BOARD OF COSMETOLOGY (R-17-1001)
Title 4, Chapter 10, Article 1, General Provisions; Article 2, Schools; Article 3, Students; Article 4, Salons

Amend: R4-10-101; R4-10-104; R4-10-105; R4-10-107; R4-10-108; R4-10-110; R4-10-203; R4-10-204; R4-10-205; R4-10-206; R4-10-208; R4-10-302; R4-10-306; R4-10-403; R4-10-404

New Section: R4-10-206.1; R4-10-304.1

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

MEETING DATE: October 3, 2017 **AGENDA ITEM: D-1**

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

FROM: Shama Thathi, Staff Attorney

DATE: September 19, 2017

SUBJECT: **BOARD OF COSMETOLOGY (R-17-1001)**
Title 4, Chapter 10, Article 1, General Provisions; Article 2, Schools; Article 3, Students; Article 4, Salons

Amend: R4-10-101; R4-10-104; R4-10-105; R4-10-107; R4-10-108; R4-10-110; R4-10-203; R4-10-204; R4-10-205; R4-10-206; R4-10-208; R4-10-302; R4-10-306; R4-10-403; R4-10-404

New Section: R4-10-206.1; R4-10-304.1

The purpose of the Arizona State Board of Cosmetology (Board) is to "ensure that the public is protected from the incompetent practice of cosmetology by establishing minimum qualifications for entry into the profession and swift and effective discipline for those practitioners who violate cosmetology statutes or rules adopted pursuant to those statutes." Laws 2014, Ch. 247, § 12.

This rulemaking seeks to amend 15 rules and create two new rules in A.A.C. Title 4, Chapter 10. The Board is engaging in this rulemaking to implement 2017 statutory changes. Under Laws 2017, Chapter 12, the legislature established a hairstylist license within the Board's purview, reduced the number of training hours to become a cosmetology or aesthetics instructor, established hairstyling as a kind of school that could be operated in Arizona, and required the Board to adopt necessary rules for administration of the hairstyling profession.

Proposed Action

- **R4-10-101** – *Definitions*: Definitions are modified to include hairstylist as an occupation and to improve clarity and understandability of the chapter.
- **R4-10-104** – *Application for License by Examination*: Requirements for obtaining a hairstyling license by examination are added. Statutory references are updated. In

subsection (C), requirement that an applicant for an instructor license be 23 years of age is reduced to 18 years.

- **R4-10-105** – *Application for License by Reciprocity*: In addition to a clarifying change, requirements for obtaining a hairstyling license by reciprocity are added.
- **R4-10-107** – *License Renewal*: Requirements for a hairstylist to renew a license are added.
- **R4-10-108** – *Pre-screening Review, Licensing Examination*: Number of training hours required to obtain a pre-screening review for hairstylists, aestheticians, and nail technicians are updated. Pre-screening reviews allow students to request the Board to review their application prior to graduation to ensure that the student is qualified to take the licensing examination.
- **R4-10-110** – *Reactivating an Inactive License*: Hairstyling occupation is added to the rule.
- **R4-10-203** – *General School Requirements*: In addition to clarifying changes, subsection (F) is modified to reflect that a licensed instructor must be present during an advanced continuing education course offered to students.
- **R4-10-204** – *School Records*: Subsection (C)(3)(c) is being modified to reflect the change in the age requirement for instructor licenses.
- **R4-10-205** – *Aesthetic School Requirements*: The number of training hours for an aesthetics instructor is reduced from 500 to 350 hours.
- **R4-10-206** – *Cosmetology School Requirements*: The number of training hours for a cosmetology instructor is reduced from 650 to 350 hours.
- **R4-10-206.1** – *Hairstyling School Requirements*: This new rule is being added to establish hairstyling school requirements, including 1000-hour training requirement for students and 350-hour training for instructors.
- **R4-10-208** – *Combined School Requirements*: The number of training hours are being updated for aesthetic and cosmetology instructors. Statutory references are updated throughout the rule.
- **R4-10-302** – *Instructor Curriculum Required Hours*: Subsection (A) is amended to clarify that the 350-curriculum hour requirement for instructors should include review of the Board's statutes and rules; theory, preparation, and practice curriculum development; and classroom and clinic oversight.
- **R4-10-304.1** – *Hairstyling Curriculum Required 1000 Hours*: This new rule establishes a curriculum for a student in a hairstyling course.
- **R4-10-306** – *Curricula Hours*: In addition to clarifying changes, subsection (C) is modified to update the kinds of training hours allowed to be applied towards the various licenses.
- **R4-10-403** – *Salon Requirements and Minimum Equipment*: Clarifying changes are being made.
- **R4-10-404** – *Mobile Services*: Clarifying changes are being made to subsection (A).

Exemption or Request and Approval for Exception from the Moratorium

The Board received an exception from the moratorium on May 2, 2017.

Substantive or Procedural Concerns

None.

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

Yes. The Board cites to A.R.S. § 32-504(A)(1) as general authority for the rules, under which the Board must "[a]dopt rules that are necessary and proper for the administration of this chapter [Title 32, Chapter 5, Cosmetology], including sanitary and safety requirements for salons and schools and sanitary and safety standards for the practice of cosmetology, aesthetics, nail technology." In addition, the Board cites to the following statutes as specific authority for the rules: A.R.S. § 32-512.01 (Hairstylists; applications; qualifications); A.R.S. § 32-513 (Reciprocity); A.R.S. § 32-517 (License renewal); A.R.S. § 32-531 (Instructors; applications; qualifications); A.R.S. § 32-532 (Instructor reciprocity); A.R.S. § 32-543 (Required display for salons); A.R.S. § 32-551 (School licenses, applications; requirements); A.R.S. § 32-557 (Services for the public; restrictions); A.R.S. § 32-572 (Grounds for disciplinary action or refusal to issue or renew license; definition); and A.R.S. § 32-574 (Unlawful acts; violations; classifications).

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

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

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

Yes. The Board indicates that it received no written comments on the rulemaking, and no one attended the oral proceeding held on August 14, 2017.

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

No. The Board indicates that only non-substantive changes were made between the proposed and final rules.

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

No. The Board indicates that it did not review or rely on a study in its evaluation of or justification for this rulemaking.

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

No. The Board indicates that no federal laws are directly applicable to the rules.

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

Yes. The Board indicates that the rules require a license. The licenses 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.

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

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

9. Conclusion

The Board requests an effective date of December 31, 2017, under A.R.S. § 41-1032(A)(2), as that is the date established by legislature for statutory provisions implemented in rule to go into effect. This analyst recommends approval of the rules.

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

MEETING DATE: October 3, 2017 **AGENDA ITEM: D-1**

TO: Members of the Governor's Regulatory Review Council

FROM: GRRC Economic Team

DATE : September 19, 2017

SUBJECT: **BOARD OF COSMETOLOGY (R-17-1001)**
Title 4, Chapter 10, Article 1, General Provisions; Article 2, Schools; Article 3, Students; Article 4, Salons

Amend: R4-10-101; R4-10-104; R4-10-105; R4-10-107; R4-10-108; R4-10-110; R4-10-203; R4-10-204; R4-10-205; R4-10-206; R4-10-208; R4-10-302; R4-10-306; R4-10-403; R4-10-404

New Section: R4-10-206.1; R4-10-304.1

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

GRRC Economist comments:

In this rulemaking, the Arizona State Board of Cosmetology (Board) is proposing to amend the rules in Chapter 10. The rules in Chapter 10 are used by the Board to enforce statutes related to the practice of Cosmetology. The Board currently licenses the occupations of aesthetician, cosmetologist, and nail technician. Instructors and training programs for these occupations also fall under the purview of the Board.

This rulemaking enforces a statutory change. The vast majority of the economic impact is created by the statute, not the rulemaking. The new statutes created a new type of license: hairstylist. Currently, cosmetologists are licensed to perform the work of aestheticians and nail technicians as well as hairstyling. The new statutes create a license where students can choose to only practice hairstyling and forgo the aesthetician or nail technician training. Training hours for each occupational license are as follows:

- Cosmetologist- 1,600 hours
- Hairstylist- 1,000 hours
- Aesthetician- 600 hours

- Nail technician- 600 hours

Key stakeholders are the Board, licensees, prospective licensees, instructors, and training programs.

The Board licenses approximately 76,775 cosmetologists, aestheticians, nail technicians, and instructors. Last year, the Board received 1,744 applications for new cosmetologist licenses. The Board estimates that 45% of these applicants would have chosen the hairstylist license instead of the cosmetology license if the hairstylist license was available.

The Board does not anticipate the need to hire full-time employees as a result of this rulemaking.

1. <u>Costs and Benefits for:</u>

a. The implementing agency:

The Board is the only agency impacted by this rulemaking. The Board bears the costs associated with promulgating and enforcing the rulemaking. The Board benefits by having rules that are consistent with state statute.

b. Political subdivisions:

Political subdivisions are not directly impacted by this rulemaking.

c. Businesses:

All businesses impacted by this rulemaking can be classified as small businesses. The impacts are enumerated below.

d. Small businesses:

The statutory change reduces a barrier for hairstylists to enter the market and begin practicing their profession. Prior to the statutory change, hairstylists were required to complete 1,600 hours of cosmetologist training even if the prospective hairstylist had no desire to practice nail technology or aesthetics. The new hairstylist license requires 1,000 hours of training, and this benefits hairstylists by reducing training fees and lost wages.

The vast majority of the benefits to small businesses are created by the statutes. The rulemaking benefits small businesses by having rules that align with state statutes. This reduces confusion and transaction costs for small businesses.

e. Consumers directly affected by the rulemaking:

Consumers are not directly impacted by this rulemaking.

2. Do the probable benefits outweigh the probable costs?

The rulemaking only adopts rules to enforce new statutes created by the legislature. Consistent rules are beneficial for all stakeholders. The costs are minimal and predominantly borne by the Board. The benefits outweigh the costs.

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

This rulemaking benefits small businesses, so reducing the impact on small businesses is not feasible.

4. The probable effect on state revenues:

The Board notes that the licensure fees are the same regardless of occupation, so any impact on state revenues will be minimal.

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

The Board concludes that this rulemaking is the lease costly or intrusive method of achieving the regulatory objective. No alternatives were considered.

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

No analysis was submitted that compares the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.

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

No empirical or quantitative data were submitted for use in the EIS.

8. Conclusion:

The submitted economic, small business, and consumer impact statement is generally accurate, and contains the information required for compliance with ARS §§ 41-1035, 41-1052(D)(1-3), and 41-1055. Staff recommends that the proposed rule amendments be approved.

Arizona State
Board of Cosmetology

Donna Aune, Executive Director

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www.azboc.gov

RECEIVED
AUG 15 2017
GRRC

August 15, 2017

Ms. Nicole O. Colyer, Chair
The Governor's Regulatory Review Council
100 North 15th Avenue, Ste. 305
Phoenix, AZ 85007

Re: A.A.C. Title 4. Professions and Occupations
Chapter 10. Board of Cosmetology

Dear Ms. Ong:

The attached final rule package is submitted for review and approval by the Council. The following information is provided for Council's use in reviewing the rule package:

A. Close of record date: The rulemaking record was closed on August 14, 2017, following a period for public comment and an oral proceeding. This rule package is being submitted within the 120 days provided by A.R.S. § 41-1024(B).

B. Relation of the rulemaking to a five-year-review report: The rulemaking does not relate to a five-year-review report.

C. New fee: The rulemaking does not establish a new fee.

D. Fee increase: The rulemaking does not increase an existing fee.

E. Immediate effective date: An immediate effective date is not requested.

F. Certification regarding studies: I certify that the preamble accurately discloses the Board did not review or rely on a study in its evaluation of or justification for any rule in this rulemaking.

G. Certification that the preparer of the EIS notified the JLBC of the number of new full-time employees necessary to implement and enforce the rule: I certify 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 Executive Director;
2. Notice of Final Rulemaking including the preamble, table of contents, and rule text;
3. Economic, Small Business, and Consumer Impact Statement

Sincerely,

Donna Aune

Donna Aune
Executive Director

NOTICE OF FINAL RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 10. BOARD OF COSMETOLOGY

PREAMBLE

1. Articles, Parts, and Sections Affected	**Rulemaking Action**
R4-10-101	Amend
R4-10-104	Amend
R4-10-105	Amend
R4-10-107	Amend
R4-10-108	Amend
R4-10-110	Amend
R4-10-203	Amend
R4-10-204	Amend
R4-10-205	Amend
R4-10-206	Amend
R4-10-206.1	New Section
R4-10-208	Amend
R4-10-302	Amend
R4-10-304.1	New Section
R4-10-306	Amend
R4-10-403	Amend
R4-10-404	Amend

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

Authorizing statute: A.R.S. § 32-504(A)(1)

Implementing statute: A.R.S. §§ 32-501, 32-504, 32-512.01, 32-513, 32-517, 32-531, 32-532, 32-543, 32-551, 32-557, 32-572, and 32-574

3. The effective date for the rules:

December 31, 2017

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):

The rules in this rulemaking will be effective on December 31, 2017, which is the date established by the legislature under Laws 2017, Chapter 12, § 18, for the statutory provisions implemented in the rulemaking to go into effect. As required under A.R.S. § 41-1032(B), the Board determined an effective date consistent with that provided in Session Law is good cause for the selected effective date and no harm is caused to the public interest.

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. 1576, June 9, 2017

Notice of Proposed Rulemaking: 23 A.A.R. 1859, July 14, 2017

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

Name: Donna Aune

Address: 1721 E. Broadway
Tempe, AZ 85282-1611

Telephone: (480) 784-4539

Fax: (480) 784-4962

E-mail: daune@azboc.gov

Web site: www.azboc.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:

Under Laws 2017, Chapter 12, the legislature added hairstylist as an occupation regulated by the Board, reduced the number of hours of training to become a cosmetology or aesthetics instructor, added hairstyling as a kind of school that could be operated in Arizona, and required the Board to make rules necessary and proper to achieve this. In this rulemaking, the Board makes the required rules. An exemption from EO2017-02 was provided for this rulemaking by Mara Mellstrom, Policy Advisor in the Governor’s office, in an email dated May 2, 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 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 Board expects the rulemaking, which simply implements a statutory change made by the legislature, to have minimal economic impact. It is the legislature that produced economic impact by requiring the Board to regulate an additional occupation, reducing the number of hours required to become licensed as a cosmetology or aesthetics instructor, and adding hairstyling as a kind of school that can be operated in Arizona.

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

No changes were made between the proposed and final rules.

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

The Board received no written comments. No one attended the oral proceeding on August 14, 2017.

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

None

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

The licenses issued under this Chapter 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:

There is no federal law directly applicable to the subject of this rulemaking. The U.S. Environmental Protection Agency requires certain disinfectants to be registered and this rulemaking requires licensees to use EPA-registered disinfectants.

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

No analysis was submitted.

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

None

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

No rule in this rulemaking was previously made, amended, or repealed as an emergency rule.

15. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 10. BOARD OF COSMETOLOGY

ARTICLE 1. GENERAL PROVISIONS

Section

R4-10-101 Definitions

R4-10-104 Application for License by Examination

R4-10-105 Application for License by Reciprocity

R4-10-107 License Renewal

R4-10-108 Pre-screening Review; Licensing Examination

R4-10-110 Reactivating an Inactive License

ARTICLE 2. SCHOOLS

Section

R4-10-203 General School Requirements

R4-10-204 School Records

R4-10-205 Aesthetic School Requirements

R4-10-206 Cosmetology School Requirements

R4-10-206.1 Hairstyling School Requirements

R4-10-208 Combined School Requirements

ARTICLE 3. STUDENTS

Section

R4-10-302 Instructor Curriculum Required Hours

R4-10-304. 1 Hairstyling Curriculum Required 1000 Hours

R4-10-306 Curricula Hours

ARTICLE 4. SALONS

Section

R4-10-403 Salon Requirements and Minimum Equipment

R4-10-404 Mobile Services

ARTICLE 1. GENERAL PROVISIONS

R4-10-101. Definitions

~~In~~ The definitions in A.R.S. §§ 32-501, 32-516, and 32-572 apply to this Chapter. Additionally, in this Chapter unless otherwise specified:

1. No change
   a. No change
   b. No change
   c. No change
   d. No change
   e. No change
   f. No change
2. No change
3. No change
   a. No change
   b. No change
   c. No change
4. No change
5. No change
   a. No change
   b. No change
6. "Certification of licensure" means the status of the license, signed by the administrator of the agency authorized to issue cosmetology, hairstyling, nail technician, aesthetics, or instructor licenses in the jurisdiction in which the applicant received a license, affixed with the agency's official seal.
7. "Clinic" means the area where a student practices cosmetology, hairstyling, nail technology, or aesthetics on the general public for a fee.
8. No change
9. No change
10. No change
11. "Double bracing" means using a stable base of support and two points of contact for the hand while performing a procedure.
12. No change

13. "Graduation" or "graduated from a school" means ~~the~~ completion of the criteria established by a cosmetology, hairstyling, aesthetics, or nail technology school for the course in which the applicant was enrolled including ~~the~~ completion of the required curriculum hours.
14. No change
    a. No change
    b. No change
    c. No change
    d. No change
15. No change
16. No change

~~17. "Lab" means the area in which instruction is provided regarding demonstration, theory, and practice on models.~~

~~18.~~17. "Licensed in another state of the United States or foreign country" means:
    a. A governmental regulatory agency in the state or country is authorized to examine~~, for~~ the competency~~, candidates~~ of individuals who graduate from a licensed cosmetology, hairstyling, nail technology, or aesthetics school, or instructors for these disciplines; and
    b. The governmental regulatory agency issues licenses over which the state or country has regulatory and disciplinary jurisdiction ~~and monitors~~.

~~19.~~18. No change

~~20.~~19. No change

~~21.~~20. No change

~~22.~~21. No change

~~23.~~22. "Personal knowledge" means actual observation of an individual who practiced aesthetics, cosmetology, hairstyling, or nail technology in any state or country.

~~24.~~23. "Practice" means engaging in the profession of aesthetics, cosmetology, hairstyling, nail technology, or instructor.

~~25.~~24. No change

~~26.~~25. No change

~~27.~~26. "Tenth grade equivalency" means:
    a. No change
    b. Proof ~~that~~ the prospective student is ~~23~~ at least 18 years old. Satisfactory proof of ~~the prospective student's~~ age is shown by a government-issued driver's license or identification card, ~~a~~ birth certificate, or ~~a~~ passport; or
    c. No change

~~28.~~27. "Transfer application,"~~,~~ as used in A.R.S. § 32-560, means an application that documents the transfer of a student from one Arizona cosmetology, hairstyling, nail technology, or aesthetics school to another and contains the student's name, address, identification number, telephone number, and number of hours of instruction received.

R4-10-104. Application for License by Examination

A. An applicant for an aesthetics, cosmetology, hairstyling, nail technology, or instructor license by examination shall submit to the Board:

1. The ~~applicable fees~~ fee required for ~~the practical and written examination and~~ an initial personal license in R4-10-102; and
2. No change
   a. No change
   b. No change
   c. No change
   d. No change
   e. No change
   f. A statement of whether the applicant has ever had an aesthetics, cosmetology, hairstyling, nail technology, or instructor license suspended or revoked in any state of the United States or foreign country;
   g. No change
   h. No change

B. In addition to complying with the requirements in subsection (A), an applicant for an aesthetics, cosmetology, hairstyling, or nail technology~~, or cosmetology~~ license by examination shall:

1. Comply with A.R.S. § 32-510, 32-511, ~~or~~ 32-512, or 32-512.01 by submitting documentation of 10th grade equivalency~~.~~; and
2. Comply with A.R.S. § 32-510, 32-511, ~~or~~ 32-512, or 32-512.01 by submitting a copy of one of the following:
   a. No change
   b. No change

C. No change

1. No change
   a. No change
   b. No change
   c. No change
   d. Proof of attainment of ~~23~~ 18 years of age; or

e. No change

2. No change

a. No change

b. No change

3. No change

a. No change

b. No change

c. No change

d. No change

e. No change

R4-10-105. Application for License by Reciprocity

An applicant for an aesthetics, cosmetology, hairstyling, nail technology, or instructor license by reciprocity shall submit the applicable fee required in R4-10-102 and all of the following to the Board:

1. No change

a. No change

b. No change

c. A statement of whether the applicant has ever had an aesthetics, cosmetology, hairstyling, nail technology, or instructor license suspended or revoked in any state of the United States or foreign country~~.~~;

2. No change

R4-10-107. License Renewal

A. An aesthetician, cosmetologist, hairstylist, nail technician, or instructor licensee shall postmark or electronically submit an application for renewal to the Board on or before the licensee's birthday every two years.

1. No change

2. No change

a. No change

b. No change

c. No change

B. No change

1. No change

2. No change
   a. No change
   b. No change

R4-10-108. Pre-screening Review; Licensing Examination

A. A student planning to apply to the Board for licensure may, but is not required to, request that the Board complete a pre-screening review of whether the student is qualified to take the licensing examination. The student may request the pre-screening review before the student graduates from a ~~school~~ licensed ~~by the Board~~ school but the student shall not be issued an examination date until the student has completed a minimum of:

1. No change
2. 750 hours of hairstyling training,

~~2.~~3. 500 hours of aesthetics or nail ~~technician~~ technology training, or

~~3.~~4. ~~550~~ 350 hours of cosmetology, hairstyling, aesthetics, or nail technology instructor training,

~~4. 400 hours for aesthetics instructor training, or~~

~~5. 250 hours of nail technician instructor training.~~

B. No change

C. No change

D. No change

E. No change

F. No change

G. No change
   1. No change
   2. No change
   3. No change

H. No change

I. No change

J. No change

K. No change

L. No change

M. No change
   1. No change
   2. No change
   3. No change

N. No change

1. No change
2. No change

R4-10-110. Reactivating an Inactive License

A. A cosmetology, hairstyling, nail technology, aesthetics, or instructor license that has been inactive for less than two years may be reactivated by paying the delinquent renewal fee.

B. A cosmetology, hairstyling, nail technology, aesthetics, or instructor license that has been inactive for more than two years, but less than five years, may be reactivated by the inactive licensee paying the delinquent renewal fee and paying for and completing the infection protection class and law review class, offered by the Board.

C. A cosmetology, hairstyling, nail technology, aesthetics, or instructor license that has been inactive for more than five years, but less than 10 years, may be reactivated by the inactive licensee if the licensee does all of the following:

1. No change
2. No change
3. No change
4. No change

D. If a cosmetology, hairstyling, nail technology, aesthetics, or instructor license has been inactive for more than 10 years, the inactive licensee shall comply with all application requirements in R4-10-104 before practicing or teaching cosmetology in Arizona.

ARTICLE 2. SCHOOLS

R4-10-203. General School Requirements

A. ~~Aesthetics~~ An aesthetics, cosmetology, hairstyling, ~~and~~ or nail technology ~~schools~~ school shall ~~comply~~ ensure the school complies with R4-10-112 and ~~have~~ has the following minimum facilities, equipment, supplies, and materials:

1. No change
2. No change
3. No change
4. No change
5. No change
6. No change

7. No change
8. No change
9. No change
10. No change

B. No change

C. No change

1. No change
2. No change
3. No change
4. No change
5. No change
6. No change
7. No change

D. No change

E. A school shall not pay ~~a salary to~~ an enrolled student ~~other than a student instructor~~ for time while the student is taking classes or receiving credit.

F. A licensed school may offer a postgraduate or advanced continuing education aesthetics, cosmetology, hairstyling, or nail technology course~~, including theory and lab,~~ to ~~students currently enrolled in the school or~~ currently licensed individuals without a licensed instructor present and to students currently enrolled in the school with a licensed instructor present.

1. No change
2. No change
3. No change
4. No change

G. No change

H. No change

I. No change

J. No change

K. No chance

L. No change

M. No change

1. No change
2. No change

3. A student of aesthetics, cosmetology, hairstyling, ~~and~~ or nail technology ~~shall perform~~ performs services within the enrolled course, upon the public or fellow students, only in the presence of a licensed instructor and, except for shampooing, only after completing the basic training specified in R4-10-303, R4-10-304, R4-10-304.1, ~~and~~ or R4-10-305.
4. No change
5. No change
6. No change
7. No change
   a. No change
   b. No change
   c. No change
   d. No change
   e. No change

R4-10-204. School Records

A. No change

B. No change

1. No change
2. No change
3. No change

C. No change

1. No change
2. No change
3. No change
   a. No change
   b. No change
   c. Proof of 10th grade equivalency for a student enrolled in an aesthetics, cosmetology, hairstyling, or nail technology course or proof of high school equivalency or ~~23~~ 18 years of age for a student enrolled in an instructor course;
   d. No change
   e. No change
   f. No change
      i. No change
      ii. No change
      iii. No change

iv. No change

v. No change

g. A record of completed hours, including proof of cosmetology, hairstyling, nail technology, aesthetics, or instructor hours earned in another state or country and accepted by the school; and

4. No change

D. No change

1. No change

a. No change

b. No change

c. No change

d. No change

e. No change

f. No change

g. No change

h. No change

i. No change

2. No change

3. No change

4. No change

5. No change

6. No change

7. No change

8. No change

9. No change

10. No change

11. No change

E. No change

R4-10-205. Aesthetic School Requirements

A. Schools that provide aesthetics 600-hour training for students, ~~500-hour~~ 350-hour training for instructors, or both, shall provide the following minimum facilities, equipment, supplies, and materials in addition to that required by R4-10-203 and R4-10-204:

1. No change

a. No change

b. No change

c. No change

d. No change

2. No change

3. No change

4. No change

5. No change

6. No change

7. No change

8. No change

9. No change

B. No change

1. No change

2. No change

3. No change

4. No change

R4-10-206. Cosmetology School Requirements

A. Schools that provide cosmetology 1600-hour training for students, ~~650-hour~~ 350-hour training for instructors, or both, shall provide the following minimum facilities, equipment, supplies, and materials in addition to that specified by R4-10-203 and R4-10-204:

1. No change

a. No change

b. No change

c. No change

d. No change

e. No change

2. No change

3. No change

4. No change

5. No change

6. No change

7. No change

8. No change

9. No change
10. No change
11. No change
12. No change
13. No change

B. No change

1. No change
2. No change
3. No change
4. No change

R4-10-206. 1. Hairstyling School Requirements

A. A school that provides hairstyling 1000-hour training for students, 350-hour training for instructors, or both, shall ensure the minimum facilities, equipment, supplies, and materials listed under R4-10-206(A)(1) through (6) are provided in addition to those specified under R4-10-203 and R4-10-204.

B. A school shall ensure a nonreturnable student training kit, containing at least the following, is provided to each enrolled hairstyling student:

1. Reasonable access to an online or standard textbook for professional hairstylists;
2. Reasonable access to or a hard copy of the Arizona Board of Cosmetology statutes and rules;
3. One disinfected, covered container to store disinfected tools and instruments as specified by R4-10-112; and
4. A container for contaminated tools and instruments as specified by R4-10-112.

R4-10-208. Combined School Requirements

A. A licensed school shall ensure that the following hours are taught to a student enrolled in the specific curriculum before allowing the student to graduate:

1. No change
2. Aesthetics instructor course – ~~500~~ 350 hours,
3. No change
4. Cosmetology instructor course – ~~650~~ 350 hours,
5. Hairstyling course – 1000 hours,
6. Hairstyling instructor course – 350 hours,

~~5.~~7. No change

~~6.~~8. No change

B. A school that provides training in all of the above courses shall have the minimum records, facilities, equipment, supplies, and materials required ~~by~~ under:

1. No change
2. No change
3. No change
4. R4-10-206, ~~and~~
5. R4-10-206.1, and

~~5.~~6. No change

C. A school that provides the curriculum specified in subsections (A)(3)~~, (A)(4), (A)(5), and~~ through ~~(A)(6)~~ (A)(8) only shall have the minimum records, facilities, equipment, supplies, and materials required ~~by~~ under:

1. No change
2. No change
3. No change
4. R4-10-206.1, and

~~4.~~5. No change

D. A school that provides the curriculum specified in subsections (A)(1)~~, (A)(2), (A)(3), and~~ through ~~(A)(4)~~ (A)(6) only shall have the minimum records, facilities, equipment, supplies, and materials required ~~by~~ under:

1. No change
2. No change
3. R4-10-205 except subsection (A)(1) is one work station for each two aesthetics students in attendance, ~~and~~
4. R4-10-206, and
5. R4-10-206.1.

E. A school that provides the curriculum specified in subsections (A)(1), (A)(2), ~~(A)(5)~~ (A)(7) and ~~(A)(6)~~(A)(8) only shall have the minimum records, facilities, equipment, supplies, and material required ~~by~~ under:

1. No change
2. No change
3. No change
4. No change

ARTICLE 3. STUDENTS

R4-10-302. Instructor Curriculum Required Hours

A. ~~Each~~ A school shall ensure each student in an aesthetics, cosmetology, hairstyling, or nail technology instructor course ~~shall complete~~ completes ~~the number of~~ 350 curriculum hours ~~listed in Table 1~~ that includes the following:

~~**Table 1: Instructor Curriculum (in hours)**~~

~~Subject~~	~~Aesthetics~~	~~Cosmetology~~	~~Nail Technology~~
~~1. Orientation and Arizona laws and rules~~	~~8~~	~~8~~	~~8~~
~~2. Theory, Preparation, and Practice~~ ~~Curriculum Development~~ ~~Developing and Using Educational Aids~~ ~~Presentation Principles (Practical and Written)~~ ~~Classroom Management~~ ~~Evaluation, Assessment, and Remediation Methods (Practical and Written)~~ ~~Diversity in learning (including cultural)~~ ~~Methods of Teaching~~	~~405~~	~~405~~	~~270~~

~~Professional~~

~~Development~~

~~(including ethics)~~

~~Alternative Learning~~

~~[see subsection (B)]~~

~~3. Lab (clinic) oversight~~	~~87~~	~~237~~	~~72~~
~~4. Total Hours~~	~~500~~	~~650~~	~~350~~

1. Orientation and review of the Arizona Board of Cosmetology statutes and rules;
2. Theory, preparation, and practice curriculum development. This includes:
   a. Developing and using educational aids;
   b. Practical and written presentation principles;
   c. Classroom management evaluation, assessment, and remediation methods;
   d. Diversity in learning including cultural differences;
   e. Methods of teaching;
   f. Professional development including ethics; and
   g. Alternative learning;
3. Classroom and clinic oversight.

B. ~~Curriculum~~ A school may allow a student in an instructor course to satisfy, in part, curriculum hours ~~may be~~ required under subsection (A)(2) ~~satisfied in part~~ by completing a course at an accredited college or university or an educational institution described ~~in~~ under R4-10-101~~(15)~~ (14)(c) and (d)~~,~~. Hours obtained under this subsection are subject to the following limits:

1. ~~for no~~ No more than nine credit hours for cosmetology, hairstyling, or aesthetics; ~~and no~~
2. No more than six credit hours for nail technology; and ~~encompassing the subjects listed under Theory, Preparation, and Practice in subsection (A) with each~~
3. Each college credit hour ~~equaling~~ equals no more than 30 of the clock hours required under subsection (A).

C. No change

D. No change

E. No change

R4-10-304. 1 Hairstyling Curriculum Required 1000 Hours

A. Each student in a hairstyling course shall complete the following curriculum:

1. Theory of hairstyling, infection control, anatomy, diseases and disorders, and Arizona Board of Cosmetology statutes and rules; and
2. Clinical and classroom instruction in hairstyling including theory that involves hair:
   a. Principles and practices of infection control and safety;
   b. Recognition of diseases and the treatment of disorders of the hair and scalp;
   c. Morphology and treatment of hair;
   d. Interpersonal skills and professional ethics;
   e. Product pharmacology and chemistry interaction, formulation, composition, and hazards;
   f. Hairstyling machines, tools, and instruments and their uses;
   g. Chemical texturizing;
   h. Changing existing hair color;
   i. Hair and scalp care;
   j. Fundamentals of hairstyling including braiding and extensions;
   k. Neck and scalp massage and manipulations;
   l. Hair cutting fundamentals;
   m. Clinical and classroom practice that includes hair;
   n. Alternative hair technology;
   o. Client pre- and post-service consultation, documentation, and analysis;
   p. Hairstyling technology; and
   q. Required industry standards and ecology, including monitor duties.

B. A school shall not receive remuneration for a hairstyling student performing clinical services, except shampooing, for the public until the student has received at least 300 hours of hairstyling training; and

C. A school shall ensure each student is evaluated for progress and suggestions are provided to the student for remediating deficiencies.

R4-10-306. Curricula Hours

A. ~~Hours~~ A school shall ensure hours of training received in an aesthetics, cosmetology, hairstyling, or nail technology course ~~do~~ are not ~~apply~~ applied toward ~~receiving~~ hours required to obtain an instructor's license.

B. ~~Hours~~ A school shall ensure hours of training received in an instructor course ~~do~~ are not ~~apply~~ applied toward ~~receiving~~ hours required to obtain an aesthetician, cosmetologist, hairstylist, or nail technician license. ~~But~~ Hours received in an instructor course may ~~apply~~ applied toward hours required to ~~reactivation of~~ reactivate an aesthetics, cosmetology, hairstyling, or nail technology license if the instructor hours are received after inactive status occurs.

C. ~~The~~ When evaluating an application for licensure, the Board shall allow the following hours ~~may~~ to apply toward licensing:

1. No change
2. No change
3. 100% of the hours of ~~combined~~ training received in ~~an~~ a combined aesthetics ~~course~~ and ~~a~~ nail technology course toward a ~~cosmetology~~ cosmetologist license ~~but the combined total shall not exceed~~ to a maximum of 600 hours;
4. 100% of the hours of training received in a hairstyling course toward a cosmetologist license;
5. 100% of the hours of training received in a cosmetology course toward a hairstylist license;

~~4.~~6. No change

~~5.~~7. No change

~~6.~~8. 33% of the hours of training received in a nail technology course toward an ~~aesthetics~~ aesthetician license;

~~7.~~9. 66% of the hours of training received in an aesthetics course toward a nail ~~technology~~ technologist license;

~~8.~~10. No change

~~9.~~11. No change

~~10.~~12. 100% of the hours of training received by a licensed cosmetologist in a nail technology instructor course toward an aesthetics instructor ~~course; however, the~~ license. The Board shall require the remaining ~~required~~ hours needed for an aesthetics instructor license to ~~shall~~ be ~~received~~ obtained in an aesthetics or cosmetology ~~school~~ instructor course;

~~11.~~13. 100% of the hours of training received by a licensed cosmetologist in a nail technology instructor course toward a cosmetology instructor ~~course; however, the~~ license. The Board shall require the remaining ~~required~~ hours needed for a cosmetology instructor license to ~~shall~~ be ~~received~~ obtained in a cosmetology ~~school~~ instructor course;

~~12.~~14. 100% of the hours of training received by a licensed cosmetologist in an aesthetics instructor course toward a cosmetology instructor ~~course; however, the~~ license. The Board shall require the remaining ~~required~~ hours needed for a cosmetology instructor license to ~~shall~~ be ~~received~~ obtained in a cosmetology ~~school~~ instructor course;

~~13.~~15. 100% of the hours of training received in a barber instructor course toward a cosmetology instructor ~~course; however, the~~ license. The Board shall require the remaining ~~required~~ hours needed for a cosmetology instructor license to ~~shall~~ be ~~received~~ obtained in a cosmetology ~~school~~ instructor course. ~~One~~ For the purpose of qualifying for the cosmetology instructor examination specified under A.R.S. § 32-531, the Board shall accept one year of licensed barber experience ~~is the same~~ as one year of licensed cosmetology experience ~~for the purpose of qualifying for the cosmetology instructor examination specified by A.R.S. § 32-531~~; and

~~14.~~16. No change

D. ~~At the completion of~~ A school shall ensure that when a student completes a course of instruction, the cumulative hours for ~~students~~ the student ~~shall~~ equal, at a minimum, ~~conform with R4-10-301, R4-10-302, R4-10-303, R4-10-304, R4-10-305, and R4-10-306~~ those specified in this Article, as applicable.

E. No change

F. No change

G. No change

H. No change

I. No change

1. No change
2. No change

J. No change

1. No change
2. No change

ARTICLE 4. SALONS

R4-10-403. Salon Requirements and Minimum Equipment

A. No change

B. No change

C. ~~Each~~ A salon shall ~~have~~ ensure the salon has:

1. No change
2. If the salon is a cosmetology or hairstyling salon, ~~a minimum of~~ at least one shampoo bowl and one hair dryer, which ~~that~~ may be a blow dryer~~, and if~~; and
3. If the salon is an aesthetics or nail technology salon, ~~a minimum of~~ at least one sink in addition to the restroom ~~or~~ and dispensary ~~sink~~ sinks.

D. ~~Aestheticians~~ A salon shall ensure aestheticians, cosmetologists, hairstylists, and nail technicians ~~shall~~ have enough equipment, materials, supplies, tools, and instruments to provide services, ~~ensure~~ control infection, ~~control at all times~~ and ~~disinfection~~ disinfect between clients.

R4-10-404. Mobile Services

A. No change

1. A salon providing mobile cosmetology, hairstyling, nail technology, or aesthetics services shall ~~post~~ ensure licenses are posted as required ~~by~~ under R4-10-111.
2. No change
3. No change
4. No change
5. No change

B. No change

1. No change
2. No change
3. No change
4. No change

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT[1]
TITLE 4. PROFESSIONS AND OCCUPATIONS
CHAPTER 10. BOARD OF COSMETOLOGY

1. Identification of the rulemaking:

   Under Laws 2017, Chapter 12, the legislature added hairstylist as an occupation regulated by the Board, reduced the number of hours of training to become a cosmetology or aesthetics instructor, added hairstyling as a kind of school that could be operated in Arizona, and required the Board to make rules necessary and proper to achieve this. In this rulemaking, the Board makes the required rules. An exemption from EO2017-02 was provided for this rulemaking by Mara Mellstrom, Policy Advisor in the Governor's office, in an email dated May 2, 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 standards for issuing a hairstylist license and will not have rules consistent with statutory changes made by the legislature.
   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:
      By having rules inconsistent with statute, the Board is violating principles of good government.
   c. The estimated change in frequency of the targeted conduct expected from the rule change:
      When the rulemaking is completed, the Board's rules will be consistent with statute and the Board will have fulfilled the statutory directive to make rules necessary and proper to implement statute.

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

   The Board expects the rulemaking, which simply implements a statutory change made by the legislature, to have minimal economic impact. It is the legislature that produced economic impact by requiring the Board to regulate an additional occupation, reducing the number of hours required to become licensed as a cosmetology or aesthetics instructor, and adding hairstyling as a kind of school that can be operated in Arizona.

[1] If adequate data are not reasonably available, the agency shall explain the limitations of the data, the methods used in an attempt to obtain the data, and characterize the probable impacts in qualitative terms.

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: Donna Aune

   Address: 1721 E. Broadway
   Tempe, AZ 85282-1611

   Telephone: (480) 784-4539

   Fax: (480) 784-4962

   E-mail: daune@azboc.gov

   Web site: www.azboc.gov

4. Persons who will be directly affected by, bear the costs of, or directly benefit from the rulemaking:

   Applicants for a hairstylist license, cosmetology or aesthetics instructor license, or license to operate a hairstyling school will be directly affected by and benefit from this rulemaking. However, the economic benefits and costs result from the statutory change rather than the rulemaking. Operators of cosmetology schools may be indirectly affected by the change.

   The Board currently licenses 76,775 cosmetologists, aestheticians, nail technicians, and instructors. A cosmetologist can do the same work as an aesthetician and nail technician in addition to hairstyling. At least 1600 hours of training are required to become licensed as a cosmetologist. An individual can become licensed as an aesthetician or nail technologist with only 600 hours of training. With the recent statutory change, the occupation of hairstylist is added to the Board's regulatory authority and an individual can become licensed as a hairstylist with only 1000 hours of training. The Board estimates that of the 1744 new applicants for licensure as a cosmetologist last year, 45 percent would have chosen to be licensed as a hairstylist if that option had been available. The fewer hours of required training mean an individual seeking licensure as a hairstylist is able to enter the workforce more quickly and may have less educational expense.

   With the recent statutory change, the legislature also added hairstyling as a kind of school a person can be licensed by the Board to operate. The Board estimates that if this option had been available last year, most of the 11 applicants for a license to operate a cosmetology school would have applied for a license to operate a hairstyling school.

(A.R.S. § 41-1055(C)).

Operators of cosmetology schools may be negatively impacted by the statutory changes implemented in this rulemaking if students who would have enrolled in a cosmetology school and paid for the required 1600 hours of instruction choose to enroll instead in a hairstyling school and pay for only 1000 hours of required instruction. However, just as an operator of a cosmetology school is able to offer a training program in aesthetics or nail technology only, the operator of a cosmetology school will be able to offer a training program in hairstyling only so the possible reduction in cosmetology students may be offset by an increase in hairstyling students.

An applicant for an instructor license is required to be licensed in the occupation to be instructed. The instructor training focuses on methods of instructing. This is why it is possible to reduce the number of hours of required training to be a cosmetology or aesthetics instructor to equal those required to be a nail technician or hairstylist instructor. The reduced number of hours of training does not pose a health or safety risk for the public.

The Board is also directly affected by, bears the costs of, or directly benefits from the rulemaking. The Board incurred the cost of making these rules and will incur the cost of implementing them. The Board has the benefit of having rules consistent with statute and fulfilling its statutory responsibility.

5. Cost-benefit analysis:
    a. Costs and benefits to state agencies directly affected by the rulemaking including the number of new full-time employees at the implementing agency required to implement and enforce the proposed rule:
    The Board is the only state agency directly affected by the rulemaking. The costs and benefits for the Board are discussed in item 4. The Board has determined no additional FTEs are required 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:
    Hairstylists are businesses directly affected by the rulemaking. As a result of the statutory change, individual hairstylists will be able to enter the workforce more quickly and may have less educational expense. School operators are also businesses directly affected by the rulemaking. The number of hours of training they are required to provide to students is reduced for cosmetology and aesthetics instructor

students. School operators wanting to provide instruction only to hairstyling instructors will now be able to do so. Cosmetology school operators may have fewer students as individuals choose to attend a hairstyling school rather than a cosmetology school. However, just as an operator of a cosmetology school is able to offer a training program in aesthetics or nail technology only, the operator of a cosmetology school will be able to offer a training program in hairstyling only so the possible reduction in cosmetology students may be offset by an increase in hairstyling students.

6. Impact on private and public employment:

   The Board believes the rulemaking will have no impact on private or public employment.

7. Impact on small businesses[2]:

   a. Identification of the small business subject to the rulemaking:

      All the effected business identified in item (5)(c) are small businesses.

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

      All applicants for licensure are required to make application, take a licensing examination, and pay a licensing fee. Operators of schools are required to comply with minimum equipment and educational standards and maintain student records.

   c. Description of methods that may be used to reduce the impact on small businesses:

      Because all businesses affected by the rulemaking are small businesses, no methods are available for reducing the impact on small businesses. Additionally, small businesses that obtain one of the licenses newly created by the legislature do so voluntarily because they determine the benefits of the license outweighs the costs.

8. Cost and benefit to private persons and consumers who are directly affected by the rulemaking:

   No private persons or consumers are directly affected by the rulemaking.

9. Probable effects on state revenues:

   Because the cost for an initial personal license is the same regardless of the occupation licensed, the addition of hairstyling as a licensed occupation will not change the amount of fees collected by the Board. The same is true regarding the fee for a license to operate a school and for applicable renewal fees. As a result, the rulemaking will have no effect on state revenues.

10. Less intrusive or less costly alternative methods considered:

[2] Small business has the meaning specified in A.R.S. § 41-1001(21).

The Board believes the rules are the least intrusive and least costly possible. No alternative methods were considered.

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 10. BOARD OF COSMETOLOGY

(Authority: A.R.S. § 32-501 et seq.)

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ARTICLE 1. GENERAL PROVISIONS

R4-10-101. Definitions

In this Chapter unless otherwise specified:

1. "Accredited" means approved by the:
   a. New England Association of Schools and Colleges,
   b. Middle States Association of Colleges and Secondary Schools,
   c. North Central Association of Colleges and Schools,
   d. Northwest Association of Schools and Colleges,
   e. Southern Association of Colleges and Schools, or
   f. Western Association of Schools and Colleges.
2. "Administrative completeness review" means the Board's process for determining that an applicant has provided all information and documents required by Board statute or rule for an application.
3. "Applicant" means an individual or any of the following seeking licensure by the Board:
   a. If a corporation, any two officers of the corporation;
   b. If a partnership, any two of the partners; or
   c. If a limited liability company, the designated corporate contact person, or if no contact person is designated, any two members of the limited liability company.
4. "Application packet" means the forms and documents the Board requires an applicant to submit.
5. "Certification of hours" means a document that states the total number of hours completed at a school, including:
   a. A written statement of the hours a student received in a licensed school, or credits a student received, signed by the administrator of the agency authorized to record hours in the jurisdiction in which the applicant received certified or accredited vocational or academic training, affixed with the agency's official seal; or
   b. If a student is transferring from one Arizona school to another under A.R.S. § 32-560, a transfer application that reflects the hours or credits a student received, signed by the administrator of the school where the applicant received certified or accredited training.
6. "Certification of licensure" means the status of the license, signed by the administrator of the agency authorized to issue cosmetology, nail technician, aesthetics, or instructor licenses in the jurisdiction in which the applicant received a license, affixed with the agency's official seal.
7. "Clinic means the area where a student practices cosmetology, nail technology, or aesthetics on the general public for a fee.
8. "Course" means an organized subject matter in which instruction is offered within a given period of time and for which credit toward graduation or certification is given.
9. "Credit" means one earned academic unit of study based on completing a high school's required number of class sessions per calendar week in a course or an earned academic unit of study based on attending a one-hour class session per calendar week at a community college, an accredited college or university, or a high school.
10. "Days" means calendar days.
11. "Double bracing" means using a stable base of support and two points of contact for the hand while performing a procedure.
12. "Establishment" means a business that functions as a school or a salon at least an average of 20 hours a week for the majority of the year.
13. "Graduation" or "graduated from a school" means the completion of the criteria established by a cosmetology, aesthetics, or nail technology school for the course in which the applicant was enrolled including the completion of the required curriculum hours.
14. "High school equivalency" means:
    a. A high school diploma from a school recognized by the basic education authority or the Department of Education in the jurisdiction in which the school is located,
    b. A total score of 45 points on a high school equivalency general educational development test or its equivalent as required by the Department of Education,
    c. An associate degree or 15 academic credits from a junior college recognized by the basic education authority in the jurisdiction in which the college is located, or
    d. Any degree from a college or university recognized by the basic education authority in the jurisdiction in which the college or university is located.
15. "Hour" means one clock hour.
16. "Instructor training" means the courses specified in R4-10-302.
17. "Lab" means the area in which instruction is provided regarding demonstration, theory, and practice on models.
18. "Licensed in another state of the United States or foreign country" means:
    a. A governmental regulatory agency in the state or country is authorized to examine, for competency, candidates who graduate from a licensed cosmetology, nail technology, aesthetics school, or instructors for these disciplines; and
    b. The agency issues licenses over which the state or country has jurisdiction and monitors.
19. "Manager" means an individual licensed by the Board who is responsible for ensuring an establishment's compliance with A.R.S. §§ 32-501 et seq. and this Chapter.
20. "Model" means a person or a mannequin on whom an applicant performs demonstrations for the practical section of a licensing examination or lab.
21. "Owner" means an individual or entity that has a controlling legal or equitable interest and authority and is responsible for ensuring an establishment's compliance with A.R.S. § 32-501 et seq. and this Chapter.

22. "Patron" means any client of an establishment or student of a school.
23. "Personal knowledge" means actual observation of an individual who practiced aesthetics, cosmetology, or nail technology in any state or country.
24. "Practice" means engaging in the profession of aesthetics, cosmetology, nail technology, or instructor.
25. "Reciprocity" means the procedure for granting an Arizona license to an applicant who received the required hours from a school licensed in another state of the United States or a foreign country or is currently licensed in another state of the United States or a foreign country.
26. "Substantive review" means the Board's process for determining whether an applicant for licensure meets the requirements for the license for which application is made including, if applicable, taking and passing an examination given by the Board.
27. "Tenth grade equivalency" means:
    a. Ten high school credits, including two in English, from any school recognized by the basic education authority or the Department of Education in the jurisdiction in which the credits were obtained;
    b. Proof that the prospective student is 23 years old. Satisfactory proof of the prospective student's age is shown by a government-issued driver's license or identification card, a birth certificate, or a passport; or
    c. High school equivalency.
28. "Transfer application", as used in A.R.S. § 32-560, means an application that documents the transfer of a student from one Arizona cosmetology, nail technology, or aesthetics school to another and contains the student's name, address, identification number, telephone number, and number of hours of instruction received.

R4-10-102. Fees and Charges

A. Under the specific authority provided by A.R.S. § 32-507(A) and subject to R4-10-103(E), the Board establishes and shall collect the following fees:
1. Initial personal license: $70.00
2. Personal licensing renewal fees: $60.00
3. Delinquent personal license renewal: $90.00 ($60 for personal license renewal as specified under subsection (A)(4) plus $30 for delinquent renewal) for every two years or portion of two years that the license is inactive to a maximum of four years
4. Personal reciprocity license: $140.00
5. Salon initial license: $110.00
6. Salon renewal: $50.00
7. Salon delinquent renewal: $80.00
8. School license: $600.00
9. School renewal: $500.00
10. Delinquent school renewal: $600.00

B. An applicant for licensure by examination shall pay directly to the national professional organization with which the Board contracts the amount charged to administer and grade the written and practical examinations.

C. Under the specific authority provided by A.R.S. § 32-507(B) and subject to R4-10-103(E), the Board establishes and shall collect the following charges for the services provided:
1. Board administered educational classes: $25.00
2. Review of examination: $50.00
3. Re-grading of examination: $25.00
4. Certification of licensure or hours: $30.00
5. For use of an alternative method of payment: $3.00 per transaction
6. For copying public documents: 50¢ per page
7. For audiotapes, videotapes, computer discs, or other media used for recording sounds, images, or information: $15 per tape, disc, or other medium
8. For a list of licensees' names and addresses: 25¢ per name
9. Duplicate license: $20.00

D. As authorized by A.R.S. § 44-6852, the Board shall charge a service fee of $20.00 for the return of a dishonored check or the failure of any other means of payment to be honored plus the actual charges assessed by the financial institution dishonoring the check or other means of payment.

R4-10-103. Payment of Fees

A. A fee is not considered paid until the Board receives the amount required. The Board shall not provide services, administer examinations, or issue certifications or licenses until it receives the required fee.

B. The Board shall accept personal checks only for license renewals. If a check for a license renewal is returned because it is dishonored for any reason including insufficient funds, the renewal application is incomplete, and any license renewal that has been issued is void effective the date the Board mails written notice to the licensee that the license is void.

C. An applicant or licensee whose fee payment to the Board is dishonored for any reason including an insufficient funds check is not entitled to a further service, examination, certification, or license until the Board receives the following:
1. The amount of the fee for which the payment was dishonored;
2. The penalty provided in R4-10-102(21);
3. If applicable, the delinquent fee for each year or part of a year the license was inactive for the type of license to be renewed.

D. Fees are nonrefundable except if A.R.S. § 41-1077 applies.

E. The Board shall not refund fees tendered for $5.00 or less over the amount specified in R4-10-102, except the Board shall refund fees paid over the amount specified as the maximum fee in A.R.S. § 32-507.

R4-10-104. Application for License by Examination

A. An applicant for an aesthetics, cosmetology, nail technology, or instructor license by examination shall submit to the Board:
1. The applicable fees required for the practical and written examination and initial personal license in R4-10-102;
2. An application provided by the Board that contains:
   a. A passport quality photo of the applicant;
   b. The applicant's name, address, telephone number, Social Security number, gender, and birth date;
   c. The name and address of each licensed school attended by the applicant;
   d. The name of course completed, the name of the school where completed, and the starting date and date of graduation;
   e. If previously licensed by the Board, type of license, license number, license expiration date, and the name used on the license;
   f. A statement of whether the applicant has ever had an aesthetics, cosmetology, nail technology, or instructor license suspended or revoked in any state or foreign country;
   g. A statement by the applicant verifying the truthfulness of the information provided by the applicant; and
   h. The applicant's signature.

B. In addition to complying with the requirements in subsection (A), an applicant for an aesthetics, nail technology, or cosmetology license by examination shall:
1. Comply with A.R.S. § 32-510, 32-511, or 32-512 by submitting documentation of 10th grade equivalency.
2. Comply with A.R.S. § 32-510, 32-511, or 32-512 by submitting a copy of one of the following:
   a. If the applicant graduated from a course presented by a school licensed by the Board, a written statement signed by the administrator of the school that documents proof of graduation and completion of all required hours; or
   b. If the applicant attended more than one licensed school in Arizona, a copy of a transfer application or certification of hours from each school attended that includes the starting and ending dates, and a written statement signed by the administrator of each school that documents proof of the total number of hours completed at the school, and, if applicable, proof of graduation.

C. In addition to complying with the requirements in subsection (A), an applicant for an instructor license by examination shall:
1. Comply with A.R.S. § 32-531 by submitting the following:
   a. Documentation of required work experience;
   b. Proof of current licensure in the profession in which experience was gained;
   c. Proof of licensure during the period experience was gained; and
   d. Proof of attainment of 23 years of age; or
   e. Proof of high school equivalency.
2. If qualifying under A.R.S. § 32-531(3)(a), submit a copy of the following:
   a. Documentation of graduation from a Board-licensed school by a certification of graduation on a form supplied by the Board including the starting and ending dates, total number of hours completed, and signature of the administrator of the school; and
   b. If the applicant attended more than one licensed school in Arizona, a copy of a transfer application or certification of hours from each school attended, including the starting and ending dates, total number of hours completed, and signature of the administrator of the school.
3. Documentation of the work experience required by A.R.S. § 32-531 shall be signed by an owner or manager of a licensed salon, an individual, or a supplier of cosmetology products with personal knowledge of the applicant's licensed experience in the profession for which the applicant seeks an instructor license. The person providing the documentation verifying the applicant's experience shall also indicate the following:
   a. Profession in which applicant gained the experience;
   b. Starting and ending dates of applicant's experience in the profession;
   c. Name of licensed salon and address where applicant gained experience in the profession; and
   d. License number and name of the licensed individual completing the form; or
   e. Name, address, and telephone number of the individual completing the information.

R4-10-105. Application for License by Reciprocity

An applicant for an aesthetics, cosmetology, nail technology, or instructor license by reciprocity shall submit the applicable fee required in R4-10-102 and all of the following to the Board:
1. An application provided by the Board and signed by the applicant that contains:
   a. The applicant's name, address, telephone number, gender, passport quality photo, Social Security number, and birth date;
   b. If previously licensed by the Board, the type of license, license number, license expiration date, and the name used on the license; and
   c. A statement of whether the applicant has ever had an aesthetics, cosmetology, nail technology, or instructor license suspended or revoked in any state or foreign country.
2. A certification of hours and proof of graduation or licensure in another state of the United States or a foreign country that shows the number of hours received in a school or the initial and final dates of licensure.

R4-10-106. Licensing Time-frames

A. The overall time-frame described in A.R.S. § 41-1072 for each type of approval granted by the Board is set forth in Table 1. The applicant and the Executive Director of the Board may agree in writing to extend the overall time-frame. The substantive review time-frame may not be extended by more than 25% of the overall time-frame.

B. The administrative completeness time-frame described in A.R.S. § 41-1072(1) for each type of approval granted by the Board is set forth in Table 1.

1. The administrative completeness review time-frame begins:
   a. For approval to take an examination, approval or denial of school or salon license, or approval or denial of a license by reciprocity, when the Board receives an application packet; or
   b. For approval or denial of a license by examination, when the applicant takes an examination.
2. If an application packet is incomplete, the Board shall send to the applicant a written notice specifying the missing document or incomplete information. The administrative completeness review time-frame and the overall time-frame are suspended from the postmark date of the notice until the date the Board receives a complete application packet from the applicant.
3. If an application packet is complete, the Board shall send a written notice of administrative completeness to the applicant.
4. If the Board grants a license or approval during the time provided to assess administrative completeness, the Board shall not issue a separate written notice of administrative completeness.

C. The substantive review time-frame described in A.R.S. § 41-1072(3) is set forth in Table 1 and begins on the postmark date of notice of administrative completeness.

1. As part of the substantive review for a school license, the Board shall conduct an inspection that may require more than one visit to the school.
2. During the substantive review time-frame, the Board may make one comprehensive written request for additional information or documentation. The time-frame for the Board to complete the substantive review is suspended from the postmark date of the comprehensive written request for additional information or documentation until the Board receives the additional information or documentation.
3. If an applicant meets the requirements of A.R.S. § 32-501 through § 32-575 and this Chapter, the Board shall send written notice of approval to the applicant. If an applicant is applying for approval to take an examination, the notice shall include the date, time, and place the applicant is scheduled to take an examination.
4. If an applicant does not meet the requirements of A.R.S. § 32-501 through § 32-575 and this Chapter, the Board shall send a written notice of denial to the applicant including a basis for the denial and an explanation of the applicant's right to appeal as prescribed in A.R.S. § 41-1076.

D. The Board shall consider an application withdrawn if within 180 days from the application submission date the applicant fails to:

1. Supply the missing information under subsection (B)(2) or (C)(2); or
2. Take an examination.

E. An applicant who does not wish an application withdrawn may request a denial in writing within 180 days from the application submission date.

F. An individual shall not practice as an aesthetician, cosmetologist, instructor, or nail technician until the individual receives and posts the license at the individual's place of employment.

G. If a time-frame's last day falls on a Saturday, Sunday, or a legal holiday, the Board shall consider the next business day the time-frame's last day.

R4-10-107. License Renewal

A. An aesthetician, cosmetologist, nail technician, or instructor licensee shall postmark or electronically submit an application for renewal to the Board on or before the licensee's birthday every two years.

1. If a licensee's birthday falls on a Saturday, Sunday, or legal holiday, the licensee may file the renewal application on the next business day following the licensee's birthday.
2. A renewal application consists of:
   a. A form provided by the Board that contains: the licensee's name, address, Social Security number, and signature or Personal Identification Number (PIN) supplied by the Board if filed electronically;
   b. A statement of whether the licensee has changed the licensee's name since the previous application and, if name has changed, a copy of a legal document, such as a marriage license or divorce decree, showing the name change; and
   c. The fee required in R4-10-102.

B. An establishment licensee shall annually postmark or electronically submit to the Board an application for renewal and the fee required in R4-10-102 on or before the license renewal date.

1. If the license renewal date falls on a Saturday, Sunday, or legal holiday, the licensee may file the application on the next business day following the license renewal date.
2. A renewal application consists of a form provided by the Board that contains:
   a. The establishment's name and license number; and
   b. If the owner is an individual or partnership, the signature and tax identification number of the owner; if the owner is a corporation, the signature of the authorized signer and the tax identification number of the corporation; if filed electronically, the Personal Identification Number (PIN) supplied by the Board may be used in place of the signature

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R4-10-108. Pre-screening Review; Licensing Examination

A. A student planning to apply to the Board for licensure may, but is not required to, request that the Board complete a pre-screening review of whether the student is qualified to take the licensing examination. The student may request the pre-screening review before the student graduates from a school licensed by the Board but the student shall not be issued an examination date until the student has completed a minimum of:

1. 1450 hours of cosmetology training,
2. 500 hours of aesthetics or nail technician training,
3. 550 hours of cosmetology instructor training,
4. 400 hours for aesthetics instructor training, or
5. 250 hours of nail technician instructor training.

B. After the Board completes the pre-screening review and determines the student has completed the number of hours specified in subsection (A), the Board or national professional organization with which the Board contracts to administer the licensing examination shall issue an examination date to the student. However, the Board shall not allow the student to take the examination until the student applies for licensure and provides a certification of graduation to the Board.

C. If a student who has been issued an examination date fails to apply for licensure and provide a certification of graduation by the examination date or fails to appear at the examination site at the scheduled examination time, the examination fee is forfeited.

D. A request for a pre-screening review is not an application for licensure and does not guarantee the Board will issue a license.

E. The Board or national professional organization with which the Board contracts to administer the licensing examination shall provide written notice to an applicant of the date, time, and location for the examination.

F. An applicant shall provide photographic identification upon entering the examination site. The following U.S.-issued forms of identification are acceptable: passport, driver license, bank identification card, military identification, or other government-issued identification card.

G. The licensing examination consists of both a written and practical section. An applicant shall perform a live demonstration on a model during the practical section of the licensing examination. During the live demonstration, the applicant shall:

1. Provide the model required for the demonstration. If the applicant provides a live model for the demonstration, the live model shall not be a current or former student of aesthetics, cosmetology, or nail technology or a current or former licensee;
2. Provide all equipment, supplies, tools, or instruments required for the demonstration; and
3. Comply with all infection control and safety standards specified in R4-10-112, including those regarding blood spills. If an applicant fails to follow proper blood-spill procedures during the demonstration, the examination administrator shall dismiss the applicant from the examination and cause the examination fee to be forfeited.

H. If an applicant fails to appear for a licensing examination as scheduled, the applicant forfeits the examination fee. If an applicant arrives at an examination site after the scheduled examination begins, the examination administrator shall not allow the applicant to take the examination. An applicant may reschedule a missed examination by paying another examination fee.

I. An applicant may cancel a scheduled examination date once by providing notice of cancellation at least 48 hours before the examination start time. The Board does not require another examination fee to reschedule a canceled examination.

J. Neither the Board nor the examination administrator shall make examination materials available for inspection or copying by any person. A person shall not attempt to obtain or provide examination materials.

K. An applicant shall not bring and the examination administrator shall not allow written material or recording media to either the written or practical section of the licensing examination. The examination administrator may exclude from the written or practical section of the licensing examination any items the examination administrator believes may impede the fair administration or security of the examination. The examination administrator shall dismiss from the examination an applicant who seeks to impede the fair administration of the examination, or copies or asks for information from another applicant and cause the examination fee to be forfeited.

L. If an applicant passes the examination but fails to complete the licensure process within one year after the date of the examination, the Board shall void the examination scores.

M. If application is made for licensure by reciprocity, the Board shall accept a score on a written or practical examination from another jurisdiction if the examination:

1. Is the same national examination administered in Arizona,
2. The score obtained by the applicant is at least the same as the passing score required by the Board at the time the applicant took the examination in the other jurisdiction, and
3. The applicant provides the Board with documentation from the other jurisdiction verifying the passing score and that the score was received within one year before the application for licensure by reciprocity.

N. The Board or national professional organization with which the Board contracts to administer the licensing examination shall conduct:

1. The practical section of the licensing examination in English and an applicant shall submit answers in English;
2. The written section of the licensing examination in English and other languages specified by the national professional organization. An applicant may choose to take the written section of the licensing examination in any of the offered languages.

R4-10-110. Reactivating an Inactive License

A. A cosmetology, nail technology, aesthetics, or instructor license that has been inactive for less than two years may be reactivated by paying the delinquent renewal fee.

B. A cosmetology, nail technology, aesthetics, or instructor license that has been inactive for more than two years, but less than five years, may be reactivated by the licensee paying the delinquent renewal fee and paying for and completing the infection protection class and law review class, offered by the Board.

C. A cosmetology, nail technology, aesthetics, or instructor license that has been inactive for more than five years, but less than 10 years, may be reactivated by the licensee if the licensee does all of the following:

1. Provides a certification of licensure;
2. Completes the infection protection class and law review class given by the Board;
3. Takes and passes the Board examination pertaining to the type of license formerly held; and
4. Pays for the classes required under subsection (C)(2) and the delinquent renewal fee.

D. If a cosmetology, nail technology, aesthetics, or instructor license has been inactive for more than 10 years, the licensee shall comply with all application requirements in R4-10-104 before practicing or teaching cosmetology in Arizona.

R4-10-111. Display of Licenses and Signs

A. The name on an establishment's exterior sign, advertising, and publications shall be the same as the name on the establishment license issued by the Board. The establishment's exterior sign shall contain lettering at least 2 1/2 inches in height.

B. A school shall prominently post a class schedule that lists the names of instructors and classes. The school shall display the school and instructor licenses near the school entrance, visible to the public.

C. A salon shall prominently post the salon license and ensure that the personal license of each licensee performing services in the salon is posted at the licensee's station.

D. A licensee performing mobile services shall prominently display a duplicate personal and establishment license in the area where mobile services are provided. The licensee's original license shall be prominently displayed in the salon from which the licensee was dispatched in accordance with subsection (C).

E. A copy of R4-10-112 shall be prominently posted in each establishment.

F. A salon shall prominently post a notice of salon services that are not regulated by the Board and that are provided at the salon.

R4-10-112. Infection Control and Safety Standards

A. An establishment shall have and maintain the following minimum equipment and supplies:
1. Non-leaking, waste receptacles, which shall be emptied, cleaned, and disinfected daily;
2. Ventilated containers for soiled linens including towels and capes;
3. Closed, clean containers to hold clean linens including towels and capes;
4. A covered, wet disinfectant container made of stainless steel or a material recommended by the manufacturer of the wet disinfectant that:
   a. Is large enough to contain sufficient disinfectant solution to allow for the total immersion of tools and instruments,
   b. Is set up with disinfectant at all times the establishment is open, and
   c. Is changed as determined by manufacturer's instructions or when visibly cloudy or contaminated;
5. An Environmental Protection Agency (EPA)-registered bactericidal, virucidal, fungicidal, and pseudomonacidal (formulated for hospitals) disinfectant which shall be mixed and used according to manufacturer's directions on all tools, instruments, and equipment, except those that have come in contact with blood or other body fluids; and
6. An EPA-registered disinfectant that is effective against HIV-1 and Human Hepatitis B Virus or Tuberculocidal which shall be mixed and used according to the manufacturer's directions on tools, instruments, and equipment that come in contact with blood or other body fluids.

B. Procedure for disinfecting non-electrical equipment.
1. Non-electrical equipment shall be disinfected by cleaning with soap or detergent and warm water, rinsing with clean water, and patting dry; and
2. Totally immersing in the wet disinfectant required under subsection (A)(5) or (A)(6) following manufacturer's recommended directions.

C. Procedure for storage of tools and instruments.
1. A tool or implement that has been used on a client or soiled in any manner shall be placed in a properly labeled receptacle; and
2. A disinfected implement shall be stored in a disinfected, dry, covered container and isolated from contaminants.

D. Procedure for disinfecting electrical equipment, which shall be in good repair, before each use.
1. Remove all foreign matter;
2. Clean and spray or wipe with a disinfectant, compatible with electrical equipment, as required in subsection (A)(5) or (A)(6); and
3. Disinfect removable parts as described in subsection (B).

E. Tools, instruments and supplies.
1. All tools, instruments, or supplies that come into direct contact with a client and cannot be disinfected (for example, cotton pads, sponges, porous emery boards, and neck strips) shall be disposed of in a waste receptacle immediately after use;
2. Disinfected tools and instruments shall not be stored in a leather storage pouch;
3. A sharp cosmetology tool or implement that is to be disposed of shall be sealed in a rigid, puncture-proof container and disposed of in a manner that keeps licensees and clients safe;
4. An instrument or supply shall not be carried in or on a garment while practicing in the establishment;
5. Clips or other tools and instruments shall not be placed in mouths, pockets, or other unsanitized holders;
6. Pencil cosmetics shall be sharpened before each use;
7. All supplies, equipment, tools, and instruments shall be kept clean, disinfected, free from defects, and in good repair;
8. Cutting equipment shall be kept sharp; and
9. A client's personal cosmetology tools and instruments that are brought into and used in the establishment shall comply with these rules.

F. If there is a blood spill or exposure to other body fluids during a service, licensees and students shall stop the service and:
1. Before returning to service, clean the wound with an antiseptic solution;
2. Cover the wound with a sterile bandage;

3. If the wound is on a licensee's or student's hand in an area that can be covered by a glove or finger cover, the licensee or student shall wear a clean, fluid-proof protective glove or finger cover. If the wound is on the client, the licensee or student providing service to the client shall wear gloves on both hands;
4. Blood-stained tissue or cotton or other blood-contaminated material shall be placed in a sealed plastic bag and that plastic bag shall be placed into another plastic bag (double bagged), labeled with a red or orange biohazard warning, and discarded;
5. All equipment, tools, and instruments that have come in contact with blood or other body fluids shall be disinfected as discussed in subsections (A)(6) and (B); and
6. Electrical equipment shall be disinfected as discussed in subsection (D).

G. All circulating and non-circulating tubs or spas shall be cleaned as follows using the disinfectant in subsection (A)(5) or (6):
1. After each client or service, complete all of the following:
   a. Drain the tub;
   b. Clean the tub according to manufacturer's instructions, taking special care to remove all film, especially at the water line;
   c. Rinse the tub;
   d. Fill the tub with water and disinfectant as in subsection (A)(5) or (6); and
   e. Allow the disinfectant to stand for non-circulating tubs or to circulate for circulating tubs for the time specified in manufacturer's instructions.
2. At the end of the day, complete all of the following:
   a. Remove all filters, screens, drains, jets, and other removable parts;
   b. Scrub with a brush and soap or detergent until free from debris;
   c. Rinse;
   d. Completely immerse in the solution described in subsection (A)(5);
   e. Rinse;
   f. Air dry; and
   g. Replace the disinfected parts in the tubs or store in a disinfected, dry, covered container.

H. Personal cleanliness.
1. A licensee or student shall thoroughly wash his or her hands with soap and warm water or any equally effective cleansing agent immediately before providing services to each client, before checking a student's work on a client, or after smoking, eating, or using the restroom;
2. A licensee or student shall wear clothing and shoes;
3. A client's skin upon which services will be performed shall be washed with soap and warm water or wiped with disinfectant or waterless hand cleanser approved for use on skin before a nail technology service, including a pedicure service, is provided; and
4. A licensee or student shall wear clean, fluid-proof protective gloves while performing any service if any bodily discharge is present from the licensee, student, or client or if any discharge is likely to occur from the client because of services being performed.

I. Disease and infestation.
1. A licensee or student who has a contagious disease shall not perform services on a client until the licensee or student takes medically approved measures to prevent transmission of the disease; and
2. Services shall not be performed on an individual who has a contagious disease that may be transmitted by the performing of the services on the individual.

J. Client protection.
1. A client's clothing shall be protected from direct contact with shampoo bowls or headrests by the use of clean linens, capes, robes, or protective neck strips;
2. Infection control shall be maintained and services shall be performed safely to protect the licensee or student and client;
3. Double bracing shall be used around a client's eyes, ears, lips, fingers, and toes; and
4. A client shall receive a pre- and post-analysis that includes appropriate instructions for follow-up.

K. Care and storage of linens including towels, robes, and capes.
1. Clean linens shall be provided for each client and laundered after each use;
2. Soiled linens shall be stored in a ventilated receptacle;
3. Laundering shall include disinfecting linens by using detergent and bleach; and
4. Clean linens shall be stored in closed containers or closets.

L. Care and storage of products including liquids, creams, powders, cosmetics, chemicals, and disinfectants.
1. All products shall be stored in a container that is clean and free of corrosion and labeled to identify contents, in compliance with state and local laws and manufacturer's instruction;
2. All products containing poisonous substances shall be distinctly marked;
3. When only a portion of a cosmetic product is to be used, the portion shall be removed from the container in a way that does not contaminate the remaining product; and
4. Once dispensed, a product shall not be returned to the original container.

M. Prohibited hazardous substances and use of products.
1. An establishment shall not have on the premises cosmetic products containing hazardous substances banned by the U.S. Food and Drug Administration (FDA) for use in cosmetic products, including liquid methyl methacrylate monomer and methylene chloride; and
2. Product shall be used only in a manner approved by the FDA.

N. Care of headrests, shampoo bowls, and treatment tables.
1. Headrests of chairs and treatment tables shall be disinfected at least daily and treatment tables

covered with a clean linen or paper sheet for each client;

2. Shampoo bowls and neck rests shall be cleansed with soap and warm water or other detergent after each use and kept in good repair; and
3. Shampoo neck rests shall be disinfected with a solution described in subsection (A)(5) or (A)(6) before each use.

O. Prohibited devices, tools, or chemicals; invasive procedures.

1. Except as provided in this subsection and subsection (O)(2), all of the following devices, tools, or chemicals are prohibited from being present in or used in a salon:
   a. A devise, tool, or chemical that is designed or used to pierce the dermis; and
   b. A low-frequency, or low-power ultrasonic, or sonic device except one intended for skin cleansing, exfoliating, or product application.
2. A salon or licensee that provides an invasive procedure, using a device, tool, or chemical described in subsection (O)(1), that is otherwise allowed under Arizona law shall ensure that the performance of the procedure complies with statutes and rules governing the procedure, training, or supervision as required by the relevant, regulatory authorities.

P. Skin peeling.

1. Except as provided in subsections (O)(1) and (O)(2), only the non-living, uppermost layer of skin, known as the epidermis, may be removed by any method or means and only for the purpose of beautification;
2. A skin removal technique or practice that affects the dermal layer of the skin is prohibited;
3. Skin removal products shall not be mixed or combined except as required by manufacturer instructions and approved by the FDA; and
4. Only commercially available products for the removal of epidermis for the purpose of beautification shall be used.

Q. Restricted use tools and instruments.

1. Nippers shall be used only to remove loose cuticles; and
2. Pre-sterilized, disposal lancets shall be used only to dilate follicles and release sebaceous debris from the follicle.

R. Cleanliness and repair of the establishment shall be maintained according to the following guidelines.

1. After each client, hair and nail clippings shall immediately be discarded;
2. All areas of the establishment, including storerooms and passageways, shall be well lighted, ventilated, and free from infectious agents;
3. Floors, walls, woodwork, ceilings, furniture, furnishings, and fixtures shall be clean and in good repair;
4. Shampoo bowls shall be clean and disinfected by using a disinfectant discussed in subsection (A)(5) or (A)(6) and drains shall be free running;
5. Counters and all work areas shall be disinfected after each client by using a disinfectant discussed in subsection (A)(5) or (A)(6); and
6. Waste or refuse shall be removed timely so there is no accumulation.

S. Building standards.

1. There shall be a direct entrance from the outside, not through living quarters, into the establishment;
2. If connected to a residence, all passageways between the living quarters and the establishment shall have a door that remains closed during business hours;
3. The establishment shall not be used for residential or other living purposes;
4. The establishment shall have a restroom for employees' and clients' use during business hours that has a wash basin, running water, liquid soap, and disposable towels; is kept clean and sanitary at all times; is in close enough proximity to the salon to ensure safety for cosmetology procedures during use; and is open and available for use by employees and clients of the salon;
5. Any excess material stored in a restroom shall be in a locked cabinet;
6. The establishment shall have hot and cold running water;
7. A mobile unit shall have sufficient water at all times; and
8. The establishment shall have a natural or mechanical ventilation and air filtration system that provides free flow of air to each room, prevents the build-up of emissions and particulates, keeps odors and diffusions from chemicals and solutions at a safe level, and provides sufficient air circulation and oxygen.

T. General requirements.

1. The establishment shall have a first-aid kit that contains, at a minimum, small bandages, gauze, antiseptic, and a blood-spill kit that contains disposable bags, gloves, and hazardous waste stickers;
2. No bird or animal, except fish aquariums and service animals, are allowed in the establishment; and
3. The establishment shall comply with federal and state requirements.

R4-10-113. Establishment Management

A. The manager of each establishment shall ensure that:

1. Licenses, notices, and the Board's most recent inspection sheet are prominently displayed;
2. The establishment and all licensees in a salon, school, or a mobile service area have current licenses;
3. Infection control and safety standards are maintained.

B. The salon and school owner and salon and school manager or director shall be responsible for all violations enumerated in subsection (A), occurring within the salon, school, or mobile service areas.

C. If a salon owner rents or leases space within the salon to a person who obtains a separate salon license, that second licensee and their salon manager and the owner shall each be responsible for all violations of requirements enumerated in subsection (A) occurring within the second licensee's licensed portion of the salon, and are each responsible for the common areas.

R4-10-114. Disciplinary Action

A. Licensees shall permit an inspector or Board representative to inspect the premises of any salon or school, or other location identified by a complaint or the Board, alleging the location is operating a salon or school.

B. Board action is required to dismiss a complaint.

R4-10-115. Rehearing or Review of Decisions

A. Except as provided in subsection (G), any party in a contested case before the Board who is aggrieved by a decision rendered in such case may file with the Board, not later than 15 calendar days after service of the decision, a written motion for rehearing or review of the decision specifying particular grounds therefor. For purposes of this subsection, a decision shall be deemed to have been served when personally delivered or mailed by certified mail to the party's last known residence or place of business.

B. A motion for rehearing or review may be amended at any time before it is ruled upon by the Board. A response may be filed within 10 calendar days after service of such motion or amended motion by any party. The Board may require the filing of written briefs upon the issues raised in the motion and may provide for oral argument.

C. A rehearing or review of the decision may be granted for any of the following causes materially affecting the moving party's rights:

1. Irregularity in the administrative proceedings of the agency or its hearing officer or the prevailing party, or any order or abuse of discretion, whereby the moving party was deprived of a fair hearing;
2. Misconduct of the Board or its hearing officer or prevailing party;
3 Accident or surprise which could not have been prevented by ordinary prudence;
4. Newly discovered material evidence which 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 administrative hearing; or
7. A decision which is not justified by the evidence or is contrary to law.

D. Not later than 10 calendar days after the Board's receipt of a motion for rehearing or review, the Board may affirm or modify the decision or grant a rehearing or review to any of the parties and on all or part of the issues for any of the reasons set forth in subsection (C). An order granting a rehearing or review shall specify with particularity the ground or grounds on which the rehearing or review is granted, and the rehearing or review shall cover only those matters so specified.

E. Not later than 15 calendar days after a decision is rendered, the Board may on its own initiative, order a rehearing or review of its decision for any reason for which it might have granted a rehearing or review on motion of a party. After giving the parties or their counsel notice and an opportunity to be heard on the matter, the Board may grant a motion for rehearing or review for a reason not stated in the motion. In either case the order granting such a rehearing or review shall specify the grounds therefor.

F. When a motion for rehearing or review is based upon affidavits, they shall be served with the motion. An opposing party may, within 10 calendar days after such service, serve opposing affidavits, which period may be extended for an additional period not exceeding 20 calendar days by the Board for good cause shown or by written stipulation of the parties. Reply affidavits may be permitted.

G. If in a particular decision the Board makes specific findings that the immediate effectiveness of the decision is necessary for the immediate preservation of the public peace, health, or safety and that a rehearing or review of the decision is impractical, unnecessary, or contrary to the public interest, the decision may be issued as a final decision without an opportunity for rehearing or review. An application for judicial review of the decision shall be made within the time limits permitted for applications for judicial review of the Board's final decisions.

H. For purposes of this Section, the terms "contested case" and "party" shall be defined as provided in A.R.S. § 41-1001.

Table 1. Time-frames (in days)

Type of Approval	Statutory Authority	Overall Time-frame	Administrative Completeness Time-frame	Substantive Review Time-frame
Approval to Take an Examination	A.R.S. §§ 32-514, 32-515, 32-533	90	60	30
License by Examination	A.R.S. §§ 32-510, 32-511, 32-512, 32-531	60	30	30

License by Reciprocity	A.R.S. §§ 32-513, 32-532	60	30	30
School License	A.R.S. § 32-551	90	30	60
License Renewal	A.R.S. §§ 32-517, 32-535, 544, 32-564	75	45	30
Salon License	A.R.S. §§ 32-541, 32-542	90	30	60
License Reactivation	A.R.S. § 32-518	30	15	15

ARTICLE 2. SCHOOLS

R4-10-201. Application for a School License; Renewal

A. An applicant for a school license shall submit the documents required in A.R.S. § 32-551 and:

1. An application on a form provided by the Board, signed by the applicant, and notarized that contains:
   a. The applicant's name, address, federal tax identification number, and telephone number;
   b. If a partnership, each partner's name and address and an identification of whether a limited or general partner;
   c. If a corporation, the state of incorporation and the name, title, and address of at least two officers of the corporation;
   d. The name under which the school will be operated as registered with the Secretary of State;
   e. The name and Board-issued license number of the instructor in charge of the school;
   f. If an existing school, the date the applicant will be assuming ownership; and
   g. If a new school, the scheduled date for opening the school;
2. If a partnership, a copy of the partnership agreement;
3. If a corporation, the articles of incorporation and a Certificate of Good Standing from the Corporation Commission;
4. A signed statement that the establishment has the equipment required by statute and rule for the school;
5. An unexpected contract form required by A.R.S. § 32-558;
6. A schedule that includes the hours of each day and each day of a calendar week during which the school will be open for instruction;
7. A proposed schedule of classes to be taught at the school;
8. The name, address, and telephone number of the bonding company and a copy of the bond;
9. A copy of all school policies and procedures;
10. A school catalog that contains the information required by A.R.S. § 32-559 and:
    a. The number of days during course enrollment that are necessary to complete the hours for the course;
    b. The days and hours of operation, vacation periods, and holidays;
    c. A listing of policies regarding leaves of absence and vacation approval for students;
11. Demonstrate evidence of compliance with A.R.S. §§ 32-551 through 32-575 and these rules through a school inspection conducted by the Board; and
12. The fee required in R4-10-102.

B. In addition to the requirements in R4-10-107, a licensee shall submit the following when renewing a license:

1. The most recent school catalog that:
   a. Indicates where any modifications, additions, or deletions from the previously submitted catalog may be found;
   b. Contains an index that shows where the information required by A.R.S. § 32-559 is located in the catalog;
   c. Contains the name of each accrediting or approving organization; and
   d. Provides a signed statement that the establishment has the equipment required by statute and rule for the school.
2. A subject description for each new course and its schedule, if applicable;
3. A new operating schedule if changes will occur beginning with the new license year;
4. The name and address of any new statutory agent if the change will take effect with the new license year;
5. The name and license number of the current licensed instructor in charge of the school; and
6. The name, address, and telephone number of the bonding company, the bond number, the expiration date of the bond, and a copy of the bond.

C. The owner of a school shall submit to the Board the terms and conditions of any management contract entered into for the school after the contract is executed;

D. Within five days after a change occurs during the year, the owner of a school shall submit to the Board the subject description of any new course; the name of any new statutory agent; or any change to the catalogue, generic student contract, policies, procedures, hours of operation, or bond.

R4-10-202. School Closure

A. For purposes of A.R.S. § 32-563, the Board may consider a school to be closed if it fails for five consecutive school days to provide instruction in accordance with its schedule of operations on file with the Board.

1. All enrolled students and employees shall be notified by the school in writing of a pending closure at least five calendar days before closure of the school, unless the time of such closure could not have been anticipated. A copy of the notice shall be sent to the Board at the time it is delivered to the students and employees. The students' and employees' personal belongings, including equipment, tools, and implements shall be released to each student or employee immediately upon request.
2. Student records as specified by A.R.S. § 32-563 shall be sent to the Board within 10 calendar days after the school closure, including:
   a. Copies of hour sheets documenting all student hours and the current time cards or time records received by the student after the last monthly report before the school closure as specified by R4-10-204;
   b. A copy of the file of each student who was enrolled the last school day prior to closure as specified by R4-10-204. If a teachout was arranged with another school which agreed to complete the training, the student's file shall be transferred to that school; and
   c. A written statement signed by each enrolled student verifying the school's compliance with subsection (A)(1) as it applies to students.

B. Failure to comply with subsection (A) may be grounds for refusal to issue a school license to an owner, manager, director, or instructor of the school at the time of the school closure.

R4-10-203. General School Requirements

A. Aesthetics, cosmetology, and nail technology schools shall comply with R4-10-112 and have the following minimum facilities, equipment, supplies, and materials:

1. One area of instruction for every 20 students;
2. A licensed instructor as manager or director;
3. A desk, table and chair, or other instructional fixtures and facilities for each student during theory instruction;
4. Filing cabinets to hold all school and student records;
5. An instruction board in each room used for instruction;
6. At least two cubic feet of an individual locked area with a different locking device for each enrolled student and each instructor to store personal objects and training kits;
7. A sink area for each 50 students in attendance for the preparation, mixing, and dispensing of supplies and chemicals, and for the disinfection of small tools or instruments;
8. At least one restroom that meets the requirements of R4-10-112;
9. Separate receptacles for garbage and soiled linens; and
10. One container for wet disinfectant for each student performing aesthetics and nail technology.

B. The school shall furnish equipment, tools, instruments, materials, and supplies needed to perform assignments and for instructional purposes, except that the school may require each student to furnish small tools or instruments. All equipment, tools, and materials shall be salon quality and maintained in good repair at all times.

C. The school shall have a library for student use which contains at least the following materials relating to the courses offered by the school:

1. Standard dictionary;
2. Medical dictionary;
3. Anatomy chart on bones, muscles, nerves, hands, arms, nails, veins, arteries, circulatory system, hair, and skin;
4. Three current periodicals on the art and science of cosmetology;
5. Current cosmetology instruction manuals or textbooks;
6. Current Arizona Cosmetology statutes and rules; and
7. A cosmetology dictionary.

D. Each school shall maintain a complete file on all current curriculum requirements.

E. A school shall not pay a salary to an enrolled student other than a student instructor.

F. A licensed school may offer a postgraduate or advanced continuing education cosmetology course, including theory and lab, to students currently enrolled in the school or currently licensed individuals without a licensed instructor present.

1. A school shall not report post-graduate credit hours to the Board or apply the hours toward graduation.
2. Currently enrolled students shall not perform services upon a person without an instructor present.
3. A student file is not required for licensed individuals.
4. Each licensee shall have the licensee's current Board-issued license number onsite.

G. An individual licensed by the Board may re-enroll in a licensed school for a refresher course as a current student. Credit hours for training received shall be submitted by the school to the Board.

H. A school shall establish a periodic grading schedule and keep student transcripts current.

I. A school shall schedule a minimum of four hours of theory classes each week for each full-time student and a minimum of two hours of theory classes each week for each part-time student.

J. A school shall teach safety and infection control measures relating to each subject in conjunction with that subject.
K. A school shall not solicit students for enrollment at other school sites.
L. While teaching, instructors shall wear a tag indicating the instructor's name and courses taught.
M. A school shall ensure compliance with the following:
1. A student shall not attend school more than 56 hours in any one week.
2. A student shall only operate safe equipment in good repair.
3. A student of aesthetics, cosmetology, and nail technology shall perform services within the enrolled course, upon the public or fellow students, only in the presence of a licensed instructor and, except for shampooing, only after completing the basic training specified in R4-10-303, R4-10-304, and R4-10-305.
4. A school shall not prevent or discourage a student from making a complaint to the Board.
5. A school shall not dismiss a student from a scheduled theory instruction or written or practical examination to perform clinical services for the public;
6. While in school, each student shall wear a tag indicating the student's name and the course in which the student is enrolled; and
7. If the school has a distant classroom, the school shall ensure that equipment for each classroom is the same as that required for each course of instruction in the school; and:
   a. Private postsecondary facilities shall not extend the school facilities beyond .5 miles apart as verified by Global Positioning System map readings;
   b. Public educational facilities shall not extend the school beyond the school designated campus;
   c. A duplicate Board-issued school license shall be posted in each distant facility;
   d. Duplicate instructor licensees are not required; and
   e. Clinic, retail, all public services, and appointments by the public are prohibited.

R4-10-204. School Records
A. A school shall maintain a student's records at the school where the student is enrolled. The Board may inspect the records at any time the school is open.
B. When a student transfers from one school to another, the school from which the student is transferring shall:
1. Keep a copy of the student's transcript,
2. Forward one copy to the student and another copy to the Board within three days of the date of transfer, and
3. Withdraw the student on the school records and the monthly report submitted to the Board.

C. Each school shall keep:
1. A complete and accurate record of the time devoted by each student to the enrolled course of study;
2. A complete and accurate record that shows the school's basis for certification of the student hours. A school shall certify only those hours of training the student receives in that school or hours the school accepts as received in another state or country;
3. A complete and accurate individual student file for each student enrolled containing:
   a. Contract and enrollment agreement;
   b. Financial aid transcript;
   c. Proof of 10th grade equivalency for a student enrolled in an aesthetics, cosmetology, or nail technology course or proof of high school equivalency or 23 years of age for a student enrolled in an instructor course;
   d. Identification number;
   e. Proof of one year of licensed work experience for a student instructor;
   f. A statement signed by a school administrator and the student that provides a list of the supplies contained in the kit provided to the student. The contract shall set forth the contents of the kit including:
      i. The price of items contained in the kit;
      ii. When the items shall be distributed;
      iii. The manufacturer of the products;
      iv. The retail value of the kit; and
      v. A statement that if substitutions occur after the contract is signed, the substitutions shall be of comparable value; and
   g. A record of completed hours, including proof of cosmetology, nail technology, aesthetics, or instructor hours earned in another state or country and accepted by the school; and
4. Complete and accurate academic transcripts and attendance and hour records or time cards.

D. The school shall electronically deliver to the Board a complete and accurate monthly report no later than the 10th day of each month. The monthly report shall include:
1. For each student enrolled since the prior monthly report only:
   a. Name;
   b. Student identification number;
   c. Enrollment date;
   d. Address;
   e. Telephone number;
   f. Type of educational documentation that meets the requirements of R4-10-104;
   g. Proof of hours received from another Board-licensed school, or a school in another state, or country, and certified by the school, if applicable;

h. Proof of crossover hours necessary to qualify for R4-10-306, if applicable; and
i. Birth date.

2. The enrollment category of each student;
3. The name, license number, and work schedule of the instructor in charge of the school, and name of the custodian of records;
4. The name, license number, and work schedule of each instructor employed by the school;
5. The signature of the instructor who prepares and certifies that the report is correct;
6. The name of student instructors, the scheduled attendance, and the Board-issued license number for each student instructor;
7. For each demonstration given, the name of the demonstrator, the name of the observing instructor, the name of the process or product demonstrated, the number of students in attendance, and the name of the course in which the demonstration was given;
8. Hours received by each student for the prior month, the current month, and total cumulative hours. The school shall not amend total hours without satisfactory proof of error;
9. Signature of each student verifying approval of the certified hours;
10. The school's certification of the students who meet the graduation requirements of the school, including the day, month, and year of graduation; and
11. The notation "transferred," "withdrawn," or "leave of absence" for students who discontinue training, and the day, month, and year training was discontinued. The school shall provide certification to the student within one week of the hours earned by the student before the student withdraws or takes a leave of absence.

E. A school shall credit a student with additional hours earned after graduation if the student completes the required hours for graduation, registers for the Board examination, and stays in school until the date of the examination.

R4-10-205. Aesthetic School Requirements

A. Schools that provide aesthetics 600-hour training for students, 500-hour training for instructors, or both, shall provide the following minimum facilities, equipment, supplies, and materials in addition to that required by R4-10-203 and R4-10-204:

1. A work station for each student in attendance to perform aesthetics services to the public, each having;
   a. A facial chair or table;
   b. A table top that is 12" x 18" or larger;
   c. A dry, disinfected, covered container to store disinfected tools and instruments, and
   d. A labeled receptacle for contaminated tools or instruments.
2. One steamer machine for each group of four students in attendance during lab and two students in attendance during clinic;
3. One microdermabrasion machine to be used at a non-invasive level;
4. One magnifying lamp of at least 5 diopters for each group of two students in attendance during lab and each group of four students in attendance during clinic;
5. Cleansers;
6. Massage medium;
7. Toner;
8. Exfolients and masks; and
9. Depilatories.

B. Each school shall provide a student training kit for each enrolled aesthetics student. The kit shall contain at a minimum, the following:

1. One standard textbook for professional aestheticians;
2. One copy of Arizona cosmetology statutes and rules;
3. One disinfected, covered container to store disinfected tools and instruments as specified by R4-10-112; and
4. A container for contaminated tools or instruments.

R4-10-206. Cosmetology School Requirements

A. Schools that provide cosmetology 1600-hour training for students, 650-hour training for instructors, or both, shall provide the following minimum facilities, equipment, supplies, and materials in addition to that specified by R4-10-203 and R4-10-204:

1. A work station for each student in attendance performing cosmetology services to the public for a fee, each having:
   a. A mirror that is at least 18" by 30" when performing services on a client;
   b. A table top or counter;
   c. A client chair;
   d. A dry, disinfected, covered receptacle to store disinfected tools and instruments; and
   e. A container for contaminated tools or instruments;
2. One shampoo basin for each group of 10 students in attendance during lab or clinic instruction;
3. One hand-held hair dryer for each student in attendance during lab or clinic instruction;
4. One hooded dryer for each group of 20 students in attendance during lab or clinic instruction;
5. One high-frequency Tesla or violet-ray unit, including a facial and scalp electrode, for each group of 20 students in attendance during practical instruction;
6. Two electric clippers in the school;
7. Depilatories;
8. Chemical hair straighteners;
9. One nail technology table with a 12" x 18" or larger top for each group of 10 students in attendance during practical instruction;
10. A facial work station for each group of 10 students in attendance and receiving lab or clinic aesthetics instruction;
11. A receptacle, large enough to completely immerse two feet for each group of 10 students in attendance during lab or clinic nail technology instruction;

12. Two nail drills for filing and buffing in the school; and
13. Nail products for acrylics, gels, tips, wraps, and polishing.

B. Each school shall provide a student training kit for each enrolled student a nonreturnable student training kit. The kit shall contain at a minimum, the following:
1. One standard textbook for professional cosmetologists;
2. One copy of Arizona cosmetology statutes and rules;
3. One disinfected, covered container to store disinfected tools and instruments; and
4. A container for contaminated tools or instruments.

R4-10-207. Nail Technology School Requirements

A. A school that provides nail technology 600-hour training for students, 350-hour training for instructors, or both, shall provide the following minimum facilities, tools, instruments, equipment, supplies, and materials, in addition to those required by R4-10-203 and R4-10-204:
1. A work station to perform nail technology services for the public for each student in attendance containing:
   a. A nail technology table with a top 32” x 16” or larger;
   b. A client chair;
   c. A nail technology chair or stool;
   d. A disinfected, covered container to store disinfected tools and instruments as specified in R4-10-112;
   e. A container with wet disinfectant as specified in R4-10-112;
   f. A container for soiled tools or instruments as specified in R4-10-112;
   g. A waste receptacle as specified in R4-10-112; and
   h. A disinfectant for blood or body-fluid exposure as specified in R4-10-112.
2. One container large enough to completely immerse two feet, for every five students in attendance during practical training;
3. Nail products for acrylics, gels, tips, wraps, and polishing; and
4. One ultraviolet light.

B. Each enrolled nail technology student shall have a training kit containing:
1. One simulated hand;
2. Disinfected tools and instruments including pusher, nipper, file or porous emery boards, tweezer, nail brush, and finger bowl;
3. One covered container to store disinfected tools and implements as specified by R4-10-112;
4. A container for soiled tools and instruments as specified in R4-10-112;
5. A current instruction manual or textbook of nail technology and Arizona cosmetology laws and rules;
6. Artificial nail enhancement kit with remover, wrap kit, two dappen dishes, polish kit, nail forms, finishing tools and instruments, and one brush product applicator; and
7. One electric nail file.

R4-10-208. Combined School Requirements

A. A licensed school shall ensure that the following hours are taught to a student enrolled in the specific curriculum before allowing the student to graduate:
1. Aesthetics course - 600 hours,
2. Aesthetics instructor course - 500 hours,
3. Cosmetology course - 1600 hours,
4. Cosmetology instructor course - 650 hours,
5. Nail technology course - 600 hours, and
6. Nail technology instructor course - 350 hours.

B. A school that provides training in all of the above courses shall have the minimum records, facilities, equipment, supplies, and materials required by:
1. R4-10-203,
2. R4-10-204,
3. R4-10-205 except subsection (A)(1) is one work station for each two aesthetics students in attendance,
4. R4-10-206, and
5. R4-10-207 except subsection (A)(1) is one work station for each two nail technology students in attendance.

C. A school that provides the curriculum specified in subsections (A)(3), (A)(4), (A)(5), and (A)(6) only shall have the minimum records, facilities, equipment, supplies, and materials required by:
1. R4-10-203,
2. R4-10-204,
3. R4-10-206, and
4. R4-10-207 except subsection (A)(1) is one work station for each two nail technology students in attendance.

D. A school that provides the curriculum specified in subsections (A)(1), (A)(2), (A)(3), and (A)(4) only shall have the minimum records, facilities, equipment, supplies, and materials required by:
1. R4-10-203,
2. R4-10-204,
3. R4-10-205 except subsection (A)(1) is one work station for each two aesthetics students in attendance, and
4. R4-10-206.

E. A school that provides the curriculum specified in subsections (A)(1), (A)(2), (A)(5) and (A)(6) only shall have the minimum records, facilities, equipment, supplies, and material required by:
1. R4-10-203,
2. R4-10-204,
3. R4-10-205, and
4. R4-10-207.

R4-10-209. Demonstrators; Exclusions

A. A person who does not hold an instructor license shall not teach in a school but may demonstrate to enrolled students any process, product, or appliance when an instructor is present and observing the demonstration.

B. When demonstrating on a model, the demonstrations shall be confined to an explanation of the products, procedures, and appliances being promoted.

ARTICLE 3. STUDENTS

R4-10-301. Instruction; Licensed Individuals

Licensed schools that provide instruction for licensed individuals pursuant to this Article shall:
1. Keep a record of the date, time, title, and name of the provider of the course along with the attendee's name and license number;
2. Ensure that the instruction consists of professional development related to scope of practice as specified by A.R.S. § 32-501; and
3. Ensure that hours are not granted toward licensing unless it is part of the approved course and provided by or in the presence of a licensed instructor.

R4-10-302. Instructor Curriculum Required Hours

A. Each student in an aesthetics, cosmetology, or nail technology instructor course shall complete the number of hours listed in Table 1:

Table 1: Instructor Curriculum (in hours)

Subject	Aesthetics	Cosmetology	Nail Technology
1. Orientation and Arizona laws and rules	8	8	8
2. Theory, Preparation, and Practice Curriculum Development Developing and Using Educational Aids Presentation Principles (Practical and Written) Classroom Management Evaluation, Assessment, and Remediation Methods (Practical and Written) Diversity in learning (including cultural) Methods of Teaching Professional Development (including ethics) Alternative Learning [see subsection (B)]	405	405	270
3. Lab (clinic) oversight	87	237	72
4. Total Hours	500	650	350

B. Curriculum hours may be satisfied in part by completing a course at an accredited college or university described in R4-10-101(15)(c) and (d), for no more than nine credit hours for cosmetology or aesthetics and no more than six credit hours for nail technology and encompassing the subjects listed under Theory, Preparation, and Practice in subsection (A) with each college credit hour equaling no more than 30 clock hours.

C. All instruction given by a student instructor shall be under the direct supervision and observation of a licensed instructor.

D. A student instructor shall be counted as a student for the purpose of determining the maximum allowed ratio of 40 students during a theory class and 20 students during a lab or clinic for each licensed instructor in the school.

E. A student instructor shall not instruct students or check student services performed on the public until the student instructor has received at least 80 hours of basic instructor training.

R4-10-303. Aesthetics Curriculum Required 600 Hours

A. Each student in an aesthetics course shall complete the following curriculum:

1. Theory of aesthetics, infection control, anatomy, physiology and histology of the body, diseases and disorders, and Arizona cosmetology laws and rules; and
2. Clinical and laboratory aesthetics including theory that involves all skin types:
   a. Principles and practices of infection control and safety;
   b. Recognition of diseases and the treatment of disorders of the skin;
   c. Interpersonal skills and professional ethics;
   d. Clinical and laboratory practice that includes face and body;
   e. Morphology and treatment of skin, including face and body, by hand and machine;
   f. Product pharmacology and chemistry interaction, formulation, composition, and hazards;
   g. Aesthetics machines, tools, and instruments and their related uses;
   h. Alternative skin technology;
   i. Pre- and post-client consultation, documentation, and analysis;
   j. Spa body modalities;
   k. Exfoliation modalities;
   l. Body and face massage and manipulations;
   m. Body and facial hair removal except by electrolysis;
   n. Introduction to electricity and light therapy for cosmetic purposes including laser/Intense Pulsed Light (IPL) procedures and devices;
   o. Cosmetic enhancement applications; and
   p. Required industry standards and ecology, including monitor duties.

B. An aesthetics school shall not receive remuneration for a student performing clinical services to the public until the student has received at least 120 hours of aesthetics training; and

C. Each student shall be evaluated for progress and provided suggested remediation of deficiencies.

R4-10-304. Cosmetology Curriculum Required 1600 Hours

A. Each student in a cosmetology course shall complete the following curriculum:

1. Theory of cosmetology, infection control, anatomy, physiology and histology of the body, electricity, diseases and disorders, and Arizona cosmetology laws and rules; and
2. Clinical and laboratory cosmetology including theory that involves nails, hair, and skin:
   a. Principles and practices of infection control and safety;
   b. Recognition of diseases and the treatment of disorders of the hair, skin, and nails;
   c. Morphology and treatment of hair, skin, and nails;
   d. Interpersonal skills and professional ethics;
   e. Product pharmacology and chemistry interaction, formulation, composition, and hazards;
   f. Cosmetology machines, tools, and instruments and their related uses;
   g. Chemical texturizing;
   h. Changing existing hair color;
   i. Hair and scalp care;
   j. Fundamentals of hairstyling including braiding and extensions;
   k. Body, scalp, and facial massage and manipulations;
   l. Hair cutting fundamentals;
   m. Fundamental aesthetics of the body and face;
   n. Fundamentals of nail technology;
   o. Clinical and laboratory practice that includes hair, skin, and nails;
   p. Alternative hair, skin, and nail technology;
   q. Pre- and post-client consultation, documentation, and analysis;
   r. Body and facial hair removal except by electrolysis;
   s. Introduction to electricity and light therapy for cosmetic purposes including laser/Intense Pulsed Light (IPL) procedures and devices;
   t. Cosmetology technology; and
   u. Required industry standards and ecology, including monitor duties.

B. A cosmetology school shall not receive remuneration for a student performing any clinical services, except shampooing, to the public until the student has received at least 300 hours of cosmetology training; and

C. Each student shall be evaluated for progress and provided suggested remediation of deficiencies.

R4-10-305. Nail Technology Curriculum Required 600 Hours

A. Each student in a nail technology course shall complete the following curriculum:

1. Theory of nail technology; infection control; diseases and disorders of the nails and skin; anatomy; physiology and histology of the limbs, nails, and skin structures; and Arizona state cosmetology laws and rules; and
2. Clinical and laboratory nail technology including theory that involves nails, skin, and limbs:
   a. Principles and practices of infection control and safety;
   b. Recognition of diseases and the treatment of disorders of the nail and skin;
   c. Massage and manipulation of the limbs;
   d. Interpersonal skills and professional ethics;
   e. Product pharmacology and chemistry interaction, formulation, composition, and hazards;
   f. Nail technology machines, tools, and instruments and their related uses;
   g. Clinical and laboratory practice that includes nails, skin, and limbs;
   h. Pre- and post-client consultation, documentation, and analysis;
   i. Manicuring, including use of nippers;
   j. Pedicuring, including use of nippers;
   k. Artificial nail enhancements (application and removal);
   l. Alternative nail technology;
   m. Electric file use;
   n. Pedicure spa modalities;
   o. Exfoliation modalities on limbs or the body; and
   p. Required industry standards and ecology, including monitor duties.

B. A nail technology school shall not receive remuneration for students performing clinical services to the public until the student has received at least 80 hours of nail technology; and

C. Each student shall be evaluated for progress and provided suggested remediation of deficiencies.

R4-10-306. Curricula Hours

A. Hours of training received in an aesthetics, cosmetology, or nail technology course do not apply toward receiving an instructor's license.

B. Hours of training received in an instructor course do not apply toward receiving an aesthetician, cosmetologist, or nail technician license but may apply toward reactivation of an aesthetics, cosmetology, or nail technology license if the instructor hours are received after inactive status occurs.

C. The following hours may apply toward licensing:

1. 100% of the hours of training received in a nail technology course toward a cosmetologist license;
2. 100% of the hours of training received in an aesthetics course toward a cosmetologist license;
3. 100% of the hours of combined training received in an aesthetics course and a nail technology course toward a cosmetology license but the combined total shall not exceed 600 hours;
4. 15% of the hours of training received in a cosmetology course toward a nail technician license;
5. 15% of the hours of training received in a cosmetology course toward an aesthetician license;
6. 33% of the hours of training received in a nail technology course toward an aesthetics license;
7. 66% of the hours of training received in an aesthetics course toward a nail technology license;
8. 50% of the hours of training received in a barber course toward a cosmetologist license;
9. 200 hours of training received for a registered nurse (RN) or clinical nurse specialist (CNS) license toward an aesthetician license;
10. 100% of the hours of training received by a licensed cosmetologist in a nail technology instructor course toward an aesthetics instructor course; however, the remaining required hours shall be received in an aesthetics or cosmetology school;
11. 100% of the hours of training received by a licensed cosmetologist in a nail technology instructor course toward a cosmetology instructor course; however, the remaining required hours shall be received in a cosmetology school;
12. 100% of the hours of training received by a licensed cosmetologist in an aesthetics instructor course toward a cosmetology instructor course; however, the remaining required hours shall be received in a cosmetology school;
13. 100% of the hours of training received in a barber instructor course toward a cosmetology instructor course; however, the remaining required hours shall be received in a cosmetology school. One year of licensed barber experience is the same as one year of licensed cosmetology experience for the purpose of qualifying for the cosmetology instructor examination specified by A.R.S. § 32-531; and
14. Hours transferred to another course shall be used only once.

D. At the completion of a course of instruction, the cumulative hours for students shall, at a minimum, conform with R4-10-301, R4-10-302, R4-10-303, R4-10-304, R4-10-305, and R4-10-306 as applicable.

E. Infection control, disinfection procedures, and safety issues shall be taught with every subject and every procedure.

F. Alternative learning hours are hours that a school may authorize to enable a student to pursue knowledge of cosmetology in an alternative format or location other than a salon. A school shall not credit a student with more than 20% of the total hours required for graduation, earned during enrollment at the school, as alternative learning hours.

G. A school that provides alternative format or location in subsection (F) shall include details of the format and location in the school policy and procedures in the school catalog.

H. Up to 16 hours of field trips may be granted toward licensing if the field trips for which those hours were granted are part of the approved course of instruction and are provided by or in the presence of a licensed instructor.

I. If a school physically closes while providing curricula in an alternative format or location or while conducting a field trip, the school shall:
1. Post a notice that is visible to the public and students; and
2. Send a notice to the Board indicating the times and location where the curricula is being conducted.

J. A student instructor may obtain lab (clinic) hours in a licensed school other than the licensed school in which the student instructor is enrolled if the student:
1. Has available proof of enrollment in a licensed school to show to a Board inspector, and
2. Earns no more than the lab (clinic) hours required by R4-10-302.

ARTICLE 4. SALONS

R4-10-401. Application for a Salon License

An applicant for a salon license shall submit:
1. An application on a form provided by the Board that contains:
   a. The applicant's name, address, telephone number, federal tax identification number, and signature;
   b. If the applicant is a partnership, each partner's name, address, and an identification of whether each is a limited or general partner;
   c. If a corporation, the state of incorporation and the name, title, and address of each officer of the corporation and the statutory agent;
   d. The name of the salon as registered with the Secretary of State;
   e. If a location change, the previous address;
   f. A history of the salon including:
      i. If the location was previously licensed by the Board, the name of the previous establishment;
      ii. The name of each business operating at the salon address; and
      iii. A statement of whether a cosmetology license of the applicant, any partner of the applicant, or any corporate officer has ever been suspended or revoked by any state or foreign country.
2. If a corporation, the articles of incorporation and a Certificate of Good Standing from the Corporation Commission;
3. If a partnership, a copy of the partnership agreement;
4. A signed statement that the establishment is in compliance with all Board statutes and rules and has all of the following in the salon:
   a. Wet disinfectant;
   b. A dry, closed, disinfected container to store disinfected tools and instruments;
   c. A sink or shampoo bowl with hot and cold running water that is not also used as a dispensary or restroom sink as required by R4-10-403;
   d. A station;
   e. A restroom; and
   f. Notice posted for activities performed in the salon but not regulated by the Board; and
5. The fee required in R4-10-102.

R4-10-402. Changes Affecting a Salon License

A. An owner shall apply for a new salon license when:
1. The salon address changes;
2. The name of a salon changes;
3. The controlling ownership in the corporation is transferred or the corporation is reorganized; or
4. The corporation, limited liability company, or partnership has a change of any corporate officer, partner, or statutory agent.

B. The salon owner and manager shall ensure that a Board-issued license, indicating proper ownership, is posted in the salon before opening for business.

R4-10-403. Salon Requirements and Minimum Equipment

A. A salon shall perform services for the public according to the type of license issued.

B. Salons shall have enough equipment, materials, supplies, tools, and instruments to ensure infection control and safety for the public and employees.

C. Each salon shall have:
1. A work station for each employee or person using space within the salon; and
2. If the salon is a cosmetology salon, a minimum of one shampoo bowl and one hair dryer that may be a blow dryer, and if the salon is an aesthetics or nail technology salon, a minimum of one sink in addition to the restroom or dispensary sink.

D. Aestheticians, cosmetologists, and nail technicians shall have enough equipment, materials, supplies, tools, and instruments to ensure infection control at all times and disinfection between clients.

R4-10-404. Mobile Services

A. If mobile services are provided as an extension of a licensed salon the mobile service shall advertise using the licensed name of the salon. The licensed salon owner and manager shall ensure that the mobile services comply with the Board's statutes and rules.
1. A salon providing mobile cosmetology, nail technology, or aesthetics services shall post licenses as required by R4-10-111.
2. A salon shall make client appointments through the licensed salon using an appointment book that lists the appointments and locations where services are performed.

3. Mobile services are subject to inspection by the Board at any time.
4. If a retrofitted mobile vehicle is used to provide mobile services, the salon owner and manager shall ensure that the vehicle has the same equipment as specified by R4-10-403 and complies with safety and infection control requirements specified by R4-10-112.
5. If mobile services are provided in a location other than a retrofitted mobile vehicle, the salon owner and manager shall ensure that equipment is disinfected before use and stored as specified in R4-10-112.

B. If a retrofitted motor vehicle is used exclusively as a mobile facility that is dispatched from a business address, the owner and manager of the mobile facility shall:

1. Comply with all salon requirements;
2. Comply with all infection control and equipment requirements;
3. Maintain a complete and current list of appointment locations at the business address and display the list in a location listed on the salon application that is available to an inspector at all times when the retrofitted motor vehicle is open for business; and
4. Comply with other statutes and rules of the Board.

R4-10-405. Shampoo Assistants

A. People who are not licensed by the Board may be hired as shampoo assistants to shampoo and apply cream rinse to an individual's hair, comb the hair to remove tangles, and remove rollers and clippies.

B. Shampoo assistants shall not apply conditioners, reconstructors, hair color, permanent wave solution or neutralizer, or remove rods, tint, relaxers, or other solutions from the hair.

32-501. Definitions

In this chapter, unless the context otherwise requires:

1. "Aesthetician" means a person who is licensed to practice skin care pursuant to this chapter.

2. "Aesthetics" means any one or a combination of the following practices if they are performed for cosmetic purposes:

(a) Massaging, cleansing, stimulating, manipulating, exercising, beautifying or applying oils, creams, antiseptics, clays, lotions or other preparations, either by hand or by mechanical or electrical appliances.

(b) Arching eyebrows or tinting eyebrows and eyelashes.

(c) Removing superfluous hair by means other than electrolysis or threading.

3. "Board" means the board of cosmetology.

4. "Cosmetic purposes" means for the purpose of beautifying, preserving or conferring comeliness, excluding therapeutic massage and manipulations.

5. "Cosmetologist" means a person who is licensed to practice cosmetology pursuant to this chapter.

6. "Cosmetology" means any one or a combination of the following practices if they are performed for cosmetic purposes:

(a) Cutting, clipping or trimming hair.

(b) Massaging, cleansing, stimulating, manipulating, exercising, beautifying or applying oils, creams, antiseptics, clays, lotions or other preparations, either by hand or by mechanical or electrical appliances.

(c) Styling, arranging, dressing, curling, waving, permanent waving, straightening, cleansing, singeing, bleaching, dyeing, tinting, coloring or similarly treating hair.

(d) Arching eyebrows or tinting eyebrows and eyelashes.

(e) Removing superfluous hair by means other than electrolysis or threading.

(f) Nail technology.

7. "Electrical appliances" means devices that use electrical current and includes lasers and IPL devices as defined in section 32-516.

8. "Instructor" means a person who is licensed to teach cosmetology, aesthetics or nail technology, or any combination thereof, pursuant to this chapter.

9. "Nail technician" means a person who is licensed to practice nail technology pursuant to this chapter.

10. "Nail technology" means:

(a) Cutting, trimming, polishing, coloring, tinting, cleansing or otherwise treating a person's nails.

(b) Applying artificial nails.

(c) Massaging and cleaning a person's hands, arms, legs and feet.

11. "Salon" means any of the following:

(a) An establishment that is operated for the purpose of engaging in the practice of cosmetology, aesthetics or nail technology, or any combination of the listed practices.

(b) An establishment together with a retrofitted motor vehicle for exclusive use as a mobile facility for the purpose of engaging in the practice of cosmetology, aesthetics or nail technology, or any combination of the listed practices, that is operated and dispatched through the establishment.

(c) A retrofitted motor vehicle exclusively used as a mobile facility for the purpose of engaging in the practice of cosmetology, aesthetics or nail technology, or any combination of the listed practices that is operated and dispatched from a business that has a physical street address that is on file with the board.
12. "School" means an establishment that is operated for the purpose of teaching cosmetology, aesthetics or nail technology, or any combination of the listed practices.
13. "Threading" means a service that results in the removal of hair from its follicle from around the eyebrows and from other parts of the face with the use of a single strand of cotton thread and an over-the-counter astringent, if the service does not use chemicals of any kind, wax or any implements, instruments or tools to remove hair.

32-502. Board of cosmetology; appointment; qualifications; terms
A. A board of cosmetology is established consisting of the following seven members who are appointed by the governor:
1. Two cosmetologists who have been actively practicing in this state for at least three years immediately preceding appointment.
2. One nail technician who has been actively practicing in this state for at least three years immediately preceding appointment.
3. One instructor who has been actively practicing in this state for at least three years immediately preceding appointment.
4. One school owner.
5. One educator who does not represent the cosmetology or nail technology industry and is not involved in the manufacture of cosmetology or nail technology products.
6. One public member who is not and has never been associated with the cosmetology or nail technology industry, licensed as a cosmetologist or nail technician or involved in the manufacture of cosmetology or nail technology products.
B. The term of office for members is three years beginning and ending June 22.
C. The governor may remove board members for neglect of duty, malfeasance or misfeasance.

32-503. Organization; meetings; personnel; compensation [CHANGE]
A. The board shall annually elect a chairman, vice-chairman and secretary-treasurer from among its membership.
B. The board shall hold at least one regular meeting monthly and may hold other meetings at times and places it designates.
C. Subject to title 41, chapter 4, article 4, the board may employ the following personnel as it deems necessary to carry out the purposes of this chapter and designate their duties:
1. An executive director who shall have been a licensed cosmetologist for at least one of the five years immediately preceding employment.

2. A supervisor of examinations who is an instructor licensed pursuant to this chapter and has worked at least two of the five years immediately preceding employment as an instructor in a school licensed pursuant to this chapter.
3. Examiners who shall not be employed as instructors in any school licensed pursuant to this chapter.
4. Persons to provide investigative, professional and clerical assistance as the board deems necessary and may hire consultants to assist the board in the performance of its duties.
5. Other personnel.
D. Members of the board are eligible to receive compensation as determined pursuant to section 38-611 for each day of actual service in the business of the board. The board shall compensate its executive director and other personnel as determined pursuant to section 38-611.

32-504. Powers and duties
A. The board shall:
1. Adopt rules that are necessary and proper for the administration of this chapter, including sanitary and safety requirements for salons and schools and sanitary and safety standards for the practice of cosmetology, aesthetics and nail technology.
2. Administer and enforce this chapter and rules adopted pursuant to this chapter.
3. Either prepare, administer and grade practical and written examinations or contract with a national professional organization for cosmetology selected by the board to prepare, administer and grade practical and written examinations.
4. Make and maintain a record of its acts and proceedings, including the issuance, denial, renewal, suspension or revocation of licenses and public reproofs of licensees.
5. Evidence its official acts by the signature of the chairman or vice-chairman of the board or a representative designated by the board.
6. Keep records of the board open to public inspection at all reasonable times.
7. Make an annual report to the governor on or before October 1 of each year covering its official acts and financial transactions during the preceding fiscal year and making recommendations it deems necessary.
8. Prescribe minimum school curriculum requirements for cosmetologists, aestheticians, nail technicians and instructors.
9. Prescribe standards and requirements for the provision of salon services through mobile units and in customer locations.
B. The board may:
1. Inspect the premises of any salon or school during business hours.
2. Delegate authority to its executive director to issue licenses to applicants who meet the requirements of this chapter.

32-505. Board of cosmetology fund
A. The board of cosmetology fund is established. Except as provided in subsection C of this section, before the end of each calendar month, pursuant to sections 35-146 and 35-147, the board shall deposit ten per cent of all monies from whatever source which come into the possession of the board in the state general fund and deposit the remaining ninety per cent in the board of cosmetology fund.

B. Except as provided in section 32-573, subsection G, monies deposited in the board of cosmetology fund are subject to section 35-143.01.
C. Monies from civil penalties received pursuant to section 32-571 shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

32-506. Nonapplicability of chapter
This chapter does not apply to the following persons while in the proper discharge of their professional duties:
1. Practices done for the treatment of physical or mental ailments or disease by medical practitioners licensed pursuant to this title.
2. Commissioned physicians and surgeons serving in the armed forces of the United States or other federal agencies.
3. Persons licensed pursuant to chapter 3 or 12 of this title.
4. Students attending schools licensed pursuant to this chapter while they are on school premises during school hours.
5. Persons employed by theatrical groups who apply makeup, oils and cosmetics.
6. Persons who sell makeup, oils and cosmetics and who apply such products during the process of selling such products.
7. Shampoo assistants who shampoo hair under the direction of a cosmetologist licensed pursuant to this chapter.
8. Services performed by and for persons in the custody of the state department of corrections.
9. Persons who apply makeup, oils and cosmetics to patients in a hospital, nursing home or residential care institution with the consent of the patient and the hospital, nursing home or residential care institution.
10. Persons who provide a service that results in tension on hair strands or roots by twisting, wrapping, weaving, extending, locking or braiding, if the service does not include the application of dyes, reactive chemicals or other preparations to alter the color of the hair or to straighten, curl or alter the structure of the hair.
11. Persons who provide threading.
12. Persons who provide tanning services by means of airbrushing, tanning beds or spray tanning.

32-507. Fees [CHANGE]
A. The board shall establish and collect fees not to exceed the following:
1. Written examination, one hundred dollars.
2. Practical examination, one hundred dollars.
3. Application for initial personal license, forty-five dollars.
4. Application for personal reciprocity license, one hundred twelve dollars.
5. Application for salon license, one hundred twelve dollars.
6. Application for school license, six hundred dollars.
7. Application for certification of licensure or hours, thirty dollars.
8. Personal license renewal, thirty-eight dollars.
9. Personal license delinquent renewal, sixty dollars.
10. Salon license renewal, fifty dollars.
11. Salon license delinquent renewal, eighty dollars.
12. School license renewal, five hundred dollars.
13. School license delinquent renewal, six hundred dollars.

14. Delinquent penalties for each year or portion of a year for which the license was inactive.
15. Computer printouts of names of licenses, twenty-five cents per name.
16. Duplicate license, thirty dollars.
17. Dishonored checks, twenty dollars.
18. Copying charges, one dollar per page. For audiotapes, videotapes, computer discs or other mediums used for recording sounds, images or information, fifteen dollars per tape, disc or other medium.
19. Board administered educational classes, one hundred dollars.
20. Review of examination, fifty dollars.
21. Regrading of examinations, twenty-five dollars.
22. Service charges for persons who pay with alternative payment methods including credit cards, charge cards, debit cards and electronic transfers, not to exceed the cost of the alternative payment method.
B. The board may charge additional fees for:
1. Documents and publications provided by the board.
2. Services which the board deems appropriate to carry out its intent and purpose. These additional fees shall not exceed the costs of rendering the services.
C. The board shall only issue a duplicate license on receipt of a written request which states the reason for the request for a duplicate license.

32-510. Aestheticians; applications; qualifications
A person is entitled to receive an aesthetician's license if the person:
1. Submits to the board an application for an aesthetician's license on a form supplied by the board.
2. Completes and receives appropriate credits for at least two years of high school education or its equivalent as prescribed by the board in its rules and submits to the board satisfactory evidence that the person is at least sixteen years of age.
3. Submits to the board satisfactory evidence of either of the following:
(a) That the person is a graduate of an aesthetician school in another state or country that has substantially the same requirements as this state for schools licensed pursuant to this chapter.
(b) That the person is a graduate of an aesthetician course consisting of at least six hundred hours of training in a school licensed pursuant to this chapter.
4. Passes the examination for an aesthetician's license.
5. Pays the prescribed fees for an aesthetician's license.

32-511. Cosmetologist; applications; qualifications
A person is entitled to receive a cosmetologist license if the person:
1. Submits to the board an application for a cosmetologist license on a form supplied by the board.
2. Completes and receives appropriate credits for at least two years of high school education or its equivalent as prescribed by the board in its rules and submits satisfactory evidence that the person is at least sixteen years of age.
3. Submits to the board satisfactory evidence of either of the following:
(a) That the person is a graduate of a cosmetology course consisting of at least sixteen hundred hours of training in a school licensed pursuant to this chapter.

(b) That the person is a graduate of a cosmetology school in another state or country that had at the time of the person's graduation substantially the same requirements as this state for schools licensed pursuant to this chapter.
4. Passes the examination for a cosmetologist license.
5. Pays the prescribed fees.

32-512. Nail technician; applications; qualifications
A person is entitled to receive a license to practice nail technology if the person does all of the following:
1. Submits to the board an application for a nail technician license on a form supplied by the board.
2. Completes and receives appropriate credits for at least two years of high school education or its equivalent as prescribed by the board in its rules and submits satisfactory evidence that the person is at least sixteen years of age.
3. Submits to the board satisfactory evidence of either of the following:
(a) That the person graduated from a nail technology school in another state or country that had at the time of the person's graduation substantially the same requirements as this state for schools licensed pursuant to this chapter.
(b) That the person completed a nail technician course consisting of at least six hundred hours of training in a school licensed pursuant to this chapter.
4. Pays the prescribed fees for a nail technician license.
5. Passes the examination for a nail technician license.

32-513. Reciprocity
Notwithstanding sections 32-510, 32-511 and 32-512, a person is entitled to receive a cosmetologist, aesthetician or nail technician license if the person:
1. Submits to the board an application for a cosmetologist, aesthetician or nail technician license on a form supplied by the board.
2. Submits to the board satisfactory evidence that the person is licensed in another state or country.
3. Takes and completes a class relating to infection protection and law review that is provided by the board or its designee. The board shall determine the amount of the fees for the class. The applicant shall pay the fees directly to the board or its designee.
4. Pays the prescribed reciprocity license fees.

32-514. Examinations
A. The board or a national professional organization for cosmetology selected by the board shall administer written and practical examinations for a cosmetologist, aesthetician, nail technician or instructor license. The examinations shall test for requisite knowledge and skills in the technical application of cosmetology services.
B. The board or a national professional organization for cosmetology selected by the board shall inform each applicant of the examination results.
C. The board shall make an accurate record of each examination.

32-515. Reexaminations
A. An applicant who fails an examination for a license pursuant to this article is entitled to a reexamination.

B. If an applicant fails either part of the examination, the applicant shall only retake the part of the examination that the applicant failed.
C. If one year or more elapses between an applicant's initial examination and reexamination, the applicant shall take both the written and practical parts of the examination.
D. An applicant desiring to be reexamined shall:
1. Apply to the board, if the board is administering the examination, on forms it prescribes and furnishes or to a national professional organization selected by the board to administer the examination.
2. Pay the prescribed examination fee.

32-516. Aestheticians; cosmetologists; cosmetic laser and IPL device use; certification; fees; definitions
A. An aesthetician or a cosmetologist who wishes to perform cosmetic laser procedures and procedures using IPL devices must:
1. Apply for and receive a certificate from the agency.
2. Comply with the requirements of this section and agency rules.
3. Successfully complete forty hours of didactic training as required by agency rules at an agency-certified training program. The program shall provide a provisional certificate to the applicant verifying the successful completion of the didactic training.
4. For hair removal, complete hands-on training that is supervised by a health professional who is acting within the health professional's scope of practice or by a laser technician who has a minimum of one hundred hours of hands-on experience per procedure. The health professional or laser technician must be present in the room during twenty-four hours of hands-on use of lasers or IPL devices. The supervising health professional or laser technician shall verify that the aesthetician or cosmetologist has completed the training and supervision as prescribed by this section.
5. For other cosmetic laser and IPL device procedures, complete a minimum of an additional twenty-four hours of hands-on training of at least ten cosmetic procedures for each type of specific procedure that is supervised by a health professional who is acting within the health professional's scope of practice or by a laser technician who has a minimum of one hundred hours of hands-on experience per procedure. The health professional or laser technician must be present in the room during twenty-four hours of hands-on use of lasers or IPL devices. The supervising health professional or laser technician shall verify that the aesthetician or cosmetologist has completed the training and supervision as prescribed by this section.
6. Submit to the agency the provisional certificate from the training program and certification by the health professional or laser technician who directly supervised the applicant in the room during the hands-on training.
B. The agency shall issue a laser technician certificate authorizing the aesthetician or cosmetologist to use lasers and IPL devices if the applicant has completed the training for hair removal or lasers and IPL devices for other cosmetic procedures, as applicable, and shall maintain a current register of those laser technicians in good standing and whether certification is for hair removal only or other cosmetic procedures as well. The agency may establish a fee for the registration of

aestheticians or cosmetologists as laser technicians and the issuance of certificates pursuant to this subsection. The agency shall deposit monies collected pursuant to this subsection in the laser safety fund established by section 32-3234.
C. An aesthetician or a cosmetologist who has been certified as a laser technician by the agency may use a laser or IPL device:
1. For hair removal under the indirect supervision of a health professional whose scope of practice permits the supervision.
2. For cosmetic purposes other than hair removal if the aesthetician or cosmetologist is directly supervised by a health professional whose scope of practice permits the supervision and the aesthetician or cosmetologist has been certified in those procedures.
D. The board shall investigate any complaint from the public or from another board or agency regarding a licensed aesthetician or cosmetologist who performs cosmetic laser procedures or procedures using IPL devices pursuant to this section. The board shall report to the agency any complaint it receives about the training or performance of an aesthetician or a cosmetologist who is certified as a laser technician.
E. An aesthetician or a cosmetologist who used laser and IPL devices before November 24, 2009 may continue to do so if the aesthetician or cosmetologist received a certificate pursuant to this section before October 1, 2010.
F. For the purposes of this section:
1. "Agency" means the radiation regulatory agency.
2. "Directly supervised" means a health professional who is licensed in this state and whose scope of practice allows the supervision supervises the use of a laser or IPL device for cosmetic purposes while the health professional is present at the facility where and when the device is being used.
3. "Health professional" means a person who is licensed pursuant to either:
(a) Chapter 11, article 2 of this title and who specializes in oral and maxillofacial surgery.
(b) Chapter 13, 14, 15, 17 or 25 of this title.
4. "Indirect supervision" means supervision by a health professional who is licensed in this state, whose scope of practice allows the supervision and who is readily accessible by telecommunication.
5. "IPL device" means an intense pulse light class II surgical device certified in accordance with the standards of the agency for cosmetic procedures.
6. "Laser" means any device that can produce or amplify electromagnetic radiation with wavelengths in the range of one hundred eighty nanometers to one millimeter primarily by the process of controlled stimulated emission and certified in accordance with the standards for the agency for cosmetic procedures.
7. "Laser technician" means a person who is or has been certified by the agency pursuant to its rules and chapter 32, article 2 of this title.

32-517. License renewal
A. Except as provided in section 32-4301, a cosmetologist, aesthetician or nail technician shall renew his license on or before his birth date every year.
B. A cosmetologist, aesthetician or nail technician shall submit an application for renewal accompanied by the prescribed renewal fee in order to renew his license.

C. A cosmetologist, aesthetician or nail technician who fails to renew his license on or before his birth date shall also pay the prescribed delinquent renewal penalty in order to renew his license.

32-518. Inactive licenses; reactivation; suspension
A. A license that is not renewed pursuant to section 32-517 automatically reverts to inactive status.
B. A licensee may reactivate an inactive license:
1. If a license has been inactive for less than one year, by paying the prescribed delinquent renewal penalty.
2. If a license has been inactive for one year or more but less than ten years, by paying the prescribed delinquent renewal penalty and submitting proof of satisfying educational requirements prescribed by the board in its rules.
C. A license that has been inactive for ten years is automatically suspended.
D. A licensee shall not practice under an inactive license.

32-531. Instructor; applications; qualifications
A person is entitled to receive a license to teach cosmetology, aesthetics or nail technology in a school if the person does all of the following:
1. Submits to the board an application for an instructor license on a form prescribed by the board.
2. Holds a diploma from a high school or its equivalent as prescribed by the board in its rules and submits to the board satisfactory evidence that the person is at least sixteen years of age.
3. Is a licensed cosmetologist, aesthetician or nail technician and complies with either of the following:
(a) Has practiced for at least one year, has passed the school examination and has received the following hours of instructor training:
(i) For a cosmetologist instructor, six hundred fifty hours.
(ii) For an aesthetics instructor, five hundred hours.
(iii) For a nail technician instructor, three hundred fifty hours.
(b) Has five years of licensed industry experience within the ten years preceding the application and meets requirements as prescribed by the board in its rules.
4. Passes the examination for an instructor license.
5. Pays the prescribed fees.

32-532. Instructor reciprocity
Notwithstanding section 32-531, a person is entitled to receive a license to teach cosmetology, aesthetics or nail technology in a school if the person submits to the board an application for an instructor license on a form prescribed by the board, pays the prescribed fees and complies with one of the following:
1. Is a current licensed cosmetologist, aesthetician or nail technician instructor in another state or country.
2. Does all of the following:
(a) Holds a diploma from a high school or its equivalent as prescribed by the board in its rules and submits to the board satisfactory evidence that the person is at least sixteen years of age.

(b) Is a licensed cosmetologist, aesthetician or nail technician in another state or country.
(c) Completes instructor training in another state or country that has instructor education requirements that are at least substantially equivalent to those of this state.
(d) Passes the examination for an instructor license.
3. Does all of the following:
(a) Has five years of licensed industry experience within the ten years preceding application.
(b) Holds a high school diploma or its equivalent as prescribed by the board in its rules and submits to the board satisfactory evidence that the person is at least sixteen years of age.
(c) Meets requirements as prescribed by the board in its rules.
(d) Passes the examination for an instructor license.

32-533. Instructor examinations; reexaminations
A. An examination for an instructor license shall be written and practical.
B. The board shall inform each applicant of the applicant's examination results in writing.
C. The board shall make an accurate record of each examination.
D. An applicant who fails any part of the examination twice shall attend a school licensed pursuant to this chapter for two hundred fifty hours of instructor training.
E. An applicant desiring to be reexamined shall apply to the board on forms it prescribes and furnishes and pay the prescribed examination fee.

32-535. Instructor license renewal
A. Except as provided in section 32-4301, an instructor shall renew his license on or before his birth date every year.
B. An instructor shall submit an application for renewal accompanied by the prescribed renewal fee in order to renew his license.
C. An instructor who fails to renew his license on or before his birth date shall also pay the prescribed delinquent renewal penalty in order to renew his license.

32-536. Instructor practice; instruction
A. An instructor may practice in the category of practice he is licensed to practice in a salon licensed pursuant to this chapter.
B. An instructor shall teach only in the area he is licensed by the board to teach.

32-537. Instructor; inactive licenses; reactivation; suspension
A. An instructor license that is not renewed pursuant to section 32-535 automatically reverts to inactive status.
B. A licensee may reactivate an inactive license:
1. If a license has been inactive for less than one year, by paying the prescribed delinquent renewal penalty.
2. If a license has been inactive for one year or more but less than ten years, by paying the prescribed delinquent renewal penalty and submitting proof of satisfying educational requirements prescribed by the board in its rules.
C. A license that has been inactive for ten years is automatically suspended.

D. A licensee shall not practice under an inactive license.

32-541. Salon requirements
A. A person is entitled to receive a license to operate a salon if the person:
1. Submits to the board an application for a salon license on a form supplied by the board.
2. Pays the prescribed fee.
B. The safety and sanitary requirements specified by the board in its rules shall be requirements while a salon is operating.
C. Each salon shall have an individual designated as the manager of the salon.

32-542. Salon inspections
A. The board shall inspect all proposed salons to determine if all of the requirements are met. The board may issue a license to a salon pending inspection of the salon as it deems appropriate.
B. The board shall inspect salons on a regular basis as it deems necessary.

32-543. Required display
Salons shall display the following in a conspicuous location which is readily observable by any patron:
1. The current salon license.
2. The current licenses for cosmetologists, aestheticians or nail technicians practicing in the salon.
3. The latest inspection sheet.

32-544. Salon license renewal
A. Except as provided in section 32-4301, a salon license is renewable each year on or before the anniversary date of the first license by meeting all the requirements for a salon license and paying the prescribed renewal fee.
B. A salon owner who fails to renew the owner's salon license each year by the anniversary date of the license shall apply pursuant to section 32-541 and pay the prescribed fee and delinquent renewal penalty.

32-545. Change of ownership or location; change of trade name
A. A salon shall not change from the name of one licensee to another or from one location to another or change its trade name without filing a new application and paying the prescribed fee.
B. A salon owner shall notify the board in writing within ten days after any change of ownership of the salon or change in the salon's location or trade name and pay the prescribed fee.

32-551. School licenses; applications; requirements
A. A person is entitled to a license to operate a school if:
1. He pays the prescribed fee.
2. He furnishes a surety bond in the amount of ten thousand dollars approved by the board and executed by a corporate bonding company authorized to do business in this state. The bond shall be for the benefit of and subject to the claims of the

state for failure to comply with the requirements of this chapter and any student who fails to receive the full course of instruction required under this chapter.
3. He submits to the board under oath an application for a school license on a form supplied by the board and other documentation required by the board in its rules.
4. The proposed school passes an inspection by the board before it opens.
B. An incomplete application shall be returned to an applicant within thirty days after the board receives it with the causes for the return.

32-552. Change of ownership or location; change of trade name
A. A school shall not change from the name of one licensee to another or from one location to another or change its trade name without filing a new application and paying the prescribed fee.
B. A school owner shall notify the board in writing within ten days after any change of ownership of the school or change in the school's location or trade name, submit a new license application for the school and pay the prescribed fee.

32-553. Instruction staff
A. Instructors shall not apply their time to private practice with or without compensation in a school.
B. Students shall be under the constant supervision of an instructor.

32-554. Required display
Schools shall display the following in a conspicuous location:
1. The current school license.
2. The current licenses of instructors teaching in the school.
3. The latest inspection sheet.

32-555. Equipment
A school shall contain sufficient equipment as prescribed by the board in its rules.

32-556. Separation of schools from other businesses
A school of any type, including a cosmetology school or otherwise, shall not be conducted with any other business, including a salon. A school of any type, including a cosmetology school or otherwise, and another business shall be separated by walls of permanent construction and not have doors or openings between them. A cosmetology school may offer for sale cosmetology products and related articles.

32-557. Services for the public; restrictions
A. Students may render services to the public only under the direct supervision of an instructor.
B. The following notice shall be posted in a conspicuous place within the school in letters large enough to be read across the length of the room, "school of cosmetology - work done exclusively by students."
C. A student in a school shall not receive a salary or commission from the school for any cosmetology, aesthetics or nail technology services while he is enrolled in the school as a student.

D. A school shall post a price list for services rendered to the public which is large enough to be easily read from a distance of ten feet.

32-558. Student-school contracts
A private school is required to execute a contract between itself and a student in duplicate. The form of the contract shall be approved by the board. A contract between a school and a student shall bear the signature of a school official and the student or parent or guardian if the student is under eighteen years of age. A fully executed copy of the contract shall be given to the student and the school shall keep the original copy.

32-559. School catalogs
A. A private school shall submit a copy of its official catalog to the board for board approval.
B. A private school catalog shall contain the following:
1. Name and address of the school.
2. Date of publication.
3. Admission requirements and procedures used by the school.
4. Number of hours of training required for licensure.
5. A brief outline of the curriculum offered by the school.
6. A description of the school's general physical facilities and equipment.
7. Policies relating to tardiness, absences, make-up work, conduct, termination and other rules of the school.
8. The grading system, including a definition of credit units if any.
9. The type of document awarded on graduation from the school.

32-560. Transfer procedures
A student who desires to transfer from one school to another shall execute an application for transfer form prescribed by the board. The transferring school shall complete the application for transfer in triplicate and forward the requested information to the board within three days after the student executes the application for transfer.

32-561. Student records
A school shall keep records as prescribed by the board in its rules on file for each student enrolled or reenrolled in a school for a regular course, postgraduate course or additional hours.

32-562. School inspections
The board shall inspect schools on a regular basis as it deems necessary.

32-563. School closings
A. Within five days after a school closes it shall notify the board by certified mail of the closure.
B. Within ten days after a school closes it shall forward all student records to the board.

32-564. School license renewal

A. Except as provided in section 32-4301, school licenses are renewable on or before June 30 of every year by meeting all the requirements for a school license and paying the prescribed renewal fee.
B. A school owner who fails to renew his school license by June 30 of every year shall apply pursuant to section 32-551 and pay the prescribed fee and delinquent renewal penalty.

32-565. Schools; postsecondary education institutions
A school must be recognized as a postsecondary educational institution if both of the following apply:
1. The school admits as regular students only individuals who have earned a recognized high school diploma or the equivalent of a recognized high school diploma or who are beyond the age of compulsory education as provided by section 15-802.
2. The school is licensed by name by the board under this chapter to offer one or more training programs beyond the secondary school level.

32-571. Disciplinary action
The board may take any one or a combination of the following disciplinary actions:
1. Revoke a license.
2. Suspend a license.
3. Impose a civil penalty in an amount not to exceed two thousand dollars.
4. Impose probation requirements best adapted to protect the public safety, health and welfare including requirements for restitution payments to patrons.
5. Publicly reprove a licensee.
6. Issue a letter of concern.

32-572. Grounds for disciplinary action or refusal to issue or renew license; definition
A. The board may take disciplinary action or refuse to issue or renew a license for any of the following causes:
1. Continued performance of cosmetology, aesthetics or nail technology services by a person knowingly having an infectious or communicable disease.
2. Conviction of a crime.
3. Commission of an act involving dishonesty, fraud or deceit with the intent to substantially benefit oneself or another or substantially injure another.
4. Malpractice or incompetency.
5. Knowingly advertising by means of false, misleading, deceptive or fraudulent statements through communication media.
6. Violating any provision of this chapter or any rule adopted pursuant to this chapter.
7. Making oral or written false statements to the board.
8. Repeated failure to correct infractions of safety and sanitary requirements prescribed by the board in its rules.
9. Failing to comply with an order of the board.
B. A conviction of a crime or act shall not be a cause of refusal to issue or renew a license unless the crime or act is substantially related to the qualifications, functions or duties of the license for which application is made.

C. The expiration, cancellation, suspension or revocation of a license or a licensee's voluntary surrender of a license does not deprive the board of jurisdiction to do any of the following:
1. Proceed with an investigation of a licensee.
2. Proceed with an action or disciplinary proceeding against a licensee.
3. Suspend or revoke a license.
4. Deny the renewal or right of renewal of a license.
D. For the purposes of this section, "conviction" means a plea or verdict of guilty or a conviction following a plea of no contest.

32-573. Procedure for disciplinary action; appeal
A. The board on its own motion may investigate any information that appears to show the existence of any of the causes set forth in section 32-572. The board shall investigate the report of any person that appears to show the existence of any of the causes set forth in section 32-572. A person who reports pursuant to this section and who provides the information in good faith is not subject to liability for civil damages as a result.
B. If, after completing its investigation, the board finds that the evidence is not of sufficient seriousness to merit direct action against a license, it may take either of the following actions:
1. Dismiss if, in the opinion of the board, the evidence is without merit.
2. File a letter of concern if, in the opinion of the board, while there is insufficient evidence to support direct action against the license there is sufficient evidence for the board to notify the licensee that continuation of the activities that led to the information or report being made to the board may result in action against the licensee's license.
C. If, in the opinion of the board, it appears the information or report is or may be true, the board shall request an informal interview with the licensee concerned. The interview shall be requested by the board in writing, stating the reasons for the interview and setting a date not less than ten days from the date of the notice for conducting the interview.
D. If, after an informal interview, the board finds that the evidence warrants suspension or revocation of a license issued pursuant to this chapter, imposition of a civil penalty or public reproof or if the licensee under investigation refuses to attend the informal interview, a complaint shall be issued and formal proceedings shall be initiated. All proceedings pursuant to this subsection shall be conducted in accordance with title 41, chapter 6, article 10.
E. A licensee who has been notified pursuant to subsection D of this section of charges pending against the licensee shall file with the board an answer in writing to the charges not more than thirty days after the licensee receives the complaint. If the licensee fails to answer in writing within this time, it is deemed an admission by the licensee of the acts charged in the complaint and the board may take disciplinary action allowed by this chapter without a hearing.
F. If the board finds that the evidence is not of sufficient seriousness to merit suspension or revocation of a license issued pursuant to this chapter, imposition of a civil penalty or public reproof it may take the following actions:
1. Dismiss if, in the opinion of the board, the evidence is without merit.

2. File a letter of concern if, in the opinion of the board, while there is insufficient evidence to support direct action against the license there is sufficient evidence for the board to notify the licensee that continuation of the activities which led to the information or report being made to the board may result in action against the licensee's license.
3. Impose probation requirements.
G. If a licensee violates this chapter or a rule adopted pursuant to this chapter, the board may assess the licensee with the board's reasonable costs and expenses, including attorney fees, incurred in conducting the investigation and administrative hearing. All monies collected pursuant to this subsection shall be deposited, pursuant to sections 35-146 and 35-147, in a separate account in the board of cosmetology fund established by section 32-505. The board may only use these monies to defray its expenses in connection with investigation related training and education, disciplinary investigations and all costs related to administrative hearings. Notwithstanding section 35-143.01 the separate account monies may be spent without legislative appropriation.
H. Except as provided in section 41-1092.08, subsection H, final decisions of the board are subject to judicial review pursuant to title 12, chapter 7, article 6.

32-574. Unlawful acts; violation; classification
A. A person shall not:
1. Perform or attempt to perform cosmetology, aesthetics or nail technology without a license in that category issued pursuant to this chapter, or practice in a category in which the person does not hold a license.
2. Display a sign or in any way advertise or hold oneself out as a cosmetologist, aesthetician or nail technician or as being engaged in the practice or business of cosmetology, aesthetics or nail technology without being licensed pursuant to this chapter.
3. Knowingly make a false statement on an application for a license pursuant to this chapter.
4. Permit an employee or another person under the person's supervision or control to perform cosmetology, aesthetics or nail technology without a license issued pursuant to this chapter.
5. Practice or attempt to practice cosmetology, aesthetics or nail technology in any place other than in a salon licensed pursuant to this chapter unless the person is requested by a customer to go to a place other than a salon licensed pursuant to this chapter and is sent to the customer from the salon, except that a person who is licensed pursuant to this chapter may practice, without the salon's request, cosmetology, aesthetics or nail technology in a health care facility, hospital, residential care institution, nursing home or residence of a person requiring home care because of an illness, infirmity or disability.
6. Obtain or attempt to obtain a license by the use of money other than the prescribed fees or any other thing of value or by fraudulent misrepresentation.
7. Provide any service to a person having a visible disease, pediculosis or open sores suggesting a communicable disease until the person furnishes a statement signed by a physician licensed pursuant to chapter 13 or 17 of this title stating that the disease or condition is not in an infectious, contagious or communicable stage.
8. Operate a salon or school without being licensed pursuant to this chapter.

9. Violate any provision of this chapter or any rule adopted pursuant to this chapter.
10. Ignore or fail to comply with a board subpoena.
11. Use the title of "aesthetician", "cosmetologist" or "nail technician" or any other title or term likely to be confused with "aesthetician", "cosmetologist" or "nail technician" in any advertisement, statement or publication unless that person is licensed pursuant to this chapter.
B. An instructor shall not render cosmetology, aesthetics or nail technology services in a school unless the services are directly incidental to the instruction of students.
C. A person who violates this section is guilty of a class 1 misdemeanor.

32-575. Injunctions
The board, the attorney general, a county attorney or any other person may apply to the superior court in the county in which acts or practices of any person which constitute a violation of this chapter or the rules adopted pursuant to this chapter are alleged to have occurred for an order enjoining those acts or practices.

32-576. Confidentiality
A. Examination materials, records of examination grading and performance and transcripts of educational institutions are confidential and are not subject to inspection pursuant to title 39, chapter 1, article 2.
B. All investigation files are confidential and are not subject to inspection pursuant to title 39, chapter 1, article 2 until the matter is final. The licensee shall be informed of the investigation. The public may obtain information that discloses that an investigation is being conducted and the general nature of the investigation.

DEPARTMENT OF HEALTH SERVICES (R-17-1002)
Title 9, Chapter 16, Article 4, Registration of Sanitarians

Amend: Article 4

New Section: R9-16-401; R9-16-402; R9-16-403; R9-16-404; R9-16-405; R9-16-406; R9-16-407; Table 4.1; R9-16-408; R9-16-409

Repeal: R9-16-401; R9-16-402; R9-16-403; R9-16-404; R9-16-405; R9-16-406; R9-16-407; Table 1; R9-16-408; R9-16-409

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

MEETING DATE: October 3, 2017 **AGENDA ITEM: D-2**

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

FROM: Chris Kleminich, Staff Attorney

DATE: September 19, 2017

SUBJECT: **DEPARTMENT OF HEALTH SERVICES (R-17-1002)**
Title 9, Chapter 16, Article 4, Registration of Sanitarians

Amend: Article 4
New Section: R9-16-401; R9-16-402; R9-16-403; R9-16-404; R9-16-405; R9-16-406; R9-16-407; Table 4.1; R9-16-408; R9-16-409
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Purpose of the Agency and Summary of What the Rulemaking Does

The Department of Health Services (Department) is establishing 10 new rules while repealing the 10 existing rules related to the registration of sanitarians in A.A.C. Title 9, Chapter 16, Article 4. The Department indicates that the rulemaking is intended to address a statewide shortage of registered sanitarians which creates a threat to public health and safety.

The Department states that the new rules expand the eligibility criteria for qualified individuals to take a sanitarian examination, increase the number of applicants approved for registration, simplify the application process, and increase the sanitarian examination fee to cover the cost of the examination to the Department. The Department proposes to amend the title of Article 4 from "Registration of Sanitarians" to "Registration of Environmental Health Sanitarians."

Exemption or Request and Approval for Exception from the Moratorium

The Department received approval to proceed with the rulemaking from Governor Ducey's office on September 1, 2016.

Proposed Action

The Department is repealing the existing rules related to the registration of sanitarians and is establishing the following new rules related to the registration of environmental health sanitarians:

- Section 401 – *Definitions*: Definitions applicable to the article are being updated.
- Section 402 – *Eligibility and Responsibilities for a Registered Environmental Health Sanitarian*: Subsection (A) provides a list of individuals eligible to be a registered environmental health sanitarian. Subsections (C) and (D) relate to the scope of practice for registrants.
- Section 403 – *Requirements for an Environmental Health Sanitarian Aide*: Subsections (A) and (B) relate to the scope of practice for environmental health sanitarian aides. Subsection (C) provides that sanitarian aides who have completed at least five years of employment may apply for registration as an environmental health sanitarian. Subsection (D) relates to requirements for supervisors of sanitarian aides.
- Section 404 – *Continuing Education Requirements; Continuing Education Deferral; and Renewal Extension*: Provisions related to continuing education are being expanded to improve clarity and effectiveness.
- Section 405 – *Application for Sanitarian Examination and Registration*: Provisions related to the application process for registration as a sanitarian are being expanded to improve clarity and effectiveness. Of note is subsection (G)(1)(a)(i), under which the fee for a sanitarian examination administered by the Department is being increased from $110 to $140 to align with the cost that the Department pays to purchase a sanitarian examination.
- Section 406 – *Application for Renewal Registration*: Provisions related to the application process for renewal as a registered sanitarian are being expanded to improve clarity and effectiveness.
- Section 407 – *Time-frames*: Provisions related to the Department's licensing time-frames are being amended to reflect changes in the time-frames.
- Table 4.1 – *Time-frames (in calendar days)*: The table sets forth licensing time-frames for the following types of approvals:
    - Sanitarian Examinations: Overall time-frame of 150 days (previously 290 days).
    - Registration: Overall time-frame of 35 days (previously 90 days).
    - Registration by Reciprocity: Overall time-frame of 150 days (previously 180 days).
    - Deferred Continuing Education: Overall time-frame of 45 days (no previous time-frame).
    - Renewal Registration: Overall time-frame of 75 days (previously 180 days).
- Section 408 – *Requesting a Change*: The rule relates to information that must be provided to the Department when a registered environmental health sanitarian requests a change to personal information.
- Section 409 – *Denial, Suspension, or Revocation*: Provisions related to the Department's enforcement powers are being expanded to improve clarity and effectiveness.

Substantive or Procedural Concerns

None.

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

Yes. As authority for the rules, the Department cites to A.R.S. § 36-136(F), under which the Department "may make and amend rules necessary for the proper administration and enforcement of the laws relating to the public health."

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

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

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

Yes. The Department indicates that no written comments have been received, and no comments were made at the June 22, 2017 oral proceeding.

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

No. Clarifying and technical changes have been made between the proposed rules and the final rules, none of which constitute a substantial change.

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

No. The Department indicates that it did not review or rely upon any study.

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

No. The Department indicates that the rules do not correspond to any federal laws.

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

Yes. The rules require the registration of sanitarians. The Department indicates that a general permit is not used as A.R.S. § 36-136.01 requires that a registration application be for a specific individual.

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

Yes. The fee for a sanitarian examination administered by the Department is being increased from $110 to $140 to align with the cost that the Department pays to purchase a sanitarian examination. The Department indicates that the benefits provided by the new rules are greater than the $30 increase in this fee.

9. Conclusion

Citing A.R.S. § 41-1032(A)(1) and (4), the Department requests an immediate effective date for the rules to allow applicants denied a request for deferred continuing education with a reasonable amount of time to complete required continuing education and submit a renewal application on or before December 31. This analyst recommends approval of the rules.

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

MEETING DATE: October 3, 2017 **AGENDA ITEM: D-2**

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

FROM: GRRC Economic Team

DATE: September 19, 2017

SUBJECT: **DEPARTMENT OF HEALTH SERVICES (R-17-1002)**
Title 9, Chapter 16, Article 4, Registration of Sanitarians

Amend: Article 4
New Section: R9-16-401; R9-16-402; R9-16-403; R9-16-404; R9-16-405; R9-16-406; R9-16-407; Table 4.1; R9-16-408; R9-16-409
Repeal: R9-16-401; R9-16-402; R9-16-403; R9-16-404; R9-16-405; R9-16-406; R9-16-407; Table 1; R9-16-408; R9-16-409

I reviewed the economic, small business, and consumer impact comparison for compliance with A.R.S. § 41-1056 and make the following comments. These comments are made to assist the Council in its review and may be used as the Council determines.

The Department is amending rules in Article 4 related to sanitarian registration. Currently, the cost of administering sanitarian examinations is subsidized. The new rules increase the sanitarian examination fee from $110 to $140, and allow applicants to take a sanitarian examination administered by the Department or by another Department-approved testing center. The Department is also changing the classification title of the sanitarian occupation from "registered sanitarian" to "environmental health sanitarian." The Department expects that the new term will allow some applicants to use natural science semester credits that would be denied under current rules.

In FY 2016, the Department reported that registered sanitarians and sanitarian aides conducted over 742,000 inspections at over 49,000 regulated facilities. The Department approved 557 applicants for registration as a sanitarian and renewal as a registered sanitarian in 2016. The Department approved 65 newly registered sanitarians and approved 69 applicants to take a sanitarian examination.

The Department has certified that the Joint Legislative Budget Committee has not been notified because the number of new full-time employees necessary to implement and enforce the rule is zero. Notice of new FTEs is required by A.R.S. § 41-1055(B)(3)(a).

1. **Costs and Benefits for:**

a. The implementing agency:

The Department anticipates incurring a moderate cost for technical resources assigned to amend and promulgate new registration of sanitarians rules through the regular rulemaking process.

b. Political subdivisions:

This rulemaking does not provide any benefits or impose any costs on political subdivisions. This rulemaking provides significant benefits to political subdivisions that employ registered sanitarians.

c. Businesses:

Businesses that employ registered sanitarians may experience significant benefits due to the rulemaking

d. Small businesses:

Small businesses that employ registered sanitarians may experience significant benefits due to the rulemaking

e. Applicants seeking registration as a sanitarian:

Individuals registering for sanitarian examinations will incur increased sanitarian examination costs. The new rule increases the Department's sanitarian examination fee from $110 to $140. The new rule also allows applicants to take the sanitarian examination administered by the National Environmental Health Association (NEHA). Fees for sanitarian examinations administered by NEHA are anticipated to cost between $450 to $550. The Department expects most, if not all, applicants will choose to take a sanitarian examination administered by the Department.

The Department anticipates applicants will benefit from the occupational title classification change from "registered sanitarian" to "environmental health sanitarian". The new term could allow some applicants to apply natural science semester credits to satisfy the required 30 natural science semester credits required for approval of an applicant to be eligible to take a sanitarian examination.

f. Consumers directly affected by the rulemaking:

The Department anticipates that consumers will be affected through decreased tax burden and increases in the number of registered sanitarians in Arizona.

2. Do the probable benefits outweigh the probable costs?

Based on the information provided, the Department indicates that the benefits from the proposed amendments outweigh the costs.

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

An analysis was not submitted because the Department estimated that there will be little to no economic impact to small businesses.

4. The probable effect on state revenues:

The proposed rulemaking will have moderate positive effect on state revenues.

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

The Department believes this is the least costly and least intrusive method because it will increase the testing facility options for applicants and expand the applicant criteria.

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

No analysis was submitted that compares the rule's impact of the competitiveness of businesses in this state to the impact on businesses in other states.

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

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

8. Conclusion:

The submitted economic, small business and consumer impact statement is generally accurate, and contains the information required for compliance with A.R.S. §§ 41-1035, 41-1052(D)(1-3), and 41-1055. The economic team recommends that the proposed rule amendments be approved.

ARIZONA DEPARTMENT OF HEALTH SERVICES

POLICY & INTERGOVERNMENTAL AFFAIRS

July 26, 2017

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

RE: 9 A.A.C. 16, Article 4 Registration of Sanitarians (regular rulemaking)

Dear Ms. Colyer:

Enclosed are the administrative rules identified above which I am submitting, as the Designee of the Director of the Department of Health Services, for approval by the Governor's Regulatory Review Council under A.R.S. § 41-1052.

The following information is provided for your use in reviewing the enclosed rule package pursuant to A.R.S. § 41-1052 and A.A.C. R1-6-201:

1. The close of record:
   The close of record was June 22, 2017. Submission of the rules is within the 120 days allowed for Final Rulemaking.

2. Procedures followed:
   As required by the Administrative Procedure Act, a Notice of Rulemaking Docket Opening was filed with the Office of the Secretary of State and published in the *Arizona Administrative Register* on October 7, 2016. A Notice of Proposed Rulemaking was filed with the Office of the Secretary of State and published in the *Arizona Administrative Register* on May 19, 2016. The Department held one oral proceeding on June 22, 2017. The Department received no written comments or oral comments.

3. Whether the rulemaking relates to a five-year-review report and, if applicable, the date the report was approved by the Council:
   The rulemaking does not relate to a five-year-review report.

4. Whether the rule contains a new fee and, if it does, citation of the statute expressly authorizing the new fee:
   The rulemaking does not contain a new fee.

5. Whether the rule contains a fee increase:

The rulemaking does contain a fee increase.

6. Whether an immediate effective date is requested for the rule under A.R.S. § 41-1032:
The Department is requesting an immediate effective date for this rulemaking. An immediate effective date will allow the Department to receive requests for deferred continuing education by November 1 so the Department may determine whether an applicant's request to defer continuing education is denied. If denied, the applicant will have time to complete required continuing education and submit their renewal application packet, as required, on or before December 31.

7. A list of all items enclosed:
   a. Notice of Final Rulemaking, including the Preamble, Table of Contents, and text of the rule;
   b. 2017 Economic, Small Business, and Consumer Impact Statement;
   c. General and specific statutes authorizing the rule; and
   d. Existing rules.

The Department is requesting that the rules be heard at the Council meeting on October 3, 2017.

I certify that the Preamble of this rulemaking discloses a reference to any study relevant to the rule that the Department reviewed and either did or did not rely on in its evaluation of or justification for the rule.

I certify that the Department, as the preparer of the economic, small business, and consumer impact statement, has notified the Joint Legislative Budget Committee that no new full-time employees are necessary to implement and enforce the rules.

Sincerely,

Robert Lane
Director's Designee

RL:tk

Enclosures

NOTICE OF FINAL RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 16. DEPARTMENT OF HEALTH SERVICES – OCCUPATIONAL LICENSING

ARTICLE 4. REGISTRATION OF SANITARIANS

PREAMBLE

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

Article 4	Amend
R9-16-401	Amend
R9-16-402	Amend
R9-16-403	Amend
R9-16-404	Amend
R9-16-405	Amend
R9-16-406	Amend
R9-16-407	Amend
Table 1	Repeal
Table 4.1	New Section
R9-16-408	Amend
R9-16-409	Amend

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

Authorizing statutes: A.R.S. §§ 36-136(F)

Implementing statutes: A.R.S. §§ 36-136.01

3. **The effective date of the rules:**

The Department is requesting an immediate effective date for this rulemaking. The Department would like to implement the new rules that allow the Department to receive requests for deferred continuing education by November 1 so the Department may determine whether an applicant's request to defer continuing education is denied. If denied, the applicant will have time to complete required continuing education and submit their renew applications packet, as required, on or before December 31.

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:**

Notice of Rulemaking Docket Opening: 22 A.A.R. 2909, October 7, 2016

Notice of Proposed Rulemaking: 23 A.A.R. 1360, May 19, 2017

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

Name: Eric Thomas, Chief

Address: Arizona Department of Health Services
Division of Public Health Services, Public Health Preparedness,
Office of Environmental Health
150 N. 18th Ave., Suite 140
Phoenix, AZ 85007-3248

Telephone: (602) 364-0929

Fax: (602) 364-3146

E-mail: Eric.Thomas@azdhs.gov

or

Name: Robert Lane, Manager

Address: Arizona Department of Health Services
Office of Administrative Counsel and Rules
150 N. 18th Ave., Suite 200
Phoenix, AZ 85007

Telephone: (602) 542-1020

Fax: (602) 364-1150

E-mail: Robert.Lane@azdhs.gov

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

Arizona Revised Statutes (A.R.S.) § 36-136.01 requires the Arizona Department of Health Services (Department) to establish a sanitarians council and establish rules for the registration of sanitarians. The Department adopted at Arizona Administrative Code (A.A.C.) Title 9, Chapter 16, Article 4 rules to implement A.R.S. § 36-136.01. The rules were originally promulgated in September 1976; substantially amended effective May 16, 2002; and last amended effective September 11, 2004. The rules in 9 A.A.C. 16, Article 4 contain definitions; examination, registration, and renewal registration requirements; continuing education requirements; time-frames; registered sanitarian's authority; and criteria for the denial, suspension, or revocation of a sanitarian registration.

A statewide shortage of registered sanitarians limits county health departments (CHD) from conducting the functions and duties, including enforcement actions to remediate public nuisances, required by Delegation Agreements between the Department and the CHDs. To address the shortage in registered sanitarians and eliminate the threat to public health and safety,

the Department is amending the rules in A.A.C. Title 9, Chapter 16, Article 4 to: expand the eligibility criteria for qualified individuals to take the sanitarian examination; increase the number of applicants approved for registration; simplify the application process; and adjust the sanitarian examination fee to cover the actual cost of the examination and remove the tax burden from taxpayers who are currently subsidizing the cost of sanitarian examinations administered by the Department. The rule amendments will address these concerns, will remove obsolete requirements, and improve the effectiveness of the rules. The new rules will conform to rulemaking format and style requirements of the Governor's Regulatory Review Council and the Office of the Secretary of State.

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

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

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

Not applicable

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

The Department anticipates cost bearers and beneficiaries may include the Department, CDHs, registered sanitarians, applicants seeking registration as a sanitarian, individuals seeking information about the sanitarian profession, individuals employed as a sanitarian aide, and the general public. Annual cost and revenue changes are designated as minimal when more than $0 and $1,000 or less, moderate when between $1,000 and $10,000, and substantial when $10,000 or greater in additional costs or revenues. A cost is listed as significant when meaningful or important, but not readily subject to quantification. Under the rules in 9 A.A.C. 16, Article 4, the Department and the Sanitarians Council approve applicants for sanitarian examination; administer the sanitarian examination; approve applicants for registration as a sanitarian, including applicants by reciprocity; approve registered sanitarian's requests to defer continuing education; and approve registered sanitarians' registration renewals.

The Department anticipates that the new rules may cause the Department to incur a moderate cost for technical resources assigned to amend and promulgate new Registration of Sanitarians rules through the regular rulemaking process. The Department anticipates a significant benefit for more individuals being interested in the environmental health sanitarian

profession and more applicants being eligible and approved for registration as an environmental health sanitarian through the new rules. Rule changes such as amending the current “registered sanitarian” classification to "registered environmental health sanitarian"; allowing an additional six months to take/retake a sanitarian examination; and adding sanitarian aide requirements that identify the specific skills and knowledge a sanitarian aide must have to ensure eligibility to take a sanitarian examination and registration as an environmental health sanitarian. The Department expects that the benefit to the Department for having effective rules for registration of sanitarians is greater than the cost to amend the rules.

Arizona CHDs in 2016 conducted over 108,000 inspections at approximately 49,300 regulated facilities. The Department anticipates that the CHDs will benefit from having more registered sanitarians available for hire due to the new rules that simplify the application processes and reduce sanitarian examination and registration approval time-frames. The Department expects a moderate decrease in cost for CHDs through newly registered sanitarians being available for employment sooner, which may allow CHDs to reduce over-time paid to employed registered sanitarians working to ensure that all required inspections are completed. The Department anticipates that the CHDs may incur greater benefits from the new rules than possible costs that the CHDs might incur, if any.

The Department approved 557 applicants for registration as a sanitarian and renewal as a registered sanitarian in 2016. The Department anticipates that registered sanitarians will most likely not incur any costs as a result of the new rules. The Department does anticipate that registered sanitarians will benefit by having a simplified renewal application process that reduces time spent completing and submitting an application. Other benefits include new term "immediate family member's illness" that adds an additional reason a registered sanitarian may request to defer continuing education and new rule that adds an automatic extension for a registered sanitarian called to active military duty.

Last year, the Department received 65 sanitarian registration applications and approved 69 applicants to take a sanitarian examination. In the current rules, applicants may only take a sanitarian examination administered by the Department and is required to pay a $110 sanitarian examination fee. The new rule increases the sanitarian examination fee to $140 and allows applicants to take a sanitarian examination administered by the Department or by another Department-approved testing center. The Department, in comparing the Department's increased sanitarian examination fee to another testing center, determined that the other testing center charged applicants a $125 application fee and $325 for a sanitarian examination. Knowing this, the Department anticipates that most applicants will choose to pay the minimal $30 increase to

take a sanitarian examination administered by the Department rather than a $450 fee charged by another testing center.

The Department anticipates that an applicant seeking registration as a sanitarian may receive a decrease in costs due to the significant benefits provided by the new rules. For example, the new rules simplify the application processes and reduce the application approval time-frames for both the sanitarian examination and the registration as a sanitarian. The Department expects that these rules will decrease the time an applicant spends on completing an application and time waiting for approval, and rather, an applicant may receive a moderate or more benefit by spending less time being unemployed. The Department also anticipates a decrease in cost from the new rule that increases the time allowed for an applicant to take and retake a sanitarian examination. Furthermore, with the Department deleting old rule that required an applicant to complete and submit another application and application fee before retaking a sanitarian examination, the Department expects additional decrease in cost for an applicant retaking a sanitarian examination. The Department anticipates that the benefits provided by the new rules are greater than the $30 increase in the cost to take a sanitarian examination administered by the Department.

The Department expects that the current rules for individuals seeking information about the sanitarian profession or are employed as a sanitarian aide do not receive any benefit and most likely, unknowingly incur costs for a lack of knowing what the state's requirements and responsibilities are for the practice of a registered sanitarian or a sanitarian aide. The Department anticipates that under the new rules individuals seeking and finding information about qualifying for a sanitarian profession through employment as a sanitarian aide are more likely to pursue employment as a sanitarian aide, more likely to complete five years of employment in a position related to environmental health, and more likely to become a registered sanitarian. For individuals who are employed as a sanitarian aide, the new rules provide requirements that identify the environmental services skills, knowledge, experience, and applications that an individual needs to acquire while employed as a sanitarian aide. The Department anticipates that the increase in a sanitarian aide's proficiencies may result in more sanitarian aides taking and passing a sanitarian examination. The Department expects the new rules to significantly benefit individuals seeking information or employed as a sanitarian aide.

In 2016, registered sanitarians conducted thousands of inspections at over 49,000 regulated facilities on behalf of the general public. Under the new rules, the Department anticipates that the benefit to the general public may increase as the number of employed registered sanitarians increase, the number of inspections increase, and the number of public

nuisances decrease. The Department anticipates that public nuisances increase costs, and as more inspections are performed, more public nuisances are avoided causing a significant decrease in costs and eliminating the threat to public health and safety to the public. The Department also anticipates a moderate decrease in cost for taxpayers who subsidize a portion of the cost that the Department pays ($140) to purchase a sanitarian examination. With current rule requiring the Department to collect a $110 fee for administrating a sanitarian examination, taxpayers are required to pay the $30 difference. The new rule amends the sanitarian examination fee to $140 and decreases taxpayers' burden. The Department expects that the new rules will significantly increase benefits for the public.

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

Between the proposed rulemaking and the final rulemaking, the Department made the following changes. The Department also made other changes at the request of Council staff. The Department does not believe that the revised rules are substantially different from the rules contained in the Notice of Proposed Rulemaking and believes that the changes improve clarity and understandability.

- R9-16-401(11) definition for "environmental health sanitarian aide" removed reference to R9-16-402(E) because R9-16-402(E) moved to new R9-16-403(D); this change is made to improve clarity and understandability.
- R9-16-401(18) corrected cite in definition for "registered environmental health sanitarian;" change 36-130.01 to 36-136.01.
- R9-16-402(E) moved to R9-16-403(D) to improve clarity and understandability.
- R9-16-404 changed subsection labeling in (B)(1)(e)(ii), created new (B)(1)(f); changed (B)(1)(f) to add new (B)(2); and changed (B)(2) to new (B)(3) to improve clarity and understandability.
- R9-16-404 changed subsection labeling in (D)(1) to add new (D)(1)(a), add new (D)(1)(a)(i) through (iv), and changed (D)(1)(e) to new (D)(1)(b) to improve clarity and understandability
- R9-16-405(B)(1)(e) removed redundant language "from outside the United States or its territories verified according to R9-16-402(A)(1)." The reference to R9-16-402(A)(1) is also stated at the beginning of R9-16-405(B)(1)(e) and R9-16-402(A)(1) states, "…from outside the United States or its territories verified..."
- R9-16-405(C) added "an applicant shall instruct" to make the rule clearer since a "college or university" would not know to send an official transcript to the Department without receiving instruction from an applicant.

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

The Department received no written comments during the public comment period. The Department held an oral proceeding for the proposed rules on June 22, 2017, at which no stakeholders/members of the public attended and no oral comments were provided.

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

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

The rule requires a permit as specified in A.R.S. § 36-136.01. However, A.R.S. § 36-136.01 requires a registration application be for a specific individual, so a general permit is not used.

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

Not applicable

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

No business competitiveness analysis was received by the Department.

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

Not applicable

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

Not applicable

15. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

CHAPTER 16. DEPARTMENT OF HEALTH SERVICES – OCCUPATIONAL LICENSING

ARTICLE 4. ~~REGISTRATION OF SANITARIANS~~ REGISTRATION OF ENVIRONMENTAL HEALTH SANITARIANS

R9-16-401. Definitions

R9-16-402. ~~Sanitarian Examination~~ Eligibility and Responsibilities for a Registered Environmental Health Sanitarian

R9-16-403. ~~Sanitarian Registration~~ Requirements for an Environmental Health Sanitarian Aide

R9-16-404. ~~Annual Registration Renewal~~ Continuing Education Requirements; Continuing Education Deferral; and Renewal Extension

R9-16-405. ~~Continuing Education~~ Application for Sanitarian Examination and Registration

R9-16-406. ~~Change of Name and Address~~ Application for Renewal Registration

R9-16-407. Time-frames

~~Table 1~~ ~~Time-frames (in days)~~ Repealed

Table 4.1 Time-frames (in calendar days)

R9-16-408. ~~Authority of a Registered Sanitarian~~ Requesting for a Change

R9-16-409. Denial, Suspension, or Revocation

ARTICLE 4. ~~REGISTRATION OF SANITARIANS~~ REGISTRATION OF ENVIRONMENTAL HEALTH SANITARIANS

R9-16-401. Definitions

~~In this Article, unless otherwise specified:~~

~~1. "Applicant" means an individual requesting from the Council:~~

~~a. Approval to take the sanitarian examination;~~

~~b. Registration as a sanitarian; or~~

~~c. Renewal of registration as a sanitarian.~~

~~2. "Application packet" means a Council-approved application form and the documentation necessary to establish an individual's qualifications for registration as a sanitarian.~~

~~3. "Billet" means an individual's military job position and job description.~~

~~4. "Council" means the Sanitarians' Council established under A.R.S. § 36-136.01(A).~~

~~5. "Course" means a program of instruction for which credit toward graduation or certification is given.~~

~~6. "Continuing education" means a course, seminar, lecture, conference, workshop, or programmed learning activity related to employment as a registered sanitarian.~~

~~7. "Day" means calendar day.~~

~~8. "Environmental health" means the well-being of a human as affected or influenced by external conditions such as: bacteria and viruses; transmitted diseases; hygiene; housing; and contamination of food, air, water, or soil.~~

~~9. "Full-time military duty" means active duty in any branch of the United States military service.~~

~~10. "Natural science" means anatomy, bacteriology, biochemistry, biology, botany, biophysics, biostatistics, cell physiology, chemical engineering, chemistry, ecology, embryology, endocrinology, entomology, environmental health, epidemiology, food bacteriology, dairy sciences, genetics, geophysics, geology, herpetology, histology, hydro geology, hydrology, ichthyology, limnology, microbiology, molecular biology, ornithology, parasitology, pathology, pharmacy, physics, physiology, plant taxonomy, radiological health, sanitary engineering, sewage sanitation, soil science, toxicology, vector control, veterinary science, virology, or zoology or the study of air pollution, community health, environmental diseases, hazardous waste, industrial hygiene, infectious diseases, occupational safety, or public health.~~

~~11. "Person" has the same meaning as in A.R.S. § 1-215.~~

~~12. "Practice of a registered sanitarian" means acting under the authority of R9-16-408(A).~~

~~13. "Registration" means the approval issued by the Council to an applicant who meets the requirements in A.R.S. § 36-136.01 and this Article.~~

~~14. "Regulatory authority" has the same meaning as in R9-8-107(B)(11).~~

~~15. "Supervise" means to oversee and provide guidance for the accomplishment of a function or activity.~~

The following definitions apply in this Article, unless otherwise specified:

1. "Accredited" means that an educational institution is recognized by the U.S. Department of Education as providing standards necessary to meet acceptable levels of quality for its graduates to gain admission to other reputable institutions of higher learning or to achieve credentials for professional practice.
2. "Administrative completeness review time-frame" has the same meaning as in A.R.S. § 41-1072.
3. "Applicant" means an individual who submits an application packet or renewal application packet for registration as an environmental health sanitarian.
4. "Application packet" means the information, documents, and fees required by the Department to apply for approval to:
   a. Take a sanitarian examination, and
   b. Be registered as an environmental health sanitarian.
5. "Calendar day" means each day, not including the day of the act, event, or default from which a designated period of time begins to run and including the last day of the period unless it is a Saturday, Sunday, statewide furlough day, or legal holiday, in which case the period runs until the end of the next day that is not a Saturday, Sunday, statewide furlough day, or legal holiday.
6. "Continuing education" means a course that provides instruction and training that is designed to develop or improve a registered environmental health sanitarian's professional competence in disciplines directly related to the practice of a registered environmental health sanitarian.
7. "Continuing education hour" means 50 to 60 minutes of continuous course work.
8. "Course" means a workshop, seminar, lecture, conference, or other learning program activities as approved by the Department.
9. "Department" means the Arizona Department of Health Services established in A.R.S. § 36-104 and the Sanitarians Council established in A.R.S. § 36-136.01.

10. "Environmental health" means the science and practice of preventing human injury and illness and promoting well-being by identifying sources that produce potential hazardous physical, chemical, and biological agents in air, water, soil, food, and other conditions; and eliminating or minimizing exposure to the sources that adversely affect or may adversely affect human health.

11. "Environmental health sanitarian aide" means an individual who performs and assists with environmental health services as described and under the supervision of an individual in R9-16-403.

12. "Hazardous environmental agent" means a material, whether liquid, solid, gas, or sludge, that contains properties that make the material potentially harmful to public health or the environment.

13. "Immediate family member" means an individual related by birth, marriage, or adoption.

14. "License or licensed" means a permit, certificate, or similar form of approval issued by a state agency according to state law that an individual may practice in the profession indicated by the approval.

15. "Natural science" means a branch of science that deals with the physical world, including life, physical, and health sciences.

16. "Overall time-frame" has the same meaning as in A.R.S. § 41-1072.

17. "Practice of a registered environmental health sanitarian" means acting under the authority of R9-16-402.

18. "Registered environmental health sanitarian" means the same as a "registered sanitarian" in A.R.S. § 36-136.01.

19. "Renewal application packet" means the information, documents, and fees required by the Department to apply for a renewal registration as an environmental health sanitarian.

20. "Sanitarian examination" means a test that consists of questions related to environmental health including natural sciences, facility and system inspections, investigations, compliance, responding to emergencies, and promoting environmental public health awareness.

21. "Semester credit" means one earned academic unit of study or equivalent, with a grade of "C" or better, at an accredited college or university by:

    a. Attending a 50 to 60 minute class session each calendar week for at least 16 weeks, or

    b. Completing practical work for a class as determined by the accredited college or university.

22. "Substantive review time-frame" has the same meaning as in A.R.S. § 41-1072.

23. "Supervision" means being responsible for and providing direction to an individual who:

a. Performs and assists a registered environmental health sanitarian with environmental health services as described in R9-16-403, and

b. Is employed as an environmental health sanitarian aide in a position directly related to environmental health.

R9-16-402. ~~Sanitarian Examination~~ Eligibility and Responsibilities for a Registered Environmental Health Sanitarian

~~**A.** The Council shall provide the sanitarian examination at least four times per calendar year.~~

~~**B.** An applicant meeting any one of the requirements in A.R.S. § 36-136.01(I) may sit for the sanitarian examination.~~

~~**C.** At least seven days before a Council meeting, an applicant for the sanitarian examination shall:~~

~~1. Submit an application form to the Council that contains:~~

~~a. The applicant's full name and all former names;~~

~~b. The applicant's current address and telephone number;~~

~~c. The applicant's social security number;~~

~~d. If applying under A.R.S. § 36-136.01(I)(1) on the basis of the applicant's employment by a public health agency or private industry in a position directly related to environmental health:~~

~~i. The name of each of the applicant's employers,~~

~~ii. The applicant's position for each employer,~~

~~iii. The months and years of employment in each position, and~~

~~iv. The name and telephone number of each individual who supervised the applicant during five years of employment in environmental health;~~

~~e. If applying under A.R.S. § 36-136.01(I)(2) on the basis of military duty:~~

~~i. Each of the applicant's billets in environmental health,~~

~~ii. The months and years in each billet, and~~

~~iii. The name and telephone number of each individual who supervised the applicant during five years of full-time military duty in environmental health;~~

~~f. If applying under A.R.S. § 36-136.01(I)(3) on the basis of education in natural science:~~

~~i. The name and address of each college or university attended,~~

~~ii. The months and years of attendance,~~

~~iii. Any degree obtained, and~~

~~iv. A listing of courses in natural science completed with a grade of C or better;~~

~~g. Whether the applicant has had an application for a registration, license, or certificate related to the practice of a registered sanitarian denied or rejected by any state or jurisdiction and if so, the:~~

~~i. Reason for denial or rejection,~~

~~ii. Date of the denial or rejection, and~~

~~iii. Name and address of the state or jurisdiction that denied or rejected the application;~~

~~h. Whether the applicant has had a registration, license, or certificate related to the practice of a registered sanitarian suspended or revoked by any state or jurisdiction or entered into a consent agreement with a state or jurisdiction and if so, the:~~

~~i. Reason for the suspension, revocation, or consent agreement;~~

~~ii. Date of the suspension, revocation, or consent agreement; and~~

~~iii. Name and address of the state or jurisdiction that suspended or revoked the registration, license, or certificate or issued the consent agreement;~~

~~i. Whether the applicant has pled guilty to, been convicted of, or entered a plea of no contest to a misdemeanor related to the applicant's employment as a sanitarian or a felony and if so, the:~~

~~i. Felony or misdemeanor charged;~~

~~ii. Date of conviction or plea; and~~

~~iii. Court having jurisdiction over the felony or misdemeanor;~~

~~j. Whether the applicant has been named as a defendant in a malpractice case resulting from the applicant's employment as a sanitarian and if so, an explanation of the circumstances of the malpractice case;~~

~~k. The applicant's current employer, including address, job position, and dates of employment, if applicable; and~~

~~l. A signed statement by the applicant verifying the truthfulness of the information provided;~~

~~2. If applying under A.R.S. § 36-136.01(I)(1), arrange to have a letter provided directly to the Council from each individual who supervised the applicant identifying the dates the~~

~~individual supervised the applicant, totaling at least five years of employment directly related to environmental health;~~

~~3. If applying under A.R.S. § 36-136.01(I)(2), arrange to have a letter provided directly to the Council from each individual who supervised the applicant identifying the dates the individual supervised the applicant, totaling at least five years of full-time military duty in environmental health;~~

~~4. If applying under A.R.S. § 36-136.01(I)(3), arrange to have an official college or university transcript provided directly to the Council from each college or university; and~~

~~5. Submit the application fee in A.R.S. § 36-136.01(F).~~

~~**D.** After receiving the written notice of approval in R9-16-407(C)(1)(b), an applicant shall submit to the Council, at least 30 days before the scheduled date of a sanitarian examination, a nonrefundable examination fee of $110 payable to the Treasurer of the state of Arizona.~~

~~**E.** An applicant who does not take a sanitarian examination on the scheduled date shall comply with subsection (D) before taking a subsequent sanitarian examination.~~

~~**F.** An applicant who scores:~~

~~1. Seventy percent or more on the sanitarian examination is issued a certificate of registration; or~~

~~2. Less than 70%:~~

~~a. Fails the sanitarian examination; and~~

~~b. Shall meet the requirements in subsections (B), (C) and (D) to sit for the sanitarian examination again.~~

A. An individual is eligible to be a registered environmental health sanitarian, if the individual meets at least one of the following:

1. Has completed at least 30 semester credits at an accredited college or university in the natural sciences or the equivalent credits from a college or university from outside the United States or its territories verified by a Department-approved third party evaluation service;
2. Has completed at least five years of employment as a sanitarian aide in a position directly related to environmental health;
3. Has completed at least five years of active military service in the field of environmental health;
4. Is currently licensed as a sanitarian in another jurisdiction, has passed a sanitarian examination that is equivalent to this state's examination with a score or 70% or more,

and has completed at least one of the requirements identified in subsections (A)(1), (2), or (3); or

5. Has received an official notice from a testing organization approved by the Department that contains the sanitarian examination test results with a score of 70% or more and has completed at least one of the requirements identified in subsections (A)(1), (2), or (3).

B. An individual who is eligible to be a registered environmental health sanitarian according to subsection (A)(1) through (3) shall pass a sanitarian examination administered by the Department or administered by a testing organization approved by the Department.

C. The practice of a registered environmental health sanitarian may include:

1. Investigate, sample, measure, and assess hazardous environmental agents;
2. Recommend and apply protective interventions that control hazards to health;
3. Develop, promote, and enforce guidelines, policies, rules, statutes, and regulations;
4. Perform system analysis;
5. Interpret research utilizing science and evidence to understand the relationship between health and environment; or
6. Interpret data and prepare technical summaries and reports.

D. A registered environmental health sanitarian shall:

1. Comply with A.R.S. § 41-1009;
2. Comply with A.A.C. Title 9, Chapter 8; and
3. Review and, as applicable, sign reports prepared by a sanitarian aide.

R9-16-403. ~~**Sanitarian Registration**~~ **Requirements for an Environmental Health Sanitarian Aide**

~~An applicant for registration as a sanitarian shall submit to the Council the application form, information, and application fee in R9-16-402 and:~~

~~1. If the applicant is registered, certified, or licensed as a sanitarian in another jurisdiction submit to the Council:~~

~~a. A copy of the applicant's sanitarian registration, certification, or licensure from the other jurisdiction;~~

~~b. A copy of the examination requirements for registration, certification, or licensure in the other jurisdiction;~~

~~c. The name of the testing company that provided the sanitarian examination the applicant passed to be registered, certified, or licensed in the other jurisdiction; and~~

~~d. Documentation of a score of 70% or more by the applicant on the other jurisdiction's sanitarian examination; or~~

~~2. If the applicant is not registered, certified, or licensed as a sanitarian in another jurisdiction:~~

~~a. Be approved to take the sanitarian examination,~~

~~b. Take and pass the sanitarian examination in R9-16-402 with a score of 70% or more, and~~

~~c. Submit to the Council the examination fee in R9-16-402(D).~~

A. An environmental health sanitarian aide may perform and assist in any of the following environmental health services:

1. Inspections related to food establishments, food processing, food distribution, sewage and refuse disposal, water supplies, hotels, motels, campground, swimming pools, and other related public facilities regulated under A.A.C. Title 9, Chapter 8;
2. Investigations of complaints to ensure compliance with environmental regulations;
3. Routine samplings of water, sewage, food, and other samples for analysis; or
4. Application of ordinances, codes, rules, and regulations governing public health.

B. An environmental health sanitarian aide shall:

1. Have reports reviewed by a registered environmental health sanitarian;
2. Not approve or disapprove the operation of an establishment under A.A.C. Title 9, Chapter 8; and
3. Not sign on behalf of a registered environmental health sanitarian.

C. A sanitarian aide, who has completed at least five years of employment as an environmental health sanitarian aide in a position directly related to environmental health, may apply for registration as an environmental health sanitarian according to R9-16-405.

D. An individual who provides supervision to an environmental health sanitarian aide shall:

1. Ensure that the number of hours and type of supervision in providing environmental health services is consistent with:
   a. The sanitarian aide's skills and experience,
   b. The setting where the environmental health services are provided, and
   c. The tasks assigned;
2. Establish a record for the environmental health sanitarian aide who receives supervision that includes:
   a. The sanitarian aide's name, address, e-mail address, and telephone number;
   b. A plan indicating the types of skills and the number of hours allocated to the development of each skill that the environmental health sanitarian aide is expected to complete;

c. Documentation of evaluations provided to the environmental health sanitarian aide during the time supervision was provided; and

d. Documentation of when supervision began and ended; and

3. Maintain a sanitarian aide's record throughout the period that the environmental health sanitarian aide received supervision.

R9-16-404. ~~Annual Registration Renewal~~ Continuing Education Requirements; Continuing Education Deferral; and Renewal Extension

~~**A.** Except as provided in subsection (B), a registered sanitarian shall submit an application packet for registration renewal on or before December 31 of each year that includes:~~

~~1. The applicant's name and current address;~~

~~2. Whether the applicant, since the applicant last submitted a registration or registration renewal application in this state:~~

~~a. Has had a registration, license, or certificate related to the practice of a registered sanitarian suspended or revoked by any state or jurisdiction or entered into a consent agreement with a state or jurisdiction and if so, the:~~

~~i. Reason for the suspension, revocation, or consent agreement;~~

~~ii. Date of the suspension, revocation, or consent agreement; and~~

~~iii. Name and address of the state or jurisdiction that suspended or revoked the registration, license, or certificate or issued the consent agreement;~~

~~b. Has pled guilty to, been convicted of, or entered into a plea of no contest to a misdemeanor that is related to the applicant's employment as a sanitarian or a felony and if so, the:~~

~~i. Felony or misdemeanor,~~

~~ii. Date of conviction, and~~

~~iii. Court having jurisdiction over the felony or misdemeanor; or~~

~~c. Has been named as a defendant in a malpractice case resulting from the applicant's employment as a sanitarian and if so, an explanation of the circumstances of the malpractice case;~~

~~3. Documentation of:~~

~~a. The continuing education required in R9-16-405(A) or (E) including for each continuing education:~~

~~i. A description of the continuing education's content,~~

~~ii. The name of the person providing the continuing education,~~

~~iii. The number of hours the sanitarian participated in the continuing education, and~~

~~iv. The date the continuing education was completed; or~~

~~b. A request for deferring continuing education and applicable documentation required in R9-16-405(C);~~

~~4. The fee required in A.R.S. § 36-136.01(F); and~~

~~5. A signed statement by the applicant verifying the truthfulness of the information provided.~~

~~**B.** A registered sanitarian who does not submit an application packet for renewal registration by December 31 has a grace period until February 15 to submit the application packet. If the registered sanitarian does not submit the application packet for renewal registration in subsection (A) during the grace period:~~

~~1. The sanitarian's registration expires; and~~

~~2. The sanitarian shall, before practicing as a registered sanitarian:~~

~~a. Submit for Council approval a new application to take the sanitarian examination and the application fee required in R9-16-402(C)(5),~~

~~b. Receive Council approval to take the sanitarian examination,~~

~~c. Submit the nonrefundable examination fee required in R-16-402(D), and~~

~~d. Pass the sanitarian examination as required in R9-16-402(F)(1).~~

A. A registered environmental health sanitarian shall complete 12 continuing education hours during the 12 months prior to December 31 of each calendar year, unless the registered environmental health sanitarian:

1. Has been a registered environmental health sanitarian for less than 12 months as indicated on the renewal application;
2. Was prevented from completing continuing education according to subsection (A) due to a personal or immediate family member's illness during at least six continuous months of the preceding 12 months; or
3. Was called to active military service.

B. Except for a registered environmental health sanitarian in subsection (A)(1) and (3), by November 1 of each calendar year, a registered environmental health sanitarian may request to defer continuing education by submitting:

1. A request in a Department-provided format that contains:
   a. The registered environmental health sanitarian's name, address, e-mail address, and telephone number;

b. The registered environmental health sanitarian's registration number;

c. A statement regarding the registered environmental health sanitarian's personal or immediate family member's illness;

d. Indicate the number of continuing education hours requesting to defer;

e. An attestation that the Department is authorized to verify all information provided in the continuing education deferral request; and

f. The registered environmental health sanitarian's signature, including date of signature;

2. Documentation that verifies the duration of the registered environmental health sanitarian's personal or immediate family member's illness from the physician treating or who treated the registered environmental health sanitarian's personal or immediate family member's illness; and

3. If a registered environmental health sanitarian has completed any continuing education hours, report the completed continuing education hours according to R9-16-406(D)(1)(h).

C. A registered environmental health sanitarian that deferred continuing education in subsection (B) shall obtain:

1. The deferred continuing education by the end of the subsequent renewal year, and

2. The continuing education required in subsection (A) for the current renewal year.

D. A registered environmental health sanitarian called to active military service:

1. Shall submit a:

a. Written notice for renewal extension to the Department that includes:

i. The registered environmental health sanitarian's name, address, e-mail address, and telephone number;

ii. The registered environmental health sanitarian's registration number;

iii. A statement stating the reason for the notice of renewal extension; and

iv. The registered environmental health sanitarian's signature, including date of signature; and

b. A copy of the registered environmental health sanitarian's deployment documentation;

2. Retains registration as an environmental health sanitarian for the term of service or deployment plus 180 calendar days;

3. Defers the requirement for completing the continuing education for the term of service or deployment plus 180 calendar days; and

4. Shall submit a renewal application packet according to R9-16-406 after the term of service or deployment plus 180 calendar days.

E. The Department shall review the request to defer continuing education submitted in subsection (B) for approval according to R9-16-407 and Table 4.1.

F. If the Department denies a registered environmental health sanitarian's request to defer continuing education, the registered environmental health sanitarian shall submit the required continuing education hours in subsection (A) according to R9-16-406(D)(1)(h).

R9-16-405. ~~Continuing Education~~ Application for Sanitarian Examination and Registration

~~**A.** Except as provided in subsections (B) and (C), a registered sanitarian shall obtain 12 hours of continuing education in each calendar year for renewal of registration.~~

~~**B.** A registered sanitarian who has been registered for less than 12 months is not required to obtain continuing education for renewal of registration.~~

~~**C.** A registered sanitarian may submit, with a renewal application, a request to defer the 12 hours of continuing education for renewal of registration that includes written documentation of the registered sanitarian's illness or active military duty for at least six months of the preceding 12 months that prevented the registered sanitarian from completing the continuing education requirement.~~

~~**D.** The Council shall approve a registered sanitarian's request for a deferral of the continuing education requirement if the request includes the documentation required in subsection (C).~~

~~**E.** A registered sanitarian who has had the continuing education requirement deferred in a calendar year shall obtain:~~

~~1. The 12 deferred hours of continuing education by the end of the subsequent calendar year, and~~

~~2. The 12 hours of continuing education required in subsection (A) for the calendar year.~~

A. An individual may apply to take the sanitarian examination for registration as a sanitarian if the individual meets one of the eligibility requirements in R9-16-402(A).

B. At least seven calendar days before a Sanitarians Council meeting, an applicant for environmental health sanitarian registration shall submit an application packet to the Department containing:

1. The following information in a Department-provided format:

   a. The applicant's name, address, e-mail address, and telephone number;

   b. If applicable, applicant's former names;

   c. The applicant's social security number, required under A.R.S. §§ 25-320 and 25-502;

   d. If applicable, the applicant's current employment information:

i. The employer's name, address, e-mail address, and telephone number;

ii. The applicant's position title; and

iii. The applicant's employment start date;

e. If an applicant meets the eligibility requirement in R9-16-402(A)(1), the following for each college or university where the applicant completed semester credits or the equivalent credits from a college or university:

i. The college or university's name, address, e-mail address, and telephone number;

ii. The number of natural science semester credits completed; and

iii. If applicable, the degree obtained;

f. If an applicant meets the eligibility requirement in R9-16-402(A)(2), the following for each employer during the five years the applicant was employed as a sanitarian aide:

i. The employer's name, address, e-mail address, and telephone number;

ii. The name, title, e-mail address, and telephone number of a contact individual for the employer;

iii. The applicant's position and description of responsibilities; and

iv. The months and years of employment;

g. If an applicant meets the eligibility requirement in R9-16-402(A)(3), the following for each active military service assignment during the five years the applicant held a military job position in the field of environmental health:

i. The military branch name, address, e-mail address, and telephone number;

ii. The name, title, e-mail address, and telephone number of a contact individual from the military branch;

iii. The applicant's military job position and description of responsibilities; and

iv. The months and years of active military service assignments;

h. If an applicant meets the eligibility requirement in R9-16-402(A)(4), the following for a sanitarian licensed in another state or jurisdiction:

i. The state, county, and city that issued the applicant's current license as a sanitarian;

ii. The testing organization that administered the sanitarian examination;

iii. The name of the sanitarian examination;

iv. The sanitarian examination administration date;

v. The number of sanitarian examination questions;

vi. The sanitarian examination score;

vii. The other eligibility requirement in R9-16-402(A)(1), (2), or (3) met by the applicant; and

viii. As applicable, the information required in subsection (B)(1)(e), (f), or (g);

i. If an applicant meets the eligibility requirement in R9-16-402(A)(5), the following for an official notice from a Department-approved testing organization that contains a sanitarian examination test results with a score of 70% or more:

i. The name of the testing organization;

ii. The date the sanitarian examination was completed;

iii The sanitarian examination score; and

iv. As applicable, the information required in subsection (B)(1)(e), (f), or (g);

j. Whether the applicant is or has been licensed as a sanitarian in another state or jurisdiction;

k. Whether the applicant has had an application for licensure as a sanitarian denied in a state or jurisdiction;

l. If the applicant has had an application for licensure as a sanitarian denied, the:

i. Reason for denial;

ii. Date of the denial; and

iii. Name, address, and telephone number of the licensing agency that denied the applicant's application;

m. Whether the applicant has had a license as a sanitarian suspended or revoked by a state or jurisdiction or entered into a consent agreement with a state or jurisdiction;

n. If the applicant has had a license as a sanitarian suspended or revoked or entered into a consent agreement, the:

i. Reason for the suspension, revocation, or consent agreement;

ii. Date of the suspension, revocation, or consent agreement; and

iii. Name, address, and telephone number of the licensing agency that suspended, revoked, or entered into a consent agreement with the applicant;

o. Whether the applicant has been convicted of a felony or a misdemeanor related to the functions of the applicant's employment or occupation as a sanitarian in this state or another state;

p. If the applicant has been convicted of a felony or a misdemeanor in subsection (o):

i. The date of the conviction,

ii. The state or jurisdiction of the conviction,

iii. An explanation of the crime of which the applicant was convicted, and

iv. The disposition of the case;

q. Whether the applicant agrees to allow the Department to submit supplemental requests for additional information or documentation in R9-16-407;

r. An attestation that:

i. The applicant authorizes the Department to verify all information provided in the application packet, and

ii. The information submitted as part of the application packet is true and accurate; and

s. The applicant's signature and date of signature;

2. In addition to the application in subsection (B)(1), the following:

a. A copy of applicant's Social Security card;

b. Proof of U.S. citizenship or alien status according to A.R.S. § 41-1080;

c. If applicable, a copy of an applicant's sanitarian license issued by another state or jurisdiction;

d. If an official transcript is issued by a college or university from outside of the United States or its territories, documentation from a third party evaluation service verifying equivalent credits identified in subsection (d);

e. If applicable, a letter verifying an applicant's start and end dates of employment for each employer identified in subsection (B)(1)(f);

f. If applicable, a letter verifying an applicant's start and end dates of the military job position for each active military service assignment identified in subsection (B)(1)(g);

g. If applicable, documentation of the completed sanitarian examination, including the sanitarian examination test results, from the testing organization or jurisdiction that administered the sanitarian examination required by another state or jurisdiction in subsection (B)(1)(h); and

h. If applicable, a copy of the official notice from a Department-approved testing organization in subsection (B)(1)(i); and

3. The nonrefundable $25 application fee.

C. If an official transcript documents natural science semester credit hours identified in subsection (B)(1)(e), an applicant shall instruct the college or university to send the official transcript to the Department.

D. The Department shall review an application packet for an applicant to take a sanitarian examination according to R9-16-407 and Table 4.1.

E. The Department shall review a sanitarian examination for an applicant licensed by another state or jurisdiction for approval for the applicant to practice as a registered environmental health sanitarian according to R9-16-407 and Table 4.1.

F. The Department shall:

1. Administer the sanitarian examination at least four times each calendar year;
2. By January 1 of each calendar year, provide the annual sanitarian examination schedule;
3. If a scheduled sanitarian examination requires rescheduling, provide a notice at least 14 calendar days before a scheduled sanitarian examination date in subsection (2) occurs that includes information about the revised sanitarian examination; and
4. By January 1 of each calendar year, provide a list of Department-approved testing organizations.

G. An applicant approved to take a sanitarian examination shall:

1. Determine whether the applicant will take a sanitarian examination administered by the Department or administered by a testing organization approved by the Department;
   a. If the applicant determines to take a sanitarian examination administered by the Department, the applicant shall:
      i. Submit a nonrefundable $140 sanitarian examination fee to the Department at least 30 calendar days before taking a scheduled sanitarian examination,
      ii. Take a scheduled sanitarian examination administered by the Department, and
      iii. Submit the completed sanitarian examination to the Department; or
   b. If the applicant determines to take a sanitarian examination administered by a testing organization approved by the Department, the applicant shall:
      i. Select a testing organization from the Department-approved list,

ii. Take a scheduled sanitarian examination administered by the testing organization, and

iii. Submit a copy of the official notice from the testing organization that contains the sanitarian examination test results to the Department.

2. Take the sanitarian examination within 6 months after the date the applicant received the notice of approval to take the sanitarian examination.

3. Pass the sanitarian examination with a score of 70% or more.

H. The Department shall review a sanitarian examination for approval for an applicant to practice as a registered environmental health sanitarian according to R9-16-407 and Table 4.1.

I. An applicant, who does not submit a sanitarian examination or a copy of an official notice from a testing organization in subsection (G) within 6 months after the date that the applicant received the notice of approval to take the sanitarian examination, shall submit a new application packet according to R9-16-405(B).

J. An applicant, who submits a sanitarian examination or a copy of an official notice from a testing organization in subsection (G) within 6 months after the date that the applicant received the notice of approval to take the sanitarian examination and does not score 70% or more, shall:

1. Have 12 months from the date of the approval letter the applicant received from the Department to resubmit a sanitarian examination or a copy of an official notice from a testing organization in subsection (G); and

2. Comply with subsections (G)(1)(a) or (b) to retake the sanitarian examination.

R9-16-406. ~~Change of Name or Address~~ Application for Renewal Registration

~~**A.** A registered sanitarian shall send written notice of a change in the registered sanitarian's name to the Council within 30 days from the date of the change.~~

~~**B.** A registered sanitarian shall send written notice of a change in the registered sanitarian's mailing address to the Council within 30 days from the date of the change.~~

A. Except as provided in R9-16-404(D), a registered environmental health sanitarian shall submit an application packet for registration renewal on or before December 31 of each calendar year.

B. A registered environmental health sanitarian who does not submit a renewal application packet by December 31 has a grace period until February 15 to submit a renewal application packet.

C. A registered environmental health sanitarian, who does not submit a renewal application packet by February 15, shall not practice as a registered environmental health sanitarian.

D. By December 31 of each calendar year, an applicant shall submit to the Department a renewal application packet containing:

1. The following information in a Department-provided format:

a. The applicant's name, address, e-mail address, and telephone number;

b. The applicant's environmental health sanitarian registration number;

c. Whether the applicant, since the applicant last submitted an application packet or renewal application packet, has had a license as a sanitarian suspended or revoked by a state or jurisdiction or entered into a consent agreement with another jurisdiction;

d. If the applicant has had a license as a sanitarian suspended or revoked or entered into a consent agreement with another jurisdiction, the:

i. Reason for the suspension, revocation, or consent agreement;

ii. Date of the suspension, revocation, or consent agreement; and

iii. Name, address, and telephone number of the licensing agency that suspended, revoked, or entered into a consent agreement;

e. Whether the applicant, since the applicant last submitted a renewal application packet, has been convicted of a felony or a misdemeanor related to the applicant's employment or occupation as a sanitarian in this state or another jurisdiction;

f. If the applicant has been convicted of a felony or a misdemeanor as stated according to subsection (e):

i. The date of the conviction,

ii. The state or jurisdiction of the conviction,

iii. An explanation of the crime of which the applicant was convicted, and

iv. The disposition of the case;

g. Whether the applicant requested to defer continuing education due to a personal or immediate family member's illness according to R9-16-404(B);

h. Except for a registered environmental health sanitarian in R9-16-404(A), for each continuing education course completed during the previous 12 months, the following:

i. The course title,

ii. A course description,

iii. The name of the individual providing the continuing education course,

iv. The date the continuing education course was completed, and

v. The total number of continuing education hours attended;

i. Whether the applicant has been a registered environmental health sanitarian for less than 12 months according to R9-16-404(A)(1);

j. An attestation that:

i. The applicant affirms that the continuing education courses specified according to subsection (h) are applicable and consistent with the Department's approved continuing education courses or with the practice of a registered environmental sanitarian described in R9-16-402(C);

ii. The applicant authorizes the Department to verify all information provided in the renewal application packet; and

iii. The information submitted as part of the renewal application packet is true and accurate; and

k. The applicant's signature and date of signature;

2. If applicable, a copy of the approved request to defer continuing education, and

3. The $10 renewal application fee.

E. If a registered environmental health sanitarian does not submit a renewal application packet in subsection (D) by February 15:

1. The registered environmental health sanitarian's registration expires on February 16; and

2. Before practicing as a registered environmental health sanitarian, a registered environmental health sanitarian whose environmental health sanitarian registration expired shall submit a new application packet according to R9-16-405.

F. The Department shall review the renewal application packet for approval of registration as an environmental health sanitarian according to R9-16-407 and Table 4.1.

R9-16-407. Time-frames

~~**A.** The overall time-frame described in A.R.S. § 41-1072(2) for each type of approval granted by the Council is set forth in Table 1. The applicant and the Department may agree in writing to extend the substantive review time-frame and the overall time-frame. The substantive review time-frame and the overall time-frame may not be extended by more than 25% of the overall time-frame.~~

~~**B.** The administrative completeness review time-frame described in A.R.S. § 41-1072(1) for each type of approval granted by the Council is specified in Table 1.~~

~~1. The administrative completeness review time-frame begins:~~

~~a. For an applicant applying to take the sanitarian examination, when the Council receives the application packet required in R9-16-402;~~

~~b. For an applicant who is approved to take the sanitarian examination, when the applicant takes the sanitarian examination; or~~

~~c. For an applicant who is registered, certified, or licensed as a sanitarian in another jurisdiction, when the Council receives the application packet required in R9-16-403; or~~

~~d. For an applicant applying to renew the applicant's registration as a sanitarian, when the Council receives the application packet required in R9-16-404.~~

~~2. If an application packet in subsection (B)(1)(a), (B)(1)(c), or (B)(1)(d) is:~~

~~a. Incomplete, the Council shall provide a deficiency notice to the applicant describing the missing documentation or incomplete information. The administrative completeness review time-frame and the overall time-frame are suspended from the date of the notice until the date the Council receives the documentation or information listed in the deficiency notice. An applicant shall submit to the Council the documentation or information listed in the deficiency notice within the time period specified in Table 1 for responding to a deficiency notice.~~

~~i. If the applicant submits the documentation or information listed in the deficiency notice within the time period specified in Table 1, the Council shall provide a written notice of administrative completeness to the applicant.~~

~~ii. If the applicant does not submit the documentation or information listed in the deficiency notice within the time period in Table 1, the Council considers the application withdrawn and shall return the application packet to the applicant; or~~

~~b. Complete, the Council shall provide a notice of administrative completeness to the applicant.~~

~~3. If an applicant takes and submits the sanitarian examination in subsection (B)(1)(b) and the examination is:~~

~~a. Incomplete, the Council shall provide a deficiency notice to the applicant stating that the applicant's sanitarian examination is incomplete and identifying the date of the next scheduled sanitarian examination. The administrative completeness review time-frame and the overall time-frame are suspended from the date of the notice until the Council receives a completed sanitarian examination; or~~

~~b. Complete, the Council shall provide a written notice of administrative completeness to the applicant.~~

~~C.~~ ~~The substantive review time-frame described in A.R.S. § 41-1072(3) is specified in Table 1 and begins to run on the date of the notice of administrative completeness.~~

~~1.~~ ~~If an application for approval to take the sanitarian examination in subsection (B)(1)(a):~~

~~a.~~ ~~Does not comply with the requirements in this Article, the Council shall provide a comprehensive request for additional information to the applicant.~~

~~i.~~ ~~If the applicant does not submit the additional information within the time specified in Table 1 or the additional information submitted by the applicant does not demonstrate compliance with this Article and A.R.S. § 36-136.01, the Council shall deny approval to take the sanitarian examination and provide the applicant a written notice of denial that complies with A.R.S. § 41-1092.03(A); or~~

~~ii.~~ ~~If the applicant submits the additional information within the time specified in Table 1 and the additional information submitted by the applicant demonstrates compliance with this Article and A.R.S. § 36-136.01, the Council shall provide a written notice of approval to take the sanitarian examination to the applicant; or~~

~~b.~~ ~~Complies with the requirements in this Article and A.R.S. § 36-136.01, the Council shall provide a written notice of approval to take the sanitarian examination to the applicant.~~

~~2.~~ ~~If the Council determines that an applicant:~~

~~a.~~ ~~Failed to sit for the sanitarian examination within the time-frame in subsection (F), the Council shall provide a written notice to the applicant requiring the applicant to submit a new application for approval to take the sanitarian examination if the applicant requests registration;~~

~~b.~~ ~~Failed the sanitarian examination, the Council shall deny registration and provide a written notice of appealable agency action that complies with A.R.S. § 41-1092.03(A) to the applicant; or~~

~~c.~~ ~~Passed the sanitarian examination, the Council shall issue a certificate of registration as a sanitarian to the applicant.~~

~~3.~~ ~~If an application for registration as a sanitarian in subsection (B)(1)(c):~~

~~a.~~ ~~Does not comply with the requirements in this Article, the Council shall provide a comprehensive request for additional information to the applicant and take action as follows:~~

~~i. If the applicant does not submit the additional information within the time specified in Table 1 or the additional information submitted by the applicant does not demonstrate compliance with this Article and A.R.S. § 36-136.01, the Council shall deny registration and provide the applicant a written notice of appealable agency action that complies with A.R.S. § 41-1092.03(A); or~~

~~ii. If the applicant submits the additional information within the time specified in Table 1 and the additional information submitted by the applicant demonstrates compliance with this Article and A.R.S. § 36-136.01, the Council shall issue a certificate of registration as a sanitarian to the applicant; or~~

~~b. Complies with the requirements in this Article and A.R.S. § 36-136.01, the Council shall issue a certificate of registration as a sanitarian to the applicant.~~

~~4. If an application for renewal of registration as a sanitarian in subsection (B)(1)(d):~~

~~a. Does not comply with the requirements in this Article, the Council shall provide a comprehensive request for additional information to the applicant;~~

~~i. If the applicant does not submit the additional information within the time specified in Table 1 or the additional information submitted does not demonstrate compliance with the requirements in this Article and A.R.S. § 36-136.01, the Council shall deny renewal and provide a written notice of appealable agency action that complies with A.R.S. § 41-1092.03(A) to the applicant; or~~

~~ii. If the applicant submits the additional information within the time specified in Table 1 and the additional information submitted demonstrates compliance with the requirements in this Article and A.R.S. § 36-136.01, the Council shall issue a renewal certificate of registration as a sanitarian to the applicant; or~~

~~b. Complies with the requirements in this Article and A.R.S. § 36-136.01, the Council shall issue a renewal certificate of registration as a sanitarian to the applicant.~~

~~**D.** If an applicant receives a written notice of appealable agency action in subsections (C)(1)(a)(i), (C)(2)(b), (C)(3)(a)(i), or (C)(4)(a)(i), the applicant may file a notice of appeal with the Department within 30 days after receiving the notice of appealable agency action. The appeal shall be conducted according to A.R.S. Title 41, Chapter 6, Article 10.~~

~~**E.** If the Council grants approval to take the sanitarian examination or issues or renews a certificate of registration as a sanitarian during the administrative completeness review time-frame, the Council shall not issue a separate written notice of administrative completeness.~~

~~**F.** If an applicant does not sit for the sanitarian examination within 12 months of the Council's approval to take the sanitarian examination, the applicant shall, before taking the sanitarian examination:~~

~~1. Submit a new application for Council approval and the application fee required in R9-16-402(C);~~

~~2. Receive Council approval to take the sanitarian examination; and~~

~~3. Submit the nonrefundable examination fee required in R9-16-402(D).~~

~~**G.** If a time-frame's last day falls on a Saturday, Sunday, or a legal holiday, the Council considers the next business day as the time-frame's last day.~~

Table 1. ~~Time-frames (in days)~~ Repealed

~~Type of Approval~~	~~Statutory Authority~~	~~Overall Time-frame~~	~~Administrative Completeness Review Time-frame~~	~~Time to Respond to Deficiency Notice~~	~~Substantive Review Time-frame~~	~~Time to Respond to Comprehensive Written Request~~
~~Sanitarian Examination (R9-16-402)~~	~~A.R.S. § 36-136.01(B)~~	~~290~~	~~30~~	~~60~~	~~200~~	~~60~~
~~Registration after completing the sanitarian examination (R9-16-403)~~	~~A.R.S. § 36-136.01(B)~~	~~90~~	~~30~~	~~N/A~~	~~60~~	~~N/A~~
~~Registration of an individual registered, certified, or licensed as a sanitarian in another jurisdiction (R9-16-403)~~	~~A.R.S. § 36-136.01(C)~~	~~180~~	~~90~~	~~15~~	~~90~~	~~15~~
~~Annual Registration Renewal (R9-16-404)~~	~~A.R.S. § 36-136.01(D)~~	~~180~~	~~90~~	~~15~~	~~90~~	~~15~~

A. The overall time-frame begins, for:

1. A sanitarian examination approval, on the date the Department receives an application packet in R9-16-405;

2. An environmental health sanitarian registration approval, on the date the Department receives an official notice for an applicant's sanitarian examination test result administered by:

   a. A testing organization described in R9-16-405(B)(1)(i) or (G), or

b. A testing organization or jurisdiction that administered the sanitarian examination required by another state or jurisdiction described in R9-16-405(B)(1)(h);

3. A continuing education deferral approval, on the date the Department receives the continuing education deferral request in R9-16-404; and

4. A renewal registration approval, on the date the Department receives a renewal application packet in R9-16-406.

B. The applicant and the Department may agree in writing to extend the substantive review time-frame and the overall time-frame. The substantive review time-frame and the overall time-frame may not be extended by more than 25% of the overall time-frame.

C. Within the administrative completeness review time-frame in Table 4.1, the Department shall:

1. Provide a notice of administrative completeness to an applicant; or

2. Provide a notice of deficiencies to an applicant, including a list of the missing information or documents.

D. If the Department provides a notice of deficiencies to an applicant:

1. The administrative completeness review time-frame and the overall time-frame are suspended after the date of the notice of deficiencies until the date the Department receives the missing information or documents from the applicant;

2. If the applicant submits the missing information or documents to the Department within the time-frame in Table 4.1, the substantive review time-frame resumes on the date the Department receives the missing information or documents; and

3. If the applicant does not submit the missing information or documents to the Department within the time-frame in Table 4.1, the Department shall consider the application or the request withdrawn.

E. If the Department issues a registration or notice of approval during the administrative completeness review time-frame, the Department may not issue a separate written notice of administrative completeness.

F. Within the substantive review time-frame specified in Table 4.1, the Department:

1. Shall approve an:

i. Applicant's request for registration as an environmental health sanitarian or

ii. Applicant, who did not score 70% or more on the sanitarian examination, to resubmit a sanitarian examination according to R9-16-405(J);

2. Shall deny an applicant's request for registration as an environmental health sanitarian;

3. May make a written comprehensive request for additional information or documentation; and

4. May make supplemental requests for additional information and documentation if agreed to by the applicant.

G. If the Department provides a written comprehensive request for additional information or documentation or a supplemental request to the applicant:

1. The substantive review time-frame and overall time-frame are suspended from the date of the written comprehensive request or supplemental request until the date the Department receives the information and documents requested; and

2. The applicant shall submit to the Department the information and documents listed in the written comprehensive request within 15 calendar days after the date of the written comprehensive request or supplemental request.

H. The Department shall issue:

1. An approval to an applicant who submits:

   a. An application packet to take a sanitarian examination that complies with the requirements in R9-16-405;

   b. An application packet and a sanitarian examination with a score of 70% or more from a testing organization approved by the Department that complies with the requirements in R9-16-405;

   c. An application packet and a sanitarian examination test results from the testing organization or jurisdiction that administered the sanitarian examination that complies with the requirements in R9-16-405;

   d. A continuing education deferral request that complies with the requirements in R9-16-404; and

   e. A renewal application packet that complies with the requirements R9-16-406; or

2. A denial to an applicant, including the reason for the denial and the appeal process in A.R.S. Title 41, Chapter 6, Article 10, if:

   a. The applicant does not submit all of the information and documentation listed in a written comprehensive request or supplemental request for additional information or documentation; or

   b. The applicant does not comply with A.R.S. § 36-136.01 and this Article.

Table 4.1 Time-frames (in calendar days)

Type of Approval	Statutory Authority	Overall Time-frame	Administrative Completeness Review Time-frame	Time to Respond to Deficiency Notice	Substantive Review Time-frame	Time to Respond to Written Comprehensive Request
Sanitarian Examination (R9-16-405)	A.R.S. § 36-136.01(B)	150	30	30	120	15
Registration (R9-16-405)	A.R.S. § 36-136.01(B)	35	5	15	30	15
Registration by Reciprocity (R9-16-405)	A.R.S. § 36-136.01(C)	150	30	30	120	15
Deferred Continuing Education (R9-16-404)	A.R.S. § 36-136.01(E)	45	30	15	15	15
Renewal Registration (R9-16-406)	A.R.S. § 36-136.01(D)	75	60	15	15	15

R9-16-408. ~~Authority of a Registered Sanitarian~~ Requesting a Change

~~**A.** A registered sanitarian may:~~

~~1. Act as an authorized representative of a regulatory authority under 9 A.A.C. 8; and~~

~~2. Sign inspection reports under 9 A.A.C. 8 and 9 A.A.C. 17.~~

~~**B.** An individual who is not a registered sanitarian shall not approve or disapprove operation of a food establishment under 9 A.A.C. 8.~~

~~**C.** An individual who is not a registered sanitarian and who prepares an inspection report under 9 A.A.C. 8 and 9 A.A.C. 17 shall submit the report to a registered sanitarian.~~

Within 30 calendar days after the effective date of a change, a registered environmental health sanitarian requesting a change to personal information shall submit in a Department-provided format:

1. A written notice stating the information to be changed and indicating the new information; and
2. If the change is to the registered environmental health sanitarian's legal name, a copy of one of the following with the registered environmental health sanitarian's new name:
   a. Marriage certificate,

b. Divorce decree,

c. Professional license, or

d. Other legal document establishing the registered environmental health sanitarian's legal name.

R9-16-409. Denial, Suspension, or Revocation

~~**A.** The Council may deny, suspend, or revoke a sanitarian's registration if the Council determines that the applicant or registered sanitarian:~~

~~1. Intentionally provided false information on an application or cheated during the sanitarian examination;~~

~~2. Had an application for a registration, license, or certificate related to the practice of a registered sanitarian denied or rejected by any state or jurisdiction;~~

~~3. Had a registration, license, or certificate related to the practice of a registered sanitarian suspended or revoked by any state or jurisdiction or entered into a consent agreement with any state or jurisdiction;~~

~~4. Pled guilty to, was convicted of, or entered into a plea of no contest to a misdemeanor resulting from employment as a registered sanitarian or a felony;~~

~~5. Assisted an individual who is not a registered sanitarian to circumvent the requirements in this Article;~~

~~6. Allowed an individual who is not a registered sanitarian to use the registered sanitarian's registration; or~~

~~7. Failed to comply with any of the requirements in A.R.S. § 36-136.01 or this Article.~~

~~**B.** In determining whether to deny an applicant's registration or suspend or revoke a sanitarian's registration, the Council shall consider the threat to public health based on:~~

~~1. Whether there is repeated non-compliance with statutes or rules,~~

~~2. Whether there is a pattern of violations or non-compliance,~~

~~3. Type of violation,~~

~~4. Severity of violation, and~~

~~5. Number of violations.~~

~~**C.** The Council's notice of denial, suspension, or revocation to the applicant or registered sanitarian, notice of hearing, and all hearing procedures shall comply with A.R.S. Title 41, Chapter 6, Article 10.~~

~~**D.** The Council shall provide written notice of a registered sanitarian's denial, suspension, or revocation containing a description of the sanitarian's noncompliance with applicable statutes and rules, by certified mail, to each local health department and each public health service district.~~

A. The Department may deny an application packet for approval for registration or renewal of registration if the Department determines that an applicant:

1. Intentionally provided false information or documents in an application packet or renewal application packet;
2. Had an application for a license related to the practice of a registered environmental health sanitarian denied by a state or jurisdiction;
3. Had a license related to the practice of a registered environmental health sanitarian suspended or revoked by a state or jurisdiction or entered into a consent agreement with a state or jurisdiction; or
4. Was convicted of or entered into a plea of no contest to a misdemeanor resulting from employment as a registered environmental health sanitarian or a felony.

B. The Department may suspend or revoke a registered environmental health sanitarian's registration if the Department determines that a registered environmental health sanitarian:

1. Assisted an individual who is not a registered environmental health sanitarian to circumvent the requirements in this Article;
2. Allowed an individual who is not a registered environmental health sanitarian to use the registered environmental health sanitarian's registration;
3. Falsified records to interfere with or obstruct an investigation or regulatory process of the Department or a political subdivision; or
4. Failed to comply with any of the requirements in A.R.S. § 36-136.01 or this Article.

C. In determining whether to suspend or revoke a registered environmental health sanitarian's registration, the Department shall consider the threat to public health based on:

1. Whether there is repeated non-compliance with statutes or rules,
2. Type of non-compliance,
3. Severity of non-compliance, and
4. Number of non-compliance actions.

D. The Department's notice of suspension or revocation to the applicant or registered environmental health sanitarian shall comply with A.R.S. Title 41, Chapter 6, Article 10.

TITLE 9. HEALTH SERVICES

CHAPTER 16. OCCUPATIONAL LICENSING
ARTICLE 4. REGISTRATION OF SANITARIANS

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT

2017

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT

TITLE 9. HEALTH SERVICES

CHAPTER 16. OCCUPATIONAL LICENSING

ARTICLE 4. REGISTRATION OF SANITARIANS

1. An identification of the rulemaking

Arizona Revised Statutes (A.R.S.) § 36-136.01 authorizes the Arizona Department of Health Services (Department) to establish a sanitarians council and rules for the registration of sanitarians in the state of Arizona. As authorized by A.R.S § 36-136.01, the Department adopted rules at Arizona Administrative Code (A.A.C.) Title 9, Chapter 16, Article 4. A.A.C. R9-16-401, R9-16-402, and R9-16-405 through R9-16-414 were originally promulgated in September 1976. The rules were substantially amended effective May 16, 2002 and last amended effective September 11, 2004, following the amendment of A.R.S. § 36-136.01 by Laws 2003, Ch. 21.

On September 1, 2016, the Department received an exception from the rulemaking moratorium, established by Executive Order 2016-03, to address the statewide shortage of registered sanitarians that prevents county health departments (CHD) from conducting the functions and duties, including enforcement actions to remediate public nuisances, required by Delegation Agreements between the Department and the CHDs. These functions, duties, and enforcement are statutorily required by A.R.S. §§ 36-132(A), 36-136(H), 36-601, 36-601.01, 36-901 through 36-916, and 36-3901 through 36-3915.

To address the statewide shortage of registered sanitarians, the Department is amending the rules in 9 A.A.C. 16, Article 4 to expand the eligibility criteria for individuals qualified to take the sanitarian examination; increase the number of qualified individuals approved; simplify the application process; and amend the sanitarian examination fee to cover the actual cost of the sanitarian examination to remove the burden from taxpayers who currently subsidize the cost of each sanitarian examination administered by the Department.

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

Persons directly affected by the rules:

- The Department
- County health departments

- Registered sanitarians
- Applicants seeking registration as a sanitarian
- Individuals seeking information about the sanitarian profession through employment as a sanitarian aide and individuals employed as a sanitarian aide
- General public

3. Cost and benefit analysis

This analysis covers costs and benefits, including revenue, associated with the 9 A.A.C. 16, Article 4 rulemaking. No new FTEs are required due to this rulemaking. Annual cost/benefit changes are designated as minimal when more than $0 and less than $1,000, moderate when between $1,000 and $10,000, and substantial when $10,000 or greater. A cost or benefit is listed as significant when meaningful or important and not readily subject to quantification.

Description of Affected Groups	Description of Effect	Increased Cost/ Decreased Benefit	Decreased Cost/ Increased Benefit
A. State Agencies and Political Subdivisions			
The Department	Requires technical resources to amend and promulgate new rules	Moderate-to-substantial	Significant
	Requires administrative support to update website, applications, forms, and other such administrative documents	Minimal	None
	Changes "Registered Sanitarian" title to "Registered Environmental Health Sanitarian"	None	Minimal
	Simplifies application processes and use of new form to request to defer continuing education	None	Minimal
	Removes requirement to submit another application and application fee for applicants who retake a sanitarian examination	None	Moderate
	Increases sanitarian examination fee	None	Minimal
	Removes obsolete requirements, updates antiquated language, and improves the effective of the rules	None	Significant
County health departments	Having more registered sanitarians available for hire	None	Significant

Description of Affected Groups	Description of Effect	Increased Cost/ Decreased Benefit	Decreased Cost/ Increased Benefit
	Revised term "natural science"	None	Moderate
	Deletes requirement for another application and application fee for retaking a sanitarian examination	None	Moderate
	Reduces approval time-frames	None	Moderate
	Provides individuals, who supervise sanitarian aides with the requirements to prepare a sanitarian aide for the sanitarian examination and increases eligibility for a sanitarian aide's registration by way of five years of employment as a sanitarian aide	Minimal	None
	Allows an individual eligible for registration as a sanitarian to take a sanitarian examination from a Department-approved testing organization	None	Moderate-to-substantial
	Revises required administrative documents, applications, and other materials	Minimal	None
	Changes "Registered Sanitarian" title to "Registered Environmental Health Sanitarian"	Minimal	None
B. Consumers			
Registered sanitarians	Simplifies the application process	None	Minimal
	Deletes requirement for registered sanitarians to report a malpractice case	None	Minimal
	Adds requirements for an applicant to provide types of contact information	None	Minimal
	Adds form for requesting deferral of continuing education	None	Minimal
	Reduces approval time-frames	None	Minimal
	Adds the ability to defer continuing education due to an immediate family member's illness	None	Minimal
	Adds automatic extension for registered	None	Minimal

Description of Affected Groups	Description of Effect	Increased Cost/ Decreased Benefit	Decreased Cost/ Increased Benefit
	sanitarians called to active military duty		
Applicants seeking registration as a sanitarian	Changes "Registered Sanitarian" title to "Registered Environmental Health Sanitarian"	None	Minimal
	Changes term "natural science" to include physical science	None	Minimal
	Increases sanitarian examination fee	Minimal	None
	Simplifies the application process	None	Significant
	Reduces approval time-frames	None	Significant
	Adds an additional six month for an applicant to take a sanitarian examination for the first time, allowing an applicant more opportunities to retake and pass a sanitarian examination	None	Minimal
	Removes requirement for an applicant who does not pass a sanitarian examination to submit another application and application fee before retaking a sanitarian examination	None	Minimal
	Allows an applicant to submit an official notice from a testing organization approved by the Department that contain test results	None	Minimal
	Removes requirement for proof of experience by billet or an individual who personally supervised the applicant	None	Minimal
	Allows an applicant to take a sanitarian examination from a Department-approved testing organizations	None	Moderate-to-substantial
Individuals seeking information about sanitarian profession through employment as a sanitarian aide and	Provides an individual seeking information with requirements about the sanitarian profession through employment as a sanitarian aide;	None	Minimal
	Provides an individual employed as a sanitarian aide with requirements for environmental service skills, knowledge, and applications that the individual	None	Minimal

Description of Affected Groups	Description of Effect	Increased Cost/ Decreased Benefit	Decreased Cost/ Increased Benefit
individuals employed as a sanitarian aide	needs to acquire while employed as a sanitarian aide Provides a sanitarian aide with adequate documentation to demonstrate the sanitarian aide's eligibility for approval to take the sanitarian examination and the five-years of employment in a position directly related to environmental health	None	Minimal
General public	Increases the number of registered sanitarians in Arizona	None	Significant
	Decreases tax burden for taxpayers by increasing the sanitarian examination fee to cover the cost of the sanitarian examination	None	Minimal
	Increases tax revenue paid by newly employed registered sanitarians	None	Moderate

· **The Department**

Under the rules in 9 A.A.C. 16, Article 4, the Department and the Sanitarians Council approve applicants for sanitarian examination; administer the sanitarian examination; approve applicants for registration as a sanitarian, including applicants by way of reciprocity; approve registered sanitarians' requests to defer continuing education; and approve registered sanitarians' registration renewals. In 2016, the Department received 65 sanitarian registration applications; approved 69 applicants to take a sanitarian examination; approved 48 applicants for registration as a sanitarian, including applicants by reciprocity; and approved 509 registered sanitarians for annual renewal[1]. The Department anticipates that the Department will incur a moderate-to-substantial cost for technical resources assigned to amend and promulgate the new Registration of Sanitarians rules through the regular rulemaking process. The Department also anticipates that the Department may incur a minimal cost for administrative support to: update Department webpages, update the registration and renewal applications, develop a Department-provided request form to defer continuing education, and update other materials as needed. The Department changed the "registered sanitarian" classification title at the request of counties and stakeholders who believe that a more relevant title could attract

[1] Data provided by Department of Health Services, Environmental Health and Sanitarians Council

individuals to the profession. If relevant, and individuals are attracted to the new "environmental health sanitarian" title, the Department anticipates that the increase in the number of applicants approved for registration as a sanitarian would be small, and at best, provide a minimal benefit to the Department. Additionally, the Department anticipates a moderate decrease in costs for implementing the new, simplified registration and renewal application processes and the new Department-provided request form to defer continuing education. The Department expects that administrative support will require less time processing applications and forms. The Department also expects a moderate decrease in costs from removing a current rule that requires applicants who retake a sanitarian examination to submit another application and application fee for each sanitarian examination taken. For the Department, the cost to process an application and the time to reapprove an applicant to retake a sanitarian examination is considerably greater than the $25 application fee collected. The Department expects that the increased sanitarian examination fee will have no effect on the Department, since the cost of the sanitarian examination is paid for by an applicant and subsidized from the state's General Fund. The Department expects that the new rule requiring an applicant to pay the total cost of a sanitarian examination will provide a minimal benefit for a very small decrease in cost for the General Fund compared to the General Fund's 2017-projected revenue of $10.1 billion.

Lastly, this rulemaking removes obsolete requirements, updates antiquated language, and improves the effectiveness of the rules, as identified in this economic, small business, and consumer impact statement and the new rules. The Department expects that the benefit to the Department for having rules that are effective, consistent, and understandable to be greater than the cost. The Department anticipates that the total cost to the Department for technical and administrative support will most likely become less costly over time. The Department also anticipates that the benefit of more individuals having information about the environmental health sanitarian profession, more applicants being eligible and approved for registration as an environmental health sanitarian, and more registered environmental health sanitarians being retained will be a significant benefit that outweighs the moderate-to-substantial cost of this rulemaking.

- **County health departments (CHDs)**

Arizona CHDs in 2016 conducted over 108,000 inspections at over 49,300 regulated facilities for food establishments, bathing places, trailer coach parks, public school grounds, camp grounds, children's camps, public accommodations, and bottled water facilities. Of all those inspections, over

99,000 were food safety related inspections[2]. The CHDs employ 30% of all Arizona registered sanitarians and are consistently challenged by the average registered sanitarians' annual turnover rates of 25% and some with turnover rates as high as 45.5%[3].

The Department anticipates that the CHDs will most likely receive a significant benefit from having more registered sanitarians available sooner for hire thanks to the new rules that expand eligibility criteria for individuals to be qualified to take the sanitarians examination and simplify the application processes. In the new rule section R9-16-401, the revised term "natural science" expands eligibility criteria by adding "physical science." Adding physical science as a category included in natural science allows the Department to consider more natural science courses when determining an applicant's eligibility, when eligibility is based on applicant having at least 30-semester credit in natural science. The Department simplified the application process by moving the approval to retake a sanitarian examination from the sanitarian examination process to the registration as a sanitarian process. This change allows the Department to remove a current rule requiring applicants who retake a sanitarian examination to submit another application and application fee prior to retaking a sanitarian examination. By moving the approval to retake a sanitarian examination, the Department is able to reduce approval time-frames for both the sanitarian examination and registration as a sanitarian approvals. The Department expects CHDs will receive a moderate benefit from each of these rule changes. The Department anticipates that more-newly registered sanitarians being available for employment sooner will allow CHDs to reduced over-time hours paid to registered sanitarians currently working to ensure completion of all required inspections.

The Department also anticipates that CHDs may see a minimal increase in cost because the new rules specify for an individual, who supervises an environmental health sanitarian aide, the types of skills and experience the environmental health sanitarian aide needs to obtain and the types of records needed to document the environmental health sanitarian aide's duties and assignments completed. An individual complying with these new rules will be able to demonstrate the supervised environmental health sanitarian aide's eligibility to take a sanitarian examination and eligibility for registration as a registered environmental health sanitarian. However, the minimal increase in cost will vary based on the CHD. The Department expects that for a CHD having an existing policy that provides adequate guidance to an individual, who supervises a sanitarian aide, no increase in cost would occur. Through

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[2] Data provided by ADHS Environmental Health, Food Safety and Environmental Services Annual Report for FY2016: http://azdhs.gov/documents/preparedness/epidemiology-disease-control/food-safety-environmental-services/annual-reports/fy2016-activity-summary.pdf

[3] Data provided to the Department by Mohave County, Pinal County, and Maricopa County

these new rules, the Department anticipates an increase in the number of sanitarian aides approved to take a sanitarian examination and approved for registration.

Additionally, the Department anticipates that a CHD, who hires an individual and allows the individual an opportunity to pass a sanitarian examination during the individual's 12-month probation period, may receive a moderate-to-substantial decrease in cost under the new rule that allows an applicant to take a sanitarian examination at any time. CHDs have informed the Department that a number of individuals on probation have quit or have been fired after passing a sanitarian examination during their 12-month probation period. The new rule allows applicants to take a sanitarian examination as often as desired during their 12-month probation period from a Department-approved testing organization, not just during one of the four scheduled sanitarian examinations administered annually by the Department as required by current rules. The Department anticipates that a CHD will decrease costs by not having to solicit to hire and train another individual to replace the individual who did not pass a Department administered sanitarian examination, but who may have passed a sanitarian examination given by other Department-approved testing organizations.

The Department anticipates that CHDs may incur minimal costs to update administrative documents related to the amended environmental health sanitarian classification title if the CHDs choose to change them and minimal costs for a CHD to amend the recordkeeping process to ensure individuals who supervise a sanitarian aide maintain appropriate records used to demonstrate a sanitarian aide's eligibility for approval to take a sanitarian examination and eventually, be registered as a sanitarian. Overall, the Department anticipates that the CHDs should experience more benefits from the new rules than any possible costs that the CHDs may incur, if any.

- **Registered sanitarians**

The Department approved 557 applicants for registration as a sanitarian and renewal as a registered sanitarian in 2016. The Department anticipates that registered sanitarians will most likely not incur any costs and will receive minimal benefits because of the new rules. The new rules simplify the application process by removing a requirement for registered sanitarians to report a malpractice case resulting from an applicant's employment as a registered sanitarian. The new rules further simplify the application process by adding a requirement that an applicant provide types of contact information that will allow the Department to communicate with an applicant in a timelier manner. Additionally, adding new rules for a Department-provided deferred continuing education form and a requirement for an applicant to submit the form by November 1 of each calendar year will most likely provide a minimal benefit to applicants wishing to defer continuing education. In the current rule, the request to

defer continuing education is included with the renewal application packet; the renewal application packet is required to be submitted on or before December 31 of each calendar year. If the Department denies a request to defer continuing education, it is too late for an applicant to complete the continuing education denied in time to renew the applicant's sanitarian registration. However, the new rules allow applicants to submit a request to defer continuing education form earlier, and if the Department denies an applicant's request to defer continuing education, the applicant will have time to complete required continuing education and submit their renewal application packet on time.

Further, these changes also allow the Department to reduce approval time-frames for both renewal applications and requests to defer continuing education, saving the applicant's time. Another new rule adds the term "immediate family member's illness" to increase the number of criteria that a registered sanitarian may seek approval for deferral of continuing education, allowing the registered sanitarian a greater opportunity to retain their registration as a sanitarian. Similarly, for a registered environmental health sanitarian called to active military duty, a new rule adds an automatic retention of their registration and defers continuing education and registration renewal for the term of service plus 180 calendar days. Current rule requires a registered sanitarian called to active military duty to submit a renewal application and request to defer continuing education while serving military duty. For a registered sanitarian called to active duty, this automatic extension reduces time spent completing a renewal application and a request to defer continuing education, and likewise, allows the registered sanitarian an opportunity to retain their registration as a sanitarian. The Department expects that the new rules will most likely provide minimal increased benefits for most, if not all, registered sanitarians.

- **Applicants seeking registration as a sanitarian**

Last year, the Department approved 65 newly registered sanitarians and approved 69 applicants to take a sanitarian examination. The Department anticipates that changing the "registered sanitarian" classification title to a more relevant title could attract individuals to the profession. The Department expects that the new classification title "environmental health sanitarian" will provide some intrinsic value equal to having a minimal benefit for applicants seeking registration as a sanitarian. The Department anticipates a minimal decrease in cost for some applicants due to changing the term "natural science" to include physical science. The Department expects the new term will allow some applicants to use natural science semester credits that would be denied under current rules. This change will prevent some applicants from having to take additional natural science courses to satisfy the required 30 natural science semester credits required for approval of an applicant to be eligible to take a sanitarian examination and be registered as a sanitarian.

In the current rules, an applicant is approved to take a sanitarian examination administered by the Department and is required to pays a $110 sanitarian examination fee. In the new rules, an applicant may choose whether to take a sanitarian examination that the Department administers four times a year or that a testing organization approved by the Department administers any time during a year. The new rules also require an applicant, who chooses to take a sanitation examination administered by the Department, to pay a $140 sanitarian examination fee. The Department anticipates an applicant who pays the $140 sanitarian examination fee will incur a minimal increase in cost over the current $110 fee. The Department expects an applicant to incur a minimal increase in cost based on the Department's comparison of its current sanitarian examination fee with the new sanitarian examination fee and a sanitarian examination fee required by a testing organization approved by the Department. The Department determined that a sanitarian examination administered by the National Environmental Health Association (NEHA) is substantially equivalent and meets this state's sanitarian examination requirements; as such, NEHA meets the requirements to be a Department-approved testing organization. NEHA charges an applicant a $125 application fee and $325 for a sanitarian examination. If an applicant takes a NEHA sanitarian examination administered by a NEHA qualified testing center, the applicant will also pay an additional $100 to a qualified testing center[4]. The Department anticipates that an applicant who pays $450 to $550 to take a sanitarian examination administered by NEHA or a NEHA qualified testing center will incur a greater cost than paying the $140 fee for a sanitarian examination administered by the Department as required in the new rules. The Department expects most, if not all, applicants will choose to take a sanitarian examination administered by the Department.

The Department also anticipates that an applicant may receive a decrease in costs due to the significant benefits provided by the new rules. The new rules add a requirement for an official transcript issued by a college or university from outside of the United States or its territories to include a report that a third party education evaluation service has assessed the transcript and determined foreign education equivalency to a degree or educational courses in the United States. The new rules also add to the list of required documents a copy of the applicant's Social Security card and proof of U.S. citizenship. These documents are required by Arizona Revised Statutes §§ 25-320, 25-502, and 41-1080. Additionally, the new rules add a requirement for the Department to provide notification for rescheduling a sanitarian examination. The new rules simplify the sanitarian examination and registration application processes and reduce the sanitarian examination and sanitarian registration approval time-frames. The Department expects that these rules will decrease

[4] National Environmental Health Association: http://neha.org/professional-development/credentials/rehs-rs

the effort and time an applicant spends on completing an application, not having to respond to a notice of deficiency, and not having to wait longer for approval than is necessary, and rather, an applicant may receive a minimal benefit by spending less time being unemployed.

The Department also anticipates a minimal decrease in cost and an increase in benefit by adding an additional six months for an applicant to take a sanitarian examination for the first time. The additional six months extends the overall time an applicant has to pass a sanitarian examination and allows an applicant more opportunities to retake a sanitarian examination. The new rules also remove a current rule requirement that an applicant who does not pass a sanitarian examination submit another application and application fee ($25) before retaking a sanitarian examination again. The Department anticipates a minimal decrease in cost for an applicant, since an applicant will no longer be required to spend time and money to complete and resubmit another application that was completed and submitted to the Department just weeks before.

The Department expects that the current rules exclude some applicants by not allowing an applicant to submit documentation that demonstrates that the applicant completed and passed a sanitarian examination that is equivalent to this state's examination requirements. The Department, in the new rule, allows an applicant to submit with an application for registration an official notice from a testing organization approved by the Department that contains test results, rather than requiring the applicant to take a sanitarian examination pursuant to current rules. The Department expects that these applicants may receive a minimal decrease in cost and an increased benefit from this change by not having to retake a sanitarian examination.

The Department anticipates removing rules that require other applicants, who acquired environmental health services experience while in the military, to provide a billet (an official order directing a person to a position/duties) as proof of experience may receive a minimal decrease in cost. As well as, an applicant who acquired environmental health services experience while employed may provide a letter documenting proof of employment from the individual who personally supervised the applicant. It is the Department's experience that these applicants may wait an unreasonably long period of time for a billet or for a letter signed by an individual who personally supervised an applicant; only never to receive the billet or the letter. The new rules allow those applicants approval by using other types of documentation to verify employment, rather than deny approval because the billet never arrived or the individual who personally supervised the applicant is deceased.

Lastly, as mentioned under CHDs, the Department anticipates that a CHD employee asked to pass a sanitarian examination during the employee's 12-month probation period may also receive a moderate-to-substantial benefit from the new rule that allows applicants to take a sanitarian

examination at any time from a Department-approved testing organization. The new rule allows applicants to take a sanitarian examination as often as desired, not just during one of the four scheduled sanitarian examinations administered annually by the Department as required by current rules. The Department anticipates that an applicant, who is also a CHD employee on probation, will decrease costs by not having to go through another employment process, employer training, and probation by passing a sanitarian examination when needed whether from the Department or a Department-approved testing organization. The Department anticipates that the benefits provided by the new rules to be significantly greater that the $30 increase in cost to take a sanitarian examination administered by the Department.

- **Individuals seeking information about the sanitarian profession through employment as a sanitarian aide and individuals employed as a sanitarian aide**

There are currently 20.5 sanitarian aides employed by the CHDs and the Department[5]. The Department expects that individuals seeking information about the sanitarian profession or who are employed as a sanitarian aide, under current rules, do not receive any benefit and mostly likely, unknowingly incur probable costs for a lack of knowing what the state's requirements and responsibilities are for the practice of a registered sanitarian or a sanitarian aide. The new rules provide individuals seeking employment and individuals employed as a sanitarian aide with information regarding the skills, knowledge, and experience required to pass a sanitarian examination and be approved for registration as a sanitarian. The Department anticipates that the new rules will provide individuals seeking information about a sanitarian profession through employment as a sanitarian aide with this information and make them more likely to pursue employment as a sanitarian aide, more likely to complete five years of employment in a position directly related to environmental health, and more likely to become a registered sanitarian. For individuals who are employed as a sanitarian aide, the new rules provide needed requirements that identify the environmental services skills, knowledge, experience, and applications that an individual should acquire while employed as a sanitarian aide. The new rules also provide that a supervisor of a sanitation aide establish a record for a sanitarian aide that demonstrates the sanitarian aide's experience and work history. The record provides information needed for a supervisor to compose a letter of employment to the Department identifying the dates worked and types of activities performed by a sanitarian aide. The record provides confirmation to the sanitarian aide of their eligibility for approval to take a sanitarian examination by establishing the sanitarian aide's five years of employment in a position directly

[5] Data provided by ADHS Environmental Health, Food Safety and Environmental Services Annual Report for FY2016: http://azdhs.gov/documents/preparedness/epidemiology-disease-control/food-safety-environmental-services/annual-reports/fy2016-activity-summary.pdf

related to environmental health. The Department anticipates that the increase in a sanitarian aide's proficiencies related to environmental health services may result in an increased benefit in the number of sanitarian aides passing a sanitarian examination. The Department does not anticipate that the new rules for sanitarian aides will increase costs and expect a decrease in costs for individuals seeking information or who are employed as a sanitarian aide. The Department anticipates that a probable decrease in costs will occur by eliminating the costs of time and resources used to search for information that is not available in current rules. The Department expects that the new rules will most likely provide a minimal increase in benefits for individuals seeking information about the sanitarian profession through employment as a sanitarian aide and individuals employed as a sanitarian aide.

- **General public**

The Department reported last year that registered sanitarians and sanitarian aides conducted over 742,000[6] inspections at over 49,000 regulated facilities on the general public's behalf. The Department anticipates that the accomplishments of registered sanitarians employed by CHDs and the Department have a significant benefit for the public. Under the new rules, the Department expects that a significant benefit for the public may increase as the number of employed registered sanitarians increase, the number of inspections increase, and the number of public nuisances decrease. The Department anticipates that public nuisances increase costs, and the more inspections performed, the more public nuisances would be avoided, resulting in a decrease in cost for the public. The Department also anticipates an indirect benefit could occur from the new rules by providing requirements and responsibilities for sanitarian aides who perform sanitarian inspections and prepare inspection reports approved and signed by a registered sanitarian.

Additionally, the Department anticipates a minimal increase in benefit for taxpayers who, under current rules, subsidize the cost of a sanitarian examination fee. The current rules require applicants pay $110 to take a sanitarian examination administered by the Department. Since the cost for the Department to buy a sanitarian examination is $140, taxpayers pay the $30 difference through monies appropriated from the General Fund for each applicant taking a sanitarian examination. In the new rules, the sanitarian examination fee raised to $140. Based on the $30 increase in a sanitarian examination fee, the Department anticipates that the public (taxpayers) will most likely experience a decrease in cost. Lastly, as more registered sanitarians are employed, the Department anticipates that the newly employed will pay taxes on income earned that could result in a moderate benefit to the

[6] Data provided by ADHS Environmental Health, Food Safety and Environmental Services Annual Report for FY2016: http://azdhs.gov/documents/preparedness/epidemiology-disease-control/food-safety-environmental-services/annual-reports/fy2016-activity-summary.pdf

general public. The Department expects the new rules may increase benefits and decrease costs for the public.

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

Although the new rules add "testing organization approved by the Department" to administer a sanitarian examination, the Department does not anticipate an impact to private businesses with regards to direct or secondary employment. The Department expects the difference in cost of a sanitarian examination administered by the Department ($140) and a sanitarian examination administered by a Department-approved testing organization ($500 - $600) will most likely cause most applicants, if not all applicants, to take a sanitarian examination administered by the Department. For this reason, the Department anticipates that the new rules will most likely have no effect on direct or secondary employment for private businesses. The intent of the new rules is to increase the number of registered sanitarians in the state as discussed in paragraph 3. The Department expects that the number of registered sanitarians will increase; however, the Department has no method to determine how many of the newly registered sanitarians will obtain employment in the state and the impact it may have.

5. A statement of the probable impact of the rules on small businesses

a. Identification of the small businesses subject to the rules

The Department considered whether regulated facilities would be impacted by the new rules and expects because regulated facilities are required to comply with Title 9, Chapter 8, Food Recreation and Institutional Sanitation, they are not affected by the new rules. The new rules are specific to increasing the number of registered sanitarians in the state; the new rules do not add requirements for a regulated facility. The Department anticipates that a rulemaking for Title 9, Chapter 8 rules would most likely affect regulated facilities. The Department knows of no other small businesses that may be affected by the new rules.

b. The administrative and other costs required for compliance with the rules

Since the Department knows of no small businesses that may be affected by the new rules, there are no other administrative or outside expenses expected.

c. A description of the methods that the agency may use to reduce the impact on small businesses

Since the Department knows of no small businesses that may be affected by the new rules, there are no methods that the Department may use to reduce the impact on small businesses.

d. The probable costs and benefits to private persons and consumers who are directly affected by the rules

The costs and benefits to private persons and consumers (general public) from the new rules are described in paragraph 3.

6. A statement of the probable effect on state revenues

The intent of the new rules is to increase the number of registered sanitarians in the state, and the Department anticipates the number of registered sanitarians will increase as identified in paragraph 3. The Department also anticipates newly employed registered sanitarians will pay taxes on income earned and could result in an increase in state revenues. However, the Department has no method to determine how many of the newly registered sanitarians will obtain employment in the state and what the probable effect on state revenues might be.

7. A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking

There are no less intrusive or less costly alternatives for achieving the purpose of the rulemaking.

8. A description of any data on which the rule is based with a detailed explanation of how the data was obtained and why the data is acceptable data

Not applicable.

ARTICLE 4. REGISTRATION OF SANITARIANS

R9-16-401. Definitions

In this Article, unless otherwise specified:

1. "Applicant" means an individual requesting from the Council:
   a. Approval to take the sanitarian examination;
   b. Registration as a sanitarian; or
   c. Renewal of registration as a sanitarian.
2. "Application packet" means a Council-approved application form and the documentation necessary to establish an individual's qualifications for registration as a sanitarian.
3. "Billet" means an individual's military job position and job description.
4. "Council" means the Sanitarians' Council established under A.R.S. § 36-136.01(A).
5. "Course" means a program of instruction for which credit toward graduation or certification is given.
6. "Continuing education" means a course, seminar, lecture, conference, workshop, or programmed learning activity related to employment as a registered sanitarian.
7. "Day" means calendar day.
8. "Environmental health" means the well-being of a human as affected or influenced by external conditions such as: bacteria and viruses; transmitted diseases; hygiene; housing; and contamination of food, air, water, or soil.
9. "Full-time military duty" means active duty in any branch of the United States military service.
10. "Natural science" means anatomy, bacteriology, biochemistry, biology, botany, biophysics, biostatistics, cell physiology, chemical engineering, chemistry, ecology, embryology, endocrinology, entomology, environmental health, epidemiology, food bacteriology, dairy sciences, genetics, geophysics, geology, herpetology, histology, hydro geology, hydrology, ichthyology, limnology, microbiology, molecular biology, ornithology, parasitology, pathology, pharmacy, physics, physiology, plant taxonomy, radiological health, sanitary engineering, sewage sanitation, soil science, toxicology, vector control, veterinary science, virology, or zoology or the study of air pollution, community health, environmental diseases, hazardous waste, industrial hygiene, infectious diseases, occupational safety, or public health.
11. "Person" has the same meaning as in A.R.S. § 1-215.
12. "Practice of a registered sanitarian" means acting under the authority of R9-16-408(A).
13. "Registration" means the approval issued by the Council to an applicant who meets the requirements in A.R.S. § 36-136.01 and this Article.
14. "Regulatory authority" has the same meaning as in R9-8-107(B)(11).
15. "Supervise" means to oversee and provide guidance for the accomplishment of a function or activity.

R9-16-402. Sanitarian Examination

A. The Council shall provide the sanitarian examination at least four times per calendar year.

B. An applicant meeting any one of the requirements in A.R.S. § 36-136.01(I) may sit for the sanitarian examination.

C. At least seven days before a Council meeting, an applicant for the sanitarian examination shall:

1. Submit an application form to the Council that contains:

a. The applicant's full name and all former names;

b. The applicant's current address and telephone number;

c. The applicant's social security number;

d. If applying under A.R.S. § 36-136.01(I)(1) on the basis of the applicant's employment by a public health agency or private industry in a position directly related to environmental health:

i. The name of each of the applicant's employers,

ii. The applicant's position for each employer,

iii. The months and years of employment in each position, and

iv. The name and telephone number of each individual who supervised the applicant during five years of employment in environmental health;

e. If applying under A.R.S. § 36-136.01(I)(2) on the basis of military duty:

i. Each of the applicant's billets in environmental health,

ii. The months and years in each billet, and

iii. The name and telephone number of each individual who supervised the applicant during five years of full-time military duty in environmental health;

f. If applying under A.R.S. § 36-136.01(I)(3) on the basis of education in natural science:

i. The name and address of each college or university attended,

ii. The months and years of attendance,

iii. Any degree obtained, and

iv. A listing of courses in natural science completed with a grade of C or better;

g. Whether the applicant has had an application for a registration, license, or certificate related to the practice of a registered sanitarian denied or rejected by any state or jurisdiction and if so, the:

i. Reason for denial or rejection,

ii. Date of the denial or rejection, and

iii. Name and address of the state or jurisdiction that denied or rejected the application;

h. Whether the applicant has had a registration, license, or certificate related to the practice of a registered sanitarian suspended or revoked by any state or jurisdiction or entered into a consent agreement with a state or jurisdiction and if so, the:

i. Reason for the suspension, revocation, or consent agreement;

ii. Date of the suspension, revocation, or consent agreement; and

iii. Name and address of the state or jurisdiction that suspended or revoked the registration, license, or certificate or issued the consent agreement;

i. Whether the applicant has pled guilty to, been convicted of, or entered a plea of no contest to a misdemeanor related to the applicant's employment as a sanitarian or a felony and if so, the:

i. Felony or misdemeanor charged;

ii. Date of conviction or plea; and

iii. Court having jurisdiction over the felony or misdemeanor;

j. Whether the applicant has been named as a defendant in a malpractice case resulting from the applicant's employment as a sanitarian and if so, an explanation of the circumstances of the malpractice case;

k. The applicant's current employer, including address, job position, and dates of employment, if applicable; and

l. A signed statement by the applicant verifying the truthfulness of the information provided;

2. If applying under A.R.S. § 36-136.01(I)(1), arrange to have a letter provided directly to the Council from each individual who supervised the applicant identifying the dates the individual supervised the applicant, totaling at least five years of employment directly related to environmental health;

3. If applying under A.R.S. § 36-136.01(I)(2), arrange to have a letter provided directly to the Council from each individual who supervised the applicant identifying the dates the individual supervised the applicant, totaling at least five years of full-time military duty in environmental health;

4. If applying under A.R.S. § 36-136.01(I)(3), arrange to have an official college or university transcript provided directly to the Council from each college or university; and

5. Submit the application fee in A.R.S. § 36-136.01(F).

D. After receiving the written notice of approval in R9-16-407(C)(1)(b), an applicant shall submit to the Council, at least 30 days before the scheduled date of a sanitarian examination, a nonrefundable examination fee of $110 payable to the Treasurer of the state of Arizona.

E. An applicant who does not take a sanitarian examination on the scheduled date shall comply with subsection (D) before taking a subsequent sanitarian examination.

F. An applicant who scores:

1. Seventy percent or more on the sanitarian examination is issued a certificate of registration; or

2. Less than 70%:

a. Fails the sanitarian examination; and

b. Shall meet the requirements in subsections (B), (C) and (D) to sit for the sanitarian examination again.

R9-16-403. Sanitarian Registration

An applicant for registration as a sanitarian shall submit to the Council the application form, information, and application fee in R9-16-402 and:

1. If the applicant is registered, certified, or licensed as a sanitarian in another jurisdiction submit to the Council:

a. A copy of the applicant's sanitarian registration, certification, or licensure from the other jurisdiction;

b. A copy of the examination requirements for registration, certification, or licensure in the other jurisdiction;

c. The name of the testing company that provided the sanitarian examination the applicant passed to be registered, certified, or licensed in the other jurisdiction; and

d. Documentation of a score of 70% or more by the applicant on the other jurisdiction's sanitarian examination; or

2. If the applicant is not registered, certified, or licensed as a sanitarian in another jurisdiction:

a. Be approved to take the sanitarian examination,

b. Take and pass the sanitarian examination in R9-16-402 with a score of 70% or more, and

c. Submit to the Council the examination fee in R9-16-402(D).

R9-16-404. Annual Registration Renewal

A. Except as provided in subsection (B), a registered sanitarian shall submit an application packet for registration renewal on or before December 31 of each year that includes:

1. The applicant's name and current address;

2. Whether the applicant, since the applicant last submitted a registration or registration renewal application in this state:

a. Has had a registration, license, or certificate related to the practice of a registered sanitarian suspended or revoked by any state or jurisdiction or entered into a consent agreement with a state or jurisdiction and if so, the:

i. Reason for the suspension, revocation, or consent agreement;

ii. Date of the suspension, revocation, or consent agreement; and

iii. Name and address of the state or jurisdiction that suspended or revoked the registration, license, or certificate or issued the consent agreement;

b. Has pled guilty to, been convicted of, or entered into a plea of no contest to a misdemeanor that is related to the applicant's employment as a sanitarian or a felony and if so, the:

i. Felony or misdemeanor,

ii. Date of conviction, and

iii. Court having jurisdiction over the felony or misdemeanor; or

c. Has been named as a defendant in a malpractice case resulting from the applicant's employment as a sanitarian and if so, an explanation of the circumstances of the malpractice case;

3. Documentation of:

a. The continuing education required in R9-16-405(A) or (E) including for each continuing education:

i. A description of the continuing education's content,

ii. The name of the person providing the continuing education,

iii. The number of hours the sanitarian participated in the continuing education, and

iv. The date the continuing education was completed; or

b. A request for deferring continuing education and applicable documentation required in R9-16-405(C);

4. The fee required in A.R.S. § 36-136.01(F); and

5. A signed statement by the applicant verifying the truthfulness of the information provided.

B. A registered sanitarian who does not submit an application packet for renewal registration by December 31 has a grace period until February 15 to submit the application packet. If the registered sanitarian does not submit the application packet for renewal registration in subsection (A) during the grace period:

1. The sanitarian's registration expires; and

2. The sanitarian shall, before practicing as a registered sanitarian:

a. Submit for Council approval a new application to take the sanitarian examination and the application fee required in R9-16-402(C)(5),

b. Receive Council approval to take the sanitarian examination,

c. Submit the nonrefundable examination fee required in R-16-402(D), and

d. Pass the sanitarian examination as required in R9-16-402(F)(1).

Historical Note

New Section made by final rulemaking at 8 A.A.R. 2444, effective May 16, 2002 (Supp. 02-2). Former R9-16-404 renumbered to R9-16-406; new R9-16-404 renumbered from R9-16-403 and amended by final rulemaking at 10 A.A.R. 3004, effective September 11, 2004 (Supp. 04-3).

R9-16-405. Continuing Education

A. Except as provided in subsections (B) and (C), a registered sanitarian shall obtain 12 hours of continuing education in each calendar year for renewal of registration.

B. A registered sanitarian who has been registered for less than 12 months is not required to obtain continuing education for renewal of registration.

C. A registered sanitarian may submit, with a renewal application, a request to defer the 12 hours of continuing education for renewal of registration that includes written documentation of the registered sanitarian's illness or active military duty for at least six months of the preceding 12 months that prevented the registered sanitarian from completing the continuing education requirement.

D. The Council shall approve a registered sanitarian's request for a deferral of the continuing education requirement if the request includes the documentation required in subsection (C).

E. A registered sanitarian who has had the continuing education requirement deferred in a calendar year shall obtain:

1. The 12 deferred hours of continuing education by the end of the subsequent calendar year, and

2. The 12 hours of continuing education required in subsection (A) for the calendar year.

R9-16-406. Change of Name or Address

A. A registered sanitarian shall send written notice of a change in the registered sanitarian's name to the Council within 30 days from the date of the change.

B. A registered sanitarian shall send written notice of a change in the registered sanitarian's mailing address to the Council within 30 days from the date of the change.

R9-16-407. Time-frames

A. The overall time-frame described in A.R.S. § 41-1072(2) for each type of approval granted by the Council is set forth in Table 1. The applicant and the Department may agree in writing to extend the substantive review time-frame and the overall time-frame. The substantive review time-frame and the overall time-frame may not be extended by more than 25% of the overall time-frame.

B. The administrative completeness review time-frame described in A.R.S. § 41-1072(1) for each type of approval granted by the Council is specified in Table 1.

1. The administrative completeness review time-frame begins:

a. For an applicant applying to take the sanitarian examination, when the Council receives the application packet required in R9-16-402;

b. For an applicant who is approved to take the sanitarian examination, when the applicant takes the sanitarian examination; or

c. For an applicant who is registered, certified, or licensed as a sanitarian in another jurisdiction, when the Council receives the application packet required in R9-16-403; or

d. For an applicant applying to renew the applicant's registration as a sanitarian, when the Council receives the application packet required in R9-16-404.

2. If an application packet in subsection (B)(1)(a), (B)(1)(c), or (B)(1)(d) is:

a. Incomplete, the Council shall provide a deficiency notice to the applicant describing the missing documentation or incomplete information. The administrative completeness review time-frame and the overall time-frame are suspended from the date of the notice until the date the Council receives the documentation or information listed in the deficiency notice. An applicant shall submit to the Council the documentation or information listed in the deficiency notice within the time period specified in Table 1 for responding to a deficiency notice.

i. If the applicant submits the documentation or information listed in the deficiency notice within the time period specified in Table 1, the Council shall provide a written notice of administrative completeness to the applicant.

ii. If the applicant does not submit the documentation or information listed in the deficiency notice within the time period in Table 1, the Council considers the application withdrawn and shall return the application packet to the applicant; or

b. Complete, the Council shall provide a notice of administrative completeness to the applicant.

3. If an applicant takes and submits the sanitarian examination in subsection (B)(1)(b) and the examination is:

a. Incomplete, the Council shall provide a deficiency notice to the applicant stating that the applicant's sanitarian examination is incomplete and identifying the date of the next scheduled sanitarian examination. The administrative completeness review time-frame and the overall time-frame are suspended from the date of the notice until the Council receives a completed sanitarian examination; or

b. Complete, the Council shall provide a written notice of administrative completeness to the applicant.

C. The substantive review time-frame described in A.R.S. § 41-1072(3) is specified in Table 1 and begins to run on the date of the notice of administrative completeness.

1. If an application for approval to take the sanitarian examination in subsection (B)(1)(a):

a. Does not comply with the requirements in this Article, the Council shall provide a comprehensive request for additional information to the applicant.

i. If the applicant does not submit the additional information within the time specified in Table 1 or the additional information submitted by the applicant does not demonstrate compliance with this Article and A.R.S. § 36-136.01, the Council shall deny approval to take the sanitarian examination and provide the applicant a written notice of denial that complies with A.R.S. § 41-1092.03(A); or

ii. If the applicant submits the additional information within the time specified in Table 1 and the additional information submitted by the applicant demonstrates compliance with this Article and A.R.S. § 36-136.01, the Council shall provide a written notice of approval to take the sanitarian examination to the applicant; or

b. Complies with the requirements in this Article and A.R.S. § 36-136.01, the Council shall provide a written notice of approval to take the sanitarian examination to the applicant.

2. If the Council determines that an applicant:

a. Failed to sit for the sanitarian examination within the time-frame in subsection (F), the Council shall provide a written notice to the applicant requiring the applicant to submit a new application for approval to take the sanitarian examination if the applicant requests registration;

b. Failed the sanitarian examination, the Council shall deny registration and provide a written notice of appealable agency action that complies with A.R.S. § 41-1092.03(A) to the applicant; or

c. Passed the sanitarian examination, the Council shall issue a certificate of registration as a sanitarian to the applicant.

3. If an application for registration as a sanitarian in subsection (B)(1)(c):

a. Does not comply with the requirements in this Article, the Council shall provide a comprehensive request for additional information to the applicant and take action as follows:

i. If the applicant does not submit the additional information within the time specified in Table 1 or the additional information submitted by the applicant does not demonstrate compliance with this Article and A.R.S. § 36-136.01, the Council shall deny registration and provide the applicant a written notice of appealable agency action that complies with A.R.S. § 41-1092.03(A); or

ii. If the applicant submits the additional information within the time specified in Table 1 and the additional information submitted by the applicant demonstrates compliance with this Article and A.R.S. § 36-136.01, the Council shall issue a certificate of registration as a sanitarian to the applicant; or

b. Complies with the requirements in this Article and A.R.S. § 36-136.01, the Council shall issue a certificate of registration as a sanitarian to the applicant.

4. If an application for renewal of registration as a sanitarian in subsection (B)(1)(d):

a. Does not comply with the requirements in this Article, the Council shall provide a comprehensive request for additional information to the applicant;

i. If the applicant does not submit the additional information within the time specified in Table 1 or the additional information submitted does not demonstrate compliance with the requirements in this Article and A.R.S. § 36-136.01, the Council shall deny renewal and provide a written notice of appealable agency action that complies with A.R.S. § 41-1092.03(A) to the applicant; or

ii. If the applicant submits the additional information within the time specified in Table 1 and the additional information submitted demonstrates compliance with the requirements in this Article and A.R.S. § 36-136.01, the Council shall issue a renewal certificate of registration as a sanitarian to the applicant; or

b. Complies with the requirements in this Article and A.R.S. § 36-136.01, the Council shall issue a renewal certificate of registration as a sanitarian to the applicant.

D. If an applicant receives a written notice of appealable agency action in subsections (C)(1)(a)(i), (C)(2)(b), (C)(3)(a)(i), or (C)(4)(a)(i), the applicant may file a notice of appeal with the Department within 30 days after receiving the notice of appealable agency action. The appeal shall be conducted according to A.R.S. Title 41, Chapter 6, Article 10.

E. If the Council grants approval to take the sanitarian examination or issues or renews a certificate of registration as a sanitarian during the administrative completeness review time-frame, the Council shall not issue a separate written notice of administrative completeness.

F. If an applicant does not sit for the sanitarian examination within 12 months of the Council's approval to take the sanitarian examination, the applicant shall, before taking the sanitarian examination:

1. Submit a new application for Council approval and the application fee required in R9-16-402(C);
2. Receive Council approval to take the sanitarian examination; and
3. Submit the nonrefundable examination fee required in R9-16-402(D).

G. If a time-frame's last day falls on a Saturday, Sunday, or a legal holiday, the Council considers the next business day as the time-frame's last day.

Table 1. Time-frames (in days)

Type of Approval	Statutory Authority	Overall Time-frame	Administrative Completeness Review Time-frame	Time to Respond to Deficiency Notice	Substantive Review Time-frame	Time to Respond to Comprehensive Written Request
Sanitarian Examination (R9-16-402)	A.R.S. § 36-136.01(B)	290	30	60	200	60
Registration after completing the sanitarian	A.R.S. § 36-	90	30	N/A	60	N/A

examination (R9-16-403)	136.01(B)					
Registration of an individual registered, certified, or licensed as a sanitarian in another jurisdiction (R9-16-403)	A.R.S. § 36-136.01(C)	180	90	15	90	15
Annual Registration Renewal (R9-16-404)	A.R.S. § 36-136.01(D)	180	90	15	90	15

R9-16-408. Authority of a Registered Sanitarian

A. A registered sanitarian may:

1. Act as an authorized representative of a regulatory authority under 9 A.A.C. 8; and
2. Sign inspection reports under 9 A.A.C. 8 and 9 A.A.C. 17.

B. An individual who is not a registered sanitarian shall not approve or disapprove operation of a food establishment under 9 A.A.C. 8.

C. An individual who is not a registered sanitarian and who prepares an inspection report under 9 A.A.C. 8 and 9 A.A.C. 17 shall submit the report to a registered sanitarian.

R9-16-409. Denial, Suspension, or Revocation

A. The Council may deny, suspend, or revoke a sanitarian's registration if the Council determines that the applicant or registered sanitarian:

1. Intentionally provided false information on an application or cheated during the sanitarian examination;
2. Had an application for a registration, license, or certificate related to the practice of a registered sanitarian denied or rejected by any state or jurisdiction;
3. Had a registration, license, or certificate related to the practice of a registered sanitarian suspended or revoked by any state or jurisdiction or entered into a consent agreement with any state or jurisdiction;
4. Pled guilty to, was convicted of, or entered into a plea of no contest to a misdemeanor resulting from employment as a registered sanitarian or a felony;
5. Assisted an individual who is not a registered sanitarian to circumvent the requirements in this Article;
6. Allowed an individual who is not a registered sanitarian to use the registered sanitarian's registration; or
7. Failed to comply with any of the requirements in A.R.S. § 36-136.01 or this Article.

B. In determining whether to deny an applicant's registration or suspend or revoke a sanitarian's registration, the Council shall consider the threat to public health based on:

1. Whether there is repeated non-compliance with statutes or rules,
2. Whether there is a pattern of violations or non-compliance,

3. Type of violation,

4. Severity of violation, and

5. Number of violations.

C. The Council's notice of denial, suspension, or revocation to the applicant or registered sanitarian, notice of hearing, and all hearing procedures shall comply with A.R.S. Title 41, Chapter 6, Article 10.

D. The Council shall provide written notice of a registered sanitarian's denial, suspension, or revocation containing a description of the sanitarian's noncompliance with applicable statutes and rules, by certified mail, to each local health department and each public health service district.

36-104. Powers and duties

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

1. Administer the following services:

(a) Administrative services, which shall include at a minimum the functions of accounting, personnel, standards certification, electronic data processing, vital statistics and the development, operation and maintenance of buildings and grounds utilized by the department.

(b) Public health support services, which shall include at a minimum:

(i) Consumer health protection programs that include at least the functions of community water supplies, general sanitation, vector control and food and drugs.

(ii) Epidemiology and disease control programs that include at least the functions of chronic disease, accident and injury control, communicable diseases, tuberculosis, venereal disease and others.

(iii) Laboratory services programs.

(iv) Health education and training programs.

(v) Disposition of human bodies programs.

(c) Community health services, which shall include at a minimum:

(i) Medical services programs that include at least the functions of maternal and child health, preschool health screening, family planning, public health nursing, premature and newborn program, immunizations, nutrition, dental care prevention and migrant health.

(ii) Dependency health care services programs that include at least the functions of need determination, availability of health resources to medically dependent individuals, quality control, utilization control and industry monitoring.

(iii) Children with physical disabilities services programs.

(iv) Programs for the prevention and early detection of an intellectual disability.

(d) Program planning, which shall include at least the following:

(i) An organizational unit for comprehensive health planning programs.

(ii) Program coordination, evaluation and development.

(iii) Need determination programs.

(iv) Health information programs.

2. Include and administer, within the office of the director, staff services, which shall include at a minimum budget preparation, public information, appeals, hearings, legislative and federal government liaison, grant development and management and departmental and interagency coordination.

3. Make rules and regulations for the organization and proper and efficient operation of the department.

4. Determine when a health care emergency or medical emergency situation exists or occurs within the state that cannot be satisfactorily controlled, corrected or treated by the health care delivery systems and facilities available. When such a situation is determined to exist, the director shall immediately report that situation to the legislature and the governor. The report shall include information on the scope of the emergency, recommendations for solution of the emergency and estimates of costs involved.

5. Provide a system of unified and coordinated health services and programs between the state and county governmental health units at all levels of government.

6. Formulate policies, plans and programs to effectuate the missions and purposes of the department.

7. Make contracts and incur obligations within the general scope of the department's activities and operations subject to the availability of funds.

8. Be designated as the single state agency for the purposes of administering and in furtherance of each federally supported state plan.

9. Provide information and advice on request by local, state and federal agencies and by private citizens, business enterprises and community organizations on matters within the scope of the department's duties subject to the departmental rules and regulations on the confidentiality of information.

10. Establish and maintain separate financial accounts as required by federal law or regulations.

11. Advise with and make recommendations to the governor and the legislature on all matters concerning the department's objectives.

12. Take appropriate steps to reduce or contain costs in the field of health services.

13. Encourage and assist in the adoption of practical methods of improving systems of comprehensive planning, of program planning, of priority setting and of allocating resources.

14. Encourage an effective use of available federal resources in this state.

15. Research, recommend, advise and assist in the establishment of community or area health facilities, both public and private, and encourage the integration of planning, services and programs for the development of the state's health delivery capability.

16. Promote the effective utilization of health manpower and health facilities that provide health care for the citizens of this state.

17. Take appropriate steps to provide health care services to the medically dependent citizens of this state.

18. Certify training on the nature of sudden infant death syndrome, which shall include information on the investigation and handling of cases involving sudden and unexplained infant death for use by law enforcement officers as part of their basic training requirement.

19. Adopt protocols on the manner in which an autopsy shall be conducted under section 11-597, subsection D in cases of sudden and unexplained infant death.

20. Cooperate with the Arizona-Mexico commission in the governor's office and with researchers at universities in this state to collect data and conduct projects in the United States and Mexico on issues that

are within the scope of the department's duties and that relate to quality of life, trade and economic development in this state in a manner that will help the Arizona-Mexico commission to assess and enhance the economic competitiveness of this state and of the Arizona-Mexico region.

21. Administer the federal family violence prevention and services act grants, and the department is designated as this state's recipient of federal family violence prevention and services act grants.

22. Accept and spend private grants of monies, gifts and devises for the purposes of methamphetamine education. The department shall disburse these monies to local prosecutorial or law enforcement agencies with existing programs, faith based organizations and nonprofit entities that are qualified under section 501(c)(3) of the United States internal revenue code, including nonprofit entities providing services to women with a history of dual diagnosis disorders, and that provide educational programs on the repercussions of methamphetamine use. State general fund monies shall not be spent for the purposes of this paragraph. If the director does not receive sufficient monies from private sources to carry out the purposes of this paragraph, the director shall not provide the educational programs prescribed in this paragraph. Grant monies received pursuant to this paragraph are no lapsing and do not revert to the state general fund at the close of the fiscal year.

23. Identify successful methamphetamine prevention programs in other states that may be implemented in this state.

24. Pursuant to chapter 13, article 8 of this title, coordinate all public health and risk assessment issues associated with a chemical or other toxic fire event if a request for the event is received from the incident commander, the emergency response commission or the department of public safety and if funding is available. Coordination of public health issues shall include general environmental health consultation and risk assessment services consistent with chapter 13, article 8 of this title and, in consultation with the Arizona poison control system, informing the public as to potential public health risks from the environmental exposure. Pursuant to chapter 13, article 8 of this title, the department of health services shall also prepare a report, in consultation with appropriate state, federal and local governmental agencies, that evaluates the public health risks from the environmental exposure. The department of health services' report shall include any department of environmental quality report and map of smoke dispersion from the fire, the results of any environmental samples taken by the department of environmental quality and the toxicological implications and public health risks of the environmental exposure. The department of health services shall consult with the Arizona poison control system regarding toxicology issues and shall prepare and produce its report for the public as soon as practicable after the event. The department of health services shall not use any monies pursuant to section 49-282, subsection E to implement this paragraph.

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

A. The director shall:

1. Be the executive officer of the department of health services and the state registrar of vital statistics but shall not receive compensation for services as registrar.

2. Perform all duties necessary to carry out the functions and responsibilities of the department.

3. Prescribe the organization of the department. The director shall appoint or remove personnel as necessary for the efficient work of the department and shall prescribe the duties of all personnel. The director may abolish any office or position in the department that the director believes is unnecessary.

4. Administer and enforce the laws relating to health and sanitation and the rules of the department.

5. Provide for the examination of any premises if the director has reasonable cause to believe that on the premises there exists a violation of any health law or rule of the state.

6. Exercise general supervision over all matters relating to sanitation and health throughout the state. When in the opinion of the director it is necessary or advisable, a sanitary survey of the whole or of any part of the state shall be made. The director may enter, examine and survey any source and means of water supply, sewage disposal plant, sewerage system, prison, public or private place of detention, asylum, hospital, school, public building, private institution, factory, workshop, tenement, public washroom, public restroom, public toilet and toilet facility, public eating room and restaurant, dairy, milk plant or food manufacturing or processing plant, and any premises in which the director has reason to believe there exists a violation of any health law or rule of the state that the director has the duty to administer.

7. Prepare sanitary and public health rules.

8. Perform other duties prescribed by law.

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

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

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

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

2. Monies appropriated or otherwise made available to the department for distribution to or division among counties or public health services districts for local health work may be allocated or reallocated in a

manner designed to ensure the accomplishment of recognized local public health activities and delegated functions, powers and duties in accordance with applicable standards of performance. Whenever in the director's opinion there is cause, the director may terminate all or a part of any delegation and may reallocate all or a part of any funds that may have been conditioned on the further performance of the functions, powers or duties conferred.

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

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

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

H. The director, by rule, shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7. Define and prescribe reasonably necessary measures governing ice production, handling, storing and distribution to ensure that all ice sold or distributed for human consumption or for the preservation or storage of food for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions and the quality of ice that shall be maintained at any ice plant, storage and truck or vehicle in which ice is produced, stored, handled or transported and shall provide for inspection

and licensing of the premises and vehicles, and for abatement as public nuisances of ice, premises, equipment, processes or vehicles that do not comply with the minimum standards.

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

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

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

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

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

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

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

J. The powers and duties prescribed by this section do not apply in instances in which regulatory powers and duties relating to public health are vested by the legislature in any other state board, commission, agency or instrumentality, except that with regard to the regulation of meat and meat products, the

department of health services and the Arizona department of agriculture within the area delegated to each shall adopt rules that are not in conflict.

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

L. After consultation with the state superintendent of public instruction, the director shall prescribe the criteria the department shall use in deciding whether or not to notify a local school district that a pupil in the district has tested positive for the human immunodeficiency virus antibody. The director shall prescribe the procedure by which the department shall notify a school district if, pursuant to these criteria, the department determines that notification is warranted in a particular situation. This procedure shall include a requirement that before notification the department shall determine to its satisfaction that the district has an appropriate policy relating to nondiscrimination of the infected pupil and confidentiality of test results and that proper educational counseling has been or will be provided to staff and pupils.

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

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

36-136.01. Sanitarians council; members; powers; fees; examinations; continuing education; exceptions; renewal; definition

A. The director shall establish a sanitarians council composed of five members. The members shall be the director of the department of health services or the director's representative, two governmental sanitarians, one of whom shall represent the two largest counties and one of whom shall represent the thirteen smaller counties, one industrial sanitarian and one lay person representing the public. The director shall be the council chairman. Members of the council are not eligible to receive compensation but are eligible for reimbursement of expenses pursuant to title 38, chapter 4, article 2.

B. The council shall provide for the classification of sanitarians, establish standards for persons employed as sanitarians and provide for the examination of applicants for registration as sanitarians. A person shall not be employed as a sanitarian by the state or any political subdivision of the state unless that person is registered by the department as a sanitarian of the class determined by the council to be appropriate for the performance of the functions of that person's employment.

C. The council may register an applicant as a sanitarian without an examination if both of the following are true:

1. The applicant is registered, certified or licensed as a sanitarian in another jurisdiction and pays all applicable fees prescribed pursuant to this section.

2. The council determines that the applicant meets at least one of the requirements prescribed pursuant to subsection I of this section and the examination requirements in the applicant's regulatory jurisdiction are substantially equivalent to this state's examination requirements.

D. Each registration expires on December 31 of each year. To renew a registration, the registrant must submit an application that contains the information prescribed by the director by rule and documentation of completion of at least ten hours of council approved continuing education during the previous twelve months. A registrant who has been registered for less than twelve months before the registration expiration date is not required to complete continuing education for the year that immediately precedes registration renewal. A registrant who does not renew the registration on or before February 15 of each year shall not perform the duties of a registered sanitarian.

E. Pursuant to rules adopted by the director, the council may defer the continuing education requirements prescribed in subsection D of this section.

F. The council shall charge and collect a nonrefundable application fee of twenty-five dollars. The council shall charge and collect a nonrefundable examination fee established by the director by rule that does not exceed the cost of administering the examination. A fee of ten dollars shall be charged and collected for the annual renewal of registration certificates.

G. All monies collected by the sanitarians council shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

H. Only a person with a valid registration certificate issued pursuant to this section may use the title "registered sanitarian" or the abbreviation "R.S." after the registrant's name.

I. An applicant is eligible for registration as a sanitarian if the applicant meets at least one of the following qualifications:

1. The applicant has completed five years of employment as a sanitarian aide in either a recognized public health agency or private industry in a position directly related to environmental health.

2. The applicant has satisfactorily completed at least five years of full-time military duty in the field of environmental health.

3. The applicant has successfully completed thirty semester hours of credit at an accredited college or university in the natural sciences.

J. For the purposes of this section, "sanitarian" means a person who by education or experience in the physical, biological and sanitary sciences is qualified to carry out educational, investigational and technical duties in the field of environmental health.

1-215. Definitions

In the statutes and laws of this state, unless the context otherwise requires:

1. "Action" includes any matter or proceeding in a court, civil or criminal.

2. "Adopted rule" means a final rule as defined in section 41-1001.

3. "Adult" means a person who has attained eighteen years of age.

4. "Alternative fuel" means:

(a) Electricity.

(b) Solar energy.

(c) Liquefied petroleum gas, natural gas, hydrogen or a blend of hydrogen with liquefied petroleum or natural gas that complies with any of the following:

(i) Is used in an engine that is certified to meet at a minimum the United States environmental protection agency low emission vehicle standard pursuant to 40 Code of Federal Regulations section 88.104-94 or 88.105-94.

(ii) Is used in an engine that is certified by the engine modifier to meet the addendum to memorandum 1-A of the United States environmental protection agency as printed in the federal register, volume 62, number 207, October 27, 1997, pages 55635 through 55637.

(iii) Is used in an engine that is the subject of a waiver for that specific engine application from the United States environmental protection agency's memorandum 1-A addendum requirements and that waiver is documented to the reasonable satisfaction of the director of the department of environmental quality.

(d) Only for vehicles that use alcohol fuels before August 21, 1998, alcohol fuels that contain not less than eighty-five per cent alcohol by volume.

(e) A combination of at least seventy per cent alternative fuel and no more than thirty per cent petroleum based fuel that operates in an engine that meets the United States environmental protection agency low emission vehicle standard pursuant to 40 Code of Federal Regulations section 88.104-94 or 88.105-94 and that is certified by the engine manufacturer to consume at least seventy per cent alternative fuel during normal vehicle operations.

5. "Bribe" means anything of value or advantage, present or prospective, asked, offered, given, accepted or promised with a corrupt intent to influence, unlawfully, the person to whom it is given in that person's action, vote or opinion, in any public or official capacity.

6. "Child" or "children" as used in reference to age of persons means persons under eighteen years of age.

7. "Clean burning fuel" means:

(a) An emulsion of water-phased hydrocarbon fuel that contains not less than twenty per cent water by volume and that complies with any of the following:

(i) Is used in an engine that is certified to meet at a minimum the United States environmental protection agency low emission vehicle standard pursuant to 40 Code of Federal Regulations section 88.104-94 or 88.105-94.

(ii) Is used in an engine that is certified by the engine modifier to meet the addendum to memorandum 1-A of the United States environmental protection agency as printed in the federal register, volume 62, number 207, October 27, 1997, pages 55635 through 55637.

(iii) Is used in an engine that is the subject of a waiver for that specific engine application from the United States environmental protection agency's memorandum 1-A addendum requirements and that waiver is documented to the reasonable satisfaction of the director of the department of environmental quality.

(b) A diesel fuel substitute that is produced from nonpetroleum renewable resources if the qualifying volume of the nonpetroleum renewable resources meets the standards for California diesel fuel as adopted by the California air resources board pursuant to 13 California Code of Regulations sections 2281 and 2282 in effect on January 1, 2000, the diesel fuel substitute meets the registration requirement for fuels and additives established by the United States environmental protection agency pursuant to section 211 of the clean air act as defined in section 49-401.01 and the use of the diesel fuel substitute complies with the requirements listed in 10 Code of Federal Regulations part 490, as printed in the federal register, volume 64, number 96, May 19, 1999.

(c) A diesel fuel that complies with all of the following:

(i) Contains a maximum of fifteen parts per million by weight of sulfur.

(ii) Meets ASTM D975.

(iii) Meets the registration requirements for fuels and additives established by the United States environmental protection agency pursuant to section 211 of the clean air act as defined in section 49-401.01.

(iv) Is used in an engine that is equipped or has been retrofitted with a device that has been certified by the California air resources board diesel emission control strategy verification procedure, the United States environmental protection agency voluntary diesel retrofit program or the United States environmental protection agency verification protocol for retrofit catalyst, particulate filter and engine modification control technologies for highway and nonroad use diesel engines.

(d) A blend of unleaded gasoline that contains at minimum eighty-five per cent ethanol by volume or eighty-five per cent methanol by volume.

(e) Neat methanol.

(f) Neat ethanol.

8. "Corruptly" means a wrongful design to acquire or cause some pecuniary or other advantage to the person guilty of the act or omission referred to, or to some other person.

9. "Daytime" means the period between sunrise and sunset.

10. "Depose" includes every manner of written statement under oath or affirmation.

11. "Federal poverty guidelines" means the poverty guidelines as updated annually in the federal register by the United States department of health and human services.

12. "Grantee" includes every person to whom an estate or interest in real property passes, in or by a deed.

13. "Grantor" includes every person from or by whom an estate or interest in real property passes, in or by a deed.

14. "Includes" or "including" means not limited to and is not a term of exclusion.

15. "Inhabitant" means a resident of a city, town, village, district, county or precinct.

16. "Issue" as used in connection with descent of estates includes all lawful, lineal descendants of the ancestor.

17. "Knowingly":

(a) Means only a knowledge that the facts exist that bring the act or omission within the provisions of the statute using such word.

(b) Does not require any knowledge of the unlawfulness of the act or omission.

18. "Magistrate" means an officer having power to issue a warrant for the arrest of a person charged with a public offense and includes the chief justice and justices of the supreme court, judges of the superior court, judges of the court of appeals, justices of the peace and judges of a municipal court.

19. "Majority" or "age of majority" as used in reference to age of persons means eighteen years of age or more.

20. "Malice" and "maliciously" mean a wish to vex, annoy or injure another person, or an intent to do a wrongful act, established either by proof or presumption of law.

21. "Minor" means a person under the age of eighteen years.

22. "Minor children" means persons under the age of eighteen years.

23. "Month" means a calendar month unless otherwise expressed.

24. "Neglect", "negligence", "negligent" and "negligently" import a want of such attention to the nature or probable consequence of the act or omission as a prudent man ordinarily bestows in acting in his own concerns.

25. "Nighttime" means the period between sunset and sunrise.

26. "Oath" includes an affirmation or declaration.

27. "Peace officers" means sheriffs of counties, constables, marshals, policemen of cities and towns, commissioned personnel of the department of public safety, personnel who are employed by the state department of corrections and the department of juvenile corrections and who have received a certificate from the Arizona peace officer standards and training board, peace officers who are appointed by a multicounty water conservation district and who have received a certificate from the Arizona peace officer standards and training board, police officers who are appointed by community college district governing boards and who have received a certificate from the Arizona peace officer standards and training board, police officers who are appointed by the Arizona board of regents and who have received a certificate from the Arizona peace officer standards and training board, police officers who are appointed by the governing body of a public airport pursuant to section 28-8426 and who have received a certificate from the Arizona peace officer standards and training board, peace officers who are appointed by a private postsecondary institution pursuant to section 15-1897 and who have received a certificate from the Arizona peace officer standards and training board and special agents from the office of the attorney general, or of a county attorney, and who have received a certificate from the Arizona peace officer standards and training board.

28. "Person" includes a corporation, company, partnership, firm, association or society, as well as a natural person. When the word "person" is used to designate the party whose property may be the subject of a criminal or public offense, the term includes the United States, this state, or any territory, state or country, or any political subdivision of this state that may lawfully own any property, or a public or private corporation, or partnership or association. When the word "person" is used to designate the violator or offender of any law, it includes corporation, partnership or any association of persons.

29. "Personal property" includes money, goods, chattels, things in action and evidences of debt.

30. "Population" means the population according to the most recent United States decennial census.

31. "Process" means a citation, writ or summons issued in the course of judicial proceedings.

32. "Property" includes both real and personal property.

33. "Real property" is coextensive with lands, tenements and hereditaments.

34. "Registered mail" includes certified mail.

35. "Seal" as used in reference to a paper issuing from a court or public office to which the seal of such court or office is required to be affixed means an impression of the seal on that paper, an impression of the seal affixed to that paper by a wafer or wax, a stamped seal, a printed seal, a screened seal or a computer generated seal.

36. "Signature" or "subscription" includes a mark, if a person cannot write, with the person's name written near it and witnessed by a person who writes the person's own name as witness.

37. "State", as applied to the different parts of the United States, includes the District of Columbia, this state and the territories.

38. "Testify" includes every manner of oral statement under oath or affirmation.

39. "United States" includes the District of Columbia and the territories.

40. "Vessel", as used in reference to shipping, includes ships of all kinds, steamboats, steamships, barges, canal boats and every structure adapted to navigation from place to place for the transportation of persons or property.

41. "Wilfully" means, with respect to conduct or to a circumstance described by a statute defining an offense, that a person is aware or believes that the person's conduct is of that nature or that the circumstance exists.

42. "Will" includes codicils.

43. "Workers' compensation" means workmen's compensation as used in article XVIII, section 8, Constitution of Arizona.

44. "Writ" means an order or precept in writing issued in the name of the state or by a court or judicial officer.

45. "Writing" includes printing.

41-1072. Definitions

In this article, unless the context otherwise requires:

1. "Administrative completeness review time frame" means the number of days from agency receipt of an application for a license until an agency determines that the application contains all components required by statute or rule, including all information required to be submitted by other government agencies. The administrative completeness review time frame does not include the period of time during which an agency provides public notice of the license application or performs a substantive review of the application.

2. "Overall time frame" means the number of days after receipt of an application for a license during which an agency determines whether to grant or deny a license. The overall time frame consists of both the administrative completeness review time frame and the substantive review time frame.

3. "Substantive review time frame" means the number of days after the completion of the administrative completeness review time frame during which an agency determines whether an application or applicant for a license meets all substantive criteria required by statute or rule. Any public notice and hearings required by law shall fall within the substantive review time frame.

ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (R-17-1003)
Title 9, Chapter 22, Article 7, Standards for Payments

Amend: R9-22-712.60; R9-22-712.62; R9-22-712.63; R9-22-712.64; R9-22-712.65; R9-22-712.66; R9-22-712.68; R9-22-712.71; R9-22-712.72; R9-22-712.80; R9-22-712.81

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

MEETING DATE: October 3, 2017 **AGENDA ITEM: D-3**

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

FROM: Shama Thathi, Staff Attorney

DATE: September 19, 2017

SUBJECT: **ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (R-17-1003)**
Title 9, Chapter 22, Article 7, Standards for Payments

Amend: R9-22-712.60; R9-22-712.62; R9-22-712.63; R9-22-712.64; R9-22-712.65; R9-22-712.66; R9-22-712.68; R9-22-712.71; R9-22-712.72; R9-22-712.80; R9-22-712.81

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

This rulemaking seeks to amend 11 rules in A.A.C. Title 9, Chapter 22, Article 7, related to standards for payments. The Administration proposes to amend and clarify rules specifying payments to hospitals for inpatient services under the Diagnosis Related Group (DRG) methodology. This rulemaking is a result of the Administration's rebasing of the multiple components of the DRG system where base payments, policy adjustors, and relative weights are recalculated using more recent claims and encounter data. These values are being removed from the rules, and rather included in the Administration's Capped Fee for Service Schedule, available on the Administration's website. In addition, this rulemaking updates the version of the All Patient Refined Diagnosis Related Group (APR-DRG) classification system established by 3M Health Information Systems that will apply for dates of discharge beginning January 1, 2018.

Proposed Action

- **R9-22-712.60** – *Diagnosis Related Group Payments*: In subsection (C), the reference to version 31 of the APR-DRG classification system is replaced by a statement noting that the applicable version of the APR-DRG classification system will now be available on the Administration's website.

- **R9-22-712.62** – *DRG Base Payment*: The DRG base rate for each hospital is a statewide standardized amount of which the hospital's labor-related share of that amount is adjusted by the hospital's wage index. In subsection (B), the standardized amount is removed, and Volume 81 of the Federal Register is being incorporated by reference to determine the hospital's labor share and wage index.
- **R9-22-712.63** – *DRG Base Payments Not Based on the Statewide Standardized Amount*: The specific select specialty hospital standardized amount is removed, and a reference to the Administration's capped fee schedule on its website is added.
- **R9-22-712.64** – *DRG Base Payments and Outlier CCR for Out-of-State Hospitals*: In subsection (A)(2), the specific amount of the wage adjusted DRG base rate for out-of-state hospitals is removed, and a reference to the capped fee schedule is added.
- **R9-22-712.65** – *DRG Provider Policy Adjustor*: The reference to the specific policy adjustor of 1.055 is removed, and a reference to the capped fee schedule is added. The new subsection (B)(3) adds an additional requirement for a hospital to be classified as a high-utilization hospital.
- **R9-22-712.66** – *DRG Service Policy Adjustor*: All specific service policy adjustors are removed, and a reference is added to the capped fee schedule on the Administration's website. In addition, a policy adjustor for burn services is added.
- **R9-22-712.68** – *DRG Reimbursement: Unadjusted Outlier Add-on Payment*: Specific dollar amount and percentages are removed, while references to the capped fee schedule published on the Administration's website are added.
- **R9-22-712.71** – *Final DRG Payment*: Claims with dates of discharge prior to January 1, 2018 are being distinguished from claims with dates of discharge on or after January 1, 2018, as these claims relate to final DRG payments.
- **R9-22-712.72** – *DRG Reimbursement: Enrollment Changes During an Inpatient Stay*: In subsection (B), a restrictive direction regarding the coding of claims when a member's enrollment changes during an inpatient stay is being struck.
- **R9-22-712.80** – *DRG Reimbursement: New Hospitals*: Specific standardized dollar amount is being removed.
- **R9-22-712.81** – *DRG Reimbursement: Updates*: The Administration's new practice of publishing a public notice on its website at least 30 days prior to the effective date of any update to allow for public comment is being added.

Exemption or Request and Approval for Exception from the Moratorium

The Administration received an exception from the moratorium on April 10, 2017.

Substantive or Procedural Concerns

None.

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

Yes. The Administration cites to A.R.S. § 36-2903.01(F) as general authority for the rules. Under A.R.S. § 36-2903.01(F), the director of the Administration "may adopt necessary

rules pursuant to [T]itle 41, [C]hapter 6 to carry out this article [Title 36, Chapter 29, Article 1, Arizona Health Care Cost Containment System]." In addition, according to A.R.S. § 36-2903.01(G)(12), the Administration is required to adopt a DRG based hospital reimbursement methodology consistent with Title XIX of the Social Security Action for inpatient dates of service on and after October 1, 2014.

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

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

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

No. On request of Council staff, the Administration only made clarifying and technical changes between the proposed rules and the final rules.

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

Yes. The Administration notes that 21 comments were received on the proposed rules. The commenters included Tucson Medical Center, Toyon Associates, Inc., Phoenix Children's Hospital, Dignity Health, Rehoboth McKinley Christian Health Care Services, Tenet Health, Arizona Hospital and Healthcare Association, and Banner Health. The Administration provides a summary of the comments, along with its responses, on pages 6-16 of the Notice of Final Rulemaking.[1] Council staff believes that the Administration has adequately addressed the public comments.

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

Yes. The Administration contracted with Navigant Consulting to assess the impacts of the proposed amendments on payments to hospitals for inpatient services under the DRG payment methodology. The results of the preliminary analysis were presented to hospital representatives. In addition, the Administration published two Navigant Consulting exhibits with the Notice of Proposed Rulemaking.

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

No. The Administration indicates that the rules are consistent with, and not more stringent than, 42 U.S.C. 1396a(a)(30)(A), under which a state plan for medical assistance must provide methods and procedures related to the use of, and payment for, care and services

[1] The comments are attached to the Notice of Final Rulemaking.

available, in order to prevent unnecessary utilization, and "to assure that payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area."

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

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

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

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

9. Conclusion

The Administration requests an effective date of January 1, 2018. This analyst recommends approval of the rules.

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

MEETING DATE: October 3, 2017 **AGENDA ITEM: D-3**

TO: Members of the Governor's Regulatory Review Council

FROM: GRRC Economic Team

DATE : September 19, 2017

SUBJECT: **ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (R-17-1003)**
Title 9, Chapter 22, Article 7, Standards for Payments

Amend: R9-22-712.60; R9-22-712.62; R9-22-712.63; R9-22-712.64; R9-22-712.65; R9-22-712.66; R9-22-712.68; R9-22-712.71; R9-22-712.72; R9-22-712.80; R9-22-712.81

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

GRRC Economist comments:

In this rulemaking, the Arizona Health Care Cost Containment System Administration (Administration) is proposing to amend the Article 7 rules related to the diagnosis-related group (DRG) based hospital reimbursement methodology. The rules in Article 7 establish standards for payments that are utilized by the Administration. AHCCCS is Arizona's Medicaid agency that offers health care programs to low-income residents of Arizona.

The DRG program rules were first implemented in 2014 using version 31 of 3M Health Information Systems. Now, version 34 is available, and version 34 is the current health care industry standard as the basis for payments by other payers. This rulemaking will update, or rebase, the rules to reflect changes related to new health care industry standards relating to hospital reimbursement methodologies.

Key stakeholders are the Administration, hospitals, and taxpayers.

The Administration does not anticipate the need to hire full-time employees as a result of this rulemaking.

1. **Costs and Benefits for:**

a. The implementing agency:

The Administration incurred the costs associated with generating the rulemaking. The Administration will benefit from this rulemaking by improving the quality of data that the Administration utilizes to meet federal obligations.

b. Political subdivisions:

This rulemaking does not directly impact political subdivisions.

c. Businesses:

Hospitals are the primary businesses that will be impacted by this rulemaking. The Administration estimates that this rulemaking will result in an additional $35.5 million in payments to hospitals each year. Hospital assessments and the general fund expenditures will increase by roughly $8.3 million each year. The increased hospital assessment will be more than offset by the increased Medicaid payments.

This rulemaking will also improve the processing of Medicaid claims. Hospitals will have greater access to information in a more timely manner. Hospitals will also benefit from a Medicaid reimbursement system that is more aligned with current health care practice.

d. Small businesses:

Two hospitals in Arizona meet the criteria of a small business. They will be impacted in the same manner listed above.

e. Consumers directly affected by the rulemaking:

The Administration notes that this rulemaking will not impact consumers.

2. **Do the probable benefits outweigh the probable costs?**

Rebasing the payment methodology is periodically necessary. This process incurred some minor costs to create the rules. Hospitals, patients, and the Administration will benefit from this rulemaking through net payment gains and more accessible payment data. The benefits outweigh the costs.

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

Exempting small businesses is not feasible. This rulemaking establishes requirements that are necessary to comply with federal law and state statute.

4. The probable effect on state revenues:

The Administration determines that this rulemaking will not impact state revenues.

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

The Administration indicates that this rulemaking is the most effective and efficient method of complying with federal law and state law. No alternatives were considered.

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

No analysis was submitted that compares the rule’s impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.

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

The Administration utilized payment data from its own payment system to create this EIS.

8. Conclusion:

The submitted economic, small business, and consumer impact statement is generally accurate, and contains the information required for compliance with ARS §§ 41-1035, 41-1052(D)(1-3), and 41-1055. Staff recommends that the proposed rule amendments be approved.

AHCCCS
Arizona Health Care Cost Containment System

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

August 21, 2017

Ms. Nicole Ong, Chair
Governor's Regulatory Review Council
100 N. 15th Ave, Suite 305
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:

- R9-22-712.60. Diagnosis Related Group Payments
- R9-22-712.62. DRG Base Payment
- R9-22-712.63. DRG Base Payments Not Based on the Statewide Standardized Amount
- R9-22-712.64. DRG Base Payments and Outlier CCR for Out-of-State Hospitals
- R9-22-712.65. DRG Provider Policy Adjustor
- R9-22-712.66. DRG Service Policy Adjustor
- R9-22-712.68. DRG Reimbursement: Unadjusted Outlier Add-on Payment
- R9-22-712.71. Final DRG Payment
- R9-22-712.72. DRG Reimbursement: Enrollment Changes During an Inpatient Stay
- R9-22-712.80. DRG Reimbursement: New Hospitals
- R9-22-712.81. DRG Reimbursement: Updates

AHCCCS is providing the following information as required in A.A.C. R1-6-104:

a. The rulemaking record was closed on August 14, 2017 following a period for public comment and an oral proceeding. The oral proceeding was held on August 8, 2017 at 1:00pm. The close of record date was 5 p.m., August 14, 2017.
b. The rulemaking does not relate to a 5-year-review.
c. The rulemaking contains no new fees.
d. The rulemaking contains no fee increase.
e. Documents attached to this email:
    - Cover Letter;
    - 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;
- Authorizing and Implementing Statute;
- Rules from the Arizona Administrative Code;
- Documentation from the Governor's Office of approval to proceed with the rule package.

f. There were comments submitted by the public concerning the proposed rule.

g. The rules contain materials incorporated by reference.

h. The adopted rules do not require a permit.

i. The rule is not more stringent than federal law and the citation to the statutory authority does not exceed the requirements of federal law.

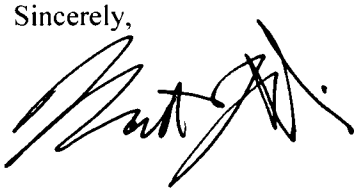
j. A person has not submitted an analysis to the agency that compares the rule's impact of the competiveness of businesses in this state to the impact on businesses in other states.

k. The AHCCCS Administration has not notified the Joint Legislative Budget Committee (JLBC) of the 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.

l. The AHCCCS Administration has requested and received approval to proceed with this rulemaking from the Governor's Office in reference to the rulemaking moratorium described under Executive Order 2016-03.

I certify that the information provided in number 7 of the Preamble is accurate. An immediate effective date is not requested. The agency selected an effective date of January 1, 2018 as specified in A.R.S. §41-1032(B). I respectfully request that the Council consider and approve the adopted rules.

Sincerely,



Matthew Devlin
Assistant Director

Attachments

NOTICE OF FINAL RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM ADMINISTRATION

ARTICLE 7. STANDARDS FOR PAYMENTS

PREAMBLE

1. Articles, Parts, or Sections Affected	**Rulemaking Action:**
R9-22-712.60	Amend
R9-22-712.62	Amend
R9-22-712.63	Amend
R9-22-712.64	Amend
R9-22-712.65	Amend
R9-22-712.66	Amend
R9-22-712.68	Amend
R9-22-712.71	Amend
R9-22-712.72	Amend
R9-22-712.80	Amend
R9-22-712.81	Amend

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

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

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

3. The effective date of the rule:

January 1, 2018

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: 23 A.A.R. 1811, July 7, 2017

Notice of Proposed Rulemaking 23 A.A.R. 1791, July 7, 2017

Prior to the filing of this Notice of Final Rulemaking, GRRC approved amendments to R9-22-712.71 regarding incremental payments for hospitals that qualify for a value-based purchasing adjustment. The amendments will become effective October 1, 2017. Additional information regarding the value-based purchasing amendment

can be found via the following related notices published in the Register:

Notice of Rulemaking Docket Opening: 23 A.A.R. 1046, May 5, 2017

Notice of Proposed Rulemaking: 23 A.A.R. 1015, May 5, 2017

Notice of Final Rulemaking: 23 A.A.R. To be filled in by the Secretary of State

Notice of Rulemaking Docket Opening: 22 A.A.R. 784, April 8, 2016

Notice of Proposed Rulemaking: 22 A.A.R. 761, April 8, 2016

Notice of Final Rulemaking: 22 A.A.R. 2187, August 19, 2016

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

Name: Gina Relkin

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 Arizona Health Care Cost Containment System Administration is the single state agency responsible for administration of the Medicaid program in Arizona. The program is jointly funded by the State, counties, and the federal government. Federal law imposes a substantial number of conditions on the receipt of federal financial assistance reflected in federal statutes (42 U.S.C. § 1396 et seq.) and regulation (generally, 42 C.F.R. Parts 430 through 455). While States are provided substantial flexibility with respect to the payment methods for health care providers that agree to participate, federal law does require that States "assure that payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area." 42 U.S.C. § 1396a(a)(30)(A). State law requires the agency to adopt a diagnosis-related group (DRG) based hospital reimbursement methodology consistent with Title XIX of the Social Security Act for inpatient dates of service on and after October 1, 2014. A.R.S. § 36-2903.01(G)(12).

A DRG based hospital reimbursement methodology pays a fixed amount on a "per discharge basis." Under this methodology each claim is assigned to a DRG based on the patient's diagnoses, surgical procedures performed, age, gender, birth weight, and discharge status. The goal of diagnosis related groups is to classify inpatient stays

into categories based on similar clinical conditions and on similar levels of hospital resources required for treatment. These categories are identified using DRG codes each of which is assigned a relative weight appropriate for the relative amount of hospital resources expected to be used to treat the patient. An essential element of a DRG based hospital payment methodology is the selection of one of the several DRG classification systems. The DRG system was first implemented via rule published in 20 A.A.R. 1956, published September 6, 2014. As originally published, the Agency elected to use the All Patient Refined DRG (APR-DRG) system of codes and relative weights established and maintained by 3M Health Information Systems. At the time, the most current version of that system was version 31. More than three years have elapsed since initial implementation of APR-DRG. The original DRG reimbursement methodology was developed using Fiscal Year 2011 data from the Agency's tiered per diem system. Since that time, 3M Health Information Systems has issued version 34 of the system which is in use in the health care industry as the basis for payments by other payers. In addition, there have been updates to the national code sets used for diagnoses and procedures.

To meet its federal obligation to establish payment methodologies that are consistent with efficiency, economy, quality and access, the Agency contracted with Navigant Consulting to assess the impacts of these changes on reimbursement for inpatient hospital reimbursement (often referred to as "rebasing" the payment methodology). The current rebase will utilize updated claims and encounter data and incorporates related changes to policy and service adjustors in an effort to maintain cost effectiveness.

Hospitals may wish to take particular note of the proposed amendment to R9-22-712.72(B). The proposed amendment strikes an overly restrictive direction regarding the coding of claims when a member's enrollment changes during an inpatient stay, which direction may result in certain claims failing to qualify for the outlier payment add-on under R9-22-712.68 when such payment is appropriate. Providers should consult AHCCCS policy manuals that are incorporated by reference into the provider participation agreement for specific guidance on correct coding practices effective for claims with dates of discharge on and after January 1, 2018.

In addition, hospitals should note that the wage indices referenced in R9-22-712.62(B) include the "rural floor" such that the wage index for a hospital in any urban area cannot be less than the wage index received by rural hospitals in the same State. Use of the rural floor is required for the Medicare program under 42 C.F.R. 412.64, and the AHCCCS Administration has elected to adopt the rural floor as part of this rulemaking.

Pursuant to A.R.S. § 36-2903.01(G), the Agency promulgates rules that describe the payment methodology; however, per A.R.S. § 41-1005(A)(9), the Agency is not required to have rules that set forth the actual amounts of fee-for-service payments. As a condition of federal financial participation, the Agency is required to provide notice through its website and/or publication through the State administrative register. In addition, the State must provide an opportunity for public comment on significant proposed changes to methods and standards for

payment rates. 42 U.S.C. § 1396a(a)(13) and 42 C.F.R. § 447.205. To accommodate future editions of the APR-DRG system, changes in the national code sets, and the corresponding changes to service and policy adjustors, the Agency is proposing to remove from the text of the rule references to specific dollar amounts and other numerical factors which, going forward, will be published to the Agency's website with advanced notice and public comment prior to implementation.

For ease of reference, the amounts intended for use as of January 1, 2018 (and historical values) appear below and will be published to the Agency's website:

Rule Section (R9-22)	**Description of Value Moved to Web**	**Current Values**	**Updated Values**
R9-22-712.60(C) R9-22-712.60(F)(1)	Reference to the version of the 3M APR-DRG classification system	Version 31	Version 34
R9-22-712.62(B)	The amount of the statewide standardized amount of the base payment.	$5,295.40	$5,168.06
R9-22-712.63	The amount of the alternative to the statewide standardized amount of the base payment for urban hospitals with high Medicare utilization and short-term hospitals.	$3,436.08	$3,359.24
R9-22-712.64(A)(2)	The amount of the DRG base payment for out of state hospitals.	$5,184.75	$5,157.58
R9-22-712.65(A)	The multiplier for high-utilization hospitals	1.055	1.110
R9-22-712.66	Multipliers for service policy adjustors.	Newborns: 1.55 Neonates: 1.10 Obstetrics: 1.55 Psychiatric: 1.65 Rehab: 1.65	Newborns: 1.55 Neonates: 1.10 Obstetrics: 1.55 Psychiatric: 1.65 Rehab: 1.65

		Children - · Severity level 1 & 2: 1.25 · Severity levels 3 & 4 (2016): 1.60	Burns: 2.70 Children - · Severity level 1 & 2: 1.25 · Severity levels 3 & 4 (2016): 1.60 · Severity levels 3 & 4 (2017): 1.945 · Severity levels 3 & 4 (2018): 2.30 All other claims: 1.025
R9-22-712.68(D)	The fixed loss amount for CAHs and all other hospitals.	CAHs $5,000 All others $65,000	CAHs $5,000 All others $65,000
R9-22-712.68(E)	The DRG marginal cost percentages for burns and all other claims.	Burns 90% All others 80%	Burns 90% All others 80%

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

The Agency engaged the services of Navigant Consulting who modeled the estimated impact of the proposed amendments on payments to hospitals for inpatient services under the DRG payment methodology. Information regarding that model will be posted to the Agency's website, and will be located on the webpage "AHCCCS APR-DRG REBASE". https://www.azahcccs.gov/PlansProviders/RatesAndBilling/FFS/APRDRGRebase.html.

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:

This rulemaking does not diminish a previous grant of authority of a political subdivision.

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

Multiple factors may influence the actual economic impact of the amendments proposed by this rulemaking, including the nature and frequency of inpatient hospital services and where those services are received. Assuming no significant changes in utilization from prior years, the Agency anticipates that the aggregate increase in expenditures as a result of this rule will be $35.5 million in additional payments to hospitals annually. Through the Medicaid program, the federal government funds a substantial percentage of the

Agency's expenditures for medical services which percentage varies by eligibility category. Based on estimates of the level of federal financial participation, the Agency estimates the proposed amendments increase State expenditures (General Fund and hospital assessment) by $8.3 million annually. The Agency does not anticipate that the rulemaking will have an effect on State revenues or materially impact political subdivisions of the State. According to hospital uniform accounting reports information filed with the Arizona Department of Health Services for 2015 (the most current information publicly available), 2 of the 104 hospitals listed reported fewer than one hundred full-time employees which qualifies those hospitals as "small businesses" under A.R.S. § 41-1001(21). The two hospitals, Arizona Orthopedic Surgical and Specialty Hospital and Arizona Spine & Joint Hospital are hospitals that are small businesses impacted by the DRG payment system. Estimates regarding the impact to those hospitals and all other hospitals participating in the AHCCCS program are posted to the Agency's website.

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

There have been no changes between the proposed rulemaking and the final rulemaking.

The AHCCCS Administration may make minor grammatical and technical corrections, as needed.

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

The AHCCCS Administration appreciates the input of stakeholders to implement the modified DRG reimbursement methodology. AHCCCS held a stakeholder's meeting on May 4, 2017 and presented the preliminary model to the stakeholders. In addition, AHCCCS presented a power point with information at the Tribal Consultation Meeting on April 20, 2017. The proposed rules were also posted on the AHCCCS website on June 16, 2017. The proposed rules were published in the Arizona Administrative Register on July 7, 2017. As part of the Arizona Administrative Procedures Act, AHCCCS allowed for public comment at the public hearing and during the comment process. The AHCCCS Administration has listed the public comments and AHCCCS response in the table below:

	COMMENT FROM COMMENTOR	AHCCCS RESPONSE:
1.	**Comment from Julia Strange** **Vice President, Community Benefit** **Tucson Medical Center (TMC):** Under R9-22-712.62 DRG Base Payment, AHCCCS suggests using the wage index values published August 22, 2016. Although these values were the proposed values published by CMS, final values were subsequently published in the tables of the October 5, 2016 Federal Register.	**AHCCCS RESPONSE:** The values published on August 22, 2016 are part of a final rule applicable to reimbursement for inpatient services under the Medicare program. On October 5, 2016, the federal government published a correction to the earlier rule. Federal law does not require the application of these same indices to the Medicaid program. AHCCCS believes that the August 22, 2016 indices more accurately reflect wage values

	Tucson Medical Center believes that using the final values as opposed to the proposed values would be more appropriate, given that it matches the wage index value in place today.	in Arizona.
2.	**Comment from Julia Strange** **Vice President, Community Benefit** **Tucson Medical Center (TMC):** In regards to R9-22-712.66 DRG Service Policy Adjustor, while TMC is appreciative that AHCCCS has increased the policy adjustor for neonate cases when compared to the adjustors originally shared with the state hospitals, TMC remains concerned that it will have a detrimental impact on the newborn and obstetrics adjustors. While we understand the goal of infusing additional resources into pediatrics, we believe that that investment would be more appropriately spread across all of the service lines that are primary to AHCCCS' mission - and most notably, to support services for moms, babies, and children.	**AHCCCS RESPONSE:** Per 42 U.S.C. § 1396a(a)(30)(A), AHCCCS is required to establish rates that are consistent with efficiency, economy, quality of care, and are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area. In essence, the federal requirement is that AHCCCS pay neither too much nor too little to achieve the goal of access to appropriate care. Spreading an "investment" across all service lines is not necessarily consistent with the federal standard. In AHCCCS opinion, the Service Policy Adjustors reflect select adjustment to payments necessary to achieve adequate access to care.
3.	**Comment from Mary Lonon** **Senior Financial Analyst, Tucson Medical Center:** Was the proposed rule updated at any point? a. I originally had that the updated standardized payment rate for TMC would go from $5,295.40 to $5,142.36. Now when I pull up the proposed rule from the AHCCCS website, it shows that the new standard payment will be $5,168.06. b. If it has been revised and the $5,168.06 is correct, can you send me a copy of the original proposed rule? I want compare, so that I make and other necessary changes.	**AHCCCS RESPONSE:** The preamble to the proposed rule originally posted to the Agency website on July 16, 2017, included inaccurate values. On July 27, 2017, AHCCCS amended the information on the website. The values published on July 27, 2016 were the values that were included in the proposed rule published by the Arizona Secretary of State. In addition to this written response, AHCCCS provided technical assistance to the commenter.
4.	**Comment from Mary Lonon** **Senior Financial Analyst, Tucson Medical Center:** In the final model version that was posted this past week, the first section states that it is V31 ***without transition***. Is this referring to the transition from the base payments when AZ rebased payments based on going from a tiered per diem to a DRG payment formula? If not, what "transition" is it referring to?	**AHCCCS RESPONSE:** The contents of the final model posted to the AHCCCS website is not incorporated into the proposed rule and was provided as information to stakeholders about the anticipated impact of the rule. As originally implemented, the DRG methodology included a three year transition period. The statement "without transition" reflects that the transition period has concluded.

5.	**Comment from Mary Lonon** **Senior Financial Analyst, Tucson Medical Center:** TMC had a shift in its wage index in recent years. Can you verify the wage index for TMC that is being used to calculate each of the V31 and V34 payments?	**AHCCCS RESPONSE:** The wage indices applicable to TMC under the current rule and under the proposed rule are included in tables referenced in proposed R9-22-712.62. .
6.	**Comment from Dave Yoder, Senior Director - Client Services** **Toyon Associates, Inc.:** At MIHS, we found the latest two published exhibits to be very helpful. Our calculations based on FY2016 data were close to the published estimates for MIHS. We believe that the APR-DRG rebase does not penalize MIHS from a rate perspective. However, changes in patient volumes, in particular burn volumes, may affect the net benefit received year over year. Otherwise, we had no questions at this time, and we were interested in hearing the questions and comments from other Arizona healthcare systems.	**AHCCCS RESPONSE:** Thank you for your positive feedback.
7.	**Comment from Jim Champlin, Phoenix Children's Hospital:** In the 2014 project PCH was listed under High Medicaid Utilization Providers, why the change?	**AHCCCS RESPONSE:** One of the criteria for that designation is: "Covered inpatient days subject to DRG reimbursement, determined using adjudicated claim and encounter data during the fiscal year beginning October 1, 2015, equal to at least four hundred percent of the statewide average number of AHCCCS-covered inpatient days at all hospitals." PCH falls below that threshold.
8.	**Comment from Matt Goss, Reimbursement Manager, Dignity Health and Brandi Brashear, Reimbursement Director, Dignity Health:** We've reviewed the proposed rule and noticed that there is a new requirement to receive the high-utilization multiplier. Would the qualification requiring hospitals to receive less than $2M in outlier payments exclude St. Joseph's from getting this adjustment factor? Please let us know. What was the logic behind this additional qualifier?	**AHCCCS RESPONSE:** The new qualifier does not exclude St Joseph's Hospital which will continue to receive the high-utilization policy adjustor following the rebase. **AHCCCS RESPONSE:** This additional qualifier is further refinement to ensure the described policy adjustor receives its intended application.
9.	**Comment from John McMullin CPA, MBA, FHFMA, Chief Financial Officer at RMCHCS:** I don't see any information for RMCHCS is	**AHCCCS RESPONSE:** Based on our FY 2016 data, Rehoboth McKinley no longer meets the threshold for a "High Utilization Out of State Hospital."

<table>
<tr>
<td></td>
<td>Gallup, NM. Are you able to help me understand how it will impact our AZ Medicaid population?</td>
<td>For that reason, beginning 01/01/2018 under the proposed rule, Rehoboth McKinley would be reimbursed by AHCCCS under proposed A.A.C. R9-22-712.64(A)(2).
To gauge the practical effect of that, you can compare the current reimbursement values for Rehoboth McKinley (see the spreadsheet at this link, row 56: https://www.azahcccs.gov/PlansProviders/Downloads/FFSrates/APR/DRG_Provider_Table_FFY2017_20170101.xlsx) to the table below illustrating the rebased "All Other Out-of-State" reimbursement values under the proposed rule.

<table>
<tr><th>Parameter</th><th>Value</th></tr>
<tr><td>Hospital category</td><td>Out of State</td></tr>
<tr><td>Statewide Average DRG Base Rate</td><td>$5,157.58</td></tr>
<tr><td>High Medicaid Volume Hold-Harmless Adjustor</td><td>1.000</td></tr>
<tr><td>Out-of-state cost-to-charge ratio</td><td>0.240</td></tr>
<tr><td>Cost Outlier Fixed Loss Threshold</td><td>$65,000</td></tr>
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<tr>
<td>10.</td>
<td>Comment from Mr. Robert Myers, Tenet Health:
Do you have a copy of the version 34 DRG table that you could send to us?</td>
<td>AHCCCS RESPONSE:
Provided table to Mr. Myers.</td>
</tr>
<tr>
<td>11.</td>
<td>Comment from Greg Vigdor, President and Chief Executive Officer, AzHHA:
The Preamble to the NOPR states that state expenditures will increase by approximately $8.3 million, some of which will come from the general fund, and some from the hospital assessment. In order for stakeholders to evaluate the impact of this proposal, we recommend the Administration provide an estimate of how this proposal would impact the assessment paid by each hospital. This is especially important because some hospitals are not paid
within the APR-DRG system and would not receive any increased payments from this proposal. Moreover, the impact statement sent by the Administration to hospitals estimates that payments to thirteen hospitals and three health systems within the DRG system would be reduced under the rebase proposal. Payments to one hospital are estimated to be reduced by 4.1</td>
<td>AHCCCS RESPONSE:
The impacts of the changes reflected in this proposed rule have been incorporated into the State Fiscal Year 2018 assessment amounts for individual hospitals that have been posted to the Agency’s website since May of this year.
Any future amendments to the hospital assessment will require separate rule making by the Agency. As part of any future rule making regarding the assessment, the Agency will publish the projected impact to individual hospitals. Any future amendments will include public notice and an opportunity for comments at that time.
Additionally, a hospital workgroup has been established to discuss any changes to the assessment for State Fiscal Year 2019. The first meeting of the workgroup has been scheduled for September 15, 2017.</td>
</tr>
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	%—not an inconsequential amount. While one would expect a revenue-neutral rebasing initiative to result in estimated payment losses for some hospitals, the fact that the Administration's proposal includes additional funds, which are partially funded by the provider assessment, and the proposal includes a 1.025 policy adjustment "for all other claims" makes this proposal different. To be clear, we are not opposed to using the hospital assessment to fund a rate increase. In fact, AzHHA has previously supported the use of the assessment for this purpose. However, we feel very strongly that stakeholders should have the opportunity to understand the implications of this approach, particularly for providers who are reimbursed under different payment methodologies or who are estimated to experience reduced reimbursement under the proposal.	
12.	**Comment from Greg Vigdor, President and Chief Executive Officer, AzHHA:** However, the Administration has revised the methodology since its May meeting with stakeholders, and has not posted an updated model with the NOPR. While the Preamble states that information regarding the model would be posted to the agency's website with the publication of the NOPR, we have not been able to locate this information. We appreciate the Administration sending out hospital and health system impact information last week, but this does not provide enough information to fully evaluate the current model and its impact on access to care for Medicaid beneficiaries. We are particularly interested in understanding the rationale behind some of the policy adjusters and their corresponding weights. The APR-DRG system as a methodology takes into account high acuity cases that some providers may experience disproportionately, and the relative weights reflect the typical resources needed to care for a patient within a particular DRG category. AzHHA believes that any additional policy adjusters should be based on key Medicaid principles of enhancing access to care and/or improving quality and efficiency. Many of the policy adjusters that AHCCCS has put in place previously or that it proposes in the NOPR are typical of this approach. They target high cost service lines and/or those services on which Medicaid beneficiaries particularly rely, including pediatrics, obstetrics, and neonatology.	**AHCCCS RESPONSE:** The Arizona Administrative Procedure Act does not require the posting of models that estimate the impact of proposed rules on individual hospitals. Nevertheless, for the information of stakeholders, an updated model was posted to the Agency's website on August 7, 2017, and the comment period was extended to August 14, 2017. At the request of the AzHHA, additional information regarding the estimated payment to cost ratios was added to the model contributing to the delay in posting. All of the policy adjusters reflected in the proposed rules are based on the Agency's evaluation of adjustments that are necessary for, and consistent with, federal requirements for establishing payment methodologies consistent with efficiency, economy, quality of care, and access to care. We appreciate your support for the policy adjuster for burns and other service categories. The Agency's justifications regarding specific adjusters are addressed in responses to other comments.

	Many other states use similar adjusters. The proposal to include a policy adjuster for burn services fits this approach as well. It is a very high cost, specialized service that is critical to maintain for Medicaid Beneficiaries. If the State were to lose burn services at the one burn center in Arizona, Medicaid beneficiaries would need to be transported out of state for appropriate care. For this reason, we support including an adjuster for burn services. While we support the inclusion of a policy adjuster for burn services, we seek clarity on how the Administration developed the specific weight for this service line adjustment, as well as the weights associated with the other policy adjusters. Specifically, what is the rationale for the *specific weights* proposed by the Administration for each policy adjuster?	
13.	**Comment from Greg Vigdor, President and Chief Executive Officer, AzHHA:** There is one adjuster for which we have not been able to ascertain a specific policy rationale—regardless of the weight proposed. The Administration proposes to retain a provider adjuster for "high Medicaid utilization hospitals," and in fact proposes to double the weight for this adjuster in the rebase proposal. According to information released last week, three hospitals would qualify as "high Medicaid utilization hospitals" under the revised definition. The definition does not necessarily target hospitals with the highest Medicaid payer mix in the State, although having a Medicaid inpatient utilization rate greater than 30% for FY 2016 is one of the criteria. Rather, in order to qualify for the adjustment, a hospital for all practical purposes must be one of the largest in the State—because the adjustment is also based on the hospital having at least 400% of the statewide average number of AHCCCS-covered inpatient days during FFY 2016. All three hospitals that qualify for this provider adjustment are located in the Phoenix metropolitan area. They are surrounded by many other hospitals that offer similar services to Medicaid beneficiaries. As such, we ask the Administration to describe the policy rationale for providing additional payments to these specific hospitals. For example, how does this adjustment enhance access to care for Medicaid beneficiaries? What inpatient services do these facilities provide that beneficiaries cannot receive	**AHCCCS RESPONSE:** While the published model identifies three "high utilizing hospitals," under section R9-22-712.65 and 712.68 of the proposed rule, AHCCCS estimates that only one high utilizing hospital would meet all criteria including the proposed outlier threshold. Without the adjustment, this one hospital is projected to have losses under the DRG reimbursement methodology. Establishing a methodology that permits the hospital to incur a projected loss would be inconsistent with AHCCCS' obligation under the federal requirements for the Medicaid program to ensure adequate access to care. The preliminary model was precisely that – a preliminary model. While AHCCCS values the input of stakeholders, to implement the modified DRG reimbursement methodology reflected in the proposed rule by January 1, 2018, AHCCCS solicited comments on the final model through the notice and comment process established as part of the Arizona Administrative Procedures Act.

	elsewhere nearby? What hardships would beneficiaries encounter if they had to travel elsewhere to receive these services? If these hospitals provide specialty services that Medicaid beneficiaries cannot access elsewhere, why not provide an adjustment for those specific service lines rather than an across-the-board provider adjustment? It is vital for the integrity of the APR-DRG payment system and to promote fairness and transparency that stakeholders fully understand the policy rationale for each adjustment. This is especially true for this particular adjustment because (1) the adjustment was modified after the preliminary model was released, and there has been no public discussion on it since then; (2) other hospitals may be paying for this adjustment through an increase to their provider assessment; and (3) the qualifying providers will continue to receive the adjustment regardless of whether their Medicaid utilization or other factors shift from year to year—at least until the rule is next modified.	
14.	**Comment from Greg Vigdor, President and Chief Executive Officer, AzHHA:** In the NOPR, the Administration is also proposing to no longer set the APR-DRG base amounts and weights through the rulemaking process. We are opposed to this proposal. The rulemaking process requires a certain level of accountability for agencies–regardless of who is leading the agency at a particular time. While rulemakings can be cumbersome for state agencies, the public benefits from this accountability and transparency. If the Administration chooses to move ahead with eliminating the base payment amounts and weights from the Administration's rules and instead adjusting them periodically on the Administration's website, we strongly recommend that the proposed rules be modified to include a requirement that the Administration publish modeling information and hospital impact analyses, and hold meetings with stakeholders when changes are proposed to the payment methodology, including changes to base amounts, weights and policy adjusters.	**AHCCCS RESPONSE:** As stated in the preamble to the proposed rule, pursuant to A.R.S. § 36-2903.01(G), the Agency promulgates rules that describe the payment methodology; however, per A.R.S. § 41-1005(A)(9), the Agency is not required to have rules that set forth the actual amounts of fee-for-service payments. As a condition of federal financial participation, the Agency is required to provide notice through its website and/or publication through the State administrative register when proposing a change to the payment methodology. In addition, the State must provide an opportunity for public comment on significant proposed changes to methods and standards for payment rates. 42 U.S.C. § 1396a(a)(13) and 42 C.F.R. § 447.205. Going forward, references to specific dollar amounts and other numerical factors will be published to the Agency's website with advanced notice and public comment prior to implementation. This approach is necessary to accommodate future editions of the APR-DRG system, changes in the national code sets, and the corresponding changes to service and policy adjustors.
15.	**Comment from Greg Vigdor, President and Chief Executive Officer, AzHHA:** Finally, we would like to thank the Administration for the change it made to the	**AHCCCS RESPONSE:** The Agency appreciates your support with respect to the changes to the wage index.

	original model regarding the wage index. We support the inclusion of the "rural floor," which is also used by the Medicare program. AzHHA appreciates the opportunity to provide comments on this rulemaking.	
16.	**Comment from Craig McKnight, Executive VP, Chief Financial Officer, Phoenix Children's Hospital:** The first relates to the qualifying calculation for High Medicaid Utilization Providers. One of the factors of the criteria for that designation is, "covered inpatient days subject to DRG reimbursement, determined using adjudicated claim and encounter data during the fiscal year beginning October 1, 2015, equal to at least four hundred percent of the statewide average number of AHCCCS-covered inpatient days at all hospitals." This calculation compares total AHCCCS days at each facility to the Statewide average. We would suggest that a more relevant measurement for High Medicaid Utilization providers would be a calculation that better represents the extent to which each hospital has dedicated its resources to Medicaid patient services. This calculation should include a factor for or be based on the comparison of AHCCCS days as compared to the total inpatient days of each facility. Utilizing AHCCCS payor mix would show that Phoenix Children's percentage of AHCCCS patient days is over 62%, among the very highest in Arizona. It is worth noting that the State data shows that the average AHCCCS inpatient payor mix is 27%. This shows that PCH is impacted to a much greater degree by AHCCCS APR-DRG reimbursement than most AZ Hospitals while being one of largest hospitals by AHCCCS days and should be considered a High Medicaid Usage facility.	**AHCCCS RESPONSE:** We agree that there are many different methods that could be used to identify high utilizing hospitals. We disagree that the method proposed by the commenter would materially improve the analysis compared to the methodology set forth in the rule. The current rule continues the methodology for identifying high utilizing hospitals that has been in place for the past several years. With the addition of the outlier criteria, the proposed methodology is consistent with the federal standard for establishing a reimbursement methodology that is consistent with efficiency, economy, quality of care, and access to care, and with the objective of not incurring expenditures for inpatient services above the level necessary to meet that standard.
17.	**Comment from Craig McKnight, Executive VP, Chief Financial Officer, Phoenix Children's Hospital:** The second area of concern for PCH is the data utilized in the study. PCH would have welcomed being involved in validating the data gathered for the study. As it is, the reported patient days for PCH are 19% below the level that PCH reports as AHCCCS patient days for that same time period and is below the level that we report annually on our Cost Report as Title XIX Days (excluding observation). Using corrected data would materially impact the representation of PCH. The	**AHCCCS RESPONSE:** We disagree that the data from the AHCCCS claims and encounter system is invalid. That data is a representative and easily available source that AHCCCS employed for its analysis for the entire system. This is the same data source that is attested to by certified actuaries and accepted by the federal government as the basis for capitation payments to managed care organizations. To the extent the commenter is suggesting that every hospital should have the opportunity to validate data or that the

	costs as reported of $127,403,159 do not represent PCH's cost to provide care for AHCCCS patients. Total costs for that time period related to AHCCCS inpatients were $177,058,162. Subtracting this from the calculated reimbursement as reported of $190,302,017, produces a payment-to-cost ratio of 1.07, not the 1.49 reported.	analysis should rely on hospital-reported data, the suggestion is administratively impractical. In addition, given that identification of high utilizing hospital is determined relative to the utilization of all hospitals, it is uncertain at best that a different data source would result in any improvement to the analysis or the outcome of the analysis.
18.	**Comment from Craig McKnight, Executive VP, Chief Financial Officer, Phoenix Children's Hospital:** Lastly, Supplemental payments are a factor in the calculations included in the study report, the inclusion and degree of which can preclude facilities from receiving various policy adjusters. Phoenix Children's is in the process of transitioning away from the Safety Net Care Pool that has recently provided the majority of supplemental payments, including those in this survey. To the extent to which supplemental payments is a factor in these calculations, we would ask that decisions made regarding future reimbursement levels take into consideration that PCH will no longer be receiving SNCP once the current approved SNCP has been distributed.	**AHCCCS RESPONSE:** The commenter incorrectly assumes that supplemental payments affect the application of the adjusters included in the rule. Supplemental payments were not a factor considered in those determinations. At the request of stakeholders based upon input on the preliminary model, the final model includes data on supplemental payments for informational purposes.
19.	**Comment from Linda Hunt, Sr. Vice President of Operations & President/CEO, Arizona, Dignity Health** **Shirley Gunther, VP of External Affairs, Arizona** **Dignity Health, Arizona Service Area Office:** **R9-22-712.65 DRG Provider Policy Adjustor** The Proposed Rule takes into account the unique populations and the high level of acuity served in high-utilization acute care facilities. Hospitals that meet the criteria of a high-utilization provider should be adequately compensated to meet high acuity and frequency of such patients. SJHMC is one of Arizona's first intercity urban acute care hospitals that delivers world-class and as such is one of the State's largest high-utilizers for a subset of patients. **Therefore, we strongly support and urge the adoption of the provider adjustment as it addresses the inequities high-utilization hospitals incur.**	**AHCCCS RESPONSE:** AHCCCS appreciates the commenter's support.
20.	**Comment from Linda Hunt, Sr. Vice President of Operations & President/CEO, Arizona, Dignity Health** **Shirley Gunther, VP of External Affairs, Arizona** **Dignity Health, Arizona Service Area Office:** **R9-22-712.66. DRG Service Policy Adjustor**	**AHCCCS RESPONSE:** While the Agency appreciates and values the skilled services provided by the Barrow Neurological Institute, the Agency has determined that the proposed reimbursement structure, including policy adjustors, is adequate to ensure access to quality care and

	Dignity Health requests "neurology" services to be added to the policy adjustors under the Proposed Rule. Like the other services listed in R9-22-712.66, neurology patients are acutely ill patients with diseases of the brain, spinal cord and nervous system issues that often have associated medical problems complicating their care. The Barrow Neurological Institute at SJHMC is known throughout the U.S. and world as a leader in brain and spine patient care often taking the most complex cases other facilities can't or won't consider. The Barrow preforms more brain surgeries than any other hospital in the United States. It is our experience that claims/encounters data are disproportionately high for this service and the hospital resources required to treat the acuity and complex conditions of these patients justifies the need for neurology to be included the Service Policy Adjustor. **For those reasons, Dignity Health requests that the AHCCCS Administration consider including "neurology" to Service Policy Adjustors in this Proposed Rule.**	comply with federal requirements to establish methodologies consistent with efficiency and economy.
21.	**Comment from Jason Bezozo** **Vice President, Government Relations, Banner Health:** Under the proposed rule, eligible hospitals for the high-utilization policy adjuster would also need to have less than $2 million in outlier payments in FFY 16. Banner would strongly urge AHCCCS to maintain the historical eligibility criteria and eliminate the proposed outlier test. The purpose of outlier payments is to reimburse providers for extraordinary costs that are not represented in the base APR-DRG reimbursement methodology. The inclusion of an outlier test for this adjuster unfairly penalizes high-Medicaid volume hospitals solely based on the provider's presentation of unusually high-cost Medicaid patients. Based on the DRG projections provided by AHCCCS, this proposed addition would preclude both Banner Desert Medical Center and Banner-University Medical Center Phoenix from being eligible for the high-utilization policy adjuster. Both of these facilities have very high Medicaid inpatient utilization compared to other hospitals across the state and should be included in this peer group—not excluded.	**AHCCCS RESPONSE:** We disagree that the outlier test unfairly penalizes high utilizing hospitals. Receipt of projected outlier payments in excess of $2 million results in the hospital receiving adequate reimbursement for extraordinary costs above the DRG. Thus, an additional adjuster for these hospitals is not necessary. Under sections R9-22-712.65 and 712.68 of the proposed rule, AHCCCS estimates that only one high utilizing hospital would meet all criteria including the proposed outlier threshold. Without the adjustment, this one hospital is projected to have losses under the DRG reimbursement methodology. In contrast, other high utilizing hospitals that do not meet the outlier threshold are not projected to have losses. Adoption of the commenter's suggestion would increase AHCCCS expenditures for inpatient hospital services without an anticipated commensurate increase in quality or access to care. This would be inconsistent with the federal standard for establishing a reimbursement methodology that is consistent with efficiency, economy, quality of care, and access to care.

	As AHCCCS prepares to finalize the proposed rule changes to the APR-DRG payment system, we would strongly urge the AHCCCS Administration to establish a payment system that reimburses all high-Medicaid utilization hospitals equally. With AHCCCS covering over 1.9 million Arizonans, nearly 28% of the state population, AHCCCS has the ability to create distortions in the marketplace. That should not be the role of government which is why it is important to treat all providers and peer groups fairly and equally. Thank you	

12. Other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules.

There are no other matters prescribed by statute applicable to rulemaking specific to this agency, to this specific rule, or to this 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:

The rule does not require the provider to obtain a permit or a general permit.

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

The rule is not more stringent than federal law.

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

No such analysis was submitted.

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

R9-22-712.62(B) references the labor share for the Medicare inpatient prospective payment system published in Volume 81 of the Federal Register at page 57312 and the wage index tables referenced in Volume 81 of the Federal Register at page 57311 for the fiscal year beginning October 1, 2016.

R9-22-712.71(4)(b) references 42 C.F.R. § 495.22.

R9-22-712.81 references 42 C.F.R. § 447.205.

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

The rule was not previously made, amended or repealed as an emergency rule.

15. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM ADMINISTRATION

ARTICLE 7. STANDARDS FOR PAYMENTS

Section

R9-22-712.60. Diagnosis Related Group Payments

R9-22-712.62. DRG Base Payment

R9-22-712.63. DRG Base Payments Not Based on the Statewide Standardized Amount

R9-22-712.64. DRG Base Payments and Outlier CCR for Out-of-State Hospitals

R9-22-712.65. DRG Provider Policy Adjustor

R9-22-712.66. DRG Service Policy Adjustor

R9-22-712.68. DRG Reimbursement: Unadjusted Outlier Add-on Payment

R9-22-712.71. Final DRG Payment

R9-22-712.72. DRG Reimbursement: Enrollment Changes During an Inpatient Stay

R9-22-712.80. DRG Reimbursement: New Hospitals

R9-22-712.81. DRG Reimbursement: Updates

ARTICLE 7. STANDARDS FOR PAYMENTS

R9-22-712.60. Diagnosis Related Group Payments

A. Inpatient hospital services with discharge dates on or after October 1, 2014, shall be reimbursed using the diagnosis related group (DRG) payment methodology described in this section and sections R9-22-712.61 through R9-22-712.81.

B. Payments made using the DRG methodology shall be the sole reimbursement to the hospital for all inpatient hospital services and related supplies provided by the hospital. Services provided in the emergency room, observation area, or other outpatient departments that are directly followed by an inpatient admission to the same hospital are not reimbursed separately. Are reimbursed through the DRG methodology and not reimbursed separately.

C. Each claim for an inpatient hospital stay shall be assigned a DRG code and a DRG relative weight based on ~~version 31 of~~ the All Patient Refined Diagnosis Related Group (APR-DRG) classification system established by 3M Health Information Systems. ~~If version 31 of the APR-DRG classification system will no longer support assigning DRG codes and relative weights to claims, and 3M Health Information Systems issues a newer version of the APR-DRG classification system using updated DRG codes and/or updated relative weights, then~~

~~an updated version established by 3M Health Information Systems will be used; however,~~ The applicable version of the APR-DRG classification system shall be available on the agency's website. ~~if the posted version employs updated relative weights, those weights will be adjusted using a single adjustment factor applied to all relative weights if necessary to ensure that the statewide weighted average of the updated relative weights does not increase or decrease from the statewide weighted average of the relative weights used under version 31~~.

D. Payments for inpatient hospital services reimbursed using the DRG payment methodology are subject to quick pay discounts and slow pay penalties under A.R.S. 36-2904.

E. Payments for inpatient hospital services reimbursed using the DRG payment methodology are subject to the Urban Hospital Reimbursement Program under R9-22-718.

F. For purposes of this section and sections R9-22-712.61 through R9-22-712.81:

1. "DRG National Average length of stay" means the national arithmetic mean length of stay published in ~~version 31 of~~ the All Patient Refined Diagnosis Related Group (APR-DRG) classification established by 3M Health Information Systems.
2. "Length of stay" means the total number of calendar days of an inpatient stay beginning with the date of admission through discharge, but not including the date of discharge (including the date of a discharge to another hospital, i.e., a transfer) unless the member expires.
3. "Medicare" means Title XVIII of the Social Security Act, 42 U.S.C. 1395 *et seq*.
4. "Medicare labor share" means a hospital's labor costs as a percentage of its total costs as determined by CMS for purposes of the Medicare Inpatient Prospective Payment System.

R9-22-712.62. DRG Base Payment

A. The initial DRG base payment is the product of the DRG base rate, the DRG relative weight for the post-HCAC DRG code assigned to the claim, and any applicable provider and service policy adjustors.

B. The DRG base rate for each hospital is the statewide standardized amount of which the hospital's labor-related share of that amount is adjusted by the hospital's wage index~~,~~. ~~where the standardized amount is $5,295.40, and the~~ The hospital's labor share is determined based on the labor share for the Medicare inpatient prospective payment system published in Volume 81 of the Federal Register at page 57312 published August 22, 2016. ~~and the~~ The hospital's wage index ~~are those used in the Medicare inpatient prospective payment system for the fiscal year beginning October 1, 2013~~ is determined based on the wage index tables reference in Volume 81 of the Federal Register at page 57311 published August 22, 2016. The statewide standardized amount is included in the AHCCCS capped fee schedule available on the agency's website.

C. Claims shall be assigned both a DRG code derived from all diagnosis and surgical procedure codes included on the claim (the "pre-HCAC" DRG code) and a DRG code derived excluding diagnosis and surgical procedure codes associated with the health care acquired conditions that were not present on admission or any other provider-preventable conditions (the "post-HCAC" DRG code). The DRG code with the lower relative weight shall be used to process claims using the DRG methodology.

R9-22-712.63. DRG Base Payments Not Based on the Statewide Standardized Amount

A. Notwithstanding section R9-22-712.62, ~~the amount of $3,436.08~~ a select specialty hospital standardized amount shall be used in place of the statewide standardized amount in subsection R9-22-712.62(B) to calculate the DRG base rate for the following hospitals:

1. Hospitals located in a city with a population greater than one million, which on average have at least 15 percent of inpatient days for patients who reside outside of Arizona, and at least 50 percent of discharges as reported on the 2011 Medicare Cost Report are reimbursed by Medicare.
2. Hospitals designated as type: hospital, subtype: short-term that has a license number beginning "SH" in the Provider & Facility Database for Arizona Medical Facilities posted by the ADHS Division of Licensing Services on its website for March of each year.

B. The select specialty hospital standardized amount is included in the AHCCCS capped fee schedule available on the agency's website.

R9-22-712.64. DRG Base Payments and Outlier CCR for Out-of-State Hospitals

A. DRG Base payment:

1. For high volume out-of-state hospitals defined in subsection (C), the wage adjusted DRG base payment is determined as described in R9-22-712.62.
2. Notwithstanding subsection R9-22-712.62 the wage adjusted DRG base rate for out-of-state hospitals that are not high volume hospitals shall be ~~$5,184.75~~ included in the AHCCCS capped fee schedule available on the agency's website.

B. Outlier CCR:

1. Notwithstanding subsection R9-22-712.68, the CCR used for the outlier calculation for out-of-state hospitals that are not high volume hospitals shall be the sum of the statewide urban default operating cost-to-charge ratio and the statewide capital CCR in the data file established as part of the Medicare Inpatient Prospective Payment System by CMS.
2. The CCR used for the outlier calculation for high volume out-of-state hospitals is the same as in-state hospitals as described in R9-22-712.68.

C. A high volume out-of-state hospital is a hospital not otherwise excluded under R9-22-712.61, that is located in a county that borders the State of Arizona and had 500 or more AHCCCS covered inpatient days for the fiscal year beginning October 1, ~~2010~~ 2015.

D. Other than as required by this section, DRG reimbursement for out-of-state hospitals is determined under R9-22-712.60 through R9-22-712.81.

R9-22-712.65. DRG Provider Policy Adjustor

A. After calculating the DRG base payment as required in sections R9-22-712.62, R9-22-712.63, or R9-22-712.64,

for claims from a high-utilization hospital, the product of the DRG base rate and the DRG relative weight for the post-HCAC DRG code shall be multiplied by a provider policy adjustor ~~of 1.055~~ that is included in the AHCCCS capped fee schedule available on the agency's website.

B. A hospital is a high-utilization hospital if the hospital had:

1. ~~At least 46,112 AHCCCS covered~~ Covered inpatient days subject to DRG reimbursement, determined using adjudicated claim and encounter data during the fiscal year beginning October 1, ~~2010~~ 2015, ~~which is~~ equal to at least four hundred percent of the statewide average number of AHCCCS-covered inpatient days at all hospitals ~~of 11,528 days~~; ~~and,~~
2. A Medicaid inpatient utilization rate greater than 30% calculated as the ratio of AHCCCS-covered inpatient days to total inpatient days as reported in the hospital's Medicare Cost Report for the fiscal year ending ~~2011~~ 2016; and,
3. Received less than $2 million in add-on payment for outliers under R9-22-712.68, based on adjudicated claims and encounters for fiscal year beginning October 1, 2015.

R9-22-712.66. DRG Service Policy Adjustor

In addition to subsection R9-22-712.65, for claims with DRG codes in the following categories, the product of the DRG base rate, the DRG relative weight for the post-HCAC DRG code, and the DRG provider policy adjustor shall be multiplied by the service policy adjustor listed in the AHCCCS capped fee schedule, available on the agency's website, corresponding to the following DRG codes ~~following service policy adjustors~~:

1. Normal newborn DRG codes~~: 1.55.~~
2. Neonates DRG codes~~: 1.10.~~
3. Obstetrics DRG codes~~: 1.55.~~
4. Psychiatric DRG codes~~: 1.65.~~
5. Rehabilitation DRG codes~~: 1.65.~~
6. Burn DRG codes.
~~6~~7. Claims for members under age 19 assigned DRG codes other than listed above:
   a. ~~1.25 for~~ For dates of discharge occurring on or after October 1, 2014 and ending no later than December 31, 2015 regardless of severity of illness level,
   b. ~~1.25 for~~ For dates of discharge on or after January 1, 2016, for severity of illness levels 1 and 2,
   c. ~~1.60 for~~ For dates of discharge on or after January 1, 2016 and before January 1, 2017, for severity of illness levels 3 and 4.
   d. For dates of discharge on or after January 1, 2017, and before January 1, 2018 for severity of illness levels 3 and 4.
   e. For dates of discharge on or after January 1, 2018, for severity of illness levels 3 and 4.
8. Claims for members assigned DRG codes other than listed above.

R9-22-712.68. DRG Reimbursement: Unadjusted Outlier Add-on Payment

A. Claims for inpatient hospital services qualify for an outlier add-on payment if the claim cost exceeds the outlier cost threshold.

B. The claim cost is determined by multiplying covered charges by an outlier CCR as described by the following subsections:

1. For hospitals designated as type: hospital, subtype: children's in the Provider & Facility Database for Arizona Medical Facilities posted by the ADHS Division of Licensing Services on its website for March of each year. The outlier CCR will be calculated by dividing the hospital total costs by the total charges using the most recent Medicare Cost Report available as of September 1 of that year.
2. For Critical Access Hospitals the outlier CCR will be the sum of the statewide rural default operating cost-to-charge ratio and the statewide capital cost-to-charge ratio in the data file established as part of the Medicare Inpatient Prospective Payment System by CMS.
3. For all other hospitals the outlier CCR will be the sum of the operating cost-to-charge ratio and the capital cost-to-charge ratio established for each hospital in the impact file established as part of the Medicare Inpatient Prospective Payment System by CMS.

C. AHCCCS shall update the CCRs described in subsection (B) to conform to the most recent CCRs established by CMS as of September 1 of each year, and the CCRs so updated shall be used ~~For~~ for claims with dates of discharge on or after October 1 of that year.

D. The outlier threshold is equal to the sum of the unadjusted DRG base payment plus the fixed loss amount. The fixed loss amount ~~is $5,000~~ for critical access hospitals and ~~$65,000~~ for all other hospitals are included in the AHCCCS capped fee schedule available on the agency's website.

E. For those inpatient hospital claims that qualify for an outlier add-on payment, the payment is calculated by subtracting the outlier threshold from the claim cost and multiplying the result by the DRG marginal cost percentage. The DRG marginal cost percentage ~~is 90%~~ for claims assigned DRG codes associated with the treatment of burns and ~~80%~~ for all other claims are included in the AHCCCS capped fee schedule available on the agency's website.

R9-22-712.71. Final DRG Payment

The final DRG payment is the sum of the final DRG base payment, the final DRG outlier add-on payment, and the Inpatient Value Based Purchasing (VBP) Differential Adjusted Payment.

1. For claims with dates of discharge prior to January 1, 2018, ~~The~~ the final DRG base payment is an amount equal to the product of the covered day adjusted DRG base payment and a hospital-specific factor established to limit the financial impact to individual hospitals of the transition from the tiered per diem payment methodology and to account for improvements in documentation and coding that are expected as a result of the transition. For claims with dates of discharge on and after January 1, 2018, no adjustment will be made to limit the financial impact to individual hospitals of the transition from the tiered per diem

payment methodology or to account for improvements in documentation and coding.

2. For claims with dates of discharge prior to January 1, 2018, ~~The~~ the final DRG outlier add-on payment is an amount equal to the product of the covered day adjusted DRG outlier add-on payment and a hospital-specific factor established to limit the financial impact to individual hospitals of the transition from the tiered per diem payment methodology and to account for improvements in documentation and coding that are expected as a result of the transition. For claims with dates of discharge on and after January 1, 2018, no adjustment will be made to limit the financial impact to individual hospitals of the transition from the tiered per diem payment methodology or to account for improvements in documentation and coding.
3. The factor for each hospital and for ~~each federal fiscal year~~ claims with dates of discharge prior to January 1, 2018 is published as part of the AHCCCS capped fee schedule and is available on the AHCCCS administration's website and is on file for public inspection at the AHCCCS administration located at 701 E. Jefferson Street, Phoenix, Arizona.
4. For inpatient services with a date of discharge from October 1, 2017 through September 30, 2018, the Inpatient VBP Differential Adjusted Payment is the sum of the final DRG base payment and the final DRG outlier add-on payment multiplied by a percentage published on the Administration's public website as part of its fee schedule, subsequent to the public notice published no later than September 1, 2017. To qualify for the Inpatient VBP Differential Adjusted Payment, a hospital providing inpatient hospital services must by May 15, 2017, have executed an agreement with a qualifying health information exchange organization and electronically submitted laboratory, radiology, transcription, and medication information, plus admission, discharge, and transfer information (including data from the hospital emergency department), to a qualifying health information exchange organization.

R9-22-712.72. DRG Reimbursement: Enrollment Changes During an Inpatient Stay

A. If a member's enrollment changes during an inpatient stay, including changing enrollment from fee-for-service to a contractor, or vice versa, or changing from one contractor to another contractor, the contractor with whom the member is enrolled on the date of discharge shall be responsible for reimbursing the hospital for the entire length of stay under the DRG payment rules in sections R9-22-712.60 through R9-22-712.81. If the member is eligible but not enrolled with a contractor on the date of discharge, then the AHCCCS administration shall be responsible for reimbursing the hospital for the entire length of stay under the DRG payment rules in sections R9-22-712.60 through R9-22-712.81.

B. When a member's enrollment changes during an inpatient stay, the hospital shall use the date of enrollment with the payer responsible on the date of discharge as the "from" date of service on the claim regardless of the date of admission. ~~The claim may include all surgical procedures performed during the entire inpatient stay, but the hospital shall only include revenue codes, service units, and charges for services performed on or after the date of enrollment~~.

C. Interim claims submitted to a payer other than the payer responsible on the day of discharge shall be processed in the same manner as other interim claims as described in R9-22-712.76.

R9-22-712.80. DRG Reimbursement: New Hospitals

A. DRG base payment for new hospitals. For any hospital that does not have a labor share or wage index published by CMS as described in section R9-22-712.62(B) because the hospital was not in operation, the DRG base rate described in section R9-22-712.62(B) shall be calculated as the statewide standardized amount ~~of $5,295.40~~ after adjusting that amount for the labor-related share and the wage index published by CMS as described in section R9-22-712.62(B) that is appropriate to the location of the hospital published by CMS as described in section R9-22-712.62(B).

B. Outlier calculations for new hospitals. For any hospital that does not have an operating cost-to-charge ratio listed in the impact file described in section R9-22-712.68(B) because the hospital was not in operation prior to the publication of the impact file, the statewide urban or rural default operating cost-to-charge ratio appropriate to the location of the hospital and the statewide capital cost-to-charge ratio shall be used to determine the unadjusted outlier add-on payment. The statewide urban or rural default operating cost-to-charge ratio and the statewide capital cost-to-charge ratio shall be based on the ratios published by CMS and updated by the Administration as described in section R9-22-712.68(C).

C. In addition to the requirement of this section, DRG reimbursement for new hospitals is determined under R9-22-712.60 through R9-22-712.79.

R9-22-712.81. DRG Reimbursement: Updates

In addition to the other updates provided for in sections R9-22-712.60 through R9-22-712.80, the Administration may update the version of the APR-DRG classification system established by 3M Health Information Systems, adjust the statewide standardized amount in section R9-22-712.62, the base payments in sections R9-22-712.63 and R9-22-712.64, the provider policy adjustor in section R9-22-712.65, service policy adjustors section R9-22-712.66, and the fixed loss amounts and marginal cost percentages used to calculate the outlier threshold in section R9-22-712.68 to the extent necessary to assure that payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available at least to the extent that such care and services are available to the general population in the geographic area. The Administration shall publish any proposed classification system on the agency's website at least 30 days prior to the effective date, to ensure a sufficient period for public comment, as required by 42 C.F.R. § 447.205. In addition, the public notice shall be available for inspection during normal business hours at 701 E. Jefferson, Phoenix, Arizona. The requirements of 42 C.F.R. § 447.205 as of November 2, 2015 are incorporated by reference and do not include any later amendments.

August 14, 2017

Mr. Tom Betlach
Director
Arizona Health Care Cost Containment System
801 E Jefferson St.
Phoenix, AZ 85034

Dear Mr. Betlach:

On behalf of the Arizona Hospital and Healthcare Association (AzHHA) and our more than 80 hospital, healthcare and affiliated health system members, thank you for the opportunity to comment on the AHCCCS Administration's Notice of Proposed Rulemaking (NOPR) making revisions to the APR-DRG payment system. We would like to extend our appreciation to the Administration for meeting with stakeholders in May and sharing a preliminary model at that time. It allowed us to tease out some initial questions and comments, which Administration staff responded to in June. We follow up on these preliminary questions/comments later in this letter.

We are also very appreciative for the additional $35 million in total funds that the Administration proposes to infuse into the DRG payment system. As you know, the State has frozen and/or cut hospital rates for almost ten years. During this time period, labor, equipment, and supply costs have continued to rise. Moreover, this comes at a time when hospitals have assumed greater financial responsibility for supporting the Medicaid system through an assessment.

Having said this, we think it is important for hospitals and other stakeholders to have a fuller understanding of the sources of this increased funding. The Preamble to the NOPR states that state expenditures will increase by approximately $8.3 million, some of which will come from the general fund, and some from the hospital assessment. In order for stakeholders to evaluate the impact of this proposal, we recommend the Administration provide an estimate of how this proposal would impact the assessment paid by each hospital. This is especially important because some hospitals are not paid

within the APR-DRG system and would not receive any increased payments from this proposal. Moreover, the impact statement sent by the Administration to hospitals estimates that payments to thirteen hospitals and three health systems within the DRG system would be reduced under the rebase proposal. Payments to one hospital are estimated to be reduced by 4.1 %—not an inconsequential amount. While one would expect a revenue-neutral rebasing initiative to result in estimated payment losses for some hospitals, the fact that the Administration's proposal includes additional funds, which are partially funded by the provider assessment, and the proposal includes a 1.025 policy adjustment "for all other claims" makes this proposal different.

To be clear, we are not opposed to using the hospital assessment to fund a rate increase. In fact, AzHHA has previously supported the use of the assessment for this purpose. However, we feel very strongly that stakeholders should have the opportunity to understand the implications of this approach, particularly for providers who are reimbursed under different payment methodologies or who are estimated to experience reduced reimbursement under the proposal.

As mentioned above, we appreciate the Administration sharing a preliminary model of the rebase proposal. However, the Administration has revised the methodology since its May meeting with stakeholders, and has not posted an updated model with the NOPR. While the Preamble states that information regarding the model would be posted to the agency's website with the publication of the NOPR, we have not been able to locate this information. We appreciate the Administration sending out hospital and health system impact information last week, but this does not provide enough information to fully evaluate the current model and its impact on access to care for Medicaid beneficiaries.

We are particularly interested in understanding the rationale behind some of the policy adjusters and their corresponding weights. The APR-DRG system as a methodology takes into account high acuity cases that some providers may experience disproportionately, and the relative weights reflect the typical resources needed to care for a patient within a particular DRG category. AzHHA believes that any additional policy adjusters should be based on key Medicaid principles of enhancing access to care and/or improving quality and efficiency. Many of the policy adjusters that AHCCCS has put in place previously or that it proposes in the NOPR are typical of this approach. They target high cost service lines and/or those services on which Medicaid beneficiaries particularly rely, including pediatrics, obstetrics, and neonatology. Many other states use similar adjusters.

The proposal to include a policy adjuster for burn services fits this approach as well. It is a very high cost, specialized service that is critical to maintain for Medicaid

beneficiaries. If the State were to lose burn services at the one burn center in Arizona, Medicaid beneficiaries would need to be transported out of state for appropriate care. For this reason, we support including an adjuster for burn services.

While we support the inclusion of a policy adjuster for burn services, we seek clarity on how the Administration developed the specific weight for this service line adjustment, as well as the weights associated with the other policy adjusters. Specifically, what is the rationale for the *specific weights* proposed by the Administration for each policy adjuster?

There is one adjuster for which we have not been able to ascertain a specific policy rationale—regardless of the weight proposed. The Administration proposes to retain a provider adjuster for "high Medicaid utilization hospitals," and in fact proposes to double the weight for this adjuster in the rebase proposal. According to information released last week, three hospitals would qualify as "high Medicaid utilization hospitals" under the revised definition. The definition does not necessarily target hospitals with the highest Medicaid payer mix in the State, although having a Medicaid inpatient utilization rate greater than 30% for FY 2016 is one of the criteria. Rather, in order to qualify for the adjustment, a hospital for all practical purposes must be one of the largest in the State—because the adjustment is also based on the hospital having at least 400% of the statewide average number of AHCCCS-covered inpatient days during FFY 2016.

All three hospitals that qualify for this provider adjustment are located in the Phoenix metropolitan area. They are surrounded by many other hospitals that offer similar services to Medicaid beneficiaries. As such, we ask the Administration to describe the policy rationale for providing additional payments to these specific hospitals. For example, how does this adjustment enhance access to care for Medicaid beneficiaries? What inpatient services do these facilities provide that beneficiaries cannot receive elsewhere nearby? What hardships would beneficiaries encounter if they had to travel elsewhere to receive these services? If these hospitals provide specialty services that Medicaid beneficiaries cannot access elsewhere, why not provide an adjustment for those specific service lines rather than an across-the-board provider adjustment? It is vital for the integrity of the APR-DRG payment system and to promote fairness and transparency that stakeholders fully understand the policy rationale for each adjustment. This is especially true for this particular adjustment because (1) the adjustment was modified after the preliminary model was released, and there has been no public discussion on it since then; (2) other hospitals may be paying for this adjustment through an increase to their provider assessment; and (3) the qualifying providers will continue to receive the adjustment regardless of whether their Medicaid utilization or other factors shift from year to year—at least until the rule is next modified.

In the NOPR, the Administration is also proposing to no longer set the APR-DRG base amounts and weights through the rulemaking process. We are opposed to this proposal. The rulemaking process requires a certain level of accountability for agencies–regardless of who is leading the agency at a particular time. While rulemakings can be cumbersome for state agencies, the public benefits from this accountability and transparency. If the Administration chooses to move ahead with eliminating the base payment amounts and weights from the Administration's rules and instead adjusting them periodically on the Administration's website, we strongly recommend that the proposed rules be modified to include a requirement that the Administration publish modeling information and hospital impact analyses, and hold meetings with stakeholders when changes are proposed to the payment methodology, including changes to base amounts, weights and policy adjusters.

Finally, we would like to thank the Administration for the change it made to the original model regarding the wage index. We support the inclusion of the "rural floor," which is also used by the Medicare program. AzHHA appreciates the opportunity to provide comments on this rulemaking. Please feel free to contact me if you have any questions or comments.

Sincerely,

Greg Vigdor
President and Chief Executive Officer

Banner Health®

August 14, 2017

Gina Relkin
Arizona Health Care Cost Containment System
Office of Administrative Legal Services
701 East Jefferson, Mail Drop 6200
Phoenix, AZ 85034

Dear Ms. Relkin,

In 2014, the Arizona Health Care Cost Containment System (AHCCCS) Administration transitioned from a tiered per diem inpatient payment system to the current All Patient Refined Diagnosis-Related Group (APR-DRG) reimbursement methodology. Banner Health supported the enabling legislation (Laws 2012, Chapter 122) to modernize the inpatient payment system from one that rewarded longer lengths of stays and higher costs.

When AHCCCS first established the APR-DRG reimbursement methodology, a provider policy adjuster for high-Medicaid utilization hospitals was included. Eligibility for this adjuster was based on two conditions: (1) the hospital's Medicaid inpatient days had to have at least 400% of the statewide average number of AHCCCS-covered inpatient days at all hospitals, and (2) the hospital had to have a Medicaid inpatient utilization rate of greater than 30%.

Under the proposed rule, eligible hospitals for the high-utilization policy adjuster would also need to have less than $2 million in outlier payments in FFY 16. Banner would strongly urge AHCCCS to maintain the historical eligibility criteria and eliminate the proposed outlier test. The purpose of outlier payments is to reimburse providers for extraordinary costs that are not represented in the base APR-DRG reimbursement methodology. The inclusion of an outlier test for this adjuster unfairly penalizes high-Medicaid volume hospitals solely based on the provider's presentation of unusually high-cost Medicaid patients.

Based on the DRG projections provided by AHCCCS, this proposed addition would preclude both Banner Desert Medical Center and Banner-University Medical Center Phoenix from being eligible for the high-utilization policy adjuster. Both of these facilities have very high Medicaid inpatient utilization compared to other hospitals across the state and should be included in this peer group—not excluded.

As AHCCCS prepares to finalize the proposed rule changes to the APR-DRG payment system, we would strongly urge the AHCCCS Administration to establish a payment system that reimburses all high-Medicaid utilization hospitals equally. With AHCCCS covering over 1.9 million Arizonans, nearly 28% of the state population, AHCCCS has the ability to create distortions in the marketplace. That should not be the role of government which is why it is important to treat all providers and peer groups fairly and equally.

Thank you for your time and consideration.

Sincerely,

Jason Bezozo
VP, Government Relations

Barry, Linda

From: Burns, Victoria
Sent: Tuesday, August 08, 2017 12:00 PM
To: Brashear, Brandi - PHX; Goss, Matthew - PHX
Cc: Upston, Amy; Johnson, Maureen; Bruss, Jason - PHX; Arvayo, Brittany - PHX
Subject: RE: AHCCCS APR-DRG Proposed Rule

Hi Brandi.

It is further refinement to ensure the described policy adjustor receives its intended application.

From: Brashear, Brandi - PHX [mailto:Brandi.Brashear@DignityHealth.org]
Sent: Friday, August 04, 2017 4:11 PM
To: Burns, Victoria; Goss, Matthew - PHX
Cc: Upston, Amy; Johnson, Maureen; Bruss, Jason - PHX; Arvayo, Brittany - PHX
Subject: RE: AHCCCS APR-DRG Proposed Rule

What was the logic behind this additional qualifier?

Brandi Brashear | Reimbursement Director | **Dignity Health** | 3033 N. 3rd Ave., Phoenix, AZ 85013 | (o) 602-307-2421 (f) 602-728-9020 | brandi.brashear@dignityhealth.org

From: Burns, Victoria [mailto:Victoria.Burns@azahcccs.gov]
Sent: Thursday, July 27, 2017 8:09 AM
To: Goss, Matthew - PHX <Matthew.Goss@DignityHealth.org>
Cc: Upston, Amy <Amy.Upston@azahcccs.gov>; Johnson, Maureen <Maureen.Johnson@azahcccs.gov>; Brashear, Brandi - PHX <Brandi.Brashear@DignityHealth.org>; Bruss, Jason - PHX <Jason.Bruss@DignityHealth.org>; Arvayo, Brittany - PHX <Brittany.Arvayo@DignityHealth.org>
Subject: RE: AHCCCS APR-DRG Proposed Rule

Dignityhealth.org made the following annotations

STOP, THINK, READ. This is an external email. Exercise extra caution responding to it, opening attachments and following links.

Hi Matt.

The new qualifier does not exclude St Joseph Hospital, which will continue to receive the high-utilization policy adjustor following the rebase.

Victoria Burns
Reimbursement Administrator
AHCCCS Division of Health Care Management
(602) 417-4049

-------- Original message --------
From: "Goss, Matthew - PHX" <Matthew.Goss@DignityHealth.org>

Date: 7/26/17 5:44 PM (GMT-07:00)
To: "Upston, Amy" <Amy.Upston@azahcccs.gov>
Cc: "Brashear, Brandi - PHX" <Brandi.Brashear@DignityHealth.org>, "Bruss, Jason - PHX" <Jason.Bruss@DignityHealth.org>, "Arvayo, Brittany - PHX" <Brittany.Arvayo@DignityHealth.org>
Subject: RE: AHCCCS APR-DRG Proposed Rule

Hi Amy,

We've reviewed the proposed rule and noticed that there is a new requirement to receive the high-utilization multiplier. Would the qualification requiring hospitals to receive less than $2M in outlier payments exclude St. Joseph's from getting this adjustment factor? Please let us know.

Thank you,
Matt

Matt Goss | Reimbursement Manager | **Dignity Health** | 3033 N. 3rd Ave., Phoenix, AZ 85013 | (o) 602-307-2886 (f) 602-604-4846 | matthew.goss@dignityhealth.org

From: Upston, Amy [mailto:Amy.Upston@azahcccs.gov]
Sent: Tuesday, June 20, 2017 9:38 AM
To: jeremy.williams@bannerhealth.com; ADiMuria@abrazohealth.com; akelly@cvrmc.org; Alice.pope@honorhealth.com; anthony.cirocco@adpt.com; blocklear@abrazohealth.com; bsmith@nshinc.com; cflanagan@lapazhospital.org; CFlores@iasishealthcare.com; cheryl.tong@bannerhealth.com; Christina.Dimambro@lpnt.net; cmcknight@phoenixchildrens.com; daniel.stimpson@bannerhealth.com; dean.shepardson2@bannerhealth.com; debra.mohesky@bannerhealth.com; Derek.Lythgoe@bannerhealth.com; deweyb@mtgraham.org; DWillie@yumaregional.org; Emma.Canlas@lpnt.net; Sorensen, Eric - CRMC; Eugene.Alexander@northwestmedicalcenter.com; froisland.jeffrey@mayo.edu; gbrink@sshaz.com; jackie.lundblad@wickhosp.com; jeff.buehrle@bannerhealth.com; Jackson, Jeffrey - SJHMC; Jeffrey.Treasure@nahealth.com; jehasz@cqch.org; jfreet@lcmcwmh.com; jhastings-smith@abrazohealth.com; jmoore@greenvalleyhospital.com; jomalley@haciendainc.org; jxzyla@abrazohealth.com; kaguirre@ncch.com; Kathleen.Benaquista@mihs.org; kgoranson@bensonhospital.org; larry.tyrrell@wmrmc.com; llivin@yrmc.org; mrice2@yrmc.org; lschroeder@newvisionhealth.com; MAHartman@iasishealthcare.com; marty_brockman@chs.net; Maurene.Polashek@orovalleyhospital.com; patricia.rhoden@bannerhealth.com; PAUL.HYMEL@abrazohealth.com; Rollie.pirkl@tenethealth.com; Rollie.pirkl@carondelet.org; sadams2@summithealthcare.net; shayoung@uspi.com; sherry.ost@canyonvistamedicalcenter.com; sodonnell@oasishospital.com; steve.bush@tmcaz.com; tblanchard@azkrmc.com; Theresa.Mouton@carondelet.org; Trevor.Lewis@bannerhealth.com; Steven.Vance@imail.org; jmcmullin@rmchcs.org; Phillip.Baker@hcahealthcare.com; Stephanie.Merrill@umcsn.com; KAMiller@sjrmc.net
Cc: SAS@IMAIL.ORG; Sgeorge@sjrmc.net; jamos@yrmc.org; ddeveau@yrmc.org; Alanna.Mallery@nahealth.com; Bobby.Yazzie@nahealth.com; Lois.Reynosa-Qumyintewa@nahealth.com; Jill.Robertson@nahealth.com; Becky.Myers@nahealth.com; Bobby.Yazzie@nahealth.com; Shantra.Wayne@nahealth.com; Ashley.sanders@wickhosp.com; blewis@abrazohealth.com; Carol.Bailey@tenethealth.com; Rob.Riordan@tenethealth.com; Robert.Myers@tenethealth.com; Ryan.Harper@tenethealth.com; Brashear, Brandi - PHX; Goss, Matthew - PHX; Gunther, Shirley - SJHMC1; Bret.Hicks@tmcaz.com; bturner@lcmcwmh.com; Jack.Dempsey@nahealth.com; cwebb@lcmcwmh.com; Becky.Myers@nahealth.com; Bobby.Yazzie@nahealth.com; ceo@lapazhospital.org; deana.koenig@wmrmc.com; Hills.Teri@mayo.edu; jchamplin@phoenixchildrens.com; dpfannenstiel@phoenixchildrens.com; jdickson@cqch.org; jehasz@cqch.org; Jennifer.Stepanek@mihs.org; Mhay@yumaregional.org; CFO@yumaregional.org; Michelle.Pabis@HonorHealth.com; Jenifer.Hendrix@HonorHealth.com; Lisa.Replogle@HonorHealth.com; njensen@cvrmc.org; rbedolla@ncch.com; pnoland@ncch.com; dlinton@ncch.com; RKnox@ncch.com; cholden@ncch.com; echanay-peters@ncch.com; rmcarthur@summithealthcare.net; KALLEN@summithealthcare.net; jcovey@summithealthcare.net; jadams@summithealthcare.net; JStoner@summithealthcare.net; Rudy.Angulo@bannerhealth.com; jeff.buehrle@bannerhealth.com; patricia.rhoden@bannerhealth.com; Jason.Bezozo@bannerhealth.com; john.peters@bannerhealth.com; John.Boelman@bannerhealth.com; Martha.Dominguez@bannerhealth.com; Scott.Steiner@bannerhealth.com; Robert.gould@bannerhealth.com; Todd.Werner@bannerhealth.com; Kathy.Bollinger@bannerhealth.com; Jeff.buehrle@bannerhealth.com; Patricia.Rhoden@bannerhealth.com; John.peters@bannerhealth.com;

Lori.Neal@bannerhealth.com; Maurene.Polashek@bannerhealth.com; Steven.Bain@bannerhealth.com; sandy_price@iasishealthcare.com; sophia.hase@LPNT.net; Franklin.Talbott@LPNT.net; denise.schreiner@lhcgroup.com; Tien_Nguyen@chs.net; Victoria.crothers@canyonvistamedicalcenter.com; Burns, Victoria; Johnson, Maureen; Jim Haynes (Jim@AzHHA.Org); Debbie Johnston; Jennifer Carusetta (jcarusetta@hsaaz.com)
Subject: AHCCCS APR-DRG Proposed Rule

Dignityhealth.org made the following annotations

STOP, THINK, READ. This is an external email. Exercise extra caution responding to it, opening attachments and following links.

Last week we posted a Notice of Proposed Rulemaking on the APR-DRG payment methodology to our website. The public comment period for the rule ends on 8/8/17. More information can be found at: https://www.azahcccs.gov/PlansProviders/CurrentProviders/State/proposedrules.html.

Please direct questions on the proposed rule to Victoria Burns at Victoria.Burns@azahcccs.gov.

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Dignity Health.

3030 N. Central Avenue , Ste. 1402
Phoenix, AZ 85012
direct 602-406-6090
dignityhealth.org

August 14, 2017

Gina Relkin
Office of Administrative and Legal Services
AHCCCS Administration
701 E. Jefferson, Mail Drop 6200
Phoenix, Arizona 85034

Via Fax & Email:
(602) 253-9115
AHCCCSrules@azahcccs.gov

RE: Dignity Health Comments to Notice of Proposed Rule A.A.C. R9-22-712.60 through R9-22-712.81 - Diagnosis Related Group (DRG) Payment Methodology

Dear Ms. Relkin:

On behalf of Dignity Health, I want to thank you for the opportunity to comment on the proposed A.A.C. R9-22-712.60 through R9-22-712.81 (the "Proposed Rule"). Dignity Health in Arizona is a respected leader in world-class medical care, cutting-edge research, superior education and is driven by its mission to serve the poor and underserved. Our acute care hospitals include St. Joseph's Hospital and Medical Center (SJHMC), St. Joseph's Westgate (SJW), Mercy Gilbert Medical Center (MGMC), and Chandler Regional Medical Center (CRMC).

R9-22-712.65 DRG Provider Policy Adjustor

The Proposed Rule takes into account the unique populations and the high level of acuity served in high-utilization acute care facilities. Hospitals that meet the criteria of a high-utilization provider should be adequately compensated to meet high acuity and frequency of such patients. SJHMC is one of Arizona's first intercity urban acute care hospitals that delivers world-class and as such is one of the State's largest high-utilizers for a subset of patients. **Therefore, we strongly support and urge the adoption of the provider adjustment as it addresses the inequities high-utilization hospitals incur.**

R9-22-712.66. DRG Service Policy Adjustor

Dignity Health requests "neurology" services to be added to the policy adjustors under the Proposed Rule. Like the other services listed in R9-22-712.66, neurology patients are acutely ill patients with diseases of the brain, spinal cord and nervous system issues that often have associated medical problems complicating their care. The Barrow Neurological Institute at SJHMC is known throughout the U.S. and world as a leader in brain and spine patient care often taking the most complex cases other facilities can't or won't consider.

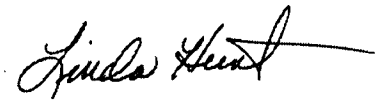
Dignity Health.

3030 N. Central Avenue , Ste. 1402
Phoenix, AZ 85012
direct 602-406-6090
dignityhealth.org

The Barrow preforms more brain surgeries than any other hospital in the United States. It is our experience that claims/encounters data are disproportionately high for this service and the hospital resources required to treat the acuity and complex conditions of these patients justifies the need for neurology to be included the Service Policy Adjustor. **For those reasons, Dignity Health requests that the AHCCCS Administration consider including "neurology" to Service Policy Adjustors in this Proposed Rule.**

Again, thank you for the opportunity to provide comments on the Proposed R9-22-712.60 through R9-22-712.81. I am hopeful that our constructive comments and perspectives are helpful and considered. I welcome any questions you may have.

Sincerely,



Linda Hunt
Sr. Vice President of Operations & President/CEO, Arizona
Dignity Health

Barry, Linda

From: Dave Yoder <dave.yoder@toyonassociates.com>
Sent: Wednesday, August 09, 2017 7:02 AM
To: Barry, Linda
Cc: Relkin, Gina
Subject: Re: Public Hearing: DRG 2018

Linda,
No problem. See below:

At MIHS, we found the latest two published exhibits to be very helpful. Our calculations based on FY2016 data were close to the published estimates for MIHS. We believe that the APR-DRG rebase does not penalize MIHS from a rate perspective. However, changes in patient volumes, in particular burn volumes, may affect the net benefit received year over year. Otherwise, we had no questions at this time, and we were interested in hearing the questions and comments from other Arizona healthcare systems.

Please let me know if you have any questions. Thank you.

Dave Yoder, Senior Director - Client Services
Toyon Associates, Inc.
949 South Coast Drive, Suite 405
Costa Mesa, CA 92626
Cell: 602.820.0837
Office: 925.685.9312, ext. 3244
Fax: 925.687.9013
www.toyonassociates.com

Barry, Linda

From: Burns, Victoria
Sent: Tuesday, August 08, 2017 12:33 PM
To: Champlin, Jim
Subject: RE: APR-DRG Rebase Proposed Rule: Extension of Comment Period

Hi Jim.

One of the criteria for that designation is: "*Covered inpatient days subject to DRG reimbursement, determined using adjudicated claim and encounter data during the fiscal year beginning October 1, 2015, equal to at least four hundred percent of the statewide average number of AHCCCS-covered inpatient days at all hospitals.*" PCH falls below that threshold this time.

From: Champlin, Jim [mailto:jchamplin@phoenixchildrens.com]
Sent: Monday, August 07, 2017 4:32 PM
To: Burns, Victoria
Subject: RE: APR-DRG Rebase Proposed Rule: Extension of Comment Period

In the 2014 project PCH was listed under High Medicaid Utilization Providers, why the change?

Jim Champlin

From: Burns, Victoria [mailto:Victoria.Burns@azahcccs.gov]
Sent: Monday, August 07, 2017 3:44 PM
Subject: [EXTERNAL] APR-DRG Rebase Proposed Rule: Extension of Comment Period

In order to provide hospitals with additional information about the proposed APR-DRG rebase and its projected fiscal impact, AHCCCS has attached two exhibits with fiscal impact projections produced by Navigant Consulting. As a result of this additional data, AHCCCS has extended the public comment period for the proposed DRG rulemaking from 5 PM August 8 to **5 PM August 14**. Although the public hearing will still be held at 1 PM on August 8, public comments will now be accepted through 5PM Monday August 14.

Please send written or email comments, no later than **5:00 p.m., August 14, 2017**, to:

Name: Gina Relkin
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

Victoria Burns
Reimbursement Administrator

AHCCCS Division of Health Care Management
(602) 417-4049

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Barry, Linda

From: McKnight, Craig <cmcknight@phoenixchildrens.com>
Sent: Monday, August 14, 2017 4:00 PM
To: AHCCCS Rules
Subject: FW: APR-DRG Rebase Proposed Rule: Extension of Comment Period
Attachments: Exhibit - DRG Rebase Cost Coverage Projection by Provider.pdf; Exhibit - DRG Rebase Projection by System.pdf

Follow Up Flag: Follow up
Flag Status: Completed

Gina,

Thank you for the opportunity to respond to the proposed APR-DRG rebase for 2018. In reviewing the documents sent by Victoria Burns on August 7th, 2017, we would like to draw your attention to areas of concern for Phoenix Children's Hospital:

The first relates to the qualifying calculation for High Medicaid Utilization Providers. One of the factors of the criteria for that designation is, "covered inpatient days subject to DRG reimbursement, determined using adjudicated claim and encounter data during the fiscal year beginning October 1, 2015, equal to at least four hundred percent of the statewide average number of AHCCCS-covered inpatient days at all hospitals." This calculation compares total AHCCCS days at each facility to the Statewide average. We would suggest that a more relevant measurement for High Medicaid Utilization providers would be a calculation that better represents the extent to which each hospital has dedicated its resources to Medicaid patient services. This calculation should include a factor for or be based on the comparison of AHCCCS days as compared to the total inpatient days of each facility. Utilizing AHCCCS payor mix would show that Phoenix Children's percentage of AHCCCS patient days is over 62%, among the very highest in Arizona. It is worth noting that the State data shows that the average AHCCCS inpatient payor mix is 27%. This shows that PCH is impacted to a much greater degree by AHCCCS APR-DRG reimbursement than most AZ Hospitals while being one of largest hospitals by AHCCCS days and should be considered a High Medicaid Usage facility.

The second area of concern for PCH is the data utilized in the study. PCH would have welcomed being involved in validating the data gathered for the study. As it is, the reported patient days for PCH are 19% below the level that PCH reports as AHCCCS patient days for that same time period and is below the level that we report annually on our Cost Report as Title XIX Days (excluding observation). Using corrected data would materially impact the representation of PCH. The costs as reported of $127,403,159 do not represent PCH's cost to provide care for AHCCCS patients. Total costs for that time period related to AHCCCS inpatients were $177,058,162. Subtracting this from the calculated reimbursement as reported of $190,302,017, produces a payment-to-cost ratio of 1.07, not the 1.49 reported.

Lastly, Supplemental payments are a factor in the calculations included in the study report, the inclusion and degree of which can preclude facilities from receiving various policy adjusters. Phoenix Children's is in the process of transitioning away from the Safety Net Care Pool that has recently provided the majority of supplemental payments, including those in this survey. To the extent to which supplemental payments is a factor in these calculations, we would ask that decisions made regarding future reimbursement levels take into consideration that PCH will no longer be receiving SNCP once the current approved SNCP has been distributed.

We welcome further conversation regarding these issues

Craig McKnight

Craig McKnight
Executive Vice President
Chief Financial Officer
Phoenix Children's Hospital
p (602) 933-0221| f (602) 933-0394
http://www.phoenixchildrens.org
cmcknight@phoenixchildrens.com

From: Burns, Victoria [mailto:Victoria.Burns@azahcccs.gov]
Sent: Monday, August 7, 2017 3:44 PM
Subject: [EXTERNAL] APR-DRG Rebase Proposed Rule: Extension of Comment Period

In order to provide hospitals with additional information about the proposed APR-DRG rebase and its projected fiscal impact, AHCCCS has attached two exhibits with fiscal impact projections produced by Navigant Consulting. As a result of this additional data, AHCCCS has extended the public comment period for the proposed DRG rulemaking from 5 PM August 8 to **5 PM August 14**. Although the public hearing will still be held at 1 PM on August 8, public comments will now be accepted through 5PM Monday August 14.

Please send written or email comments, no later than **5:00 p.m., August 14, 2017**, to:

Name:	Gina Relkin
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

Victoria Burns
Reimbursement Administrator
AHCCCS Division of Health Care Management
(602) 417-4049

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Barry, Linda

From: Burns, Victoria
Sent: Tuesday, August 08, 2017 10:56 AM
To: John E McMullin
Subject: RE: APR-DRG Rebase Proposed Rule: Extension of Comment Period

Hi John.

Based on our FY 2016 data, Rehoboth McKinley no longer meets the threshold for a "High Utilization Out of State Hospital." For that reason, beginning 01/01/2017 under the proposed rule, Rehoboth McKinley would be reimbursed by AHCCCS under proposed A.A.C. R9-22-712.64(A)(2).

To gauge the practical effect of that, you can compare the current reimbursement values for Rehoboth McKinley (see the spreadsheet at this link, row 56: https://www.azahcccs.gov/PlansProviders/Downloads/FFSrates/APR/DRG_Provider_Table_FFY2017_20170101.xlsx) to the table below illustrating the rebased "All Other Out-of-State" reimbursement values under the proposed rule.

Parameter	Value
Hospital category	Out of State
Statewide Average DRG Base Rate	$5,157.58
High Medicaid Volume Hold-Harmless Adjustor	1.000
Out-of-state cost-to-charge ratio	0.240
Cost Outlier Fixed Loss Threshold	$65,000

Victoria Burns
Reimbursement Administrator
AHCCCS Division of Health Care Management
(602) 417-4049

From: John E McMullin [mailto:jmcmullin@rmchcs.org]
Sent: Monday, August 07, 2017 4:21 PM
To: Burns, Victoria
Subject: RE: APR-DRG Rebase Proposed Rule: Extension of Comment Period

Victoria,
I don't see any information for RMCHCS is Gallup, NM. Are you able to help me understand how it will impact our AZ Medicaid population?

John McMullin CPA, MBA, FHFMA
Chief Financial Officer

RMCHCS
1901 RED ROCK DRIVE - GALLUP, NM 87301

505.863.7347 - OFFICE
505.863.7330 - FAX
JMCMULLIN@RMCHCS.ORG
WWW.RMCH.ORG

Rehoboth
McKinley
Christian Health Care Services

From: Burns, Victoria [mailto:Victoria.Burns@azahcccs.gov]
Sent: Monday, August 07, 2017 4:44 PM
Subject: APR-DRG Rebase Proposed Rule: Extension of Comment Period

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Barry, Linda

From: Burns, Victoria
Sent: Tuesday, August 08, 2017 10:31 AM
To: Myers, Robert
Subject: RE: APR-DRG Rebase Proposed Rule: Extension of Comment Period
Attachments: APR-DRG v34 Table.xlsx

Hi Robert. Find it attached.

From: Myers, Robert [mailto:Robert.Myers@tenethealth.com]
Sent: Tuesday, August 08, 2017 8:19 AM
To: Burns, Victoria
Subject: RE: APR-DRG Rebase Proposed Rule: Extension of Comment Period

Thank you very much. Do you have a copy of the version 34 DRG table that you could send to us?

From: Burns, Victoria [mailto:Victoria.Burns@azahcccs.gov]
Sent: Monday, August 07, 2017 5:44 PM
Subject: APR-DRG Rebase Proposed Rule: Extension of Comment Period

In order to provide hospitals with additional information about the proposed APR-DRG rebase and its projected fiscal impact, AHCCCS has attached two exhibits with fiscal impact projections produced by Navigant Consulting. As a result of this additional data, AHCCCS has extended the public comment period for the proposed DRG rulemaking from 5 PM August 8 to **5 PM August 14**. Although the public hearing will still be held at 1 PM on August 8, public comments will now be accepted through 5PM Monday August 14.

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Barry, Linda

From: Barry, Linda
Sent: Monday, August 07, 2017 11:02 AM
To: Barry, Linda
Subject: FW: Tucson Medical Center DRG and APR-DRGf classifcation comments
Attachments: image003.emz; Betlach - DRG system and APR-DRG classification- J Strange.pdf

---

From: Barry, Linda
Sent: Monday, August 07, 2017 11:01 AM
To: Relkin, Gina; Devlin, Matt
Subject: FW: Tucson Medical Center DRG and APR-DRGf classifcation comments

We have received comment regarding the DRG Rules.

I will create a table to deal with the comments that we will receive.

From: Kathy Navarro [mailto:Kathy.Navarro@tmcaz.com]
Sent: Friday, August 04, 2017 12:35 PM
To: AHCCCS Rules
Cc: Rhonda Bodfield
Subject: Tucson Medical Center DRG and APR-DRGf classifcation comments

Tucson Medical Center's comments are below as well as attached. Thank you for the opportunity to make our concerns known.

August 4, 2017

Thomas J. Betlach
AHCCCS Director
801 East Jefferson Street, MD 4100
Phoenix, Arizona 85034

Dear Director Betlach,

Tucson Medical Center is grateful for the time and effort AHCCCS has put into updating existing payment methodologies and is pleased to share our perspective on the proposed rule that rebases components of the diagnosis-related group (DRG) system and updates the All Patient Refined, or APR-DRG, classification system.

There are two areas in particular that we believe are critical as you work toward the state's obligation of assuring payments are consistent with efficiency, economy and quality of care.

Under R9-22-712.62 DRG Base Payment, AHCCCS suggests using the wage index values published August 22, 2016. Although these values were the proposed values published by CMS, final values were subsequently published in the tables of the October 5, 2016 Federal Register.

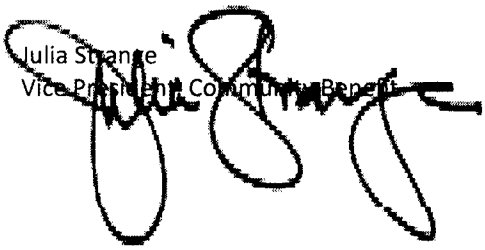
Tucson Medical Center believes that using the final values as opposed to the proposed values would be more appropriate, given that it matches the wage index value in place today.

In regards to R9-22-712.66 DRG Service Policy Adjustor, while TMC is appreciative that AHCCCS has increased the policy adjustor for neonate cases when compared to the adjustors originally shared with the state hospitals, TMC remains concerned that it will have a detrimental impact on the newborn and obstetrics adjustors.

While we understand the goal of infusing additional resources into pediatrics, we believe that that investment would be more appropriately spread across all of the service lines that are primary to AHCCCS' mission - and most notably, to support services for moms, babies, and children.

Again, we are appreciative that the rebasing is occurring and If we might be of further assistance or if we can provide further clarification, we would be happy to expand upon our comments.

Sincerely,



Julia Strange
Vice President Community Benefit

Thanks,

Kathy Navarro
Executive Assistant to
Julia Strange, Vice President
Office: 520-324-2018 Cell: 520-360-3152

Tucson Medical Center

August 4, 2017

Thomas J. Betlach
AHCCCS Director
801 East Jefferson Street, MD 4100
Phoenix, Arizona 85034

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Under R9-22-712.62 DRG Base Payment, AHCCCS suggests using the wage index values published August 22, 2016. Although these values were the proposed values published by CMS, final values were subsequently published in the tables of the October 5, 2016 Federal Register.

Tucson Medical Center believes that using the final values as opposed to the proposed values would be more appropriate, given that it matches the wage index value in place today.

In regards to R9-22-712.66 DRG Service Policy Adjustor, while TMC is appreciative that AHCCCS has increased the policy adjustor for neonate cases when compared to the adjustors originally shared with the state hospitals, TMC remains concerned that it will have a detrimental impact on the newborn and obstetrics adjustors.

While we understand the goal of infusing additional resources into pediatrics, we believe that that investment would be more appropriately spread across all of the service lines that are primary to AHCCCS' mission - and most notably, to support services for moms, babies, and children.

Again, we are appreciative that the rebasing is occurring and If we might be of further assistance or if we can provide further clarification, we would be happy to expand upon our comments.

Sincerely,

Julia Strange
Vice President, Community Benefit

5301 East Grant Road ▪ Tucson, Arizona 85712 ▪ 520-327-5461

Barry, Linda

From: Barry, Linda
Sent: Tuesday, August 08, 2017 2:11 PM
To: Relkin, Gina; Devlin, Matt; Silver, Shelli; Burns, Victoria
Cc: Barry, Linda
Subject: FW: Tucson Medical Center

Importance: High

Another comment from TMC.
Linda B

From: Mary Lonon [mailto:Mary.Lonon@tmcaz.com]
Sent: Tuesday, August 08, 2017 1:08 PM
To: AHCCCS Rules
Subject: Tucson Medical Center
Importance: High

Gina,
Good afternoon, I am Sr. Financial Analyst at Tucson Medical Center (working with Bret Hicks). I am looking at the new DRG data that was published this past week and had a few questions. A little background, I recently moved to Arizona so am trying to get up to speed with the payment model and transitions that Arizona has made in the past few years.

1. Was the proposed rule updated at any point?
    a. I originally had that the updated standardized payment rate for TMC would go from $5,295.40 to $5,142.36. Now when I pull up the proposed rule from the AHCCCS website, it shows that the new standard payment will be $5,168.06.
    b. If it has been revised and the $5,168.06 is correct, can you send me a copy of the original proposed rule? I want compare, so that I make and other necessary changes.

2. In the final model version that was posted this past week, the first section states that it is V31 ***without transition***. Is this referring to the transition from the base payments when AZ rebased payments based on going from a tiered per diem to a DRG payment formula? If not, what "transition" is it referring to?

3. TMC had a shift in its wage index in recent years. Can you verify the wage index for TMC that is being used to calculate each of the V31 and V34 payments?

Thank you,

Mary Lonon

Senior Financial Analyst
Tucson Medical Center
mary.lonon@tmcaz.com

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT
TITLE 9. HEALTH SERVICES
CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM ADMINISTRATION
ARTICLE 7. STANDARDS FOR PAYMENTS

(R9-22-712.60, R9-22-712.62, R9-22-712.63, R9-22-712.64, R9-22-712.65, R9-22-712.66, R9-22-712.68, R9-22-712.71 R9-22-712.72, R9-22-712.80)

1. **Identification of rulemaking.**

The Arizona Health Care Cost Containment System Administration is the single State agency responsible for administration of the Medicaid program in Arizona. The program is jointly funded by the State, counties, and the federal government. Federal law imposes a substantial number of conditions on the receipt of federal financial assistance reflected in federal statutes (42 U.S.C. § 1396 et seq.) and regulation (generally, 42 C.F.R. Parts 430 through 455). While States are provided substantial flexibility with respect to the payment methods for health care providers that agree to participate, federal law does require that states "assure that payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area." 42 U.S.C. § 1396a(a)(30)(A). The purpose of this rulemaking is to rebase and update the diagnosis-related group (DRG) based hospital payment methodology for payment of inpatient claims to comply with the federal Medicaid statute referenced above. Several years will have elapsed since initial implementation of the DRG methodology in October 2014. The rebase will utilize more timely and relevant claims and encounter information, and an updated version of the system of codes and relative weights used for implementation of the DRG methodology will be specified. The rulemaking will apply to dates of discharge on and after January 1, 2018.

As background, State law requires the agency to adopt a diagnosis-related group (DRG) based hospital reimbursement methodology consistent with Title XIX of the Social Security Act for inpatient dates of service on and after October 1, 2014. A.R.S. § 36-2903.01(G)(12). A diagnosis- related group (DRG) based hospital reimbursement methodology pays a fixed amount on a "per discharge basis." Under this methodology each claim is assigned to a DRG based on the patient's diagnoses, surgical procedures performed, age, gender, birth weight, and discharge status. The goal of diagnosis- related groups is to classify inpatient stays into categories based on similar clinical conditions and on similar levels of hospital resources required for treatment. These categories are identified using Diagnosis-Related Group (DRG) codes each of which is assigned a relative weight appropriate for the relative amount of hospital resources

expected to be used to treat the patient. An essential element of a DRG based hospital payment methodology is the selection of one of the several DRG classification systems.

The DRG system was first implemented via rule published in 20 A.A.R. 1956, on September 6, 2014. As originally published, the agency elected to use the All Patient Refined DRG (APR-DRG) system of codes and relative weights established and maintained by 3M Health Information Systems. At the time, the most current version of that system was version 31. More than three years have elapsed since initial implementation of APR-DRG. The original DRG reimbursement methodology was developed using Fiscal Year 2011 data from the agency's tiered per diem system. Since that time, 3M Health Information Systems has issued version 34 of the system which is in use in the health care industry as the basis for payments by other payers. In addition, there have been updates to the national code sets used for diagnoses and procedures.

To meet its federal obligation to establish payment methodologies that are consistent with efficiency, economy, quality and access, the agency contracted with Navigant Consulting to assess the impacts of these changes on reimbursement for inpatient hospital reimbursement (often referred to as "rebasing" the payment methodology). The current rebase will utilize updated claims and encounter data, and incorporates related changes to policy and service adjustors in an effort to maintain cost effectiveness. Pursuant to A.R.S. § 36-2903.01(G), the agency promulgates rules that describe the payment methodology; however, per A.R.S. § 41-1005(A)(9), the agency is not required to have rules that set forth the actual amounts of fee-for-service payments. As a condition of federal financial participation, the agency is required to provide notice through its website and/or publication through the State administrative register. In addition the State must provide an opportunity for public comment on significant proposed changes to methods and standard for payment rates. 42 U.S.C. § 1396(a)(a)(13) and 42 C.F.R. § 447.205. To accommodate future editions of the APR-DRG system, changes in the national code sets, and the corresponding changes to service and policy adjustors, the agency is proposing to remove from the text of the rule references to specific dollar amounts and other numerical factors which, going forward, will be published to the agency's website with advanced notice and public comment prior to implementation. As specified below, the Agency has provided an identification of changes to the rules.

R9-22-712.60 Diagnosis Related Group Payments

The agency updated the language to accommodate future editions of the APR-DRG system, changes in the national code sets, and the corresponding changes to service and policy adjustors. The agency is proposing to remove from the text of the rule references to specific dollar amounts and other numerical factors which, going forward, will be published to the agency's website with advanced notice and public comment prior to implementation. In addition the references to "version 31" were deleted from the rule.

R9-22-712.62 DRG Base Payment

There were two incorporations by reference added to clarify how AHCCCS determines the hospitals' labor-related share and the hospitals' wage index. Hospitals should note that the wage indices referenced in R9-22-712.62(B) include the "rural floor" such that the wage index for a hospital in any urban area cannot be less than the wage index received by rural hospitals in the same State. Use of the rural floor is required for the Medicare program under 42 C.F.R. 412.64, and AHCCCS has elected to adopt the rural floor as part of this rulemaking.

R9-22-712.63 DRG Base Payments Not Based on the Statewide Standardized Amount

AHCCCS deleted the actual amount when DRG base payments are not based on the statewide standardized amount and used the term "select specialty hospital standardized amount". The agency will post to the AHCCCS website the select specialty hospital standardized amount included in the AHCCCS capped fee schedule.

R9-22-712.64 DRG Base Payments and Outlier CCR for Out-of-State Hospitals

The agency is proposing to remove from the text of the rule references to specific dollar amounts and other numerical factors which, going forward, will be published to the agency's website with advanced notice and public comment prior to implementation. In addition, the agency updated the fiscal year referenced in R9-22-712.65 B. from 2010 to 2015.

R9-22-712.65 DRG Provider Policy Adjustor

The agency is proposing to remove from the text of the rule references to specific dollar amounts and other numerical factors which, going forward, will be published to the agency's website with advanced notice and public comment prior to implementation. The agency clarified language in relation to the explanation of a high utilization hospital.

R9-22-712.66 DRG Service Policy Adjustor

The agency is proposing to remove from the text of the rule references to specific dollar amounts and other numerical factors which, going forward, will be published to the agency's website with advanced notice and public comment prior to implementation.

R9-22-712.68 DRG Reimbursement: Unadjusted Outlier Add-on Payment

The agency is proposing to remove from the text of the rule references to specific dollar amounts and other numerical factors which, going forward, will be published to the agency's website with advanced notice and public comment prior to implementation.

R9-22-712.71 Final DRG Payment

The final DRG payment is the sum of the final DRG base payment, the final DRG outlier add-on payment, and the Inpatient Value Based Purchasing (VBP) Differential Adjusted Payment. The agency added clarifying language to specify claims with dates of discharge prior to January 1, 2018. Furthermore, the agency updated the date of June 1, 2016 to May 15, 2017 to clarify that a hospital must have executed an agreement with a qualified health information exchange organization, and be able to submit admission, discharge, and transfer information, as well as data from the hospital emergency department electronically to a qualified health information exchange organization.

R9-22-712.72 DRG Reimbursement: Enrollment Changes During an Inpatient Stay

The proposed amendment strikes an overly restrictive direction regarding the coding of claims when a member's enrollment changes during an inpatient stay, which may result in certain claims failing to qualify for the outlier payment add-on under R9-22-712.68 when such payment is appropriate. Providers should consult AHCCCS policy manuals that are incorporated by reference into the provider participation agreement for specific guidance on correct coding practices for claims with dates of discharge on and after January 1, 2018.

R9-22-712.80 DRG Reimbursement: New Hospitals

The agency is proposing to remove from the text of the rule references to specific dollar amounts and other numerical factors which, going forward, will be published to the agency's website with advanced notice and public comment prior to implementation.

R9-22-712.81 DRG Reimbursement: Updates

The Agency may update the version of the APR-DRG classification system established by 3M Health Information Systems, AHCCCS provided additional language to the other updates in sections R9-22-712.60 through R9-22-712.80. Furthermore, the agency added rule language to specify that a public notice will be added to the agency's website at least 30 days prior to the effective date to allow for public comment consistent with federal requirements regarding updates to the DRG reimbursement.

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

The rule is designed to regulate the payment methods used by the agency and its contractors. The proposed changes are intended to update the APR-DRG reimbursement system for inpatient hospital services and facilitate future updates by making the process less burdensome to stakeholders. As a result of this rulemaking, the agency may regularly update the APR-DRG version used for processing Medicaid claims and the reimbursement values used for pricing claims online, allowing stakeholders to access the information more quickly and easily than a full notice-and-comment rulemaking process would allow.

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 expected that by updating the inpatient hospital reimbursement system and providing a means for more regular updates will allow the agency to remain current with health care industry standard coding in use by other payers and to better meet its federal obligation to establish payment methodologies that are consistent with efficiency, economy, quality and access.

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

It is anticipated that participants who receive inpatient hospital claim reimbursements using the APR-DRG methodology will continue regular participation going forward. In addition, the Agency anticipates annual updates to the inpatient hospital reimbursement system.

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

Inpatient hospitals that are reimbursed by the APR-DRG methodology will directly benefit from a reimbursement system that is in line with the current health care market and responsive to changes in health care industry coding standards.

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 Agency estimates that the aggregate economic impact of this rulemaking, assuming no significant changes in utilization from prior years, will be $35.5 million in additional payments to hospitals annually. The federal government, through the Medicaid program, will fund a substantial percentage of this expense, varying by eligibility category. Based on estimates of the level of federal financial participation, the Agency estimates the rule increases State expenditures (General fund and hospital assessment) by an increase of $8.3 million annually. The Agency does not anticipate that the rule will have an effect on State revenues or materially impact other agencies. In addition, the Agency incurred a one-time cost in securing the services of a consultant to assist the analysis related to this rulemaking.

ii. Benefit:

AHCCCS, taxpayers, and providers will benefit by an improved ability to meet its federal obligations, and provide regular updates to the APR-DRG version used for processing Medicaid claims and the reimbursement values used for pricing claims online, allowing stakeholders to access the information more quickly and easily than a full notice-and-comment rulemaking process would allow.

iii. Need for additional Full-time Employees:

The Agency 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 Agency 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.

According to hospital uniform accounting reports information filed with the Arizona Department of Health Services for 2015 (the most current information publicly available), 2 of the 104 hospitals listed reported fewer than one hundred full-time employees which qualifies those hospitals as "small businesses" under A.R.S. § 41-1001(21). The two hospitals, Arizona Orthopedic Surgical and Specialty Hospital and Arizona Spine & Joint Hospital are hospitals that are small businesses impacted by the DRG payment system.

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

The Agency 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 beyond those requirements that are necessary to comply with federal law and state statute.

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

The rule will not affect private persons and consumers.

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

It is anticipated that the rule will not affect state revenues.

7. **Description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking, including the monetizing of the costs and benefits for each option and providing the rationale for not using nonselected alternatives.**

The Agency did not consider other alternatives because the revisions to the rule are the most cost effective and efficient method of complying with federal law and state law as well as the State's fiduciary responsibility to Arizona taxpayers.

8. **A description of any data on which a rule is based with a detailed explanation of how the data was obtained and why the data is acceptable data.**

Analyses for the rule were conducted using data that reflected paid claims and adjudicated encounters from the Agency's payment system. The data set is representative of actual claims activity under the AHCCCS APR-DRG payment methodology and is a readily available source that AHCCCS regularly employs for its payment analyses. This data source is accepted by the federal government as the basis for capitation payments to managed care organizations.

TITLE 9. HEALTH SERVICES

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM - ADMINISTRATION

Editor's Note: The Office of the Secretary of State prints all Code Chapters on white paper (Supp 01-3).

Editor's Note: This Chapter contains rules which were adopted or amended under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6), pursuant to Laws 1992, Ch. 301, § 61 and Ch. 302, § 13, and Laws 1993, Ch. 6, § 34. Exemption from A.R.S. Title 41, Chapter 6 means that AHCCCS did not submit notice of this rulemaking to the Secretary of State's Office for publication in the Arizona Administrative Register; the Governor's Regulatory Review Council did not review these rules; AHCCCS was not required to hold public hearings on these rules; and the Attorney General did not certify these rules. Because this Chapter contains rules which are exempt from the regular rulemaking process, the Chapter is printed on blue paper.

ARTICLE 7. STANDARDS FOR PAYMENTS

Section

R9-22-712.60. Diagnosis Related Group Payments .....

R9-22-712.61. DRG Payments: Exceptions .....

R9-22-712.62. DRG Base Payment .....

R9-22-712.63. DRG Base Payments Not Based on the Statewide Standardized Amount
R9-22-712.64. DRG Base Payments and Outlier CCR for Out-of-State Hospitals

R9-22-712.65. DRG Provider Policy Adjustor .....
R9-22-712.66. DRG Service Policy Adjustor

R9-22-712.67. DRG Reimbursement: Transfers .....

R9-22-712.68. DRG Reimbursement: Unadjusted Outlier Add-on Payment

R9-22-712.69. DRG Reimbursement: Covered Day Adjusted DRG Base Payment and Covered Day Adjusted Outlier Add-on Payment .....

R9-22-712.70. Covered Day Adjusted DRG Base Payment and Covered Day Adjusted Outlier Add-on Payment for FES members .....

R9-22-712.71. Final DRG Payment .....

R9-22-712.72. DRG Reimbursement: Enrollment Changes During an Inpatient Stay

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R9-22-712.75. DRG Reimbursement: Payment for Administrative Days

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R9-22-712.77. DRG Reimbursement: Admissions and Discharges on the Same Day

R9-22-712.78. DRG Reimbursement: Readmissions .....

R9-22-712.79. DRG Reimbursement: Change of Ownership .....

R9-22-712.80. DRG Reimbursement: New Hospitals .....
R9-22-712.81. DRG Reimbursement: Updates .....
R9-22-712.90. Reimbursement of Hospital-based Freestanding Emergency Departments .....

R9-22-712.60. Diagnosis Related Group Payments

A. Inpatient hospital services with discharge dates on or after October 1, 2014, shall be reimbursed using the diagnosis related group (DRG) payment methodology described in this section and sections R9-22-712.61 through R9-22-712.81.

B. Payments made using the DRG methodology shall be the sole reimbursement to the hospital for all inpatient hospital services and related supplies provided by the hospital. Services provided in the emergency room, observation area, or other outpatient departments that are directly followed by an inpatient admission to the same hospital are not reimbursed separately. Are reimbursed through the DRG methodology and not reimbursed separately.

C. Each claim for an inpatient hospital stay shall be assigned a DRG code and a DRG relative weight based on version 31 of the All Patient Refined Diagnosis Related Group (APR-DRG) classification system established by 3M Health Information Systems. If version 31 of the APR-DRG classification system will no longer support assigning DRG codes and relative weights to claims, and 3M Health Information Systems issues a newer version of the APR-DRG classification system using updated DRG codes and/or updated relative weights, then an updated version established by 3M Health Information Systems will be used; however, if the version employs updated relative weights, those weights will be adjusted using a single adjustment factor applied to all relative weights to ensure that the statewide weighted average of the updated relative weights does not increase or decrease from the statewide weighted average of the relative weights used under version 31.

D. Payments for inpatient hospital services reimbursed using the DRG payment methodology are subject to quick pay discounts and slow pay penalties under A.R.S. 36-2904.

E. Payments for inpatient hospital services reimbursed using the DRG payment methodology are subject to the Urban Hospital Reimbursement Program under R9-22-718.

F. For purposes of this section and sections R9-22-712.61 through R9-22-712.81:

1. "DRG National Average length of stay" means the national arithmetic mean length of stay published in version 31 of the All Patient Refined Diagnosis Related Group (APR-DRG) classification established by 3M Health Information Systems.
2. "Length of stay" means the total number of calendar days of an inpatient stay beginning with the date of admission through discharge, but not including the date of discharge (including the date of a discharge to another hospital, i.e., a transfer) unless the member expires.
3. "Medicare" means Title XVIII of the Social Security Act, 42 U.S.C. 1395 *et seq*.
4. "Medicare labor share" means a hospital's labor costs as a percentage of its total costs as determined by CMS for purposes of the Medicare Inpatient Prospective Payment System.

Historical Note

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3). Amended by final rulemaking at 22 A.A.R. 2187, effective October 1, 2016 (Supp. 16-4).

R9-22-712.61. DRG Payments: Exceptions

A. Notwithstanding section R9-22-712.60, claims for inpatient services from the following hospitals shall be paid on a per diem basis, including provisions for outlier payments, where rates and outlier thresholds are included in the capped fee schedule published by the Administration on its website and available for inspection during normal business hours at 701 E. Jefferson, Phoenix, Arizona. If the covered costs per day on a claim exceed the published threshold for a day, the claim is considered an outlier. Outliers will be paid by multiplying the covered charges by the outlier CCR. The outlier CCR will be the sum of the urban or rural default operating CCR appropriate to the location of the hospital and the statewide capital cost-to-charge ratio in the data file established as part of the Medicare Inpatient Prospective Payment System by CMS. The resulting amount will be the total reimbursement for the claim. There is no provision for outlier payments for hospitals described under subsection (A)(3).

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

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

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

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

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

Historical Note

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3). Amended by final rulemaking at 22 A.A.R. 2187, effective October 1, 2016 (Supp. 16-4).

R9-22-712.62. DRG Base Payment

A. The initial DRG base payment is the product of the DRG base rate, the DRG relative weight for the post-HCAC DRG code assigned to the claim, and any applicable provider and service policy adjustors.

B. The DRG base rate for each hospital is the statewide standardized amount of which the hospital's labor-related share of that amount is adjusted by the hospital's wage index, where the standardized amount is $5,295.40, and the hospital's labor share and the hospital's wage index are those used in the Medicare inpatient prospective payment system for the fiscal year beginning October 1, 2013.

C. Claims shall be assigned both a DRG code derived from all diagnosis and surgical procedure codes included on the claim (the "pre-HCAC" DRG code) and a DRG code derived excluding diagnosis and surgical procedure codes associated with the health care acquired conditions that were not present on admission or any other provider-preventable conditions (the "post-HCAC" DRG code). The DRG code with the lower relative weight shall be used to process claims using the DRG methodology.

Historical Note

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3).

R9-22-712.63. DRG Base Payments Not Based on the Statewide Standardized Amount

Notwithstanding section R9-22-712.62, the amount of $3,436.08 shall be used in place of the statewide standardized amount in subsection R9-22-712.62(B) to calculate the DRG base rate for the following hospitals:

1. Hospitals located in a city with a population greater than one million, which on average have at least 15 percent of inpatient days for patients who reside outside of Arizona, and at least 50 percent of discharges as reported on the 2011 Medicare Cost Report are reimbursed by Medicare.

2. Hospitals designated as type: hospital, subtype: short-term that has a license number beginning "SH" in the Provider & Facility Database for Arizona Medical Facilities posted by the ADHS Division of Licensing Services on its website for March of each year.

Historical Note

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3).

R9-22-712.64. DRG Base Payments and Outlier CCR for Out-of-State Hospitals

A. DRG Base payment:
1. For high volume out-of-state hospitals defined in subsection (C), the wage adjusted DRG base payment is determined as described in R9-22-712.62.
2. Notwithstanding subsection R9-22-712.62 the wage adjusted DRG base rate for out-of-state hospitals that are not high volume hospitals shall be $5,184.75.

B. Outlier CCR:
1. Notwithstanding subsection R9-22-712.68, the CCR used for the outlier calculation for out-of-state hospitals that are not high volume hospitals shall be the sum of the statewide urban default operating cost-to-charge ratio and the statewide capital CCR in the data file established as part of the Medicare Inpatient Prospective Payment System by CMS.
2. The CCR used for the outlier calculation for high volume out-of-state hospitals is the same as in-state hospitals as described in R9-22-712.68.

C. A high volume out-of-state hospital is a hospital not otherwise excluded under R9-22-712.61, that is located in a county that borders the State of Arizona and had 500 or more AHCCCS covered inpatient days for the fiscal year beginning October 1, 2010.

D. Other than as required by this section, DRG reimbursement for out-of-state hospitals is determined under R9-22-712.60 through R9-22-712.81.

Historical Note

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3).

R9-22-712.65. DRG Provider Policy Adjustor

A. After calculating the DRG base payment as required in sections R9-22-712.62, R9-22-712.63, or R9-22-712.64, for claims from a high-utilization hospital, the product of the DRG base rate and the DRG relative weight for the post-HCAC DRG code shall be multiplied by a provider policy adjustor of 1.055.

B. A hospital is a high-utilization hospital if the hospital had:

1. At least 46,112 AHCCCS-covered inpatient days using adjudicated claim and encounter data during the fiscal year beginning October 1, 2010, which is equal to at least four hundred percent of the statewide average number of AHCCCS-covered inpatient days at all hospitals of 11,528 days; and,
2. A Medicaid inpatient utilization rate greater than 30% calculated as the ratio of AHCCCS-covered inpatient days to total inpatient days as reported in the hospital's Medicare Cost Report for the fiscal year ending 2011.

Historical Note

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3).

R9-22-712.66. DRG Service Policy Adjustor

In addition to subsection R9-22-712.65, for claims with DRG codes in the following categories, the product of the DRG base rate, the DRG relative weight for the post-HCAC DRG code, and the DRG provider policy adjustor shall be multiplied by the following service policy adjustors:

1. Normal newborn DRG codes: 1.55
2. Neonates DRG codes: 1.10
3. Obstetrics DRG codes: 1.55
4. Psychiatric DRG codes: 1.65
5. Rehabilitation DRG codes: 1.65
6. Claims for members under age 19 assigned DRG codes other than listed above:
   a. 1.25 for dates of discharge occurring on or after October 1, 2014 and ending no later than December 31, 2015 regardless of severity of illness level,
   b. 1.25 for dates of discharge on or after January 1, 2016 for severity of illness levels 1 and 2,
   c. 1.60 for dates of discharge on or after January 1, 2016 for severity of illness levels 3 and 4.

Historical Note

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3). Amended by final rulemaking at 22 A.A.R. 2187, effective October 1, 2016 (Supp. 16-4).

R9-22-712.67. DRG Reimbursement: Transfers

A. For purposes of this Section a "transfer" means the transfer of a member from a hospital to a short-term general hospital for inpatient care, a designated cancer center, children's hospital, or a critical access hospital except when a member is moved for the purpose of receiving sub-acute services.

B. Designated cancer center or children's hospitals are those hospitals identified as such in the UB-04 billing manual published by the National Uniform Billing Committee.

C. The hospital the member is transferred from shall be reimbursed either the initial DRG base payment or the transfer DRG base payment, whichever is less.

D. The transfer DRG base payment is an amount equal to the initial DRG base payment, as determined after making any provider or service policy adjustors, divided by the DRG National Average length of stay for the DRG code multiplied by the sum of one plus the length of stay.

E. The hospital the member is transferred to shall be reimbursed under the DRG payment methodology without a reduction due to the transfer.

F. Unadjusted DRG base payment. The unadjusted DRG base payment is either the initial DRG base payment, as determined after making any provider or service policy adjustors, or the transfer DRG base payment, whichever is less.

Historical Note

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3). Amended by final rulemaking at 22 A.A.R. 2187, effective October 1, 2016 (Supp. 16-4).

R9-22-712.68. DRG Reimbursement: Unadjusted Outlier Add-on Payment

A. Claims for inpatient hospital services qualify for an outlier add-on payment if the claim cost exceeds the outlier cost threshold.

B. The claim cost is determined by multiplying covered charges by an outlier CCR as described by the following subsections:

1. For hospitals designated as type: hospital, subtype: children's in the Provider & Facility Database for Arizona Medical Facilities posted by the ADHS Division of Licensing Services on its website for March of each year. The outlier CCR will be calculated by dividing the hospital total costs by the total charges using the most recent Medicare Cost Report available as of September 1 of that year.

2. For Critical Access Hospitals the outlier CCR will be the sum of the statewide rural default operating cost-to-charge ratio and the statewide capital cost-to-charge ratio in the data file established as part of the Medicare Inpatient Prospective Payment System by CMS.
3. For all other hospitals the outlier CCR will be the sum of the operating cost-to-charge ratio and the capital cost-to-charge ratio established for each hospital in the impact file established as part of the Medicare Inpatient Prospective Payment System by CMS.

C. AHCCCS shall update the CCRs described in subsection (B) to conform to the most recent CCRs established by CMS as of September 1 of each year, and the CCRs so updated shall be used For claims with dates of discharge on or after October 1 of that year.

D. The outlier threshold is equal to the sum of the unadjusted DRG base payment plus the fixed loss amount. The fixed loss amount is $5,000 for critical access hospitals and $65,000 for all other hospitals.

E. For those inpatient hospital claims that qualify for an outlier add-on payment, the payment is calculated by subtracting the outlier threshold from the claim cost and multiplying the result by the DRG marginal cost percentage. The DRG marginal cost percentage is 90% for claims assigned DRG codes associated with the treatment of burns and 80% for all other claims.

Historical Note

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3).

R9-22-712.69. DRG Reimbursement: Covered Day Adjusted DRG Base Payment and Covered Day Adjusted Outlier Add-on Payment

Adjustments to the payments are made to account for days not covered by AHCCCS as follows:

1. A covered day reduction factor unadjusted is determined if the member is not eligible on the first day of the inpatient stay but is eligible for subsequent days during the inpatient stay. In this case, a covered day reduction factor unadjusted is calculated by dividing the number of AHCCCS covered days by the DRG National Average length of stay. The number of AHCCCS covered days is equal to the number of days the member is eligible during the inpatient stay.
2. A covered day reduction factor unadjusted is also determined if the member is eligible on the first day of the inpatient stay but is determined ineligible for one or more days prior to the date of discharge. In this case, a covered day reduction factor unadjusted is calculated by adding one to the number of AHCCCS covered days and dividing the result by the DRG National Average length of stay. The number of AHCCCS covered days is equal to the number of days the member is eligible during the inpatient stay.
3. If the covered day reduction factor unadjusted is greater than one, then the covered day reduction factor final is one; otherwise, the covered day reduction factor final is equal to the covered day reduction factor unadjusted.
4. The covered day adjusted DRG base payment is an amount equal to the product of the unadjusted DRG base payment and the covered day reduction factor final.
5. The covered day adjusted DRG outlier add-on payment is an amount equal to the product of the unadjusted DRG outlier add-on payment and the covered day reduction factor final.

Historical Note

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3).

R9-22-712.70. Covered Day Adjusted DRG Base Payment and Covered Day Adjusted Outlier Add-on Payment for FES members

In addition to the covered day reduction factor in R9-22-712.69, a covered day reduction factor unadjusted is determined for an inpatient stay during which an FES member receives services for the treatment of an emergency medical condition and also receives services once the condition no longer meets the criteria as an emergency medical condition described in R9-22-217.

1. A covered day reduction factor unadjusted is calculated by adding one to the AHCCCS covered days and dividing the result by the DRG National Average length of stay. The number of AHCCCS covered days is equal to the number of inpatient days during which an FES member receives services for an emergency medical condition as described in R9-22-217. For purposes of this adjustment, any portion of a day during which the FES member receives treatment for an emergency medical condition is counted as an AHCCCS covered day.
2. If the covered day reduction factor unadjusted is greater than one, then the covered day reduction factor final is one; otherwise, the covered day reduction factor final is equal to the covered day reduction factor unadjusted.
3. The covered day adjusted DRG base payment is an amount equal to the product of the unadjusted DRG base payment and the covered day reduction factor final.
4. The covered day adjusted DRG outlier add-on payment is an amount equal to the product of the unadjusted DRG outlier add-on payment and the covered day reduction factor final.

Historical Note

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3).

R9-22-712.71. Final DRG Payment

The final DRG payment is the sum of the final DRG base payment, the final DRG outlier add-on payment, and the Inpatient Value Based Purchasing (VBP) Differential Adjusted Payment.

1. The final DRG base payment is an amount equal to the product of the covered day adjusted DRG base payment and a hospital-specific factor established to limit the financial impact to individual hospitals of the transition from the tiered per diem payment methodology and to account for improvements in documentation and coding that are expected as a result of the transition.
2. The final DRG outlier add-on payment is an amount equal to the product of the covered day adjusted DRG outlier add-on payment and a hospital-specific factor established to limit the financial impact to individual hospitals of the transition from the tiered per diem payment methodology and to account for improvements in documentation and coding that are expected as a result of the transition.
3. The factor for each hospital and for each federal fiscal year is published as part of the AHCCCS capped fee schedule and is available on the AHCCCS administration's website and is on file for public inspection at the AHCCCS administration located at 701 E. Jefferson Street, Phoenix, Arizona.
4. For inpatient services with a date of discharge from October 1, 2016 through September 30, 2017, the Inpatient VBP Differential Adjusted Payment is the sum of the final DRG base payment and the final DRG outlier add-on payment multiplied by a percentage published on the Administration's public website as part of its fee schedule, subsequent to the public notice published no later than September 1, 2016. To qualify for the Inpatient VBP Differential Adjusted Payment, a hospital providing inpatient hospital services must meet the following criteria:
   a. By June 1, 2016, the hospital must have executed an agreement with and electronically submitted admission, discharge, and transfer information, as well as data from the hospital emergency department, to a qualifying health information exchange organization, and
   b. No sooner than January 4, 2016, and no later than February 29, 2016, CMS must have approved the hospital's attestation demonstrating meaningful use stage 2 as described in 42 CFR 495.22 during an electronic health record reporting period in 2015; or, for a children's hospital that does not participate in the medicare electronic health record incentive program, no sooner than January 4, 2016, and no later than the date established by CMS, the administration must have approved the hospital's attestation demonstrating meaningful use stage 2 as described in 42 CFR 495.22 during an electronic health record reporting period in 2015.

Historical Note

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3). Amended by final rulemaking at 22 A.A.R. 2187, effective October 1, 2016 (Supp. 16-4).

R9-22-712.72. DRG Reimbursement: Enrollment Changes During an Inpatient Stay

A. If a member's enrollment changes during an inpatient stay, including changing enrollment from fee-for-service to a contractor, or vice versa, or changing from one contractor to another contractor, the contractor with whom the member is enrolled on the date of discharge shall be responsible for reimbursing the hospital for the entire length of stay under the DRG payment rules in sections R9-22-712.60 through R9-22-712.81. If the member is eligible but not enrolled with a contractor on the date of discharge, then the AHCCCS administration shall be responsible for reimbursing the hospital for the entire length of stay under the DRG payment rules in sections R9-22-712.60 through R9-22-712.81.

B. When a member's enrollment changes during an inpatient stay, the hospital shall use the date of enrollment with the payer responsible on the date of discharge as the "from" date of service on the claim regardless of the date of admission. The claim may include all surgical procedures performed during the entire inpatient stay, but the hospital shall only include revenue codes, service units, and charges for services performed on or after the date of enrollment.

C. Interim claims submitted to a payer other than the payer responsible on the day of discharge shall be processed in the same manner as other interim claims as described in R9-22-712.76.

Historical Note

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3).

R9-22-712.73. DRG Reimbursement: Inpatient Stays for Members Eligible for Medicare

If the hospital receives less than the full Medicare payment for a member eligible for benefits under Part A of Medicare because the member has exceeded the maximum benefit permitted under Part A of Medicare, the hospital shall submit a separate claim for services performed after the date the maximum Medicare Part A benefit is exceeded. The claim may include all diagnosis codes for the entire inpatient stay, but the hospital is only required to include revenue codes, surgical procedure codes, service units, and charges for services performed after the date the Medicare Part A benefit is exceeded. A claim so submitted shall be reimbursed using the DRG payment methodology.

Historical Note

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3).

R9-22-712.74. DRG Reimbursement: Third Party Liability

DRG payments are subject to reduction based on cost avoidance under section R9-22-1003 and other rules regarding first-and third-party liability under Article 10 of this Chapter including cost avoidance for claims for ancillary services covered under Part B of Medicare.

Historical Note

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3).

R9-22-712.75. DRG Reimbursement: Payment for Administrative Days

A. Administrative days are days in which a member is admitted as an inpatient to an acute care hospital, does not meet the criteria for an acute inpatient stay, but is admitted or not discharged because (1) an appropriate placement outside the hospital is not available, (2) the member cannot be safely discharged or transferred, or (3) the Administration or the contractor failed to provide for the appropriate placement outside the hospital in a timely manner.

1. Administrative days may occur prior to an acute care episode, for example, when a woman with a high-risk pregnancy is admitted to a hospital while awaiting delivery.
2. Administrative days may also occur at the end of an acute care episode, for example, when a member is not discharged while awaiting placement in a nursing facility or other sub-acute or post-acute setting.
3. Administrative days may also include days in a receiving hospital when the member has been discharged from one acute care hospital for the purpose of receiving sub-acute services at the receiving hospital.

B. Administrative days do not include days when the member is awaiting appropriate placement or services that are currently available but the hospital has not transferred or discharged the member because of the hospital's administrative or operational delays.

C. Prior authorization is required for administrative days.

D. A hospital shall submit a claim for administrative days separate from any claim for reimbursement for the inpatient stay otherwise reimbursable under the DRG payment methodology.

E. Administrative days are reimbursed at the rate the claim would have paid had the services not been provided in an inpatient hospital setting but had been provided at the appropriate level of care (e.g., as nursing facility days).

Historical Note

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3). Amended by final rulemaking at 22 A.A.R. 2187, effective October 1, 2016 (Supp. 16-4).

R9-22-712.76. DRG Reimbursement: Interim Claims

A. For inpatient stays with a length of stay greater than 29 days, a hospital may submit interim claims for each 30 day period during the inpatient stay.

B. Hospitals shall be reimbursed for interim claims at a per diem rate of $500 per day.

C. Following discharge, the hospital shall void all interim claims. In such circumstances, the hospital shall submit a claim to the payer with whom the member is enrolled on the date of discharge, whether the Administration or a contractor, for the entire inpatient stay for which the final claim shall be reimbursed under the DRG payment methodology. Interim claims will be recouped.

Historical Note

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3).

R9-22-712.77. DRG Reimbursement: Admissions and Discharges on the Same Day

A. Except as provided for in subsection (B), for any claim for inpatient services with an admission date and discharge date that are the same calendar date, the contractor or the Administration shall process the claim as an outpatient claim and the hospital shall be reimbursed under R9-22-712.10 through R9-22-712.50.

B. Claims with an admission date and discharge date that are the same calendar date that also indicate that the member expired on the date of discharge shall be reimbursed under the DRG methodology.

Historical Note

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3).

R9-22-712.78. DRG Reimbursement: Readmissions

If a member is readmitted without prior authorization to the same hospital that the member was discharged from within 72 hours and the DRG code assigned to the claim for the prior admission has the same first three digits as the DRG code assigned to the claim for the readmission, then payment for the claim for the readmission will be disallowed only if the readmission could have been prevented by the hospital.

Historical Note

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3).

R9-22-712.79. DRG Reimbursement: Change of Ownership

The administration shall not change any of the components of the calculation of reimbursement for inpatient services using the DRG methodology based upon a change in the hospital's ownership except to the extent those components would change under the methodology had the hospital not changed ownership (e.g., updating the hospital's cost-to-charge ratio as of September 1 of each year under R9-22-712.68).

Historical Note

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3).

R9-22-712.80. DRG Reimbursement: New Hospitals

A. DRG base payment for new hospitals. For any hospital that does not have a labor share or wage index published by CMS as described in section R9-22-712.62(B) because the hospital was not in operation, the DRG base rate described in section R9-22-712.62(B) shall be calculated as the statewide standardized amount of $5,295.40 after adjusting that amount for the labor-related share and the wage index published by CMS as described in section R9-22-712.62(B) that is appropriate to the location of the hospital published by CMS as described in section R9-22-712.62(B).

B. Outlier calculations for new hospitals. For any hospital that does not have an operating cost-to-charge ratio listed in the impact file described in section R9-22-712.68(B) because the hospital was not in operation prior to the publication of the impact file, the statewide urban or rural default operating cost-to-charge ratio appropriate to the location of the hospital and the statewide capital cost-to-charge ratio shall be used to determine the unadjusted outlier add-on payment. The statewide urban or rural default operating cost-to-charge ratio and the statewide capital cost-to-charge ratio shall be based on the ratios published by CMS and updated by the Administration as described in section R9-22-712.68(C).

C. In addition to the requirement of this section, DRG reimbursement for new hospitals is determined under R9-22-712.60 through R9-22-712.79.

Historical Note

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3).

R9-22-712.81. DRG Reimbursement: Updates

In addition to the other updates provided for in sections R9-22-712.60 through R9-22-712.80, the Administration may adjust the statewide standardized amount in section R9-22-712.62, the base payments in sections R9-22-712.63 and R9-22-712.64, the provider policy adjustor in section R9-22-712.65, service policy adjustors section R9-22-712.66, and the fixed loss amounts and marginal cost percentages used to calculate the outlier threshold in section R9-22-712.68 to the extent necessary to assure that payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available at least to the extent that such care and services are available to the general population in the geographic area.

Historical Note

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3).

R9-22-712.90. Reimbursement of Hospital-based Freestanding Emergency Departments

A. "Hospital-based freestanding emergency department" (hospital-based FSED) means an outpatient treatment center, as defined in R9-10-101, that: (1) provides emergency room services under R9-10-1019, (2) is subject to the requirements of 42 CFR 489.24, and (3) shares an ownership interest with a hospital, regardless of whether the outpatient treatment center operates under a hospital's single group license as described in A.R.S. § 36-422.

B. A hospital-based FSED shall register with the Administration separately from the hospital with which an ownership interest is shared and shall obtain a separate provider identification number. The Administration shall not charge a separate provider enrollment fee for registration of a hospital-based FSED. The Administration shall accept a hospital's compliance with the provider screening and enrollment requirements of 42 CFR Part 455 as compliance by the hospital-based FSED.

C. For dates of service on and after March 1, 2017, and except as provided in subsection (D), services provided by a hospital-based FSED for evaluation and management CPT codes 99281 through 99285 shall be reimbursed at the following percentages of the amounts otherwise reimbursable under sections R9-22-712.20 through R9-22-712.30. All other covered codes shall be reimbursed in accordance with sections R9-22-712.20 through R9-22-712.30 without a percentage reduction.

1. 60% for a level 1 emergency department visit as indicated by CPT 99281.
2. 80% for a level 2 emergency department visit as indicated by CPT 99282.
3. 90% for a level 3 emergency department visit as indicated by CPT 99283.
4. 100% for a level 4 or 5 emergency department visit as indicated by CPT codes 99284 and 99285.

D. A hospital-based FSED located in a city or town in a county with less than 500,000 residents, where the only hospital in the city or town operating an emergency department closed on or after January 1, 2015, shall be reimbursed under sections R9-22-712.20 through R9-22-712.35 using the adjustment in R9-22-712.35 associated with the nearest hospital with which the freestanding emergency department shares an ownership interest.

E. Services provided by an outpatient treatment center that provides emergency room services under R9-10-1019, but does not otherwise meet the criteria in subsection A, shall be reimbursed based on the non-hospital AHCCCS capped fee-for-service schedule under R9-22-710.

F. The Administration shall not reimburse a hospital for services provided at a hospital-based FSED if the member is admitted directly from a hospital-based FSED to a hospital with an ownership interest in the hospital-based FSED. As provided in R9-22-712.60(B), payments made for the inpatient stay using the DRG methodology shall be the sole reimbursement.

Historical Note

New Section made by final rulemaking at 23 A.A.R. 22, February 11, 2017 (Supp. 16-4).
upp. 12-2).

36-2903.01. Additional powers and duties; report; definition

A. The director of the Arizona health care cost containment system administration may adopt rules that provide that the system may withhold or forfeit payments to be made to a noncontracting provider by the system if the noncontracting provider fails to comply with this article, the provider agreement or rules that are adopted pursuant to this article and that relate to the specific services rendered for which a claim for payment is made.

B. The director shall:

1. Prescribe uniform forms to be used by all contractors. The rules shall require a written and signed application by the applicant or an applicant's authorized representative, or, if the person is incompetent or incapacitated, a family member or a person acting responsibly for the applicant may obtain a signature or a reasonable facsimile and file the application as prescribed by the administration.

2. Enter into an interagency agreement with the department to establish a streamlined eligibility process to determine the eligibility of all persons defined pursuant to section 36-2901, paragraph 6, subdivision (a). At the administration's option, the interagency agreement may allow the administration to determine the eligibility of certain persons, including those defined pursuant to section 36-2901, paragraph 6, subdivision (a).

3. Enter into an intergovernmental agreement with the department to:

(a) Establish an expedited eligibility and enrollment process for all persons who are hospitalized at the time of application.

(b) Establish performance measures and incentives for the department.

(c) Establish the process for management evaluation reviews that the administration shall perform to evaluate the eligibility determination functions performed by the department.

(d) Establish eligibility quality control reviews by the administration.

(e) Require the department to adopt rules, consistent with the rules adopted by the administration for a hearing process, that applicants or members may use for appeals of eligibility determinations or redeterminations.

(f) Establish the department's responsibility to place sufficient eligibility workers at federally qualified health centers to screen for eligibility and at hospital sites and level one trauma centers to ensure that persons seeking hospital services are screened on a timely basis for eligibility for the system, including a process to ensure that applications for the system can be accepted on a twenty-four hour basis, seven days a week.

(g) Withhold payments based on the allowable sanctions for errors in eligibility determinations or redeterminations or failure to meet performance measures required by the intergovernmental agreement.

(h) Recoup from the department all federal fiscal sanctions that result from the department's inaccurate eligibility determinations. The director may offset all or part of a sanction if the department submits a corrective action plan and a strategy to remedy the error.

4. By rule establish a procedure and time frames for the intake of grievances and requests for hearings, for the continuation of benefits and services during the appeal process and for a grievance process at the contractor level. Notwithstanding sections 41-1092.02, 41-1092.03 and 41-1092.05, the administration shall develop rules to establish the procedure and time frame for the informal resolution of grievances and appeals. A grievance that is not related to a claim for payment of system covered services shall be filed in writing with and received by the administration or the prepaid capitated provider or program contractor not later than sixty days after the date of the adverse action, decision or policy implementation being grieved. A grievance that is related to a claim for payment

of system covered services must be filed in writing and received by the administration or the prepaid capitated provider or program contractor within twelve months after the date of service, within twelve months after the date that eligibility is posted or within sixty days after the date of the denial of a timely claim submission, whichever is later. A grievance for the denial of a claim for reimbursement of services may contest the validity of any adverse action, decision, policy implementation or rule that related to or resulted in the full or partial denial of the claim. A policy implementation may be subject to a grievance procedure, but it may not be appealed for a hearing. The administration is not required to participate in a mandatory settlement conference if it is not a real party in interest. In any proceeding before the administration, including a grievance or hearing, persons may represent themselves or be represented by a duly authorized agent who is not charging a fee. A legal entity may be represented by an officer, partner or employee who is specifically authorized by the legal entity to represent it in the particular proceeding.

5. Apply for and accept federal funds available under title XIX of the social security act (P.L. 89-97; 79 Stat. 344; 42 United States Code section 1396 (1980)) in support of the system. The application made by the director pursuant to this paragraph shall be designed to qualify for federal funding primarily on a prepaid capitated basis. Such funds may be used only for the support of persons defined as eligible pursuant to title XIX of the social security act or the approved section 1115 waiver.

6. At least thirty days before the implementation of a policy or a change to an existing policy relating to reimbursement, provide notice to interested parties. Parties interested in receiving notification of policy changes shall submit a written request for notification to the administration.

7. In addition to the cost sharing requirements specified in subsection D, paragraph 4 of this section:

(a) Charge monthly premiums up to the maximum amount allowed by federal law to all populations of eligible persons who may be charged.

(b) Implement this paragraph to the extent permitted under the federal deficit reduction act of 2005 and other federal laws, subject to the approval of federal waiver authority and to the extent that any changes in the cost sharing requirements under this paragraph would permit this state to receive any enhanced federal matching rate.

C. The director is authorized to apply for any federal funds available for the support of programs to investigate and prosecute violations arising from the administration and operation of the system. Available state funds appropriated for the administration and operation of the system may be used as matching funds to secure federal funds pursuant to this subsection.

D. The director may adopt rules or procedures to do the following:

1. Authorize advance payments based on estimated liability to a contractor or a noncontracting provider after the contractor or noncontracting provider has submitted a claim for services and before the claim is ultimately resolved. The rules shall specify that any advance payment shall be conditioned on the execution before payment of a contract with the contractor or noncontracting provider that requires the administration to retain a specified percentage, which shall be at least twenty percent, of the claimed amount as security and that requires repayment to the administration if the administration makes any overpayment.

2. Defer liability, in whole or in part, of contractors for care provided to members who are hospitalized on the date of enrollment or under other circumstances. Payment shall be on a capped fee-for-service basis for services other than hospital services and at the rate established pursuant to subsection G of this section for hospital services or at the rate paid by the health plan, whichever is less.

3. Deputize, in writing, any qualified officer or employee in the administration to perform any act that the director by law is empowered to do or charged with the responsibility of doing, including the authority to issue final administrative decisions pursuant to section 41-1092.08.

4. Notwithstanding any other law, require persons eligible pursuant to section 36-2901, paragraph 6, subdivision (a), section 36-2931 and section 36-2981, paragraph 6 to be financially responsible for any cost sharing requirements established in a state plan or a section 1115 waiver and approved by the centers for medicare and medicaid services. Cost sharing requirements may include copayments, coinsurance, deductibles, enrollment fees and monthly premiums for enrolled members, including households with children enrolled in the Arizona long-term care system.

E. The director shall adopt rules that further specify the medical care and hospital services that are covered by the system pursuant to section 36-2907.

F. In addition to the rules otherwise specified in this article, the director may adopt necessary rules pursuant to title 41, chapter 6 to carry out this article. Rules adopted by the director pursuant to this subsection shall consider the differences between rural and urban conditions on the delivery of hospitalization and medical care.

G. For inpatient hospital admissions and outpatient hospital services on and after March 1, 1993, the administration shall adopt rules for the reimbursement of hospitals according to the following procedures:

1. For inpatient hospital stays from March 1, 1993 through September 30, 2014, the administration shall use a prospective tiered per diem methodology, using hospital peer groups if analysis shows that cost differences can be attributed to independently definable features that hospitals within a peer group share. In peer grouping the administration may consider such factors as length of stay differences and labor market variations. If there are no cost differences, the administration shall implement a stop loss-stop gain or similar mechanism. Any stop loss-stop gain or similar mechanism shall ensure that the tiered per diem rates assigned to a hospital do not represent less than ninety percent of its 1990 base year costs or more than one hundred ten percent of its 1990 base year costs, adjusted by an audit factor, during the period of March 1, 1993 through September 30, 1994. The tiered per diem rates set for hospitals shall represent no less than eighty-seven and one-half percent or more than one hundred twelve and one-half percent of its 1990 base year costs, adjusted by an audit factor, from October 1, 1994 through September 30, 1995 and no less than eighty-five percent or more than one hundred fifteen percent of its 1990 base year costs, adjusted by an audit factor, from October 1, 1995 through September 30, 1996. For the periods after September 30, 1996 no stop loss-stop gain or similar mechanisms shall be in effect. An adjustment in the stop loss-stop gain percentage may be made to ensure that total payments do not increase as a result of this provision. If peer groups are used, the administration shall establish initial peer group designations for each hospital before implementation of the per diem system. The administration may also use a negotiated rate methodology. The tiered per diem methodology may include separate consideration for specialty hospitals that limit their provision of services to specific patient populations, such as rehabilitative patients or children. The initial per diem rates shall be based on hospital claims and encounter data for dates of service November 1, 1990 through October 31, 1991 and processed through May of 1992. The administration may also establish a separate reimbursement methodology for claims with extraordinarily high costs per day that exceed thresholds established by the administration.

2. For rates effective on October 1, 1994, and annually through September 30, 2011, the administration shall adjust tiered per diem payments for inpatient hospital care by the data resources incorporated market basket index for prospective payment system hospitals. For rates effective beginning on October 1, 1999, the administration shall adjust payments to reflect changes in length of stay for the maternity and nursery tiers.

3. Through June 30, 2004, for outpatient hospital services, the administration shall reimburse a hospital by applying a hospital specific outpatient cost-to-charge ratio to the covered charges. Beginning on July 1, 2004 through June 30, 2005, the administration shall reimburse a hospital by applying a hospital specific outpatient cost-to-charge ratio to covered charges. If the hospital increases its charges for outpatient services filed with the Arizona department of health services pursuant to chapter 4, article 3 of this title, by more than 4.7 percent for dates of service effective on or after July 1, 2004, the hospital specific cost-to-charge ratio will be reduced by the amount that it exceeds 4.7 percent. If charges exceed 4.7 percent, the effective date of the increased charges will be the effective date of the adjusted Arizona health care cost containment system cost-to-charge ratio. The administration shall develop the methodology for a capped fee-for-service schedule and a statewide cost-to-charge ratio. Any covered outpatient service not included in the capped fee-for-service schedule shall be reimbursed by applying the statewide cost-to-charge ratio that is based on the services not included in the capped fee-for-service schedule. Beginning on July 1, 2005, the administration shall reimburse clean claims with dates of service on or after July 1, 2005, based on the

capped fee-for-service schedule or the statewide cost-to-charge ratio established pursuant to this paragraph. The administration may make additional adjustments to the outpatient hospital rates established pursuant to this section based on other factors, including the number of beds in the hospital, specialty services available to patients and the geographic location of the hospital.

4. Except if submitted under an electronic claims submission system, a hospital bill is considered received for purposes of this paragraph on initial receipt of the legible, error-free claim form by the administration if the claim includes the following error-free documentation in legible form:

(a) An admission face sheet.

(b) An itemized statement.

(c) An admission history and physical.

(d) A discharge summary or an interim summary if the claim is split.

(e) An emergency record, if admission was through the emergency room.

(f) Operative reports, if applicable.

(g) A labor and delivery room report, if applicable.

Payment received by a hospital from the administration pursuant to this subsection or from a contractor either by contract or pursuant to section 36-2904, subsection I is considered payment by the administration or the contractor of the administration's or contractor's liability for the hospital bill. A hospital may collect any unpaid portion of its bill from other third-party payors or in situations covered by title 33, chapter 7, article 3.

5. For services rendered on and after October 1, 1997, the administration shall pay a hospital's rate established according to this section subject to the following:

(a) If the hospital's bill is paid within thirty days of the date the bill was received, the administration shall pay ninety-nine percent of the rate.

(b) If the hospital's bill is paid after thirty days but within sixty days of the date the bill was received, the administration shall pay one hundred percent of the rate.

(c) If the hospital's bill is paid any time after sixty days of the date the bill was received, the administration shall pay one hundred percent of the rate plus a fee of one percent per month for each month or portion of a month following the sixtieth day of receipt of the bill until the date of payment.

6. In developing the reimbursement methodology, if a review of the reports filed by a hospital pursuant to section 36-125.04 indicates that further investigation is considered necessary to verify the accuracy of the information in the reports, the administration may examine the hospital's records and accounts related to the reporting requirements of section 36-125.04. The administration shall bear the cost incurred in connection with this examination unless the administration finds that the records examined are significantly deficient or incorrect, in which case the administration may charge the cost of the investigation to the hospital examined.

7. Except for privileged medical information, the administration shall make available for public inspection the cost and charge data and the calculations used by the administration to determine payments under the tiered per diem system, provided that individual hospitals are not identified by name. The administration shall make the data and calculations available for public inspection during regular business hours and shall provide copies of the data and

calculations to individuals requesting such copies within thirty days of receipt of a written request. The administration may charge a reasonable fee for the provision of the data or information.

8. The prospective tiered per diem payment methodology for inpatient hospital services shall include a mechanism for the prospective payment of inpatient hospital capital related costs. The capital payment shall include hospital specific and statewide average amounts. For tiered per diem rates beginning on October 1, 1999, the capital related cost component is frozen at the blended rate of forty percent of the hospital specific capital cost and sixty percent of the statewide average capital cost in effect as of January 1, 1999 and as further adjusted by the calculation of tier rates for maternity and nursery as prescribed by law. Through September 30, 2011, the administration shall adjust the capital related cost component by the data resources incorporated market basket index for prospective payment system hospitals.

9. For graduate medical education programs:

(a) Beginning September 30, 1997, the administration shall establish a separate graduate medical education program to reimburse hospitals that had graduate medical education programs that were approved by the administration as of October 1, 1999. The administration shall separately account for monies for the graduate medical education program based on the total reimbursement for graduate medical education reimbursed to hospitals by the system in federal fiscal year 1995-1996 pursuant to the tiered per diem methodology specified in this section. The graduate medical education program reimbursement shall be adjusted annually by the increase or decrease in the index published by the global insight hospital market basket index for prospective hospital reimbursement. Subject to legislative appropriation, on an annual basis, each qualified hospital shall receive a single payment from the graduate medical education program that is equal to the same percentage of graduate medical education reimbursement that was paid by the system in federal fiscal year 1995-1996. Any reimbursement for graduate medical education made by the administration shall not be subject to future settlements or appeals by the hospitals to the administration. The monies available under this subdivision shall not exceed the fiscal year 2005-2006 appropriation adjusted annually by the increase or decrease in the index published by the global insight hospital market basket index for prospective hospital reimbursement, except for monies distributed for expansions pursuant to subdivision (b) of this paragraph.

(b) The monies available for graduate medical education programs pursuant to this subdivision shall not exceed the fiscal year 2006-2007 appropriation adjusted annually by the increase or decrease in the index published by the global insight hospital market basket index for prospective hospital reimbursement. Graduate medical education programs eligible for such reimbursement are not precluded from receiving reimbursement for funding under subdivision (c) of this paragraph. Beginning July 1, 2006, the administration shall distribute any monies appropriated for graduate medical education above the amount prescribed in subdivision (a) of this paragraph in the following order or priority:

(i) For the direct costs to support the expansion of graduate medical education programs established before July 1, 2006 at hospitals that do not receive payments pursuant to subdivision (a) of this paragraph. These programs must be approved by the administration.

(ii) For the direct costs to support the expansion of graduate medical education programs established on or before October 1, 1999. These programs must be approved by the administration.

(c) The administration shall distribute to hospitals any monies appropriated for graduate medical education above the amount prescribed in subdivisions (a) and (b) of this paragraph for the following purposes:

(i) For the direct costs of graduate medical education programs established or expanded on or after July 1, 2006. These programs must be approved by the administration.

(ii) For a portion of additional indirect graduate medical education costs for programs that are located in a county with a population of less than five hundred thousand persons at the time the residency position was created or for a residency position that includes a rotation in a county with a population of less than five hundred thousand persons at the time the residency position was established. These programs must be approved by the administration.

(d) The administration shall develop, by rule, the formula by which the monies are distributed.

(e) Each graduate medical education program that receives funding pursuant to subdivision (b) or (c) of this paragraph shall identify and report to the administration the number of new residency positions created by the funding provided in this paragraph, including positions in rural areas. The program shall also report information related to the number of funded residency positions that resulted in physicians locating their practices in this state. The administration shall report to the joint legislative budget committee by February 1 of each year on the number of new residency positions as reported by the graduate medical education programs.

(f) Local, county and tribal governments and any university under the jurisdiction of the Arizona board of regents may provide monies in addition to any state general fund monies appropriated for graduate medical education in order to qualify for additional matching federal monies for providers, programs or positions in a specific locality and costs incurred pursuant to a specific contract between the administration and providers or other entities to provide graduate medical education services as an administrative activity. Payments by the administration pursuant to this subdivision may be limited to those providers designated by the funding entity and may be based on any methodology deemed appropriate by the administration, including replacing any payments that might otherwise have been paid pursuant to subdivision (a), (b) or (c) of this paragraph had sufficient state general fund monies or other monies been appropriated to fully fund those payments. These programs, positions, payment methodologies and administrative graduate medical education services must be approved by the administration and the centers for medicare and medicaid services. The administration shall report to the president of the senate, the speaker of the house of representatives and the director of the joint legislative budget committee on or before July 1 of each year on the amount of money contributed and number of residency positions funded by local, county and tribal governments, including the amount of federal matching monies used.

(g) Any funds appropriated but not allocated by the administration for subdivision (b) or (c) of this paragraph may be reallocated if funding for either subdivision is insufficient to cover appropriate graduate medical education costs.

10. Notwithstanding section 41-1005, subsection A, paragraph 9, the administration shall adopt rules pursuant to title 41, chapter 6 establishing the methodology for determining the prospective tiered per diem payments that are in effect through September 30, 2014.

11. For inpatient hospital services rendered on or after October 1, 2011, the prospective tiered per diem payment rates are permanently reset to the amounts payable for those services as of October 1, 2011 pursuant to this subsection.

12. The administration shall adopt a diagnosis-related group based hospital reimbursement methodology consistent with title XIX of the social security act for inpatient dates of service on and after October 1, 2014. The administration may make additional adjustments to the inpatient hospital rates established pursuant to this section for hospitals that are publicly operated or based on other factors, including the number of beds in the hospital, the specialty services available to patients, the geographic location and diagnosis-related group codes that are made publicly available by the hospital pursuant to section 36-437. The administration may also provide additional reimbursement for extraordinarily high cost cases that exceed a threshold above the standard payment. The administration may also establish a separate payment methodology for specific services or hospitals serving unique populations.

H. The director may adopt rules that specify enrollment procedures, including notice to contractors of enrollment. The rules may provide for varying time limits for enrollment in different situations. The administration shall specify in contract when a person who has been determined eligible will be enrolled with that contractor and the date on which the contractor will be financially responsible for health and medical services to the person.

I. The administration may make direct payments to hospitals for hospitalization and medical care provided to a member in accordance with this article and rules. The director may adopt rules to establish the procedures by which the administration shall pay hospitals pursuant to this subsection if a contractor fails to make timely payment to a hospital. Such payment shall be at a level determined pursuant to section 36-2904, subsection H or I. The director

may withhold payment due to a contractor in the amount of any payment made directly to a hospital by the administration on behalf of a contractor pursuant to this subsection.

J. The director shall establish a special unit within the administration for the purpose of monitoring the third-party payment collections required by contractors and noncontracting providers pursuant to section 36-2903, subsection B, paragraph 10 and subsection F and section 36-2915, subsection E. The director shall determine by rule:

1. The type of third-party payments to be monitored pursuant to this subsection.

2. The percentage of third-party payments that is collected by a contractor or noncontracting provider and that the contractor or noncontracting provider may keep and the percentage of such payments that the contractor or noncontracting provider may be required to pay to the administration. Contractors and noncontracting providers must pay to the administration one hundred percent of all third-party payments that are collected and that duplicate administration fee-for-service payments. A contractor that contracts with the administration pursuant to section 36-2904, subsection A may be entitled to retain a percentage of third-party payments if the payments collected and retained by a contractor are reflected in reduced capitation rates. A contractor may be required to pay the administration a percentage of third-party payments that are collected by a contractor and that are not reflected in reduced capitation rates.

K. The administration shall establish procedures to apply to the following if a provider that has a contract with a contractor or noncontracting provider seeks to collect from an individual or financially responsible relative or representative a claim that exceeds the amount that is reimbursed or should be reimbursed by the system:

1. On written notice from the administration or oral or written notice from a member that a claim for covered services may be in violation of this section, the provider that has a contract with a contractor or noncontracting provider shall investigate the inquiry and verify whether the person was eligible for services at the time that covered services were provided. If the claim was paid or should have been paid by the system, the provider that has a contract with a contractor or noncontracting provider shall not continue billing the member.

2. If the claim was paid or should have been paid by the system and the disputed claim has been referred for collection to a collection agency or referred to a credit reporting bureau, the provider that has a contract with a contractor or noncontracting provider shall:

(a) Notify the collection agency and request that all attempts to collect this specific charge be terminated immediately.

(b) Advise all credit reporting bureaus that the reported delinquency was in error and request that the affected credit report be corrected to remove any notation about this specific delinquency.

(c) Notify the administration and the member that the request for payment was in error and that the collection agency and credit reporting bureaus have been notified.

3. If the administration determines that a provider that has a contract with a contractor or noncontracting provider has billed a member for charges that were paid or should have been paid by the administration, the administration shall send written notification by certified mail or other service with proof of delivery to the provider that has a contract with a contractor or noncontracting provider stating that this billing is in violation of federal and state law. If, twenty-one days or more after receiving the notification, a provider that has a contract with a contractor or noncontracting provider knowingly continues billing a member for charges that were paid or should have been paid by the system, the administration may assess a civil penalty in an amount equal to three times the amount of the billing and reduce payment to the provider that has a contract with a contractor or noncontracting provider accordingly. Receipt of delivery signed by the addressee or the addressee's employee is prima facie evidence of knowledge. Civil penalties collected pursuant to this subsection shall be deposited in the state general fund. Section 36-2918, subsections C, D and F, relating to the imposition, collection and enforcement of civil penalties, apply to civil penalties imposed pursuant to this paragraph.

L. The administration may conduct postpayment review of all claims paid by the administration and may recoup any monies erroneously paid. The director may adopt rules that specify procedures for conducting postpayment review. A contractor may conduct a postpayment review of all claims paid by the contractor and may recoup monies that are erroneously paid.

M. Subject to title 41, chapter 4, article 4, the director or the director's designee may employ and supervise personnel necessary to assist the director in performing the functions of the administration.

N. The administration may contract with contractors for obstetrical care who are eligible to provide services under title XIX of the social security act.

O. Notwithstanding any other law, on federal approval the administration may make disproportionate share payments to private hospitals, county operated hospitals, including hospitals owned or leased by a special health care district, and state operated institutions for mental disease beginning October 1, 1991 in accordance with federal law and subject to legislative appropriation. If at any time the administration receives written notification from federal authorities of any change or difference in the actual or estimated amount of federal funds available for disproportionate share payments from the amount reflected in the legislative appropriation for such purposes, the administration shall provide written notification of such change or difference to the president and the minority leader of the senate, the speaker and the minority leader of the house of representatives, the director of the joint legislative budget committee, the legislative committee of reference and any hospital trade association within this state, within three working days not including weekends after receipt of the notice of the change or difference. In calculating disproportionate share payments as prescribed in this section, the administration may use either a methodology based on claims and encounter data that is submitted to the administration from contractors or a methodology based on data that is reported to the administration by private hospitals and state operated institutions for mental disease. The selected methodology applies to all private hospitals and state operated institutions for mental disease qualifying for disproportionate share payments.

P. Disproportionate share payments made pursuant to subsection O of this section include amounts for disproportionate share hospitals designated by political subdivisions of this state, tribal governments and universities under the jurisdiction of the Arizona board of regents. Subject to the approval of the centers for medicare and medicaid services, any amount of federal funding allotted to this state pursuant to section 1923(f) of the social security act and not otherwise spent under subsection O of this section shall be made available for distribution pursuant to this subsection. Political subdivisions of this state, tribal governments and universities under the jurisdiction of the Arizona board of regents may designate hospitals eligible to receive disproportionate share payments in an amount up to the limit prescribed in section 1923(g) of the social security act if those political subdivisions, tribal governments or universities provide sufficient monies to qualify for the matching federal monies for the disproportionate share payments.

Q. Notwithstanding any law to the contrary, the administration may receive confidential adoption information to determine whether an adopted child should be terminated from the system.

R. The adoption agency or the adoption attorney shall notify the administration within thirty days after an eligible person receiving services has placed that person's child for adoption.

S. If the administration implements an electronic claims submission system, it may adopt procedures pursuant to subsection G of this section requiring documentation different than prescribed under subsection G, paragraph 4 of this section.

T. In addition to any requirements adopted pursuant to subsection D, paragraph 4 of this section, notwithstanding any other law, subject to approval by the centers for medicare and medicaid services, beginning July 1, 2011, members eligible pursuant to section 36-2901, paragraph 6, subdivision (a), section 36-2931 and section 36-2981, paragraph 6 shall pay the following:

1. A monthly premium of fifteen dollars, except that the total monthly premium for an entire household shall not exceed sixty dollars.

2. A copayment of five dollars for each physician office visit.

3. A copayment of ten dollars for each urgent care visit.

4. A copayment of thirty dollars for each emergency department visit.

U. Subject to the approval of the centers for medicare and medicaid services, political subdivisions of this state, tribal governments and any university under the jurisdiction of the Arizona board of regents may provide to the Arizona health care cost containment system administration monies in addition to any state general fund monies appropriated for critical access hospitals in order to qualify for additional federal monies. Any amount of federal monies received by this state pursuant to this subsection shall be distributed as supplemental payments to critical access hospitals.

V. For the purposes of this section, "disproportionate share payment" means a payment to a hospital that serves a disproportionate share of low-income patients as described by 42 United States Code section 1396r-4.

DEPARTMENT OF ENVIRONMENTAL QUALITY (R-17-1004)
Title 18, Chapter 9, Article 6, Reclaimed Water Conveyances; Article 7, Direct Reuse of Reclaimed Water

Amend: Article 7; R18-9-A701; R18-9-A702; R18-9-A703; R18-9-A704; R18-9-A705; R18-9-A706; R18-9-B701; R18-9-B702; Table 1; R18-9-B703; R18-9-B704; R18-9-B705; R18-9-B706; R18-9-B707; R18-9-B708; R18-9-B709; R18-9-B710; R18-9-C701; R18-9-D701; R18-9-D702

New Part: Part A; Part B; Part C; Part D; Part E

New Section: R18-9-A707; R18-9-E701

Renumber: R18-9-701; R18-9-702; R18-9-703; R18-9-704; R18-9-705; R18-9-706; R18-9-707; R18-9-708; R18-9-709; R18-9-710; R18-9-711; R18-9-712; R18-9-713; R18-9-714; R18-9-715; R18-9-716; R18-9-717; R18-9-718; R18-9-719; R18-9-A701; R18-9-A702; R18-9-A703; R18-9-A704; R18-9-A705; R18-9-A706; R18-9-B701; R18-9-B702; Table 1; R18-9-B703; R18-9-B704; R18-9-B705; R18-9-B706; R18-9-B707; R18-9-B708; R18-9-B709; R18-9-B710; R18-9-C701; R18-9-D701; R18-9-D702

Repeal: Article 6; R18-9-601; R18-9-602; R18-9-603; R18-9-720

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

MEETING DATE: October 3, 2017 **AGENDA ITEM: D-4**

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

FROM: Chris Kleminich, Staff Attorney

DATE: September 19, 2017

SUBJECT: **DEPARTMENT OF ENVIRONMENTAL QUALITY (R-17-1004)**
Title 18, Chapter 9, Article 6, Reclaimed Water Conveyances; Article 7, Direct Reuse of Reclaimed Water

Amend: Article 7; R18-9-A701; R18-9-A702; R18-9-A703; R18-9-A704; R18-9-A705; R18-9-A706; R18-9-B701; R18-9-B702; Table 1; R18-9-B703; R18-9-B704; R18-9-B705; R18-9-B706; R18-9-B707; R18-9-B708; R18-9-B709; R18-9-B710; R18-9-C701; R18-9-D701; R18-9-D702
New Part: Part A; Part B; Part C; Part D; Part E
New Section: R18-9-A707; R18-9-E701
Renumber: R18-9-701; R18-9-702; R18-9-703; R18-9-704; R18-9-705; R18-9-706; R18-9-707; R18-9-708; R18-9-709; R18-9-710; R18-9-711; R18-9-712; R18-9-713; R18-9-714; R18-9-715; R18-9-716; R18-9-717; R18-9-718; R18-9-719; R18-9-A701; R18-9-A702; R18-9-A703; R18-9-A704; R18-9-A705; R18-9-A706; R18-9-B701; R18-9-B702; Table 1; R18-9-B703; R18-9-B704; R18-9-B705; R18-9-B706; R18-9-B707; R18-9-B708; R18-9-B709; R18-9-B710; R18-9-C701; R18-9-D701; R18-9-D702
Repeal: Article 6; R18-9-601; R18-9-602; R18-9-603; R18-9-720

Purpose of the Agency and Summary of What the Rulemaking Does

The Department of Environmental Quality (Department) is engaging in rulemaking related to the use of reclaimed water in A.A.C. Title 18, Chapter 9. The Department indicates that the rulemaking is intended to update and restructure the reclaimed water rules, and allow for treatment of reclaimed water for potable use.

The Department's last comprehensive revision of these rules took effect in 2001, and the Department notes that the science and technology of water treatment has advanced in recent years. In addition, the Department is proposing modifications to some of the terminology used in

the rules. While the current rules regulate gray water,[1] industrial wastewater,[2] and reclaimed water[3] under the umbrella term "reclaimed water," the Department proposes to regulate these types of water as different categories of "recycled water." Also, in many of the rules, the Department is eliminating provisions required by other rules or applicable statutes. The Department has provided a comprehensive and detailed explanation of the rulemaking on pages 5-22 of the Notice of Final Rulemaking.

Exemption or Request and Approval for Exception from the Moratorium

The Department received approval to proceed with the rulemaking from Governor Ducey's office on November 3, 2015.

Proposed Action

The Department summarizes its proposed actions as follows:

- Article 6 is repealed as the rules are being transferred into Article 7.
    - Section 601 – *Definitions*: Incorporated into Section A701.
    - Section 602 – *Pipeline Conveyances of Reclaimed Water*: Incorporated into the reclaimed water general requirements in Section B702(J).
    - Section 603 – *Open Water Conveyances of Reclaimed Water*: Incorporated into the reclaimed water general requirements in Section B702(K).
- Article 7 is split into parts to differentiate between various types of water that fall under the umbrella term "recycled water."
- Section 720 – *Enforcement and Penalties*: Repealed as enforcement and penalty processes are already prescribed in statute at A.R.S. §§ 49-261 through 49-263.
- Part A, related to recycled water general provisions, is established.
    - Section A701 (renumbered from 701) – *Definitions*: Definitions applicable to the Article are being updated.
    - Section A702 (renumbered from 702) – *Applicability and Standards for Recycled Water*: Clarifying amendments are made.
    - Section A703 (renumbered from 705) – *Recycled Water Individual Permit Application*
        - Subsection (A), related to pre-application conferences, is eliminated. The Department states that it is always willing to hold pre-application conferences when requested by applicants.
        - Application requirements for the Recycled Water Individual Permit are modified.

[1] In A.R.S. § 49-201(18), "gray water" is defined as "wastewater that has been collected separately from a sewage flow and that originates from a clothes washer or a bathroom tub, shower or sink but that does not include wastewater from a kitchen sink, dishwasher or toilet."
[2] Under the proposed R18-9-A701(6), "industrial wastewater" is defined as "wastewater generated from an industrial process."
[3] In A.R.S. § 49-201(32), "reclaimed water" is defined as "water that has been treated or processed by a wastewater treatment plant or an on-site wastewater treatment facility."

- Section A704 (renumbered from 708) – *Recycled Water General Permit*:
    - Subsection (B)(2)(c), stating that a Notice of Intent to Use Recycled Water must include the description of the direct reuse activity for a Type 2 Recycled Water General Permit for Direct Reuse of Reclaimed Water, is added.
    - Subsection (B)(3), requiring the Department to notify an applicant that the Department received a Notice of Intent to Use Recycled Water and that the applicant is authorized to use the recycled water according to Type 2 permit conditions, is added.
- Section A705 (renumbered from 709) – *Recycled Water Permit Term, Information Changes, and Renewal*: The rule has been rewritten to apply to all recycled water permits.
- Section A706 (renumbered from 710) – *Recycled Water Permit Revocation*: The rule has been rewritten to apply to all recycled water permits. The Department indicates that the changes simplify revocation procedures for general and individual permits.
- Section A707 – *Recycled Water Permit Transition*: The rule is added to note that existing permittees will be required to follow the provisions in Article 7 as effective at the time of permit issuance.

· Part B is established for reclaimed water regulation.

- Section B701 (renumbered from 703) – *Transfer of Aquifer Protection Permits and Permits for the Reuse of Reclaimed Wastewater*: Clarifying amendments are made.
- Section B702 (renumbered from 704) – *General Requirements for Reclaimed Water*:
    - Subsection (G), providing that a permittee directly reusing reclaimed water shall secure hose bibbs discharging reclaimed water to prevent use by the public, is added.
    - Subsection (J), providing requirements for pipeline conveyances that previously existed in Section 602, is added.
    - Subsection (K), providing requirements for open water conveyances that previously existed in Section 603, is added.
- Table 1 – *Signage and Notification Requirements for Direct Reuse Sites*: Modifications consistent with other rule changes are made.
- Section B703 (renumbered from 706) – *General Provisions for Recycled Water Individual Permit for Reclaimed Water*: In addition to clarifying amendments, permit transfer requirements are eliminated as they are now covered in Part A.
- Section B704 (renumbered from 712) – *Type 2 Recycled Water General Permit for Direct Reuse of Class A+ Reclaimed Water*: Clarifying amendments are made.
- Section B705 (renumbered from 713) – *Type 2 Recycled Water General Permit for Direct Reuse of Class A Reclaimed Water*: Clarifying amendments are made.
- Section B706 (renumbered from 714) – *Type 2 Recycled Water General Permit for Direct Reuse of Class B+ Reclaimed Water*: Clarifying amendments are made.
- Section B707 (renumbered from 715) – *Type 2 Recycled Water General Permit for Direct Reuse of Class B Reclaimed Water*: Clarifying amendments are made.

- Section B708 (renumbered from 716) – *Type 2 Recycled Water General Permit for Direct Reuse of Class C Reclaimed Water*: Clarifying amendments are made.
- Section B709 (renumbered from 717) – *Type 3 Recycled Water General Permit for a Reclaimed Water Blending Facility*:
  - Information requirements for Type 3 blending facility applications are clarified.
  - Requirements are clarified for instances when nitrogen or fecal coliform concentrations are exceeded.
  - The annual reporting date is changed to a uniform calendar year date of January 31 from the permit anniversary date.
- Section B710 (renumbered from 718) – *Type 3 Recycled Water General Permit for a Reclaimed Water Agent*: In addition to clarifying amendments, the annual reporting date is changed to a uniform calendar year date of January 31 from the permit anniversary date.

· Part C is established for recycled industrial wastewater regulation.
- Section C701 (renumbered from 707) – *Recycled Water Individual Permit for Industrial Wastewater*: Clarifying amendments are made.

· Part D is established for gray water regulation.
- Section D701 (renumbered from 711) – *Type 1 Recycled Water General Permit for Gray Water*: Amendments are intended to provide more useful guidance for residential gray water use and eliminate ambiguities in the existing rule.
- Section D702 (renumbered from 719) – *Type 3 Recycled Water General Permit for Gray Water*: The technical requirements for large-scale gray water use are largely rewritten. The Department indicates that the utility of the permit is expanded due to new requirements.

· Part E is established for potable use regulation.
- Section E701 – *Recycled Water Individual Permit for an Advanced Reclaimed Water Treatment Facility*: This new rule relates to an individual permit process for facilities to treat reclaimed water to produce potable water and provides interim criteria requirements.

Substantive or Procedural Concerns

None.

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

Yes. As authority for the rules, the Department cites to A.R.S. § 49-203(A)(6), under which the Department must "[a]dopt, by rule, technical standards for conveyances of reclaimed water and a permit program for the direct reuse of reclaimed water."

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

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

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

Yes. The Department received comments from ten individuals on the proposed rules.[4] A summary of the public comments received, along with the Department's responses, can be found on pages 33-56 of the Notice of Final Rulemaking. Please note that the Department, for purposes of responding to commenters, has divided those ten submissions into 54 comments. Council staff believes that the Department has adequately addressed the comments on the proposed rules.

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

No. Clarifying and technical changes have been made between the proposed rules and the final rules, none of which constitute a substantial change in Council staff's opinion.

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

Yes. The Department indicates that it reviewed and relied upon the following study:

- *The Opportunities and Economics of Direct Potable Reuse* (2014), WateReuse Research Foundation.[5] The Department states that it relied on this study for information regarding the likely cost of direct potable reuse and the likely costs compared to alternative sources of water.

The Department indicates that it reviewed but did not rely upon the following studies:

- *Framework for Direct Potable Reuse* (Jeffrey J. Mosher, et al. eds, 2015), sponsored by the WateReuse Association and co-sponsored by National Water Research Institute, American Water Works Association, and Water Environment Federation.[6]
- *Direct Potable Reuse: A Path Forward* (George Tchobanoglous, University of California, Davis, et al., 2011), sponsored by WateReuse, Bureau of Reclamation, and California State Water Resources Control Board.[7]
- *Blue Ribbon Panel on Water Sustainability: Final Report* (2010), sponsored by the Arizona Department of Environmental Quality, Arizona Corporation Commission, and Arizona Department of Water Resources.[8]

[4] Copies of these comments have been included as an attachment to the Notice of Final Rulemaking.
[5] This study is available at https://watereuse.org/watereuse-research/the-opportunities-and-economics-of-direct-potable-reuse/
[6] This study is available at https://watereuse.org/watereuse-research/framework-for-direct-potable-reuse/
[7] This study is available at https://watereuse.org/watereuse-research/11-00-direct-potable-reuse-a-path-forward/
[8] This study is available at http://www.azwater.gov/AzDWR/waterManagement/BlueRibbonPanel.htm

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

No. The Department indicates that no federal laws directly correspond to the regulation of reclaimed water, gray water, or the direct potable use of treated reclaimed water.

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

Yes. The rules require many different categories of permits. The Department indicates that it uses general permits where possible, but that in many instances it is technically infeasible to issue general permits. For example, the Department notes that general permits cannot be issued for advanced reclaimed water treatment facilities as those facilities have varying advanced water treatment techniques and require facility-specific determinations. In such circumstances, the Department issues individual permits pursuant to A.R.S. § 41-1037(A)(3).

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

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

9. Conclusion

The Department requests a January 1, 2018 effective date for the rules. This analyst recommends approval of the rules.

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

MEETING DATE: October 3, 2017 **AGENDA ITEM: D-4**

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

FROM: GRRC Economic Team

DATE: September 19, 2017

SUBJECT: **DEPARTMENT OF ENVIRONMENTAL QUALITY (R-17-1004)**
Title 18, Chapter 9, Article 6, Reclaimed Water Conveyances; Article 7, Direct Reuse of Reclaimed Water

Amend: Article 7; R18-9-A701; R18-9-A702; R18-9-A703; R18-9-A704; R18-9-A705; R18-9-A706; R18-9-B701; R18-9-B702; Table 1; R18-9-B703; R18-9-B704; R18-9-B705; R18-9-B706; R18-9-B707; R18-9-B708; R18-9-B709; R18-9-B710; R18-9-C701; R18-9-D701; R18-9-D702
New Part: Part A; Part B; Part C; Part D; Part E
New Section: R18-9-A707; R18-9-E701
Renumber: R18-9-701; R18-9-702; R18-9-703; R18-9-704; R18-9-705; R18-9-706; R18-9-707; R18-9-708; R18-9-709; R18-9-710; R18-9-711; R18-9-712; R18-9-713; R18-9-714; R18-9-715; R18-9-716; R18-9-717; R18-9-718; R18-9-719; R18-9-A701; R18-9-A702; R18-9-A703; R18-9-A704; R18-9-A705; R18-9-A706; R18-9-B701; R18-9-B702; Table 1; R18-9-B703; R18-9-B704; R18-9-B705; R18-9-B706; R18-9-B707; R18-9-B708; R18-9-B709; R18-9-B710; R18-9-C701; R18-9-D701; R18-9-D702
Repeal: Article 6; R18-9-601; R18-9-602; R18-9-603; R18-9-720

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

In this rulemaking, the Department is proposing to amend Articles 6 & 7 to update and restructure the reclaimed water rules, and allow for the treatment of reclaimed water for potable use. Under the 2001 reclaimed water rules, an entity is prevented from providing treated reclaimed water for human consumption, except as allowed by substantive policy. The Department is modifying this prohibition to allow for the distribution of highly-treated reclaimed water to augment Arizona's water supply and spark innovation.

This rulemaking is anticipated to encourage the usage of reclaimed water, increase business opportunities, and allow for water resource conservation and savings. This rulemaking is the first phase in expanding the use of reclaimed and recycled waters to further the goals of the Governor's Arizona Water Initiative's Augmentation Council. A phased approach will allow the state to make rules to meet water augmentation goals as expeditiously as possible.

Key stakeholders are recycled water permittees and those who use reclaimed water and gray water for beneficial use. The Department has 401 active Type 2 general permits, 52 active Type 3 reclaimed water permits for water agents or blending facilities, and 10 active individual recycled water permits. There are currently 6 Type 3 grey water permits. There is an unknown number of Type 1 grey users, as no written or recorded permit is required to be in compliance with the rules. Other potential permittees include those who may choose to apply for an advanced reclaimed water treatment facility individual permit. These permittees will likely consist of those who wish to capitalize on new technology to maximize the use and conservation of water.

1. <u>Costs and Benefits for:</u>

a. The implementing agency:

The Department does not expect these rules to increase the number of permits it processes, and expects permit fees to support extra permit processing costs. Initially, no new full time employees will be devoted to support the program. The Department expects minor economic impacts for this rulemaking.

b. Political subdivisions:

Political subdivisions and government entities will be impacted by this rule, but any economic impact should be minimal. Costs and benefits should be similar as to businesses listed below.

c. Businesses:

The grey water rule modifies best management practices for Type 1 and Type 3 permits. There may be minimal consulting or engineering costs to ensure compliance with the new permit requirements. No negative impact on employment in the state is anticipated.

The Department expects the cost of the new permit for advanced reclaimed water treatment facilities to be like that of and an individual Aquifer Protection Program (APP) permit for a large wastewater treatment facility. APP permit costs range between $10,000 - $15,000. The benefits from an increased supply of potable water should eventually out weight the costs, given the high value of potable water in Arizona.

The rule eliminates the requirement for the state to publish permit public notices in newspapers, but rather requires notice be given on the Department's website. The modification

of the notice requirement will save the cost of publishing notices, but could affect newspaper companies negatively.

d. Small businesses:

The Department does not expect this rulemaking to significantly increase burdens on small businesses. The impact on small business should the same as on business listed above.

e. Consumers directly affected by the rulemaking:

Recycled water permittees, including those who use reclaimed water and grey water will benefit from this rule change.

2. Do the probable benefits outweigh the probable costs?

The Department does not anticipate any significant economic cost or benefit to private persons or consumers. An intangible benefit of these rules may be the ability of the public to support businesses that conserve more water through gray water use, or that lead the nation in protecting water resources by producing potable water from reclaimed water.

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

To protect human health and the environment, the Department indicates that it cannot exempt small business from requirements of this rulemaking.

4. The probable effect on state revenues:

The Department does not expect any significant increase or decrease in state revenue as a result of this rulemaking.

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

The Department does not know of any less intrusive or less costly alternative of expanding gray water use and allowing for treatment of reclaimed water to produce potable water, while still protecting human health and the environment.

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

No analysis was submitted that compares the rule’s impact of the competitiveness of businesses in this state to the impact on businesses in other states.

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

No empirical or quantitative data were submitted for use in the EIS.

8. Conclusion:

The submitted economic, small business, and consumer impact statement is generally accurate, and contains the information required for compliance with ARS §§ 41-1035, 41-1052(D)(1-3), and 41-1055. Staff recommends that the proposed rule amendments be approved.

Douglas A. Ducey
Governor

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

Misael Cabrera
Director

August 22, 2017

Via electronic submission
Ms. Nicole Ong Colyer, Chair
Governor's Regulatory Review Council
100 N. 15th Avenue, Suite 305
Phoenix, Arizona 85007

Re: New Rulemaking for Title 18. Environmental Quality, Chapter 9. Department of Environmental Quality Water Pollution Control, Articles 6 and 7.

Dear Ms. Colyer:

The Arizona Department of Environmental Quality (ADEQ) has approved amendments and developed new rules for consideration by the Council on October 3, 2017. ADEQ is amending several rules in Title 18, Chapter 9, which regulate the use of recycled water, including reclaimed water and gray water. This rule revision mainly (1) restructures the rules related to recycled water; (2) modifies the prohibition of providing regulating the distribution of reclaimed water for human consumption to allow for an exception for an advanced reclaimed water treatment facility that treats reclaimed water to produce potable water; and (3) modifies the gray water provisions for clarity and to allow increased utility of the large scale gray water permit.

The following information is provided for your use in reviewing the enclosed rules for approval pursuant to A.R.S. § 41-1052 and A.A.C. R1-6-201:

I. Information Required by R1-6-201(A)(1)

- The public record closed for all rules on July 25, 2017 at 5:00 p.m.
- The rulemaking activity was recently discussed in a five-year review report for Articles 6 & 7. The report was approved by the Council on September 7, 2016.
- The rules do not contain a new fee.
- The rules do not contain a fee increase.
- The Department is not seeking an immediate effective date for these rules, but is requesting the specific effective date of January 1, 2018.
- I certify that the preamble discloses a reference to any study relevant to the rule that the agency reviewed and either did or did not rely on in the agency's evaluation of or justification for the rule.
- A full-time employee will not be required to implement and enforce the rule.
- A list of all documents enclosed is provided in Sections II and III.

II. List of Documents Enclosed under R1-6-201(A)

- One electronic copy of the following is enclosed:
  1. This cover letter.
  2. The Notice of Final Rulemaking (NFRM), including the preamble, table of contents, and text of each rule.
  3. A complete economic, small business and consumer impact statement, which is also included in the preamble of the NFRM.
  4. Written comments on the Notice of Proposed Rulemaking (NPRM) received by ADEQ.
- Testimony for the July 25, 2017 public hearing was received and recorded, but such testimony is not systematically transcribed by the agency. However, the recording is available upon request and the oral comments received are addressed in the responsiveness summary.
- ADEQ received no analysis regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states, therefore, no such analysis is included in this submittal.

III. List of Documents Enclosed under A.A.C. R1-6-201(B)

- There are no incorporations by reference added to the rules in this action.
- One electronic copy of each of the following is enclosed: The general and specific statutes authorizing the rule, including relevant statutory definitions; specifically: A.R.S. § 49-203.
- One electronic copy of A.A.C. R18-9-101(37) containing the definition of "sewage treatment facility," to which the new A.A.C. R18-9-A701(16) refers. No other term is defined in the rule by referring to another rule or a statute other than the general and specific statutes authorizing the rule.
- One electronic copy of each of the existing rules being amended, specifically A.A.C. Title 18, Chapter 9, Articles 6 & 7.

Thank you for your timely review and approval. Please contact Heidi Haggerty Welborn, Rules Analyst, Water Quality Division, at 602-771-4815 or haggerty.heidi@azdeq.gov, if you have any questions.

Sincerely,

Bret Parke
Deputy Director

Encls.

NOTICE OF FINAL RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 9. DEPARTMENT OF ENVIRONMENTAL QUALITY

WATER POLLUTION CONTROL

PREAMBLE

1. Article, Part of Sections Affected (as applicable)	**Rulemaking Action**
Article 6	Repeal
R18-9-601	Repeal
R18-9-602	Repeal
R18-9-603	Repeal
Article 7	Amend
R18-9-701	Renumber
R18-9-702	Renumber
R18-9-703	Renumber
R18-9-704	Renumber
R18-9-705	Renumber
R18-9-706	Renumber
R18-9-707	Renumber
R18-9-708	Renumber
R18-9-709	Renumber
R18-9-710	Renumber
R18-9-711	Renumber
R18-9-712	Renumber
R18-9-713	Renumber

R18-9-714	Renumber
R18-9-715	Renumber
R18-9-716	Renumber
R18-9-717	Renumber
R18-9-718	Renumber
R18-9-719	Renumber
R18-9-720	Repeal
Part A	New Part
R18-9-A701	Renumber
R18-9-A701	Amend
R18-9-A702	Renumber
R18-9-A702	Amend
R18-9-A703	Renumber
R18-9-A703	Amend
R18-9-A704	Renumber
R18-9-A704	Amend
R18-9-A705	Renumber
R18-9-A705	Amend
R18-9-A706	Renumber
R18-9-A706	Amend
R18-9-A707	New Section
Part B	New Part
R18-9-B701	Renumber
R18-9-B701	Amend

R18-9-B702	Renumber
R18-9-B702	Amend
Table 1.	Renumber
Table 1.	Amend
R18-9-B703	Renumber
R18-9-B703	Amend
R18-9-B704	Renumber
R18-9-B704	Amend
R18-9-B705	Renumber
R18-9-B705	Amend
R18-9-B706	Renumber
R18-9-B706	Amend
R18-9-B707	Renumber
R18-9-B707	Amend
R18-9-B708	Renumber
R18-9-B708	Amend
R18-9-B709	Renumber
R18-9-B709	Amend
R18-9-B710	Renumber
R18-9-B710	Amend
Part C	New Part
R18-9-C701	Renumber
R18-9-C701	Amend
Part D	New Part

R18-9-D701	Renumber
R18-9-D701	Amend
R18-9-D702	Renumber
R18-9-D702	Amend
Part E	New Part
R18-9-E701	New Section

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

Authorizing statutes: A.R.S. § 49-203(A)(6).

Implementing statute: A.R.S. § 49-203.

3. The effective date of the rules:

January 1, 2018

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

Notice of Rulemaking Docket Opening: 22 A.A.R. 16, January 1, 2016

Notice of Rulemaking Docket Opening: 23 A.A.R. 1687, June 23, 2017

Notice Proposed Rulemaking: 23 A.A.R. 1663, June 23, 2017

5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Heidi M. Haggerty (Welborn)

Address: Arizona Department of Environmental Quality
Water Quality Division
1110 W. Washington Street
Phoenix, Arizona 85007

Telephone: (602) 771-4815 (This number may be reached toll-free in state by dialing 1-800-234-5677 and entering the seven digit number at any time during the automated message.)

E-mail: haggerty.heidi@azdeq.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:

Summary

The Arizona Department of Environmental Quality (ADEQ) proposes to amend 18 A.A.C. 9, Articles 6 & 7 to update and restructure the reclaimed water rules, and allow for treatment of reclaimed water for potable use.

Article 7 reclaimed water rules have historically regulated both reclaimed water and gray water. Reclaimed water is water that has been treated or processed by a wastewater treatment plant or an on-site wastewater treatment facility to meet certain standards. Reclaimed water may then be directly reused for certain allowable uses depending on the quality of the water. Reclaimed water quality standards and allowable uses are established in 18 A.A.C. 11, Article 3, which establishes five classes of reclaimed water based on protection of public health and groundwater quality (A+, A, B+, B, and C). Class A+ reclaimed water is wastewater that has undergone the most treatment of a minimum secondary treatment, nitrogen removal treatment, and high levels of disinfection. Class C water is wastewater that has undergone minimum secondary treatment and some disinfection. Allowable end uses correspond with the water quality class designations. End uses for reclaimed water include, for example, crop irrigation, golf course irrigation, recreational impoundments, and dust control.

Gray water is wastewater that is collected separately from a sewage flow and originates from a clothes washer or a bathroom tub, shower, or sink but does not include wastewater from a kitchen sink, dishwasher, or toilet. Arizona has many residential gray water users that reuse water for irrigation purposes. There are few large scale gray water users that reuse water for irrigation in Arizona, including some R.V. parks, recreational parks, and residential communities.

Generally, the types of facilities that the rules in Articles 6 and 7 apply to include wastewater treatment plants, irrigation districts, other reclaimed water end users, and residential and large-scale gray water users.

ADEQ last adopted a comprehensive revision of the reclaimed water reuse rules in January, 2001. These rules have fostered the beneficial reuse of reclaimed water while protecting water quality and human health. This regulatory framework has served Arizona well in expanding its water supply portfolio.

Since 2001, however, the science and technology of treatment and monitoring have advanced, and new concerns and needs have arisen, including the need for clarification of ambiguities in the rules. In

early 2016, ADEQ held informal listening sessions in Tucson, Phoenix, and Flagstaff to gather comments and feedback on the current rules. This rule is an outcome of that process and represents the first round of three planned rulemaking phases.

In addition to meeting stakeholders' water augmentation requests, this rulemaking furthers the goals of the Governor's Arizona Water Initiative's Augmentation Council, originated by Governor Ducey under Executive Order 2015-13 and the Governor's Blue Ribbon Panel on Water Sustainability, which was formed in 2009 by Governor Brewer. The *Blue Ribbon Panel on Water Sustainability Final Report, November 30, 2010* contained recommendations to advance and expand the use of reclaimed water and other recycled waters. In *The Arizona Water Initiative Annual Report, July 1, 2016,* experts identified the need for water augmentation through expanding reclaimed water reuse. This rulemaking is the first phase in expanding the use of reclaimed and recycled waters to further these augmentation goals. For example, part of this rulemaking is will allow for an exception to the prohibition against providing reclaimed water for human consumption in order to augment Arizona's water supply and to spark innovation.

Based on the need for augmentation and the listening sessions held in early 2016, future phases will likely involve updates and amendments to A.A.C. Title 18, Chapter 11, Article 3, Reclaimed Water Quality Standards and additional amendments to A.A.C. Title 18, Chapter 9, Article 7 regarding infrastructure and technology and potable use criteria.

ADEQ is planning a second rulemaking phase that will involve amending A.A.C. Title 18, Chapter 11, Article 3, Reclaimed Water Quality Standards. To assist ADEQ in revising the reclaimed water quality standards, ADEQ has convened an expert workgroup to review the suitability of existing standards in light of current knowledge and provide recommendations on revisions.

ADEQ has also convened a workgroup of experts to provide recommendations to ADEQ on infrastructure and technology for a third rulemaking phase. This work group is charged with two main tasks: (1) review the reclaimed water conveyance requirements (formerly A.A.C. Title 18, Chapter 9, Article 6 provisions, which have been proposed for incorporation into Part B of Article 7, and determine whether the current technical criteria are adequate, and (2) develop and recommend comprehensive criteria for advanced water treatment of reclaimed water for direct potable use. Comprehensive criteria for direct potable use would replace the interim criteria specified in Part E of this rulemaking.

ADEQ intends to modify the reclaimed rules in phases, as opposed to all at once, for several reasons. The review and modification process for such an expansive program is expected to take a good deal

of time. The workgroups have been established to provide technical recommendations, but their review is expected to take approximately six months. ADEQ will then modify the rules, considering workgroup and other stakeholder recommendations to further modify the rules. The magnitude of necessary future modification cannot be fully known at this time without further review and stakeholder process. Currently, however, gray water permits are underutilized because of impracticable requirements, and this rulemaking will promote greater gray water utilization. Further, the rules as originally written did not account for advanced reclaimed water treatment technologies so the rules now potentially suppress potable water augmentation innovation and implementation. Phasing the rulemaking will allow for the flow of innovation and utilization of reclaimed and gray water permits. If ADEQ batches all of the phases into one rulemaking, it may be years before permittees may utilize Type 3 gray water permits sufficiently, and before the state can begin to augment its water supply through treated reclaimed water potable use. Also, modifying the rule in phases will allow the regulated community and the public to adapt to the new structure and standards as the rules are modified, and provide additional opportunities for comment and improvement of the rules. For the above reasons, a phased approach will allow the state to make rules to meet water augmentation goals as expeditiously as possible.

Explanation of Major Modifications

ADEQ proposed several major changes for 18 A.A.C. 9, Articles 6 and 7 in this rulemaking, including the following:

- Nomenclature and Restructuring Modifications;
- Modification of the Prohibition Against Providing Reclaimed Water for Human Consumption;
- Addition of Interim Permitting Criteria for an Advanced Reclaimed Water Treatment Facility, Which Produces Potable Water from Reclaimed Source Water;
- Modification of Gray Water Permitting Requirements;
- Modification of Notice and Signage Provisions;
- Modification of Reporting Requirements;
- Modification of Permit Revocation Provisions;
- Addition of Recycled Permit Transition Provision;
- Repeal of Unnecessary Sections and Subsections;
- Modification of Permit Notice Requirements; and
- Other minor clarifications, grammatical changes, and technical and consistency modifications to implement the above listed overarching changes.

Nomenclature and Restructuring Modifications.

ADEQ modified the overall nomenclature of Article 7. Under ADEQ's current regulations, gray water, industrial wastewater, and reclaimed water are regulated as "reclaimed water." However, gray water, industrial wastewater, and reclaimed water are all separate and unique categories of "recycled water." ADEQ proposed to modify Article 7 to regulate all of these categories of water under the same umbrella term of "recycled water." ADEQ renamed A.A.C. Title 18, Chapter 9, Article 7, from Direct Reuse of Reclaimed Water to Use of Recycled Water. A definition for recycled water is also proposed in R18-9-A701. To implement this new nomenclature, ADEQ proposed a new organizational structure for Article 7 clearly distinguishing the general recycled water provisions and the different categories of recycled water. The proposed structure is designed to ease the addition of any potential new categories of recycled waters in the future.

ADEQ modified the general provisions for reclaimed water to be applicable to all recycled waters and moved the provisions into Part A. Reclaimed water is now addressed in Part B. Reuse of industrial wastewater is regulated separately in Part C. Gray water is now regulated in Part D. Part E, which has no counterpart in the current rules, contains the interim criteria for advanced reclaimed water treatment for distribution of water for direct potable use. Below is the proposed structure for Article 7:

Table 1 Proposed Article 7 Restructure According to Part

Article 7	**Use of Recycled Water**
Part A	General Provisions
Part B	Reclaimed Water
Part C	Recycled Industrial Wastewater
Part D	Gray Water
Part E	Purified Water for Potable Use

In the current rules, the permit types are listed consecutively in R18-9-711 through R18-9-719. However, as a part of the nomenclature and restructuring changes, ADEQ proposed these permits be located in the part of the rules addressing the particular category of recycled water regulated in

the permit. For example, gray water is regulated under Part D. Also as a result of the restructure, every permit is now a "recycled water" permit and renamed as such. Below is a table showing each of the permit types proposed for regulation under Article 7, including their new name and part location.

Table 2 Proposed Permits by Type

Permit Type	***Part***
Type 1 Recycled Water General Permit for Gray Water	D
Type 2 Recycled Water General Permit for Direct Reuse of Class A+ Reclaimed Water	B
Type 2 Recycled Water General Permit for Direct Reuse of Class A Reclaimed Water	B
Type 2 Recycled Water General Permit for Direct Reuse of Class B+ Reclaimed Water	B
Type 2 Recycled Water General Permit for Direct Reuse of Class B Reclaimed Water	B
Type 2 Recycled Water General Permit for Direct Reuse of Class C Reclaimed Water	B
Type 3 Recycled Water General Permit for a Reclaimed Water Blending Facility	B
Type 3 Recycled Water General Permit for a Reclaimed Water Agent	B
Type 3 Recycled Water General Permit for Gray Water	D
Recycled Water Individual Permit (General)	A
Recycled Water Individual Permit for Industrial Wastewater That Is Reused	C
Recycled Water Individual Permit for an Advanced Reclaimed Water Treatment Facility *(new permit type)*	E

The Recycled Water Individual Permit Application in Part A must be used for specific individual permits, which are prescribed by other Parts in Article 7 for particular types of water or situations (e.g. an individual permit for a reclaimed water agent). The Part A individual permit application may also be used for situations involving more than one type of permit at one facility or for situations not captured by a general permit in order to ensure recycled water is used appropriately for the end use. For example, one individual permit may be issued for a facility using gray water and reclaimed water.

The proposed modifications also transfer all of the provisions from A.A.C. Title 18, Chapter 9, Article 6, Reclaimed Water Conveyances, into Article 7 for regulation as general reclaimed water requirements under Part B of Article 7. The definitions for "open water conveyance" and "pipeline conveyance" are moved into the Article 7 General Provisions definition section, R18-9-A701. The reclaimed water pipeline conveyance and open water conveyance sections, R18-9-602

and R18-9-603, respectively, are moved into the section for general requirements for reclaimed water, R18-9-B702. These provisions are only applicable to reclaimed water conveyance and distribution and so are only regulated under the reclaimed water category under Part B of Article 7. ADEQ added a clause to the open water conveyances in R18-9-B702(K)(3)(c) to allow for a possible variance from the ¼ mile signage interval requirement, as approved by the Department to be reasonably protective of human health.

Modification of the Prohibition Against Providing Reclaimed Water for Human Consumption.

In furtherance of augmenting Arizona's potable water supply to meet future demands, ADEQ is providing an exception to the prohibition against providing reclaimed water for human consumption by allowing reclaimed water to be treated appropriately for potable use.

ADEQ proposed to leave the current reclaimed classes and permitting methodology substantially in place to allow for the continued appropriate regulation of reclaimed water, which has benefitted the state over the years. Without additional advanced treatment, current classes of reclaimed water (A+, A, B+, B, and C) are not verifiably safe to drink. For this reason, ADEQ maintains the prohibition against providing direct reclaimed water for human consumption should continue in order to protect human health, unless the water is treated by a permitted advanced reclaimed water treatment facility

Research and studies have shown, and ADEQ concurs, the science and technology of advanced water treatment is at a level today where reclaimed water can be reliably treated to produce potable water. Therefore, ADEQ proposed to modify the prohibition against providing reclaimed water for human consumption to allow for an exception. As proposed, reclaimed water may be used as a source water for human consumption if the water undergoes further advanced water treatment and permitting under Part E. Part E prescribes a permitting process and a list of criteria that must be considered for ADEQ to issue a permit for an advanced reclaimed water treatment facility as an end user. The proposed term "advanced reclaimed water treatment facility" is defined in R18-9-A701(1). Under the definition, the facility treats and purifies only Class A+ or B+ reclaimed water to produce potable water suitable for distribution for human consumption. However, if this facility also qualifies as a potable water system as defined under the Safe Drinking Water Act (SDWA), SDWA requirements will also separately apply to the facility under A.A.C. Title 18, Chapter 4.

Given the proven effectiveness of advanced water treatment techniques to produce drinkable water, ADEQ intends reclaimed water appropriately treated by an advanced reclaimed water treatment facility is no longer considered "reclaimed water" and therefore subsequent use is not to be "direct reuse" of reclaimed water as defined in the rules. To implement this concept, ADEQ proposed to modify the definition of "direct reuse" to clarify it does not include the use of potable water produced by an advanced reclaimed water treatment facility. ADEQ also proposed part of the definition of advanced reclaimed water treatment facility to specifically state, "Potable water produced by such a facility is not reclaimed water."

In other words, while an advanced reclaimed water treatment facility is considered an end user of reclaimed water, a person receiving water produced by an advanced reclaimed water treatment facility is not an end user of reclaimed water and is not subject to the end user permitting requirements under Article 7. However, water produced by an advanced reclaimed water treatment facility may be subject to other water quality regulations. For example, if the water produced by an advanced reclaimed water treatment facility is subsequently delivered to a public water system, Safe Drinking Water Act regulations would apply as they would to a surface source water.

Addition of Interim Permitting Criteria for an Advanced Reclaimed Water Treatment Facility, Which Produces Potable Water from Reclaimed Source Water.

Part E of this proposed rulemaking provides protective interim permitting criteria for an advanced reclaimed water treatment facility. These interim rules will remain in effect until ADEQ next modifies Article 7 to perfect the interim criteria based on experience and additional stakeholder input. ADEQ has already started the process for developing final criteria.

As stated in the previous section above, ADEQ is confident in the science and technology that advanced water treatment techniques can provide a finished water suitable for any potable use. These conclusions are based on research of laboratory analyses and multiple publications. E.g. WateReuse, *Framework for Direct Potable Use* 79 (2015) ("The ability of a wide range of treatment processes to meet chemical and pathogen standards for [advanced treated water] production……have been demonstrated and are well documented…"). These conclusions are also supported in practice by facilities in the United States and internationally currently producing potable water by treating reclaimed water through multiple treatment technology barriers.

An advanced reclaimed water treatment facility consists of a chain of state-of-the-art treatment processes provide multiple purification mechanisms that remove contaminants from reclaimed

water to produce potable water. The source water allowed by the proposed Part E, Class A+ and B+ reclaimed water, already has received a significant level of treatment by high performance wastewater treatment plants. An advanced reclaimed water treatment facility further purifies this water through a sequence of technologies such as ultrafiltration, reverse osmosis, advanced oxidation, and granular activated carbon. These technologies remove chemical constituents and have the capability to eliminate microbial contaminants many times over. For example, typical treatment trains employed for this purpose provide six to ten or more logarithm removal levels for microbial contaminants. This is equivalent to a removal capability of 99.9999 to 99.99999999 percent or more. This is far more than needed considering the high quality of the source water. By comparison, under the Safe Drinking Water Act, public water systems fed by surface water sources must maintain 4 log removal of viruses, which is equivalent to a 99.99 percent removal. The Safe Drinking Water Act applies its most stringent microbial log removal targets to viruses.

State-of-the-art monitoring technology is also used to track in real time the treatment processes and the quality of the finished water product. Using these monitoring technologies, nonconforming water can be diverted almost immediately offline into, for example, a storage tank or impoundment. These technological advances ensure the facility can reliably purify water for drinking from virtually any source water to any desired standard of protection and ensure no nonconforming water is co-mingled with potable water for delivery.

Under the proposed rules, an advanced reclaimed water treatment facility must obtain a Recycled Water Individual Permit for an Advanced Reclaimed Water Treatment Facility. An applicant would provide the same information as required for any Recycled Water Individual Permit, as well as additional information required in a prescribed design report. The design report must demonstrate the advanced treatment provides multiple barriers of protection reliably producing water suitable for human consumption. Among other required information, the design report must include proof of pilot studies and results, a plan for monitoring for public health, and a complete identification, description, and analysis of the treatment stream, treatment system performance alerts, and corrective actions and contingencies for noncompliant water. The requirement for proof of a pilot study means proof of a pilot plant, which is a small treatment system which is operated to generate information needed to design the full-scale facility. Design of the pilot plan itself may be based on an even smaller bench-scale system. ADEQ may accept a pilot study that ADEQ determines to be analogous to the applicant’s planned facility. The proposed interim criteria will serve as a framework to develop final criteria for the design, treatment, monitoring, and operation of advanced reclaimed water treatment facilities producing potable water.

To assist in further developing the interim criteria into final criteria, ADEQ has convened a workgroup of experts with access and knowledge of recent publications, research, and practice. Several of these experts have knowledge of or are involved in developing a recent document on Arizona-specific potable use considerations facilitated by the Steering Committee on Arizona Potable Reuse (SCAPR), an ad hoc group formed by experts from municipalities, consulting firms, and academia. Once finalized, ADEQ will likely use this document to further expand the potable use criteria in a later rulemaking phase. However, during this interim period, ADEQ is confident the interim criteria will ensure that any advanced reclaimed water treatment plant proposed produces an exceptional and drinkable finished water product.

Modification of Gray Water Permitting Requirements.

ADEQ updated the gray water use rules to clarify ambiguities and expand the utility of gray water permits.

ADEQ proposed to modify some of the language and requirements in the Type 1 General Permit for Gray Water in R18-9-D701, which regulates residential gray water use. The proposed rule provides greater clarity as to what best practices are most appropriate, safe, and practical. The changes proposed in this rule revision reflect more than 15 years of experience under the current approach. The changes:

- Clarify the use of gray water for safely watering food plants;
- Allow gray water use for shrubs as well as trees;
- Disallow mixing of water used to wash diapers or similarly soiled garments with gray water because disinfection is too complicated for most home gray water systems;
- Provide examples for minimizing standing water on the surface, including the now widespread practice of distributing gray water under a mulch cover;
- Mandate that if blockage, backup, or overload of the system occurs, distribution of gray water should cease until the deficiency is corrected. This may provide additional options over the former language, which required the flow to be directed to the sewer or septic tank;
- Broaden the scope of filtration language to clarify that best practices and additional components may achieve the same level of water quality;
- Specify that gray water storage tank holding time should be minimized to avoid development of anaerobic conditions and odors (such tanks have proven problematic in

practice, leading to the use of surge tanks with shorter holding times in some systems); and

- Provide specific examples of flood gray water application including containment by horticultural mulch basins and swales.

Additionally, ADEQ proposed to increase the utility of the Type 3 General Permit for Gray Water. The current Type 3 General Permit for Gray Water is not usable for most applicants due to inappropriate gray water dispersal requirements. The dispersal requirements as currently written mirror the disposal requirements for an on-site wastewater treatment facility, which require disposal into trenches. Trench disposal for on-site waste water treatment facilities is intended to allow for the infiltration of septic tank effluent, which gray water is not. Trench disposal limits the ability of a gray water permittee to use the water for simple irrigation or composting uses.

The proposed R18-9-D702 Type 3 Recycled Water General Permit for Gray Water also reshapes the former Type 3 permit. The new permit language addresses a need by many non-household entities to use gray water for simple subsurface irrigation of landscape plants in a way that protects human health and the environment.

Further, under the proposed R18-9-A703 Recycled Water Individual Permit, ADEQ may allow the addition of kitchen sink and dishwater wastewater to a gray water source, as long as the water is treated appropriately for its end use.

Modification of Notice and Signage Provisions.

Recognizing that not all allowed end uses are amenable to posting signs, the proposed rules allow a permittee to post signs or provide notification for Type 2 Reclaimed Water General Permits for Direct Reuse of Class A+, A, B+, B, and C waters in R18-9-B704 through –B708.

ADEQ proposed changes to the signage requirement for “Mobile Reclaimed Water Dispersal” in R18-9-B702 to accommodate dispersal equipment other than trucks and tanks.

Modification of Reporting Requirements.

ADEQ proposed in R18-9-A705 to mandate if certain informational changes have occurred, a recycled water permittee must report such changes at least once annually by January 31st. While certain informational changes must be submitted for notice purposes only, ADEQ proposed any other changes will require a new permit application. ADEQ also proposed required annual reporting be due by a calendar date versus the permit anniversary date, in order to minimize work for both ADEQ and the customer to keep track of specific permit effective dates.

Modification of Permit Revocation Provisions.

ADEQ proposed to simplify and consolidate permit revocation provisions into one section, R18-9-A706, for both general and individual permits.

Addition of Recycled Permit Transition Provision.

ADEQ proposed a permit transition provision so that until their permits expire, existing permittees will follow Article 7 rules as they existed at the beginning of 2017.

Repeal of Unnecessary Sections and Subsections.

Upon review, some sections and subsection in Article 7 are unnecessary because the Department is already required by statute or rule to implement such sections or subsections. For example, the Department is already subject to permitting and licensing timeframe requirements by statute in Arizona Revised Statutes Title 41 and general agency rules in the Arizona Administrative Code, Title 18, Chapter 1. In addition, enforcement and penalty procedures in the current R18-9-720 are already established in A.R.S. §§ 49-261 through 49-263.

Modification of Notice Requirements.

In R18-9-A703, ADEQ proposed the agency must post notices of permitting decisions and for hearings on the Department's website, rather than in newspaper publications.

Section by Section Explanation of Proposed Rules

Table 3 Section by Section Crosswalk and Condensed Explanation of Proposed Rules

Proposed Rule Number and Title	***Current Rule Number and Title***	***Condensed Explanation of Modification***
Repeal Article 6	Article 6 Reclaimed Water Conveyances	Repeal as this article will no longer be necessary because all text will be transferred to Article 7.
Repeal	R18-6-601 Definitions	Repeal and transfer text into the Article 7 definitions in R18-9-A701.
Repeal	R18-9-602 Pipeline Conveyances of Reclaimed Water	Repeal and transfer text into the reclaimed water general requirements in R18-9-B702(J).

Proposed Rule Number and Title	*Current Rule Number and Title*	*Condensed Explanation of Modification*
Repeal	R18-9-603 Open Water Conveyances of Reclaimed Water	Repeal and transfer text into the reclaimed water general requirements in R18-9-B702(K).
Article 7 Use of Recycled Water	Article 7 Direct Reuse of Reclaimed Water	Restructure into several parts to regulate different types of water under the umbrella term recycled water.
Part A General Provisions	N/A	New part for recycled water general provisions.
R18-9-A701 Definitions	R18-9-701 Definitions	Renumbered. Insert "Open water conveyance" and "pipeline conveyance" definitions from Article 6 here. Amend gray water definition to be consistent with statutory definition. Add a definition for recycled water. Add a definition for an advanced reclaimed water treatment facility. Modify definition of direct reuse to clarify it does not include the use of potable water produced by an advanced reclaimed water treatment facility. Add a definition for a sewage treatment facility to clarify the term means the same as it does under the Aquifer Protection Program.
R18-9-A702 Applicability and Standards for Recycled Water	R18-9-702 Applicability and Standards for Reclaimed Water Classes	Renumber and make minor amendments to clarify applicability under recycled water structure.

Proposed Rule Number and Title	***Current Rule Number and Title***	***Condensed Explanation of Modification***
R18-9-A703 Recycled Water Individual Permit Application	R18-9-705 Reclaimed Water Individual Permit Application	Renumber and amend to include certain general information changes an applicant must annually submit. Modify the notice requirements from requiring newspaper notices to posting on the Department's website. Repeal pre-application conference provision as ADEQ is always willing to hold pre-application conferences when requested by applicants. Repeal provisions already required by other agency rules or specific applicable statutes. Amend to ensure treatment measures will be employed to meet water quality as appropriate for the source and use. Kitchen sink water may be permitted here with a gray water source. Also, multiple waters and/or uses may be regulated under one individual permit (e.g. gray and reclaimed). Fix rule references.
R18-9-A704 Recycled Water General Permit	R18-9-708 Reusing Reclaimed Water Under a General Permit	Renumber and clarify process and information required for Notice of Intent to Use Recycled Water. Recycled Water Authorization is not automatically issued for a Type 3 permit and ADEQ must inform permittees of its receipt of a Notice of Intent for Type 2 permits.
R18-9-A705 Recycled Water Permit Term, Information Changes, and Renewal	R18-9-709 Reclaimed Water General Permit Renewal and Transfer	Renumber and completely restructure to apply to all recycled water permits. Requires the permittee to provide certain information annually if there are any changes in the information. If there are any changes other than those allowed with notice, a new permit is required.

Proposed Rule Number and Title	*Current Rule Number and Title*	*Condensed Explanation of Modification*
R18-9-A706 Recycled Water Permit Revocation	R18-9-710 Reclaimed Water General Permit Revocation	Renumber, restructure, and simplify permit revocation procedures for general and individual permits. This rule was modified to be applicable to all recycled water permits, not just reclaimed water general permits.
R18-9-A707. Recycled Water Permit Transition	N/A	Add provisions so until their permits expire, existing permittees will follow their permits according to the language in Article 7 as it existed at the time the permits were issued.
Repeal	R18-9-720 Enforcement and Penalties	Repeal because enforcement and penalty processes are already prescribed in statute at A.R.S. §§ 49-261 through 49-263.
Part B Reclaimed Water	N/A	New part for reclaimed water regulation.
R18-9-B701 Transition of Aquifer Protection Permits and Permits for the Reuse of Reclaimed Wastewater	R18-9-703 Transition of Permits	Renumber and minor grammar edits and consistency changes, such as updating cross-references and nomenclature.

Proposed Rule Number and Title	*Current Rule Number and Title*	*Condensed Explanation of Modification*
R18-9-B702 General Requirements for Reclaimed Water	R18-9-704 General Requirements	Modify the prohibition against direct reuse for human consumption to allow for an exception for reclaimed water treated under Part E. The hose bibb provision is transferred to its own subsection to clarify all hose bibbs discharging reclaimed water shall be secured to prevent use by the public, not just hose bibbs associated with irrigation. At "at valve" to clarify ADEQ's longstanding interpretation of the meaning of hose bibb. Modify signage and notice requirements. Pipeline and open water conveyance requirements from Article 6 are moved into this section. Add a clause in subsection (K)(3)(b) to allow a possible variance from the required ¼ mile interval signage, as approved by ADEQ to reasonably protect human health. Renumber and make nomenclature, grammar, and reference fixes for consistency. This section is still only applicable to reclaimed water.
R18-9-B703 General Provisions for Recycled Water Individual Permit for Reclaimed Water	R18-9-706 Reclaimed Water Individual Permit Application	Renumber and make minor consistency and clarification edits. Remove permit transfer provisions, now covered in Part A. Add provisions for closure as applicable and signage and notification requirements, as appropriate for the end use. Update reference to strip chart recordings to the more generic word "data" to reflect digital data collection methods. For clarity, provide reference to discretionary alternate direct reuses allowed under R18-11-309.

Proposed Rule Number and Title	*Current Rule Number and Title*	*Condensed Explanation of Modification*
R18-9-B704 Type 2 Recycled Water General Permit for Direct Reuse of Class A+ Reclaimed Water	R18-9-712 Type 2 Recycled Water General Permit for Direct Reuse of Class A+ Reclaimed Water	Renumber and make minor changes for consistency.
R18-9-B705 Type 2 Recycled Water General Permit for Direct Reuse of Class A Reclaimed Water	R18-9-713 Type 2 Reclaimed Water General Permit for Direct Reuse of Class A Reclaimed Water	Renumber and minor changes for consistency and clarity.
R18-9-B706 Type 2 Recycled Water General Permit for Direct Reuse of Class B+ Reclaimed Water	R18-9-714 Type 2 Reclaimed Water General Permit for Direct Reuse of Class B+ Reclaimed Water	Renumber and make minor changes for consistency.
R18-9-B707 Type 2 Recycled Water General Permit for Direct Reuse of Class B Reclaimed Water	R18-9-715 Type 2 Reclaimed Water General Permit for Direct Reuse of Class B Reclaimed Water	Renumber and make minor changes for consistency.
R18-9-B708 Type 2 Recycled Water General Permit for Direct Reuse of Class C Reclaimed Water	R18-9-716 Type 2 Reclaimed Water General Permit for Direct Reuse of Class C Reclaimed Water	Renumber and make minor changes for consistency.

Proposed Rule Number and Title	*Current Rule Number and Title*	*Condensed Explanation of Modification*
R18-9-B709 Type 3 Recycled Water General Permit for a Reclaimed Water Blending Facility	R18-9-717 Type 3 Reclaimed Water General Permit for a Reclaimed Water Blending Facility	Renumber and clarify information requirements for Type 3 blending facility applications. Clarify requirements if nitrogen or fecal coliform concentrations are exceeded. Modifies annual reporting date from permit anniversary to a uniform calendar year date of January 31.
R18-9-B710 Type 3 Recycled Water General Permit for a Reclaimed Water Agent	R18-9-718 Type 3 Reclaimed Water General Permit for a Reclaimed Water Agent	Renumbered, modified for consistency, and clarifies information requirements for Type 3 water agent permit. Modify annual reporting date from permit anniversary to a uniform calendar year date of January 31.
Part C Recycled Industrial Wastewater	N/A	New part for recycled industrial wastewater regulation.
R18-9-C701 Recycled Water Individual Permit for Industrial Wastewater	R18-9-707 Reclaimed Water Individual Permit Where Industrial Wastewater Influences the Characteristics of Reclaimed Water	Renumber and minor changes for consistency. Updated industrial code terminology.
Part D Gray Water	N/A	New part for gray water regulation.

Proposed Rule Number and Title	*Current Rule Number and Title*	*Condensed Explanation of Modification*
R18-9-D701 Type 1 Recycled Water General Permit for Gray Water	R18-9-711 Type 1 Reclaimed Water General Permit for Gray Water	Renumber and make minor changes for consistency. Several changes to clarify ambiguities in current rule and to provide more useful guidance for residential gray water use.
R18-9-D702 Type 3 Recycled Water General Permit for Gray Water	R18-9-719 Type 3 Reclaimed Water General Permit for Gray Water	Renumber and make minor changes for consistency. Significant changes to technical requirements for large-scale gray water use. New requirements expand the utility of the permit.
Part E Purified Water for Potable Use	N/A	New part for potable use regulation.
R18-9-E701 Recycled Water Individual Permit for an Advanced Reclaimed Water Treatment Facility	N/A	New section to provide an individual permit process for an advanced reclaimed water treatment facility, a facility treats reclaimed water to produce potable water. Provides interim criteria requirements permittees must meet for purifying water for potable use. Clarifies product water subject to the Safe Drinking Water Act (SDWA) would be considered surface water. Clarifies that this rule does not exempt a facility from SDWA requirements.

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

- *Framework for Direct Potable Reuse* (Jeffrey J. Mosher, et al. eds, 2015), sponsored by the WateReuse Association and co-sponsored by NWRI, American Water Works Association,

and Water Environment Federation, *available at* https://watereuse.org/watereuse-research/framework-for-direct-potable-reuse/.
This report was developed to guide areas that face scarce water supplies, including Southwestern states, with a general framework for direct potable reuse (DPR). The document provides basic information regarding DPR treatment processes, the value of DPR, considerations and context for regulation of DPR, technical issues, and the importance and challenges of public support and outreach. ADEQ used this report as guidance for a DPR framework in Arizona.

- George Tchobanoglous, University of California, Davis, et al., *Direct Potable Reuse: A Path Forward* (2011), sponsored by WateReuse, Bureau of Reclamation, and California State Water Resources Control Board, *available at* https://watereuse.org/watereuse-research/11-00-direct-potable-reuse-a-path-forward/.
This report provides basic information regarding the development of DPR as of 2011, including early background information of the development of DPR, technical issues and aspects of DPR, and the future research needs as of 2011. ADEQ used this report to inform its understanding of the development of DPR.

- *Blue Ribbon Panel on Water Sustainability: Final Report* (2010), sponsored by Arizona Department of Environmental Quality (ADEQ), Arizona Corporation Commission (ACC), and Arizona Department of Water Resources (ADWR), *available at* http://www.azwater.gov/AzDWR/waterManagement/BlueRibbonPanel.htm.
This report was produced by a governor appointed panel of water resource planning experts and leaders to provide recommendations to Arizona for increasing its water portfolio, in part through use of reclaimed water. ADEQ used this report to better understand the Arizona's water reuse and sustainability goals.

ADEQ reviewed the above three studies and reports as guiding principles and background for the rules, but did not rely on them. To develop these rules, ADEQ took the information in these studies into account in conjunction with internal expert and external stakeholder input.

- WateReuse Research Foundation, *The Opportunities and Economics of Direct Potable Reuse* (2014), *available at* https://watereuse.org/watereuse-research/the-opportunities-and-economics-of-direct-potable-reuse/.

WaterReuse prepared the above report to assist water agencies in answering questions regarding how much direct potable reuse could cost versus other sources of water; what the carbon footprint may be for direct potable reuse, or how much new water could be made available via direct potable reuse. The report concentrates mostly on California, but the information may be used to approximate costs in Arizona in the absence of similar analysis specific to Arizona.

ADEQ relied on this above study for information regarding the likely cost of direct potable reuse and the likely costs compared to alternative sources of water.

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

Not applicable.

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

The following discussion addresses each of the elements required for an economic, small business and consumer impact statement (ESBCIS) under A.R.S. § 41-1055.

A. An identification of the rulemaking.

This rulemaking is generally anticipated to encourage usage of reclaimed water, increase business opportunities, and pave the way for water resource conservation and savings. This rulemaking allows for activity that has long been prohibited and does not limit already occurring activities. Under the 2001 reclaimed water rules, no one has been allowed to provide even treated reclaimed water for human consumption, except as allowed by substantive policy. ADEQ is modifying this prohibition to allow for the distribution of highly treated reclaimed water in order to augment Arizona's water supply and to spark innovation. In addition, rule modifications to large scale gray water use modifications will also allow for activity previously limited by implementation requirements. The other rule modifications, including rule clarifications and rule restructure, should have limited, if any, economic effects.

B. An identification of the persons who will be directly affected by, bear the costs of, or directly benefit from this rulemaking.

Recycled water permittees will be directly affected by this rulemaking, including those who use reclaimed water and gray water for beneficial use.

The types of facilities that these rules generally apply to include wastewater treatment plants, irrigation districts, other reclaimed water end users, and residential and large-scale gray water users.

Type 2 permittees include, as examples, schools, retail centers, HOAs, other residential communities and subdivisions, school districts, municipalities, construction companies, churches, and correctional facilities. The table below shows the numbers of currently active Type 2 general reclaimed permits:

Use Category	**Active Type 2 General Permits**
Agriculture Irrigation	9
Construction and/or Dust Control	9
Golf Course Irrigation	46
Landscape Impoundment	4
Landscape Irrigation	275
Pasture for animals (dairy)	1
Pasture for animals (non-dairy)	3
Recreational Impoundments (lakes)	2
Restricted Access Landscape Irrigation	6
Silviculture	1
Multiple uses	45
Total Type 2 General Reclaimed Permits	***401***

ADEQ also currently has 52 active Type 3 reclaimed water permits for water agents or blending facilities, which mainly include municipalities, political subdivisions, and utilities.

There are 10 active individual recycled water permits under ADEQ. This includes:

- 7 industrial permits, including permits for correctional facilities, power plants, food processing facilities, and mines;
- 3 individual gray water permits including for colleges, correctional facilities, municipalities, and industrial operations such as food canning, mining, and power plants; and
- 2 individual reclaimed permits, one for a municipality and one for a county.

There are many Type 1 gray water users in the state, but the exact or even approximate number is unknown as no written or recorded permit is required in order to be in compliance with the rules.

There are currently 6 Type 3 gray water permits, including for R.V. parks, recreational parks, and residential communities. The Type 3 gray water provisions as modified may encourage similar facilities, including hotels, to consider applying for this type of permit in the future.

Other potential permittees include those who may choose to apply for an advanced reclaimed water treatment facility individual permit. These permittees will likely consists of those who wish to capitalize on new technology to maximize the use and conservation of water. ADEQ anticipates that as these innovators demonstrate and prove current technologies, and the technologies become less expensive, more water treatment facilities will start to take advantage of the economic benefit opportunities that these rules provide

C. A cost benefit analysis of the following:

a. The probable costs and benefits to the implementing agency and other agencies directly affected by the implementation and enforcement of the rulemaking.

ADEQ is the main agency impacted by the proposed changes. ADEQ already issues reclaimed and gray water permits. ADEQ expects that processing a permit for advanced water treatment facilities will cost no more than the cost to process aquifer protection permits for large-scale wastewater treatment plants. Likewise, ADEQ does not anticipate any increase in state costs to analyze Type 3 gray water or other individual reclaimed permits.

ADEQ does not anticipate the number of applications for new permits, including for advanced water treatment facility permits, individual reclaimed/gray water permits, or Type 3 gray water permits, to drastically increase as a result of these rules. Therefore, ADEQ does not currently expect this rule to greatly increase the number of permits it must process, and ADEQ expects permit fees to support most of any extra permit processing costs. Upon finalization of the rule, the agency does not expect it will need to greatly increase resources to support the program, at this time. Initially, no new full time employees will be devoted to support the program. The permit fees for aquifer protection, reclaimed, and gray water are fixed, however, and do not adjust with any sort of inflationary index, which may cause issues at a future date. As the agency gains experience and data to measure impacts, ADEQ intends to analyze and address this issue at a future date as a part of regular periodic water quality division-wide analysis of fees. Therefore, ADEQ expects minor economic impacts to result from this rulemaking at this time.

b. The probable costs and benefits to a political subdivision of this state directly affected by the implementation and enforcement of the rulemaking.

Political subdivisions and government entities that are reclaimed water permittees are impacted by the rule, but any economic impacts should be minimal. There are approximately 90 reclaimed water permittees that are public entities, such as municipalities, towns, counties, and associated organizations, such as schools. Costs and benefits should be similar as to businesses, and are discussed below.

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

Gray Water Modifications

This rule modifies gray water best management practices for Type 1 and Type 3 permits. ADEQ does not expect the costs to comply with the Type 1 rule to be any more expensive than the previous gray water use requirements. However, when Type 3 gray water users wish renew their permits, there will likely be a minimal consulting or engineering cost to ensure compliance with the new permit requirements. While this may minimally affect each permittee, consultants, engineers, and law firms may minimally or moderately benefit from this rulemaking from their clients in the aggregate in the future if their services are needed to comply with this rule. More potential large-scale gray water users may also benefit from water cost savings from this rulemaking. Only seven Type 3 gray water permits exist because the current use requirements essentially preclude the objective of the permit, which is to irrigate the land for beneficial use. Instead, current Type 3 gray water facilities must disperse the water to mirror the trench disposal requirements for on-site waste wastewater facilities, which limits the ability of a gray water permittee to use the water for simple irrigation or composting purposes. Given that this rule provides reasonable best management practices in place of the on-site trench disposal methodology, the ability to use gray water on a large scale should increase. This ability may translate to increased use of gray water for water that a business may otherwise have to pay for. This may result in incremental conservation of water and serve to address community water augmentation and water security planning.

Any additional costs to businesses subject to the amended gray water rules will be minimal and are not expected to deter any expansion of business operations. In fact, ADEQ expects this rule to have the opposite effect overall. Likewise, there should be no negative impact on employment in this state.

New Permit for Advanced Reclaimed Water Treatment Facility

The new rule allows for activity that was previously prohibited, namely treating reclaimed water and distributing it for human consumption. In order for this activity to be carried out safely, ADEQ will require an individual reclaimed water permit. This type of facility is unlike most other current reclaimed water facilities, but ADEQ expects the cost of the permit to be similar to that of an individual APP permit for a large wastewater treatment facility. According to billing records, the cost of these types of permits generally range between $10,000 - $15,000.

Advanced reclaimed water treatment is a voluntary activity which may be pursued to augment Arizona's water supply for environmental reasons, and it may soon become profitable given the high value of potable water in Arizona. This rule will also allow for increased water security and an additional long-term dependable water source as a part of a larger plan to augment Arizona's water supply and promote continued economic growth.

Based on Southern California figures as reported in WateReuse Research Foundation's *The Opportunities and Economics of Direct Potable Reuse*, the total cost of treating reclaimed water to produce potable water, including treatment, conveyance and brine management may run between $820 acre-foot and $2000 acre-foot. This cost is likely lower than imported water supply and brackish groundwater supply options. The price of direct potable use overall may be more expensive than other current conservation options, but conservation typically requires increasingly more expensive technologies and resources as the level of acre-feet saved increases. In other words, there is a mathematical limit to the benefits of conservation, whereas advanced water treatment may continue to provide increased supply and benefit with more limited additional resources.

Newspaper Notice Removal

The rule eliminates the requirement for the state to publish permit public notices in newspapers, but rather requires notice be given on the Department's website. As an example, a public notice published in a statewide newspaper may cost approximately $1,000. This cost is passed along to the permittees in their final permit processing bills. Hence, the change could save thousands of dollars a year for ADEQ permitting customers. However, this modification of the notice requirement could affect newspaper companies negatively, as government-required newspaper notices are a source of income for these companies.

D. A general description of the probable impact on private and public employment in businesses, agencies, and political subdivisions of this state directly affected by this rulemaking.

ADEQ does not anticipate any significant impact on employment in this state as a result of this rulemaking.

E. A statement of the probable impact of the rulemaking on small businesses.

ADEQ does not expect this rulemaking to significantly increase burdens on small businesses. Some additional design, engineering, or consulting costs may be required for a renewing permittee to comply with the Type 3 gray water requirements under this rule. Additionally, consultants, suppliers, engineers, and lawyers with small businesses may indirectly benefit from additional work contracted as a result of the permitting and construction associated with new Type 3 gray water facilities or new advanced reclaimed water treatment facilities.

a. An identification of the small businesses subject to this rulemaking.

Under A.R.S. § 41-1001(21):

"Small business" means a concern, including its affiliates, which is [1] independently owned and operated, which is [2] not dominant in its field and which [3] employs fewer than one hundred full-time employees or which had gross annual receipts of less than four million dollars in its last fiscal year. (Emphasis added.)

The types of businesses affected are the same as those listed in the section above that identifies those persons affected by the rulemaking. Construction, landscaping, golf courses, and retail centers are some examples of possible small businesses affected by this rulemaking. ADEQ is unaware of any small businesses that do not want this rule to proceed.

b. The administrative and other costs required for compliance with the rulemaking.

This rule does not prescribe significant changes in administrative or compliance costs for existing reclaimed water or Type 1 gray water users.

New Type 3 gray water permittees, which may include small businesses, will likely need to consult designers, engineers, or consultants to comply with the new rule modifications. However, the costs will likely be no more or less than the consultant costs for the trench disposal requirements that have existed since 2001. Therefore, ADEQ does not expect the new Type 3

gray water requirements to increase compliance costs for new businesses, including small businesses. However, upon renewal, each of the 6 existing Type 3 gray water facilities will be required to renew according to the rules established in this rulemaking. This will entail some design costs as discussed above. These facilities are not impacted immediately as they have until their existing permit expires in order to comply with the new regulations.

New advanced reclaimed water treatment facilities will entail significant investment in permitting, engineering, construction, and long-term operation costs.

For both Type 3 gray water users and advanced reclaimed water treatment facilities, potential permittees will need to analyze the possible return on investment for their particular business.

c. A description of the methods that the agency may use to reduce the impact on small businesses.

(i) Establishing less costly compliance requirements in the rulemaking for small businesses.

ADEQ is consolidating most generally required reporting under this rule to be made once annually by January 31st instead of by the permit anniversary date. ADEQ anticipates this to have a minimal positive impact on small businesses. ADEQ is providing an exception to the prohibition of providing reclaimed water for human consumption by allowing an advanced reclaimed water treatment facility to be permitted to treat reclaimed water and distribute the potable product for human consumption.

(ii) Establishing less costly schedules or less stringent deadlines for compliance in the rulemaking.

Current permits are grandfathered into the recycled water program so that existing reclaimed and gray water permits shall follow the rules as they exist under current permits until such permits expire. Any renewed permit will be renewed under the new rules. This was done to allow the regulated community time to evaluate the new rule structure any changes needed to their processes before the new rules apply. The new rules are not, however, expected to cause significant changes for small businesses.

(iii) Exempting small businesses from any or all requirements of this rulemaking.

To protect human health and the environment, ADEQ cannot exempt small businesses from requirements of this rulemaking.

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

ADEQ does not anticipate any immediate significant economic cost or benefit to private persons or consumers. The modifications in Type 1 gray water use requirements are essentially clarifications and are expected to at most minimally affect residential gray water users. An intangible benefit of these rules may be the ability of the public to support businesses that conserve more water through gray water use or that lead the nation in protecting water resources by producing potable water from reclaimed water.

F. A statement of the probable effect on state revenues.

ADEQ does not expect any significant increase or decrease state revenues as a result of this rule.

G. A description of any less intrusive or less costly alternative methods of achieving the purpose of the rulemaking.

ADEQ does not know of any less intrusive or less costly alternative methods of expanding gray water use and allowing for treatment of reclaimed water to produce potable water, while still protecting human health and the environment.

H. A description of the limitations of the data available for this economic small business and consumer impact statement.

ADEQ generally does not track in a database certain information on permittees, such as whether a facility is publicly or privately owned. Some of the information came from an informal review of active permits and past billing histories.

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

R18-9-A701(A)(2)(a) –

- left "National" to avoid clarify applicability to both NPDES & AZPDES permits [see Comment and Response 1]

R18-9-B702, Table 1 –

- combined rows for A+ & A and B+ and B because they are the same [see Comment and Response 18];

- added “at valve” to clarify longstanding ADEQ interpretation of hose bibb [see Comment and Response 37]; and
- modified language for to clarify ADEQ’s longstanding interpretation for when and where signage is required for restricted access irrigation signage [see Comment and Response 2]

R18-9-B702(K)(3)(c) –

- added clause to the open water conveyances signage provision in R18-9-B702(K)(3)(c) to allow for a possible variance from the ¼ mile signage interval requirement, as approved by the Department to be reasonably protective of human health [see Comment and Response 30]

R18-9-B705(B)(1)(c) & (d) –

- removed “if applicable” from these subsections as the phrase does not add value for clarification purposes [see Comment and Response 10]

R18-9-B710(F) –

- repealed this subsection because it is already covered under subsection (E) and was left in place in error in the proposed rulemaking [see Comment and Response 27]

R18-9-D701(C)(8) & R18-9-D701(C)(8) –

- in both rules, modified the holding tank time provision from mandating a 24 hour time period to mandating that the holding tank time must be “minimized to avoid development of anaerobic conditions and odors”, so as to account for varying temperatures and conditions throughout the state and throughout the year [see Comment and Response 44]

R18-9-E701(B) –

- added emphasis that the rule does not exempt any facility from Safe Drinking Water Act requirements applicable under Title 18, Chapter 4 of the Arizona Administrative Code [see Comment and Response 3, and other comments for which the responses refer the reader to Response 3]; and
- changed “treated” to “considered” in order to avoid confusion between the technical term “treated” and the colloquial interpretation of “treated” [change not made in response to a particular comment]

Technical Corrections –

- ADEQ also made technical corrections at the request of 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:

Comment 1: In R18-9-A701(2)(a), "National" should not be struck out and the rule should read as follows: "The use of water subsequent to its discharge under the conditions of a National or an Arizona Pollutant Discharge Elimination System permit." Phoenix's 91st Avenue Wastewater Treatment Plant has a National, rather than an Arizona, Discharge Elimination System permit, due to proximity to tribal lands. (City of Phoenix)

Response 1: ADEQ agrees that this clarification is important considering the different nomenclatures and the fact that reclaimed conveyance rules would apply to both federal and state permits. ADEQ has modified the rule language accordingly.

Comment 2: R18-9-B702, Table 1, Signage and Notification Requirements for Direct Reuse Sites: under Restricted Access Irrigation for Class B+, B, and C reclaimed water, Phoenix requests the clarifying changes below:

1. Ingress points; or 2. On premises ~~or~~ at reasonably spaced intervals not more than 1/4 mile, as applicable to the use; and 3. Notice on golf score cards, if applicable. (City of Phoenix)

Response 2: ADEQ's interpretation is that a clarification is needed to accommodate situations where reclaimed water is distributed within a large area in which access is secured, such as within the fenced area of a sewage treatment facility. This contrasts with the more typical situation where an irrigation ditch conveys reclaimed water to more distant farm fields and access to the ditch is unsecured to vehicular and pedestrian traffic. In this latter situation, to ensure protection of human health, ADEQ believes the existing signage requirements are appropriate. ADEQ has revised this provision to read:

"1. Ingress points; 2. ~~On premises or at~~ At reasonably spaced intervals of not more than 1/4 mile~~, as applicable to the use~~ at the reuse site or along the open water conveyance, unless access to vehicular and pedestrian traffic is secured; and 3. ~~Notice~~ If applicable, notice on golf score cards~~, if applicable~~"

Comment 3: The definition of "advanced reclaimed water treatment facility" should be amended to state that it treats and purifies reclaimed water to be suitable as a source water supply to a drinking water treatment facility which is designed, approved, and regulated under the Safe Drinking Water

Act. It is not appropriate to regulate potable water under the reclaimed water rules. (Maricopa County Water and Waste Management Division [Maricopa County])

Response 3: ADEQ does not intend that the Part E provisions for an Advanced Reclaimed Water Treatment Facility substitute for or contradict any requirements of the Safe Drinking Water Act, as subsection R18-9-E701(B) prescribes. In fact, federal law has not addressed how to safely treat and directly reuse reclaimed water for Safe Drinking Water Act purposes. If an advanced reclaimed water treatment facility is also subject to the SDWA as a potable water system, then this rule provides additional public health protection in the absence of any parallel federal law. Also, this rule applies to more situations than the distribution of drinking water by a potable water system regulated under the SDWA; it applies to any distribution of treated reclaimed water for potable use. To clarify that this rule does not substitute for Safe Drinking Water Act requirements, ADEQ has revised this subsection from the proposed version to read:

"B. Safe Drinking Water Act. For purposes of Safe Drinking Water Act requirements, water produced by an Advanced Reclaimed Water Treatment Facility shall be ~~treated as~~ considered surface water for purposes of compliance with Title 18, Chapter 4 of the Arizona Administrative Code. Nothing in this section exempts an applicable facility from Safe Drinking Water Act requirements."

Note that ADEQ also modified "treated as" to "considered" to avoid confusion between the technical and colloquial interpretations of "treated."

Comment 4: Regulating drinking water under the Aquifer Protection rules is inappropriate, since there is no discharge to the groundwater under the proposed rules. (Maricopa County)

Response 4: This rule proposal regulates an Advanced Reclaimed Water Treatment Facility under a Recycled Water Individual Permit, not through the Aquifer Protection Permit program. Recycled water used as a drinking water source would be regulated as if it were a surface water under Title 18, Chapter 4 of the Arizona Administrative Code.

Comment 5: The proposed rules are inconsistent and need to be clear that an advanced reclaimed water treatment facility treats and purifies reclaimed water to be suitable as a source water supply to a drinking water treatment facility which is designed, approved, and regulated under the Safe Drinking Water Act. It is not appropriate to regulate potable water under the reclaimed water rules. Under the Safe Drinking Water Act, this source of water would need to be treated as a surface water supply, with all of the protections for such a supply as detailed under the Safe Drinking Water rules. (Maricopa County)

Response 5: These rules are fully consistent with SDWA requirements. The finished water from an Advanced Reclaimed Water Treatment Facility will be considered a surface water source under the Safe Drinking Water Act. As Response 3 indicates, ADEQ modified R18-9-E701(B) to further clarify that the Part E requirements do not substitute for or override SDWA requirements. ADEQ developed the criteria for permitting an Advanced Reclaimed Water Treatment Facility in Part E to ensure that such facilities appropriately address safety concerns in consideration of the distinctive characteristics of reclaimed water.

If the commenter is concerned that a drinking water distributor not subject to SDWA (that is, the system serves less than 25 people or 15 service connections) might somehow produce water unsuitable for human consumption, ADEQ does not share this concern. The costs of permitting, design, construction, and monitoring necessary to bring a protective advanced reclaimed water treatment facility online are likely prohibitive for most small systems not subject to the SDWA that have so few water users to fund the project. Even so, these rules are specifically designed to ensure that any advanced reclaimed water treatment facility will be permitted to produce drinkable water protective of human health. Therefore, outside of the clarification to subsection R18-9-E701(B), no further change to the rule is necessary.

Comment 6: The use of Class A+ and B+ effluent as appropriate sources for direct potable reuse is inappropriate as long as the standard only has to be met 4 out of 7 days. This opens up the range of source water to potentially untreated wastewater being acceptable. The use of source water should be limited to those facilities which can prove to meet the standard under all circumstances. (Maricopa County)

Response 6: The commenter mentions only part of the standard for the reclaimed water quality classes. As the commenter alludes to, for Class A+ reclaimed water, there must be no fecal coliform organisms in 4 of the last 7 daily samples, and for Class B+ reclaimed water, there must be less than 200 fecal coliform organisms per 100 milliliters (ml) of water in 4 of the last 7 daily samples. However, the commenter fails to mention that the standard also includes single sample maximum limits. Thus, for Class A+ reclaimed water, all samples for fecal coliforms must fall below 23 organisms per 100 ml, and for Class B+ reclaimed water, all samples must fall below 800 organisms per 100 ml. In other words, the quality of the reclaimed water is tightly constrained for all of the reclaimed water classes, and does not open “up the range of source water to potentially untreated wastewater.”

Advanced Reclaimed Water Treatment Facilities will treat water to a potable level through multiple barriers of treatment that take into consideration not only the 4 of 7 day averages but the single sample maximum limits applicable to the reclaimed water classes. The criteria proposed in this rule ensure that the Advanced Reclaimed Water Treatment Facility will produce finished water protective of public health for any of the reclaimed water classes, although only classes A+ and B+ are allowed under this rule. Among these criteria are detailed characterization of the reclaimed water source, pilot treatment system testing tailored to the characteristics of the source water, multiple barriers of treatment for microbial and chemical constituents within the treatment train, determination of appropriate microbial removal targets, process control monitoring to ensure microbial limits are met, and corrective actions for out-of-range monitoring and diversion of any non-compliant water from delivery. No change to the rule is necessary.

Comment 7: It is inappropriate to proceed with direct potable reuse provisions (section E) until after the Phase 2 standards are developed for the advanced wastewater treatment facility. (Maricopa County)

Response 7: ADEQ believes that the interim criteria proposed in Part E of this rule are fully satisfactory for the purpose of permitting an Advanced Reclaimed Water Treatment Facility if a utility submits an application to ADEQ during the period the interim criteria are in effect. An extensive body of technical literature exists on design and operation details pertaining to the interim criteria. Both facility designers and ADEQ permitting specialists would be relying on this literature to ensure that the interim criteria are satisfactorily addressed. No change to the rule is necessary.

Comment 8: There is a concern that this type of facility would be reviewed and approved by someone without an expertise in the review and approval of surface water treatment facilities. (Maricopa County)

Response 8: ADEQ has delegated approval of surface water treatment facilities under SDWA to only one local authority. If ADEQ were to receive an application and issue a permit for an Advanced Reclaimed Water Treatment Facility that produces a finished water that is considered a surface water source, ADEQ would collaborate with the local authority during the entire process to ensure that appropriate technical review is provided all around. No change to the rule is necessary.

Comment 9: The current and proposed reuse rules do not require any signage at parks which are using reclaimed water as a source of spray irrigation water. It is irresponsible not to notify the users of public or private parks that the water used to irrigate with is reclaimed water. These facilities are typically

used by children and families. Activities include picnicking and play, and participants should be properly notified as such. (Maricopa County)

Response 9: ADEQ does not allow reuse of Class B+, B, or C reclaimed water for irrigation of parks and schoolyards. However, it does allow irrigation with Class A+ and A reclaimed water. The current rule requires signage for irrigation of schoolyards with Class A+ or A reclaimed water but not for parks. A rule change to require signage for parks is not a consideration in this rule revision, but ADEQ will analyze the current situation with respect to parks and determine whether a rule change is merited in the next installment of rulemaking.

Comment 10: Under R18-9-B705(B)(1)(c) (Recycled Water Permit Term, Information Changes, and Renewal), the rule requires reporting of "the total nitrogen concentration of the reclaimed water applied, if applicable." It is not clear when it would not be applicable to report this. I think that ADEQ should delete the phrase "if applicable" here. Also, it would be clearer if the rule identified that this is the average total nitrogen concentration or geometric mean of the total nitrogen concentration. (Pima County Regional Wastewater Reclamation Department [Pima County])

Response 10: ADEQ has removed "if applicable" in both subsections (c) and (d) as the phrase does not add clarification value to these subsections. The situation will dictate whether the requirement is applicable to the use. Regarding the total nitrogen comment, ADEQ did not consider this change in this rulemaking but will take this comment under advisement for the next rulemaking installment.

Comment 11: Under R18-9-B702(H)(4)(c), within these exceptions there is opportunity to address use of reclaimed water for riparian ecosystem enhancement. I suggest that ADEQ add an additional item under this subsection that says "ii. Silviculture for riparian habitat restoration where the application uses A+ reclaimed water outside of any active stream channel and irrigation is controlled with moisture sensing equipment." (Pima County)

Response 11: ADEQ is aware of interest among stakeholders in recent years to designate riparian restoration or enhancement as an allowed end use for reclaimed water in A.A.C. Title 18, Chapter 11. ADEQ will take this suggestion under advisement for a possible rule change in the next installment of rulemaking.

Comment 12: For R18-9-A705(B) (Recycled Water Permit Term, Information Changes, and Renewal), ADEQ should be notified within 15 days from the date of change of the permittee (end user), as opposed to annually (as stated in the proposed language). If passed as proposed with the annual limit, this would have the potential to result in the loss of critical permit information which

could cost the Department time and resources to recover. Fifteen days is consistent with other ADEQ permit transfer notification timeframes. (Global Water Resources Inc. [Global Water])

Response 12: ADEQ does not anticipate significant costs from having only annual notice of the changes prescribed in the rule. Nor is a delay in this information likely result in negative environmental effects. The rule also does not preclude permittees from notifying ADEQ of any changes more frequently than once annually. No change to the rule is necessary.

Comment 13: For R18-9-A705(B)(1) & (2) (Recycled Water Permit Term, Information Changes, and Renewal), ADEQ should define and specify the difference between the Owner and the Permittee, or replace them with "end-user". Section D701(A) includes a definition for "end-user" as being basically the Permittee, which is supported by the Type 2 Notice of Intent (NOI). It makes sense that the person who uses the recycled water is the one who must adhere to the rules, i.e., the responsible use of recycled water for the intended allowable use. (Global Water)

Response 13: ADEQ believes that there is value in obtaining owner information in the case that ownership has changed and it is different from the permittee or provided contact person. Also, ADEQ believes that the rule and the application forms are clear that the permittee means the end user. No change to the rule is necessary.

Comment 14: For R18-9-A705(B)(6) (Recycled Water Permit Term, Information Changes, and Renewal), the expansion of a reuse area and/or the addition of another allowable use within the same property boundary is information that should be presented to the Department for approval prior to implementing. The Department has the faculty to approve whether or not the use of reclaimed water as presented in a Notice of Intent (NOI) meets with the intent of the rule and is considered safe. The allowable uses and use-requirements are not always interpreted correctly by the end-users (permittees or potential permittees), and they should not be given the authority to self-approve these changes to their Department-approved permit. Two examples come to mind: 1) an end-user wants to expand their reuse area to include land which is not contiguous with their previously-approved permit (ADEQ historically has considered non-contiguous reuse areas as needing separate permits); 2) an end-user wants to add dust control as an allowable use under their Class B reclaimed water permit, with the intent to impound the water at the construction site (ADEQ does not allow the impoundment of non-denitrified reclaimed water without lining the impoundment to achieve a certain hydraulic conductivity). If these activities were only required to be reported to ADEQ annually, non-denitrified reclaimed water could potentially be discharged to the aquifer for an entire year, or what should have been two separate reuse permits could erroneously be permitted under only one. (Global Water)

Response 14: The commenter is concerned that for Classes A, B, and C reclaimed water, in which the total nitrogen content is not removed to below the drinking water Maximum Contaminant Level, any delay by a permittee in notifying ADEQ about end use changes until the end of the calendar year could lead to groundwater contamination. ADEQ recognizes this concern, but believes that in practice, this outcome is highly unlikely.

For example, a permittee irrigating acreage with Class A, B, or C reclaimed water is doing so under an existing end use general permit that covers water application rates and water balances designed to minimize the potential for groundwater contamination for the type of vegetation that is irrigated. It is unlikely that a permittee would risk violating the permit terms by willfully over-irrigating additional non-contiguous land, rather than simply following the application rate and water balance measures that continue to be required under the permit.

As for dust control, the general permit for the end user does prescribe that if an impoundment is added, the impoundment must be lined. Again, a permittee would risk violation of permit terms. However, ADEQ believes the in practice, reclaimed water permittees are very cognizant of the special practices obligated by reuse, so such situations would be rare.

Thus, ADEQ believes that it is the best use of resources for itself and the permittee to process these types of changes no more than once annually, given the unlikelihood of adverse environmental impacts. ADEQ appreciates the comment, but believes that a reasonable person would have considerable experience with reusing reclaimed water under the rules as written, and would contact ADEQ to clarify if he or she is unsure. No change to the rule is necessary.

Comment 15: R18-9-A705(B)(7) (Recycled Water Permit Term, Information Changes, and Renewal) does not specify that an increase in non-denitrified recycled water should be subject to the same nitrogen-management method as originally approved. Without a review of the amended nitrogen-management method (such as a water balance model), the Department would not know if an increase of 10 to 20 percent of the Class A, B, or C reclaimed water could have the potential to reach the water table and cause the groundwater to exceed the Aquifer Water Quality Standard for nitrogen. (Global Water)

Response 15: ADEQ believes that the rules as written would still clearly apply to any additional use or expansion in water use. This means that nitrogen management provisions would still apply to any increased usage of recycled water. Therefore, before expanding his or her use of water, a permittee must ensure that impoundments are lined appropriately, and that, using a water balance or other

approved method, any expansion of water usage would not reach the water table and affect an aquifer. Please also see Response 14. No change to the rule is necessary.

Comment 16: For R18-9-A705(C) (Recycled Water Permit Term, Information Changes, and Renewal), Consider rewriting the second sentence as follows: A permittee shall update all information as listed in subsection (B) in a Notice of Renewal; changes to the information specified in B6 and B7 shall be subject to approval. (Global Water)

Response 16: For the reasons stated above, ADEQ currently believes this change is not necessary to protect human health or the environment or to improve internal processes.

Comment 17: For R18-9-B702(C) (General Requirements for Reclaimed Water), there are existing APPs which include reclaimed water blending operations, so it would be inconsistent to say that these blending operations could only take place under a Recycled Water Individual Permit or a Type 3 Recycled Water General Permit for a Reclaimed Water Blending Facility. (Global Water)

Response 17: The clarification of language in this rule does not change any requirements for existing Aquifer Protection Permits.

Comment 18: For R18-9-B702(I) (General Requirements for Reclaimed Water), since the signage requirements are exactly the same for A+ and A, and also for B+ and B, you may want to consider combining A+ and A in the same row, and also B+ and B, in the interest of brevity and saving space. (Global Water)

Response 18: ADEQ agrees that this would make the rule simpler and more understandable and has modified the rule accordingly.

Comment 19: Consider removing R18-9-B704(D) (Type 2 Recycled Water General Permit for Direct Reuse of Class A+ Reclaimed Water). It is difficult to justify why an APP impoundment has to be reviewed and monitored, and the same impoundment at a reuse site does not. (This also pertains to R18-9-B706, for Class B+ reclaimed water.) Or consider adding an explanation that the planned disposal of reclaimed water in unlined impoundments is only allowed under an Aquifer Protection Permit. (Global Water)

Response 19: The general permits for Class A+ and Class B+ reclaimed water do not require a liner for impoundments storing reclaimed water under a general permit. Unlike Class A, B, and C reclaimed water, which contains a total nitrogen content in excess of the Aquifer Water Quality Standard limit of 10 mg/l, Class A+ and B+ reclaimed waters have undergone nitrogen removal within the sewage treatment facility to a total nitrogen content of less than 10 mg/l. Thus, seepage of Class A+ and B+

reclaimed water from an unlined impoundment would not cause an Aquifer Water Quality Standard violation for total nitrogen in the underlying aquifer.

Under APP, subsection R18-9-B204(B)(7) requires that all containment structures within the treatment works of a sewage treatment facility meet a defined and very low seepage rate. For an impoundment, a lining is usually required to meet this seepage rate. However, under R18-9-B204(D), an applicant may request in writing and justify a less stringent alternative, including use of an unlined impoundment, if justified by site-specific conditions.

ADEQ believes that there is insufficient justification for requiring a liner for impoundments containing Class A+ or B+ reclaimed water. No change to the rule is necessary.

Comment 20: Consider rewriting R18-9-D701 (Type 1 Recycled Water General Permit for Gray Water) as follows: The gray water irrigation area is sited outside of a floodway. (ADEQ does not regulate the "system", as in how they capture their gray water; the rules apply to where and how they apply the gray water for irrigation.) This comment applies also to the Type 3 gray water permit under R18-9-D702(C)(9). (Global Water)

Response 20: It is ADEQ's longstanding interpretation is that the "gray water system" means the gray water system's assemblies and the application area combined. No change to the rule is necessary.

Comment 21: For R18-9-E701 (Recycled Water Individual Permit for an Advanced Reclaimed Water Treatment Facility [Individual Permit for ARWTF]) generally and R18-9-E701(C)(6), currently, the "Part E. Purified Water for Potable Use" (PWPU) R18-9-E701 does not address the compliance tracking and reporting of the water quality for the water system owner and their Customers. The rule advises the water from a facility shall be treated as a surface Water facility. However, this does not address how the Primacy Agency, ADEQ, EPA and customers will track the water quality compliance parameters of the system. The ADEQ Oracle Water Quality Tracking Data base used by the APP SMRF has many problems and program limitations. I recommend the Water Quality (WQ) of the facility be tracked in the SDWIS system as a either a New PWS or a New EPDS. Then, the WQ can be tracked with the additional WQ parameters deemed necessary for PWPU to ensure all interested parties including customers have the ability to monitor and track the facility's performance. This will give the public the knowledge they need to track the system's WQ and obtain a comfort level that the PWPU is being treated to whatever the agreed Direct Potable Reuse DW regulatory standards are deemed to be. Also, the distribution system of the PWPU system needs to be addressed, specifically the piping conveyance prior to entering the actual potable water system. (Global Water)

Response 21: This rule is not intended to substitute for SDWA requirements. However, if the advanced reclaimed water treatment facility is also a potable water system, compliance and monitoring will be tracked in the same manner as required under Arizona's rules and procedures implementing the Safe Drinking Water Act.

Comment 22: For R18-9-E701(C)(1)(b) (Individual Permit for ARWTF), in regards to "source water", I assume source water will be defined as Class B+ - Class A+ as documented on page no. 1667 of proposed rulemaking. (Global Water)

Response 22: Yes, the definition of "advanced reclaimed water treatment facility" specifies that the facility only treats and purifies Class A+ or B+ water.

Comment 23: For R18-9-E701(C)(1)(d) (Individual Permit for ARWTF), requesting a list of unregulated microbial and chemical constituents and the corresponding concentrations in the source water to determine the system's effectiveness of treatment seems ambiguous since even the UCMRs for potable drinking water are consistently changing. This may require a clear definition of what the microbial and chemical constituents are or may require classification for WWTPs that are not in an industrial environment and only treat domestic wastewater for example. (Global Water)

Response 23: For the purpose of these interim criteria, the applicant would propose a list of constituents based on their specific circumstances and other factors. This list would be discussed with ADEQ staff during the application review process to finalize a list appropriate to the applicant's source water, proposed treatment train, published guidance and relevant research, and other factors.

Comment 24: For R18-9-E701(C)(2) (Individual Permit for ARWTF), it seems this will be primarily from the pilot System(s) since the PWPU systems are all fairly new, especially the newer technology related to filtration. (Global Water)

Response 24: ADEQ agrees that the results from pilot treatment testing under R18-9-E701(C)(2) will greatly inform design and monitoring elements of the Advanced Reclaimed Water Treatment Facility.

Comment 25: For R18-9-E701(C)(4) (Individual Permit for ARWTF), on page no. 1667 the verbiage advises technology is in the 6 and 10 log range, however for example the current potable 4 Log requirements for drinking water using chlorine disinfection comply with the 334.0 EPA 4 Log requirement. The rule should help define what the minimum acceptable treatment criteria will be for the logarithmic reduction target level, maybe 6 log? (Global Water)

Response 25: The appropriate logarithmic removal target level will vary on a case by case basis depending on the particular reclaimed source water, treatment train of a facility, and any additional

potential treatment as part of a drinking water system. Under the rule as written, applicant may propose an appropriate log removal target accordingly. ADEQ does not believe a rule change is necessary at this time.

Comment 26: For R18-9-E701(C)(9) (Individual Permit for ARWTF), you need to determine if new PWPU operator treatment and distribution certifications will be required. (Global Water)

Response 26: An operation plan and training is already required in the rule as proposed. However, ADEQ will consider specific operator certification requirements in future rulemaking installments.

Comment 27: R18-9-B710(F) (Type 3 Recycled Water General Permit for a Reclaimed Water Agent) should be deleted because it is covered under subsection (E) immediately preceding it and under R18-9-A705(B), and the deadlines for the disclosures would conflict. (Zimmerman)

Response 27: ADEQ agrees with this clarifying change and has modified the rule accordingly.

Comment 28: R18-9-A705(C) (Recycled Water Individual Permit Application) should allow for late filing of a notice of renewal provided that nothing has changed that would require a new permit and the permittee has stayed in compliance with the applicable substantive requirements for reuse. 5 years is a long time to remember or calendar the renewal and ADEQ does not provide notice of imminent permit expiration, so it is not difficult to miss the deadline and have to submit a new application and expend ADEQ resources reviewing it when there is no actual need for it. Alternatively, permit terms could be lengthened or made indefinite. Effluent reuse arrangements are typically very long term. There is no reason for only a 5 year term if the permittee has to stay in compliance as substantive rules change over time and annually submit any changes in information. (Zimmerman)

Response 28: It is important for the agency and the customer to periodically update a permit as rules and facilities change over time. ADEQ believes that a five year permit time is a reasonable permit term time period and similar to other environmental permit term time periods (e.g. CWA AZPDES and CAA Title V). The agency makes every effort to notify a permittee of upcoming renewal dates. However, if a renewal date is missed, the agency works with permittees to ensure that a facility may continue their operations until a new permit is issued.

Comment 29: The RID Board concurs that using reclaimed water will offset and conserve potable water for human consumption and domestic purposes. (Roosevelt Irrigation District [RID])

Response 29: ADEQ appreciates the expression of support.

Comment 30: The RID owns and operates pipelines and open water canal conveyances that carry a combination of reclaimed water in conjunction with remediated water and groundwater. The reclaimed water is from the City of Phoenix 23rd Avenue water reclamation facility and the Liberty Water Company water reclamation facility. It is not practical for the RID to place warning signs along the canal ditch at all points of ingress and at 1/4 mile intervals. (RID)

Response 30: ADEQ agrees that it may be reasonable in certain situations to place signs at different intervals than currently required by the rules. As such, ADEQ added a clause to the open water conveyances signage provision in R18-9-B702(K)(3)(c) to allow for a possible variance from the 1/4 mile signage interval requirement, as approved by the Department to be reasonably protective of human health. The subsection is revised as follows:

"(c) Place signs at all points of ingress and, if the open water conveyance is operated with open access, at least every 1/4-mile along the length of the open water conveyance <u>or other interval as approved in writing by the Department</u>; and"

Comment 31: The RID supports the amendment to R18-9-704 in order to allow incidental runoff of reclaimed water to the waters of the U.S. under certain conditions. Reclaimed water has been a significant component of the RID water supply used for beneficial purposes, such as irrigation. Allowing incidental runoff of reclaimed water from a site where it is being applied is a sound practice which have been utilized by the agricultural community for decades. The RID does not see any need for the agency to place additional restrictions or permit regulations on the existing uses and practices of the RID or its customers. (RID)

Response 31: This comment appears to refer to changes made in prior rulemakings. No changes are proposed specific to run-off provisions in this rulemaking.

Comment 32: RID believes that the generator of the reclaimed water should remain responsible for the amount of chlorine and E.Coli that can be discharged into the RID conveyance system. Since the RID owns and operates a significant amount of open conveyance systems, water quality is subject to changes from nonpoint sources. The regulations should be clear that the conveyances which receive reclaimed water is not a reclaimed water blending facility. The use of the RID canals for conveyance has been a long term beneficial means of conveyance and should be allowed to continue without further regulation or permitting. The RID should be allowed to continue to use standard agricultural conveyance pipelines to convey their water which contains some amount of reclaimed water. (RID)

Response 32: ADEQ appreciates the comments. ADEQ has made no substantive changes to conveyance requirements. All requirements that applied regarding conveyances before this rulemaking will still apply.

Comment 33: It is unclear why the owner operator of the facility that accepts reclaimed water, and provides additional treatment for a higher-quality direct reuse, such as using the reclaimed water as source water for a potable water treatment plant, should be permitted as anything other than a potable water treatment facility? (RID)

Response: 33: Please see Response 3.This rule does not substitute for SDWA requirements.

Comment 34: The RID supports ADEQ in providing an exception to the prohibition against providing reclaimed water for human consumption by allowing reclaimed water to be treated appropriately for potable use. The RID supports ADEQ leaving the current reclaimed classes and permitting methodology in place. The RID supports ADEQ no longer using the term reclaimed water for water that is delivered to and processed through an advanced water treatment facility. The RID supports ADEQ requiring an advanced water treatment facility to obtain a recycled water individual permit. The RID supports ADEQ expanding and establishing interim permitting criteria. This will enable projects to move forward, which will meet ever increasing water demands. (RID)

Response 34: ADEQ appreciates the commenter's support.

Comment 35: The RID believes that a permit should be ten (10) years rather than five (5) years in length to provide certainty to the facility owners. (RID)

Response 35: ADEQ believes that five years is a reasonable permit term, especially given the current rate of advancement of treatment and monitoring technologies. Please see Response 28 above.

Comment 36: The RID does not believe ADEQ should always require a full pilot plant study for the advanced water treatment facility that will be used to treat reclaimed water for potable use under a recycled water individual permit. (RID)

Response 36: ADEQ believes that protection of public health currently demands a high level of review, including the submission of a pilot study with a permit application for an advanced reclaimed water treatment facility. ADEQ may accept an analogous facility's full pilot study.

Comment 37: I would like to see a definition of hose bibb in the rule. (City of Flagstaff)

Response 37: This comment refers to the provision in R18-9-B702(G) that hose bibbs discharging reclaimed water should be secured to prevent use by the public and Table 1 in R18-9-B702 for signage

of hose bibbs. Neither the International Plumbing Code (IPC) nor the Uniform Plumbing Code (UPC) define hose bibb. To clarify ADEQ's longstanding intent that a "hose bibb" is the valve from which water may be discharged, and does not include hose connection points, ADEQ will add the phrase "at valve" under the heading "Hose Bibbs" in Table 1 of R18-9-B702.

Comment 38: I think the permit requirements in R18-9-E701 should be moved to the drinking water rules. (City of Flagstaff)

Response 38: ADEQ disagrees. As addressed in Responses 3 and 5, the permitting requirements for an Advanced Reclaimed Water Treatment Facility neither substitute for nor contradict any requirements of the Safe Drinking Water Act (SDWA). All SDWA approvals and other requirements remain effect. Despite the high level of treatment provided by an Advanced Reclaimed Water Treatment Facility—to a potable standard—this rule considers the finished water produced by the facility a surface water source with respect to the SDWA and therefore subject to all SDWA requirements regarding surface water sources. No change to the rule is necessary.

Comment 39:

…Currently, about 25% of wastewater in Arizona is… [generated by systems producing] less than 24,000 gallons per day…down to a simple home…I reuse my water through the "free" quote-unquote permit offered by the 711 section of the gray water rules…and I also get the pleasure of enforcing on people who use that permit and use it incorrectly…we need to approach gray water and reuse from a total standpoint including all waste waters in Arizona.

The other point I want to make is…I see this as a "top-down" approach…I believe if we're going to have the support of reuse throughout Arizona that we need to have the individual citizens reusing the water they can in their homes and support that through the proper easy to use, functional permit and process…I believe if you look at those permits [authorizing use of less than 24,000 gallons per day]…they are administered on a face to face basis…and that's very different than the environment established in the individual permits section…people like me have a direct contact with the public.

…If you look at what's happened in NSF 350 recently, there are products now…approved on their product listing...show better test results than A+ quality effluent. I'm encouraging the department to actually look at a…series of permits and a program … for under 24,000 gallons for [recycled water]. And delegate that to the counties along with those the black water permits so that they can be administered face to face by a single party.

I think there is also a missing element…a type 3 permit delegated that is essentially a…residential permit for under 3,000 gallons per day…to also include commercial projects. (Garrett)

Individuals do not read the rules before implementing – RULES MUST BE DESIGNED WITH THE UNDERSTANDING OF NORMAL HUMAN ACTIONS

ADEQ should develop a recycled water program for on-site wastewater treatment facilities of less than 24,000 gallons per day that are regulated under Type 3 General Aquifer Protection Permits. ADEQ should develop these as Type 3 recycled water permits with five or seven year renewal periods and delegate them to the counties. Permits should be developed for residential use from 400 to 24,000 gallons per day and for commercial use from 0 to 24,000 gallons per day.

Resolve:

- Current conflict between 711 residential free permit and E303 Compost system requirements for a normal black water disposal system.
- Apply any resolution to all type 4 permits – Provide consistency
- Provide transition from Type 1 1.09 sewage treatment and onsite treatment facilities that are currently using overflow or gray water discharge. (Garrett)

Response 39: In the above comments, it is sometimes not clear that two different regulatory programs are being discussed. One program requires a permit under the Aquifer Protection Permit (APP) program for on-site wastewater treatment facilities, including septic tanks and alternative on-site systems where site conditions prevent installation of a septic tank. Such facilities exist in order to facilitate the disposal of treated black water, which includes wastewater from toilets and kitchen sinks. The other program discussed is the recycled water program (or the reclaimed water program under the 2001 rules), which involves use, reuse, and permitting of reclaimed water and gray water. Specifically at issue here is the Type 1 Recycled [formerly "Reclaimed"] General Permit for gray water, whereby residents may collect and reuse water collected from laundry, bathroom sinks, or showers, for irrigation purposes.

On-site wastewater treatment facilities, which exist in order to facilitate the disposal of black water, are permitted as general permits under APP. ADEQ has generally delegated permitting authority for on-site wastewater treatment facilities to the 15 counties. Specifically, ADEQ has delegated general permit authority under APP for septic tanks and some or all alternative systems of less than 3000 gallons per day of flow (generally residential systems) to all counties. ADEQ has delegated general permit authority under APP for larger on-site wastewater treatment facilities (multi-residential or non-

residential), from 3,000 to 24,000 gallons per day of flow, to counties based on their need for these larger facilities and the ability of the delegated agency to review and oversee administration of these more complex systems. ADEQ retains jurisdiction for sewage treatment facilities with a flow of 24,000 gallons per day or more as Individual Aquifer Protection Permits.

Except for complaint response and compliance assistance duties for Type 1 gray water user permits, ADEQ does not delegate any of the recycled water program to local authorities. This includes individual and general permits for reclaimed water, and general permits for gray water. Two types of general permits are specified in rule for gray water. The Type 1 general permit is for private residential gray water use for a flow of less than 400 gallons per day. The Type 3 general permit applies to gray water flows of not more than 3000 gallons per day which do not fit the conditions of the Type 1 general permit. In addition, under these final rules, a person has the option to apply for an Individual Recycled Water Permit for gray water use for situations that do not fit either the Type 1 or Type 3 general permit conditions.

The Type 1 general permit for private residential gray water does not require a person to submit an application or register for that permit or pay a permit fee. A person is deemed to be in compliance with the permit and may use gray water under the permit if he or she follows the criteria specified in the rule. This Type 1 gray water permit does not conflict with permits issued by delegated agencies for on-site wastewater treatment facilities. There are no significant changes to the Type 1 gray water permit in this rulemaking. As most people using gray water fall under the Type 1 criteria, and therefore do not need to apply for a permit through ADEQ, the agency disagrees with the current process labeled as duplicative for most customers.

The commenter suggests that ADEQ consider expanding the reclaimed water permitting program to on-site wastewater treatment facilities under this rulemaking and also provides comments related to general permits under APP. A major revision of the APP rules for these systems, involving development of significantly more stringent requirements, would be needed to ensure the safety of any wastewater reuse. This is outside the purview of the recycled water program and of this rulemaking, but ADEQ will take these suggestions under advisement for possible future rule changes.

Also, the commenter ties the issuance of the Type 3 gray water permit to a general APP that would be issued for an on-site system. These are separate programs because black water and gray water pose different environmental and health concerns. In ADEQ's experience, most commercial or institutional facilities dispose of black water to a sewer rather than rely on on-site wastewater treatment systems. Therefore, at this time, there is not enough need to consider tying the issuance of a Type 3 gray water

permit to that of a general permit under APP for an on-site wastewater treatment system disposing 3000 to 24,000 gallons per day.

As ADEQ implements the recycled water program as governed under this rule change, it will evaluate the potential benefits to Arizona's citizens and whether delegating provisions of these recycled water rules to local authorities is appropriate.

Comment 40: Currently 15 counties in the State of Arizona have some sort of delegation agreement with ADEQ to administer the onsite wastewater program…we have up to 23 different types of permits…about 15 different advanced technologies that produce wastewater quality far superior than you would get with gray water… [Innovation and technological advancements are] also happening in the onsite technology, we have products already on the proprietary product listing of ADEQ that we can bring inside…for irrigation and to flush inside the house. What we don't have is a framework for the on-site people to be able to manage that. But what we do have are building codes that have already adopted NSF 350 that has these great performance standards…

So if we're going to talk about water reuse…we need to bring the onsite people in and listen to them; we've missed this piece in this rule making…One of the recommendations I would have is on your committee group is to get a building official on it…and one the on-site folks…to talk about the specific parts of the gray water and the things we can do to make sure this dialog moves forward…

The [Coconino County] Board of Supervisors…they want us to be able to issue permits from the local level…if you're above 400 gallons of gray water use you come in and get a permit from our a department, but I have to send you to ADEQ to get a permit down in Phoenix…If we can treat full source waste water at a local level, why are we sending the lesser gray water we are not concerned about to ADEQ…it's an unnecessary complication for our citizens and a duplication of processes, one of the things Doug Ducey has told us he wants us to do a better job at. The counties are delegated full strength waste water up to 24,000 gallons per day so certainly we can handle those permits for gray water as well. (Coconino County)

Response 40: Please see Response 39 above regarding the recycled water program, which is the subject of this rulemaking. The APP general permit program for on-site wastewater treatment facilities is outside the scope of this rulemaking.

The last paragraph of this comment implies that there is a duplication of permitting processes between on-site wastewater treatment systems and gray water systems. This is not the case as the gray systems are separate types of facilities from onsite systems and under separate regulatory frameworks.

No change to this rule is necessary.

Comment 41: In some ways when you go with an unpermitted, "happy go free" approach…, you lose the ability to monitor your effectiveness. So we don't know how many we're doing. I'd like us to do rules statewide and not just written for a semi-arid desert down in Tucson…in Flagstaff, I have gray water but I also have a 30 inch frost depth.

We should have some kind of O&M manual…we regulate the house for the life expectancy…and we like to have documents that live with that house… if we had documentation on the gray water system, it would be helpful for the third or fourth homeowner to know where it is… By not having a permit or documentation, these systems are not being identified 100% of the time on the notice of transfers. Which is problematic…You could have a homeowner who doesn't know what they have. (Coconino County)

Response 41: ADEQ believes that permitting residential gray water users by rule is the current best way to protect human health and the environment while also easing overly burdensome regulation. The current rule for permitting private residential use has been an effective regulatory tool since its inception in 2001, and no changes to the permitting process aspects of the rule are necessary. As issues associated with gray water use are largely self-limiting, ADEQ believes it is not within the scope of its mission to regulate property transfers to the extent of required and O&M manual. ADEQ believes no change to the rule is necessary.

Comment 42: In addition to addressing reclaimed water for direct potable reuse, ADEQ needs to develop and recommend comprehensive criteria for advanced onsite system treatment of reclaimed water for direct reuse. Recommend ADEQ adopt NSF 350 that currently is adopted by the 2015 IRC. Technologies are currently on the ADEQ proprietary Product Listing that will allow reuse of the treated onsite wastewater to be reused to flush toilets and irrigation. (Coconino County)

As with the advances that have been made in innovation and utilization of gray water and reuse permits, advances have also been made with treatment technologies in the onsite wastewater program. There are currently technologies listed on the ADEQ Proprietary Product Listing that would allow for wastewater treated onsite to have the effluent reused for toilet flushing inside the home. The wastewater rules have been hindered from any substantive rule making since 2005. ADEQ incorrectly characterizes the Type 4 Composting Toilet permit. Type 4.03 is for use of a composting toilet. The disposal methods allow for year round use of a residence. Composting toilet is not a standalone permit.

Response 42: Please see Response 39 above. ADEQ is not revising any APP rules as a part of this rulemaking.

Comment 43: Gray water is for the beneficial use of irrigation and not for discharge. The number one reason people seek out a compost-gray water system is because it is often the cheapest easiest path for development, it is not for irrigation purposes. This section should also consider cold climate for those areas where temperatures drop down to prevent any type of irrigation a properly sized soil based system would be needed. (Coconino County)

Response 43: ADEQ believes that the combination of practices described in R18-9-D701(A)(6), (A)(7), and (A)(11) in the Type 1 gray water general permit along with the option under R18-9-E303(F)(2)(b) of requiring the interceptor and disposal trench for kitchen wastewater to also accommodate gray water flows are sufficient to guide a homeowner in proper operation of the gray water system.

Comment 44: ADEQ specifies that gray water storage tank holding time should be 24 hours or less to avoid development of anaerobic conditions and odors. Consideration should be given for buried tanks in areas with cold climate. In Flagstaff the soil temperature does not get high enough year round to sustain bacterial growth. Soil temperatures are available on the web. (Coconino County)

Response 44: Because of the differences in climate throughout the state and throughout the year, ADEQ has modified R18-9-D701(C)(8) rule to say that holding time must be "minimized to avoid the development anaerobic conditions and odors". If odors or anaerobic conditions may develop, a gray water user is expected to ensure that water is kept in holding tanks for a period of time that prevents such conditions or odors to occur. ADEQ also similarly modified the corresponding provision in the Type 3 gray water rule at R18-9-D702(C)(8).

Comment 45: Simply changing the name from Direct Reuse of Reclaimed Water to Use of Recycled Water does not address the problem. Especially when the classifications of water will remain the same. As it pertains to gray water, gray water should not be included as reclaimed-recycled water as it receives no treatment.

The following are two examples of definitions on Reclaimed/Recycled water:

Reclaimed or recycled water (also called wastewater reuse or water reclamation) is the process of converting wastewater into water that can be reused for other purposes. Reuse may include irrigation of gardens and agricultural fields or replenishing surface water and groundwater (i.e., groundwater recharge).

Reclaimed or recycled water (also called wastewater reuse or water reclamation) is the process of converting wastewater into water that can be reused for other purposes. Reuse may include irrigation of gardens and agricultural fields or replenishing surface water and groundwater (i.e., groundwater recharge). Reused water may also be directed toward fulfilling certain needs in residences (e.g. toilet flushing), businesses, and industry, and could even be treated to reach drinking water standards. This last option is called either "direct potable reuse" or "indirect potable" reuse, depending on the approach used. Colloquially, the term "toilet to tap" also refers to potable reuse.

Additionally "Reclaimed" is the more consistent and common term consistent with the technology on a nationwide scale. (Coconino County)

Response 45: Previously, gray water was included in Article 7 with reclaimed water. However, it is really a different type of recycled water. There is widespread acceptance that gray water use is a distinct form of recycling water. No change to rule is necessary.

Comment 46: Currently, gray water permits are underutilized because of impracticable requirements. The use of gray water is underutilized as it is ideally not the most efficient way to reuse water and is not sustainable due to what is in the waste stream. Gray water is not a Reclaimed water, nor is it a Recycled water as it appears the categories for Reclaimed/Recycled water will not be changed. Gray water needs to be regulated by one entity and not the bifurcated process that currently exists. Gray water needs to be taken out of the 711 rules and put into the Title 18 Chapter 9 APP Program. All 15 counties are delegated the Type 4 permits. The source for all gray water for onsite systems would be through these permitted systems. It is more logical for gray water permitting processing for both rural and municipal areas to be overseen by the county partners.

Currently the application process is as follows: There is a duplicative permitting process by requiring those applicants that are installing onsite system with gray water systems obtain a second permit through ADEQ is overly burdensome. Certainly if the Delegated Authorities can oversee the full strength waste and permit these systems the lesser strength gray water need not be further administered and overseen by and entity in Phoenix. As with the intent of this Rule Revision there is the desire to encourage, permit and oversee these reuse permits at the local level?

The Gray Water Reuse Rules allow for a very permissive use of gray water without regulation. All of the existing Type 4 Alternative Treatment Technologies in the APP produce an effluent discharge that has better performance numbers that the unregulated gray water. Perhaps this should be considered for all general permits and instead of discharge treated effluent could be used at shallower depths to allow for broader irrigation applications. (Coconino County)

Response 46: Please see response 39 and 40 above.

Comment 47: Use of gray water for safely watering food plants, R18-9-D701(A)(3). Caution and disagree with this approach. There is insufficient research to allow this and we would need to be very careful as once it is allowed it is becomes very difficult to segregate, for use on vegetables with a skin or rind as opposed to leafy greens.

Allow gray water use for shrubs as well as trees, R18-9-D701(A)(3). This is actually the best use for gray water as the supply is not as reliable over time and shrubs typically are not as needy as other landscape plants. (Coconino County)

Response 47: This provision is very clear that using gray water to water food plants is not allowed except for trees and shrubs which have an edible portion that does not come into contact with the gray water, which includes the skin or rind of that edible portion. ADEQ does not believe that irrigation of trees and shrubs in this category would be confused with leafy greens. No change to rule is necessary.

Comment 48: Disallow mixing of water used to wash diapers or similarly soiled garments with gray water, R18-9-D701(A)(5), because disinfection is too complicated for most home gray water systems. Agree with this proposal. (Coconino County)

Response 48: Thank you for your comment.

Comment 49: Provide examples for minimizing standing water on the surface, including the now widespread practice of distributing gray water under a mulch cover. Gray water should not be applied through flood irrigation, flooding is not an efficient method in maximizing the use of gray water for irrigation purposes. If the use of gray water is to promote water conservation this is not a correct path. The best method to maximize water usage to plants is through drip irrigation where the water may be applied to the plants in a controlled amount and time. Wide spread application of flood irrigation for gray water could result in breeding areas for mosquitoes. We already have West Nile Virus and Zika. Mandate that if blockage, backup, or overload of the system occurs, distribution of gray water should cease until the deficiency is corrected, R18-9-D701(A)(7). This is a common sense approach and should not have to be written out however, a blockage alone is not the only reason an individual needs to route their gray water back to an onsite system or municipal system. It may include uses inside the home that generate an effluent that would be harmful to plants, for example salt baths or high bleach loads of laundry. Or if there is a contagious disease inside the household or a very sick person taking and using medications, rubs, and ointments that are best suited to not go to the planted areas. Or what about if the homeowner simply has no desire to maintain their planter and wishes to convert the

planted area to something else. Or with time the gray water volume inside the home decreases as children or parties leave the household and irrigation areas need to be reconsidered or sometimes abandoned. There needs to be a method to revert the water back to an onsite system or municipal system. (Coconino County)

Response 49: ADEQ believes the conditions prescribed for private residential gray water in this rule satisfactorily address the issues raised by the commenter. The concern about generating harmful effluent is addressed at R18-9-D701. The commenter's concern with respect to a contagious disease or very sick person is addressed in part by R18-9-D701(A)(5), which specifies not washing diapers or similarly soiled or infectious garments, and by R18-9-D701(A)(2), which specifies that human contact with gray water and soil watered by gray water must be avoided. In whatever way a gray water user reasonably ceases distribution of gray water in case of a system blockage, backup, or overload or in the situation that any of the other permit conditions cannot be met, is up to the user. No change to the rule is necessary.

Comment 50: ADEQ is proposing a new reuse/gray water permit for flows from 3000 to 24,000 gpd. The counties are currently delegated these flows for full-strength wastewater. This permit should be folded into the on-site system rules. (Coconino County)

Response 50: Please see comment 39 above.

Comment 51: Under the proposed R18-9-A703 Recycled Water Individual Permit, ADEQ will allow the addition of kitchen sink and dishwater wastewater to a gray water source, as long as the water is treated appropriately for its end use. This is where there is a potential for problems with vectors with the kitchen water going out on top of the ground in flood irrigation or on top of the ground surface. Food wastes attracts insects, rodents and animals. Disagree with this practice and has not be widely accepted nationwide. (Coconino County)

Response 51: Individual permit conditions are tailored to site-specific conditions and are designed to be protective of human health, including treatment, monitoring, reporting, and other requirements appropriate to the use. No change to the rule is necessary.

Comment 52: Regarding the proposed Type 3 Recycled Water General Permit for Gray Water, R18-9-D702, suggest that large commercial systems that are served by municipal wastewater be the only permits that apply for this permit category. Use of the currently the existing 4.23 General Permit [in APP] would allow for reuse up to 24,000 gpd at the local level. (Coconino County)

Response 52: The 4.23 General APP Permit regulates wastewater discharges from larger-sized septic tanks and alternative on-site systems under the Aquifer Protection Permit program. ADEQ does not intend to move the beneficial use of gray water from these recycled water rules into the APP program. Please see Response 39 above.

Comment 53: The continuation of perpetual-life Type 1 permits for gray water, may meet ADEQ rulemaking intentions in the hands of a highly motivated property owner or lessee. However, such success cannot be assured during a property transfer, or in the hands of less motivated persons, such as a new or impaired owner, or a renter, especially without an effective oversight and training programs.

The absence of records pertaining to the presence and management responsibilities for a Type 1 Recycled Water Gray Water system operating under R18-9-D701 could be problematic for property which is going through a transfer of ownership. At that time there will be responsibilities for seller disclosure and buyer due diligence inspection. Without design and operational records, the transfer of ownership transaction could be in jeopardy, or result in other risk to the parties to the transaction, including a Realtor® and Escrow officer.

Retaining the Type 1 permit for properties operating under a pre-existing gray water authorization makes sense, perhaps with a 20-year sunset date. The upgraded program should provide better documentation by utilizing a process resembling that for the proposed Type 2 Recycled Water General Permit, but allowing for a longer term, say until the time of ownership transfer. While that term may seem burdensome, such general permit-type practices are common for automobile registration renewal, credit card agreements, etc. Further the program established in A.A.C. R18-9-A316 establishes an inspection and transfer processes for Type 4 General Permit facilities in Chapter 9, Article 3; and could be adapted for a recycled water permit. This Article 3 program has been operating since mid-2006, applicable to the approximately 550,000 operating On-site Wastewater Treatment Facilities under ADEQ jurisdiction. (Swanson)

Response 53: Please see Response 41.

Comment 54: ADEQ APP rules pertaining to residential sewage, including gray water, would seem to function more efficiently within the same body of regulation and expertise. The placement of residential gray water on the land surface may seem risk free, though the presence of vectors and disease transmission uncertainty has been rapidly evolving. Further professional scrutiny by those with comprehensive communicable disease expertise within the various public health programs in Arizona is recommended for the 13 Practices and several Prohibitions. (Swanson)

Response 54: Please see Responses 47 and 49. ADEQ has consulted with internal and external gray water experts to develop these rules and considers the rules to be protective of human health and the environment.

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

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

The rules require several different types of permits. General permits are used where possible. However, pursuant to A.R.S. 41-1037(A)(3), which allows individual permits if general permits are technically infeasible, individual permits are prescribed for case-by-case situations. For example, individual permit is required for advanced reclaimed water treatment facilities. Such facilities will have varying advanced water treatment techniques and will also require case-by-case facility-specific determinations.

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

There is no corresponding federal law applicable to reclaimed water, gray water, or to the direct potable use of treated reclaimed water.

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

No analysis has been submitted.

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

None.

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

No.

15. The full text of the rules follows:

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 9. DEPARTMENT OF ENVIRONMENTAL QUALITY
WATER POLLUTION CONTROL

ARTICLE 6. ~~RECLAIMED WATER CONVEYANCES~~ REPEALED

R18-9-601. ~~Definitions~~ Repealed

R18-9-602. ~~Pipeline Conveyances of Reclaimed Water~~ Repealed

R18-9-603 ~~Open Water Conveyances of Reclaimed Water~~ Repealed

ARTICLE 7. ~~DIRECT REUSE OF RECLAIMED~~ USE OF RECYCLED WATER

Section

R18-9-701. ~~Definitions~~ Renumbered

R18-9-702. ~~Applicability and Standards for Reclaimed Water Classes~~ Renumbered

R18-9-703. ~~Transition of Permits~~ Renumbered

R18-9-704. ~~General Requirements~~ Renumbered

R18-9-705. ~~Reclaimed Water Individual Permit Application~~ Renumbered

R18-9-706. ~~Reclaimed Water Individual Permit General Provisions~~ Renumbered

R18-9-707. ~~Reclaimed Water Individual Permit Where Industrial Wastewater Influences the Characteristics of Reclaimed Water~~ Renumbered

R18-9-708. ~~Reusing Reclaimed Water Under a General Permit~~ Renumbered

R18-9-709. ~~Reclaimed Water General Permit Renewal and Transfer~~ Renumbered

R18-9-710. ~~Reclaimed Water General Permit Revocation~~ Renumbered

R18-9-711. ~~Type 1 Reclaimed Water General Permit for Gray Water~~ Renumbered

R18-9-712. ~~Type 2 Reclaimed Water General Permit for Direct Reuse of Class A+ Reclaimed Water~~ Renumbered

R18-9-713. ~~Type 2 Reclaimed Water General Permit for Direct Reuse of Class A Reclaimed Water~~ Renumbered

R18-9-714. ~~Type 2 Reclaimed Water General Permit for Direct Reuse of Class B+ Reclaimed Water~~ Renumbered

R18-9-715. ~~Type 2 Reclaimed Water General Permit for Direct Reuse of Class B Reclaimed Water~~ Renumbered

R18-9-716. ~~Type 2 Reclaimed Water General Permit for Direct Reuse of Class C Reclaimed Water~~ Renumbered

R18-9-717. ~~Type 3 Reclaimed Water General Permit for a Reclaimed Water Blending Facility~~ Renumbered

R18-9-718. ~~Type 3 Reclaimed Water General Permit for a Reclaimed Water Agent~~ Renumbered

R18-9-719. ~~Type 3 Reclaimed Water General Permit for Gray Water~~ Renumbered

R18-9-720. ~~Enforcement and Penalties~~ Repealed

PART A. GENERAL PROVISIONS

~~R18-9-701.~~ R18-9-A701. Definitions

~~R18-9-702.~~ R18-9-A702. Applicability and Standards for ~~Reclaimed~~ Recycled Water ~~Classes~~

~~R18-9-705.~~ R18-9-A703. ~~Reclaimed~~ Recycled Water Individual Permit Application

~~R18-9-708.~~ R18-9-A704. ~~Reusing Reclaimed~~ Recycled Water ~~Under a~~ General Permit

~~R18-9-709.~~ R18-9-A705. ~~Reclaimed~~ Recycled Water General Permit Term, Information Changes, and Renewal ~~and Transfer~~

~~R18-9-710.~~ R18-9-A706. ~~Reclaimed~~ Recycled Water ~~General~~ Permit Revocation

R18-9-A707. Recycled Water Permit Transition

PART B. RECLAIMED WATER

~~R18-9-703.~~ R18-9-B701. Transition of Aquifer Protection Permits and Permits for the Reuse of Reclaimed Wastewater

~~R18-9-704.~~ R18-9-B702. General Requirements for Reclaimed Water

~~R18-9-706.~~ R18-9-B703. General Provisions for ~~Reclaimed~~ Recycled Water Individual Permit for Reclaimed Water ~~General Provisions~~

~~R18-9-712.~~ R18-9-B704. Type 2 ~~Reclaimed~~ Recycled Water General Permit for Direct Reuse of Class A+ Reclaimed Water

~~R18-9-713.~~ R18-9-B705. Type 2 ~~Reclaimed~~ Recycled Water ~~General~~ Permit for Direct Reuse of Class A Reclaimed Water

~~R18-9-714.~~ R18-9-B706. Type 2 ~~Reclaimed~~ Recycled Water General Permit for Direct Reuse of Class B+ Reclaimed Water

~~R18-9-715.~~ R18-9-B707. Type 2 ~~Reclaimed~~ Recycled Water General Permit for Direct Reuse of Class B Reclaimed Water

~~R18-9-716.~~ R18-9-B708. Type 2 ~~Reclaimed~~ Recycled Water General Permit for Direct Reuse of Class C Reclaimed Water

~~R18-9-717.~~ R18-9-B709. Type 3 ~~Reclaimed~~ Recycled Water General Permit for a Reclaimed Water Blending Facility

~~R18-9-718.~~ R18-9-B710. Type 3 ~~Reclaimed~~ Recycled Water General Permit for a Reclaimed Water Agent

PART C. RECYCLED INDUSTRIAL WASTEWATER

~~R18-9-707.~~ R18-9-C701. ~~Reclaimed~~ Recycled Water Individual Permit ~~Where~~ for Industrial Wastewater ~~Influences the Characteristics of Reclaimed Water~~ That Is Reused

PART D. GRAY WATER

~~R18-9-711.~~ R18-9-D701. Type 1 ~~Reclaimed~~ Recycled Water General Permit for Gray Water

~~R18-9-719.~~ R18-9-D702. Type 3 ~~Reclaimed~~ Recycled Water General Permit for Gray Water

PART E. PURIFIED WATER FOR POTABLE USE

R18-9-E701. Recycled Water Individual Permit for an Advanced Reclaimed Water Treatment Facility

ARTICLE 6. ~~RECLAIMED WATER CONVEYANCES~~ REPEALED

R18-9-601. ~~Definitions~~ Repealed

~~In addition to the definitions provided in R18-9-701, the following terms apply to this Article:~~

~~1. "Open water conveyance" means any constructed open waterway, including canals and laterals that transports reclaimed water from a sewage treatment facility to a reclaimed water blending facility or from a sewage treatment facility or reclaimed water blending facility to the point of land application or end use. An open water conveyance does not include waters of the United States.~~

~~2. "Pipeline conveyance" means any system of pipelines that transports reclaimed water from a sewage treatment facility to a reclaimed water blending facility or from a sewage treatment facility or reclaimed water blending facility to the point of land application or end use.~~

R18-9-602. ~~Pipeline Conveyances of Reclaimed Water~~ Repealed

~~A. Applicability.~~

~~1. Any person constructing a pipeline conveyance on or after January 1, 2001, whether new or a replacement of an existing pipeline shall meet the requirements of this Article.~~

~~2. Any person who has constructed a pipeline conveyance before January 1, 2001, is considered to be in compliance with this Article.~~

~~B. A person shall design and construct a pipeline conveyance system using good engineering judgement following standards of practice.~~

~~C. A person shall construct a pipeline conveyance so that:~~

~~1. Reclaimed water does not find its way into, or otherwise contaminate, a potable water system;~~

~~2. System structural integrity is maintained; and~~

~~3. The capability for inspection, maintenance, and testing is maintained.~~

~~D. A person shall construct a pipeline conveyance and all appurtenances conducting reclaimed water to withstand a static pressure of at least 50 pounds per square inch greater than the design working pressure without leakage as determined in A.A.C. R18-9-E301(D)(2)(j).~~

~~E. A person shall provide a pipeline conveyance with thrust blocks or restrained joints where needed to prevent excessive movement of the pipeline.~~

~~F. The following requirements for minimum separation distance apply. A person shall:~~

~~1. Locate a pipeline conveyance no closer than 50 feet from a drinking water well unless the pipeline conveyance is constructed as specified under subsection (F)(3);~~

~~2. Locate a pipeline conveyance no closer than two feet vertically nor six feet horizontally from a potable water pipeline unless the pipeline conveyance is constructed as specified under subsection (F)(3);~~

~~3. Construct a pipeline conveyance that does not meet the minimum separation distances specified in subsections (F)(1) and (F)(2) by encasing the pipeline conveyance in at least six inches of concrete or using mechanical joint ductile iron pipe or other materials of equivalent or greater tensile and compressive strength at least 10 feet beyond any point on the pipeline conveyance within the specified minimum separation distance; and~~

~~4. If a reclaimed water system is supplemented with water from a potable water system, separate the potable water system from the pipeline conveyance by an air gap.~~

~~G. A person shall:~~

~~1. For a pipeline conveyance, eight inches in diameter or less, use pipe marked on opposite sides in English: "CAUTION: RECLAIMED WATER, DO NOT DRINK" in intervals of three feet or less and colored purple or wrapped with durable purple tape.~~

~~2. For a mechanical appurtenance to a pipeline conveyance, ensure that the mechanical appurtenance is colored purple or legibly marked to identify it as part of the reclaimed water distribution system and distinguish it from systems for potable water distribution and sewage collection.~~

R18-9-603. ~~**Open Water Conveyances of Reclaimed Water**~~ **Repealed**

~~A. This Article applies to an open water conveyance, regardless of the date of construction.~~

~~B. A person shall maintain an open water conveyance to prevent release of reclaimed water except as allowed under federal and state regulations. The maintenance program shall include periodic inspections and follow-up corrective measures to ensure the integrity of conveyance banks and capacity of the conveyance to safely carry operational flows.~~

~~C. Signage for Class B+, B, and C Reclaimed Water. A person shall:~~

~~1. Ensure that signs state: "CAUTION: RECLAIMED WATER, DO NOT DRINK," and display the international "do not drink" symbol;~~

~~2. Place signs at all points of ingress and, if the open water conveyance is operated with open access, at least every ¼ mile along the length of the open water conveyance; and~~

~~3. Ensure that signs are visible and legible from both sides of the open water conveyance.~~

ARTICLE 7. ~~DIRECT REUSE OF RECLAIMED~~ USE OF RECYCLED WATER

R18-9-701. Renumbered

R18-9-702. Renumbered

R18-9-703. Renumbered

R18-9-704. Renumbered

R18-9-705.- Renumbered

R18-9-706. Renumbered

R18-9-707. Renumbered

R18-9-708. Renumbered

R18-9-709. Renumbered

R18-9-710. Renumbered

R18-9-711. Renumbered

R18-9-712. Renumbered

R18-9-713. Renumbered

R18-9-714. Renumbered

R18-9-715. Renumbered

R18-9-716. Renumbered

R18-9-717. Renumbered

R18-9-718 . Renumbered

R18-9-719. Renumbered

R18-9-720. ~~Enforcement and Penalties~~ Repealed

~~Any person who violates a condition specified in a permit issued under this Article, falsifies data or information submitted to the Department as required under Articles 6 or 7 of this Chapter, or violates a provision of Article 6 or 7 of this Chapter, is subject to the enforcement actions prescribed under A.R.S. §§ 49-261 and 49-262.~~

PART A. GENERAL PROVISIONS

~~R18-9-701.~~R18-9-A701. Definitions

Unless provided otherwise, the definitions provided in A.R.S. § 49-201, A.A.C. R18-9-101, R18-9-601, R18-11-301, and the following terms apply to this Article:

1. "Advanced reclaimed water treatment facility" means a facility that treats and purifies Class A+ or Class B+ reclaimed water to produce potable water suitable for distribution for human consumption. R18-9-B702(B) does not apply to an advanced reclaimed water treatment facility. Potable water produced by an advanced reclaimed water treatment facility is not reclaimed water.

~~1.~~2. "Direct reuse" means the beneficial use of reclaimed water for a purpose allowed by this Article. The following is not a direct reuse of reclaimed water:

   a. The use of water subsequent to its discharge under the conditions of a National or Arizona Pollutant Discharge Elimination System permit;

   b. The use of water subsequent to discharge under the conditions of an Aquifer Protection Permit issued under 18 A.A.C. 9, Articles 1 through 3; ~~or~~

c. The use of industrial wastewater, reclaimed water, or both, in a workplace subject to a federal program that protects workers from workplace exposures; or

d. The use of potable water produced by an advanced reclaimed water treatment facility.

~~2.~~3. "Direct reuse site" means an area permitted for the application or impoundment of reclaimed water. An impoundment operated for disposal under an Aquifer Protection Permit is not a direct reuse site.

~~3.~~4. "End user" means a person who directly reuses reclaimed water meeting the standards for Classes A+, A, B+, B, and C, established under 18 A.A.C. 11, Article 3.

~~4.~~5. *"Gray water" means wastewater that has been collected separately from a sewage flow and that originates from a clothes washer~~, bathtub, shower, and sink,~~ or a bathroom tub, shower or sink but that does not include wastewater from a kitchen sink, dishwasher~~,~~ or toilet.* A.R.S. § 49-201(18).

~~5.~~6. "Industrial wastewater" means wastewater generated from an industrial process.

~~6.~~7. "Irrigation" means the beneficial use of water or reclaimed water, or both, for growing crops, turf, or silviculture, or for landscaping.

~~7.~~8. "Open access" means ~~that~~ access to reclaimed water by the general public is uncontrolled.

9. "Open water conveyance" means any constructed open waterway, including canals and laterals, that transports reclaimed water from a sewage treatment facility to a reclaimed water blending facility or from a sewage treatment facility or reclaimed water blending facility to the point of land application or end use. An open water conveyance does not include waters of the United States.

10. "Pipeline conveyance" means any system of pipelines that transports reclaimed water from a sewage treatment facility to a reclaimed water blending facility or from a sewage treatment facility or reclaimed water blending facility to the point of land application or end use.

~~8.~~ 11. *"Reclaimed water" means water that has been treated or processed by a wastewater treatment plant or an on-site wastewater treatment facility.* A.R.S. § ~~49-201(31)~~ 49-201(32).

~~9.~~ 12. "Reclaimed water agent" means a person who holds a permit to distribute reclaimed water to more than one end user.

~~10.~~ 13. "Reclaimed water blending facility" means an installation or method of operation that receives reclaimed water from a sewage treatment facility or other reclaimed water blending facility classified to produce Class C or better reclaimed water and blends it with other water so that the produced water may be used for a higher-class purpose listed in 18 A.A.C. 11, Article 3, ~~Appendix~~ Table A.

14. "Recycled water" means a processed water that originated as a waste or discarded water, including reclaimed water and gray water, for which the Department has designated water quality specifications to allow the water to be used as a supply.

~~11.~~ 15. "Restricted access" means that access to reclaimed water by the general public is controlled.

16. "Sewage Treatment Facility" means a sewage treatment facility as defined in 18 A.A.C. 9, Article 1.

~~R18-9-702.~~R18-9-A702. Applicability and Standards for ~~Reclaimed~~ Recycled Water ~~Classes~~

A. This Article applies to:

1. An owner or operator of a sewage treatment facility that generates reclaimed water for direct reuse,
2. An owner or operator of a reclaimed water blending facility,
3. A reclaimed water agent,
4. An end user of reclaimed water,
5. A person who uses ~~gray water~~ recycled water regulated under this Article,
6. A person who directly reuses reclaimed water from a sewage treatment facility combined with industrial wastewater or combined with ~~reclaimed~~ water from an industrial wastewater treatment facility, and
7. A person who directly reuses reclaimed water from an industrial wastewater treatment facility in the production or processing of a crop or substance that may be used as human or animal food.

B. Reclaimed water classes A+, A, B+, B, and C specified in this Article shall meet the standards established in 18 A.A.C. 11, Article 3.

C. Nothing in this Article exempts the disposal of reclaimed water from the Aquifer Protection Permit requirements under A.R.S. Title 49, Chapter 2, Articles 1, 2, and 3.

~~R18-9-705.~~ R18-9-A703. ~~Reclaimed~~ Recycled Water Individual Permit Application

~~**A.** Pre-application conference. Upon request of an applicant, the Department shall schedule and hold a pre-application conference with the applicant to discuss any requirements in this Article.~~

~~**B.**~~**A.** To apply for a ~~Reclaimed~~ Recycled Water Individual Permit, a person shall provide the Department with:

1. The applicable permit fee specified under 18 A.A.C. 14; and

~~1.~~2. The following information on a form provided by the Department:

a. The name, e-mail address, telephone number, and mailing address of the owner or operator of the facility or, if applicable, the reclaimed water agent;

~~b. The social security number of the applicant, if the applicant is an individual;~~

~~c.~~b. The ~~legal description of the direct reuse site, including~~ latitude and longitude coordinates; township range, and section; site address, if applicable; and a map showing the facility or site location;

~~d.~~c. Any other federal or state environmental permits issued to the applicant;

~~e.~~d. Source of ~~reclaimed~~ recycled water to be ~~directly reused~~ used;

e. The applicant may propose for approval, and the Department may issue, a single permit that includes more than one type of recycled water allowed by this article, including for multiple classes of reclaimed water, if the applicant demonstrates the waters will be treated appropriately for the end use;

f. The applicant may propose, and the Department may permit, the inclusion of kitchen sink and dishwasher wastewater with gray water under a Recycled Water Individual Permit, if the applicant demonstrates such waters will be treated appropriately for the end use;

~~f.~~g. ~~Volume of reclaimed~~ Estimated volume of recycled water to be ~~directly reused~~ used on an annual basis;

~~g.~~h. Class of reclaimed water to be directly reused, if applicable;

~~h.~~i. Description of the ~~direct reuse~~ use activity; ~~and~~

j. Any treatment measures utilized to meet or maintain reclaimed water quality standards or otherwise ensure the quality of the recycled water is fit for the intended use; and

~~i.~~k. The applicant's ~~signature certifying~~ certification that the information submitted in the application is true and accurate to the best of the applicant's knowledge~~;~~ .

~~2. A copy of the certificate of disclosure of violations required under A.R.S. § 49-109; and~~

~~3. The applicable permit fee specified under 18 A.A.C. 14.~~

~~**C.** Administrative completeness review. Upon receipt, the Department shall review the Reclaimed Water Individual Permit application to determine its administrative completeness under A.R.S. § 41-1074 and A.A.C. R18-1-503.~~

~~**D.** Substantive review. Upon receipt of a complete Reclaimed Water Individual Permit application, the Department shall review the application to determine its substantive adequacy under A.R.S. § 41-1075 and A.A.C. R18-1-504.~~

~~**E.** Draft permit. The Department shall provide the applicant a copy of a draft of the Reclaimed Recycled Water Individual Permit before the notice specified in subsection (F) is published.~~

~~**F.**~~**B.** Public participation.

1. Notice of Preliminary Decision.

~~a. The Department shall publish a Notice of Preliminary Decision to issue or deny a Reclaimed Water Individual Permit within a period of time that allows the Department to meet the licensing time-frame requirements under 18 A.A.C. 5.~~

~~b.~~a. The Department shall publish the Notice of Preliminary Decision regarding the issuance or denial of a final permit determination ~~in one or more newspapers of general circulation where the facility is located~~ on the Department's website.

~~c.~~b. The Department shall accept written comments from the public before a ~~Reclaimed~~ Recycled Water Individual Permit is issued or denied.

~~d.~~c. The written public comment period begins on the publication date of the Notice of Preliminary Decision and extends for 30 calendar days.

2. After publishing the notice specified in subsection ~~(F)(1)(a)~~ (B)(1)(a), the Department shall hold a public hearing to address the Notice of Preliminary Decision if the Department determines that:
   a. ~~Public~~ Significant public interest in a public hearing exists, or
   b. ~~Issues~~ Significant issues or information have been brought to the attention of the Department that are relevant to the permitting decision and have not been considered previously in the permitting process.
3. If the Department determines ~~that~~ a public hearing is necessary and a public hearing has not already been noticed under subsection ~~(F)(1)(a)~~ (B)(1)(a), the Department shall schedule a public hearing and republish the Notice of Preliminary Decision ~~as a legal notice at least once, in one or more newspapers of general circulation where the facility is located~~ and notice of the public hearing on the Department's website.
4. The Department shall accept written public comment until the close of the hearing record as specified by the person presiding at the public hearing.

~~G.~~**C.** Final permit issuance or denial.

~~1. The Department shall give the applicant written notification of its final decision to issue or deny the permit application within the overall licensing time-frame requirements in 18 A.A.C. 5.~~

~~2.~~1. The Department may deny a ~~Reclaimed~~ Recycled Water Individual Permit if the Department determines upon completion of the application process ~~that~~ the applicant has:
   a. Failed or refused to correct a deficiency in the permit application;
   b. Failed to demonstrate ~~that~~ the facility and the operation will protect public health and water quality. This determination shall be based on:
      i. The information submitted in the permit application,
      ii. Any information submitted to the Department as written public comment or following a public hearing; or

iii. Any information relevant to the demonstration ~~that is~~ developed or acquired by the Department, or

c. Provided false or misleading information.

~~3.~~2. If the Department denies a ~~Reclaimed~~ Recycled Water Individual Permit the Department shall provide the applicant with written notification ~~that explains~~ explaining the following:

a. The reasons for the denial with references to the statutes or rules on which the denial is based.

b. The applicant's right to appeal the denial, including the number of days the applicant has to file a notice of appeal, and the name and telephone number of the Department contact person who can answer questions regarding the appeals process.

c. The applicant's right to request an informal settlement conference under A.R.S. §§ 41-1092.03(A) and 41-1092.06.

~~R18-9-708.~~ R18-9-A704. ~~Reusing Reclaimed~~ Recycled Water ~~Under a~~ General Permit

A. Type 1 ~~Reclaimed~~ Recycled Water General Permit for Gray Water. A person may ~~directly reuse reclaimed~~ use recycled water without notice to the Department if the use:

1. ~~The direct reuse is~~ Is specifically authorized by and meets the requirements of this Article, and
2. Complies with the requirements of the Type 1 ~~Reclaimed~~ Recycled Water General Permit under ~~R18-9-711~~ this Article.

B. Type 2 ~~Reclaimed~~ Recycled Water General Permit for Reclaimed Water.

1. A person may ~~directly reuse reclaimed~~ use recycled water under a Type 2 ~~Reclaimed~~ Recycled Water General Permit if:
   a. The ~~direct reuse~~ use is authorized by and meets the requirements of this Article;
   b. The ~~direct reuse~~ use meets all the conditions of the applicable Type 2 ~~Reclaimed~~ Recycled Water General Permit under ~~R18-9-712 through R18-9-716~~ this Article;
   c. The person files a Notice of Intent ~~for Direct Reuse of Reclaimed~~ to Use Recycled Water under subsection (B)(2); and
   d. The person submits the applicable fee established in 18 A.A.C. 14.
2. Notice of Intent ~~for Direct Reuse of Reclaimed~~ to Use Recycled Water.
   a. A person shall submit, by ~~certified~~ mail, in person, or by another method approved by the Department, the Notice of Intent ~~for Direct Reuse of Reclaimed~~ to Use Recycled Water on a form provided by the Department.
   b. The Notice of Intent ~~for Direct Reuse of Reclaimed~~ to Use Recycled Water shall include;
      i. The name, address, e-mail address, and telephone number of the applicant;
      ii. ~~The social security number of the applicant, if the applicant is an individual;~~
      ~~iii.~~ The name, address, and telephone number of the contact person;

~~iv.~~iii. The source, estimated volume, and, if applicable, class of ~~reclaimed~~ recycled water to be ~~directly reused~~ used;

~~v. A legal description of the direct reuse site, including~~ iv. The latitude and longitude coordinates of the approximate center point of the use site;

~~vi.~~v. The description of the ~~direct reuse~~ use activity~~, including a description of acreage and the type of vegetation to be irrigated, if applicable to the type of direct reuse activity~~; and

~~vii.~~vi. The ~~permittee's~~ applicant's ~~signature certifying~~ certification that the~~ permittee~~ applicant agrees to comply with all requirements of this Article, including specific terms of the applicable ~~Reclaimed~~ Recycled Water General Permit.

c. For a Type 2 Recycled Water General Permit for Direct Reuse of Reclaimed Water, the Notice of Intent to Use Recycled Water must include the description of the direct reuse activity, including a description of acreage and the type of vegetation to be irrigated, if applicable to the type of direct reuse activity.

3. The Department shall notify the applicant that the Department received the Notice of Intent to Use Recycled Water and that the applicant is authorized to use the recycled water according to Type 2 permit conditions.

C. Type 3 ~~Reclaimed~~ Recycled Water General Permit for Reclaimed Water and Type 3 Recycled Water General Permit for Gray Water. A person ~~may~~ shall not operate under a Type 3 ~~Reclaimed~~ Recycled Water General Permit ~~after filing an applicable Notice of Intent to Operate with the Department and receiving~~ until the Department issues a written~~ Verification of General Permit Conformance for the operation~~ Recycled Water Authorization.

1. Application submittal. The applicant shall submit, either by ~~certified~~ mail, in person at the Department, or by another method approved by the Department:
   a. The Notice of Intent to ~~Operate~~ Use Recycled Water on a form provided by the Department containing the information specified in the applicable Type 3 ~~Reclaimed~~ Recycled Water General Permit under ~~R18-9-717(B), R18-9-718(C), or R18-9-719(B)~~ this Article, and
   b. The applicable fee established in 18 A.A.C. 14.
2. ~~Verification issuance.~~ Issuance of Recycled Water Authorization. If, after reviewing the Notice of Intent to ~~Operate~~ Use Recycled Water, the Department determines ~~that~~ the direct reuse conforms with the conditions of a Type 3 ~~Reclaimed~~ Recycled Water General Permit and all other applicable requirements of this Article, the Department shall issue the ~~Verification of General Permit Conformance~~ Recycled Water Authorization.
3. ~~Verification denial~~ Denial of Recycled Water Authorization.

a. If the Department determines on the basis of its review or an inspection ~~that~~ the ~~direct reuse~~ use does not conform to the conditions of the applicable Type 3 ~~Reclaimed~~ Recycled Water General Permit or other applicable requirements of this Article, the Department shall notify the applicant of its decision not to issue the ~~Verification of General Permit Conformance~~ Recycled Water Authorization.

~~b. If an application is denied, the applicant shall not operate under a Type 3 Reclaimed Recycled Water General Permit.~~

~~c.~~b. The applicant may appeal the decision not to issue a ~~Verification of General Permit Conformance~~ Recycled Water Authorization under A.R.S. §§ 41-1092 through 41-1092.12.

~~4. Automatic issuance. If the Department does not issue the Verification of General Permit Conformance within the time-frame specified under 18 A.A.C. 1, Article 5, and does not notify the applicant that it will not issue the verification, the verification automatically becomes effective upon expiration of the overall time-frame.~~

~~R18-9-709.~~ R18-9-A705. ~~Reclaimed~~ Recycled Water ~~General~~ Permit Term, Information Changes, and Renewal ~~and Transfer~~

~~**A.** General permit renewal. A permittee shall renew a Reclaimed Water General Permit at least 90 days before the permit expires by following the procedure described in either R18-9-708(B) or (C) and include the applicable fee established in 18 A.A.C. 14.~~

~~1. A Type 1 Reclaimed Water General Permit is valid as long as the conditions of the general permit and the requirements of this Article are met. No renewal is required;~~

~~2. A Type 2 Reclaimed Water General Permit is valid for five years from the date the Department receives the Notice of Intent for Direct Reuse of Reclaimed Water;~~

~~3. A Type 3 Reclaimed Water General Permit is valid for five years from the date the Verification of General Permit Conformance becomes effective.~~

~~**B.** General permit transfer. A permittee shall provide notice to the Department by certified mail within 15 days following the transfer of a Type 2 or Type 3 Reclaimed Water General Permit. The Notice of Transfer shall:~~

~~1. Contain any information that has changed from the original Notice of Intent for Direct Reuse of Reclaimed Water or the Notice of Intent to Operate, including all information on the proposed new permittee, and~~

~~2. Include the applicable fee established in 18 A.A.C. 14.~~

A. A recycled water general permit is valid as follows:

1. A Type 1 Recycled Water General Permit is valid as long as the conditions of the general permit and the requirements of this Article are met. No renewal is required.
2. A Type 2 Recycled Water General Permit is valid for five years from the date the Department receives the Notice of Intent to Use Recycled Water;
3. A Type 3 Recycled Water General Permit is valid for five years from the date the Recycled Water Authorization is issued.

B. If any change in the following information occurs, a permittee operating under any individual, or Type 2 or Type 3 recycled water general permit shall update the Department with such changes at least once annually by January 31:

1. Permittee,
2. Ownership,
3. Contact person,
4. Phone number, address, email address, or telephone number, or any combination of any of the above, for permittee or contact person,
5. Name of the use site,
6. For a Type 2 Recycled Water General Permit for Direct Reuse of Class A + or B + Reclaimed Water remaining under the same ownership:
   a. Expansion of the reuse area,
   b. Addition of another allowable use if it is located within the same property boundary as the boundary identified in the Notice of Intent to Use Recycled Water submitted to the Department.
7. An increase in Class A, B, or C reclaimed water use of more than ten percent but less than twenty percent above the volume of reclaimed water currently permitted for use at the reuse site, if applicable.

C. To renew any Type 2 or Type 3 Recycled Water General Permit, a permittee must submit a Notice of Renewal at least 30 days before the permit expires and include the applicable fee established in 18 A.A.C. 14. A permittee may update or change any information as described in subsection (B) in a Notice of Renewal.

D. For changes not described in subsections (B) or (C), the permittee must submit a new Notice of Intent to Use Recycled Water or a Recycled Water Individual Permit application, as applicable.

~~R18-9-710.~~ R18-9-A706. ~~Reclaimed~~ Recycled Water ~~General~~ Permit Revocation

~~**A.** The Director may revoke a Reclaimed Water General Permit if the permittee fails to comply with any requirement in this Article, including a condition specified in the applicable Reclaimed Water General Permit. The Director shall make the determination based on the risk to public health and safety or a threat to waters of the state.~~

~~1. Before revoking a general permit, the Department shall provide notice to the permittee by certified mail of the Department's intent to revoke the Reclaimed Water General Permit. The notice of intent to revoke the general permit shall provide the permittee a reasonable opportunity to correct any noncompliance and specify a time-frame within which the permittee shall achieve compliance.~~

~~2. If the permittee fails to correct the noncompliance within the specified time-frame, the Department shall notify the permittee, by certified mail, of the Director's decision to revoke the Reclaimed Water General Permit.~~

~~**B.** The Director shall revoke a Reclaimed Water General Permit for any or all facilities located within a specific geographic area, if, due to a geologic or hydrologic condition, the cumulative effect of the facilities subject to the Reclaimed Water General Permit has violated or will violate a Water Quality Standard established under A.R.S. §§ 49-221 and 49-223.~~

A. After notice and opportunity for a hearing, the Director may revoke coverage under a Recycled Water General Permit and require the permittee to obtain an individual permit in order to operate for any of the following:

1. The permittee failed to comply with any applicable provision of A.R.S. Title 49, Chapter 2; Article 7 of this Chapter; or any permit condition;
2. The permittee misrepresented or omitted a fact, information, or data related to an application or permit condition;
3. The Director determines a permitted activity is causing or will cause a violation of a water quality standard established under A.R.S. § 49-221;
4. A permitted activity is causing or will cause imminent and substantial endangerment to public health or the environment.

B. The Director may revoke coverage under a general permit for any or all facilities within a specific geographic area, if, due to geologic or hydrologic conditions, the cumulative effect of the facilities subject to the Recycled Water General Permit has violated or will violate a water quality standard established under A.R.S. § 49-221.

C. If an individual permit is issued to replace general permit coverage, the coverage under the general permit is automatically revoked upon issuance of the individual permit.

D. The Director may, after notice and opportunity for hearing, suspend or revoke a Recycled Water Individual Permit for any of the reasons listed in subsections (A)(1) through (A)(4) of this section.

R18-9-A707. Recycled Water Permit Transition

The terms and conditions of Type 2, Type 3, and individual reclaimed water permits issued before January 1, 2018, including permits issued for gray water, shall remain in effect according to the language of this Article effective as of the date the permit was issued.

PART B. RECLAIMED WATER

~~R18-9-703.~~ R18-9-B701. Transition of Aquifer Protection Permits and Permits for the Reuse of Reclaimed Wastewater

A. A person may directly reuse reclaimed water under an individual Aquifer Protection Permit or a Permit for the Reuse of Reclaimed Wastewater issued by the Department before January 1, 2001 if the person meets the conditions of the permit and the permit does not expire.

B. A person meeting the requirements of subsection (A) may apply for a new reclaimed water permit under this Article.

1. To obtain a reclaimed water permit, a person shall submit a ~~Reclaimed~~ Recycled Water Individual Permit application, required under ~~R18-9-705(B)~~ R18-9-A703(A), or a Notice of Intent ~~for Direct Reuse of Reclaimed~~ to Use Recycled Water, required under ~~R18-9-708(B)(2)~~ R18-9-A704(B)(2) or R18-9-A704(B)(3), ~~or a Notice of Intent to Operate, required under R18-9-708(C)(1)~~ to the Department at least 120 days before the current permit expires.
2. The Department shall continue the terms of the individual Aquifer Protection Permit or the Permit for the Reuse of Reclaimed Wastewater beyond the stated date of expiration if:
   a. The permitted direct reuse is of a continuing nature; and
   b. The permittee submits a timely and complete application for a new permit.

C. Sewage treatment facility generating reclaimed water.

1. At the request of a permittee holding an individual Aquifer Protection Permit, the Department shall amend an individual Aquifer Protection Permit ~~issued before January 1, 2001~~ if the permittee adequately demonstrates that the applicable quality of reclaimed water produced for direct reuse is achieved. The Department shall review:
   a. The information in the individual Aquifer Protection Permit ~~application~~, any applicable supporting documentation, and the water quality test results from the previous two years to determine the classification of reclaimed water generated by the sewage treatment facility; and

b. The available water quality data if the sewage treatment facility has operated for less than two years.

2. The Department shall ~~ensure that~~ issue an amended individual Aquifer Protection Permit under procedures specified under 18 A.A.C. 9, Article 2 ~~contains~~ containing:
   a. Identification of the class of reclaimed water generated by the facility;
   b. Requirements for monitoring reclaimed water quality and flow at a frequency appropriate to demonstrate compliance with this Article and 18 A.A.C. 11, Article 3;
   c. Requirements for quarterly reporting of the following data to the Department, any reclaimed water agent who has contracted for delivery of reclaimed water from the facility, and any end user who has not waived interest in receiving this information:
      i. Water quality test results demonstrating ~~that~~ reclaimed water produced by the facility meets the applicable standards for the class of water identified in subsection (C)(2)(a), and
      ii. The total volume of reclaimed water generated for direct reuse.
   d. Provision for cessation of delivery, if necessary, and storage or disposal if reclaimed water cannot be delivered for direct reuse.

~~R18-9-704.~~ R18-9-B702. General Requirements for Reclaimed Water

A. Sewage treatment facility. ~~Except for permits continued under R18-9-703(A), a~~ A sewage treatment facility owner or operator shall provide reclaimed water for direct reuse only as authorized under an individual Aquifer Protection Permit ~~amended under R18-9-703(C)(2)~~.

B. Additional treatment. If an owner or operator of a facility accepts reclaimed water and provides additional treatment for a higher quality direct reuse, the facility is considered a sewage treatment facility and shall ~~operate under the requirements of~~ provide reclaimed water for direct reuse only as authorized under an individual Aquifer Protection Permit ~~amended under R18-9-703(C)(2)~~.

C. Reclaimed water blending facility. An owner or operator of a reclaimed water blending facility shall ~~not~~ conduct blending operations ~~without obtaining~~ only as authorized under a ~~Reclaimed~~ Recycled Water Individual Permit or ~~Reclaimed~~ a Type 3 Recycled Water General Permit for a Reclaimed Water Blending Facility.

D. Reclaimed water agent. A person shall ~~not~~ operate as a reclaimed water agent ~~without obtaining~~ only as authorized under a ~~Reclaimed~~ Recycled Water Individual Permit or a ~~Reclaimed~~ Type 3 Recycled Water General Permit for a Reclaimed Water Agent.

E. End user. A person shall not directly reuse reclaimed water unless permitted under this Article.

F. Irrigating with reclaimed water. A permittee ~~irrigating with reclaimed water~~ applying reclaimed water for an irrigation use allowed in 18 A.A.C. 11, Article 3, Table A shall:

1. Use application methods that reasonably preclude human contact with reclaimed water;
2. Prevent reclaimed water from standing on open access areas during normal periods of use; and
3. Prevent reclaimed water from coming into contact with drinking fountains, water coolers, or eating areas~~; and~~.
~~4. Secure hose bibbs discharging reclaimed water to prevent use by the public.~~

G. Hose bibbs. A permittee directly reusing reclaimed water shall secure hose bibbs discharging reclaimed water to prevent use by the public.

~~**G.**~~**H.** Prohibited activities.

1. Irrigating with untreated sewage;
2. Providing water for human consumption from a reclaimed water source except as allowed in Part E of this article.

~~2.~~3. Providing or using reclaimed water for any of the following activities:

~~a. Direct reuse for human consumption;~~

~~b.~~a. Direct reuse for swimming, wind surfing, water skiing, or other full-immersion water activity with a potential of ingestion; or

~~c.~~b. Direct reuse for evaporative cooling or misting.

~~3.~~4. Misapplying reclaimed water for any of the following reasons:

a. Application of a stated class of reclaimed water ~~that is~~ of lesser quality than allowed by this Article for the type of direct reuse application;
b. Application of reclaimed water to any area other than a direct reuse site; or
c. Allowing runoff of reclaimed water or reclaimed water mixed with stormwater from a direct reuse site, except for:
   i. agricultural return flow ~~that is~~ directed onto an adjacent field or returned to an open water conveyance; or
   ii. a discharge authorized by an individual or general NPDES or AZPDES permit.

~~**H.**~~**I.** Signage and Notification. A permittee shall place and maintain signage at locations and provide applicable notification as specified in Table 1 so the public is informed ~~that~~ reclaimed water is in use and ~~that~~ no one should drink from the system.

J. Pipeline Conveyances of Reclaimed Water.

1. Applicability. Any person constructing a pipeline conveyance, whether new or a replacement of an existing pipeline, shall meet the requirements of this subsection.
2. A person shall design and construct a pipeline conveyance system using good engineering judgement following standards of practice.
3. A person shall construct a pipeline conveyance so that:

a. Reclaimed water does not find its way into, or otherwise contaminate, a potable water system;

b. System structural integrity is maintained; and

c. The capability for inspection, maintenance, and testing is maintained.

4. A person shall construct a pipeline conveyance and all appurtenances conducting reclaimed water to withstand a static pressure of at least 50 pounds per square inch greater than the design working pressure without leakage as determined in A.A.C. R18-9-E301(D)(2)(j).

5. A person shall provide a pipeline conveyance with thrust blocks or restrained joints where needed to prevent excessive movement of the pipeline.

6. The following requirements for minimum separation distance apply. A person shall:

a. Locate a pipeline conveyance no closer than 50 feet from a drinking water well unless the pipeline conveyance is constructed as specified under subsection (J)(5)(c);

b. Locate a pipeline conveyance no closer than two feet vertically nor six feet horizontally from a potable water pipeline unless the pipeline conveyance is constructed as specified under subsection (J)(5)(c);

c. Construct a pipeline conveyance that does not meet the minimum separation distances specified in subsections (J)(5)(a) and (J)(5)(b) by encasing the pipeline conveyance in at least six inches of concrete or using mechanical joint ductile iron pipe or other materials of equivalent or greater tensile and compressive strength at least 10 feet beyond any point on the pipeline conveyance within the specified minimum separation distance; and

d. If a reclaimed water system is supplemented with water from a potable water system, separate the potable water system from the pipeline conveyance by an air gap.

7. A person shall:

a. For a pipeline conveyance, eight inches in diameter or less, use pipe marked on opposite sides in English: “CAUTION: RECLAIMED WATER, DO NOT DRINK” in intervals of three feet or less and colored purple or wrapped with durable purple tape.

b. For a mechanical appurtenance to a pipeline conveyance, ensure the mechanical appurtenance is colored purple or legibly marked to identify it as part of the reclaimed water distribution system and distinguish it from systems for potable water distribution and sewage collection.

K. Open Water Conveyances of Reclaimed Water.

1. This subsection applies to an open water conveyance, regardless of the date of construction.

2. A person shall maintain an open water conveyance to prevent release of reclaimed water except as allowed under federal and state regulations. The maintenance program shall include periodic inspections and follow-up corrective measures to ensure the integrity of conveyance banks and capacity of the conveyance to safely carry operational flows.

3. Signage for Class B+, B, and C Reclaimed Water. A person shall:
   a. Ensure signs state: "CAUTION: RECLAIMED WATER, DO NOT DRINK," and display the international "do not drink" symbol;
   b. Place signs at all points of ingress and, if the open water conveyance is operated with open access, at least every 1/4-mile along the length of the open water conveyance or other interval as approved in writing by the Department; and
   c. Ensure signs are visible and legible from both sides of the open water conveyance.

Table 1. Signage and Notification Requirements for Direct Reuse Sites

Reclaimed Water Class	Hose Bibbs	Residential Irrigation	Schoolground Irrigation	Other Open Access Irrigation	Restricted Access Irrigation	Mobile Reclaimed Water Dispersal
A+, A	Each bibb at valve	Front yard, or all entrances to a subdivision if the signage is supplemented by written yearly notification to individual homeowners by the homeowner's association.	On premises visible to staff and students	None	None	~~Back of truck or on tank~~ On dispersal equipment and visible to the public
~~A~~	~~Each bibb~~	~~Front yard, or all entrances to a subdivision if the signage is supplemented by written yearly notification to individual homeowners by the~~	~~On premises visible to staff and students~~	~~None~~	~~None~~	~~Back of truck or on tank~~

		~~homeowner's association.~~				
B+, B	Each bibb at valve	Direct Reuse Not Allowed	Direct Reuse Not Allowed	Direct Reuse Not Allowed	1. Ingress points; 2. ~~On premises or at~~ At reasonably spaced intervals of not more than 1/4 mile~~, as applicable to the use~~ at the reuse site or along the open water conveyance, unless access to vehicular and pedestrian traffic is secured; and 3. ~~Notice~~ If applicable, notice on golf score cards~~, if applicable~~	~~Back of truck or on tank~~ On dispersal equipment and visible to the public
~~B~~	~~Each bibb~~	~~Direct Reuse Not Allowed~~	~~Direct Reuse Not Allowed~~	~~Direct Reuse Not Allowed~~	~~1. Ingress points 2. On premises or at reasonably spaced intervals not more than 1/4 mile, as applicable to the use~~ ~~3. Notice on golf score cards, if applicable~~	~~Back of truck or on tank~~

C	Each bibb at valve	Direct Reuse Not Allowed	Direct Reuse Not Allowed	Direct Reuse Not Allowed	1. Ingress points; 2. ~~On premises or at~~ At reasonably spaced intervals of not more than 1/4 mile~~, as applicable to the use~~ at the reuse site or along the open water conveyance, unless access to vehicular and pedestrian traffic is secured; and 3. ~~Notice~~ If applicable, notice on golf score cards~~, if applicable~~	~~Back of truck or on tank~~ On dispersal equipment and visible to the public

Note: All impoundments with open access including lakes, ponds, ornamental fountains, waterfalls, and other water features shall be posted with signs regardless of the class of reclaimed water.

~~R18-9-706~~. R18-9-B703. General Provisions for ~~Reclaimed~~ Recycled Water Individual Permit for Reclaimed Water ~~General Provisions~~

A. A ~~Reclaimed~~ Recycled Water Individual Permit for Reclaimed Water is obtained under ~~R18-9-705~~ R18-9-A703. A ~~Reclaimed~~ Recycled Water Individual Permit for Reclaimed Water:

1. Is valid for five years;
2. ~~May be amended, transferred, reissued, or revoked by the Director based on whether the permittee meets the terms of the individual permit and the requirements of this Article~~ Must be updated as prescribed by R18-9-A705; and
3. Continues, pending the issuance of a new permit, with the same terms following its expiration if the following are met:

a. The permittee submits an application for a new permit at least ~~120~~ 60 days before the expiration of the existing permit; and

b. The permitted activity is of a continuing nature.

B. A ~~Reclaimed~~ Recycled Water Individual Permit for Reclaimed Water shall contain, if applicable:

1. The class of reclaimed water to be applied for direct reuse or the alternative water quality criteria appropriate for a direct reuse type not listed in 18 A.A.C. 11, Article 3, Table A that ADEQ may allow under R18-11-309;
2. Specific types of direct reuse ~~applications or~~ and any limitations on reuse;
3. Requirements for monitoring reclaimed water quality and flow to demonstrate compliance with this Article and 18 A.A.C. 11, Article 3;
4. Requirements for reporting the following data to demonstrate compliance with this Article and 18 A.A.C. 11, Article 3:
   a. Water quality test results demonstrating ~~that~~ the reclaimed water meets the applicable standards for the class of water or the alternative water quality criteria identified in subsection (B)(1), and
   b. The total volume of reclaimed water generated for direct reuse.
5. Requirements for maintaining records of all monitoring information and monitoring activities ~~that~~ include:
   a. The date, description of sampling location, and time of sampling or measurement;
   b. The name of the person who performed the sampling or measurement;
   c. The date the analyses were performed;
   d. The name of the person who performed the analyses;
   e. The analytical techniques or methods used;
   f. The results of the analyses; and
   g. Documentation of sampling technique, sample preservation, and transportation, including chain-of-custody forms.
6. Requirements to retain all monitoring activity records and results, including all ~~original strip chart recordings~~ data for continuous monitoring instrumentation, and calibration and maintenance records for five years from the date of sampling or analysis. The Director shall extend the five-year retention period:
   a. During the course of an unresolved litigation regarding compliance with the permit conditions, or
   b. For any other justifiable cause.

7. A requirement to allow all end users access to the records of physical, chemical, and biological quality of the reclaimed water.
8. Signage or other notification requirements appropriate to the use; and
9. Closure requirements, if applicable.

~~**C.** Permit transfer. A permittee may transfer a Reclaimed Water Individual Permit to another person if the following conditions are met:~~

~~1. The permittee notifies the Director of the proposed transfer.~~

~~2. The permittee submits a written agreement containing a specific date for the transfer of permit responsibility and coverage between the current permittee and the proposed new permittee, including an acknowledgment that the existing permittee is liable for violations up to the date of transfer and that the proposed new permittee will be liable for violations from that date forward.~~

~~3. The notice specified in subsection (C)(1) contains any information for the proposed new permittee that is changed from the information submitted under R18-9-705(B).~~

~~4. The Director, within 30 days of receiving a transfer notice from the permittee, does not notify both the current permittee and proposed new permittee of the intent to amend, revoke, or reissue the permit or require the proposed new permittee to file an application for a new permit rather than agreeing to transfer the current permit.~~

~~R18-9-712.~~ R18-9-B704. Type 2 ~~Reclaimed~~ Recycled Water General Permit for Direct Reuse of Class A+ Reclaimed Water

A. A Type 2 ~~Reclaimed~~ Recycled Water General Permit for Direct Reuse of Class A+ Reclaimed Water allows any direct reuse application of reclaimed water listed in 18 A.A.C. 11, Article 3, ~~Appendix~~ Table A, if the conditions in this Article are met.

B. Record maintenance. A permittee shall maintain records for five years ~~that describe~~ describing the direct reuse site and the total amount of reclaimed water used annually for the permitted direct reuse activity. The records shall be made available to the Department upon request.

C. A permittee shall post signs or provide notification or both as specified in ~~R18-9-704(H)~~ R18-9-B702(I).

D. No lining is required for an impoundment storing Class A+ reclaimed water.

~~R18-9-713.~~ R18-9-B705. Type 2 ~~Reclaimed~~ Recycled Water General Permit for Direct Reuse of Class A Reclaimed Water

A. A Type 2 ~~Reclaimed~~ Recycled Water General Permit for the Direct Reuse of Class A Reclaimed Water allows any direct reuse application of reclaimed water listed in 18 A.A.C. 11, Article 3, ~~Appendix~~ Table A, if the conditions in this Article are met.

B. Records and reporting. A permittee shall:

1. Maintain records containing the following information for five years, and make them available to the Department upon request:
   a. The direct reuse site,
   b. The volume of reclaimed water applied monthly for each category of direct reuse activity listed in 18 A.A.C. 11, Article 3, ~~Appendix~~ Table A,
   c. The total nitrogen concentration of the reclaimed water applied, and
   d. The acreage and type of vegetation to which the reclaimed water is applied.
2. Report annually to the Department on or before the anniversary date of the Notice of Intent to Use Recycled Water:
   a. The volume of reclaimed water received,
   b. The type of reclaimed water application, and
   c. If used for irrigation, the vegetation and acreage irrigated.

C. Nitrogen management. A permittee shall ensure ~~that~~:

1. Impoundments storing reclaimed water allowed by the general permit are lined using a low-hydraulic conductivity artificial or site-specific liner material achieving a calculated discharge rate less than 550 gallons per acre per day; and
2. The application rates of the reclaimed water are based on one of the following:
   a. ~~The~~ If assigned, the water allotment ~~assigned~~ specified by the Arizona Department of Water Resources;
   b. A water balance that considers consumptive use of water by the crop, turf, or landscape vegetation; or
   c. An alternative method approved by the Department.

D. In addition to the Notice of Intent to Use Recycled Water ~~for Direct Reuse of Reclaimed Water~~ specified in ~~R18-9-708(B)(2)~~ R18-9-A704(B)(2), the applicant shall provide a list of impoundments, water depth, freeboard, and the liner characteristics and the method chosen from the list in subsection (C)(2).

E. The permittee shall post signs or provide notification, or both, as specified in ~~R18-9-704(H)~~ R18-9-B702(I).

~~R18-9-714.~~ R18-9-B706. Type 2 ~~Reclaimed~~ Recycled Water General Permit for Direct Reuse of Class B+ Reclaimed Water

A. A Type 2 ~~Reclaimed~~ Recycled Water General Permit for Direct Reuse of Class B+ Reclaimed Water allows any direct reuse application of Class B and Class C reclaimed water listed in 18 A.A.C. 11, Article 3, ~~Appendix~~ Table A, if the conditions in this Article are met.

B. A permittee shall comply with the record maintenance and posting requirements established under ~~R18-9-712~~ R18-9-B704 and make records available to the Department upon request.

C. No lining is required for an impoundment storing Class B+ reclaimed water.

~~R18-9-715.~~ R18-9-B707. Type 2 ~~Reclaimed~~ Recycled Water General Permit for Direct Reuse of Class B Reclaimed Water

A. A Type 2 ~~Reclaimed~~ Recycled Water General Permit for the Direct Reuse of Class B Reclaimed Water allows the direct reuse application of Class B and Class C reclaimed water listed in 18 A.A.C. 11, Article 3, ~~Appendix~~ Table A, if conditions in this Article are met.

B. A permittee shall comply with the requirements established under ~~R18-9-713(B)~~ R18-9-B705(B), (C), (D), and (E).

~~R18-9-716.~~ R18-9-B708. Type 2 ~~Reclaimed~~ Recycled Water General Permit for Direct Reuse of Class C Reclaimed Water

A. A Type 2 ~~Reclaimed~~ Recycled Water General Permit for the Direct Reuse of Class C Reclaimed Water allows the direct reuse application of Class C reclaimed water listed in 18 A.A.C. 11, Article 3, ~~Appendix~~ Table A, if conditions in this Article are met.

B. A permittee shall comply with the requirements established under ~~R18-9-713(B)~~ R18-9-B705(B), (C), (D), and (E).

~~R18-9-717.~~ R18-9-B709. Type 3 ~~Reclaimed~~ Recycled Water General Permit for a Reclaimed Water Blending Facility

A. Permit conditions.

1. A Type 3 ~~Reclaimed~~ Recycled Water General Permit for a Reclaimed Water Blending Facility allows the blending of reclaimed water with other water, if the conditions in this Article are met.
2. Blending reclaimed water with industrial wastewater or with reclaimed water from an industrial wastewater treatment plant is not authorized by this general permit.

B. A person shall file with the Department a Notice of Intent to Operate a reclaimed water blending facility ~~at least 90 days before the date the proposed activity will start~~ on a form provided by the Department. The Notice of Intent to Operate shall include:

1. The name, address, e-mail address, and telephone number of the applicant;

~~2. The social security number of the applicant, if the applicant is an individual;~~

~~3.~~2. The name, address, e-mail address, and telephone number of a contact person;

~~4.~~3. The source and volume of reclaimed water to be blended;

~~5.~~4. The class of reclaimed water to be blended;

~~6.~~5. The source, volume, and quality of other water to be blended;

~~7.~~6. ~~A legal description of the reclaimed water blending facility, including~~ The latitude and longitude coordinates of the blending facility;

~~8.~~7. A description of the reclaimed water blending facility, including a demonstration ~~that~~ the proposed blending methodology will meet the standards established in 18 A.A.C. 11, Article 3 for the class of reclaimed water the facility will produce;

~~9.~~8. ~~A signature on the notice of intent certifying~~ The applicant's certification that the applicant agrees to comply with the requirements of this Article, 18 A.A.C. 11, Article 3, and the terms of this recycled water general permit; and

~~10.~~9. The applicable permit fee specified under 18 A.A.C. 14.

C. A person shall not operate a reclaimed water blending facility until the Department issues a written ~~Verification of General Permit Conformance~~ Recycled Water Authorization under ~~R18-9-708(C)~~ R18-9-A704(C).

D. A permittee shall monitor:

1. The blended water quality for total nitrogen and fecal coliform at frequencies specified by the class of reclaimed water in 18 A.A.C. 11, Article 3.
   a. If the concentration in the blended water of either total nitrogen or fecal coliform, as applicable, exceeds the limits for the applicable reclaimed water class established in 18 A.A.C. 11, Article 3, within 30 days of the exceedance, the permittee shall submit a ~~report~~ plan to the Department ~~within 30 days with a proposal~~ to change the blending process or to otherwise correct the deficiency. The permittee shall also double the monitoring frequency for the next ~~two~~ four months.
   b. If another exceedance occurs within the interval of increased monitoring, the permittee shall submit an application within 45 days for a ~~Reclaimed~~ Recycled Water Individual Permit for Reclaimed Water.

2. The volume of reclaimed water, the volume of the other water, and the total volume of blended water delivered for direct reuse on a monthly basis.

E. The permittee shall report the results of the monitoring under subsection (D) to the Department ~~on or before the anniversary date of the verification approval~~ by January 31, for the immediately preceding calendar year, and shall make this information available to the end users.

~~R18-9-718.~~ R18-9-B710. Type 3 ~~Reclaimed~~ Recycled Water General Permit for a Reclaimed Water Agent

A. A Type 3 ~~Reclaimed~~ Recycled Water General Permit for a Reclaimed Water Agent allows a person to operate as a Reclaimed Water Agent if ~~that~~ the conditions of this Article are met, and the following conditions are met for the class of reclaimed water delivered by the Reclaimed Water Agent:

1. Signage and notification requirements specified under ~~R18-9-704(H)~~ R18-9-B702(I), as applicable;
2. Impoundment liner requirements specified under ~~R18-9-712(D), R18-9-713(C), R18-9-714(C), R18-9-715(B), or R18-9-716(B)~~ R18-9-B704(D), R18-9-B705(C), R18-9-B706(C), R18-9-B707(B) or R18-9-B708(B), as applicable; and
3. Nitrogen management requirements specified under ~~R18-9-713(C), R18-9-715(B), and R18-9-716(B)~~ R18-9-B705(C), R18-9-B707(B), and R18-9-B708(B), as applicable.

B. A person holding a Type 3 ~~Reclaimed~~ Recycled Water Permit for a Reclaimed Water Agent:

1. Is responsible for the direct reuse of reclaimed water by more than one end user instead of direct reuse by the end users under separate Type 2 Recycled Water General Permits, and
2. Shall maintain a contractual agreement with each end user stipulating any end user responsibilities for the requirements specified under subsection (A).

C. A person shall file with the Department a Notice of Intent to Operate as a reclaimed water agent ~~at least 90 days before the date the proposed activity will start~~. The Notice of Intent to Operate shall include:

1. The name, address, e-mail address, and telephone number of the applicant;

~~2. The social security number of the applicant, if the applicant is an individual;~~

~~3.~~2. The name, address, e-mail address, and telephone number of a contact person;

~~4.~~ 3. The following information for each end user to be supplied reclaimed water by the applicant:

a. The name, address, e-mail address, and telephone number of the end user;

b. ~~A legal description of each direct reuse site, including~~ A system map showing the locations of the direct reuse sites and the latitude and longitude coordinates of each site; and

c. A description of each direct reuse activity, including the type of vegetation, acreage, and annual volume of reclaimed water to be used, unless Class A+ or Class B+ reclaimed water is delivered.

~~5.~~ 4. The source, class, and annual volume of reclaimed water to be delivered by the applicant;

~~6.~~ 5. A description of the contractual arrangement between the applicant and each end user, including any end user responsibilities for the requirements specified under subsection (A); and

~~7.~~ 6. The applicable permit fee specified under 18 A.A.C. 14.

D. A proposed reclaimed water agent shall not distribute reclaimed water to end users until the Department issues a written ~~Verification of General Permit Conformance~~ Recycled Water Authorization ~~issued~~ under ~~R18-9-708(C)~~ R18-9-A704(C).

E. A reclaimed water agent shall record and annually report the following information to the Department~~, on or before each anniversary date of the verification approval~~ by January 31, for the immediately preceding year:

1. The total volume of reclaimed water delivered by the reclaimed water agent;
2. The volume of reclaimed water delivered to each end user for Class A, Class B, and Class C reclaimed water; and
3. Any change in the information submitted under subsection (C).

~~**F.** The reclaimed water agent shall notify the Department before the end of each calendar year of any changes in the information submitted under subsection (C).~~

PART C. RECYCLED INDUSTRIAL WASTEWATER

~~R18-9-707.~~ R18-9-C701. ~~Reclaimed~~ Recycled Water Individual Permit ~~Where~~ for Industrial Wastewater ~~Influences the Characteristics of Reclaimed Water~~ That Is Reused

A. The following activities are prohibited unless a ~~Reclaimed~~ Recycled Water Individual Permit is obtained under ~~R18-9-705~~ R18-9-A703:

1. ~~Direct reuse~~ Use of reclaimed water from a sewage treatment facility that is combined with industrial wastewater or ~~that is combined with reclaimed~~ water from an industrial wastewater treatment facility.
2. ~~Direct reuse~~ Use of reclaimed water from an industrial wastewater treatment facility for production or processing of a crop or substance that may be used as human or animal food.

B. In addition to the requirements in ~~R18-9-705(B)~~ R18-A703(A), an application for a ~~Reclaimed~~ Recycled Water Individual Permit shall include:

1. Each source of the industrial wastewater with Standard Industrial Code or North American Industry Classification System Code, and the projected rates and volumes from each source;
2. The chemical, biological, and physical characteristics of the industrial wastewater from each source; and
3. If reclaimed water will be used in the processing of any crop or substance that may be used as human or animal food, the information regarding food safety and any potential adverse health effects of this direct reuse.

PART D. GRAY WATER

~~R18-9-711.~~ R18-9-D701. Type 1 ~~Reclaimed~~ Recycled Water General Permit for Gray Water

A. A Type 1 ~~Reclaimed~~ Recycled Water General Permit for Gray Water allows private residential ~~direct reuse~~ use of gray water for a flow of less than 400 gallons per day if all the following conditions are met:

~~1. Human contact with gray water and soil irrigated by gray water is avoided;~~

~~2.~~1. Gray water originating from the residence is used and contained within the property boundary for household gardening, composting, ~~lawn watering,~~ or landscape ~~irrigation~~ watering;

2. Human contact with gray water and soil watered by gray water is avoided;

3. Surface application of gray water is not used for ~~irrigation~~ watering of food plants, except for ~~citrus and nut~~ trees and shrubs which have an edible portion that does not come into contact with the gray water;

4. The gray water does not contain hazardous chemicals derived from activities such as cleaning car parts, washing greasy or oily rags, or disposing of waste solutions from ~~home photo labs or similar~~ hobbyist or home occupational activities;

5. The gray water does not contain water used to wash diapers or similarly soiled or infectious garments;

~~5.~~6. The application of gray water is managed to minimize standing water on the surface by using measures such as avoiding overwatering, distributing the gray water beneath a mulch or other cover, and using best practices to improve soil condition and increase filtration;

~~6.~~7. ~~The gray water system is constructed so that if~~ If blockage, ~~plugging, or~~ backup, or overload of the system occurs, ~~gray water can be directed into the sewage collection system or on-site wastewater treatment and disposal system, as applicable~~ gray water distribution shall cease until the deficiency is corrected. The gray water system may include ~~a means of filtration~~ components to reduce ~~plugging and~~ blockage and backup and be operated using best practices to extend system lifetime;

~~7.~~8. ~~Any gray~~ Gray water ~~storage tank is~~ surge tanks, if any, are covered to restrict access and to eliminate habitat for mosquitoes or other vectors, and holding time is minimized to avoid development of anaerobic conditions and odors;

~~8.~~9. The gray water system is sited outside of a floodway;

~~9.~~10. The gray water system is operated to maintain a minimum vertical separation distance of at least five feet from the point of gray water application to the top of the seasonally high groundwater table;

~~10.~~11. For a ~~residences~~ residence using an on-site wastewater treatment facility for black water treatment and disposal, the use of a gray water system does not change the design, capacity, or reserve area requirements for the on-site wastewater treatment facility at the residence, and ensures ~~that~~ the facility can handle the combined black water and gray water flow ~~if the gray water system fails or is not fully used~~;

~~11.~~12. Any pressure piping used in a gray water system that may be susceptible to cross connection with a potable water system clearly indicates ~~that~~ the piping does not carry potable water; and

~~12. Gray water applied by surface irrigation does not contain water used to wash diapers or similarly soiled or infectious garments unless the gray water is disinfected before irrigation; and~~

13. Surface ~~irrigation by~~ application of gray water is only by flood or drip ~~irrigation~~ distribution methods. Flood distribution methods may include containment by horticultural mulch basins and swales.

B. Prohibitions. The following are prohibited:

1. Gray water use for purposes other than ~~irrigation~~ watering and composting, and
2. ~~Spray irrigation.~~ Application of gray water by a spray method.

~~**C.** Towns, cities, or counties may further limit the use of gray water described in this Section by rule or ordinance.~~

~~R18-9-719.~~ R18-9-D702. Type 3 ~~Reclaimed~~ Recycled Water General Permit for Gray Water

A. A Type 3 ~~Reclaimed~~ Recycled Water General Permit for Gray Water allows ~~a~~ for the use of gray water ~~irrigation system~~ for landscape irrigation and composting if:

1. The general permit described in ~~R18-9-711~~ R18-9-D701 does not apply,
2. The flow is not more than 3000 gallons per day, and
3. The gray water system satisfies the notification, design, and installation requirements specified in ~~subsection~~ subsections (B) and (C).

B. A person shall file a Notice of Intent to Operate a Gray Water ~~Irrigation~~ System with the Department ~~at least 90 days before the date the proposed activity will start~~ on a form provided by the Department. The Notice of Intent to Operate shall include:

1. The name, address, e-mail address, and telephone number of the applicant;
2. ~~The social security number of the applicant, if the applicant is an individual;~~
3. ~~A legal description of the direct reuse site, including~~ The latitude and longitude coordinates;
3. A description of the sources of gray water and calculations demonstrating the flow is not more than 3000 gallons per day;
4. Design plans for the gray water ~~irrigation~~ system;
5. ~~A signature on the Notice of Intent to Operate certifying~~ The applicant's certification that the applicant agrees to comply with the requirements of this Article and the terms of this ~~Reclaimed~~ Recycled Water General Permit for Gray Water; and
6. The applicable permit fee specified under 18 A.A.C. 14.

C. The following ~~technical~~ requirements apply to the design, ~~and~~ installation, and operation of a gray water ~~irrigation~~ system allowed under this ~~Reclaimed~~ Recycled Water General Permit for Gray Water:

~~1. Design of the gray water irrigation system shall meet the on-site wastewater treatment facility requirements under R18-9-A312(C), (D)(1), (D)(2), (E)(1), (G), and R18-9-E302(C)(1), except the septic tank specified in R18-9-E302(C)(1) is not required if pretreatment of gray water is not necessary for the intended application;~~

~~2. Design of the dispersal trenches for the gray water irrigation system shall meet the on-site wastewater treatment facility requirements for shallow trenches specified in R18-9-E302(C)(2);~~

~~3. The depth of the gray water dispersal trenches shall be appropriate for the intended irrigation use but not more than 5 feet below the finished grade of the native soil; and~~

~~4. The void space volume of the aggregate fill in the gray water dispersal trench below the bottom of the distribution pipe shall have enough capacity to contain two days of gray water at the design flow.~~

1. Human contact with gray water and soil irrigated by gray water is avoided;
2. Gray water is not applied to an exposed surface but into a bed or trench of permeable material, through piping installed below the soil surface, or by similar means. Spray irrigation of gray water is not allowed. The application of gray water shall not result in standing water on the surface.
3. The design shall ensure gray water is used and contained within the property boundary for landscape irrigation or composting;
4. Gray water is not used for irrigation of food plants, except for trees and shrubs which have an edible portion that does not come into contact with the gray water;

5. The gray water may contain water from drinking fountains but does not contain hazardous chemicals derived from industrial, hobbyist, or similar activities at the site;
6. Gray water does not contain water used to wash diapers or similarly soiled or infectious garments;
7. The gray water system is constructed so if blockage, plugging, or backup of the system occurs, gray water can be directed into the sewage collection system or on-site wastewater treatment and disposal system, as applicable;
8. Gray water surge tanks, if any, are covered to restrict access and to eliminate habitat for mosquitoes or other vectors, and holding time is minimized to avoid development of anaerobic conditions and odors;
9. The gray water system is sited outside of a floodway;
10. The gray water system is operated to maintain a minimum vertical separation distance of at least five feet from the point of gray water application to the top of the seasonally high groundwater table;
11. If an on-site wastewater treatment facility is used for black water treatment and disposal, the use of a gray water system does not change the design, capacity, or reserve area requirements for the on-site wastewater treatment facility so the facility may handle the combined black water and gray water flow; and
12. Any piping used in a gray water system susceptible to cross connection with a potable water system clearly indicates the piping does not carry potable water.

D. The applicant shall not operate the gray water system until the Department issues a written Recycled Water Authorization under R18-9-A704(C).

E. The Department may ~~review design plans and details and accept a gray water irrigation system~~ issue a Recycled Water Authorization that differs from the requirements specified in subsection (C) if the system provides equivalent performance and protection of human health and water quality.

F. In the Recycled Water Authorization, the Department may require a permittee to report data or information for any of the conditions in this section if the Department deems the reporting necessary to protect human health or water quality or both.

PART E. PURIFIED WATER FOR POTABLE USE

R18-9-E701. Recycled Water Individual Permit for an Advanced Reclaimed Water Treatment Facility

A. An application for a Recycled Water Individual Permit for an Advanced Reclaimed Water Treatment Facility must be submitted to the Department according to the requirements in R18-9-A703, as applicable.

B. Safe Drinking Water Act. For purposes of Safe Drinking Water Act requirements, water produced by an Advanced Reclaimed Water Treatment Facility shall be considered surface water for purposes of compliance with Title 18, Chapter 4 of the Arizona Administrative Code. Nothing in this section exempts an applicable facility from Safe Drinking Water Act requirements.

C. Design Report. In addition to the information required by subsection (A), the applicant shall submit a design report for the Advanced Reclaimed Water Treatment Facility according to a form prescribed by the Department and certified by an Arizona-registered professional engineer. The design report must include the following information:

1. Characterization of source water quantity and quality, including:
   a. Average and anticipated minimum and maximum source water flows to the facility;
   b. Concentrations of the source water's physical, microbiological, and chemical constituents regulated for drinking water Maximum Contaminant Levels under the Safe Drinking Water Act and which the Department determines are appropriate for the particular facility and source water;
   c. Description and concentrations of constituents in the source water used for unit treatment process monitoring and assessment of unit treatment process efficacy, and
   d. A list of unregulated microbial and chemical constituents and corresponding concentrations in the source water a facility proposes to monitor in order to assess the treatment effectiveness of the overall treatment train. The particular constituents will depend on consideration of factors, such as:
      i. Occurrence of the constituent in source and local waters,
      ii. Availability of standardized laboratory methods for quantification of the constituent,
      iii. Usefulness as representatives of or surrogates for larger classes of constituents, and
      iv. Availability of toxicity data for the constituent.
2. Description of, and results from, the pilot water treatment system for the facility or of analogous systems where comparable treatment components are demonstrated as appropriate for treating the particular characteristics of the applicant's proposed source water;
3. Identification and description of the technologies, processes, methodologies, and process control monitoring to be employed for microbial control;
4. Logarithmic reduction targets for microbial control, to ensure the product water is free of pathogens and suitable for potable use;
5. Identification and description of technologies, processes, methodologies and process control monitoring for chemical control;
6. Plan for monitoring the product water for public health protection;

7. Commissioning and startup plan, including preoperational and startup testing and monitoring, expected time-frame for meeting full operational performance, and any other special startup condition meriting consideration in the individual permit;
8. Operation and maintenance plan including corrective actions for out-of-range monitoring results and contingencies for non-compliant water;
9. Operator training plan; and
10. Documentation of technical, financial, and management capability.

City of Phoenix
WATER SERVICES DEPARTMENT
ENVIRONMENTAL SERVICES DIVISION
Quality Reliability Value

July 25, 2017

DELIVERED BY ELECTRONIC MAIL
Heidi M. Haggerty
Arizona Department of Environmental Quality
Water Quality Division
1110 W. Washington Street
Phoenix, Arizona 85007

RE: City of Phoenix Comments on Proposed Reclaimed Water Rules for Conveyances and Direct Reuse

Thank you for the opportunity to provide comments on the Arizona Department of Environmental Quality's (ADEQ) proposed revisions to Arizona's reclaimed water rules for conveyances and direct reuse, Arizona Administrative Code Title 18, Chapter 9, Articles 6 and 7. The City of Phoenix (Phoenix) respectfully submits the comments below. Phoenix appreciates that ADEQ took several of its informal comments into consideration in these revisions.

1. R18-9-A701(2)(a): Phoenix requests that "National" should not be struck out, and the rule should read as follows:

   > The use of water subsequent to its discharge under the conditions of a National or an Arizona Pollutant Discharge Elimination System permit.

   Phoenix's 91st Avenue Wastewater Treatment Plant has a National, rather than an Arizona, Discharge Elimination System permit, due to proximity to tribal lands.

2. R18-9-B702, Table 1, Signage and Notification Requirements for Direct Reuse Sites: Under Restricted Access Irrigation for Class B+, B and C reclaimed water, Phoenix requests the clarifying changes below:

   > 1. Ingress points; or 2. On premises ~~or~~ at reasonably spaced intervals not more than 1/4 mile, as applicable to the use; and 3. Notice on golf score cards, if applicable.

Thank you for your consideration and responses to our inquiries and comments. Please feel free to contact Heather Finden at 602-495-7477 or heather.finden@phoenix.gov if you have any questions.

Sincerely,

Randy Gottler
Deputy Water Services Director

CC: Rosanne Albright (electronic pdf)
Brandy Kelso (electronic pdf)
Randy Gottler (electronic pdf)
Heather Finden (electronic pdf)
Melanie Ford (electronic pdf)

From:	Dale Bodiya - ENVX
To:	Heidi Haggerty
Subject:	Comments from Maricopa County Water and Waste Management Division
Date:	Tuesday, July 25, 2017 4:56:47 PM
Attachments:	image001.png

Arizona Department of Environmental Quality
1110 W Washington Street
Phoenix AZ 85007

Attn: Ms. Heidi Haggerty
Re: Proposed Reuse Rules
Comments from Maricopa County Water and Waste Management Division

1. The definition of "advanced reclaimed water treatment facility" should be amended to state that it treats and purifies reclaimed water to be suitable as a source water supply to a drinking water treatment facility which is designed, approved, and regulated under the Safe Drinking Water Act. It is not appropriate to regulate potable water under the reclaimed water rules.
2. Regulating drinking water under the Aquifer Protection rules is inappropriate, since there is no discharge to the groundwater under the proposed rules.
3. The proposed rules are inconsistent and need to be clear that an advanced reclaimed water treatment facility treats and purifies reclaimed water to be suitable as a source water supply to a drinking water treatment facility which is designed, approved, and regulated under the Safe Drinking Water Act. It is not appropriate to regulate potable water under the reclaimed water rules. Under the Safe Drinking Water Act, this source of water would need to be treated as a surface water supply, with all of the protections for such a supply as detailed under the Safe Drinking Water rules.
4. The use of Class A+ and B+ effluent as appropriate sources for direct potable reuse is inappropriate as long as the standard only has to be met 4 out of 7 days. This opens up the range of source water to potentially untreated wastewater being acceptable. The use of source water should be limited to those facilities which can prove to meet the standard under all circumstances.
5. It is inappropriate to proceed with direct potable reuse provisions (section E) until after the Phase 2 standards are developed for the advanced wastewater treatment facility.
6. There is a concern that this type of facility would be reviewed and approved by someone without an expertise in the review and approval of surface water treatment facilities.
7. The current and proposed reuse rules do not require any signage at parks which are using reclaimed water as a source of spray irrigation water. It is irresponsible not to notify the users of public or private parks that the water used to irrigate with is reclaimed water. These facilities are typically used by children and families. Activities include picnicking and play, and participants should be properly notified as such.

Thank you for the opportunity to comment on these proposed rules. If you have any questions, please do not hesitate to contact me

Dale Bodiya, P.E.

Treatment Program Manager | Water and Waste Management Division

Maricopa County Environmental Services Department
1001 N Central Avenue, Suite 150, Phoenix, AZ 85004
Desk: 602.506.6670 | Fax: 602.506.6925 Mobile: 602-527-2257

dbodiya@mail.maricopa.gov | esd.maricopa.gov

Working with our community
to ensure a safe and healthy environment

Environmental Services
Department

Heidi Haggerty

From: James Dubois <James.Dubois@pima.gov>
Sent: Tuesday, July 25, 2017 3:52 PM
To: Heidi Haggerty
Subject: Comments on Proposed Rule - Article 7 Use of Recycled Water

Hi Heidi,

I understand that comments on the proposed rule are due today. I submitted comments on your draft earlier, and those seem to have been addressed. So, I only have two items to send you today:

1) Under R18-9-B705(B)(1)(c), the rule requires reporting of "the total nitrogen concentration of the reclaimed water applied, if applicable." It is not clear when it would not be applicable to report this. I think that ADEQ should delete the phrase "if applicable" here. Also, it would be more clear if the rule identified that this is the average total nitrogen concentration or geometric mean of the total nitrogen concentration.
2) Under R18-9-B702(H)(4)(c), within these exceptions there is opportunity to address use of reclaimed water for riparian ecosystem enhancement. I suggest that ADEQ add an additional item under this subsection that says "ii. Silviculture for riparian habitat restoration where the application uses A+ reclaimed water outside of any active stream channel and irrigation is controlled with moisture sensing equipment."

I appreciate the opportunity to comment.

Thanks,
Jim

Jim DuBois, R.G.
Permit & Reg Compliance Ofc
Pima County Regional Wastewater Reclamation Dept.
james.dubois@pima.gov
(520) 724-6009

Please consider the environment before printing this email

Heidi Haggerty

From: Marcy Mullins <marcy.mullins@gwresources.com>
Sent: Tuesday, July 25, 2017 4:28 PM
To: Heidi Haggerty
Cc: Chuck Graf; Jeff Lemley
Subject: Comments on the Reclaimed Water Rule Revision

Hi Heidi – here are our comments on the proposed reclaimed water rule revision. My comments cover A705 thru D701, and Jeff Lemley took on E701.

R18-9-A705 – Recycled Water Permit Term, Information Changes, and Renewal:

B: ADEQ should be notified within 15 days from the date of change of the permittee (end user), as opposed to annually (as stated in the proposed language). If passed as proposed with the annual limit, this would have the potential to result in the loss of critical permit information which could cost the Department time and resources to recover. Fifteen days is consistent with other ADEQ permit transfer notification timeframes.

B1 and 2: Should define and specify the difference between the Owner and the Permittee, or replace them with "end-user". Section D701.A includes a definition for "end-user" as being basically the Permittee, which is supported by the Type 2 Notice of Intent (NOI). It makes sense that the person who uses the recycled water is the one who must adhere to the rules, i.e., the responsible use of recycled water for the intended allowable use.

B6: The expansion of a reuse area and/or the addition of another allowable use within the same property boundary is information that should be presented to the Department for approval prior to implementing. The Department has the faculty to approve whether or not the use of reclaimed water as presented in a Notice of Intent (NOI) meets with the intent of the rule and is considered safe. The allowable uses and use-requirements are not always interpreted correctly by the end-users (permittees or potential permittees), and they should not be given the authority to self-approve these changes to their Department-approved permit. Two examples come to mind: 1) an end-user wants to expand their reuse area to include land which is not contiguous with their previously-approved permit (ADEQ historically has considered non-contiguous reuse areas as needing separate permits); 2) an end-user wants to add dust control as an allowable use under their Class B reclaimed water permit, with the intent to impound the water at the construction site (ADEQ does not allow the impoundment of non-denitrified reclaimed water without lining the impoundment to achieve a certain hydraulic conductivity). If these activities were only required to be reported to ADEQ annually, non-denitrified reclaimed water could potentially be discharged to the aquifer for an entire year, or what should have been two separate reuse permits could erroneously be permitted under only one.

B7: It does not specify that an increase in non-denitrified recycled water should be subject to the same nitrogen-management method as originally approved. Without a review of the amended nitrogen-management method (such as a water balance model), the Department would not know if an increase of 10 to 20 percent of the Class A, B, or C reclaimed water could have the potential to reach the water table and cause the groundwater to exceed the Aquifer Water Quality Standard for nitrogen.

C: Consider rewriting the second sentence as follows: A permittee shall update all information as listed in subsection (B) in a Notice of Renewal; changes to the information specified in B6 and B7 shall be subject to approval.

R18-9-B702 – General Requirements

C: There are existing APPs which include reclaimed water blending operations, so it would be inconsistent to say that these blending operations could only take place under a Recycled Water Individual Permit or a Type 3 Recycled Water General Permit for a Reclaimed Water Blending Facility.

I: Since the signage requirements are exactly the same for A+ and A, and also for B+ and B, you may want to consider combining A+ and A in the same row, and also B+ and B, in the interest of brevity and saving space.

R18-9-B704 – Type 2 Recycled Water General Permit for Direct Reuse of Class A+ Reclaimed Water

D: Consider removing – it is difficult to justify why an APP impoundment has to be reviewed and monitored, and the same impoundment at a reuse site does not. (This also pertains to R18-9-B706, for Class B+ reclaimed water.) Or consider adding an explanation that the planned disposal of reclaimed water in unlined impoundments is only allowed under an Aquifer Protection Permit.

R18-9-D701 – Type 1 Recycled Water General Permit for Gray Water

A.9 Consider rewriting as follows: The gray water irrigation area is sited outside of a floodway. (ADEQ does not regulate the "system", as in how they capture their gray water; the rules apply to where and how they apply the gray water for irrigation.) This comment applies also to the Type 3 gray water permit under R18-9-D702.C.9.

R18-9-E701 – Recycled Water Individual Permit for an Advanced Reclaimed Water Treatment Facility

General Comments: Currently, the "Part E. Purified Water for Potable Use" (PWPU) R18-9-E701 does not address the compliance tracking and reporting of the water quality for the water system owner and their Customers. The rule advises the water from a facility shall be treated as a surface Water facility. However, this does not address how the Primacy Agency, ADEQ, EPA and customers will track the water quality compliance parameters of the system. The ADEQ Oracle Water Quality Tracking Data base used by the APP SMRF has many problems and program limitations. I recommend the Water Quality (WQ) of the facility be tracked in the SDWIS system as a either a New PWS or a New EPDS. Then, the WQ can be tracked with the additional WQ parameters deemed necessary for PWPU to ensure all interested parties including customers have the ability to monitor and track the facility's performance. This will give the public the knowledge they need to track the system's WQ and obtain a comfort level that the PWPU is being treated to whatever the agreed Direct Potable Reuse DW regulatory standards are deemed to be.
Also, the distribution system of the PWPU system needs to be addressed, specifically the piping conveyance prior to entering the actual potable water system.

A: No Comment

B: No Comment

C1b: In regards to "source water", I assume source water will be defined as Class B+ - Class A+ as documented on page no. 1667 of proposed rulemaking.
C1d: Requesting a list of unregulated microbial and chemical constituents and the corresponding concentrations in the source water to determine the system's effectiveness of treatment seems ambiguous since even the UCMRs for potable drinking water are consistently changing. This may require a clear definition of what the microbial and chemical constituents are or may require classification for WWTPs that are not in an industrial environment and only treat domestic wastewater for example.

C2: Seems this will be primarily from the pilot System(s) since the PWPU systems are all fairly new, especially the newer technology related to filtration.

C3: No comment

C4: on page no. 1667 the verbiage advises technology is in the 6 and 10 log range, however for example the current potable 4 Log requirements for drinking water using chlorine disinfection comply with the 334.0 EPA 4 Log requirement. The rule should help define what the minimum acceptable treatment criteria will be for the logarithmic reduction target level, maybe 6 log?

C5: No Comment

C6: See Comment section regarding SDWIS etc.

C7: No Comment

C8: No Comment

C9: Need to determine if new PWPU operator treatment and distribution certifications will be required.

C10: No Comment

Marcy Mullins
Environmental Resources and Compliance Specialist
Global Water Resources, Inc.
marcy.mullins@gwresources.com
P: 520-257-3959
M: 623-377-3651
www.gwresources.com

From: Jeff Zimmerman
To: Heidi Haggerty
Subject: Notice of Proposed Rulemaking June 23, 2017 / Reclaimed water rules / Public comments
Date: Sunday, July 02, 2017 6:55:58 PM

Dear Ms. Haggerty,

I submit the following comments on ADEQ's proposed changes to the reclaimed water rules solely on behalf of myself as an individual and not on behalf of my firm or any client:

1. R18-9-B710(F) should be deleted because it is covered under subsection (E) immediately preceding it and under R18-9-A705(B), and the deadlines for the disclosures would conflict.
2. R18-9-705(C) should allow for late filing of a notice of renewal provided that nothing has changed that would require a new permit and the permittee has stayed in compliance with the applicable substantive requirements for reuse. 5 years is a long time to remember or calendar the renewal and ADEQ does not provide notice of imminent permit expiration, so it is not difficult to miss the deadline and have to submit a new application and expend ADEQ resources reviewing it when there is no actual need for it. Alternatively, permit terms could be lengthened or made indefinite. Effluent reuse arrangements are typically very long term. There is no reason for only a 5 year term if the permittee has to stay in compliance as substantive rules change over time and annually submit any changes in information.

Thank you for your consideration of these comments.

Jeff Zimmerman
Moyes Sellers & Hendricks Ltd.
1850 N. Central Ave., Suite 1100
602-604-2111
jczimmerman@law-msh.com

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DIRECTORS
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ROOSEVELT RID IRRIGATION DISTRICT

103 WEST BASELINE ROAD
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To: Shivani Shah
Arizona Department of Environmental Quality
Water Quality Division
1110 W. Washington Street
Phoenix, AZ 85007
602-771-4465
ss7@azdeq.gov

From: Donovan Neese, P.E., Roosevelt Irrigation District

Comments to: Proposed Reclaimed Water Rules Title 18, Chapter 9, Article 6&7
Closing Date for Comment: July 25, 2017

The RID Staff has reviewed the proposed changes to the Reclaimed Water Rules Title 18, Chapter 9, Article 6&7.

The following are comments from the Roosevelt Irrigation RID, as approved by the Roosevelt Irrigation District (RID) Board:

The RID Board concurs that using reclaimed water will offset and conserve potable water for human consumption and domestic purposes.

The RID owns and operates pipelines and open water canal conveyances that carry a combination of reclaimed water in conjunction with remediated water and groundwater. The reclaimed water is from the City of Phoenix 23rd Avenue water reclamation facility and the Liberty Water Company water reclamation facility. It is not practical for the RID to place warning signs along the canal ditch at all points of ingress and at ¼ mile intervals.

The RID currently delivers this canal water from conveyance facilities through a number of communities in the West Valley. It is anticipated that at some point in the future, these communities will develop potable water treatment plants that will use this water, blended with other water supplies, as source water at their potable water treatment plants.

The RID is committed to complying with all regulatory requirements and water quality standards associated with existing and future uses of RID canal water.

The RID supports the amendment to Article 18 – 9 – 704 in order to allow incidental runoff of reclaimed water to the waters of the U.S. under certain conditions.

Reclaimed water has been a significant component of the RID water supply used for beneficial purposes, such as irrigation.

Allowing incidental runoff of reclaimed water from a site where it is being applied is a sound practice which have been utilized by the agricultural community for decades. The RID does not see any need for the agency to place additional restrictions or permit regulations on the existing uses and practices of the RID or its customers

The RID supports continued restrictions to ensure that only high-quality reclaimed water would be used where there is a relatively high possibility of human exposure.

The RID supports updating the list of allowable direct reuse activities while continuing with the existing use of reclaimed water in the RID system.

RID believes that the generator of the reclaimed water should remain responsible for the amount of chlorine and E.Coli that can be discharged into the RID conveyance system. Since the RID owns and operates a significant amount of open conveyance systems, water quality is subject to changes from nonpoint sources.

It is unclear why the owner operator of the facility that excepts reclaimed water, and provides additional treatment for a higher-quality direct reuse, such as using the reclaimed water as source water for a potable water treatment plant, should be permitted as anything other than a potable water treatment facility?

The regulations should be clear that the conveyances which receive reclaimed water is not a reclaimed water blending facility. The use of the RID canals for conveyance has been a long term beneficial means of conveyance and should be allowed to continue without further regulation or permitting.

The RID should be allowed to continue to use standard agricultural conveyance pipelines to convey their water which contains some amount of reclaimed water.

The RID supports ADEQ in providing an exception to the prohibition against providing reclaimed water for human consumption by allowing reclaimed water to be treated appropriately for potable use.

The RID supports ADEQ leaving the current reclaimed classes and permitting methodology in place.

The RID supports ADEQ no longer using the term reclaimed water for water that is delivered to and processed through an advanced water treatment facility.

The RID supports ADEQ requiring an advanced water treatment facility to obtain a recycled water individual permit.

The RID believes that a permit should be ten (10) years rather than five (5) years in length to provide certainty to the facility owners.

The RID does not believe ADEQ should always require a full pilot plant study for the advanced water treatment facility that will be used to treat reclaimed water for potable use under a a recycled water individual permit.

The RID supports ADEQ expanding and establishing interim permitting criteria. This will enable projects to move forward, which will meet ever increasing water demands.

Thank you for the opportunity to provide comments.

Regards,

Donovan L. Neese

Heidi Haggerty

From: Steve Camp <SCamp@flagstaffaz.gov>
Sent: Tuesday, July 25, 2017 2:09 PM
To: Heidi Haggerty
Subject: Comments - Rule: 23 Arizona Administrative Register 1663

Hi Heidi,

These are my comments to the proposed rule changes to the reclaimed water rules:

1. I would like to see a definition of hose bib in the rule and
2. I think the permit requirements in R18-9-E701 should be moved to the drinking water rules.

Thank You,

Steve Camp
Regulatory Compliance Section Manager
Utilities Division
City of Flagstaff
211 West Aspen Avenue
Flagstaff, AZ 86001
Office (928) 213-2475
Cell (928) 853-8643

SPEAKER SLIP

DATE: July 25, 2017 HEARING TOPIC: Reclaimed Water Updates in A.A.C. Title 18, Chap. 9, Art. 6 & 7

NAME: Jake Garrett

REPRESENTING: Self & Citizens

MAILING ADDRESS: 608 E. Hwy 260

EMAIL: jgarrett@gilacountyaz.gov PHONE 928-474-3177

☒ I wish to make an oral statement. The approximate amount of time I require is 3-5 minutes.

☐ I have submitted written comments

☐ I will submit written comments before the close of the public comment period outline only

COMMENT SUBJECT: Gray Water

OVERVIEW:

- Onsite is 25% of AZ wastewater production and is now ignored with exception of 711 GW Permit
- Focus on reuse has been top down - ADD Bottom up
- REAL ; FAST IMPACT
- GAIN CITIZEN SUPPORT FOR RECYCLING.

FACTS:

- Onsite GP's for flows up to < 24,000 gpd are delegated to counties and administered face-to-face - Individuals will implement themselves w/o a permit unless permitting is local
- GW removed is directly related to Existing system permit and may affect the performance
- most Type 4 GP's have test results that exceed A or A+ WQ standards
- Use of the current 711 residential GW use open permit is widely misused - PASSES RESPONSIBILITY FROM PERMITTING TO LOCAL ENFORCEMENT
- Individuals do not read the rules before implementing- RULES MUST BE DESIGNED WITH THE UNDERSTANDING OF NORMAL HUMAN ACTIONS
-

NEED:

Develop Recycled Waters Program for flows below the Individual permit threshold of 24,000 gpd

- Complete rule section mirroring IP sections
- Make all type 3 with 5 or 7 year verification & renewal
- Delegate to Counties along with onsite systems E303 through E323
- Include D701
- One permit for residential 400 to <24,000
- One permit for commercial 0 to <24000

RESOLVE:

- Current conflict between 711 residential free permit and E303 Compost system requirements for a normal black water disposal system
- Apply any resolution to all Type 4 permits - Provide consistency
- Make GW requirements ~~some~~ that normal citizens will follow, and
- Provide areas for local enforcement
- Provide transition from Type 1 1.09 sewage treatment and onsite treatment facilities that are currently using Overflow or GW discharge

SPEAKER SLIP

DATE: July 25, 2017 HEARING TOPIC: Reclaimed Water Updates in A.A.C. Title 18, Chap. 9, Art. 6 & 7

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☐ I wish to make an oral statement. The approximate amount of time I require is ____ minutes.

☑ I have submitted written comments

☑ I will submit written comments before the close of the public comment period

COMMENT SUBJECT: Missing topic of Onsite Wastewater & Reuse

Notice of Proposed Rule Making- Reclaimed Water

ADEQ is planning a second rulemaking phase that will involve amending A.A.C. Title 18, Chapter 11, Article 3, Reclaimed Water Quality Standards. To assist ADEQ in revising the reclaimed water quality standards, ADEQ has convened an expert workgroup to review the suitability of existing standards in light of current knowledge and provide recommendations on revisions.

The expert work group is missing a member that would represent the Delegated programs for the counties. The fifteen counties are delegated oversight and permitting responsibilities for onsite wastewater treatment facilities per the Aquifer Protection Permit Program.

ADEQ has also convened a workgroup of experts to provide recommendations to ADEQ on infrastructure and technology for a third rulemaking phase. This work group is charged with two tasks: (1) review the reclaimed water conveyance requirements (formerly A.A.C. Title 18, Chapter 9, Article 6 provisions, which are now proposed for incorporation into Part B of Article 7) and determine whether the current technical criteria are adequate, and (2) develop and recommend comprehensive criteria for advanced water treatment of reclaimed water for direct potable use. Comprehensive criteria for direct potable use would replace the interim criteria specified in Part E of this rulemaking. ADEQ intends to modify the reclaimed rules in phases for several reasons

In addition to addressing reclaimed water for direct potable reuse, ADEQ needs to develop and recommend comprehensive criteria for advanced **onsite** system treatment of reclaimed water for direct reuse. Recommend ADEQ adopt NSF 350 that currently is adopted by the 2015 IRC. Technologies are currently on the ADEQ proprietary Product Listing that will allow reuse of the treated onsite wastewater to be reused to flush toilets and irrigation.

Currently, however, gray water permits are underutilized because of impracticable requirements.

The use of gray water is underutilized as it is ideally not the most efficient way to reuse water and is not sustainable due to what is in the waste stream. Gray water is not a Reclaimed water, nor is it a Recycled water as it appears the categories for Reclaimed/Recycled water will not be changed. Gray water needs to be regulated by one entity and not the bifurcated process that currently exists. Gray water needs to be taken out of the 711 rules and put into the Title 18 Chapter 9 APPP Program. All 15 counties are delegated the type 4 permits. The source for all gray water for onsite systems would be through these permitted systems. It is more logical for

graywater permitting processing for both rural and municipal areas to be overseen by the county partners. Currently the application process is as follows:
To have a duplicative permitting process by requiring those applicants that are installing onsite system with gray water systems obtain a second permit through ADEQ is overly burdensome. Certainly if the Delegated Authorities can oversee the full strength waste and permit these systems the lesser strength gray water need not be further administered and overseen by and entity in Phoenix. As with the intent of this Rule Revision there is the desire to encourage, permit and oversee these reuse permits at the local level?

Current Permit Requirements	Delegated Authority (DA)	ADEQ	None Required
711 Gray Water *with existing onsite or municipal system in place	NA	NA	Applicant answers 13 Questions that if they may comply with no permit is required.
Permit for 4.03 Composting Toilet with Gray water disposal	Applicant obtains a permit from the Delegated authority. Graywater disposal criteria as per R18-9-E302 but may reuse graywater for the irrigation of landscape if they may comply with 711 rules		
Alternative (Advanced treatment)Treatment, flows <3,000 gpd	Permitted locally through the DA	*if graywater use is > than 400 gpd a permit must be applied for through ADEQ	
Alternative Treatment 3,000 gpd-24,0000 gpd	Permitted locally through the DA	*if graywater use is > than 400 gpd a permit must be applied for through ADEQ	
ADEQ is proposing a new Reuse/Graywater Permit for flows from 3,000 gpd to 24,000 gpd	The DA's are currently delegated these flows for the full strength ww, this permit should be folded into the onsite rules.		

The Gray Water Reuse Rules allow for a very permissive use of gray water without regulation. All of the existing Type 4 Alternative Treatment Technologies in the APPP produce an effluent discharge that has better performance numbers that the unregulated gray water. Perhaps this

should be considered for all general permits and instead of discharge treated effluent could be used at shallower depths to allow for broader irrigation applications.

Phasing the rulemaking will allow for the flow of innovation and utilization of reclaimed and gray water permits. If ADEQ batches all of the phases into one rulemaking, it may be years before permittees may utilize Type 3 gray water permits sufficiently, and before the state can begin to augment its water supply through treated reclaimed water potable use. Also, modifying the rule in phases will allow the regulated community and the public to adapt to the new structure and standards as the rules are modified, and provide

As with the advances that have been made in innovation and utilization of gray water and reuse permits, advances have also been made with treatment technologies in the onsite wastewater program. There are currently technologies listed on the ADEQ Proprietary Product Listing that would allow for wastewater treated onsite to have the effluent reused for toilet flushing inside the home. The wastewater rules have been hindered from any substantive rule making since 2005. Many of the 15 counties currently have all or portions delegated to them for the oversight of the wastewater programs.

ADEQ modified the overall nomenclature of Article 7. Under ADEQ's current regulations, gray water, industrial wastewater, and reclaimed water are regulated as "reclaimed water." However, gray water, industrial wastewater, and reclaimed water are all separate and unique categories of "recycled water." ADEQ proposes to modify Article 7 to regulate all of these categories of water under the same umbrella term of "recycled water." ADEQ renamed A.A.C. Title 18, Chapter 9, Article 7, from Direct Reuse of Reclaimed Water to Use of Recycled Water. A definition for recycled water is also proposed in R18-9-A701. To implement this new nomenclature, ADEQ proposes a new organizational structure for Article 7 clearly distinguishing the general recycled water provisions and the different categories of recycled water. The proposed structure is designed to ease the addition of any potential new categories of recycled waters in the future.

Simply changing the name does not address the problem. Especially when the classifications of water will remain the same. As it pertains to graywwer, graywater should not be included as reclaimed-recycled water as it receives no treatment.

The following are two examples of definitions on Reclaimed/Recycled water:

Reclaimed or **recycled water** (also called wastewater reuse or **water** reclamation) is the process of converting wastewater into **water** that can be reused for other purposes. Reuse may include irrigation of gardens and agricultural fields or replenishing surface **water** and groundwater (i.e., groundwater recharge).

Reclaimed or **recycled water** (also called **wastewater reuse** or **water reclamation**) is the process of converting wastewater into water that can be reused for other purposes. Reuse may include irrigation of gardens and agricultural fields or replenishing surface water and groundwater (i.e., groundwater recharge). Reused water may also be directed toward fulfilling certain needs in residences (e.g. toilet flushing), businesses, and industry, and could even be treated to reach drinking water standards. This last option is called either "direct potable reuse" or

"indirect potable" reuse, depending on the approach used. Colloquially, the term "toilet to tap" also refers to potable reuse.

Additionally "Reclaimed" is the more consistent and common term consistent with the technology on a nationwide scale.

Modification of Gray Water Permitting Requirements.
ADEQ updated the gray water use rules to clarify ambiguities and expand the utility of gray water permits. ADEQ proposes to modify some of the language and requirements in the Type 1 General Permit for Gray Water in R18-9-D701, which regulates residential gray water use. The proposed rule provides greater clarity as to what best practices are most appropriate, safe, and practical. The changes proposed in this rule revision reflect more than 15 years of experience under the current approach. The changes:

• Clarify the use of gray water for safely watering food plants;
Caution and disagree with this approach. There is insufficient research to allow this and we would need to be very careful as once it is allowed it is becomes very difficult to segregate, for use on vegetables with a skin or rind as opposed to leafy greens.

• Allow gray water use for shrubs as well as trees;
This is actually the best use for gay water as the supply is not as reliable over time and shrubs typically are not as needy as other landscape plants.

• Disallow mixing of water used to wash diapers or similarly soiled garments with gray water because disinfection is too complicated for most home gray water systems;
Agree with this proposal.

• Provide examples for minimizing standing water on the surface, including the now widespread practice of distributing graywater under a mulch cover;
Graywater should not be applied through flood irrigation, flooding is not an efficient method in maximizing the use of graywater for irrigation purposes. If the use of gray water is to promote water conservation this is not a correct path. The best method to maximize water usage to plants is through drip irrigation where the water may be applied to the plants in a controlled amount and time. Wide spread application of flood irrigation for graywater could result in breeding areas for mosquitoes. We already have West Nile Virus and Zika.

• Mandate that if blockage, backup, or overload of the system occurs, distribution of gray water should cease until the deficiency
This is a common sense approach and should not have to be written out however, a blockage alone is not the only reason an individual needs to route their gray water back to an onsite system or municipal system. It may include uses inside the home that generate an effluent that would be harmful to plants, for example salt baths or high bleach loads of laundry. Or if there is a contagious disease inside the household or a very sick person taking and using medications, rubs, and ointments that are best suited to not go to the planted areas. Or what about if the homeowner simply has no desire to maintain their planter and wishes to convert the planted area to something else. Or with time the gray water volume inside the home decreases as children or parties leave the household and irrigation areas need to be reconsidered or sometimes abandoned. There needs to be a method to revert the water back to an onsite system or municipal system

• **Specify that gray water storage tank holding time should be 24 hours or less to avoid development of anaerobic conditions and odors (such tanks have proven problematic in practice, leading to the use of surge tanks with shorter holding times in some systems);**
Consideration should be given for buried tanks in areas with cold climate. In Flagstaff the soil temperature does not get high enough year round to sustain bacterial growth. Soil temperatures are available on the web.

Further, under the proposed R18-9-A703 Recycled Water Individual Permit, ADEQ will allow the addition of kitchen sink and dishwater wastewater to a gray water source, as long as the water is treated appropriately for its end use.
This is where there is a potential for problems with vectors with the kitchen water going out on top of the ground in flood irrigation or on top of the ground surface. Food wastes attracts insects rodents and animals. Disagree with this practice and has not be widely accepted nationwide.

Additionally, ADEQ proposes to increase the utility of the Type 3 General Permit for Gray water. The current Type 3 General Permit for Gray Water is not usable for most applicants due to inappropriate gray water dispersal requirements. The dispersal requirements as currently written mirror the disposal requirements for an on-site wastewater treatment facility, which require disposal into trenches. Trench disposal for on-site waste water treatment facilities is intended to allow for the infiltration of septic tank effluent, which gray water is not. Trench disposal limits the ability of a gray water permittee to use the water for simple irrigation or composting uses.

This is an incorrect characterization of the Type 4 Composting Toilet permit. Type 4.03 is for us of a composting toilet. The disposal methods allow for year round use of a residence. Composting toilet is not a standalone permit. Gray water is for the beneficial use of irrigation and not for discharge. The number one reason people seek out a compost-gray water system is because it is often the cheapest easiest path for development, it is not for irrigation purposes. This section should also consider cold climate for those areas where temperatures drop down to prevent any type of irrigation a properly sized soil based system would be needed.

The proposed R18-9-D702 Type 3 Recycled Water General Permit for Gray Water also reshapes the former Type 3 permit. The new permit language addresses a need by many non-household entities to use gray water for simple subsurface irrigation of landscape plants in a way that protects human health and the environment.
Suggest large commercial systems that are served by municipal wastewater be the only permits that apply for this permit category, currently the existing 4.23 General Permit would allow for reuse up to 24,000 gpd at the local level.

Heidi Haggerty

From: Edwin <AzOnsiteEngineering@msn.com>
Sent: Tuesday, July 25, 2017 3:36 PM
To: Heidi Haggerty
Cc: cullin.pattillo@mohavecounty.us; dave@bwsinconline.com; septicsleuths@qwestoffice.net; Frank@Fdickens.com; jgarrett@gilacountyaz.gov; jwirth@coconino.az.gov; KChadwick@mail.maricopa.gov; kittfp@ag.arizona.edu; Larry.hawke@pima.gov; lowellfagen@redarrowrealestate.com; Paul@busydpumping.com; richards@apewater.com; Suzanne.Ehrlich@yavapai.us; HansonT@mail.maricopa.gov; Ophelia A. Begay; Edwin; castaneda@gatewaycc.edu
Subject: Comments on proposed rule R18-9-D701

Dear Ms. Heidi M. Haggerty (Welborn),
While my comments are focused on R18-9-D701, Type 1 Recycled Water General Permit for Gray Water, there are broader implications to other rule proposals, and to other ADEQ rules.
The continuation of perpetual-life Type 1 permits for gray water, may meet ADEQ rulemaking intentions in the hands of a highly motivated property owner or leasee. However, such success cannot be assured during a property transfer, or in the hands of less motivated persons, such as a new or impaired owner, or a renter, especially without an effective oversight and training programs.
The absence of records pertaining to the presence and management responsibilities for a Type 1 Recycled Water Gray Water system operating under R18-9-D701 could be problematic for property which is going through a transfer of ownership. At that time there will be responsibilities for *seller disclosure* and *buyer due diligence inspection*. Without design and operational records, the transfer of ownership transaction could be in jeopardy, or result in other risk to the parties to the transaction, including a Realtor® and Escrow officer.
Retaining the Type 1 permit for properties operating under a pre-existing gray water authorization makes sense, perhaps with a 20-year sunset date. The upgraded program should provide better documentation by utilizing a process resembling that for the proposed Type 2 Recycled Water General Permit, but allowing for a longer term, say until the time of ownership transfer. While that term may seem burdensome, such general permit-type practices are common for automobile registration renewal, credit card agreements, etc. Further the program established in A.A.C. R18-9-A316 establishes a inspection and transfer processes for Type 4 General Permit facilities in Chapter 9, Article 3; and could be adapted for a recycled water permit. This Article 3 program has been operating since mid 2006, applicable to the approximately 550,000 operating On-site Wastewater Treatment Facilities under ADEQ jurisdiction.
ADEQ APP rules pertaining to residential sewage, including gray water, would seem to function more efficiently within the same body of regulation and expertise. The placement of residential gray water on the land surface may seem risk free, though the presence of vectors and disease transmission uncertainty has been rapidly evolving. Further professional scrutiny by those with comprehensive communicable disease expertise within the various public health programs in Arizona is recommended for the 13 Practices and several Prohibitions.

Thank you for the opportunity to provide comments. Please confirm receipt of these comments by the comments deadline.

Edwin Swanson

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 9. DEPARTMENT OF ENVIRONMENTAL QUALITY

WATER POLLUTION CONTROL

Economic, Small Business, and Consumer Impact Statement

The following discussion addresses each of the elements required for an economic, small business and consumer impact statement under A.R.S. § 41-1055.

A. An identification of the rulemaking.

This rulemaking is generally anticipated to encourage usage of reclaimed water, increase business opportunities, and pave the way for water resource conservation and savings. This rulemaking allows for activity that has long been prohibited and does not limit already occurring activities. Under the 2001 reclaimed water rules, no one has been allowed to provide even treated reclaimed water for human consumption, except as allowed by substantive policy. ADEQ is modifying this prohibition to allow for the distribution of highly treated reclaimed water in order to augment Arizona's water supply and to spark innovation. In addition, rule modifications to large scale gray water use modifications will also allow for activity previously limited by implementation requirements. The other rule modifications, including rule clarifications and rule restructure, should have limited, if any, economic effects.

B. An identification of the persons who will be directly affected by, bear the costs of, or directly benefit from this rulemaking.

Recycled water permittees will be directly affected by this rulemaking, including those who use reclaimed water and gray water for beneficial use.

The types of facilities that these rules generally apply to include wastewater treatment plants, irrigation districts, other reclaimed water end users, and residential and large-scale gray water users.

Type 2 permittees include, as examples, schools, retail centers, HOAs, other residential communities and subdivisions, school districts, municipalities, construction companies, churches, and correctional facilities. The table below shows the numbers of currently active Type 2 general reclaimed permits:

Use Category	Active Type 2 General Permits
Agriculture Irrigation	9
Construction and/or Dust Control	9
Golf Course Irrigation	46
Landscape Impoundment	4
Landscape Irrigation	275
Pasture for animals (dairy)	1
Pasture for animals (non-dairy)	3
Recreational Impoundments (lakes)	2
Restricted Access Landscape Irrigation	6
Silviculture	1
Multiple uses	45
Total Type 2 General Reclaimed Permits	***401***

ADEQ also currently has 52 active Type 3 reclaimed water permits for water agents or blending facilities, which mainly include municipalities, political subdivisions, and utilities.

There are 10 active individual recycled water permits under ADEQ. This includes:

- 7 industrial permits, including permits for correctional facilities, power plants, food processing facilities, and mines;
- 3 individual gray water permits including for colleges, correctional facilities, municipalities, and industrial operations such as food canning, mining, and power plants; and
- 2 individual reclaimed permits, one for a municipality and one for a county.

There are many Type 1 gray water users in the state, but the exact or even approximate number is unknown as no written or recorded permit is required in order to be in compliance with the rules.

There are currently 6 Type 3 gray water permits, including for R.V. parks, recreational parks, and residential communities. The Type 3 gray water provisions as modified may encourage similar facilities, including hotels, to consider applying for this type of permit in the future.

Other potential permittees include those who may choose to apply for an advanced reclaimed water treatment facility individual permit. These permittees will likely consists of those who wish to capitalize on new technology to maximize the use and conservation of water. ADEQ anticipates that as these innovators demonstrate and prove current technologies, and the technologies become less

expensive, more water treatment facilities will start to take advantage of the economic benefit opportunities that these rules provide

C. A cost benefit analysis of the following:

a. The probable costs and benefits to the implementing agency and other agencies directly affected by the implementation and enforcement of the rulemaking.

ADEQ is the main agency impacted by the proposed changes. ADEQ already issues reclaimed and gray water permits. ADEQ expects that processing a permit for advanced water treatment facilities will cost no more than the cost to process aquifer protection permits for large-scale wastewater treatment plants. Likewise, ADEQ does not anticipate any increase in state costs to analyze Type 3 gray water or other individual reclaimed permits.

ADEQ does not anticipate the number of applications for new permits, including for advanced water treatment facility permits, individual reclaimed/gray water permits, or Type 3 gray water permits, to drastically increase as a result of these rules. Therefore, ADEQ does not currently expect this rule to greatly increase the number of permits it must process, and ADEQ expects permit fees to support most of any extra permit processing costs. Upon finalization of the rule, the agency does not expect it will need to greatly increase resources to support the program, at this time. Initially, no new full time employees will be devoted to support the program. The permit fees for aquifer protection, reclaimed, and gray water are fixed, however, and do not adjust with any sort of inflationary index, which may cause issues at a future date. As the agency gains experience and data to measure impacts, ADEQ intends to analyze and address this issue at a future date as a part of regular periodic water quality division-wide analysis of fees. Therefore, ADEQ expects minor economic impacts to result from this rulemaking at this time.

b. The probable costs and benefits to a political subdivision of this state directly affected by the implementation and enforcement of the rulemaking.

Political subdivisions and government entities that are reclaimed water permittees are impacted by the rule, but any economic impacts should be minimal. There are approximately 90 reclaimed water permittees that are public entities, such as municipalities, towns, counties, and associated organizations, such as schools. Costs and benefits should be similar as to businesses, and are discussed below.

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

Gray Water Modifications

This rule modifies gray water best management practices for Type 1 and Type 3 permits. ADEQ does not expect the costs to comply with the Type 1 rule to be any more expensive than the previous gray water use requirements. However, when Type 3 gray water users wish renew their permits, there will likely be a minimal consulting or engineering cost to ensure compliance with the new permit requirements. While this may minimally affect each permittee, consultants, engineers, and law firms may minimally or moderately benefit from this rulemaking from their clients in the aggregate in the future if their services are needed to comply with this rule. More potential large-scale gray water users may also benefit from water cost savings from this rulemaking. Only seven Type 3 gray water permits exist because the current use requirements essentially preclude the objective of the permit, which is to irrigate the land for beneficial use. Instead, current Type 3 gray water facilities must disperse the water to mirror the trench disposal requirements for on-site waste wastewater facilities, which limits the ability of a gray water permittee to use the water for simple irrigation or composting purposes. Given that this rule provides reasonable best management practices in place of the on-site trench disposal methodology, the ability to use gray water on a large scale should increase. This ability may translate to increased use of gray water for water that a business may otherwise have to pay for. This may result in incremental conservation of water and serve to address community water augmentation and water security planning.

Any additional costs to businesses subject to the amended gray water rules will be minimal and are not expected to deter any expansion of business operations. In fact, ADEQ expects this rule to have the opposite effect overall. Likewise, there should be no negative impact on employment in this state.

New Permit for Advanced Reclaimed Water Treatment Facility

The new rule allows for activity that was previously prohibited, namely treating reclaimed water and distributing it for human consumption. In order for this activity to be carried out safely, ADEQ will require an individual reclaimed water permit. This type of facility is unlike most other current reclaimed water facilities, but ADEQ expects the cost of the permit to be similar to that of

an individual APP permit for a large wastewater treatment facility. According to billing records, the cost of these types of permits generally range between $10,000 - $15,000.

Advanced reclaimed water treatment is a voluntary activity which may be pursued to augment Arizona's water supply for environmental reasons, and it may soon become profitable given the high value of potable water in Arizona. This rule will also allow for increased water security and an additional long-term dependable water source as a part of a larger plan to augment Arizona's water supply and promote continued economic growth.

Based on Southern California figures as reported in WateReuse Research Foundation's *The Opportunities and Economics of Direct Potable Reuse*, the total cost of treating reclaimed water to produce potable water, including treatment, conveyance and brine management may run between $820 acre-foot and $2000 acre-foot. This cost is likely lower than imported water supply and brackish groundwater supply options. The price of direct potable use overall may be more expensive than other current conservation options, but conservation typically requires increasingly more expensive technologies and resources as the level of acre-feet saved increases. In other words, there is a mathematical limit to the benefits of conservation, whereas advanced water treatment may continue to provide increased supply and benefit with more limited additional resources.

Newspaper Notice Removal

The rule eliminates the requirement for the state to publish permit public notices in newspapers, but rather requires notice be given on the Department's website. As an example, a public notice published in a statewide newspaper may cost approximately $1,000. This cost is passed along to the permittees in their final permit processing bills. Hence, the change could save thousands of dollars a year for ADEQ permitting customers. However, this modification of the notice requirement could affect newspaper companies negatively, as government-required newspaper notices are a source of income for these companies.

D. A general description of the probable impact on private and public employment in businesses, agencies, and political subdivisions of this state directly affected by this rulemaking.

ADEQ does not anticipate any significant impact on employment in this state as a result of this rulemaking.

E. A statement of the probable impact of the rulemaking on small businesses.

ADEQ does not expect this rulemaking to significantly increase burdens on small businesses. Some additional design, engineering, or consulting costs may be required for a renewing permittee to comply with the Type 3 gray water requirements under this rule. Additionally, consultants, suppliers, engineers, and lawyers with small businesses may indirectly benefit from additional work contracted as a result of the permitting and construction associated with new Type 3 gray water facilities or new advanced reclaimed water treatment facilities.

a. An identification of the small businesses subject to this rulemaking.

Under A.R.S. § 41-1001(21):

"Small business" means a concern, including its affiliates, which is [1] independently owned and operated, which is [2] not dominant in its field and which [3] employs fewer than one hundred full-time employees or which had gross annual receipts of less than four million dollars in its last fiscal year. (Emphasis added.)

The types of businesses affected are the same as those listed in the section above that identifies those persons affected by the rulemaking. Construction, landscaping, golf courses, and retail centers are some examples of possible small businesses affected by this rulemaking. ADEQ is unaware of any small businesses that do not want this rule to proceed.

b. The administrative and other costs required for compliance with the rulemaking.

This rule does not prescribe significant changes in administrative or compliance costs for existing reclaimed water or Type 1 gray water users.

New Type 3 gray water permittees, which may include small businesses, will likely need to consult designers, engineers, or consultants to comply with the new rule modifications. However, the costs will likely be no more or less than the consultant costs for the trench disposal requirements that have existed since 2001. Therefore, ADEQ does not expect the new Type 3 gray water requirements to increase compliance costs for new businesses, including small businesses. However, upon renewal, each of the 6 existing Type 3 gray water facilities will be required to renew according to the rules established in this rulemaking. This will entail some design costs as discussed above. These facilities are not impacted immediately as they have until their existing permit expires in order to comply with the new regulations.

New advanced reclaimed water treatment facilities will entail significant investment in permitting, engineering, construction, and long-term operation costs.

For both Type 3 gray water users and advanced reclaimed water treatment facilities, potential permittees will need to analyze the possible return on investment for their particular business.

c. A description of the methods that the agency may use to reduce the impact on small businesses.

(i) Establishing less costly compliance requirements in the rulemaking for small businesses.

ADEQ is consolidating most generally required reporting under this rule to be made once annually by January 31st instead of by the permit anniversary date. ADEQ anticipates this to have a minimal positive impact on small businesses. ADEQ is providing an exception to the prohibition of providing reclaimed water for human consumption by allowing an advanced reclaimed water treatment facility to be permitted to treat reclaimed water and distribute the potable product for human consumption.

(ii) Establishing less costly schedules or less stringent deadlines for compliance in the rulemaking.

Current permits are grandfathered into the recycled water program so that existing reclaimed and gray water permits shall follow the rules as they exist under current permits until such permits expire. Any renewed permit will be renewed under the new rules. This was done to allow the regulated community time to evaluate the new rule structure any changes needed to their processes before the new rules apply. The new rules are not, however, expected to cause significant changes for small businesses.

(iii) Exempting small businesses from any or all requirements of this rulemaking.

To protect human health and the environment, ADEQ cannot exempt small businesses from requirements of this rulemaking.

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

ADEQ does not anticipate any immediate significant economic cost or benefit to private persons or consumers. The modifications in Type 1 gray water use requirements are essentially clarifications and are expected to at most minimally affect residential gray water users. An

intangible benefit of these rules may be the ability of the public to support businesses that conserve more water through gray water use or that lead the nation in protecting water resources by producing potable water from reclaimed water.

F. A statement of the probable effect on state revenues.

ADEQ does not expect any significant increase or decrease state revenues as a result of this rule.

G. A description of any less intrusive or less costly alternative methods of achieving the purpose of the rulemaking.

ADEQ does not know of any less intrusive or less costly alternative methods of expanding gray water use and allowing for treatment of reclaimed water to produce potable water, while still protecting human health and the environment.

H. A description of the limitations of the data available for this economic small business and consumer impact statement.

ADEQ generally does not track in a database certain information on permittees, such as whether a facility is publicly or privately owned. Some of the information came from an informal review of active permits and past billing histories.

Replacement Check List
For rules filed within the
3rd Quarter
July 1- September 30, 2016

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 18. Environmental Quality

Chapter 9. Department of Environmental Quality - Water Pollution Control

Supplement Release Quarter: 16-3

Sections, Parts, Exhibits, Tables or Appendices modified
A.C.C. citation updated in R18-9-1011(B)

REMOVE Supp. 16-2	REPLACE with Supp. 16-3
Pages: 1 - 129	Pages: 1 - 129

The Department's contact person who can answer questions about rules in Supp. 16-3:

Agency: Department of Environmental Quality
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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 have changed and is provided as a public courtesy.

PUBLISHER
Arizona Department of State
Office of the Secretary of State, Public Services Division

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Article 4 consisting of Sections R9-20-401 through R9-20-407 adopted effective May 24, 1985.

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Editor's Note: The recodification at 7 A.A.R. 2522 described below erroneously moved Sections into 18 A.A.C. 9, Article 9. Those Sections were actually recodified to 18 A.A.C. 9, Article 10. See the Historical Notes for more information (Supp. 01-4).

Article 9, consisting of Sections R18-9-901 through R18-9-914 and Appendix A, recodified from 18 A.A.C. 13, Article 15 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2).

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   i. The first use of an impoundment not used before November 12, 2005; or
   ii. Completion of a liner upgrade required under this Section for an impoundment used before November 12, 2005; or
b. Include the information required in subsections (B)(3)(a)(i) and (ii) in the next annual report submitted for the AZPDES Concentrated Animal Feeding Operation General Permit, issued under 18 A.A.C. 9, Article 9, Part C.

Historical Note

Adopted effective January 4, 1991 (Supp. 91-1). Section R18-9-403 renumbered from R18-9-203 and amended by final rulemaking at 7 A.A.R. 235, effective December 8, 2000 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-404. Revocation of Coverage under a Nitrogen Management General Permit

A. The Director may revoke coverage under a nitrogen management general permit and require the permittee to obtain an individual permit under 18 A.A.C. 9, Article 2, if the Director determines that the permittee failed to comply with the best management practices under R18-9-403.

B. Notification.
1. If coverage under the nitrogen management general permit is revoked under subsection (A), the Director shall notify the permittee by certified mail of the decision according to the notification and hearing procedures in A.R.S. Title 41, Chapter 6, Article 10. The notification shall include:
   a. A brief statement of the reason for the decision,
   b. The effective revocation date of the general permit coverage, and
   c. A statement of whether the discharge shall cease immediately or whether the discharge may continue until the individual permit is issued, and
2. If the Director requires a person to obtain an individual permit, the notification shall include:
   a. An individual permit application form, and
   b. A deadline between 90 and 180 days after receipt of the notification for filing the application.

C. When the Director issues an individual permit to an owner or operator of a facility covered under a nitrogen management general permit, the coverage under the nitrogen management general permit is superseded by the individual permit allowing the discharge.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

ARTICLE 5. GRAZING BEST MANAGEMENT PRACTICES

R18-9-501. Surface Water Quality General Grazing Permit

A. A person who engages in livestock grazing and applies any of the following voluntary best management practices to maintain soil cover and prevent accelerated erosion, nitrogen discharges, and bacterial impacts to surface water greater than the natural background amount is issued a Surface Water Quality General Grazing Permit:
1. Manages the location, timing, and intensity of grazing activities to help achieve Surface Water Quality Standards;
2. Installs rangeland improvements, such as fences, water developments, trails, and corrals to help achieve Surface Water Quality Standards;
3. Implements land treatments to help achieve Surface Water Quality Standards;
4. Implements supplemental feeding, salting, and parasite control measures to help achieve Surface Water Quality Standards.

B. The person to whom a permit is issued shall make the following information available to the Department, at the person's place of business, within 10 business days of Department notice:
1. The name and address of the person grazing livestock, and
2. The best management practices selected for livestock grazing.

Historical Note

New Section made by final rulemaking at 7 A.A.R. 1768, effective April 5, 2001 (Supp. 01-2).

ARTICLE 6. RECLAIMED WATER CONVEYANCES

R18-9-601. Definitions

In addition to the definitions provided in R18-9-701, the following terms apply to this Article:
1. "Open water conveyance" means any constructed open waterway, including canals and laterals that transports reclaimed water from a sewage treatment facility to a reclaimed water blending facility or from a sewage treatment facility or reclaimed water blending facility to the point of land application or end use. An open water conveyance does not include waters of the United States.
2. "Pipeline conveyance" means any system of pipelines that transports reclaimed water from a sewage treatment facility to a reclaimed water blending facility or from a sewage treatment facility or reclaimed water blending facility to the point of land application or end use.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 758, effective January 16, 2001 (Supp. 01-1).

R18-9-602. Pipeline Conveyances of Reclaimed Water

A. Applicability.
1. Any person constructing a pipeline conveyance on or after January 1, 2001, whether new or a replacement of an existing pipeline shall meet the requirements of this Article.
2. Any person who has constructed a pipeline conveyance before January 1, 2001, is considered to be in compliance with this Article.

B. A person shall design and construct a pipeline conveyance system using good engineering judgement following standards of practice.

C. A person shall construct a pipeline conveyance so that:
1. Reclaimed water does not find its way into, or otherwise contaminate, a potable water system;
2. System structural integrity is maintained; and
3. The capability for inspection, maintenance, and testing is maintained.

D. A person shall construct a pipeline conveyance and all appurtenances conducting reclaimed water to withstand a static pressure of at least 50 pounds per square inch greater than the design working pressure without leakage as determined in A.A.C. R18-9-E301(D)(2)(j).

E. A person shall provide a pipeline conveyance with thrust blocks or restrained joints where needed to prevent excessive movement of the pipeline.

F. The following requirements for minimum separation distance apply. A person shall:
1. Locate a pipeline conveyance no closer than 50 feet from a drinking water well unless the pipeline conveyance is constructed as specified under subsection (F)(3);
2. Locate a pipeline conveyance no closer than two feet vertically nor six feet horizontally from a potable water pipeline unless the pipeline conveyance is constructed as specified under subsection (F)(3);
3. Construct a pipeline conveyance that does not meet the minimum separation distances specified in subsections (F)(1) and (F)(2) by encasing the pipeline conveyance in at least six inches of concrete or using mechanical joint ductile iron pipe or other materials of equivalent or greater tensile and compressive strength at least 10 feet beyond any point on the pipeline conveyance within the specified minimum separation distance; and
4. If a reclaimed water system is supplemented with water from a potable water system, separate the potable water system from the pipeline conveyance by an air gap.

G. A person shall:
1. For a pipeline conveyance, eight inches in diameter or less, use pipe marked on opposite sides in English: "CAUTION: RECLAIMED WATER, DO NOT DRINK" in intervals of three feet or less and colored purple or wrapped with durable purple tape.
2. For a mechanical appurtenance to a pipeline conveyance, ensure that the mechanical appurtenance is colored purple or legibly marked to identify it as part of the reclaimed water distribution system and distinguish it from systems for potable water distribution and sewage collection.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 758, effective January 16, 2001 (Supp. 01-1).

R18-9-603. Open Water Conveyances of Reclaimed Water

A. This Article applies to an open water conveyance, regardless of the date of construction.

B. A person shall maintain an open water conveyance to prevent release of reclaimed water except as allowed under federal and state regulations. The maintenance program shall include periodic inspections and follow-up corrective measures to ensure the integrity of conveyance banks and capacity of the conveyance to safely carry operational flows.

C. Signage for Class B+, B, and C Reclaimed Water. A person shall:
1. Ensure that signs state: "CAUTION: RECLAIMED WATER, DO NOT DRINK," and display the international "do not drink" symbol;
2. Place signs at all points of ingress and, if the open water conveyance is operated with open access, at least every 1/4-mile along the length of the open water conveyance; and
3. Ensure that signs are visible and legible from both sides of the open water conveyance.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 758, effective January 16, 2001 (Supp. 01-1).

ARTICLE 7. DIRECT REUSE OF RECLAIMED WATER

R18-9-701. Definitions

Unless provided otherwise, the definitions provided in A.R.S. § 49-201, A.A.C. R18-9-101, R18-9-601, R18-11-301, and the following terms apply to this Article:
1. "Direct reuse" means the beneficial use of reclaimed water for a purpose allowed by this Article. The following is not a direct reuse of reclaimed water:
   a. The use of water subsequent to its discharge under the conditions of a National Pollutant Discharge Elimination System permit;
   b. The use of water subsequent to discharge under the conditions of an Aquifer Protection Permit issued under 18 A.A.C. 9, Articles 1 through 3; or
   c. The use of industrial wastewater or reclaimed water, or both, in a workplace subject to a federal program that protects workers from workplace exposures.
2. "Direct reuse site" means an area permitted for the application or impoundment of reclaimed water. An impoundment operated for disposal under an Aquifer Protection Permit is not a direct reuse site.
3. "End user" means a person who directly reuses reclaimed water meeting the standards for Classes A+, A, B+, B, and C, established under 18 A.A.C. 11, Article 3.
4. "Gray water" means wastewater collected separately from a sewage flow that originates from a clothes washer, bathtub, shower, and sink, but does not include wastewater from a kitchen sink, dishwasher, or toilet.
5. "Industrial wastewater" means wastewater generated from an industrial process.
6. "Irrigation" means the beneficial use of water or reclaimed water, or both, for growing crops, turf, or silviculture, or for landscaping.
7. "Open access" means that access to reclaimed water by the general public is uncontrolled.
8. "Reclaimed water" means water that has been treated or processed by a wastewater treatment plant or an on-site wastewater treatment facility. A.R.S. § 49-201(31).
9. "Reclaimed water agent" means a person who holds a permit to distribute reclaimed water to more than one end user.
10. "Reclaimed water blending facility" means an installation or method of operation that receives reclaimed water from a sewage treatment facility or other reclaimed water blending facility classified to produce Class C or better reclaimed water and blends it with other water so that the produced water may be used for a higher-class purpose listed in 18 A.A.C. 11, Article 3, Appendix A.
11. "Restricted access" means that access to reclaimed water by the general public is controlled.

Historical Note

Former Section R9-20-401 repealed, new Section R9-20-401 adopted effective May 24, 1985 (Supp. 85-3). Former Section R9-20-401 renumbered without change as Section R18-9-701 (Supp. 87-3). Amended by final rulemaking at 7 A.A.R. 758, effective January 16, 2001 (Supp. 01-1).

R18-9-702. Applicability and Standards for Reclaimed Water Classes

A. This Article applies to:
1. An owner or operator of a sewage treatment facility that generates reclaimed water for direct reuse,
2. An owner or operator of a reclaimed water blending facility,
3. A reclaimed water agent,
4. An end user,
5. A person who uses gray water,
6. A person who directly reuses reclaimed water from a sewage treatment facility combined with industrial waste-

water or combined with reclaimed water from an industrial wastewater treatment facility, and

7. A person who directly reuses reclaimed water from an industrial wastewater treatment facility in the production or processing of a crop or substance that may be used as human or animal food.

B. Reclaimed water classes A+, A, B+, B, and C specified in this Article shall meet the standards established in 18 A.A.C. 11, Article 3.

C. Nothing in this Article exempts the disposal of reclaimed water from the Aquifer Protection Permit requirements under A.R.S. Title 49, Chapter 2, Articles 1, 2, and 3.

Historical Note

Former Section R9-20-402 repealed, new Section R9-20-402 adopted effective May 24, 1985 (Supp. 85-3). Former Section R9-20-402 renumbered without change as Section R18-9-702 (Supp. 87-3). Section repealed; new Section adopted by final rulemaking at 7 A.A.R. 758, effective January 16, 2001 (Supp. 01-1).

R18-9-703. Transition of Permits

A. A person may directly reuse reclaimed water under an individual Aquifer Protection Permit or a Permit for the Reuse of Reclaimed Wastewater issued by the Department before January 1, 2001 if the person meets the conditions of the permit and the permit does not expire.

B. A person meeting the requirements of subsection (A) may apply for a new reclaimed water permit under this Article.

1. To obtain a reclaimed water permit, a person shall submit a Reclaimed Water Individual Permit application, required under R18-9-705(B), a Notice of Intent for Direct Reuse of Reclaimed Water, required under R18-9-708(B)(2), or a Notice of Intent to Operate, required under R18-9-708(C)(1) to the Department at least 120 days before the current permit expires.
2. The Department shall continue the terms of the individual Aquifer Protection Permit or the Permit for the Reuse of Reclaimed Wastewater beyond the stated date of expiration if:
   a. The permitted direct reuse is of a continuing nature; and
   b. The permittee submits a timely and complete application for a new permit.

C. Sewage treatment facility generating reclaimed water.

1. At the request of a permittee, the Department shall amend an individual Aquifer Protection Permit issued before January 1, 2001 if the permittee adequately demonstrates that the applicable quality of reclaimed water produced for direct reuse is achieved. The Department shall review:
   a. The information in the individual Aquifer Protection Permit application and the water quality test results from the previous two years to determine the classification of reclaimed water generated by the sewage treatment facility; and
   b. The available water quality data if the sewage treatment facility has operated for less than two years.
2. The Department shall ensure that an amended individual Aquifer Protection Permit contains:
   a. Identification of the class of reclaimed water generated by the facility;
   b. Requirements for monitoring reclaimed water quality and flow at a frequency appropriate to demonstrate compliance with this Article and 18 A.A.C. 11, Article 3;
   c. Requirements for quarterly reporting of the following data to the Department, any reclaimed water agent who has contracted for delivery of reclaimed water from the facility, and any end user who has not waived interest in receiving this information:
      i. Water quality test results demonstrating that reclaimed water produced by the facility meets the applicable standards for the class of water identified in subsection (C)(2)(a), and
      ii. The total volume of reclaimed water generated for direct reuse.
   d. Provision for cessation of delivery, if necessary, and storage or disposal if reclaimed water cannot be delivered for direct reuse.

Historical Note

Former Section R9-20-403 repealed, new Section R9-20-403 adopted effective May 24, 1985 (Supp. 85-3). Former Section R9-20-403 renumbered without change as Section R18-9-703 (Supp. 87-3). Editorial change to labels in subsection (c)(8) (Supp. 89-4). Section repealed; new Section adopted by final rulemaking at 7 A.A.R. 758, effective January 16, 2001 (Supp. 01-1).

R18-9-704. General Requirements

A. Sewage treatment facility. Except for permits continued under R18-9-703(A), a sewage treatment facility owner or operator shall provide reclaimed water for direct reuse only under an individual Aquifer Protection Permit amended under R18-9-703(C)(2).

B. Additional treatment. If an owner or operator of a facility accepts reclaimed water and provides additional treatment for a higher quality direct reuse, the facility is considered a sewage treatment facility and shall operate under the requirements of an individual Aquifer Protection Permit amended under R18-9-703(C)(2).

C. Reclaimed water blending facility. An owner or operator of a reclaimed water blending facility shall not conduct blending operations without obtaining a Reclaimed Water Individual Permit or Reclaimed Water General Permit.

D. Reclaimed water agent. A person shall not operate as a reclaimed water agent without obtaining a Reclaimed Water Individual Permit or a Reclaimed Water General Permit.

E. End user. A person shall not directly reuse reclaimed water unless permitted under this Article.

F. Irrigating with reclaimed water. A permittee irrigating with reclaimed water shall:

1. Use application methods that reasonably preclude human contact with reclaimed water;
2. Prevent reclaimed water from standing on open access areas during normal periods of use;
3. Prevent reclaimed water from coming into contact with drinking fountains, water coolers, or eating areas; and
4. Secure hose bibbs discharging reclaimed water to prevent use by the public.

G. Prohibited activities.

1. Irrigating with untreated sewage;
2. Providing or using reclaimed water for any of the following activities:
   a. Direct reuse for human consumption;
   b. Direct reuse for swimming, wind surfing, water skiing, or other full-immersion water activity with a potential of ingestion; or
   c. Direct reuse for evaporative cooling or misting.
3. Misapplying reclaimed water for any of the following reasons:
   a. Application of a stated class of reclaimed water that is of lesser quality than allowed by this Article for the type of direct reuse application;

b. Application of reclaimed water to any area other than a direct reuse site; or
c. Allowing runoff of reclaimed water or reclaimed water mixed with stormwater from a direct reuse site, except for:
   i. Agricultural return flow that is directed onto an adjacent field or returned to an open water conveyance; or
   ii. A discharge authorized by an individual or general NPDES or AZPDES permit.

H. A permittee shall place and maintain signage at locations specified in Table 1 so the public is informed that reclaimed water is in use and that no one should drink from the system.

Table 1. Signage Requirements for Direct Reuse Sites

Reclaimed Water Class	Hose Bibbs	Residential Irrigation	Schoolground Irrigation	Other Open Access Irrigation	Restricted Access Irrigation	Mobile Reclaimed Water Dispersal
A+	Each bibb	Front yard, or all entrances to a subdivision if the signage is supplemented by written yearly notification to individual homeowners by the homeowner's association.	On premises visible to staff and students	None	None	Back of truck or on tank
A	Each bibb	Front yard, or all entrances to a subdivision if the signage is supplemented by written yearly notification to individual homeowners by the homeowner's association.	On premises visible to staff and students	None	None	Back of truck or on tank
B+	Each bibb	Direct Reuse Not Allowed	Direct Reuse Not Allowed	Direct Reuse Not Allowed	1. Ingress points 2. On premises or at reasonably spaced intervals not more than 1/4 mile, as applicable to the use 3. Notice on golf score cards, if applicable	Back of truck or on tank
B	Each bibb	Direct Reuse Not Allowed	Direct Reuse Not Allowed	Direct Reuse Not Allowed	1. Ingress points 2. On premises or at reasonably spaced intervals not more than 1/4 mile, as applicable to the use 3. Notice on golf score cards, if applicable	Back of truck or on tank
C	Each bibb	Direct Reuse Not Allowed	Direct Reuse Not Allowed	Direct Reuse Not Allowed	1. Ingress points 2. On premises or at reasonably spaced intervals not more than 1/4 mile, as applicable to the use	Back of truck or on tank

Note: All impoundments with open access including lakes, ponds, ornamental fountains, waterfalls, and other water features shall be posted with signs regardless of the class of reclaimed water.

Historical Note

Former Section R9-20-404 repealed, new Section R9-20-404 adopted effective May 24, 1985 (Supp. 85-3). Former Section R9-20-404 renumbered without change as Section R18-9-704 (Supp. 87-3). Section repealed; new Section adopted by final rulemaking at 7 A.A.R. 758, effective January 16, 2001 (Supp. 01-1). Section R18-9-704 amended by final rulemaking at 22 A.A.R. 1696, effective August 12, 2016 (Supp. 16-2).

R18-9-705. Reclaimed Water Individual Permit Application

A. Pre-application conference. Upon request of an applicant, the Department shall schedule and hold a pre-application conference with the applicant to discuss any requirements in this Article.

B. To apply for a Reclaimed Water Individual Permit, a person shall provide the Department with:
1. The following information on a form provided by the Department:
   a. The name and mailing address of the owner or operator of the facility or the reclaimed water agent;
   b. The social security number of the applicant, if the applicant is an individual;
   c. The legal description of the direct reuse site, including latitude and longitude coordinates;
   d. Any other federal or state environmental permits issued to the applicant;
   e. Source of reclaimed water to be directly reused;
   f. Volume of reclaimed water to be directly reused on an annual basis;
   g. Class of reclaimed water to be directly reused;
   h. Description of the direct reuse activity; and
   i. The applicant's signature certifying that the information submitted in the application is true and accurate to the best of the applicant's knowledge.
2. A copy of the certificate of disclosure of violations required under A.R.S. § 49-109; and
3. The applicable permit fee specified under 18 A.A.C. 14.

C. Administrative completeness review. Upon receipt, the Department shall review the Reclaimed Water Individual Permit application to determine its administrative completeness under A.R.S. § 41-1074 and A.A.C. R18-1-503.

D. Substantive review. Upon receipt of a complete Reclaimed Water Individual Permit application, the Department shall review the application to determine its substantive adequacy under A.R.S. § 41-1075 and A.A.C. R18-1-504.

E. Draft permit. The Department shall provide the applicant a copy of a draft of the Reclaimed Water Individual Permit before the notice specified in subsection (F) is published.

F. Public participation.
1. Notice of Preliminary Decision.
   a. The Department shall publish a Notice of Preliminary Decision to issue or deny a Reclaimed Water Individual Permit within a period of time that allows the Department to meet the licensing time-frame requirements under 18 A.A.C. 5.
   b. The Department shall publish the Notice of Preliminary Decision regarding the issuance or denial of a final permit determination in one or more newspapers of general circulation where the facility is located.
   c. The Department shall accept written comments from the public before a Reclaimed Water Individual Permit is issued or denied.
   d. The written public comment period begins on the publication date of the Notice of Preliminary Decision and extends for 30 calendar days.
2. After publishing the notice specified in subsection (F)(1)(a), the Department shall hold a public hearing to address the Notice of Preliminary Decision if the Department determines that:
   a. Public interest in a public hearing exists, or
   b. Issues or information have been brought to the attention of the Department that are relevant to the permitting decision and have not been considered previously in the permitting process.
3. If the Department determines that a public hearing is necessary and a public hearing has not already been noticed under subsection (F)(1)(a), the Department shall schedule a public hearing and republish the Notice of Preliminary Decision as a legal notice at least once, in one or more newspapers of general circulation where the facility is located.
4. The Department shall accept written public comment until the close of the hearing record as specified by the person presiding at the public hearing.

G. Final permit issuance or denial.
1. The Department shall give the applicant written notification of its final decision to issue or deny the permit application within the overall licensing time-frame requirements in 18 A.A.C. 5.
2. The Department may deny a Reclaimed Water Individual Permit if the Department determines upon completion of the application process that the applicant has:
   a. Failed or refused to correct a deficiency in the permit application;
   b. Failed to demonstrate that the facility and the operation will protect public health and water quality. This determination shall be based on:
      i. The information submitted in the permit application,
      ii. Any information submitted to the Department as written public comment or following a public hearing; or
      iii. Any information relevant to the demonstration that is developed or acquired by the Department, or
   c. Provided false or misleading information.
3. If the Department denies a Reclaimed Water Individual Permit the Department shall provide the applicant with written notification that explains the following:
   a. The reasons for the denial with references to the statutes or rules on which the denial is based.
   b. The applicant's right to appeal the denial, including the number of days the applicant has to file a notice of appeal, and the name and telephone number of the Department contact person who can answer questions regarding the appeals process.
   c. The applicant's right to request an informal settlement conference under A.R.S. §§ 41-1092.03(A) and 41-1092.06.

Historical Note

Former Section R9-20-405 repealed, new Section R9-20-405 adopted effective May 24, 1985 (Supp. 85-3). Former Section R9-20-405 renumbered without change as Section R18-9-705 (Supp. 87-3). Section repealed; new Section adopted by final rulemaking at 7 A.A.R. 758, effective January 16, 2001 (Supp. 01-1).

R18-9-706. Reclaimed Water Individual Permit General Provisions

A. A Reclaimed Water Individual Permit obtained under R18-9-705:
1. Is valid for five years;
2. May be amended, transferred, reissued, or revoked by the Director based on whether the permittee meets the terms of the individual permit and the requirements of this Article; and
3. Continues, pending the issuance of a new permit, with the same terms following its expiration if the following are met:

a. The permittee submits an application for a new permit at least 120 days before the expiration of the existing permit; and
b. The permitted activity is of a continuing nature.

B. A Reclaimed Water Individual Permit shall contain, if applicable:
1. The class of reclaimed water to be applied for direct reuse;
2. Specific reuse applications or limitations on reuse;
3. Requirements for monitoring reclaimed water quality and flow to demonstrate compliance with this Article and 18 A.A.C. 11, Article 3;
4. Requirements for reporting the following data to demonstrate compliance with this Article and 18 A.A.C. 11, Article 3:
   a. Water quality test results demonstrating that the reclaimed water meets the applicable standards for the class of water identified in subsection (B)(1), and
   b. The total volume of reclaimed water generated for direct reuse.
5. Requirements for maintaining records of all monitoring information and monitoring activities that include:
   a. The date, description of sampling location, and time of sampling or measurement;
   b. The name of the person who performed the sampling or measurement;
   c. The date the analyses were performed;
   d. The name of the person who performed the analyses;
   e. The analytical techniques or methods used;
   f. The results of the analyses; and
   g. Documentation of sampling technique, sample preservation, and transportation, including chain-of-custody forms.
6. Requirements to retain all monitoring activity records and results, including all original strip chart recordings for continuous monitoring instrumentation, and calibration and maintenance records for five years from the date of sampling or analysis. The Director shall extend the five-year retention period:
   a. During the course of an unresolved litigation regarding compliance with the permit conditions, or
   b. For any other justifiable cause.
7. A requirement to allow all end users access to the records of physical, chemical, and biological quality of the reclaimed water.

C. Permit transfer. A permittee may transfer a Reclaimed Water Individual Permit to another person if the following conditions are met:
1. The permittee notifies the Director of the proposed transfer.
2. The permittee submits a written agreement containing a specific date for the transfer of permit responsibility and coverage between the current permittee and the proposed new permittee, including an acknowledgment that the existing permittee is liable for violations up to the date of transfer and that the proposed new permittee will be liable for violations from that date forward.
3. The notice specified in subsection (C)(1) contains any information for the proposed new permittee that is changed from the information submitted under R18-9-705(B).
4. The Director, within 30 days of receiving a transfer notice from the permittee, does not notify both the current permittee and proposed new permittee of the intent to amend, revoke, or reissue the permit or require the proposed new permittee to file an application for a new permit rather than agreeing to transfer the current permit.

Historical Note

Former Section R9-20-406 repealed, new Section R9-20-406 adopted effective May 24, 1985 (Supp. 85-3). Former Section R9-20-406 renumbered without change as Section R18-9-706 (Supp. 87-3). Amended effective December 1, 1988 (Supp. 88-4). Section repealed; new Section adopted by final rulemaking at 7 A.A.R. 758, effective January 16, 2001 (Supp. 01-1).

R18-9-707. Reclaimed Water Individual Permit Where Industrial Wastewater Influences the Characteristics of Reclaimed Water

A. The following activities are prohibited unless a Reclaimed Water Individual Permit is obtained under R18-9-705:
1. Direct reuse of reclaimed water from a sewage treatment facility that is combined with industrial wastewater or that is combined with reclaimed water from an industrial wastewater treatment facility.
2. Direct reuse of reclaimed water from an industrial wastewater treatment facility for production or processing of a crop or substance that may be used as human or animal food.

B. In addition to the requirements in R18-9-705(B), an application for a Reclaimed Water Individual Permit shall include:
1. Each source of the industrial wastewater with Standard Industrial Code, and the projected rates and volumes from each source;
2. The chemical, biological, and physical characteristics of the industrial wastewater from each source; and
3. If reclaimed water will be used in the processing of any crop or substance that may be used as human or animal food, the information regarding food safety and any potential adverse health effects of this direct reuse.

Historical Note

Former Section R9-20-407 repealed, new Section R9-30-407 adopted effective May 24, 1985 (Supp. 85-3). Former Section R9-20-407 renumbered without change as Section R18-9-707 (Supp. 87-3). Section repealed; new Section adopted by final rulemaking at 7 A.A.R. 758, effective January 16, 2001 (Supp. 01-1).

R18-9-708. Reusing Reclaimed Water Under a General Permit

A. Type 1 Reclaimed Water General Permit. A person may directly reuse reclaimed water without notice to the Department if:
1. The direct reuse is specifically authorized by and meets the requirements of this Article, and
2. Complies with the requirements of the Type 1 Reclaimed Water General Permit under R18-9-711.

B. Type 2 Reclaimed Water General Permit.
1. A person may directly reuse reclaimed water under a Type 2 Reclaimed Water General Permit if:
   a. The direct reuse is authorized by and meets the requirements of this Article;
   b. The direct reuse meets all the conditions of the applicable Type 2 Reclaimed Water General Permit under R18-9-712 through R18-9-716;
   c. The person files a Notice of Intent for Direct Reuse of Reclaimed Water under subsection (B)(2); and
   d. The person submits the applicable fee established in 18 A.A.C. 14.
2. Notice of Intent for Direct Reuse of Reclaimed Water.

a. A person shall submit, by certified mail, in person, or by another method approved by the Department, the Notice of Intent for Direct Reuse of Reclaimed Water on a form provided by the Department.
b. The Notice of Intent for Direct Reuse of Reclaimed Water shall include;
i. The name, address, and telephone number of the applicant;
ii. The social security number of the applicant, if the applicant is an individual;
iii. The name, address, and telephone number of the contact person;
iv. The source, volume, and class of reclaimed water to be directly reused;
v. A legal description of the direct reuse site, including latitude and longitude coordinates;
vi. The description of the direct reuse activity, including a description of acreage and the type of vegetation to be irrigated, if applicable to the type of direct reuse activity; and
vii. The permittee's signature certifying that the permittee agrees to comply with all requirements of this Article, including specific terms of the applicable Reclaimed Water General Permit.

C. Type 3 Reclaimed Water General Permit. A person may operate under a Type 3 Reclaimed Water General Permit after filing an applicable Notice of Intent to Operate with the Department and receiving a written Verification of General Permit Conformance for the operation.
1. Application submittal. The applicant shall submit, either by certified mail, in person at the Department, or by another method approved by the Department:
a. The Notice of Intent to Operate on a form provided by the Department containing the information specified in the applicable Type 3 Reclaimed Water General Permit under R18-9-717(B), R18-9-718(C), or R18-9-719(B), and
b. The applicable fee established in 18 A.A.C. 14.
2. Verification issuance. If, after reviewing the Notice of Intent to Operate, the Department determines that the direct reuse conforms with the conditions of a Type 3 Reclaimed Water General Permit and all other applicable requirements of this Article, the Department shall issue the Verification of General Permit Conformance.
3. Verification denial.
a. If the Department determines on the basis of its review or an inspection that the direct reuse does not conform to the conditions of the applicable Type 3 Reclaimed Water General Permit or other applicable requirements of this Article, the Department shall notify the applicant of its decision not to issue the Verification of General Permit Conformance.
b. If an application is denied, the applicant shall not operate under a Type 3 Reclaimed Water General Permit.
c. The applicant may appeal the decision not to issue a Verification of General Permit Conformance under A.R.S. §§ 41-1092 through 41-1092.12.
4. Automatic issuance. If the Department does not issue the Verification of General Permit Conformance within the time-frame specified under 18 A.A.C. 1, Article 5, and does not notify the applicant that it will not issue the verification, the verification automatically becomes effective upon expiration of the overall time-frame.

Historical Note
New Section adopted by final rulemaking at 7 A.A.R. 758, effective January 16, 2001 (Supp. 01-1).

R18-9-709. Reclaimed Water General Permit Renewal and Transfer

A. General permit renewal. A permittee shall renew a Reclaimed Water General Permit at least 90 days before the permit expires by following the procedure described in either R18-9-708(B) or (C) and include the applicable fee established in 18 A.A.C. 14.
1. A Type 1 Reclaimed Water General Permit is valid as long as the conditions of the general permit and the requirements of this Article are met. No renewal is required;
2. A Type 2 Reclaimed Water General Permit is valid for five years from the date the Department receives the Notice of Intent for Direct Reuse of Reclaimed Water;
3. A Type 3 Reclaimed Water General Permit is valid for five years from the date the Verification of General Permit Conformance becomes effective.

B. General permit transfer. A permittee shall provide notice to the Department by certified mail within 15 days following the transfer of a Type 2 or Type 3 Reclaimed Water General Permit. The Notice of Transfer shall:
1. Contain any information that has changed from the original Notice of Intent for Direct Reuse of Reclaimed Water or the Notice of Intent to Operate, including all information on the proposed new permittee, and
2. Include the applicable fee established in 18 A.A.C. 14.

Historical Note
New Section adopted by final rulemaking at 7 A.A.R. 758, effective January 16, 2001 (Supp. 01-1).

R18-9-710. Reclaimed Water General Permit Revocation

A. The Director may revoke a Reclaimed Water General Permit if the permittee fails to comply with any requirement in this Article, including a condition specified in the applicable Reclaimed Water General Permit. The Director shall make the determination based on the risk to public health and safety or a threat to waters of the state.
1. Before revoking a general permit, the Department shall provide notice to the permittee by certified mail of the Department's intent to revoke the Reclaimed Water General Permit. The notice of intent to revoke the general permit shall provide the permittee a reasonable opportunity to correct any noncompliance and specify a time-frame within which the permittee shall achieve compliance.
2. If the permittee fails to correct the noncompliance within the specified time-frame, the Department shall notify the permittee, by certified mail, of the Director's decision to revoke the Reclaimed Water General Permit.

B. The Director shall revoke a Reclaimed Water General Permit for any or all facilities located within a specific geographic area, if, due to a geologic or hydrologic condition, the cumulative effect of the facilities subject to the Reclaimed Water General Permit has violated or will violate a Water Quality Standard established under A.R.S. §§ 49-221 and 49-223.

Historical Note
New Section adopted by final rulemaking at 7 A.A.R. 758, effective January 16, 2001 (Supp. 01-1).

R18-9-711. Type 1 Reclaimed Water General Permit for Gray Water

A. A Type 1 Reclaimed Water General Permit allows private residential direct reuse of gray water for a flow of less than 400 gallons per day if all the following conditions are met:
1. Human contact with gray water and soil irrigated by gray water is avoided;
2. Gray water originating from the residence is used and contained within the property boundary for household gardening, composting, lawn watering, or landscape irrigation;
3. Surface application of gray water is not used for irrigation of food plants, except for citrus and nut trees;
4. The gray water does not contain hazardous chemicals derived from activities such as cleaning car parts, washing greasy or oily rags, or disposing of waste solutions from home photo labs or similar hobbyist or home occupational activities;
5. The application of gray water is managed to minimize standing water on the surface;
6. The gray water system is constructed so that if blockage, plugging, or backup of the system occurs, gray water can be directed into the sewage collection system or on-site wastewater treatment and disposal system, as applicable. The gray water system may include a means of filtration to reduce plugging and extend system lifetime;
7. Any gray water storage tank is covered to restrict access and to eliminate habitat for mosquitoes or other vectors;
8. The gray water system is sited outside of a floodway;
9. The gray water system is operated to maintain a minimum vertical separation distance of at least five feet from the point of gray water application to the top of the seasonally high groundwater table;
10. For residences using an on-site wastewater treatment facility for black water treatment and disposal, the use of a gray water system does not change the design, capacity, or reserve area requirements for the on-site wastewater treatment facility at the residence, and ensures that the facility can handle the combined black water and gray water flow if the gray water system fails or is not fully used;
11. Any pressure piping used in a gray water system that may be susceptible to cross connection with a potable water system clearly indicates that the piping does not carry potable water;
12. Gray water applied by surface irrigation does not contain water used to wash diapers or similarly soiled or infectious garments unless the gray water is disinfected before irrigation; and
13. Surface irrigation by gray water is only by flood or drip irrigation.

B. Prohibitions. The following are prohibited:
1. Gray water use for purposes other than irrigation, and
2. Spray irrigation.

C. Towns, cities, or counties may further limit the use of gray water described in this Section by rule or ordinance.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 758, effective January 16, 2001 (Supp. 01-1).

R18-9-712. Type 2 Reclaimed Water General Permit for Direct Reuse of Class A+ Reclaimed Water

A. A Type 2 Reclaimed Water General Permit for Direct Reuse of Class A+ Reclaimed Water allows any direct reuse application of reclaimed water listed in 18 A.A.C. 11, Article 3, Appendix A, if the conditions in this Article are met.

B. Record maintenance. A permittee shall maintain records for five years that describe the direct reuse site and the total amount of reclaimed water used annually for the permitted direct reuse activity. The records shall be made available to the Department upon request.

C. A permittee shall post signs as specified in R18-9-704(H).

D. No lining is required for an impoundment storing Class A+ reclaimed water.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 758, effective January 16, 2001 (Supp. 01-1).

R18-9-713. Type 2 Reclaimed Water General Permit for Direct Reuse of Class A Reclaimed Water

A. A Type 2 Reclaimed Water General Permit for the Direct Reuse of Class A Reclaimed Water allows any direct reuse application of reclaimed water listed in 18 A.A.C. 11, Article 3, Appendix A, if the conditions in this Article are met.

B. Records and reporting. A permittee shall:
1. Maintain records containing the following information for five years, and make them available to the Department upon request:
   a. The direct reuse site,
   b. The volume of reclaimed water applied monthly for each category of direct reuse activity listed in 18 A.A.C. 11, Article 3, Appendix A,
   c. The total nitrogen concentration of the reclaimed water applied, and
   d. The acreage and type of vegetation to which the reclaimed water is applied.
2. Report annually to the Department on or before the anniversary date of the Notice of Intent:
   a. The volume of reclaimed water received,
   b. The type of reclaimed water application, and
   c. If used for irrigation, the vegetation and acreage irrigated.

C. Nitrogen management. A permittee shall ensure that:
1. Impoundments storing reclaimed water allowed by the general permit are lined using a low-hydraulic conductivity artificial or site-specific liner material achieving a calculated discharge rate less than 550 gallons per acre per day; and
2. The application rates of the reclaimed water are based on one of the following:
   a. The water allotment assigned by the Arizona Department of Water Resources;
   b. A water balance that considers consumptive use of water by the crop, turf, or landscape vegetation; or
   c. An alternative method approved by the Department.

D. In addition to the Notice of Intent for Direct Reuse of Reclaimed Water specified in R18-9-708(B)(2), the applicant shall provide a list of impoundments and the liner characteristics and the method chosen from the list in subsection (C)(2).

E. The permittee shall post signs as specified in R18-9-704(H).

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 758, effective January 16, 2001 (Supp. 01-1).

R18-9-714. Type 2 Reclaimed Water General Permit for Direct Reuse of Class B+ Reclaimed Water

A. A Type 2 Reclaimed Water General Permit for Direct Reuse of Class B+ Reclaimed Water allows any direct reuse application of Class B and Class C reclaimed water listed in 18 A.A.C. 11, Article 3, Appendix A, if the conditions in this Article are met.

B. A permittee shall comply with the record maintenance and posting requirements established under R18-9-712 and make records available to the Department upon request.

C. No lining is required for an impoundment storing Class B+ reclaimed water.

Historical Note
New Section adopted by final rulemaking at 7 A.A.R. 758, effective January 16, 2001 (Supp. 01-1).

R18-9-715. Type 2 Reclaimed Water General Permit for Direct Reuse of Class B Reclaimed Water

A. A Type 2 Reclaimed Water General Permit for the Direct Reuse of Class B Reclaimed Water allows the direct reuse application of Class B and Class C reclaimed water listed in 18 A.A.C. 11, Article 3, Appendix A, if conditions in this Article are met.

B. A permittee shall comply with the requirements established under R18-9-713(B), (C), (D), and (E).

Historical Note
New Section adopted by final rulemaking at 7 A.A.R. 758, effective January 16, 2001 (Supp. 01-1).

R18-9-716. Type 2 Reclaimed Water General Permit for Direct Reuse of Class C Reclaimed Water

A. A Type 2 Reclaimed Water General Permit for the Direct Reuse of Class C Reclaimed Water allows the direct reuse application of Class C reclaimed water listed in 18 A.A.C. 11, Article 3, Appendix A, if conditions in this Article are met.

B. A permittee shall comply with the requirements established under R18-9-713(B), (C), (D), and (E).

Historical Note
New Section adopted by final rulemaking at 7 A.A.R. 758, effective January 16, 2001 (Supp. 01-1).

R18-9-717. Type 3 Reclaimed Water General Permit for a Reclaimed Water Blending Facility

A. Permit conditions.
1. A Type 3 Reclaimed Water General Permit for a Reclaimed Water Blending Facility allows the blending of reclaimed water with other water, if the conditions in this Article are met.
2. Blending reclaimed water with industrial wastewater or with reclaimed water from an industrial wastewater treatment plant is not authorized by this general permit.

B. A person shall file with the Department a Notice of Intent to Operate a reclaimed water blending facility at least 90 days before the date the proposed activity will start. The Notice of Intent to Operate shall include:
1. The name, address, and telephone number of the applicant;
2. The social security number of the applicant, if the applicant is an individual;
3. The name, address, and telephone number of a contact person;
4. The source and volume of reclaimed water to be blended;
5. The class of reclaimed water to be blended;
6. The source, volume, and quality of other water to be blended;
7. A legal description of the reclaimed water blending facility, including latitude and longitude coordinates;
8. A description of the reclaimed water blending facility, including a demonstration that the proposed blending methodology will meet the standards established in 18 A.A.C. 11, Article 3 for the class of reclaimed water the facility will produce;
9. A signature on the notice of intent certifying that the applicant agrees to comply with the requirements of this Article, 18 A.A.C. 11, Article 3, and the terms of this reclaimed water general permit; and
10. The applicable permit fee specified under 18 A.A.C. 14.

C. A person shall not operate a reclaimed water blending facility until the Department issues a written Verification of General Permit Conformance under R18-9-708(C).

D. A permittee shall monitor:
1. The blended water quality for total nitrogen and fecal coliform at frequencies specified by the class of reclaimed water in 18 A.A.C. 11, Article 3.
   a. If the concentration of either total nitrogen or fecal coliform, as applicable, exceeds the limits for the reclaimed water class established in 18 A.A.C. 11, Article 3, the permittee shall submit a report to the Department within 30 days with a proposal to change the blending process. The permittee shall also double the monitoring frequency for the next two months.
   b. If another exceedance occurs within the interval of increased monitoring, the permittee shall submit an application within 45 days for a Reclaimed Water Individual Permit.
2. The volume of reclaimed water, the volume of the other water, and the total volume of blended water delivered for direct reuse on a monthly basis.

E. The permittee shall report the results of the monitoring under subsection (D) to the Department on or before the anniversary date of the verification approval and shall make this information available to the end users.

Historical Note
New Section adopted by final rulemaking at 7 A.A.R. 758, effective January 16, 2001 (Supp. 01-1).

R18-9-718. Type 3 Reclaimed Water General Permit for a Reclaimed Water Agent

A. A Type 3 Reclaimed Water General Permit allows a person to operate as a Reclaimed Water Agent if that the conditions of this Article are met, and the following conditions are met for the class of reclaimed water delivered by the Reclaimed Water Agent:
1. Signage requirements specified under R18-9-704(H), as applicable;
2. Impoundment liner requirements specified under R18-9-712(D), R18-9-713(C), R18-9-714(C), R18-9-715(B), or R18-9-716(B), as applicable; and
3. Nitrogen management requirements specified under R18-9-713(C), R18-9-715(B), and R18-9-716(B), as applicable.

B. A person holding a Type 3 Reclaimed Water Permit for a Reclaimed Water Agent:
1. Is responsible for the direct reuse of reclaimed water by more than one end user instead of direct reuse by the end users under separate Type 2 Reclaimed Water General Permits, and
2. Shall maintain a contractual agreement with each end user stipulating any end user responsibilities for the requirements specified under subsection (A).

C. A person shall file with the Department a Notice of Intent to Operate as a reclaimed water agent at least 90 days before the date the proposed activity will start. The Notice of Intent to Operate shall include:
1. The name, address, and telephone number of the applicant;
2. The social security number of the applicant, if the applicant is an individual;
3. The name, address, and telephone number of a contact person;

4. The following information for each end user to be supplied reclaimed water by the applicant:
   a. The name, address and telephone number of the end user;
   b. A legal description of each direct reuse site, including latitude and longitude coordinates; and
   c. A description of each direct reuse activity, including the type of vegetation, acreage, and annual volume of reclaimed water to be used, unless Class A+ or Class B+ reclaimed water is delivered.
5. The source, class, and annual volume of reclaimed water to be delivered by the applicant;
6. A description of the contractual arrangement between the applicant and each end user, including any end user responsibilities for the requirements specified under subsection (A); and
7. The applicable permit fee specified under 18 A.A.C. 14.

D. A proposed reclaimed water agent shall not distribute reclaimed water to end users until the Department issues a written Verification of General Permit Conformance issued under R18-9-708(C).

E. A reclaimed water agent shall record and annually report the following information to the Department, on or before each anniversary date of the verification approval:
1. The total volume of reclaimed water delivered by the reclaimed water agent;
2. The volume of reclaimed water delivered to each end user for Class A, Class B, and Class C reclaimed water; and
3. Any change in the information submitted under subsection (C).

F. The reclaimed water agent shall notify the Department before the end of each calendar year of any changes in the information submitted under subsection (C).

Historical Note
New Section adopted by final rulemaking at 7 A.A.R. 758, effective January 16, 2001 (Supp. 01-1).

R18-9-719. Type 3 Reclaimed Water General Permit for Gray Water

A. A Type 3 Reclaimed Water General Permit allows a gray water irrigation system if:
1. The general permit described in R18-9-711 does not apply,
2. The flow is not more than 3000 gallons per day, and
3. The gray water system satisfies the notification, design, and installation requirements specified in subsection (C).

B. A person shall file a Notice of Intent to Operate a Gray Water Irrigation System with the Department at least 90 days before the date the proposed activity will start. The Notice of Intent to Operate shall include:
1. The name, address and telephone number of the applicant;
2. The social security number of the applicant, if the applicant is an individual;
3. A legal description of the direct reuse site, including latitude and longitude coordinates;
4. The design plans for the gray water irrigation system;
5. A signature on the Notice of Intent to Operate certifying that the applicant agrees to comply with the requirements of this Article and the terms of this Reclaimed Water General Permit; and
6. The applicable permit fee specified under 18 A.A.C. 14.

C. The following technical requirements apply to the design and installation of a gray water irrigation system allowed under this Reclaimed Water General Permit:
1. Design of the gray water irrigation system shall meet the on-site wastewater treatment facility requirements under R18-9-A312(C), (D)(1), (D)(2), (E)(1), (G), and R18-9-E302(C)(1), except the septic tank specified in R18-9-E302(C)(1) is not required if pretreatment of gray water is not necessary for the intended application;
2. Design of the dispersal trenches for the gray water irrigation system shall meet the on-site wastewater treatment facility requirements for shallow trenches specified in R18-9-E302(C)(2);
3. The depth of the gray water dispersal trenches shall be appropriate for the intended irrigation use but not more than 5 feet below the finished grade of the native soil; and
4. The void space volume of the aggregate fill in the gray water dispersal trench below the bottom of the distribution pipe shall have enough capacity to contain two days of gray water at the design flow.

D. The Department may review design plans and details and accept a gray water irrigation system that differs from the requirements specified in subsection (C) if the system provides equivalent performance and protection of human health and water quality.

Historical Note
New Section adopted by final rulemaking at 7 A.A.R. 758, effective January 16, 2001 (Supp. 01-1).

R18-9-720. Enforcement and Penalties

Any person who violates a condition specified in a permit issued under this Article, falsifies data or information submitted to the Department as required under Articles 6 or 7 of this Chapter, or violates a provision of Article 6 or 7 of this Chapter, is subject to the enforcement actions prescribed under A.R.S. §§ 49-261 and 49-262.

Historical Note
New Section adopted by final rulemaking at 7 A.A.R. 758, effective January 16, 2001 (Supp. 01-1).

ARTICLE 8. REPEALED

R18-9-801. Repealed

Historical Note
Corrected A.R.S. reference (Supp. 77-3). Former Section R9-8-311 renumbered without change as Section R18-9-801 (Supp. 87-3). Amended effective December 1, 1988 (Supp. 88-4). Section repealed by final rulemaking at 7 A.A.R. 235, effective December 8, 2000 (Supp. 00-4).

R18-9-802. Repealed

Historical Note
Amended by adding subsections (N) through (R) effective June 8, 1981 (Supp. 81-3). Former Section R9-8-312 renumbered without change as Section R18-9-802 (Supp. 87-3). Section repealed by final rulemaking at 7 A.A.R. 235, effective December 8, 2000 (Supp. 00-4).

R18-9-803. Repealed

Historical Note
Amended effective April 18, 1979 (Supp. 79-2). Amended by adding subsection (E) effective October 2, 1986 (Supp. 86-5). Former Section R9-8-313 renumbered without change as Section R18-9-803 (Supp. 87-3). Section repealed by final rulemaking at 7 A.A.R. 235, effective December 8, 2000 (Supp. 00-4).

R18-9-804. Repealed

A.R.S. § 49-203

Current through First Regular Session of the Fifty-Third Legislature (2017), all legislation. Unless the act provides a specific effective date, the general effective date for 2017 legislation is August 9, 2017.

LexisNexis® Arizona Annotated Revised Statutes > Title 49 The Environment > Chapter 2 Water Quality Control > Article 1. General Provisions

49-203. Powers and duties of the director and department

A. The director shall:

1. Adopt, by rule, water quality standards in the form and subject to the considerations prescribed by article 2 of this chapter.

2. Adopt, by rule, a permit program that is consistent with but no more stringent than the requirements of the clean water act for the point source discharge of any pollutant or combination of pollutants into navigable waters. The program and the rules shall be sufficient to enable this state to administer the permit program identified in section 402(b) of the clean water act including the sewage sludge requirements of section 405 of the clean water act and as prescribed by article 3.1 of this chapter.

3. Adopt, by rule, a program to control nonpoint source discharges of any pollutant or combination of pollutants into navigable waters.

4. Adopt, by rule, an aquifer protection permit program to control discharges of any pollutant or combination of pollutants that are reaching or may with a reasonable probability reach an aquifer. The permit program shall be as prescribed by article 3 of this chapter.

5. Adopt, by rule, the permit program for underground injection control described in the safe drinking water act.

6. Adopt, by rule, technical standards for conveyances of reclaimed water and a permit program for the direct reuse of reclaimed water.

7. Adopt, by rule or as permit conditions, such discharge limitations, best management practice standards, new source performance standards, toxic and pretreatment standards and such other standards and conditions as are reasonable and necessary to carry out the permit programs and regulatory duties described in paragraphs 2 through 5 of this subsection.

8. Assess and collect fees to revoke, issue, deny, modify or suspend permits issued pursuant to this chapter and to process permit applications. The director may also assess and collect costs reasonably necessary if the director must conduct sampling or monitoring relating to a facility because the owner or operator of the facility has refused or failed to do so on order by the director. The director shall set fees that are reasonably related to the department's costs of providing the service for which the fee is charged. State agencies are exempt from all fees imposed pursuant to this chapter. Monies collected from aquifer protection permit fees and from Arizona pollutant discharge elimination system permit fees shall be deposited, pursuant to *sections 35-146* and *35-147*, in the water quality fee fund established by *section 49-210*. Monies from other permit fees shall be deposited, pursuant to *sections 35-146* and *35-147*, in the water quality fee fund unless otherwise provided by law. Monies paid by an applicant for review by consultants for the department pursuant to *section 49-241.02*, subsection D, shall be deposited, pursuant to *sections 35-146* and *35-147*, in the water quality fee fund established by *section 49-210*.

9. Adopt, modify, repeal and enforce other rules that are reasonably necessary to carry out the director's functions under this chapter.

10. Require monitoring at an appropriate point of compliance for any organic or inorganic pollutant listed under *section 49-243*, subsection I if the director has reason to suspect the presence of the pollutant in a discharge.

11. Adopt rules establishing what constitutes a significant increase or adverse alteration in the characteristics or volume of pollutants discharged for purposes of determining what constitutes a major modification to an existing facility under the definition of new facility pursuant to *section 49-201*. Before the adoption of these rules, the director shall determine whether a change at a particular facility results in a significant increase or adverse alteration in the characteristics or volume of pollutants discharged on a case by case basis, taking into account site conditions and operational factors.

B. The director may:

1. On presentation of credentials, enter into, on or through any public or private property from which a discharge has occurred, is occurring or may occur or on which any disposal, land application of sludge or treatment regulated by this chapter has occurred, is occurring or may be occurring and any public or private property where records relating to a discharge or records that are otherwise required to be maintained as prescribed by this chapter are kept, as is reasonably necessary to ensure compliance with this chapter. The director or a department employee may take samples, inspect and copy records required to be maintained pursuant to this chapter, inspect equipment, activities, facilities and monitoring equipment or methods of monitoring, take photographs and take other action reasonably necessary to determine the application of, or compliance with, this chapter. The owner or managing agent of the property shall be afforded the opportunity to accompany the director or department employee during inspections and investigations, but prior notice of entry to the owner or managing agent is not required if reasonable grounds exist to believe that such notice would frustrate the enforcement of this chapter. If the director or department employee obtains any samples before leaving the premises, the director or department employee shall give the owner or managing agent a receipt describing the samples obtained and a portion of each sample equal in volume or weight to the portion retained. If an analysis is made of samples, or monitoring and testing are performed, a copy of the results shall be furnished promptly to the owner or managing agent.

2. Require any person who has discharged, is discharging or may discharge into the waters of the state under article 3 or 3.1 of this chapter and any person who is subject to pretreatment standards and requirements or sewage sludge use or disposal requirements under article 3.1 of this chapter to collect samples, to establish and maintain records, including photographs, and to install, use and maintain sampling and monitoring equipment to determine the absence or presence and nature of the discharge or indirect discharge or sewage sludge use or disposal.

3. Administer state or federal grants, including grants to political subdivisions of this state, for the construction and installation of publicly and privately owned pollutant treatment works and pollutant control devices and establish grant application priorities.

4. Develop, implement and administer a water quality planning process, including a ranking system for applicant eligibility, wherein appropriated state monies and available federal monies are awarded to political subdivisions of this state to support or assist regional water quality planning programs and activities.

5. Enter into contracts and agreements with the federal government to implement federal environmental statutes and programs.

6. Enter into intergovernmental agreements pursuant to title 11, chapter 7, article 3 if the agreement is necessary to more effectively administer the powers and duties described in this chapter.

7. Participate in, conduct and contract for studies, investigations, research and demonstrations relating to the causes, minimization, prevention, correction, abatement, mitigation, elimination, control and remedy of discharges and collect and disseminate information relating to discharges.

8. File bonds or other security as required by a court in any enforcement actions under article 4 of this chapter.

C. Subject to *section 38-503* and other applicable statutes and rules, the department may contract with a private consultant for the purposes of assisting the department in reviewing aquifer protection permit applications and on-site wastewater treatment facilities to determine whether a facility meets the criteria and requirements of this chapter and the rules adopted by the director. Except as provided in *section 49-241.02*, subsection D, the department shall not use a private consultant if the fee charged for that service would be greater than the fee the department would charge to

provide that service. The department shall pay the consultant for the services rendered by the consultant from fees paid by the applicant or facility to the department pursuant to subsection A, paragraph 8 of this section.

D. The director shall integrate all of the programs authorized in this section and such other programs affording water quality protection that are administered by the department for purposes of administration and enforcement and shall avoid duplication and dual permitting to the maximum extent practicable.

History

Last legislative year: 2010.

Recent legislative history: Laws 1999, Ch. 26, § 5; Laws 2000, Ch. 193, § 563; Laws 2001, Ch. 357, § 2; Laws 2010, 2nd Reg. Sess., Ch. 265, § 2.

Annotations

Notes

Prior Law

Laws 1996, 2nd Reg. Sess., Ch. 194, § 5.

Laws 1994, 2nd Reg. Sess., Ch. 237, § 2.

Editor's note.

Laws 2010, 2nd Reg. Sess., Ch. 265, § 11 provides, "If the legislature authorizes the department of environmental quality to collect or impose a fee, assessment or other levy to be used for a specific purpose and not to fund the state general fund, the monies so collected must be used only for the purposes authorized by law. This act is intended to restore the trust of the people of this state and the businesses that operate in this state and that have paid and will be required to pay those fees, assessments and other levies that those monies will be used for the stated purpose and not for some other purpose."

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End of Document

D-5

INDUSTRIAL COMMISSION (R-17-1005)
Title 20, Chapter 5, Article 12, Arizona Minimum Wage and Earned Paid Sick Time Practice and Procedure

Amend: Article 12; R20-5-1201; R20-5-1202; R20-5-1205; R20-5-1206; R20-5-1208; R20-5-1209; R20-5-1210; R20-5-1211; R20-5-1213; R20-5-1218

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

MEETING DATE: October 3, 2017 **AGENDA ITEM: D-5**

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

FROM: Chris Kleminich, Staff Attorney

DATE: September 19, 2017

SUBJECT: **INDUSTRIAL COMMISSION (R-17-1005)**
Title 20, Chapter 5, Article 12, Arizona Minimum Wage and Earned Paid Sick Time Practice and Procedure

Amend: Article 12; R20-5-1201; R20-5-1202; R20-5-1205; R20-5-1206; R20-5-1208; R20-5-1209; R20-5-1210; R20-5-1211; R20-5-1213; R20-5-1218

Purpose of the Agency and Summary of What the Rulemaking Does

The purpose of the Industrial Commission (Commission) is to "promote the health, safety and welfare of employees." Laws 2006, Ch. 15, § 3. In November 2016, voters approved Proposition 206, the Fair Wages and Healthy Families Act (Act). The Act's minimum wage provisions took effect on January 1, 2017. The Act's earned paid sick time provisions took effect on July 1, 2017. To implement the Act, the Commission is amending ten rules in A.A.C. Title 20, Chapter 5.

The Commission notes that its existing rules only address the enforcement and implementation of the state's minimum wage laws. As the Commission is now responsible for enforcing and implementing, the earned paid sick time provisions of the Act, the Commission is proposing to modify its rules to address matters related to earned paid sick time. The Commission indicates that it is also conforming its "independent contractor" analysis to statutorily outlined factors, defining the term "small employer" and exempting "small employers" from the Act's posting requirements, and making various technical amendments.

Exemption or Request and Approval for Exception from the Moratorium

The Commission received approval to proceed with the rulemaking from Governor Ducey's office on March 29, 2017.

Proposed Action

- Section 1201 – *Notice of Rules*: Technical amendments are made.
- Section 1202 – *Definitions*: The Commission is defining terms for application to both the Act and the rules.
- Section 1205 – *Determination of Employment Relationship*: In subsection (A), the Commission is conforming its "independent contractor" analysis to the factors identified in A.R.S. §§ 23-902(D) and 23-1601(B).
- Section 1206 – *Payment of Minimum Wage; Commissions; Tips; Front Loading Earned Paid Sick Time; Limitation on Carry Over of Unused Earned Paid Sick Time*: Subsections (F)-(I), related to the "front loading" and carry over of earned paid sick time, are added.
- Section 1208 – *Posting Requirements; Small Employer Exemption*: Subsection (A) is amended to exempt "small employers" from being required to conspicuously place posters informing employees of their rights under the Act. Subsection (B) is added to define the term "small employer" as "a corporation, proprietorship, partnership, joint venture, limited liability company, trust, or association that has less than $500,000 in gross annual revenue."
- Section 1209 – *Records Availability*: Subsection (B) is amended to allow employers to utilize technology to facilitate the inspection and copying of records by the Commission.
- Section 1210 – *General Recordkeeping Requirements*: Subsections (B)(13) – (B)(16), related to recordkeeping requirements for earned paid sick time, are added.
- Section 1211 – *Administrative Complaints*: Technical amendments are made.
- Section 1213 – *Findings and Order Issued by the Department*: In subsection (C), the Commission will have the authority to take actions related to retaliation, discrimination, confidentiality, or nondisclosure violations of the Act. The existing rule only gives the Commission authority to act in cases of retaliation.
- Section 1218 – *Collection of Wages, Earned Paid Sick Time, Equivalent Paid Time Off, or Penalty Payments Owed*: Technical amendments are made.

Substantive or Procedural Concerns

None.

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

Yes. The Commission cites to A.R.S. § 23-364 as general authority for the rules, subsection (A) of which authorizes the Commission to promulgate regulations to enforce and implement A.R.S. Title 23, Chapter 2, Articles 8 and 8.1. The Commission also cites to A.R.S. § 23-376, which states that "[t]he [C]ommission shall be authorized to coordinate implementation and enforcement of this article [A.R.S. Title 23, Chapter 2, Article 8.1, Earned Paid Sick Time] and shall promulgate appropriate guidelines or regulations for such purposes." Council staff would note that, in addition to promulgating these rules, the Commission has published

"Frequently Asked Questions about Minimum Wage and Earned Paid Sick Time" that arguably are "guidelines" under A.R.S. § 23-376.[1]

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

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

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

Yes. The Commission indicates that it has received seven comments on the Notice of Supplemental Proposed Rulemaking. A summary of those comments, along with the Commission's responses, can be found on pages 6-9 of the Notice of Final Rulemaking.[2] Council staff believes that the Commission has adequately addressed the comments.

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

No. One technical change to the final rules was made at the recommendation of Council staff. As the preamble notes, the Commission published a Notice of Supplemental Proposed Rulemaking on July 7, 2017 to make significant substantive changes to its original Notice of Proposed Rulemaking published on May 5, 2017. The Commission indicates that the changes made in the supplemental proposal were primarily the result of public comments received on the original proposal. The final rules are not substantially different from those proposed in the Notice of Supplemental Proposed Rulemaking.

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

No. The Commission indicates that it did not review or rely on any study for this rulemaking.

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

No. The Commission indicates that no federal laws relate to this rulemaking. Federal law does not address earned paid sick time and does not preclude states from adopting a higher minimum wage than the federal baseline.

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[1] The publication is available at: https://www.azica.gov/sites/default/files/media/070317%20FREQUENTLY%20ASKED%20QUESTIONS_MasterwTOC%20FINAL.pdf

[2] Copies of these comments have been provided as an attachment to the Notice of Final Rulemaking.

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

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

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

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

9. Conclusion

The Commission requests an immediate effective date for the rules, citing A.R.S. § 41-1032(A)(1), under which an immediate effective date can be granted "[t]o preserve the public peace, health or safety," and A.R.S. § 41-1032(A)(3), under which an immediate effective date can be granted "[t]o comply with deadlines in amendments to an agency's governing statute...if the need for an immediate effective date is not created due to the agency's delay or inaction." This analyst recommends approval of the rules.

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

MEETING DATE: October 3, 2017 **AGENDA ITEM: D-5**

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

FROM: GRRC Economic Team

DATE: September 19, 2017

SUBJECT: **INDUSTRIAL COMMISSION (R-17-1005)**
Title 20, Chapter 5, Article 12, Arizona Minimum Wage and Earned Paid Sick Time Practice and Procedure

Amend: Article 12; R20-5-1201; R20-5-1202; R20-5-1205; R20-5-1206; R20-5-1208; R20-5-1209; R20-5-1210; R20-5-1211; R20-5-1213; R20-5-1218

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

The Commission is proposing to amend rules in Article 12 to align the Commission's rules with the recently approved Proposition 206. The rules establish procedures, practices, and standards involved in enforcing the minimum wage.

The Act established provisions for mandatory paid sick time for employees. The Commission is amending the rules associated with enforcing the minimum wage to include provisions for enforcing the paid sick time provisions. Mandating that employers provide paid sick time to employees imposes a significant economic cost on employers and provides a significant benefit to employees. These impacts are created by the Act, not the rules in this rulemaking. The rules the Commission is promulgating will have a modest economic impact. The Commission's role in clarifying the rules and procedures for employers will benefit employers and employees. Key stakeholders are ICA, employers, and employees.

The Commission has certified that the Joint Legislative Budget Committee has not been notified because the number of new full-time employees necessary to implement and enforce the rule is zero. Notice of new FTEs is required by A.R.S. § 41-1055(B)(3)(a).

1. Costs and Benefits for:

a. The implementing agency:

The Commission notes that it will incur the initial costs involved with promulgating the rules and enforcing the Act. The Commission also notes that it will benefit from the rulemaking by having clear rules that assist the Commission while conducting investigations.

b. Political subdivisions:

Political subdivisions will be impacted in the same manner as businesses listed below.

c. Businesses:

Businesses will benefit from this rulemaking because it provides guidance and clarity to businesses on how the Act will be enforced by the Commission. Paid sick time mandates will impose a cost on businesses, but uncertainty about the numerous facets of the Act also impose significant costs on businesses. This rulemaking ameliorates the uncertainty that businesses are facing due to the passage of the Act.

d. Small businesses:

Small businesses will be impacted in the same manner as all businesses listed above. The Act includes exemptions for small businesses using a very narrow definition from the Fair Labor Standards Act (FLSA). The Commission notes that very few modern small businesses could be considered exempt from the Act.

e. Consumers directly affected by the rulemaking:

These rules do not directly impact consumers.

2. Do the probable benefits outweigh the probable costs?

This rulemaking provides practical guidance for businesses on how to interpret the Act. This benefits businesses by reducing uncertainty. The benefits of this rulemaking outweigh the costs.

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

The Act specifically provides a lower amount of paid sick leave requirements for small businesses. This rulemaking is simply providing enforcement clarifications for stakeholders, so exempting small businesses from the rulemaking would be detrimental.

4. The probable effect on state revenues:

The Commission concludes that the proposed rulemaking will not have an effect on state revenues.

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

The Commission notes that there are no less costly alternatives to this rulemaking. This rulemaking provides benefits to businesses.

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

No analysis was submitted that compares the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.

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

No empirical or quantitative data were submitted for use in the EIS. The Commission utilized qualitative data from stakeholder feedback.

8. Conclusion:

The submitted economic, small business, and consumer impact statement is generally accurate, and contains the information required for compliance with A.R.S. §§ 41-1035, 41-1052(D)(1-3), and 41-1055. Staff recommends that the proposed rule amendments be approved.

THE INDUSTRIAL COMMISSION OF ARIZONA
OFFICE OF THE DIRECTOR

DALE L. SCHULTZ, CHAIRMAN
JOSEPH M. HENNELLY, JR., VICE CHAIR
SCOTT P. LEMARR, MEMBER
ROBIN S. ORCHARD, MEMBER
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P.O. Box 19070
Phoenix, Arizona 85005-9070

JAMES ASHLEY, DIRECTOR
PHONE: (602) 542-4411
FAX: (602) 542-7889

August 29, 2017

Nicole Ong, Esq.
Chair
Governor's Regulatory Review Council
100 North 15th Avenue, Suite 402
Phoenix, Arizona 85007

Re: Amendment of "Rules Governing Arizona Minimum Wage Act Practice and Procedure" (A.A.C. Title 20, Chapter 5, Article 12, R20-5-1201, 1202, 1205, 1206, 1208, 1209, 1210, 1211, 1213, and 1218) to Address Proposition 206: The Fair Wages and Healthy Families Act

Dear Ms. Ong:

The Industrial Commission of Arizona (the "Commission") requests that the Governor's Regulatory Review Council (the "Council") approve the above-referenced proposed rulemaking. Pursuant to A.A.C. R1-6-201(A)(1), the Commission provides the following information:

a. The close of record date.

August 8, 2017.

b. Whether the rulemaking activity relates to a five-year review report and, if applicable, the date the report was approved by the Council.

Though the subject rulemaking activity primarily arises out of The Fair Wages and Healthy Families Act (the "Act"), the five-year review report concerning the subject Article is due in November 2017, and the Commission has undertaken a full review of Article 12 in proposing the recommended rulemaking amendments.

c. Whether the rule establishes a new fee and, if it does, citation of the statute expressly authorizing the new fee.

The rule amendments do not establish a new fee.

d. Whether the rule contains a fee increase.

The rule amendments do not contain a fee increase.

e. Whether an immediate effective date is requested for the rule under A.R.S. § 41-1032.

The Commission requests an immediate effective date under A.R.S. § 41-1032(A)(1) and (A)(3).

f. A certification that the preamble discloses a reference to any study relevant to the rule that the agency reviewed and either did or did not rely on in the agency's evaluation of or justification for the rule.

The Commission did not rely on a study for justification of the rule amendments.

g. If one or more full-time employees are necessary to implement and enforce the rule, a certification that the preparer of the economic, small business, and consumer impact statement has notified the Joint Legislative Budget Committee of the number of new full-time employees necessary to implement and enforce the rule.

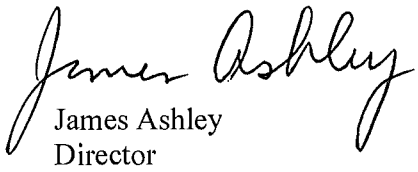
The Commission does not anticipate that it will be necessary to hire any new full-time employees to implement the rule amendments, though it may become necessary to hire additional full-time employees to implement and enforce the Act.

h. A list of all documents enclosed.

Request for Approval of Rulemaking
Approval of Rulemaking
Notice of Final Rulemaking
Economic Impact Statement
Written Comments Received by the Commission Concerning the Proposed Rules
A Transcript of Oral Comments Received
General and Specific Statutes Authorizing Rulemaking
Statutes Referenced in the Definitions (A.A.C. R20-5-1202)

Thank you for your consideration. Should you have any questions regarding the amendments, please contact Jonathan Hauer, Assistant Chief Counsel, at 602-542-5781.

Sincerely,



James Ashley
Director

Enclosures

NOTICE OF FINAL RULEMAKING

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

PREAMBLE

1. Article, Part, or Section Affected	**Rulemaking Action**
Article 12	Amend
R20-5-1201	Amend
R20-5-1202	Amend
R20-5-1205	Amend
R20-5-1206	Amend
R20-5-1208	Amend
R20-5-1209	Amend
R20-5-1210	Amend
R20-5-1211	Amend
R20-5-1213	Amend
R20-5-1218	Amend

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

Authorizing statutes: A.R.S. §§ 23-364, 23-376

Implementing statutes: A.R.S. Title 23, Chapter 2, Articles 8 and 8.1

3. The effective date of the rule:

The Industrial Commission of Arizona (the "Commission") requests an immediate effective date under A.R.S. § 41-1032(A)(1) ("[t]o preserve the public peace, health or safety") and (A)(3) ("[t]o comply with deadlines in amendments to an agency's governing statute . . ., if the need for an immediate effective date is not created due to the agency's delay or inaction").

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 Commission requests an immediate effective date under A.R.S. § 41-1032(A)(1) ("[t]o preserve the public peace, health or safety") and (A)(3) ("[t]o comply with deadlines in amendments to an agency's governing statute . . ., if the need for an immediate effective date is not created due to the agency's delay or inaction"). Arizona voters approved Proposition 206, the Fair Wages and Healthy Families Act (the "Act"), in November 2016, and the Act's minimum wage and earned paid sick time provisions went into effect on January 1 and July 1, 2017, respectively. In title and substance, the Act concerns the health of Arizona citizens. The Commission anticipates that the proposed rulemaking will facilitate broader employer compliance with the Act, thereby promoting public health. In addition, the Act fundamentally alters the Commission's governing statutes by tasking it with enforcement of the Act's earned paid sick time provisions, effective July 1, 2017. The Commission has worked diligently and transparently to craft rules that add clarity to the Act, ease the burdens of compliance for Arizona employers, and preserve the rights granted to employees by the Act. To assist the Commission in complying with its statutory enforcement obligations and to promote the health of Arizona citizens, the Commission requests an immediate effective date.

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

Notice of Rulemaking Docket Opening:	23 A.A.R. 1047, May 5, 2017
Notice of Proposed Rulemaking:	23 A.A.R. 1019, May 5, 2017
Notice of Supplemental Proposed Rulemaking:	23 A.A.R. 1799, July 7, 2017

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

Name:	Steven Welker
Address:	Industrial Commission of Arizona Labor Department 800 West Washington Street, Suite 303 Phoenix, AZ 85007
Telephone:	(602) 542-4515
Fax:	(602) 542-8097
E-mail:	PublicComments@azica.gov (include "Article 12 Notice of Final Rulemaking" in the subject line)

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

Arizona voters approved the Act in November 2016. The Act established a new state minimum wage effective January 1, 2017, and granted employees earned paid sick time rights effective July 1, 2017. The Act authorizes the Commission to "enforce and implement" both the minimum wage and earned paid sick time provisions and promulgate regulations consistent with the articles. *See* A.R.S. § 23-364(A); A.R.S. Title 23, Chapter 2, Articles 8 and 8.1. In the earned paid sick time context, the Act provides that "[t]he commission shall be authorized to coordinate implementation and enforcement of [Article 8.1, Earned Paid Sick Time] and shall promulgate appropriate guidelines or regulations for such purposes." A.R.S. § 23-376.

Currently, the rules in Article 12—implemented in 2007 after the referendum that created the Arizona Minimum Wage Act—address only those procedures related to the enforcement and implementation of minimum wage law. Because the Commission is now statutorily tasked with implementing, enforcing, and regulating the Act's earned paid sick time provisions, the Commission is proposing to amend existing rules in Article 12 to address matters related to earned paid sick time. *See infra* § 10.

In addition to amendments related to the Act's earned paid sick time provisions, the proposed rulemaking conforms the independent contractor analysis to factors outlined in A.R.S. §§ 23-902(D) and 23-1601(B); defines "small employer" and exempts "small employers" from the Act's posting requirements; amends R20-5-1209 to conform to current technologies, and includes various non-substantive amendments.

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

The Commission did not review or rely on any study relevant to the proposed amended rules.

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

Not applicable.

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

The proposed rulemaking is primarily responsive to the Act, and, as such, creates minimal economic, small business, or consumer impact beyond that already created by the Act. To the extent that the proposed rulemaking creates any impact beyond the Act, the Commission anticipates that the proposed amendments will reduce regulatory burden on employers by aligning Article 12 with current Arizona statutes and providing clarifications that reduce uncertainty for Arizona employers and employees. Among its provisions, the proposed rulemaking includes: (1) definitions (including "employee's regular paycheck," "health care professional," and "smallest increment that the employer's payroll system uses to account for absences or use of other time") that offer clarity for employers and employees and reduce burden; (2) methods for calculating hourly rates of pay for various employee types, reducing the likelihood of disputes between employers and employees; and (3) allowance of front-loading options that exceed the accrual and carry-over requirements in the Act without burdening employers with recordkeeping requirements that provide no benefit to employees. In addition, the proposed rulemaking reduces the regulatory burden on "small employers" by waiving posting requirements pursuant to A.R.S. § 23-364(D) (*see* proposed amendment to R20-5-1208). The proposed amendments will reduce regulatory burden while achieving the Commission's regulatory objectives as prescribed by the Act.

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

The Commission made significant substantive changes to the proposed rulemaking in its Notice of Supplemental Proposed Rulemaking. These changes were primarily prompted by public comments received after the Commission published its May 5, 2017 Notice of Proposed Rulemaking. The Notice of Supplemental Proposed Rulemaking included the following substantive changes:

Generally

- Where necessary, included "equivalent paid time off" when referencing earned paid sick time.

R20-5-1202

- Amended the rule to apply definitions found in the Act to Article 12 and apply the definitions in Article 12 to the Act.

- Added the following definitions:

  - "Amount of earned paid sick time available to the employee";

  - "Amount of earned paid sick time taken by the employee to date in the year";

  - "Amount of pay the employee has received as earned paid sick time";

  - "Employee's regular paycheck";

  - "Equivalent paid time off";

  - "Heath care professional"; and

  - "Smallest increment that the employer's payroll system uses to account for absences or use of other time"

- Amended and reorganized the definition of "same hourly rate," as follows: (1) modified the methods for determining "same hourly rate" to result in hourly rates, not lump sums; (2) added a reference to minimum wage in each method of determining "same hourly rate"; (3) amended the method for determining "same hourly rate" for salaried employees; (4) modified and added an option for determining "same hourly rate" for commission, piece-rate, or fee-for-service employees; and (5) added language to subsection 25(f)(ii) referencing subsection 25(e).

R20-5-1206

- Changed Section title to reference the ability to "front load" earned paid sick time.

- Added subsections (F, G, and H) to address procedures for "front loading" earned paid sick time and the effect of "front loading" on accrual and carry over.

- Amended prior proposed subsection (H) (now subsection [I]) to address: (1) an employer's carry over obligations; (2) an employer's ability to permit greater carry over than that required by the Act: and (3) the impact of carry over on accrual, usage rights, and usage limits.

R20-5-1210

- Added reference in subsection (B) to the collective bargaining agreement exception found in A.R.S. § 23-381.

- Deleted subsections (B)(13) and (B)(14) and replaced with subsections (B)(13) through (B)(16), which: (1) make earned paid sick time recordkeeping requirements consistent

with A.R.S. § 23-375's notice requirements; (2) add a requirement to maintain records concerning employees' earned paid sick time balances; and (3) define the phrase "[t]he employee's earned paid sick time balance."

- Amended subsection (C)(1) to reference the changes to subsection (B).

R20-5-1218

- Changed Section title to reference earned paid sick time and equivalent paid time off.

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

The Commission received numerous public and stakeholder comments in response to its May 5, 2017 Notice of Proposed Rulemaking. Based on these comments, the Commission made significant substantive changes to the proposed rules via its July 7, 2017 Notice of Supplemental Proposed Rulemaking. The Notice of Supplemental Rulemaking addressed the majority of the previously-submitted comments and rendered other comments moot. During the public comment period following publication of the Notice of Supplemental Proposed Rulemaking, the Commission received additional comments, only one of which reiterated a comment raised during the initial comment period. The Commission will therefore address those comments submitted after publication of the Notice of Supplemental Proposed Rulemaking.

COMMENT 1: The proposed rules should include language permitting an employer to seek review from the Commission or the Superior Court.

A.A.C. R20-5-1214, R20-5-1215, and R20-5-1216, as currently written, provide Commission and Superior Court review rights. Additional rule changes concerning review rights is unnecessary.

COMMENT 2: Employers should not be required to report the information required by A.R.S. § 23-375(C) on an employee's regular paycheck.

Comment 2 is not responsive to the proposed rulemaking, as it takes issue with the Act's notice requirements. Nevertheless, in an attempt to alleviate employer burden without diminishing employee rights under the Act, the proposed rules define the term "employer's regular paycheck" to include electronic payroll records.

COMMENT 3: The proposed rules should address the intersection of the Act's earned paid sick time provisions and federal laws (including the ADA and the FMLA) and other state laws that extend other protections to employees (including Arizona's workers' compensation laws).

The Act addresses potential conflicts between the Act and federal law in A.R.S. § 23-379, which provides that "[n]othing in this article shall be interpreted or applied so as to create a conflict with federal law." Section 23-379 also provides that the Act's earned paid sick time provisions "shall not be construed to preempt, limit, or otherwise affect the applicability of any other law . . . that extends other protections to employees." The Commission believes these statutory provisions adequately address the intersection of the Act's earned paid sick time provisions and related federal/state law. Although the Commission does not intend to promulgate rules addressing these issues, the Commission may provide additional guidance pursuant to A.R.S. § 23-376.

COMMENT 4: Proposed rule 1206(F) burdens employers by requiring that they track exempt employees' hours worked.

For over a decade, Arizona's administrative rules have required employers to track exempt employees' hours. Pursuant to A.A.C. R20-5-1210(C), employers are required to keep a "record of the hours upon which payment of [an exempt employee's] salary is based." Proposed rule 1206(F) is consistent with existing rules and adds no additional burden. In addition, eliminating this requirement would interfere with the Commission's statutorily-mandated duty to determine whether Arizona employers are complying with minimum wage and earned paid sick time requirements.

COMMENT 5: The proposed rules should require that employers use the higher of a base rate or minimum wage when determining a commissioned employee's hourly rate for earned paid sick time purposes.

The Act provides that earned paid sick time shall be "compensated at the same hourly rate . . . as the employee normally earns during hours worked." A.R.S. § 23-371. This language is somewhat incongruent in the context of commissioned employees, where employers may not

have already established hourly rates for commissioned employees. To adequately address the treatment of commissioned employees, the proposed rules offer five methods for determining a commissioned employee's hourly rate (which are to be followed in priority order). *See* proposed rule 1202(25)(d). The first method is to use an agreed-upon hourly rate, which can be no less than minimum wage. Per the Commission's guidance, the Commission "will consider an employee-acknowledged policy concerning the hourly rate of pay adequate evidence of an agreement between employee and employer." *See* FREQUENTLY ASKED QUESTIONS (FAQS) ABOUT MINIMUM WAGE AND EARNED PAID SICK TIME (Rev. July 3, 2017) *at* https://www.azica.gov/sites/default/files/media/070317%20FREQUENTLY%20ASKED%20QUESTIONS_MasterwTOC%20FINAL.pdf. Where an employer establishes an agreed-upon hourly rate that equals or exceeds minimum wage, and the employer pays the employee this rate for earned paid sick time, the employer will be in compliance with the Act. The proposed rules also provide flexibility in the event that an employer has not established an hourly base rate for commissioned employees. In such cases, the employer may determine a commissioned employee's hourly rate by utilizing the following (in priority order): (1) an hourly rate based on the amount the employee would have earned during the period earned paid sick time is used, if known; (2) an hourly rate based on the employer's reasonable estimation of the amount the employee would have earned during the period of earned paid sick time used; (3) an hourly rate based on the employee's earning over the previous 90 days, if the employee worked regularly during previous 90 days; and (4) an hourly rate based upon the employee's earnings over the previous year. The Commission believes the options outlined in proposed rule 1202(25) will assist employers in determining an accurate rate of pay for commissioned employees who use earned paid sick time, while still permitting employers to establish an hourly rate in the manner the commenter recommended.

COMMENT 6: The proposed rules' earned paid sick time calculation should not include shift differentials and premiums meant to compensate an employee for work performed under differing conditions (such as hazard pay or a shift differential for working at night) because it places undue burdens on employers by requiring different PTO rates and incentivizes the use of earned paid sick time during shifts that are subject to shift differentials or hazard pay.

The Act provides that earned paid sick time shall be "compensated at the same hourly rate . . . as the employee normally earns during hours worked." A.R.S. § 23-371. The Commission considers the inclusion of shift differentials and hazard pay necessary to accurately reflect an employee's hourly rate for earned sick time purposes. While the Commission recognizes that the inclusion of shift differentials and hazard pay may prevent an employer from using a singular hourly rate in the earned paid sick time context, the same burden exists when employers determine rates of pay for hours worked during overtime periods or holidays. The Commission's Notice of Supplemental Proposed Rulemaking qualifies the inclusion of differing condition pay by specifying that it need only be included "if the employee would have been entitled to the shift differential or premium for the period of time in which earned paid sick time or equivalent paid time off is used."

COMMENT 7: The rules should provide that union employers may establish a bank of accumulated earned paid sick time that short-term or itinerant union employees can take from union employer to union employer.

The Act does not contemplate the issue raised in Comment 7 and the proposed concept exceeds the scope of the Commission's authorizing and implementing statutes. The Act specifies that employees hired after July 1, 2017, are not entitled to use accrued earned paid sick time until the ninetieth calendar day after commencing employment (unless the employer permits otherwise). *See* A.R.S. § 23-372. Therefore, the Act already contemplates short-term or itinerant-worker employment and denies these employees access to accrued earned paid sick time before their ninetieth day of employment (unless the employer permits otherwise). Promulgating a rule that obviates this statutory provision by allowing employees to use earned paid sick time within the first 90 days of employment exceeds the Commission's authority. On the other hand, because A.R.S. § 23-381 provides employers subject to a collective bargaining agreement a method for opting out of the Act's earned paid sick time provisions, these employers could elect to opt out and instead adopt an earned paid sick time banking system, consistent with the commenter's requirements.

12. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council

review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:

None.

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

The amended rules do not require issuance of a regulatory permit or license.

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

Although federal law establishes a baseline for minimum wage, it does not preclude states from adopting a higher minimum wage. Nor does federal law address earned paid sick time. The proposed rule amendments implement Arizona's minimum wage and earned paid sick time provisions and do not implicate federal law.

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

No analysis was submitted.

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

None.

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

Not applicable

15. The full text of the rules follows:

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

ARTICLE 12. ARIZONA MINIMUM WAGE ~~ACT~~ AND EARNED PAID SICK TIME PRACTICE AND PROCEDURE

Section

R20-5-1201. Notice of Rules

R20-5-1202. Definitions

R20-5-1205. Determination of Employment Relationship

R20-5-1206. Payment of Minimum Wage; Commissions; Tips; Front Loading Earned Paid Sick Time; Limitation on Carry Over of Unused Earned Paid Sick Time

R20-5-1208. Posting Requirements; Small Employer Exemption

R20-5-1209. Records Availability

R20-5-1210. General Recordkeeping Requirements

R20-5-1211. Administrative Complaints

R20-5-1213. Findings and Order Issued by the Department

R20-5-1218. Collection of Wages, Earned Paid Sick Time, Equivalent Paid Time Off, or Penalty Payments Owed

ARTICLE 12. ARIZONA MINIMUM WAGE ~~ACT~~ AND EARNED PAID SICK TIME PRACTICE AND PROCEDURE

R20-5-1201. Notice of Rules

A. This Article applies to all actions and proceedings before the Industrial Commission of Arizona arising under ~~the Raise the Arizona Minimum Wage for Working Arizonans Act, as added by 2006 Proposition 202, § 2~~ A.R.S. Title 23, Articles 8 and 8.1.

B. The Industrial Commission of Arizona shall provide a copy of this Article upon request to any person free of charge.

R20-5-1202. Definitions

In this Article, the definitions of A.R.S. §§ 23-362 (version two), 23-371, and 23-364 apply. In addition, unless the context otherwise requires, the following definitions shall apply to both the Act and this Article:

1. "Act" means ~~the Raise the Arizona Minimum Wage for Working Arizonans Act, as added by 2006 Proposition 202, § 2~~ A.R.S. Title 23, Chapter 2, Articles 8 and 8.1.
2. "Affected employee" means an employee or employees on whose behalf a complaint may be filed alleging a violation under the Act.
3. "Amount of earned paid sick time available to the employee" means the amount of earned paid sick time or equivalent paid time off that is available to the employee for use in the current year.
4. "Amount of earned paid sick time taken by the employee to date in the year" means the amount of earned paid sick time or equivalent paid time off taken by the employee to date in the current year. Where an employee has used available equivalent paid time off for either the purposes enumerated in A.R.S. § 23-373 or other purposes, the employer may count that usage towards the "amount of earned paid sick time taken by the employee to date in the year."
5. "Amount of pay the employee has received as earned paid sick time"

means the amount of pay the employee has received as earned paid sick time or equivalent paid time off to date in the current year. Where an employee has received pay for equivalent paid time off for the purposes enumerated in A.R.S. § 23-373 or other purposes, the employer may count that pay towards the "amount of pay the employee has received as earned paid sick time."

~~3.~~6. "Authorized representative" means a person prescribed by law to act on behalf of a party who files with the Department a written instrument advising of the person's authority to act on behalf of the party.

~~4.~~7. "Casual Basis," when applied to babysitting services, means employment which is irregular or intermittent.

~~5.~~8. "Commission" means monetary compensation based on:

a. A percentage of total sales,

b. A percentage of sales in excess of a specified amount,

c. A fixed allowance per unit, or

d. Some other formula the employer and employee agree to as a measure of accomplishment.

9. "Communicable disease" has the meaning prescribed by A.R.S. § 36-661.

~~6.~~10. "Complainant" means a person or organization filing an administrative complaint under the Act.

~~7.~~11. "Department" means the Labor Department of the Industrial Commission of Arizona or other authorized division of the Industrial Commission as designated by the Industrial Commission.

12. "Earned sick time" under A.R.S. § 23-364(G) means earned paid sick time.

13. "Employee's regular paycheck" means a regular payroll record that is readily available to employees and contains the information required by A.R.S. § 23-375(C), including physical or electronic paychecks or paystubs.

14. "Equivalent paid time off" means paid time off provided under a paid leave policy, such as a paid time off policy, that makes available an amount of paid leave sufficient to meet the accrual requirements of the Act that may be used for the same purposes and under the same conditions as earned paid sick time.

~~8.~~15. "Filing" means receipt of a report, document, instrument, videotape, audiotape, or other written matter at an office of the Department.

16. The term "heath care professional" in A.R.S. § 23-373(G) has the same meaning as "health care professional," as defined in this Section.

17. "Health care professional" means any of the following:

    a. A "physician" as defined by A.R.S. § 36-2351;

    b. A "physician assistant" as defined by A.R.S. § 32-2501;

    c. A "registered nurse practitioner" as defined by A.R.S. § 32-1601.

    d. A certified nurse midwife who is a registered nurse practitioner approved by the Arizona State Board of Nursing to provide primary care services during pregnancy, childbirth, and the postpartum period;

    e. A dentist licensed under A.R.S. Title 32, Chapter 11, Article 2; or

    f. A behavioral health provider practicing as:

        i. A psychologist licensed under A.R.S. Title 32, Chapter 19.1;

        ii. A clinical social worker licensed under A.R.S. § 32-3293;

        iii. A marriage and family therapist licensed under A.R.S. § 32-3311; or

        iv. A professional counselor licensed under A.R.S. § 32-3301.

18. "Health care provider" has the meaning prescribed by A.R.S. § 36-

661.

~~9.~~19. "Hours worked" means all hours for which an employee covered under the Act is employed and required to give to the employer, including all time during which an employee is on duty or at a prescribed work place and all time the employee is suffered or permitted to work.

~~10.~~20. "Minimum wage" means the lowest rate of monetary compensation required under the Act.

~~11.~~21. "Monetary compensation" means cash or its equivalent due to an employee by reason of employment.

~~12.~~22. "On duty" means time spent working or waiting that the employer controls and that the employee is not permitted to use for the employee's own purpose.

23. "Public benefits" has the same meaning as "state or local public benefit," as prescribed by A.R.S. § 1-502(I).

24. "Public health emergency" means a state of emergency declared by the governor in which there is an occurrence or imminent threat of an illness or health condition caused by bioterrorism, an epidemic or pandemic disease or a highly fatal infectious agent or biological toxin and that poses a substantial risk of a significant number of human fatalities or incidents of permanent or long-term disability.

25. "Same hourly rate" means the following:

    a. For employees paid on the basis of a single hourly rate, "same hourly rate" shall be the hourly rate the employee would have earned for the period of time in which earned paid sick time or equivalent paid time off is used, but shall in no case be less than minimum wage.

    b. For employees who are paid multiple hourly rates of pay, "same hourly rate" shall be determined in the following order of priority, but shall in no case be

less than minimum wage:

i. The hourly rate the employee would have earned, if known, for each hour of earned paid sick time or equivalent paid time off used.

ii. The weighted average of all hourly rates of pay during the previous pay period.

c. For employees who are paid a salary, no additional pay is due when the employee's use of earned paid sick time or equivalent paid time off results in no reduction in the employee's regular salary during the pay period in which the earned paid sick time or equivalent paid time off is used. "Same hourly rate" for salaried employees shall be determined in the following order of priority, but shall in no case be less than minimum wage:

i. The wages an employee earns during each pay period covered by the salary divided by the number of hours agreed to be worked during each pay period, if the number of hours to be worked during each pay period was previously established.

ii. The wages an employee earns during each workweek covered by the salary in the current year divided by 40 hours.

d. For employees paid on a commission, piece-rate, or fee-for-service basis, "same hourly rate" shall be determined in the following order of priority, but shall in no case be less than minimum wage:

i. The hourly rate of pay previously agreed upon by the employer and the employee as:

(1) a minimum hourly rate for work performed; or (2) an hourly rate for payment of earned paid sick time or equivalent paid time off.

ii. The wages that the employee would have been paid, if known, for the period of time in which earned paid sick time or equivalent paid time off is used, divided by the number of hours of earned paid sick time or equivalent paid time off used.

iii. A reasonable estimation of the commission, piece-rate, or fee-for-service compensation that the employee would have been paid for the period of time in which the earned paid sick time or equivalent paid time off is used, divided by the number of hours of earned paid sick time or equivalent paid time off used.

iv. The hourly average of all commission, piece-rate, or fee-for-service compensation that the employee earned during the previous 90 days, if the employee worked regularly during the previous 90-day period, based on: (1) hours that the employee actually worked; or (2) a 40-hour workweek.

v. The hourly average of all commission, piece-rate, or fee-for-service compensation that the employee earned during the previous 365 days, based on: (1) hours that the employee actually worked; or (2) a 40-hour workweek.

e. "Same hourly rate" includes shift differentials and

premiums meant to compensate an employee for work performed under differing conditions (such as hazard pay or a shift differential for working at night) if the employee would have been entitled to the shift differential or premium for the period of time in which earned paid sick time or equivalent paid time off is used.

f. "Same hourly rate" does not include:

i. Additions to an employee's base rate for overtime or holiday pay;

ii. Subject to subsection (e), bonuses or other types of incentive pay; and

iii. Tips or gifts.

26. "Smallest increment that the employer's payroll system uses to account for absences or use of other time" means the smallest increment of time that an employer utilizes, by policy or practice, to account for absences or use of other paid time off.

~~13.~~27. "Tip" means a sum that a customer presents as a gift in recognition of some service performed, and includes gratuities. The sum may be in the form of cash, amounts paid by bank check or other negotiable instrument payable at par, or amounts the employer transfers to the employee under directions from a credit customer who designates an amount to be added to a bill as a tip. Gifts in forms other than cash or its equivalent as described in this definition, ~~including theater~~ such as event tickets, passes, or merchandise, are not tips.

~~14.~~28. "Violation" means a transgression of any statute or rule, or any part of a statute or rule, including both acts and omissions.

~~15.~~29. "Willfully" means acting with actual knowledge of the requirements of the Act or this Article, or acting with reckless disregard of the requirements of the Act or this Article.

~~16.~~30. "Workday" means any fixed period of 24 consecutive hours.

~~17.~~31. "Workweek" means any fixed and regularly recurring period of seven consecutive workdays.

R20-5-1205. Determination of Employment Relationship

A. Determination of an employment relationship under the Act, which includes whether an individual is an independent contractor, shall be based upon the economic realities of the relationship. Consideration of whether an individual is economically dependent on the employer for which the individual performs work shall be determined by factors showing dependence, which non-exclusive factors shall include~~:~~ those factors identified in A.R.S. §§ 23-902(D) and 23-1601(B).

~~1. The degree of control the alleged employer exercises over the individual,~~

~~2. The individual's opportunity for profit or loss and the individual's investment in the business,~~

~~3. The degree of skill required to perform the work,~~

~~4. The permanence of the working relationship, and~~

~~5. The extent to which the work performed is an integral part of the alleged employer's business.~~

B. An individual ~~that~~ who works for another person without any express or implied compensation agreement is not an employee under the Act. This may include an individual that volunteers to work for civic, charitable, or humanitarian reasons that are offered freely and without direct or implied pressure or coercion from an employer, provided that the volunteer is not otherwise employed by the employer to perform the same type of services as those which the individual proposes to volunteer.

C. An individual ~~that~~ who works for another individual as a babysitter on a casual basis and whose vocation is not babysitting, is not an employee under the Act even if the individual performs other household work not related to caring for the children, provided the household work does not exceed 20% of the total hours worked on the particular babysitting assignment.

R20-5-1206. Payment of Minimum Wage; Commissions; Tips; Front Loading Earned Paid Sick Time; Limitation on Carry Over of Unused Earned Paid Sick Time

A. Subject to the requirements of the Act and this Article, no less than the minimum wage shall be paid for all hours worked, regardless of the frequency of payment and regardless of whether the wage is paid on an hourly, salaried, commissioned, piece rate, or any other basis.

B. If the combined wages of an employee are less than the applicable minimum wage for a work week, the employer shall pay monetary compensation already earned, and no less than the difference between the amounts earned and the minimum wage as required under the Act.

C. The workweek is the basis for determining an employee's hourly wage. Upon hire, an employer shall advise the employee of the employee's designated workweek. Once established, an employer shall not change or manipulate an employee's workweek to evade the requirements of the Act.

D. In computing the minimum wage, an employer shall consider only monetary compensation and shall count tips and commissions in the workweek in which the tip or commission is earned.

E. An employer is allowed to:

1. Require or permit employees to pool, share, or split tips; and
2. Require an employee to report tips to the employer in order to meet reporting requirements of this Article and federal law.

F. An employer who hires an employee after the beginning of the employer's year is not required to provide additional earned paid sick time or equivalent paid time off during that year if the employer provides the employee for immediate use on the employee's ninetieth calendar day after commencing employment an amount of earned paid sick time or equivalent paid time off that meets or exceeds the employer's reasonable projection of the amount of earned paid sick time or equivalent paid time off that the employee would have accrued from the date of hire through the end of the employer's year at a rate of one hour for every 30 hours worked. If the amount of earned

paid sick time or equivalent paid time off provided is less than the employee would have accrued based on hours actually worked during the employer's year, the employer shall immediately provide an amount of earned paid sick time or equivalent paid time off that reflects the difference between the employer's projection and the amount of earned paid sick time or equivalent paid time off that the employee would have accrued for hours actually worked in the year.

G. Subject to subsection (F), an employer with 15 or more employees that provides its employees for immediate use at the beginning of each year 40 or more hours of earned paid sick time or 40 or more hours of equivalent paid time off is not required to provide carryover or additional accrual.

H. Subject to subsection (F), an employer with fewer than 15 employees that provides its employees for immediate use at the beginning of each year 24 or more hours of earned paid sick time or 24 or more hours of equivalent paid time off is not required to provide carryover or additional accrual.

I. Unless an employer: (1) elects to pay an employee for unused earned paid sick time or equivalent paid time off at the end of a year pursuant to A.R.S. § 23-372(D)(4); or (2) meets the requirements of subsections (G) or (H), unused earned paid sick time and equivalent paid time off may be carried over to the next year, as follows:

1. Subject to an employer's entitlement to permit greater carry over, an employee of an employer with 15 or more employees may carry over to the following year up to 40 hours of unused earned paid sick time or equivalent paid time off.

2. Subject to an employer's entitlement to permit greater carry over, an employee of an employer with fewer than 15 employees may carry

over to the following year up to 24 hours of unused earned paid sick time or equivalent paid time off.

3. Carry over shall not affect accrual, usage rights, or usage limits under the Act.

R20-5-1208. Posting Requirements; Small Employer Exemption

A. ~~Every~~With the exception of small employers, every employer subject to the Act shall place ~~a poster~~ the posters prescribed by the Department informing employees of their rights under the Act in a conspicuous place in every establishment where employees are employed and where notices to employees are customarily placed. The employer shall ensure that the ~~notice is~~ notices are not removed, altered, defaced, or covered by other material.

B. In this Section, unless context otherwise requires, "small employer" means a corporation, proprietorship, partnership, joint venture, limited liability company, trust, or association that has less than $500,000 in gross annual revenue.

R20-5-1209. Records Availability

A. Each employer shall keep the records required under the Act and this Article safe and accessible at the place or places of employment, or at one or more established central recordkeeping offices where the records are customarily maintained. When the employer maintains the records at a central recordkeeping office other than in the place or places of employment, the employer shall make the records available to the Department within 72 hours following notice from the Department.

B. Employers ~~who use microfilm or another method for recordkeeping purposes~~ shall make available to the Department any equipment or technology that is necessary to facilitate inspection and copying of the records.

C. Each employer required to maintain records under the Act shall make enlargement, recomputation, or transcription of the records and shall submit

to the Department the records or reports in a readable format upon the Department's written request.

R20-5-1210. General Recordkeeping Requirements

A. Payroll records required to be kept under the Act include:

1. All time and earning cards or sheets on which are entered the daily starting and stopping time of individual employees, or of separate work forces, or the amounts of work accomplished by individual employees on a daily, weekly, or pay period basis (for example, units produced) when those amounts determine in whole or in part: (1) those employees' ~~the~~ pay period wages; and (2) those employees' earned paid sick time or equivalent paid time off ~~of those employees~~;
2. From their last effective date, all wage-rate tables or schedules of the employer that provide the piece rates or other rates used in computing wages; and
3. Records of additions to or deductions from wages paid and records that support or corroborate the additions or deductions.

B. Subject to A.R.S. § 23-381 and ~~Except~~ except as otherwise provided in this Section, every employer shall maintain and preserve payroll or other records containing the following information and data with respect to each employee to whom the Act applies:

1. Name in full, and on the same record, the employee's identifying symbol or number if it is used in place of the employee's name on any time, work, or payroll record;
2. Home address, including zip code;
3. Date of birth, if under 19;
4. Occupation in which employed;
5. Time of day and day of week on which the employee's workweek begins. If the employee is part of a workforce or employed in or by an establishment all of whose workers have a workweek beginning

at the same time on the same day, then a single notation of the time of the day and beginning day of the workweek for the whole workforce or establishment is permitted;

6. Regular hourly rate of pay for any workweek and an explanation of the basis of pay by indicating the monetary amount paid on a per hour, per day, per week, per piece, commission on sales, or other basis, including the amount and nature of each payment;
7. Hours worked each workday and total hours worked each workweek;
8. Total daily or weekly straight-time wages due for hours worked during the workday or workweek, exclusive of premium overtime compensation;
9. Total premium pay for overtime hours and an explanation of how the premium pay was calculated exclusive of straight-time wages for overtime hours recorded under subsection (B)(8) of this Section;
10. Total additions to or deductions from wages paid each pay period including employee purchase orders or wage assignments, including, for individual employee records, the dates, amounts, and nature of the items that make up the total additions and deductions;
11. Total wages paid each pay period; ~~and~~
12. Date of payment and the pay period covered by payment~~.~~;
13. The amount of earned paid sick time available to the employee;
14. The amount of earned paid sick time taken by the employee to date in the year;
15. The amount of pay the employee has received as earned paid sick time; and
16. The employee's earned paid sick time balance. "The employee's earned paid sick time balance" means the sum of earned paid sick time or equivalent paid time off that is: (1) carried over to the current year; (2) accrued to date in the current year; and (3) provided to date

in the current year pursuant to A.R.S. § 23-372(D)(4) or A.A.C. R20-5-1206(F), (G), or (H).

C. For an employee who is compensated on a salary basis at a rate that exceeds the minimum wage required under the Act and who, under 29 CFR 541, is an exempt bona fide executive, administrative, or professional employee, including an employee employed in the capacity of academic administrative personnel or teachers in elementary or secondary schools, or in outside sales, an employer shall maintain and preserve:

1. Records containing the information and data required under subsections (B)(1) through (B)(5), ~~(B)(11)~~ and (B)(11) through (B)(~~12~~16) of this Section; and
2. Records containing the basis on which wages are paid in sufficient detail to permit a determination or calculation of whether the salary received exceeds the minimum wage required under the Act, including a record of the hours upon which payment of the salary is based, whether full time or part time.

D. With respect to employees working on fixed schedules, an employer may maintain records showing instead of the hours worked each day and each workweek as required under this Section, the schedule of daily and weekly hours the employee normally works, provided:

1. In weeks in which an employee adheres to this schedule, the employer indicates by check mark, statement, or other method, that the employee actually worked the hours; and
2. In weeks in which more or fewer than the scheduled hours are worked, the employer records the number of hours actually worked each day and each week.

E. With respect to an employee who customarily and regularly receives tips, the employer shall ensure that the records required under this Article include the following information:

1. A symbol, letter, or other notation placed on the pay records identifying each employee whose wage is determined in part by tips;

2. Amount of tips the employee reports to the employer;
3. The hourly wage of each tipped employee after taking into consideration the employee's tips;
4. Hours worked each workday in any occupation in which the employee does not receive tips, and total daily or week straight-time payment made by the employer for the hours;
5. Hours worked each workday in occupations in which the employee receives tips and total daily or weekly straight-time wages for the hours; and
6. Copy of the notice required under R20-5-1207(C).

F. An employer who makes retroactive payment of wages, voluntarily or involuntarily, shall record on the pay records, the amount of the payment to each employee, the period covered by the payment, and the date of payment.

R20-5-1211. Administrative Complaints

A. A person or organization alleging a minimum wage, earned paid sick time, or equivalent paid time off violation shall file a complaint with the Labor Department within one year from the date the wages, earned paid sick time, or equivalent paid time off were due.

B. A person or organization alleging retaliation, discrimination, or a violation of A.R.S. § 23-377 shall file a complaint with the Labor Department within one year from the date the alleged violation occurred or when the employee knew or should have known of the alleged violation.

C. The person or organization filing a complaint with the Labor Department shall sign the complaint.

D. Any person or organization other than an affected employee who files a complaint shall include the names of affected employees.

E. ~~For good cause, and upon~~ Upon its own complaint, the Department may investigate violations under the Act.

R20-5-1213. Findings and Order Issued by the Department

A. Except as provided in R20-5-1219, after receipt of a complaint alleging a violation of the ~~minimum wage requirement of the Act, or alleging retaliation under the~~ Act, the Department shall issue a Findings and Order of its determination. The Department shall send its Findings and Order to both the employer and the complainant at their last known addresses served personally or by regular first class mail. If the complaint named affected employees, the Department may send a copy of its Findings and Order to the affected employees.

B. If the Department determines that an employer has violated the minimum wage, earned paid sick time, or equivalent paid time off ~~payment requirement~~ requirements, the Department shall order the employer to pay the employee, and if applicable, affected employees, the balance of the wages, earned paid sick time, or equivalent paid time off owed, including interest at the legal rate and an additional amount equal to twice the underpaid wages, earned paid sick time, or equivalent paid time off owed.

C. If the Department determines that a retaliation, discrimination, confidentiality, or nondisclosure violation has occurred, the Department

shall direct the employer or other person to cease and desist from the violation and may take action necessary to remedy the violation, including:

1. Rehiring or reinstatement,
2. Reimbursement of lost wages and interest,
3. Payment of penalty to employees or affected employees as provided for in the Act and this Article, and
4. Posting of notices to employees.

D. If the Department determines that no ~~retaliation~~ violation of the Act has occurred the Department shall notify the parties and shall dismiss the complaint without prejudice. After notification of the Department's determination, the complainant may bring a civil action under A.R.S. § 23-364(E).

E. The Department may assess civil penalties for recordkeeping, posting, and other violations under the Act and this Article as part of a Findings and Order issued under subsection (A) or the civil penalties and other violations may be assessed as a separate Findings and Order. If issued as a separate Findings and Order, the Department shall serve, personally or by regular first class mail, the Findings and Order on the employer and, if a complaint has been filed, the complainant.

F. The Director of the Department shall sign the written Findings and Order issued by the Department.

G. If an employer does not comply with a Findings and Order issued by the Department within 10 days following finality of the Findings and Order, the Department may refer the matter to a law enforcement officer.

R20-5-1218. Collection of Wages, Earned Paid Sick Time, Equivalent Paid Time Off, or Penalty Payments Owed

A. Upon determination that wages, earned paid sick time, equivalent paid time off, or penalty payments are due and unpaid to any employee, the employee may, or the Department may on behalf of an employee, obtain judgment and execution, garnishment, attachment, or other available remedies for

collection of unpaid wages and penalty payments established by a final Findings and Order of the Department.

B. If payment cannot be made to the employee, the Department shall receive monetary compensation or penalty payments on behalf of the employee and transmit monies it receives as payment in a special state fund as provided in A.R.S. § 23-356(C).

C. The Department may amend a Findings and Order to conform to the legal name of the business or the person who is the defendant employer to a complaint under the Act, provided service of the Findings and Order was made on the defendant or the defendant's agent. If a judgment has been entered on the order, the Department may apply to the clerk of the superior court to amend a judgment that has been issued under a final order, provided service was made on the defendant or the defendant's agent.

Lisa Padgett

From: Brenda Haro <bharo@rljones.com>
Sent: Tuesday, July 11, 2017 4:54 PM
To: PublicComments
Subject: Article 12 Proposed Rulemaking

Good Afternoon Mr. Welker,

We are looking at "CHANGES/UPDATES VERSION to the FREQUENTLY ASKED QUESTIONS ABOUT MINIMUM WAGE AND EARNED PAID SICK TIME UPDATE" on the ICA website, and we are wondering if we should be following the proposed changes right away or until they get approved.

Thank you,

Brenda Haro
HR Department
R.L. Jones Customhouse Brokers – San Diego Office
8830 Siempre Viva Road Suite 100, San Diego CA 92154
Tel: 619-661-8182 x1650 | Fax: 619-661-8183
Email: bharo@rljones.com

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Lisa Padgett

From: Denise Blommel <denise@azlaborlaw.com>
Sent: Wednesday, July 26, 2017 1:41 PM
To: Jonathan Hauer
Cc: mac.kerbey@bensonsys.com; PublicComments
Subject: Article 12 Proposed Rulemaking: Comment to proposed AAC R20-5-1213

Importance: High

Hi Jonathan
McFall Kerbey, III, General Counsel for Benson Systems, asked me a really great question about the supplemental proposed rules to enforce Proposition 206.
Where is the process for an employer to "appeal" a State Labor Department determination that it violated the Act?

Proposed AAC R20-1213 contains the process for issuance of the State Labor Department's Findings and Orders in administrative complaints under the Act.
If a complainant is aggrieved by the Findings and Order (subsection D), s/he can file a civil lawsuit.
There is no provision in this proposed rule, however, for an employer aggrieved by a Findings and Order to appeal or seek review.

In a regular wage complaint case, the State Labor Department makes a determination. According to the rule for these complaints:

AAC R20-5-1007. Notice of Right of Review A. A determination issued under A.R.S. § 23-357 shall include a notice informing the parties of their right to seek review under A.R.S. § 23-358 and § 12-901 et seq. B. The Department shall serve a determination on the parties by regular mail.

So, R20-5-1213(B) and (C) and (E) all need to have language that the employer can seek review from the Agency or the Superior Court in the Administrative Review Act.

Thank you for your consideration of this comment.

Best,
Denise

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AVVO "Superb" rating and AV (highest) peer review rating by Martindale-Hubbell

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Lisa Padgett

From: Alison Brandt <Alison@pay-tech.com>
Sent: Tuesday, June 27, 2017 4:59 PM
To: PublicComments
Subject: Article 12 Proposed Rulemaking - Sick Time Figures on Check Stubs

Good Afternoon,

The new sick time requirements specifically in regard to the printing of various figures on the paycheck/check stub is something I believe should be revised. I researched other states that have mandated paid sick time and of 6 of them, only one, Oregon, has any similar requirement. Theirs is to provide the **available balance** of paid sick time on the check stub at least *once per quarter*. Here is a link to the Oregon law for reference:
http://arcweb.sos.state.or.us/pages/rules/oars_800/oar_839/839_007.html

As a small, local payroll service bureau, we are faced with extreme difficulties because of the new rules, specifically having various figures printed out on every single check. It is a matter of programming. We do not own the software product that we use to manage our clients' payrolls. We are simply licensed to use it, and cannot make critical changes. I expect that many payroll service bureaus like us are in the same position. We are not giant corporations like ADP and Paychex, with control of their own software.

What we *do* have the immediate ability to do is print a Sick (or equivalent PTO) **available balance** on every check. That has always been the standard. But the additional requirements by this law are for accrual amounts, used amounts, and now dollar values of used amounts to appear. This is in my opinion excessive and more information than most employees will ever look at. As long as employees can inquire with their employer, the employer is notifying them about the accrual or front load policies, and employees are keeping copies of their paystubs, why would they need anything more than the available balance at any time? This all seems needlessly detailed for something that should be pretty straightforward – and it would seem other states agree.

Additionally, because my company offers accounting services to small business in Arizona, and many of these small business manage their own payroll through QuickBooks, I decided to reach out to Intuit QuickBooks to see If they are able to do this for their clients. QuickBooks confirmed to me that they too do not have the ability to print all of this data on the check stub currently.

Below was my reply from QuickBooks. As you can see, their work around is to provide a report. Of course, we can generate reports as well. However, just as an example....we have clients with over 200 employees who get pressure-sealed checks run through a special machine. Providing any "attached reports" to a pressure-sealed check is manual, extremely time consuming, and cumbersome.

Hello Alison. I'll be happy to clarify this.

There isn't an official method to include the sick time balances on an employee's pay stub at this time. However, some customers have found it helpful to use the method found in this article to track each balance: http://intuit.me/2seQxXN

Other customers have opted to use the Vacation and Sick Leave report to provide these balances. The steps to run this report can be found on this page: http://intuit.me/2seQAmr

-Kristian

I urge the commission to revisit the requirements for what is printed on the check stubs based on all of the above. As a payroll service bureau employee, I have in depth knowledge of what goes on behind the scenes in payroll. I believe the current requirements are too cumbersome to be implemented effectively across the many platforms that offer payroll services.

Thank you,

Alison Brandt
Implementation Specialist
Pay-Tech, Inc.
Office Hours: Mon-Thu 8:00-5:00, Fri 8:00-3:00
Please note I am out of the office July 3rd-6th
Phone: (602) 788-1317 Ext 130
Fax: (602) 971-6022
Email: alison@pay-tech.com
www.pay-tech.com

PAYTECH

Lisa Padgett

From:	Denise Blommel <denise@azlaborlaw.com>
Sent:	Wednesday, August 02, 2017 4:32 PM
To:	PublicComments
Cc:	Jonathan Hauer
Subject:	Article 12 Proposed Rulemaking
Attachments:	Comments to ICA about supplemental proposed rules.pdf
Importance:	High

Good afternoon Mr. Welker
I appreciate your consideration of my attached comments about the Supplemental Proposed Rules.
Thank you,
Denise Blommel

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2014 Member of the Year State Bar of Arizona Employment & Labor Section
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Denise M. Blommel
Attorney at Law

Denise M. Blommel, PLLC
Voice 480-905-5810
Email denise@azlaborlaw.com

August 3, 2017

Mr. Steven Welker
Labor Department
Industrial Commission of Arizona
800 W. Washington
Phoenix, AZ 85007
via email to PublicComments@azica.gov

re: Comments about Proposed Rules

Dear Mr. Welker:

I appreciate your consideration of my comments about the supplemental rules the ICA has proposed. I intend to attend the August 8, 2017 hearing and respectfully request an opportunity to address the ICA about the following comments at that time.

ARS 23-376 commands the ICA to promulgate appropriate guidelines or regulations to coordinate implementation and enforcement of the new laws. The proposed rules do not address documentation of absence for industrial injuries, disabilities under the Americans with Disabilities Act (ADA) or serious health conditions of either the employee or a family member under the federal Family Medical Leave Act (FMLA) in light of ARS 23-373, which provides in subsections G through I:

G. For earned paid sick time of three or more consecutive work days, an employer may require reasonable documentation that the earned paid sick time has been used for a purpose covered by subsection A. Documentation signed by a heath care professional indicating that earned paid sick time is necessary shall be considered reasonable documentation for purposes of this section. In cases of domestic violence, sexual violence, abuse or stalking, one of the following types of documentation selected by the employee shall be considered reasonable documentation:
1. A police report indicating that the employee or the employee's family member was a victim of domestic violence, sexual violence, abuse or stalking;
2. A protective order; injunction against harassment; a general court order; or other evidence from a court or prosecuting attorney that the employee or employee's family member appeared, or is scheduled to appear, in court in connection with an incident of domestic violence, sexual violence, abuse, or stalking;
3. A signed statement from a domestic violence or sexual violence program or victim services organization affirming that the employee or employee's family member is receiving services related to domestic violence, sexual violence, abuse, or stalking;
4. A signed statement from a witness advocate affirming that the employee or employee's family member is receiving services from a victim services organization;
5. A signed statement from an attorney, member of the clergy, or a medical or other professional affirming that the employee or employee's family member is a victim of domestic violence, sexual violence, abuse or stalking; or
6. An employee's written statement affirming that the employee or the employee's family member is a victim of domestic violence, sexual violence, abuse, or stalking, and that the leave was taken for one of the purposes of subsection A, paragraph 4 of this section. The employee's written statement, by itself, is reasonable documentation for absences under this paragraph. The written statement does not need to be in an affidavit format or notarized, but shall be legible if handwritten and shall reasonably make clear the employee's identity, and if applicable, the employee's relationship to the family member.
H. The provision of documentation under subsection G does not waive or diminish any confidential or privileged communications between a victim of domestic violence, sexual violence, abuse or stalking with one or more of the individuals named in subsection G.
I. An employer may not require that documentation under subsection G explain the nature of the health condition or the details of the domestic violence, sexual violence, abuse or stalking.

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www.azlaborlaw.com

Given the prohibitions on seeking documentary justification in this statute, it seems that the employer is in a "don't ask/don't tell" dilemma if Earned Paid Sick Time (EPST) is used for anything less than three consecutive work days. Three huge issues are presented, in addition to the obvious (e.g. co-worker tells the employer, "I saw him on the golf course," when the employee used EPST):

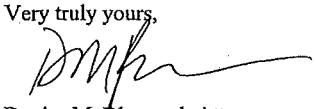
Worker Compensation Return to Work Release
If an employee is hurt on the job and misses only two days of work, she is not entitled to temporary disability benefits under Arizona worker compensation law. She can use EPST for this purpose. If she uses EPST for two days, I believe the employer has the right to ask her upon return whether her doctor has given her a release to return to her job. Work releases in worker compensation are used consistently by employers and even appear in reported decisions. *See: Landon v. Industrial Commission*, 240 Ariz. 21, 375 P.3d 86 (App. 2016). The ICA needs to clarify that employers have this right to a work release because such a release does not require a documentary justification for the use of EPST or specify the health condition involved. Rather, this documentation ensures that the employee is ready to return to her job or requires light duty. Moreover, the employer will already be apprised of the health condition involved through the processing of the worker compensation claim.

Americans with Disabilities Act
If an employee is absent and uses EPST for less than three consecutive days, the employer may be under a duty to engage in the interactive process under the ADA. If the disability is either obvious to the employer or the employee volunteers information about a difficulty in performing his job, the employer must have a conversation with the employee about reasonable accommodation. In that event, the employer can request medical records to support any accommodation request or to help the employer and employee with devising a reasonable accommodation. The employer has a federal right under the ADA to ask the employee for such documentation even if the employee used less than three consecutive work days of EPST. The ICA should clarify this ADA exception to ARS 23-373G through I in the rules because as ARS 23-379A says, "Nothing in this article shall be interpreted or applied so as to create a conflict with federal law."

Family Medical Leave Act
If an employee requests intermittent leave for a serious health condition under the FMLA, the employer has the right to a medical certification of need under the FMLA, even if the employee has not used three consecutive work days of EPST. The ICA should clarify this FMLA exception to ARS 23-373G through I in the rules to make it consistent with ARS 23-379A.

Thank you for your consideration of these remarks.

Very truly yours,



Denise M. Blommel, Attorney
Denise M. Blommel, PLLC

Lisa Padgett

From: Steven R. Welker
Sent: Thursday, August 03, 2017 10:44 AM
To: Jonathan Hauer; James Ashley; Courtney Hayden; Lisa Padgett
Subject: FW: Arizona Paid Sick Leave - Comment Period for Proposed Supplemental Rules

I also got this in my inbox referencing the proposed rules.

Steve W.

From: Dan Bogert [mailto:Dan@azrestaurant.org]
Sent: Thursday, August 03, 2017 10:20 AM
To: Steven R. Welker <Steven.Welker@azica.gov>
Subject: FW: Arizona Paid Sick Leave - Comment Period for Proposed Supplemental Rules

Hi Steve,

I hope you are enjoying this wonderful AZ weather we are having. I just wanted to touch base with you on a few topics that have come up. We have one of our members that has expressed concern over some of the rules in the supplemental rules and before I tell them to submit comments, I was hoping to get your thoughts on the following issues and see if this is already addressed somewhere. My comments are in yellow.

- New Hire Additional Accrual (R20-5-1206(F)). Subsection (F) of the rule provides that if an employee is hired after the beginning of the employer's year, the employer is not required to provide additional sick time or paid time off during that year if the employer provides the employee on the 90th calendar day after employment an amount of sick time or paid time off that meets or exceeds the employer's reasonable projection of the amount of sick time or paid time off that the employee would have accrued from the date of hire through the end of the employer's year at a rate of one hour for every 30 hours worked. However, if the amount of sick time or paid time off is less than the employee would have accrued based on hours actually worked, the employer must provide the employee with additional sick time or paid time off that reflects the difference between the employer's projection and the amount of time that the employee would have accrued for hours actually worked in the year.
    - This rule creates an additional burden for certain employers. For instance, if an employer does not track hours of an exempt employee, this rule would require an employer to track hours for such an employee. The Industrial Commission of Arizona is urged to revise this requirement to either strike the provision in its entirety or provide that the rule does not apply to exempt employees whose hours are not tracked.

- In the FAQs there is a questions "How is the accrual of earned paid sick time calculated for exempt employees?" and the answer states that it is presumed that exempt employees work a 40 hour week. If I am applying this correctly, that would solve the problem of the above comments because they would not need to track exempt employees actual hours worked in order to comply with the "meets or exceeds" requirements because they could just apply the presumed hours worked. Am I reading that correctly? If this is not as straight forward, we can submit the comments.

- Frontload (R20-5-1206(G)). Subsection (G) of the rule provides that, subject to the rule above, an employer that provides all of its employees at the beginning of each year 40 hours or more of sick time or time off is not required to provide carryover or additional accrual.

- This rule creates administrative hardships for certain employers. For instance, if an employer currently frontloads 40 hours of time off to exempt employees only, this rule would require an employer to frontload 40 hours of time off to all of its employees in order to be exempt from the requirement to provide carryover or additional accrual. The Industrial Commission of Arizona is urged to revise this requirement to either strike the provision in its entirety or provide that the rule can be applied on a employee-category basis. For example, if the employer frontloads 40 hours to exempt employees, then the employer is not required to provide carryover or additional accrual to exempt employees.

- The way I read R20-5-1206(G) in conjunction with (F) is a bit different then their interpretation. They main problem they have is that they currently front-load their exempt employees but not their non-exempt. They want to keep this current construct because it is easier to manage administratively. However, they are concerned that (G) requires them to front-load ALL employees if they still want to front-load their exempt employees.

Thanks again. I do understand that you might not be able to answer these questions, but If I am able to give them and answer sooner rather than later it would help with their policy implementation.

Any advice/guidance you can provide would be greatly appreciated.

Dan Bogert
Chief Operating Officer

Arizona Restaurant Association

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azrestaurant.org

Lisa Padgett

From: michelle ahlmer <michelle@azretailers.com>
Sent: Friday, August 04, 2017 2:26 PM
To: PublicComments
Subject: Article 12 Proposed Rulemaking
Attachments: ARA Letterhead.docx

Mr. Welker,

Attached is a comment in regards to the Proposed Rulemaking for Article 12. Please let me know if you have any questions or if you need additional information.

Best regards,

Michelle

Michelle Ahlmer
Executive Director
Arizona Retailers Association
224 West 2nd Street
Mesa, Az 85201

480-833-0009 office
480-220-6319 cell

Arizona Retailers Association
The United Voice of Retailing in Arizona

Mr. Steven Welker
Industrial Commission of Arizona
Labor Department
800 West Washington, STE 303
Phoenix, AZ 85007

August 4, 2017

Dear Mr. Welker,

On behalf of the members of the Arizona Retailers Association, I respectfully request consideration of the following comment in regards to the Article 12 Proposed Rulemaking – earned sick leave.

A sector of the retail industry employs a sales force earning a base wage plus commissions. As the Proposed Rule was reviewed, it was noted that calculation of the earned sick leave should not include commissions. Obviously, it would be impossible to determine the commissions that were not earned during an absence. In other jurisdictions that require earned sick leave, retailers are permitted to pay the higher of the base rate or minimum wage. We ask that the Arizona Rules reflect the same calculation as other jurisdictions and require the calculation for a commissioned salesperson to be determined on the base rate or minimum wage whichever is higher.

If you have any questions or desire more information, please contact me.

Thank you for your consideration.

Sincerely,

Michelle Ahlmer
Executive Director

Lisa Padgett

From: Siever, Richard <rsiever@phoenixchildrens.com>
Sent: Tuesday, August 08, 2017 8:01 AM
To: PublicComments
Subject: Article 12 Proposed Rulemaking

Mr. Welker,

I respectfully request the Arizona Industrial Commission reconsider its proposed supplemental rulemaking, as published in R1-1-409(A), with respect to the definition of "same hourly rate" for purposes of calculating earned paid sick time. The inclusion of shift differentials and premiums that are meant to compensate an employee for work actually performed in differing conditions (such as working evenings or nights) in the hourly rate for paid sick time would pose many challenges to employers, particularly in industries like healthcare.

The initiative passed by voters states that earned paid sick time means the time is compensated at the same hourly rate as the employee "normally earns during hours worked." Hospitals and other healthcare employers frequently offer shift differential pay to employees who are scheduled on a rotating or sporadic basis to work evening or night shifts. In many cases employees volunteer to take certain shifts in return for shift differential or premium rates, often when other employees already have called out or are unable to work. Such premiums are not "normally earned during hours worked." Rather, they are earned if the employee actually works such a shift. Just as holiday pay and overtime logically are not included in the hourly rate, shift differential and premium pay should not be included for hours not worked.

Including shift differential or other premiums in the calculation of an hourly rate may also incentivize the use of paid sick time during these particular shifts, when many employers already struggle to staff shifts. It may also incentivize employees to provide less notice to an employer of their intent to use paid sick time.

As a practical matter, the process of applying a shift differential or premium rates to leave for a period in which the employee did not work would also be difficult for employers to track and administer. Most timekeeping systems apply shift differential rates, for example, based on the actual time worked and recorded in the system. Additionally, most employers with paid time off plans pay vacation time at the normal base rate. For employers that will continue to offer paid sick time through a PTO program, the inclusion of shift differential and premium rates in the calculation of paid sick time will result in PTO being paid out at different rates depending on the use.

Your reconsideration of this concept is appreciated.

Richard Siever
Attorney
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August 7, 2017

Industrial Commission of
Arizona
Phoenix Office
800 West Washington Street
Phoenix, Arizona 85007

Dear Commission:

This is written in response to your call for comments concerning the proposed administrative regulations required by the enactment of Proposition 206 in November, 2016. I write on behalf of the Phoenix Building Trades which represents 16 unions whose membership engages in the construction and maintenance of commercial and residential buildings, manufacturing and warehouse facilities, highways and other public facilities, airports and other public transportation properties and other facilities.

These employees range from highly skilled to unskilled trades people, all of whom have been trained in their respective trades by seasoned journeymen who have extensive experience developed over many years of work within their trades. They also receive on-the-job training over a period of time ranging from 2 to 5 years. Most of them are working pursuant to the terms of a collective bargaining agreement ("CBA"). In virtually all instances, these CBA's are with an employer group rather than with one employer. The nature of their work is that they will work for a number of different signatory employers throughout the year. Their period of work for one employer may vary from a few days to many months.

We also write on behalf of the Local affiliates of the International Association of Theater, Stage, Employees Union. These employees work for companies which assemble the booths at trade shows, as well as stages used at such shows. They also install whatever visual and audio equipment is needed at such venues. They assemble (and take down) the equipment needed at concerts, traveling stage shows and other performances. They,

too, work for a number of different employers throughout the year, generally pursuant to a CBA. In their case, many of their jobs will last only a few hours or days.

The statute provides that an employer with fifteen or more employees must provide 40 hours of paid sick time to each of its employees and one with less than fifteen employees must provide 24 hours of paid sick time per year. However, it does not specify how to treat those employees who regularly work for a number of employers during the course of each year. As noted above, such intermittent employment is a regular feature in construction and in concert and trade show venues and involves many thousands of employees.

Employees in these occupations typically work a number of hours for multiple employers over the course of a year. While they would be earning the hourly credit envisioned by the statute, they certainly would not necessarily be able to use them all. For example, an employee who works 150 hours for employer "A" and another 60 hours for employer "B" will have accrued 5 hours of paid leave on the books of "A" and 2 hours on the books of "B". If that employee were to then start working for employer "C", and need within a day or so to use paid sick time in order to take care of an ill family member, there would be none due.

We are aware of the statutory language that provides that employers and unions can opt out of the sick pay requirement if they have executed a CBA which expressly states in clear language that the parties have decided to opt out of all or part of the sick pay provision by following the required procedure set forth in §23-381. However, that does not resolve the problems that many employees will face in situations where paid time off is wanted.

First, not all CBAs will contain the required opt out language. Second, there may well be periods of time where the CBA has expired and a new one is not yet in place. Indeed, this situation can arise in any industry, including those where employees work solely for one employer. In these circumstances, there may well be instances where these affected employees will not have the coverage contemplated by the statute.

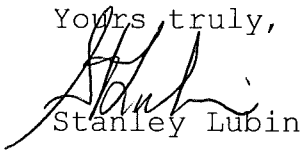
Clearly, the statute's authors did not intend for these circumstances to occur. I believe that there is a way to deal with this that protects everybody affected, both employer and

employee, and is consistent with the language and intent of the statute. It would require an additional rule to remain in compliance with the statute.

The rule that we suggest would resolve both of the above situations. It would provide that when a CBA has expired the parties can continue to rely on the opt out language while they are negotiating the terms of a CBA to succeed the prior one. The rule should provide that the opt out would remain in place so long as the parties are in compliance with their good faith bargaining obligations pursuant to the NLRA.

The rule would also provide that a group of employers who are party to a multi-employer CBA with a union shall be in compliance with the statute if it contributes an amount of money to a trust fund organized and maintained by the parties which equals the amount that would be paid to an employee who worked solely for that employer. The trustees of the fund would then pay the employee the amount owed pursuant to the statute. Thus, using the example above, if the 5 hours of pay were in a trust fund, the trustee would pay up to five hours to the employee. If the claimed hours totals less than the five, the trustee would take the first 3 from the deposit by the first employer and whatever else was needed to cover the balance, from the second employer. The trustees would also maintain the records necessary to track what was received and from which employers and what was accrued by, used by or owed to each employee.

Yours truly,



Stanley Lubin

SL/sll

cc: Dean Wine
Bill Hennessy
Scott Stravitz

INDUSTRIAL COMMISSION OF ARIZONA

PUBLIC HEARING

ON

PROPOSED RULEMAKING

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Phoenix, Arizona

August 8, 2017

9:00 A.M.

REPORTED BY:

Teri L. Veres, RMR
Certified Reporter (AZ 50687)

(ORIGINAL)

I N D E X

BOARD MEMBERS PRESENT:

JAMES ASHLEY

JONATHAN HAUER

LISA PADGETT

COURTNEY HAYDEN

STEVEN WELKER

PUBLIC SPEAKERS:

PAT PLAYMAN

STANLEY LUBIN

DENISE BLOMMEL

BETH CALL

PAMELA KINGSLEY

SHAYNA BALCH

ANDREA LOVELL

LORI HIGUERA

P R O C E E D I N G S

* * *

DIRECTOR ASHLEY: Good morning, everyone. Thank you very much for being here this morning.

Let's get started. I'd like to welcome you to the oral proceeding concerning the Notice of Supplemental Proposed Rulemaking regarding the amendment of Title 20, Chapter 5, Article 12, specifically R20-5-1201, 1202, 1205, 1206, 1208, 1209, 1210, 1211, 1213 and 1218.

My name is James Ashley. I'm the Director of the Industrial Commission. Joining me this morning is Jonathan Hauer, he's our Assistant Chief Counsel. Steve Welker is our Director of the Department of Labor. Lisa Padget is our Investigation Supervisor in the Labor Department, and Courtney Hayden is our Program and Project Specialist in the Labor Department.

By way of a short summary, Arizona voters approved Proposition 206, the Fair Wages and Healthy Families Act in November of 2016. The Act established a new State minimum wage effective January 1st, 2017, and entitled employees to accrue earned paid sick time effective July 1st, 2017.

The Act authorizes the Industrial Commission of Arizona to enforce and implement both

the Act's minimum wage and earned paid sick time provisions and promulgate regulations consistent with the articles.

In the earned paid sick time context, the Act provides that the Commission shall be authorized to coordinate implementation and enforcement of Article 8.1 earned paid sick time and shall promulgate appropriate guidelines or regulations for such purposes.

Currently, the rules in Article 12 implemented in 2007 after the referendum that created the Arizona Minimum Wage Act addressed only those procedures related to the enforcement and implementation of minimum wage law.

Because the Commission is now statutorily tasked with implementing, enforcing and regulating the Act's earned paid sick time provisions, the Commission is proposing to amend existing rules in Article 12 to be consistent with the Act's new provisions.

On May 5th, 2017, the Commission published a Notice of Proposed Rulemaking in the Arizona Administrative Register at Volume 23, Issue 18, beginning on Page 1019; and on June 5th, 2017, the Commission held an oral proceeding to hear your comments concerning the proposed rules.

Your feedback has been invaluable during

this process and has enabled us to better understand our stakeholders' needs and concerns.

After reviewing your oral and written comments and in the interest of further clarifying the Act, the Commission published a Notice of Supplemental Proposed Rulemaking on July 7th, 2017, in the Arizona Administrative Register at Volume 23, Issue 27, beginning on Page 1799.

Jonathan Hauer will now provide a synopsis of the rulemaking changes found in the supplemental proposal.

MR. HAUER: Thank you, Director, and good morning.

To reiterate the Director's statements, your feedback has been extremely helpful as we set out to clarify the Act. To address your comments, we have proposed the following new substantive changes to Article 12:

Starting with Rule 1202, we amended the preamble to apply definitions found in the Act to Article 12 and apply the definitions in Article 12 to the Act.

We added the following definitions: The amount of earned paid sick time available to the employee, amount of earned paid sick time taken by

the employee to date in the year, amount of pay the employee has received as earned paid sick time, the employee's regular paycheck, equivalent paid time off, health care professional, and the smallest increment that the employer's payroll system uses to account for absences or other use of -- or use, sorry, of other time.

We also amended and reorganized the definition of "same hourly rate" as follows: First, we modified methods for determining same hourly rate to result in hourly rates, not lump sums.

Second, we added a reference to minimum wage in each method of determining same hourly rate.

Third, we amended the method for determining same hourly rate per salaried employees; and, fourth, we modified and added an option for determining same hourly rate for commission, piece rate or fee-per-service employees.

Rule 1205, we deleted a reference to "circumstances" and replaced that with "economic realities."

Rule 1206 changed the section title to reflect the addition of a front loading concept and added subsections concerning the effect of front loading earned paid six time on accrual and carry over.

We added a method for front loading earned paid sick time for partial year employees and employees who are hired after the first of the employer's year, added references to an employer's ability to permit greater carry over than that required by statute and amended subsection H(3), which is now I(3), to reference usage limits in addition to usage rights.

In Rule 1210 we added a reference to A.R.S. 23-381 in Subsection (B). That references collective bargaining agreements. We deleted B(13) and B(14) and replaced them with B(13) through B(16). These changes accomplished the following:

First, they brought the rules' recordkeeping requirements in line with A.R.S. 23-375's notice requirements.

Second, they added a requirement that employers maintain records concerning employer -- sorry, employees' earned paid sick time balances and, third, they defined the phrase "the employee's earned paid sick time balance." And, finally, we amended Subsection C(1) to reference the changes to B(13) and B(14).

Director.

DIRECTOR ASHLEY: Thank you, Jon.

I just want to reiterate and show our

appreciation for all of your involvement, being part of this public transparent process. This feedback is very valuable and our very lengthy and robust FAQs, not to mention what we're doing here with the proposed rulemaking, that's grown because of your feedback.

So we just wanted to, once again, thank you very much for your involvement in the process and being here this morning.

We now welcome you to present your oral comments regarding supplemental proposed rulemaking with a Notice of Supplemental Proposed Rulemaking.

Those wishing to speak may do so. We have a couple of slips already. We have additional slips back at the table with Kara. Please fill out the speaker slips, and I will call each speaker who will each have five minutes to speak.

Although the oral proceeding will end when oral comments have concluded, written comments will be accepted until 5:00 p.m. today at which time the public comment period will close.

The Commission will carefully consider all written comments, along with your oral comments today. The Commission will discuss and take action on supplemental proposed rules at a regular public meeting of the Commission.

Please keep in mind that this oral proceeding is for the Commission to receive public comment on the supplemental proposed rulemaking, not on the provisions of the Fair Wages and Healthy Families Act or the wisdom of the Act.

If you have specific questions regarding the Act, the Commission has posted, as I mentioned, an extensive list of FAQs on the website addressing common questions about the Act and the proposed rules.

In the event that the FAQs do not answer your questions, we would invite you to submit questions directly to Steve Welker, the Director of our Labor Department. Mr. Welker's email address and phone number are available on the Commission's website; and with that we now open the floor to public comment, and we will begin with Pat Playman.

MS. PLAYMAN: You know, I probably don't have comment as much as a question. So you kind of defined the questions relative to the interpretation of the laws is really more what I have, and I don't know that this is the forum for that.

DIRECTOR ASHLEY: If this is related to the rulemaking, we'd be -- we'd be happy to hear your thoughts and input even a comment on that or a question.

MS. PLAYMAN: It's really more about the

record keeping and what we're required to report on paycheck stubs as opposed to even our payroll records in fractions of hours.

So we've had multiple interpretations, one hour for every 30 hours worked. If you pay once a week, as an example, on the first week do you make only one hour available to your employees and wait until they've earned another twenty hours or another hour of paid sick leave before recording them?

DIRECTOR ASHLEY: We'd be happy to address that to the extent we can at this point and then personally follow up with you with additional details.

MS. PLAYMAN: That would be great.

MR. HAUER: As yet, we haven't formally answered that question.

MS. PLAYMAN: Okay.

MR. HAUER: It's a good question.

The statue requires that earned paid sick time be available as it is accrued or be able to be used as it is accrued, which would suggest that once you have an hour it's now usable.

MS. PLAYMAN: Uh-huh.

MR. HAUER: But I think it makes sense to include in our FAQs maybe a more formal answer to your question. So why don't we talk after and see if we

can get more information from you and then formalize a response.

MS. PLAYMAN: That would be wonderful.

DIRECTOR ASHLEY: Thank you.

Stanley Lubin.

MR LUBIN: Yes, my comments are directed to the question of how to deal with collective bargaining agreements when you have alternate labor.

For example, in the construction industry and also in the convention industry where you have people working for one employer for a few days or a few months at a time or even sometimes in convention and staging for a few hours at a time and then they go on to another employer, they may be unemployed for a week, they go on to a third employer or a fourth.

They never really accumulate enough hours with an employer -- with one employer to be able to use them before they're gone. For example, if you work a week or two for one employer, you might work, say, 60 hours. You'll pick up two hours of time. You then go on to work for the third employer and you need the time. You can't use it because the first or second employer owes it to you,

at least for a period of time thereafter, but the third employer you haven't built up the time yet.

So what I would like to propose is that, for example, that -- if you could put this in your rules somewhere, that they be allowed to accumulate these hours in a trust fund of sorts.

The building trades, for example, have trust funds for healthcare and the employers donate money into the trust fund based on the hours of work that an individual works under the Collective Bargaining Agreement.

Then when the employee is ill, they can use that time, use it and be paid back out of the trust fund and the employers are credited for the usage. The -- this is a working system that's been working for more than six decades and adding this to it would be almost a non-expense.

What can happen, for example, is if somebody is working for me for two weeks, I will owe them two hours, perhaps. If I'm assuming they work 60 hours, I will owe them two hours. Now, that -- I would then donate the money -- or contribute the money to the trust fund to pay for the two hours. The trustees would hold that money. Then if that employee gets ill later on that year, they can tap

into it.

The alternative, of course, is they can opt out of the system under the collective bargaining rules, but they may not want to be opt out. There are going to be times when they're working without a contract. There will be times when they're working with one that opts out. There will be times when they're working with one that does not opt out, and all these things can be handled by the trust fund.

It's kind of like a glorified payroll service that now exists -- you know, that many employers use to make their payroll, and I think it might be a good idea to put them into the rules at the appropriate spot so that this can be done. I'd be more than happy to work with somebody in your department to help draft that.

In the entertainment industry, other than, for example, employees of the opera, the ballet and symphony, which are long-term employers, the same thing happens except they're working for even shorter periods for a given employer and they're going in and out with the same employer frequently; and, again, they don't have a chance to accumulate the time before they're working

elsewhere.

In addition, they would lose because of the definition of who is covered and what kind of services can be used -- that the time sick could be used for, they would lose that if they were not able to accumulate it from a group of employers together.

Obviously, the employers and the unions would have to agree, and that's something that they could negotiate over over time; but if they're not in the rules, they can't do it. So I would suggest that this be done.

MR. HAUER: If I may respond, it's an interesting concept. Two thoughts occur to me.

First, we view the -- the Act as a minimum. Employers are always welcome to offer more generous policies than those prescribed by the Act. So though it would not initially, you know, absent a rule be required, employers could certainly agree to do something like this, even if the Act doesn't require it. So that's still an option.

The rest, the idea of a trust fund between employers, there's a -- there's a concept that we've recognized in the FAQs regarding commonality, but I'm not sure that addresses what you're talking about. In other words, they wouldn't have common ownership

between these employers.

So I -- I think perhaps at this point the best thing to do would be to take something like that under advertisement and look at our options and discuss it further.

MR. LUBIN: I have no quarrel with that. I think it needs some discussion. The point being that the employers will be reluctant to do this because -- absent some kind of statement in the rules or guidelines authorizing it, because what they're telling us now is that they feel that they would be violating the rules, the law, if they, basically, put the responsibility of this on to the trust fund that they don't have total control over.

MR. HAUER: In other words, they're -- they're giving up their -- their record keeping requirements and handing them off to another employer via this trust fund?

MR. LUBIN: It would be the trust fund, which is controlled by --

MR. HAUER: Right.

MR. LUBIN: -- both union and employer representatives together or jointly under federal law and it's pretty heavy regulated.

MR. HAUER: Right.

MR. LUBIN: But the employers are saying to us, "Wait, I have the duty of maintaining these records. I cannot -- and I have the duty of making the payments. I cannot delegate that to somebody that I don't have control over."

A payroll service that I use, I have a contract with, they're my agent.

MR. HAUER: Uh-huh.

MR. LUBIN: This is an agent with a group of us and it makes some changes. So they're a little reluctant to go forward with it, which is causing some of the unions now after end of contracts opting out from the system, which is basically depriving the membership of the right to use the sick time during periods of time when they might need it.

MR. HAUER: Right.

MR. LUBIN: So -- and I don't think that that was the intent of the drafters to -- to exclude people from it. I think they would like it, as you say, as a minimum and then allow this to be done. It would be part of what they already have, but it would broaden out the terms of use and make it a little bit easier regarding the record keeping and -- and everything else.

MR. HAUER: That's a very interesting concept.

MR. LUBIN: It would cost the individual employers not one penny more because, in effect, they're paying -- they're all paying the same rate anyway, and as a result if they're basically allowed to do it this way they would be credited for the time that would be used by the employee, would basically reduce what each employer owes.

MR. HAUER: I think it's a very interesting concept. Unfortunately, we don't have a lot of information about the intent of 381 and whether that was intended to give unions a total out if they haven't -- I mean, on its face, it seems like that is what 381 suggests, is that if you have waived the right to earned paid sick time requirements via Collective Bargaining Agreement --

MR. LUBIN: Sure.

MR. HAUER: -- then you're no longer required to abide by the Act in that -- in that way.

A very interesting concept. I think we have to discuss it further.

MR. LUBIN: I'd be more than happy to meet with you, if you wish.

DIRECTOR ASHLEY: Mr. Lubin, thank you very much. We look forward to continuing this conversation, delving a little deeper into the details, working with both our Legal Division and our Labor Division on this.

MR. LUBIN: Sure.

DIRECTOR ASHLEY: Thank you.

Denise Blommel.

MS. BLOMMEL: Good morning. Thank you very much. Can I just sit here and --

DIRECTOR ASHLEY: Feel free.

MS. BLOMMEL: That's okay? Very good, thank you.

First of all, thank you very much for the changes that have been made in the supplemental rulemaking. I appreciate that, and I noticed in your updated FAQs that you had addressed one of the issues that I raised dealing with the documentation of paid sick time as it relates to the Americans with Disabilities Act and the Family Medical Leave Act, both federal law, and I think they're on Page 33 of your FAQs you address that.

I am still, however, concerned and my written comments address this, about Workers' Compensation. If an employee is off work for two

days due to an industrial injury and returns to an employer, that employee, I think, needs to be able -- and the employer needs to be able to ask the employee for a release to return back to work, particularly if there were an industrial injury that interfered with the person's ability to work.

Moreover, the physician -- the Workers' Compensation physician may have assigned light duty in which case the employer is required to take a look at that.

So the thing is is that I think the rules should address this particular situation so that employers and employees are not confused.

MR. HAUER: That -- you're spot on. It's an area of -- of the law that does need to be addressed. What we're looking at right now is whether 23-379(B), which discusses conflict of laws -- actually, (A) discusses federal laws, (B) discusses other laws that extend other protections to employees, whether that is the carve-out that gives us -- or gives employers the ability to look at medical documents under those circumstances, and I think we should have an answer on that one for you soon.

So I appreciate you bringing it to our attention. It's a very important point.

MS. BLOMMEL: Good. Thank you so much. That's all I have.

DIRECTOR ASHLEY: Thank you very much. It looks like we have one more slip. Just a reminder, if anyone would like to make a comment or ask a question regarding the proposed rules, please fill out a Request To Speak slip, and Kara has those in the back of the room.

Our next speaker is Beth Call.

MS. CALL: Thank you. I have several questions seeking clarity on implementation of the requirements that I do not believe have been addressed, at least to the level that my clients are looking for, either in the FAQs or in the supplemental rulemaking.

So tell me if this is not the right place to kind of go into some of them and I'd be happy to have conversations after or submit questions, but if I could kind of go ahead with some of them and then you guys can let me know.

DIRECTOR ASHLEY: That will be okay for the benefit of the folks here.

MS. CALL: Okay. Some of them, maybe, are easy for you to -- to answer but we're looking for more definitive answers.

So several of my clients have historically been offering more generous sick pay to their employees in the amount of 80 hours per year. They find themselves in a situation as of January 1 where they've provided that to their employees and several have used all of it up before July 1.

My reading of the law and everything that you've provided is that that doesn't matter, starting July 1 we need to let employees begin to accrue. So they're going to get additional time for this year; but they, of course, would like clarity on that because it's a cost, obviously, to them.

MR. HAUER: That is correct. That interpretation is correct. At least that is our interpretation of the statute, that accrual begins July 1. This is an issue that we explored and -- and that is our current interpretation, and that's why we offered the prorating option for the remainder of this first year. I think it lends additional credence to it.

Not only does it put all employees hopefully on the same footing at the beginning of the -- the effective period, but it also gives employers who have been this generous some relief along those lines.

MS. CALL: Okay. And along those same lines, the employers finding themselves in these situations, oftentimes employees have vacation time available to them. So would there be concern with converting vacation time to an equivalent paid time off bucket for this short period of time even though they plan to front load sick pay starting on January 1?

MR. HAUER: So if I understand correctly, you're saying it's already -- the employee's already accrued vacation time. The employer would then convert that time to earned paid sick time.

That's not something we've addressed. My -- actually, I hesitate to give you my initial response just because we haven't formally addressed it. So let's -- let's talk more about that one after.

MS. CALL: Okay, terrific.

Another question that's come up -- and I know that you addressed this, to some extent, in your on-call FAQ, but many of my clients have hourly employees who work a regular schedule as well as having the opportunity to work additional time for overtime purposes.

If they -- if an employee signs up for overtime work and is scheduled for that, is it

correct to interpret your FAQ to say if they've already been scheduled for that time, they can allocate their sick -- paid sick time to that time --

MR. HAUER: Correct.

MS. CALL: -- even though it's outside their regular schedule?

MR. HAUER: Correct, if they -- if they -- if they've been scheduled to work, they can use the time.

MS. CALL: Okay. And then I -- I have one more question, and then I'll let the next person go ahead.

Many of my clients have policies in place that require employees to use all paid time before they go into unpaid time, vacation or sick. I see some language within the law, as well as the supplemental rulemaking, that suggests that we can't require employees to allocate Arizona paid sick time to time.

What is your position on that, those type of policies versus the -- you know, the language of the -- of the law?

MR. HAUER: That's another one that we have not addressed via FAQ --

MS. CALL: Okay.

MR. HAUER: -- and it's a great question. Let's discuss that one further and see if can --

MS. CALL: Okay.

MR. HAUER: -- address it in the future.

DIRECTOR ASHLEY: Okay, let's move on.

And as a reminder, you have a host of content experts available to all of you on a personal basis in both the Legal and Labor Division that are more than happy to -- to have personal one-on-one conversations regarding a lot of the details regarding the FAQs and then, also, to get your insight and input to expand those.

Our next speaker is Pamela Kingsley.

MS. KINGSLEY: Thank you. I'm an attorney and I represent both employers and employees. So on the employer drafting side of it, not that it really matters in the long run in terms of application, but I read 372 a little differently than how perhaps the Commission has read it.

So where it says "but employees shall not be entitled to accrue or use more than 40 hours of earned paid sick time per year..." just stop there, I take it the Industrial Commission is saying once you get to 40 hours per year, nobody's used any

time the first year. They've just kept it right there. Move into the second year, I'm going to front load the second year. So they don't carry over the first 40, I understand that part.

Let's say they don't front load. They carry over the 40, they still don't use it. Your interpretation, I take it, is the next year they're carrying over only 40. My interpretation is they're carrying over 80, they would then carry over 120 and they would continue to carry over because you're able to cap every year, but you still have that year.

I know it doesn't matter practicality, but when you get the plaintiff's attorney who then comes in -- for the Industrial Commission it's going to be a win-win, but when the plaintiff's attorney comes in and starts to pick it apart, can I have a little thought in terms of the considerations that went on to say that "no" they actually do just cap at 40 and that's it?

MR. HAUER: Certainly, and -- so our proposed rules -- let me pull up what I'm looking for.

So our proposed rules define -- or consider that the statute is basically saying that you can -- I'm trying find the accrual requirement.

Okay, that you are -- you are able to carry over to the following year earned paid sick time subject to limitations on usage; and pursuant to 372(A) and (B) the limitations on usage are either at 24 or 40.

So that's the basis for it. So that's the basis for our analysis, that you carry forward what you can use in the current year.

MS. KINGSLEY: So any time that you come in and look at record keeping, the maximum number of hours would be 80 hours?

MR. HAUER: Correct.

MS. KINGSLEY: Ever?

MR. HAUER: So if you went into the second year and you would carry forward 40, you're not front loading so you can accrue another 40, get up to 80.

MS. KINGSLEY: Okay, so --

MR. HAUER: And then you can get 40 in year three.

MS. KINGSLEY: And I get that interpretation, I'm just not sure that that's the way I read the statute.

MR. HAUER: Sure.

MS. KINGSLEY: Great minds differ.

MR. HAUER: Well, I think another

consideration is that -- well, two things.

In any given year an employee can never use more than 40 or 24 hours. So the additional time doesn't get them anywhere.

MS. KINGSLEY: Right.

MR. HAUER: Additionally, there's no provision in the statute that requires payout at separation. So if you bank hundreds of hours, there's no additional benefit to it.

So as you stated -- or mentioned in your question, you'd be accruing hours that were useless, essentially, and -- and so what we'd end up doing is dinging employers on technicalities rather than actual benefit. I think that's problematic.

MS. KINGSLEY: I had a criminal defense attorney teach me criminal law and he talked about (inaudible.)

So you have an employee who works ten hours a year and leaves every seven months and comes back every seven months.

MR. HAUER: Uh-huh.

MS. KINGSLEY: So he's not earning any more time, but ultimately after maybe a long period of time will have started to bank -- will be able to start to use some of those additional hours. That's

why --

MR. HAUER: Yeah.

MS. KINGSLEY: Yeah. I mean, we get into the one realistic version, but still.

My other thing is --

MR. HAUER: Go ahead.

MS. KINGSLEY: -- anybody can use up -- an employer can use -- make a policy that says anybody can use vacation time for earned paid sick time and anybody can use paid sick time for vacation time.

Is there any restriction on that at all, unless other than you have to treat that vacation time under kind of the same rules as earned paid sick time?

MR. HAUER: Right. If you have a bucket of time, a pool of time that you've designated as available for all the uses and the same conditions are available under the Act, they can use it for whatever they want to use it for.

If they accrue earned paid sick time in this equivalent PTO pool and use it for vacation time, you don't have to give them additional time is really how that works.

MS. PLAYMAN: Can I make a comment on

that?

(Discussion off the record.)

MS. PLAYMAN: I'd just like to weigh in on that from a record keeping (inaudible), just looking forward to a potential audit --

MR. HAUER: Uh-huh.

MS. PLAYMAN: -- that a client might be put through. So would it be the Commission's recommendation to have -- I mean, I'm just trying to figure out how you would look at it in an audit situation.

If you allow your employees to use paid sick time for vacation time or personal time or whatever, is it a recommended best practice to have some form of documentation where the employee is giving you written agreement to utilizing that for personal time so that he doesn't come back to the company saying, "Gee you didn't provide me enough of this protected sick leave," for the reasons you list in the law?

MR. HAUER: So it's an interesting question. I don't know -- and I'm not sure we can get into this in this forum whether it's a best practice for employers to require that employees certify a specific usage for a specific absence.

However -- and I think the Labor Department here would agree -- if you can, as an employer, reference a policy that's been acknowledged by the employee that explains that the time can be used for any purpose under the Act or the other various uses that the employer allows, that would probably satisfy your inquiry.

Does that sound correct to you guys?

DIRECTOR ASHLEY: Courtney?

MS. HAYDEN: I was going to say just to boil it down to the most simple point --

MS. PLAYMAN: Yes.

MS. HAYDEN: -- as an investigator, right, and as someone who gets calls from both employers and employers, the more an employee understands what they're being provided and why, maybe the less confused calls I get. So I always say error on the side of the employee understanding more.

MR. HAUER: You know, when we come -- when it comes back to best practices, an acknowledged policy is always, I think, going to be helpful for the investigators.

MS. PLAYMAN: All right, thank you.

DIRECTOR ASHLEY: All right, let's move

on to Shayna Balch.

MS. BALCH: Hello. Thanks for having this meeting. My colleagues back here just have some general questions regarding interpretation and kind of where things are going to go from now.

I guess my first question is: Do you guys anticipate any additional supplemental regulations regarding this law?

DIRECTOR ASHLEY: That will be taken into consideration by the Commissioners, and we'll evaluate the additional comments and feedback we receive and base it upon that.

MS. BALCH: Okay. To that point, one issue that a lot of my clients have been struggling with is regarding usage of sick leave; and I haven't really seen any, you know, guidance on that. The supplemental regulations are silent to that issue, as to specifically the issues of, you know, foreseeable, unforeseeable leave, what type of notice employers can really ask of employees.

Specifically, in looking at the language of the law -- flip to it here -- the law states that employees shall make a reasonable effort to schedule the use of earned paid sick time in the effort not to disrupt the operations of the

employer; but, yet, what a "reasonable effort" is is not really defined.

It's unclear as to whether or not an employer can have a rule, for example, "You need to notify us if it's, like, a doctor's appointment that was scheduled three weeks ago. You need to notify us at least seven days in advance so we can schedule things."

My reading is that under that circumstances, if a doctor's appointment was scheduled three weeks earlier and an employer were to deny it and say, "You didn't give us at least one week notice," that they could actually be on the hook for retaliation for denying that leave pursuant to the anti-retaliation provision.

And, similarly, with unforeseeable leave, there is a section in there that says if you're going to deny a request, then you need to have a written policy in place; but, yet, there's no guidance for recommendations or regulations on what that policy would look like.

Are you guys going to weigh in on that with supplemental regulations?

MR. HAUER: Well, we've currently addressed that in some respect via the Frequently

Asked Questions.

Have you had an opportunity to look at those?

MS. BALCH: Yes, but I think it still leaves some lack of clarity.

MR. HAUER: Yeah, the -- the Frequently Asked Questions addressed foreseeable and unforeseeable leave and kind of what we see these policies looking like --

MS. BALCH: Uh-huh.

MR. HAUER: -- but they don't get as granular as you are discussing --

MS. BALCH: Uh-huh.

MR. HAUER: -- and the statutes don't either, as we've discussed.

MS. BALCH: Yeah.

MR. HAUER: So I think the question -- well, two questions. One, can we provide additional guidance about what written policies should look like?

MS. BALCH: Uh-huh.

MR. HAUER: Probably. There may be forthcoming guidance.

Is there a forthcoming regulation? I'd defer to Director Ashley. I think that's really a

question to the Commissioners at this point.

MS. BALCH: Uh-huh.

MR. HAUER: However, we're committed to working with our stakeholders to make sure they get the guidance they need, if we can offer it, so they can act with some reasonable understanding of what our investigator is going to look for.

MS. BALCH: Okay.

DIRECTOR ASHLEY: Thank you.

Andrea Lovell.

MS. LOVELL: Thank you. Thank you all for having us. I just had a quick question. We have a lot of clients who have Family and Medical Leave Act policies that require employees who use up FMLA to also use any paid time off they have accrued or any vacations and those types of leaves.

We wondered if you had a position on whether the same could be made true of the earned paid sick time?

MR. HAUER: So in our FAQs we've addressed this to an extent where we've referenced, again, 23-379 and said that the statute says that nothing in the Act is intended to conflict with federal law. So if federal law permits it, then we would be on the same page.

MS. LOVELL: Okay, thank you.

DIRECTOR ASHLEY: Thank you.

And our last speaker is Lori Higuera.

MS. HIGUERA: Hi. Just a couple questions. With regard to front loading, I don't recall seeing it. So what is the Commission's position on where an employer front loads the earned paid sick time? Can it also allow employees to cash that out, similar to what we do with vacation or PTO, or not?

MR. HAUER: So I think this goes back to an earlier question and our -- our position is, again, that the Act provides a minimum for earned paid sick time purposes.

So if an employer wishes to cash out front loaded earned paid sick time, they certainly can. They can always pay more than they have to. They can offer more than they're required to. I think that's the best answer.

MS. HIGUERA: Okay, so just --

MR. HAUER: Is the question whether they're required to restock them with earned paid sick time if all --

MS. HIGUERA: No. I mean, obviously, if they cashed out they're not using the unpaid sick

time, but they are going to get the value of it and use it for some other purpose.

MR. HAUER: Uh-huh.

MS. HIGUERA: Don't know if that contradicts the underlying purpose of the law and if that's problematic or we, you know, don't take that paternalistic view and just allow employees to do what they will?

MR. HAUER: So our view is that if an employer's interested in front loading in perpetuity each year and every year, then they're basically accomplishing the carry over and accrual requirements of the Act and being more generous than the Act requires in that they're giving them time at the beginning.

If they wish to pay out unused earned paid sick time at the end of a year and then front load it at the beginning of the following year, it's permissible.

MS HIGUERA: I guess -- I'm sorry, I'm probably not being clear enough.

So they front load. On January 1, you know, they have their amount of time, and they allow the employee at any time during the year to cash it out rather than actually use it for paid sick time.

Just say, "You know what, I'm not going to be sick all year. Just give me the cash value of that because I'm going on vacation at the end of January."

MR. HAUER: Yeah, I -- I understand what you're saying now, and I think that could be problematic. The way we view earned paid sick time is there's really two components to it. There's time and money and you can't -- the Act specifies you can't waive your rights under the Act.

Therefore, you know, if you're just gonna take the money associated with the time and lose the ability to use that time --

MS. HIGUERA: Right.

MR. HAUER: -- I think that could be problematic in the course of an investigation.

MS. HIGUERA: Okay. Okay, so that's helpful.

This one, I -- I think we can kind of gather the answer to, but I would love to hear the Commission's perspective. You know, because you can offer earned paid sick time in very small increments depending on what your practice is, let's say it's 15-minute increments and an employee calls in to use their paid sick time and only has less in their

bucket left than the shift.

Say it's an eight-hour shift and they only have fifteen minutes left in their bucket. I assume the paid sick time only applies to the fifteen minutes and not the remainder seven hours and forty-five minutes?

MR. HAUER: Correct.

MS. HIGUERA: Okay. Um --

MR. HAUER: Do you -- do you have any other takes on that issue? That's my understanding as well.

MR. WELKER: Yeah, that's correct.

MS. HIGUERA: I mean, it's a little bit tricky because I think if the employee is sick, they're going to be sick for more than fifteen minutes.

MR. HAUER: Right. The question is whether that --

MS. HIGUERA: Right.

MR. HAUER: -- entire period then becomes protected?

MS. HIGUERA: Right, right.

MR. HAUER: And then you have the -- as Ms. Blommel I'm sure is aware, subsequent litigation about whether or not it was fifteen minutes or the remainder of the day.

Those are -- those are questions that will still be out there --

MS. HIGUERA: Sure.

MR. HAUER: -- but our position is then it's the time that is used for earned paid sick time under the Act that is protected and not the remainder.

MS. HIGUERA: Yeah, fair.

MS. KINGSLEY: Doesn't that then go to the original question of percentages of hours? I mean, I think to me that it says that you earn it as it -- you get it as it's accrued.

MR. HAUER: Uh-huh.

MS. KINGSLEY: I was a little surprised that you came back and said you hadn't decided because one of your FAQs talks in terms of a twenty hours and two tens --

MR. HAUER: Right.

MS. KINGSLEY: -- every year.

So I've assumed it's incurred -- it's accrued in percentages.

MR. HAUER: Okay, all right.

MS. KINGLSEY: I mean, is anybody else different?

MR. HAUER: I'd like to talk more -- I'd like to talk to you more about that because I'd like

to make sure we're on the same page because I'm not sure I understand, but let's -- let's talk after and see if we can find a way to get you some guidance.

DIRECTOR ASHLEY: Ms. Higuera, do you have anything you wanted to -- to add to your topic?

MS. HIGUERA: Yes, one more question, please.

I didn't quite understand it -- at least well enough for me to have confidence in with regard to the on-call issue.

If you have an employee who's on-call but the on-call is not necessarily a set shift, like you may be called to serve this eight-hour shift, it's rather more like emergency response-type situations, right.

So the -- you call the employee and for the first time learn that they are sick and can't do it. In terms of attributing paid sick time, it's not as if you have a block of eight hours or twelve hours. It's just how long would it take to put that fire out or how long would it take to do something?

How does the Commission envision those types of on-call situations?

MR. HAUER: Yeah, and this is tricky because I think on-call and the Act don't necessarily

jibe --

MS. HIGUERA: Sure.

MR. HAUER: -- all that well.

So the way that we view it is if you have scheduled time, which this -- what we're discussing now is not quite. Certainly, it's applicable. If you're called to actual work, if there's work to be done for which you would otherwise be paid, you could use your unpaid sick time for that time, regardless of the length of time. So it doesn't have to be a scheduled block of time.

If you're an emergency responder and it would take you two hours to go out and put out the fire and that's the only work you'd be doing --

MS. HIGUERA: Uh-huh.

MR. HAUER: -- you could use your time for that as an on-call employee.

Does that answer your question?

MS. HIGUERA: It does. Would that be up to the employer or the employee to decide how long it would take to -- to do -- I mean, you know, I don't know how long a fire lasts. I don't know how big it is. It's going to be different every time --

MR. HAUER: Yeah.

MS. HIGUERA: -- with all that situation. I guess as long as we have some sort of reasonable estimate of what we think that time is, that's probably going to work?

MR. HAUER: I think for now, yes. We haven't addressed that formally either --

MS. HIGUERA: Sure.

MR. HAUER: -- but it's another good question and something we'll certainly take into consideration.

MS. HIGUERA: All right. Appreciate it, thank you.

DIRECTOR ASHLEY: Once again, that was our last speaker slip. Thank you very much. We really appreciate everyone's attendance and participation this morning; and, as I mentioned, our Labor Division stands ready to help you personally one-on-one with any detailed additional questions you have. We're here to work through this with you to add clarity to the process.

And this concludes the oral proceeding concerning the Notice of Supplemental Proposed Rulemaking Regarding Amendment of Title 20, Chapter 5, Article 12, specifically R20-5-1201, 1202, 1205, 1206, 1208, 1209, 1210, 1211, 1213 and 1218.

As a reminder, although the oral proceeding has concluded, written comments will be accepted until 5:00 p.m. today at which time the record will close.

Thank you very much.

(Whereupon the proceedings were concluded at 9:42 a.m.)

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

ARTICLE 12. ARIZONA MINIMUM WAGE ACT PRACTICE AND PROCEDURE

1. Identification of the proposed rulemaking:

Arizona voters approved Proposition 206, the Fair Wages and Healthy Families Act (the "Act"), in November 2016. The Act established a new state minimum wage effective January 1, 2017, and granted earned paid sick time rights effective July 1, 2017. The Act authorizes the Industrial Commission of Arizona (the "Commission") to "enforce and implement" both the minimum wage and earned paid sick time provisions and promulgate regulations consistent with the articles. *See* A.R.S. § 23-364(A); A.R.S. Title 23, Chapter 2, Articles 8 and 8.1. In the earned paid sick time context, the Act provides that "[t]he commission shall be authorized to coordinate implementation and enforcement of [Article 8.1, Earned Paid Sick Time] and shall promulgate appropriate guidelines or regulations for such purposes." A.R.S. § 23-376.

Currently, the rules in Article 12—implemented in 2007 after the referendum that created the Arizona Minimum Wage Act—address only those procedures related to the enforcement and implementation of minimum wage law. Because the Commission is now statutorily tasked with implementing, enforcing, and regulating the Act's earned paid sick time provisions, the Commission is proposing to amend existing rules in Article 12 to address matters related to earned paid sick time. *See* NOTICE OF FINAL RULEMAKING, § 6.

In addition to amendments related to the Act's earned paid sick time provisions, the proposed rulemaking conforms the independent contractor analysis to factors outlined in A.R.S. §§ 23-902(D) and 23-1601(B); defines "small employer" and exempts "small employers" from the Act's posting requirements; amends R20-5-1209 to conform to current technologies; and includes various non-substantive amendments.

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

The Act directly affects nearly every Arizona employer and employee (notable exceptions being state and federal employers and employees, and employers and employees subject to collective bargaining agreements that are exempted by the Act). The proposed rulemaking, however, is primarily responsive to the Act, and, as such, creates minimal economic, small business, or consumer impact beyond that already created by the Act. To the extent that the proposed rulemaking creates any impact beyond the Act, the Commission anticipates that the proposed amendments will reduce regulatory burden on employers by aligning Article 12 with current Arizona statutes and providing clarifications that reduce uncertainty for Arizona employers and employees. Among its provisions, the proposed rulemaking includes: (1) definitions (including "employee's regular paycheck," "health care professional," and "smallest increment that the employer's payroll system uses to account for absences or use of other time") that offer clarity for employers and employees and reduce burden; (2) methods for calculating hourly rates of pay for various employee types, reducing the likelihood of disputes between employers and employees; and (3) allowance of front-loading options that exceed the accrual and carry-over requirements in the Act without burdening employers with recordkeeping requirements that provide no benefit to employees. *See also infra* Section 5(b). In addition, the proposed rulemaking reduces the regulatory burden on "small employers" by waiving posting requirements pursuant to A.R.S. § 23-364(D) (*see* proposed amendment to R20-5-1208). The proposed amendments will reduce regulatory burden while achieving the Commission's regulatory objectives as prescribed by the Act.

In *Arizona Chamber of Commerce & Indus. v. Kiley*, the Arizona Supreme Court found that the Commission itself will necessarily incur costs associated with implementing and enforcing the Act's earned paid sick time provisions. No. CV-16-0314-SA, 2017 WL 3272196, at *2 (Ariz. Aug. 2, 2017). The proposed rulemaking, however, will benefit the Commission by: (1) clarifying the scope and methodology of the Commission's enforcement program; (2) establishing clear recordkeeping requirements to assist the Commission in effectively conducting enforcement investigations; and (3) providing substantive guidance to employers and employees that is designed to reduce burden and increase compliance.

3. <u>A cost benefit analysis of the following:</u>

(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 Commission, as a result of the Act, has and will incur costs related to: (1) staff time involved in the rulemaking process; (2) training to enforce the new law; and (3) staff time and resources to enforce the Act. The proposed rulemaking, however, does not independently impose any obligations, costs, or time constraints on the Commission. Rather, the proposed rulemaking should benefit the Commission by: (1) clarifying the scope and methodology of the Commission's enforcement program; (2) establishing clear recordkeeping requirements to assist the Commission in effectively conducting enforcement investigations; and (3) providing substantive guidance to employers and employees that is designed to reduce burden and increase compliance.

As the Commission is the only state agency directly affected by the rulemaking, the Commission does not anticipate any direct costs or benefits to other state agencies as a result of the proposed rulemaking.

(b) Costs and benefits to political subdivisions directly affected by the rulemaking; *and*

The proposed rulemaking applies to political subdivisions subject to the Act. For further discussion regarding the anticipated costs and benefits to entities directly affected by the rulemaking, *see supra* Section 2.

(c) Costs and benefits to businesses directly affected by the rulemaking:

See supra Section 2.

4. Impact on private and public employment in businesses, agencies and political subdivisions:

Although the Act itself is likely to have a significant impact on employment in private businesses and political subdivisions, the proposed rulemaking seeks to reduce regulatory burden by aligning Article 12 with current Arizona statutes and providing guidance that reduces uncertainty for Arizona businesses. *See supra* Section 2 & *infra* Section 5(b). The Commission does not anticipate that the proposed rulemaking will have any negative impact on employment in businesses and political subdivisions.

5. Impact on small businesses:

(a) Identification of the small businesses subject to the rulemaking:

The proposed rulemaking applies to all small businesses in Arizona who are subject to the Act. In the minimum wage context, "small businesses" are specifically exempted, provided that they meet the statutory definition of a "small business" (*i.e.*, a "corporation, proprietorship, partnership, joint venture, limited liability company, trust, or association that has less than five hundred thousand dollars in gross annual revenue *and* that is exempt from having to pay a minimum wage under section 206(a) of title 29 of the United States Code"). *See* A.R.S. § 23-362(B), (C). Section 206(a) of Title 29 of the United States Code is a subsection of the federal Fair Labor Standards Act (FLSA) that requires employers whose employees or enterprises are engaged in interstate "commerce" to pay their employees a minimum wage. As applied, very few modern businesses will qualify as exempt from the Act's minimum wage provisions because most businesses engage in some form of interstate "commerce." In the earned paid sick time context, there is no exemption for small businesses. Instead, the Act modifies earned paid sick time accrual entitlement based on employer size.

(b) Administrative and other costs required for compliance with the rulemaking:

The proposed rulemaking is not intended to impose new obligations, costs, or time constraints on employers or employees. Instead, the proposed rulemaking is intended to reduce regulatory burden and other costs imposed by the Act. *See supra* Section 2. Among its provisions:

- The proposed rulemaking defines "employee's regular paycheck" to incorporate any regular payroll record that is readily available to employees and contains the information required by A.R.S. § 23-375(C), including physical or electronic paychecks or paystubs. A.A.C. R20-5-1202(13).
- The proposed rulemaking defines "health care professional" to specify which health care professionals are qualified to provide documentation concerning earned paid sick time. A.A.C. R20-5-1202(16).
- The proposed rulemaking offers methods for calculating earned paid sick time for various employee types, thus reducing the likelihood of a dispute over the employee's hourly rate for earned paid sick time. A.A.C. R20-5-1202(25).

- The proposed rulemaking defines "smallest increment that the employer's payroll system uses to account for absences or use of other time" to specify that employers may utilize "the smallest increment of time that an employer utilizes, by policy or practice, to account for absences or use of other paid time off." A.A.C. R20-5-1202(26).
- The proposed rulemaking authorizes front-loading of earned paid sick time to meet employee accrual and carry-over requirements without burdening employers with unnecessary recordkeeping requirements. A.A.C. R20-5-1206.
- The proposed rulemaking waives small employer posting requirements. A.A.C. R20-5-1208.

(c) Description of the methods that may be used to reduce the impact on small businesses:

The Commission crafted the proposed rulemaking to reduce regulatory burden and costs imposed on small businesses by the Act, while preserving employee rights granted by the Act. *See supra* Sections 2 & 5(b).

(d) Cost and benefit to private persons and consumers who are directly affected by proposed rulemaking:

See supra Sections 2 & 5(b) (discussing anticipated cost and benefit to employers and employees).

6. Probable effect on state revenues:

The Commission will incur costs associated with implementing and enforcing the Act's minimum wage and earned paid sick time provisions. The proposed rulemaking, however, will benefit the Commission by: (1) clarifying the scope and methodology of the Commission's enforcement program; (2) establishing clear recordkeeping requirements to assist the Commission in effectively conducting enforcement investigations; and (3) providing substantive guidance to employers and employees that is designed to reduce burden and increase compliance. The Commission does not anticipate that the proposed rulemaking will have an effect on state revenues.

7. Less intrusive or less costly alternative methods considered:

The Commission crafted the proposed rulemaking to reduce regulatory burden and costs imposed on small businesses by the Act, while preserving employee rights granted by the Act. *See supra* Sections 2 & 5(b).

8. Data on which the rule is based:

The Commission did not perform any studies as a basis for the proposed rulemaking. The rulemaking was primarily responsive to the Act and to stakeholder comments received in response to both the Act and the proposed rulemaking.

ARTICLE 12. ARIZONA MINIMUM WAGE ACT PRACTICE AND PROCEDURE

R20-5-1201. Notice of Rules

A. This Article applies to all actions and proceedings before the Commission arising under the Raise the Arizona Minimum Wage for Working Arizonans Act, as added by 2006 Proposition 202, § 2.

B. The Commission shall provide a copy of this Article upon request to any person free of charge.

Historical Note

New Section made by emergency rulemaking at 13 A.A.R. 473, effective January 25, 2007 for 180 days (Supp. 07-1). Emergency renewed at 13 A.A.R. 2785, effective July 17, 2007 for 180 days (Supp. 07-3). New Section made by final rulemaking at 13 A.A.R. 4315, effective January 13, 2008 (Supp. 07-4).

R20-5-1202. Definitions

In this Article, the definitions of A.R.S. § 23-362 (version two) apply. In addition, unless the context otherwise requires:

1. "Act" means the Raise the Arizona Minimum Wage for Working Arizonans Act, as added by 2006 Proposition 202, § 2.
2. "Affected employee" means an employee or employees on whose behalf a complaint may be filed alleging a violation under the Act.
3. "Authorized representative" means a person prescribed by law to act on behalf of a party who files with the Department a written instrument advising of the person's authority to act on behalf of the party.
4. "Casual Basis," when applied to babysitting services, means employment which is irregular or intermittent.
5. "Commission" means monetary compensation based on:
   a. A percentage of total sales,
   b. A percentage of sales in excess of a specified amount,
   c. A fixed allowance per unit, or
   d. Some other formula the employer and employee agrees as a measure of accomplishment.
6. "Complainant" means a person or organization filing an administrative complaint under the Act.
7. "Department" means the Labor Department of the Industrial Commission of Arizona or other authorized division of the Industrial Commission as designated by the Industrial Commission.
8. "Filing" means receipt of a report, document, instrument, videotape, audiotape, or other written matter at an office of the Department.
9. "Hours worked" means all hours for which an employee covered under the Act is employed and required to give to the employer, including all time during which an employee is on duty or at a prescribed work place and all time the employee is suffered or permitted to work.
10. "Minimum wage" means the lowest rate of monetary compensation required under the Act.
11. "Monetary compensation" means cash or its equivalent due to an employee by reason of employment.
12. "On duty" means time spent working or waiting that the employer controls and that the employee is not permitted to use for the employee's own purpose.
13. "Tip" means a sum a customer presents as a gift in recognition of some service performed, and includes gratuities. The sum may be in the form of cash, amounts paid by bank check or other negotiable instrument payable at par, or amounts the employer transfers to the employee under directions from a credit customer who designates an amount to be added to a bill as a tip. Gifts in forms other than cash or its equivalent as described in this definition, including theater tickets, passes, or merchandise, are not tips.
14. "Violation" means a transgression of any statute or rule, or any part of a statute or rule, including both acts and omissions.
15. "Willfully" means acting with actual knowledge of the requirements of the Act or this Article, or acting with reckless disregard of the requirements of the Act or this Article.
16. "Workday" means any fixed period of 24 consecutive hours.
17. "Workweek" means any fixed and regularly recurring period of seven consecutive workdays.

Historical Note

New Section made by emergency rulemaking at 13 A.A.R. 473, effective January 25, 2007 for 180 days (Supp. 07-1). Emergency renewed at 13 A.A.R. 2785, effective July 17, 2007 for 180 days (Supp. 07-3). New Section made by final rulemaking at 13 A.A.R. 4315, effective January 13, 2008 (Supp. 07-4).

R20-5-1203. Duty to Provide Current Address

A. A complainant shall provide and keep the Labor Department advised of the complainant's current mailing address and telephone number.

B. An employer under investigation by the Department shall provide and keep the Labor Department advised of the employer's current mailing address and telephone number.

Historical Note

New Section made by emergency rulemaking at 13 A.A.R. 473, effective January 25, 2007 for 180 days (Supp. 07-1). Emergency renewed at 13 A.A.R. 2785, effective July 17, 2007 for 180 days (Supp. 07-3). New Section made by final rulemaking at 13 A.A.R. 4315, effective January 13, 2008 (Supp. 07-4).

R20-5-1204. Forms Prescribed by the Department

Forms prescribed by the Department, including the poster required under R20-5-1208, shall not be changed, amended, or otherwise altered without the prior written approval of the Department.

Historical Note

New Section made by emergency rulemaking at 13 A.A.R. 473, effective January 25, 2007 for 180 days (Supp. 07-1). Emergency renewed at 13 A.A.R. 2785, effective July 17, 2007 for 180 days (Supp. 07-3). New Section made by final rulemaking at 13 A.A.R. 4315, effective January 13, 2008 (Supp. 07-4).

R20-5-1205. Determination of Employment Relationship

A. Determination of an employment relationship under the Act, which includes whether an individual is an independent contractor, shall be based upon the economic realities of the relationship. Consideration of whether an individual is economically dependent on the employer for which the individual performs work shall be determined by factors showing dependence, which non-exclusive factors shall include:

1. The degree of control the alleged employer exercises over the individual,
2. The individual's opportunity for profit or loss and the individual's investment in the business,
3. The degree of skill required to perform the work,
4. The permanence of the working relationship, and
5. The extent to which the work performed is an integral part of the alleged employer's business.

B. An individual that works for another person without any express or implied compensation agreement is not an employee under the Act. This may include an individual that volunteers to work for civic, charitable, or humanitarian reasons that are offered freely and without direct or implied pressure or coercion from an employer, provided that the volunteer is not otherwise employed by the employer to perform the same type of services as those which the individual proposes to volunteer.

C. An individual that works for another individual as a babysitter on a casual basis and whose vocation is not babysitting, is not an employee under the Act even if the individual performs other household work not related to caring for the children, provided the household work does not exceed 20% of the total hours worked on the particular babysitting assignment.

Historical Note

New Section made by emergency rulemaking at 13 A.A.R. 473, effective January 25, 2007 for 180 days (Supp. 07-1). Emergency renewed at 13 A.A.R. 2785, effective July 17, 2007 for 180 days (Supp. 07-3). New Section made by final rulemaking at 13 A.A.R. 4315, effective January 13, 2008 (Supp. 07-4).

R20-5-1206. Payment of Minimum Wage; Commissions; Tips

A. Subject to the requirements of the Act and this Article, no less than the minimum wage shall be paid for all hours worked, regardless of the frequency of payment and regardless of whether the wage is paid on an hourly, salaried, commissioned, piece rate, or any other basis.

B. If the combined wages of an employee are less than the applicable minimum wage for a work week, the employer shall pay monetary compensation already earned, and no less than the difference between the amounts earned and the minimum wage as required under the Act.

C. The workweek is the basis for determining an employee's hourly wage. Upon hire, an employer shall advise the employee of the employee's designated workweek. Once established, an employer shall not change or manipulate an employee's workweek to evade the requirements of the Act.

D. In computing the minimum wage, an employer shall consider only monetary compensation and shall count tips and commissions in the workweek in which the tip or commission is earned.

E. An employer is allowed to:

1. Require or permit employees to pool, share, or split tips; and
2. Require an employee to report tips to the employer in order to meet reporting requirements of this Article and federal law.

Historical Note

New Section made by emergency rulemaking at 13 A.A.R. 473, effective January 25, 2007 for 180 days (Supp. 07-1). Emergency renewed at 13 A.A.R. 2785, effective July 17, 2007 for 180 days (Supp. 07-3). New Section made by final rulemaking at 13 A.A.R. 4315, effective January 13, 2008 (Supp. 07-4).

R20-5-1207. Tip Credit Toward Minimum Wage

A. In this Section, unless the context otherwise requires, "customarily and regularly" means receiving tips on a consistent and recurrent basis, the frequency of which may be greater than occasional, but less than constant, and includes the occupations of waiter, waitress, bellhop, busboy, car wash attendant, hairdresser, barber, valet, and service bartender.

B. For purposes of calculating the permissible credit for tips under A.R.S. § 23-363(C), the following applies:

1. Tips are customarily and regularly received in the occupation in which the employee is engaged;
2. Except as provided in R20-5-1206(E), the employee actually receives the tip free of employer control as to how the employee uses the tip and the tip becomes the employee's property;
3. Employees who customarily and regularly receive tips may pool, share, or split tips between them, and the amount each employee actually retains is considered the tip of the employee who retains it;

4. Employer-required sharing of tips with employees who do not customarily and regularly receive tips in the occupation in which the employee is engaged, including management or food preparers, are not credited toward that employee's minimum wage; and
5. A compulsory charge for service imposed on a customer by an employer's establishment are not credited toward an employee's minimum wage unless the employer actually distributes the charge to the employee in the pay period in which the charge is earned.

C. Upon hiring or assigning an individual to a position that customarily and regularly receives tips, an employer intending to exercise a tip credit shall provide written notice to the employee prior to exercising the tip credit. Thereafter, the employer shall notify the employee in writing each pay period of the amount per hour that the employer takes as a tip credit.

Historical Note

New Section made by emergency rulemaking at 13 A.A.R. 473, effective January 25, 2007 for 180 days (Supp. 07-1). Emergency renewed at 13 A.A.R. 2785, effective July 17, 2007 for 180 days (Supp. 07-3). New Section made by final rulemaking at 13 A.A.R. 4315, effective January 13, 2008 (Supp. 07-4).

R20-5-1208. Posting Requirements

Every employer subject to the Act shall place a poster prescribed by the Department informing employees of their rights under the Act in a conspicuous place in every establishment where employees are employed and where notices to employees are customarily placed. The employer shall ensure that the notice is not removed, altered, defaced, or covered by other material.

Historical Note

New Section made by emergency rulemaking at 13 A.A.R. 473, effective January 25, 2007 for 180 days (Supp. 07-1). Emergency renewed at 13 A.A.R. 2785, effective July 17, 2007 for 180 days (Supp. 07-3). New Section made by final rulemaking at 13 A.A.R. 4315, effective January 13, 2008 (Supp. 07-4).

R20-5-1209. Records Availability

A. Each employer shall keep the records required under the Act and this Article safe and accessible at the place or places of employment, or at one or more established central recordkeeping offices where the records are customarily maintained. When the employer maintains the records at a central recordkeeping office other than in the place or places of employment, the employer shall make the records available to the Department within 72 hours following notice from the Department.

B. Employers who use microfilm or another method for recordkeeping purposes shall make available to the Department any equipment that is necessary to facilitate inspection and copying of the records.

C. Each employer required to maintain records under the Act shall make enlargement, recomputation, or transcription of the records and shall submit to the Department the records or reports in a readable format upon the Department's written request.

Historical Note

New Section made by emergency rulemaking at 13 A.A.R. 473, effective January 25, 2007 for 180 days (Supp. 07-1). Emergency renewed at 13 A.A.R. 2785, effective July 17, 2007 for 180 days (Supp. 07-3). New Section made by final rulemaking at 13 A.A.R. 4315, effective January 13, 2008 (Supp. 07-4).

R20-5-1210. General Recordkeeping Requirements

A. Payroll records required to be kept under the Act include:

1. All time and earning cards or sheets on which are entered the daily starting and stopping time of individual employees, or of separate work forces, or the amounts of work accomplished by individual employees on a daily, weekly, or pay period basis (for example, units produced) when those amounts determine in whole or in part the pay period wages of those employees;
2. From their last effective date, all wage-rate tables or schedules of the employer that provide the piece rates or other rates used in computing wages; and
3. Records of additions to or deductions from wages paid and records that support or corroborate the additions or deductions.

B. Except as otherwise provided in this Section, every employer shall maintain and preserve payroll or other records containing the following information and data with respect to each employee to whom the Act applies:

1. Name in full, and on the same record, the employee's identifying symbol or number if it is used in place of the employee's name on any time, work, or payroll record;
2. Home address, including zip code;
3. Date of birth, if under 19;
4. Occupation in which employed;
5. Time of day and day of week on which the employee's workweek begins. If the employee is part of a workforce or employed in or by an establishment all of whose workers have a workweek beginning at the same time on the same day, then a single notation of the time of the day and beginning day of the workweek for the whole workforce or establishment is permitted;
6. Regular hourly rate of pay for any workweek and an explanation of the basis of pay by indicating the monetary amount paid on a per hour, per day, per week, per piece, commission on sales, or other basis, including the amount and nature of each payment;
7. Hours worked each workday and total hours worked each workweek;
8. Total daily or weekly straight-time wages due for hours worked during the workday or workweek, exclusive of premium overtime compensation;
9. Total premium pay for overtime hours and an explanation of how the premium pay was calculated exclusive of straight-time wages for overtime hours recorded under subsection (B)(8) of this Section;

10. Total additions to or deductions from wages paid each pay period including employee purchase orders or wage assignments, including, for individual employee records, the dates, amounts, and nature of the items that make up the total additions and deductions;
11. Total wages paid each pay period; and
12. Date of payment and the pay period covered by payment.

C. For an employee who is compensated on a salary basis at a rate that exceeds the minimum wage required under the Act and who, under 29 CFR 541, is an exempt bona fide executive, administrative, or professional employee, including an employee employed in the capacity of academic administrative personnel or teachers in elementary or secondary schools, or in outside sales, an employer shall maintain and preserve:

1. Records containing the information and data required under subsections (B)(1) through (B)(5), (B)(11) and (B)(12) of this Section; and
2. Records containing the basis on which wages are paid in sufficient detail to permit a determination or calculation of whether the salary received exceeds the minimum wage required under the Act, including a record of the hours upon which payment of the salary is based, whether full time or part time.

D. With respect to employees working on fixed schedules, an employer may maintain records showing instead of the hours worked each day and each workweek as required under this Section, the schedule of daily and weekly hours the employee normally works, provided:

1. In weeks in which an employee adheres to this schedule, the employer indicates by check mark, statement, or other method, that the employee actually worked the hours; and
2. In weeks in which more or fewer than the scheduled hours are worked, the employer records the number of hours actually worked each day and each week.

E. With respect to an employee that customarily and regularly receives tips, the employer shall ensure that the records required under this Article include the following information:

1. A symbol, letter, or other notation placed on the pay records identifying each employee whose wage is determined in part by tips;
2. Amount of tips the employee reports to the employer;
3. The hourly wage of each tipped employee after taking into consideration the employee's tips;
4. Hours worked each workday in any occupation in which the employee does not receive tips, and total daily or week straight-time payment made by the employer for the hours;
5. Hours worked each workday in occupations in which the employee receives tips and total daily or weekly straight-time wages for the hours; and
6. Copy of the notice required under R20-5-1207(C).

F. An employer who makes retroactive payment of wages, voluntarily or involuntarily, shall record on the pay records, the amount of the payment to each employee, the period covered by the payment, and the date of payment.

Historical Note

New Section made by emergency rulemaking at 13 A.A.R. 473, effective January 25, 2007 for 180 days (Supp. 07-1). Emergency renewed at 13 A.A.R. 2785, effective July 17, 2007 for 180 days (Supp. 07-3). New Section made by final rulemaking at 13 A.A.R. 4315, effective January 13, 2008 (Supp. 07-4).

R20-5-1211. Administrative Complaints

A. A person or organization alleging a minimum wage violation, shall file a complaint with the Labor Department within one year from the date the wages were due.

B. A person or organization alleging retaliation shall file a complaint with the Labor Department within one year from the date the alleged violation occurred or when the employee knew or should have known of the alleged violation.

C. The person or organization filing a complaint with the Labor Department shall sign the complaint.

D. Any person or organization other than an affected employee who files a complaint shall include the names of affected employees.

E. For good cause, and upon its own complaint, the Department may investigate violations under the Act.

Historical Note

New Section made by emergency rulemaking at 13 A.A.R. 473, effective January 25, 2007 for 180 days (Supp. 07-1). Emergency renewed at 13 A.A.R. 2785, effective July 17, 2007 for 180 days (Supp. 07-3). New Section made by final rulemaking at 13 A.A.R. 4315, effective January 13, 2008 (Supp. 07-4).

R20-5-1212. Conduct that Hinders Investigation

An employer hinders an investigation under the Act if the employer engages in conduct, or causes another person to engage in conduct, that delays or otherwise interferes with the Department's investigation, including:

1. Obstructing or refusing to admit the Department to any place of employment authorized under the Act;
2. Obstructing or refusing to permit interviews authorized under the Act;
3. Failing to make, keep, or preserve records required under the Act or this Article;
4. Failing to permit the review and copying of records required under the Act and this Article; and
5. Falsifying any record required under the Act or this Article.

Historical Note

New Section made by emergency rulemaking at 13 A.A.R. 473, effective January 25, 2007 for 180 days (Supp. 07-1). Emergency

renewed at 13 A.A.R. 2785, effective July 17, 2007 for 180 days (Supp. 07-3). New Section made by final rulemaking at 13 A.A.R. 4315, effective January 13, 2008 (Supp. 07-4).

R20-5-1213. Findings and Order Issued by the Department

A. Except as provided in R20-5-1219, after receipt of a complaint alleging a violation of the minimum wage requirement of the Act, or alleging retaliation under the Act, the Department shall issue a Findings and Order of its determination. The Department shall send its Findings and Order to both the employer and the complainant at their last known addresses served personally or by regular first class mail. If the complaint named affected employees, the Department may send a copy of its Findings and Order to the affected employees.

B. If the Department determines that an employer has violated the minimum wage payment requirement, the Department shall order the employer to pay the employee, and if applicable, affected employees, the balance of the wages owed, including interest at the legal rate and an additional amount equal to twice the underpaid wages.

C. If the Department determines that a retaliation violation has occurred, the Department shall direct the employer or other person to cease and desist from the violation and may take action necessary to remedy the violation, including:

1. Rehiring or reinstatement,
2. Reimbursement of lost wages and interest,
3. Payment of penalty to employees or affected employees as provided for in the Act and this Article, and
4. Posting of notices to employees.

D. If the Department determines that no retaliation has occurred the Department shall notify the parties and shall dismiss the complaint without prejudice. After notification of the Department's determination, the complainant may bring a civil action under A.R.S. § 23-364(E).

E. The Department may assess civil penalties for recordkeeping, posting, and other violations under the Act and this Article as part of a Findings and Order issued under subsection (A) or the civil penalties and other violations may be assessed as a separate Findings and Order. If issued as a separate Findings and Order, the Department shall serve, personally or by regular first class mail, the Findings and Order on the employer and, if a complaint has been filed, the complainant.

F. The Director of the Department shall sign the written Findings and Order issued by the Department.

G. If an employer does not comply with a Findings and Order issued by the Department within 10 days following finality of the Findings and Order, the Department may refer the matter to a law enforcement officer.

Historical Note

New Section made by emergency rulemaking at 13 A.A.R. 473, effective January 25, 2007 for 180 days (Supp. 07-1). Emergency renewed at 13 A.A.R. 2785, effective July 17, 2007 for 180 days (Supp. 07-3). New Section made by final rulemaking at 13 A.A.R. 4315, effective January 13, 2008 (Supp. 07-4).

R20-5-1214. Review of Department Findings and Order; Hearings; Issuance of Decision Upon Hearing

A. Except as provided in R20-5-1213(D), a party aggrieved by a Findings and Order issued by the Department may request a hearing by filing a written request for hearing with the Department within 30 days after the Findings and Order is served upon the party. Failure to timely file a request for hearing means that the Findings and Order issued by the Department is final and res judicata to all parties.

B. A request for hearing shall be in writing and contain:

1. The name and address of the party requesting the hearing,
2. The signature of the party or the party's authorized representative, and
3. A statement that a hearing is requested.

C. Upon receipt of a timely filed request for hearing, the Department shall refer the matter to the Administrative Law Judge Division of the Commission for hearing.

D. Except as otherwise provided in this Section, the hearing shall be conducted under A.R.S. § 41-1061 et seq.

E. A person submitting correspondence or other documents, including subpoena requests, to an administrative law judge concerning a matter pending before the administrative law judge, shall contemporaneously serve a copy of the correspondence or other document upon all other parties, or if represented, the parties' authorized representative.

F. The administrative law judge may dismiss a request for hearing when it appears to the judge's satisfaction that the parties have resolved the disputed issue or issues.

G. The administrative law judge shall issue a written decision upon hearing containing findings of fact and conclusions of law no later than 30 days after the matter is submitted for decision. The decision shall be sent to the parties at their last known addresses served personally or by regular first class mail.

H. A decision issued under this Section is final when entered unless a party files a request for rehearing or review as provided in R20-5-1215 or commences an action in the Superior Court as provided in R20-5-1216 and A.R.S. § 12-901 et seq. The decision shall contain a statement explaining the review rights of a party.

Historical Note

New Section made by emergency rulemaking at 13 A.A.R. 473, effective January 25, 2007 for 180 days (Supp. 07-1). Emergency renewed at 13 A.A.R. 2785, effective July 17, 2007 for 180 days (Supp. 07-3). New Section made by final rulemaking at 13 A.A.R. 4315, effective January 13, 2008 (Supp. 07-4).

R20-5-1215. Request for Rehearing or Review of Decision Upon Hearing

A. A party may request rehearing or review of a decision issued under R20-5-1214 by filing with the Administrative Law Judge a written request for rehearing or review no later than 15 days after the written decision is served personally or by regular first class mail upon the parties.

B. A request for rehearing or review shall be based upon any of the following causes that materially affected the rights of an aggrieved party:
1. Irregularities in the hearing proceeding or any order, or abuse of discretion that deprives a party seeking review of a fair hearing;
2. Accident or surprise that could not have been prevented by ordinary prudence;
3. Newly discovered material evidence that could not have been discovered with reasonable diligence and produced at the hearing;
4. Error in the admission or rejection of evidence, or errors of law occurring at the hearing;
5. Bias or prejudice of the Department or administrative law judge; and
6. The findings of fact or conclusions of law contained in the decision are not justified by the evidence or are contrary to law.

C. A request for rehearing or review shall state the specific facts and law in support of the request and shall specify the relief sought by the request.

D. A party shall have 15 days from the date of the filing of a request for rehearing or review to file a written response. Failure to respond shall not be deemed an admission against interest.

E. The administrative law judge shall issue a decision upon review no later than 30 days after receiving a request for review or response, if one is filed.

F. A decision upon review is final unless a party seeks judicial review as provided in R20-5-1216.

Historical Note

New Section made by emergency rulemaking at 13 A.A.R. 473, effective January 25, 2007 for 180 days (Supp. 07-1). Emergency renewed at 13 A.A.R. 2785, effective July 17, 2007 for 180 days (Supp. 07-3). New Section made by final rulemaking at 13 A.A.R. 4315, effective January 13, 2008 (Supp. 07-4).

R20-5-1216. Judicial Review of Decision Upon Hearing or Decision Upon Review

A. A party aggrieved by a decision upon hearing issued under R20-5-1214 or a decision upon review issued under R20-5-1215 may seek review by commencing an action in the Superior Court as provided in A.R.S. § 12-901 et seq. within 35 days from the date a copy of the decision sought to be reviewed is served personally or by regular first class mail upon the party affected.

B. A decision upon hearing issued under R20-5-1214 or a decision upon review issued under R20-5-1215 is final unless a party seeks judicial review as provided under A.R.S. § 12-901 et seq.

Historical Note

New Section made by emergency rulemaking at 13 A.A.R. 473, effective January 25, 2007 for 180 days (Supp. 07-1). Emergency renewed at 13 A.A.R. 2785, effective July 17, 2007 for 180 days (Supp. 07-3). New Section made by final rulemaking at 13 A.A.R. 4315, effective January 13, 2008 (Supp. 07-4).

R20-5-1217. Assessment of Civil Penalties Under A.R.S. § 23-364(F)

The Department may assess civil penalties for violations of the Act and this Article, including the assessment of civil penalties for engaging in conduct that hinders an investigation of the Department as specified in R20-5-1212.

Historical Note

New Section made by emergency rulemaking at 13 A.A.R. 473, effective January 25, 2007 for 180 days (Supp. 07-1). Emergency renewed at 13 A.A.R. 2785, effective July 17, 2007 for 180 days (Supp. 07-3). New Section made by final rulemaking at 13 A.A.R. 4315, effective January 13, 2008 (Supp. 07-4).

R20-5-1218. Collection of Wages or Penalty Payments Owed

A. Upon determination that wages or penalty payments are due and unpaid to any employee, the employee may, or the Department may on behalf of an employee, obtain judgment and execution, garnishment, attachment, or other available remedies for collection of unpaid wages and penalty payments established by a final Findings and Order of the Department.

B. If payment cannot be made to the employee, the Department shall receive monetary compensation or penalty payments on behalf of the employee and transmit monies it receives as payment in a special state fund as provided in A.R.S. § 23-356(C).

C. The Department may amend a Findings and Order to conform to the legal name of the business or the person who is the defendant employer to a complaint under the Act, provided service of the Findings and Order was made on the defendant or the defendant's agent. If a judgment has been entered on the order, the Department may apply to the clerk of the superior court to amend a judgment that has been issued under a final order, provided service was made on the defendant or the defendant's agent.

Historical Note

New Section made by emergency rulemaking at 13 A.A.R. 473, effective January 25, 2007 for 180 days (Supp. 07-1). Emergency renewed at 13 A.A.R. 2785, effective July 17, 2007 for 180 days (Supp. 07-3). New Section made by final rulemaking at 13 A.A.R. 4315, effective January 13, 2008 (Supp. 07-4).

R20-5-1219. Resolution of Disputes

Notwithstanding any other provision of law, the Department may mediate and conciliate a dispute between the parties.

Historical Note

New Section made by emergency rulemaking at 13 A.A.R. 473, effective January 25, 2007 for 180 days (Supp. 07-1). Emergency renewed at 13 A.A.R. 2785, effective July 17, 2007 for 180 days (Supp. 07-3). New Section made by final rulemaking at 13 A.A.R. 4315, effective January 13, 2008 (Supp. 07-4).

R20-5-1220. Small Employer Request for Exception to Recordkeeping Requirements

A. In this Section, unless context otherwise requires, "small employer" means a corporation, proprietorship, partnership, joint venture, limited liability company, trust, or association that has less than $500,000 in gross annual revenue.

B. A small employer, or any category of small employer that is unreasonably burdened by the recordkeeping requirements of the Act and this Article may file a written petition for exception with the Department requesting relief from certain recordkeeping requirements under this Article. The petition shall:

1. State the reasons for the request for relief;
2. State an alternate manner or method of making, keeping, and preserving records that will enable the Department to determine hours worked and wages paid; and
3. Include the signature of the employer or an authorized representative of the employer.

C. Subject to any conditions or limitations necessary to ensure fulfillment of the purpose and intent of Act, the Department may grant a petition for exception if it finds that:

1. The small employer, or category of small employer is unreasonably burdened by the recordkeeping requirements of the Act and this Article; and
2. The relief requested and alternative proposed will not hinder the Department's enforcement of the Act and this Article.

D. For good cause, the Department may rescind a prior order granting relief under this Section.

E. Relief under this Section is effective upon the Department's written authorization.

Historical Note

New Section made by emergency rulemaking at 13 A.A.R. 473, effective January 25, 2007 for 180 days (Supp. 07-1). Emergency renewed at 13 A.A.R. 2785, effective July 17, 2007 for 180 days (Supp. 07-3). New Section made by final rulemaking at 13 A.A.R. 4315, effective January 13, 2008 (Supp. 07-4).

General and Specific Statutes Authorizing the Rules

23-364. Enforcement

(Caution: 1998 Prop. 105 applies)

A. The commission is authorized to enforce and implement this article and may promulgate regulations consistent with this article to do so. For purposes of this section: (1) "article shall mean both article 8 and article 8.1 of this chapter; (2) "earned paid sick time" is as defined in section 23-371, Arizona Revised Statutes; (3) "employer" shall refer to the definition of employer in section 23-362, Arizona Revised Statutes, for purposes of minimum wage enforcement and shall refer to the definition of employer in section 23-371, Arizona Revised Statutes, for purposes of earned paid sick time enforcement; and (4) "retaliation" shall mean denial of any right guaranteed under article 8 and article 8.1 of this chapter and any threat, discharge, suspension, demotion, reduction of hours, or any other adverse action against an employee for the exercise of any right guaranteed herein including any sanctions against an employee who is the recipient of public benefits for rights guaranteed herein. Retaliation shall also include interference with or punishment for in any manner participating in or assisting an investigation, proceeding or hearing under this article.

B. No employer or other person shall discriminate or subject any person to retaliation for asserting any claim or right under this article, for assisting any other person in doing so, or for informing any person about their rights. Taking adverse action against a person within ninety days of a person's engaging in the foregoing activities shall raise a presumption that such action was retaliation, which may be rebutted by clear and convincing evidence that such action was taken for other permissible reasons.

C. Any person or organization may file an administrative complaint with the commission charging that an employer has violated this article as to any employee or other person. When the commission receives a complaint, the commission may review records regarding all employees at the employer's worksite in order to protect the identity of any employee identified in the complaint and to determine whether a pattern of violations has occurred. The name of any employee identified in a complaint to the commission shall be kept confidential as long as possible. Where the commission determines that an employee's name must be disclosed in order to investigate a complaint further, it may so do only with the employee's consent.

D. Employers shall post notices in the workplace, in such format specified by the commission, notifying employees of their rights under this article. Employers shall provide their business name, address, and telephone number in writing to employees upon hire. Employers shall maintain payroll records showing the hours worked for each day worked, and the wages and earned paid sick time paid to all employees for a period of four years. Failure to do so shall raise

a rebuttable presumption that the employer did not pay the required minimum wage rate or earned paid sick time. The commission may by regulation reduce or waive the recordkeeping and posting requirements herein for any categories of small employers whom it finds would be unreasonably burdened by such requirements. Employers shall permit the commission or a law enforcement officer to inspect and copy payroll or other business records, shall permit them to interview employees away from the worksite, and shall not hinder any investigation. Such information provided shall keep confidential except as is required to prosecute violations of this article. Employers shall permit an employee or his or her designated representative to inspect and copy payroll records pertaining to that employee.

E. A civil action to enforce this article may be maintained in a court of competent jurisdiction by a law enforcement officer or by any private party injured by a violation of this article.

F. Any employer who violates recordkeeping, posting, or other requirements that the commission may establish under this article shall be subject to a civil penalty of at least $250 dollars for a first violation, and at least $1000 dollars for each subsequent or willful violation and may, if the commission or court determines appropriate, be subject to special monitoring and inspections.

G. Any employer who fails to pay the wages or earned paid sick time required under this article shall be required to pay the employee the balance of the wages or earned paid sick time owed, including interest thereon, and an additional amount equal to twice the underpaid wages or earned paid sick time. Any employer who retaliates against an employee or other person in violation of this article shall be required to pay the employee an amount set by the commission or a court sufficient to compensate the employee and deter future violations, but not less than one hundred fifty dollars for each day that the violation continued or until legal judgment is final. The commission and the courts shall have the authority to order payment of such unpaid wages, unpaid earned sick time, other amounts, and civil penalties and to order any other appropriate legal or equitable relief for violations of this article. Civil penalties shall be retained by the agency that recovered them and used to finance activities to enforce this article. A prevailing plaintiff shall be entitled to reasonable attorney's fees and costs of suit.

H. A civil action to enforce this article may be commenced no later than two years after a violation last occurs, or three years in the case of a willful violation, and may encompass all violations that occurred as part of a continuing course of employer conduct regardless of their date. The statute of limitations shall be tolled during any investigation of an employer by the commission or other law enforcement officer, but such investigation shall not bar a person from bringing a civil action under this article. No verbal or written agreement or employment contract may waive any rights under this article.

I. The legislature may by statute raise the minimum wage established under this article, extend coverage, or increase penalties. A county, city, or town may by ordinance regulate minimum wages and benefits within its geographic boundaries but may not provide for a minimum wage lower than that prescribed in this article. State agencies, counties, cities, towns and other political subdivisions of the state may consider violations of this article in determining whether employers may receive or renew public contracts, financial assistance or licenses. This article shall be liberally construed in favor of its purposes and shall not limit the authority of the

legislature or any other body to adopt any law or policy that requires payment of higher or supplemental wages or benefits, or that extends such protections to employers or employees not covered by this article.

23-376. Regulations

(Caution: 1998 Prop. 105 applies)

The commission shall be authorized to coordinate implementation and enforcement of this article and shall promulgate appropriate guidelines or regulations for such purposes.

Statutes Implemented by this Rulemaking

Article 8. Minimum Wage

23-362. Definitions

(2006 Prop. 202, sec. 2. Caution: 1998 Prop. 105 applies.)

As used in this article, unless the context otherwise requires:

A. "Employee" means any person who is or was employed by an employer but does not include any person who is employed by a parent or a sibling, or who is employed performing babysitting services in the employer's home on a casual basis.

B. "Employer" includes any corporation, proprietorship, partnership, joint venture, limited liability company, trust, association, political subdivision of the state, individual or other entity acting directly or indirectly in the interest of an employer in relation to an employee, but does not include the state of Arizona, the United States, or a small business.

C. "Small business" means any corporation, proprietorship, partnership, joint venture, limited liability company, trust, or association that has less than five hundred thousand dollars in gross annual revenue and that is exempt from having to pay a minimum wage under section 206(a) of title 29 of the United States Code.

D. "Employ" includes to suffer or permit to work; whether a person is an independent contractor or an employee shall be determined according to the standards of the federal fair labor standards act, but the burden of proof shall be upon the party for whom the work is performed to show independent contractor status by clear and convincing evidence.

E. "Wage" means monetary compensation due to an employee by reason of employment, including an employee's commissions, but not tips or gratuities.

F. "Law enforcement officer" means the attorney general, a city attorney, a county attorney or a town attorney.

G. "Commission" means the industrial commission of Arizona, any successor agency, or such other agency as the governor shall designate to implement this article.

23-363. Minimum wage

(Caution: 1998 Prop. 105 applies)

A. Employers shall pay employees no less than the minimum wage, which shall be not less than:

1. $10 on and after January 1, 2017.

2. $10.50 on and after January 1, 2018.

3. $11 on and after January 1, 2019.

4. $12 on and after January 1, 2020.

B. The minimum wage shall be increased on January 1, 2021 and on January 1 of successive years, by the increase in the cost of living. The increase in the cost of living shall be measured by the percentage increase as of August of the immediately preceding year over the level as of August of the previous year of the consumer price index (all urban consumers, U.S. city average for all items) or its successor index as published by the U.S. department of labor or its successor agency, with the amount of the minimum wage increase rounded to the nearest multiple of five cents.

C. For any employee who customarily and regularly receives tips or gratuities from patrons or others, the employer may pay a wage up to $3.00 per hour less than the minimum wage if the employer can establish by its records of charged tips or by the employee's declaration for federal insurance contributions act (FICA) purposes that for each week, when adding tips received to wages paid, the employee received not less than the minimum wage for all hours worked. Compliance with this provision will be determined by averaging tips received by the

employee over the course of the employer's payroll period or any other period selected by the employer that complies with regulations adopted by the commission.

23-364. Enforcement

(Caution: 1998 Prop. 105 applies)

A. The commission is authorized to enforce and implement this article and may promulgate regulations consistent with this article to do so. For purposes of this section: (1) "article shall mean both article 8 and article 8.1 of this chapter; (2) "earned paid sick time" is as defined in section 23-371, Arizona Revised Statutes; (3) "employer" shall refer to the definition of employer in section 23-362, Arizona Revised Statutes, for purposes of minimum wage enforcement and shall refer to the definition of employer in section 23-371, Arizona Revised Statutes, for purposes of earned paid sick time enforcement; and (4) "retaliation" shall mean denial of any right guaranteed under article 8 and article 8.1 of this chapter and any threat, discharge, suspension, demotion, reduction of hours, or any other adverse action against an employee for the exercise of any right guaranteed herein including any sanctions against an employee who is the recipient of public benefits for rights guaranteed herein. Retaliation shall also include interference with or punishment for in any manner participating in or assisting an investigation, proceeding or hearing under this article.

B. No employer or other person shall discriminate or subject any person to retaliation for asserting any claim or right under this article, for assisting any other person in doing so, or for informing any person about their rights. Taking adverse action against a person within ninety days of a person's engaging in the foregoing activities shall raise a presumption that such action was retaliation, which may be rebutted by clear and convincing evidence that such action was taken for other permissible reasons.

C. Any person or organization may file an administrative complaint with the commission charging that an employer has violated this article as to any employee or other person. When the commission receives a complaint, the commission may review records regarding all employees at the employer's worksite in order to protect the identity of any employee identified in the complaint and to determine whether a pattern of violations has occurred. The name of any employee identified in a complaint to the commission shall be kept confidential as long as possible. Where the commission determines that an employee's name must be disclosed in order to investigate a complaint further, it may so do only with the employee's consent.

D. Employers shall post notices in the workplace, in such format specified by the commission, notifying employees of their rights under this article. Employers shall provide their business name, address, and telephone number in writing to employees upon hire. Employers shall maintain payroll records showing the hours worked for each day worked, and the wages and earned paid sick time paid to all employees for a period of four years. Failure to do so shall raise

a rebuttable presumption that the employer did not pay the required minimum wage rate or earned paid sick time. The commission may by regulation reduce or waive the recordkeeping and posting requirements herein for any categories of small employers whom it finds would be unreasonably burdened by such requirements. Employers shall permit the commission or a law enforcement officer to inspect and copy payroll or other business records, shall permit them to interview employees away from the worksite, and shall not hinder any investigation. Such information provided shall keep confidential except as is required to prosecute violations of this article. Employers shall permit an employee or his or her designated representative to inspect and copy payroll records pertaining to that employee.

E. A civil action to enforce this article may be maintained in a court of competent jurisdiction by a law enforcement officer or by any private party injured by a violation of this article.

F. Any employer who violates recordkeeping, posting, or other requirements that the commission may establish under this article shall be subject to a civil penalty of at least $250 dollars for a first violation, and at least $1000 dollars for each subsequent or willful violation and may, if the commission or court determines appropriate, be subject to special monitoring and inspections.

G. Any employer who fails to pay the wages or earned paid sick time required under this article shall be required to pay the employee the balance of the wages or earned paid sick time owed, including interest thereon, and an additional amount equal to twice the underpaid wages or earned paid sick time. Any employer who retaliates against an employee or other person in violation of this article shall be required to pay the employee an amount set by the commission or a court sufficient to compensate the employee and deter future violations, but not less than one hundred fifty dollars for each day that the violation continued or until legal judgment is final. The commission and the courts shall have the authority to order payment of such unpaid wages, unpaid earned sick time, other amounts, and civil penalties and to order any other appropriate legal or equitable relief for violations of this article. Civil penalties shall be retained by the agency that recovered them and used to finance activities to enforce this article. A prevailing plaintiff shall be entitled to reasonable attorney's fees and costs of suit.

H. A civil action to enforce this article may be commenced no later than two years after a violation last occurs, or three years in the case of a willful violation, and may encompass all violations that occurred as part of a continuing course of employer conduct regardless of their date. The statute of limitations shall be tolled during any investigation of an employer by the commission or other law enforcement officer, but such investigation shall not bar a person from bringing a civil action under this article. No verbal or written agreement or employment contract may waive any rights under this article.

I. The legislature may by statute raise the minimum wage established under this article, extend coverage, or increase penalties. A county, city, or town may by ordinance regulate minimum wages and benefits within its geographic boundaries but may not provide for a minimum wage lower than that prescribed in this article. State agencies, counties, cities, towns and other political subdivisions of the state may consider violations of this article in determining whether employers may receive or renew public contracts, financial assistance or licenses. This article shall be liberally construed in favor of its purposes and shall not limit the authority of the

legislature or any other body to adopt any law or policy that requires payment of higher or supplemental wages or benefits, or that extends such protections to employers or employees not covered by this article.

23-365. Reliance on administrative rule or regulation

(Added with a 1998 Prop. 105 clause pursuant to L07, Ch. 272)

In any action or proceeding commenced on or after January 1, 2007, an employer or other entity is not liable if the employer or entity fails to pay the minimum wage if the employer or entity proves that the act or omission was in good faith, conformed with and relied on an administrative regulation, order, ruling, approval or interpretation, administrative practice or enforcement policy issued by the commission pursuant to and in accordance with the commission's authority under this article. This defense, if established, bars the action or proceeding, notwithstanding that after the act or omission, the administrative regulation, order, ruling, approval, interpretation, practice or enforcement policy is modified or rescinded or is determined by judicial authority to be invalid.

Article 8.1

23-371. Definitions

(Caution: 1998 Prop. 105 applies)

For purposes of this article:

A. "Abuse" means an offense prescribed in section 13-3623, Arizona Revised Statutes.

B. "Commission" is as defined in section 23-362, Arizona Revised Statutes.

C. "Domestic Violence" is as defined in section 13-3601, Arizona Revised Statutes.

D. "Earned paid sick time" means time that is compensated at the same hourly rate and with the same benefits, including health care benefits, as the employee normally earns during hours worked and is provided by an employer to an employee for the purposes described in section 23-373 of this article, but in no case shall this hourly amount be less than that provided under the

Fair Labor Standards Act of 1938 (29 United States Code section 206(A)(1)) or section 23-363, Arizona Revised Statutes.

E. "Employ" is as defined in section 23-362, Arizona Revised Statutes.

F. "Employee" is as defined in section 23-362, Arizona Revised Statutes. Employee includes recipients of public benefits who are engaged in work activity as a condition of receiving public assistance.

G. "Employer" includes any corporation, proprietorship, partnership, joint venture, limited liability company, trust, association, political subdivision of the state, individual or other entity acting directly or indirectly in the interest of an employer in relation to an employee, but does not include the State of Arizona or the United States.

H. "Family member" means:

1. Regardless of age, a biological, adopted or foster child, stepchild or legal ward, a child of a domestic partner, a child to whom the employee stands in loco parentis, or an individual to whom the employee stood in loco parentis when the individual was a minor;

2. A biological, foster, stepparent or adoptive parent or legal guardian of an employee or an employee's spouse or domestic partner or a person who stood in loco parentis when the employee or employee's spouse or domestic partner was a minor child;

3. A person to whom the employee is legally married under the laws of any state, or a domestic partner of an employee as registered under the laws of any state or political subdivision;

4. A grandparent, grandchild or sibling (whether of a biological, foster, adoptive or step relationship) of the employee or the employee's spouse or domestic partner; or

5. Any other individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.

I. "Retaliation" is as defined in section 23-364, Arizona Revised Statutes.

J. "Sexual violence" means an offense prescribed in: (a) title 13, chapter 14, Arizona Revised Statutes, except for sections 13-1408 and 13-1422; or (b) sections 13-1304(A)(3), 13-1307, 13-3019, 13-3206, 13-3212, 13-3552, 13-3553, 13-3554, or 13-3560, Arizona Revised Statutes.

K. "Stalking" means an offense prescribed in section 13-2923, Arizona Revised Statutes.

L. "Year" means a regular and consecutive 12-month period as determined by the employer.

23-372. Accrual of earned paid sick time

(Caution: 1998 Prop. 105 applies)

A. Employees of an employer with 15 or more employees shall accrue a minimum of one hour of earned paid sick time for every 30 hours worked, but employees shall not be entitled to accrue or use more than 40 hours of earned paid sick time per year, unless the employer selects a higher limit.

B. Employees of an employer with fewer than 15 employees shall accrue a minimum of one hour of earned paid sick time for every 30 hours worked, but employees shall not be entitled to accrue or use more than 24 hours of earned paid sick time per year, unless the employer selects a higher limit.

C. In determining the number of employees performing work for an employer for compensation during a given week, all employees performing work for compensation on a full-time, part-time or temporary basis shall be counted. In situations in which the number of employees who work for an employer for compensation per week fluctuates above and below 15 employees per week over the course of the year, an employer is required to provide earned paid sick time pursuant to subsection A of this section if it maintained 15 or more employees on the payroll for some portion of a day in each of 20 different calendar weeks, whether or not the weeks were consecutive, in either the current or the preceding year (irrespective of whether the same individuals were in employment in each day).

D. All employees shall accrue earned paid sick time as follows:

1. Earned paid sick time as provided in this section shall begin to accrue at the commencement of employment or on July 1, 2017, whichever is later. An employer may provide all earned paid sick time that an employee is expected to accrue in a year at the beginning of the year.

2. An employee may use earned paid sick time as it is accrued, except that an employer may require an employee hired after July 1, 2017, to wait until the ninetieth calendar day after commencing employment before using accrued earned paid sick time, unless otherwise permitted by the employer.

3. Employees who are exempt from overtime requirements under the Fair Labor Standards Act of 1938 (29 United States Code section 213(A)(1)) will be assumed to work 40 hours in each work week for purposes of earned paid sick time accrual unless their normal work week is less than 40 hours, in which case earned paid sick time accrues based upon that normal work week.

4. Earned paid sick time shall be carried over to the following year, subject to the limitations on usage in subsections A and B. Alternatively, in lieu of carryover of unused earned paid sick time

from one year to the next, an employer may pay an employee for unused earned paid sick time at the end of a year and provide the employee with an amount of earned paid sick time that meets or exceeds the requirements of this article that is available for the employee's immediate use at the beginning of the subsequent year.

5. If an employee is transferred to a separate division, entity or location, but remains employed by the same employer, the employee is entitled to all earned paid sick time accrued at the prior division, entity or location and is entitled to use all earned paid sick time as provided in this section. When there is a separation from employment and the employee is rehired within nine months of separation by the same employer, previously accrued earned paid time that had not been used shall be reinstated. Further, the employee shall be entitled to use accrued earned paid sick time and accrue additional earned paid sick time at the re-commencement of employment.

6. When a different employer succeeds or takes the place of an existing employer, all employees of the original employer who remain employed by the successor employer are entitled to all earned paid sick time they accrued when employed by the original employer, and are entitled to use earned paid sick time previously accrued.

7. At its discretion, an employer may loan earned paid sick time to an employee in advance of accrual by such employee.

E. Any employer with a paid leave policy, such as a paid time off policy, who makes available an amount of paid leave sufficient to meet the accrual requirements of this section that may be used for the same purposes and under the same conditions as earned paid sick time under this article is not required to provide additional paid sick time.

F. Nothing in this article shall be construed as requiring financial or other reimbursement to an employee from an employer upon the employee's termination, resignation, retirement or other separation from employment for accrued earned paid sick time that has not been used.

23-373. Use of earned paid sick time

(Caution: 1998 Prop. 105 applies)

A. Earned paid sick time shall be provided to an employee by an employer for:

1. An employee's mental or physical illness, injury or health condition; an employee's need for medical diagnosis, care, or treatment of a mental or physical illness, injury or health condition; an employee's need for preventive medical care;

2. Care of a family member with a mental or physical illness, injury or health condition; care of a family member who needs medical diagnosis, care, or treatment of a mental or physical illness, injury or health condition; care of a family member who needs preventive medical care;

3. Closure of the employee's place of business by order of a public official due to a public health emergency or an employee's need to care for a child whose school or place of care has been closed by order of a public official due to a public health emergency, or care for oneself or a family member when it has been determined by the health authorities having jurisdiction or by a health care provider that the employee's or family member's presence in the community may jeopardize the health of others because of his or her exposure to a communicable disease, whether or not the employee or family member has actually contracted the communicable disease; or

4. Notwithstanding section 13-4439, Arizona Revised Statutes, absence necessary due to domestic violence, sexual violence, abuse or stalking, provided the leave is to allow the employee to obtain for the employee or the employee's family member:

(a) Medical attention needed to recover from physical or psychological injury or disability caused by domestic violence, sexual violence, abuse or stalking;

(b) Services from a domestic violence or sexual violence program or victim services organization;

(c) Psychological or other counseling;

(d) Relocation or taking steps to secure an existing home due to the domestic violence, sexual violence, abuse or stalking; or

(e) Legal services, including but not limited to preparing for or participating in any civil or criminal legal proceeding related to or resulting from the domestic violence, sexual violence, abuse or stalking.

B. Earned paid sick time shall be provided upon the request of an employee. Such request may be made orally, in writing, by electronic means or by any other means acceptable to the employer. When possible, the request shall include the expected duration of the absence.

C. When the use of earned paid sick time is foreseeable, the employee shall make a good faith effort to provide notice of the need for such time to the employer in advance of the use of the earned paid sick time and shall make a reasonable effort to schedule the use of earned paid sick time in a manner that does not unduly disrupt the operations of the employer.

D. An employer that requires notice of the need to use earned paid sick time where the need is not foreseeable shall provide a written policy that contains procedures for the employee to provide notice. An employer that has not provided to the employee a copy of its written policy for providing such notice shall not deny earned paid sick time to the employee based on non-compliance with such a policy.

E. An employer may not require, as a condition of an employee's taking earned paid sick time, that the employee search for or find a replacement worker to cover the hours during which the employee is using earned paid sick time.

F. Earned paid sick time may be used in the smaller of hourly increments or the smallest increment that the employer's payroll system uses to account for absences or use of other time.

G. For earned paid sick time of three or more consecutive work days, an employer may require reasonable documentation that the earned paid sick time has been used for a purpose covered by subsection A. Documentation signed by a heath care professional indicating that earned paid sick time is necessary shall be considered reasonable documentation for purposes of this section. In cases of domestic violence, sexual violence, abuse or stalking, one of the following types of documentation selected by the employee shall be considered reasonable documentation:

1. A police report indicating that the employee or the employee's family member was a victim of domestic violence, sexual violence, abuse or stalking;

2. A protective order; injunction against harassment; a general court order; or other evidence from a court or prosecuting attorney that the employee or employee's family member appeared, or is scheduled to appear, in court in connection with an incident of domestic violence, sexual violence, abuse, or stalking;

3. A signed statement from a domestic violence or sexual violence program or victim services organization affirming that the employee or employee's family member is receiving services related to domestic violence, sexual violence, abuse, or stalking;

4. A signed statement from a witness advocate affirming that the employee or employee's family member is receiving services from a victim services organization;

5. A signed statement from an attorney, member of the clergy, or a medical or other professional affirming that the employee or employee's family member is a victim of domestic violence, sexual violence, abuse or stalking; or

6. An employee's written statement affirming that the employee or the employee's family member is a victim of domestic violence, sexual violence, abuse, or stalking, and that the leave was taken for one of the purposes of subsection A, paragraph 4 of this section. The employee's written statement, by itself, is reasonable documentation for absences under this paragraph. The written statement does not need to be in an affidavit format or notarized, but shall be legible if handwritten and shall reasonably make clear the employee's identity, and if applicable, the employee's relationship to the family member.

H. The provision of documentation under subsection G does not waive or diminish any confidential or privileged communications between a victim of domestic violence, sexual violence, abuse or stalking with one or more of the individuals named in subsection G.

I. An employer may not require that documentation under subsection G explain the nature of the health condition or the details of the domestic violence, sexual violence, abuse or stalking.

23-374. Exercise of rights protected; retaliation prohibited

(Caution: 1998 Prop. 105 applies)

A. It shall be unlawful for an employer or any other person to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right protected under this article.

B. An employer shall not engage in retaliation or discriminate against an employee or former employee because the person has exercised rights protected under this article. Such rights include but are not limited to the right to request or use earned paid sick time pursuant to this article; the right to file a complaint with the commission or courts or inform any person about any employer's alleged violation of this article; the right to participate in an investigation, hearing or proceeding or cooperate with or assist the commission in its investigations of alleged violations of this article; and the right to inform any person of his or her potential rights under this article.

C. It shall be unlawful for an employer's absence control policy to count earned paid sick time taken under this article as an absence that may lead to or result in discipline, discharge, demotion, suspension, or any other adverse action.

D. Protections of this section shall apply to any person who mistakenly but in good faith alleges violations of this article.

23-375. Notice

(Caution: 1998 Prop. 105 applies)

A. Employers shall give employees written notice of the following at the commencement of employment or by July 1, 2017, whichever is later: employees are entitled to earned paid sick time and the amount of earned paid sick time, the terms of its use guaranteed under this article, that retaliation against employees who request or use earned paid sick time is prohibited, that each employee has the right to file a complaint if earned paid sick time as required by this article is denied by the employer or the employee is subjected to retaliation for requesting or taking earned paid sick time, and the contact information for the commission where questions about rights and responsibilities under this article can be answered.

B. The notice required in subsection A shall be in English, Spanish, and any language that is deemed appropriate by the commission.

C. The amount of earned paid sick time available to the employee, the amount of earned paid sick time taken by the employee to date in the year and the amount of pay the employee has received as earned paid sick time shall be recorded in, or on an attachment to, the employee's regular paycheck.

D. The commission shall create and make available to employers, in English, Spanish, and any language deemed appropriate by the commission, model notices that contain the information required under subsection A for employers' use in complying with subsection A.

E. An employer who violates the notice requirements of this section shall be subject to a civil penalty according to section 23-364(F), Arizona Revised Statutes.

23-376. Regulations

(Caution: 1998 Prop. 105 applies)

The commission shall be authorized to coordinate implementation and enforcement of this article and shall promulgate appropriate guidelines or regulations for such purposes.

23-377. Confidentiality and nondisclosure

(Caution: 1998 Prop. 105 applies)

An employer may not require disclosure of details relating to domestic violence, sexual violence, abuse or stalking or the details of an employee's or an employee's family member's health information as a condition of providing earned paid sick time under this article. If an employer possesses health information or information pertaining to domestic violence, sexual violence, abuse or stalking about an employee or employee's family member, such information shall be treated as confidential and not disclosed except to the affected employee or with the permission of the affected employee.

23-378. Encouragement of more generous earned paid sick time policies; no effect on more generous policies or laws

(Caution: 1998 Prop. 105 applies)

A. Nothing in this article shall be construed to discourage or prohibit an employer from the adoption or retention of an earned paid sick time policy more generous than the one required herein.

B. Nothing in this article shall be construed as diminishing the obligation of an employer to comply with any contract, collective bargaining agreement, employment benefit plan or other agreement providing more generous paid sick time to an employee than required herein. Nothing in this article shall be construed as diminishing the rights of public employees regarding paid sick time or use of paid sick time.

C. Nothing in this article shall be construed to supersede any provision of any local law that provides greater rights to paid sick time than the rights established under this article.

23-379. Other legal requirements

(Caution: 1998 Prop. 105 applies)

A. Nothing in this article shall be interpreted or applied so as to create a conflict with federal law.

B. This article provides minimum requirements pertaining to earned paid sick time and shall not be construed to preempt, limit, or otherwise affect the applicability of any other law, regulation, requirement, policy, or standard that provides for greater accrual or use by employees of earned paid sick time or that extends other protections to employees.

23-380. Public education and outreach

(Caution: 1998 Prop. 105 applies)

The commission may develop and implement a multilingual outreach program to inform employees, parents and persons who are under the care of a health care provider about the availability of earned paid sick time under this article. This program may include the distribution of notices and other written materials in English, Spanish, and any language deemed appropriate by the commission to all child care and elder care providers, domestic violence shelters, schools, hospitals, community health centers and other health care providers.

23-381. Collective bargaining agreements

(Caution: 1998 Prop. 105 applies)

All or any portion of the earned paid sick time requirements of this article shall not apply to employees covered by a valid collective bargaining agreement, to the extent that such requirements are expressly waived in the collective bargaining agreement in clear and unambiguous terms. No provisions of article 8.1 shall apply to employees covered by a collective bargaining agreement in effect on the effective date of this act until the stated expiration date in the collective bargaining agreement.

Statutes Referenced in the Definitions

1-502. Eligibility for state or local public benefits; documentation; violation; classification; citizen suits; court costs and attorney fees; definition

A. Notwithstanding any other state law and to the extent permitted by federal law, any agency of this state or a political subdivision of this state that administers any state or local public benefit shall require each natural person who applies for the state or local public benefit to submit at least one of the following documents to the entity that administers the state or local public benefit demonstrating lawful presence in the United States:

1. An Arizona driver license issued after 1996 or an Arizona nonoperating identification license.

2. A birth certificate or delayed birth certificate issued in any state, territory or possession of the United States.

3. A United States certificate of birth abroad.

4. A United States passport.

5. A foreign passport with a United States visa.

6. An I-94 form with a photograph.

7. A United States citizenship and immigration services employment authorization document or refugee travel document.

8. A United States certificate of naturalization.

9. A United States certificate of citizenship.

10. A tribal certificate of Indian blood.

11. A tribal or bureau of Indian affairs affidavit of birth.

B. For the purposes of administering the Arizona health care cost containment system, documentation of citizenship and legal residence shall conform with the requirements of title XIX of the social security act.

C. To the extent permitted by federal law, an agency of this state or political subdivision of this state may allow tribal members, the elderly and persons with disabilities or incapacity of the mind or body to provide documentation as specified in section 6036 of the federal deficit reduction act of 2005 (P.L. 109-171; 120 Stat. 81) and related federal guidance in lieu of the documentation required by this section.

D. Any person who applies for state or local public benefits shall sign a sworn affidavit stating that the documents presented pursuant to subsection A of this section are true under penalty of perjury.

E. Failure to report discovered violations of federal immigration law by an employee of an agency of this state or a political subdivision of this state that administers any state or local public benefit is a class 2 misdemeanor. If that employee's supervisor knew of the failure to report and failed to direct the employee to make the report, the supervisor is guilty of a class 2 misdemeanor.

F. This section shall be enforced without regard to race, color, religion, sex, age, disability or national origin.

G. Any person who is a resident of this state has standing in any court of record to bring suit against any agent or agency of this state or its political subdivisions to remedy any violation of any provision of this section, including an action for mandamus. Courts shall give preference to actions brought under this section over other civil actions or proceedings pending in the court.

H. The court may award court costs and reasonable attorney fees to any person or any official or agency of this state or a county, city, town or other political subdivision of this state that prevails by an adjudication on the merits in a proceeding brought pursuant to this section.

I. For the purposes of this section, "state or local public benefit" has the same meaning prescribed in 8 United States Code section 1621, except that it does not include commercial or professional licenses, benefits provided by the public retirement systems and plans of this state or services widely available to the general population as a whole.

32-1601. Definitions

In this chapter, unless the context otherwise requires:

1. "Absolute discharge from the sentence" means completion of any sentence, including imprisonment, probation, parole, community supervision or any form of court supervision.

2. "Appropriate health care professional" means a licensed health care professional whose scope of practice, education, experience, training and accreditation are appropriate for the situation or condition of the patient who is the subject of a consultation or referral.

3. "Approval" means that a regulated training or educational program to prepare persons for licensure, certification or registration has met standards established by the board.

4. "Board" means the Arizona state board of nursing.

5. "Certified nurse midwife" means a registered nurse who:

(a) Is certified by the board.

(b) Has completed a nurse midwife education program approved or recognized by the board and educational requirements prescribed by the board by rule.

(c) Holds a national certification as a certified nurse midwife from a national certifying body recognized by the board.

(d) Has an expanded scope of practice in the provision of health care services for women from adolescence to beyond menopause, including antepartum, intrapartum, postpartum, reproductive, gynecologic and primary care, for normal newborns during the first twenty-eight days of life and for men for the treatment of sexually transmitted diseases. The expanded scope of practice under this subdivision includes:

(i) Assessing patients, synthesizing and analyzing data and understanding and applying principles of health care at an advanced level.

(ii) Managing the physical and psychosocial health care of patients.

(iii) Analyzing multiple sources of data, identifying alternative possibilities as to the nature of a health care problem and selecting, implementing and evaluating appropriate treatment.

(iv) Making independent decisions in solving complex patient care problems.

(v) Diagnosing, performing diagnostic and therapeutic procedures and prescribing, administering and dispensing therapeutic measures, including legend drugs, medical devices and controlled substances, within the scope of the certified nurse midwife practice after meeting requirements established by the board.

(vi) Recognizing the limits of the nurse's knowledge and experience by consulting with or referring patients to other appropriate health care professionals if a situation or condition occurs that is beyond the knowledge and experience of the nurse or if the referral will protect the health and welfare of the patient.

(vii) Delegating to a medical assistant pursuant to section 32-1456.

(viii) Performing additional acts that require education and training as prescribed by the board and that are recognized by the nursing profession as proper to be performed by a certified nurse midwife.

6. "Certified nursing assistant" means a person who is registered on the registry of nursing assistants pursuant to this chapter to provide or assist in the delivery of nursing or nursing-related services under the supervision and direction of a licensed nursing staff member. Certified nursing assistant does not include a person who:

(a) Is a licensed health care professional.

(b) Volunteers to provide nursing assistant services without monetary compensation.

(c) Is a licensed nursing assistant.

7. "Certified registered nurse" means a registered nurse who has been certified by a national nursing credentialing agency recognized by the board.

8. "Certified registered nurse anesthetist" means a registered nurse who meets the requirements of section 32-1634.03 and who practices pursuant to the requirements of section 32-1634.04.

9. "Clinical nurse specialist" means a registered nurse who:

(a) Is certified by the board as a clinical nurse specialist.

(b) Holds a graduate degree with a major in nursing and completes educational requirements as prescribed by the board by rule.

(c) Is nationally certified as a clinical nurse specialist or, if certification is not available, provides proof of competence to the board.

(d) Has an expanded scope of practice based on advanced education in a clinical nursing specialty that includes:

(i) Assessing clients, synthesizing and analyzing data and understanding and applying nursing principles at an advanced level.

(ii) Managing directly and indirectly a client's physical and psychosocial health status.

(iii) Analyzing multiple sources of data, identifying alternative possibilities as to the nature of a health care problem and selecting appropriate nursing interventions.

(iv) Developing, planning and guiding programs of care for populations of patients.

(v) Making independent nursing decisions to solve complex client care problems.

(vi) Using research skills and acquiring and applying critical new knowledge and technologies to nursing practice.

(vii) Prescribing and dispensing durable medical equipment.

(viii) Consulting with or referring a client to other health care providers based on assessment of the client's health status and needs.

(ix) Facilitating collaboration with other disciplines to attain the desired client outcome across the continuum of care.

(x) Performing additional acts that require education and training as prescribed by the board and that are recognized by the nursing profession as proper to be performed by a clinical nurse specialist.

10. "Conditional license" or "conditional approval" means a license or approval that specifies the conditions under which the regulated party is allowed to practice or to operate and that is prescribed by the board pursuant to section 32-1644 or 32-1663.

11. "Delegation" means transferring to a competent individual the authority to perform a selected nursing task in a designated situation in which the nurse making the delegation retains accountability for the delegation.

12. "Disciplinary action" means a regulatory sanction of a license, certificate or approval pursuant to this chapter in any combination of the following:

(a) A civil penalty for each violation of this chapter, not to exceed one thousand dollars for each violation.

(b) Restitution made to an aggrieved party.

(c) A decree of censure.

(d) A conditional license or a conditional approval that fixed a period and terms of probation.

(e) Limited licensure.

(f) Suspension of a license, a certificate or an approval.

(g) Voluntary surrender of a license, a certificate or an approval.

(h) Revocation of a license, a certificate or an approval.

13. "Health care institution" has the same meaning prescribed in section 36-401.

14. "Licensed nursing assistant" means a person who is licensed pursuant to this chapter to provide or assist in the delivery of nursing or nursing-related services under the supervision and direction of a licensed nursing staff member. Licensed nursing assistant does not include a person who:

(a) Is a licensed health care professional.

(b) Volunteers to provide nursing assistant services without monetary compensation.

(c) Is a certified nursing assistant.

15. "Licensee" means a person who is licensed pursuant to this chapter or in a party state as defined in section 32-1668.

16. "Limited license" means a license that restricts the scope or setting of a licensee's practice.

17. "Medication order" means a written or verbal communication given by a certified registered nurse anesthetist to a health care professional to administer a drug or medication, including controlled substances.

18. "Practical nurse" means a person who holds a practical nurse license issued pursuant to this chapter or pursuant to a multistate compact privilege and who practices practical nursing as defined in this section.

19. "Practical nursing" includes the following activities that are performed under the supervision of a physician or a registered nurse:

(a) Contributing to the assessment of the health status of individuals and groups.

(b) Participating in the development and modification of the strategy of care.

(c) Implementing aspects of the strategy of care within the nurse's scope of practice.

(d) Maintaining safe and effective nursing care that is rendered directly or indirectly.

(e) Participating in the evaluation of responses to interventions.

(f) Delegating nursing activities within the scope of practice of a practical nurse.

(g) Performing additional acts that require education and training as prescribed by the board and that are recognized by the nursing profession as proper to be performed by a practical nurse.

20. "Presence" means within the same health care institution or office as specified in section 32-1634.04, subsection A, and available as necessary.

21. "Registered nurse" or "professional nurse" means a person who practices registered nursing and who holds a registered nurse license issued pursuant to this chapter or pursuant to a multistate compact privilege.

22. "Registered nurse practitioner" means a registered nurse who:

(a) Is certified by the board.

(b) Has completed a nurse practitioner education program approved or recognized by the board and educational requirements prescribed by the board by rule.

(c) If applying for certification after July 1, 2004, holds national certification as a nurse practitioner from a national certifying body recognized by the board.

(d) Has an expanded scope of practice within a specialty area that includes:

(i) Assessing clients, synthesizing and analyzing data and understanding and applying principles of health care at an advanced level.

(ii) Managing the physical and psychosocial health status of patients.

(iii) Analyzing multiple sources of data, identifying alternative possibilities as to the nature of a health care problem and selecting, implementing and evaluating appropriate treatment.

(iv) Making independent decisions in solving complex patient care problems.

(v) Diagnosing, performing diagnostic and therapeutic procedures, and prescribing, administering and dispensing therapeutic measures, including legend drugs, medical devices and controlled substances within the scope of registered nurse practitioner practice on meeting the requirements established by the board.

(vi) Recognizing the limits of the nurse's knowledge and experience by consulting with or referring patients to other appropriate health care professionals if a situation or condition occurs that is beyond the knowledge and experience of the nurse or if the referral will protect the health and welfare of the patient.

(vii) Delegating to a medical assistant pursuant to section 32-1456.

(viii) Performing additional acts that require education and training as prescribed by the board and that are recognized by the nursing profession as proper to be performed by a nurse practitioner.

23. "Registered nursing" includes the following:

(a) Diagnosing and treating human responses to actual or potential health problems.

(b) Assisting individuals and groups to maintain or attain optimal health by implementing a strategy of care to accomplish defined goals and evaluating responses to care and treatment.

(c) Assessing the health status of individuals and groups.

(d) Establishing a nursing diagnosis.

(e) Establishing goals to meet identified health care needs.

(f) Prescribing nursing interventions to implement a strategy of care.

(g) Delegating nursing interventions to others who are qualified to do so.

(h) Providing for the maintenance of safe and effective nursing care that is rendered directly or indirectly.

(i) Evaluating responses to interventions.

(j) Teaching nursing knowledge and skills.

(k) Managing and supervising the practice of nursing.

(l) Consulting and coordinating with other health care professionals in the management of health care.

(m) Performing additional acts that require education and training as prescribed by the board and that are recognized by the nursing profession as proper to be performed by a registered nurse.

24. "Registry of nursing assistants" means the nursing assistants registry maintained by the board pursuant to the omnibus budget reconciliation act of 1987 (P.L. 100-203; 101 Stat. 1330), as amended by the medicare catastrophic coverage act of 1988 (P.L. 100-360; 102 Stat. 683).

25. "Regulated party" means any person or entity that is licensed, certified, registered, recognized or approved pursuant to this chapter.

26. "Unprofessional conduct" includes the following, whether occurring in this state or elsewhere:

(a) Committing fraud or deceit in obtaining, attempting to obtain or renewing a license or a certificate issued pursuant to this chapter.

(b) Committing a felony, whether or not involving moral turpitude, or a misdemeanor involving moral turpitude. In either case, conviction by a court of competent jurisdiction or a plea of no contest is conclusive evidence of the commission.

(c) Aiding or abetting in a criminal abortion or attempting, agreeing or offering to procure or assist in a criminal abortion.

(d) Any conduct or practice that is or might be harmful or dangerous to the health of a patient or the public.

(e) Being mentally incompetent or physically unsafe to a degree that is or might be harmful or dangerous to the health of a patient or the public.

(f) Having a license, certificate, permit or registration to practice a health care profession denied, suspended, conditioned, limited or revoked in another jurisdiction and not reinstated by that jurisdiction.

(g) Wilfully or repeatedly violating a provision of this chapter or a rule adopted pursuant to this chapter.

(h) Committing an act that deceives, defrauds or harms the public.

(i) Failing to comply with a stipulated agreement, consent agreement or board order.

(j) Violating this chapter or a rule that is adopted by the board pursuant to this chapter.

(k) Failing to report to the board any evidence that a registered or practical nurse or a nursing assistant is or may be:

(i) Incompetent to practice.

(ii) Guilty of unprofessional conduct.

(iii) Mentally or physically unable to safely practice nursing or to perform nursing-related duties. A nurse who is providing therapeutic counseling for a nurse who is in a drug rehabilitation program is required to report that nurse only if the nurse providing therapeutic counseling has personal knowledge that patient safety is being jeopardized.

(l) Failing to self-report a conviction for a felony or undesignated offense within ten days after the conviction.

(m) Cheating or assisting another to cheat on a licensure or certification examination.

32-2501. Definitions

In this chapter, unless the context otherwise requires:

1. "Active license" means a regular license issued pursuant to this chapter.

2. "Adequate records" means legible medical records containing, at a minimum, sufficient information to identify the patient, support the diagnosis, justify the treatment, accurately document the results, indicate advice and cautionary warnings provided to the patient and provide sufficient information for another practitioner to assume continuity of the patient's care at any point in the course of treatment.

3. "Advisory letter" means a nondisciplinary letter to notify a physician assistant that either:

(a) While there is insufficient evidence to support disciplinary action, the board believes that continuation of the activities that led to the investigation may result in further board action against the licensee.

(b) The violation is a minor or technical violation that is not of sufficient merit to warrant disciplinary action.

(c) While the licensee has demonstrated substantial compliance through rehabilitation or remediation that has mitigated the need for disciplinary action, the board believes that repetition of the activities that led to the investigation may result in further board action against the licensee.

4. "Approved program" means a physician assistant educational program accredited by the accreditation review commission on education for physician assistants, or one of its predecessor agencies, the committee on allied health education and accreditation or the commission on the accreditation of allied health educational programs.

5. "Board" means the Arizona regulatory board of physician assistants.

6. "Completed application" means an application for which the applicant has supplied all required fees, information and correspondence requested by the board on forms and in a manner acceptable to the board.

7. "Immediate family" means the spouse, natural or adopted children, father, mother, brothers and sisters of the physician assistant and the natural or adopted children, father, mother, brothers and sisters of the physician assistant's spouse.

8. "Letter of reprimand" means a disciplinary letter that is issued by the board and that informs the physician assistant that the physician assistant's conduct violates state or federal law and may require the board to monitor the physician assistant.

9. "Limit" means a nondisciplinary action that is taken by the board and that alters a physician assistant's practice or medical activities if there is evidence that the physician assistant is or may be mentally or physically unable to safely engage in health care tasks.

10. "Medically incompetent" means that a physician assistant lacks sufficient medical knowledge or skills, or both, in performing delegated health care tasks to a degree likely to endanger the health or safety of patients.

11. "Minor surgery" means those invasive procedures that may be delegated to a physician assistant by a supervising physician, that are consistent with the training and experience of the physician assistant, that are normally taught in courses of training approved by the board and that have been approved by the board as falling within a scope of practice of a physician assistant. Minor surgery does not include a surgical abortion.

12. "Physician" means a physician who is licensed pursuant to chapter 13 or 17 of this title.

13. "Physician assistant" means a person who is licensed pursuant to this chapter and who practices medicine with physician supervision.

14. "Regular license" means a valid and existing license issued pursuant to section 32-2521 to perform health care tasks.

15. "Restrict" means a disciplinary action that is taken by the board and that alters a physician assistant's practice or medical activities if there is evidence that the physician assistant is or may be medically incompetent or guilty of unprofessional conduct.

16. "Supervising physician" means a physician who holds a current unrestricted license, who supervises a physician assistant and who assumes legal responsibility for health care tasks performed by the physician assistant.

17. "Supervision" means a physician's opportunity or ability to provide or exercise direction and control over the services of a physician assistant. Supervision does not require a physician's constant physical presence if the supervising physician is or can be easily in contact with the physician assistant by telecommunication.

18. "Unprofessional conduct" includes the following acts by a physician assistant that occur in this state or elsewhere:

(a) Violation of any federal or state law or rule that applies to the performance of health care tasks as a physician assistant. Conviction in any court of competent jurisdiction is conclusive evidence of a violation.

(b) Claiming to be a physician or knowingly permitting another person to represent that person as a physician.

(c) Performing health care tasks that have not been delegated by the supervising physician.

(d) Habitual intemperance in the use of alcohol or habitual substance abuse.

(e) Signing a blank, undated or predated prescription form.

(f) Gross malpractice, repeated malpractice or any malpractice resulting in the death of a patient.

(g) Representing that a manifestly incurable disease or infirmity can be permanently cured or that a disease, ailment or infirmity can be cured by a secret method, procedure, treatment, medicine or device, if this is not true.

(h) Refusing to divulge to the board on demand the means, method, procedure, modality of treatment or medicine used in the treatment of a disease, injury, ailment or infirmity.

(i) Prescribing or dispensing controlled substances or prescription-only drugs for which the physician assistant is not approved or in excess of the amount authorized pursuant to this chapter.

(j) Any conduct or practice that is or might be harmful or dangerous to the health of a patient or the public.

(k) Violation of a formal order, probation or stipulation issued by the board.

(l) Failing to clearly disclose the person's identity as a physician assistant in the course of the physician assistant's employment.

(m) Failing to use and affix the initials "P.A." or "P.A.-C." after the physician assistant's name or signature on charts, prescriptions or professional correspondence.

(n) Procuring or attempting to procure a physician assistant license by fraud, misrepresentation or knowingly taking advantage of the mistake of another.

(o) Having professional connection with or lending the physician assistant's name to an illegal practitioner of any of the healing arts.

(p) Failing or refusing to maintain adequate records on a patient.

(q) Using controlled substances that have not been prescribed by a physician, physician assistant, dentist or nurse practitioner for use during a prescribed course of treatment.

(r) Prescribing or dispensing controlled substances to members of the physician assistant's immediate family.

(s) Prescribing, dispensing or administering any controlled substance or prescription-only drug for other than accepted therapeutic purposes.

(t) Knowingly making any written or oral false or fraudulent statement in connection with the performance of health care tasks or when applying for privileges or renewing an application for privileges at a health care institution.

(u) Committing a felony, whether or not involving moral turpitude, or a misdemeanor involving moral turpitude. In either case, conviction by a court of competent jurisdiction or a plea of no contest is conclusive evidence of the commission.

(v) Having a certification or license refused, revoked, suspended, limited or restricted by any other licensing jurisdiction for the inability to safely and skillfully perform health care tasks or for unprofessional conduct as defined by that jurisdiction that directly or indirectly corresponds to any act of unprofessional conduct as prescribed by this paragraph.

(w) Having sanctions including restriction, suspension or removal from practice imposed by an agency of the federal government.

(x) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate a provision of this chapter.

(y) Using the term "doctor" or the abbreviation "Dr." on a name tag or in a way that leads the public to believe that the physician assistant is licensed to practice as an allopathic or an osteopathic physician in this state.

(z) Failing to furnish legally requested information to the board or its investigator in a timely manner.

(aa) Failing to allow properly authorized board personnel to examine on demand documents, reports and records of any kind relating to the physician assistant's performance of health care tasks.

(bb) Knowingly making a false or misleading statement on a form required by the board or in written correspondence or attachments furnished to the board.

(cc) Failing to submit to a body fluid examination and other examinations known to detect the presence of alcohol or other drugs pursuant to an agreement with the board or an order of the board.

(dd) Violating a formal order, probation agreement or stipulation issued or entered into by the board or its executive director.

(ee) Except as otherwise required by law, intentionally betraying a professional secret or intentionally violating a privileged communication.

(ff) Allowing the use of the licensee's name in any way to enhance or permit the continuance of the activities of, or maintaining a professional connection with, an illegal practitioner of medicine or the performance of health care tasks by a person who is not licensed pursuant to this chapter.

(gg) False, fraudulent, deceptive or misleading advertising by a physician assistant or the physician assistant's staff or representative.

(hh) Knowingly failing to disclose to a patient on a form that is prescribed by the board and that is dated and signed by the patient or guardian acknowledging that the patient or guardian has read and understands that the licensee has a direct financial interest in a separate diagnostic or treatment agency or in nonroutine goods or services that the patient is being prescribed and if the prescribed treatment, goods or services are available on a competitive basis. This subdivision does not apply to a referral by one physician assistant to another physician assistant or to a doctor of medicine or a doctor of osteopathy within a group working together.

(ii) With the exception of heavy metal poisoning, using chelation therapy in the treatment of arteriosclerosis or as any other form of therapy without adequate informed patient consent or without conforming to generally accepted experimental criteria including protocols, detailed records, periodic analysis of results and periodic review by a medical peer review committee, or without approval by the United States food and drug administration or its successor agency.

(jj) Prescribing, dispensing or administering anabolic or androgenic steroids for other than therapeutic purposes.

(kk) Prescribing, dispensing or furnishing a prescription medication or a prescription-only device as defined in section 32-1901 to a person unless the licensee first conducts a physical examination of that person or has previously established a professional relationship with the person. This subdivision does not apply to:

(i) A physician assistant who provides temporary patient care on behalf of the patient's regular treating licensed health care professional.

(ii) Emergency medical situations as defined in section 41-1831.

(iii) Prescriptions written to prepare a patient for a medical examination.

(iv) Prescriptions written or antimicrobials dispensed to a contact as defined in section 36-661 who is believed to have had significant exposure risk as defined in section 36-661 with another person who has been diagnosed with a communicable disease as defined in section 36-661 by the prescribing or dispensing physician assistant.

(ll) Engaging in sexual conduct with a current patient or with a former patient within six months after the last medical consultation unless the patient was the licensee's spouse at the time of the contact or, immediately preceding the professional relationship, was in a dating or engagement relationship with the licensee. For the purposes of this subdivision, "sexual conduct" includes:

(i) Engaging in or soliciting sexual relationships, whether consensual or nonconsensual.

(ii) Making sexual advances, requesting sexual favors or engaging in other verbal conduct or physical contact of a sexual nature with a patient.

(iii) Intentionally viewing a completely or partially disrobed patient in the course of treatment if the viewing is not related to patient diagnosis or treatment under current practice standards.

(mm) Performing health care tasks under a false or assumed name in this state.

36-661. Definitions

In this article, unless the context otherwise requires:

1. "Acquired immune deficiency syndrome" has the same meaning as defined by the centers for disease control of the United States public health service.

2. "Capacity to consent" means a person's ability, determined without regard to the person's age, to understand and appreciate the nature and consequences of a proposed health care service, treatment or procedure and to make an informed decision concerning that service, treatment or procedure.

3. "Child" means an unemancipated person under eighteen years of age.

4. "Communicable disease" means a contagious, epidemic or infectious disease required to be reported to the local board of health or the department pursuant to chapter 1 of this title and this chapter.

5. "Communicable disease related information" means information regarding a communicable disease in the possession of a person who provides health services or who obtains the information pursuant to the release of communicable disease related information.

6. "Contact" means a spouse or sex partner of a protected person, a person who has shared hypodermic needles or syringes with a protected person or a person otherwise exposed to a protected person with a communicable disease in a manner that poses an epidemiologically significant risk of transmission of that disease.

7. "Department" means the department of health services.

8. "Director" means the director of the department of health services.

9. "First responder" means a law enforcement officer, a firefighter or an ambulance attendant as defined in section 36-2201.

10. "Good samaritan" means a person who renders emergency care or assistance in good faith and without compensation at the scene of any accident, fire or other life-threatening emergency and who believes that a significant exposure risk occurred while the person rendered care or assistance.

11. "Health care decision maker" has the same meaning prescribed in section 12-2801.

12. "Health care provider" means a physician, nurse or other person involved in providing health services.

13. "Health facility" means a health care institution as defined in section 36-401, a blood bank, blood center, milk bank, sperm bank, organ or tissue bank or clinical laboratory or a health care services organization holding a certificate of authority pursuant to section 20-1054.

14. "Health service" means public or private care, treatment, clinical laboratory tests, counseling or educational service for adults or children and acute, chronic, custodial, residential, outpatient, home or other health care or activities related to the detection, reporting, prevention and control of communicable or preventable diseases.

15. "HIV" means the human immunodeficiency virus.

16. "HIV infection" means infection with the human immunodeficiency virus or a related virus identified as a probable causative agent of acquired immune deficiency syndrome.

17. "HIV-related illness" means an illness that may result from or be associated with HIV infection.

18. "HIV-related information" means information concerning whether a person has had an HIV-related test or has HIV infection, HIV-related illness or acquired immune deficiency syndrome and includes information that identifies or reasonably permits identification of that person or the person's contacts.

19. "HIV-related test" means a laboratory test or series of tests for the virus, components of the virus or antibodies to the virus thought to indicate the presence of HIV infection.

20. "Occupational significant exposure risk" means a significant exposure risk that occurs in the performance of a health care provider's professional duties or a first responder's official duties.

21. "Protected person" means a person who takes an HIV-related test or who has been diagnosed as having HIV infection, acquired immune deficiency syndrome, HIV-related illness or another communicable disease.

22. "Significant exposure risk" means contact with another person in a manner that, if the other person has a communicable disease, poses an epidemiologically significant risk of transmission of that disease as determined by the department.

36-2351. Definitions

In this chapter, unless the context otherwise requires:

1. "Construction" means building, erection, fabrication or installation.

2. "Coordinating medical provider" means a physician or group of physicians, or any combination thereof, which has entered into an agreement with a county, incorporated city or town, health service district or the department to supervise the medical care offered at a medical clinic, as defined by this section.

3. "Department" means the department of health services.

4. "Health service district" means a health service district established pursuant to title 48, chapter 16, article 1.

5. "Hospital" means a health care institution licensed as a hospital pursuant to chapter 4, article 2 of this title.

6. "Medical clinic" means a facility, whether mobile or stationary, which provides ambulatory medical care in a medically-underserved area through the employment of physicians, professional nurses, physician assistants or other health care technical and paraprofessional personnel.

7. "Physician" means a physician licensed pursuant to title 32, chapter 13 or 17.