries
   Address:  AHCCCS
             Office of Administrative Legal Services
             701 E. Jefferson, Mail Drop 6200
             Phoenix, AZ  85034
   Telephone:  (602) 417-4232
   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 proposed rulemaking will amend and clarify rules to provide a wider breadth of providers who may be reimbursed under the Urban Hospital Inpatient Reimbursement Program. In particular, this rulemaking is requested to allow AHCCCS to remove the exceptions for Tribal Regional Behavioral Health Authorities (TRBHA’s) and the Arizona Department of Health Services, Division of Behavioral Health Services
(ADHS/BHS), currently interpreted as extending to Regional Behavioral Health Authorities (RBHA’s) as well because RBHA’s were subcontractors of ADHS/DBHS at the time the rule was last amended. Since the transfer of ADHS/DBHS duties and responsibilities to AHCCCS (Arizona Laws 2015, Chapter 195), RBHA’s and TRBHA’s contract directly with AHCCCS, and therefore, the provisions of the rule will be revised to include them in the definition of contractor for purposes of the Urban Hospital Reimbursement Program. In addition, the requirement for the Contractor to be an Urban Contractor no longer achieves the objectives AHCCCS intended. Instead, AHCCCS intends to encourage contracting between providers and all contractors to best serve AHCCCS members who require inpatient stays, regardless of whether the Contractor is urban or rural. Therefore the Urban Contractor requirement will also be removed from the rule. Also, the rule will explicitly authorize inpatient psychiatric hospitals to be included in the Urban Hospital Reimbursement Program subject to the 95% discount.

The amended rule will encourage competition among hospitals and Contractors, expand provider networks, promote administrative efficiencies, and authorize AHCCCS to more efficiently and effectively reimburse hospitals for inpatient stays. Current federal and state statutory provisions do not prohibit such a change. The proposed rulemaking will also limit AHCCCS Program expenditures to hospitals in this State by extending applicability of the 95% reimbursement to all AHCCCS Contractors responsible for payments to non-contracted urban hospitals. As a result, the rulemaking supports payments to hospitals that are consistent with efficiency, economy, and quality of care, promoting the fiscal health of the State.

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:

The rulemaking will not diminish a previous grant of authority of a political subdivision.

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

This rulemaking creates greater opportunities for contracts between contractors and urban hospitals. Based on these changes, the economic impact of this rulemaking will be a savings due to paying 95% of the reimbursement rate for inpatient urban hospitals stays if they are non-contracting hospitals. Since this rulemaking extends the types of hospitals that may be paid 95% when non-contracted, there is a potential savings of over $2 million less per year, paid in reimbursements to non-contracting hospitals for member inpatient stays. This is because non-contracted inpatient stays were 40% of those stays AHCCCS reimbursed in FY2017. Each 1% discount of the reimbursement value is equal to $440,830; therefore 5% would equal...
$2,204,105. Since the rulemaking may incentivize urban hospitals to contract at a greater rate, exact savings going forward cannot be predicted; however, it is estimated to be over $2 million less per year.

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

There were no changes between the proposed and final rulemaking.

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

No public comments were received.

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

No other matters have been prescribed.

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

   The rule does not require a permit.

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

   The rule is not more stringent than the federal law, 42 CFR 435.915 because waivers to exempt the Administration from the federal law are allowable, the Administration has held such a waiver before, and the proposed rule would be less stringent than the federal law.

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

   No analysis was submitted.

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

   No material is incorporated by reference.

14. **Whether the rule was previously made, amended or repealed as an emergency rule. If so, cite the notice published in the Register as specified in R1-1-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:**
The rule was not made, amended or repealed as an emergency rule.

15. The full text of the rules follows:
Section
R9-22-718. Urban Hospital Inpatient Reimbursement Program
ARTICLE 7. STANDARD FOR PAYMENTS

R9-22-718. Urban Hospital Inpatient Reimbursement Program

A. Definitions. The following definitions apply to this Section:

1. “Noncontracted Hospital” means an urban hospital which does not have a contract under this Section with an urban contractor in the same county. “Contractor” has the same meaning as set forth in Arizona Revised Statutes, section 36-2901, and includes all contractors regardless of whether the GSA’s served by the contractor includes urban or rural counties.

2. “Rural Contractor” means a contractor or program contractor as defined in A.R.S. Title 36, Chapter 29 that does not provide services to members residing in either Maricopa or Pima County. “Noncontracted Hospital” means an urban hospital, including psychiatric hospitals, which does not have a contract under this Section with a contractor.

3. “Urban Contractor” means a contractor or program contractor as defined in A.R.S. Title 36, Chapter 29, that provides services to members residing in Maricopa or Pima County and may also provide services to members who reside in other counties. An urban contractor does not include ADHS/BHS, or a TRBHA.

4. “Rural Hospital” means a hospital, that is physically located in Arizona but in a county other than Maricopa and Pima County.

35. “Urban Hospital” means a hospital that is not a rural hospital, as defined in R9-22-712.07, and that is physically located in Maricopa or Pima County.

B. General Provisions.

1. This Section applies to an urban hospital who receives payment for inpatient hospital services under A.R.S. §§ 36-2903.01 and 36-2904.

2. AHCCCS shall operate an inpatient hospital reimbursement program under A.R.S. § 36-2905.01 and this Section.

3. Residency of the member receiving inpatient AHCCCS covered services is not a factor in determining which hospitals are required to contract with which contractors.

4. An urban A contractor shall enter into a contract for reimbursement for inpatient AHCCCS covered services with one or more urban hospitals located in the same county as the urban contractor.

5. A noncontracted urban hospital shall be reimbursed for inpatient services by an urban A contractor at 95% of the amount calculated as defined in A.R.S. § 36-2903.01 and this Article, unless otherwise negotiated by both parties.

C. Contract Begin Date. A contract under this Article shall cover inpatient acute care hospital services for members with hospital admissions on and after October 1, 2003.

D. Outpatient urban hospital services. Outpatient urban hospital services, including observation days and emergency room treatments that do not result in an admission, shall be reimbursed either through an urban hospital contract negotiated between a contractor and an urban hospital, or the reimbursement rates set
forth in A.R.S. § 36-2903.01. Outpatient services in an urban hospital that result in an admission shall be paid as inpatient services in accordance with this Section.

E. Urban Hospital Contract.

1. Provisions of an urban hospital contracts. The urban hospital contract shall contain but is not limited to the following provisions:
   a. Required provisions as described in the Request for Proposals (RFP);
   b. Dispute settlement procedures. If the AHCCCS Grievance System prescribed in A.R.S. § 36-2903.01(B) and rule is not used, then arbitration shall be used;
   c. Arbitration procedure. If arbitration is used, the urban hospital contract shall identify:
      i. The parties’ agreement on arbitrating claims arising from the contract,
      ii. Whether arbitration is nonbinding or binding,
      iii. Timeliness of arbitration,
      iv. What contract provisions may be appealed,
      v. What rules will govern arbitrations,
      vi. The number of arbitrators that shall be used,
      vii. How arbitrators shall be selected, and
      viii. How arbitrators shall be compensated.
   d. Timeliness of claims submission and payment;
   e. Prior authorization;
   f. Concurrent review;
   g. Electronic submission of claims;
   h. Claims review criteria;
   i. Payment of discounts or penalties such as quick-pay and slow-pay provisions;
   j. Payment of outliers;
   k. Claim documentation specifications under A.R.S. §36-2904.
   l. Treatment and payment of emergency room services; and
   m. Provisions for rate changes and adjustments.

2. AHCCCS review and approval of urban hospital contracts:
   a. AHCCCS may review, approve, or disapprove the hospital contract rates, terms, conditions, and amendments to the contract;
   b. The AHCCCS evaluation of each urban hospital contract shall include but not be limited to the following areas:
      i. Availability and accessibility of services to members,
      ii. Related party interests,
      iii. Inclusion of required terms pursuant to this Section, and
      iv. Reasonableness of the rates.
F. Quick-Pay/Slow-Pay. A payment made by a contractor to a noncontracted hospital shall be subject to quick-pay discounts and slow-pay penalties under A.R.S. § 36-2904.
ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT
TITLE 9. HEALTH SERVICES
CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM
ADMINISTRATION

Introduction:
The proposed rulemaking will amend and clarify rules to provide a wider breadth of providers who may be reimbursed under the Urban Hospital Inpatient Reimbursement Program.

Purpose of Rule:
The amended rule will encourage competition among hospitals and Contractors, expand provider networks, promote administrative efficiencies, and authorize AHCCCS to more efficiently and effectively reimburse hospitals for inpatient stays. Current federal and state statutory provisions do not prohibit such a change. The proposed rulemaking will also limit AHCCCS Program expenditures to hospitals in this State by extending applicability of the 95% reimbursement to all AHCCCS Contractors responsible for payments to non-contracted urban hospitals. As a result, the rulemaking supports payments to hospitals that are consistent with efficiency, economy, and quality of care, promoting the fiscal health of the State.

1. Identification of rulemaking.
This rulemaking is to remove the exceptions for Tribal Regional Behavioral Health Authorities (TRBHA’s) and the Arizona Department of Health Services, Division of Behavioral Health Services (ADHS/BHS), currently interpreted as extending to Regional Behavioral Health Authorities (RBHA’s) as well because RBHA’s were subcontractors of ADHS/DBHS at the time the rule was last amended. Since the transfer of ADHS/DBHS duties and responsibilities to AHCCCS (Arizona Laws 2015, Chapter 195), RBHA’s and TRBHA’s contract directly with AHCCCS, and therefore, the provisions of the rule will be revised to include them in the definition of contractor for purposes of the Urban Hospital Reimbursement Program. In addition, the requirement for the Contractor to be an Urban Contractor no longer achieves the objectives AHCCCS intended. Instead, AHCCCS intends to encourage contracting between providers and all contractors to best serve AHCCCS members who require inpatient stays, regardless of whether the Contractor is urban or rural. Therefore the Urban Contractor requirement will also be removed from the rule. Also, the rule will explicitly authorize inpatient psychiatric hospitals to be included in the Urban Hospital Reimbursement Program subject to the 95% discount.

a. The conduct and its frequency of occurrence that the rule is designed to change:
AHCCCS intends to encourage contracting between providers and all contractors to best serve AHCCCS members who require inpatient stays, regardless of whether the Contractor is urban or rural.

b. The harm resulting from the conduct the rule is designed to change and the likelihood it will continue to occur if the rule is not changed:
Without this rulemaking the network of providers available to members is likely to be diminished.

c. The estimated change in frequency of the targeted conduct expected from the rule change:
The Administration anticipates an increase in contracting between Managed Care Organizations (MCO) and inpatient facility providers.

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

AHCCCS members will directly benefit from this rulemaking because it will increase the network of providers available through their MCO.

3. Cost-benefit analysis.

a. Probable costs and benefits to the implementing agency and other agencies directly affected by the implementation and enforcement of the proposed rulemaking including the number of new full-time employees necessary to implement and enforce the proposed rule:

i. Cost:
The Administration anticipates no increase in cost to the implementing agency.

ii. Benefit:
The Administration anticipates a benefit to the implementing agency as a cost saving due to an increase in contracting between providers and MCO’s. There will also be a cost saving due to the inclusion of RHBA’s as permissible providers and the removal of the urban requirement, leading to more providers being able to contract with MCO’s.

iii. Need for additional Full-time Employees:
The Administration does not anticipate the need to hire full-time employees as a result of this rulemaking.

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

This rulemaking does not directly affect political subdivisions.

4. General description of the probable impact on private and public employment in businesses, agencies, and political subdivisions of this state directly affected by the rulemaking.
The Administration anticipates that public and private employment will not be impacted by the changes.

5. Statement of probable impact of the proposed rule on small businesses. The statement shall include:

a. Identification of the small businesses subject to the proposed rulemaking.
The Administration anticipates no impact on small businesses other than the providers that might be small businesses, but they should not receive a fiscal impact if they choose to take the new opportunity to contract.

b. **Administrative and other costs required for compliance with the proposed rulemaking.**
   The Administration anticipates no impact on the administrative expenses of these small businesses because the proposed rule does not require a change in claim submission coding or procedure.

c. **Description of methods prescribed in section A.R.S. § 41-1035 that the agency may use to reduce the impact on small businesses, with reasons for the agency’s decision to use or not use each method:**
   i. **Establishing less stringent compliance or reporting requirements in the rule for small businesses:**
      This rule does not impose compliance or reporting requirements on small businesses beyond those already necessary to comply with federal law and state statute.

   ii. **Establishing less stringent schedules deadlines in the rule for compliance or reporting requirements for small businesses:**
      This rule does not impose compliance or reporting requirements on small businesses beyond those requirements that are necessary to comply with federal law and state statute.

   iii. **Consolidate or simplify the rule’s compliance or reporting requirements for small businesses:**
      This rule does not impose compliance or reporting requirements on small businesses beyond those requirements that are necessary to comply with federal law and state statute.

   iv. **Establish performance standards for small businesses to replace design or operational standards in the rule; and**
      This rule does not establish performance standards for small businesses beyond those requirements that are necessary to comply with federal law and state statute.

   v. **Exempting small businesses from any or all requirements of the rule.**
      Exempting small businesses is not applicable to this rule.

d. **The probable cost and benefit to private persons and consumers who are directly affected by the proposed rulemaking.**
   There is no effect on private persons except that this rulemaking is likely to expand the network of providers available under their MCO.

6. **Statement of the probable effect on state revenues.**
The economic impact of this rulemaking will be a savings due to paying 95% of the reimbursement rate for inpatient urban hospitals stays if they are non-contracting hospitals. Since the rulemaking may incentivize urban hospitals to contract at a greater rate, exact savings going forward cannot be predicted; however, it is estimated to be over $2 million less per year. These are largely federally-matched funds.

7. **Description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking, including the monetizing of the costs and benefits for each option and providing the rationale for not using nonselected alternatives.**

The Administration did not consider other alternatives because the revisions to the rule are the most cost effective and efficient method of complying with federal law and state law.

8. **A description of any data on which a rule is based with a detailed explanation of how the data was obtained and why the data is acceptable data.**

The Administration did not consider any specific data to base the rule upon.
Historical Note
Adopted effective July 30, 1993 (Supp. 93-3). Amended effective September 22, 1997 (Supp. 97-3). Section repealed by final rulemaking at 11 A.A.R. 3222, effective October 1, 2005 (Supp. 05-3).

Editor’s Note: The following Section was adopted under an exemption from the provisions of the Administrative Procedure Act which means that this rule was not reviewed by the Governor’s Regulatory Review Council. The agency was required to submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; and was required to hold a public hearing.

R9-22-718. Urban Hospital Inpatient Reimbursement Program
A. Definitions. The following definitions apply to this Section:
1. “Noncontracted Hospital” means an urban hospital which does not have a contract under this Section with an urban contractor in the same county.
2. “Rural Contractor” means a contractor or program contractor as defined in A.R.S. Title 36, Chapter 29 that does not provide services to members residing in either Maricopa or Pima County.
3. “Urban Contractor” means a contractor or program contractor as defined in A.R.S. Title 36, Chapter 29, that provides services to members residing in Maricopa or Pima County and may also provide services to members who reside in other counties. An urban contractor does not include ADHS/BIH, or a TRBHA.
4. “Rural Hospital” means a hospital, as defined in R9-22-712.07, that is physically located in Arizona but in a county other than Maricopa and Pima County.
5. “Urban Hospital” means a hospital that is not a rural hospital and is physically located in Maricopa or Pima County.
B. General Provisions.
1. This Section applies to an urban hospital who receives payment for inpatient hospital services under A.R.S. §§ 36-2903.01 and 36-2904.
2. AHCCCS shall operate an inpatient hospital reimbursement program under A.R.S. § 36-2905.01 and this Section.
3. Residency of the member receiving inpatient AHCCCS covered services is not a factor in determining which hospitals are required to contract with which contractors.
4. An urban contractor shall enter into a contract for reimbursement for inpatient AHCCCS covered services with one or more urban hospitals located in the same county as the urban contractor.
5. A noncontracted urban hospital shall be reimbursed for inpatient services by an urban contractor at 95% of the amount calculated as defined in A.R.S. § 36-2903.01 and this Article, unless otherwise negotiated by both parties.
C. Contract Begin Date. A contract under this Article shall cover inpatient acute care hospital services for members with hospital admissions on and after October 1, 2003.
D. Outpatient urban hospital services. Outpatient urban hospital services, including observation days and emergency room treatments that do not result in an admission, shall be reimbursed either through an urban hospital contract negotiated between a contractor and an urban hospital, or the reimbursement rates set forth in A.R.S. § 36-2903.01. Outpatient services in an urban hospital that result in an admission shall be paid as inpatient services in accordance with this Section.
E. Urban Hospital Contract.
1. Provisions of an urban hospital contracts. The urban hospital contract shall contain but is not limited to the following provisions:
   a. Required provisions as described in the Request for Proposals (RFP);
   b. Dispute settlement procedures. If the AHCCCS Grievance System prescribed in A.R.S. § 36-2903.01(B) and rule is not used, then arbitration shall be used;
   c. Arbitration procedure. If arbitration is used, the urban hospital contract shall identify:
      i. The parties’ agreement on arbitrating claims arising from the contract,
      ii. Whether arbitration is nonbinding or binding,
      iii. Timeliness of arbitration,
   iv. What contract provisions may be appealed,
   v. What rules will govern arbitrations,
   vi. The number of arbitrators that shall be used,
   vii. How arbitrators shall be selected, and
   viii. How arbitrators shall be compensated.
   d. Timeliness of claims submission and payment;
   e. Prior authorization;
   f. Concurrent review;
   g. Electronic submission of claims;
   h. Claims review criteria;
   i. Payment of discounts or penalties such as quick-pay and slow-pay provisions;
   j. Payment of outliers;
   k. Claim documentation specifications under A.R.S. § 36-2904.
   l. Treatment and payment of emergency room services; and
   m. Provisions for rate changes and adjustments.
2. AHCCCS review and approval of urban hospital contracts:
   a. AHCCCS may review, approve, or disapprove the hospital contract rates, terms, conditions, and amendments to the contract;
   b. The AHCCCS evaluation of each urban hospital contract shall include but not be limited to the following areas:
      i. Availability and accessibility of services to members,
      ii. Related party interests,
      iii. Inclusion of required terms pursuant to this Section, and
      iv. Reasonableness of the rates.
F. Quick-Pay/Slow-Pay. A payment made by urban contractor to a noncontracted hospital shall be subject to quick-pay discounts and slow-pay penalties under A.R.S. § 36-2904.

Historical Note

R9-22-719. Contractor Performance Measure Outcomes
The Administration may retain a specified percentage of capitation reimbursement to distribute to contractors based on their performance measure outcomes under A.R.S. § 36-2904. The Administration shall notify contractors 60 days prior to a new contract year if
36-2903.01. Additional powers and duties; report; definition

A. The director of the Arizona health care cost containment system administration may adopt rules that provide that the system may withhold or forfeit payments to be made to a noncontracting provider by the system if the noncontracting provider fails to comply with this article, the provider agreement or rules that are adopted pursuant to this article and that relate to the specific services rendered for which a claim for payment is made.

B. The director shall:

1. Prescribe uniform forms to be used by all contractors. The rules shall require a written and signed application by the applicant or an applicant's authorized representative, or, if the person is incompetent or incapacitated, a family member or a person acting responsibly for the applicant may obtain a signature or a reasonable facsimile and file the application as prescribed by the administration.

2. Enter into an interagency agreement with the department to establish a streamlined eligibility process to determine the eligibility of all persons defined pursuant to section 36-2901, paragraph 6, subdivision (a). At the administration's option, the interagency agreement may allow the administration to determine the eligibility of certain persons, including those defined pursuant to section 36-2901, paragraph 6, subdivision (a).

3. Enter into an intergovernmental agreement with the department to:

   (a) Establish an expedited eligibility and enrollment process for all persons who are hospitalized at the time of application.

   (b) Establish performance measures and incentives for the department.

   (c) Establish the process for management evaluation reviews that the administration shall perform to evaluate the eligibility determination functions performed by the department.

   (d) Establish eligibility quality control reviews by the administration.

   (e) Require the department to adopt rules, consistent with the rules adopted by the administration for a hearing process, that applicants or members may use for appeals of eligibility determinations or redeterminations.

   (f) Establish the department's responsibility to place sufficient eligibility workers at federally qualified health centers to screen for eligibility and at hospital sites and level one trauma centers to ensure that persons seeking hospital services are screened on a timely basis for eligibility for the system, including a process to ensure that applications for the system can be accepted on a twenty-four hour basis, seven days a week.

   (g) Withhold payments based on the allowable sanctions for errors in eligibility determinations or redeterminations or failure to meet performance measures required by the intergovernmental agreement.

   (h) Recoup from the department all federal fiscal sanctions that result from the department's inaccurate eligibility determinations. The director may offset all or part of a sanction if the department submits a corrective action plan and a strategy to remedy the error.

4. By rule establish a procedure and time frames for the intake of grievances and requests for hearings, for the continuation of benefits and services during the appeal process and for a grievance process at the contractor level. Notwithstanding sections 41-1092.02, 41-1092.03 and 41-1092.05, the administration shall develop rules to establish the procedure and time frame for the informal resolution of grievances and appeals. A grievance that is not related to a claim for payment of system covered services shall be filed in writing with and received by the administration or the prepaid capitated provider or program contractor not later than sixty days after the date of the adverse action, decision or policy implementation being grieved. A grievance that is related to a claim for payment of system covered services must be filed in writing and received by the administration or the prepaid capitated provider or program contractor within twelve months after the date of service, within twelve months after the date that eligibility is posted or within
sixty days after the date of the denial of a timely claim submission, whichever is later. A grievance for the denial of a
claim for reimbursement of services may contest the validity of any adverse action, decision, policy implementation or
rule that related to or resulted in the full or partial denial of the claim. A policy implementation may be subject to a
grievance procedure, but it may not be appealed for a hearing. The administration is not required to participate in a
mandatory settlement conference if it is not a real party in interest. In any proceeding before the administration,
including a grievance or hearing, persons may represent themselves or be represented by a duly authorized agent who is
not charging a fee. A legal entity may be represented by an officer, partner or employee who is specifically authorized
by the legal entity to represent it in the particular proceeding.

5. Apply for and accept federal funds available under title XIX of the social security act (P.L. 89-97; 79 Stat. 344; 42
United States Code section 1396 (1980)) in support of the system. The application made by the director pursuant to this
paragraph shall be designed to qualify for federal funding primarily on a prepaid capitated basis. Such funds may be
used only for the support of persons defined as eligible pursuant to title XIX of the social security act or the approved
section 1115 waiver.

6. At least thirty days before the implementation of a policy or a change to an existing policy relating to reimbursement,
provide notice to interested parties. Parties interested in receiving notification of policy changes shall submit a written
request for notification to the administration.

7. In addition to the cost sharing requirements specified in subsection D, paragraph 4 of this section:
   (a) Charge monthly premiums up to the maximum amount allowed by federal law to all populations of eligible persons
       who may be charged.
   (b) Implement this paragraph to the extent permitted under the federal deficit reduction act of 2005 and other federal
       laws, subject to the approval of federal waiver authority and to the extent that any changes in the cost sharing
       requirements under this paragraph would permit this state to receive any enhanced federal matching rate.

C. The director is authorized to apply for any federal funds available for the support of programs to investigate and
prosecute violations arising from the administration and operation of the system. Available state funds appropriated for
the administration and operation of the system may be used as matching funds to secure federal funds pursuant to this
subsection.

D. The director may adopt rules or procedures to do the following:

1. Authorize advance payments based on estimated liability to a contractor or a noncontracting provider after the
contractor or noncontracting provider has submitted a claim for services and before the claim is ultimately resolved. The
rules shall specify that any advance payment shall be conditioned on the execution before payment of a contract with the
contractor or noncontracting provider that requires the administration to retain a specified percentage, which shall be at
least twenty percent, of the claimed amount as security and that requires repayment to the administration if the
administration makes any overpayment.

2. Defer liability, in whole or in part, of contractors for care provided to members who are hospitalized on the date of
enrollment or under other circumstances. Payment shall be on a capped fee-for-service basis for services other than
hospital services and at the rate established pursuant to subsection G of this section for hospital services or at the rate
paid by the health plan, whichever is less.

3. Deputize, in writing, any qualified officer or employee in the administration to perform any act that the director by
law is empowered to do or charged with the responsibility of doing, including the authority to issue final administrative
decisions pursuant to section 41-1092.08.

4. Notwithstanding any other law, require persons eligible pursuant to section 36-2901, paragraph 6, subdivision (a),
section 36-2931 and section 36-2981, paragraph 6 to be financially responsible for any cost sharing requirements
established in a state plan or a section 1115 waiver and approved by the centers for medicare and medicaid services.
Cost sharing requirements may include copayments, coinsurance, deductibles, enrollment fees and monthly premiums
for enrolled members, including households with children enrolled in the Arizona long-term care system.

E. The director shall adopt rules that further specify the medical care and hospital services that are covered by the system pursuant to section 36-2907.

F. In addition to the rules otherwise specified in this article, the director may adopt necessary rules pursuant to title 41, chapter 6 to carry out this article. Rules adopted by the director pursuant to this subsection shall consider the differences between rural and urban conditions on the delivery of hospitalization and medical care.

G. For inpatient hospital admissions and outpatient hospital services on and after March 1, 1993, the administration shall adopt rules for the reimbursement of hospitals according to the following procedures:

1. For inpatient hospital stays from March 1, 1993 through September 30, 2014, the administration shall use a prospective tiered per diem methodology, using hospital peer groups if analysis shows that cost differences can be attributed to independently definable features that hospitals within a peer group share. In peer grouping the administration may consider such factors as length of stay differences and labor market variations. If there are no cost differences, the administration shall implement a stop loss-stop gain or similar mechanism. Any stop loss-stop gain or similar mechanism shall ensure that the tiered per diem rates assigned to a hospital do not represent less than ninety percent of its 1990 base year costs or more than one hundred ten percent of its 1990 base year costs, adjusted by an audit factor, during the period of March 1, 1993 through September 30, 1994. The tiered per diem rates set for hospitals shall represent no less than eighty-seven and one-half percent or more than one hundred twelve and one-half percent of its 1990 base year costs, adjusted by an audit factor, during the period of March 1, 1993 through September 30, 1994. The tiered per diem rates set for hospitals shall represent no less than eighty-seven and one-half percent or more than one hundred twelve and one-half percent of its 1990 base year costs, adjusted by an audit factor, from October 1, 1994 through September 30, 1995. For the periods after September 30, 1994 no stop loss-stop gain or similar mechanisms shall be in effect. An adjustment in the stop loss-stop gain percentage may be made to ensure that total payments do not increase as a result of this provision. If peer groups are used, the administration shall establish initial peer group designations for each hospital before implementation of the per diem system. The administration may also use a negotiated rate methodology. The tiered per diem methodology may include separate consideration for specialty hospitals that limit their provision of services to specific patient populations, such as rehabilitative patients or children. The initial per diem rates shall be based on hospital claims and encounter data for dates of service November 1, 1990 through October 31, 1991 and processed through May of 1992. The administration may also establish a separate reimbursement methodology for claims with extraordinarily high costs per day that exceed thresholds established by the administration.

2. For rates effective on October 1, 1994, and annually through September 30, 2011, the administration shall adjust per diem payments for inpatient hospital care by the data resources incorporated market basket index for prospective payment system hospitals. For rates effective beginning on October 1, 1999, the administration shall adjust payments to reflect changes in length of stay for the maternity and nursery tiers.

3. Through June 30, 2004, for outpatient hospital services, the administration shall reimburse a hospital by applying a hospital specific outpatient cost-to-charge ratio to the covered charges. Beginning on July 1, 2004 through June 30, 2005, the administration shall reimburse a hospital by applying a hospital specific outpatient cost-to-charge ratio to covered charges. If the hospital increases its charges for outpatient services filed with the Arizona department of health services pursuant to chapter 4, article 3 of this title, by more than 4.7 percent for dates of service on or after July 1, 2004, the hospital specific cost-to-charge ratio will be reduced by the amount that it exceeds 4.7 percent. If charges exceed 4.7 percent, the effective date of the increased charges will be the effective date of the adjusted Arizona health care cost containment system cost-to-charge ratio. The administration shall develop the methodology for a capped fee-for-service schedule and a statewide cost-to-charge ratio. Any covered outpatient service not included in the capped fee-for-service schedule shall be reimbursed by applying the statewide cost-to-charge ratio that is based on the services not included in the capped fee-for-service schedule. Beginning on July 1, 2005, the administration shall reimburse clean claims with dates of service on or after July 1, 2005, based on the capped fee-for-service schedule or the statewide cost-to-charge ratio established pursuant to this paragraph. The administration may make additional adjustments to the outpatient hospital rates established pursuant to this section based on other factors, including the number of beds in the hospital, specialty services available to patients and the geographic location of the hospital.
4. Except if submitted under an electronic claims submission system, a hospital bill is considered received for purposes of this paragraph on initial receipt of the legible, error-free claim form by the administration if the claim includes the following error-free documentation in legible form:

(a) An admission face sheet.
(b) An itemized statement.
(c) An admission history and physical.
(d) A discharge summary or an interim summary if the claim is split.
(e) An emergency record, if admission was through the emergency room.
(f) Operative reports, if applicable.
(g) A labor and delivery room report, if applicable.

Payment received by a hospital from the administration pursuant to this subsection or from a contractor either by contract or pursuant to section 36-2904, subsection I is considered payment by the administration or the contractor of the administration's or contractor's liability for the hospital bill. A hospital may collect any unpaid portion of its bill from other third-party payors or in situations covered by title 33, chapter 7, article 3.

5. For services rendered on and after October 1, 1997, the administration shall pay a hospital's rate established according to this section subject to the following:

(a) If the hospital's bill is paid within thirty days of the date the bill was received, the administration shall pay ninety-nine percent of the rate.
(b) If the hospital's bill is paid after thirty days but within sixty days of the date the bill was received, the administration shall pay one hundred percent of the rate.
(c) If the hospital's bill is paid any time after sixty days of the date the bill was received, the administration shall pay one hundred percent of the rate plus a fee of one percent per month for each month or portion of a month following the sixtieth day of receipt of the bill until the date of payment.

6. In developing the reimbursement methodology, if a review of the reports filed by a hospital pursuant to section 36-125.04 indicates that further investigation is considered necessary to verify the accuracy of the information in the reports, the administration may examine the hospital's records and accounts related to the reporting requirements of section 36-125.04. The administration shall bear the cost incurred in connection with this examination unless the administration finds that the records examined are significantly deficient or incorrect, in which case the administration may charge the cost of the investigation to the hospital examined.

7. Except for privileged medical information, the administration shall make available for public inspection the cost and charge data and the calculations used by the administration to determine payments under the tiered per diem system, provided that individual hospitals are not identified by name. The administration shall make the data and calculations available for public inspection during regular business hours and shall provide copies of the data and calculations to individuals requesting such copies within thirty days of receipt of a written request. The administration may charge a reasonable fee for the provision of the data or information.

8. The prospective tiered per diem payment methodology for inpatient hospital services shall include a mechanism for the prospective payment of inpatient hospital capital related costs. The capital payment shall include hospital specific and statewide average amounts. For tiered per diem rates beginning on October 1, 1999, the capital related cost component is frozen at the blended rate of forty percent of the hospital specific capital cost and sixty percent of the statewide average capital cost in effect as of January 1, 1999 and as further adjusted by the calculation of tier rates for
maternity and nursery as prescribed by law. Through September 30, 2011, the administration shall adjust the capital related cost component by the data resources incorporated market basket index for prospective payment system hospitals.

9. For graduate medical education programs:

(a) Beginning September 30, 1997, the administration shall establish a separate graduate medical education program to reimburse hospitals that had graduate medical education programs that were approved by the administration as of October 1, 1999. The administration shall separately account for monies for the graduate medical education program based on the total reimbursement for graduate medical education reimbursed to hospitals by the system in federal fiscal year 1995-1996 pursuant to the tiered per diem methodology specified in this section. The graduate medical education program reimbursement shall be adjusted annually by the increase or decrease in the index published by the global insight hospital market basket index for prospective hospital reimbursement. Subject to legislative appropriation, on an annual basis, each qualified hospital shall receive a single payment from the graduate medical education program that is equal to the same percentage of graduate medical education reimbursement that was paid by the system in federal fiscal year 1995-1996. Any reimbursement for graduate medical education made by the administration shall not be subject to future settlements or appeals by the hospitals to the administration. The monies available under this subdivision shall not exceed the fiscal year 2005-2006 appropriation adjusted annually by the increase or decrease in the index published by the global insight hospital market basket index for prospective hospital reimbursement, except for monies distributed for expansions pursuant to subdivision (b) of this paragraph.

(b) The monies available for graduate medical education programs pursuant to this subdivision shall not exceed the fiscal year 2006-2007 appropriation adjusted annually by the increase or decrease in the index published by the global insight hospital market basket index for prospective hospital reimbursement. Graduate medical education programs eligible for such reimbursement are not precluded from receiving reimbursement for funding under subdivision (c) of this paragraph. Beginning July 1, 2006, the administration shall distribute any monies appropriated for graduate medical education above the amount prescribed in subdivision (a) of this paragraph in the following order or priority:

(i) For the direct costs to support the expansion of graduate medical education programs established before July 1, 2006 at hospitals that do not receive payments pursuant to subdivision (a) of this paragraph. These programs must be approved by the administration.

(ii) For the direct costs to support the expansion of graduate medical education programs established on or before October 1, 1999. These programs must be approved by the administration.

(c) The administration shall distribute to hospitals any monies appropriated for graduate medical education above the amount prescribed in subdivisions (a) and (b) of this paragraph for the following purposes:

(i) For the direct costs of graduate medical education programs established or expanded on or after July 1, 2006. These programs must be approved by the administration.

(ii) For a portion of additional indirect graduate medical education costs for programs that are located in a county with a population of less than five hundred thousand persons at the time the residency position was created or for a residency position that includes a rotation in a county with a population of less than five hundred thousand persons at the time the residency position was established. These programs must be approved by the administration.

(d) The administration shall develop, by rule, the formula by which the monies are distributed.

(e) Each graduate medical education program that receives funding pursuant to subdivision (b) or (c) of this paragraph shall identify and report to the administration the number of new residency positions created by the funding provided in this paragraph, including positions in rural areas. The program shall also report information related to the number of funded residency positions that resulted in physicians locating their practices in this state. The administration shall report to the joint legislative budget committee by February 1 of each year on the number of new residency positions as reported by the graduate medical education programs.

(f) Local, county and tribal governments and any university under the jurisdiction of the Arizona board of regents may provide monies in addition to any state general fund monies appropriated for graduate medical education in order to qualify for additional matching federal monies for providers, programs or positions in a specific locality and costs incurred pursuant to a specific contract between the administration and providers or other entities to provide graduate medical education services as an administrative activity. Payments by the administration pursuant to this subdivision may be limited to those providers designated by the funding entity and may be based on any methodology deemed appropriate by the administration, including replacing any payments that might otherwise have been paid pursuant to subdivision (a), (b) or (c) of this paragraph had sufficient state general fund monies or other monies been appropriated to fully fund those payments. These programs, positions, payment methodologies and administrative graduate medical education services must be approved by the administration and the centers for medicare and medicaid services. The administration shall report to the president of the senate, the speaker of the house of representatives and the director of the joint legislative budget committee on or before July 1 of each year on the amount of money contributed and number of residency positions funded by local, county and tribal governments, including the amount of federal matching monies used.

(g) Any funds appropriated but not allocated by the administration for subdivision (b) or (c) of this paragraph may be reallocated if funding for either subdivision is insufficient to cover appropriate graduate medical education costs.

10. Notwithstanding section 41-1005, subsection A, paragraph 9, the administration shall adopt rules pursuant to title 41, chapter 6 establishing the methodology for determining the prospective tiered per diem payments that are in effect through September 30, 2014.

11. For inpatient hospital services rendered on or after October 1, 2011, the prospective tiered per diem payment rates are permanently reset to the amounts payable for those services as of October 1, 2011 pursuant to this subsection.

12. The administration shall adopt a diagnosis-related group based hospital reimbursement methodology consistent with title XIX of the social security act for inpatient dates of service on and after October 1, 2014. The administration may make additional adjustments to the inpatient hospital rates established pursuant to this section for hospitals that are publicly operated or based on other factors, including the number of beds in the hospital, the specialty services available to patients, the geographic location and diagnosis-related group codes that are made publicly available by the hospital pursuant to section 36-437. The administration may also provide additional reimbursement for extraordinarily high cost cases that exceed a threshold above the standard payment. The administration may also establish a separate payment methodology for specific services or hospitals serving unique populations.

H. The director may adopt rules that specify enrollment procedures, including notice to contractors of enrollment. The rules may provide for varying time limits for enrollment in different situations. The administration shall specify in contract when a person who has been determined eligible will be enrolled with that contractor and the date on which the contractor will be financially responsible for health and medical services to the person.

I. The administration may make direct payments to hospitals for hospitalization and medical care provided to a member in accordance with this article and rules. The director may adopt rules to establish the procedures by which the administration shall pay hospitals pursuant to this subsection if a contractor fails to make timely payment to a hospital. Such payment shall be at a level determined pursuant to section 36-2904, subsection H or I. The director may withhold payment due to a contractor in the amount of any payment made directly to a hospital by the administration on behalf of a contractor pursuant to this subsection.

J. The director shall establish a special unit within the administration for the purpose of monitoring the third-party payment collections required by contractors and noncontracting providers pursuant to section 36-2903, subsection B, paragraph 10 and subsection F and section 36-2915, subsection E. The director shall determine by rule:

1. The type of third-party payments to be monitored pursuant to this subsection.

2. The percentage of third-party payments that is collected by a contractor or noncontracting provider and that the contractor or noncontracting provider may keep and the percentage of such payments that the contractor or noncontracting provider may be required to pay to the administration. Contractors and noncontracting providers must
pay to the administration one hundred percent of all third-party payments that are collected and that duplicate administration fee-for-service payments. A contractor that contracts with the administration pursuant to section 36-2904, subsection A may be entitled to retain a percentage of third-party payments if the payments collected and retained by a contractor are reflected in reduced capitation rates. A contractor may be required to pay the administration a percentage of third-party payments that are collected by a contractor and that are not reflected in reduced capitation rates.

K. The administration shall establish procedures to apply to the following if a provider that has a contract with a contractor or noncontracting provider seeks to collect from an individual or financially responsible relative or representative a claim that exceeds the amount that is reimbursed or should be reimbursed by the system:

1. On written notice from the administration or oral or written notice from a member that a claim for covered services may be in violation of this section, the provider that has a contract with a contractor or noncontracting provider shall investigate the inquiry and verify whether the person was eligible for services at the time that covered services were provided. If the claim was paid or should have been paid by the system, the provider that has a contract with a contractor or noncontracting provider shall not continue billing the member.

2. If the claim was paid or should have been paid by the system and the disputed claim has been referred for collection to a collection agency or referred to a credit reporting bureau, the provider that has a contract with a contractor or noncontracting provider shall:

   (a) Notify the collection agency and request that all attempts to collect this specific charge be terminated immediately.

   (b) Advise all credit reporting bureaus that the reported delinquency was in error and request that the affected credit report be corrected to remove any notation about this specific delinquency.

   (c) Notify the administration and the member that the request for payment was in error and that the collection agency and credit reporting bureaus have been notified.

3. If the administration determines that a provider that has a contract with a contractor or noncontracting provider has billed a member for charges that were paid or should have been paid by the administration, the administration shall send written notification by certified mail or other service with proof of delivery to the provider that has a contract with a contractor or noncontracting provider stating that this billing is in violation of federal and state law. If, twenty-one days or more after receiving the notification, a provider that has a contract with a contractor or noncontracting provider knowingly continues billing a member for charges that were paid or should have been paid by the system, the administration may assess a civil penalty in an amount equal to three times the amount of the billing and reduce payment to the provider that has a contract with a contractor or noncontracting provider accordingly. Receipt of delivery signed by the addressee or the addressee's employee is prima facie evidence of knowledge. Civil penalties collected pursuant to this subsection shall be deposited in the state general fund. Section 36-2918, subsections C, D and F, relating to the imposition, collection and enforcement of civil penalties, apply to civil penalties imposed pursuant to this paragraph.

L. The administration may conduct postpayment review of all claims paid by the administration and may recoup any monies erroneously paid. The director may adopt rules that specify procedures for conducting postpayment review. A contractor may conduct a postpayment review of all claims paid by the contractor and may recoup monies that are erroneously paid.

M. Subject to title 41, chapter 4, article 4, the director or the director's designee may employ and supervise personnel necessary to assist the director in performing the functions of the administration.

N. The administration may contract with contractors for obstetrical care who are eligible to provide services under title XIX of the social security act.

O. Notwithstanding any other law, on federal approval the administration may make disproportionate share payments to private hospitals, county operated hospitals, including hospitals owned or leased by a special health care district, and state operated institutions for mental disease beginning October 1, 1991 in accordance with federal law and subject to
legislative appropriation. If at any time the administration receives written notification from federal authorities of any change or difference in the actual or estimated amount of federal funds available for disproportionate share payments from the amount reflected in the legislative appropriation for such purposes, the administration shall provide written notification of such change or difference to the president and the minority leader of the senate, the speaker and the minority leader of the house of representatives, the director of the joint legislative budget committee, the legislative committee of reference and any hospital trade association within this state, within three working days not including weekends after receipt of the notice of the change or difference. In calculating disproportionate share payments as prescribed in this section, the administration may use either a methodology based on claims and encounter data that is submitted to the administration from contractors or a methodology based on data that is reported to the administration by private hospitals and state operated institutions for mental disease. The selected methodology applies to all private hospitals and state operated institutions for mental disease qualifying for disproportionate share payments.

P. Disproportionate share payments made pursuant to subsection O of this section include amounts for disproportionate share hospitals designated by political subdivisions of this state, tribal governments and universities under the jurisdiction of the Arizona board of regents. Subject to the approval of the centers for medicare and medicaid services, any amount of federal funding allotted to this state pursuant to section 1923(f) of the social security act and not otherwise spent under subsection O of this section shall be made available for distribution pursuant to this subsection. Political subdivisions of this state, tribal governments and universities under the jurisdiction of the Arizona board of regents may designate hospitals eligible to receive disproportionate share payments in an amount up to the limit prescribed in section 1923(g) of the social security act if those political subdivisions, tribal governments or universities provide sufficient monies to qualify for the matching federal monies for the disproportionate share payments.

Q. Notwithstanding any law to the contrary, the administration may receive confidential adoption information to determine whether an adopted child should be terminated from the system.

R. The adoption agency or the adoption attorney shall notify the administration within thirty days after an eligible person receiving services has placed that person's child for adoption.

S. If the administration implements an electronic claims submission system, it may adopt procedures pursuant to subsection G of this section requiring documentation different than prescribed under subsection G, paragraph 4 of this section.

T. In addition to any requirements adopted pursuant to subsection D, paragraph 4 of this section, notwithstanding any other law, subject to approval by the centers for medicare and medicaid services, beginning July 1, 2011, members eligible pursuant to section 36-2901, paragraph 6, subdivision (a), section 36-2931 and section 36-2981, paragraph 6 shall pay the following:

1. A monthly premium of fifteen dollars, except that the total monthly premium for an entire household shall not exceed sixty dollars.
2. A copayment of five dollars for each physician office visit.
3. A copayment of ten dollars for each urgent care visit.
4. A copayment of thirty dollars for each emergency department visit.

U. Subject to the approval of the centers for medicare and medicaid services, political subdivisions of this state, tribal governments and any university under the jurisdiction of the Arizona board of regents may provide to the Arizona health care cost containment system administration monies in addition to any state general fund monies appropriated for critical access hospitals in order to qualify for additional federal monies. Any amount of federal monies received by this state pursuant to this subsection shall be distributed as supplemental payments to critical access hospitals.

V. For the purposes of this section, "disproportionate share payment" means a payment to a hospital that serves a disproportionate share of low-income patients as described by 42 United States Code section 1396r-4.
36-2903.01 - Additional powers and duties; report; definition
36-2905.01. Inpatient hospital reimbursement program; large counties

A. Notwithstanding any other law, beginning on October 1, 2003, pursuant to this chapter the administration shall establish and operate a program for inpatient hospital reimbursement in each county with a population of more than five hundred thousand persons.

B. Beginning on October 1, 2003, the director shall require contractors to enter into contracts with one or more hospitals in these counties and to reimburse those hospitals for services provided pursuant to this chapter based on the reimbursement levels negotiated with each hospital and specified in the contract and under the terms on which the contractor and the hospital agree and under all of the following conditions:

1. The director may review and approve or disapprove the reimbursement levels and the terms agreed on by the contractor and the hospital.

2. If the contractor implements an electronic claims submission system it may adopt procedures requiring documentation of the system.

3. Payment received by a hospital from a contractor is considered payment in full by the contractor. A hospital may collect any unpaid portion of its bill from other third party payors or in situations covered by title 33, chapter 7, article 3.

C. If a contractor and a hospital do not enter into a contract pursuant to subsection B of this section, the reimbursement level for inpatient services provided on dates of admission on or after October 1, 2003 for that hospital is the reimbursement level prescribed in section 36-2903.01 multiplied by ninety-five per cent.

D. For outpatient hospital services provided under the program prescribed in this section, a contractor may reimburse a hospital either pursuant to rates and terms negotiated in a contract between the contractor and the hospital or pursuant to section 36-2903.01, subsection G, paragraph 3.

E. Contracts established pursuant to this section shall specify that arbitration may be used in lieu of the grievance and appeal procedure prescribed in section 36-2903.01, subsection B, paragraph 4 to resolve any disputes arising under the contract.
LAND DEPARTMENT (F-18-0405)
Title 12, Chapter 5, Article 5, Leases
TO: Members of the Governor’s Regulatory Review Council (Council)

FROM: Council Staff

DATE: April 16, 2018

SUBJECT: LAND DEPARTMENT (F-17-0405)
Title 12, Chapter 5, Article 5, Leases

COMMENTS ON THE FIVE-YEAR REVIEW REPORT

Purpose of the Agency and Number of Rules in the Report

This five-year review report from the Land Department (Department) covers 12 rules in A.A.C. Title 12, Chapter 5, Articles 5, related to leases. The rules are related to issuance of permits and leases of State Trust land; conflicting permit and lease applications; rental amounts and payment procedures; assignment and amendment to existing permits and leases; and sales, mortgages, and liens against the rights of permit and leaseholders. Additionally, the rules prescribe penalties for trespassing on State Trust land and explain the Commissioner’s power to close state land to recreational use under certain conditions.

The rules, except for Sections 505, 506, 533, and 534, have not been amended since they were first adopted in 1976. Section 533 was last amended in 1994, Sections 505 and 506 in 2003, and Section 534 in 2006.

Proposed Action

The Department states that it recognizes the flaws and inconsistencies within the rules. However, on pages 4 -5 of the report, the Department indicates that it does not have the internal resources to modify all of its rules simultaneously. The Department is in the process of reviewing and prioritizing which rules need to be amended. Once that analysis is completed, the Department states that it will “attempt” a rulemaking by March 2019 for the rules that require amendment.
Substantive or Procedural Concerns

In the past three five-year-review reports, dating back to 2003, the Department has identified numerous issues with its rules. However, the Department has failed to make any proposed changes to its rules.

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

Yes. The Department cites to both general and specific authority for the rules. Of particular significance is A.R.S. § 37-132(A)(1), which requires the State Land Commissioner to “[e]xercise and perform all powers and duties vested in or imposed upon the [D]epartment, and prescribe such rules as are necessary to discharge those duties.”

2. **Summary of the agency’s economic impact comparison and identification of stakeholders:**

The Department indicates that the majority of the economic impact is to the Department and its staff in the processing of applications and managing applications through to execution or cancellation or withdrawal. The processing of conflicting applications is both resource and time intensive. Lienholders may be subject to a potential negative impact if they do not follow the rules and the liens are not recorded and the Department defaults or cancels a lease due to non-payment. The key stakeholders are the Department and the general public.

In FY17, leases and revenues generated:

<table>
<thead>
<tr>
<th>Lease Type</th>
<th># of Leases</th>
<th># of Acres</th>
<th>Revenues</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agricultural Leases</td>
<td>343</td>
<td>153,515</td>
<td>$4,674,434</td>
</tr>
<tr>
<td>Mineral Leases</td>
<td>54</td>
<td>45,900</td>
<td>$290,937</td>
</tr>
<tr>
<td>Commercial Leases</td>
<td>307</td>
<td>70,270</td>
<td>$25,654,774</td>
</tr>
</tbody>
</table>

Additionally, the Department had 7,715 rights-of-way grants and permits covering 194,557 acres of Trust Land which generated $8,821,910 in revenues in FY17.

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

Yes. The Department determines the rules do impose the least burden and costs to the regulated community.

4. **Has the agency received any written criticisms of the rules over the last five years?**

Yes. The Department indicates that it has received written criticisms on two of the reviewed rules during the last five years.¹ A criticism and Department’s response of Section 524 (Sale, Mortgage, or Lien on Interest of Holder of Lease or Permit) are summarized on page 16 of

¹ Copies of the criticisms have been included as attachments to the report.
the report. A criticism and Department’s response of Section 533 (Trespass on State Land) are summarized on page 18 of the report.

5. **Has the agency analyzed the rules’ clarity, conciseness, and understandability, consistency with other rules and statutes, and effectiveness?**

Yes. The Department indicates that the following rules are not clear, concise, and understandable:

- **Section 509 – Execution of Lease or Permits; Covenants; Effective Date and Completion of Lease of Permit:** The rule should be amended to remove language that is consistent with, but repetitive of, A.R.S. § 37-103. The statute also requires the Department’s seal to be affixed to various documents, including leases. Additionally, the rule contains many inconsistencies with agency operations.
- **Section 512 – Assignments:** The Department notes that references to “Commissioner” should be changed to the “Department” for clarity.
- **Section 513 – Manner of Assignment:** The Department notes that further consideration needs to be made to determine whether rights-of-way should be incorporated into Article 5.
- **Section 517 – Rentals:** The rule contains inconsistencies with agency operations. Grazing lease rentals are not fixed amounts; and grazing and agricultural leases do not contain rental fee amounts in the lease documents. Rights-of-ways and grantees of rights-of-way
may need to be incorporated into this rule after further consideration has been made by the Department.

- **Section 521 – Modification or Amendment of Existing Lease or Permit:** After further consideration is made, the Department will determine whether rights-of-way and grantees of rights-of-way should be incorporated into this rule.

- **Section 533 – Trespass on State Land:** The rule is inconsistent with A.R.S. § 37-501, as subsection (A) states that a person is guilty of trespass if certain actions are committed unless the person has a pending application with the Department. However, the statute notes that a person is guilty of trespass unless that person has an approved lease or sublease with the Department.

- **Section 534 – Closing Land to Recreational Use:** In the 2013 five-year-review report, the Department proposed to amend the rule to allow for closure of the land to motorized and non-motorized recreational uses unless a license was issued by Arizona Game and Fish; and to address closures to protect natural and cultural resources and lease improvements. In the current report, the Department states that these amendments are not necessary but may be helpful.

The Department indicates that the following rule is not entirely effective:

- **Section 508 – Application Confers No Right to Land:** In the previous five-year-review report, the Department proposed to amend the rule to clarify that the Department shall continue to collect rental payment from holdover lessees, permittees, and grantees pending renewal of a prior lease or permit. The Department indicates that it still implements this practice; therefore, the rule is inconsistent with agency operations.

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

Yes. The Department indicates that the following rules are not enforced as written as they are inconsistent with statutes or with agency operations:

- **Section 509 – Execution of Lease or Permits; Covenants; Effective Date and Completion of Lease of Permit:** This rule is mostly enforced, except for an application for reclassification does not serve as an effective date for a new lease because it triggers the need for a new lease.

- **Section 533 – Trespass on State Land:** The rule is enforced to the extent it is consistent with statute.

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

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

8. **For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

Not applicable, as the rules were adopted prior to July 29, 2010.
9.  **Conclusion**

As noted above, the Department “will ‘attempt’” to begin the rulemaking process by March 2019. While Council staff is concerned about the timeliness of the Department’s proposed course of action, staff recommends that the report be approved as it generally meets the requirements of A.R.S. § 41-1056 and R1-6-301.
January 25, 2018

Arizona Department of Administration
Governor's Regulatory Review Council
100 North 15th Avenue, Suite 402
Phoenix, AZ 85007

Attn: Nicole Ong Colyer, Chairperson

RE:    Arizona State Land Department’s 5 Year Rule Review Report on A.A.C. Title 12, Chapter 5, Article 5

Dear Chairperson Ong:

The Arizona State Land Department ("Department") submits for Council approval the accompanying Five-Year Review Report for A.A.C. Title 12, Chapter 5, Article 5. This document complies with the requirements under A.R.S. § 41-1056. The Department certifies that the report complies with A.R.S. § 41-1091.

Should you have any questions, please do not hesitate to contact Angela Calabrasi, Administrative Counsel, at (602) 542-2632 or acalabrasi@azland.gov.

Sincerely,

[Signature]
Wesley P. Mehl
Deputy Land Commissioner

Enclosures

c:    David Jacobs, Attorney General’s Office, Natural Resource Section
      Paul M. Peterson, Senior Administrative Counsel
      Angela Calabrasi, Administrative Counsel
FIVE-YEAR RULE REVIEW REPORT

Submitted to

THE GOVERNOR’S REGULATORY REVIEW COUNCIL

ARIZONA STATE LAND DEPARTMENT
“Serving Arizona’s Schools and Public Institutions Since 1915”

TITLE 12 – Natural Resources
CHAPTER 5 – State Land Department
ARTICLE 5 - Leases

Submitted January 31, 2018
Revised and resubmitted April 9, 2018
FIVE YEAR RULE REVIEW REPORT

TITLE 12. NATURAL RESOURCES
CHAPTER 5. STATE LAND DEPARTMENT
ARTICLE 5. LEASES

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FIVE-YEAR REVIEW REPORT FOR ARTICLE 5

Summary

The Administrative Procedures Act (APA) mandates a periodic review of agency rules. A.R.S. § 41-1056 provides criteria by which an agency must examine each rule, compile the examination into a report, and submit the report to the Governor’s Regulatory Review Council (the “Council”) for review. The Arizona State Land Department (the “Department”) is scheduled to file a review of its rules under Title 12, Chapter 5, Articles 5 with the Council by the end of January 2018. The Department’s complete rules are located in the Arizona Administrative Code (“A.A.C.”) Title 12, Chapter 5, Articles 1 through 25 and can be found on the Department’s website (www.azland.gov) as well as the Arizona Secretary of State’s website (www.azsos.gov).

The Department is not a regulatory agency. It functions as the trustee of the State’s 9.2 million acres of Trust land and associated natural resources. The trust status of the lands granted to the State imposes obligations and constraints that would not apply if the State held the land outright. The Department’s management of the Trust is governed by extensive and detailed provisions in Sections 24-30 of the State’s Enabling Act, the Arizona Constitution (Article X), and statutes in A.R.S. Titles 27 (sub-surface) and 37 (surface estate). In addition, extensive case law governs the Department’s procedures and management of the Trust.

Under this Five-Year Rule Review Report, the Department evaluated twelve separate rules relating to Article 5, copies of which are attached in Appendix A. The rules under Article 5 provide guidelines to issue leases and permits for use of Trust land, identifying and processing conflicting application, procedures for assigning or amending leases, rental, liens, trespass, and closing lands for recreational purposes. The rules were originally adopted in 1976.
FACTORS ANALYZED AND IDENTICAL INFORMATION

Legend of Factors Used in Analysis pursuant to A.A.C. R1-6-301(A):

1. General and specific authority, including any statute that authorizes the agency to make rules;
2. Objective of the rule, including the purpose for the existence of the rule;
3. Effectiveness of the rule in achieving the objective, including a summary of any available data supporting the conclusion reached;
4. Consistency of the rule with state and federal statutes and other rules made by the agency;
5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement;
6. Clarity, conciseness, and understandability of the rule;
7. Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the five-year review report;
8. A comparison of the estimated economic, small business and consumer impact with prior economic impact statement or assessment;
9. Any analysis submitted to the agency by another person regarding the rule’s impact on this State’s business competitiveness;
10. If applicable, how the agency completed the course of action indicated in the agency’s previous five-year review report;
11. A determination that the rule’s probable benefits outweigh the probable costs and that rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective;
12. A determination after analysis that the rule is not more stringent than a corresponding federal law unless there is statutory authority to exceed the requirements of that federal law;
13. For a rule adopted after July 29, 2010, that requires issuance of a regulatory permit, license or agency authorization, whether the rule complies with A.R.S 40-1037; and
14. Course of action the agency proposes to take regarding each rule.

Identical Information for All the Rules

Pursuant to A.A.C. R1-6-301(B), identical information shall be provided only once for any group of rules for which information on a particular issue is the same. The rules contained in this report are identical in the following ways:

9. No external analysis of the rule has been received by the Department.
10. The Department contends that the rule’s probable benefits outweigh its probable costs, and the rule imposes the least burden and costs to persons regulated by the rule.
11. There is no federal law with which to compare this rule.
12. This factor does not apply because the rules reviewed herein were not adopted after July 29, 2010.
13. The Department recognizes the flaws and inconsistencies in many of its rules. However, the Department does not have the budget or staff resources available to simultaneously change
all of its rules. Therefore, the Department is reviewing and prioritizing which rules need to be amended. Once that analysis is completed, the Department will attempt a rulemaking by March 2019 for the rules it deems a priority to amend.
RULE ANALYSIS

Article 5. Leases

A.A.C. Rule 12-5-505 Time for Filing Conflicting Applications

1. Statutory Authority:
   A.R.S. § 37-132(A)(1); § 37-284

2. Objective:
The objective of the rule is to notify to all stakeholders as to when the Department will not accept a conflicting application to use Trust land, to provide time frames for the acceptance of conflicting applications, and to define a conflicting application.

3. Effectiveness:
The rule is effective as written.

4. Consistency:
The rule is consistent with statute and agency operations.

5. Enforcement policy:
The rule is enforced.

6. Clear, concise, and understandable:
The rule is clear, concise, and understandable.

7. Written criticisms:
The Department has not received any written criticisms of the rule in the past five years.

8. Economic impact:
There is no economic impact of the rule on stakeholders. There is an economic impact of the rule on the Department, as the processing of conflicting applications is both resource- and time-intensive. Nonetheless, statutes dictate that the Department accept conflicting applications in certain circumstances.

10. Previous 5YRRR Report Course of Action:
In the previous 5YRRR in 2013, the Department proposed to amend the rule to reiterate language in A.R.S. § 37-284. The Department did not complete this course of action. The Department now believes this proposed amendment would be redundant and unnecessary.
A.A.C. Rule 12-5-506 Procedure in Processing Conflicting Applications

1. **Statutory Authority:**
   A.R.S. § 37-132(A)(1); § 37-284

2. **Objective:**
   The objective of the rule is to articulate how the Department processes and awards a lease when there are conflicting applications.

3. **Effectiveness:**
   The rule is effective as written.

4. **Consistency:**
   The rule is consistent with statute and agency operations.

5. **Enforcement policy:**
   The rule is enforced.

6. **Clear, concise, and understandable:**
   The rule is clear, concise, and understandable.

7. **Written criticisms:**
   The Department has not received any written criticisms of the rule in the past five years.

8. **Economic impact:**
   There is no economic impact of the rule on stakeholders. There is an economic impact of the rule on the Department, as the processing of conflicting applications is both resource- and time-intensive. Nonetheless, statutes dictate that the Department accept conflicting applications in certain circumstances.

10. **Previous 5YRRR Report Course of Action:**
    In the previous 5YRRR in 2013, the Department proposed to amend the rule to include rights-of-way. The Department did not complete this course of action. The Department now believes this proposed amendment would be unnecessary as it has not received any conflicting right-of-way applications in at least twenty years, and Rights-of-way are mostly for non-exclusive uses.
A.A.C. Rule 12-5-508 Application Confers No Right to Land

1. Statutory Authority:
A.R.S. § 37-132(A)(1); 37-294

2. Objective:
The objective of this rule is to articulate the rights which are and are not conferred in the land subject to a pending new or renewal application.

3. Effectiveness:
The rule is effective as written.

4. Consistency:
The rule is consistent with statute and agency operations.

5. Enforcement policy:
The rule is enforced.

6. Clear, concise, and understandable:
The rule is clear, concise and understandable.

7. Written criticisms:
The Department has not received any written criticisms of the rule in the past five years.

8. Economic impact:
The estimated economic impact of the rule to renewal applicants would be the fair market rental value of the land that is paid during the term of interim occupancy.

9. Previous 5YRRR Report Course of Action:
In the previous 5YRRR in 2013, the Department proposed to amend the rule to include right-of-way grantees. The Department did not complete this course of action.
A.A.C. Rule 12-5-509 Execution of Lease or Permits; Covenants; Effective Date and Completion of Lease of Permit

1. **Statutory Authority:**
   A.R.S. § 37-132; § 37-103; § 37-215; § 37-281

2. **Objective:**
   The objective of this rule is to explain the requirements to finalize a State lease or permit, including the requirements for signing, payment of rent or fees, timeframes, and deadlines. The rule describes how effective dates are determined and includes instructions on appealing an appraised rental value.

3. **Effectiveness:**
   The rule is mostly effective.

4. **Consistency:**
   Part of paragraph 2 is inconsistent with agency operations, as many insert sheets are not themselves signed. Another part of the second paragraph is inconsistent with agency operations as the statement of rental usually is sent out beforehand and not with the transmittal of the lease or permit. Also, the rule is inconsistent with agency operations, as we do not send out receipts unless requested following execution of the lease or permit. Further, where it notes that the rental statement is sent with a copy of lease for execution by the lessee or permittee, in actuality, the Department mostly sends a copy of the rental statement under separate cover prior to sending out the lease documents. Lastly, the effective date of a lease is never the date of application upon open land, but rather the date of Review Committee Approval, the day after approval by the Board of land Appeals, or the date of auction, whichever is later, all options which fall under the language “or such other subsequent date as the Commissioner may prescribe.”

5. **Enforcement policy:**
   The rule is mostly enforced, except that an application for reclassification does not serve as an effective date for a new lease because it triggers the need for a new lease.

6. **Clear, concise, and understandable:**
   The rule is mostly clear, concise, and understandable, except that mention of the Department seal being affixed to lease documents is redundant of A.R.S. § 37-103.

7. **Written criticisms:**
   The Department has not received any written criticisms of the rule in the past five years.

8. **Economic impact:**
The economic impact of the rule is primarily to the Department staff and resources in processing applications and managing the applications through to execution or cancellation or withdrawal.

10. **Previous 5YRRR Report Course of Action:**
    In the previous 5YRRR in 2013, the Department proposed to amend the rule to add references to right-of-way grants and grantees, remove inconsistencies with agency operations in regards to the mailing of the billing statements with the leases, to remove the redundant reference to the seal having to be affixed to lease and permit documents, and to remove the reference to reclassification and appeal as this process triggers a requirement to apply for a new lease and renders moot a need for a defined effective date under this scenario. The Department did not complete this course of action.

14. **Proposed Course of Action:**
    Regarding the inconsistency whether insert sheets are signed, ASLD only in the past year implemented an electronic application process and is currently working toward an electronic signature process for executing documents. Until those processes are implemented fully and standardized, it is not clear what ASLD would propose in the new rule regarding the treatment of insert sheets and whether those will need additional execution or be incorporated by addendum into the ASLD contracts. Further consideration needs to be made as to whether rights-of-way and grantees of rights-of-way should be incorporated into this and other rules within this Article. As to whether ASLD should resolve the inconsistency in the mailing of billing statements will depend on the extent to which electronic means continue to be developed and standardized at the Department. The reference to the seal and to reclassification and appeal should be amended once the entirety of the rule is ready for amendment.
A.A.C. Rule 12-5-512 Assignments

1. **Statutory Authority:**
   A.R.S. § 37-132(A)(1); 37-286

2. **Objective:**
   The objective of this rule is to notify assignors of leases or permits of the prerequisites for assigning a lease or permit.

3. **Effectiveness:**
   The rule is effective as written.

4. **Consistency:**
   The rule is consistent with statute and agency operations.

5. **Enforcement policy:**
   The rule is enforced.

6. **Clear, concise, and understandable:**
   The rule is clear, concise and understandable.

7. **Written criticisms:**
   The Department has not received any written criticisms of the rule in the past five years.

8. **Economic impact:**
   The estimated economic impact of the rule to assignment applicants would be the following year’s rent payment required in advance of an assignment application made within 30 days of the rent’s due date.

10. **Previous 5YRRR Report Course of Action:**
    In the previous 5YRRR in 2013, the Department proposed to amend the rule to include references to rights-of-way and to replace references to the Commissioner with “Department”. The Department did not complete this course of action.

14. **Proposed Course of Action:**
    Further consideration needs to be made as to whether rights-of-way and grantees of rights-of-way should be incorporated into this and other rules within this Article. The interchange of “Commissioner” and “Department” do not present a substantive or immediate issue, but should other issues necessitate a rulemaking, ASLD would likely propose to change some references to “Commissioner” to “Department”.

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A.A.C. Rule 12-5-513 Manner of Assignments

1. **Statutory Authority:**
   A.R.S. § 37-132(A)(1); § 37-255(A); § 37-286(B)

2. **Objective:**
   The objective of this rule is to notify assignors of leases or permits of the manner in which assignments are required to be done, including reference to forms, fees, map requirements, and lienholder consent.

3. **Effectiveness:**
   The rule is effective as written.

4. **Consistency:**
   The rule is consistent with statute and agency operations.

5. **Enforcement policy:**
   The rule is enforced.

6. **Clear, concise, and understandable:**
   The rule is clear, concise and understandable.

7. **Written criticisms:**
   The Department has not received any written criticisms of the rule in the past five years.

8. **Economic impact:**
   There is no estimated economic impact of the rule to assignment applicants.

10. **Previous 5YRRR Report Course of Action:**
    In the previous 5YRRR in 2013, the Department proposed to amend the rule to include references to rights-of-way, to note that the assignment application includes the assumption of interest in the land, to remove confusing language regarding divided and undivided interests, and to combine the rule with -512. The Department did not complete this course of action.

14. **Proposed Course of Action:**
    Further consideration needs to be made as to whether rights-of-way and grantees of rights-of-way should be incorporated into this and other rules within this Article. The other amendments referenced in the 2013 report may also be beneficial to make.
A.A.C. Rule 12-5-517 Rentals

1. **Statutory Authority:**
   A.R.S. § 37-132

2. **Objective:**
The objective of the rule is to inform stakeholders of the nature and payment of rental amounts.

3. **Effectiveness:**
The rule is mostly effective.

4. **Consistency:**
The rule is mostly consistent, although it is inconsistent with agency operations in that grazing lease rentals are not fixed amounts and grazing and agricultural leases do not contain rental fee amounts in the lease documents.

5. **Enforcement policy:**
The rule is enforced as written, except as to grazing leases.

6. **Clear, concise, and understandable:**
The rule is clear, concise, and understandable.

7. **Written criticisms:**
The Department has not received any written criticisms of the rule in the past five years.

8. **Economic impact:**
There is no estimated economic impact of the rule to assignment applicants.

10. **Previous 5YRRR Report Course of Action:**
In the previous 5YRRR in 2013, the Department proposed to amend the rule to include references to rights-of-way and to delete antiquated language. The Department did not complete this course of action.

14. **Proposed Course of Action:**
Further consideration needs to be made as to whether rights-of-way and grantees of rights-of-way should be incorporated into this and other rules within this Article. Specifically, the Department has most recently litigated an issue regarding the treatments of rights-of-way by ASLD. That litigation is still pending, and the resolution of that litigation, along with other legal considerations of the treatments of rights-of-way, may bring clarity to whether ASLD will include the reference to rights-of-way and right-of-way grantees in certain rules pertaining to Leases.
A.A.C. Rule 12-5-518 Rental Notices

1. **Statutory Authority:**
   A.R.S. § 37-132

2. **Objective:**
   The objective of the rule is to explain how the Department notifies lessees that rent is due or is changing and when rent is due.

3. **Effectiveness:**
   The rule is effective.

4. **Consistency:**
   The rule is consistent.

5. **Enforcement policy:**
   The rule is enforced as written.

6. **Clear, concise, and understandable:**
   The rule is clear, concise, and understandable.

7. **Written criticisms:**
   The Department has not received any written criticisms of the rule in the past five years.

8. **Economic impact:**
   There is no estimated economic impact of the rule to stakeholders.

10. **Previous 5YRRR Report Course of Action:**
    In the previous 5YRRR in 2013, the Department proposed to amend the rule to replace references to the Commissioner with “Department.” The Department did not complete this course of action.

14. **Proposed Course of Action:**
    The interchange of “Commissioner” and “Department” do not present a substantive or immediate issue, but should other issues necessitate a rulemaking, ASLD may propose to change some references to “Commissioner” to “Department”.

A.A.C. Rule 12-5-521 Modification or Amendment of Existing Lease or Permit

1. Statutory Authority:
   A.R.S. § 37-132

2. Objective:
The objective of the rule is to explain a limitation on the modification of an existing lease or permit term.

3. Effectiveness:
The rule is effective.

4. Consistency:
The rule is consistent.

5. Enforcement policy:
The rule is enforced as written.

6. Clear, concise, and understandable:
The rule is clear, concise, and understandable.

7. Written criticisms:
The Department has not received any written criticisms of the rule in the past five years.

8. Economic impact:
There is no estimated economic impact of the rule to stakeholders.

10. Previous 5YRRR Report Course of Action:
It is unclear whether there was a specific proposed amendment to the rule in the previous 5YRRR in 2013.

14. Proposed Course of Action:
Further consideration needs to be made as to whether rights-of-way and grantees of rights-of-way should be incorporated into this and other rules within this Article.
A.A.C. Rule 12-5-524 Sale, Mortgage, or Lien on Interest of Holder of Lease or Permit

1. **Statutory Authority:**
   A.R.S. § 37-132; § 37-255

2. **Objective:**
   The objective of the rule is to explain the responsibilities of lessees, the Department, and lienholders with respect to liens filed, foreclosure, lien balance, and notices of certain actions to parties to a lien.

3. **Effectiveness:**
   The rule is effective.

4. **Consistency:**
   The rule is consistent.

5. **Enforcement policy:**
   The rule is enforced as written.

6. **Clear, concise, and understandable:**
   The rule is clear, concise, and understandable, except the first paragraph is redundant of A.R.S. § 37-255.

7. **Written criticisms:**
   On August 25, 2017, Jennifer Cannon, Manager, Construction Services and Land, Arizona Public Service, notes this rule (R12-5-524) and recommended certain rights be afforded to utilities to purchase land when the Department sells the land.

   The Department’s response is as follows: the rule cited, while this rule, does not regulate the sale of lands but rather the filing of liens by lienholders and the Department’s obligations during assignments and foreclosures when a lien has been filed.

8. **Economic impact:**
   There is a potential negative economic impact to stakeholders, i.e. lienholders in this instance, if they do not follow the rule and the liens are not recorded and the Department defaults or cancels a lease due to non-payment. In other words, there is only a negative impact to stakeholders if they do not follow the rule; in other words, the rule protects lienholders. Generally though, the Department’s primary stakeholder are its land beneficiaries and while we include applicants as “stakeholders” for the purpose of rule review and rulemaking, ASLD ultimately acts in the best interests of the Trust and its beneficiaries which does not always align with applicant stakeholders.
10. **Previous 5YRRR Report Course of Action:**

In the previous 5YRRR in 2013, the Department proposed to amend the rule to primarily make technical and grammatical changes and to remove language it deemed redundant of A.R.S. § 37-289 and § 37-513.
A.A.C. Rule 12-5-533 Trespass on State Land

1. Statutory Authority:
   A.R.S. § 37-132; § 37-501; § 37-502

2. Objective:
The objective of the rule is to explain a trespass action and legal off-highway vehicle (“OHV”) use, as well as designate authorized uses and prescribe penalties for trespass. The rule also defines terms used.

3. Effectiveness:
The rule is effective.

4. Consistency:
The rule is partially inconsistent, as subsection (A) articulates that a person is guilty of trespass if certain actions are committed unless the person has a pending application on file with the Department, whereas A.R.S. § 37-501 requires that a person have an approved lease or sublease with the Department and not just a pending application.

5. Enforcement policy:
The rule is enforced as written except where inconsistent with statute.

6. Clear, concise, and understandable:
The rule is clear, concise, and understandable, except that subsection (B) is redundant of A.R.S. § 37-502.

7. Written criticisms:
On August 25, 2017, Craig McMullen, Assistant Director, Field Operations Division, Arizona Game and Fish Department, recommended that clarifying language be added to subsection (A) to have the rule indicate what degree of misdemeanor a trespass entails, to add that a person shall not recreate on State Trust Land without a valid recreational permit or hunting and fishing license, and to add that a person must show a valid permit or license to a peace officer upon a request.

   The Department’s response is as follows: the statute covering trespass, A.R.S. § 37-501 already articulates that trespass on state lands is a class 2 misdemeanor and the Department is considering adding the reference to valid recreational permits and hunting and fishing licenses.

8. Economic impact:
The main economic impact is of that to the Department where OHV use is difficult to monitor, contain, and mitigate impacts. There is no estimated economic impact to stakeholders.
10. Previous 5YRRR Report Course of Action:
In the previous 5YRRR in 2013, the Department proposed to amend subsection (A) to conform with A.R.S. § 37-501; to create a new rule to address OHVs separate from trespass actions; to amend subsection (C) to be a requirement instead of a request; and to remove language redundant of statutes.
A.A.C. Rule 12-5-534 Closing Land to Recreational Use

1. **Statutory Authority:**
   A.R.S. § 37-132

2. **Objective:**
   The objective of the rule is to describe when the Commissioner may close lands for recreational use.

3. **Effectiveness:**
   The rule is effective.

4. **Consistency:**
   The rule is consistent

5. **Enforcement policy:**
   The rule is enforced.

6. **Clear, concise, and understandable:**
   The rule is clear, concise, and understandable.

7. **Written criticisms:**
   The Department has not received any written criticisms of the rule in the past five years.

8. **Economic impact:**
   There is no estimated economic impact of this rule on stakeholders.

10. **Previous 5YRRR Report Course of Action:**
    In the previous 5YRRR in 2013, the Department proposed to amend portions of the rule to allow for closure of the land to motorized and non-motorized recreational uses while recognizing the rights of those who hold a license issued by AZ game and Fish and to address closures to protect natural and cultural resources and lease improvements. The Department did not complete this course of action.

14. **Proposed Course of Action:**
    The changes referenced in the Previous 5YRRR (noted above) are not necessary but may be helpful under certain circumstances.
Economic Impact Statement

As of Fiscal Year 2017, the Department held: 343 Agricultural Leases covering 153,515 acres of Trust Land which generated $4,674,434 in income; 1,191 Grazing Leases and Permits covering 8,349,806 acres which generated $3,087,894 in income; 307 Commercial Leases covering 70,270 acres which generated $25,654,774 in income; 7,715 Right-of-Way Grants and Permits covering 194,557 acres which generated $8,821,910 in income; and 54 Mineral Leases covering 45,900 acres of Trust Land which generated $290,937 in rental income.

As a matter of comparison, in Fiscal Year 2016 the Department held: 342 Agricultural Leases covering 153,779 acres of Trust Land which generated $4,402,721 in income; 1,191 Grazing Leases and Permits covering 8,329,280 acres which generated $3,404,424 in income; 295 Commercial Leases covering 69,397 acres which generated $26,199,522 in income; 7,673 Right-of-Way Grants and Permits covering 198,487 acres which generated $4,212,499 in income; and 55 Mineral Leases covering 30,230 acres of Trust Land which generated $226,255 in rental income.

The rental payments from all of the above leases are deposited into the Trust’s expendable fund to be invested by the Treasurer and distributed directly to the beneficiaries. In addition to the direct impacts to the 13 beneficiaries of Trust Land, activities on Trust Lands provide opportunities for local economies via the labor force and businesses that supply goods and services.
APPENDIX A
Arizona Administrative Code

Title 12, Chapter 5, Article 5 Leases:
   R12-5-505 Time for Filing Conflicting Applications
   R12-5-506 Procedure in Processing Conflicting Applications
   R12-5-508 Application Confers No Right to Land
   R12-5-509 Execution of Leases of Permits; Covenants; Effective Date and Completion of Lease or Permit
   R12-5-512 Assignments
   R12-5-513 Manner of Assignments
   R12-5-517 Rentals
   R12-5-518 Rental Notices
   R12-5-521 Modification or Amendment of Existing Lease of Permit
   R12-5-524 Sale, Mortgage or Lien on Interest of Holder of Lease or Permit
   R12-5-533 Trespass on State Land
   R12-5-534 Closing Land to Recreational Use
A. Unleased land. If an application is filed on unleased land, and a proposed lease, permit, or right-of-way document is offered to an applicant for review and signature, the Department shall not accept another application for the same purpose.

B. Land under lease for the same purpose. The Department shall not accept a conflicting application for a lease unless the application is filed within the time prescribed by A.R.S. § 37-284.

C. Land under permit for the same purpose where the use is exclusive. An applicant shall file a conflicting application for a permit on land for the same purpose within 60 days before expiration of the existing permit.

D. For the purpose of this Article, conflicting applications are defined as two or more applications to lease State Trust surface land for the same purpose or two or more permit applications to use State Trust surface land for the same purpose.

Credits

Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-505 renumbered from Section R12-5-104 (Supp. 93-3). Section repealed; new Section made by final rulemaking at 9 A.A.R. 3817, effective October 4, 2003 (Supp. 03-3).

A. If two or more applicants apply for a lease or permit on the same land for the same purpose, the Department shall send a Notice of Conflicting Applications to each applicant requiring each applicant to submit to the Department a statement of equities containing the basis of the applicant’s claim to the lease or permit and to serve a copy upon the other applicants within 30 days from the date of the Department’s Notice, unless the time is extended by the Department or by stipulation of the applicants. If an applicant fails to submit a statement of equities, the Department may examine evidence or records, or review testimony from a hearing conducted under subsection (E)(2) and make a decision regarding the conflicting applications. The Department shall make its decision regarding an application filed for lease or permit under this Section in the best interest of the Trust.

B. An applicant shall have the statement of equities verified under oath before an officer authorized under the laws of this state to administer oaths, or sign the statement of equities accompanied by a certification under penalty of perjury that the information contained in the statement of equities is to the best of the applicant’s knowledge and belief, true, correct, and complete. The statement of equities shall include information related to the factors considered under subsection (D).

C. An applicant, within 10 days from the date of receipt of the statement of equities of another applicant, may file with the Department and if filed, shall serve upon other applicants, a response to the other applicant’s statement of equities.

D. In conducting an investigation and review, the Department shall consider the following factors:

1. An offer to pay more than appraised rental as an equity, if the Department determines not to go to bid on the conflict;

2. Whether the applicant’s proposed land use or land management plan is beneficial to the Trust;

3. The applicant’s access to or control of facilities or resources necessary to accomplish the proposed use;
4. The applicant’s willingness to reimburse the owner of reimbursable non-removable improvements;

5. The applicant’s previous management of land leases, land management plans, or any history of land or resource management activities on private or leased lands;

6. The applicant’s experience associated with the proposed use of land;

7. Impact of the proposed use on future utility and income potential of the land;

8. Impact to surrounding state land;

9. Recommendations of the Department’s staff; and

10. Any other considerations in the best interest of the Trust.

**E. After investigation and review of the statements of equities, the Department may:**

1. Request additional information from an applicant;

2. Conduct a hearing at the Department or another designated location at the earliest possible date, giving notice of time and place for hearing to all applicants;

3. Award the lease or permit to an applicant;

4. Reject all applications; or

5. Proceed to bid according to **A.R.S. § 37-284**.
F. The bid process is as follows:

1. If the Department determines to proceed to bidding, the Department shall issue a Notice of Call for Bidding that states the time and place bids will be accepted including the minimum rental that will be accepted.

2. The Notice shall specify the existence of a preferred right, if any. The Department shall include, with the Notice, a copy of the form of lease or permit that may be offered to the successful bidder. A bidder shall submit a written bid to the Department by 5:00 p.m. no later than 30 days from the date of the Notice. A bid shall be made on forms provided by the Department. The Department shall accept a bid form only with the original signature of the bidder. A bidder may either mail or deliver the bid in person to the Department.

3. The Department shall not accept a bid from anyone other than an applicant named in the Notice of Call for Bidding.

4. Unless subsection (F)(5) applies, the Department shall accept only one bid from each applicant. Once the bid is submitted, the Department shall not accept a second or substitute bid or any change to the original bid.

5. If the bids of two or more applicants are the same, are also the highest bids offered, and there is no preferred right, the Department shall repeat the bid procedure under subsections (F)(1) and (2) with the following exceptions, until a single highest bid is submitted:

   a. In a call for new bids, the Department shall establish a new minimum rental that equals the highest amount offered in the previous bidding.

   b. The Department shall accept new bids only from the applicants who submitted the highest matching bids.

6. The Department shall mail a Notice of Bid Results to all bidders. A bidder choosing to exercise a preferred right shall, within 15 days of the Department’s issuance of the Notice of Bid Results, offer a bid matching the highest bid, in writing, on forms provided by the Department.

G. Nothing in this Section limits or diminishes the jurisdiction of the Department. This Section does not apply to an application for an oil or gas lease.

Credits

Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-506 renumbered from Section R12-5-105 (Supp. 93-3). Section repealed; new Section made by final rulemaking at 9 A.A.R. 3817, effective October 4, 2003 (Supp. 03-3).
An application or permit for state land confers no right of occupancy, possession or use of said land until a lease or permit is issued thereunder or permission is granted in writing by the Commissioner. Provided, however, a prior lessee or permittee may occupy and use said land pending action on his application for renewal. In the event that the prior lessee or permittee should not be awarded a renewed lease or permit, the Commissioner may assess and collect from said lessee or permittee the reasonable value of the use of said land pending action upon the application to renew said lease or permit.

Credits

Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-508 renumbered from Section R12-5-107 (Supp. 93-3).

R12-5-509. Execution of Leases or Permits; Covenants; Effective Date and Completion of Lease or Permit

All leases and permits shall be signed by the lessee or permittee as provided by these rules and regulations and by the Commissioner or his Deputy, with the seal of the Department affixed thereto. All leases and permits shall contain such provisions, covenants, conditions and restrictions as may be prescribed by the Commissioner, hereinafter more particularly set forth under each type of lease. The effective date of the lease will be the date of application upon open land, or such other subsequent date as the Commissioner may prescribe. Upon lands previously leased, the date following the expiration date of the lease shall be the effective date; provided, that where the lands under lease have been reclassified, the effective date of the lease shall bear the date of such reclassification, if no appeal from reclassification is taken or if the Commissioner’s decision is upheld if so appealed, or such other subsequent date as the Commissioner may prescribe.

Upon approval of the application to lease or permit and an appraisal or fixing of the rental value thereof, a lease or permit in duplicate will be mailed to the lessee or permittee, which lease or permit shall be signed in duplicate by the lessee or the permittee in the manner prescribed by these rules and regulations. Insert sheets which, when required, described the land being leased or for which permit is issued are a part of the lease or permit and shall be signed in the same manner as the lease or permit. A statement of the rental due and the permit or lease issuance fee will accompany the transmittal of the lease or permit. Upon the lease and permit and insert sheets, when required, they are to be returned to the Commissioner with the rental payment and lease or permit issuance fee in accordance with the statement rendered. When the lease or permit and insert sheets, when required, are received by the Commissioner, the same will be executed by the Commissioner as above provided and entered upon the records of the Commissioner. After execution by the Commissioner, one copy of the lease or permit, including the insert sheets when required, will be returned to the lessee or permittee with a receipt for the payment of rental.

If the lease, permit and insert sheets, when required, are not executed by the lessee or permittee and returned to the Commissioner, together with the payment of the rental as indicated by the statement therefor forwarded with such instruments, within 60 days from the date of mailing by the Commissioner, the lease or permit will be declared to be null and void and of no force and effect, and the land will become open and available for leasing by other persons. Provided, however, that should the applicant object to the appraised rental value, he may appeal from said appraisement as provided by law and the rules and regulations of the Department to the Board of Appeals of the State Land Department without prejudice to his rights to the offered lease or permit.

Credits

A. A lessee or permittee of state lands not in default in his rentals and who has kept and performed all the conditions of his lease or permit may, but only with the written consent of the Commissioner, assign such lease or permit.

1. Application for assignment shall be made on the appropriate form prescribed by the Commissioner.

B. An application for assignment of a lease or permit made within the 30 days immediately preceding the end of any lease year of the pertinent lease or permit will not be accepted for filing by the Commissioner unless the next year’s advance rentals have been made.

Credits

Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-512 renumbered from Section R12-5-111 (Supp. 93-3).

R12-5-513. Manner of Assignments

Except as otherwise provided by law or these rules and regulations, assignments may be for all or part of the lands covered by a lease or permit. An application for assignment by the lessee or permittee, together with an application for transfer and assumption of lease or permit shall be submitted upon forms furnished and approved by the Commissioner. The applications shall be accompanied by the required fees, together with the lease or permit being assigned. The application for such assignment and the application for transfer and assumption of a lease or permit shall be signed by the parties as provided in these rules and regulations and acknowledged before a notary public or other officer authorized to administer oaths. The Commissioner shall indicate on the application to assign and application for transfer and assumption of lease or permit his approval or disapproval of the application, which action shall be made of record by the Commissioner.

In the event the assignment is a partial assignment and only covers a part of the leased or permitted lands, the description of the lands being transferred must be by legal subdivision or by metes and bounds based on an actual survey upon which acreage can be determined, together with a map or such survey if required by the Commissioner; otherwise no approval to said assignment and assumption will be granted by the Commissioner. An assignment may be only for a divided or undivided interest.

No assignment shall be made without the consent of all parties of record in the State Land Department in writing who may have a lien or encumbrance upon the lessee’s or permittee’s interest in said lease or permit.

Credits

Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-513 renumbered from Section R12-5-112 (Supp. 93-3).

Rentals for leases and permits shall be as hereinafter fixed. All rentals must be paid annually in advance, except as may be provided in the lease or permit or otherwise authorized and directed in writing by the Commissioner.

Credits

Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-517 renumbered from Section R12-5-116 (Supp. 93-3).


A.A.C. R12-5-517, AZ ADC R12-5-517

End of Document
If the rental is changed, the Commissioner shall notify the lessees and permittees at their last known address in the Commissioner’s records; lessees and permittees shall be notified by the Commissioner of a change in rental, by sending a notice thereof by mail at least 30 days prior to the date upon which said rental is fixed by the Commissioner to be due, and any such notice shall be presumptively deemed to have been received on the day following which such notice is deposited in the U.S. Mail by the Commissioner. In all other cases, the Commissioner shall mail out rental notices which rents shall be paid within 30 days or on the due date whichever is the later; the Commissioner shall assume no responsibility if the notices are not acted upon.

Credits

Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-518 renumbered from Section R12-5-117 (Supp. 93-3).

No existing lease or permit shall be modified or amended for a term any different than the term set forth therein unless mutually agreed upon by the Commissioner and the lessee or permittee.

Credits

Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-521 renumbered from Section R12-5-120 (Supp. 93-3).


A.A.C. R12-5-521, AZ ADC R12-5-521

End of Document
R12-5-524. Sale, Mortgage or Lien on Interest of Holder of Lease or Permit

The interest of the holder of any lease or permit shall be subject to sale, mortgage or other lien to the same extent as patented land. No contract of sale, mortgage or other lien shall become effective unless and until an executed or conformed copy thereof showing the recording data is filed with the Commissioner. When so filed, no assignment of the lease or permit affected shall be made without the consent of all parties. Upon the foreclosure of a contract of sale, mortgage or other lien filed with the Commissioner, the Commissioner shall assign the instrument in question to the party entitled thereto.

No action shall be taken by the Commissioner affecting the rights of the lienholder, mortgagee or contract purchaser or seller affecting the canceling, modification or declaration of the lien or permit to be forfeited without written notice to all parties in interest.

If a mortgagee, trustee under a deed of trust, lienholder or other person entitled to payment, receives full satisfaction of a mortgage, deed of trust or other obligation evidence of which has been filed with the Commissioner, he shall, at the request of the person making satisfaction or the Commissioner file with the Commissioner a sufficient release or satisfaction of mortgage or deed of release of the mortgage or deed of trust or lien.

Filing of these documents in no way obligates the Commissioner to the terms of them.

The Commissioner may on his own initiative, or at the request of a lessee or permittee, request of any mortgagee, trustee under a deed of trust, lienholder or other person entitled to payment who has filed with the Commissioner evidence of an obligation as set forth above, to notify the Department in writing as to the principal balance remaining due, if any, on such obligation; such request shall be made in writing and shall be mailed by the Commissioner to the last known address of record of such obligee -- the failure of such obligee to respond within 90 days from the date of receipt of such notice shall ipso facto be deemed as a consent by such obligee to any action that may be taken thereafter by the Commissioner with respect to any land covered by such mortgage, deed of trust, contract of sale; or other instrument evidencing an obligation.

Credits

Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-524 renumbered from Section R12-5-123 (Supp. 93-3).

A. Whoever knowingly and wilfully commits a trespass upon state lands, either by cutting down or destroying any timber or wood standing or growing thereon, or by carrying away any timber or wood therefrom, or by mowing, cutting, or removing any hay or grass thereof or therefrom or the grazing of livestock thereon, unless he shall have pending an application for the leasing of such lands, or by extracting or removing any oils, gases, coal, minerals, earth, rocks, fertilizer or fossils of any kind or description thereon or therefrom, or who, without right, injures or removes any building, fence or improvements thereon, or unlawfully occupies, plows or cultivates any of said lands, or negligently or wilfully exposes growing trees, shrubs, or undergrowth standing thereon to danger or destruction by fire, shall be guilty of a misdemeanor.

B. Whoever commits any trespass upon state lands, as above stated, shall also be liable in a civil action, brought in the name of the state in the county in which the trespass was committed, for three times the amount of the damage caused by such trespass, if the trespass was wilful, but for single damages only, if casual or involuntary. In the case of unfenced state land included within a fenced range, it shall be prima facie evidence of wilful trespass to permit the grazing of livestock thereon, unless the defendant shall have pending an application for the leasing of such lands. The damage referred to will be the rate per acre as found for the year for the appraised carrying capacities of the land. The Commissioner may also, without legal process, seize and take any product or property whatsoever unlawfully severed from such land, whether the same has been removed from such land or not, and may dispose of the product or property so seized in the manner prescribed by law for disposing of the products of state lands. The county officers of the several counties shall report to the Commissioner any trespass upon state lands which may come to their knowledge.

C. All lessees and permittees and holders of Certificates of Purchase are requested to inform the Commissioner in writing of any trespass committed on state lands, giving full information concerning such acts of trespass and by whom the same has been committed.

D. It shall be unlawful to utilize any type of motorized vehicle for travel on state trust lands except:

1. By the general public using public roads and highways that cross state trust lands;
2. By lessees and permittees of the Department acting within the limits of their leases and permits, employees of public agencies acting within the scope of their duties, and any persons using military, fire, search and rescue, or law enforcement vehicles for emergency purposes; and

3. By holders of valid Arizona hunting, fishing, or trapping licenses within the scope of such license:

   a. On existing roads; or

   b. For cross-country travel without damaging croplands, improvements, or cultural or historic sites to pick up legally killed big game animals.

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

1. “Cross-country travel” means travel over the countryside other than on existing roads.

2. “Existing road” means any maintained or unmaintained way, road, highway, trail, or path that has been utilized for motorized vehicular travel and clearly shows or has a history of established vehicle use. A one-time use or a single set of vehicle tracks created by an off-highway vehicle does not constitute a road under this definition.

3. “Motorized vehicle” means any vehicle deriving motive power from any source other than muscle or wind.

4. “Public roads and highways” means the entire width between the boundary lines of every public road or highway maintained by the Federal Government, the state, the Department, or a city, town, or county if any part of the road or highway is generally open to the use of the public for purposes of vehicular travel.

Credits


A. The Commissioner may close Trust land in a specific area to recreational use for any of the following purposes when the Commissioner determines that it is in the best interest of the Trust and this state to restrict recreational access to reduce liability to the state or protect the public:

1. Dust abatement: To abate dust caused by the unauthorized use of motorized or non-motorized off-road vehicles on Trust land;

2. Human-caused hazardous environmental conditions: Conditions posing a risk to the public health or safety resulting from human-caused environmental hazards. Examples include illegal dumping of toxic or hazardous materials, leaking or abandoned underground storage fuel tanks, abandoned or unauthorized landfills, abandoned airfields used for pesticide or herbicide storage, abandoned mine workings, and other sites with similar characteristics;

3. Naturally-occurring hazardous conditions: To reduce the risk from naturally-occurring conditions posing a risk to public health or safety. Examples include fissures, sink holes, and flood-damaged areas; or

4. Damaged Trust lands: For protection or remediation of Trust lands that have been damaged by toxic or hazardous materials, mining, fires, off-road vehicles, or other human-caused or natural occurrences.

B. The Commissioner shall, by order, close land only to the extent necessary to prevent unauthorized recreational access, and shall specify the period of time deemed necessary for closure.

C. The Department shall post the order of Trust land closure to recreation in the Department’s Public Records Room at 1616 W. Adams, Phoenix, AZ 85007 and in the Department’s District Offices. The Department shall maintain evidence of public notice of Trust land closure in the Department’s records.
D. For the purpose of this Section, the following definitions apply:

1. “Dust abatement” means to minimize the amount of particulate matter entrained into the air by requiring measures to prevent or mitigate particulate matter creation or emissions.

2. “Environmental hazard” means a chemical, physical agent, biological toxin, or other pollutant that is present in the environment and that may cause human illness or injury.

3. “Remediation” means an environment cleanup or other method used to remove or contain hazardous materials, stabilize mining waste, stabilize soil damage, or restore rangeland or native vegetation.

Credits


APPENDIX B

Related Statutes

A.R.S. § 37-103 Seal of the state land department
A.R.S. § 37-132 Powers and duties
A.R.S. § 37-215 Appeal from decision of commissioner or board of appeals
A.R.S. § 37-255 Sale or mortgage or other lien on interest of lessee or holder of certificate of purchase
A.R.S. § 37-281 Lease of state lands for certain purposes without advertising; terms and conditions
A.R.S. § 37-284 Conflicting short-term lease applications; preference rights
A.R.S. § 37-286 Execution of leases by land department; covenants’ assignment of lease by lessee
A.R.S. § 37-294 Recovery of lands unlawfully held
A.R.S. § 37-501 Trespass on state lands; classification
A.R.S. § 37-502 Damages in civil action for trespass on state lands; seizure of products; report of trespass
The state land department shall have a seal, and it shall be affixed with the signature of the state land commissioner to all instruments of conveyance, leases, certificates and other official acts. The signature of the commissioner and seal of the department upon the original or copy of any paper, plat, map or document from the state land department shall impart verity thereto.

A. R. S. § 37-103, AZ ST § 37-103
Current through the First Regular Session of the Fifty-Third Legislature (2017)
§ 37-132. Powers and duties

Effective: September 29, 2012

A. The commissioner shall:

1. Exercise and perform all powers and duties vested in or imposed upon the department, and prescribe such rules as are necessary to discharge those duties.

2. Exercise the powers of surveyor-general except for the powers of the surveyor-general exercised by the treasurer as a member of the selection board pursuant to § 37-202.

3. Make long-range plans for the future use of state lands in cooperation with other state agencies, local planning authorities and political subdivisions.

4. Promote the infill and orderly development of state lands in areas beneficial to the trust and prevent urban sprawl or leapfrog development on state lands.

5. Classify and appraise all state lands, together with the improvements on state lands, for the purpose of sale, lease or grant of rights-of-way. The commissioner may impose such conditions and covenants and make such reservations in the sale of state lands as the commissioner deems to be in the best interest of the state trust. The provisions of this paragraph are subject to hearing procedures pursuant to title 41, chapter 6, article 10 and, except as provided in § 41-1092.08, subsection H, are subject to judicial review pursuant to title 12, chapter 7, article 6.

6. Have authority to lease for grazing, agricultural, homesite or other purposes, except commercial, all land owned or held in trust by the state.

7. Have authority to lease for commercial purposes and sell all land owned or held in trust by the state, but any such lease for commercial purposes or any such sale shall first be approved by the board of appeals.

8. Except as otherwise provided, determine all disputes, grievances or other questions pertaining to the administration of state lands.
9. Appoint deputies and other assistants and employees necessary to perform the duties of the department and assign their duties subject to title 41, chapter 4, article 4 and require of them such surety bonds as the commissioner deems proper. The compensation of the deputy, assistants or employees shall be as determined pursuant to § 38-611.

10. Make a written report to the governor annually, not later than September 1, disclosing in detail the activities of the department for the preceding fiscal year, and publish it for distribution. The report shall include an evaluation of auctions of state land leases held during the preceding fiscal year considering the advantages and disadvantages to the state trust of the existence and exercise of preferred rights to lease reclassified state land.

11. Withdraw state land from surface or subsurface sales or lease applications if the commissioner deems it to be in the best interest of the trust. This closure of state lands to new applications for sale or lease does not affect the rights that existing lessees have under law for renewal of their leases and reimbursement for improvements.

B. The commissioner may:

1. Take evidence relating to, and may require of the various county officers information on, any matter that the commissioner has the power to investigate or determine.

2. Under such rules as the commissioner adopts, use private real estate brokers to assist in any sale or long-term lease of state land and pay, from fees collected under § 37-107, subsection B, paragraph 1, a commission to a broker that is licensed pursuant to title 32, chapter 20 and that provides the purchaser or lessee at auction. The purchaser or lessee at auction is not eligible to receive a commission pursuant to this subsection. A commission shall not be paid on a sale or a long-term lease if the purchaser or lessee is a political subdivision of this state.

3. Require a permittee, lessee or grantee to post a surety bond or any form of collateral deemed sufficient by the commissioner for performance or restoration purposes. The commissioner shall use the proceeds of a bond or collateral only for the purposes determined at the time the bond or collateral is posted. For agricultural lessees, the commissioner may require collateral as follows:

(a) As security for payment of the annual assessments levied by the irrigation district in which the state land is located if the lessee has a history of late payments or defaults. The amount of the collateral required shall not exceed the annual assessment levied by the irrigation district.

(b) As security for payment of rent, if an extension of time for payment is requested or if the lessee has a history of late payments of rent. The collateral shall be submitted at the time any extension of time for payment is requested. The amount of the collateral required shall not exceed the annual amount of rent for the land.

(c) A surety bond shall be required only if the commissioner determines that other forms of collateral are insufficient.
4. Withhold market and economic analyses, preliminary engineering, site and area studies and appraisals that are collected during the urban planning process from public viewing before they are submitted to local planning and zoning authorities.

5. Withhold from public inspection proprietary information received during lease negotiations. The proprietary information shall be released to public inspection unless the release may harm the competitive position of the applicant and the information could not have been obtained by other legitimate means.

6. Issue permits for short-term use of state land for specific purposes as prescribed by rule.

7. Contract with a third party to sell recreational permits. A third party under contract pursuant to this paragraph may assess a surcharge for its services as provided in the contract, in addition to the fees prescribed pursuant to § 37-107.

8. Close urban lands to specific uses as prescribed by rule if necessary for dust abatement, to reduce a risk from hazardous environmental conditions that pose a risk to human health or safety or for remediation purposes.

9. Notwithstanding subsection A, paragraph 4 of this section, authorize, in the best interest of the trust, the extension of public services and facilities either:

   (a) That are necessary to implement plans of the local governing body, including plans adopted or amended pursuant to § 9-461.06 or 11-805.

   (b) Across state lands that are either:

      (i) Classified as suitable for conservation pursuant to § 37-312.

      (ii) Sold or leased at auction for conservation purposes.

C. The commissioner or any deputy or employee of the department shall not have, own or acquire, directly or indirectly, any state lands or the products on any state lands, any interest in or to such lands or products, or improvements on leased state lands, or be interested in any state irrigation project affecting state lands.

Credits
Amended by Laws 1970, Ch. 204, § 142; Laws 1971, Ch. 166, § 1; Laws 1972, Ch. 156, § 2; Laws 1981, 1st S.S., Ch. 1, § 5; Laws 1982, Ch. 121, § 1; Laws 1983, Ch. 288, § 1; Laws 1989, Ch. 171, § 1; Laws 1992, Ch. 190, § 1; Laws 1992, Ch. 357, § 1; Laws 1993, Ch. 169, § 3, eff. April 20, 1993; Laws 1994, Ch. 177, § 3; Laws 1997, Ch. 221, § 167; Laws 1997, Ch. 249, § 1; Laws 1999, Ch. 209, § 1; Laws 2000, Ch. 10, § 1; Laws 2000, Ch. 113, § 158; Laws 2002, Ch. 336, § 2; Laws 2003, Ch. 69, § 2; Laws 2010, Ch. 243, § 6; Laws 2010, Ch. 244, § 27, eff. Oct. 1, 2011; Laws 2011, Ch. 238, § 34, eff. Oct. 1, 2011; Laws 2012, Ch. 321, § 86, eff. Sept. 29, 2012.
Notes of Decisions (40)

Footnotes
1 Section 41-1092 et seq.
2 Section 12-901 et seq.
3 Section 41-741 et seq.
4 Section 32-2101 et seq.

A. R. S. § 37-132, AZ ST § 37-132
Current through the First Regular Session of the Fifty-Third Legislature (2017)
A.R.S. § 37-215

§ 37-215. Appeal from decision of commissioner or board of appeals

Currentness

A. An appeal from a final decision of the state land commissioner relating to classification or appraisal of lands or improvements may be taken to the board of appeals by any person adversely affected by the decision. Appeals shall be taken by giving notice in writing to the commissioner within thirty days from the date notice of the decision is mailed to the last known post office address of the appellant by the commissioner.

B. As a condition for filing an appeal of an order regarding an appraisal conducted under § 37-285 or a reappraisal required by the terms of a lease, the appellant, with the notice of appeal, shall pay to the department all amounts of the billed rental during the pendency of the appeal. The disputed amount shall be held by the state treasurer in an impound fund to be invested subject to the final disposition of the appeal, and the undisputed amount shall be credited to the appropriate trust. If the appellant fails to pay any amount before the deadline for filing notice of the appeal and fails to provide proof of payment of the amount with the notice of appeal, any notice of appeal to the board of appeals or to superior court shall not be accepted for filing and the decision of the commissioner is final. If billed rental becomes due during the pendency of an appeal and is not paid on or before the due date, the appeal shall be dismissed and the decision of the commissioner is final. If the commissioner's decision is upheld on final disposition of the appeal, the monies in the impound fund, with interest, shall be paid to the appropriate trust. If the commissioner's decision is not upheld on final disposition of the appeal, the monies in the impound fund, with interest, shall be credited first to the accrued rent determined to be due and the remainder shall be paid to the appellant.

C. The board of appeals, within one hundred twenty days from the date of the notice of appeal, shall conduct a hearing in the county in which the major portion of the land involved in the appeal is located, unless otherwise stipulated by the parties to the appeal. The board shall render its decision upon the hearing within sixty days from the date of the hearing unless the parties to the appeal otherwise stipulate. The board shall make its findings and decision in writing and shall furnish a copy to all parties to the appeal. A majority of a quorum of the board may render the decision.

D. All records of the board of appeals shall be kept in the offices of the state land department. The department shall provide clerical assistants to the board as necessary to perform its duties.

E. Except as provided in §41-1092.08, subsection H, the commissioner or any person adversely affected by a final decision of the board of appeals may seek judicial review pursuant to title 12, chapter 7, article 6. ¹

F. Any person adversely affected by a final decision of the commissioner not relating to the classification or appraisal of lands or improvements is entitled to a hearing pursuant to title 41, chapter 6, article 10. ²
§ 37-215. Appeal from decision of commissioner or board of appeals, AZ ST § 37-215

G. If no appeal is taken, the decision of the commissioner or the board of appeals, as the case may be, is final and conclusive.

Credits
Enacted as § 37-214. Amended by Laws 1960, Ch. 73, § 1; Laws 1980, Ch. 231, § 71. Renumbered as § 37-215 by Laws 1981, 1st S.S., Ch. 1, § 10. Amended by Laws 1989, Ch. 127, § 2; Laws 1993, Ch. 168, § 2, eff. April 20, 1993; Laws 1994, Ch. 177, § 4; Laws 1995, Ch. 5, § 1; Laws 1997, Ch. 221, § 171; Laws 2000, Ch. 113, § 159.

Notes of Decisions (5)

Footnotes
1 Section 12-901 et seq.
2 Section 41-1092 et seq.

A. R. S. § 37-215, AZ ST § 37-215
Current through the First Regular Session of the Fifty-Third Legislature (2017)
§ 37-255. Sale of or mortgage or other lien on interest of lessee or holder of certificate of purchase

Currentness

A. The interest of the holder of any certificate of purchase of state land, or any lease or permit on state land, shall be subject to sale, mortgage or other lien to the same extent as patented land, without prejudice to the state. A contract of sale, mortgage or other lien affecting any certificate of purchase, lease or permit on state land shall not become effective unless a copy of the document is filed with the state land department. When filed, no assignment of the certificate of purchase, lease or permit affected shall be made without notice to and the consent of all parties.

B. Upon foreclosure of a contract of sale, mortgage or other lien filed with the department as provided in subsection A of this section, the department shall assign the instrument in question to the party entitled to the instrument, if all taxes, rent and assessment payments are current.

C. If a cancellation or assignment order is issued pursuant to § 37-247, 37-281.04 or 37-289, the cancellation or assignment order shall not become final until any foreclosure action by a party registered with the department as a mortgagee or other lienholder of the purchaser's interest or the lessee's interest is finally resolved, if the mortgagee or lienholder does both of the following:

1. Within thirty days of the date of issuance of a notice of default, files written notice with the department of its intent to proceed with a foreclosure action.

2. Within one hundred twenty days of the date of issuance of a notice of default, has commenced either a foreclosure action in court or a nonjudicial foreclosure of a deed of trust, and has provided the department with a certified copy of the complaint or other document that officially commences the foreclosure process, and thereafter prosecutes the foreclosure with reasonable diligence.

D. If a default notice has been sent to a purchaser pursuant to § 37-247, subsection A or to a lessee pursuant to § 37-289, subsection A, and the purchaser or lessee thereafter applies to assign the certificate of purchase or lease to a mortgagee or lienholder registered with the department, before the date a cancellation or assignment order becomes final and conclusive, the department shall approve the assignment if all taxes, purchase payments, rent and assessment payments are current and subject to the written consent of any other mortgagees or lienholders of record.

E. On proof that a lessee or purchaser has rejected a lease or certificate of purchase in a bankruptcy proceeding, the department shall issue a lease or certificate of purchase to the registered mortgagee or other lienholder in order of priority on application by the mortgagee or other lienholder within thirty days after the rejection if all taxes, purchase payments,
rent and assessment payments are current. Any lease or certificate of purchase that is issued pursuant to this subsection shall be for the remaining term and on the same conditions and priority as the rejected lease or certificate of purchase.

Credits
Amended by Laws 1984, Ch. 252, § 1; Laws 1991, Ch. 80, § 4; Laws 1993, Ch. 168, § 5, eff. April 20, 1993; Laws 1997, Ch. 249, § 3; Laws 2001, Ch. 298, § 2; Laws 2002, Ch. 336, § 8.

Notes of Decisions (1)
A. R. S. § 37-255, AZ ST § 37-255
Current through the First Regular Session of the Fifty-Third Legislature (2017)
§ 37-281. Lease of state lands for certain purposes without advertising; terms and conditions

A. All state lands are subject to lease as provided in this article for a term of not more than ten years for agricultural, commercial and homesite purposes, without advertising. The leases shall be granted according to the constitution, the law and the rules of the state land department.

B. No lease shall be granted as provided by this section without application. All applications for leases shall be made upon forms prepared and furnished by the department, shall be signed and sworn to by the applicant or his authorized agent or attorney and shall be filed with the department. In lieu of signing and swearing to the application before a notary public or other person authorized to take acknowledgments, the applicant may affix his signature to the application, accompanied by a certification, under penalty of perjury, that the information and statements made in the application are to the best of his knowledge and belief true, correct and complete, and the application shall be accepted as duly executed.

C. Any material false statement or concealment of facts made by an applicant, his authorized agent or his attorney in the application to lease, which, if known to the department, would have prevented issuance of the lease in the form or to the person issued, shall be grounds for cancellation of a lease issued upon such application.

D. No lessee shall use lands leased to him except for the purpose for which the lands are leased.

E. No lessee shall sublease lands leased to him without written permission of the state land department.

Credits
Amended by Laws 1960, Ch. 83, § 1; Laws 1993, Ch. 168, § 6, eff. April 20, 1993; Laws 1994, Ch. 177, § 5; Laws 1997, Ch. 249, § 5; Laws 1998, Ch. 184, § 2, eff. May 28, 1998.

Notes of Decisions (37)
A. R. S. § 37-281, AZ ST § 37-281
Current through the First Regular Session of the Fifty-Third Legislature (2017)
§ 37-284. Conflicting short-term lease applications; preference rights

A.R.S. § 37-284

§ 37-284. Conflicting short-term lease applications; preference rights

Effective: July 29, 2010

A. A conflicting application for an existing lease for a term of not more than ten years shall be filed at least two hundred seventy days but not more than one year before the expiration date on the lease. The conflicting application must be accompanied by a list of nonremovable improvements on the leased lands on file with the department, including fences. The conflicting applicant must post a surety bond or other form of security in the amount of two thousand five hundred dollars or twenty per cent of the rental payments over the term of the current lease, whichever is greater. The department shall calculate the amount of the security within thirty days after receiving the conflicting application, and the conflicting applicant must post the security within thirty days after the department determines the amount. If the conflicting applicant is unsuccessful or withdraws the application, the department shall return the security to the applicant. If the conflicting applicant is successful, the security shall be applied against the value of the nonremovable improvements.

B. When the department receives a conflicting application, the department shall give the existing lessee thirty days' notice to file an application for renewal pursuant to this section.

C. If two or more applicants apply to lease the same land for a term of not more than ten years, the department shall approve the application of the one who, after investigation or hearing, appears to have the best right and equity to the lease. The order of filing shall not be a controlling factor in deciding who is entitled to the lease. If it appears that none of the applicants has any right or equities superior to those of another that would outweigh an offer of additional rent, and if it is in the best interest of the trust, the department, at a stated time and after due notice to all applicants, may receive bids submitted in accordance with rules of the department. If one of the competing applicants is the existing lessee who has a preferred right of renewal pursuant to § 37-291, the department shall extend the preferred right of renewal to the existing lessee if the existing lessee offers a bid matching the highest bid. The department shall approve the application of the bidder who in all respects is eligible to receive a lease upon the land and will pay the highest annual rental, or the department may reject all bids.

D. Before the department issues a lease to the successful bidder, the successful bidder shall pay one full year of rent and, unless all parties agree to an extended payment schedule, the appraised value of any nonremovable improvements pursuant to § 37-322.01. If the successful bidder does not pay one full year of rent or the value of any nonremovable improvements within thirty days after the department requests payment, the department may offer the lease to the next best bidder. A lease that is issued pursuant to this section shall require the lessee to pay annual rent that is equal to the amount of annual rent bid, unless a reappraisal or rental adjustment requires a higher amount.
§ 37-284. Conflicting short-term lease applications; preference rights, AZ ST § 37-284

E. Any person residing upon contiguous land for which the person has an allowed United States homestead entry or for which the person has received a patent from the United States upon a homestead entry, upon application, shall have a preferred right to lease the amount of contiguous state land necessary for personal use.

F. Any person lawfully occupying any lands, the title to which is acquired by the state by operation of law, shall have a preference right to lease the occupied land provided application to do so is made within thirty days from and after written notice by the department to such occupant of the acquisition of title.

Credits
Amended by Laws 1961, Ch. 16, § 1; Laws 1998, Ch. 184, § 5, eff. May 28, 1998; Laws 2000, Ch. 10, § 2; Laws 2002, Ch. 204, § 1; Laws 2003, Ch. 69, § 6; Laws 2010, Ch. 123, § 1.

Notes of Decisions (21)
A. R. S. § 37-284, AZ ST § 37-284
Current through the First Regular Session of the Fifty-Third Legislature (2017)
A.R.S. § 37-286

§ 37-286. Execution of leases by land department; covenants; assignment of lease by lessee

Currentness

A. Leases shall be signed by the commissioner and sealed with the seal of the state land department, and shall contain covenants that the lessee will not permit any loss, cause any waste in or upon the land, or cut, waste or allow to be cut or wasted, any timber or standing trees thereon without written consent of the department, except for fuel for domestic uses, or for necessary improvements on the land, and that the lessee will surrender peaceable possession of the lands at the expiration of the lease. Nothing in this section shall be construed to permit the cutting of saw timber for any purpose without the written consent of the department.

B. A lessee of state lands who is not in default in rent, and who has kept and performed all the conditions of his lease, may, with the written consent of the department, assign the lease, but a lessee who assigns a holding lease shall pay to the department one-half of the consideration received for the assignment.

Credits
Amended by Laws 1989, Ch. 229, § 3.

Notes of Decisions (5)
A. R. S. § 37-286, AZ ST § 37-286
Current through the First Regular Session of the Fifty-Third Legislature (2017)
A.R.S. § 37-294

§ 37-294. Recovery of lands unlawfully held

Currentness

A. Nothing in this article shall confer any rights upon occupants or lessees of lands who have not executed and received a lease under the provisions of this article.

B. The state land department shall examine into the rights of all persons in possession of state lands, or improvements thereon, or claiming compensation for improvements on the lands. If it is determined that any person is unlawfully in possession of such lands, or is unlawfully claiming compensation for improvements, the department shall bring an action to recover possession of the lands and improvements, or otherwise establish the rights of the state.

Notes of Decisions (4)

A. R. S. § 37-294, AZ ST § 37-294
Current through the First Regular Session of the Fifty-Third Legislature (2017)
A.R.S. § 37-501

§ 37-501. Trespass on state lands; classification

Currentness

A person is guilty of a class 2 misdemeanor who:

1. Knowingly commits a trespass upon state lands, either by cutting down or destroying timber or wood standing or growing thereon, by carrying away timber or wood therefrom, by mowing, cutting, or removing hay or grass thereon or therefrom, or by grazing livestock thereon, unless he has a lease or sublease approved by the department for the area being grazed.

2. Knowingly extracts or removes oil, gas, coal, mineral, earth, rock, fertilizer or fossils of any kind or description therefrom.

3. Knowingly without right injures or removes any building, fence or improvements on state lands, or unlawfully occupies, plows or cultivates any of the lands.

4. With criminal negligence exposes growing trees, shrubs or undergrowth standing on state lands to danger or destruction by fire.

Credits

Notes of Decisions (4)
A. R. S. § 37-501, AZ ST § 37-501
Current through the First Regular Session of the Fifty-Third Legislature (2017)
§ 37-502. Damages in civil action for trespass on state lands; seizure of products; report of trespasses

A.R.S. § 37-502

§ 37-502. Damages in civil action for trespass on state lands; seizure of products; report of trespasses

Currentness

A. Whoever commits any trespass upon state lands as defined by § 37-501 is also liable in a civil action brought in the name of the state in the county in which the trespass was committed, for three times the amount of the damage caused by the trespass, if the trespass was wilful, but for single damages only if casual or involuntary.

B. When unfenced state land is included within a fenced range, it is prima facie evidence of wilful trespass to permit the grazing of livestock thereon, unless the person has a lease or sublease approved by the department for the area being grazed.

C. The damage provided for in this section is the rate per acre as determined for the year for the appraised carrying capacity of the lands.

D. The state land department may also, without legal process, seize and take any product or property unlawfully severed from the land, whether it has been removed from the land or not, and may dispose of the product or property so seized in the manner prescribed by law for disposing of products of state lands.

E. The county officers of the several counties shall report to the department any trespass upon state lands which comes to their knowledge.

Credits
Amended by Laws 1993, Ch. 168, § 14, eff. April 20, 1993.

Notes of Decisions (3)
A. R. S. § 37-502, AZ ST § 37-502
Current through the First Regular Session of the Fifty-Third Legislature (2017)
August 25, 2017

Arizona State Land Department
Attn: Angela Calabrasi, Administrative Counsel
1616 W. Adams Street
Phoenix, AZ 85007

Re: Executive Order 2017-02 – Arizona State Land Department Rules

Dear Ms. Calabrasi:

The Arizona Game and Fish Department (Department) greatly appreciates the opportunity to provide feedback regarding Arizona State Land Department (ASLD) rules that may be overly burdensome or unnecessary to protect consumers, public health, or public safety. In the spirit of Governor Ducey’s Executive Order 2017-02, the following specific rule amendments, clarifications, and additions facilitate more efficient law enforcement, streamline administrative processes, and remove unnecessary burdens/restrictions on the public.

**Law Enforcement**

**R12-5-533 - Trespass on State Land**

A.

Recommend adding clarifying language in red: *individual commits trespass on State Land, if knowingly cuts wood, removes hay, or grazing of livestock, .... Removes oils, gases, coal, .... Or unlawfully occupies or travels on or through State Land....shall be guilty of a (indicate what degree of misdemeanor trespass Class 1, Class 2 or Class 3) misdemeanor. Add A person shall not recreate on STL without a valid recreation permit or a valid Arizona hunting, fishing, or trapping license. Person shall carry recreation permit or license and produce it on request to any peace officer. Unlawfully occupies is the only reference to public presence on State Land without permission/permit. These clarifications will facilitate more efficient law enforcement.*

**Access**

**R12-5-705 P - Locked Gates**

P.

Recommend adding clarifying language in red: *Posting, locking, or denying access to prohibit hunting and fishing on state land. State Land under lease or permit may not be posted, locked, or modified to deny access to prohibit hunting and fishing without the consent of the Arizona Game and Fish Commission. This clarification will facilitate more efficient law enforcement and remove unnecessary restrictions on the public.*
R12-5-801 – Rights of Way

D.
Recommend adding clarifying language in red:

1. ..... In cases where state or political subdivisions and municipalities apply for a perpetual right-of-way, the Commissioner shall provide a perpetual right-of-way at appraised value in accordance with ARS 12-1122 and 37-132.

This will eliminate additional applications and burdensome processes associated with unnecessary term limits and facilitates more effective and efficient long-term state and municipality planning and growth.

The Department also recommends establishing reasonable and transparent timeframes for responding to applicants to expedite customer service, streamline administrative processes, and facilitate more efficient planning and improvements on state land. Example language provided in red and can be developed for a specific application or a suite of application types (i.e., Application to Place Improvement, Application for Land Treatment, Special Land Use Permit, Right of Way, etc.): The Arizona State Land Department will, within ____ business days of receipt of the _________ application/request, respond to applicants with issuance of requested permit/authorization or notify the applicant of a deficiency in the application. Once the deficiency has been cured, the Arizona State Land Department will, within ____ business days respond to applicant with issuance of requested permit/authorization.

The Department appreciates the opportunity to work with you and assist in your efforts to improve the Arizona State Land Department’s operations and mission. Please do not hesitate to contact me at 623-236-7293 with any questions.

Sincerely,

Craig McMullen
Assistant Director, Field Operations Division

JMF:lc
Dear Ms. Calabrasi,

This correspondence is in response to Commissioner Atkins’ July 26, 2017 letter requesting input on ASLD rules that may be overly burdensome and not necessary to protect consumers, public health or public safety. Governor Ducey’s Executive Order 2017-02 is a commendable effort and APS appreciates the opportunity to respond.

We have comprised a list below that includes numerous items, however, the most negatively impactful has been the ASLD’s revised policy to no longer issue perpetual rights-of-way for permanent utility infrastructure. This policy has not only increased the amount of processing time for both ASLD and utilities but the current practice of requiring utilities to reapply for the same land right is cumbersome, unnecessary and creates uncertainty regarding the future ability of the infrastructure to serve customers.

The following items are not in order of importance, but are referenced based upon the Arizona Administrative Code, Title 12. Natural Resources, Chapter 5. State Land Department:

**Article 1. General Provisions**
- R12-5-107 A & B – Allow any ROW application expense to be paid via credit card electronically (i.e., application fee, advertising costs, appraisal costs, and issuing fee).

**Article 5. Leases**
- R12-5-524 – Upon ASLD sale of land containing a utility right-of-way, allow the utility the option to purchase the land in lieu of the new owner assuming the existing right-of-way. The current practice puts the utility and its facilities at considerable risk once the existing right-of-way expires.

**Article 8. Rights-of-Way**
- R12-5-801 C.2 – Allow one application that includes multiple counties (i.e., transmission line involving multiple counties).
- R12-5-801 C.5.C.iii – Allow High Voltage Electric Transmission, Generation and permanent substations to be considered permanent infrastructure (similar to roads) enabling utilities to procure either in fee or as a perpetual lease with a one-time pay.
- R12-5-801 D.5.a – Allow any ROW application expense to be paid via credit card (i.e., application fee, advertising costs, appraisal costs, and issuing fee).
• R12-5-801 D.6 – Allow renewals and payments to be made at any time prior to the expiration date. The current rule reads “not less than 30 days, nor more than 60 days prior to the expiration of the right-of-way contract.” APS internal operations and accounting rules require that we process check requests within the same calendar year as the invoice due date. The current rule makes that virtually impossible to accomplish this for rights-of-way that expire within 30 days after the new year.

Again, thank you for the opportunity to respond. Please do not hesitate to contact me if you would like to discuss any of the items in further detail.

Sincerely,

Jennifer Cannon
Manager Construction Services and Land

2121 West Cheryl Drive | Mail Station 3270
Phoenix AZ 85021
Direct: (602) 250-3188 | Cell: (602) 319-1391
jennifer.cannon@aps.com
APPENDIX A
Arizona Administrative Code

Title 12, Chapter 5, Article 5 Leases:
   R12-5-505 Time for Filing Conflicting Applications
   R12-5-506 Procedure in Processing Conflicting Applications
   R12-5-508 Application Confers No Right to Land
   R12-5-509 Execution of Leases of Permits; Covenants; Effective Date and Completion of Lease or Permit
   R12-5-512 Assignments
   R12-5-513 Manner of Assignments
   R12-5-517 Rentals
   R12-5-518 Rental Notices
   R12-5-521 Modification or Amendment of Existing Lease of Permit
   R12-5-524 Sale, Mortgage or Lien on Interest of Holder of Lease or Permit
   R12-5-533 Trespass on State Land
   R12-5-534 Closing Land to Recreational Use
A.A.C. R12-5-505
Ariz. Admin. Code R12-5-505
R12-5-505. Time for Filing Conflicting Applications

A. Unleased land. If an application is filed on unleased land, and a proposed lease, permit, or right-of-way document is offered to an applicant for review and signature, the Department shall not accept another application for the same purpose.

B. Land under lease for the same purpose. The Department shall not accept a conflicting application for a lease unless the application is filed within the time prescribed by A.R.S. § 37-284.

C. Land under permit for the same purpose where the use is exclusive. An applicant shall file a conflicting application for a permit on land for the same purpose within 60 days before expiration of the existing permit.

D. For the purpose of this Article, conflicting applications are defined as two or more applications to lease State Trust surface land for the same purpose or two or more permit applications to use State Trust surface land for the same purpose.

Credits
Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-505 renumbered from Section R12-5-104 (Supp. 93-3). Section repealed; new Section made by final rulemaking at 9 A.A.R. 3817, effective October 4, 2003 (Supp. 03-3).

A.A.C. R12-5-505, AZ ADC R12-5-505
A. If two or more applicants apply for a lease or permit on the same land for the same purpose, the Department shall send a Notice of Conflicting Applications to each applicant requiring each applicant to submit to the Department a statement of equities containing the basis of the applicant's claim to the lease or permit and to serve a copy upon the other applicants within 30 days from the date of the Department's Notice, unless the time is extended by the Department or by stipulation of the applicants. If an applicant fails to submit a statement of equities, the Department may examine evidence or records, or review testimony from a hearing conducted under subsection (E)(2) and make a decision regarding the conflicting applications. The Department shall make its decision regarding an application filed for lease or permit under this Section in the best interest of the Trust.

B. An applicant shall have the statement of equities verified under oath before an officer authorized under the laws of this state to administer oaths, or sign the statement of equities accompanied by a certification under penalty of perjury that the information contained in the statement of equities is to the best of the applicant's knowledge and belief, true, correct, and complete. The statement of equities shall include information related to the factors considered under subsection (D).

C. An applicant, within 10 days from the date of receipt of the statement of equities of another applicant, may file with the Department and if filed, shall serve upon other applicants, a response to the other applicant's statement of equities.

D. In conducting an investigation and review, the Department shall consider the following factors:

1. An offer to pay more than appraised rental as an equity, if the Department determines not to go to bid on the conflict;

2. Whether the applicant’s proposed land use or land management plan is beneficial to the Trust;

3. The applicant’s access to or control of facilities or resources necessary to accomplish the proposed use;
4. The applicant’s willingness to reimburse the owner of reimbursable non-removable improvements;

5. The applicant’s previous management of land leases, land management plans, or any history of land or resource management activities on private or leased lands;

6. The applicant’s experience associated with the proposed use of land;

7. Impact of the proposed use on future utility and income potential of the land;

8. Impact to surrounding state land;

9. Recommendations of the Department’s staff; and

10. Any other considerations in the best interest of the Trust.

E. After investigation and review of the statements of equities, the Department may:

1. Request additional information from an applicant;

2. Conduct a hearing at the Department or another designated location at the earliest possible date, giving notice of time and place for hearing to all applicants;

3. Award the lease or permit to an applicant;

4. Reject all applications; or

5. Proceed to bid according to A.R.S. § 37-284.
F. The bid process is as follows:

1. If the Department determines to proceed to bidding, the Department shall issue a Notice of Call for Bidding that states the time and place bids will be accepted including the minimum rental that will be accepted.

2. The Notice shall specify the existence of a preferred right, if any. The Department shall include, with the Notice, a copy of the form of lease or permit that may be offered to the successful bidder. A bidder shall submit a written bid to the Department by 5:00 p.m. no later than 30 days from the date of the Notice. A bid shall be made on forms provided by the Department. The Department shall accept a bid form only with the original signature of the bidder. A bidder may either mail or deliver the bid in person to the Department.

3. The Department shall not accept a bid from anyone other than an applicant named in the Notice of Call for Bidding.

4. Unless subsection (F)(5) applies, the Department shall accept only one bid from each applicant. Once the bid is submitted, the Department shall not accept a second or substitute bid or any change to the original bid.

5. If the bids of two or more applicants are the same, are also the highest bids offered, and there is no preferred right, the Department shall repeat the bid procedure under subsections (F)(1) and (2) with the following exceptions, until a single highest bid is submitted:

   a. In a call for new bids, the Department shall establish a new minimum rental that equals the highest amount offered in the previous bidding.

   b. The Department shall accept new bids only from the applicants who submitted the highest matching bids.

6. The Department shall mail a Notice of Bid Results to all bidders. A bidder choosing to exercise a preferred right shall, within 15 days of the Department’s issuance of the Notice of Bid Results, offer a bid matching the highest bid, in writing, on forms provided by the Department.

G. Nothing in this Section limits or diminishes the jurisdiction of the Department. This Section does not apply to an application for an oil or gas lease.

Credits

Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-506 renumbered from Section R12-5-105 (Supp. 93-3). Section repealed; new Section made by final rulemaking at 9 A.A.R. 3817, effective October 4, 2003 (Supp. 03-3).
R12-5-506. Procedure in Processing Conflicting Applications, AZ ADC R12-5-506


A.A.C. R12-5-506, AZ ADC R12-5-506

A.A.C. R12-5-508

Ariz. Admin. Code R12-5-508

R12-5-508. Application Confers No Right to Land

An application or permit for state land confers no right of occupancy, possession or use of said land until a lease or permit is issued thereunder or permission is granted in writing by the Commissioner. Provided, however, a prior lessee or permittee may occupy and use said land pending action on his application for renewal. In the event that the prior lessee or permittee should not be awarded a renewed lease or permit, the Commissioner may assess and collect from said lessee or permittee the reasonable value of the use of said land pending action upon the application to renew said lease or permit.

Credits

Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-508 renumbered from Section R12-5-107 (Supp. 93-3).


A.A.C. R12-5-508, AZ ADC R12-5-508

All leases and permits shall be signed by the lessee or permittee as provided by these rules and regulations and by the Commissioner or his Deputy, with the seal of the Department affixed thereto. All leases and permits shall contain such provisions, covenants, conditions and restrictions as may be prescribed by the Commissioner, hereinafter more particularly set forth under each type of lease. The effective date of the lease will be the date of application upon open land, or such other subsequent date as the Commissioner may prescribe. Upon lands previously leased, the date following the expiration date of the lease shall be the effective date; provided, that where the lands under lease have been reclassified, the effective date of the lease shall bear the date of such reclassification, if no appeal from reclassification is taken or if the Commissioner’s decision is upheld if so appealed, or such other subsequent date as the Commissioner may prescribe.

Upon approval of the application to lease or permit and an appraisal or fixing of the rental value thereof, a lease or permit in duplicate will be mailed to the lessee or permittee, which lease or permit shall be signed in duplicate by the lessee or the permittee in the manner prescribed by these rules and regulations. Insert sheets which, when required, described the land being leased or for which permit is issued are a part of the lease or permit and shall be signed in the same manner as the lease or permit. A statement of the rental due and the permit or lease issuance fee will accompany the transmittal of the lease or permit. Upon the lease and permit and insert sheets, when required, being signed, they are to be returned to the Commissioner with the rental payment and lease or permit issuance fee in accordance with the statement rendered. When the lease or permit and insert sheets, when required, are received by the Commissioner, the same will be executed by the Commissioner as above provided and entered upon the records of the Commissioner. After execution by the Commissioner, one copy of the lease or permit, including the insert sheets when required, will be returned to the lessee or permittee with a receipt for the payment of rental.

If the lease, permit and insert sheets, when required, are not executed by the lessee or permittee and returned to the Commissioner, together with the payment of the rental as indicated by the statement therefor forwarded with such instruments, within 60 days from the date of mailing by the Commissioner, the lease or permit will be declared to be null and void and of no force and effect, and the land will become open and available for leasing by other persons. Provided, however, that should the applicant object to the appraised rental value, he may appeal from said appraisal as provided by law and the rules and regulations of the Department to the Board of Appeals of the State Land Department without prejudice to his rights to the offered lease or permit.

Credits


A. A lessee or permittee of state lands not in default in his rentals and who has kept and performed all the conditions of his lease or permit may, but only with the written consent of the Commissioner, assign such lease or permit.

1. Application for assignment shall be made on the appropriate form prescribed by the Commissioner.

B. An application for assignment of a lease or permit made within the 30 days immediately preceding the end of any lease year of the pertinent lease or permit will not be accepted for filing by the Commissioner unless the next year’s advance rentals have been made.

Credits

Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-512 renumbered from Section R12-5-111 (Supp. 93-3).

A.A.C. R12-5-513
Ariz. Admin. Code R12-5-513

R12-5-513. Manner of Assignments

Except as otherwise provided by law or these rules and regulations, assignments may be for all or part of the lands covered by a lease or permit. An application for assignment by the lessee or permittee, together with an application for transfer and assumption of lease or permit shall be submitted upon forms furnished and approved by the Commissioner. The applications shall be accompanied by the required fees, together with the lease or permit being assigned. The application for such assignment and the application for transfer and assumption of a lease or permit shall be signed by the parties as provided in these rules and regulations and acknowledged before a notary public or other officer authorized to administer oaths. The Commissioner shall indicate on the application to assign and application for transfer and assumption of lease or permit his approval or disapproval of the application, which action shall be made of record by the Commissioner.

In the event the assignment is a partial assignment and only covers a part of the leased or permitted lands, the description of the lands being transferred must be by legal subdivision or by metes and bounds based on an actual survey upon which acreage can be determined, together with a map or such survey if required by the Commissioner; otherwise no approval to said assignment and assumption will be granted by the Commissioner. An assignment may be only for a divided or undivided interest.

No assignment shall be made without the consent of all parties of record in the State Land Department in writing who may have a lien or encumbrance upon the lessee’s or permittee’s interest in said lease or permit.

Credits

Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-513 renumbered from Section R12-5-112 (Supp. 93-3).


A.A.C. R12-5-513, AZ ADC R12-5-513
Rentals for leases and permits shall be as hereinafter fixed. All rentals must be paid annually in advance, except as may be provided in the lease or permit or otherwise authorized and directed in writing by the Commissioner.

Credits

Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-517 renumbered from Section R12-5-116 (Supp. 93-3).

If the rental is changed, the Commissioner shall notify the lessees and permittees at their last known address in the Commissioner's records; lessees and permittees shall be notified by the Commissioner of a change in rental, by sending a notice thereof by mail at least 30 days prior to the date upon which said rental is fixed by the Commissioner to be due, and any such notice shall be presumptively deemed to have been received on the day following which such notice is deposited in the U.S. Mail by the Commissioner. In all other cases, the Commissioner shall mail out rental notices which rents shall be paid within 30 days or on the due date which-ever is the later; the Commissioner shall assume no responsibility if the notices are not acted upon.

Credits

Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-518 renumbered from Section R12-5-117 (Supp. 93-3).


A.A.C. R12-5-518, AZ ADC R12-5-518
A.A.C. R12-5-521
Ariz. Admin. Code R12-5-521

R12-5-521. Modification or Amendment of Existing Lease or Permit

Currentness

No existing lease or permit shall be modified or amended for a term any different than the term set forth therein unless mutually agreed upon by the Commissioner and the lessee or permittee.

Credits

Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-521 renumbered from Section R12-5-120 (Supp. 93-3).


A.A.C. R12-5-521, AZ ADC R12-5-521
The interest of the holder of any lease or permit shall be subject to sale, mortgage or other lien to the same extent as patented land. No contract of sale, mortgage or other lien shall become effective unless and until an executed or conformed copy thereof showing the recording data is filed with the Commissioner. When so filed, no assignment of the lease or permit affected shall be made without the consent of all parties. Upon the foreclosure of a contract of sale, mortgage or other lien filed with the Commissioner, the Commissioner shall assign the instrument in question to the party entitled thereto.

No action shall be taken by the Commissioner affecting the rights of the lienholder, mortgagee or contract purchaser or seller affecting the canceling, modification or declaration of the lien or permit to be forfeited without written notice to all parties in interest.

If a mortgagee, trustee under a deed of trust, lienholder or other person entitled to payment, receives full satisfaction of a mortgage, deed of trust or other obligation evidence of which has been filed with the Commissioner, he shall, at the request of the person making satisfaction or the Commissioner file with the Commissioner a sufficient release or satisfaction of mortgage or deed of release of the mortgage or deed of trust or lien.

Filing of these documents in no way obligates the Commissioner to the terms of them.

The Commissioner may on his own initiative, or at the request of a lessee or permittee, request of any mortgagee, trustee under a deed of trust, lienholder or other person entitled to payment who has filed with the Commissioner evidence of an obligation as set forth above, to notify the Department in writing as to the principal balance remaining due, if any, on such obligation; such request shall be made in writing and shall be mailed by the Commissioner to the last known address of record of such obligee -- the failure of such obligee to respond within 90 days from the date of receipt of such notice shall ipso facto be deemed as a consent by such obligee to any action that may be taken thereafter by the Commissioner with respect to any land covered by such mortgage, deed of trust, contract of sale; or other instrument evidencing an obligation.

Credits

Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-524 renumbered from Section R12-5-123 (Supp. 93-3).

A. Whoever knowingly and wilfully commits a trespass upon state lands, either by cutting down or destroying any timber or wood standing or growing thereon, or by carrying away any timber or wood therefrom, or by mowing, cutting, or removing any hay or grass thereof or therefrom or the grazing of livestock thereon, unless he shall have pending an application for the leasing of such lands, or by extracting or removing any oils, gases, coal, minerals, earth, rocks, fertilizer or fossils of any kind or description thereon or therefrom, or who, without right, injures or removes any building, fence or improvements thereon, or unlawfully occupies, plows or cultivates any of said lands, or negligently or wilfully exposes growing trees, shrubs, or undergrowth standing thereon to danger or destruction by fire, shall be guilty of a misdemeanor.

B. Whoever commits any trespass upon state lands, as above stated, shall also be liable in a civil action, brought in the name of the state in the county in which the trespass was committed, for three times the amount of the damage caused by such trespass, if the trespass was wilful, but for single damages only, if casual or involuntary. In the case of unfenced state land included within a fenced range, it shall be prima facie evidence of wilful trespass to permit the grazing of livestock thereon, unless the defendant shall have pending an application for the leasing of such lands. The damage referred to will be the rate per acre as found for the year for the appraised carrying capacities of the land. The Commissioner may also, without legal process, seize and take any product or property whatsoever unlawfully severed from such land, whether the same has been removed from such land or not, and may dispose of the product or property so seized in the manner prescribed by law for disposing of the products of state lands. The county officers of the several counties shall report to the Commissioner any trespass upon state lands which may come to their knowledge.

C. All lessees and permittees and holders of Certificates of Purchase are requested to inform the Commissioner in writing of any trespass committed on state lands, giving full information concerning such acts of trespass and by whom the same has been committed.

D. It shall be unlawful to utilize any type of motorized vehicle for travel on state trust lands except:

1. By the general public using public roads and highways that cross state trust lands;
2. By lessees and permittees of the Department acting within the limits of their leases and permits, employees of public agencies acting within the scope of their duties, and any persons using military, fire, search and rescue, or law enforcement vehicles for emergency purposes; and

3. By holders of valid Arizona hunting, fishing, or trapping licenses within the scope of such license:

   a. On existing roads; or

   b. For cross-country travel without damaging croplands, improvements, or cultural or historic sites to pick up legally killed big game animals.

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

1. “Cross-country travel” means travel over the countryside other than on existing roads.

2. “Existing road” means any maintained or unmaintained way, road, highway, trail, or path that has been utilized for motorized vehicular travel and clearly shows or has a history of established vehicle use. A one-time use or a single set of vehicle tracks created by an off-highway vehicle does not constitute a road under this definition.

3. “Motorized vehicle” means any vehicle deriving motive power from any source other than muscle or wind.

4. “Public roads and highways” means the entire width between the boundary lines of every public road or highway maintained by the Federal Government, the state, the Department, or a city, town, or county if any part of the road or highway is generally open to the use of the public for purposes of vehicular travel.

Credits


A.A.C. R12-5-533, AZ ADC R12-5-533
A. The Commissioner may close Trust land in a specific area to recreational use for any of the following purposes when the Commissioner determines that it is in the best interest of the Trust and this state to restrict recreational access to reduce liability to the state or protect the public:

1. Dust abatement: To abate dust caused by the unauthorized use of motorized or non-motorized off-road vehicles on Trust land;

2. Human-caused hazardous environmental conditions: Conditions posing a risk to the public health or safety resulting from human-caused environmental hazards. Examples include illegal dumping of toxic or hazardous materials, leaking or abandoned underground storage fuel tanks, abandoned or unauthorized landfills, abandoned airfields used for pesticide or herbicide storage, abandoned mine workings, and other sites with similar characteristics;

3. Naturally-occurring hazardous conditions: To reduce the risk from naturally-occurring conditions posing a risk to public health or safety. Examples include fissures, sink holes, and flood-damaged areas; or

4. Damaged Trust lands: For protection or remediation of Trust lands that have been damaged by toxic or hazardous materials, mining, fires, off-road vehicles, or other human-caused or natural occurrences.

B. The Commissioner shall, by order, close land only to the extent necessary to prevent unauthorized recreational access, and shall specify the period of time deemed necessary for closure.

C. The Department shall post the order of Trust land closure to recreation in the Department’s Public Records Room at 1616 W. Adams, Phoenix, AZ 85007 and in the Department’s District Offices. The Department shall maintain evidence of public notice of Trust land closure in the Department’s records.
D. For the purpose of this Section, the following definitions apply:

1. "Dust abatement" means to minimize the amount of particulate matter entrained into the air by requiring measures to prevent or mitigate particulate matter creation or emissions.

2. "Environmental hazard" means a chemical, physical agent, biological toxin, or other pollutant that is present in the environment and that may cause human illness or injury.

3. "Remediation" means an environment cleanup or other method used to remove or contain hazardous materials, stabilize mining waste, stabilize soil damage, or restore rangeland or native vegetation.

Credits


A.A.C. R12-5-534, AZ ADC R12-5-534

APPENDIX B

Related Statutes

A.R.S. § 37-103 Seal of the state land department
A.R.S. § 37-132 Powers and duties
A.R.S. § 37-215 Appeal from decision of commissioner or board of appeals
A.R.S. § 37-255 Sale or mortgage or other lien on interest of lessee or holder of certificate of purchase
A.R.S. § 37-281 Lease of state lands for certain purposes without advertising; terms and conditions
A.R.S. § 37-284 Conflicting short-term lease applications; preference rights
A.R.S. § 37-286 Execution of leases by land department; covenants’ assignment of lease by lessee
A.R.S. § 37-294 Recovery of lands unlawfully held
A.R.S. § 37-501 Trespass on state lands; classification
A.R.S. § 37-502 Damages in civil action for trespass on state lands; seizure of products; report of trespass
A.R.S. § 37-103

§ 37-103. Seal of state land department

Currentness

The state land department shall have a seal, and it shall be affixed with the signature of the state land commissioner to all instruments of conveyance, leases, certificates and other official acts. The signature of the commissioner and seal of the department upon the original or copy of any paper, plat, map or document from the state land department shall impart verity thereto.

A. R. S. § 37-103, AZ ST § 37-103
Current through the First Regular Session of the Fifty-Third Legislature (2017)
A.R.S. § 37-132

§ 37-132. Powers and duties

Effective: September 29, 2012

Currentness

A. The commissioner shall:

1. Exercise and perform all powers and duties vested in or imposed upon the department, and prescribe such rules as are necessary to discharge those duties.

2. Exercise the powers of surveyor-general except for the powers of the surveyor-general exercised by the treasurer as a member of the selection board pursuant to § 37-202.

3. Make long-range plans for the future use of state lands in cooperation with other state agencies, local planning authorities and political subdivisions.

4. Promote the infill and orderly development of state lands in areas beneficial to the trust and prevent urban sprawl or leapfrog development on state lands.

5. Classify and appraise all state lands, together with the improvements on state lands, for the purpose of sale, lease or grant of rights-of-way. The commissioner may impose such conditions and covenants and make such reservations in the sale of state lands as the commissioner deems to be in the best interest of the state trust. The provisions of this paragraph are subject to hearing procedures pursuant to title 41, chapter 6, article 10.1 and, except as provided in § 41-1092.08, subsection 11, are subject to judicial review pursuant to title 12, chapter 7, article 6.2

6. Have authority to lease for grazing, agricultural, homsite or other purposes, except commercial, all land owned or held in trust by the state.

7. Have authority to lease for commercial purposes and sell all land owned or held in trust by the state, but any such lease for commercial purposes or any such sale shall first be approved by the board of appeals.

8. Except as otherwise provided, determine all disputes, grievances or other questions pertaining to the administration of state lands.
9. Appoint deputies and other assistants and employees necessary to perform the duties of the department and assign their duties subject to title 41, chapter 4, article 4\(^3\) and require of them such surety bonds as the commissioner deems proper. The compensation of the deputy, assistants or employees shall be as determined pursuant to §38-611.

10. Make a written report to the governor annually, not later than September 1, disclosing in detail the activities of the department for the preceding fiscal year, and publish it for distribution. The report shall include an evaluation of auctions of state land leases held during the preceding fiscal year considering the advantages and disadvantages to the state trust of the existence and exercise of preferred rights to lease reclassified state land.

11. Withdraw state land from surface or subsurface sales or lease applications if the commissioner deems it to be in the best interest of the trust. This closure of state lands to new applications for sale or lease does not affect the rights that existing lessees have under law for renewal of their leases and reimbursement for improvements.

B. The commissioner may:

1. Take evidence relating to, and may require of the various county officers information on, any matter that the commissioner has the power to investigate or determine.

2. Under such rules as the commissioner adopts, use private real estate brokers to assist in any sale or long-term lease of state land and pay, from fees collected under §37-107, subsection B, paragraph 1, a commission to a broker that is licensed pursuant to title 32, chapter 20\(^4\) and that provides the purchaser or lessee at auction. The purchaser or lessee at auction is not eligible to receive a commission pursuant to this subsection. A commission shall not be paid on a sale or a long-term lease if the purchaser or lessee is a political subdivision of this state.

3. Require a permittee, lessee or grantee to post a surety bond or any form of collateral deemed sufficient by the commissioner for performance or restoration purposes. The commissioner shall use the proceeds of a bond or collateral only for the purposes determined at the time the bond or collateral is posted. For agricultural lessees, the commissioner may require collateral as follows:

(a) As security for payment of the annual assessments levied by the irrigation district in which the state land is located if the lessee has a history of late payments or defaults. The amount of the collateral required shall not exceed the annual assessment levied by the irrigation district.

(b) As security for payment of rent, if an extension of time for payment is requested or if the lessee has a history of late payments of rent. The collateral shall be submitted at the time any extension of time for payment is requested. The amount of the collateral required shall not exceed the annual amount of rent for the land.

(c) A surety bond shall be required only if the commissioner determines that other forms of collateral are insufficient.
4. Withhold market and economic analyses, preliminary engineering, site and area studies and appraisals that are collected during the urban planning process from public viewing before they are submitted to local planning and zoning authorities.

5. Withhold from public inspection proprietary information received during lease negotiations. The proprietary information shall be released to public inspection unless the release may harm the competitive position of the applicant and the information could not have been obtained by other legitimate means.

6. Issue permits for short-term use of state land for specific purposes as prescribed by rule.

7. Contract with a third party to sell recreational permits. A third party under contract pursuant to this paragraph may assess a surcharge for its services as provided in the contract, in addition to the fees prescribed pursuant to § 37-107.

8. Close urban lands to specific uses as prescribed by rule if necessary for dust abatement, to reduce a risk from hazardous environmental conditions that pose a risk to human health or safety or for remediation purposes.

9. Notwithstanding subsection A, paragraph 4 of this section, authorize, in the best interest of the trust, the extension of public services and facilities either:

(a) That are necessary to implement plans of the local governing body, including plans adopted or amended pursuant to §9-461.06 or 11-805.

(b) Across state lands that are either:

(i) Classified as suitable for conservation pursuant to §37-312.

(ii) Sold or leased at auction for conservation purposes.

C. The commissioner or any deputy or employee of the department shall not have, own or acquire, directly or indirectly, any state lands or the products on any state lands, any interest in or to such lands or products, or improvements on leased state lands, or be interested in any state irrigation project affecting state lands.

Credits
Amended by Laws 1970, Ch. 204, §142; Laws 1971, Ch. 166, §1; Laws 1972, Ch. 156, §2; Laws 1981, 1st S.S., Ch. 1, §5; Laws 1982, Ch. 121, §1; Laws 1983, Ch. 288, §1; Laws 1989, Ch. 171, §1; Laws 1992, Ch. 190, §1; Laws 1992, Ch. 357, §1; Laws 1993, Ch. 169, §3, eff. April 20, 1993; Laws 1994, Ch. 177, §3; Laws 1997, Ch. 221, §167; Laws 1997, Ch. 249, §1; Laws 1999, Ch. 209, §1; Laws 2000, Ch. 10, §1; Laws 2000, Ch. 113, §158; Laws 2002, Ch. 336, §2; Laws 2003, Ch. 69, §2; Laws 2010, Ch. 243, §6; Laws 2010, Ch. 244, §27, eff. Oct. 1, 2011; Laws 2011, Ch. 238, §34, eff. Oct. 1, 2011; Laws 2012, Ch. 321, §86, eff. Sept. 29, 2012.
Notes of Decisions (40)

Footnotes
1  Section 41-1092 et seq.
2  Section 12-901 et seq.
3  Section 41-741 et seq.
4  Section 32-2101 et seq.

A. R. S. § 37-132, AZ ST § 37-132
Current through the First Regular Session of the Fifty-Third Legislature (2017)
§ 37-215. Appeal from decision of commissioner or board of appeals, AZ ST § 37-215

A.R.S. § 37-215

§ 37-215. Appeal from decision of commissioner or board of appeals

Currentness

A. An appeal from a final decision of the state land commissioner relating to classification or appraisal of lands or improvements may be taken to the board of appeals by any person adversely affected by the decision. Appeals shall be taken by giving notice in writing to the commissioner within thirty days from the date notice of the decision is mailed to the last known post office address of the appellant by the commissioner.

B. As a condition for filing an appeal of an order regarding an appraisal conducted under § 37-285 or a reappraisal required by the terms of a lease, the appellant, with the notice of appeal, shall pay to the department all amounts of the billed rental during the pendency of the appeal. The disputed amount shall be held by the state treasurer in an impound fund to be invested subject to the final disposition of the appeal, and the undisputed amount shall be credited to the appropriate trust. If the appellant fails to pay any amount before the deadline for filing notice of the appeal and fails to provide proof of payment of the amount with the notice of appeal, any notice of appeal to the board of appeals or to superior court shall not be accepted for filing and the decision of the commissioner is final. If billed rental becomes due during the pendency of an appeal and is not paid on or before the due date, the appeal shall be dismissed and the decision of the commissioner is final. If the commissioner's decision is upheld on final disposition of the appeal, the monies in the impound fund, with interest, shall be paid to the appropriate trust. If the commissioner's decision is not upheld on final disposition of the appeal, the monies in the impound fund, with interest, shall be credited first to the accrued rent determined to be due and the remainder shall be paid to the appellant.

C. The board of appeals, within one hundred twenty days from the date of the notice of appeal, shall conduct a hearing in the county in which the major portion of the land involved in the appeal is located, unless otherwise stipulated by the parties to the appeal. The board shall render its decision upon the hearing within sixty days from the date of the hearing unless the parties to the appeal otherwise stipulate. The board shall make its findings and decision in writing and shall furnish a copy to all parties to the appeal. A majority of a quorum of the board may render the decision.

D. All records of the board of appeals shall be kept in the offices of the state land department. The department shall provide clerical assistants to the board as necessary to perform its duties.

E. Except as provided in §41-1092.08, subsection H, the commissioner or any person adversely affected by a final decision of the board of appeals may seek judicial review pursuant to title 12, chapter 7, article 6.1

F. Any person adversely affected by a final decision of the commissioner not relating to the classification or appraisal of lands or improvements is entitled to a hearing pursuant to title 41, chapter 6, article 10.2
§ 37-215. Appeal from decision of commissioner or board of appeals, AZ ST § 37-215

G. If no appeal is taken, the decision of the commissioner or the board of appeals, as the case may be, is final and conclusive.

Credits
Enacted as § 37-214. Amended by Laws 1960, Ch. 73, § 1; Laws 1980, Ch. 231, § 71. Renumbered as § 37-215 by Laws 1981, 1st S.S., Ch. 1, § 10. Amended by Laws 1989, Ch. 127, § 2; Laws 1993, Ch. 168, § 2, eff. April 20, 1993; Laws 1994, Ch. 177, § 4; Laws 1995, Ch. 5, § 1; Laws 1997, Ch. 221, § 171; Laws 2000, Ch. 113, § 159.

Notes of Decisions (5)

Footnotes
1 Section 12-901 et seq.
2 Section 41-1092 et seq.
A. R. S. § 37-215, AZ ST § 37-215
Current through the First Regular Session of the Fifty-Third Legislature (2017)
§ 37-255. Sale of or mortgage or other lien on interest of lessee..., AZ ST § 37-255

Arizona Revised Statutes Annotated
Title 37, Public Lands (Refs & Annos)
Chapter 2. Administration of State and Other Public Lands (Refs & Annos)
Article 3, Sale of State Lands (Refs & Annos)

A.R.S. § 37-255

§ 37-255. Sale of or mortgage or other lien on interest of lessee or holder of certificate of purchase

Currentness

A. The interest of the holder of any certificate of purchase of state land, or any lease or permit on state land, shall be subject to sale, mortgage or other lien to the same extent as patented land, without prejudice to the state. A contract of sale, mortgage or other lien affecting any certificate of purchase, lease or permit on state land shall not become effective unless a copy of the document is filed with the state land department. When filed, no assignment of the certificate of purchase, lease or permit affected shall be made without notice to and the consent of all parties.

B. Upon foreclosure of a contract of sale, mortgage or other lien filed with the department as provided in subsection A of this section, the department shall assign the instrument in question to the party entitled to the instrument, if all taxes, rent and assessment payments are current.

C. If a cancellation or assignment order is issued pursuant to § 37-247, 37-281.04 or 37-289, the cancellation or assignment order shall not become final until any foreclosure action by a party registered with the department as a mortgagee or other lienholder of the purchaser's interest or the lessee's interest is finally resolved, if the mortgagee or lienholder does both of the following:

1. Within thirty days of the date of issuance of a notice of default, files written notice with the department of its intent to proceed with a foreclosure action.

2. Within one hundred twenty days of the date of issuance of a notice of default, has commenced either a foreclosure action in court or a nonjudicial foreclosure of a deed of trust, and has provided the department with a certified copy of the complaint or other document that officially commences the foreclosure process, and thereafter prosecutes the foreclosure with reasonable diligence.

D. If a default notice has been sent to a purchaser pursuant to § 37-247, subsection A or to a lessee pursuant to § 37-289, subsection A, and the purchaser or lessee thereafter applies to assign the certificate of purchase or lease to a mortgagee or lienholder registered with the department, before the date a cancellation or assignment order becomes final and conclusive, the department shall approve the assignment if all taxes, purchase payments, rent and assessment payments are current and subject to the written consent of any other mortgagees or lienholders of record.

E. On proof that a lessee or purchaser has rejected a lease or certificate of purchase in a bankruptcy proceeding, the department shall issue a lease or certificate of purchase to the registered mortgagee or other lienholder in order of priority on application by the mortgagee or other lienholder within thirty days after the rejection if all taxes, purchase payments,
rent and assessment payments are current. Any lease or certificate of purchase that is issued pursuant to this subsection shall be for the remaining term and on the same conditions and priority as the rejected lease or certificate of purchase.

Credits
Amended by Laws 1984, Ch. 252, § 1; Laws 1991, Ch. 80, § 4; Laws 1993, Ch. 168, § 5, eff. April 20, 1993; Laws 1997, Ch. 249, § 3; Laws 2001, Ch. 298, § 2; Laws 2002, Ch. 336, § 8.

Notes of Decisions (1)
A. R. S. § 37-255, AZ ST § 37-255
Current through the First Regular Session of the Fifty-Third Legislature (2017)
§ 37-281. Lease of state lands for certain purposes without..., AZ ST § 37-281

Arizona Revised Statutes Annotated
Title 37. Public Lands (Refs & Annos)
Chapter 2. Administration of State and Other Public Lands (Refs & Annos)
Article 4. Lease of State Lands (Refs & Annos)

A.R.S. § 37-281

§ 37-281. Lease of state lands for certain purposes without advertising; terms and conditions

Currentness

A. All state lands are subject to lease as provided in this article for a term of not more than ten years for agricultural, commercial and homesite purposes, without advertising. The leases shall be granted according to the constitution, the law and the rules of the state land department.

B. No lease shall be granted as provided by this section without application. All applications for leases shall be made upon forms prepared and furnished by the department, shall be signed and sworn to by the applicant or his authorized agent or attorney and shall be filed with the department. In lieu of signing and swearing to the application before a notary public or other person authorized to take acknowledgments, the applicant may affix his signature to the application, accompanied by a certification, under penalty of perjury, that the information and statements made in the application are to the best of his knowledge and belief true, correct and complete, and the application shall be accepted as duly executed.

C. Any material false statement or concealment of facts made by an applicant, his authorized agent or his attorney in the application to lease, which, if known to the department, would have prevented issuance of the lease in the form or to the person issued, shall be grounds for cancellation of a lease issued upon such application.

D. No lessee shall use lands leased to him except for the purpose for which the lands are leased.

E. No lessee shall sublease lands leased to him without written permission of the state land department.

Credits
Amended by Laws 1960, Ch. 83, § 1; Laws 1993, Ch. 168, § 6, eff. April 20, 1993; Laws 1994, Ch. 177, § 5; Laws 1997, Ch. 249, § 5; Laws 1998, Ch. 184, § 2, eff. May 28, 1998.

Notes of Decisions (37)
A. R. S. § 37-281, AZ ST § 37-281
Current through the First Regular Session of the Fifty-Third Legislature (2017)
A.R.S. § 37-284

§ 37-284. Conflicting short-term lease applications; preference rights

Effective: July 29, 2010

Currentness

A. A conflicting application for an existing lease for a term of not more than ten years shall be filed at least two hundred seventy days but not more than one year before the expiration date on the lease. The conflicting application must be accompanied by a list of nonremovable improvements on the leased lands on file with the department, including fences. The conflicting applicant must post a surety bond or other form of security in the amount of two thousand five hundred dollars or twenty per cent of the rental payments over the term of the current lease, whichever is greater. The department shall calculate the amount of the security within thirty days after receiving the conflicting application, and the conflicting applicant must post the security within thirty days after the department determines the amount. If the conflicting applicant is unsuccessful or withdraws the application, the department shall return the security to the applicant. If the conflicting applicant is successful, the security shall be applied against the value of the nonremovable improvements.

B. When the department receives a conflicting application, the department shall give the existing lessee thirty days' notice to file an application for renewal pursuant to this section.

C. If two or more applicants apply to lease the same land for a term of not more than ten years, the department shall approve the application of the one who, after investigation or hearing, appears to have the best right and equity to the lease. The order of filing shall not be a controlling factor in deciding who is entitled to the lease. If it appears that none of the applicants has any right or equities superior to those of another that would outweigh an offer of additional rent, and if it is in the best interest of the trust, the department, at a stated time and after due notice to all applicants, may receive bids submitted in accordance with rules of the department. If one of the competing applicants is the existing lessee who has a preferred right of renewal pursuant to § 37-291, the department shall extend the preferred right of renewal to the existing lessee if the existing lessee offers a bid matching the highest bid. The department shall approve the application of the bidder who in all respects is eligible to receive a lease upon the land and will pay the highest annual rental, or the department may reject all bids.

D. Before the department issues a lease to the successful bidder, the successful bidder shall pay one full year of rent and, unless all parties agree to an extended payment schedule, the appraised value of any nonremovable improvements pursuant to § 37-322.01. If the successful bidder does not pay one full year of rent or the value of any nonremovable improvements within thirty days after the department requests payment, the department may offer the lease to the next best bidder. A lease that is issued pursuant to this section shall require the lessee to pay annual rent that is equal to the amount of annual rent bid, unless a reappraisal or rental adjustment requires a higher amount.
E. Any person residing upon contiguous land for which the person has an allowed United States homestead entry or for which the person has received a patent from the United States upon a homestead entry, upon application, shall have a preferred right to lease the amount of contiguous state land necessary for personal use.

F. Any person lawfully occupying any lands, the title to which is acquired by the state by operation of law, shall have a preference right to lease the occupied land provided application to do so is made within thirty days from and after written notice by the department to such occupant of the acquisition of title.

Credits
Amended by Laws 1961, Ch. 16, § 1; Laws 1998, Ch. 184, § 5, eff. May 28, 1998; Laws 2000, Ch. 10, § 2; Laws 2002, Ch. 204, § 1; Laws 2003, Ch. 69, § 6; Laws 2010, Ch. 123, § 1.

Notes of Decisions (21)
A. R. S. § 37-284, AZ ST § 37-284
Current through the First Regular Session of the Fifty-Third Legislature (2017)
A.R.S. § 37-286

§ 37-286. Execution of leases by land department; covenants; assignment of lease by lessee

Currentness

A. Leases shall be signed by the commissioner and sealed with the seal of the state land department, and shall contain covenants that the lessee will not permit any loss, cause any waste in or upon the land, or cut, waste or allow to be cut or wasted, any timber or standing trees thereon without written consent of the department, except for fuel for domestic uses, or for necessary improvements on the land, and that the lessee will surrender peaceable possession of the lands at the expiration of the lease. Nothing in this section shall be construed to permit the cutting of saw timber for any purpose without the written consent of the department.

B. A lessee of state lands who is not in default in rent, and who has kept and performed all the conditions of his lease, may, with the written consent of the department, assign the lease, but a lessee who assigns a holding lease shall pay to the department one-half of the consideration received for the assignment.

Credits
Amended by Laws 1989, Ch. 229, § 3.

Notes of Decisions (5)
A. R. S. § 37-286, AZ ST § 37-286
Current through the First Regular Session of the Fifty-Third Legislature (2017)
§ 37-294. Recovery of lands unlawfully held, AZ ST § 37-294

Arizona Revised Statutes Annotated
Title 37. Public Lands (Refs & Annos)
Chapter 2. Administration of State and Other Public Lands (Refs & Annos)
Article 4. Lease of State Lands (Refs & Annos)

A.R.S. § 37-294

§ 37-294. Recovery of lands unlawfully held

Currentness

A. Nothing in this article shall confer any rights upon occupants or lessees of lands who have not executed and received a lease under the provisions of this article.

B. The state land department shall examine into the rights of all persons in possession of state lands, or improvements thereon, or claiming compensation for improvements on the lands. If it is determined that any person is unlawfully in possession of such lands, or is unlawfully claiming compensation for improvements, the department shall bring an action to recover possession of the lands and improvements, or otherwise establish the rights of the state.

Notes of Decisions (4)

A. R. S. § 37-294, AZ ST § 37-294
Current through the First Regular Session of the Fifty-Third Legislature (2017)
§ 37-501. Trespass on state lands; classification, AZ ST § 37-501

A.R.S. § 37-501

§ 37-501. Trespass on state lands; classification

Currentness

A person is guilty of a class 2 misdemeanor who:

1. Knowingly commits a trespass upon state lands, either by cutting down or destroying timber or wood standing or growing thereon, by carrying away timber or wood therefrom, by mowing, cutting, or removing hay or grass thereon or therefrom, or by grazing livestock thereon, unless he has a lease or sublease approved by the department for the area being grazed.

2. Knowingly extracts or removes oil, gas, coal, mineral, earth, rock, fertilizer or fossils of any kind or description therefrom.

3. Knowingly without right injures or removes any building, fence or improvements on state lands, or unlawfully occupies, plows or cultivates any of the lands.

4. With criminal negligence exposes growing trees, shrubs or undergrowth standing on state lands to danger or destruction by fire.

Credits

Notes of Decisions (4)
A. R. S. § 37-501, AZ ST § 37-501
Current through the First Regular Session of the Fifty-Third Legislature (2017)
§ 37-502. Damages in civil action for trespass on state lands;... AZ ST § 37-502

Arizona Revised Statutes Annotated
Title 37, Public Lands (Refs & Annos)
Chapter 2, Administration of State and Other Public Lands (Refs & Annos)
Article 12, Trespass on State Lands

A.R.S. § 37-502

§ 37-502. Damages in civil action for trespass on state lands; seizure of products; report of trespasses

Currentness

A. Whoever commits any trespass upon state lands as defined by § 37-501 is also liable in a civil action brought in the name of the state in the county in which the trespass was committed, for three times the amount of the damage caused by the trespass, if the trespass was wilful, but for single damages only if casual or involuntary.

B. When unfenced state land is included within a fenced range, it is prima facie evidence of wilful trespass to permit the grazing of livestock thereon, unless the person has a lease or sublease approved by the department for the area being grazed.

C. The damage provided for in this section is the rate per acre as determined for the year for the appraised carrying capacity of the lands.

D. The state land department may also, without legal process, seize and take any product or property unlawfully severed from the land, whether it has been removed from the land or not, and may dispose of the product or property so seized in the manner prescribed by law for disposing of products of state lands.

E. The county officers of the several counties shall report to the department any trespass upon state lands which comes to their knowledge.

Credits
Amended by Laws 1993, Ch. 168, § 14, eff. April 20, 1993.

Notes of Decisions (3)
A. R. S. § 37-502, AZ ST § 37-502
Current through the First Regular Session of the Fifty-Third Legislature (2017)
TO: Members of the Governor’s Regulatory Review Council (Council)

FROM: Council Staff

DATE: April 16, 2018

SUBJECT: DEPARTMENT OF HEALTH SERVICES (F-18-0501)
Title 9, Chapter 6, Article 12, Tuberculosis Control

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 health of the people of the state.” A.R.S. § 36-132(A)(1)

This five-year-review report covers four rules in A.A.C. Title 9, Chapter 6, Article 12, for Tuberculosis Control. R9-6-1201 defines the terminology used in the Article. R9-6-1202 specifies tuberculosis-related reporting requirements for local health agencies. R9-6-1203 specifies requirements for symptom screening for inmates, medical treatment for afflicted inmates, and reporting to local health agencies. R9-6-1204 specifies standards for medical health care providers who are treating afflicted persons. Active tuberculosis means “a disease that is caused by mycobacterium tuberculosis or other members of the mycobacterium tuberculosis complex family in any part of the body and that is in an active state.” A.R.S. § 36-711(1)

The rules were made by final rulemaking effective January 5, 2008. In the 2013 five-year-review report, the Department believed the rules were sufficient to protect public health and did not plan to amend the rules unless a threat to public health or safety arose. No such threat arose in the past five years, and the Department did not amend the rules.

Proposed Action

The Department seeks to amend rules R9-6-1202, R9-6-1203, and R9-6-1204 as they are not clear, concise, and understandable. In addition, R9-6-1202 and R9-6-1204 are not effective and not enforced as written.
1. **Has the agency analyzed whether the rules are authorized by statute?**

   Yes. The Department cites to A.R.S. §§ 36-132(A)(1), 36-136 (A)(7) and 36-136(G) as general authority. Under A.R.S. § 36-136(G), the Department “may make and amend rules necessary for the proper administration and enforcement of the laws relating to the public health.” For specific authority, the Department cites A.R.S. §§ 36-136(I)(1) and 36-721, which provide the Department authority for declaring certain diseases reportable and provide measures to prevent and report communicable or preventable diseases.

2. **Summary of the agency’s economic impact comparison and identification of stakeholders:**

   While there were minimal to moderate costs to stakeholders associated with compliance to the rules, the benefits of the rules helped to provide the information needed to report to the Centers for Disease Control and Prevention (CDC). This helps identify the source of illnesses and helps prevent further transmission of diseases. The Department therefore believes there is a positive economic impact to the enforcement of the rules. The stakeholders are ADHS, local health agencies (LHAs), correctional facilities (CFs), health care institutions (HCIs), health care providers (HCPs), shelters, child care establishments (CCEs), schools, pharmacies, pharmacists, clinical laboratories (CLs), food establishments, and animal control agencies.

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

   The Department believes the benefits of the rules have far outweighed the burdens. The changes in the rules primarily benefited the public by enhancing the detection, reporting, control, and prevention of communicable diseases in Arizona, including communicable diseases that had been identified by the CDC as potential bioterrorism agents. The Department is not aware of any less intrusive or less costly alternative method of achieving the purposes of the rules.

4. **Has the agency received any written criticisms of the rules over the last five years?**

   No. The Department indicates that it has not received any written criticisms of the rules in the past five years.

5. **Has the agency analyzed the rules’ clarity, conciseness, and understandability, consistency with other rules and statutes, and effectiveness?**

   Yes. The Department indicates that three of the rules are not, clear, concise, and understandable and two of the rules are only partly effective; however, all of the rules are consistent with other rules.

   - R9-6-1202 may be unclear as to what “information” subsection (A) refers. The “information” received by a local health agency may be information received per R9-6-
202, information collected by the local health agency as part of the epidemiologic investigation conducted by the local health agency, or the information needed to complete the CDC forms, which may take 12 or more months to complete. This rule would be more effective if the CDC forms were incorporated or the information contained in the forms were specified in the rules.

- R9-6-1203 may not be concise without the definitions from R9-6-1201 being included in the text. Two of the definitions in R9-6-1201 are only used once and in this rule, and the rule may be more understandable if the terms were described in the rule and the defined term, “symptoms suggestive of tuberculosis” was used in subsection (A)(5).
- R9-6-1204 could be more understandable and effective by putting the requirements into a more easily understood format.

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

   Yes. The Department indicates that two of the rules are not enforced as written.

- R9-6-1202 is being enforced using a more recent version of CDC forms. All local health agencies and five tribal nations are connected to and use the Department’s Medical Electronic Disease Surveillance Intelligence System (MEDSIS) for reporting tuberculosis data to the Department, and the fields in MEDSIS are consistent with the more recent forms. The balance is being enforced as written.
- R9-6-1204 is being enforced by communicating directly to the regulated community. The balance is being enforced as written.

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

   No. The Department indicates that federal laws do not apply to the rules. The rules are consistent with the CDC guidelines.

8. **For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

   No. The Department indicates that except for the correction of a cross-reference in R9-6-1202 that was effective January 1, 2018, the rules were adopted before July 29, 2010. The rules do not require the issuance of a permit, license, or agency authorization.

9. **Conclusion**

   The Department plans to amend rules R9-6-1202, R9-6-1203, and R9-6-1204 for clarity, conciseness, and understanding in the manner described above and to submit a Notice of Final Expedited Rulemaking to the Council by January 2019. The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. Council staff recommends approval of this report.
February 21, 2018

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

RE: Report for A.A.C. Title 9, Chapter 6, Article 12 of Communicable Diseases and Infestations

Dear Ms. Colyer:

According to the five-year-review report schedule of the Governor's Regulatory Review Council (Council), a report for A.A.C. Title 9, Chapter 6, Article 12 is due to the Council no later than April 30, 2018. The Arizona Department of Health Services (Department) has reviewed 9 A.A.C. 6, Article 12 and is enclosing a report to the Council for these rules.

The Department believes that this report complies with the requirements of A.R.S. § 41-1056. A five-year-review summary, information that is identical for all the rules, information for individual rules, the rules reviewed, the general and specific authority, and an economic impact statement are included in the package. As described in the report, the Department plans to amend the rules in 9 A.A.C. 6, Article 10 by expedited rulemaking to address the issues identified in the report and submit a Notice of Final Expedited Rulemaking to the Council by January 2019.

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

If you need any further information, please contact me at (602) 542-1020.

Sincerely,

Robert Lane
Director’s Designee

RL: rms
Enclosures
FIVE-YEAR-REVIEW REPORT
TITLE 9. HEALTH SERVICES
CHAPTER 6. DEPARTMENT OF HEALTH SERVICES
COMMUNICABLE DISEASES AND INFESTATIONS
ARTICLE 12. TUBERCULOSIS CONTROL

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FIVE-YEAR-REVIEW SUMMARY

Arizona Revised Statutes (A.R.S.) § 36-136(I)(1) requires the Arizona Department of Health Services (Department) to “define and prescribe reasonably necessary measures for detecting, reporting, preventing and controlling communicable and preventable diseases.” A.R.S. § 36-721 requires the Director to make rules to prescribe reasonable and necessary measures regarding standards of medical care for persons afflicted with tuberculosis. A.R.S. § 36-721 further requires the submission of tuberculosis reports and statistics from counties. The Department has adopted rules to implement these statutes in Arizona Administrative Code (A.A.C.) Title 9, Chapter 6, Article 12.

After an analysis of the rules in 9 A.A.C. 6, Article 12, the Department has determined that three of the rules are not clear, concise, and understandable; and two are not effective and not enforced as written. Thus, they pose an unnecessary burden on regulated persons. The Department has received no written criticism of the rules. The Department plans to amend the rules in 9 A.A.C. 6, Article 12 by expedited rulemaking to address issues described in this report and to submit a Notice of Final Expedited Rulemaking to the Governor’s Regulatory Review Council (GRRC) by January 2019.
INFORMATION FOR INDIVIDUAL RULE

1. **Authorization of the rule by existing statute**
   The general statutory authority for the rules in 9 A.A.C. 6, Article 12 are A.R.S. §§ 36-132(A)(1), 36-136(A)(7) and 36-136(G).
   The specific statutory authority for the rules in 9 A.A.C. 6, Article 12 is A.R.S. §§ 36-136(I)(1) and 36-721.

2. **The purpose of the rule**
   The purpose of the rules in 9 A.A.C. 6, Article 12 is to establish requirements for tuberculosis control.

4. **Analysis of consistency with state and federal statutes and rules**
   The rules in 9 A.A.C. 6, Article 12 are consistent with applicable statutes and rules.

7. **Summary of the written criticisms of the rule received within the last five years**
   The Department has not received any written criticisms of the rules in 9 A.A.C. 6, Article 12 in the past five years.

8. **Economic, small business, and consumer impact comparison**
   In 2007, there were 302 cases of tuberculosis (TB) reported to the Department. This is a case rate of 4.8 (number of cases per 100,000 population) in Arizona as compared to a case rate of 4.4 in the United States. In 2016, there were 188 cases of TB reported to the Department. This is a case rate of 2.8 in Arizona as compared to a case rate of 2.9 in the United States. Overall, the case rates in Arizona from 2007 through 2016 had an overall downward trend. A formal analysis of the trend has not been conducted, but historically it is due to improved TB control and prevention activities. The current estimated treatment costs for an afflicted person, including basic lab tests; X-rays; medication for treatment; and costs related to time and mileage for medical, social work, case management, and communicable disease investigator personnel is $18,000 for a patient treated for six to nine months on Rifampin with no drug resistance, $160,000 for a patient treated for 20 to 26 months with multi-drug resistance, and $513,000 for a patient treated for 32 months with extensively drug resistant TB. In 2015 in Arizona, the last year for which completion of treatment data is available, approximately 50 percent of afflicted persons were treated for a period of six months or less, 30 percent were treated for a period of seven to nine months, and 20 percent were treated for longer than nine months. It is uncommon for a person to have multi-drug resistance. Over the past five years, Arizona has reported anywhere from one to two percent of cases that have multi-drug resistance and zero cases that have extensively-drug resistant TB.
Although the rules in 9 A.A.C. 6, Article 12 were made by final rulemaking published in the Arizona Administrative Register (A.A.R.) at 13 A.A.R. 4106, effective January 5, 2008, the rulemaking was a recodification of the rules from 9 A.A.C. Article 6, through which the content of the rules were unchanged; therefore, an economic, small business, and consumer impact statement (EIS) was not submitted to GRRC as part of this final rulemaking.

Prior to the 2008 rulemaking, the rules were substantially revised in 2004 to clarify rules, remove provisions that were unnecessary because of statutory changes, and make the rules more effective in detecting, preventing, and controlling TB by adopting control measures for correctional facilities. An EIS was submitted to GRRC as part of the 2004 final rulemaking. The EIS designated annual costs/revenue changes as minimal when less than $1,000, moderate when between $1,000 and $10,000, and substantial when $10,000 or greater in additional costs or revenues. A cost or benefit was “significant” when meaningful or important, but not readily subject to quantification.

As stated in the 2004 EIS, the Department believed:

- Defining terms previously undefined would not result in increased costs and in a minimal benefit to the Department, a local health agency (LHA), an administrator of a correctional facility, and the public by making the rules clearer.
- Removing provisions addressed in A.R.S. Title 36, Chapter 6, Article 6, would not result in increased costs and in a minimal benefit to the Department, a LHA, and the public by eliminating rule language that is inconsistent with state statutes.
- Adding a deadline for a LHA to report TB information would result in a minimal burden for a LHA because of the inclusion of the deadline, and a significant benefit to the Department, a LHA, and the public because it would enable the Department to receive timely information, thereby making the Department’s response more effective.
- Requiring a LHA to complete and submit a Center for Disease Control and Prevention (CDC) form for each person with infectious active TB, suspect case, or contact of an individual with infectious active TB, would result in a minimal-to-moderate burden for a LHA because the form is lengthy and requires information gathered in an epidemiologic investigation. This provision would result in a significant benefit to the Department because it would ensure that the Department has the information needed to report to the CDC, which can lead to identification of the source of illness and prevention of further transmission of the disease.
- The following would result in a substantial benefit for the Department, a LHA, a CF, and the public, by controlling the spread of TB within a CF and, thereby, reducing the costs associated with treatment for TB. The Department estimated the cost of treating one individual with TB averages between $10,000 and $20,000:
○ Requiring a symptom screening for each new inmate entering a CF. This requirement would result in a moderate-to-substantial burden to a CF, depending on the number of new inmates, due to the time spent performing the screening. The Department estimated that the annual cost to the Arizona Department of Corrections (DOC) would be approximately $8,740 - $17,480; for county jails, approximately $98,967 - $197,933; and for Arizona’s three private prisons, approximately $1,250 - $2,500.

○ Requiring the placement of an inmate with symptoms suggestive of TB in airborne infection isolation or that the inmate wear a surgical mask at all times and have minimal exposure to the general inmate population. This requirement would result in a minimal burden for a CF due to the cost of a surgical mask and placement of the inmate in an appropriate environment.

○ Requiring, within 24 hours after screening, an inmate with symptoms suggestive of TB who was not immediately placed in airborne infection isolation to be given a medical evaluation for active TB or transported to a health care institution to be placed in airborne infection isolation, and that each inmate with symptoms suggestive of TB be given a medical evaluation for TB before being released from airborne infection isolation or permitted to stop wearing a mask and released from the environment where exposure to the general inmate population is minimal. This requirement would result in a minimal-to-moderate burden to a CF. The costs for a CF were identified as being for the medical evaluation or the cost of approximately $3,000 - $5,000 for each inmate to be transported and treated at a health care institution.

○ Requiring a TB test within seven days after in-processing an inmate who does not have a documented history of a positive TB test and has not received a TB test within the previous 12 months. This requirement would result in a substantial burden to a CF due to the time spent performing the test and the cost of testing. The Department estimated that the annual cost to the DOC would be approximately $72,892 - $102,083; for county jails, approximately $825,381 - $1,155,929; and for Arizona’s three private prisons, approximately $10,425 - $14,600.

○ Requiring each inmate with active TB to receive medical treatment and be placed in airborne infection isolation until no longer infectious. This requirement would result in a moderate-to-substantial burden to a CF for each inmate who receives medical treatment and a minimal-to-moderate impact for each inmate who is placed in airborne infection isolation. The cost of placing an inmate in airborne infection isolation would be...
minimal if the CF had an area on-site, but moderate if the CF had to transport the inmate to a health care institution for airborne infection isolation.

- The following would result in a significant benefit for the Department, a LHA, a CF, and the public by controlling the spread of TB within a CF and subsequent transmission upon release. There would be a substantial benefit for each case prevented due to the savings in costs associated with treating one individual with active TB. The Department estimated the cost of treating one individual with TB averages between $10,000 and $20,000:
  - Requiring a chest X-ray and medical evaluation for each inmate with a positive TB test or with a documented history of a positive result, to be completed within 14 days of in-processing. This requirement would result in a substantial burden to CF’s due to the cost of the chest X-ray and medical evaluation. The Department estimated that the annual cost to the DOC would be approximately $244,720 - $305,900; for county jails, approximately $2,771,090-$3,463,810; and for Arizona’s three private prisons, approximately $35,000-$43,750.
  - Requiring a chest X-ray and medical evaluation within seven days of in-processing for each inmate who was HIV positive. This requirement would result in a moderate-to-substantial burden to CF’s due to the cost of the X-ray and evaluation. The Department estimated that the annual cost to the DOC would be approximately $18,200 - $36,680; for county jails, approximately $207,830-415,660; and for Arizona’s three private prisons, approximately $2,660-$5,250.
  - Requiring repeat TB testing after 12 months of incarceration and every 12 months thereafter. This requirement would result in a in a moderate-to-substantial burden to CF’s due to the time spent performing the tests and the cost of the testing supplies. The Department estimated that the annual cost to the DOC would be approximately $130,417 - $182,646; for county jails, approximately $59,956-$83,968; and for Arizona’s three private prisons, approximately $10,425-$14,600.

- Exempting CF’s from the requirements mentioned above (screening, testing, X-ray, medical evaluation, treatment and isolation.) for each CF that does not house an inmate for longer than 13 days and for inmates who are incarcerated for 13 or fewer days, would not result in any burden to the CF and a moderate-to-substantial benefit for each CF because of the cost savings.

- Requiring a CF administer to notify the LHA before releasing a case or suspect case, unless prior notification would cause security concerns, in which case the rule requires notification after release, would result in a minimal burden to CF’s because of the time spent providing notification. This provision would result in a substantial benefit for the Department, LHA’s and
the public because notification should enable the LHA to provide evaluation and treatment, thereby preventing transmission of TB to the public. The Department estimated the total cost of treating one individual averages $10,000-$20,000.

- Requiring a CF administrator to provide a case, suspect case, or inmate being treated for latent TB, the name and address of the LHA before release would result in a minimal burden to the CF’s for the time spent providing the information. This provision would result in a substantial benefit for the Department, LHA’s and the public because it would enable the inmate to contact the LHA for treatment upon release and prevent transmission.

- Requiring a health care provider (HCP) who is caring for an afflicted person comply with American Thoracic Society/CDC/Infectious Disease Society of America (ATS/CDC/IDSA) guidelines unless the HCP believes a deviation is necessary, would result in no-burden-to-minimal-burden because the guidelines reflected the current standard of care. This provision would result in a significant benefit to the Department, LHA’s and the public because it helps to ensure that persons will be treated appropriately and in a significant benefit to the Department because it satisfied the mandate of A.R.S. § 36-721(2).

- Requiring an HCP who is caring for an afflicted person to explain to the Department or an LHA, upon request, any deviation from ATS/CDC/IDSA guidelines would result in a minimal burden for an HCP and a substantial benefit for the Department, LHA’s and the public by allowing a determination of whether the treatment provided is appropriate and intervention if the treatment is not appropriate. Each case prevented results in a substantial benefit.

Although costs have risen from 2004, the Department believes that the costs and benefits identified in the 2004 EIS are generally consistent with the actual costs and benefits of the rule.

9. **Summary of business competitiveness analyses of the rules**
   The Department did not receive a business competitiveness analysis of the rules in 9 A.A.C. 6, Article 12 in the last five years.

10. **Status of the completion of action indicated in the previous five-year-review report**
    In the 2013 five-year-review report, the Department stated that the Department believed the rules were sufficient to protect public health and did not plan to amend the rules in 9 A.A.C. 6, Article 12 unless a threat to public health or safety arose that would require amending the rules. Since no such threat arose in the past five years, the Department complied with this plan, although a cross-reference that was being made incorrect was changed as part of a rulemaking effective January 1, 2018.

12. **Analysis of stringency compared to federal laws**
    Federal laws do not apply to the rules in 9 A.A.C. 6, Article 12.
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**

Except for the correction of a cross-reference in R9-6-1202 that was effective January 1, 2018, the rules were adopted before July 29, 2010. The rules do not require the issuance of a permit, license, or agency authorization.

14. **Proposed course of action**

The Department plans to amend the rules in 9 A.A.C. 6, Article 12 by expedited rulemaking to address issues described in this report and to submit a Notice of Final Expedited Rulemaking to the Governor’s Regulatory Review Council (GRRC) by January 2019.
INFORMATION FOR INDIVIDUAL RULES

R9-6-1201. Definitions

2. **Objective**
   The objective of the rule is to define terms used in the Article to enable the reader to understand clearly the requirements of the Article and allow for consistent interpretation.

3. **Analysis of effectiveness in achieving the objective**
   The rule is effective in achieving its objective.

5. **Status of enforcement of the rule**
   The rule is enforced by the Department as written.

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 regulated persons 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 rules, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objectives.

R9-6-1202. Local Health Agency Reporting Requirements

2. **Objective**
   The objective of the rule is to specify tuberculosis-related reporting requirements for local health agencies.

3. **Analysis of effectiveness in achieving the objective**
   The rule, as enforced, is effective in achieving its objective, but the rule would be more effective if the September 2008 version of the CDC forms were incorporated, or information contained in the forms were specified in the rules. Since local health agencies also report information within 30 days after a patient completes treatment, the duration of which varies by patient, the rule would also be more effective if the rule included information about this reporting.

5. **Status of enforcement of the rule**
   Subsection (B) of the rule is enforced using a more recent version of the CDC forms. All local health agencies and five tribal nations are connected to and use the Department’s Medical Electronic Disease Surveillance Intelligence System (MEDSIS) for reporting tuberculosis data to the
Department, and the fields in MEDSIS are consistent with the more recent forms. The balance of the rule is enforced as written.

6. **Analysis of clarity, conciseness, and understandability**
The rule is partly clear, concise, and understandable, but it may be unclear as to what “information” subsection (A) refers. The “information” received by a local health agency may be information received according to R9-6-202, information collected by the local health agency as part of the epidemiologic investigation conducted by the local health agency, or the information needed to complete the CDC forms, which may take 12 or more months to complete.

11. **Analysis of burden and costs to persons regulated by the rule**
Although subsection (B) could pose an unnecessary burden on stakeholders if enforced as written, the Department enforces the rule consistent with current CDC requirements. Therefore, any burden placed on stakeholders to resolve the discrepancy between the rules and how the rule is enforced is far out-weighed by the benefit of the additional information received, which can lead to the identification of the source of illness and prevention of further transmission, as well as the reduced time spent collecting additional information needed by the Department after a form not consistent with CDC requirements is submitted.

R9-6-1203. **Tuberculosis Control in Correctional Facilities**

2. **Objective**
The objectives of the rule are to specify requirements in correctional facilities for:
   a. Tuberculosis symptom screening for inmates,
   b. Medical treatment, including isolation for afflicted inmates, and
   c. Tuberculosis-related reporting to the local health agency.

3. **Analysis of effectiveness in achieving the objective**
The rule is mostly effective in achieving its objective. However, since two of the terms defined in R9-6-1201 are used only once and in this rule, the rule could be more effective if the terms were defined/described where they are used. The rule would also be more effective if it clarified requirements for when an inmate has a positive result on a repeat test for TB.

5. **Status of enforcement of the rule**
The rule is enforced by the Department as written.

6. **Analysis of clarity, conciseness, and understandability**
The rule is clear, concise, and understandable. However, two of the definitions in R9-6-1201 are only used only once and in this rule, and the rule may be more understandable if the terms were described
in the rule and the defined term, “symptoms suggestive of tuberculosis” were used in subsection (A)(5).

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

The rule imposes the least burden and costs to persons regulated by the rules, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objectives.

R9-6-1204. Standards of Medical Care

2. **Objective**

The objective of the rule is to specify standards of medical care for health care providers who are treating afflicted persons.

3. **Analysis of effectiveness in achieving the objective**

The rule is partly effective in achieving its objective and could be improved by updating the incorporation by reference to the October 2016 edition of the Official American Thoracic Society/Centers for Disease Control and Prevention/Infectious Diseases Society of America Clinical Practice Guidelines: Treatment of Drug-Susceptible Tuberculosis (Guidelines).

5. **Status of enforcement of the rule**

The rule is enforced by communicating directly to the regulated community and referring the public to the more recent version of the Guidelines, which constitutes the standard of care for afflicted persons. The balance of the rule is enforced as written.

6. **Analysis of clarity, conciseness, and understandability**

The rule is partly clear, concise, and understandable, but could be improved by putting the requirements in the Section into a more easily understood format.

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

Although the rules do not pose the least burden on stakeholders because of the discrepancies between the requirements in the rules and current standards of medical care for afflicted persons, the Department enforces the rules consistent with current standards of medical care for afflicted persons. Therefore, the burden placed on stakeholders to resolve the discrepancy between the rules and how
the rule is enforced is far out-weighed by the benefit that healthcare providers receive in using current standards of care to treat afflicted persons appropriately.
FIVE-YEAR-REVIEW REPORT
TITLE 9. HEALTH SERVICES
CHAPTER 6. DEPARTMENT OF HEALTH SERVICES
COMMUNICABLE DISEASES AND INFESTATIONS
ARTICLE 12. TUBERCULOSIS CONTROL

ATTACHMENT A
CURRENT RULES
ARTICLE 12. TUBERCULOSIS CONTROL

R9-6-1201. Definitions
In addition to the definitions in A.R.S. § 36-711, the following definitions apply in this Article, unless otherwise specified:

1. "Inmate" means an individual who is incarcerated in a correctional facility.
2. "Latent tuberculosis infection" means the presence of Mycobacterium tuberculosis, as evidenced by a positive result from an approved test for tuberculosis, in an individual who:
   a. Has no symptoms of active tuberculosis,
   b. Has no clinical signs of tuberculosis other than the positive result from the approved test for tuberculosis, and
   c. Is not infectious to others.
3. "Symptoms suggestive of tuberculosis" means any of the following that cannot be attributed to a disease or condition other than tuberculosis:
   a. A productive cough that has lasted for at least three weeks;
   b. Coughing up blood; or
   c. A combination of at least three of the following:
      i. Fever,
      ii. Chills,
      iii. Night sweats,
      iv. Fatigue,
      v. Chest pain, and
      vi. Weight loss.

R9-6-1202. Local Health Agency Reporting Requirements
A. Within 30 days after receiving information, a local health agency shall report to the Department regarding:
   1. Each individual in its jurisdiction who has been diagnosed with active tuberculosis,
   2. Each individual in its jurisdiction who is suspected of having active tuberculosis, and
   3. Each individual in its jurisdiction who is believed to have been exposed to an individual with infectious active tuberculosis.
B. Each report made under subsection (A) shall consist of completed Centers for Disease Control and Prevention, U.S. Department of Health and Human Services, Form CDC 72.9A and B,
“Report of Verified Case of Tuberculosis” (January 2003), which is incorporated by reference or a completed electronic equivalent to Form CDC 72.9A and B provided by the Department

R9-6-1203. Tuberculosis Control in Correctional Facilities

A. An administrator of a correctional facility shall ensure that:

1. Each new inmate in the correctional facility undergoes a symptom screening for tuberculosis while processing into the correctional facility;

2. An inmate in whom symptoms suggestive of tuberculosis are detected during screening:
   a. Is immediately:
      i. Placed in airborne infection isolation, or
      ii. Required to wear a surgical mask and retained in an environment where exposure to the general inmate population is minimal and the inmate can be observed at all times to be wearing the mask;
   b. If not immediately placed in airborne infection isolation, is within 24 hours after screening:
      i. Given a medical evaluation for active tuberculosis, or
      ii. Transported to a health care institution to be placed in airborne infection isolation; and
   c. Is given a medical evaluation for active tuberculosis before being released from airborne infection isolation or permitted to stop wearing a surgical mask and released from the environment described in subsection (A)(2)(a)(ii).

3. Except as provided in subsection (A)(6), each new inmate who does not have a documented history of a positive result from an approved test for tuberculosis or who has not received an approved test for tuberculosis within the previous 12 months is given an approved test for tuberculosis within seven days after processing into the correctional facility;

4. Except as provided in subsection (A)(5), each new inmate who has a positive result from an approved test for tuberculosis or who has a documented history of a positive result from an approved test for tuberculosis is given a chest x-ray and a medical evaluation, within 14 days after processing into the correctional facility, to determine whether the inmate has active tuberculosis;

5. If an inmate has had a documented negative chest x-ray after a positive result from an approved test for tuberculosis, the inmate is not required to have another chest x-ray unless the inmate has signs or symptoms of active tuberculosis;
6. Each new inmate who is HIV-positive, in addition to receiving an approved test for tuberculosis, is given a chest x-ray and a medical evaluation within seven days after processing into the correctional facility, to determine whether the inmate has active tuberculosis;

7. Each inmate who has a negative result from an approved test for tuberculosis when tested during processing has a repeat approved test for tuberculosis after 12 months of incarceration and every 12 months thereafter during the inmate's term of incarceration;

8. Each inmate with active tuberculosis is:
   a. Provided medical treatment that meets accepted standards of medical practice, and
   b. Placed in airborne infection isolation until no longer infectious; and

9. All applicable requirements in 9 A.A.C. 6, Articles 2 and 3 are complied with.

B. The requirements of subsection (A) apply to each correctional facility that houses inmates for 14 days or longer and to each inmate who will be incarcerated for 14 days or longer.

C. An administrator of a correctional facility, either personally or through a representative, shall:
   1. Unless unable to provide prior notification because of security concerns, notify the local health agency at least one working day before releasing a tuberculosis case or suspect case;
   2. If unable to provide prior notification because of security concerns, notify the local health agency within 24 hours after releasing a tuberculosis case or suspect case; and
   3. Provide a tuberculosis case or suspect case or an inmate being treated for latent tuberculosis infection the name and address of the local health agency before the case, suspect case, or inmate is released.

R9-6-1204. Standards of Medical Care
A health care provider caring for an afflicted person shall comply with the recommendations for treatment of tuberculosis in American Thoracic Society/Centers for Disease Control and Prevention/Infectious Diseases Society of America: Treatment of Tuberculosis (October 2002), published in 167 American Journal of Respiratory and Critical Care Medicine 603-662 (February 15, 2003), which is incorporated by reference, on file with the Department, and available from the American Thoracic Society, 61 Broadway, New York, NY 10006-2747 or at www.atsjournals.org, unless the health care provider believes, based on the health care provider's professional judgment, that deviation from the recommendations is medically necessary. If a health care provider caring for an afflicted person deviates from the recommendations for treatment of tuberculosis in American Thoracic Society/Centers for Disease Control and
Prevention/Infectious Diseases Society of America: Treatment of Tuberculosis (October 2002), the health care provider shall, upon request, explain to the Department or a local health agency the rationale for the deviation. If the tuberculosis control officer determines that deviation from the recommendations for treatment of tuberculosis in American Thoracic Society/Centers for Disease Control and Prevention/Infectious Diseases Society of America: Treatment of Tuberculosis (October 2002), is inappropriate and that the public health and welfare require intervention, the tuberculosis control officer may take charge of the afflicted person's treatment as authorized under A.R.S. § 36-723(C).
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ATTACHMENT B
GENERAL AND SPECIFIC AUTHORITY
Statutory Authority

36-132. Department of health services; functions; contracts
A. The department, in addition to other powers and duties vested in it by law, shall:
   1. Protect the health of the people of the state.
   2. Promote the development, maintenance, efficiency and effectiveness of local health departments or districts of sufficient population and area that they can be sustained with reasonable economy and efficient administration, provide technical consultation and assistance to local health departments or districts, provide financial assistance to local health departments or districts and services that meet minimum standards of personnel and performance and in accordance with a plan and budget submitted by the local health department or districts to the department for approval, and recommend the qualifications of all personnel.
   3. Collect, preserve, tabulate and interpret all information required by law in reference to births, deaths and all vital facts, and obtain, collect and preserve information relating to the health of the people of this state and the prevention of diseases as may be useful in the discharge of functions of the department not in conflict with chapter 3 of this title and sections 36-693, 36-694 and 39-122.
   4. Operate such sanitariums, hospitals or other facilities assigned to the department by law or by the governor.
   5. Conduct a statewide program of health education relevant to the powers and duties of the department, prepare educational materials and disseminate information as to conditions affecting health, including basic information for the promotion of good health on the part of individuals and communities, and prepare and disseminate technical information concerning public health to the health professions, local health officials and hospitals. In cooperation with the department of education, the department of health services shall prepare and disseminate materials and give technical assistance for the purpose of education of children in hygiene, sanitation and personal and public health, and provide consultation and assistance in community organization to counties, communities and groups of people.
   6. Administer or supervise a program of public health nursing, prescribe the minimum qualifications of all public health nurses engaged in official public health work, and encourage and aid in coordinating local public health nursing services.
7. Encourage and aid in coordinating local programs concerning control of preventable diseases in accordance with statewide plans that shall be formulated by the department.

8. Encourage and aid in coordinating local programs concerning maternal and child health, including midwifery, antepartum and postpartum care, infant and preschool health and the health of schoolchildren, including special fields such as the prevention of blindness and conservation of sight and hearing.

9. Encourage and aid in the coordination of local programs concerning nutrition of the people of this state.

10. Encourage, administer and provide dental health care services and aid in coordinating local programs concerning dental public health, in cooperation with the Arizona dental association. The department may bill and receive payment for costs associated with providing dental health care services and shall deposit the monies in the oral health fund established by section 36-138.

11. Establish and maintain adequate serological, bacteriological, parasitological, entomological and chemical laboratories with qualified assistants and facilities necessary for routine examinations and analyses and for investigations and research in matters affecting public health.

12. Supervise, inspect and enforce the rules concerning the operation of public bathing places and public and semipublic swimming pools adopted pursuant to section 36-136, subsection I, paragraph 10.

13. Take all actions necessary or appropriate to ensure that bottled water sold to the public and water used to process, store, handle, serve and transport food and drink are free from filth, disease-causing substances and organisms and unwholesome, poisonous, deleterious or other foreign substances. All state agencies and local health agencies involved with water quality shall provide to the department any assistance requested by the director to ensure that this paragraph is effectuated.

14. Enforce the state food, caustic alkali and acid laws in accordance with chapter 2, article 2 of this title, chapter 8, article 1 of this title and chapter 9, article 4 of this title, and collaborate in the enforcement of the federal food, drug, and cosmetic act (52 Stat. 1040; 21 United States Code sections 1 through 905).

15. Recruit and train personnel for state, local and district health departments.

16. Conduct continuing evaluations of state, local and district public health programs, study and appraise state health problems and develop broad plans for use by the department and
for recommendation to other agencies, professions and local health departments for the best solution of these problems.

17. License and regulate health care institutions according to chapter 4 of this title.

18. Issue or direct the issuance of licenses and permits required by law.

19. Participate in the state civil defense program and develop the necessary organization and facilities to meet wartime or other disasters.

20. Subject to the availability of monies, develop and administer programs in perinatal health care, including:
   (a) Screening in early pregnancy for detecting high-risk conditions.
   (b) Comprehensive prenatal health care.
   (c) Maternity, delivery and postpartum care.
   (d) Perinatal consultation, including transportation of the pregnant woman to a perinatal care center when medically indicated.
   (e) Perinatal education oriented toward professionals and consumers, focusing on early detection and adequate intervention to avert premature labor and delivery.

21. License and regulate the health and safety of group homes for persons with developmental disabilities. The department shall issue a license to an accredited facility for a period of the accreditation, except that no licensing period shall be longer than three years. The department is authorized to conduct an inspection of an accredited facility to ensure that the facility meets health and safety licensure standards. The results of the accreditation survey shall be public information. A copy of the final accreditation report shall be filed with the department of health services. For the purposes of this paragraph, "accredited" means accredited by a nationally recognized accreditation organization.

B. The department may accept from the state or federal government, or any agency of the state or federal government, and from private donors, trusts, foundations or eleemosynary corporations or organizations grants or donations for or in aid of the construction or maintenance of any program, project, research or facility authorized by this title, or in aid of the extension or enforcement of any program, project or facility authorized, regulated or prohibited by this title, and enter into contracts with the federal government, or an agency of the federal government, and with private donors, trusts, foundations or eleemosynary corporations or organizations, to carry out such purposes. All monies made available under this section are special project grants. The department may also expend these monies to further applicable scientific research within this state.
C. The department, in establishing fees authorized by this section, shall comply with title 41, chapter 6. The department shall not set a fee at more than the department's cost of providing the service for which the fee is charged. State agencies are exempt from all fees imposed pursuant to this section.

D. The department may enter into contracts with organizations that perform nonrenal organ transplant operations and organizations that primarily assist in the management of end-stage renal disease and related problems to provide, as payors of last resort, prescription medications necessary to supplement treatment and transportation to and from treatment facilities. The contracts may provide for department payment of administrative costs it specifically authorizes.

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

A. The director shall:

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

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

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

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

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

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

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

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

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

E. The director may delegate to a local health department, county environmental department or public health services district any functions, powers or duties that the director believes can be competently, efficiently and properly performed by the local health department, county environmental department or public health services district if:
   1. The director or superintendent of the local health agency, environmental agency or public health services district is willing to accept the delegation and agrees to perform or
exercise the functions, powers and duties conferred in accordance with the standards of performance established by the director of the department of health services.

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

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

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

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

I. The director, by rule, shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

36-721. Rules
The director shall adopt rules to:

1. Prescribe reasonable and necessary measures for the submission of tuberculosis reports and statistics from counties.
2. Prescribe reasonable and necessary measures regarding standards of medical care to be used by health care providers, agencies and institutions caring for afflicted persons.
3. Prescribe necessary and reasonable measures not in conflict with law for the enforcement of the provisions of this article.
4. To enforce this article as necessary.

36-723. Investigation of tuberculosis cases
A. When a local health officer is notified that an afflicted person is within the officer's jurisdiction, the local health officer shall immediately initiate an investigation. In performance of the duty to prevent or control tuberculosis, the tuberculosis control officer or local health officer at reasonable times and within reasonable limits may enter and inspect:
1. A public place in the performance of that person's duty to prevent or control tuberculosis. For the purposes of this paragraph, "public place" means all or any portion of an area, lands, building or other structure that is generally open to the public or to which the public has access and is not used primarily for private residential purposes.

2. Any public or commercial means of transportation or common carrier, including a vehicle, watercraft or aircraft in the performance of that person's duty to prevent or control tuberculosis.

3. Private property and premises to locate and inspect persons who may be afflicted persons. The tuberculosis control officer or the local health officer shall first identify the officer to an occupant of the building or premises and shall seek the consent of an adult occupant to enter the building or premises to enforce the provisions of this article. If consent is refused or if it is not possible to reasonably obtain consent, the tuberculosis control officer, the local health officer or a designated representative may obtain a search warrant to enter the building or premises to locate the afflicted person and to inspect the building or premises for other persons who may be at risk of exposure to active tuberculosis. The scope of the search shall be limited to those areas in which the afflicted person or other persons who may be at risk of exposure to active tuberculosis may reasonably be found. Any search warrant sought by the tuberculosis control officer or local health officer shall be obtained in compliance with section 13-3912.

B. A local health officer who conducts an investigation pursuant to this article shall immediately notify the tuberculosis control officer of the existence and nature of the disease and of the measures taken to control tuberculosis. The local health officer shall keep the tuberculosis control officer informed of the prevalence of the disease as prescribed by the department.

C. The tuberculosis control officer may take charge of the investigation and suppression of a suspected or actual case, outbreak or epidemic of tuberculosis if the officer reasonably believes that the public health and welfare require this action. In that event the control officer or the control officer's designee has exclusive authority over the case, outbreak or epidemic.

D. A treating, screening or attending health care provider as defined in section 36-661, a clinical laboratory as defined in section 36-451 or an operator of a homeless shelter who knows of an afflicted person shall notify the tuberculosis control officer or the local health officer and cooperate in any investigation conducted as a result of the notification. The notification shall include, if known, the name, address and physical location of an afflicted person. If the person reporting is a licensed physician, the physician shall report on the condition of the afflicted person.
and the status of the disease as often as required by the tuberculosis control officer or the local health officer.

E. An institution or health care provider shall promptly report to the tuberculosis control officer or the local health officer if an afflicted person ceases or refuses to accept treatment or fails or refuses to comply with medical recommendations for voluntary examination, isolation, monitoring, quarantine or treatment for active tuberculosis. The initial disease notification report and subsequent reports shall include if known the afflicted person's name, address and physical location, date of birth, tuberculin skin test results and pertinent radiologic, microbiologic and pathologic reports, whether final or pending, and any other information as required by the tuberculosis control officer or the local health officer.

36-731. Confinement; selection; jails; prohibition

A. After an afflicted person has been taken into custody pursuant to this article, the tuberculosis control officer or local health officer is responsible for selecting a facility or quarters suitable for the comfortable, safe and humane confinement of the afflicted person, if the person is not otherwise admitted or confined in a health care institution. The tuberculosis control officer or local health officer may authorize a physician, health care provider, emergency medical services personnel, ambulance or ambulance service, guardian, conservator, parent, custodian, relative or friend to transport an afflicted person to a designated institution or facility if the tuberculosis control officer or local health officer determines that the means of transportation are reliable and would not be detrimental to any person's health, safety or welfare. A sheriff or law enforcement agency shall maintain custody of the afflicted person until the afflicted person is delivered to the institution or facility specified in the order or to an alternate institution or facility approved by the department, the tuberculosis control officer or the local health officer.

B. An afflicted person who is not incarcerated on a criminal charge and who is the subject of an order or petition under this article shall not be confined in any prison or jail where those charged with crimes are incarcerated unless the afflicted person represents an immediate and serious danger to the staff or physical facilities of a hospital or any institution to which committed, or unless the afflicted person has failed to obey a court order or has failed to obey a lawful order of the tuberculosis control officer or local health officer issued pursuant to this article and the medical director of the receiving facility or designee has determined that no less restrictive confinement measures are appropriate. The court shall subsequently determine the appropriate level of confinement necessary during this initial consideration of the petition and the request for compulsory detention pursuant to section 36-726, subsection F.
DEPARTMENT OF HEALTH SERVICES (F-18-0503)
Title 9, Chapter 10, Article 9, Outpatient Surgical Centers
TO: Members of the Governor’s Regulatory Review Council (Council)

FROM: Council Staff

DATE: April 16, 2018

SUBJECT: DEPARTMENT OF HEALTH SERVICES (F-18-0502)
Title 9, Chapter 10, Article 9, Outpatient Surgical Centers

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 health of the people of the state.” A.R.S. § 36-132(A)(1)

This five-year review report covers 18 rules in A.A.C. Title 9, Chapter 10, Article 9, for Outpatient Surgical Centers (OSC). Under R9-10-101, an “outpatient surgical center” is a class of health care institutions that has the facility, staffing, and equipment to provide surgery and anesthesia services to a patient whose recovery does not require inpatient care in a hospital. The rules contain sections that integrate physical and behavioral health requirements and standards for outpatient surgical centers and consist of requirements for administration, medical staff and personnel, patient admissions, patient rights and medical records.

This is the first five-year review report on these rules. The Department revised the rules to comply with Laws 2011, Ch. 96, § 1. The Department repealed outpatient surgical center rules in 9 A.A.C. 10, Article 17 and made new outpatient surgical center rules in October 1, 2013. The rules were revised July 1, 2014 to further amend the rules.

Proposed Action

The Department does not intend to amend or repeal any of the rules reviewed in this report unless a substantive issue arises.
1. **Has the agency analyzed whether the rules are authorized by statute?**

   Yes. The Department cites to A.R.S. §§ 36-132(A)(1), 36-132(A)(17), and 36-136(G) as general authority for the rules. A.R.S. § 36-132(A)(17) requires the Department to “license and regulate health care institutions.” Under A.R.S. § 36-136(G), the Department “may make and amend rules necessary for the proper administration and enforcement of the laws relating to the public health.”

   The Department also cites to A.R.S. §§ 36-405 and 36-406 for specific authority. A.R.S. § 36-405 requires the Department to “adopt rules to establish minimum standards and requirements for the construction, modification, and licensure of health care institutions necessary to assure the public health, safety and welfare.” A.R.S. § 36-406 requires the Department to enforce the provisions of A.R.S. Title 36, Chapter 4 and the rules adopted under that Chapter.

2. **Summary of the agency’s economic impact comparison and identification of stakeholders:**

   No economic, small business, and consumer impact statements were prepared as a part of the exempt rulemakings. In 2017, the Department reported that 203 licensed OSCs were operating in the state and that four elected to close. The Department believes that some OSCs may incur a moderate increase in costs for additional administrative functions and patients may bear that cost if their OSC decides to pass the increased administrative cost on to them. However, the Department believes that all affected persons may receive an increased benefit from having OSCs that comply with infection control standards. Overall, the Department believes that the benefits of the rules are much greater than the costs.

   Key stakeholders include the Department, outpatient care centers, physicians, other health care providers, patients, and the general public.

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

   The Department has determined that the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.

4. **Has the agency received any written criticisms of the rules over the last five years?**

   No. The Department indicates that it has not received any written criticisms of the rules over the last five years.
5. **Has the agency analyzed the rules’ clarity, conciseness, and understandability, consistency with other rules and statutes, and effectiveness?**

   Yes. The Department indicates that the rules are clear, concise, and understandable, are consistent with other rules and statutes, and are effective.

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

   Yes. The Department indicates that the rules are enforced as written.

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

   No. The Department indicates that the rules are not more stringent than federal law.

8. **For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

   Yes. The Department indicates that the rules require the issuance of a specific agency authorization, which is authorized by A.R.S. § 36-405, so a general permit is not applicable.

9. **Conclusion**

   No action is proposed on the rules. The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. Council staff recommends that the report be approved.
February 26, 2018

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

RE: Report for A.A.C. Title 9, Chapter 10, Article 9 Outpatient Surgical Centers

Dear Ms. Colyer:

According to the five-year-review report schedule of the Governor's Regulatory Review Council (Council), a report for A.A.C. Title 9, Chapter 10, Article 9 is due to the Council no later than February 28, 2018. The Arizona Department of Health Services (Department) has reviewed 9 A.A.C. 10, Article 9 and is enclosing a report to the Council for this rule.

The Department believes that this report complies with the requirements of A.R.S. § 41-1056. A five-year-review summary, information that is identical for all the rules, information for individual rules, the rules reviewed, and the general and specific authority are included in the package. As described in the report, the Department does not plan to amend the rules in 9 A.A.C. 10, Article 9 unless a substantive issue arises.

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

If you need any further information, please contact me at (602) 542-1020.

Sincerely,

[Signature]
Robert Lane
Director's Designee

RL:tk
Enclosures
FIVE-YEAR-REVIEW REPORT
TITLE 9. HEALTH SERVICES
CHAPTER 10. DEPARTMENT OF HEALTH SERVICES
HEALTH CARE INSTITUTIONS: LICENSING
ARTICLE 9. OUTPATIENT SURGICAL CENTERS

February 2018
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FIVE-YEAR-REVIEW SUMMARY

Arizona Revised Statutes (A.R.S.) § 36-132(A)(1) requires the Arizona Department of Health Services (Department) to protect the health of the people of the state of Arizona. A.R.S. § 36-136(G) requires the Department to promulgate rules necessary for the proper administration and enforcement of the laws relating to public health. A.R.S. § 36-405(A) requires the Department to adopt rules setting minimum standards and requirements for the construction, modification, and licensing of health care institutions to protect the public health, safety, and welfare. Under A.R.S. § 36-405(B)(1), the Department classifies and sub-classifies health care institutions based on six statutory licensing criteria. A.R.S. § 36-406 requires the Department to enforce the provisions of A.R.S. Title 36, Chapter 4 and the rules adopted under that Chapter.

The Arizona Administrative Code (A.A.C.) Title 9, Chapter 10, Article 9 contains 18 rules that establish the requirements and minimum standards for outpatient surgical centers, implementing A.R.S. §§ 36-405 and 36-406. Laws 2011, Ch. 96, § 1, effective July 20, 2011, required the Department to adopt rules for health care institutions to reduce monetary or regulatory costs on person or individuals and facilitate licensing of "integrated health programs that provide both behavioral and physical health services." The Department revised the rules in 9 A.A.C. 10 and 9 A.A.C. 20 to comply with Laws 2011, Ch. 96, § 1, during which the Department repealed outpatient surgical center rules in 9 A.A.C. 10, Article 17 and made new outpatient surgical center rules in 9 A.A.C. 10, Article 9 at 19 A.A.R. effective October 1, 2013. Additionally, the Article 9 rules were revised at 20 A.A.R. 1409, effective July 1, 2014, to further amend the rules, as allowed by Laws 2013, Ch. 10, § 13 that amended Laws 2011, Ch. 96 § 1 to extend the Department's time to revise the rules in 9 A.A.C. 10 and 9 A.A.C. 20 until April 30, 2014.

The new rules adopted in 9 A.A.C. 10, Article 9 contain rule Sections that integrate physical and behavioral health requirements and standards for outpatient surgical centers (OSC) that provide surgery to patients who do not require inpatient care in a hospital. The new rules consist of requirements for administration, medical staff and personnel, patient admissions, patient rights and medical records. The new rules also contain requirements for types of services that may be provided at an OSC that include surgical services, nursing services, behavioral health services, medication services, and patient transfers. Additionally, the new rules include standards for an infection control program, emergency and safety, environmental control, and physical plant.

After an analysis of 9 A.A.C. 10, Article 9 rules, the Department has determined that the rules are effective and consistent with state and federal statutes. The rules are clear, concise, and understandable and enforced as written. The Department has received no written criticism of the rules. The Department does not plan to amend the rules in Article 9 until a substantive matter occurs.
INFORMATION THAT IS IDENTICAL FOR ALL RULES

1. **Authorization of the rule by existing statutes**
The general statutory authority for the rules is A.R.S. §§ 36-132(A)(1), 36-132(A)(17), and 36-136(G).
The specific statutory authority for the rules is A.R.S. §§ 36-405 and 36-406.

2. **The purpose of the rule**
The purpose of the rules is to establish requirements for outpatient surgical centers.

3. **Analysis of effectiveness in achieving the objective**
The rules are effective in achieving their respective objectives.

4. **Analysis of consistency with state and federal statutes and rules**
The rules are consistent with state and federal statutes and rules.

5. **Status of enforcement of the rule**
The rules in are enforced as written.

6. **Analysis of clarity, conciseness, and understandability**
The rules are clear, concise, and understandable.

7. **Summary of the written criticisms of the rule received within the last five years**
The Department has not received any written criticisms of the rules in the past five years.

8. **Economic, small business, and consumer impact comparison**
The rules in 9 A.A.C. 10, Article 9 were made new in their entirety in 2013 as part of an exempt rulemaking of 9 A.A.C. 10 and 9 A.A.C. 20 to comply with Laws 2011, Ch. 96. Additionally, in 2014, six of the rules in Article 9 were revised through exempt rulemaking to comply with Laws 2013, Ch. 10, effective July 1, 2014. No economic, small business, and consumer impact statements were prepared as a part of the exempt rulemakings. The Department believes persons who are directly affected by, bear the costs of, or directly benefit from the rules are: the Department, OSCs, physicians and other health care providers, patients, and the general public. Annual costs and revenues are designated as minimal when more than $0 and less than $5,000, moderate when $5,000 and less than $20,000, and substantial when $20,000 or greater. A cost or benefit is designated as significant when meaningful or important but not readily subject to quantification.

In 2017, the Department reported that 203 licensed outpatient surgical centers were operating in state
and four outpatient surgical centers elected to close. Additionally, 23 initial applications and 30 renewal applications were approved. No amended applications were received, and no other applications were denied. The Department completed 40 compliance surveys related to renewal applications and 29 complaint investigations surveys. The Department also completed 46 enforcement actions of which four were related to compliance and complaint investigations surveys and 42 related to late renewal applications.

As mentioned in the five-year-review summary, the Department amended 9 A.A.C. 10 and 9 A.A.C. 20 to consolidate definitions and make consistent throughout amended-new Chapter 10 Articles. In the 2013 rulemaking, the consolidation of all definitions reduced the number of terms listed in new rule section R9-10-901. New R9-10-901 now makes reference to definitions in A.R.S. § 36-401 and R9-10-101, reducing the number of definitions listed in R9-10-901 to three definitions specific to Article 9 rules. The Department believes the reference to other definitions and added definitions in new R9-10-901 improve the effectiveness and understandability of the rules. The Department believes new R9-10-901 provides a significant benefit to all affected persons by eliminating confusion, providing more effective rules, and increasing consistency for all Articles in 9 A.A.C. 10.

New R9-10-902 establishes requirements for a governing authority to organize, operate, and administer an OTC. The requirements establish a health care institution's scope of practice; qualification for and designation of an administrator; and administration of clinical privileges, including medical staff by-laws. R9-10-902 requires policies and procedures for personnel members, employees, volunteers, and students; patient rights; medical records; quality management program; medical and nursing services; and pharmacy and pathology services. R9-10-902 also added requirements for policies and procedures for governing contracted services, patient transfer, behavioral health services, medication services and infection control. The new rule further added requirements for a quality management review to occur every 12 months, designation of an acting administrator, and notification to the Department when there is a change of administrator. Additionally, requirements for policies and procedures for processing a complaint related to a patient, providing information to the Department, and medical and nursing services were also clarified. As part of the 2014 exempt rulemaking, changes to R9-10-902 added policies that address patient safety reporting and non-retaliation; prescribing a controlled substance; and responding to a patient's sudden, intense, or out-of-control behavior. The changes to R9-10-902 also increased the review period for policies and procedures to three years from two years.
In new R9-10-903, the changes include clarifying specific methods to be implemented by a quality management program and a requirement for a 12-month retention period for reports, including supporting documentation of each concern about the delivery of services related to patient care. Rule Section R9-10-904 is new and establishes requirements for documenting and maintaining information for contracted services provided through an OSC. The new R9-10-905 clarifies and adds requirements for establishing personnel member qualifications, skills, and knowledge based on the type of services provided. Additional changes clarify requirements for providing evidence of freedom from infectious tuberculosis and personnel records. The 2014 exempt rulemaking amended R9-10-905 by adding a requirement that personnel records for a personnel member, who has not provided services at or for an OSC during the previous 12 months, be provided to the Department within 72 hours after Department's request.

The new R9-10-906 rule contains requirements for medical staff that are the same as old rules in 9 A.A.C. 10, Article 17, except for removing the requirement for establishing documentation of cardiopulmonary resuscitation and emergency transfer of a patient policies and procedures. The new R9-10-907 established requirements for a patient admitted for a surgical procedure and clarified the identification of the individual who is responsible for documenting preoperative diagnosis and surgical procedures in a medical record. Rule Section R9-10-908 is new and establishes requirements for patient transfer due to an emergency. R9-10-908 also added administrative requirements for patient evaluation, medical records, and documentation of transfer. New R9-10-909 clarified the types of unacceptable behaviors against a patient and added patient's rights to protect against discrimination and ensure a patient receives appropriate treatment.

New R9-10-910, medical record, establishes requirements for patient's medical records, authorized individuals who may access and change a medical record, acceptable types of signatures, and protection of electronic medical records. As part of the 2014 exempt rulemaking, R9-10-910 was amended to add contact information for a patient's representative, the dates of admission and discharge, and documentation of any action taken to control a patient's behavior to prevent harm to the patient or another individual. The Department believes the rules in R9-10-902 through R9-10-910 provide minimal standards that protect the health and safety of patients and provide needed requirements for OSCs, physicians, and health care providers. The Department believes any costs incurred by an OSC to be minimal and do not outweigh the benefits. The Department also believes the rules provide a substantial benefit to other affected persons, especially patients.
As part of the 2013 rulemaking, new R9-10-911 establishes requirements for a current listing of surgical procedures, a medical staff roster, and for individuals who perform surgical procedures or administer anesthesia to complete reports and discharge instruction according to policies, procedures, and medical staff bylaws. A new requirement for a physician to remain on the premises until all patients are discharged was also added. New R9-10-912 establishes requirements for nursing services and clarifies that a nurse document in a patient's medical record that the patient or patient's representative received written discharge instructions. Since the requirements in new R9-10-911 and R9-10-912 are similar to previous rules in 9 A.A.C. 10, Article 17, the Department believes that the new rules did not increase costs for affected persons; and the changes to the rules made the rules more effective, clear, and understandable providing increased benefits to affected persons.

New R9-10-913 establishes requirements for behavioral health services, including policies and procedures that cover informed consent when required or given and a requirement that behavioral health services are provided under the direction of a behavioral health professional. R9-10-914 establishes requirements for medication services. Medication services requirements include clarification of what information about a prescribed medication a patient should be provided and requires policies and procedures for preventing and responding to a medication error or adverse response to a medication and medication administration. R9-10-914 also includes requirements for reviewing a patient's medication regimen; pharmaceutical services if provided on the premises; and medications stored, tracked, dispensed, and discarded by an OSC. The Department believes that OSCs may incur a moderate cost due to the additional administrative functions required by the new rules in R9-10-913 and R9-10-914. The Department believes that all affected persons may receive a significant benefit from the new behavioral health services rules that allow an OSC to provide behavioral health services to an individual experiencing a behavioral health issue. Additionally, the Department believes that all affected persons may receive a moderate benefit from the new medication services rules that ensure patients are well informed about the medications prescribed and administered and medication is managed to prevent medication errors, adverse responses, or medication overdose.

The Department also added standards for infection control, emergency and safety, environmental, and physical plant. New R9-10-915 establishes standards for an infection control program to prevent the development and transmission of infections and communicable diseases. R9-10-915 also added policies and procedures for reporting and control measures for communicable disease and infestations, handling biohazardous medical waste, handling medical equipment and supplies, and
use of personal protective equipment. As part of the 2014 exempt rulemaking, R9-10-915 was amended to remove requirement for compliance with contagious disease reporting in A.R.S. § 36-621 and communicable disease reporting in 9 A.A.C. 6, Article 2. As part of the 2013 rulemaking, R9-10-916 establishes emergency and safety standards and added policies and procedures used for providing medical emergency treatment to a patient, to include requirements for identifying and maintaining medications, supplies, and equipment required for medical emergency treatment. R9-10-916 also added requirements for the development of a disaster plan for staff and employees, including evacuation drills for employees; and provision of a sign, if applicable, at the entrance to a room or area indicating that oxygen is in use. As part of the 2014 exempt rulemaking, R9-10-916 was amended to add a disaster drill for employees and changed the required frequency of an evacuation drill from every three months to every six months. New R9-10-917 added a requirement for a pest control program and clarified standards for equipment, garbage and refuse, heating and cooling systems, common area lighting, water supply, and emergency power source. Lastly, new R9-10-918 added physical plant standards to allow for sufficient premises and equipment to accommodate an OSC's scope of services, patients, recovery room area including beds, operating room, and surgical suite.

The Department believes that some OSCs may incur a moderate increase in costs for additional administrative functions added by requirements in new R9-10-915 rules and patients may also incur a minimal increase in cost should an OSC determine to pass their increased administrative cost on their patients. Additionally, the Department believes that all affected person may receive an increased benefit from having OSCs that comply with infection control standards and decrease and eliminate infections and communicable diseases present at their premises. The Department believes that the requirements in R9-10-916, R9-10-917, and R9-10-918 are similar to those in previous R9-10-1712, R9-10-1711, and R9-10-1713, respectively. The Department believes the changes made to these rules may create a minimal increase in costs, but provides an increased benefit of having more effective and understandable rules that outweighs any minimal costs incurred. Through these exempt rulemakings, the Department planned to reduce monetary or regulatory cost on persons or individuals and facilitate licensing of "integrated health programs that provide both behavioral and physical health services." The Department believes that the benefits of the rules are much greater than the costs.

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**
   This is the first five-year-review report for the new rules.

11. **A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective**
   The Department has determined that the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.

12. **Analysis of stringency compared to federal laws**
   The rules are not more stringent than related federal laws.

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with section 41-1037**
   The rules require the issuance of a specific agency authorization, which is authorized by A.R.S. § 36-405, so a general permit is not applicable.

14. **Proposed course of action**
   The Department does not plan to amend the rules in 9 A.A.C. 10, Article 9 unless a substantive issue arises.
R9-10-901. Definitions
2. Objective
The objective of the rule is to define terms used in the Article to enable the reader to understand clearly the requirements of the Article and allow for consistent interpretation.

R9-10-902. Administration
2. Objective
The objective of the rule is to establish minimum requirements for an outpatient surgical center's governing authority and administrator, including specific administrative policies and procedures to protect the health and safety of a patient.

R9-10-903. Quality Management
2. Objective
The objective of the rule is to establish minimum requirements for an outpatient surgical center's quality management program.

R9-10-904. Contracted Services
2. Objective
The objective of the rule is to establish minimum requirements for outpatient surgical center services provided by a person who contracts with the licensee to provide outpatient surgical center services to ensure that the contractor complies with applicable requirements.

R9-10-905. Personnel
2. Objective
The objective of the rule is to establish minimum standards for outpatient surgical center personnel.

R9-10-906. Medical Staff
2. Objective
The objective of the rule is to establish minimum requirements for outpatient surgical center medical staff.
R9-10-907. Admission
2. Objective
   The objective of the rule is to establish minimum requirements for an individual’s admission to an outpatient surgical center.

R9-10-908. Transfer
2. Objective
   The objective of the rule is to establish minimum requirements for the transfer of a patient to ensure that the health and safety of the patient are not compromised as a result of the patient’s transfer.

R9-10-909. Patient Rights
2. Objective
   The objective of the rule is to establish minimum standards for patient rights.

R9-10-910. Medical Records
2. Objective
   The objective of the rule is to establish minimum requirements for patients’ medical records.

R9-10-911. Surgical Services
2. Objective
   The objective of the rule is to establish minimum requirements for surgical services in an outpatient surgical center.

R9-10-912. Nursing Services
2. Objective
   The objective of the rule is to establish minimum requirements for nursing services in an outpatient surgical center.

R9-10-913. Behavioral Health Services
2. Objective
   The objective of the rule is to establish minimum requirements for behavioral health services in an outpatient surgical center.
R9-10-914. Medication Services

2. **Objective**
   The objective of the rule is to establish minimum requirements for medication services in an outpatient surgical center.

R9-10-915. Infection Control

2. **Objective**
   The objective of the rule is to establish minimum requirements for infection control in an outpatient surgical center.

R9-10-916. Emergency and Safety Standards

2. **Objective**
   The objective of the rule is to establish minimum requirements to ensure that an outpatient surgical center is prepared for an emergency.

R9-10-917. Environmental Standards

2. **Objective**
   The objective of the rule is to establish minimum requirements for outpatient surgical center environmental services.

R9-10-918. Physical Plant Standards

2. **Objective**
   The objective of the rule is to establish physical plant requirements for an outpatient surgical center's physical plant.
ARTICLE 9. OUTPATIENT SURGICAL CENTERS

R9-10-901. Definitions
In addition to the definitions in A.R.S. § 36-401 and R9-10-101, the following apply in this Article, unless otherwise specified:

1. “Inpatient care” means postsurgical services provided in a hospital.
2. “Outpatient surgical services” means anesthesia and surgical services provided to a patient in an outpatient surgical center.
3. “Surgical suite” means an area of an outpatient surgical center that includes one or more operating rooms and one or more recovery rooms.

R9-10-902. Administration
A. A governing authority shall:
   1. Consist of one or more individuals responsible for the organization, operation, and administration of an outpatient surgical center;
   2. Establish, in writing:
      a. An outpatient surgical center’s scope of services, and
      b. Qualifications for an administrator;
   3. Designate, in writing, an administrator who has the qualifications established in subsection (A)(2)(b);
   4. Grant, deny, suspend, or revoke clinical privileges of a physician and other members of the medical staff and delineate, in writing, the clinical privileges of each medical staff member, according to the medical staff by-laws;
   5. Adopt a quality management plan according to R9-10-903;
   6. Review and evaluate the effectiveness of the quality management plan at least once every 12 months;
   7. Designate in writing, an acting administrator who has the qualifications established in subsection (A)(2)(b) if the administrator is:
      a. Expected not to be present on an outpatient surgical center’s premises for more than 30 calendar days, or
      b. Not present on an outpatient surgical center’s premises for more than 30 calendar days; and
   8. Except as provided in subsection (A)(7), notify the Department according to A.R.S. § 36-425(I) when there is a change in the administrator and identify the name and qualifications of the new administrator.

B. An administrator:
1. Is directly accountable to the governing authority of an outpatient surgical center for the daily operation of the outpatient surgical center and for all services provided by or at the outpatient surgical center;

2. Has the authority and responsibility to manage the outpatient surgical center; and

3. Except as provided in subsection (A)(7), designates, in writing, an individual who is present on an outpatient surgical center’s premises and accountable for the outpatient surgical center when the administrator is not present on the outpatient surgical center’s premises.

C. An administrator shall ensure that:

1. Policies and procedures are established, documented, and implemented to protect the health and safety of a patient that:
   a. Cover job descriptions, duties, and qualifications, including required skills, knowledge, education, and experience for personnel members, employees, volunteers, and students;
   b. Cover orientation and in-service education for personnel members, employees, volunteers, and students;
   c. Include how a personnel member may submit a complaint relating to patient care;
   d. Cover the requirements in A.R.S. Title 36, Chapter 4, Article 11;
   e. Include a method to identify a patient to ensure that the patient receives services as ordered;
   f. Cover patient rights, including assisting a patient who does not speak English or who has a disability to become aware of patient rights;
   g. Cover specific steps for:
      i. A patient to file a complaint, and
      ii. The outpatient surgical center to respond to a patient complaint;
   h. Cover health care directives;
   i. Cover medical records, including electronic medical records;
   j. Cover a quality management program, including incident reports and supporting documentation; and
   k. Cover contracted services;

2. Policies and procedures for medical services and nursing services provided by an outpatient surgical center are established, documented, and implemented to protect the health and safety of a patient that:
   a. Cover patient screening, admission, transfer, and discharge;
   b. Cover the provision of medical services, nursing services, and health-related services in the outpatient surgical center’s scope of services;
   c. Include when general consent and informed consent are required;
   d. Cover dispensing, administering, and disposing of medications;
e. Cover prescribing a controlled substance to minimize substance abuse by a patient;
f. Cover how personnel members will respond to a patient’s sudden, intense, or out-of-control behavior to prevent harm to the patient or another individual;
g. Cover infection control; and
h. Cover environmental services that affect patient care;
3. Policies and procedures are:
a. Available to personnel members, employees, volunteers, and students of the outpatient surgical center; and
b. Reviewed at least once every three years and updated as needed;
4. A pharmacy maintained by the outpatient surgical center is licensed according to A.R.S. Title 32, Chapter 18;
5. Pathology services are provided by a laboratory that holds a certificate of accreditation, certificate of compliance, or certificate of waiver issued by the U.S. Department of Health and Human Services under the 1988 amendments to the Clinical Laboratories Act of 1967;
6. If the outpatient surgical center meets the definition of “abortion clinic” in A.R.S. § 36-449.01, abortions and related services are provided in compliance with the requirements in Article 15 of this Chapter; and
7. Unless otherwise stated:
a. Documentation required by this Article is provided to the Department within two hours after a Department request; and
b. When documentation or information is required by this Chapter to be submitted on behalf of an outpatient surgical center, the documentation or information is provided to the unit in the Department that is responsible for licensing and monitoring the outpatient surgical center.

R9-10-903. Quality Management
An administrator shall ensure that:
1. A plan is established, documented, and implemented for an ongoing quality management program that, at a minimum, includes:
a. A method to identify, document, and evaluate incidents;
b. A method to collect data to evaluate services provided to patients;
c. A method to evaluate the data collected to identify a concern about the delivery of services related to patient care;
d. A method to make changes or take action as a result of the identification of a concern about the delivery of services related to patient care; and
e. The frequency of submitting a documented report required in subsection (2) to the governing authority;

2. A documented report is submitted to the governing authority that includes:
   a. An identification of each concern about the delivery of services related to patient care, and
   b. Any change made or action taken as a result of the identification of a concern about the delivery of services related to patient care; and

3. The report required in subsection (2) and the supporting documentation for the report are maintained for at least 12 months after the date the report is submitted to the governing authority.

R9-10-904. Contracted Services
An administrator shall ensure that:

1. Contracted services are provided according to the requirements in this Article, and
2. Documentation of current contracted services is maintained that includes a description of the contracted services provided.

R9-10-905. Personnel
A. An administrator shall ensure that:

1. The qualifications, skills, and knowledge required for each type of personnel member:
   a. Are based on:
      i. The type of physical health services or behavioral health services expected to be provided by the personnel member according to the established job description, and
      ii. The acuity of the patients receiving physical health services or behavioral health services from the personnel member according to the established job description; and
   b. Include:
      i. The specific skills and knowledge necessary for the personnel member to provide the expected physical health services and behavioral health services listed in the established job description,
      ii. The type and duration of education that may allow the personnel member to have acquired the specific skills and knowledge for the personnel member to provide the expected physical health services or behavioral health services listed in the established job description, and
      iii. The type and duration of experience that may allow the personnel member to have acquired the specific skills and knowledge for the personnel member to provide the expected physical health services or behavioral health services listed in the established job description;

2. A personnel member’s skills and knowledge are verified and documented:
ATTACHMENT A

a. Before the personnel member provides physical health services or behavioral health services, and
b. According to policies and procedures;

3. Sufficient personnel members are present on an outpatient surgical center’s premises with the qualifications, skills, and knowledge necessary to:
   a. Provide the services in the outpatient surgical center’s scope of services,
   b. Meet the needs of a patient, and
   c. Ensure the health and safety of a patient;

4. A personnel member, or an employee, a volunteer, or a student who has or is expected to have more than eight hours of direct interaction per week with patients, provides evidence of freedom from infectious tuberculosis:
   a. On or before the date the individual begins providing services at or on behalf of the outpatient surgical center, and
   b. As specified in R9-10-113;

5. A plan to provide orientation, specific to the duties of a personnel member, an employee, a volunteer, and a student is developed, documented, and implemented;

6. A personnel member completes orientation before providing physical health services or behavioral health services;

7. An individual’s orientation is documented, to include:
   a. The individual’s name,
   b. The date of the orientation, and
   c. The subject or topics covered in the orientation;

8. A plan to provide in-service education specific to the job duties of a personnel member is developed, documented, and implemented; and

9. A personnel member’s in-service education is documented, to include:
   a. The personnel member’s name,
   b. The date of the training, and
   c. The subject or topics covered in the in-service education.

B. An administrator shall ensure that a personnel member:
   1. Is 18 years of age or older; and
   2. Is certified in cardiopulmonary resuscitation within the first month of employment or volunteer service, and maintains current certification in cardiopulmonary resuscitation.

C. An administrator shall ensure that a personnel record for each personnel member, employee, volunteer, or student includes:
   1. The individual’s name, date of birth, and contact telephone number;
2. The individual’s starting date of employment or volunteer service and, if applicable, the ending date; and
3. Documentation of:
   a. The individual’s qualifications, including skills and knowledge applicable to the individual’s job duties;
   b. The individual’s education and experience applicable to the individual’s job duties;
   c. The individual’s completed orientation and in-service education as required by policies and procedures;
   d. The individual’s license or certification, if the individual is required to be licensed or certified in this Article or policies and procedures;
   e. If the individual is a behavioral health technician, clinical oversight required in R9-10-115;
   f. Cardiopulmonary resuscitation training, if required for the individual according to subsection (B); and
   g. Evidence of freedom from infectious tuberculosis, if required for the individual according to subsection (A)(4).

D. An administrator shall ensure that personnel records are:
   1. Maintained:
      a. Throughout the individual's period of providing services in or for the outpatient surgical center, and
      b. For at least 24 months after the last date the individual provided services in or for the outpatient surgical center; and
   2. For a personnel member who has not provided physical health services or behavioral health services at or for the outpatient surgical center during the previous 12 months, provided to the Department within 72 hours after the Department's request.

R9-10-906. Medical Staff

A governing authority shall ensure that:
   1. The medical staff approve bylaws for the conduct of medical staff activities according to medical staff bylaws and governing authority requirements;
   2. The medical staff physicians conduct medical peer review according to A.R.S. Title 36, Chapter 4, Article 5 and submit recommendations to the governing authority for approval; and
   3. The medical staff establish written policies and procedures that define the extent of emergency treatment to be performed in the outpatient surgical center.
R9-10-907. Admission
A. A medical staff member shall only admit patients to the outpatient surgical center who:
   1. Do not require planned inpatient care, and
   2. Are discharged from the outpatient surgical center within 24 hours.
B. Within 30 calendar days before a patient is admitted to an outpatient surgical center, a medical staff member shall complete a medical history and physical examination of the patient.
C. The individual who is responsible for performing a patient’s surgical procedure shall document the preoperative diagnosis and the surgical procedure to be performed in the patient’s medical record.
D. An administrator shall ensure that the following documents are in a patient’s medical record before the patient’s surgery:
   1. A medical history and the physical examination required in subsection (B),
   2. A preoperative diagnosis and the results of any laboratory tests or diagnostic procedures relative to the surgery and the condition of the patient,
   3. Evidence of informed consent by the patient or patient’s representative for the surgical procedure and care of the patient,
   4. Health care directives, and
   5. Physician orders.

R9-10-908. Transfer
Except for a transfer of a patient due to an emergency, an administrator shall ensure that:
   1. A personnel member coordinates the transfer and the services provided to the patient;
   2. According to policies and procedures:
      a. An evaluation of the patient is conducted before the transfer;
      b. Information in the patient’s medical record, including orders that are in effect at the time of the transfer, is provided to a receiving health care institution; and
      c. A personnel member explains risks and benefits of the transfer to the patient or the patient’s representative; and
   3. Documentation in the patient’s medical record includes:
      a. Communication with an individual at a receiving health care institution;
      b. The date and time of the transfer;
      c. The mode of transportation; and
      d. If applicable, the name of the personnel member accompanying the patient during a transfer.
R9-10-909. Patient Rights

A. An administrator shall ensure that:

1. The requirements in subsection (B) and the patient rights in subsection (C) are conspicuously posted on the premises;

2. At the time of admission, a patient or the patient’s representative receives a written copy of the requirements in subsection (B) and the patient rights in subsection (C); and

3. Policies and procedures include:
   a. How and when a patient or the patient’s representative is informed of patient rights in subsection (C), and
   b. Where patient rights are posted as required in subsection (A)(1).

B. An administrator shall ensure that:

1. A patient is treated with dignity, respect, and consideration;

2. A patient is not subjected to:
   a. Abuse;
   b. Neglect;
   c. Exploitation;
   d. Coercion;
   e. Manipulation;
   f. Sexual abuse;
   g. Sexual assault;
   h. Seclusion;
   i. Restraint;
   j. Retaliation for submitting a complaint to the Department or another entity; or
   k. Misappropriation of personal and private property by the outpatient surgical center’s medical staff, personnel members, employees, volunteers, or students; and

3. A patient or the patient’s representative:
   a. Except in an emergency, either consents to or refuses treatment;
   b. May refuse or withdraw consent for treatment before treatment is initiated;
   c. Except in an emergency, is informed of alternatives to a proposed psychotropic medication or surgical procedure and the associated risks and possible complications of the proposed psychotropic medication or surgical procedure;
   d. Is informed of the following:
      i. Policies and procedures on health care directives, and
      ii. The patient complaint process;
ATTACHMENT A

e. Consents to photographs of the patient before a patient is photographed, except that a patient may be photographed when admitted to an outpatient surgical center for identification and administrative purposes; and

f. Except as otherwise permitted by law, provides written consent to the release of information in the patient’s:
   i. Medical record, or
   ii. Financial records.

C. A patient has the following rights:

1. Not to be discriminated against based on race, national origin, religion, gender, sexual orientation, age, disability, marital status, or diagnosis;

2. To receive treatment that supports and respects the patient’s individuality, choices, strengths, and abilities;

3. To receive privacy in treatment and care for personal needs;

4. To review, upon written request, the patient’s own medical record according to A.R.S. §§ 12-2293, 12-2294, and 12-2294.01;

5. To receive a referral to another health care institution if the outpatient surgical center is not authorized or not able to provide physical health services needed by the patient;

6. To participate, or have the patient's representative participate, in the development of or decisions concerning treatment;

7. To participate or refuse to participate in research or experimental treatment; and

8. To receive assistance from a family member, a patient’s representative, or other individual in understanding, protecting, or exercising the patient’s rights.

R9-10-910. Medical Records

A. An administrator shall ensure that:

1. A medical record is established and maintained for a patient according to A.R.S. Title 12, Chapter 13, Article 7.1;

2. An entry in a patient’s medical record is:
   a. Recorded only by an individual authorized by policies and procedures to make the entry;
   b. Dated, legible, and authenticated; and
   c. Not changed to make the initial entry illegible;

3. An order is:
   a. Dated when the order is entered in the patient’s medical record and includes the time of the order;
   b. Authenticated by a medical staff member according to policies and procedures; and
c. If the order is a verbal order, authenticated by the medical staff member issuing the order;

4. If a rubber-stamp signature or an electronic signature is used to authenticate an order, the individual whose signature the rubber-stamp signature or electronic signature represents is accountable for the use of the rubber-stamp signature or electronic signature;

5. A patient’s medical record is available to an individual:
   a. Authorized according to policies and procedures to access the patient’s medical record;
   b. If the individual is not authorized according to policies and procedures, with the written consent of the patient or the patient’s representative; or
   c. As permitted by law; and

6. A patient’s medical record is protected from loss, damage, or unauthorized use.

B. If an outpatient surgical center maintains patients’ medical records electronically, an administrator shall ensure that:
   1. Safeguards exist to prevent unauthorized access, and
   2. The date and time of an entry in a patient’s medical record is recorded by the computer’s internal clock.

C. An administrator shall ensure that a patient’s medical record contains:
   1. Patient information that includes:
      a. The patient’s name;
      b. The patient’s address;
      c. The patient’s date of birth; and
      d. Any known allergies, including medication allergies;
   2. The admitting medical practitioner;
   3. An admitting diagnosis;
   4. Documentation of general consent and informed consent for treatment by the patient or the patient’s representative, except in an emergency;
   5. If applicable, the name and contact information of the patient’s representative and:
      a. If the patient is 18 years of age or older or an emancipated minor, the document signed by the patient consenting for the patient’s representative to act on the patient’s behalf; or
      b. If the patient’s representative:
         i. Has a health care power of attorney established under A.R.S. § 36-3221 or a mental health care power of attorney executed under A.R.S. § 36-3282, a copy of the health care power of attorney or mental health care power of attorney; or
         ii. Is a legal guardian, a copy of the court order establishing guardianship;
   6. The date of admission and, if applicable, date of discharge;
7. Documentation of medical history and results of a physical examination;
8. A copy of patient’s health care directive, if applicable;
9. Orders;
10. Progress notes;
11. If applicable, documentation of any actions taken to control the patient’s sudden, intense, or out-of-control behavior to prevent harm to the patient or another individual;
12. Documentation of outpatient surgical center services provided to the patient;
13. A discharge summary, if applicable;
14. Documentation of receipt of written discharge instructions by the patient or patient’s representative;
15. If applicable:
   a. Laboratory reports,
   b. Radiologic report, and
   c. Diagnostic reports;
16. The anesthesia report, required in R9-10-911(C)(2);
17. The operative report of the surgical procedure, required in R9-10-911(C)(1); and
18. Documentation of a medication administered to the patient that includes:
   a. The date and time of administration;
   b. The name, strength, dosage, and route of administration;
   c. For a medication administered for pain:
      i. An assessment of the patient’s pain before administering the medication, and
      ii. The effect of the medication administered;
   d. For a psychotropic medication:
      i. An assessment of the patient’s behavior before administering the psychotropic medication, and
      ii. The effect of the psychotropic medication administered;
   e. The identification, signature, and professional designation of the individual administering or observing the self-administration of the medication; and
   f. Any adverse reaction a patient has to the medication.

R9-10-911. Surgical Services
A. An administrator shall ensure that:
   1. A current listing of surgical procedures offered by an outpatient surgical center is maintained on the outpatient surgical center’s premises, and
   2. A chronological register of surgical procedures performed in the outpatient surgical center is maintained for at least 24 months after the date of the last entry.
B. An administrator shall ensure that a roster of medical staff members who have clinical privileges at the outpatient surgical center is available to the medical staff, specifying the privileges and limitations of each medical staff member on the roster.

C. An administrator shall ensure that the individual responsible for:
   1. Performing a surgical procedure completes an operative report of the surgical procedure and any necessary discharge instructions according to medical staff by-laws and policies and procedures, and
   2. Administering anesthesia during a surgical procedure completes an anesthesia report and any necessary discharge instructions according to medical staff by-laws and policies and procedures.

D. An administrator shall ensure that a physician remains on the outpatient surgical center’s premises until all patients are discharged from the recovery room.

R9-10-912. Nursing Services
An administrator shall appoint a registered nurse as the director of nursing who:
   1. Is responsible for the management of the outpatient surgical center’s nursing services;
   2. Ensures that policies and procedures are established, documented, and implemented for nursing services provided in the outpatient surgical center;
   3. Ensures that the outpatient surgical center is staffed with sufficient nursing personnel, based on the number of patients, the health care needs of the patients, and the outpatient surgical center’s scope of services;
   4. Participates in quality management activities;
   5. Designates a registered nurse, in writing, to manage an outpatient surgical center’s nursing services when the director of nursing is not present on the outpatient surgical center’s premises;
   6. Ensures that a nurse who is not directly assisting the surgeon is responsible for the functioning of an operating room while a surgical procedure is being performed in the operating room;
   7. Ensures that a registered nurse is present in the:
      a. Recovery room when a patient is present in the recovery room, and
      b. Outpatient surgical center until all patients are discharged; and
   8. Ensures that a nurse documents in a patient’s medical record that the patient or the patient’s representative has received written discharge instructions.

R9-10-913. Behavioral Health Services
If an outpatient surgical center is authorized to provide behavioral health services, an administrator shall ensure that:
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1. Policies and procedures are established, documented, and implemented that cover when informed consent is required and by whom informed consent may be given; and

2. The behavioral health services:
   a. Are provided under the direction of a behavioral health professional; and
   b. Comply with the requirements:
      i. For behavioral health paraprofessionals and behavioral health technicians, in R9-10-115; and
      ii. For an assessment, in R9-10-1011(B).

R9-10-914. Medication Services

A. An administrator shall ensure that policies and procedures for medication services:
   1. Include:
      a. A process for providing information to a patient about medication prescribed for the patient including:
         i. The prescribed medication’s anticipated results,
         ii. The prescribed medication’s potential adverse reactions,
         iii. The prescribed medication’s potential side effects, and
         iv. Potential adverse reactions that could result from not taking the medication as prescribed;
      b. Procedures for preventing, responding to, and reporting:
         i. A medication error,
         ii. An adverse reaction to a medication, or
         iii. A medication overdose; and
      c. Procedures to ensure that a patient’s medication regimen is reviewed by a medical practitioner to ensure the medication regimen meets the patient’s needs; and
   2. Specify a process for review through the quality management program of:
      a. A medication administration error, and
      b. An adverse reaction to a medication.

B. An administrator shall ensure that:
   1. Policies and procedures for medication administration:
      a. Are reviewed and approved by a medical practitioner;
      b. Specify the individuals who may:
         i. Order medication, and
         ii. Administer medication;
      c. Ensure that medication is administered to a patient only as prescribed; and
      d. Cover the documentation of a patient’s refusal to take prescribed medication in the patient’s medical record;
2. Verbal orders for medication services are taken by a nurse, unless otherwise provided by law; and
3. A medication administered to a patient:
   a. Is administered in compliance with an order, and
   b. Is documented in the patient’s medical record.

C. An administrator shall ensure that:
   1. A current drug reference guide is available for use by personnel members;
   2. A current toxicology reference guide is available for use by personnel members; and
   3. If pharmaceutical services are provided on the premises:
      a. A committee, composed of at least one physician, one pharmacist, and other personnel members as determined by policies and procedures, is established to:
         i. Develop a drug formulary,
         ii. Update the drug formulary at least once every 12 months,
         iii. Develop medication usage and medication substitution policies and procedures, and
         iv. Specify which medications and medication classifications are required to be stopped automatically after a specific time period unless the ordering medical staff member specifically orders otherwise;
      b. The pharmaceutical services are provided under the direction of a pharmacist;
      c. The pharmaceutical services comply with A.R.S. Title 36, Chapter 27; A.R.S. Title 32, Chapter 18; and 4 A.A.C. 23; and
      d. A copy of the pharmacy license is provided to the Department upon request.

D. When medication is stored at an outpatient surgical center, an administrator shall ensure that:
   1. Medication is stored in a separate locked room, closet, or self-contained unit used only for medication storage;
   2. Medication is stored according to the instructions on the medication container; and
   3. Policies and procedures are established, documented, and implemented for:
      a. Receiving, storing, inventorying, tracking, dispensing, and discarding medication, including expired medication;
      b. Discarding or returning prepackaged and sample medication to the manufacturer if the manufacturer requests the discard or return of the medication;
      c. A medication recall and notification of patients who received recalled medication; and
      d. Storing, inventorying, and dispensing controlled substances.

E. An administrator shall ensure that a personnel member immediately reports a medication error or a patient’s adverse reaction to a medication to the medical practitioner who ordered the medication and, if applicable, the outpatient surgical center’s director of nursing.
ATTACHMENT A

R9-10-915. Infection Control

An administrator shall ensure that:

1. An infection control program is established, under the direction of an individual qualified according to policies and procedures, to prevent the development and transmission of infections and communicable diseases including:
   a. A method to identify and document infections occurring at the outpatient surgical center;
   b. Analysis of the types, causes, and spread of infections and communicable diseases at the outpatient surgical center;
   c. The development of corrective measures to minimize or prevent the spread of infections and communicable diseases at the outpatient surgical center; and
   d. Documenting infection control activities including:
      i. The collection and analysis of infection control data,
      ii. The actions taken related to infections and communicable diseases, and
      iii. Reports of communicable diseases to the governing authority and state and county health departments;

2. Infection control documentation is maintained for at least 12 months after the date of the documentation;

3. Policies and procedures are established, documented, and implemented that cover:
   a. Compliance with the requirements in 9 A.A.C. 6 for reporting and control measures for communicable diseases and infestations;
   b. Handling and disposal of biohazardous medical waste;
   c. Sterilization, disinfection, distribution, and storage of medical equipment and supplies;
   d. Using personal protective equipment such as aprons, gloves, gowns, masks, or face protection when applicable;
   e. Training personnel members, employees, and volunteers in infection control practices; and
   f. Work restrictions for a personnel member with a communicable disease or infected skin lesion;

4. Biohazardous medical waste is identified, stored, and disposed of according to 18 A.A.C. 13, Article 14 and policies and procedures;

5. Soiled linen and clothing are:
   a. Collected in a manner to minimize or prevent contamination,
   b. Bagged at the site of use, and
   c. Maintained separate from clean linen and clothing; and
6. A personnel member, employee, or volunteer washes hands or uses a hand disinfection product after patient contact and after handling soiled linen, soiled clothing, or potentially infectious material.

R9-10-916. Emergency and Safety Standards
A. An administrator shall ensure that policies and procedures for providing medical emergency treatment to a patient are established, documented, and implemented and include:
1. A list of the medications, supplies, and equipment required on the premises for the medical emergency treatment provided by the outpatient surgical center;
2. A system to ensure medications, supplies, and equipment are available, have not been tampered with, and, if applicable, have not expired;
3. A requirement that a cart or a container is available for medical emergency treatment that contains medications, supplies, and equipment specified in policies and procedures;
4. A method to verify and document that the contents of the cart or container are available for medical emergency treatment; and
5. A method for ensuring a patient may be transferred to a hospital or other health care institution to receive treatment for a medical emergency that the outpatient surgical center is not authorized or not able to provide.
B. An administrator shall ensure that medical emergency treatment is provided to a patient admitted to the outpatient surgical center according to policies and procedures.
C. An administrator shall ensure that:
1. A disaster plan is developed, documented, maintained in a location accessible to medical staff and employees, and, if necessary, implemented that includes:
   a. Procedures to be followed in the event of a fire or threat to patient safety;
   b. Assigned personnel responsibilities;
   c. Instructions for the evacuation or transfer of patients;
   d. Maintenance of patient medical records; and
   e. A plan to provide any other services related to patient care to meet the patients’ needs;
2. The disaster plan required in subsection (C)(1) is reviewed at least once every 12 months;
3. Documentation of a disaster plan review required in subsection (C)(2) is created, is maintained for at least 12 months after the date of the disaster plan review, and includes:
   a. The date and time of the disaster plan review;
   b. The name of each personnel member, employee, medical staff member, or volunteer participating in the disaster plan review;
   c. A critique of the disaster plan review; and
ATTACHMENT A

d. If applicable, recommendations for improvement;
4. A disaster drill for employees is conducted on each shift at least once every three months and documented;
5. An evacuation drill for employees is conducted at least once every six months for employees on the premises;
6. Documentation of an evacuation drill is created, is maintained for at least 12 months after the date of the evacuation drill, and includes:
   a. The date and time of the evacuation drill;
   b. The amount of time taken for employees to evacuate the outpatient surgical center;
   c. Any problems encountered in conducting the evacuation drill; and
   d. Recommendations for improvement, if applicable; and
7. An evacuation path is conspicuously posted on each hallway of each floor of the outpatient surgical center and every room where patients may be present.

D. An administrator shall ensure that, if applicable, a sign is placed at the entrance to a room or area indicating that oxygen is in use.

E. An administrator shall:
   1. Obtain a fire inspection conducted according to the time-frame established by the local fire department or the State Fire Marshal,
   2. Make any repairs or corrections stated on the fire inspection report, and
   3. Maintain documentation of a current fire inspection.

R9-10-917. Environmental Standards
A. An administrator shall ensure that:
   1. An outpatient surgical center’s premises and equipment are:
      a. Cleaned and disinfected according to policies and procedures or manufacturer’s instructions to prevent, minimize, and control illness or infection; and
      b. Free from a condition or situation that may cause a patient or an individual to suffer physical injury;
   2. A pest control program is implemented and documented;
   3. Equipment used at the outpatient surgical center to provide care to a patient is:
      a. Maintained in working order;
      b. Tested and calibrated according to the manufacturer’s recommendations or, if there are no manufacturer’s recommendations, as specified in policies and procedures; and
      c. Used according to the manufacturer’s recommendations;
4. Documentation of equipment testing, calibration, and repair is maintained for at least 12 months after the date of the testing, calibration, or repair;

5. Garbage and refuse are:
   a. Stored in covered containers lined with plastic bags, and
   b. Removed from the premises at least once a week;

6. Heating and cooling systems maintain the outpatient surgical center at a temperature between 70° F and 84° F at all times;

7. Common areas:
   a. Are lighted to assure the safety of patients, and
   b. Have lighting sufficient to allow personnel members to monitor patient activity;

8. The supply of hot and cold water is sufficient to meet the personal hygiene needs of patients and the cleaning and sanitation requirements in this Article.

B. An administrator shall ensure that an outpatient surgical center has a functional emergency power source.

R9-10-918. Physical Plant Standards
A. An administrator shall ensure that the outpatient surgical center complies with the applicable physical plant health and safety codes and standards, incorporated by reference in A.A.C. R9-1-412, that were in effect on the date the outpatient surgical center submitted architectural plans and specifications to the Department for approval according to R9-10-104.

B. An administrator shall ensure that the premises and equipment are sufficient to accommodate:
   1. The services stated in the outpatient surgical center’s scope of services, and
   2. An individual accepted as a patient by the outpatient surgical center.

C. An administrator shall ensure that:
   1. There are two recovery beds for each operating room, for up to four operating rooms, whenever general anesthesia is administered;
   2. One additional recovery bed is available for each additional operating room; and
   3. Recovery beds are located in a space that provides for a minimum of 70 square feet per bed, allowing three feet or more between beds and between the sides of a bed and the wall.

D. An administrator may provide chairs in the recovery room area that allow a patient to recline for patients who have not received general anesthesia.

E. An administrator shall ensure that the following are available in the surgical suite:
   1. Oxygen and the means of administration;
   2. Mechanical ventilator assistance equipment including airways, manual breathing bag, and suction apparatus;
ATTACHMENT A

3. Cardiac monitor;
4. Defibrillator; and
5. Cardiopulmonary resuscitation drugs as determined by the policies and procedures.
ATTACHMENT B

Statutory Authority

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

A. The department shall, in addition to other powers and duties vested in it by law:

1. Protect the health of the people of the state.

2. Promote the development, maintenance, efficiency and effectiveness of local health departments or districts of sufficient population and area that they can be sustained with reasonable economy and efficient administration, provide technical consultation and assistance to local health departments or districts, provide financial assistance to local health departments or districts and services that meet minimum standards of personnel and performance and in accordance with a plan and budget submitted by the local health department or districts to the department for approval, and recommend the qualifications of all personnel.

3. Collect, preserve, tabulate and interpret all information required by law in reference to births, deaths and all vital facts, and obtain, collect and preserve information relating to the health of the people of the state and the prevention of diseases as may be useful in the discharge of functions of the department not in conflict with the provisions of chapter 3 of this title, and sections 36-693, 36-694 and 39-122.

4. Operate such sanitariums, hospitals or other facilities assigned to the department by law or by the governor.

5. Conduct a statewide program of health education relevant to the powers and duties of the department, prepare educational materials and disseminate information as to conditions affecting health, including basic information for the promotion of good health on the part of individuals and communities, and prepare and disseminate technical information concerning public health to the health professions, local health officials and hospitals. In cooperation with the department of education, the department of health services shall prepare and disseminate materials and give technical assistance for the purpose of education of children in hygiene, sanitation and personal and public health, and provide consultation and assistance in community organization to counties, communities and groups of people.

6. Administer or supervise a program of public health nursing, prescribe the minimum qualifications of all public health nurses engaged in official public health work, and encourage and aid in coordinating local public health nursing services.

7. Encourage and aid in coordinating local programs concerning control of preventable diseases in accordance with statewide plans that shall be formulated by the department.

8. Encourage and aid in coordinating local programs concerning maternal and child health, including midwifery, antepartum and postpartum care, infant and preschool health and the health of school children, including special fields such as the prevention of blindness and conservation of sight and hearing.

9. Encourage and aid in the coordination of local programs concerning nutrition of the people of the state.
10. Encourage, administer and provide dental health care services and aid in coordinating local programs concerning dental public health, in cooperation with the Arizona dental association. The department may bill and receive payment for costs associated with providing dental health care services and shall deposit the monies in the oral health fund established by section 36-138.

11. Establish and maintain adequate serological, bacteriological, parasitological, entomological and chemical laboratories with qualified assistants and facilities necessary for routine examinations and analyses and for investigations and research in matters affecting public health.

12. Supervise, inspect and enforce the rules concerning the operation of public bathing places and public and semipublic swimming pools adopted pursuant to section 36-136, subsection H, paragraph 10.

13. Take all actions necessary or appropriate to ensure that bottled water sold to the public and water used to process, store, handle, serve and transport food and drink are free from filth, disease-causing substances and organisms and unwholesome, poisonous, deleterious or other foreign substances. All state agencies and local health agencies involved with water quality shall provide to the department any assistance requested by the director to ensure that this paragraph is effectuated.

14. Enforce the state food, caustic alkali and acid laws in accordance with chapter 2, article 2 of this title, chapter 8, article 1 of this title and chapter 9, article 4 of this title, and collaborate in the enforcement of the federal food, drug and cosmetic act of 1938 (52 Stat. 1040; 21 United States Code sections 1 through 905).

15. Recruit and train personnel for state, local and district health departments.

16. Conduct continuing evaluations of state, local and district public health programs, study and appraise state health problems and develop broad plans for use by the department and for recommendation to other agencies, professions and local health departments for the best solution of these problems.

17. License and regulate health care institutions according to chapter 4 of this title.

18. Issue or direct the issuance of licenses and permits required by law.

19. Participate in the state civil defense program and develop the necessary organization and facilities to meet wartime or other disasters.

20. Subject to the availability of monies, develop and administer programs in perinatal health care, including:

   (a) Screening in early pregnancy for detecting high risk conditions.

   (b) Comprehensive prenatal health care.

   (c) Maternity, delivery and postpartum care.

   (d) Perinatal consultation, including transportation of the pregnant woman to a perinatal care center when medically indicated.
(e) Perinatal education oriented toward professionals and consumers, focusing on early detection and adequate intervention to avert premature labor and delivery.

21. License and regulate the health and safety of group homes for persons with developmental disabilities. The department shall issue a license to an accredited facility for a period of the accreditation, except that no licensing period shall be longer than three years. The department is authorized to conduct an inspection of an accredited facility to ensure that the facility meets health and safety licensure standards. The results of the accreditation survey shall be public information. A copy of the final accreditation report shall be filed with the department of health services. For the purposes of this paragraph, "accredited" means accredited by a nationally recognized accreditation organization.

B. The department may accept from the state or federal government, or any agency of the state or federal government, and from private donors, trusts, foundations or eleemosynary corporations or organizations grants or donations for or in aid of the construction or maintenance of any program, project, research or facility authorized by this title, or in aid of the extension or enforcement of any program, project or facility authorized, regulated or prohibited by this title, and enter into contracts with the federal government, or an agency of the federal government, and with private donors, trusts, foundations or eleemosynary corporations or organizations, to carry out such purposes. All monies made available under this section are special project grants. The department may also expend these monies to further applicable scientific research within this state.

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

D. The department may enter into contracts with organizations that perform nonrenal organ transplant operations and organizations that primarily assist in the management of end stage renal disease and related problems to provide, as payors of last resort, prescription medications necessary to supplement treatment and transportation to and from treatment facilities. The contracts may provide for department payment of administrative costs it specifically authorizes.

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

A. The director shall:

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

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

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

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

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

7. Prepare sanitary and public health rules.

8. Perform other duties prescribed by law.

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

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

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

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

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

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

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

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

I. The director, by rule, shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12. Prescribe reasonably necessary measures regarding human immunodeficiency virus testing as a means to control the transmission of that virus, including the designation of anonymous test sites as dictated by current epidemiologic and scientific evidence.
13. Establish an online registry of food preparers that are authorized to prepare food for commercial purposes pursuant to paragraph 4 of this subsection.

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

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

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

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

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

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

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

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

Q. For the purposes of this section, "fetal demise" means a fetal death that occurs or is confirmed in a licensed hospital. Fetal demise does not include an abortion as defined in section 36-2151.
36-405. Powers and duties of the director

A. The director shall adopt rules to establish minimum standards and requirements for the construction, modification and licensure of health care institutions necessary to assure the public health, safety and welfare. The standards and requirements shall relate to the construction, equipment, sanitation, staffing for medical, nursing and personal care services, and record keeping pertaining to the administration of medical, nursing, behavioral health and personal care services, in accordance with generally accepted practices of health care. The director shall use the current standards adopted by the joint commission on accreditation of hospitals and the commission on accreditation of the American osteopathic association or those adopted by any recognized accreditation organization approved by the department as guidelines in prescribing minimum standards and requirements under this section.

B. The director, by rule, may:

1. Classify and subclassify health care institutions according to character, size, range of services provided, medical or dental specialty offered, duration of care and standard of patient care required for the purposes of licensure. Classes of health care institutions may include hospitals, infirmaries, outpatient treatment centers, health screening services centers and residential care facilities. Whenever the director reasonably deems distinctions in rules and standards to be appropriate among different classes or subclasses of health care institutions, the director may make such distinctions.

2. Prescribe standards for determining a health care institution's substantial compliance with licensure requirements.

3. Prescribe the criteria for the licensure inspection process.

4. Prescribe standards for the selection of health care related demonstration projects.

5. Establish and collect nonrefundable fees for health care institutions for license applications, initial licenses, renewal licenses and architectural drawing reviews.

C. The director, by rule, shall adopt licensing provisions that facilitate the colocation and integration of outpatient treatment centers that provide medical, nursing and health-related services with behavioral health services consistent with article 3.1 of this chapter.

D. Ninety percent of the fees collected pursuant to this section shall be deposited, pursuant to sections 35-146 and 35-147, in the health services licensing fund established by section 36-414 and ten percent of the fees collected pursuant to this section shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

E. Subsection B, paragraph 5 of this section does not apply to a health care institution operated by a state agency pursuant to state or federal law or to adult foster care residential settings.

36-406. Powers and duties of the department

In addition to its other powers and duties:

1. The department shall:
(a) Administer and enforce this chapter and the rules, regulations and standards adopted pursuant thereto.

(b) Review, and may approve, plans and specifications for construction or modification or additions to health care institutions regulated by this chapter.

(c) Have access to books, records, accounts and any other information of any health care institution reasonably necessary for the purposes of this chapter.

(d) Require as a condition of licensure that nursing care institutions and assisted living facilities make vaccinations for influenza and pneumonia available to residents on site on a yearly basis. The department shall prescribe the manner by which the institutions and facilities shall document compliance with this subdivision, including documenting residents who refuse to be immunized. The department shall not impose a violation on a licensee for not making a vaccination available if there is a shortage of that vaccination in this state as determined by the director.

2. The department may:

(a) Make or cause to be made inspections consistent with standard medical practice of every part of the premises of health care institutions which are subject to the provisions of this chapter as well as those which apply for or hold a license required by this chapter.

(b) Make studies and investigations of conditions and problems in health care institutions, or any class or subclass thereof, as they relate to compliance with this chapter and rules, regulations and standards adopted pursuant thereto.

(c) Develop manuals and guides relating to any of the several aspects of physical facilities and operations of health care institutions or any class or subclass thereof for distribution to the governing authorities of health care institutions and to the general public.

36-422. Application for license; notification of proposed change in status; joint licenses; definitions

A. A person who wishes to apply for an initial license or to renew a license to operate a health care institution pursuant to this chapter shall file with the department an application on a written or electronic form that is prescribed, prepared and furnished by the department. The application shall contain the following:

1. The name and location of the health care institution.

2. Whether it is to be operated as a proprietary or nonproprietary institution.

3. The name of the governing authority. The applicant shall be the governing authority having the operative ownership of, or the governmental agency charged with the administration of, the health care institution sought to be licensed. If the applicant is a partnership that is not a limited partnership, the partners shall make the application jointly, and the partners are jointly the governing authority for purposes of this article.

4. The name and business or residential address of each controlling person and an affirmation that none of the controlling persons has been denied a license or certificate by a health profession
regulatory board pursuant to title 32 or by a state agency pursuant to chapter 6, article 7 or chapter 17 of this title or a license to operate a health care institution in this state or another state or has had a license or certificate issued by a health profession regulatory board pursuant to title 32 or issued by a state agency pursuant to chapter 6, article 7 or chapter 17 of this title or a license to operate a health care institution revoked. If a controlling person has been denied a license or certificate by a health profession regulatory board pursuant to title 32 or by a state agency pursuant to chapter 6, article 7 or chapter 17 of this title or a license to operate a health care institution in this state or another state or has had a health care professional license or a license to operate a health care institution revoked, the controlling person shall include in the application a comprehensive description of the circumstances for the denial or the revocation.

5. The class or subclass of health care institution to be established or operated.

6. The types and extent of the health care services to be provided, including emergency services, community health services and services to indigent patients.

7. The name and qualifications of the chief administrative officer implementing direction in that specific health care institution.

8. Other pertinent information required by the department for the proper administration of this chapter and department rules.

B. An application filed pursuant to this section shall contain the written or electronic signature of:

1. If the applicant is an individual, the owner of the health care institution.

2. If the applicant is a partnership, limited liability company or corporation, two of the officers of the corporation or managing members of the partnership or limited liability company or the sole member of the limited liability company if it has only one member.

3. If the applicant is a governmental unit, the head of the governmental unit.

C. An application for licensure or relicensure shall be filed at least sixty but not more than one hundred twenty days before the anticipated operation or the expiration date of the current license. An application for a substantial compliance survey submitted pursuant to section 36-425, subsection G shall be filed at least thirty days before the date on which the substantial compliance survey is requested.

D. If a current licensee intends to terminate the operation of a licensed health care institution or if a change of ownership is planned either during or at the expiration of the term of the license, the current licensee shall notify the director in writing at least thirty days before the termination of operation or change in ownership is to take place. The current licensee is responsible for preventing any interruption of services required to sustain the life, health and safety of the patients or residents. A new owner shall not begin operating the health care institution until the director issues a license.

E. A licensed health care institution for which operations have not been terminated for more than thirty days may be relicensed pursuant to the standards that were applicable under its most recent license.
F. If a person operates a hospital in a county with a population of more than five hundred thousand persons in a setting that includes satellite facilities of the hospital that are located separately from the main hospital building, the department at the request of the applicant or licensee shall issue a single group license to the hospital and its designated satellite facilities located within one-half mile of the main hospital building if all of the facilities meet or exceed department licensure requirements for the designated facilities. At the request of the applicant or licensee, the department shall also issue a single group license that includes the hospital and not more than ten of its designated satellite facilities that are located farther than one-half mile from the main hospital building if all of these facilities meet or exceed applicable department licensure requirements. Each facility included under a single group license is subject to the department's licensure requirements that are applicable to that category of facility. Subject to compliance with applicable licensure or accreditation requirements, the department shall reissue individual licenses for the facility of a hospital located in separate buildings from the main hospital building when requested by the hospital. This subsection does not apply to nursing care institutions and residential care institutions. The department is not limited in conducting inspections of an accredited health care institution to ensure that the institution meets department licensure requirements. If a person operates a hospital in a county with a population of five hundred thousand persons or less in a setting that includes satellite facilities of the hospital that are located separately from the main hospital building, the department at the request of the applicant or licensee shall issue a single group license to the hospital and its designated satellite facilities located within thirty-five miles of the main hospital building if all of the facilities meet or exceed department licensure requirements for the designated facilities. At the request of the applicant or licensee, the department shall also issue a single group license that includes the hospital and not more than ten of its designated satellite facilities that are located farther than thirty-five miles from the main hospital building if all of these facilities meet or exceed applicable department licensure requirements.

G. If a county with a population of more than one million persons or a special health care district in a county with a population of more than one million persons operates an accredited hospital that includes the hospital's accredited facilities that are located separately from the main hospital building and the accrediting body's standards as applied to all facilities meet or exceed the department's licensure requirements, the department shall issue a single license to the hospital and its facilities if requested to do so by the hospital. If a hospital complies with applicable licensure or accreditation requirements, the department shall reissue individual licenses for each hospital facility that is located in a separate building from the main hospital building if requested to do so by the hospital. This subsection does not limit the department's duty to inspect a health care institution to determine its compliance with department licensure standards. This subsection does not apply to nursing care institutions and residential care institutions.

H. An applicant or licensee must notify the department within thirty days after any change regarding a controlling person and provide the information and affirmation required pursuant to subsection A, paragraph 4 of this section.

I. This section does not limit the application of federal laws and regulations to an applicant or licensee certified as a medicare or an Arizona health care cost containment system provider under federal law.

J. Except for an outpatient treatment center providing dialysis services or abortion procedures, a person wishing to begin operating an outpatient treatment center before an initial licensing inspection is completed shall submit all of the following:

1. The initial license application required pursuant to this section.
2. All applicable application and license fees.

3. A written request for a temporary license that includes:

   (a) The anticipated date of operation.

   (b) An attestation signed by the applicant that the applicant and the facility comply with and will continue to comply with the applicable licensing statutes and rules.

K. Within seven days of the department's receipt of the items required in subsection J of this section, but not before the anticipated operation date submitted in subsection C of this section, the department shall issue a temporary license that includes:

1. The name of the facility.

2. The name of the licensee.

3. The facility's class or subclass.

4. The temporary license's effective date.

5. The location of the licensed premises.

L. A facility may begin operating on the effective date of the temporary license.

M. The director may cease the issuance of temporary licenses at any time if the director believes that public health and safety is endangered.

N. For the purposes of this section:

1. "Accredited" means accredited by a nationally recognized accreditation organization.

2. "Satellite facility" means an outpatient facility at which the hospital provides outpatient medical services.

36-424. Inspections; suspension or revocation of license; report to board of examiners of nursing care institution administrators

A. Every applicant for initial licensure or relicensure as a health care institution shall submit to the director a properly completed application for a license accompanied by the necessary fee.

B. Subject to the limitation prescribed by subsection C of this section, the director shall inspect the premises of the health care institution and investigate the character and other qualifications of the applicant to ascertain whether the applicant and the health care institution are in substantial compliance with the requirements of this chapter and the rules established pursuant to this chapter. The director may prescribe rules regarding department background investigations into an applicant's character and qualifications.
C. The director shall accept proof that a health care institution is an accredited hospital or is an accredited health care institution in lieu of all compliance inspections required by this chapter if the director receives a copy of the institution's accreditation report for the licensure period. If the health care institution's accreditation report is not valid for the entire licensure period, the department may conduct a compliance inspection of the health care institution during the time period the department does not have a valid accreditation report for the health care institution.

D. On a determination by the director that there is reasonable cause to believe a health care institution is not adhering to the licensing requirements of this chapter, the director and any duly designated employee or agent of the director, including county health representatives and county or municipal fire inspectors, consistent with standard medical practices, may enter on and into the premises of any health care institution that is licensed or required to be licensed pursuant to this chapter at any reasonable time for the purpose of determining the state of compliance with this chapter, the rules adopted pursuant to this chapter and local fire ordinances or rules. Any application for licensure under this chapter constitutes permission for and complete acquiescence in any entry or inspection of the premises during the pendency of the application and, if licensed, during the term of the license. If an inspection reveals that the health care institution is not adhering to the licensing requirements established pursuant to this chapter, the director may take action authorized by this chapter. Any health care institution, including an accredited hospital, whose license has been suspended or revoked in accordance with this section is subject to inspection on application for relicensure or reinstatement of license.

E. The director shall immediately report to the board of examiners of nursing care institution administrators information identifying that a nursing care institution administrator's conduct may be grounds for disciplinary action pursuant to section 36-446.07.

36-425. Inspections; issuance of license; posting of deficiencies; provisional license; denial of license

A. On receipt of a properly completed application for initial licensure, the director shall conduct an inspection of the health care institution as prescribed by this chapter. If an application for an initial license is submitted due to a planned change of ownership, the director shall determine the need for an inspection of the health care institution. Based on the results of the inspection, the director shall either deny the license or issue a regular or provisional license. A license issued by the department shall be conspicuously posted in the reception area of that institution. Unless the health care institution is an accredited hospital at the time of licensure, an initial license is valid for one year after the date the initial license is issued. If the health care institution is an accredited hospital at the time of licensure, the licensure term is three years from the expiration date of the hospital's current license, or in the case of an initial license based on a change of ownership, the licensure term is three years beginning on the effective date of the hospital's current accreditation.

B. The director shall issue an initial license if the director determines that an applicant and the health care institution for which the license is sought substantially comply with the requirements of this chapter and rules adopted pursuant to this chapter and the applicant agrees to carry out a plan acceptable to the director to eliminate any deficiencies. The director shall not require a health care institution that was designated as a critical access hospital to make any modifications required by this chapter or rules adopted pursuant to this chapter in order to obtain an amended license with the same licensed capacity the health care institution had before it was designated as a critical access hospital if all of the following are true:

1. The health care institution has subsequently terminated its critical access hospital designation.
2. The licensed capacity of the health care institution does not exceed its licensed capacity prior to its designation as a critical access hospital.

3. The health care institution remains in compliance with the applicable codes and standards that were in effect at the time the facility was originally licensed with the higher licensed capacity.

C. On receipt of an application for a renewal of a health care institution's license that complies with the requirements of this chapter and rules adopted pursuant to this chapter, the department shall issue a renewal license to the health care institution. An accredited hospital's renewal license is valid for three years after the expiration date of the accredited hospital's current license. All other health care institution renewal licenses are valid for one year after the expiration date of the health care institution's current license.

D. Except as provided in section 36-424, subsection C and subsection E of this section, the department shall conduct a compliance inspection of a health care institution to determine compliance with this chapter and rules adopted pursuant to this chapter at least once during each license period.

E. After the initial license period ends and after the department determines a facility to be deficiency free on a compliance survey, the department shall not conduct a compliance survey of that facility for twenty-four months from the date of the deficiency free survey. This subsection does not prohibit the department from enforcing licensing requirements as authorized by section 36-424.

F. A hospital licensed as a rural general hospital may provide intensive care services.

G. The director shall issue a provisional license for a period of not more than one year if an inspection or investigation of a currently licensed health care institution or a health care institution for which an applicant is seeking initial licensure reveals that the institution is not in substantial compliance with department licensure requirements and the director believes that the immediate interests of the patients and the general public are best served if the institution is given an opportunity to correct deficiencies. The applicant or licensee shall agree to carry out a plan to eliminate deficiencies that is acceptable to the director. The director shall not issue consecutive provisional licenses to a single health care institution. The director shall not issue a license to the current licensee or a successor applicant before the expiration of the provisional license unless the health care institution submits an application for a substantial compliance survey and is found to be in substantial compliance. The director may issue a license only if the director determines that the institution is in substantial compliance with the licensure requirements of the department and this chapter. This subsection does not prevent the director from taking action to protect the safety of patients pursuant to section 36-427.

H. Subject to the confidentiality requirements of articles 4 and 5 of this chapter, title 12, chapter 13, article 7.1 and section 12-2235, the licensee shall keep current department inspection reports at the health care institution. Unless federal law requires otherwise, the licensee shall conspicuously post a notice that identifies the location at that institution where the inspection reports are available for review.

I. A health care institution shall immediately notify the department in writing when there is a change of the chief administrative officer specified in section 36-422, subsection A, paragraph 7.

J. When the department issues an original license or an original provisional license to a health care institution, it shall notify the owners and lessees of any agricultural land within one-fourth mile of the
health care institution. The health care institution shall provide the department with the names and 
addresses of owners or lessees of agricultural land within one-fourth mile of the proposed health 
care institution.

K. In addition to the grounds for denial of licensure prescribed pursuant to subsection A of this 
section, the director may deny a license because an applicant or anyone in a business relationship 
with the applicant, including stockholders and controlling persons, has had a license to operate a 
health care institution denied, revoked or suspended or a license or certificate issued by a health 
profession regulatory board pursuant to title 32 or issued by a state agency pursuant to chapter 6, 
article 7 or chapter 17 of this title denied, revoked or suspended or has a licensing history of recent 
serious violations occurring in this state or in another state that posed a direct risk to the life, health 
or safety of patients or residents.

L. In addition to the requirements of this chapter, the director may prescribe by rule other licensure 
requirements and may prescribe procedures for conducting investigations into an applicant's 
character and qualifications.

36-445. Review of certain medical practices

The governing body of each licensed hospital or outpatient surgical center shall require that 
physicians admitted to practice in the hospital or center organize into committees or other 
organizational structures to review the professional practices within the hospital or center for the 
purposes of reducing morbidity and mortality and for the improvement of the care of patients 
provided in the institution. Such review shall include the nature, quality and necessity of the care 
provided and the preventability of complications and deaths occurring in the hospital or center. Such 
review need not identify the patient or doctor by name but may use a case number or some other 
such designation.

36-445.01. Confidentiality of information; conditions of disclosure

A. All proceedings, records and materials prepared in connection with the reviews provided for in 
section 36-445, including all peer reviews of individual health care providers practicing in and 
applying to practice in hospitals or outpatient surgical centers and the records of such reviews, are 
confidential and are not subject to discovery except in proceedings before the Arizona medical board 
or the board of osteopathic examiners, or in actions by an individual health care provider against a 
hospital or center or its medical staff arising from discipline of such individual health care provider or 
refusal, termination, suspension or limitation of the health care provider's privileges. No member of a 
committee established under the provisions of section 36-445 or officer or other member of a 
hospital's or center's medical, administrative or nursing staff engaged in assisting the hospital or 
center to carry out functions in accordance with that section or any person furnishing information to a 
committee performing peer review may be subpoenaed to testify in any judicial or quasi-judicial 
proceeding if the subpoena is based solely on those activities.

B. This article does not affect any patient's claim to privilege or privacy or to prevent the subpoena of 
a patient's medical records if they are otherwise subject to discovery or to restrict the powers and 
duties of the director pursuant to this chapter, with respect to records and information that are not 
subject to this article. In any legal action brought against a hospital or outpatient surgical center 
licensed pursuant to this chapter claiming negligence for failure to adequately do peer review, 
representatives of the hospital or center are permitted to testify as to whether there was peer review 
as to the subject matter being litigated. The contents and records of the peer review proceedings are 
fully confidential and inadmissible as evidence in any court of law.
**36-445.02. Immunity relating to review of medical practices**

A. Any individual who, in connection with duties or functions of a hospital or outpatient surgical center pursuant to section 36-445, makes a decision or recommendation as a member, agent or employee of the medical or administrative staff of a hospital or center or of one of its review committees or related organizations or who furnishes any records, information, or assistance to such medical staff or review committee or related organization is not subject to liability for civil damages or legal action in consequence thereof.

B. No hospital or outpatient surgical center and no individual involved in carrying out review or disciplinary duties or functions of a hospital or center pursuant to section 36-445 may be liable in damages to any person who is denied the privilege to practice in a hospital or center or whose privileges are suspended, limited or revoked. The only legal action which may be maintained by a licensed health care provider based on the performance or nonperformance of such duties and functions is an action for injunctive relief seeking to correct an erroneous decision or procedure. The review shall be limited to a review of the record. If the record shows that the denial, revocation, limitation or suspension of membership or privileges is supported by substantial evidence, no injunction shall issue. In such actions, the prevailing party shall be awarded taxable costs, but no other monetary relief shall be awarded.

C. Nothing in this section relieves any individual, hospital or outpatient surgical center from liability arising from treatment of a patient.

**36-445.03. Limitation of publication; identity of patient confidential**

Any publication of the results of a review for the purposes provided in sections 36-445 and 36-445.01 shall be made only for the purposes provided in those sections and shall keep confidential the identity of any patient whose condition, care or treatment was a part thereof.
DEPARTMENT OF HEALTH SERVICES (F-18-0503)
Title 9, Chapter 10, Article 17, Unclassified Health Care Institutions
TO: Members of the Governor’s Regulatory Review Council

FROM: Council Staff

DATE: April 17, 2018

SUBJECT: DEPARTMENT OF HEALTH SERVICES (F-18-0503)
Title 9, Chapter 10, Article 17, Unclassified Health Care Institutions

COMMENTS ON THE FIVE-YEAR-REVIEW REPORT

Purpose of the Agency and Number of Rules in the Report

This five-year-review report from the Arizona Department of Health Services (Department) covers 12 rules in A.A.C. Title 9, Chapter 10, Article 17. The article contains unclassified health care institution rules that relate to any institution that is categorized in a class that is not classified in Chapter 10 or any other institution that the Department determines is unclassified.

The rules integrate behavioral health and physical health services and consist of requirements for administration, quality management, personnel qualifications, patient rights, patient medical records, and patient transport and transfer. In addition, the rules address requirements for contract services, medication services, food services, standards for emergency and safety, physical plant, environmental controls, and equipment.

This is the first five-year-review report on the rules. The rules were made in 2013 and most of the rules were last amended by exempt rulemaking in 2014.

Proposed Action

The Department plans to amend Section 1702 and submit a Notice of Final Expedited Rulemaking to the Council by July 2019.
1. **Has the agency analyzed whether the rules are authorized by statute?**

   Yes. The Department cites both general and specific authority for the rules. Of particular significance is A.R.S. § 36-405, which requires the director of the Department to “adopt rules to establish minimum standards and requirements for the construction, modification and licensure of health care institutions necessary to ensure the public health, safety and welfare.” In addition, the statute allows the director to classify and sub classify health care institutions based on factors such as character, size, and range of services provided by the institution.

2. **Summary of the agency’s economic impact comparison and identification of stakeholders:**

   Currently there are 44 unclassified health care institutions in Arizona with most providing palliative care, birthing services, and mobile imagery services.

   The Department believes that the rules may have increased costs for unclassified health care institutions, which may be passed on to the institution’s patients. The Department believes the increased benefit of having more effective rules ensures better patient care and greatly outweigh the costs affected persons may have incurred.

   The key stakeholders include the Department, unclassified health care institutions, physicians, other health care providers, and patients.

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

   Yes. The Department indicates that the rules impose the least burden and costs to persons regulated, including paperwork and other compliance costs, necessary to achieve the regulatory objective.

4. **Has the agency received any written criticisms of the rules over the last five years?**

   No. The Department indicates that it has not received any written criticisms of the rules over the last five years.

5. **Has the agency analyzed the rules’ effectiveness, consistency with other rules and statutes, and the rules’ clarity, conciseness, and understandability?**

   Yes. The Department indicates that the rules are consistent with other rules and statutes. The rules are also effective and clear, concise, and understandable, with the exception of Section 1702.

   Section 1702 contains an incorrect reference. In subsection (H)(3), a reference to R9-10-1712(B) should be changed to R9-10-1711(B).
6. **Has the agency analyzed the current enforcement status of the rules?**

   Yes. The Department indicates that the rules are enforced as written, except Section 1702, which contains an incorrect reference.

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

   No. The Department indicates that no federal law directly relates to the rules.

8. **For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

   Yes. The rules require the issuance of a specific agency authorization, which is authorized by A.R.S. § 36-405.

9. **Conclusion**

   The Department plans to submit a Notice of Final Expedited Rulemaking to the Council by July 2019 to make the changes identified in this report. The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. Council staff recommends approval of this report.
February 26, 2018

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

RE: Report for A.A.C. Title 9, Chapter 10, Article 17 Unclassified Health Care Institutions

Dear Ms. Colyer:

According to the five-year-review report schedule of the Governor's Regulatory Review Council (Council), a report for A.A.C. Title 9, Chapter 10, Article 17 is due to the Council no later than February 28, 2018. The Arizona Department of Health Services (Department) has reviewed 9 A.A.C. 10, Article 17 and is enclosing a report to the Council for this rule.

The Department believes that this report complies with the requirements of A.R.S. § 41-1056. A five-year-review summary, information that is identical for all the rules, information for individual rules, the rules reviewed, and the general and specific authority are included in the package. As described in the report, the Department may amend the rules in 9 A.A.C. 10, Article 17 to address the matter identified in this report and submit a Notice of Final Expedited Rulemaking to Governor's Regulatory Review Council by July 2019.

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

If you need any further information, please contact me at (602) 542-1020.

Sincerely,

Robert Lane
Director's Designee

RL:tk
Enclosures
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FIVE-YEAR-REVIEW SUMMARY

Arizona Revised Statutes (A.R.S.) § 36-132(A)(1) requires the Arizona Department of Health Services (Department) to protect the health of the people of the state of Arizona. A.R.S. § 36-136(G) requires the Department to promulgate rules necessary for the proper administration and enforcement of the laws relating to public health. A.R.S. § 36-405(A) requires the Department to adopt rules setting minimum standards and requirements for the construction, modification, and licensing of health care institutions to protect the public health, safety, and welfare, and A.R.S. § 36-405(B)(1) requires the Department to classify and sub-classify health care institutions. Additionally, A.R.S. § 36-406 requires the Department to enforce the provisions of A.R.S. Title 36, Chapter 4 and the rules adopted under that Chapter.

The Department promulgated Arizona Administrative Code (A.A.C.) R9-10-115 in 1981, providing rules for unclassified health care institutions and implementing A.R.S. §§ 36-405 and 36-406. Laws 2011, Ch. 96, § 1, effective July 20, 2011, required the Department to adopt rules for health care institutions that reduce monetary or regulatory costs on persons and facilitate licensing of "integrated health programs that provide both behavioral and physical health services." The Department revised the rules in 9 A.A.C. 10 and 9 A.A.C. 20 to comply with Laws 2011, Ch. 96, § 1, during which the Department repealed the rules for unclassified health care institutions in 9 A.A.C. 10, Article 1 and made new unclassified health care institutions rules in 9 A.A.C. 10, Article 17 at 19 A.A.R. 2015, effective October 1, 2013. Additionally, the Article 17 rules were revised at 20 A.A.R. 1409, effective July 1, 2014, to further amend the rules as allowed by Laws 2013, Ch. 10, § 13 that amended Laws 2011, Ch. 96 § 1 to extend the Department's time to revise the rules in 9 A.A.C. 10 and 9 A.A.C. 20 until April 30, 2014.

The new 9 A.A.C. 10, Article 17 contains unclassified health care institution rules that apply to any health care institution that is a class or subclass not otherwise classified in 9 A.A.C. 10 or any other health care institution the Department determines is unclassified. The new rules integrate physical health and behavioral health services provided to patients and consist of requirements for administration, quality management, personnel qualifications, patient rights, patient medical records, and patient transport and transfer. The new rules also contain requirements for contract services, medication services, and food services and standards for emergency and safety, physical plant, environmental controls, and equipment.

After an analysis of 9 A.A.C. 10, Article 17 rules, the Department has determined that the rules are effective and consistent with state and federal statutes. The Department has not received any written criticism of the rules, and the rules are clear, concise, and understandable. The Department may amend the rules in Article 17 to address matter identified in this report and submit a Notice of Final Expedited Rulemaking to the Governor’s Regulatory Review Council by July 2019.
1. **Authorization of the rule by existing statutes**
   The rules general statutory authority is A.R.S. §§ 36-132(A)(1), 36-132(A)(17), and 36-136(G).
   The rules specific statutory authority is A.R.S. §§ 36-405.

2. **The purpose of the rule**
   The purpose of the rules is to establish requirements for unclassified health care institutions.

3. **Analysis of effectiveness in achieving the objective**
   Except as described in R9-10-1702, the rules are effective in achieving their respective objectives.

4. **Analysis of consistency with state and federal statutes and rules**
   The rules are consistent with state and federal statutes and rules.

5. **Status of enforcement of the rule**
   Except as described in R9-10-1702, the rules are enforced as written.

6. **Analysis of clarity, conciseness, and understandability**
   Except as described in R9-10-1702, the rules are clear, concise, and understandable.

7. **Summary of the written criticisms of the rule received within the last five years**
   The Department has not received any written criticisms of the rules in the past five years.

8. **Economic, small business, and consumer impact comparison**
   The rules in 9 A.A.C. 10, Article 17 were made new in their entirety in 2013 as part of an exempt rulemaking of 9 A.A.C. 10 and 9 A.A.C. 20 to comply with Laws 2011, Ch. 96. Additionally in 2014, ten of the rules in Article 17 were revised through exempt rulemaking to comply with Laws 2013, Ch. 10, effective July 1, 2014. No economic, small business, and consumer impact statements were prepared as a part of the exempt rulemakings. The Department believes persons who are directly affected by, bear the costs of, or directly benefit from the rules are: the Department, unclassified health care institutions, patients and their families, and the general public. Annual costs and revenues are designated as minimal when more than $0 and less than $5,000, moderate when $5,000 and less than $20,000, and substantial when $20,000 or greater. A cost or benefit is designated as significant when meaningful or important but not readily subject to quantification.

   Unclassified health care institutions provide medical services, nursing services, personal care services, palliative services, and other health-related services. Currently, there are 44 licensed unclassified health care institutions in the state with most providing palliative care, birthing services, and mobile imagery.
services. During 2017, the Department received and approved 10 initial applications and renewed 28 applications. Additionally, the Department completed seven initial surveys, three compliant surveys, 24 renewal surveys, and 13 enforcement actions. The Department also collected $1,500 in civil money penalties from licensees for submitting late renewal applications. The Department did not deny any applications or issue any revocations.

As part of the 2013 exempt rulemaking, the rules in 9 A.A.C. 10 and 9 A.A.C. 20 integrated behavioral health and physical health services, repealed unclassified health care institutions rules in R9-10-115, and made new unclassified health care institutions rules in 9 A.A.C. 10, Article 17. In its March 2010 Five-Year-Review Report (Report) of 9 A.A.C. 10 Article 1, the Department indicated that the requirements in A.A.C. R9-10-115 "...are so general and the range of health care institutions regulated under the rule is so broad that it is impossible to determine the exact economic impact of the rules..." The Report also indicated that "the rule lacks requirements for a health care institution's governing authority, administrator, patient rights, personnel records, and posting of the health care institution's license." During its 2013 exempt rulemaking, the Department considered the concerns expressed in the Report and, in the new unclassified health care institutions rules, added, as applicable, requirements addressing the concerns expressed in the Report. To ensure public health and safety and based on services provided in an unclassified health care institution, the Department also added other requirements consistent with other health care institutions that have or provide the same or similar services and standards.

In the 2013 exempt rulemaking, the Department consolidated the definitions in 9 A.A.C. 10 and 9 A.A.C. 20 to make them consistent throughout all new-amended Chapter 10 Articles. The Department added new R9-10-1701 specific to rules in Article 17. The new R9-10-1701 rule provides a reference to A.R.S. § 36-401 and A.A.C. R9-10-101 for definitions that are applicable to Article 17 rules. The Department believes that the new rule improves the effectiveness of all the rules in Article 17. The Department also believes that adding the new R9-10-1701 rule does not increase costs for affected persons and, instead, provides a significant benefit by eliminating confusion and providing clearer rules that are consistent with all the Articles in 9 A.A.C. 10.

The new R9-10-1702 establishes requirements for a governing authority to organize, operate, and administrate an unclassified health care institution. The requirements establish a health care institution's scope of practice; qualification for and designation of an administrator; and development of policies and procedures related to a quality management program, contracted services, personnel, patient rights, medical records, and patient transport and transfers. Additionally, the new R9-10-1702 requires policies and procedures for medication services and food services; emergency and safety
standards; and physical plant, environmental services, and equipment standards. New requirements for written notifications to the Department; information or documents to be posted on the premises; and managing and reporting abuse, neglect, or exploitation of a patient were also added. The new R9-10-1703 rule specifies requirements for establishing a quality management program that manages methods for how incidents that occur at the health care institution are identified, documented, evaluated, and changes or action taken in response to a concern. The new rule also includes a requirement for the administrator to frequently report to the governing authority incidents related to patient care and a requirement for such reports, including supporting documentation, to be retained for a 12-month retention period.

The new R9-10-1704 establishes requirements for documenting and maintaining information for current contacted services provided through an unclassified health care institution. The new R9-10-1705 clarifies and adds requirements for personnel members' qualifications, skills, and knowledge based on the type of health services provided, whether physical health or behavioral health services. Additional requirements establish a plan for orientation for personnel members, employees, volunteers, and students; provide for evidence of freedom from infectious tuberculosis; and for personnel records and record retention periods. The Department believes that the rules in R9-10-1702 through R9-10-1705 provide requirements that protect the health and safety of patients and provide unclassified health care institutions, physicians, and personnel with adequate administrative controls. The Department believes that the costs incurred by an unclassified health care institution to comply with these requirements may be moderate-to-substantial, but the costs incurred do not outweigh the benefits that an unclassified health care institution receives from the payments made by patients who receive their services. The Department believes that the rules provide a substantial benefit to all affected persons, especially patients and their families.

The new R9-10-1706 establishes requirements for transporting a patient due to an emergency and transferring a patient in need of a higher level of care, and includes requirements for documenting patient evaluation and related information in a patient's medical record prior to and after transport or transfer. The new R9-10-1707 rule clarifies the types of unacceptable behaviors against a patient; establishes where patient's rights are posted; and clarifies patient's rights, which protect against discrimination and ensure a patient receives appropriate treatment. The new R9-10-1708 for medical records adds requirements to establish a medical record for each patients; clarifies individuals who are authorized to access and change a medical record; establishes medical record content; and clarifies the use of rubber-stamp signature or electronic signature code. Requirements for protecting medical records from loss, damage, or unauthorized use, including electronic medical records, are also included in new R9-10-1708. The Department believes that the rules in R9-10-1706, R9-10-
1707, and R9-10-1708 provide significant benefits for patients and unclassified health care institutions. Patient rights and patient medical record requirements ensure that a patient receives the care and services needed, decrease patient recovery time, and decrease an unclassified health care institutions legal liability. The Department believes that costs incurred by patients and unclassified health care institutions are minimal-to-moderate and do not outweigh the benefits of having the rules.

The new R9-10-1709 for medication services establishes requirements for policies and procedures for providing medication administration and assistance in self-administration of medication. The new rule clarifies the medication information that must be provided to a patient, the requirements for preventing and responding to a medication error or adverse response to a medication or medication administration, and the requirements for administration of medication to a patient. In R9-10-1709 requirements include providing for patient medication regimen review; assisting in the self-administration of medication; and standards for medications stored, tracked, dispensed, and discarded. New R9-10-1710 establishes food services requirements to ensure that handling and storing of foods are effective to prevent contamination, spoilage, or threat to the health of a patient. Also new R9-10-1710 adds requirements to provide nutritional meals and snacks daily and ensure that foods served meet the dietary needs of a patient. The Department believes that unclassified health care institutions may incur a moderate cost as a result of the increase in administrative functions for implementing new requirements in R9-10-1709 and R9-10-1710 rules. Additionally, the Department believes that patients may receive a moderate benefit from having rules that ensure patients are informed about the medications prescribed and administered.

The new R9-10-1711 establishes emergency and safety standards and clarifies requirements for a first aid kit, firearms or ammunition, smoke detectors, fire extinguishers, and evacuation plan and drills. New R9-10-1711 also adds requirements for obtaining fire inspections, responding to a corrective action identified in a fire inspection report, and maintaining documentation of a current fire inspection report on the premises. The new R9-10-1712 establishes physical plant, environmental services, and equipment standards. Additionally, the new rule adds standards for maintaining a safe building, including requirements for having designated living and dining areas and adequate bathrooms to accommodate patients, provider, and other individuals present at an unclassified health care institution. The rule also establishes standards for ensuring a health care institution's premises are free from hazardous conditions and equipment to be periodically inspected, tested, calibrated, serviced or repaired. The Department believes that unclassified health care institutions may have incurred a minimal-to-moderate increase in costs for added standards, and some patients may have incurred a minimal increase in cost for an unclassified health care institution that decided to pass their increased costs on to their patients. Additionally, the Department believes
that all affected persons have most likely receive a significant benefit from having unclassified health care institutions that comply with environmental standards and decrease and eliminate infections and communicable diseases present on their premises.

As part of the 2014 exempt rulemaking, the Department changed R9-10-1702 to clarify a new administrator's information, clarify daily operations, update citation, remove the requirement for obtaining documentation of fingerprint clearance, and change the policies and procedures review period from every two years to every three years. Other changes to R9-10-1702 rule were made to clarify requirements for abuse, neglect, or exploitation of a patient; increase the time period required to investigate and document suspected abuse information from within 48 hours to within five working days; and remove a requirement to send investigation reports to the Department. A change to R9-10-1703, quality management, was made to clarify the duration for maintaining reports and supporting documents; and to R9-10-1704 changes were made to clarify documenting contracted services.

Additionally, a requirement for an unclassified health care institution administer to be responsible for developing and implementing a plan for in-service education was added to R9-10-1705. Other changes to R9-10-1705 included correcting three citations and adding requirements for evidence of freedom from infectious tuberculosis be provided before an individual interacts with a patient and specific personnel records be provided to the Department within 72 hours after the Department's request. Changes in R9-10-1706 were made to clarify medical information and which patient transports are not allowed and in R9-10-1707 rule, patient's rights, medical information, and patient restraint were also clarified. The rule in R9-10-1708 for medical records was changed to clarify the individual accountable for authenticating rubber-stamp or electronic signatures, individuals who may access a patient's medical record, and information contained in a patient's medical record.

The medical services requirements in R9-10-1709 were changed to clarify required procedures, medication administration, assistance in the self-administration of medication, and medication storage. Emergency and safety standards in R9-10-1711 changed the type of safety drill required and the evacuation drill frequency to every six months instead of every three months. Lastly, in R9-10-1712, the standards for physical plant, environmental services, and equipment were amended to clarify physical plant requirements and added requirements to allow pets or animals and to ensure combustible or flammable liquids and hazardous materials are safely stored.

The Department believes that the rules, changed by the 2014 exempt rulemaking, may have increased costs for unclassified health care institutions. And if an unclassified health care institution passed increased costs on to the patients, those patients may have incurred increased costs as well.
The Department believes having rules that are more consistent, clear, and understandable provides a significant benefit to all affected persons. In considering the economic impact created by the exempt rulemakings, the Department believes the increase in costs compared to the increased benefit of having more effective rules ensures better patient care and greatly outweighs the costs affected persons may have incurred. The Department believes that the rules provide a substantial benefit to all affected persons.

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**
    This is the first five-year-review report for the new rules.

11. **A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective**
    The Department has determined that the rules impose the least burden and costs to persons regulated, including paperwork and other compliance costs necessary to achieve the regulatory objective.

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**
    A general permit is not applicable. The rules require the issuance of a specific agency authorization, which is authorized by A.R.S. § 36-405.

14. **Proposed course of action**
    The Department plans to amend the rules in Article 17 to address matter identified in this report and submit a Notice of Final Expedited Rulemaking to the Governor’s Regulatory Review Council by July 2019.
INFORMATION FOR INDIVIDUAL RULES

R9-10-1701. Definitions

2. **Objective**
   The objective of the rule is to define terms used in the Article to enable the reader to understand clearly the requirements of the Article and allow for consistent interpretation.

R9-10-1702. Administration

2. **Objective**
   The objective of the rule is to establish minimum requirements for an unclassified health care institution's governing authority and administrator, including specific administrative policies and procedures to protect the health and safety of a patient.

3. **Analysis of effectiveness in achieving the objective**
   The rule is effective in achieving its respective objective. However, the rule could be more effective if citation identified in paragraph 6 were revised.

5. **Status of enforcement of the rule**
   The rule is enforced as written. To assist regulated persons and the public with citation identified in paragraph 6, the Department promptly responds to related inquiries and provides citation and assistance as needed to ensure that a licensee complies with R9-10-1711(B).

6. **Analysis of clarity, conciseness, and understandability**
   The rule is clear, concise, and understandable. However, the rule could be more concise if the reference in subsection (H)(3) were revised. The reference to R9-10-1712(B) should reference R9-10-1711(B).

R9-10-1703. Quality Management

2. **Objective**
   The objective of the rule is to establish minimum requirements for an unclassified health care institution's quality management program.

R9-10-1704. Contracted Services

2. **Objective**
   The objective of the rule is to establish minimum requirements for unclassified health care institution services provided by a person who contracts with the licensee to provide outpatient surgical center services to ensure that the contractor complies with applicable requirements.
R9-10-1705. Personnel
2. Objective
   The objective of the rule is to establish minimum standards for unclassified health care institution personnel.

R9-10-1706. Transport; Transfer
2. Objective
   The objective of the rule is to establish minimum requirements for the transfer of a patient to ensure that the health and safety of the patient are not compromised as a result of the patient’s transfer.

R9-10-1707. Patient Rights
2. Objective
   The objective of the rule is to establish minimum standards for patient rights.

R9-10-1708. Medical Records
2. Objective
   The objective of the rule is to establish minimum requirements for patients’ medical records.

R9-10-1709. Medication Services
2. Objective
   The objective of the rule is to establish minimum requirements for medication services in an unclassified health care institution.

R9-10-1710. Food Services
2. Objective
   The objectives of the rule are to establish minimum requirements for an unclassified health care institution that provides food services to handle and maintain foods free from contamination; serve foods that meet a patient's dietary needs; and serve patients balanced-nutritional meals and snacks.

R9-10-1711. Emergency and Safety Standards
2. Objective
   The objectives of the rule are to establish minimum requirements to ensure that an unclassified health care institution is prepared for an emergency, and for an unclassified health care institution that keeps a firearm or ammunition, minimum requirements for storing the firearm and ammunition.
2. **Objective**

The objectives of the rules are to establish minimum requirements to ensure that a building is safe and designated living areas are accessible and adequate to accommodate patients, provider, and other individuals present in an unclassified health care institution. The objectives of the rules also establish requirements to maintain the health care institution's premises clean, disinfected, and free from hazardous condition; and equipment periodically inspected, tested, calibrated, serviced or repaired so equipment functions properly and reliably.
ATTACHMENT A

ARTICLE 17. UNCLASSIFIED HEALTH CARE INSTITUTIONS

Section
R9-10-1701. Definitions
R9-10-1702. Administration
R9-10-1703. Quality Management
R9-10-1704. Contracted Services
R9-10-1705. Personnel
R9-10-1706. Transport; Transfer
R9-10-1707. Patient Rights
R9-10-1708. Medical Records
R9-10-1709. Medication Services
R9-10-1710. Food Services
R9-10-1711. Emergency and Safety Standards
R9-10-1712. Physical Plant, Environmental Services, and Equipment Standards
R9-10-1713. Repealed
ARTICLE 17. UNCLASSIFIED HEALTH CARE INSTITUTIONS

R9-10-1701. Definitions
Definitions in A.R.S. § 36-401 and R9-10-101 apply in this Article unless otherwise specified.

R9-10-1702. Administration
A. A governing authority for a health care institution not otherwise classified or subclassified in A.R.S. Title 36, Chapter 4 or 9 A.A.C. 10 shall:
   1. Consist of one or more individuals responsible for the organization, operation, and administration of the health care institution;
   2. Establish, in writing:
      a. A health care institution’s scope of services, and
      b. Qualifications for an administrator;
   3. Designate, in writing, an administrator who has the qualifications established in subsection (A)(2)(b);
   4. Adopt a quality management program according to R9-10-1703;
   5. Review and evaluate the effectiveness of the quality management program in R9-10-1703 at least once every 12 months;
   6. Designate, in writing, an acting administrator who has the qualifications established in subsection (A)(2)(b) if the administrator is:
      a. Expected not to be present on a health care institution’s premises for more than 30 calendar days, or
      b. Not present on a health care institution’s premises for more than 30 calendar days; and
   7. Except as provided in subsection (A)(6), notify the Department according to A.R.S. § 36-425 when there is a change in an administrator and identify the name and qualifications of the new administrator.

B. An administrator:
   1. Is directly accountable to the governing authority of a health care institution for the daily operation of the health care institution and all services provided by or at the health care institution;
   2. Has the authority and responsibility to manage the health care institution; and
   3. Except as provided in subsection (A)(6), designates, in writing, an individual who is present on the health care institution’s premises and accountable for the health care institution when the administrator is not present on the health care institution’s premises.

C. An administrator shall ensure that:
ATTACHMENT A

1. Policies and procedures are established, documented, and implemented to protect the health and safety of a patient that:
   a. Cover job descriptions, duties, and qualifications, including required skills, knowledge, education, and experience for personnel members, employees, volunteers and students;
   b. Cover orientation and in-service education for personnel members, employees, volunteers and students;
   c. Include how a personnel member may submit a complaint relating to services provided to a patient;
   d. Cover the requirements in A.R.S. Title 36, Chapter 4, Article 11;
   e. Cover cardiopulmonary resuscitation training, including:
      i. The method and content of cardiopulmonary resuscitation training,
      ii. The qualifications for an individual providing cardiopulmonary resuscitation training,
      iii. The time-frame for renewal of cardiopulmonary resuscitation training, and
      iv. The documentation that verifies that the individual has received cardiopulmonary resuscitation training;
   f. Include a method to identify a patient to ensure the patient receives services as ordered;
   g. Cover first aid training;
   h. Cover patient rights, including assisting a patient who does not speak English or who has a physical or other disability to become aware of patient rights;
   i. Cover specific steps for:
      i. A patient to file a complaint, and
      ii. The health care institution to respond to and resolve a patient complaint;
   j. Cover medical records, including electronic medical records;
   k. Cover a quality management program, including incident report and supporting documentation;
   l. Cover contracted services;
   m. Cover health care directives; and
   n. Cover when an individual may visit a patient in a health care institution;

2. Policies and procedures for health care institution services are established, documented, and implemented to protect the health and safety of a patient that:
   a. Cover patient screening, admission, assessment, treatment plan, transport, transfer, and discharge, if applicable;
   b. Cover patient outings, if applicable;
   c. Include when general consent and informed consent are required;
   d. Cover the provision of services listed in the health care institution's scope of services;
ATTACHMENT A

e. Cover administering medication, assistance in the self-administration of medication, and disposing of medication, including provisions for inventory control and preventing diversion of controlled substances, if applicable;
f. Cover infection control;
g. Cover telemedicine, if applicable;
h. Cover environmental services that affect patient care;
i. Cover smoking and the use of tobacco products on the health care institution’s premises;
j. Cover how the health care institution will respond to a patient's sudden, intense, or out-of-control behavior to prevent harm to the patient or another individual;
k. Cover how incidents are reported and investigated; and
l. Designate which employees or personnel members are required to have current certification in cardiopulmonary resuscitation and first aid training;

3. Policies and procedures are reviewed at least once every three years and updated as needed;
4. Policies and procedures are available to personnel members, employees, volunteers, and students; and
5. Unless otherwise stated:
   a. Documentation required by this Article is provided to the Department within two hours after the Department’s request; and
   b. When documentation or information is required by this Chapter to be submitted on behalf of a health care institution, the documentation or information is provided to the unit in the Department that is responsible for licensing and monitoring the health care institution.

D. If applicable, an administrator shall designate a clinical director who:
   1. Provides direction for behavioral health services provided at the health care institution, and
   2. Is a behavioral health professional.

E. An administrator shall provide written notification to the Department of a patient’s:
   1. Death, if the patient’s death is required to be reported according to A.R.S. § 11-593, within one working day after the patient’s death; and
   2. Self-injury, within two working days after the patient inflicts a self-injury that requires immediate intervention by an emergency medical services provider.

F. If abuse, neglect, or exploitation of a patient is alleged or suspected to have occurred before the patient was admitted or while the patient is not on the premises and not receiving services from a health care institution’s employee or personnel member, an administrator shall report the alleged or suspected abuse, neglect, or exploitation of the patient as follows:
   1. For a patient 18 years of age or older, according to A.R.S. § 46-454; or
   2. For a patient under 18 years of age, according to A.R.S. § 13-3620.
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G. If an administrator has a reasonable basis, according to A.R.S. § 13-3620 or 46-454, to believe abuse, neglect, or exploitation has occurred on the premises or while the patient is receiving unclassified healthcare services, the administrator shall:

1. If applicable, take immediate action to stop the suspected abuse, neglect, or exploitation;
2. Report the suspected abuse, neglect, or exploitation of the patient:
   a. For a patient 18 years of age or older, according to A.R.S. § 46-454; or
   b. For a patient under 18 years of age, according to A.R.S. § 13-3620;
3. Document:
   a. The suspected abuse, neglect, or exploitation;
   b. Any action taken according to subsection (G)(1); and
   c. The report in subsection (G)(2);
4. Maintain the documentation in subsection (G)(3) for at least 12 months after the date of the report in subsection (G)(2);
5. Initiate an investigation of the suspected abuse, neglect, or exploitation and document the following information within five working days after the report required in (G)(2):
   a. The dates, times, and description of the suspected abuse, neglect, or exploitation;
   b. A description of any injury to the patient related to the suspected abuse or neglect and any change to the patient’s physical, cognitive, functional, or emotional condition;
   c. The names of witnesses to the suspected abuse, neglect, or exploitation; and
   d. The action taken by the administrator to prevent the suspected abuse, neglect, or exploitation from occurring in the future; and
6. Maintain a copy of the documented information required in subsection (G)(5) and any other information obtained during the investigation for at least 12 months after the date the investigation was initiated.

H. An administrator shall ensure that the following information or documents are conspicuously posted on the premises and are available upon request to a personnel member, an employee, a patient, or a patient’s representative:

1. The health care institution’s current license,
2. The evacuation plan listed in R9-10-1711, and
3. The location at which inspection reports required in R9-10-1712(B) are available for review or can be made available for review.

R9-10-1703. Quality Management

An administrator shall ensure that:
ATTACHMENT A

1. A plan is established, documented, and implemented for an ongoing quality management program that, at a minimum, includes:
   a. A method to identify, document, and evaluate incidents;
   b. A method to collect data to evaluate services provided to patients;
   c. A method to evaluate the data collected to identify a concern about the delivery of services related to patient care;
   d. A method to make changes or take action as a result of the identification of a concern about the delivery of services related to patient care; and
   e. The frequency of submitting a documented report required in subsection (2) to the governing authority;

2. A documented report is submitted to the governing authority that includes:
   a. An identification of each concern about the delivery of services related to patient care, and
   b. Any changes made or actions taken as a result of the identification of a concern about the delivery of services related to patient care; and

3. The report required in subsection (2) and the supporting documentation for the report are maintained for at least 12 months after the date the report is submitted to the governing authority.

R9-10-1704. Contracted Services

An administrator shall ensure that:

1. Contracted services are provided according to the requirements in this Article,
2. Documented of current contracted services is maintained that includes a description of the contracted services provided.

R9-10-1705. Personnel

A. An administrator shall ensure that:
   1. A personnel member is:
      a. At least 21 years old, or
      b. Licensed or certified under A.R.S. Title 32 and providing services within the personnel member’s scope of practice;
   2. An employee is at least 18 years old,
   3. A student is at least 18 years old, and
   4. A volunteer is at least 21 years old.

B. An administrator shall ensure that:
   1. The qualifications, skills, and knowledge required for each type of personnel member:
      a. Are based on:
ATTACHMENT A

i. The type of physical health services or behavioral health services expected to be provided by the personnel member according to the established job description, and

ii. The acuity of the patients receiving physical health services or behavioral health services from the personnel member according to the established job description; and

b. Include:

i. The specific skills and knowledge necessary for the personnel member to provide the expected physical health services and behavioral health services listed in the established job description,

ii. The type and duration of education that may allow the personnel member to have acquired the specific skills and knowledge for the personnel member to provide the expected physical health services or behavioral health services listed in the established job description, and

iii. The type and duration of experience that may allow the personnel member to have acquired the specific skills and knowledge for the personnel member to provide the expected physical health services or behavioral health services listed in the established job description;

2. A personnel member’s skills and knowledge are verified and documented:

a. Before the personnel member provides physical health services or behavioral health services, and

b. According to policies and procedures;

3. Sufficient personnel members are present on a health care institution’s premises with the qualifications, skills, and knowledge necessary to:

a. Provide the services in the health care institution’s scope of services,

b. Meet the needs of a patient, and

c. Ensure the health and safety of a patient.

C. An administrator shall ensure that:

1. A plan to provide orientation specific to the duties of a personnel member, employee, volunteer, and student is developed, documented, and implemented;

2. A personnel member completes orientation before providing behavioral health services or physical health services;

3. An individual’s orientation is documented, to include:

   a. The individual’s name,

   b. The date of the orientation, and

   c. The subject or topics covered in the orientation;

4. A plan to provide in-service education specific to the duties of a personnel member is developed;
ATTACHMENT A

5. A personnel member’s in-service education is documented, to include:
   a. The personnel member’s name,
   b. The date of the training, and
   c. The subject or topics covered in the training; and

6. A work schedule of each personnel member is developed and maintained at the health care institution for at least 12 months after the date of the work schedule.

D. An administrator shall ensure that a personnel member, or an employee, a volunteer, or a student who has or is expected to have direct interaction with a patient, provides evidence of freedom from infectious tuberculosis:
   a. On or before the date the individual begins providing services at or on behalf of the unclassified healthcare institution, and
   b. As specified in R9-10-113.

E. An administrator shall ensure that a personnel record is maintained for each personnel member, employee, volunteer, or student that includes:
   1. The individual’s name, date of birth, and contact telephone number;
   2. The individual’s starting date of employment or volunteer service and, if applicable, the ending date; and
   3. Documentation of:
      a. The individual’s qualifications including skills and knowledge applicable to the individual’s job duties;
      b. The individual’s education and experience applicable to the individual’s job duties;
      c. The individual’s completed orientation and in-service education as required by policies and procedures;
      d. The individual’s license or certification, if the individual is required to be licensed or certified in this Article or policies and procedures;
      e. If the health care institution provides services to children, the individual’s compliance with the fingerprinting requirements in A.R.S. § 36-425.03;
      f. Cardiopulmonary resuscitation training, if required for the individual according to R9-10-1702(C)(2)(l);
      g. First aid training, if required for the individual according to this Article or policies and procedures; and
      h. Evidence of freedom from infectious tuberculosis, if the individual is required to provide evidence of freedom according to subsection (D).

F. An administrator shall ensure that personnel records are:
   1. Maintained:
ATTACHMENT A

a. Throughout an individual’s period of providing services in or for the health care institution, and
b. For at least 24 months after the last date the individual provided services in or for the health care institution; and

2. For a personnel member who has not provided physical health services or behavioral health services at or for the health care institution during the previous 12 months, provided to the Department within 72 hours after the Department’s request.

G. An administrator shall ensure that at least one personnel member who is present at the health care institution during the hours of the health care institution operation has first-aid training and cardiopulmonary resuscitation certification specific to the populations served by the health care institution.

R9-10-1706. Transport; Transfer

A. Except as provided in subsection (B), an administrator shall ensure that:

1. A personnel member coordinates the transport and the services provided to the patient;
2. According to policies and procedures:
   a. An evaluation of the patient is conducted before and after the transport,
   b. Information in the patient’s medical record is provided to a receiving health care institution, and
   c. A personnel member explains risks and benefits of the transport to the patient or the patient’s representative; and
3. Documentation in the patient’s medical record includes:
   a. Communication with an individual at a receiving health care institution;
   b. The date and time of the transport;
   c. The mode of transportation; and
   d. If applicable, the personnel member accompanying the patient during a transport.

B. Subsection (A) does not apply to:

1. Transportation to a location other than a licensed health care institution,
2. Transportation provided for a patient by the patient or the patient’s representative,
3. Transportation provided by an outside entity that was arranged for a patient by the patient or the patient’s representative, or
4. A transport to another licensed health care institution in an emergency.

C. Except for a transfer of a patient due to an emergency, an administrator shall ensure that:

1. A personnel member coordinates the transfer and the services provided to the patient;
2. According to policies and procedures:
   a. An evaluation of the patient is conducted before the transfer;
ATTACHMENT A

b. Information in the patient’s medical record, including orders that are in effect at the time of the transfer, is provided to a receiving health care institution; and
c. A personnel member explains risks and benefits of the transfer to the patient or the patient’s representative; and

3. Documentation in the patient’s medical record includes:
   a. Communication with an individual at a receiving health care institution;
   b. The date and time of the transfer;
   c. The mode of transportation; and
   d. If applicable, the name of the personnel member accompanying the patient during a transfer.

R9-10-1707. Patient Rights

A. An administrator shall ensure that:
   1. The requirements in subsection (B) and the patient rights in subsection (C) are conspicuously posted on the premises;
   2. At the time of admission, a patient or the patient’s representative receives a written copy of the requirements in subsection (B) and the patient rights in subsection (C); and
   3. Policies and procedures include:
      a. How and when a patient or the patient’s representative is informed of patient rights in subsection (C), and
      b. Where patient rights are posted as required in subsection (A)(1).

B. An administrator shall ensure that:
   1. A patient is treated with dignity, respect, and consideration;
   2. A patient is not subjected to:
      a. Abuse;
      b. Neglect;
      c. Exploitation;
      d. Coercion;
      e. Manipulation;
      f. Sexual abuse;
      g. Sexual assault;
      h. Seclusion;
      i. Restraint;
      j. Retaliation for submitting a complaint to the Department or another entity; or
      k. Misappropriation of personal and private property by the unclassified health care institution’s personnel members, employees, volunteers, or students; and
3. A patient or the patient’s representative:
   a. Is informed of the patient complaint process;
   b. Consents to photographs of the patient before the patient is photographed, except that a patient
      may be photographed when admitted to a health care institution for identification and
      administrative purposes; and
   c. Except as otherwise permitted by law, provides written consent to the release of information in
      the patient’s:
      i. Medical record, or
      ii. Financial records.

C. A patient has the following rights:
   1. Not to be discriminated against based on race, national origin, religion, gender, sexual orientation,
      age, disability, marital status, or diagnosis;
   2. To receive services that support and respect the patient’s individuality, choices, strengths, and
      abilities;
   3. To receive privacy in care for personal needs;
   4. To review, upon written request, the patient’s own medical record according to A.R.S. §§ 12-2293,
      12-2294, and 12-2294.01;
   5. To receive a referral to another health care institution if the provider is not authorized or not able to
      provide physical health services or behavioral health services needed by the patient; and
   6. To receive assistance from a family member, representative, or other individual in understanding,
      protecting, or exercising the patient’s rights.

R9-10-1708. Medical Records
A. An administrator shall ensure that:
   1. A medical record is established and maintained for each patient according to A.R.S. Title 12,
      Chapter 13, Article 7.1;
   2. An entry in a patient’s medical record is:
      a. Recorded only by a personnel member authorized by policies and procedures to make the entry;
      b. Dated, legible, and authenticated; and
      c. Not changed to make the entry illegible;
   3. An order is:
      a. Dated when the order is entered in the patient’s medical record and includes the time of the
         order;
      b. Authenticated by a medical practitioner or behavioral health professional according to policies
         and procedures; and
ATTACHMENT A

c. If the order is a verbal order, authenticated by the medical practitioner or behavioral health professional issuing the order;
4. If a rubber-stamp signature or an electronic signature is used to authenticate an order, the individual whose signature the rubber-stamp signature or electronic signature represents is accountable for the use of the rubber-stamp signature or electronic signature;
5. A patient’s medical record is available to an individual:
   a. Authorized according to policies and procedures to access the patient’s medical record;
   b. If the individual is not authorized according to policies and procedures, with the written consent of the patient or the patient’s representative; or
   c. As permitted by law;
6. Policies and procedures include the maximum time-frame to retrieve a patient’s medical record at the request of a medical practitioner, behavioral health professional, or authorized personnel member; and
7. A patient’s medical record is protected from loss, damage, or unauthorized use.

B. If a health care institution maintains a patient’s medical records electronically, an administrator shall ensure that:
   1. Safeguards exist to prevent unauthorized access, and
   2. The date and time of an entry in a patient’s medical record is recorded by the computer’s internal clock.

C. An administrator shall ensure that a patient’s medical record contains:
   1. Patient information that includes:
      a. The patient’s name;
      b. The patient’s address;
      c. The patient’s date of birth; and
      d. Any known allergies, including medication allergies;
   2. The name of the admitting medical practitioner or behavioral health professional;
   3. The date of admission and, if applicable, the date of discharge;
   4. An admitting diagnosis;
   5. If applicable, the name and contact information of the patient’s representative and:
      a. If the patient is 18 years of age or older or an emancipated minor, the document signed by the patient consenting for the patient’s representative to act on the patient’s behalf; or
      b. If the patient’s representative:
         i. Is a legal guardian, a copy of the court order establishing guardianship; or
ii. Has a health care power of attorney established under A.R.S. § 36-3221 or a mental health care power of attorney executed under A.R.S. § 36-3282, a copy of the health care power of attorney or mental health care power of attorney;

6. If applicable, documented general consent and informed consent by the patient or the patient’s representative;

7. Documentation of medical history and results of a physical examination;

8. A copy of the patient’s health care directive, if applicable;

9. Orders;

10. Assessment;

11. Treatment plans;

12. Interval note;

13. Progress notes;

14. Documentation of health care institution services provided to the patient;

15. Disposition of the patient after discharge;

16. If applicable, documentation of any actions taken to control the patient’s sudden, intense, or out-of-control behavior to prevent harm to the patient or another individual;

17. Discharge plan;

18. A discharge summary, if applicable;

19. If applicable:
   a. Laboratory reports,
   b. Radiologic reports,
   c. Diagnostic reports, and
   d. Consultation reports; and

20. Documentation of a medication administered to the patient that includes:
   a. The date and time of administration;
   b. The name, strength, dosage, and route of administration;
   c. For a medication administered for pain, when initially administered or PRN:
      i. An assessment of the patient’s pain before administering the medication, and
      ii. The effect of the medication administered;
   d. For a psychotropic medication, when initially administered or PRN:
      i. An assessment of the patient’s behavior before administering the psychotropic medication, and
      ii. The effect of the psychotropic medication administered;
   e. The identification, signature, and professional designation of the individual administering or observing the self-administration of the medication; and
R9-10-1709. Medication Services

A. An administrator shall ensure that:

1. Policies and procedures for medication services include:
   a. A process for providing information to a patient about medication prescribed for the patient including:
      i. The prescribed medication’s anticipated results,
      ii. The prescribed medication’s potential adverse reactions,
      iii. The prescribed medication’s potential side effects, and
      iv. Potential adverse reactions that could result from not taking the medication as prescribed;
   b. Procedures for preventing, responding to, and reporting a medication error;
   c. Procedures for responding to and reporting an unexpected reaction to a medication;
   d. Procedures to ensure that a patient’s medication regimen and method of administration is reviewed by a medical practitioner and to ensure the medication regimen meets the patient’s needs;
   e. Procedures for:
      i. Documenting, as applicable, medication administration and assistance in the self-administration of medication; and
      ii. Monitoring a patient who self-administers medication;
   f. Procedures for assisting a patient in obtaining medication; and
   g. If applicable, procedures for providing medication administration or assistance in the self-administration of medication off the premises; and

2. A process is specified for review through the quality management program of:
   a. A medication administration error, and
   b. An adverse reaction to a medication.

B. If a health care institution provides medication administration, an administrator shall ensure that:

1. Medication is stored by the health care institution;

2. Policies and procedures for medication administration:
   a. Are reviewed and approved by a medical practitioner;
   b. Specify the individuals who may:
      i. Order medication, and
      ii. Administer medication;
   c. Ensure that medication is administered to a patient only as prescribed; and
ATTACHMENT A

d. Cover the documentation of a patient’s refusal to take prescribed medication in the patient’s medical record;

3. Verbal orders for medication services are taken by a nurse, unless otherwise provided by law; and

4. A medication administered to a patient:
   a. Is administered in compliance with an order, and
   b. Is documented in the patient’s medical record.

C. If a health care institution provides assistance in the self-administration of medication, an administrator shall ensure that:

1. A patient’s medication is stored by the health care institution;

2. The following assistance is provided to a patient:
   a. A reminder when it is time to take the medication;
   b. Opening the medication container for the patient;
   c. Observing the patient while the patient removes the medication from the container;
   d. Verifying that the medication is taken as ordered by the patient’s medical practitioner by confirming that:
      i. The patient taking the medication is the individual stated on the medication container label,
      ii. The patient is taking the dosage of the medication as stated on the medication container label, and
      iii. The patient is taking the medication at the time stated on the medication container label; or
   e. Observing the patient while the patient takes the medication;

3. Policies and procedures for assistance in the self-administration of medication are reviewed and approved by a medical practitioner or registered nurse;

4. Training for a personnel member, other than a medical practitioner or registered nurse, in assistance in the self-administration of medication:
   a. Is provided by a medical practitioner or registered nurse or an individual trained by a medical practitioner or registered nurse; and
   b. Includes:
      i. A demonstration of the personnel member’s skills and knowledge necessary to provide assistance in the self-administration of medication,
      ii. Identification of medication errors and medical emergencies related to medication that require emergency medical intervention, and
      iii. Process for notifying the appropriate entities when an emergency medical intervention is needed;
ATTACHMENT A

5. A personnel member, other than a medical practitioner or registered nurse, completes the training in subsection (C)(4) before the personnel member provides assistance in the self-administration of medication; and

6. Assistance in the self-administration of medication provided to a patient:
   a. Is in compliance with an order, and
   b. Is documented in the patient’s medical record.

D. An administrator shall ensure that:
   1. A current drug reference guide is available for use by personnel members;
   2. A current toxicology reference guide is available for use by personnel members; and
   3. If pharmaceutical services are provided on the premises:
      a. A committee, composed of at least one physician, one pharmacist, and other personnel members as determined by policies and procedures, is established to:
         i. Develop a drug formulary,
         ii. Update the drug formulary at least once every 12 months,
         iii. Develop medication usage and medication substitution policies and procedures, and
         iv. Specify which medications and medication classifications are required to be automatically stopped after a specific time period unless the ordering medical practitioner specifically orders otherwise;
      b. The pharmaceutical services are provided under the direction of a pharmacist;
      c. The pharmaceutical services comply with A.R.S. Title 36, Chapter 27; A.R.S. Title 32, Chapter 18; and 4 A.A.C. 23; and
      d. A copy of the pharmacy license is provided to the Department upon request.

E. When medication is stored at a health care institution, an administrator shall ensure that:
   1. Medication is stored in a separate locked room, closet, or self-contained unit used only for medication storage;
   2. Medication is stored according to the instructions on the medication container; and
   3. Policies and procedures are established, documented, and implemented to protect the health and safety of a patient for:
      a. Receiving, storing, inventorying, tracking, dispensing, and discarding medication including expired medication;
      b. Discarding or returning prepackaged and sample medication to the manufacturer if the manufacturer requests the discard or return of the medication;
      c. A medication recall and notification of patients who received recalled medication; and
      d. Storing, inventorying, and dispensing controlled substances.
ATTACHMENT A

F. An administrator shall ensure that a personnel member immediately reports a medication error or a patient’s adverse reaction to a medication to the medical practitioner who ordered the medication and, if applicable, the health care institution’s clinical director.

R9-10-1710. Food Services

If food services are provided, an administrator shall ensure:

1. Food is obtained, handled, and stored to prevent contamination, spoilage, or a threat to the health of a patient;
2. Three nutritionally balanced meals are served each day;
3. Nutritious snacks are available between meals;
4. Food served meets any special dietary needs of a patient as prescribed by the patient’s physician or diettian; and
5. Chemicals and detergents are not stored with food.

R9-10-1711. Emergency and Safety Standards

A. An administrator shall ensure that:

1. A first aid kit is available at a health care institution;
2. If a firearm or ammunition for a firearm are stored at a health care institution:
   a. The firearm is stored separate from the ammunition for the firearm; and
   b. The firearm and the ammunition for the firearm are:
      i. Stored in a locked closet, cabinet, or container; and
      ii. Inaccessible to a patient;
3. If applicable, there is a smoke detector installed in:
   a. A bedroom used by a patient,
   b. A hallway in a health care institution, and
   c. A health care institution’s kitchen;
   a. Is maintained in operable condition; and
   b. Is battery operated or, if hard-wired into the electrical system of a health care institution, has a back-up battery;
5. A health care institution has a portable fire extinguisher that is labeled 1A-10-BC by the Underwriters Laboratory and is available to a personnel member;
6. A portable fire extinguisher required in subsection (A)(5) is:
   a. If a disposable fire extinguisher, replaced when the fire extinguisher’s indicator reaches the red zone; or
ATTACHMENT A

b. Serviced at least once every 12 months and has a tag attached to the fire extinguisher that includes the date of service;

7. A written evacuation plan is maintained and available for use by personnel members and any patient in a health care institution;

8. An evacuation drill is conducted at least once every six months; and

9. A record of an evacuation drill required in subsection (A)(8) is maintained for at least 12 months after the date of the evacuation drill.

B. An administrator shall:

1. Obtain a fire inspection conducted according to the time-frame established by the local fire department or the State Fire Marshal,

2. Make any repairs or corrections stated on the fire inspection report, and

3. Maintain documentation of a current fire inspection.

R9-10-1712. Physical Plant, Environmental Services, and Equipment Standards

A. If applicable, an administrator shall ensure that a health care institution:

1. Is in a building that:
   a. Has a certificate of occupancy from the local jurisdiction; and
   b. Is free of any plumbing, electrical, ventilation, mechanical, or structural hazard that may jeopardize the health or safety of a patient;

2. Has a living room accessible at all times to a patient;

3. Has a dining area furnished for group meals that is accessible to the provider, patients, and any other individuals present in the health care institution;

4. Has:
   a. At least one bathroom for each six individuals residing in the health care institution, including patients; and
   b. A bathroom accessible for use by a patient that contains:
      i. A working sink with running water, and
      ii. A working toilet that flushes and has a seat; and

5. Has equipment and supplies to maintain a patient’s personal hygiene that are accessible to the patient.

B. An administrator shall ensure that:

1. A health care institution’s premises are:
   a. Sufficient to provide the health care institution’s scope of services;
   b. Cleaned and disinfected according to the health care institution’s policies and procedures to prevent, minimize, and control illness and infection;
c. Clean and free from accumulations of dirt, garbage, and rubbish; and
d. Free from a condition or situation that may cause an individual to suffer physical injury;

2. If a health care institution collects urine or stool specimens from a patient, the health care institution has at least one bathroom that:
   a. Contains:
      i. A working sink with running water,
      ii. A working toilet that flushes and has a seat,
      iii. Toilet tissue,
      iv. Soap for hand washing,
      v. Paper towels or a mechanical air hand dryer,
      vi. Lighting, and
      vii. A means of ventilation; and
   b. Is for the exclusive use of the health care institution;

3. A pest control program is implemented and documented;

4. If pets or animals are allowed in the health care institution, pets or animals are:
   a. Controlled to prevent endangering the patients and to maintain sanitation;
   b. Licensed consistent with local ordinances; and
   c. For a dog or a cat, vaccinated against rabies;

5. A smoke-free environment is maintained on the premises;

6. A refrigerator used to store a medication is:
   a. Maintained in working order, and
   b. Only used to store medications;

7. Equipment at the health care institution is:
   a. Sufficient to provide the health care institution’s scope of service;
   b. Maintained in working condition;
   c. Used according to the manufacturer's recommendations; and
   d. If applicable, tested and calibrated according to the manufacturer’s recommendations or, if there are no manufacturer’s recommendations, as specified in policies and procedures;

8. Documentation of an equipment test, calibration, and repair is maintained for at least 12 months after the date of testing, calibration, or repair; and

9. Combustible or flammable liquids and hazardous materials stored by the health care institution are stored in the original labeled containers or safety containers in a storage area that is locked and inaccessible to patients.
ATTACHMENT B

Statutory Authority

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

A. The department shall, in addition to other powers and duties vested in it by law:

1. Protect the health of the people of the state.

2. Promote the development, maintenance, efficiency and effectiveness of local health departments or districts of sufficient population and area that they can be sustained with reasonable economy and efficient administration, provide technical consultation and assistance to local health departments or districts, provide financial assistance to local health departments or districts and services that meet minimum standards of personnel and performance and in accordance with a plan and budget submitted by the local health department or districts to the department for approval, and recommend the qualifications of all personnel.

3. Collect, preserve, tabulate and interpret all information required by law in reference to births, deaths and all vital facts, and obtain, collect and preserve information relating to the health of the people of the state and the prevention of diseases as may be useful in the discharge of functions of the department not in conflict with the provisions of chapter 3 of this title, and sections 36-693, 36-694 and 39-122.

4. Operate such sanitariums, hospitals or other facilities assigned to the department by law or by the governor.

5. Conduct a statewide program of health education relevant to the powers and duties of the department, prepare educational materials and disseminate information as to conditions affecting health, including basic information for the promotion of good health on the part of individuals and communities, and prepare and disseminate technical information concerning public health to the health professions, local health officials and hospitals. In cooperation with the department of education, the department of health services shall prepare and disseminate materials and give technical assistance for the purpose of education of children in hygiene, sanitation and personal and public health, and provide consultation and assistance in community organization to counties, communities and groups of people.

6. Administer or supervise a program of public health nursing, prescribe the minimum qualifications of all public health nurses engaged in official public health work, and encourage and aid in coordinating local public health nursing services.

7. Encourage and aid in coordinating local programs concerning control of preventable diseases in accordance with statewide plans that shall be formulated by the department.

8. Encourage and aid in coordinating local programs concerning maternal and child health, including midwifery, antepartum and postpartum care, infant and preschool health and the health of school children, including special fields such as the prevention of blindness and conservation of sight and hearing.

9. Encourage and aid in the coordination of local programs concerning nutrition of the people of the state.
10. Encourage, administer and provide dental health care services and aid in coordinating local programs concerning dental public health, in cooperation with the Arizona dental association. The department may bill and receive payment for costs associated with providing dental health care services and shall deposit the monies in the oral health fund established by section 36-138.

11. Establish and maintain adequate serological, bacteriological, parasitological, entomological and chemical laboratories with qualified assistants and facilities necessary for routine examinations and analyses and for investigations and research in matters affecting public health.

12. Supervise, inspect and enforce the rules concerning the operation of public bathing places and public and semipublic swimming pools adopted pursuant to section 36-136, subsection H, paragraph 10.

13. Take all actions necessary or appropriate to ensure that bottled water sold to the public and water used to process, store, handle, serve and transport food and drink are free from filth, disease-causing substances and organisms and unwholesome, poisonous, deleterious or other foreign substances. All state agencies and local health agencies involved with water quality shall provide to the department any assistance requested by the director to ensure that this paragraph is effectuated.

14. Enforce the state food, caustic alkali and acid laws in accordance with chapter 2, article 2 of this title, chapter 8, article 1 of this title and chapter 9, article 4 of this title, and collaborate in the enforcement of the federal food, drug and cosmetic act of 1938 (52 Stat. 1040; 21 United States Code sections 1 through 905).

15. Recruit and train personnel for state, local and district health departments.

16. Conduct continuing evaluations of state, local and district public health programs, study and appraise state health problems and develop broad plans for use by the department and for recommendation to other agencies, professions and local health departments for the best solution of these problems.

17. License and regulate health care institutions according to chapter 4 of this title.

18. Issue or direct the issuance of licenses and permits required by law.

19. Participate in the state civil defense program and develop the necessary organization and facilities to meet wartime or other disasters.

20. Subject to the availability of monies, develop and administer programs in perinatal health care, including:

   (a) Screening in early pregnancy for detecting high risk conditions.

   (b) Comprehensive prenatal health care.

   (c) Maternity, delivery and postpartum care.

   (d) Perinatal consultation, including transportation of the pregnant woman to a perinatal care center when medically indicated.
(e) Perinatal education oriented toward professionals and consumers, focusing on early detection and adequate intervention to avert premature labor and delivery.

21. License and regulate the health and safety of group homes for persons with developmental disabilities. The department shall issue a license to an accredited facility for a period of the accreditation, except that no licensing period shall be longer than three years. The department is authorized to conduct an inspection of an accredited facility to ensure that the facility meets health and safety licensure standards. The results of the accreditation survey shall be public information. A copy of the final accreditation report shall be filed with the department of health services. For the purposes of this paragraph, "accredited" means accredited by a nationally recognized accreditation organization.

B. The department may accept from the state or federal government, or any agency of the state or federal government, and from private donors, trusts, foundations or eleemosynary corporations or organizations grants or donations for or in aid of the construction or maintenance of any program, project, research or facility authorized by this title, or in aid of the extension or enforcement of any program, project or facility authorized, regulated or prohibited by this title, and enter into contracts with the federal government, or an agency of the federal government, and with private donors, trusts, foundations or eleemosynary corporations or organizations, to carry out such purposes. All monies made available under this section are special project grants. The department may also expend these monies to further applicable scientific research within this state.

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

D. The department may enter into contracts with organizations that perform nonrenal organ transplant operations and organizations that primarily assist in the management of end stage renal disease and related problems to provide, as payors of last resort, prescription medications necessary to supplement treatment and transportation to and from treatment facilities. The contracts may provide for department payment of administrative costs it specifically authorizes.

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

A. The director shall:

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

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

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

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

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

7. Prepare sanitary and public health rules.

8. Perform other duties prescribed by law.

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

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

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

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

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

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

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

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

I. The director, by rule, shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12. Prescribe reasonably necessary measures regarding human immunodeficiency virus testing as a means to control the transmission of that virus, including the designation of anonymous test sites as dictated by current epidemiologic and scientific evidence.
13. Establish an online registry of food preparers that are authorized to prepare food for commercial purposes pursuant to paragraph 4 of this subsection.

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

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

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

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

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

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

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

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

Q. For the purposes of this section, "fetal demise" means a fetal death that occurs or is confirmed in a licensed hospital. Fetal demise does not include an abortion as defined in section 36-2151.
36-405. Powers and duties of the director

A. The director shall adopt rules to establish minimum standards and requirements for the construction, modification and licensure of health care institutions necessary to assure the public health, safety and welfare. The standards and requirements shall relate to the construction, equipment, sanitation, staffing for medical, nursing and personal care services, and record keeping pertaining to the administration of medical, nursing, behavioral health and personal care services, in accordance with generally accepted practices of health care. The director shall use the current standards adopted by the joint commission on accreditation of hospitals and the commission on accreditation of the American osteopathic association or those adopted by any recognized accreditation organization approved by the department as guidelines in prescribing minimum standards and requirements under this section.

B. The director, by rule, may:

1. Classify and subclassify health care institutions according to character, size, range of services provided, medical or dental specialty offered, duration of care and standard of patient care required for the purposes of licensure. Classes of health care institutions may include hospitals, infirmaries, outpatient treatment centers, health screening services centers and residential care facilities. Whenever the director reasonably deems distinctions in rules and standards to be appropriate among different classes or subclasses of health care institutions, the director may make such distinctions.

2. Prescribe standards for determining a health care institution's substantial compliance with licensure requirements.

3. Prescribe the criteria for the licensure inspection process.

4. Prescribe standards for the selection of health care related demonstration projects.

5. Establish and collect nonrefundable fees for health care institutions for license applications, initial licenses, renewal licenses and architectural drawing reviews.

C. The director, by rule, shall adopt licensing provisions that facilitate the colocation and integration of outpatient treatment centers that provide medical, nursing and health-related services with behavioral health services consistent with article 3.1 of this chapter.

D. Ninety percent of the fees collected pursuant to this section shall be deposited, pursuant to sections 35-146 and 35-147, in the health services licensing fund established by section 36-414 and ten percent of the fees collected pursuant to this section shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

E. Subsection B, paragraph 5 of this section does not apply to a health care institution operated by a state agency pursuant to state or federal law or to adult foster care residential settings.

36-406. Powers and duties of the department

In addition to its other powers and duties:

1. The department shall:
(a) Administer and enforce this chapter and the rules, regulations and standards adopted pursuant thereto.

(b) Review, and may approve, plans and specifications for construction or modification or additions to health care institutions regulated by this chapter.

(c) Have access to books, records, accounts and any other information of any health care institution reasonably necessary for the purposes of this chapter.

(d) Require as a condition of licensure that nursing care institutions and assisted living facilities make vaccinations for influenza and pneumonia available to residents on site on a yearly basis. The department shall prescribe the manner by which the institutions and facilities shall document compliance with this subdivision, including documenting residents who refuse to be immunized. The department shall not impose a violation on a licensee for not making a vaccination available if there is a shortage of that vaccination in this state as determined by the director.

2. The department may:

(a) Make or cause to be made inspections consistent with standard medical practice of every part of the premises of health care institutions which are subject to the provisions of this chapter as well as those which apply for or hold a license required by this chapter.

(b) Make studies and investigations of conditions and problems in health care institutions, or any class or subclass thereof, as they relate to compliance with this chapter and rules, regulations and standards adopted pursuant thereto.

(c) Develop manuals and guides relating to any of the several aspects of physical facilities and operations of health care institutions or any class or subclass thereof for distribution to the governing authorities of health care institutions and to the general public.

36-422. Application for license; notification of proposed change in status; joint licenses; definitions

A. A person who wishes to apply for an initial license or to renew a license to operate a health care institution pursuant to this chapter shall file with the department an application on a written or electronic form that is prescribed, prepared and furnished by the department. The application shall contain the following:

1. The name and location of the health care institution.

2. Whether it is to be operated as a proprietary or nonproprietary institution.

3. The name of the governing authority. The applicant shall be the governing authority having the operative ownership of, or the governmental agency charged with the administration of, the health care institution sought to be licensed. If the applicant is a partnership that is not a limited partnership, the partners shall make the application jointly, and the partners are jointly the governing authority for purposes of this article.

4. The name and business or residential address of each controlling person and an affirmation that none of the controlling persons has been denied a license or certificate by a health profession
regulatory board pursuant to title 32 or by a state agency pursuant to chapter 6, article 7 or chapter 17 of this title or a license to operate a health care institution in this state or another state or has had a license or certificate issued by a health profession regulatory board pursuant to title 32 or issued by a state agency pursuant to chapter 6, article 7 or chapter 17 of this title or a license to operate a health care institution revoked. If a controlling person has been denied a license or certificate by a health profession regulatory board pursuant to title 32 or by a state agency pursuant to chapter 6, article 7 or chapter 17 of this title or a license to operate a health care institution in this state or another state or has had a health care professional license or a license to operate a health care institution revoked, the controlling person shall include in the application a comprehensive description of the circumstances for the denial or the revocation.

5. The class or subclass of health care institution to be established or operated.

6. The types and extent of the health care services to be provided, including emergency services, community health services and services to indigent patients.

7. The name and qualifications of the chief administrative officer implementing direction in that specific health care institution.

8. Other pertinent information required by the department for the proper administration of this chapter and department rules.

B. An application filed pursuant to this section shall contain the written or electronic signature of:

1. If the applicant is an individual, the owner of the health care institution.

2. If the applicant is a partnership, limited liability company or corporation, two of the officers of the corporation or managing members of the partnership or limited liability company or the sole member of the limited liability company if it has only one member.

3. If the applicant is a governmental unit, the head of the governmental unit.

C. An application for licensure or relicensure shall be filed at least sixty but not more than one hundred twenty days before the anticipated operation or the expiration date of the current license. An application for a substantial compliance survey submitted pursuant to section 36-425, subsection G shall be filed at least thirty days before the date on which the substantial compliance survey is requested.

D. If a current licensee intends to terminate the operation of a licensed health care institution or if a change of ownership is planned either during or at the expiration of the term of the license, the current licensee shall notify the director in writing at least thirty days before the termination of operation or change in ownership is to take place. The current licensee is responsible for preventing any interruption of services required to sustain the life, health and safety of the patients or residents. A new owner shall not begin operating the health care institution until the director issues a license.

E. A licensed health care institution for which operations have not been terminated for more than thirty days may be relicensed pursuant to the standards that were applicable under its most recent license.
F. If a person operates a hospital in a county with a population of more than five hundred thousand persons in a setting that includes satellite facilities of the hospital that are located separately from the main hospital building, the department at the request of the applicant or licensee shall issue a single group license to the hospital and its designated satellite facilities located within one-half mile of the main hospital building if all of the facilities meet or exceed department licensure requirements for the designated facilities. At the request of the applicant or licensee, the department shall also issue a single group license that includes the hospital and not more than ten of its designated satellite facilities that are located farther than one-half mile from the main hospital building if all of these facilities meet or exceed applicable department licensure requirements. Each facility included under a single group license is subject to the department's licensure requirements that are applicable to that category of facility. Subject to compliance with applicable licensure or accreditation requirements, the department shall reissue individual licenses for the facility of a hospital located in separate buildings from the main hospital building when requested by the hospital. This subsection does not apply to nursing care institutions and residential care institutions. The department is not limited in conducting inspections of an accredited health care institution to ensure that the institution meets department licensure requirements. If a person operates a hospital in a county with a population of five hundred thousand persons or less in a setting that includes satellite facilities of the hospital that are located separately from the main hospital building, the department at the request of the applicant or licensee shall issue a single group license to the hospital and its designated satellite facilities located within thirty-five miles of the main hospital building if all of the facilities meet or exceed department licensure requirements for the designated facilities. At the request of the applicant or licensee, the department shall also issue a single group license that includes the hospital and not more than ten of its designated satellite facilities that are located farther than thirty-five miles from the main hospital building if all of these facilities meet or exceed applicable department licensure requirements.

G. If a county with a population of more than one million persons or a special health care district in a county with a population of more than one million persons operates an accredited hospital that includes the hospital's accredited facilities that are located separately from the main hospital building and the accrediting body's standards as applied to all facilities meet or exceed the department's licensure requirements, the department shall issue a single license to the hospital and its facilities if requested to do so by the hospital. If a hospital complies with applicable licensure or accreditation requirements, the department shall reissue individual licenses for each hospital facility that is located in a separate building from the main hospital building if requested to do so by the hospital. This subsection does not limit the department's duty to inspect a health care institution to determine its compliance with department licensure standards. This subsection does not apply to nursing care institutions and residential care institutions.

H. An applicant or licensee must notify the department within thirty days after any change regarding a controlling person and provide the information and affirmation required pursuant to subsection A, paragraph 4 of this section.

I. This section does not limit the application of federal laws and regulations to an applicant or licensee certified as a medicare or an Arizona health care cost containment system provider under federal law.

J. Except for an outpatient treatment center providing dialysis services or abortion procedures, a person wishing to begin operating an outpatient treatment center before an initial licensing inspection is completed shall submit all of the following:

1. The initial license application required pursuant to this section.
2. All applicable application and license fees.

3. A written request for a temporary license that includes:

(a) The anticipated date of operation.

(b) An attestation signed by the applicant that the applicant and the facility comply with and will continue to comply with the applicable licensing statutes and rules.

K. Within seven days of the department's receipt of the items required in subsection J of this section, but not before the anticipated operation date submitted in subsection C of this section, the department shall issue a temporary license that includes:

1. The name of the facility.

2. The name of the licensee.

3. The facility's class or subclass.

4. The temporary license's effective date.

5. The location of the licensed premises.

L. A facility may begin operating on the effective date of the temporary license.

M. The director may cease the issuance of temporary licenses at any time if the director believes that public health and safety is endangered.

N. For the purposes of this section:

1. "Accredited" means accredited by a nationally recognized accreditation organization.

2. "Satellite facility" means an outpatient facility at which the hospital provides outpatient medical services.

36-424. Inspections; suspension or revocation of license; report to board of examiners of nursing care institution administrators

A. Every applicant for initial licensure or relicensure as a health care institution shall submit to the director a properly completed application for a license accompanied by the necessary fee.

B. Subject to the limitation prescribed by subsection C of this section, the director shall inspect the premises of the health care institution and investigate the character and other qualifications of the applicant to ascertain whether the applicant and the health care institution are in substantial compliance with the requirements of this chapter and the rules established pursuant to this chapter. The director may prescribe rules regarding department background investigations into an applicant's character and qualifications.
C. The director shall accept proof that a health care institution is an accredited hospital or is an accredited health care institution in lieu of all compliance inspections required by this chapter if the director receives a copy of the institution's accreditation report for the licensure period. If the health care institution's accreditation report is not valid for the entire licensure period, the department may conduct a compliance inspection of the health care institution during the time period the department does not have a valid accreditation report for the health care institution.

D. On a determination by the director that there is reasonable cause to believe a health care institution is not adhering to the licensing requirements of this chapter, the director and any duly designated employee or agent of the director, including county health representatives and county or municipal fire inspectors, consistent with standard medical practices, may enter on and into the premises of any health care institution that is licensed or required to be licensed pursuant to this chapter at any reasonable time for the purpose of determining the state of compliance with this chapter, the rules adopted pursuant to this chapter and local fire ordinances or rules. Any application for licensure under this chapter constitutes permission for and complete acquiescence in any entry or inspection of the premises during the pendency of the application and, if licensed, during the term of the license. If an inspection reveals that the health care institution is not adhering to the licensing requirements established pursuant to this chapter, the director may take action authorized by this chapter. Any health care institution, including an accredited hospital, whose license has been suspended or revoked in accordance with this section is subject to inspection on application for relicensure or reinstatement of license.

E. The director shall immediately report to the board of examiners of nursing care institution administrators information identifying that a nursing care institution administrator's conduct may be grounds for disciplinary action pursuant to section 36-446.07.

36-425. Inspections; issuance of license; posting of deficiencies; provisional license; denial of license

A. On receipt of a properly completed application for initial licensure, the director shall conduct an inspection of the health care institution as prescribed by this chapter. If an application for an initial license is submitted due to a planned change of ownership, the director shall determine the need for an inspection of the health care institution. Based on the results of the inspection, the director shall either deny the license or issue a regular or provisional license. A license issued by the department shall be conspicuously posted in the reception area of that institution. Unless the health care institution is an accredited hospital at the time of licensure, an initial license is valid for one year after the date the initial license is issued. If the health care institution is an accredited hospital at the time of licensure, the licensure term is three years from the expiration date of the hospital's current license, or in the case of an initial license based on a change of ownership, the licensure term is three years beginning on the effective date of the hospital's current accreditation.

B. The director shall issue an initial license if the director determines that an applicant and the health care institution for which the license is sought substantially comply with the requirements of this chapter and rules adopted pursuant to this chapter and the applicant agrees to carry out a plan acceptable to the director to eliminate any deficiencies. The director shall not require a health care institution that was designated as a critical access hospital to make any modifications required by this chapter or rules adopted pursuant to this chapter in order to obtain an amended license with the same licensed capacity the health care institution had before it was designated as a critical access hospital if all of the following are true:

1. The health care institution has subsequently terminated its critical access hospital designation.
2. The licensed capacity of the health care institution does not exceed its licensed capacity prior to its designation as a critical access hospital.

3. The health care institution remains in compliance with the applicable codes and standards that were in effect at the time the facility was originally licensed with the higher licensed capacity.

C. On receipt of an application for a renewal of a health care institution's license that complies with the requirements of this chapter and rules adopted pursuant to this chapter, the department shall issue a renewal license to the health care institution. An accredited hospital's renewal license is valid for three years after the expiration date of the accredited hospital's current license. All other health care institution renewal licenses are valid for one year after the expiration date of the health care institution's current license.

D. Except as provided in section 36-424, subsection C and subsection E of this section, the department shall conduct a compliance inspection of a health care institution to determine compliance with this chapter and rules adopted pursuant to this chapter at least once during each license period.

E. After the initial license period ends and after the department determines a facility to be deficiency free on a compliance survey, the department shall not conduct a compliance survey of that facility for twenty-four months from the date of the deficiency free survey. This subsection does not prohibit the department from enforcing licensing requirements as authorized by section 36-424.

F. A hospital licensed as a rural general hospital may provide intensive care services.

G. The director shall issue a provisional license for a period of not more than one year if an inspection or investigation of a currently licensed health care institution or a health care institution for which an applicant is seeking initial licensure reveals that the institution is not in substantial compliance with department licensure requirements and the director believes that the immediate interests of the patients and the general public are best served if the institution is given an opportunity to correct deficiencies. The applicant or licensee shall agree to carry out a plan to eliminate deficiencies that is acceptable to the director. The director shall not issue consecutive provisional licenses to a single health care institution. The director shall not issue a license to the current licensee or a successor applicant before the expiration of the provisional license unless the health care institution submits an application for a substantial compliance survey and is found to be in substantial compliance. The director may issue a license only if the director determines that the institution is in substantial compliance with the licensure requirements of the department and this chapter. This subsection does not prevent the director from taking action to protect the safety of patients pursuant to section 36-427.

H. Subject to the confidentiality requirements of articles 4 and 5 of this chapter, title 12, chapter 13, article 7.1 and section 12-2235, the licensee shall keep current department inspection reports at the health care institution. Unless federal law requires otherwise, the licensee shall conspicuously post a notice that identifies the location at that institution where the inspection reports are available for review.

I. A health care institution shall immediately notify the department in writing when there is a change of the chief administrative officer specified in section 36-422, subsection A, paragraph 7.

J. When the department issues an original license or an original provisional license to a health care institution, it shall notify the owners and lessees of any agricultural land within one-fourth mile of the
health care institution. The health care institution shall provide the department with the names and addresses of owners or lessees of agricultural land within one-fourth mile of the proposed health care institution.

K. In addition to the grounds for denial of licensure prescribed pursuant to subsection A of this section, the director may deny a license because an applicant or anyone in a business relationship with the applicant, including stockholders and controlling persons, has had a license to operate a health care institution denied, revoked or suspended or a license or certificate issued by a health profession regulatory board pursuant to title 32 or issued by a state agency pursuant to chapter 6, article 7 or chapter 17 of this title denied, revoked or suspended or has a licensing history of recent serious violations occurring in this state or in another state that posed a direct risk to the life, health or safety of patients or residents.

L. In addition to the requirements of this chapter, the director may prescribe by rule other licensure requirements and may prescribe procedures for conducting investigations into an applicant's character and qualifications.

36-445. Review of certain medical practices

The governing body of each licensed hospital or outpatient surgical center shall require that physicians admitted to practice in the hospital or center organize into committees or other organizational structures to review the professional practices within the hospital or center for the purposes of reducing morbidity and mortality and for the improvement of the care of patients provided in the institution. Such review shall include the nature, quality and necessity of the care provided and the preventability of complications and deaths occurring in the hospital or center. Such review need not identify the patient or doctor by name but may use a case number or some other such designation.

36-445.01. Confidentiality of information; conditions of disclosure

A. All proceedings, records and materials prepared in connection with the reviews provided for in section 36-445, including all peer reviews of individual health care providers practicing in and applying to practice in hospitals or outpatient surgical centers and the records of such reviews, are confidential and are not subject to discovery except in proceedings before the Arizona medical board or the board of osteopathic examiners, or in actions by an individual health care provider against a hospital or center or its medical staff arising from discipline of such individual health care provider or refusal, termination, suspension or limitation of the health care provider's privileges. No member of a committee established under the provisions of section 36-445 or officer or other member of a hospital's or center's medical, administrative or nursing staff engaged in assisting the hospital or center to carry out functions in accordance with that section or any person furnishing information to a committee performing peer review may be subpoenaed to testify in any judicial or quasi-judicial proceeding if the subpoena is based solely on those activities.

B. This article does not affect any patient's claim to privilege or privacy or to prevent the subpoena of a patient's medical records if they are otherwise subject to discovery or to restrict the powers and duties of the director pursuant to this chapter, with respect to records and information that are not subject to this article. In any legal action brought against a hospital or outpatient surgical center licensed pursuant to this chapter claiming negligence for failure to adequately do peer review, representatives of the hospital or center are permitted to testify as to whether there was peer review as to the subject matter being litigated. The contents and records of the peer review proceedings are fully confidential and inadmissible as evidence in any court of law.
36-445.02. Immunity relating to review of medical practices

A. Any individual who, in connection with duties or functions of a hospital or outpatient surgical center pursuant to section 36-445, makes a decision or recommendation as a member, agent or employee of the medical or administrative staff of a hospital or center or of one of its review committees or related organizations or who furnishes any records, information, or assistance to such medical staff or review committee or related organization is not subject to liability for civil damages or legal action in consequence thereof.

B. No hospital or outpatient surgical center and no individual involved in carrying out review or disciplinary duties or functions of a hospital or center pursuant to section 36-445 may be liable in damages to any person who is denied the privilege to practice in a hospital or center or whose privileges are suspended, limited or revoked. The only legal action which may be maintained by a licensed health care provider based on the performance or nonperformance of such duties and functions is an action for injunctive relief seeking to correct an erroneous decision or procedure. The review shall be limited to a review of the record. If the record shows that the denial, revocation, limitation or suspension of membership or privileges is supported by substantial evidence, no injunction shall issue. In such actions, the prevailing party shall be awarded taxable costs, but no other monetary relief shall be awarded.

C. Nothing in this section relieves any individual, hospital or outpatient surgical center from liability arising from treatment of a patient.

36-445.03. Limitation of publication; identity of patient confidential

Any publication of the results of a review for the purposes provided in sections 36-445 and 36-445.01 shall be made only for the purposes provided in those sections and shall keep confidential the identity of any patient whose condition, care or treatment was a part thereof.
DEPARTMENT OF AGRICULTURE (F-18-0504)
Title 3, Chapter 5, Article 1, Sampling and Laboratory Certification
COMMENTS ON THE FIVE-YEAR-REVIEW REPORT

Purpose of the Agency and Number of Rules in the Report

This five-year-review report from the Arizona Department of Agriculture (Department) covers ten rules and one table in A.A.C. Title 3, Chapter 5, Article 1, related to sampling and laboratory certification. The rules include procedures for certification renewal to perform agricultural laboratory services and the Proficiency Testing program; requirements and standards for certified laboratories and referee laboratories; fees; testing procedures; and licensing timeframes.

The rules were last amended in 2004. In the previous five-year-review report, the Department proposed to amend Section 103; however, the Department was not able to amend the rule due to other priorities.

Proposed Action

At this time, the Department does not propose any actions on the rules. The Department plans to amend Section 103 when it conducts a more comprehensive rulemaking because it does not believe that the rule is so unclear that it requires a separate rulemaking. Moreover, the Department is anticipating that legislation will be passed this session which will require the Department to update its rules.

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

Yes. The Department cites applicable general and specific authority for the rules. According to A.R.S. § 3-107(A)(1), the director of the Department shall “adopt administrative
rules to effect its program and policies.” In addition, A.R.S. § 3-147 requires the director to “adopt reasonable rules for certification of laboratories that perform agricultural laboratory testing.”

2. **Summary of the agency’s economic impact comparison and identification of stakeholders:**

   The economic impact of the rules has not differed significantly since the last rulemaking in 2004. The same five laboratories remain certified by the Department.

   The key stakeholders affected by these rules are the Department, agricultural laboratories, and customers.

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

   Yes. The Department indicates that the rules impose the least burden and costs to the regulated community.

4. **Has the agency received any written criticisms of the rules over the last five years?**

   No. The Department indicates that it has not received any written criticisms over the last five years.

5. **Has the agency analyzed the rules’ effectiveness, consistency with other rules and statutes, and the rules’ clarity, conciseness, and understandability?**

   Yes. The Department indicates that the rules are effective, and consistent with other rules and statutes. The rules are also clear, concise, and understandable, with the exception of Section 103.

   Section 103 should be amended to clarify that certification is based on a specific service tied to a specific analyte (e.g., aflatoxin) for a specific substance (e.g., raw milk), rather than a category of services. In other words, separate certification is needed for aflatoxin testing of raw milk and cottonseed, as opposed to the certification applying broadly for aflatoxin testing in all substances.

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

   Yes. The Department indicates that the rules are enforced as written.

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

   No. The Department indicates that the rules are not more stringent than corresponding federal law.
8. **For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

   Not applicable. The rules were adopted before July 29, 2010.

9. **Conclusion**

   As mentioned above, the Department does not plan to amend the rules. However, the Department will amend Section 103 and conduct a comprehensive rulemaking if certain legislation is passed this session. The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. Council staff recommends approval of this report.
February 28, 2018

Nicole Colyer, Chair  
Governor’s Regulatory Review Council  
100 N. 15th Avenue, Suite 402  
Phoenix, Arizona 85007

RE: Five-Year Review Report for A.A.C. Title 3, Chapter 5

Dear Ms. Colyer:

Enclosed please find the Arizona Department of Agriculture’s five-year review report for A.A.C. Title 3, Chapter 5.

The Office reviewed all the rules in the article. It does not intend for any rules to expire under A.R.S. § 41-1056(J).

The Office certifies that it is in compliance with A.R.S. § 41-1091.

Please contact Doug Marsh at 602-744-4924 or Chris McCormack at (602) 542-8334 or Christopher.McCormack@azag.gov with any questions about this report.

Sincerely,

Mark Killian, Director  
Arizona Department of Agriculture
ARIZONA DEPARTMENT OF AGRICULTURE
STATE AGRICULTURAL LABORATORY

2018 FIVE YEAR REVIEW REPORT

3 A.A.C. 5

ARTICLE 1
SAMPLING AND LABORATORY CERTIFICATION

INFORMATION THAT IS IDENTICAL FOR ALL RULES UNLESS OTHERWISE STATED

1. **Statutory authority**

   General: A.R.S. § 3-107(A)(1)
   Specific: A.R.S. § 3-147

3. **Analysis of effectiveness in achieving the objective**

   The stated objectives of the rules are effectively met.

4. **Consistency**

   These rules are consistent with statutes and other rules.

   List of statutes or rules used in determining consistency:
   A.R.S. §§ 3-141 through 3-149
   3 A.A.C. 5

5. **Agency enforcement policy**

   The Department enforces the rules as written.

6. **Clarity, conciseness, and understandability**

   With the exception of rule 103, the rules are clear, concise and understandable.

7. **Written criticisms**

   The Department has not received any written criticisms of these rules within the last 5 years.
8. **Economic, small business, and consumer impact comparison**

The economic impact of the rules has not differed significantly from that projected in the last economic impact statement prepared. The Department has certified the same five laboratories for the past several years and the fee for certification (and recertification) has remained constant.

The rules in this article were effective and last revised on the following dates:

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<th>Rule</th>
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<th>Last Revision</th>
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9. **Analysis submitted by another person**

None

10. **Completion of course of action from prior review**

With the exception of R3-5-103, the Department did not propose any changes to these rules during the prior review.

11. **Determination that rule imposes least burden and costs**

The Department believes these rules, with the proposed changes identified in this report, impose the least burden and costs to persons regulated by the rules necessary to achieve the underlying regulatory objective.

12. **Determination that rule is not more stringent than corresponding federal law**

These rules are not more stringent than a corresponding federal law.

13. **Compliance with A.R.S. § 41-1037 for rules adopted after July 29, 2010 that require a permit**

None of these rules were adopted after July 29, 2010.
14. **Proposed course of action**

With the exception of R3-5-103, the Department proposes to maintain the rules as is.

**INFORMATION THAT IS NOT IDENTICAL**

**R3-5-101. Definitions**

2. **Objective**

This rule sets out the definitions used for specific terms in this Article.

**R3-5-102. Certification; Renewal; Termination**

1. **Statutory authority**

Specific: A.R.S. § 3-146.

2. **Objective**

This rule prescribes the procedures to apply for and renew certification to perform agricultural laboratory services, as well as the procedures for a certification holder to terminate the certification.

**R3-5-103. Agricultural Laboratory Services**

2. **Objective**

This rule prescribes the laboratory services for which a person can seek certification.

6. **Clarity, conciseness, and understandability**

This rule is partially clear, concise and understandable. The rule lists categories of agricultural laboratory services. But certification is based on a specific service tied to a specific analyte for a specific substance, not on a category of services. For example, one service is testing for aflatoxin in cottonseed. Aflatoxin testing in raw milk is a separate service and requires a separate certification. The rule is not clear on this point.

14. **Proposed course of action**

The next time that the Department conducts a rulemaking, it plans to amend this rule to clarify that certification is based on a specific service and not on a category of services. The Department is anticipating that legislation will be passed this session which will
require the Department to update its rules this fall. However, the Department does not
believe that the rule is so unclear that it requires a separate rulemaking to correct based on
the fact that there has been no documented confusion amongst the regulated community.

R3-5-104. Fees

1. Statutory authority

   Specific: A.R.S. § 3-146.

2. Objective

   This rule sets the fee for initial certification and renewal.

R3-5-105. Laboratory Requirements

2. Objective

   This rule requires certified laboratories to maintain certain documentation for a specific
   period of time, maintain a quality assurance manual with specific contents, ensure the
   accurate calibration of testing equipment, follow OSHA standards, and dispose of
   hazardous waste as provided in federal law.

R3-5-106. Testing Procedures

2. Objective

   This rule requires that certified laboratories use standardized testing procedures either
developed by or approved by the Department.

R3-5-107. Proficiency Testing Program

2. Objective

   This rule requires all applicants for certification to participate in a proficiency testing
   program to demonstrate their ability to provide credible test results for the agricultural
   service and to submit a corrective action plan to correct deficiencies.

R3-5-110. Referee Laboratory

2. Objective

   This rule prescribes use of a referee laboratory if the results from two certified labs are
different or an individual or state agency contests the results from a certified lab that it
contracts for service.
R3-5-111. Certification Expiration; Laboratory Relocation

2. Objective

This rule makes clear that laboratory certification is good for a physical location and that if a laboratory facility moves a new certification is required.

R3-5-112. Licensing Time-frames

1. Statutory authority

Specific: A.R.S. § 41-1073.

2. Objective

This rule establishes overall time-frames within which the Department shall issue or deny a license under this article.

4. Consistency

List of statutes or rules used in determining consistency:
A.R.S. §§ 41-1072 through 41-1079

Table 1. Time-frames (Calendar Days)

1. Statutory authority

Specific: A.R.S. § 41-1073.

2. Objective

This table, referenced in R3-5-112, lists the total number of days provided to the Department for administrative completeness reviews and substantive reviews within which the Department shall issue or deny a license.

4. Consistency

List of statutes or rules used in determining consistency:
A.R.S. §§ 41-1072 through 41-1079
ARTICLE 1. SAMPLING AND LABORATORY CERTIFICATION

Article 1, consisting of Sections R3-5-101 through R3-5-110 renumbered from R3-1-701 through R3-1-710 (Supp. 91-4).

Title 3, Chapter 1, Article 7 consisting of Sections R3-1-201 through R3-1-210 renumbered without change as Article 7, Sections R3-1-701 through R3-1-710 (Supp. 89-1).

Title 3, Chapter 1, Article 7 consisting of Sections R3-1-201 through R3-1-210 adopted effective July 25, 1985.

Section
R3-5-101. Definitions
R3-5-102. Certification; Renewal; Termination
R3-5-103. Agricultural Laboratory Services
R3-5-104. Fees
R3-5-105. Laboratory Requirements
R3-5-106. Testing Procedures
R3-5-107. Proficiency Testing Program
R3-5-108. Repealed
R3-5-109. Repealed
R3-5-110. Referee Laboratory
R3-5-111. Certification Expiration; Laboratory Relocation
R3-5-112. Licensing Time-frames
Table 1. Time-frames (Calendar Days)

ARTICLE 1. SAMPLING AND LABORATORY CERTIFICATION

R3-5-101. Definitions
In addition to the definitions in A.R.S. §§ 3-101 and 3-141, the following terms apply to this Chapter:

"Accuracy" means the closeness of an observation to the true value.

"Embossing Seal" means a seal approved by the SAL.

"Person" means an individual, partnership, corporation, or other legal entity that establishes, conducts, or maintains a laboratory as prescribed in A.R.S. § 3-145(A).

"Precision" means the agreement of repeated observations made under the same conditions.

"Proficiency Testing Program" or "PTP" means a check sample testing program.

"Quality assurance" means an integrated system of management activities involving planning, implementation, assessment, reporting, and quality improvement to ensure that a process, item, or service is of definable quality.

"SAL" means Arizona Department of Agriculture State Agricultural Laboratory.

"Testing" means a process employed to achieve a result for an agricultural service performed by a certified laboratory.

Historical Note
Adopted effective July 25, 1985 (Supp. 85-4). Former Section R3-1-201 renumbered without change as Section R3-5-101 (Supp. 89-1). Section R3-5-101 renumbered from R3-1-701 (Supp. 91-4). Amended by final rulemak-
R3-5-103. Agricultural Laboratory Services

A. A person may apply for a laboratory certification to perform any of the services listed in A.R.S. § 3-141(1) or any of the following agricultural laboratory services:

1. Determination of specific element and ion content of water for irrigation or livestock purposes;
2. Determination of specific element and ion content of plant tissue for the evaluation of plant nutrients;
3. Determination of specific element and ion content of soil for the evaluation of soil fertility and for element and ion content that may cause plant growth limitations;
4. Determination of the content of processed meat or a meat food product including the percentage of a meat or non-meat ingredient;
5. Verification of an analysis for the accuracy of the label guarantee of a feed, fertilizer, animal manure, plant growth stimulant, soil amendment, soil conditioner, or pesticide;
6. Verification of planting seed germination percentages, purity analysis, or another named seed or plant propagative material testing procedure;
7. Identification of insects, plant pathogens, animal pathogens, nematodes, noxious weeds, noxious weed seeds, or animal parasites;
8. Testing of milk or milk product for quality and market standards;
9. Determination of mycotoxin, antibiotic, or drug residue in plant or animal tissue;
10. Determination of mycotoxin, antibiotic, or drug residue in a plant or animal product, animal feed, or feed ingredient;
11. Determination of a specific pesticide, or hazardous or toxic element in plant or animal tissue;
12. Determination of a specific pesticide or hazardous or toxic element in water used in livestock production, irrigation water, air, soil, agricultural product, or animal feed; or
13. Collection of samples.

B. A person may seek laboratory certification for an agricultural laboratory service not listed in subsection (A) by complying with R3-5-102(A).

R3-5-104. Fees

A. A person shall pay the following fee to the Department before the SAL will review the application for laboratory certification to perform an agricultural laboratory service:

1. Initial fee, $200 per certification; or
2. Renewal fee, $100 per certification.

B. Except as provided in A.R.S. § 41-1077, the applicable fee is nonrefundable.

Historical Note

R3-5-105. Laboratory Requirements

A. A person who has obtained laboratory certification under this Article shall maintain a master file for each certification. The person shall update the master file within 30 days of any change. The master file shall contain:

1. The most current letter of certification, stating the period of validity;
2. A quality assurance manual as described in subsection (B);
3. An organizational chart that indicates:
   a. Each personnel position with responsibility for the agricultural laboratory service; and
   b. The reporting relationship of each position identified in subsection (A)(3)(a), including every administrative, operational, and quality control relationship;
4. The name and resume of the individual assigned to each position identified in subsection (A)(3)(a);
5. Documentation of training for each staff member who performs all or part of the agricultural laboratory service;
6. Documentation of the laboratory’s competence and experience in the applicable test procedure for the agricultural laboratory service;
7. Reports of each sample result for the last three years and all data generated during the testing. After three years, these records shall be maintained as prescribed in subsection (D). With the approval of the Assistant Director, a person may maintain records in electronic format;
8. Laboratory equipment lists, including:
   a. Type and manufacturer;
   b. Serial and model number;
   c. Date of the last calibration, if applicable; and
   d. Maintenance records;
9. Receiving and shipping records of all samples and supplies relating to the certification;
10. Quality control documentation;
11. Documentation of reference material, standards, and biological specimens as prescribed in subsection (B)(5); and
12. All correspondence relating to the certification and operation of the program.

B. A person who has obtained laboratory certification shall maintain a quality assurance manual. The person shall update the manual within 30 days of any change, except that any change to a testing procedure requires pre-approval from the Assistant Director based on a request made at least 30 days before the proposed implementation date. The manual shall contain:

1. A description of laboratory management and the responsibilities of personnel related to the certification that includes:
   a. The legal name, address, and telephone number of the main office or parent company;
   b. The name, location of the laboratory, and telephone number, if different from subsection (B)(1)(e);
   c. The education, skill, and experience required of an individual in a position included in the organizational chart prescribed in subsection (A)(3); and
   d. A description of the method used to train each person in a position included in the organizational chart prescribed in subsection (A)(3);
2. Procedures for receiving and handling samples, including:
   a. Transporting samples to the laboratory in a manner that protects the integrity of the sample;
   b. Performing a visual examination upon receipt for evidence of shipping damage;
   c. Recording date and time of sample receipt, carrier name, and method of shipment;
   d. Recording sample weight, temperature, or other physical parameters, as applicable;
   e. Completing chain of custody documentation for receipt, as applicable;
   f. Identifying a sample with a unique identification number;
   g. Storing a sample before and after testing; and
   h. Disposing of samples after completion of testing, including holding time;
3. Procedures for purchasing, receiving and storing reagents and laboratory consumable materials that affect the quality of tests;
4. A written standard operating procedure for each test as prescribed in R3.1-106. A standard operating procedure for a test shall contain, as applicable:
   a. An identification of the standard operating procedure, including the title, revision number, effective date, and authorizing signature;
   b. The purpose of the procedure, including a description of the expected outcome;
   c. The scope of the procedure, including a description of the type of samples and test parameters for which the procedure is applicable;
   d. A list of reagents, apparatus, and equipment used, including technical performance requirements;
   e. A list of necessary reference standards or reference materials;
   f. A description of acceptable environmental conditions;
   g. A sequential listing, in detail, of the steps and operations of the procedure;
   h. An identification of any hazardous situation or operation;
   i. A list of safety measures specific to the test procedure;
   j. A list of precautions designed to prevent damage or contamination to a sample or testing equipment;
   k. Any quality control measures that will be used to determine acceptability of a test result, including acceptance criteria;
   l. A list of data to be recorded and the method for reporting the test result; and
   m. The procedure’s uncertainty or the method to be used for reporting uncertainty;
5. Procedures for documenting applicable reference material, standards, and biological specimens that provide:
   a. Traceability of each chemical standard of measurement to a primary standard;
   b. Verified and traceable biological specimens; and
   c. Origin and traceability of reference material;
6. A description of an equipment maintenance program that includes:
   a. Each manufacturer’s recommendations for the setup and normal operation of each piece of equipment;
   b. A separate maintenance schedule for each piece of equipment, and a procedure for recording the date maintenance is performed and the date of any damage, malfunction, modification, or repair of the equipment; and
   c. Quality control procedures for determining equipment performance; and
7. Procedures for quality control activity, including:
   a. Monitoring temperature-controlled spaces;
   b. Certifying that each thermometer, analytical balance, and biological hood meets federal or nationally-recognized standards, as applicable;
   c. Calibrating glassware and volumetric equipment, as applicable; and
   d. Validating the quality of reagents and laboratory consumable material, as applicable.
C. A person who has obtained laboratory certification shall ensure the accurate calibration of testing equipment.
D. A person who has obtained laboratory certification shall maintain records required under this Article for five years, except pesticide residue sample results and data, which shall be maintained for seven years;
E. A person who has obtained laboratory certification shall maintain a facility and conduct operations in compliance with the standards established by the Occupational Safety and Health Administration and any other applicable federal, state, or local building, sanitary, safety, electrical, and fire code for the area in which the laboratory is located.
F. A person who has obtained laboratory certification shall dispose of hazardous waste cataloged in the Identification and Listing of Hazardous Waste, 40 CFR 261, July 1, 2003 edition, as prescribed in the Standards Applicable to Generators of Hazardous Waste, 40 CFR 262, July 1, 2003 edition. This material is incorporated by reference, does not include any later amendments or editions, and is on file with the Department.

Historical Note

R3.1-106. Testing Procedures
A person complying with this Article shall:
1. Use testing procedures that are referenced in professional journals or manuals and obtain the Assistant Director’s approval of the procedures, or
2. Use testing procedures established by the SAL.

Historical Note

R3.1-107. Proficiency Testing Program
A. A person applying for laboratory certification shall participate in a PTP to demonstrate the ability of the laboratory to provide the agricultural laboratory service.
B. A person participating in an outside PTP shall provide the Assistant Director with its identification number and a copy of the results. The person shall pay the cost of the PTP.
C. The Department shall evaluate each laboratory based on comparative results obtained for each FTP sample. If the Department discovers a deficiency, the person applying for laboratory certification shall submit a corrective action plan to the Assistant Director.

Historical Note

R3-5-108. Repealed

Historical Note
Adopted effective July 25, 1985 (Supp. 85-4). Former Section R3-1-208 renumbered without change as Section R3-5-108 (Supp. 89-1). Section R3-5-108 renumbered from R3-1-708 (Supp. 91-4). Section repealed by final rulemaking at 5 A.A.R. 573, effective February 4, 1999 (Supp. 99-1).

R3-5-109. Repealed

Historical Note
Adopted effective July 25, 1985 (Supp. 85-4). Former Section R3-1-209 renumbered without change as Section R3-5-109 (Supp. 89-1). Section R3-5-109 renumbered from R3-1-709 (Supp. 91-4). Section repealed by final rulemaking at 5 A.A.R. 573, effective February 4, 1999 (Supp. 99-1).

R3-5-110. Referee Laboratory
If the testing results from two certified laboratories differ or certified laboratory results are challenged by a person or state agency that is contracting for agricultural laboratory services, the Director may designate a laboratory to serve as a referee and assist in making a final determination. If the test results are challenged, the party who loses the dispute shall pay all costs incurred by the referee laboratory.

Historical Note
Adopted effective July 25, 1985 (Supp. 85-4). Former Section R3-1-210 renumbered without change as Section R3-5-110 (Supp. 89-1). Section R3-5-110 renumbered from R3-1-710 (Supp. 91-4). Amended by final rulemaking at 5 A.A.R. 573, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 10 A.A.R. 3959, effective November 13, 2004 (Supp. 04-3).

R3-5-111. Certification Expiration; Laboratory Relocation
A laboratory certification is valid for the physical location approved by the SAL in response to the initial or renewal application. If a laboratory relocates after initial certification or renewal of certification, the existing 12-month certification expires on the date of the move. A person seeking laboratory certification for the new location shall file an initial certification application to become certified at the new physical location and the Department shall perform an on-site review.

Historical Note
New Section made by final rulemaking at 10 A.A.R. 3959, effective November 13, 2004 (Supp. 04-3).

R3-5-112. Licensing Time-frames
A. Overall time-frame. The Department shall issue or deny a laboratory certification within the overall time-frame listed in Table 1 after receipt of an application. The overall time-frame is the total of the number of days provided for the administrative completeness review and the substantive review.

B. Administrative completeness review.
1. The applicable administrative completeness review time-frame established in Table 1 begins on the date the Department receives an application. The Department shall notify the applicant in writing within the administrative completeness review time-frame whether the application is incomplete. The notice shall specify the information that is missing. If the Department does not provide notice to the applicant within the administrative completeness review time-frame, the application is complete.

2. An applicant with an incomplete certification application shall supply the missing information within the completeness review period established in Table 1. The administrative completeness review time-frame is suspended from the date that the Department mails the notice of missing information to the applicant until the date that the Department receives the information.

3. If the applicant fails to submit the missing information before expiration of the completeness review period request, the Department shall close the file, unless the applicant requests an extension. An applicant whose file has been closed may obtain laboratory certification by submitting a new application.

4. If an applicant requests laboratory certification of a new service, the Department shall add 90 days to the administrative completeness review time-frame to provide time for establishing a protocol for granting certification.

C. Substantive review. The substantive review time-frame established in Table 1 begins on the date that the application is administratively complete.

1. On-site survey.
   a. Within 30 days after receipt of a complete application, the SAL shall schedule an on-site survey of an applicant's laboratory facilities.
   b. The Assistant Director may waive the on-site survey for a renewal applicant if the renewal applicant is in compliance with the other provisions of this Article.

2. If the Department makes a comprehensive written request for additional information, the applicant shall submit the additional information identified by the request within the additional information period provided in Table 1. The substantive review time-frame is suspended from the date that the Department mails the request until the information is received by the Department. If the applicant fails to provide the information identified in the written request within the additional information period, the Department shall deny the certification.

3. If laboratory certification is denied, the Department shall send the applicant written notice explaining:
   a. The reason for the denial with citations to supporting statutes or rules;
   b. The applicant's right to appeal the denial;
   c. The period for appealing the denial; and
   d. The name and telephone number of a Department contact person who can answer questions regarding the appeals process.

Historical Note
New Section made by final rulemaking at 10 A.A.R. 3959, effective November 13, 2004 (Supp. 04-3).
Table 1. Time-frames (Calendar Days)

<table>
<thead>
<tr>
<th>Certification</th>
<th>Authority</th>
<th>Administrative Completeness Review</th>
<th>Completion Request Period</th>
<th>Substantive Completeness Review</th>
<th>Additional Information Period</th>
<th>Overall Time-frame</th>
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<td>Laboratory Certification</td>
<td>A.R.S. § 3-145</td>
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<td>R3-5-102</td>
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<td>14</td>
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<td>New service</td>
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Historical Note
Table 1 adopted by final rulemaking at 5 A.A.R. 573, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 10 A.A.R. 3959, effective November 13, 2004 (Supp. 04-3).
Arizona Revised Statutes, Title 3, Chapter 1, Article 4
State Agricultural Laboratory

3-141. Definitions

In this article, unless the context otherwise requires:
1. "Agricultural laboratory services" means the following services:
   (a) Providing a residue analysis of:
       (i) Raw, processed or manufactured agricultural commodities and products.
       (ii) Soil.
       (iii) Plant or animal tissue.
       (iv) Commercial feed as defined in section 3-2601.
       (v) Fertilizer as defined in section 3-262.
       (vi) Water used for agricultural purposes.
   (b) Providing a nutrient analysis of:
       (i) Raw, processed or manufactured agricultural commodities and products.
       (ii) Soil.
       (iii) Plant or animal tissue.
       (iv) Commercial feed as defined in section 3-2601, and including whole seeds and
            any feed mixed or unmixed used in the feeding of animals.
       (v) Fertilizer as defined in section 3-262.
   (c) Providing a quantitative analysis of ingredients in pesticide formulations.
   (d) Providing a germination and purity analysis of planting seed.
   (e) Providing the identification of insects, parasites, bacteria and pathogenic organisms in
       raw, processed or manufactured agricultural products and commodities and in plant or
       animal tissue.
   (f) Providing the services necessary to carry out section 3-1203, subsection A.
   (g) Providing any other services compatible with or incidental to those laboratory
       services provided pursuant to sections 3-142 and 3-143.
2. "Assistant director" means the assistant director for the state agricultural laboratory

3-142. State agricultural laboratory

There is established a state agricultural laboratory in the department to provide laboratory
services to the department and others as provided by law or pursuant to contract.

3-143. Assistant director: powers and duties

A. The assistant director for the state agricultural laboratory is responsible for the administration,
operation and control of the state agricultural laboratory.
B. The assistant director shall have all the following qualifications:
   1. A master's degree in chemistry or its equivalent in practical experience as determined
      by the director.
2. Experience in agricultural laboratory testing or experience in a control laboratory of an agency that regulates feeds, fertilizers or pesticides.
C. The assistant director shall enforce rules established pursuant to section 3-147:
   1. For the voluntary certification of laboratories providing agricultural laboratory services to persons of this state.
   2. For the mandatory certification of laboratories providing agricultural laboratory services to agencies and departments of this state or its political subdivisions, including those laboratories that are a part of a state agency or department or a political subdivision of this state.
   3. Prescribing testing, documentation and quality assurance procedures and requirements.
D. The assistant director may contract with and assist other divisions and offices in the department and other departments and agencies of the state, local and federal governments in the furtherance of the purposes of this article, including contracting to provide laboratory services.

3-144. State agricultural laboratory: maintenance and purpose: fees

A. The state agricultural laboratory is established and maintained to carry out this article and for laboratory examinations, diagnosis, analysis, testing, quantifying and identification necessary to perform the functions and duties prescribed by this article.
B. The state agricultural laboratory may accept samples from any person for regulatory, diagnostic and research purposes.
C. The state agricultural laboratory may collect fees for laboratory services as prescribed by the director.

3-145. Mandatory and voluntary certification: sampling procedures: application: expiration; renewal

A. A person who establishes, conducts or maintains a laboratory that provides agricultural laboratory services to agencies or departments of this state or its political subdivisions shall apply for a certificate from the state agricultural laboratory as proof that the laboratory so certified is in compliance with rules adopted by the director for the certification of such laboratories. Any other person providing agricultural laboratory services may apply for such a certificate.
B. A person providing guaranteed laboratory analysis information to distributors of commercial feed and whole seeds for consumption by livestock shall be certified under this section.
C. An individual who collects samples for the state agricultural laboratory or for any certified agricultural laboratory shall follow the sampling procedures established by the director.
D. A certified laboratory shall report test results only to the party who provided the original sample and, on request, to the state agricultural laboratory or as required by section 3-2611.01.
E. A person who desires a certificate pursuant to this section shall file with the state agricultural laboratory an application for a certificate accompanied by the application fee.
F. The application shall be on a form prescribed by the assistant director and furnished by the state agricultural laboratory and shall contain:
1. The name and location of the laboratory.
2. The name of the person owning the laboratory and the name of the person supervising the laboratory.
3. A description of the programs, services and functions provided by the laboratory.
4. Such other information as the assistant director deems necessary to carry out the purposes of this section.

G. The assistant director shall issue a certificate to an applicant if the assistant director is satisfied that the applicant has complied with the rules prescribing standards for certified laboratories.

H. A certificate expires one year after the date of issuance and shall be renewed upon payment of the renewal application fee as prescribed in section 3-146 and continued compliance with this article and the applicable rules.

3-146. Certificate fees

The director may establish by rule and the assistant director shall collect in advance the following nonrefundable fees:

1. For an initial laboratory certificate, not more than nine hundred dollars.
2. For a renewal of a laboratory certificate, not more than nine hundred dollars.
3. For a duplicate of a certificate, two dollars.

3-147. Rules; advisory committee

A. The director shall adopt reasonable rules for certification of laboratories that perform agricultural laboratory testing. Rules shall be prescribed only insofar as they affect the precision and accuracy of laboratory results. The rules shall include:

1. Acceptable methods of sampling, analyzing and testing including the routine examination of certified laboratories for accuracy of analysis.
2. Acceptable standards of sanitary and safety conditions within the laboratory and its surroundings.
3. Equipment essential to the proper operation of a laboratory.
4. The construction and operation of the laboratory, including plumbing, heating, lighting, ventilation, electrical services and similar conditions.

B. If before adopting rules pursuant to this section the director determines that it is necessary or desirable, the director may appoint an advisory committee pursuant to section 3-106.

3-148. Grounds for denial, suspension or revocation of a certificate; review and appeal

A. The assistant director may refuse to grant or renew a certificate or may suspend or revoke a certificate if the assistant director has reasonable grounds to believe that the applicant or registrant is not in compliance with adopted rules relating to the certification of laboratories pursuant to this article. The assistant director shall notify an applicant of the reasons for the action.
B. The director shall review the assistant director's action on request of any person adversely affected by the action, and the director's decision is subject to appeal pursuant to title 41, chapter 6, article 10.

3-149. **Evidence**

**Effect of test results certified by the assistant director**

Test results certified by the assistant director are prima facie evidence of the facts stated in the results.
COMMENTS ON THE FIVE-YEAR-REVIEW REPORT

Purpose of the Agency and Number of Rules in the Report

The purpose of the Greater Arizona Development Authority (Authority or GADA) is to assist local and tribal governments and special districts with the development of public infrastructure, by providing technical and financial assistance. The Authority leverages funding for infrastructure projects, helps to accelerate project development, and lowers the costs of financing. The Authority was formerly housed within the Department of Commerce, but is now part of the Arizona Finance Authority (AFA). The Executive Director of the Water Infrastructure Finance Authority (WIFA) has been delegated authority by the AFA to act on GADA matters.

This report covers eight rules in A.A.C. Title 20, Chapter 8. The rules were adopted on February 3, 1998 and amended effective March 6, 2010. In 2013, citation corrections were made by the Secretary of State, pursuant to A.R.S. § 41-1011(C), upon the Authority’s request.

Proposed Action

The Authority does not propose any changes to the rules.

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

   Yes. The Authority cites applicable statutory authority for the rules. Under A.R.S. § 41-2255(A)(3), the Authority must “[e]stablish by rule criteria by which technical and financial assistance will be awarded. For financial assistance the criteria shall include a determination of the ability of the applicant to repay a loan according to its terms and other conditions established...”
by this article.” In addition, under A.R.S. § 41-2255(A)(4), the Authority is to “[a]dopt rules to prioritize applications for technical and financial assistance.”

2. **Summary of the agency’s economic impact comparison and identification of stakeholders:**

   The key stakeholders affected by these rules are the Administration and recipients of program assistance. The rules outline the administration of GADA’s Technical and Financial Assistance programs. By utilizing the Technical Assistance program, Arizona communities can develop public infrastructure projects in the pre-construction phase. Through the Financial Assistance program, communities can obtain long-term financing for these projects. Recent state statutory changes transferred GADA to the Arizona Finance Authority. It is estimated that no economic, small business, or consumer impact resulted from these revisions.

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

   Yes. The Authority has determined that the rules impose the least burden and costs to persons regulated by the rules, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objectives.

4. **Has the agency received any written criticisms of the rules over the last five years?**

   No. The Authority indicates that it has not received any written criticisms of the rules over the last five years.

5. **Has the agency analyzed the rules’ clarity, conciseness, and understandability, consistency with other rules and statutes, and effectiveness?**

   Yes. The Authority indicates that the rules are clear, concise, and understandable, are consistent with other rules and statutes, and are effective.

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

   Yes. The Authority indicates that the rules are enforced as written.

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

   No. The Authority indicates that the rules are not more stringent than federal law.

8. **For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

   Not applicable. The rules were adopted prior to July 29, 2010.
9. **Conclusion**

   No action is proposed on the rules. The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. Council staff recommends that the report be approved.
February 27, 2018

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

Dear Ms. Ong Colver,

Attached is the Five-Year Review Report by the Greater Arizona Development Authority (GADA) for A.A.C. Title 20, Chapter 8. All rules have been reviewed as part of this five-year review. GADA does not intend to let any rule expire. No rule review was rescheduled by the Council. GADA is in compliance with A.R.S. § 41-1091.

The contact for this report is:

    Trish Incognito
    On behalf of the Arizona Finance Authority for GADA
    100 N. 15th Avenue, Suite 103
    Phoenix, Arizona 85007
    Telephone: (602) 364-1235
    Fax: (602) 364-1327
    E-mail: pincognito@azwifa.gov

Sincerely,

Trish Incognito
WIFA Executive Director
Greater Arizona Development Authority
Five-Year Review Report

A.A.C. Title 20, Chapter 8

Submitted to the

Governor’s Regulatory Review Council

February 2018
Introduction

Created in 1997, the Greater Arizona Development Authority (GADA) received a one-time $20 million appropriation in order to (1) leverage funding for infrastructure projects, (2) help accelerate project development and (3) lower costs of financing.

Recent state statutory changes to A.R.S. Title 41, Chapter 18 and the addition of A.R.S. Title 41, Chapter 53 have affected GADA. On August 6, 2016, Arizona House Bill 2666 (Fifty-second Legislature, Second Regular Session, 2016) became effective, transferring GADA to the newly established Arizona Finance Authority (AFA) which is governed by a newly created AFA Board of Directors. The GADA Board of Directors was dissolved. Governance of the Authority is now under the AFA Board of Directors. The Executive Director of WIFA has been delegated authority by the AFA to act on GADA matters.

GADA’s mission is to assist Arizona communities and tribal governments with the development of public infrastructure projects that enhance community and economic development. GADA achieves these tenets through its Technical and Financial Assistance programs. By utilizing the Technical Assistance program, Arizona communities can develop public infrastructure projects in the pre-construction phase. Through the Financial Assistance program, communities can obtain long-term financing for these projects.

A copy of the rules being reviewed in this report is included in Attachment A.

1. **Authorization of the rule by existing statutes**

   A.R.S. § 41-2255(A)(3-4) directs the Authority to create rules governing the awarding of technical and financial assistance. All GADA’s rules stem from this statutory authority.

2. **The objective of each rule:**

   **Article 1. Technical Assistance**

   **A.A.C. R20-8-101 Definitions:** The intent of this rule is to define the terms used throughout Article 1.

   **A.A.C. R20-8-102 Application Process:** This rule formalizes the process of opening a new round of technical assistance. It also provides a list of items that the Authority requests as part of an application.

   **A.A.C. R20-8-103 Eligibility Criteria:** The purpose of this rule is to set forth the eligibility criteria for receipt of technical assistance.

   **A.A.C. R20-8-104 Priority; Approval and Disapproval; Appeal:** These rules set forth the process of prioritizing technical assistance applications, making technical assistance awards based on the prioritization, and handling any appeal of prioritization or award.

   **Article 2. Financial Assistance**

   **A.A.C. R20-8-201 Definitions:** The intent of this rule is to define the terms used throughout Article 2.
A.A.C. R20-8-202 Application Process: This rule is intended to formalize the process of opening a new round of financial assistance. It also provides a list of items that the Authority may request as part of an application for financial assistance.

A.A.C. R20-8-203 Eligibility Criteria: The objective of this rule is to set forth the eligibility criteria for the receipt of financial assistance.

A.A.C. R20-8-204 Priority; Approval and Disapproval; Funding; Appeal: The purpose of this rule is to establish the process of prioritizing financial assistance applications, making financial assistance awards, and handling any appeal of prioritization or awards.

3. Are the rules effective in achieving their objectives? Yes X No
   In accordance with A.A.C. R1-6-301(B), GADA reports that the following information is identical for all GADA rules:

   GADA believes the rules are effective in achieving their objectives. GADA bases this conclusion on the fact it is able to fulfill its statutory responsibilities.

4. Are the rules consistent with other rules and statutes? Yes X No
   In accordance with A.A.C. R1-6-301(B), GADA reports that the following information is identical for all GADA rules:

   The rules in 20 A.A.C. 8 are consistent with A.R.S. Title 41, Chapter 18. These statutes are included in Attachment B.

5. Are the rules enforced as written? Yes X No
   In accordance with A.A.C. R1-6-301(B), GADA reports that the following information is identical for all GADA rules:

   All of the rules are being enforced, and there are no issues with enforcement.

6. Are the rules clear, concise, and understandable? Yes X No
   In accordance with A.A.C. R1-6-301(B), GADA reports that the following information is identical for all GADA rules:

   GADA has analyzed the clarity, conciseness and understandability of its rules and concluded that the rules are clear, concise and understandable.

7. Has the agency received written criticisms of the rules within the last five years? Yes No X
   In accordance with A.A.C. R1-6-301(B), GADA reports that the following information is identical for all GADA rules:

   GADA has not received any written criticisms or analyses of the rule within the five years immediately preceding this five-year review report.
8. **Economic, small business, and consumer impact comparison:**
   In accordance with A.A.C. R1-6-301(B), GADA reports that the following information is identical for all GADA rules:

   The economic, small business and consumer impact of the rules has not changed from that projected in the Economic, Small Business and Consumer Impact Statement submitted for the 2010 rulemaking. A copy of the 2010 Economic, Small Business and Consumer Impact Statement is included in Attachment C.

9. **Has the agency received any business competitiveness analyses of the rules?**
   Yes  No  **X**
   In accordance with A.A.C. R1-6-301(B), GADA reports that the following information is identical for all GADA rules:

   GADA has not received any business competitiveness analyses of the rules.

10. **Has the agency completed the course of action indicated in the agency’s previous five-year-review report?**
    In accordance with A.A.C. R1-6-301(B), GADA reports that the following information is identical for all GADA rules:

    Statute citations throughout 20 A.A.C. 8 were corrected in 2013. GADA has determined that its rules are satisfactory and does not plan to amend the rules in 20 A.A.C. 8 in the foreseeable future.

11. **A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:**
    In accordance with A.A.C. R1-6-301(B), GADA reports that the following information is identical for all GADA rules:

    GADA determined the probable benefits of the rules outweigh their probable costs and the rules impose the least burden and costs to regulated persons necessary to achieve the underlying regulatory objective.

12. **Are the rules more stringent than corresponding federal laws?**
    Yes  No  **X**
    In accordance with A.A.C. R1-6-301(B), GADA reports that the following information is identical for all GADA rules:

    This is a state program and is governed by state law.

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with**
the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:
In accordance with A.A.C. R1-6-301(B), GADA reports that the following information is identical for all GADA rules:

These rules do not require the issuance of a regulatory permit, license or other agency authorization.

14. **Proposed course of action**
In accordance with A.A.C. R1-6-301(B), GADA reports that the following information is identical for all GADA rules:

GADA has determined that its rules are satisfactory and does not plan to amend the rules in 20 A.A.C. 8 in the foreseeable future.
Attachment A

A.A.C. Title 20, Chapter 8
ARTICLE 1. TECHNICAL ASSISTANCE

Section R20-8-101. Definitions
R20-8-102. Application Process
R20-8-103. Eligibility Criteria
R20-8-104. Priority; Approval and Disapproval; Appeal

In addition to the definitions prescribed in A.R.S. § 41-2251, the following definitions apply in this Article:

“Administrative fee” means any and all costs or expenses associated with processing, preparing or executing a technical assistance application or related transaction, including costs and expenses associated with staff, the Board, professional services, service providers, vendors or other entities involved in the transaction.

“Administratively complete” means that an applicant has completed the application for technical assistance and provided all of the information and documents that staff determines are applicable.

“Applicant” means a political subdivision, special district, Indian tribe, or tribal subdivision that applies to the Authority for technical assistance.

“Economic impact summary” means an economic analysis that establishes the economic context for a project based on information provided by the applicant.

“Project” means the whole, or any distinguishable segment or segments, of publicly owned infrastructure for which technical assistance is being requested or provided.

“Project Assistance Account” means an account within the Technical Assistance Program of the Authority designed to provide technical assistance for eligible infrastructure projects that are in the final phases of project development.

“Project Development Account” means an account within the Technical Assistance Program of the Authority designed to provide technical assistance to eligible infrastructure projects that are in the early or exploratory phases of project development.

“Staff” means the Executive Director and other employees of the Department of Commerce.

“Technical assistance round” means a period of time established by the Board during which applications for technical assistance are sent to potential applicants, returned to the Authority, analyzed by Staff, and submitted to the Board for approval or disapproval.

ARTICLE 2. FINANCIAL ASSISTANCE

Section R20-8-201. Definitions
R20-8-202. Application Process
R20-8-203. Eligibility Criteria
R20-8-204. Priority; Approval and Disapproval; Funding; Appeal

In addition to the definitions prescribed in A.R.S. § 41-2251, the following definitions apply in this Article:

“Administrative fee” means any and all costs or expenses associated with processing, preparing or executing a technical assistance application or related transaction, including costs and expenses associated with staff, the Board, professional services, service providers, vendors or other entities involved in the transaction.

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“Technical assistance round” means a period of time established by the Board during which applications for technical assistance are sent to potential applicants, returned to the Authority, analyzed by Staff, and submitted to the Board for approval or disapproval.

**Historical Note**

shall satisfy all of the following criteria:

1. The applicant is a political subdivision, Indian tribe, tribal subdivision, or special district.
2. The technical assistance requested is for the development of an infrastructure project.
3. The application is administratively complete.
4. The applicant provides evidence that the project has public support.
5. The applicant provides evidence that the project is part of an adopted comprehensive plan, for example, a capital improvement plan, a local strategic plan, general plan, comprehensive plan or similar planning document or evidence that the project has been discussed in meetings or in study sessions of the governing body of the applicant.
6. The cost of the technical assistance does not exceed 10% of the total cost of the final project.
7. The applicant does not have an open award for technical assistance from the Authority.
8. The applicant is not requesting technical assistance for a project that has already received funds from the Financial Assistance Program.
9. Applicants are responsible for the payment of all administrative fees and penalties associated with technical assistance. Administrative fees shall be paid on or before 90 days from the date on the Authority’s invoice. Administrative fees remaining unpaid after 90 days from the date of the Authority’s invoice shall be subject to penalties of five percent per annum. Applicants with outstanding administrative fees or penalties are not eligible for technical or financial assistance.

**Historical Note**


**R20-8-103. Eligibility Criteria**

Applicants for the Project Assistance Account must satisfy all of the requirements in A.R.S. § 41-2256 in addition to the items below. To be eligible to receive technical assistance, an applicant shall satisfy all of the following criteria:

1. The applicant is a political subdivision, Indian tribe, tribal subdivision, or special district;
2. The technical assistance requested is for the development of an infrastructure project;
3. The application is administratively complete;
4. The applicant provides evidence that the project has public support;
5. The applicant provides evidence that the project is part of an adopted comprehensive plan, for example, a capital improvement plan, a local strategic plan, general plan, comprehensive plan or similar planning document or evidence that the project has been discussed in meetings or in study sessions of the governing body of the applicant;
6. The cost of the technical assistance does not exceed 10% of the total cost of the final project;
7. If the project is listed on the priority list of the Water Infrastructure Finance Authority or on the Department of Transportation’s Five-Year State Plan, a document evidencing this fact; and
8. A resolution from the governing body of the applicant stating the following:
   a. The project is in the best interests of the residents,
   b. The estimated economic impact on the community, and
   c. The commitment of a local cash contribution; or
9. If the applicant is a tribal subdivision:
   a. A resolution from the tribal council in support of the tribal subdivision’s technical assistance application, or
   b. Certification by the tribal council that the tribal subdivision may enter into intergovernmental agreements with state agencies without further tribal council action;
10. The applicant’s financial statements for the most recent three years.
11. The project is in the best interests of the residents, and
12. The estimated economic impact on the community, and
13. The commitment of a local cash contribution; or
14. A resolution from the governing body of the applicant or in study sessions of the governing body of the applicant evidencing this fact; and
15. A resolution from the tribal council in support of the project or in study sessions of the governing body of the tribal subdivision evidencing this fact; and
16. The commitment of a local cash contribution; or
17. Certification by the tribal council that the tribal subdivision may enter into intergovernmental agreements with state agencies without further tribal council action;
18. The project is an infrastructure project; or
19. Evidence of the project’s impact on the community based on all of the following:
   i. The project addresses health, safety, and welfare issues - Up to 15 points; and
   ii. The economic impact summary prepared by the applicant - Up to 10 points; and
20. Evidence of the project’s impact on the community based on all of the following:
   i. The project addresses health, safety, and welfare issues - Up to 15 points; and
   ii. The economic impact summary prepared by the applicant - Up to 10 points; and
21. Certification by the tribal council that the tribal subdivision may enter into intergovernmental agreements with state agencies without further tribal council action; and
22. The project is part of an adopted comprehensive plan, for example, a capital improvement plan, a local strategic plan, general plan, comprehensive plan or similar planning document or evidence that the project has been discussed in meetings or in study sessions of the governing body of the applicant;
For the Project Assistance Account, the Board shall use a scale consisting of 100 points maximum for all other applications based on subsections (C)(1)(a), (b), and (c), the application with the higher score under subsection (C)(1)(d) shall have priority over the other applications; and
c. If the tied applications have the same score under subsections (B)(1)(a), (b), (c), and (d), the Board shall determine the priority of the applications.

C. For the Project Assistance Account, the Board shall use a scale consisting of 95 points maximum for tribal applications and a scale consisting of 100 points maximum for all other applications based on subsections (C)(1) and (2) of this Section. The minimum number of points required to be eligible for consideration for award by the Board shall be 70 percent, or 70 points. Tribal applications must receive 66.5 percent, or 70 points. Tribal applications must receive 66.5 percent, or 70 points. The minimum number of points required to be eligible for consideration for award by the Board shall be 70 percent, or 70 points.

1. Applications for monies from the Project Assistance Account shall be assigned points under the following categories in descending order of importance:
a. Evidence of local support for the project up to 35 points:
i. An adopted planning document specific to the locality or evidence that the project has been discussed in meetings or study sessions of the governing body of the applicant - Up to 15 points; and
ii. The project has public or private partnerships that provide financial or in-kind services - Up to 10 points; and
iii. The project has received a resolution of support from the governing body of the applicant - 5 points; and
iv. The project has received voter authorization. The Authority’s statutes do not require tribal governments to obtain voter authorization for infrastructure projects. Therefore, technical assistance applications received from tribal governments will be based on an adjusted 95-point scale, as described in subsection (C) - 5 points.
b. Evidence of the project’s impact on the community based on all of the following - Up to 30 points:
i. The economic impact summary prepared by the applicant - Up to 15 points; and
ii. The project addresses health, safety, and welfare issues - Up to 10 points; and
iii. The applicant has not previously received funding from the Project Assistance Account in the past five years - Up to 5 points.
c. Evidence of a permanent funding source for the project - Up to 20 points:
i. The project is a likely candidate for a financial assistance loan from the authority - Up to 10 points, and
ii. A revenue stream has been identified to pay for the project - 5 points, and
iii. A funding source has been identified for the project - 5 points.
d. Evidence of sufficient financial capacity to operate and maintain the project - Up to 15 points.

2. The prioritization using points assigned under subsection (C)(1) is as follows:
a. The tied application with the higher score under subsection (B)(1)(a) shall have priority over other applications;
b. If the tied applications have the same score under subsection (B)(1)(a), the application with the higher score under subsection (B)(1)(b) shall have priority over the other applications;
c. If the tied applications have the same score under subsections (B)(1)(a) and (b), the application with the higher score under subsection (B)(1)(c) shall have priority over the other applications;
d. If the tied applications have the same score under subsections (B)(1)(a), (b), and (c), the application with the higher score under subsection (B)(1)(d) shall have priority over the other applications; and
e. If tied applications have the same score under subsections (B)(1)(a), (b), (c), and (d), the Board shall determine the priority of the applications.

D. The Board shall approve or disapprove each eligible application for technical assistance based upon the priority list and available funding for technical assistance. The Board shall not consider applications scoring less than 70 percent for either the Project Development Account or the Project Assistance Account. Applicants scoring less than 70 percent will be notified in writing by electronic or other means. A score of 70 percent does not guarantee funding. The Authority shall notify in writing by electronic or other means each applicant of the Board’s determination within 90 days after the date that all applications for technical assistance are due.

E. The Authority shall notify in writing by electronic or other means each applicant of the Board’s determination within 90 days after the date that all applications for technical assistance are due.

F. For each project approved for technical assistance funding, the Authority shall establish a date by which the commitment of the Authority to provide technical assistance expires. The Authority shall not provide technical assistance for an approved project scoring 70 percent or more if the applicant does not complete all agreements with the Authority on or before that date.
ARTICLE 2. FINANCIAL ASSISTANCE

R20-8-201. Definitions
In addition to the definitions prescribed in A.R.S. § 41-2251, the following definitions apply in this Article:

“A rating” means an applicant has been assigned a credit rating of A1, A2, or A3 by Moody’s or A+, A, or A- by Standard & Poor’s.

“Access to capital” means an applicant’s ability to obtain funding based on the security of the revenues to be pledged, the general financial condition of the applicant and other factors outside of the applicant’s control.

“Administrative fee” means any and all costs and expenses associated with processing, preparing or executing a financial assistance application or related bond transaction, including costs and expenses associated with staff, the Board, professional services, service providers, vendors or other entities involved in the transaction.

“Administratively complete” means that an applicant has completed the application for financial assistance and provided all of the information and documents that the staff determines are applicable.

“Applicant” means a political subdivision, special district, or Indian tribe that applies to the Authority for financial assistance.

“Baa rating” means an applicant has been assigned a credit rating of Baa1, Baa2, or Baa3 by Moody’s.

“BBB rating” means an applicant has been assigned a credit rating of BBB+, BBB, or BBB- by Standard & Poor’s.

“Category I” means a rating indication assigned by Moody’s that applies to applicants that have credit ratings determined to fall into category of A3 or higher.

“Category II” means a rating indication assigned by Moody’s to applicants that have credit ratings determined to Baa3, Baa2, or Baa1.

“Coverage ratio” means the ratio produced by the fraction in which pledged revenues are the numerator and debt service is the denominator.

“Debt service” means annual principle and interest payments on all loans from the Authority plus any principle and interest payments on other debt secured with an equal pledge on the same revenues pledged to the Authority’s loans.

“Dedicated revenue source” means the origin of money committed by an Indian tribe to be used for repayment of a loan.

“Financial assistance round” means a period of time established by the Board during which applications for financial assistance are sent to potential applicants, returned to the Authority, analyzed by Staff, and submitted to the Board for approval or disapproval.

“General obligation” means a pledge by the applicant’s voters of the full faith and credit and unlimited taxing ability to secure a loan. The applicant must have the ability to levy and increase property taxes for payment of debt obligations.

“Moody’s” means Moody’s Investors Service, Inc., its successors and assigns.

“Project” means the whole, or any distinguishable segment or segments, of publicly owned infrastructure for which financial assistance is being requested or provided.

“Staff” means the Executive Director and other employees of the Water Infrastructure Finance Authority.

“Standard & Poor’s” means Standard & Poor’s Ratings Service, its successors and assigns.

“Staff” means the Executive Director and other employees of the Water Infrastructure Finance Authority.

Historical Note
Adopted effective February 3, 1998 (Supp. 98-1). Amended by final rulemaking at 7 A.A.R. 2042, effective April 10, 2001 (Supp. 01-2). Pursuant to authority of A.R.S. § 41-1011(C), Laws 2011, Second Special Session, Ch. 1, authorizes the transfer of A.R.S. citations. Therefore the A.R.S. citation in the opening paragraph was updated; due to a reassignment of duties, the reference to the Department of Commerce was removed in the definition of “staff.” Agency request filed February 12, 2013, Office File No. R13-179 (Supp. 13-1).
D. In addition to the application and documentation required in subsection (C), an applicant shall provide to the Authority by the established due date for applications the following information:

1. Copies of documentation relating to outstanding indebtedness, including official statements, financial assistance agreements, and amortization schedules;
2. A detailed description of the project, with an explanation of how the project complements the overall development of the community, including the following, if available and applicable:
   a. Copies of project feasibility studies, engineering reports, project designs, rate studies, and related material;
   b. A detailed timeline for the project; and
   c. A planning document specific to the locality of the project for which the financial assistance is being requested that includes the project, such as a capital improvement plan, local strategic plan, or similar planning document;
3. A resolution of the governing body of the applicant stating the following:
   a. The project is in the best interests of its residents;
   b. The commitment of local funds, if applicable; and
   c. If a political subdivision, then confirmation of the pledge of the state-shared revenues;
4. For a political subdivision, a written commitment by its governing body to complete all applicable reviews and approvals and to secure all required permits in a timely manner;
5. To the extent required under A.R.S. § 41-2257, for a political subdivision, evidence of voter approval to incur debt in connection with the project:
   a. If the election for voter authorization has been held, a copy of the ballot evidencing voter authorization for the debt in connection with the project and official action canvassing the results of the election;
   b. If the election for voter authorization is scheduled to be held after the application date, sample ballot language and evidence of a plan to obtain voter authorization for the debt to be incurred in connection with the project;
6. For a political subdivision, if voter approval has been obtained for substantially the same project but with a different funding source, evidence of that approval in lieu of that required by subsection (D)(5); and
7. For an Indian tribe, evidence of the current or proposed establishment of a dedicated revenue source under the control of a tribally chartered corporation or other tribal entity subject to suit by the Attorney General, or evidence that additional funds or revenue streams that are subject to execution by the Attorney General without the waiver of any claim of sovereign immunity by the Tribe have been designated as additional security.

E. Staff shall analyze each application received on or prior to the due date for applications for financial assistance to determine whether the application is administratively complete and whether an applicant meets the eligibility criteria prescribed in R20-8-203. Applications for financial assistance that are determined to be both administratively complete and eligible for financial assistance under R20-8-203 shall be submitted to the Board for prioritization and possible funding. Applications that are either not administratively complete or do not meet the criteria in R20-8-203 shall not be submitted to the Board.

Historical Note


R20-8-203. Eligibility Criteria

To be eligible to receive financial assistance, an applicant shall satisfy all of the following criteria:

1. The applicant is a political subdivision, special district, or Indian tribe;
2. The financial assistance requested is for an infrastructure project;
3. The application is administratively complete;
4. The applicant demonstrates that the financial assistance can be repaid and the level of security pledged to the loan is consistent with A.R.S. §§ 41-2257(D)(4) through (6);
5. The applicant demonstrates that the project is ready for construction and the applicant is ready to proceed;
6. The applicant provides evidence that the project has public support;
7. The applicant provides evidence that the project is part of an adopted comprehensive plan, for example, a capital improvement plan, local strategic plan, general plan, comprehensive plan or similar planning document;
8. The applicant demonstrates that the loan proceeds will be managed and expended in accordance with the timetable set forth in the application;
9. The minimum number of points required to be eligible for consideration for funding by the Board shall be 70 percent or 70 points; and
10. Applicants are responsible for the payment of all administrative fees and penalties associated with financial assistance. Administrative fees shall be paid on or before 90 days from the date on the Authority’s invoice. Administrative fees remaining unpaid after 90 days from the date on the Authority’s invoice shall be subject to penalties of five percent per annum. Applicants with outstanding administrative fees or penalties are not eligible for financial or technical assistance.

**Historical Note**


**R20-8-204. Priority; Approval and Disapproval; Funding; Appeal**

A. The Board shall not review an application for financial assistance that does not meet the eligibility criteria in R20-8-203.
B. During each financial assistance round, the Board shall determine the order and priority of infrastructure projects for which an eligible application for financial assistance has been received. Application scores shall be prioritized based on a percentage of the points received to total points possible. The minimum number of points required to be eligible for consideration for funding by the Board is 70 percent or 70 points. Applicants scoring less than 70 percent will be notified in writing by electronic or other means. A score of 70 percent does not guarantee funding. Applications for financial assistance shall be assigned points under the following categories in descending order of importance:

1. The applicant demonstrates strong credit worthiness and ability to repay the obligation based on the source of the repayment pledge - Up to 50 points,
   a. Category I, A, and general obligation pledges - Up to 50 points; or
   b. Category II, Baa, BBB, and previously unrated pledges with coverage ratios of 1.50 or higher - Up to 45 points; or
   c. Previously unrated pledges with coverage ratios less than 1.50 - Up to 35 points.
2. The applicant demonstrates that it has little or no access to alternative funding sources that provide the same or lower access to capital as that provided by the Authority - Up to 25 points,
   a. No access to alternative funding sources - 25 points, or
   b. One alternative funding source - 15 points, or
   c. Two or more alternative funding sources - 5 points, or
   d. No alternative funding sources researched - 0 points.
3. There is evidence of the project’s public support based on the adopted planning document specific to the locality or evidence that the project has been discussed in meetings or in study sessions of the governing body of the applicant - Up to 15 points,
4. The purpose of the project is the following:
   a. Public infrastructure or economic development - Up to 10 points, or
   b. Refinancing of public infrastructure debt - Up to 5 points.
C. The Board shall approve or disapprove each application for financial assistance based upon the priority list and available funding for financial assistance. The Board may fund all or a portion of a financial assistance request. Disbursement of funds to an approved applicant shall only occur upon the applicant’s agreement with the terms and conditions established by the Board in accordance with A.R.S. § 41-2257. The prioritization using points assigned under subsection (B) is as follows:

1. The tied application with the higher score under subsection (B)(1) shall have priority over other applications;
2. If the tied applications have the same score under subsection (B)(1) the application with the higher score under subsection (B)(2) shall have priority over the other applications;
3. If the tied applications have the same score under subsections (B)(1) and (2) the application with the higher score under subsection (B)(3) shall have priority over the other applications;
4. If the tied applications have the same score under subsections (B)(1), (2), and (3), the application with the higher score under subsection (B)(4) shall have priority over the other applications;
5. If the tied applications have the same score under subsections (B)(1), (2), (3), and (4), the Board shall determine the priority of the applications.

D. The Authority shall notify in writing by electronic or other means each applicant of the Board’s determination within 90 days after the date that all applications for financial assistance were due.

E. For each approved project, the Authority shall establish a date by which the commitment of the Authority to provide financial assistance expires. The Authority shall not provide financial assistance for an approved project if the applicant does not complete all agreements with the Authority or on before that date.

F. An applicant whose project for financial assistance is disapproved or determined to be ineligible may appeal. The Authority shall use the Uniform Administrative Hearings Procedures of A.R.S. Title 41, Chapter 6, Article 10 to govern the initiation and conduct of formal adjudicative proceedings before the Authority.

**Historical Note**

Attachment B

A.R.S. Title 41, Chapter 18

A.R.S. Title 41, Chapter 53, Article 2
Title 41 Chapter 18 GREATER ARIZONA DEVELOPMENT AUTHORITY

Article 1 General Provisions

41-2251. Definitions
In this article, unless the context otherwise requires:
1. "Authority" means the greater Arizona development authority.
2. "Board" means the board of directors of the Arizona finance authority established by chapter 53, article 2 of this title.
3. "Financial assistance" means assistance provided by the authority to eligible political subdivisions, special districts and Indian tribes pursuant to section 41-2257.
4. "Fund" means the greater Arizona development authority revolving fund established by section 41-2254.
5. "Indian tribe" means any Indian tribe, band, group or community that is recognized by the United States secretary of the interior and that exercises governmental authority within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent and including rights-of-way running through the reservation.
6. "Infrastructure" means any land, building or other improvement and equipment or other personal property that will make up part of a facility that is located in this state for public use and that is owned by a political subdivision, special district or Indian tribe that retains ultimate responsibility for its operation and maintenance.
7. "Loan" means bonds, leases, loans or other evidences of indebtedness.
8. "Loan repayment agreement" means an agreement to repay a loan entered into by a political subdivision, special district or Indian tribe.
9. "Pledged revenues" means any monies to be received by a political subdivision, special district or Indian tribe, including property taxes, other local taxes, fees, assessments or charges pledged by a political subdivision, special district or Indian tribe as a source for repayment of a loan repayment agreement.
10. "Political subdivision" means a county, city or town.
11. "Short-term assistance" means assistance provided by the authority to political subdivisions, special districts and Indian tribes in connection with the financing of infrastructure.
12. "Special district" means any of the following entities established pursuant to title 48:
   (a) Municipal improvement district.
   (b) Fire district.
   (c) County improvement district.
   (d) Special road district.
   (e) Sanitary district.
   (f) Drainage or flood protection district.
   (g) County flood control district.
   (h) County jail district.
   (i) Regional public transportation authority.
   (j) Regional transportation authority.
13. "Technical assistance" means assistance provided pursuant to section 41-2256.
14. "Technical assistance repayment agreement" means an agreement to repay assistance provided pursuant to section 41-2256.
15. "Tribal subdivision" means any chapter, district or village that is recognized by an Indian tribe by resolution or through tribal constitution and that receives technical assistance.

**41-2252. Greater Arizona development authority**
The greater Arizona development authority is established in the Arizona finance authority. The authority shall be governed by the board of directors of the Arizona finance authority.

**41-2253. Powers and duties of authority**
A. The authority is a body corporate and politic and shall have an official seal that is judicially noticed. The authority may sue and be sued, contract and acquire, hold, operate and dispose of property as necessary to carry out its responsibilities under this article.
B. The authority, through its board, may:
1. Issue bonds to provide financial assistance to political subdivisions, special districts and Indian tribes for acquiring, constructing, improving or equipping infrastructure or for refinancing outstanding bonds or other obligations of the political subdivisions, special districts or Indian tribes that were issued to acquire, construct, improve or equip infrastructure. The bonds shall be in the name of the authority.
2. Provide financial assistance to political subdivisions, special districts and Indian tribes to finance or refinance infrastructure projects.
3. Guarantee debt obligations of political subdivisions, special districts and Indian tribes that are issued to finance or refinance infrastructure projects.
4. Provide technical assistance or short-term assistance to political subdivisions, special districts, Indian tribes and tribal subdivisions.
5. Apply for, accept and administer grants and other monetary assistance from the United States government and from other public and private sources to carry out its responsibilities under this article.
6. Hire professional assistance as needed to carry out this article.
C. The board shall:
1. Approve all policies and procedures of the authority.
2. Approve which projects receive technical and financial assistance.
3. Approve loan repayment agreements entered into with political subdivisions, special districts and Indian tribes.
D. The authority may impose administrative fees and penalties that are necessary to recover the costs incurred in connection with entering into or enforcing a loan repayment agreement or providing financial or technical assistance.
E. The board shall deposit, pursuant to sections 35-146 and 35-147, any monies received pursuant to subsection B, paragraph 5 of this section in the fund.

**41-2254. Greater Arizona development authority revolving fund**
A. The greater Arizona development authority revolving fund is established consisting of:
1. Monies appropriated by the legislature.
2. Monies received from the United States government to carry out this article.
3. Monies received from political subdivisions, Indian tribes, tribal subdivisions and special districts as loan repayments, technical assistance repayments, interest, administrative fees and penalties.
4. Interest and other income received from investing monies in the fund.
5. Gifts, grants and donations received from any public or private source to carry out this article.
6. Any other monies received by the authority.
B. The board shall administer the fund in compliance with the requirements of this article. The board shall separately account for monies received from each source listed in subsection A of this section. Monies received pursuant to subsection A, paragraph 1 of this section shall not be used for any purpose except securing bonds issued by the authority and providing assistance under technical assistance repayment agreements if the amount used for providing this assistance is not more than eight hundred thousand dollars. This subsection does not limit the power of the authority to pledge other monies in the fund to secure bonds issued by the authority or to provide assistance under technical assistance repayment agreements.
C. The board may establish accounts and subaccounts as necessary to properly account for and use monies received by the authority.
D. Monies in the fund may be used for securing bonds of the authority.
E. Monies in the fund received pursuant to subsection A, paragraphs 2, 3, 4, 5 and 6 of this section may be used for:
1. Providing technical assistance to political subdivisions, special districts, Indian tribes and tribal subdivisions.
2. Providing financial assistance to political subdivisions, special districts and Indian tribes.
3. Paying compensation and employment-related expenses.
4. Paying the costs to operate the authority, to administer the fund and to carry out the requirements of this article.
5. Paying the costs of professional assistance hired by the authority pursuant to section 41-2253, subsection B, paragraph 6.
F. On notice from the board, the state treasurer shall invest and divest monies in the fund as provided by section 35-313, and monies earned from investment shall be credited to the fund.
G. If the monies pledged to secure the bonds become insufficient to pay the principal and interest on the bonds, the board may direct the state treasurer to divest monies in the fund as may be necessary and may apply those proceeds to make current all payments then due on the bonds. The state treasurer shall immediately notify the attorney general and auditor general of the insufficiency. The auditor general shall audit the circumstances surrounding the depletion of the fund and shall report these findings to the attorney general. The attorney general shall conduct an investigation and report these findings to the governor and the legislature.

41-2255. Project application and prioritization
A. The authority shall:
1. Establish an application form for technical and financial assistance.
2. Establish a procedure to review and approve or disapprove on its merits each administratively complete application for technical and financial assistance.
3. Establish by rule criteria by which technical and financial assistance will be awarded. For financial assistance the criteria shall include a determination of the ability of the applicant to repay a loan according to its terms and other conditions established by this article.
4. Adopt rules to prioritize applications for technical and financial assistance.
5. Inform the applicant of the board's determination within ninety days after the application date established by the authority pursuant to paragraph 2 of this subsection.

B. The board shall:
1. Approve or disapprove applications for financial and technical assistance.
2. Determine the order and priority of projects assisted under this article based on the merits of the applications.

C. If the application is approved, the board may condition the approval on assurances the board deems necessary to ensure that the technical assistance or financial assistance will be used according to law and the terms of the application. The loan repayment agreement shall include any conditions concerning financial assistance deemed necessary by the board.

D. The authority shall only make financial assistance or short-term assistance available when the applicant is ready to proceed or, if the financial assistance is for refinancing outstanding bonds or other obligations, when the outstanding bonds or other obligations are to be refunded. The authority may provide technical assistance on an as needed basis. The authority may charge the applicant fees sufficient to cover the authority's costs related to the project.

E. A political subdivision, a special district or an Indian tribe may apply to the authority for financial assistance and may accept assistance in connection with an infrastructure project owned by the political subdivision, special district or Indian tribe. The existence of a current investment grade rating on existing debt of the applicant that is secured by the same revenues to be pledged to secure repayment under the loan repayment agreement may be accepted by the board as evidence regarding the ability of the applicant to repay a loan.

F. The authority shall only make financial assistance available upon a determination of the ability of the applicant to repay the financial assistance according to its terms and conditions.

G. Applications for financial assistance shall:
1. Be solicited annually, semiannually, quarterly or monthly as determined by the authority pursuant to subsection A, paragraph 2.
2. Be administratively complete before being reviewed by the authority.
3. Include documentation concerning the ability of the applicant to repay the financial assistance according to its terms and conditions.
4. Include a resolution from the governing body of the political subdivision, special district or Indian tribe that the project is in the best interests of the residents.

H. Applications for technical assistance shall:
1. Be solicited annually or semiannually as determined by the authority pursuant to subsection A, paragraph 2, except that an application for short-term assistance may be solicited at those times as the authority determines.
2. Be administratively complete before being reviewed by the authority.
3. Include a resolution from the governing body of the political subdivision, special district or Indian tribe that the project is in the best interests of the residents.

41-2256. Technical assistance; repayment agreements
A. The authority may provide technical assistance to political subdivisions, special districts, Indian tribes and tribal subdivisions in connection with the development or financing of infrastructure.

B. Technical assistance may include the following:
   1. Assistance in selecting outside consultants.
   2. Evaluation of design and construction options.
   3. Financial advisory services.
   4. Assistance in satisfying statutory requirements.
   5. Short-term assistance.

C. Assistance provided under a technical assistance repayment agreement:
   1. Shall not be more than two hundred fifty thousand dollars for a single project.
   2. Shall be repaid not more than three years after the date the monies for the assistance are advanced to the applicant.
   3. Shall be in a form and under terms determined by the authority.

D. Short-term assistance represents an advance of financial assistance. The authority shall not provide short-term assistance unless the political subdivision, special district or Indian tribe has an approved financial assistance application on file with the authority. A political subdivision, special district or Indian tribe shall repay short-term assistance pursuant to a technical assistance repayment agreement.

E. The authority shall establish an application process and method of determining the allocation of technical assistance pursuant to section 41-2255.

F. Before technical assistance may be provided, the board shall approve the application for technical assistance.

G. The provision of technical assistance by the authority does not create any liability for the authority or this state regarding the design, construction or operation of any infrastructure project.

41-2257. Financial assistance
A. The authority may provide financial assistance to political subdivisions, special districts and Indian tribes in developing, acquiring, constructing, improving, equipping or refinancing infrastructure. The financial assistance shall include:
   1. Loans as provided in this section.
   2. Credit enhancements purchased for a political subdivision's, special district's or Indian tribe's bonds or other forms of indebtedness.

B. A loan shall be evidenced by a loan repayment agreement, lease purchase agreement or bonds of a political subdivision, special district or Indian tribe that are delivered to and held by the authority.

C. The authority shall prescribe a principal repayment schedule for each loan made. Loan principal payments may be rescheduled at the discretion of the authority but may not be forgiven.

D. A loan under this section:
   1. Shall be repaid not more than thirty years after the date it is incurred.
   2. Shall require that interest payments begin not later than the next date that either principal or interest must be paid by the authority to holders of any of the authority's bonds that provided
funding for the loan. The authority may provide that loan interest accruing during construction of the borrower’s infrastructure project and up to one year after completion of the construction be capitalized in the loan.

3. Shall be repayable in at least annual principal installments and at least semiannual interest installments.

4. Shall be conditioned on the identification of pledged revenues for repaying the loan. If the infrastructure financed by the loan is part of a municipal utility and the city or town pledges revenues of the utility to repay the loan, the loan shall be treated under section 9-530, subsection B as a lawful long-term obligation incurred for a specific capital purpose.

5. To the extent permitted by law, shall be secured by a debt service reserve account that is held in trust and that is in such amount, if any, as determined by the authority.

6. Shall be either:
   (a) For a political subdivision, additionally secured by an irrevocable pledge of the shared state revenues due the political subdivision for the life of the loan as provided by a resolution of the board.
   (b) For an Indian tribe, conditioned on the establishment of a dedicated revenue source under the control of a tribally chartered corporation or other tribal entity that is subject to suit by the attorney general to enforce the loan contract or be secured by assets that, in the event of default of the loan contract, are subject to execution by the attorney general.

E. The authority shall prescribe the rate or rates of interest on loans made under this section, but the rate or rates shall not exceed the prevailing market rate for similar types of loans. A political subdivision or special district may negotiate the sale of its bonds to or a loan repayment agreement with the authority without complying with any public or accelerated bidding requirements imposed by any other law for the sale of its bonds.

F. The approval of a loan is conditioned on a written commitment by the political subdivision or special district to complete all applicable reviews and approvals and to secure all required permits in a timely manner.

G. The approval of financial assistance to a city or town having a population of more than fifty thousand persons shall be conditioned on approval of its voters. An election is not required if voter approval has previously been received for substantially the same project.

H. The approval of financial assistance to a county having a population of more than two hundred thousand persons shall be conditioned on approval of its voters. An election is not required if voter approval has previously been received for substantially the same project.

I. By resolution of the board, the authority may impose any additional requirements it considers necessary to ensure that the loan principal and interest are timely paid.

J. All monies received from political subdivisions, special districts and Indian tribes as loan repayments, interest and penalties shall be deposited, pursuant to sections 35-146 and 35-147, in the fund.

K. The attorney general may take whatever actions are necessary to enforce the loan contract and achieve repayment of loans provided by the authority pursuant to this article.

L. If a political subdivision fails to make any payment due to the authority under its loan repayment agreement or bonds, the authority shall certify to the state treasurer and notify the governing body of the defaulting political subdivision that the political subdivision has failed to make the required payment and direct a withholding of state shared revenues as provided in
subsection M of this section. The certificate of default shall be in the form determined by the authority, provided the certificate specifies the amount required to satisfy the unpaid payment obligation of the political subdivision.

M. On receipt of a certificate of default from the authority, the state treasurer, to the extent not otherwise expressly prohibited by law, shall withhold the monies from the next succeeding distribution of monies pursuant to section 42-5029 due to the defaulting political subdivision. In the case of a city or town, the state treasurer shall also withhold from the next succeeding distribution of monies pursuant to section 43-206 due to the defaulting city or town the amount specified in the certificate of default and immediately deposit the amount withheld in the fund. The state treasurer shall continue to withhold and deposit the monies until the authority certifies to the state treasurer that the default has been cured. In no event shall the state treasurer withhold any amount that is necessary, as certified by the defaulting political subdivision to the state treasurer and the authority, to make any required deposits then due for the payment of principal and interest on bonds of the political subdivision that were issued prior to the date of the loan repayment agreement or bonds and that have been secured by a pledge of distributions made pursuant to sections 42-5029 and 43-206.

41-2258. Greater Arizona development authority bonds

A. The authority, through the board, may issue negotiable bonds in a principal amount that in its opinion is necessary to provide sufficient monies for assistance under this article, to refund bonds, when the authority deems it expedient to do so, maintaining sufficient reserves in the fund to secure the bonds, to pay the necessary costs of issuing, selling and redeeming the bonds and to pay other expenditures of the authority incidental to and necessary and convenient to carry out the purposes of this article.

B. The board shall authorize the bonds by resolution. The resolution shall prescribe:
   1. The rate or rates of interest and the denominations of the bonds.
   2. The date or dates of the bonds and maturity.
   3. The coupon or registered form of the bonds.
   4. The manner of executing the bonds.
   5. The medium and place of payment.
   6. The terms of redemption.

C. The bonds shall be sold at public or private sale at the price and on the terms determined by the board. All proceeds from the issuance of bonds, except any amounts used to pay costs associated with the issuance and sale of the bonds, shall be deposited in the fund or a separately held account as specified in the resolution.

D. To secure any bonds authorized by this section the board by resolution may:
   1. Provide that bonds issued under this section may be secured by a lien on all or part of the monies paid into the appropriate account or subaccount of the fund.
   2. Pledge or assign to or in trust to be held by the state treasurer or a trustee appointed by the authority for the benefit of the holder or holders of the bonds any part of the appropriate account or subaccount of the fund monies as is necessary to pay the principal and interest of the bonds as they come due.
   3. Set aside, regulate and dispose of reserves and sinking funds.
4. Provide that sufficient amounts of the proceeds from the sale of the bonds may be used to fully or partly fund any reserves or sinking funds set up by the bond resolution.
5. Prescribe the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent to and the manner in which consent may be given.
6. Provide for payment from the proceeds of the sale of the bonds of all legal and financial expenses incurred by the board in issuing, selling, delivering and paying the bonds.
7. Provide terms necessary to secure credit enhancement or other sources of payment or security.
8. Provide any other terms and conditions that in any way may affect the security and protection of the bonds.

E. Any pledge of revenues by a political subdivision, a special district, an Indian tribe or the authority made under this article is valid and binding from the time when the pledge is made. The monies pledged and received by the state treasurer to be placed in the fund or in any account or subaccount in the fund are immediately subject to the lien of the pledge without any future physical delivery or further act, and any lien of any pledge is valid or binding against all parties having claims of any kind in tort, contract or otherwise against the board regardless of whether the parties have notice of the lien. The official resolution or trust indenture or any instrument by which this pledge is created, when placed in the board's records, is notice to all concerned of the creation of the pledge, and those instruments need not be recorded in any other place.

F. A member of the board or any person executing the bonds is not personally liable for the payment of the bonds. The bonds are valid and binding obligations notwithstanding that before the delivery of the bonds any of the persons whose signatures appear on the bonds cease to be members of the board. From and after the sale and delivery of the bonds, they are incontestable by the board.

G. The board, out of any available monies, may purchase bonds, which may then be canceled, at a price not exceeding either of the following:
1. If the bonds are then redeemable, the redemption price then applicable plus accrued interest to the next interest payment date.
2. If the bonds are not then redeemable, the redemption price applicable on the first date after purchase on which the bonds become subject to redemption plus accrued interest to that date.

H. The bonds issued under this section, their transfer and the income they produce are exempt from taxation by this state or by any political subdivision of this state.

I. If a political subdivision fails to make a payment due to the authority under its loan repayment agreement or bonds, the authority shall certify to the state treasurer and notify the governing body of the defaulting political subdivision that the political subdivision has failed to make the payment and direct withholding pursuant to subsection J of this section. The authority may determine the form of the certificate of default, except that the certificate must specify the amount of money required to satisfy the unpaid payment obligation of the political subdivision.

J. On receipt of a certificate of default from the authority, the state treasurer, to the extent not otherwise expressly prohibited by law, shall withhold an amount from the defaulting political subdivision's next distribution of monies pursuant to section 42-5029 and an amount from a
defaulting city's or town's next distribution of monies pursuant to section 43-206 necessary to meet the certified amount of the deficiency. The state treasurer shall immediately deposit in the fund the amount withheld. The state treasurer shall continue to withhold distributions pursuant to sections 42-5029 and 43-206 and deposit them into the fund until the authority certifies to the state treasurer that the default has been cured. K. Notwithstanding subsection J of this section, the state treasurer shall not withhold from the distribution of monies under section 42-5029 any amount, as certified by the defaulting political subdivision to the state treasurer and the authority, that is necessary to make any required deposits then due for payment of principal and interest on bonds of the political subdivision that have been secured by a pledge of the distribution.

41-2259. Bond obligations of the authority
Bonds issued under this article are obligations of the authority, are payable only according to their terms and are not general, special or other obligations of this state. The bonds do not constitute a legal debt of this state and are not enforceable against this state. Payment of the bonds is not enforceable out of any state monies other than the income and revenue pledged and assigned to, or in trust for the benefit of, the holder or holders of the bonds.

41-2260. Agreement of state
A. This state pledges to and agrees with the holders of the bonds that this state will not limit or alter the rights vested in the authority or any successor agency to collect the monies necessary to produce sufficient revenue to fulfill the terms of any agreements made with the holders of the bonds, or in any way impair the rights and remedies of the bondholders, until all bonds issued under this article, together with interest, with interest on any unpaid installments of interest and all costs and expenses in connection with any action or proceedings by or on behalf of the bondholders, are fully met and discharged. B. The board as agent for this state may include this pledge and undertaking in its resolutions and indentures securing its bonds.

41-2261. Certifications of bonds by attorney general
A. The board may submit any bonds issued under this article to the attorney general after all proceedings for their authorization have been completed. Within fifteen days after submission the attorney general shall examine and pass on the validity of the bonds and the regularity of the proceedings. B. If the proceedings comply with this article, and if the attorney general determines that, when delivered and paid for, the bonds will constitute binding and legal obligations of the board, the attorney general shall certify on the back of each bond, in substance, that it is issued according to the constitution and laws of this state.

41-2262. Bonds as legal investments
Bonds issued under this article are securities:
1. In which public officers and bodies of this state and of municipalities and political subdivisions of this state, all companies, associations and other persons carrying on an insurance business, all financial institutions, investment companies and other persons carrying
on a banking business, all fiduciaries and all other persons who are authorized to invest in obligations of this state may properly and legally invest.

2. That may be deposited with public officers or bodies of this state and municipalities and political subdivisions of this state for purposes that require the deposit of state bonds or obligations.

41-2263. Annual audit and reporting
A. The board shall cause an annual audit to be made of the fund. The audit shall be conducted by a certified public accountant within one hundred fifty days after the close of the fiscal year. The board shall immediately file a certified copy of the audit with the auditor general.
B. The auditor general may make further audits and examinations that the auditor general considers to be necessary and take appropriate action relating to the audit or examination pursuant to title 41, chapter 7, article 10.1. If the auditor general takes no official action within twenty days after the annual audit is filed pursuant to subsection A, the audit is considered to be sufficient.
C. The board shall pay any fees and costs of the certified public accountant and auditor general under this section from the earnings on the fund.
D. Not later than January 1 of each year, the board shall submit an annual report of its activities, including a copy of the annual audit, to the governor, the president of the senate and the speaker of the house of representatives.
Title 41 Chapter 53 Office of Economic Opportunity

Article 2 ARIZONA FINANCE AUTHORITY

41-5351. Definitions
In this article, unless the context otherwise requires:
1. "Agreement" means any loan or other agreement, contract, note, mortgage, deed of trust, trust indenture, lease, sublease or instrument entered into by the authority.
2. "Authority" means the Arizona finance authority.
3. "Board" means the board of directors of the authority.
4. "Bonds" means any bonds issued by the authority.
5. "Costs":
   (a) Means all costs incurred in the issuance of bonds, including insurance policy, credit enhancement, legal, accounting, consulting, printing, advertising and travel expenses, plus any authority administrative fees.
   (b) May include interest on bonds issued by the authority for a reasonable time before and during the time the proceeds are used.
6. "Director" means the director of the authority.
7. "Federal agency" means the United States or any agency or agencies of the United States.

41-5352. Arizona finance authority; fund
A. The Arizona finance authority is established in the office of economic opportunity.
B. The governor shall appoint the director of the authority to serve at the pleasure of the governor.
C. The Arizona finance authority operations fund is established consisting of monies deposited pursuant to section 41-5355. The authority shall administer the fund. Monies in the fund are continuously appropriated.
D. At the end of the fiscal year, the authority shall transfer all unencumbered monies in the fund in excess of the authority's operating costs to the economic development fund established by section 41-5302.

41-5353. Board; members; terms; meetings; compensation; prohibition
A. The authority shall be governed by a board of directors, consisting of five members to be appointed by the governor, giving due consideration to a diverse geographical representation on the board, and to serve at the pleasure of the governor.
B. Before appointment by the governor, a prospective member of the board of directors shall submit a full set of fingerprints to the governor for the purpose of obtaining a state and federal criminal records check pursuant to section 41-1750 and Public Law 92-544. The department of public safety may exchange this fingerprint data with the federal bureau of investigation.
C. Each member shall serve for a term of three years. Vacancies occurring other than by expiration of term shall be filled in the same manner for the remainder of the unexpired term.
D. The board shall annually elect from among its members a chairperson, a secretary and a treasurer.

E. The board rules shall provide for regular annual meetings of the board. The chairperson may call a special meeting at any time. The board rules shall provide for a method of giving notice of a special meeting.

F. The board may meet by audioconference or videoconference. The requirements of title 38, chapter 3, article 3.1 apply to an audioconference or videoconference, except that all votes of members must be by roll call, and the board may not meet in executive session by audioconference or videoconference.

G. Members of the board are not eligible to receive compensation but are eligible to receive reimbursement for necessary expenses pursuant to title 38, chapter 4, article 2 while engaged in the performance of the members' duties.

H. Members of the board may not have any direct or indirect personal financial interest in any project financed under this article.

41-5354. Powers of board

The board may:
1. Adopt an official seal and alter the seal at its pleasure.
2. Apply for, accept and administer grants of monies or materials or property of any kind from a federal agency or others on such terms and conditions as may be imposed.
3. Make and enter into agreements, including intergovernmental agreements pursuant to title 11, chapter 7, article 3, execute all instruments, perform all acts and do all things necessary or convenient to carry out the powers granted.
4. Employ or contract with experts, engineers, architects, attorneys, accountants, construction and financial experts and such other persons as may be necessary in the board's judgment and fix their compensation.
5. Pay compensation and employee-related expenses.
6. Fix the compensation of the director.
7. Sue and be sued.
8. Acquire and maintain office space, equipment, supplies, services and insurance necessary to administer this article.
9. Contract with, act as guarantor for or coinsure with any federal, state or local governmental agency and other organizations or corporations in connection with its activities under this article and receive monies relating to those contracts and services.
10. Adopt bylaws and administrative rules consistent with this article.
11. Protect and enforce the interests of the authority in any project financed through the authority's resources.
12. Enter into and inspect any facility financed through the authority's resources to investigate its physical condition, construction, rehabilitation, operation, management and maintenance and to examine all of the records relating to its capitalization, income and other related matters.
13. Acquire title to real property or other assets by gift, grant or operation of law, or by purchase.
14. Establish advisory boards that have all rights and powers granted by the board, including the right to review, evaluate and recommend to the board for approval proposed financings.
41-5355. Assets; cost of operation and administration; taxation
A. Any monies, pledges or property issued or given to the Arizona finance authority, whether by appropriation, loan, gift or otherwise, constitute the assets of the Arizona finance authority.
B. This state is not responsible for any obligation incurred by the authority.
C. All costs and expenses of the authority shall be paid from bond proceeds of bonds issued by any industrial development authority established by the Arizona finance authority or other monies of the authority, and to the extent not prohibited by state or federal law or by contract, the monies of the greater Arizona development authority and the water infrastructure finance authority of Arizona that are available to pay the Arizona finance authority's costs and expenses.
D. The authority and its income are exempt from taxation in this state.

41-5356. Duties of board; advisory board; board termination
A. The board shall:
1. Establish an industrial development authority under title 35, chapter 5 and, notwithstanding the requirements of section 35-705, serve as the board of the industrial development authority.
2. Serve as the board of the greater Arizona development authority and have all powers and authority to take action on behalf of the greater Arizona development authority pursuant to chapter 18 of this title.
3. Serve as the board of the water infrastructure finance authority of Arizona and have all powers and authority to take action pursuant to title 49, chapter 8 regarding water infrastructure financing.
4. Approve the authority's budget.
5. Establish a water and infrastructure finance authority advisory board to advise the board of directors of the authority consisting of relevant state agency representatives and the following additional members:
   (a) One member who represents a public water system that serves five hundred or more connections.
   (b) One member who represents a public water system that serves less than five hundred connections.
   (c) One member who represents a sanitary district in a county with a population of less than five hundred thousand persons.
   (d) One member who represents a sanitary district in a county with a population of five hundred thousand or more persons.
   (e) One member who represents a city or town with a population of less than fifty thousand persons.
   (f) One member who represents a city or town with a population of fifty thousand or more persons.
   (g) One member who represents a county with a population of five hundred thousand or more persons.
B. The board established pursuant to subsection A, paragraph 5 of this section ends on July 1, 2024 pursuant to section 41-3103.

41-5355. Assets; cost of operation and administration; taxation
A. Any monies, pledges or property issued or given to the Arizona finance authority, whether by appropriation, loan, gift or otherwise, constitute the assets of the Arizona finance authority.
B. This state is not responsible for any obligation incurred by the authority.
C. All costs and expenses of the authority shall be paid from bond proceeds of bonds issued by any industrial development authority established by the Arizona finance authority or other monies of the authority, and to the extent not prohibited by state or federal law or by contract, the monies of the greater Arizona development authority and the water infrastructure finance authority of Arizona that are available to pay the Arizona finance authority's costs and expenses.
D. The authority and its income are exempt from taxation in this state.